

# ASTROLABE

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A CIS Student Research Journal



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# ASTROLABE

A CIS Student Research Journal

*Astrolabe* is a student research journal that is published on behalf of the College of Islamic Studies (CIS) at Hamad Bin Khalifa University (HBKU) by HBKU Press.

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*Astrolabe* is a student publication platform created in the spirit of our Islamic heritage and the quest for students to engage with issues of significance to Muslims in the contemporary global context.

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## Dean's Message

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Dear Reader,

I am pleased to present the latest edition of *Astrolabe: A CIS Student Research Journal*, a testament to the intellectual vibrancy that thrives within the College of Islamic Studies (CIS) at Hamad Bin Khalifa University (HBKU). As we embark on our fifth issue, *Astrolabe* continues to be a dynamic platform, bringing forth a multidisciplinary collection of scholarly pieces authored by students from a broad range of fields of expertise.

A glance at the Table of Contents can showcase the intersectionality of Islamic thought across various fields of study. In these pages, you will encounter academic explorations and debates from the perspective of our graduate students, which demonstrate the relevance of rooting our viewpoints in the Islamic faith and the clarity it provides in addressing complex challenges of our time.

I extend my gratitude to the graduate students who have enthusiastically delved into their respective subjects and provided some thought-provoking insights. As you peruse these pages, I encourage you to appreciate the intellectual diversity within our community and the profound impact that Islamic thought can have across a spectrum of academic pursuits.

**Recep Şentürk, PhD**

Dean, College of Islamic Studies  
Hamad Bin Khalifa University

## Introductory Note

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*Intelligence, keenness [to learn], impoverishment, estrangement,  
the instruction of a master, and a long life.*

Imam al-Ḥaramayn al-Juwaynī (d. 478/1085)  
on the requisites of knowledge

Dear Reader,

Welcome to the fifth issue of *Astrolabe: A CIS Student Research Journal*, a publication that reflects the spirit of curiosity, exploration, and dissemination of knowledge at CIS to the wider community.

The journal draws inspiration from the astrolabe, its namesake, serving as a scholarly embodiment of the ancient instrument that guided sailors through unexplored realms—and in this case, uncharted territories of our scholarship and civilizational history. We encourage our students to seize control, setting a course toward academic questions that resonate with their interests. Through this journey, they refine their skills, design their intellectual voyage, and immerse themselves in the spirit of their academic pursuits.

Each article enclosed in this issue was generated as part of the coursework produced during the graduate study journey. They each portray analytical thought and a nuanced understanding of the Islamic tradition in addressing debates from virtue ethics to sustainable architecture in Mali, from drawing refugee management lessons from the history of the Muhajirun to hadith scholarship in India. You will also find papers addressing the financial industry, such as the Shari'a perspective on non-fungible tokens (NFTs) and the circular economy.

We hope you enjoy this edition, which offers a diverse array of academic discussions informed by Islamic perspectives, in the spirit of fostering our audience with a renewed drive for curiosity and learning.



# CONTENT

1. Restricting the Permissible and Divorce: From Traditional Jurists to the Coerciveness of the Modern State	1
<i>Ibrahim Salahaldeen Ibrahim Alledawi</i>	
2. A Typological Study of West African Mosque at Djenné, Mali	18
<i>Rimsha Khalid</i>	
3. Non-Fungible Tokens (NFTs): A Shari'a Perspective	32
<i>Noha Selim</i>	
4. The Use of Circular Economy for the Natural Resources of Power: The State of Qatar as a Case Study (Oil and Gas)	53
<i>Khawla Ahmed Al-Turki</i>	
5. Drawing Parallels Between Al-Muhājirūn and Contemporary Migrants	63
<i>Laura Farooq Sani</i>	
6. History of Hadith Scholarship in Medieval Malabar of South India	72
<i>Muhammed Ramsan Cheerakkolil</i>	





# Restricting the Permissible and Divorce: From Traditional Jurists to the Coerciveness of the Modern State

Ibrahim Salahaldeen Ibrahim Alledawi

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## ABSTRACT

Calls for the codification and reform of Islamic family laws in contemporary times have arisen around the globe. Of particular criticism is Islamic family law of divorce, which has drawn harsh criticism and repeated calls for reform to meet the demand of international human rights and gender equality. However, for Modern Muslim states, changing or reforming their laws to adhere to the Western model in divorce is quite problematic because divorce, as part of family law, is more detailed in the scriptures than in any other domain, which gives it a divine significance that results in resistance from the Muslim population when it comes to deviating from these rules. Therefore, these reforms have utilized several marginal Islamic legal tools in order to establish historical and religious legitimacy for formalizing a new law. Tools such as *taqyīd al-mubāḥ* (restricting the permissible) have become crucial in providing a credible Islamic perspective for state

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regulations. As a result, restricting the permissible has become a widespread concept in contemporary legal discourse. However, this has raised debates over the state's authority and right to restrict *mubāḥ* and traditional Islamic divorce, as well as the legal and moral responsibilities of individuals under such restrictions. It has also raised questions about the role of jurists in law production within the modern state. Thus, this article aims to address two primary questions: 1) Can modern Muslim states restrict divorce and bring it under the court's authority? 2) As a Muslim state, does such restriction align with the broader principles of shari'a? The article is divided into three sections. The first section explores how the modern state depends on the legal tool of *taqyīd al-mubāḥ* and the shift in juristic thinking to adapt to contemporary changes while discussing the legitimacy of the states right to apply the restrictions. The second section demonstrates the transformation of Islamic family law from traditional jurists' authority to being regulated by the modern state. It also presents three opposing viewpoints on transitioning from traditional divorce to juridical divorce. The third section analyzes and critiques the debates among these views.

**Keywords:** Taqyīd al-mubāḥ, divorce, talāq, Muslim state, Islamic family law

## INTRODUCTION

*Taqyīd al-mubāḥ* (to restrict the permissible) has been a subject of controversy in modern scholarship. This is not only because classical scholars did not dedicate a specific chapter for it in their writings but also because it intersects with many other concepts when defining its boundaries. Moreover, its widespread contemporary use raises questions about its origins, the causes of its expansion and development, and the reasons behind its prevalence in today's legal discourse (Shareef, 2023).

Some notions that intersect with *taqyīd al-mubāḥ* include the rights of God and the rights of the *mukallaf* (one who is obliged to fulfil religious duties) granted by God. The restriction of textual *mubāḥ* would infringe on the rights of both God and the *mukallaf*. The concept of *maṣlaḥa*, which governs the restriction, is another problematic concept in modern studies. It prompts questions such as whether it is obligatory to obey the rules of the restriction, and what is the scope of the ruler's authority in implementing it. This is especially relevant since the ruler is entrusted with the duty of upholding religion and worldly issues. The most important element is the radical change in the state's structure and scope of authority, along with the changes in the field of positive law, that brought about a shift in current moral values. The modern state structure has significantly changed the nature and influence of Islamic law in current legal systems. Nonetheless, "Islamic law remains part of modern Muslim states, albeit in a significantly different role than in the premodern period" (Emon, 2021, p. 53). The shift of the concept *taqyīd al-mubāḥ* from a marginal term, rather—or perhaps a nonexistent concept—to becoming a central term in the modern era highlights the profound transformation in the state's nature and its will-to-power.

## Taqyīd al-Mubāḥ

*Taqyīd al-mubāḥ* is the act of prioritizing one of the two options for legitimate and temporary reasons and to render the permissible required as long as there is no legal impediment, such as a text or a rule ('Abd-Al-Lāwī, 2011, p. 116). This definition applies to both individuals and the state, as individuals may also impose restrictions on some *mubāḥ* activities upon themselves. According to al-Qarāfī, The Lawgiver has categorized legal rulings into two types: those He originally determined to be obligatory or forbidden, and those He entrusted to the *mukallaf* to obligate upon himself (restrict) what was not obligatory (1995, p. 39).

This technical legal term was not used by classical jurists in their works before the 18th century (Shareef, 2023); rather they used numerous equivalent terms such as 'to prevent the permissible' (*man' al-mubāḥ*), 'to discontinue the permissible' (*ta'ṭīl al-mubāḥ*), 'to suspend the permissible' (*īqāf al-'amal al-mubāḥ*), and 'to refrain from the permissible' (*al-imtinā' 'an al-mubāḥ*). *Taqyīd al-mubāḥ* is part of the *siyāsa shari'a* (governance based on principles of Islamic law), and it refers to the authority of Muslim rulers to restrict acts that the shari'a permits in order to prevent social corruption (*mafsada*) and obtain a public benefit (*maṣlaḥa 'amma*) (al-Zarqā, 2004, p. 215; al-Qaradāwī, 1993, p. 126).

Accordingly, the state will render the permissible to either require (as obligatory from the state) to perform or to refrain from doing; hence the 'choice' is taken away from the *mukallaf*. The concept of *taqyīd al-mubāḥ* has been used since the late 19th century as the main argument in justifying the restriction of permissible acts by the state, such as polygyny and slavery (Riḍā, 1947, vol. 4, pp. 344-375). According to Jonathan Brown, slavery has been abolished in the Muslim world primarily through *taqyīd al-mubāḥ* by government orders (Brown, 2020, p. 224).

*Taqyīd al-mubāḥ* is similar to the legal tool 'blocking the means,' which Muslim scholars have been applying to forbid acts whenever they have overwhelming preponderance (*ghalabat al-zann*) that it will lead to unlawful acts. Jurists have used 'blocking the means' to derive a legal ruling on an act that is not explicitly addressed in the text or to respond to social changes. By contrast, *taqyīd al-mubāḥ* is exercised by Muslim rulers rather than jurists, and it is used to temporarily restrict what is otherwise permissible. It is essential to note that the restriction is not permanent, and it is not intended to establish permanent juridical rulings. *Taqyīd al-mubāḥ* has raised another question about the distinction between what is prohibited (*ḥarām*) and what is illegal. In other words, how *taqyīd al-mubāḥ* is different from 'prohibiting the permissible' (*tahrīm al-mubāḥ*).

Scholars have used three ways to make this distinction. Firstly, the desired *mubāḥ* act to be restricted must either cause social harm (*mafsada*) or secure a social benefit (*maṣlaḥa*). Secondly, the *mubāḥ* act can be restricted only until social harm is eliminated. And thirdly, a ruler may only impose restrictions on a particular instance of the *mubāḥ* category and not the whole category. For instance, a Muslim ruler can restrict child marriage but not outright prohibit marriage (Abū l-Baṣl, 1995, p. 227).



## LIMITS AND CONDITIONS OF THE RULER IN RESTRICTING *MUBĀḤ*

The delineation of the ruler's duties is not explicitly outlined in a definitive text. Rather, jurists have derived these duties from various texts and the practices of the first four caliphs and those who followed them as rulers (al-Māwardī, for instance, listed ten duties of the ruler; see al-Māwardī, 1989, p. 22).

The question of whether the ruler has the authority to restrict *mubāḤ* and whether the public should obey such restrictions has been a subject of intense debate within both classical and contemporary scholarship. According to al-Ālūsī (d. 1270/1854), in the context of interpreting the verse (Q, 4:59), he says that "Obedience to the ruler is obligatory as long as they are following the truth, so it is not obligatory to obey them when they violate the shari'a... Does it include *mubāḤ* or not? There was a disagreement; some argued that it is not obligatory to obey them..., while others asserted that it is obligatory" (al-Ālūsī, 1994, vol. 3, p. 64).

The dispute also extends to contemporary scholars. While most of them affirm the right of the ruler (or the state) to restrict *mubāḤ* under specific conditions, others hold differing opinions. These opposing views can be categorized into several groups: some of them prevent it absolutely (al-Tarīfī, 1994, p. 24), while others distinguish between textual *mubāḤ* and non-textual *mubāḤ* (*al-maskūt 'anh*), claiming that the restriction can only be imposed on the latter category due to concerns that such a restriction might be motivated by political gain. Furthermore, some contend that the ruler can render the *mubāḤ* as required to perform but cannot render it as required to refrain from doing.

There are three views regarding the right of the ruler to restrict *mubāḤ*. First, it is believed by some that the ruler has no authority to impose restrictions on *mubāḤ*, and should he attempt to do so, one is not obliged to obey him. The act of restricting *mubāḤ* is similar to 'blocking the means.' Scholars who do not acknowledge this as a legal tool reject the idea of restricting *mubāḤ*. For instance, Ibn Ḥazm, who believed that changing the status of *mubāḤ* was a violation of shari'a, considered it an act of disobedience to God and the Prophet (n.d., vol. 6, pp. 2-3). To impose restrictions on *mubāḤ* is seen as an act of legislating that supersedes God's legislation.

The main concern among both classical and contemporary scholars is that the ruler may follow his whims and desire to control the laws of shari'a. Thus, scholars advocate preventing the ruler from restricting *mubāḤ* so that he may not act on his own whims instead of considering actual benefits or harm (al-Zarqā, 2004, p. 221). Besides, such restrictions would curtail the freedoms granted by the Lawgiver and potentially increase oppression by modern states over individuals' choices. The restriction is usually based on the assumption of potential future corruption. However, rules and regulations should be founded on evidence, rather than mere conjectures. According to some contemporaries, "the restriction of polygamy has gone astray from God and His Messenger because polygamy is permissible. So, who prevents it has removed the permissibility established by God, the Sunnah and consensus, so who does so is a sinful" (Āl Būrnū, 2003, vol. 4, p. 384).

The second viewpoint is more permissive than the first. Advocates of this perspective argue that the ruler has the right to restrict only the non-textual *mubāḥ*, and not the textual *mubāḥ*. They believe that the ruler's right should be limited to restricting non-textual *mubāḥ* because there cannot be reasoning (*ijtihād*) in the presence of a text. Textual *mubāḥ*, on the other hand, is a right given by God, and to restrict it is perceived as a revocation of this right. Actions that fall under *siyāsa shari'a* are subject to change, in contrast to those that fall under *shari'a*, which are characterized by their unalterable and permanent nature. Giving the ruler the authority to restrict and abolish these rights would transform the ruler into a source of legislation. This would constitute an encroachment on God's right, allowing the ruler to supersede *shari'a* law based on whims and desires (Abū l-Baṣl, 1995, pp. 227, 242).

Both viewpoints emphasized the concept of rights in their approach to preventing restriction, specifically focusing on God's right to legislate and not invalidate the texts. The second perspective is the right granted to the *mukallaḥ* by God through an explicit text, even if its legal ruling is permissible. The restriction will abolish both rights. Many scholars have been dismissive of the aforementioned viewpoints. For example, Al-Raysūnī argued that even in cases of textual *mubāḥ*, restriction may be required to achieve benefits and avert corruption (2000, p. 32). The majority of scholars hold this later opinion that base the concept of restriction on the principle of *maṣlaḥa*. However, it should be noted that even though this viewpoint is widely held, "the restricting of *mubāḥ* by the ruler based on *maṣlaḥa* has a room for consideration, and is not from the consensus that it is not allowed to disagree with" (Ibn 'Āshūr, 1984, vol. 2, p. 418). Besides, questions remain regarding the ruler's role in achieving the public's *maṣlaḥa*, as well as what constitutes such *maṣlaḥa*.

The third viewpoint maintains that the ruler has the authority and the right to restrict *mubāḥ*, and it is obligatory to obey the restriction in both textual and non-textual *mubāḥ* (al-Mūs, 2014, pp. 211). In both cases, the ruler is subject to the legal maxim "the actions of an Imam (leader) are driven by the interest of the community" (al-Suyūṭī, 1983, p. 121). The ruler's responsibility is to guard the religion and to govern worldly matters (al-Māwardī, 1989, p. 3), and to secure the *maṣlaḥa* of the governed, much like the responsibilities of a guardian towards an orphan. For example, Ibn 'Ābidīn emphasized the obligation of obeying the ruler's restrictions in matters classified as *mubāḥ* (2000, vol. 5, pp. 167-168).

In the case of non-textual *mubāḥ*, the ruler's authority to restrict *mubāḥ* follows the rule "Wherever there is the *maṣlaḥa* (benefit), then there will be the *shari'a* of Allah." Jurists have established that if the ruler restricts a non-textual *mubāḥ*, one must abide by the restriction, effectively rendering the *mubāḥ* as forbidden (al-Ghazālī, 1993, p. 346).

In textual *mubāḥ*, scholars have adopted a more rigorous stance. They propose a set of conditions that must be met for restrictions to be applied. According to al-Qaraḍāwī, "the righteous ruler has the right to restrict the permissible for a *maṣlaḥa*, but such restrictions must be temporary and justified" (2008, p. 206). In the absence of a definitive text, some permissible actions may require restriction for *maṣlaḥa*.

Recent literature on restricting *mubāḥ* raises three concerns. Firstly, it highlights the need to align *mubāḥ* restriction with the context of the modern state, replacing the ruler, Imam, or guardian used in classical references by the state or one of its governmental bodies.

Secondly, it aims to establish that the restriction has existed in classical times since the advent of shari'a. In other words, to claim history and premodern legal culture as its frame of reference, scholars cite instances from the lives of the Prophet and the four caliphs. They also make analogies to the writings of classical scholars to legitimize the restriction of *mubāḥ* and to refute the arguments of the previous viewpoints. For example, the instance where the second Caliph, Umar, restricted the issuance of three divorces at once, rendering it a *bain* (irrevocable) divorce serves as a historical precedent. Scholars then determined and deduced that the restriction has a purpose ('*ila*'), which is the *maṣlaḥa* of the community (Shalabī, 1947, pp. 87- 93).

Thirdly, recent literature on *mubāḥ* restriction focuses on safeguarding the integrity of the shari'a texts to prevent them from being manipulated to fulfill the ruler's whims and desires. This is achieved by clarifying the concept of *maṣlaḥa* and setting conditions for the validity of restrictions. Scholars have outlined a list of conditions that must be met to validate a restriction based on *maṣlaḥa*, preventing the misuse of shari'a in favor of the ruler's whims and desires. For instance, a restriction must either prevent social harm (*mafsada*) or secure a social benefit (*maṣlaḥa*).

Additionally, a restriction should only continue until social harm is mitigated, and the ruler may impose restrictions on specific instances within the *mubāḥ* category rather than the whole category (Abū l-Baṣl, 1995, p. 227). According to al-Qaraḏāwī, from a shari'a perspective, the intended interest is comprehensive, encompassing both specific and universal aspects, individual and collective dimensions, local and global considerations, materialistic and moralistic aspects, and the concerns of both the worldly and the hereafter.

However, one of the most controversial issues in recent Islamic scholarship is the concept of *maṣlaḥa*: what is *maṣlaḥa*? When to consider something as *maṣlaḥa*? Whose *maṣlaḥa* should be considered? These questions are not easy to answer and differ from one researcher to another. For example, the so-called Muslim modernists and Islamist reforms aimed to reconcile the shari'a and the modern state. This required a new exploration of the possibility of reconciliation beyond the text, representing a constraint. They introduced conceptions of *maṣlaḥa* and *maqāṣid* that they understood as a means of transcending the limitations of the text and its apparent meanings, playing an important role in this reconciliation. In other words, *maṣlaḥa* and *maqāṣid* provided an avenue to avoid the 'secular' solution outside the textual framework (Hallaq, 2011, p. 12).

On the other hand, Muḥammad Sa'īd Ramaḏān al-Būṭī (d. 2013) affirmed the tight linkage between the shari'a and *maṣlaḥa* but rejected that *maṣlaḥa* can revise the shari'a. Instead, he argued that because the shari'a constitutes *maṣlaḥa*, it is not possible for the rules of the shari'a to be repealed by *maṣlaḥa* (1977, pp. 58- 59). Wael Hallaq also rejected the modernist approach to *maṣlaḥa*, arguing that they have elevated a marginal concept in Islamic law to make it central, leading to a form of religious utilitarianism in some sort

(2009, p. 511). Mohammad Fadel, on the contrary, believes that *maṣlaḥa* is not a marginal concept within the field of Islamic law but a “particular kind of flourishing rather than a form of utility” (2022).

Notably, *taqyīd al-mubāḥ* is a term governed by the *maṣlaḥa* to a large extent. Consequently, whenever there is a need to achieve benefit or to avert corruption, the concept of *taqyīd al-mubāḥ* comes into play; but how to define this benefit, and who has the authority to define it? Can it be protected from whims and desires?

It seems that the modern interpretation of benefit has distanced itself from a term established to safeguard the *fiqh* of one’s legal school and the shari’a. The intent was to protect existing Islamic laws from imputing human rationality into a term that can be exploited in favor of the modern nation-state or a desired interpretation. This has resulted in diluting the concept of benefit to make it suitable for such an understanding, reducing *taqyīd al-mubāḥ* to a mere tool for such endeavors.

The prominence given to the concept of *taqyīd al-mubāḥ* in recent studies reflects a significant transformation that occurred with the shift to the modern state system. One of the most significant features of the modern state is the monopoly of power and the coercive enforcement of the law. Hence, the state is the sole authority in decision-making and law enforcement. In this context, certain concepts in shari’a must be adjusted to fit within the framework of state control.

In one way or another, the state governed by shari’a simultaneously requires justifications and historical and religious legitimacy to establish a new law. If a state needs to codify laws that seem to conflict with the shari’a, it must invoke an Islamic rule to resolve this contradiction. As a result, *taqyīd al-mubāḥ* has become a key concept supported by Islamic historical legitimacy. It is, in fact, a tool for implementing the state’s objectives and political interests through reasoning based on *maṣlaḥa*.

## THE PROBLEM OF DIVORCE IN MODERN CONTEXT

Marriage, according to the Qur’ān, is meant to be unlimited in time (firm bond). Ideally, the foundation of this relationship should be built upon love and understanding, referred to as “*mawaddah wa-rahma*”, in the Qur’ān (Q, 30:21; Q, 2:228). In addition to this ideal, the primary purpose of the marriage contract is to facilitate sexual intercourse between the spouses, which is considered a primary reason for marriage, aimed at protecting them from committing a sexual sin.

Nevertheless, in cases where this harmony fails to develop or fades away over time, the Qur’ān allows to bring the marriage to an end (Q, 2:231), because “the Qur’ān recognizes the possibility of divorce in every marriage that it does not stigmatize divorce but provides the skeletal framework for dissolving the contract” (Siddiqui, 2010, p. 35).

There are several ways for ending a marriage for both men and women. However, *ṭalāq* denotes that the authority to end the marriage is in the hand of the man (or his proxy); it is the husband’s exclusive right to dissolve a marriage, according to the Qur’ān and Islamic law. *Ṭalāq* “is a means by which the man purposely brings his marriage to an end” (Motzki, 2003, p. 279). Just like a marriage is established through a verbal agreement

or declaration, divorce can also be initiated verbally by the husband.

In this context, language serves as the sole requirement for initiating a divorce, without the need to explicitly state one's intentions, as language reveals intention. *Talāq* can be unequivocal when employing the verbal form of *ṭalāq*, such as saying “*antī ṭāliq*.” However, it can also be ambiguous when using a more general formula to indicate *ṭalāq*, such as “I want you to go.” This would lead to the first issue, which originates from the potential misinterpretation of divorce, which starts from the translation of *ṭalāq*.

The term *talāq* is typically translated as divorce or repudiation. However, this translation falls short of capturing the full juristic and Islamic understanding of divorce. In English-speaking contexts, divorce is commonly perceived as a mutual agreement between both parties to end the marriage. In contrast, *ṭalāq* is a type of divorce that is entirely initiated by the husband's will and actions. Therefore, “assigning the term ‘divorce’ to mean *ṭalāq* unduly predetermines a paradigmatic meaning of what divorce represents in Islam” (Hallaq, 2009, p. 324; Siddiqui, 2010, p. 19).

Accordingly, modern Western divorce laws do not incorporate the unilateral aspect of *ṭalāq*. Modern Muslim states are gradually introducing legal and formal restrictions on *ṭalāq* in order to confine the husband's freedom to end marriages. The reasoning behind it is to reform divorce law and to enhance women's rights as a type of equality between a man and a woman since women are required to present arguments and justifications to seek dissolution of marriage while men face no such scrutiny for their motives. Furthermore, states grasp this opportunity to control family matters and reduce divorce rates (Voorhoeve, 2013, p. 212).

As a result, there have been calls for the legalization of juridical divorce as the only form deemed genuine and valid. In this proposed system, verbal divorce would not be recognized unless it is officially registered. This raises a myriad of complex issues, such as the conflict between the apparent legal aspects and the underlying religious aspects (*al-ḥukm al-diyānī wa-lqadā'ī*). In a scenario where a man declares divorce to his wife without informing the court, she would remain his wife in legal terms, yet simultaneously it is proscribed to him. By virtue of the law, he would inherit her if she passed away, but because he knows she is no longer his wife, he does not have the right to her inheritance. This situation leads to several additional legal consequences of divorce, including considerations such as the waiting period, inheritance, alimony, and custody, raising the critical question of the extent to which invalidating verbal divorce serves the best interests of both the family and society as a whole.

### THREE POSITIONS ON RESTRICTING DIVORCE

The debate over juridical divorce emerged in the early second-half of the 20th century, primarily in response to shifting social and economic dynamics. This debate was further fueled by the commitment of Islamic countries to international human rights agreements. It was exacerbated by instances of arbitrary divorce by some husbands, which led to unfavorable consequences for the family.

In this context, many voices advocated for the necessity of transferring the right of

verbal divorce from the husband to the judiciary. Three opposing viewpoints emerged in response to this issue. The first favors the attribution of divorce in the presence of two witnesses. Advocates of this stance argue that it serves the public interest and is in harmony with the shari'a. This perspective is championed by scholars who recognize the importance of revisiting some traditional rulings with the goal of addressing them in light of the changes that have taken place on these matters, ensuring consistency and closing any gaps that may arise from recent social and moral transformations.

The second perspective advocates for emulating the Western model, viewing Islamic divorce as demeaning to women and a threat to their dignity. According to proponents of this stance, Islamic divorce portrays women as a man's property. This perspective is endorsed by both the so-called Islamist reforms, which are often rooted in Islamic studies, as well as feminists. They view the text as an impediment because it conflicts with the modern system developed independently from these texts. In response, the text is circumvented to create new laws that comply with contemporary societal demands.

The third perspective denies all claims advocating for restrictions on divorce and supports the right that God granted to man for verbal divorce.

### **First Position: Only Before Two Witnesses**

Some contemporary jurists, including Aḥmad Muḥammad Shākīr, Muḥammad Abū Zahra, 'Alī al-Khafīf, 'Abd al-Raḥmān al-Sābwnī, and others, have argued that for a divorce to be valid, it must take place in the presence of two witnesses. This requirement does not necessitate that the testimony takes place in a specific place like a court; the man can divorce his wife anywhere and at any time, as long as two witnesses are present. For example, Abū Zahra said that "If we were to pick a divorce strategy for Egypt, we would have gone with the opinion that a divorce could only be finalized in the presence of two fair witnesses capable of persuading the spouses. Thus, the circle of divorce is narrowed" (n.d., p. 369; and see, Shākīr, 1970, p. 18).

While this viewpoint is not held by the majority, it found support in classical times among certain Shāfi'īs, such as Ibn Ḥazm and others, who believed that the presence of two witnesses is obligatory (al-Ramlī, n.d., vol. 7, p. 55). They argued that since two witnesses are required to establish a marriage contract, their presence is equally necessary in its dissolution.

Furthermore, this requirement facilitates the process of proving the occurrence of divorce. Importantly, the involvement of two witnesses could deter many divorce cases, as it would take time for those seeking a divorce to find witnesses. This extended process could help reduce the state of anger that often accompanies divorce. Moreover, the witnesses would play a role in mediating and persuading the parties to reach an agreement, ultimately aiming to protect the family and the institution of marriage. Others follow a different path.

In his article, A. Faizur Rahman argues that despite the clarity of the Qur'ān and Prophetic teachings, divorce has been completely misunderstood by clergy. According to Faizur Rahman, divorce, as outlined in the Qur'ān, is a long process that a Muslim should

follow before reaching the final divorce. He builds his analysis on the Qur'ān, and concludes that a "Muslim husband is not entitled to pronounce even one *ṭalāq* without having first exhausted the four reconciliation attempts mentioned in 4:34-35" (2011, p. 4). And even after the pronouncement of *ṭalāq*, there are further steps to follow, including notifying the Chairman of the state-appointed Union Council in writing. These steps are intended to facilitate reconciliation between the couples.

## Second Position: Only by Judicial Authorities

This position sees Islamic divorce as demeaning to women, eroding their dignity and portraying women as a man's property. It is seen as promoting equality between men and women, given that traditional Islam granted men exclusive divorce rights. This perspective necessitates emulating the Western model to overcome traditional flaws.

Besides, the modern progressive approach mandates a shift to juridical divorce (al-Mūs, 2015, p. 137). Proponents of this perspective advocate for preventing men from getting a divorce outside of a court setting and insist on allowing only juridical divorce. Under this framework, if a man wants to end his marriage, he has no independent free will to do so unilaterally. Instead, he should file for divorce through the court. If the court finds his justifications and reasons convincing, the divorce is sanctioned by the court and is recognized by the law. Otherwise, the request is dismissed. The man's verbal divorce inefficiencies stem from the laws and legislations rather than the man's lack of legal capacity (al-Mūs, 2015, pp. 128-206).

Some Islamic countries, such as Tunisia and Morocco, have already implemented this divorce form. Al-Ḥusayn al-Mūs, for instance, published a book that outlines the Morocco government's restriction of divorce exclusively to juridical divorce. In Egypt, Sa'd al-Dīn al-Hilālī published a book arguing for the invalidity of verbal divorce unless it is registered (juridical divorce) (2015).

According to proponents of this viewpoint, the Qur'ān addresses the rulers and those in authority, urging them to serve as arbitrators to set things right if there is a breach and facilitate reconciliation between spouses (Q, 4:35). They view the marriage contract as a legal agreement between two consenting adults, establishing obligations on both parties. Therefore, entrusting the power of divorce solely to the husband, without negotiation, should make the contract invalid (Abū Zahra, n.d., p. 281). As a result, men and women are considered equally entitled to seek judicial divorce (Badrān, n.d., p. 308). The ruler must apply the principle of restriction permissible to achieve the interest of the public as it protects the family from the potential harm stemming from verbal divorce. This aligns with the hadith, "Do not cause harm or return harm," and the application of the legal maxim that blocks the means of harm (Badrān, n.d., p. 308; Biltājī, 2000, p. 353).

These principles are essential tools in *siyāsa shari'a*, justifying the ruler's decision of *taqyīd al-mubāḥ*. Juridical divorce is seen as a solution to reduce divorce incidents, as it involves an impartial judge who investigates the reasons behind the divorce request. If convinced by the valid grounds, the judge grants the divorce, a process fully consistent with the rules of shari'a and does not violate them (Badrān, n.d., p. 308; Abū Zahra, n.d., p. 281; Biltājī, 2000, p. 354).



Notably, this issue extends beyond juridical divorce for some, encompassing an entire legal system affected by the relationship between shari'a and the modern state. Others perceive it as more than just a matter of equality before the law between men and women; it aligns with a modern feminist tendency that challenges male guardianship over a woman and seeks to shift the authority to divorce away from the husband to an external party. For them, the core issue lies in the male guardianship and the so-called "hierarchy of men over women." This position aims to strip men from dominance and the associated guardianship (see Chaudhry, 2013, pp. 40-55).

### Third Position: Opponents of Restriction

Many jurists oppose the restricting of verbal divorce, arguing that it runs counter to the historical practice since the time of the Prophet in which divorce cases were not brought before a judiciary; they were only subject to a legal proceeding in cases where the husband did not adhere to shari'a or in inexplicable circumstances (Emon, 2012, p. 62) to resolve disputes (As-Sūsī, 2007, vol. 2, p. 49). Furthermore, such a restriction contradicts the principles of the four *madhāhib* that permit a husband to announce divorce without requiring court permission.

Ibn Rushd, Mālik, al- Shāfi'ī, and Abū Ḥanīfā have all agreed to accredit the verbal divorce of those who uttered it explicitly (Ibn Rushd Al-Jadd, 1996, p. 78). Among the contemporaries who rejected this position were Muḥammad Shaltūt, Wahba Al-Zuhaylī, Muṣṭafā al-Sibā'ī, and others who considered juridical divorce incompatible with shari'a. They pointed out many harmful consequences, including that it is not in the woman's best interest to announce the divorce in court because the divorce may be for secret personal reasons (Shaltūt, 1983, p. 179).

Additionally, there is a difference between restricting and abolishing the right. While the ruler may restrict non-textual *mubāḥ*, this should not extend to textual *mubāḥ* that has established rights through texts that leave no room for ijtihad. Giving the ruler the authority to abolish such rights would mean that he has the authority to legislate, which could ultimately lead to the suspension of the texts of shari'a. Besides, when a man pronounces divorce, he believes that his wife is immediately divorced without waiting for the judge's ruling. However, his divorce would not be recognized and has no legal effect outside the court. In this case, the woman has two contradictory legal statuses: she considers herself divorced and her waiting period starts immediately; yet simultaneously, she is still considered a wife because the divorce is not recognized outside the court, and consequently, her waiting period does not start (Biltāji, 2000, p. 356).

It is possible to argue that the positive law may have misinterpreted the divine text, even after a legal decision has been made. This could have many implications, affecting matters such as inheritance and her right to marry.



## CRITIQUE AND ANALYSIS

### Premodern Moral-Legal Constraints

In the premodern period, divorce (*ṭalāq*) constituted one type of contract dissolution, which was considered exclusively the man's right. If a woman sought to dissolve a marriage, she could resort to *khul'*. Notably, *khul'* was more prevalent in practice during the premodern period than divorce (Rapoport, 2005, p.4).

Jurists reached a consensus that terminating a marriage, whether initiated by the man or the woman, was generally discouraged (al-Kāsānī, 1328 AH, vol. 3, p. 95). For example, Al-Sarakhsī called the dissolution of the marriage an "ingratitude of [God's] blessings (*kufrān al-ni'ma*)" (n.d., vol. 6, p.2). Divorce is inherently a harm (*mafsadah*) as it ends a marriage, impacting both religious and worldly interests.

Yet, it was permitted as a means to alleviate the harm (al-Marghinānī, n.d., p. 227). Thus, The Lawgiver's intent behind divorce is to remove the harm. Depending on the circumstances and external influences, divorce can take on any of the five legal rulings (al-Dasūqī, n.d., vol. 2, p. 361). The authority to pronounce and effect a divorce was generally vested in the man after satisfying specific conditions set by the jurists. These conditions included being sane, making the decision willingly, and attaining adulthood. For example, if a man divorced his wife in a fit of fury, the divorce was invalid because rage could impair one's mental state. Similarly, if he pronounced a divorce by mistake for any reason, it was also invalid and had no legal effect, except for the Ḥanafīs who hold a different view. Additionally, the words used to convey a divorce must be clear, as the ambiguous language does not affect as well, and it is a subject of intense scrutiny by the jurists.

Jurists established many moral, legal, and even social customary constraints to deter a man from divorcing hastily. Even if a man intends to divorce, he must adhere to some conditions and demonstrate a valid reason, such as a long and irreparable dispute, so he complies with the divine law; otherwise, he is considered sinful. Jurists also differentiated between two types of divorce: *Sunnī ṭalāq* (the Sunnah method of *ṭalāq*) and *bid'ī ṭalāq* (the prohibited method of *ṭalāq*). They discouraged men from employing the *Sunnī ṭalāq*. Specifically, they discouraged a man from divorcing his wife three times at once.

In cases where a valid reason for divorcing exists, he must adhere to only one divorce, allowing time for reflection (during the three-month waiting period for women), because if a man divorces his wife three times, he cannot remarry her unless she marries another man first. This served as a significant deterrent for hasty divorces, especially in societies where honor was highly valued. Moreover, jurists prohibited *khul'* resulting from a husband's intentional mistreatment of his wife in order to push her to seek a divorce in exchange for financial compensation, thereby relieving the husband of the financial burdens of divorce. According to the Ḥanafīs, a man is not entitled to compensation if a woman seeks *khul'* due to her husband's misconduct (*nushūz*). Even if he takes compensation for the *khul'* requested by the woman, the majority of jurists maintain that this compensation should never exceed the value of the dowry (al-Ḥiṣnī, 1994, vol. 2, p. 80).

These moral constraints imposed on the husband were equal to or even more restrictive

than those imposed today in modern Islamic countries to restrict male freedom and guardianship. In the premodern period, a woman was required to file a complaint with a judge and provide valid reasons to obtain a divorce. In contrast, husbands were not obligated to follow such procedures or present reasons, except in extreme cases, due to the principle of concealment and the preservation of the privacy of marital life, as many reasons for divorce are matters that cannot be disclosed to preserve family dignity and reputation.

On the other hand, the one who bore the consequences of divorce was the man, which served as a deterrent against initiating divorce. For a man, there was little incentive to seek divorce without a valid reason, primarily due to the significant financial implications involved. In many cases, such a decision could be financially devastating for the husband. Moreover, upon divorce, the husband was legally obliged to provide financial support in various forms. This included maintenance payments to his ex-wife for at least three months, as well as children's maintenance, in addition to the delayed dower, which often involved a substantial sum, and the cost of nursing if the children were of a young age. Due to these financial obligations, he was granted the right to divorce by his own will. Therefore, it was deemed unfair for the wife to be able to dissolve the marriage shortly after its initiation, as this would neglect the financial costs incurred by the husband and those that lay ahead when entering another marriage.

Before and at the beginning of Islam, divorce was not limited to a certain number a man could initiate. This allowed a man to divorce his wife without restrictions, sometimes with the intention of harming her. In response to the potential harm that such unrestricted divorces could cause to women, divorce was restricted to three, a measure put in place to protect women.

The traditional jurisprudential stance on divorce considered it as part of a coherent system governed by moral values that aligned with the norms of premodern societies. It acknowledged the individual's private autonomy, which empowered them to alter their legal relationships. However, *talāq* was a long process involving various considerations. Dissolving a marriage carried significant implications for the rights and obligations of both the husband and the wife, which is why jurists approached the matter with great care.

Jurists made significant efforts to minimize the occurrence of divorce, and to do so, they established legal guarantees for the wife's rights in the event of a husband misusing his right to divorce. These guarantees were rooted in ethical and legal principles centered on key values, such as upholding rights, preventing harm, and making the man financially accountable for any unwarranted divorces.

### **The Quest for Legal Divorce in Modern Societies**

In contemporary times, because of the challenges posed by modernity and the influence of feminist thought, or even to comply with the desires of the state (the ruler) in embracing Western-inspired changes, there has been a growing call for divorce to be placed under the jurisdiction of the court. However, within Islamic societies, it remains challenging to regard the personal status law as anything less than sacred.

Two groups advocate for juridical divorce: the Islamist reformers and feminists. The

Islamist reformers, who support the state's decisions, follow an approach aimed at legitimatizing juridical divorce using Islamic sources and arguments, mainly by employing the legal tool *taqyīd al-mubāḥ* to serve the interests of society and to avert corruption. Therefore, the most important factor influencing the restriction of *ṭalāq* is societal interest, as it is theoretically allowed for the state to restrict textual *mubāḥ*. In this context, proponents have published several books to demonstrate the validity of the state's authority to regulate personal status laws. Nevertheless, one must question whether such writings should have been produced before the state decided to establish the need for the restriction based on Islamic authority, rather than after.

The public interest should not serve the whims and desires of one group or party over the others. According to al-Shātibī, "the public guardianship is one that is exempt from whims and desires" (2004, p. 334). Hence, the benefit must be real, publicly oriented, and free from any whims and desires. This position relies on several approaches to legitimize the restriction of *ṭalāq*, such as inference on unsound historical narration and general discourse that claims the existence of interest but without specification or statistics. Most importantly, it remains unclear where this societal interest lies in the context of restricting divorce in Islamic countries. Who among the scholars has determined the existence of such an interest? Is it permanent or temporary? Furthermore, where are the studies that substantiate the detrimental consequences of not restricting divorce? This position justifies the state's actions but fails to establish a conclusive ruling. On the contrary, the traditionalist group supports its claim with robust arguments, numbers, studies, and statistics (for example, Abū l-Baṣl, 1995).

Juridical divorce, particularly in Arab-Islamic societies, does not achieve any interest or avert corruption. Firstly, how can the judge prevent mistreatment between spouses and resolve the causes of dispute? Conversely, it can inadvertently lead to situations where the husband mistreats his wife to compel her to seek a divorce, which goes against the teachings of traditional jurists and leads to the forbidden *khul'*.

Secondly, juridical divorce may enable the husband to file for divorce and ask for compensation, thus shifting the financial burden from the man to the woman, who often lacks independent financial sources, especially in Islamic countries.

Thirdly, this approach risks exposing the private matters of the spouses before the judiciary. In an attempt to persuade the judge to grant a divorce, one may resort to harsh descriptions and potentially false accusations, undermining the chances of reconciliation. Women, especially in Islamic societies, bear a more significant brunt of damage to their reputation in such situations. This contradicts the Qur'ānic text that emphasizes confidentiality, compassion, mercy, and benevolence, even in divorce.

Fourthly, many reasons for divorce involve psychological and internal factors that cannot be easily regulated or monitored by legal mechanisms.

Fifthly, the restriction on divorce based on the notion of societal interest must be temporary, with specific conditions and criteria. Laws often impose permanent and perpetual restrictions, which encroach upon the legislative authority of God. Juridical divorce does not necessarily reduce divorce rates or achieve any societal interest, especially

since it depends on the husband's will. If the husband is determined to obtain a divorce, he would inevitably do so, whether by his own will or by involving the judiciary.

Finally, attributing family disintegration and societal harm solely to the divorce system, particularly the husband's free will, is an oversimplification. Depriving the husband of his right to divorce does not address the root causes of divorce, which often relate to broader societal issues such as poverty, resulting from government policies. The Qur'ānic text and jurisprudence cannot be held responsible for the problem of family dysfunction, a universal human issue driven by multiple factors in the modern world.

Feminists, in contrast, start from a different vantage point, demonstrating a strong inclination to challenge the text. For them, "there is no getting around law; we must understand it, then work to replace it" (Ali, 2003, p. 166). Their perspective differs from that of Islamic modernists concerning interests, customs, traditions, and contexts. Their advocacy for equality hinges on denying the husband the right to divorce, in which they rest their reference on international conventions. They contend that Islamic divorce, rather than the concept of male guardianship, perpetuates the inferiority of women, violates equality, and constitutes a form of domestic violence against women. They view premodern concept of divorce as a construct of Islamic jurisprudence. The fact that the verse was initially directed at men at the time of revelation indicates that Arab societies were dominated by jurists who enshrined patriarchal norms.

Assigning the authority to grant divorce solely to the judge means that all husbands are incapable of exercising their legal right, thereby requiring the judge's guardianship over them. This is attributed to the feminist perspective, which distrusts men, contradicting previous practices and regulations, where men were entrusted with the responsibility divorce and family matters. The feminist approach risks severing the foundation of the marital relationship, characterized by love and compassion. Feminists prioritize the legal aspects of marriage over moral considerations, often overlooking ethical principles regulating marriage, such as autonomy, freedom, and confidentiality.

The disagreement with this position goes beyond the question of equality, delving into the issue of male guardianship over women.

## CONCLUSION

In premodern times, divorce was just one of many methods (such as *khul'*) for dissolving a marriage, and it was not subject to the jurisdiction of courts or ruler authorities. The text of the Qur'ān entrusts this authority to the husband. However, the significant transformation in the structure of the modern state has affected the influence of Islamic law within the legal system, even though it remains integral to modern Muslim states.

Amid calls from many parties, including feminists or the so-called Muslim reformists, modern Muslim states are moving towards codifying Islamic family laws in general and making divorce a part of the judiciary. They argue that this transition aligns with human rights and gender equality while also serving the public good. To do so, the concept of *taqyīd al-mubāh* has emerged as the preferred legal tool for Muslim states to restrict *mubāh* and legitimize this restriction. This concept has gained prevalence in the current

era and reflects the modern state's pursuit of authority and control over its governed population.

However, as a Muslim state, does this restriction align with the broader principles of shari'a? If the concepts and rules governing the restriction of *mubāḥ* fail to prevent corruption or achieve the benefit, then the restriction should not be imposed since the anticipated benefit is nonexistent. Furthermore, the values governing the assumed relationship between spouses are affection, mercy, confidentiality, love, and understanding.

Therefore, resolving marital issues through legal tools contradicts the teachings of the Qur'an and human nature. That is why there is a distinction highlighting the contrast between the classical approach to divorce and modern calls for its legalization. Many modern proponents do not feel compelled to reference the premodern era in order to understand Islamic law in the present day. Interestingly, they deny Islamic law any sense of integrity, significance, or relevance in the contemporary world. In many respects, Islamic law has become a platform for political slogans, ideological demagogues, and shabby scholarship. However, in the context of *ṭalāq*, if the matter is placed in the hands of a judge, it effectively cancels all these values and considerations at the individual level, shifting them to the judiciary. Subsequently, important moral values, as well as the right and freedom of choice God granted to individuals in such *mubāḥ* actions, are revoked.

In premodern times, divorce was part of a coherent system governed by moral values that aligned with the prevailing norms in those societies. Individuals had the autonomy to make decisions that could impact legal relations. However, the *ṭalāq* process was a meticulous one, with various considerations taken into account. Therefore, it has been a subject of intense scrutiny, as the dissolution of a marriage entails intricate rights and obligations between the husband and the wife.

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## RESEARCH ARTICLE

# A Typological Study of West African Mosque at Djenné, Mali

Rimsha Khalid

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## ABSTRACT

This paper presents a comprehensive typological study of the iconic mosque in Djenné, Mali, situated in the heart of West Africa. Djenné is renowned for its exceptional adobe architecture and its historical significance as a center of Islamic culture and learning. The primary objective of this research is to investigate and categorize the various architectural typologies and generic forms employed in the construction of the mosque, shedding light on its historical evolution, cultural significance, and enduring architectural traditions. The study uncovers the evolution of mosque architecture in Djenné over the centuries, illustrating how local materials and building techniques have been adapted to create awe-inspiring structures that blend seamlessly with the environment and reflect the Islamic heritage of the region. Furthermore, this research delves into the cultural and social aspects of the Djenné mosque, exploring its role as a center of communal worship, education, and cultural preservation. It highlights the intricate relationship between the mosque and the local communities, showcasing how this architectural marvel serves as a focal point for cultural identity and community cohesion. In conclusion, the typological study of West African mosques in Djenné offers valuable insights into the architectural heritage of Mali and West Africa at large.

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**Keywords:** Sudano-Sahelian architecture, Djenné Mosque, typology, indigenous methods, local material, cultural influences

## INTRODUCTION

The West African mosque that is studied in this essay is located in Djenné, an ancient mud town in the Niger Delta region of Mali in West Africa. It is situated on the flood plains between the Bani River and the Niger River, 220 miles southwest of Timbuktu (Sarin, 2015, p. 173). The town was included in the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Centre in 1988 due to its archeological, religious, cultural, and historical importance. The town comprises four important archeological sources, namely Djenné-Djenno, Hambarketolo, Kaniana, and Tonomba, along with the Great Mosque of Djenné. The Mosque of Djenné is particularly representative of Islamic architecture in sub-Saharan Africa. This paper will focus on the historical importance, typology, architectural elements, and role of indigenous factors in the construction of the Djenné Mosque.

The mosque's construction, along with an explanation of the floor plan with the help of illustrations and the framework provided by Nader Ardalan in *The Visual Language of Symbolic Form: A Preliminary Study of Mosque Architecture* will be used to explore the typology of Djenné Mosque and its unique architectural elements—all of which have been influenced by the local culture and geography.

## THE CONSTRUCTION OF THE DJENNÉ MOSQUE

Before the 13th century, Djenné was already an established focal point and an entrepot for the dissemination of Islam into the Sahel region. Cotter notes that Islam “had been filtering in on trade routes from the Mediterranean coast and the Middle East for centuries. Along with salt, gold, and slaves, merchant caravans brought scholars and scribes, many of whom stopped along the road to set up Koranic schools and manuscript ateliers” (Cotter, 2012). However, the town gained greater importance in the Islamic world when Koi Konboro, who was the 26th king of Djenné, became the first ruler to accept Islam in the 13th century.

The rich historical background of the mosque starts with Konboro converting his palace into a sizeable mosque on the advice of a Muslim sage named Ismaila. Bourgeois (1987) documents the narrative behind the construction of the mosque, stating that after accepting Islam, Konboro asked Ismaila, “How may I please God?” Ismaila replied, “Plant a tree, and for years the people who enjoy its shade will bless you. Dig a well, and long after your death people who draw water will bless you. And build a mosque. The people who pray in it will bless your name for centuries.” Konboro did all three things. (p. 54). He turned his palace into a large mosque; currently, it is the largest mud mosque structure in the world.

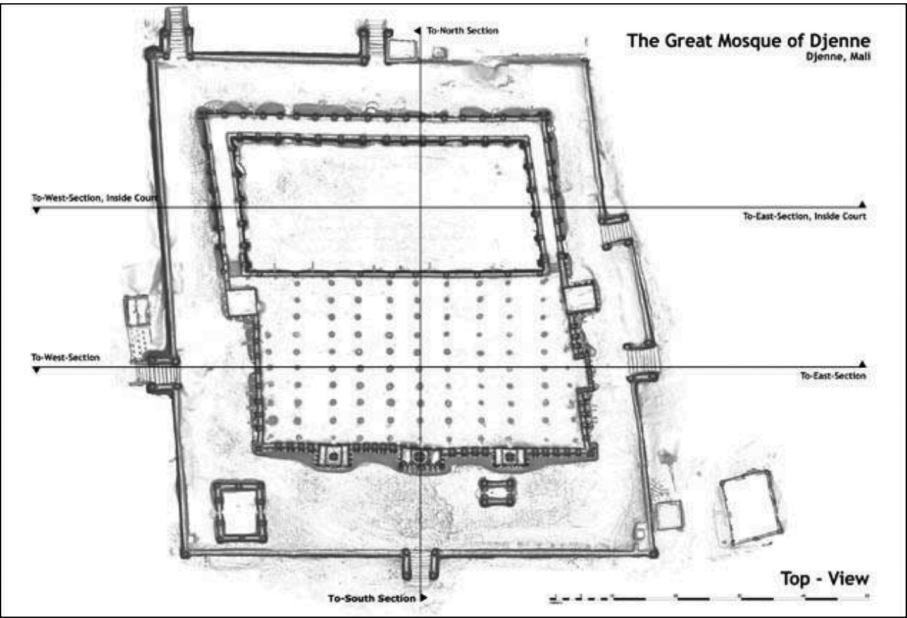
After its construction, the mosque soon became a center for religious, social, and commercial activities. It was reconstructed twice due to a lack of maintenance and political



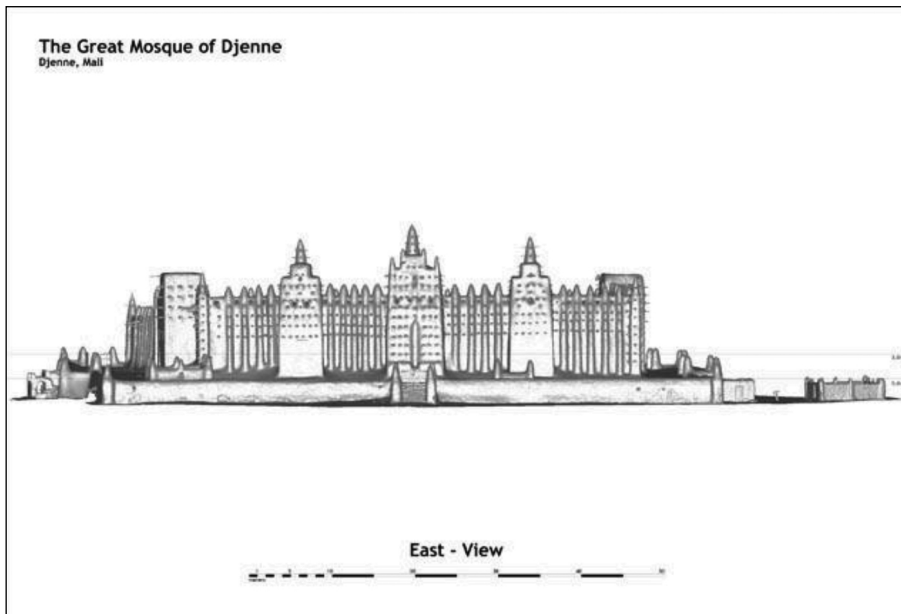
unrest, as Bourgeois (1987) notes: “Intense political drama marked the construction of each of its two successors” (p. 54). The second reconstruction took place between 1834 and 1836. The Great Mosque that exists today is the result of its third reconstruction, completed in 1907.

The floor plan of the mosque (Figure 1) is elevated on a plinth. It is in the shape of a parallelogram, with a total of six entry staircases coupled with a surrounding terrace. Three flanking pillars are erected on the eastern façade (Figure 2) with the help of pilaster buttresses in an alternating sequence of four and five. The *riwaq*-style prayer hall can be accessed through doors located on the north and south facades of the building.

The interior, measuring approximately 50 meters long by 26 wide and nearly 12 meters in height, is insulated from the hum and the heat of the outside world by the building’s thick mud-brick structure. The interior is essentially a hypostyle hall containing 90 massive pillars that constitute a very considerable proportion of the total floor plan. Like a platoon of gigantic dominoes, the pillars are neatly set out in ten rows of nine each that align with the qibla wall and configure the entire space into a series of long, narrow corridors that traverse the building north-south and east-west. (Marchand, 2015, p. 7)



**Figure 1.** Floor plan. Source: Djenné mosque (zamaniproject.org).



**Figure 2.** The Great Mosque of Djenné: East view. Source: Djenné Mosque (zamaniproject.org).

Since the prayer hall is filled with numerous pillars, it provides private spaces for the worshippers for meditation, prayers, and reading the Qur'an.

The inner courtyard allows sunlight to enter the mosque, which is an important element in Islamic architecture. Other elements incorporated to allow daylight in the mosque are fenestrations in the north and south walls, arched doorways along the western wall giving access to the courtyard, and small oculi piercing the flat terraced roof. The oculi are protected by round terra-cotta vessels. These function as removable lids, allowing the entrance of light and the exit of hot air, keeping the mosque cool.

The Mosque of Djenné has segregated prayer areas for women located in the corridors surrounding the courtyard on the west side of the mosque. The three corridors act as galleries where women can gather to pray.

## TYOLOGY OF THE MOSQUE

To comprehend any architectural work, it is paramount to first understand the typology of the edifice. As Moneo (1978) states, "to raise the question of typology in architecture is to raise a question of the nature of the architectural work itself" (p. 8). The classification of the architecture of mosque typology allows for a better understanding of its form, function, and meaning. It also allows the idea of evolution contrary to the beliefs of some experts

who view it as a frozen mechanism. Typological series are formed by the interaction of architectural elements; the architect usually starts from the type and this is how the work is produced and identified but it can be transformed later on. A later transformation can happen due to the influence of several factors: climatic changes, geographical conditions, and regional traditions. Therefore, the transformation of a building's typology is not a foreign concept as some of the most common 'types' are in fact under constant change, such as domestic homes, shops, and mosques (Koch, 2014, p. 168).

Nader Ardalan's essay sheds light on mosque typology and transformation in different geographic and cultural regions. In his essay entitled "The Visual Language of Symbolic Form: A Preliminary Study of Mosque Architecture," Ardalan explains three main mosque typologies: the trabeated (*riwaq* style) mosque, the Ottoman central dome mosque, and the four-*iwan* mosque (p. 18). He also describes the different transformations that took place in some monumental mosques, such as in the Prophet's Mosque in Medina, Hagia Sophia in Istanbul, the Great Mosque of Damascus in Syria, the Mosque of Cordoba in Spain, and the four-*iwan* buildings found mainly in Iran, Afghanistan, and Central Asia.

To add to the analysis, Ardalan provides a list of generic forms and some principles of spatial organization in mosques all around the world. The first form is the orientation toward Mecca, i.e., the *qibla* direction; this is achieved by the *mihrab*, a niche located in the *qibla* wall. The other forms include a central dome, courtyard, gateway, plinth, ablution place, and portico. However, due to regional and cultural differences, mosques may be built without having a typical dome, e.g., mosques having pyramidal roofs with wooden rafts in southeast Asia. Another example is the Great Mosque of Djenné, which has a flat roof.

## SOME NOTES ON THE MOSQUE IN DJENNÉ, MALI

The Great Mosque of Djenné in Mali is a clear deviation from the domed mosque; it is characterized by a flat roof and is considered a highly stylized version of the Sudano-Sahelian mosques. Historians have attributed different reasons to the source of this occurrence. According to Dubios and Charles Montel, the architecture of mosques is said to have been influenced by upper Egypt, while Delafosse believes it originated in Maghreb, especially Morocco. Professor Prussin concludes that the external source of Djenné's architecture originated mainly from Moroccan, Mozabite, and Sudanese architecture (Snelder, 1984, p. 72). Prussin notes that, "while the architecture of the Sudanese mosque derives from North Africa, Islamic architecture in West Africa is nevertheless unique. It is neither Egyptian nor North African form but expresses in its essence and the adjustments and modifications to the highly ritualized character of Islam, which specifically prescribes both the floor plan of a mosque and the activities relevant to its use" (1968, p. 70).

The Sudano-Sahelian mosques do not follow the stereotypical mosque plan. They do not necessarily have domes, minarets, arches, mosaics, and stucco decorations. They might have some of these elements and might lack some too. Usually, these mosques are characterized by buttressing, the use of wooden posts for scaffolding during the yearly process of resurfacing as well as for ornamental purposes, a *mihrab* tower, a flat roof, and

a courtyard. In this way, they are closer to the Prophet's mosque in Medina, circa 610 CE, which was built from mud bricks and palm trunks. The floor is often covered in sand, on top of which mats are placed, and the flat ceiling is supported by pillars. Occuli drilled in the roof provide intriguing lighting to the interior that is simple and reveals the enormous pillars and their arches. The graceful simplicity is a testament to the worshipper's unbroken focus on the Creator. These architectural elements are present in the Djenné Mosque in Mali.

Ardalan provides a taxonomy of eight generic forms in mosques through a survey of 113 mosques around the world. These eight generic forms are: dome, courtyard, plinth, *mihrab*, gateway, portico, ablution place, and minaret. However, it is not necessary to have these architectural elements in the building altogether for it to be called a mosque, highlighting the fact that the only paramount element is the *mihrab*. Therefore, the absence of a dome in the Djenné Mosque does not decrease its significance as a monumental structure in sub-Saharan Africa; and out of the eight generic forms, this mosque has six, including the *mihrab*, courtyard, and minaret, with an emphasis on the gateway, plinth, and ablution place (Ardalan, p. 32).

The Great Mosque of Djenné in particular is classified as a prototype for Sudano-Sahelian architecture, the indigenous style that is common to the African people of Sahel and Sudan. "Founded in West Africa, Sudanese architecture is urban architecture in raw earth. It is mainly found in Mali, Ghana, and northern Nigeria. The construction consists of a mixture of clay and straw, rice husks, etc. This type of architecture has been erroneously attributed to the Andalusian architect Abou Ishaq as-Sahéli" (Siriman & Wang, 2021, p. 86). According to some writers, he introduced the style after his arrival in Mali around the 14th century, at the invitation of Mansa Mu, who was the ninth Mansa of the Mali empire, after his pilgrimage to Mecca. Some examples of Sudano-Sahelian architecture are as follows:

- Mosque at Kawara (Savanes, Côte d'Ivoire, West Africa)
- Sankore Mosque (Timbuktu, Mali)
- Mosque at Bobo Dioulasso (Burkina Faso, West Africa)
- Mosque of Djinguereyber (Timbuktu, Mali)
- The Great Friday Mosque of Niono (Segou region, southern Mali)
- The Komoguel Mosque (Mopti, Mali)

The tomb of the Askias (rulers of the Songhai Empire) in Gao is also an important example of earthen architecture.

## BUILDING MATERIALS USED IN SUDANO-SAHELIAN ARCHITECTURE

The buildings of sub-Saharan Africa give more importance to indigenous materials and cultural traditions. Even though mud is not as durable, most of the buildings in Mali are constructed from mud. Prussin (1968) believes that the reason behind such construction is that in West Africa, "monumentality is achieved through a sense of verticality" (p. 34)

rather than permanence and durability. Therefore, “the monumental mud-clay architecture is widely expressed in mosques and civil constructions in Mali (Djenné, Mopti, Timbuktu, and Gao). It is still maintained today despite the urban growth which has imposed, elsewhere (in other cities) much more modern constructions and using sand, gravel, and cement” (Siriman & Wang, 2021, p. 86). The other materials used are:

- Rammed earth, which is basically an amalgam of clay, water, and a grease remover usually of vegetable origin, which is used for plasters, mortars, bricks, and solid earth;
- Hand-molded bricks and raw bricks, where raw bricks are dried directly under sunlight instead of the oven; and
- Straw and rice husks, which are used to strengthen the mud bricks.

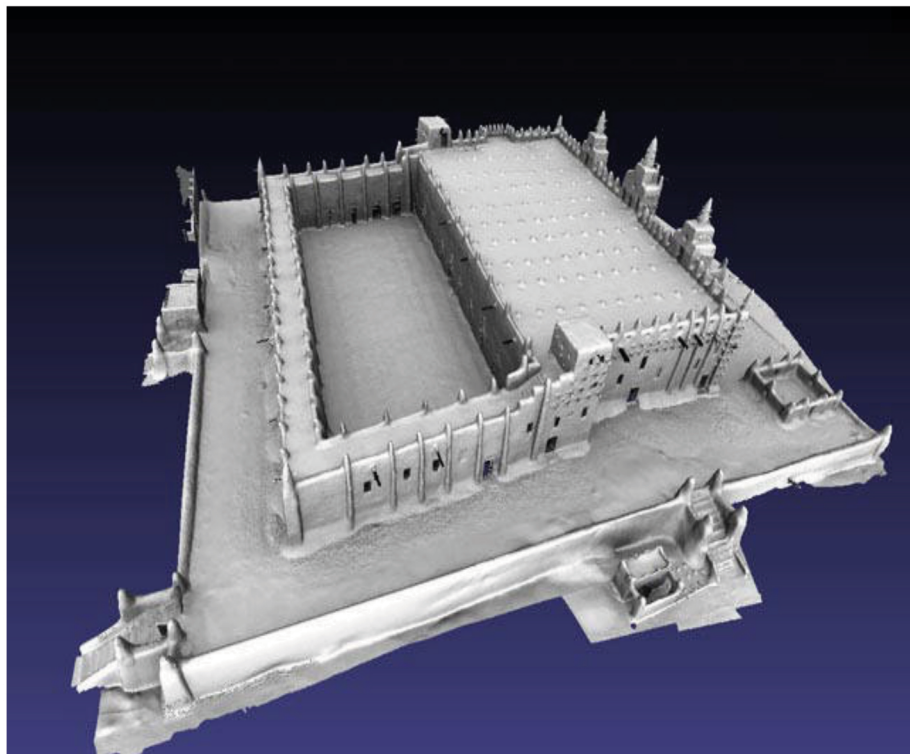
Mud buildings are suitable for hot, arid climate zones; they act as a thermal regulator. These buildings get cooler during the day and retain their heat during the cooler months; most of the region resorts to passive building techniques.

## INFLUENCE OF CULTURE AND INDIGENOUS FACTORS

Having explained the general plan, this section discusses the influence of culture and indigenous factors on the architecture of the Djenné Mosque.

A universal element present in every single mosque is the *mihrab*, which is a niche in the *qibla* wall oriented toward the Ka'aba. The Great Mosque of Djenné also has a *mihrab*. Architectural elements grounded in cultural and emotional traditions are also present in the Great Mosque of Djenné. “Some of these elements are the pinnacles on the roof parapet, the triple minaret on the front facade, the buttressing of exterior walls and vertical exterior rib effect” (Kahera, 1987, p.15).

The three flanking minarets on the façade create a sense of symmetry. The tall minarets, vertical buttresses, and plinth provide a sense of loftiness and height; hence, the mosque can be seen from far away, towering over the mud houses surrounding it (Figure 3). Moreover, the plinth also functions as an additional space for congregational Friday prayers. Inside the minarets, mud stairs are located, which lead to the roof from where the muezzin calls the *adhan* (the call to prayer). In Timbuktu, the minarets of mosques are usually built from a mass of solid material; hence, they possess only a feeling of mass. In contrast, the Djenné Mosque “achieves a remarkable sense of spatial enclosure. The incorporation of the minarets as an integral element of the façade itself marks an innovation in mosque design” (Prussin, 1968, p. 72).



**Figure 3.** 3D Model: The Great Mosque of Djenné. Source: Djenné Mosque (zamaniproject.org).

Genealogy and anthropology play an important role in the formation of mosque architecture, and are also visible in certain elements of the Djenné Mosque. The elements originate from local traditions and perform their own function, such as the flanking quoins (*sara fa hars*) in the façade of the mosque (Figure 4). The grandeur of the mosque façade represents the importance given to entrances by the local population. Throughout West Africa, all rites and rituals relating to change or transition take place at the entrance such as “outdooing” or naming ceremonies, which announce a newborn’s arrival into the world and are usually performed at the entrance of the compound (Prussin, 1974, p. 199). Earthen pillars are erected in front of houses, which represent the ancestral shrines of the lineage. In the context of mosque architecture in West Africa, conical earthen pillars are considered a symbol of continuity and fertility (Prussin, 1974, p. 201). These were often projected like engaged pillars from the wall surfaces of mosques. They became a signature of the so-called “Sudanese style” in African architecture. These earthen pillars hold diverse cultural connotations in different areas. Prussin notes that these ancestral pillars were

transposed onto the “portal facades of Djenné’s urban architecture to become *sara fa har* or quoins” (Prussin, 1974, p. 200). It is believed that the earthen pillars signal the graves of two local religious leaders. Another product of cultural imperative is the placement of ostrich eggs at the conical extensions on the top of the pillars, which are considered a symbol of fertility and purity in the Malian region (Figure 5).



**Figure 4.** Façade of the Great Mosque. Source: Djenné Mosque ([zamaniproject.org](http://zamaniproject.org)).



**Figure 5.** An ostrich egg circled in red at the top of the pillar. Source: Great Mosque of Djenné (Khan Academy).



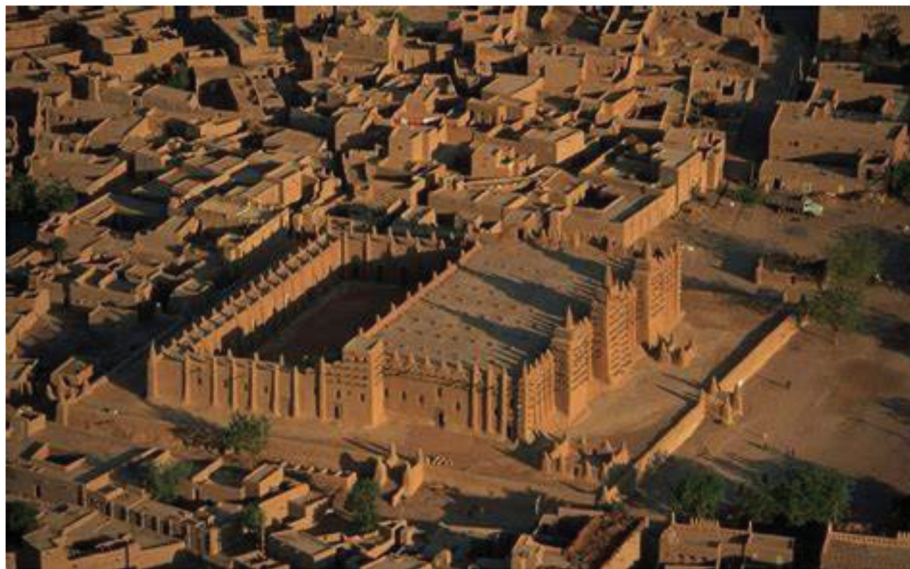
An important decorative and structural element is the presence of timbre beams throughout the exterior of the mosque at regular intervals (Figure 6). The beams serve as permanent scaffolding for constructing walls. During the replastering ceremony, these are used as scaffolding to help in the plastering of the exterior walls. The “clay clumps applied by hand, together with finger marks, create a sensory skin effect” (Engmann, 2017, p. 190). The placement of these wooden planks at regular intervals allows the residents of the town to participate in the replastering festival while working together in harmony, creating a sense of belonging. The residents are extremely protective of their heritage, and this event allows them to demonstrate their deep attachment to their cultural roots.



**Figure 6.** Mosque entrance. Source: Djenné Mosque (zamaniproject.org).



Despite the challenges and limitations faced by floods and rain due to its location in the Niger Delta, the residents would build the mosque out of mud. The reason lies in the craft of masonry, which has been a specialized trade in Djenné for centuries (Royal Anthropological Institute, 2013, p. 2). Local materials and traditional design techniques that were used in the building of local houses were also implemented by the masons in the construction of the mosque. Questions are often raised as to why the mosque was built out of mud. The simple answer would be that all other buildings and houses in the town of Djenné were made out of mud as well (Figure 7), so it was a natural decision that the mosque would also be built using the same techniques over more modern methods of construction.



**Figure 7.** The Great Mosque, surrounded by mud houses. Source: Great Mosque of Djenné, Mali (SteemKR).

## THE REPLASTERING CEREMONY

Residents take great pride in the replastering ceremony, which takes place annually and is called *Crepissage de la Grand Mosque*. The entire population contributes by kneading mud plaster into the walls. The plaster is made from a mixture of butter and fine clay from the alluvial soil of the nearby Niger and Bani rivers. The ceremony is celebrated as a festival in which the whole community gathers and socializes with each other (Figure 8). The building is pivotal to the collective identity of the residents as *Djennénke*. The postcolonial governments in Mali played a significant role in the appropriation of Djenné's architecture as a marker of regional, cultural, and local tradition. President Alpha Konare

prioritized cultural heritage in his developmental strategies between 1992 and 2002. Now, “the mosque has become a seminal icon of Mali’s distinct world-class heritage on a global stage. As expression of tangible and intangible heritage, respectively, the mosque and its spectacular annual re-claying ceremony feed social and political imaginings of pre-colonial roots, authenticity, and sustained tradition, while their integration into the economics of tourism and development allow them to be productively brought into line with national ideologies of cultural uniqueness and modernity” (Marchand, 2015, p. 5).



**Figure 8.** Scene of the annual replastering ceremony. Source: Archnet.org.

## CONCLUSION

After the typological study of the Great Mosque of Djenné, we can conclude that the mosque is a clear deviation from the dome-style mosque. This mosque has six of the eight generic forms described by Ardalan in his article. The *mihrab*, courtyard, and minaret are strongly emphasized, with medium emphasis on the gateway, plinth, and ablution place. The dome and porticoes are completely absent, proving the argument that it is not necessary to have all these architectural elements in the building together for it to be considered a mosque. The only paramount element that must be present is the *mihrab*. The absence of a dome is due to ecological and geographical conditions. The earthen flat roof with openings covered by terracotta lids is a much more suitable feature than the dome because it allows light and fresh air, even during the hottest days. The mosque has cultural, traditional, and geographical imperatives, which made it a prototype for other mosques in West Africa like the mosques in Mopti. In a nutshell, it can be said that the Great Mosque of Djenné is a trademark of Sudano-Sahelian architecture, displaying mud architecture at its finest.

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## RESEARCH ARTICLE

# Non–Fungible Tokens (NFTs): A Shari‘a Perspective

Noha Selim

## ABSTRACT

Non-fungible tokens (NFTs) have experienced an unprecedented surge in popularity in 2022. This growth has attracted attention of experts and researchers keen on understanding the vast potential of NFTs, which has already impacted various industries including arts, gaming, collectibles, films, music, and ticketing. NFTs can represent not only digital assets but also rights to physical assets, with ownership and registration done through a blockchain. Typically, the Ethereum network ensures authenticity and transferability of ownership. However, while NFTs present significant opportunities for innovation and growth, their rapid rise has also raised concerns and questions, particularly regarding their compliance with shari‘a rules and higher objectives. This research paper aims to investigate shari‘a compliance concerns related to NFTs based on Islamic jurisprudence (*fiqh*) and examine whether NFTs comply with shari‘a objectives (*maqasid al-shari‘a*). Additionally, the paper will explore the legal and technical aspects of NFTs to gain a comprehensive understanding of this phenomenon. Although NFTs have the potential to facilitate secure transactions and safeguard asset ownership, it is crucial to address any potential shari‘a compliance concerns. The paper will provide recommendations for using NFTs in a

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<https://www.hbku.edu.qa/sites/default/files/nftshariah.pdf>

manner to comply with shari'a principles. By exploring the shari'a aspects of NFTs, the research aims to provide a deeper understanding of this emerging technology and its implications from a religious perspective.

**Keywords:** Non-Fungible Tokens (NFTs), shari'a compliance, digital assets, Ethereum network, ownership transformation

## 1. INTRODUCTION

In 2022, non-fungible tokens (NFTs) saw a significant rise in popularity, with trading volumes jumping to \$23 billion from \$19.8 billion the previous year, according to Binance Research (2023). This growth has sparked interest from various sectors, as NFTs influence areas like art, gaming, music, and even real estate and healthcare. Notably, NFTs can represent both digital and physical assets, with ownership recorded on blockchains like Ethereum. Their recent high-profile sales have brought acclaim, yet also controversies and questions. This research aims to explore the shari'a compliance of NFTs from an Islamic jurisprudence (*fiqh*) standpoint, looking into their alignment with shari'a rules and objectives. As NFTs offer considerable prospects, it is vital to ensure their compatibility with shari'a principles. Also, this study seeks to deepen the understanding of NFTs' religious implications and offer shari'a-compliant recommendations for their future use.

## 2. THE BACKGROUND

### 2.1 NFTs Market Analysis

NFT sales rose by 10.6% in 2022 reaching \$21.9 billion from \$19.8 billion in the previous year. The year started strong with sales of \$18.3 billion in the first half, comprising 83% of the year's total. Yet, sales slowed in the latter half due to market shifts. Binance Research indicates a significant 73% drop in the average NFT sale price, from \$400 in H1 to \$110 in H2. Transaction volume only fell by 24% in the same period. As NFTs are often priced in tokens like ETH, SOL, and BNB, which saw a US\$ value decline, such a trend is anticipated (Piech, 2022).

### 2.2 NFTs' Historical Overview

Comprehending the evolution of NFTs offers insights into their progression, challenges, and potential. Knowing their origins aids in innovative applications and overcoming challenges.

#### 2.2.1 Origins of NFTs

##### First Stage (2012–2016)

NFTs as we know them evolved from early blockchain explorations into unique digital assets. While Ethereum is now synonymous with NFTs, they have roots in the Bitcoin blockchain. In fact, the first attempt at it was Colored Coins (2012). Initiated by Yoni Assia

and Ethereum's future founder, Vitalik Buterin, Colored Coins on the Bitcoin blockchain was among the earliest representations of this concept. Beyond merely representing money, it could signify assets like metals, bonds, or digital collectibles where each 'color' stood for a different asset type (Etoro, n.d.). This was followed by the Rare Pepe & Counterparty Tokens, developed on Bitcoin's Counterparty platform. Rare Pepe represented the early digital trading cards. Moreover, Counterparty tokens, unique and non-fungible like NFTs, symbolized various assets. This platform extended Bitcoin's functionality, letting users trade unique digital assets without a new blockchain. It played a crucial role in NFT development by demonstrating blockchain's capability in asset creation and management (Marcobello, 2022).

Despite similarities, NFTs and Counterparty tokens have distinctions. The former mainly utilizes Ethereum, while the latter is Bitcoin-based. NFTs gained traction in digital art and gaming, whereas Counterparty tokens remained less adopted. However, both highlighted blockchains' potential for unique digital asset creation, paving the way for NFTs (Creighton, 2023).

### **Second Stage (2017–2020)**

Before the emergence of NFTs in 2017, no cryptocurrency counterpart existed for the non-fungible token concept. Early NFT projects included CryptoPunks, a collection of 10,000 unique pixel art characters developed by Larva Labs on Ethereum in June 2017; and CryptoKitties, a game by Axiom Zen, launched in November 2017 on Ethereum in which users traded digital cats. Both projects played pivotal roles in defining and popularizing NFTs, with CryptoKitties even causing Ethereum network congestion (Lodge, 2023; Takahashi, 2018).

However, these initial NFT ventures were largely speculative, offering limited tangible societal value and catering mostly to affluent collectors. This exclusivity resulted in a skewed distribution of potential profits. However, despite the significant market attention, many viewed these early NFTs as more speculative assets than genuine value additions.

### **Third Stage (2021–Present)**

Starting around 2020, the NFT expansion saw a surge in NFT sales and the rise of new marketplaces. Artists, musicians, and creators embraced NFTs to monetize their work across industries like gaming, entertainment, finance, and real estate. NFTs evolved into assets backed by real-world items like art and property, providing proof of ownership. They became collateral in decentralized finance, enabling innovative borrowing models. In gaming, NFTs represented in-game assets and ownership in platforms introducing diverse revenue streams. NFTs' potential for innovation is only beginning to unfold.

## **3. ARE NFTS CONSIDERED MĀL (PROPERTY)?**

### **3.1 The Fiqh Literature**

The shari'a perspective on NFTs begins with a consideration of the concept of *māl* (property). This is followed by an exploration of the various types of *māl*, the shari'a



classification. It is crucial to discuss the concept of *māl* in shari'a to determine whether NFTs can be classified as *māl* or not. In fact, this has implications for the legal treatment and rulings governing their ownership and use under the Islamic law. If NFTs are considered *māl*, then they may be subject to the same legal protections and regulations as other forms of property that are under the Islamic law. This includes rules governing their transfer, inheritance, taxation, and liability, among other regulations. On the other hand, if NFTs are not considered *māl*, then they may not be entitled to legal protection, and their ownership and use may be subject to different rules and regulations.

In fact, the concept of *māl* has been given multiple definitions by classical jurists, with varying interpretations depending on the juristic approach. According to Ibn 'Ābidīn's explanation of the Ḥanafī stance on this matter, *māl* refers to something that humans have a natural inclination to possess and can be retained for a certain period (Ibn Abidin, 2011). Also, the Mālikī jurist al-Qāḍī 'Abd al-Wahhāb defined *māl* as something that can be utilized and accepted as consideration (*'iwaq*) (Bouheraoua, 2015). Al-Zarkashī, a Shāfi'ī jurist, defined *māl* as anything that can be utilized for either corporeal matters (*a'yān*) or usufructs (*manāfi'*) (1982). Ibn Qudāmah, a Ḥanbalī jurist, stated that *māl* refers to anything that can be utilized in non-necessity situations (1994).

Furthermore, based on the aspect of similarity, property can be classified into two categories: comparable property (*māl mithlī*) and non-comparable property (*māl qīmī*). *Māl mithlī* refers to property that is readily available in the market and has a high degree of similarity with other items of the same type to the point where any slight differences are negligible to traders or consumers (Al-Zuhaili, 2008). For example, a large quantity of a specific brand of handbags that can be easily replaced in case of damage as they are commonly available in the market is an example of *māl mithlī*. On the other hand, *māl qīmī* refers to property for which there is no equivalent replacement (Al-Zuhaili, 2008). This may be because it is unique, like the painting of Mona Lisa, or because it is no longer available in the market such as a brand that has been discontinued and is therefore impossible to replace in the event of damage.

Property can also be classified into two categories from the aspect of recognition and protection under Islam: *māl mutaqaawwam* and *māl ghayr mutaqaawwam*. *Māl mutaqaawwam* refers to property that is legally recognized and protected under the Islamic law (Al-Zuhaili, 2008). This includes any property that is rightfully owned and can be lawfully utilized. *Māl ghayr mutaqaawwam*, on the other hand, refers to property that has no rightful owner or is not permitted for lawful use under Islamic law (Al-Zuhaili, 2008). This includes items such as wine which is not permitted for consumption in Islam.

### 3.2 Conclusion on Fiqh

Firstly, NFTs display characteristics of money in Islam because people are naturally drawn to them. In today's digital age, virtual elements are essential, and NFTs safeguard the rights and value of a virtual content. Secondly, NFTs can be stored securely on blockchains like Ethereum, ensuring tamper-proof ownership and reducing fraud or ownership disputes. Thirdly, NFTs are versatile, representing both tangible assets like real estate,



simplifying transactions; or intangible items like cartoons with no tangible benefits. Fourthly, NFTs' diverse uses challenge their classification as *mutaqawwam* or *ghayr mutaqawwam*. While they can represent assets like wine, they may also symbolize video clips, which could vary in compliance with Islamic law. Therefore, an NFT's classification depends on its represented asset's nature and purpose. Finally, NFTs are unique digital assets considered *māl qīmī*. Some can be semi-fungible tokens (SFTs). The distinction is that NFTs become unique assets once traded, whereas SFTs retain their nature. Thus, in certain scenarios, NFTs can be viewed as *māl mithlī*.

## 4. ISSUES RELATED TO NFTS

### 4.1 NFTs and Extravagance

One potential issue with NFTs is that they can be seen as a form of extravagance. In fact, Allah (SWT) says in the Holy Qur'an:

﴿يَا بَنِي آدَمَ خُذُوا زِينَتَكُمْ عِنْدَ كُلِّ مَسْجِدٍ وَكُلُوا وَاشْرَبُوا وَلَا تُسْرِفُوا إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ﴾ (7:31)

“O Children of Adam, take your adornment at every masjid, and eat and drink, but be not excessive. Indeed, He likes not those who commit excess” (Saheeh International, 1997).

Then He says, deterring people from wastefulness and excess:

﴿إِنَّ الْمُبَذِّرِينَ كَانُوا إِخْوَانَ الشَّيَاطِينِ ۖ وَكَانَ الشَّيْطَانُ لِرَبِّهِ كَفُورًا﴾ (17:27)

“Indeed, the wasteful are brothers of the devils,” meaning that they resemble them in that regard (Saheeh International, 1997).

It is evident that Allah has allowed his servants to enjoy the blessings He has bestowed upon them, including food, drink, and clothing. He has also instructed them to maintain family ties and give to those in need. However, Allah (SWT) has prohibited extravagance and wastefulness in spending and giving. Shaykh al-Sa'di (may Allah have mercy on him) said that committing excess means either consuming more than is sufficient and eating too much of foods that are harmful to the body; going to extremes in choosing the most luxurious and fanciest of foods, drinks, and clothing; or going beyond that which is permissible to that which is unlawful (1988). While NFTs themselves may not be inherently *haram* (prohibited), the high prices paid for them can be considered as a form of extravagance. If a person spends large amounts of money on NFTs, particularly if it leads to financial hardship or neglect of more important obligations, it can be considered a violation of the Islamic teachings on responsible spending and stewardship of wealth. In Islam, Muslims are encouraged to spend their wealth wisely and to avoid wasting it on unnecessary or excessive purchases.

In Islam, Muslims are guided to make purposeful financial decisions that benefit themselves, their families, and communities, emphasizing moderation and avoiding wasteful spending. Also, Islamic economics encourages individuals to consider the broader societal consequences of their financial actions. Investing in assets like NFTs,

which might lack intrinsic value, can be seen as financial irresponsibility from an Islamic viewpoint. The core objective in Islamic finance is not mere wealth accumulation but promoting societal welfare. Thus, Muslims should prioritize investments that spur genuine economic growth and community development, avoiding speculative or non-essential luxuries that do not contribute to societal well-being.

## 4.2 Speculations over NFTs

NFTs have garnered mixed reactions. They were criticized for environmental concerns and potential fraud. Yet, they have broader applications than just speculative investments. We will first delve into NFTs' negative aspects before discussing their potential. In fact, many see NFTs as speculative assets. Often, NFTs are purchased with hopes of reselling at a profit. For example, one might buy a rare NFT artwork, anticipating its value to grow due to its scarcity. Such NFTs tied to significant events, like the World Cup or trending memes, also lure investors aiming at future profits. Furthermore, the limited release of NFTs, known as 'drops,' further fuel their speculative nature.

### What are NFT Drops?

'NFT drops' are events releasing new NFT collections, which provide a limited window to acquire sought-after digital assets (Dean, 2022). Announced beforehand, these drops may employ 'blind box' systems or auctions and often attract participants eyeing potential future value increases. These primary sales differ from subsequent secondary sales on platforms like OpenSea. While the exclusivity and potential appreciation of NFTs entice investors, speculation based on predicted rather than intrinsic value can foster asset bubbles. Such bubbles, if burst, can redirect resources and detrimentally impact the economy.

### Speculation in NFT Trading

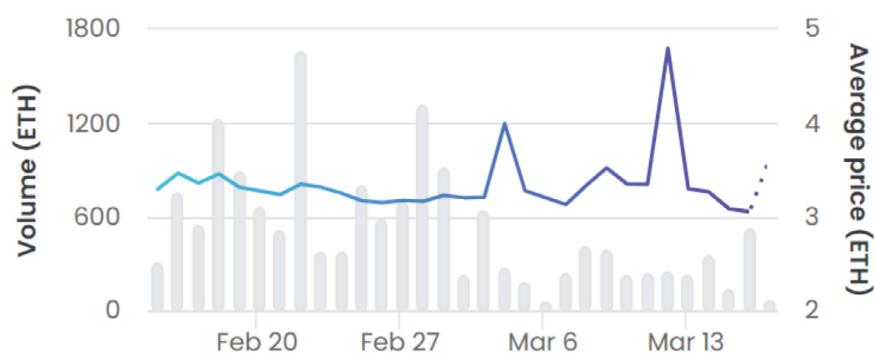
The NFT market is characterized by high risk and unpredictability, largely due to its novelty and lack of extensive historical data for sound analysis. The value of NFTs is highly volatile, often swayed by buyer demand. An illustrative example is an NFT sale on OpenSea, where an asset acquired for 22.5 ETH (\$61,329) was resold in just two weeks by the same account for 39 ETH (around \$124,205). Such rapid price changes highlight the erratic nature of NFT investments. While lucrative profits might tempt some, it is crucial for potential investors to exercise diligence, understand the risks, and thoroughly research the NFT landscape before committing financially.

### Meebits and the NFT Market's Volatility

Since their May 2021 debut, Meebits' prices have been erratic as shown in Figure 1, with some artworks reselling for millions after initial modest sales. CryptoPunk's average prices fluctuated drastically within months, exemplifying market instability. Jack Dorsey's tweet sale and the aggressive bidding on Beeple's artwork indicate speculative trading in the NFT realm, driven more by hype than genuine economic value. Also, speculation can intensify income inequality, leading to established players profiting while newcomers

struggle. When celebrities like Jimmy Fallon, Paris Hilton, Gwyneth Paltrow, and Justin Bieber flaunt their NFTs, it exemplifies the influence of the affluent on market dynamics where few gain at the expense of many (Clark, 2022).

## Volume and Price



**Figure 1.** The price volatility of Meebits. Source: OpenSea marketplace.

### 4.3 The Shari’a Perspective on NFTs Trading

Based on *qiyas* (analogical reasoning), the high level of speculation in NFTs can be linked to gambling. This is because both activities involve taking risks and offer the possibility of winning or losing without producing any tangible value. In fact, buying NFTs solely for the purpose of speculation, with hopes to sell them later at a profit, can be viewed negatively in Islam, especially given the high volatility of NFT trading. Due to the speculative nature of NFTs, caution should be exercised when considering trading them. The value of NFTs can be influenced by various factors such as hype, demand, and the creator’s reputation. However, it is important to stress that excessive risk (*gharar*) is the key element that brings in the gambling aspect.

Moreover, in adherence to Islamic principles, individuals should avoid engaging in speculative trading on NFTs, which could lead to financial losses and harm and is expressly forbidden by Islamic law, since gambling is described as an abomination and a source of enmity and hatred among people in the Qur’an. It is crucial to note that the prohibition on speculative trading of NFTs is linked to their high volatility, and this rule only relates to trading. This suggests that if the price of an NFT stabilizes, the rule may change.

In fact, the Qur’an mentions gambling in several verses, including:

﴿يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنَافِعُ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِن نَّفْعِهِمَا ۗ وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلِ الْعَفْوَ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمُ الْآيَاتِ لَعَلَّكُمْ تَتَفَكَّرُونَ﴾ (2:219)

“They ask you about intoxicants and games of chance. Say: In both, there is great harm as well as benefit for people, but their harm is greater than their benefit” (Saheeh International, 1997).

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ﴾ (5:90)

“O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful” (Saheeh International, 1997).

Based on these verses, Islamic scholars agree that gambling is prohibited in Islam, and Muslims are advised to avoid it as it can lead to harm for themselves and others. According to Al-Dibian (2011/1432 H.), gambling inherits enmity and hatred among the manipulators, because gambling robs money for nothing in return. If a person loses in gambling, this calls him to engage in it again in hopes to compensate for his loss, and it may happen that he does not get what he wants, but rather his loss increases and his problems worsen, leading him to continually re-enter into the situation hoping for compensation. Moreover, when he loses his money and becomes destitute, he looks at those people who were the cause of his loss as being among his staunch enemies, and thus it appears that gambling is a great cause of provoking enmity and hatred among people. Therefore, it is important to exercise caution and avoid engaging in speculative trading on NFTs that could lead to financial losses and harm.

#### 4.4 NFTs' Impact on the Real Economy

Concerns arise that NFT hype may spawn speculative bubbles and shift resources from other economic sectors. Islam promotes a productive economy focused on trading and entrepreneurship, emphasizing just and equitable wealth creation. Like the prohibition of usury aimed at fostering a sustainable economy, valueless NFTs can encourage unproductive actions. NFT investments, being speculative, may prioritize short-term gains over sustainable value creation, pulling talents and resources away from activities benefiting society. Furthermore, NFT investments can intensify financial inequality, as those who are able to invest might disproportionately profit, sidelining broader societal benefits.

The significant returns from NFT investments can result in resource misallocation. Notably, 2021's NFT spending equaled the funds pledged at COP26 to phase out coal or the World Bank's allocation for COVID-19 vaccines (Howcroft, 2022). This poses a question: is heavy investment in NFTs judicious compared to addressing global challenges like climate change or the pandemic?

#### 4.5 NFT Scams

The rapid surge in NFTs' popularity has concurrently seen a rise in scams. Investors may encounter 'rug-pull' scams, such as the Frosties NFT project, which disappeared with over \$1.3 million, prompting a US court case (United States Department of Justice, 2022). There

is also the risk of phishing, where hackers use misleading links on platforms like Twitter and Discord to obtain NFT account details; for instance, a Bored Ape Yacht Club collector lost \$2.2 million in Ethereum due to a disguised scam email (Chawla, 2022). Furthermore, plagiarized NFTs have become prevalent. OpenSea, in August 2021, observed that over 80% of NFTs uploaded via their Collection Manager tool were potentially inauthentic, emphasizing the market's need for better regulations (OpenSea, 2021).

### **The Shari'a Perspective on NFT Scams**

It is important to note that under Islamic law, illegal minting of NFTs is not tolerated as it constitutes a form of theft by infringing upon someone else's digital property rights without their permission. In fact, Islamic law recognizes the significance of protecting property rights, including the digital property, as previously discussed. Any unauthorized use or duplication of someone else's digital property such as NFTs is deemed a violation of their property rights and is not permitted under the shari'a. Aside from the negative impact on the victim of theft, Islam places great emphasis on the moral and ethical implications of this act. Theft is viewed as a breach of trust and a betrayal of the social contract between individuals and society, thereby undermining the foundations of a just and fair society that rests on the principles of honesty, respect, and mutual trust. Indeed, theft erodes trust among individuals in society, promotes injustice, and disrupts the economy. Since NFTs offer a means for businesses and individuals to create value and earn income through their efforts and creativity, illegal minting can lead to losses and adversely affect the NFT market, thereby diminishing the potential value and benefits of this innovative technology.

### **4.6 Off-Chain Issues with NFTs**

Challenges arise when NFTs are linked to physical goods that can be harmed or lost. Smart contracts can automate ownership transfers and manage data. For instance, smart contracts may orchestrate ownership transfers based on conditions like the delivery of a tangible item. Yet, ensuring off-chain data accuracy, proper execution of smart contracts and legal considerations remain concerns.

### **4.7 Liability in NFT Technical Issues**

The digital nature of NFTs creates ambiguity for liability in technical issues. If an NFT platform malfunctions, causing loss or inaccessibility of an NFT, accountability is unclear. Similarly, in the event of an NFT's loss due to security breaches, assigning responsibility can be problematic (Vallabhaneni, 2021). This ambiguity can deter potential NFT buyers. Future regulations and tech innovations are likely to address these concerns.

## **5. CASES OF NFT USES**

Beyond being a speculative investment, NFTs can revolutionize business models by tokenizing assets and enabling unique value exchanges. They exemplify smart contracts' potential and a vast scope of blockchain technologies, steering focus toward broader applications rather than just monetary gains.

When considering its compatibility with shari'a, *maqasid al-shari'a* outlines the objectives of Islamic law, highlighting social justice and well-being. NFTs can resonate with these objectives by offering a unique way to preserve wealth, promoting economic growth, ensuring creators receive fair compensation, and safeguarding intellectual property against fraud.

### 5.1 NFTs: Beyond Speculation to Utility

NFTs, beyond being speculative collectibles, are revolutionizing areas like supply chains, gaming, and ticketing by tokenizing assets and bridging the digital and physical realms. They offer new ways to verify ownership and can serve functions like utility tokens, an example being loyalty rewards in coffee shops. Historically, creators relied on intermediaries, reducing their earnings; but NFTs are empowering them to directly reach audiences, enhancing their revenue and autonomy. Built on blockchain's decentralized nature, NFTs promise transparency and trust, allowing buyers to authenticate originality and shifting authority in the arts and entertainment sectors.

### 5.2 Multilayer Product

The NBA's 'NBA Top Shot' offers fans digital collectible videos or 'Moments' capturing iconic plays, acting as blockchain-based digital trading cards licensed by the NBA. Collectors can enhance their collection and potentially access rarer pieces. By regulating the number of editions, the NBA controls Moment values through scarcity. Apart from collectibles, Moments can offer perks like access to exclusive NBA events. Their value fluctuates based on market demand and is influenced by the NBA's supply control. NBA Top Shot website sells packs with random Moments, introducing an element of surprise for collectors.

#### The Shari'a Perspective on 'Blind Box' Approach in Selling NFTs

In Islamic finance, *gharar* denotes prohibited excessive uncertainty or ambiguity in transactions. The randomized nature of NBA Top Shot pack purchases, where collectors can receive duplicates or undesired Moments, embodies this concept. The inherent uncertainty, not knowing the contents' real value, contradicts Islamic principles of risk-sharing and transparency. The potential of receiving a low-valued or duplicate Moment can introduce unfairness and exploitation, opposing Islamic finance's tenets for justice and fairness. Thus, NBA Moment packs could be viewed as problematic from an Islamic finance angle due to excessive risk. However, interpretations of *gharar* can differ among Islamic scholars and institutions.

### 5.3 The Art Industry

NFTs have revolutionized the art sector, providing a transparent and tamper-proof method to confirm digital artwork ownership (British Broadcasting Corporation (BBC), 2022). It addresses previous challenges surrounding digital art replication and distribution (*The Economist*, 2022). NFTs enhance the art market by ensuring trustworthiness, empowering artists, and streamlining licensing. Beeple's "Everydays: The First 5000 Days" auctioned

for \$69.3 million, drawing attention to Christie's and highlighting NFTs' potential (Christies, n.d.). While NFTs and blockchain validate authenticity, art value is still tied to the artist's reputation. Concerns about plagiarized NFTs emphasize the need for ensuring genuine and ethical transactions.

## 5.4 The Real Estate Industry

NFTs have shown revolutionizing potential in the real estate sector by automating processes and improving transparency. Property transactions, including ownership histories, become more transparent with blockchain ledgers (Sonenreich, 2022). Platforms like NFT Asset Properties encapsulate all transaction details within an NFT. Propy, a notable example, employs blockchain to simplify international property dealings and automate processes like title transfers through smart contracts (Propy, n.d.). Challenges, such as lost cryptocurrency keys, have been raised by experts like Natalia Karayaneva from Propy. NFTs can enhance property transfers by eliminating intermediaries with smart contracts automating tasks like payments (Hajji, 2022). A significant innovation is fractional ownership, ideal for joint investments, facilitated through asset tokenization (Stefanoski & Sahin, 2021). Ventures like Black Manta Capital Partners have showcased the concept's feasibility with real estate token offerings (Black Manta Capital Partners, 2023). The rise of NFTs in real estate hints at democratizing asset access. However, the process requires meticulous planning, addressing legal, technical, and market-related challenges and urging stakeholders to proceed cautiously.

## 5.5 NFTs as Collateral for Loans

NFTs can act as collateral for loans, allowing borrowers to leverage their asset's value without selling. Platforms like NFTfi and Nexo offer such services. NFTfi facilitates cryptocurrency loans using NFTs as collateral, while Nexo provides fiat currency loans. NFTfi claims to have processed about \$300 million in loans since May 2020. Borrowers must be wary of hidden fees and high interest rates. Despite the advantages, it is crucial from an Islamic finance perspective to ensure that NFTs used as collateral are *halal* (permitted). Any lending should be structured in adherence to shari'a laws, ruling out conventional debt contracts. Both the NFTs' status and the contracts' structure require scrutiny for shari'a compliance.

## 6. LEGAL ASPECTS OF NFTS

### 6.1 Linking a Robust Legal Framework to *Maqasid al-Shari'a*

Crafting a rigorous legal framework for digital assets including NFTs aligns with *maqasid al-shari'a*. Such a framework can champion key objectives like safeguarding property rights, spurring economic development, ensuring consumer rights, and endorsing ethical behavior, which are all cornerstones of Islamic law. Ensuring property rights, a prime concern in *maqasid al-shari'a*, would give confidence to digital asset holders. Encouraging economic growth through a well-defined legal structure would invigorate the sector and

foster innovation. Protecting consumers in the digital asset market can ensure safety, fairness, and correct information dissemination. Moreover, abiding by ethical standards to avert fraud is vital, and a robust legal framework would enforce these values.

However, selling NFTs internationally brings forth the challenge of multiple legal jurisdictions. Each nation has distinct laws governing digital assets, and sellers must be cautious to respect the legal demands of every country involved, covering areas like intellectual property, digital assets, taxation, and consumer rights, to name a few. It underscores the necessity of meticulously considering and adhering to the pertinent legal prerequisites of each jurisdiction when transacting NFTs.

## 6.2 Legal Complexities of Cryptocurrencies in the Arab Nations

Global NFT transactions, especially between Arab countries and the US, encounter challenges due to variances in digital asset laws. Many Arab nations are in the early stages of crafting clear regulations around NFT sales, leading to potential legal ambiguities. While some Arab nations restrict or even prohibit cryptocurrencies, which might imply similar treatment for NFTs, their stances vary. Some have adopted more receptive approaches by implementing frameworks to govern cryptocurrencies and associated technologies. For instance, Bahrain's Central Bank initiated in 2019 a regulatory sandbox for cryptocurrency experimentation (Goud, 2021). Similarly, the United Arab Emirates took proactive steps in 2020 when its Securities and Commodities Authority (SCA) rolled out regulations for crypto assets.

## 6.3 Discrepancies in NFT Regulations between Qatar, the US, and Arab Nations

Qatar's Central Bank has banned Bitcoin transactions, emphasizing concerns over illicit activities, money laundering, and volatile pricing (Al Saad, 2022). Conversely, the US has a more developed legal framework for digital assets leading to differences in legal obligations, especially considering the significant US NFT market. Intellectual property laws crucial for NFTs vary, with some Arab nations having unique regulations. Moreover, while the US has clear tax guidelines for digital assets, Arab countries differ or lack NFT-specific tax regulations. Consumer protection laws for NFTs also vary between the US and certain Arab nations.

## 6.4 Shari'a Issues around Cryptocurrencies

Since the only way to buy and sell NFTs is through using cryptocurrencies, it is important to view the shari'a perspective on cryptocurrencies. In fact, Islamic scholars have different opinions about cryptocurrencies, as it is a relatively new phenomenon and its implications for Islamic finance and law are still being debated. Some scholars view cryptocurrencies as a form of currency and are supportive of their use, while others are more cautious or outright skeptical.

Scholars who support the use of cryptocurrencies argue that they can serve as a means of exchange, similar to traditional currency. They also suggest that cryptocurrencies may have the potential to provide financial inclusion and access to banking services to those



who are unbanked or underbanked. On the other hand, some scholars are critical of cryptocurrencies due to their lack of intrinsic value and their potential to be used for illegal activities such as money laundering and financing terrorism. They also raise concerns about the speculative nature of cryptocurrencies and their potential for price manipulation. In fact, the Islamic scholarly community is still in the process of evaluating cryptocurrencies and their compatibility with Islamic law and finance. The opinions on this matter may continue to evolve as cryptocurrencies continue to gain prominence and their impact on the global economy becomes clearer.

## 6.5 Importance of Legal Framework for NFTs

Historically, digital artists have struggled with monetizing their works due to easy online replication. NFTs offer a solution by tokenizing unique versions of these works, enabling artists to earn and maintain the distinctiveness and worth of their creations. Without a robust legal framework, however, the genuine value of NFTs can be undermined. Hence, laws safeguarding artists' intellectual property and ensuring transactional transparency in the NFT sphere are crucial for market trust, attracting investments, and the sector's evolution (Goutay and Wittek, 2022).

## 6.6 Legal Dimensions of NFTs and Intellectual Property

With NFTs surging in popularity, understanding legal bounds linked to copyrighted works is essential. An NFT buyer might assume that they have procured the linked art; but typically, the original artist retains the copyright, holding exclusive rights unless they are specifically transferred (Devin, 2022). In many scenarios, NFT purchasers get only the token and limited non-commercial usage rights of the connected artwork. Sellers may be legally accountable if rights related to the underlying work are miscommunicated. Hence, a clear comprehension of intellectual property rights is crucial for both parties. For instance, purchasing an NBA Top Shot or Board Ape Yacht Club NFT grants the owner a distinct digital asset. However, these typically do not convey copyright ownership. The terms of both NBA Top Shot and Board Ape Yacht Club grant the buyer limited and non-commercial licenses without transferring underlying intellectual property rights.

### 6.6.1 The Shari'a Point of View on Protecting Copyrights

Since copyrights have value and are considered from the perspective of the Shari'a, they should be protected. In fact, according to the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) standards 42, copyrights and trademarks are financial rights, and the owner is fully entitled to its rights. Moreover, in the Qur'an, Allah (SWT) says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا﴾ (4:29)

“O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful” (Saheeh International, 1997).

According to Al-Sa'di in his book, the meaning of this verse is to not take the wealth of others without right because a Muslim should love for his brother what he loves for himself and should respect his brother's wealth as he respects his own. Taking someone else's wealth is not only unjust, but can also invite others to do the same to his own wealth if he were to be in a similar situation. Therefore, it is important to treat others' wealth with the same level of respect and care as one's own.

Since copyrights have value and can be bought and sold, just like any other asset, Islamic law recognizes the importance of protecting copyrights and provides legal remedies to ensure that owners are able to exercise their rights. Therefore, if NFTs can help protect copyrights then they should be encouraged under Islamic law. Moreover, the Islamic financial and legal systems should adapt to recognize and accommodate the emergence of NFTs, so that they can be fully integrated into the Islamic economic system and the broader financial industry while also ensuring that they are used and traded in a fair and ethical manner.

In fact, NFTs have the potential to revolutionize copyright protection by providing a secure and transparent way to verify ownership and authenticity of digital content. With NFTs, creators can prove their ownership of the original works and have control over the use and distribution of their content without the need for intermediaries or third-party platforms. Still, there may be some legal issues that can lower the efficiency of the use of NFTs.

## 6.7 NFTs and Real Estate Regulation

NFTs can modernize real estate transactions but getting governments on board is a challenge. The regulated nature of real estate demands that NFT transactions align with existing laws, like property and tax regulations. Convincing authorities would necessitate substantial regulatory alterations (Sonnenreich, 2022). Additionally, the large values in real estate underline the need for a fail-proof NFT system. A broad acceptance of NFTs also demands a paradigm shift in the perceptions of all industry participants. Hence, close collaboration between NFT advocates and policymakers is vital to navigate these hurdles.

Setting up a legal committee for NFT usage in real estate can be a possible approach to standardizing and regulating the sector. The committee, comprising experts and stakeholders, can establish best practices, ensure law compliance, and resolve NFT-related disputes in real estate.

## 6.8 NFTs, Money Laundering, and Shar'ia Compliance

Money laundering, a longstanding concern in the art sector, can find a new avenue with NFTs. The US Treasury fears that NFTs can be manipulated for self-laundering where a criminal buys an NFT with illicit money and then repurchases it using clean funds, legitimizing the money's source. This technique, combined with the innate nature of NFTs to allow artists to gain from each sale, emphasizes the need for stronger regulations in the NFT market (Barnett & McCrory, 2022).

Shari'a, grounded in the teachings of the Qur'an and Sunnah, takes a stricter stand against money laundering than conventional laws, emphasizing wealth's ethical acquisition and use. Islam's prohibition of usury and the values of clarity and justice underscore the significance of transparent and fair financial dealings. Clarity demands clear transaction intents, making it a potential antidote to money laundering. Justice, meanwhile, champions fair social financial systems (Hoque et al., 2021). Reference can also be made to historical Islamic narratives, such as the interaction between Omar Ibn al Khattab and his governor Amr Ibn al-Aas, where the former sought clarification on how the latter acquired great wealth in a short time. It is said that Amr Ibn al-Aas responded with an account of his legitimate earnings; this highlights the emphasis on transparent wealth accumulation (Al-Andalusi, 1983).

## 7. THE TECHNOLOGY BEHIND NFTS

### 7.1 Blockchain Technology

NFTs are underpinned by blockchain technology, a decentralized database maintained by a network of computers rather than a central authority (Vacca et al., 2020). This design fosters decentralized, redundant, and transparent database management by networks. NFTs are 'minted' on this technology, specifically on platforms like Ethereum, using token standards like ERC-721 and ERC-1155 (Sharma, 2023). Ethereum has also given rise to major NFT marketplaces like OpenSea, Rarible, and SuperRare.

### 7.2 Gas Fees

Interactions on the Ethereum network necessitate gas fees to compensate miners. These fees ensure network security and prevent spamming. Every NFT-related action incurs these fees, with platforms like OpenSea and Rarible sometimes deferring fees through lazy minting, passing the cost to buyers (Alchemy, 2022). Ethereum's previous proof-of-work mechanism, now transitioning to proof-of-stake, had significant energy implications, comparable to an entire country's consumption (Digiconomist, 2022a, 2022b).

### 7.3 Smart Contracts

Smart contracts, which are digital agreements on blockchains, automate execution when conditions are met, promoting efficiency, trust, and transparency by removing intermediaries and ensuring tamper-proof data (Frankenfield, 2023; International Business Machines Corporation (IBM), n.d.). Integrated with NFTs, smart contracts confirm authenticity and combat counterfeits by verifying an NFT's origin (Binance, 2022). Challenges arise from their immutable nature; once deployed, smart contracts cannot be easily altered, demanding precision in their creation. Errors, being permanent, emphasize the need for expert programmers and thorough testing to avoid biases or unforeseen issues (Apostolou, 2023; Corporate Finance Institute (CFI), 2022).

### **The Shari'a Consideration Regarding NFTs Using Smart Contracts**

Under Islamic law, smart contracts may satisfy the requirements for a valid sale contract including offer and acceptance, subject matter, and involved parties (Al-Zuhaili, 2008). In

NFT sales via smart contracts, the offer is presented by the seller, and the buyer's acceptance is recorded. The contract's clarity ensures the item's lawfulness and rightful ownership. Payments are direct, eliminating intermediaries. Smart contracts also automate NFT transfers, executing only when agreed-upon conditions, like payment amounts, are met. However, verifying the actual identity behind a smart contract remains challenging, posing potential transactional concerns.

#### 7.4 Technical Issues with NFTs

NFTs, in most cases, do not store the digital asset directly. Rather, they contain URLs or references pointing to the asset on a separate computer network. A potential issue with this is that if the storage network goes offline or faces security breaches, the associated NFT becomes void or meaningless. This system also complicates the validation of the digital asset's authenticity and ownership when it resides on another network (Vallabhaneni, 2021). Furthermore, gas fees associated with NFT transactions on platforms like Ethereum can be unpredictable due to fluctuating gas prices. During high-demand periods, these fees can sometimes exceed the NFT's actual value (Garg et al., 2021). Another significant concern with NFTs is scalability. The inherent architecture of popular NFT platforms like Ethereum limits transaction speeds due to their proof-of-work consensus mechanism, which demands extensive computational power. This limitation often leads to network congestion, delayed transactions, and increased gas fees (Binance Research, 2022).

#### 7.5 Environmental Impact and Considerations for NFTs

NFTs have garnered attention due to their potential environmental repercussions. Gas fees, primarily paid through mined cryptocurrencies, largely derive energy from non-renewable sources. In early 2021, Ethereum's energy consumption was comparable to a small country. However, the network has made commendable progress in lowering its environmental footprint by transitioning from a proof-of-work to a proof-of-stake consensus mechanism, achieving a staggering 99.95% reduction in energy use (Digiconomist, 2022a, 2022b). Despite these advancements, the environmental toll of NFTs remains a subject of concern. As per Digiconomist, a single NFT transaction on Bitcoin equates to the emissions of 1.7 million Visa transactions or watching YouTube for 124,714 hours. Ethereum's NFT transactions are considerably less damaging, but they still have an impact (Digiconomist, 2022a, 2022b). To genuinely address these concerns, a multifaceted approach is essential. This involves adopting more energy-efficient blockchain technologies, like proof-of-stake, and fostering responsible consumption patterns. Both creators and consumers must emphasize sustainability and ethical considerations in the realm of NFTs.

#### 7.6 The Shari'a Point of View on the Environmental Impact of Using NFTs

From the shari'a perspective, Muslims, as stewards of the earth, must consider the environmental repercussions of using technologies like NFTs. According to Nomanul Haq and Ozdemir (2017), the Qur'an emphasizes humans as God's vicegerents on earth, and

harming the environment is akin to self-injury, violating Qur'anic ethics. The value of NFTs, often based on subjective opinions and sometimes fetching extravagant prices, could be seen as wasteful, especially when juxtaposed against environmental concerns. Islam prohibits wastefulness, and resources once depleted are largely irrecoverable. The Prophet Muhammad (PBUH) highlighted the importance of resource conservation, exemplifying with the prudent use of water. Therefore, Muslims should evaluate the environmental impacts of NFTs against their intrinsic value, ensuring their actions align with Islamic values and ecological responsibility.

## 8. RECOMMENDATIONS

NFTs have the potential to be a powerful tool for supporting economic development and providing access to financing companies that are not able to access traditional bank loans. Islamic finance principles require financial transactions to be structured in a way that is consistent with Islamic law. In countries where there is no access to such Islamically compliant loans, NFTs can play a significant role. In fact, NFTs can provide a new way to structure financial transactions that is more in line with Islamic principles, allowing companies to access funding in a way that is both Islamically compliant and innovative. By using NFTs to provide financing, Muslim communities can support the growth of new businesses and industries, creating jobs and driving economic development.

Additionally, NFTs can be used to create new investment opportunities for individual investors, providing a more accessible and equitable way for Muslims to participate in the global economy. In fact, the use of NFTs for Islamically compliant financing has the potential to be a game-changer for Muslim communities, helping to build a more inclusive and sustainable economy.

NFTs can also be used to empower Muslim communities and build a more inclusive and equitable economy. By leveraging the unique properties of NFTs, such as their ability to represent ownership of digital and physical assets, Muslim communities can create new economic opportunities and eliminate intermediaries that may not share the same values and principles. For example, NFTs could be used to create new markets for Islamic art and culture, allowing Muslim artists and creators to benefit directly from the sale of their work. NFTs could also be used to support Islamic philanthropy and charitable giving, creating a more transparent and efficient system for the distribution of funds. By utilizing NFTs in these ways, Muslim communities can take control of their economic destiny and build a more just and equitable society.

## 9. CONCLUSION

NFTs have emerged as a revolutionary technology that has the potential to transform a wide range of industries. NFTs offer a new way to represent ownership and value in a digital world, providing opportunities for creators and investors to monetize unique digital assets such as art, real estate, and other forms of content. However, as with any emerging technology, there are also challenges to consider, including the environmental impact of

NFTs and the potential for fraudulent activity. It is important for stakeholders to carefully consider the implications of NFTs on ethics and sustainability and work to ensure that they are used in responsible and socially conscious ways.

Indeed, NFTs currently have a variety of uses. NFTs can be used to represent unique digital artwork, giving artists a new way to monetize their creations and collectors a way to own and display digital art in a verifiable and secure way. They can be used to represent the ownership of a property or a fraction of it, allowing for easier and more transparent ownership transfer and fractional ownership opportunities. They can also be used as collateral for loans, with the token representing a valuable asset that can be used as collateral and transferred to the lender until the loan is repaid. NFTs can be used as utility tokens, representing access to a particular service or product, such as a membership or subscription. NFTs can also be used to prove ownership of a particular piece of content, such as a song or a video, and enable creators to earn royalties for their work.

Overall, the potential of NFTs is vast, and it will be exciting to see how this technology continues to develop and evolve in the coming years. Moreover, NFTs are complex and varied. One of the primary concerns is the lack of clarity regarding ownership rights and intellectual property infringement. As NFTs allow for the creation and sale of unique digital assets, there is a risk of copyright infringement, especially in cases where the underlying content is not original. There are also questions regarding the enforceability of smart contracts and the legal status of NFTs in various jurisdictions. Additionally, there are concerns about money laundering and other illegal activities associated with NFT transactions, requiring regulators to keep a close eye on the NFT market. As NFTs continue to gain popularity, it is likely that these legal issues will need to be addressed through legislation and regulation to ensure the protection of intellectual property rights and prevent criminal activity.

From a shari'a perspective, the use of NFTs can be seen as a form of financial speculation which can lead to economic injustice and harm to society. Also, there are concerns that NFTs can be used for gambling or other illegal activities, which are prohibited in Islam. Additionally, the high value of some NFTs can be seen as a form of extravagance or hoarding, which goes against the principles of moderation and generosity in Islam. Some use cases of NFTs may also be prohibited if they include an extensive level of *gharar*. Therefore, there is a need for careful consideration of the *maqasid al-shari'a* in the use of NFTs to ensure that they are used in a way that is consistent with the values and objectives of Islamic law.

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## RESEARCH ARTICLE

# The Use of Circular Economy for the Natural Resources of Power: The State of Qatar as a Case Study (Oil and Gas)

Khawla Ahmed Al-Turki

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## ABSTRACT

Climate change has been an issue since the late 18th century, and since then, humans have begun to react differently to curb global warming and play a vital role in making the planet a better and safer place for all people. However, the rapid growth of economies and technologies has a different impact when it comes to globalization and development. Nevertheless, if leading countries start working and lending a hand to solving the issue, other countries will be motivated to go with the tide. In addition, the circular economy as a solution is an ideal choice for countries like Qatar, where the oil and gas industry plays an important role in the country's economy but also increases air and water

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pollution, which ultimately worsens the climate change problem. Therefore, this paper tries to determine whether the use of circular economy for natural resources of power such as oil and gas in the case study of the State of Qatar can somehow lead to better figures and sustainable solutions, as well as less exposure to the risks associated with global changes in the oil and gas industry. Given that many countries, like Qatar, rely heavily on oil and gas for their economies, using circular economy as a model to eliminate waste and pollution, as well as recycling existing products and materials, can fully contribute to better air and water conditions. Rather than ignoring the challenges, countries should ensure compliance with the norms and standards of a circular economy and motivate their own nations to fully transition towards circular economy and sustainable solutions.

**Keywords:** circular economy, natural resources, climate change, energy, Qatar, pollution.

## 1. INTRODUCTION

### 1.1. Initial Motivation and the Real Problem

The world is struggling with a serious problem, and that problem is climate change. Ackerman et al. (2008) published a report on the estimated costs of climate change and put it at approximately US\$1.9 trillion per year. From a macroeconomic perspective, this cost (in the form of damage and lost opportunities) can represent a significant portion (around 3.6%) of a developed country's economic output in terms of GDP. Numerous models have been proposed to quantify the losses caused by climate change, not only to the economy but also in terms of other outcomes such as the human experience and loss of life (Ashraf et al., 2020; Duran et al., 2020; Preston et al., 2019). Studies published so far agree that climate change is a real problem that is becoming increasingly serious, which is why countries need to start working on solutions as quickly as possible (Christis et al., 2019; Schmid et al., 2020; Wysokinska, 2016). Given that climate change is causing human suffering and loss of life, it should come as no surprise that more and more countries are increasingly motivated to address this problem.

### 1.2. Importance of the Study

There are many possible solutions to the growing global problem of climate change. The use of renewable energy sources, for example, is one of the most commonly mentioned and researched solutions. Each alternative solution has its own advantages and disadvantages. For this reason, studies aimed at finding the most effective long-term solution to climate change must have a high level of specificity or focus on that solution (Geissdoerfer et al., 2017; Geng et al., 2019). This paper focuses on developing a circular economy as a manner by which to address the global problem of climate change. The importance of this paper lies in the fact that developing a circular economy is a less explored option for a solution to climate change (Kirchherr et al., 2017; Korhonen et al., 2018; Morsetto, 2020).

### 1.3 Importance of the Subject

The subject which the present paper focuses on is the circular economy. It is important to note that this subject is addressed in the context of the State of Qatar, a developed country in the Middle East region. A large part of the country's economic output is attributed to the oil and gas industry (Almfraji et al., 2014; Charfeddine et al., 2018; Mirzaei & Moore, 2016). The world is transitioning towards a less carbon-dependent energy production and consumption model, which is why it is important for countries like Qatar to take the necessary steps to make this global trend transition smoother for them, as the economies of Qatar and many of its neighboring states depend on the global demand for oil and gas (Kalmykova et al., 2018; Moraga, et al., 2019; Otero et al., 2018; Sandoval et al., 2018).

For this reason, this paper will address water and air pollution caused mainly by the oil and gas industry. Firstly, water pollution is the pollution of water bodies by human activity that has a negative impact on their legitimate use. Water pollution reduces a body of water's ability to provide ecosystem services. For example, this paper shows that oil can easily and highly cause water pollution from oil spills through fouling or oiling, and oil toxicity.

Fouling or oiling is a regular phenomenon in oil refineries, which is used to cool or heat oil as it passes through several stages that can harm animals, plants, and even human lives. Oil toxicity refers to the variety of harmful substances present in oil that can cause serious health issues such as heart disease, immune system problems, and ultimately death. USA has one of the highest records for oil spills per year (at the scale of thousands of oil spill incidents), causing enormous environmental damage (Denchak, 2018).

Secondly, air pollution is defined as the presence of gases in the environment that are harmful to the health of humans and other living beings, as well as to the ecosystem and other surrounding materials (Mackenzie & Turrentine, 2021). Some of these gases can cause photochemical smog, acid rain, forest dieback, and reduced atmospheric visibility.

Photochemical smog occurs when nitrogen oxides and volatile organic compounds combine with sunlight to form a brown cloud over cities. It happens more often in the summer when the cities have the most sunshine (Afework et al., 2018). Acid rain, also called acid deposition, is a general term that refers to any type of precipitation that contains acidic components such as nitric acid or sulfuric acid, and falls from the atmosphere to the ground in wet or dry form. This can include hail, fog, dust, snow, and acid rain (Environmental Protection Agency [EPA], 2021). Forest dieback is a condition in which a group of trees loses their health and dies for no apparent reason. Forest decline, forest degradation, canopy-level dieback, and stand-level dieback are terms used to describe this phenomenon. It mainly affects individual tree species, but it can also damage a group of trees all at once (Gordaliza & Turnbull, 2020). According to the Food and Agriculture Organization (FAO) of the United Nations, Nigeria has the highest rate of primary forest degradation (FAO, 2021). Finally, the most visible symptom of air pollution is undoubtedly reduced visibility. The absorption and scattering of light by particles and gases in the atmosphere before it reaches the observer causes visibility degradation. Particulate scattering reduces visibility much more quickly (Regional Haze Program, 2011).

It would be detrimental for Qatar’s economy to find itself in a situation where it still relies on revenue from its oil and gas industry after countries in the global economy have already successfully transitioned towards renewable energy sources, i.e., away from fossil fuels (Kalmykova et al., 2018; Moraga et al., 2019; Otero et al., 2018; Sandoval et al., 2018).

## 2. HISTORY, BACKGROUND

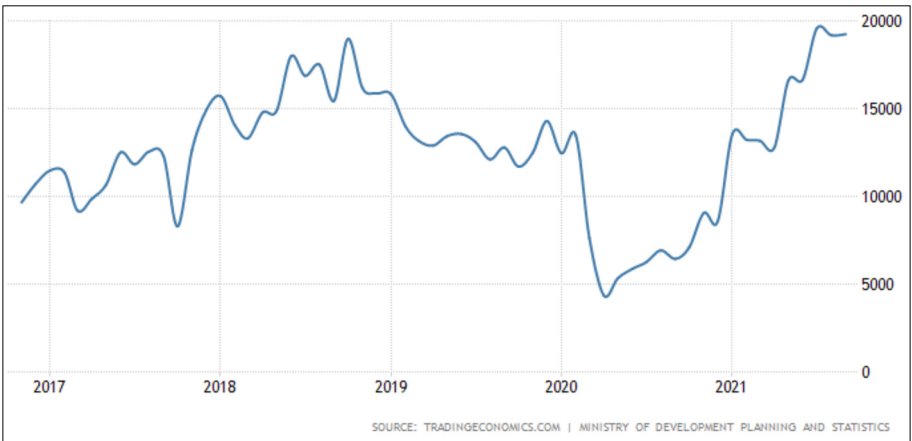
### 2.1 History, Background of Qatar’s Economy

#### 2.1.1 Pearl Extracting

Qatar is a country with humble beginnings. Before the emergence of the oil and gas industry, the country’s economic output was based primarily on the pearl extracting sector. Pearl extraction is one of the oldest industries in the Middle East and North Africa. Archeological sources show that pearl extracting began in the region around 7,000 years ago (Tsao, 2016). The profit margins and economic multiplier effects in the pearl extraction industry are low, especially compared to other high-value industries. For this reason, for much of Qatar’s history before the discovery of its oil and natural gas reserves, Qatar was considered a poor country.

#### 2.1.2 Country Trading with India and Other Countries

At the same time, Qatar’s economy was heavily dependent on trade. The country was able to export its large surpluses from oil and gas production to other countries that needed them. India is one of Qatar’s largest trading partners. Since India has the second largest population in the world, it is not surprising that the country also has one of the highest demands for energy resources such as oil and natural gas.



**Figure 1.** Trade balance between Qatar and India (Source: TradinginEconomics.com).

Figure 1 shows the trade balance between Qatar and India from Qatar's perspective (Qatar's Ministry of Development Planning and Statistics, 2021). It can be seen that Qatar has had a trade surplus with India in the last decade, which means that the value of the commodities that Qatar has exported to India is greater than the value of the commodities that the country has imported from India. This essentially means that one of the most profitable trading partners for Qatar is India, which is why the government has been keen to maintain positive relations with India over the last 50 years since the two countries began establishing mutual diplomatic relations (Cooper & Momani, 2011; Fahy, 2018; Kinninmont, 2019; Ustaoglu et al., 2017; Wright, 2013).

### **2.1.3 The Development of Qatar's Oil and Gas Industry**

The first oil and gas exploration, development, and extraction projects in Qatar began in the late 1930s. It took several decades for the country to build its oil and gas industry to the point where it could be considered a major economic factor (Kirat, 2015; Rathmell & Schulze, 2000). Depending on which sources we look at, this threshold—when Qatar's oil and gas industry became the largest contributor to its economy—was reached in the 1970s, and the same is true today (Chedid et al., 2007; Fromherz, 2017; Hashimoto et al., 2004). Qatar still relies heavily on revenue from the oil and gas industry.

### **2.1.4 The Oil- and Gas-Dependent Economy of Qatar**

Qatar's oil and natural gas industry accounts for about 51% of nominal GDP. Based on this figure, it is safe to suggest that Qatar is still an oil- and gas-dependent country. In other words, a crisis in the industry, be it a shortage of supply or a drop in price, will have a significant impact on the country's economic outcomes (Alkhateb et al., 2020; Fasano-Filho & Iqbal, 2003; Oxford Analytica, 2020; Parveen, 2019). However, His Highness Sheikh Hamad bin Khalifa Al-Thani, father of the Amir of Qatar at the time of writing, endorsed the Qatar National Vision 2030 (QNV 2030) in June 2008 during his reign, and strongly emphasized the need to diversify the economy and gradually reduce its dependence on the hydrocarbon industry by creating new economic objectives (Government Communications Office [GCO], 2019).

## **3. CIRCULAR ECONOMY MECHANISM AND FRAMEWORK**

### **3.1 Circular Economy as a Concept**

The concept of the circular economy is based directly on the idea of circularity (Bilal et al., 2020; Ferasso et al., 2020). The goal of a circular economy is to secure, and in some cases guarantee, the long-term sustainability of a process or system, or in the case of Qatar, the economy of an entire nation-state (Dantas et al., 2021; Kristoffersen et al., 2020; Pascale et al., 2021). Applying this to the case of Qatar, a successful transition to a circular economy could mean that the country would be significantly less exposed to the risks posed by global changes in the oil and gas industry.

### 3.2 Circular Economy as a Theory

The theory of the circular economy is based on three main principles: the elimination of waste and pollution, the regeneration of natural systems, and the recycling of existing products and materials. A true circular economy is one in which most, if not all, wastes and by-products of production and consumption are either reused or recycled to create another product—which is then consumed, leading to another cycle of production and consumption; hence the term ‘circular’ (Naustdalsslid, 2014; Qing et al., 2011; Velenturf & Purnell, 2021). The current theoretical framework used in the economies of many countries is far from circular. This is because the vast majority of products consumed end up as waste and are not reintroduced into the economy through recycling, upcycling, or reusing. The end result is economic, social, and environmental chaos (Gan, 2002; Joensuu et al., 2020; Real et al., 2018; Sauve et al., 2016).

### 3.3 Qatar’s Progress in the Development of a Circular Economy

In order to accurately analyze Qatar’s progress in developing a circular economy, this paper evaluates the current status of Qatar’s circular economy development based on the following criteria: (1) production of goods and services, (2) consumption of goods and services, (3) waste management—especially solid, liquid, and hazardous wastes, (4) research and development, (5) use of technology and innovation, (6) public awareness and education, and (7) government support, by examining the main players in these sectors of oil and gas—Ras Gas; Qatar Energy (QE), previously known as Qatar Petroleum (QP); Shell; Qatar Petrochemical Company (QAPCO); Oryx GTL; Nakilat; Qatar Gas; Dolphin; Qatar Fuel (WOQOD); and Muntajat (QPJSC) (Gulf Talent, 2021). Furthermore, it is shown that these main players are currently in an above-average state in all the seven indicators when it comes to developing a truly circular economy.

### 3.4 The Zero-Pollution Environment: The Case of Qatar

Looking at the aforementioned main players in the oil and gas sector, it can be observed that Qatar’s progress in developing a circular economy is rapid and that, although the country is currently in a slightly above-average state, there is still room for further improvement in the long run with regard to the seven indicators mentioned.

It is unrealistic to assume Qatar can achieve a zero level of emissions and waste, because it is an unlikely scenario in the real world (Fogarassy & Finger, 2020; Ghomi et al., 2021; Koh et al., 2020; Mugoni et al., 2020). What is more realistic is a low or almost negligible level of waste and emissions due to a fully functioning circular economy. Assuming that Qatar can keep up with its rapid pace of progress, the outcome of a near-zero level of emissions and waste can be feasible.

## 4. CHALLENGES

### 4.1 Circular Economy Mechanism Challenges

The challenges commonly associated with developing and implementing a circular economy vary widely. In one study, Hopkinson et al. (2018) examine the various challenges

of the circular economy, which include, among others, people's natural tendency to be resistant to change and fearful of the risks associated with developing a circular economy (Hopkinson et al., 2018). Other previously published studies identify additional challenges of the circular economy: (1) meeting consumers' expectations for convenience, (2) meeting consumers' expectations for price, (3) lack of government support, (4) lack of access to the required technologies, (5) lack of access to the required infrastructure, (6) lack of support from the private sector, and (7) public awareness and education about the advantages of transitioning towards a circular economy (Adams et al., 2017; Franco, 2017; Geng & Doberstein, 2008; Oliveira et al., 2018).

## 4.2 Qatar's Challenges with Circular Economy

While the main sector players in Qatar show how much progress is being made in improving the economy by achieving the goals and objectives of the circular economy, the country still faces some challenges in implementing this theory. These include: (1) lack of access to the required technologies, (2) lack of access to the required infrastructure, (3) lack of support from the private sector, (4) public awareness and education, (5) reducing costs to remain competitive, (6) improving the environmental footprint to meet increasingly stringent standards, and (7) improving performance to ensure asset valorization.

## 5. RECOMMENDATIONS

At present, Qatar should maintain the pace of its progress in developing its circular economy. Over time, the country's above-average circular economic development status should develop positively and reach an excellent state. Qatar consistently scored average to above-average across all seven challenges listed in this paper: (1) meeting consumers' expectations for convenience, (2) meeting consumers' expectations for price, (3) lack of government support, (4) lack of access to the required technologies, (5) lack of access to the required infrastructure, (6) lack of support from the private sector, and (7) public awareness and education. Therefore, the government of Qatar should focus on addressing these challenges in these areas, as Qatar has all the resources it can devote to a successful transition towards a circular economy. In addition, further trends in the application and compliance with the norms and standards of the circular economy can be explored from international organizations or consultancy agents, as well as further government guidelines can be set for leading companies in the oil and gas sector in the transition towards the circular economy.

## 6. CONCLUSION

In summary, Qatar is an oil- and gas-rich developed country in the Middle East. The country has all the resources it can devote to a successful transition to a circular economy. Based on the findings of secondary data, Qatar's current performance in the circular economy is reasonably adequate. It is important to note that there is not a single country in the world that has achieved this feat—i.e., fully transitioning towards a circular



economy. It is therefore not surprising that Qatar is considered an average state when assessed against relatively stringent circular economy standards. On the positive side, however, Qatar has made great and rapid progress in improving the performance of its circular economy in terms of (1) production of goods and services, (2) consumption of goods and services, (3) waste management—especially solid, liquid, and hazardous wastes, (4) research and development, (5) use of technology and innovation, (6) public awareness and education, and (7) government support. This means that assuming Qatar can continue to improve at its current pace, its ability to achieve a higher functioning circular economy has strong possibility in the future.

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Khawla Ahmed Al-Turki is a PhD student in Islamic Finance and Economy at the College of Islamic Studies (CIS) at Hamad Bin Khalifa University (HBKU). She is a graduate of the College of Business and Economics at Qatar University (Class of 2018) and a graduate of the Master of Public Administration (MPA) program of the Doha Institute for Graduate Studies (Class of 2020). Khawla is Head of the International Cooperation Unit at the General Tax Authority of the State of Qatar. In this role, she aims to study the relationship between Islamic finance and international taxation and examine how these two subjects correlate and impact each other.

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## RESEARCH ARTICLE

# Drawing Parallels Between Al-Muhājirūn and Contemporary Migrants

Laura Farooq Sani

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## ABSTRACT

The paper compares the situation of the refugees to Medina (al-Muhājirūn) and the contemporary asylum seekers through the prism of the 1951 Convention Relating to the Status of Refugees. Moreover, the analysis is grounded in two thematical items: prerequisites for the acceptance of refugees within national borders and their condition after their formal reception into the host country. The academic endeavor suggests that the moral principles that governed the “hijra” can be used to procure relative rectitude in the conditions of present-day asylum seekers.

**Keywords:** Islam, migration, 1951 Convention, refugees, Al-Muhajirun

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<https://www.hbku.edu.qa/sites/default/files/almuhajirunmigrants.pdf>

## INTRODUCTION

According to a recent report put forward by Islamic Relief, the number of refugees and displaced people rounds to 80 million. It comes as no surprise that 66.7% originate from developing countries with some Muslim-majority representation, such as Syria, Afghanistan, and Somalia, featured on the list (Islamic Relief, 2019). Moreover, the statistics are not a recent reflection of the exacerbated situation under the dominion of the Taliban or the heightened humanitarian crisis in the Palestinian territories. The cited data, coupled with the nature of political regimes, economic capabilities, and the degree of social cohesion, induced many pundits to view Muslim polities as the points of inception and transit of migrants, but also as final destinations (De Haas et al., 2020). The reasoning behind this assumption is that areas of conflict often have neighboring regions that face similar structural deficiencies.

Historically, the movement across or within geographies is not foreign intellection but rather it became problematic with modernity. One of the earliest accounts of mass relocation is the Migration Period (4<sup>th</sup>–7<sup>th</sup> century AD). Tribes of non-Roman descent moved towards the borders of the Roman Empire due to environmental factors (Wright, 1997). Their movement eastwards was restricted by the Great Wall of China, thus allowing them to explore opportunities of resettlement in the Great Empire, which at that time could have been characterized as politically and economically dysfunctional (Halsall, 2006). If one compares the situation at that time and today in the reality of the Western nation-state, one might observe that the discourse regarding migration is tied to national security and the protection of a specific social identity and way of life (Rydgren, 2018). This framing of migration has been reflected in policies that aim at curbing migratory influx through bureaucratic hurdles and legal obstacles in addition to a hard-power securitized approach in the form of “militarized border management by a global border and migration industry by private contractors—companies, firms and agencies—that build and operate detention centres, exercise border control, and carry out deportations” (Knudsen & Berg, 2023).

In contrast to such measures that limit human mobility, the Islamic tradition takes a more philosophical outlook on migration. Migrants do not necessarily represent a threat to an existing socio-political fixture. They are viewed more as portable cruisers than the average city-dwellers but do not bear the stigma of being disenfranchised members of the community, as essentially all residents of the *dunya* (worldly life) are travelers. The Prophet (peace be upon him) instructed the *umma* (larger Muslim community): “Be in this world as if you were a stranger or a traveler” (Sahih al-Bukhari 6416).

The hadith encourages the denial of attachment to worldly assets. For the migrant community, worldly assets in connection to migration can be a homeland and possessions acquired therein while the host community can be equally attached to their homeland and possessions they might acquire if public expenditure was not directed to the integration of refugees and migrants in the economic system of their countries. Having said that, the situation in the contemporary Middle East is not ideal for asylum seekers in terms of food offering, settlement, and healthcare. However, these countries receive and provide for

migrants according to their financial capabilities with a low level of militarized migration governance (Cabot, 2018; Lemberg-Pedersen, 2013).

## Migration in Islam

Travelling from one place to another, i.e., migration, is unanimously equated by previous research with the Arabic word *hijra*. This act of venture has been thought to be “the starting point of Muslim civilization” and a foundation for the erection of an Islamic society (Jureidini & Hassan, 2020, p. 2). Authors such as El Fadl (2020) found justification for such an argument in the Holy Qur’an: “And We have certainly honored the children of Adam and carried them on the land and sea” (Q 17:70). In his writing, the phrase *wa ḥamalnahum fīl-barri wal-baḥr* is translated as “ha[ve] facilitated to them mobility on earth and the seas” (El Fadl, 2020, p. 13). Therefore, his logical continuum promotes the idea that the freedom of movement is not only a mere opportunity but is a requirement for the attainment of human dignity, although actual displacement is not necessary (El Fadl, 2020, p. 13). The stance might not be too far-fetched as elsewhere in the scripture, the angels address the ones who failed to migrate to Medina with the Prophet (peace be upon him): “Was not the earth of Allah spacious [enough] for you to emigrate therein?” (Q 4:97).

Nevertheless, Al-Tabari (d. 310 AH), one of the earliest interpreters of the Qur’an, understood the phrase *wa ḥamalnahum fīl-barri wal-baḥr* as the subjugation of all creations, especially the creations that facilitate transportation over land and sea such as pack animals and ships, to the human race. His reading offers a broader perspective on the concept of mobility. Mobility in his analysis is intertwined with God-given authority. Other verses in the Holy Qur’an (Q 2:164; Q 10:22; Q 14:32; Q 22:65) build on the idea of authority by mentioning mobility alongside Allah’s omnipotence.

## The Migration to Medina

It is quite interesting that migration in the Qur’an is primarily realized with the verb *hājara* whose root *h-j-r* comes as the opposite of *w-s-l*. The usage signals that mobility is viewed as a disconnection from the place of origin or its abandonment. The thread resonates with the reality of the procedural legitimatization of the voyage to Medina. First of all, the resettlement was delayed to the last moment, even though the oppressive measures undertaken by Quraysh impacted new converts, both psychologically and physically. The postponement implies that the decision of departure is not to be taken lightly despite the obstacles one might face in their home country.

Nowadays, it can be seen that people with skills and talents are willing to readily commit to permanent residence in the West because no favorable circumstances for personal growth and professional advancement are present in their polities of origin. If their potential could be adroitly utilized for building up a strong institutional edifice that would withhold the norms set out by international law and ensure the just distribution of wealth among community members, the choice of leaving should be reconsidered. Furthermore, if the world population is concentrated in a few prosperous states, the

deserted countries might in the long term develop into failed states. This would permit the expansion of violent extremist groups and cement their role as refugee suppliers and drug production sites (Delpech, 2007). Contemporary examples are Syria, Iraq, Yemen, Afghanistan, and Somalia, but the record is likely to amass more entities in the near future.

Secondly, the hijra to Medina took place for a particular purpose—the assemblage of a united Muslim nation under religiously ordained rules and regulations. Thus, it does not rest on whims but clear intentions to live in accordance with the Divine Law. The semblance of this rationale can be found in the following hadith: “Deeds are but by intentions and each man will have but that which he intended. If a man’s migration was for the sake of Allah, then his migration was for that for which he migrated, but if his migration was to achieve some worldly aim or to take some woman in marriage, his migration was for that for which he migrated” (Musnad Ahmad 168). Moreover, the relocation was not recognized as a durable solution but as a respite for the aggregation of spiritual, civilizational, and military confidence to neutralize the oppressing agent at a later stage. This is why the feasibility of migration was censored after the conquest of Mecca (Sahih al-Bukhari 4311).

Therefore, it can be concluded that the exodus to Medina was not only a normative response to persecution and human suffering but also a cleverly calculated movement. Looking into the Islamic juristic discourse produced after the time of the Prophet (peace be upon him), one might hypothesize that the nascent narrative, which converged between a refugee and a migrant, diverted from its course in order to align with matters of convenience. Hijra was taken up to signify a duty to leave territories of disbelief (*dār al-kufr*) and seek asylum in abodes with a predominant Muslim presence (*dār al-Islām*). Factual illustrations of this phenomenon are the flight in aversion to colonial rule in North Africa and the emigration of Muslims from India to the newly founded Islamic Republic of Pakistan (Jureidini & Hassan, 2020). After World War II, the paradox of reverse hijra occurred. Large masses of people migrated to non-Muslim countries, often to those colonial powers which governed their respective states of ancestral background. Due to the pressures of the new reality, some Islamic circles were convinced to license the trend under *fiqh al-muwāṭana*<sup>1</sup> (jurisprudence of citizenship) (Jureidini & Hassan, 2020). However, the granted preliminary approval acted as a regulatory decision based on the duration and reasons for resettlement (Ramadan, 1999).

### Comparison with Contemporary Migration

Having discussed the concept of migration in Islam in the previous section, this section compares the situation of the refugees to Medina (al-Muhājirūn) and the contemporary asylum seekers through the prism of the 1951 Convention Relating to the Status of Refugees. Moreover, the analysis is grounded in two thematical items: prerequisites for the acceptance of refugees within national borders and their condition after their formal reception into the host community.

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1 New branch in the Islamic Law which was supplemented in the 1990s and 2000s to address issues of nationality, integration, and citizenship in non-Muslim countries (Jureidini & Hassan, 2020).



The 1951 Convention was initially designed to cater for the needs of European refugees in the aftermath of World War II. With its initial timestamp and ethnic grouping, it primarily served individuals who became refugees owing to events before 1951 which took place in Europe. In the ensuing years, an amelioration of the Convention was introduced in the form of the 1967 Protocol. The appendage, which came out 16 years later, widened the scope of international protection for displaced people, including those of all nationalities who were persecuted because of their religion, race, nationality, political opinion, or group membership. In addition, the 1967 Protocol and the Convention were suited to encompass current and prospective refugee situations.

Nevertheless, the universalized definitions and additional changes made in the documentation did not surmount the geographical limitation of refugee acceptance. Both documents that regulate the international assistance scheme do not have all countries in the world as signatories. Such exclusion raises questions on the readiness of non-participatory agents to comply with the established norms. As Millbank (2000) noted, the obligations enshrined in the Convention apply only when “an asylum seeker has entered a signatory country” (p. i). For example, most Arab countries are not signatories of the Convention. Various reasons have been presented by scholars but the most popular is that there is an inherent reluctance by Arab states to offer permanent accommodation to refugees (Janmyr, 2017). This might not be far from the truth as the Islamic tradition, which is preserved in many of these countries, frowns upon permanent relocation. Countries like Lebanon are willing to accept a significant number of Palestinian refugees, but they are aware that if they become signatories of the Convention and the Protocol, it would require them to fully integrate foreigners into their communities. The integration does not constitute a problem on its own as such practice was observed in the Islamic migration to Medina. Nonetheless, Al-Muhājirūn were emboldened to return to their homes with the conquest of Mecca. In the same manner, Lebanon, by not signing and ratifying the documents, honors the right of Palestinians to return to and claim their own land (Janmyr & Stevens, 2021).

Apart from the limited geographical scope of action, the Convention and the Protocol suffer from various textual discrepancies. The international instruments for refugee protection are designed to provide favorable conditions for displaced persons in the form of rights and obligations. The conceptualization of solidarity and safety, however, are left to the judgment of the individual nation-state.

The Convention and the Protocol codify rights. Rights in the context of refugee protection rely on the measurement of the need for humanitarian assistance, also verbalized as deservingness. Willen and Cook (2022) identify the following characteristics that pertain to deservingness: relational, conditional, contextual, syncretic, affected, mutable, and implicit (p. 32). Deservingness is relational because one assesses the deservingness of others by comparing their own situation with the situation of others. Moreover, the act of comparing is influenced by the social proximity between the evaluating agent and the evaluated. Deservingness is conditional because it takes into consideration the features, presumed or actual, of those in need of assistance. Those features are prerequisites for



allowing them to access aid. Deservingness is contextual as it is grounded in a specific socio-political context. It is syncretic as deservingness assessment is articulated in a moral register. As the level of deservingness varies among displaced people, it is influenced by emotions and, as a result, becomes subjective. Deservingness is mutable since it changes in correspondence with the volatile circumstances of a particular context. Deservingness assessment is implicit as it is not expressed in a formal judicial discourse and remains, for the most part, invisible (Willen & Cook, 2022, p. 32). When rights are understood as deservingness, the empirical reality becomes distorted and the applicability of the international law becomes selective. Ultimately, the beliefs about the extent of deservingness predetermine the attitude of the host country and resource allocation to the displaced community. A contemporary illustration of a case in which the recipients' racial background impacted the evaluation of deservingness is the Ukrainian mid-war migration. Ukrainians were received more positively in the European continent compared to their non-white counterparts, who have also experienced war.

Besides the inconvenience introduced by the rights-deservingness divide, it can be said that the definition of a refugee in the Convention is too narrow and excludes people who suffer from enumerated harms but fail to be classified under the protected categories of "race, religion, nationality, membership of a particular social group or political opinion" (Convention Relating to the Status of Refugees, 1951, p. 14; El Fadl, 2020). Withdrawal from the realities of the 20th and 21st centuries would allow the reader to consider the untapped potential of Islamic ethical principles, such as *ḍiyāfa* (hospitality), *mu'ākhā* (brotherly relations), *'ijāra* (protection), and *'amāna* (safety), which are not tied to the individuals' particularities. Even before Islam, Arab tribes had the custom to grant security to whomever asked for it. Additionally, if only one person from the tribe had assumed guardianship responsibility for another, all members of that tribe were required to respect the tube (El Fadl, 2020).

At second glance, even the text of the Convention does little justice to address the practical deficiencies observed in real life. Article 7 accords to refugees the same treatment as foreigners, while subsequent articles such as Article 17.3 confer to them equal rights with the nationals. Nevertheless, the affairs on the ground could not have been more aloof from the spirit in which the Convention was written. Asylum seekers are left most often to the mercy of their host countries.

The initial admittance is followed by a containment in camps or rural settlements near the borders. Furthermore, Schmidt (2003) points out that there was an increase in the use of detention centers in the West as an alternative to camps to which she refers as "the most conspicuous element of refugee assistance" (p. 1). Before refugees acquire similar liberties as the locals, their temporary places of lodging restrict their freedom of movement. The situation in the camps is richly documented. Hoffmann (2017) writes about the harsh entry and exit controls that incorporate biometric technology. Even though open camps are laxer in this regard, there are also regulations put in place to closely monitor the mobility of migrants (Knudsen & Berg, 2023). This type of restraint is justified as the only feasible way to uphold the "international standard of assistance" and "distribute aid faster and

more effectively, especially in the short-run and in immediate emergency situations” (Schmidt, 2003, p. 7).

This reality of encampment or semi-encampment is only possible if migrants manage to reach a signatory country, usually situated in the West. Keeping migrants away from the European mainland is achieved through the creation of buffer zones in the Middle Eastern and border countries. The European Union boosts the facilities of other countries to host asylum seekers by “combining economic incentives (international aid) and concessions (visas and trade)” (Knudsen & Berg, 2023, p. 16). Turkey, Iraq, Lebanon, and Jordan are some of the Oriental states that receive financial support to interfere with the migrants’ journey (Knudsen, 2017). Coastal European countries, like Spain, Italy, and Greece, were sponsored for the acquisition of surveillance systems and other technologies of border management for deterrence (Cabot, 2018; De Genova, 2013; Fisher, 2018). Additionally, some countries in Eastern Europe, such as Bulgaria, Slovakia, and Hungary, have served as supplementary barriers to reduce the migratory flow towards the heart of the European continent (FitzGerald, 2019).

In contrast, the Prophet (peace be upon him) assured the honorable treatment of Al-Muhājirūn by Al-ʿAnṣār by the establishment of an accord between the two parties. The alliance provisioned equitable distribution of resources, inheritance between the groups, just partition of immovable property, impartial judicial hearing, equal access to social services, and political participation (Al-Mubarakpuri, 1996). The status of Al-Muhājirūn was codified in the Constitution of Medina with the following legislative clause: “They are one nation to the exclusion of other people” (Al-Mubarakpuri, 1996, p. 189). They were referred to as residents, meaning they had the same access to courts and enjoyed the same socio-economic privileges as Al-ʿAnṣār. They were provided with shelter immediately after their arrival without having to undergo the inconvenience of encampment. Moreover, Al-Muhājirūn had access to the wealth of their hosts after their demise. Al-Muhājirūn were allowed to inherit from Al-ʿAnṣār. The constitutional guarantees of allowance went beyond the bare minimum as Al-Muhājirūn were free to marry the wives of Al-ʿAnṣār (Al-Mubarakpuri, 1996).

Al-Muhājirūn were treated so favorably that Abu Hurairah asked the Prophet (peace be upon him) if the two groups could share the palm tree orchards. This request, however, was not fulfilled on the grounds that the newcomers’ sustained unrealistic expectations for the acquisition of assets could cause the dwellers of Medina to harbor resentment. Hence, the built resentment was likely to have hampered the attempts to maintain peaceful coexistence.

## CONCLUSION

In conclusion, it can be said that the international community needs to perform better in terms of providing adequate shelter and services to refugees and displaced individuals. The current measures seem to directly conflict with the arrangements in the Convention. Other issues arise from its design which was tailored to the temporality of a different era. Enclosed in camps and temporary settlements, asylum seekers are not offered a solution

for their ontological, food, and health insecurity. Outside these facilities, they are likely to fall prey to the practices of human trafficking, organ trafficking, or labor exploitation. This reality cannot be completely overturned by resorting to examples from the past, but the moral principles which have governed the hijra should be used to procure relative rectitude in the conditions of those submerged in oppression.

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## RESEARCH ARTICLE

# History of Hadith Scholarship in Medieval Malabar of South India

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## ABSTRACT

This study aims to contribute to the institutional, intellectual, and social history of hadith sciences in Malabar from the 10th to 18th centuries CE. At its most general level, it attempts to fill a gap in our knowledge of the development of hadith sciences in modern South Asia. In the modern period, the regional locus of the interpretive tradition of Sunni hadith collection and commentaries moved partly eastward from the Middle East to South Asia (Zaman, 2009), as evidenced by the rich production of hadith commentaries and related literature over the last two centuries from different places or regions in North India and Indonesia.<sup>1</sup> While the upsurge of hadith scholarship in the northern provinces of

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1 While the core tradition of Hadīth literature remained in Arabic, this development saw the production of commentaries in different Asian Islamic languages such as Urdu, Farsi, Bahasa Indonesian, Malayalam, and Tamil.

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British India—closely linked to a newly emerging milieu of madrasas (Zaman, 1999)<sup>2</sup> — has drawn the attention of many scholars; the history of South Indian Islamic scholars' engagement with the field of hadith studies is usually ignored.

Most academic studies on the history of hadith literature in the Indian subcontinent neglect southern India. Ishaq (1955) and Zaman (2020) focused on the hadith tradition of North India. In this study, I propose to partly address this regional knowledge gap by briefly examining different aspects of the medieval history of hadith sciences in Malabar and South India. This article focuses primarily on the history of the major Islamic scholars who contributed to or engaged in hadith scholarship from the 10th to the 18th centuries CE. This article discusses the larger history of hadith scholarship in the Malabar<sup>3</sup> region of South India from the 10th century onwards to the revival of Islamic sciences under the Makhdooms of Ponnani in the 16th century. It interprets how hadith science grew in Malabar during the time of the Makhdooms and how it faced a decline along with other sciences after their time.

**Keywords:** Malabar, hadith scholarship, madrasahs, Islam in South India, Mappila Muslims, Islamic literature, Malabar 'ulama'

## HADITH SCHOLARSHIP IN MALABAR UP TO THE 10TH CENTURY AH/16TH CENTURY CE

The historical records of the early stages of hadith sciences in Malabar are limited and sometimes fragmentary. There are no well-preserved hadith texts or related scholarly records written in the early centuries after the arrival of Islam in Kerala. However, based on some available historical sources such as travelogues of Ibn Battuta, textual records of the life and activities of some early Malabar scholars such as the *Mu'jam al-Buldān* of Shihābuddīn Yāqūt al-Ḥamawī (d. 1228/626) and records of Shams al-dīn Muḥammad ibn 'Abd al-Raḥmān al-Sakhāwī (d. 902 AH/1497 CE), we can make a number of assumptions about how Kerala 'ulama' (a body of Muslim scholars) treated hadith sciences in the early centuries and how it led to developments in the hadith field in the region.

Kerala's relationship with hadith sciences may have begun as early as the arrival of Arab Muslims on the shores of Malabar, since knowledge of ahadith (plural of hadith) is as vital and important to Muslims as the Quran. As the Shafī'i scholar Najīb Maulavi<sup>4</sup> of Kerala suggested, the oral mode of transmission may have been the way by which

2 Most world-renowned pre-modern Ḥadīth scholars from India, such as Shah Waliyullah al-Dihlawī (d. 1762), Sheikh 'Abd al-Haq al-Dihlawī (d. 1642), and Sheikh Aḥmed al-Sirhindī (d. 1624), had their own madrasahs of muḥaddithūn for promoting Ḥadīth learning under their patronage.

3 Malabar is the ancient name for a particular territory in Kerala. It refers to the northern part of the state between the current Trichur and Kasaragod, where the Muslim population is higher compared to other parts of Kerala (Miller, 1976, pp. 18–19).

4 Moulana Najīb Maulavi is a famous scholar and author from Malabar and currently the acting general secretary of the *Kerala Samsthana Jamiyyat al-'Ulema* (an organization of Muslim scholars).

common people learned ahadith in early times, as written texts were not common (Najīb, 2018). After the emergence of Islam in the Arabian subcontinent, in addition to Arab merchants, Arab scholars and preachers were another important group of visitors to the coasts of Kerala. Māppila historian K.K Kareem argues that a group of scholars under the leadership of Mugheerat bin Shughba landed in Kozhikode in the seventh century. He was one of the most notable scholars among the followers of the Prophet, and the place where he and his group lived in Kozhikode is still known as Mugadhar, which means *Mugheerat al-Dar* and could be translated as the House of Mugheera (Ampotti, 2014; Koya, 2012).

According to Najīb Maulavi, several hadith scholars (*muḥaddithūn*) from Malabar undertook long-distance journeys to collect ahadith. While written records of many of these early scholars are missing, some sources provide information about them. The description of Malabar by Shihābuddīn Yaqūt al-Ḥamawī (d. 1228 CE/626 AH) in Chapter *Mīm* of his historical masterpiece *Mu'ajam al-Buldan* supports this argument. Ḥamawī explains: “Malabar is famous for the spice trade. I have read in the history of Damascus that ‘Abd Allah bin ‘Abd al Raḥmān al-Malabari a scholar from the Malabar region was in Damascus learning ahadith from Aḥmad b. ‘Abd al-Wāhid al-Shīrāzi who was a famous *muḥaddith* from the Adnūn port city near Damascus. Abu ‘Abd alla al-Suri from Basra reported ahadith from this ‘Abd Allah al-Malabari” (Ḥamawī, 1995, 5/196). Najīb Maulavi remarks that Damascus, Baghdad, and Basra were prominent cities known for hadith studies during this period. Shams al-Dīn Muḥammed b. ‘Abd al-Rraḥmān al-Sakhāwī (d. 1497/902), a reputable Shafī‘i historian and hadith scholar from Cairo, mentions another hadith scholar from Malabar, ‘Abd Allah bin Aḥmed al-Kālikūti, who was born in Kozhikode around 1472. At an unspecified date, he traveled with his brothers Qasim and Abubakr to Mecca, where he became a student of al-Sakhāwī and received an ijāza for transmitting ahadith from him (al-Sakhāwī, 2008).

Based on the stories of these two scholars, we know that hadith scholarship in Malabar has been an integral part of transregional circuits of knowledge since at least the seventh century. It is reasonable to assume that these *muḥaddithūn* operated in a broader institutional context in which Islamic sciences were taught and studied. This is indeed demonstrated by Mahmood Kooria, who presents evidence of “legalist links of South Asian terrains to the regions of the Eastern Mediterranean as well as to Southeast Asia as early as the thirteenth century” (Kooria, 2016, p. 105). Kooria notes that “a few South Asian scholars ... were active in the legalist, educational and intellectual circles of the Middle East and Southeast Asia well before the assumed ‘upsurge of Yemenis” (Ibid, p. 103). He concludes: “All these al-Hindīs and al-Malabarīs tell us about a persistent historical awareness of ‘Indian’ scholarship holding a considerable but neglected position” (Ibid, p. 105; see also pp. 96 and 219).

This fact is also evidenced by the recurring references to ‘ulama’ in Ibn Battuta’s travelogue *Rihla*. Ibn Battuta writes: “After I visited Kalikūth in the Malabar, my next

destination was Juma Mosque of Ezhimala<sup>5</sup> which voyagers and sailors make big vows and Muslims and Hindus paid homage alike. The mosque compound includes a grand madrasa that provides a scholarship for students and an eatery for travellers and poor people. I met with a Sufi scholar from Somalia who taught in that madrasa, he told me that he studied fourteen years each in Mecca and Medina and had been in touch with prominent scholars of the holy cities as well as with Amīrs of Mansur bin Jammaz in Medina (r 1330–1325) and Abu Numayy of Mecca (r 1254–1301). After that, he visited China and India for further research in Islamic studies.” (Battuta, 1987, p. 572). Ibn Battuta mentioned at least seven foreign Islamic scholars who taught at different madrasas in Malabar during his visit. He met a scholar from Oman who taught in the madrasa of Panthalayani (*Fantarina*), a coastal city in north Malabar, and another scholar from Qazwīn who taught in the mosque of Kollam. Battuta also reveals that he met many “ulema who came to make visits and ziyaras in the Malabar shore, for example, Ibrahim Shah Bandar from Bahrain whom he met during his Calicut visit” (Battuta, 1987, p. 573). Although we do not have enough evidence to claim the affiliation of these scholar with hadith scholarship, the probability is very high that at least some of these scholars taught or were engaged in hadith scholarship, as hadith studies have been an inevitable part of Islamic learning since its origin.

After Mālik bin Dīnār came to Malabar with his nephew and some other Muslim preachers from Arabia in the second decade of the first Hijri century<sup>6</sup>, they settled in the port cities of Kerala and built ten mosques in different parts of Malabar, where King Zamorin allotted them land for construction (Sadasivan, 2000; Zainuddīn, 2014).<sup>7</sup> These masjids may have been the first centers of hadith learning in Malabar as the founders of these mosques designated their descendants as the qadis (a Muslim judge who interprets and administers Islamic law) and teachers in each of these masjids. Thus, each of them functioned more than just masjids and also as learning centers of Islam. The descendants of the founders of these masjids are popularly known as “Qadis of Kozhikode,” as Kozhikode was the major center of Muslim settlements and Islamic learning with the support of King Zamorin of Kozhikode. The first qadi to be appointed as the chief qadi of Kozhikode was Zain al-dīn Madani, the grandson of Mālik bin Habīb, the nephew of Mālik bin Dīnār, based on one of the first built mosques of Malabar in Chaliyam (Koya,

5 Ezhimala is a coastal city in the northern part of Malabar, currently famous for the naval base of the Indian Naval Army.

6 The time period of Mālik bin Dīnār’s expedition to the Malabar is a controversial topic among historians. Some of the Malabar historians such as M.G.S Narayanan and Satish Kumar argued that it happened during the lifetime of the Prophet itself based on some assumptions, and others such as Zainuddin Makhdoom and Sadasivan believed that it took place only in later periods (Kumar, 2009; Narayanan, 2018; Sadasivan 2000; Zainuddīn, 2014).

7 Mālik bin Dīnār and his team built ten different masjids after arriving on the Malabar Coast in different parts of Zamorin’s kingdom such as Kollam, Kasaragod, Mangalore, Darmadam, Kodungallur, Ezhimala, Chaliyam, Panthalayani, and Barkur. All of them were built in the lands granted by the ruler Zamorin (William Logan, 1951, *Malabar Manual*).



2012, 42; Nadwi, 2017, 26–27).<sup>8</sup> As the Qadis of Kozhikode took from their predecessors the responsibility for the rule of law in the Muslim community under them and also educated the Māppila Muslims of Malabar religiously, it could be said that they were the transmitters of hadith scholarship from their Arab ancestors to their Malabar descendants. The travelogue *Rihla* by the world-renowned traveler Ibn Battuta and the accounts of ‘Abd al-Rahmān al-Sakhāwī (d. 1497) are among the earliest sources on the activities of the early Qadis of Kozhikode. Battuta visited Kozhikode in 1343 and met with the Qadi of Kozhikode, Sheikh Faqrudīn ‘Uthmān al-Shāliyyātī. Although he made no specific comments on hadith learning under the qadis during that period, he explains how the qadis of different regions of Malabar influenced the religious life of their people, especially in the process of religious learning and practice (Battuta, 1987, p. 406; Dale, 1980, p. 158). Since they were officially appointed in each period by the order of King Zamorin, they were the first designated patrons of the Māppila Muslim community of Malabar and were obliged to advance the educational and social development of the Muslim community. They established madrasas and mosques for the religious enrichment of society. Some of the well-known earlier Qadis of Kozhikode were Faqrudīn ‘Uthmān, Muḥammed Zīāuddīn, Mūsa Ibrahīm, Ibrahīm bin Muḥammed, Abubakr bin Ramadān, Shihābuddīn Aḥmed, ‘Abd al Aziz, and ‘Ali al-Qādi al-Nashīrī (Koya, 2012, p. 42; Nadwi, 2017, p. 35). Based on these premises, we can assume that the Qadis of Kozhikode have been the patrons of different Islamic sciences and scholarship, including that of ahādith in the Malabar, for long centuries since the establishment of early masjids across Malabar by Mālik bin Dīnār and his companions until the time of the Makhdooms of Ponnani in the 16th century.

## MAKHDOOMS OF PONNANI AND THE 16TH-CENTURY REVIVAL

After the Qadis of Kozhikode, the Makhdoom family played an important role in the history of scientific and educational advancement in the medieval Muslim society of Malabar. Their intervention brought significant contributions to the educational system of Malabar Muslims as they adopted a new scientific and more efficient Islamic curriculum and introduced the Darsi education system (*Palli dars* in Malayalam). These changes resulted in numerous contributions by Makhdooms themselves and their students in different fields of knowledge, including that of hadith sciences. The Makhdooms who migrated to Malabar from Yemen described themselves as descendants of Abu Bakr al-Siddiq, the first caliph. According to early sources, one of the ancestors of Makhdooms traveled from southern Yemen to the Indian subcontinent and settled in the Coromandel coast of Tamil Nādu known as *Ma’abar*, and some others settled in the coastal Kayalpattinam region of southern India (Raṇṭattāni, 2007, p. 418). The first Makhdoom to travel from Yemen to southern India was Zainuddīn, who settled in the Nagōre region of the Coromandel

8 For a list of the early Qadis of Kozhikode, see *Qissat Shakarwati Farmad* (Tale of the great Chera ruler), an early Arabic manuscript of anonymous authorship written in the Malabar, which lists the names of early qadis appointed in different masjids on the Malabar Coast (Prange, 2018, p. 98).

Coast in the early 15th century, where he became a student of the Sufi scholar Abubakr Sādiq Ma'bāri. Sheikh Zainuddīn al-Awwal's (b. 1467) grandfather, Sheikh Aḥmed al Ma'bāri, later migrated from Kayalpattinam to Cochin in central Kerala around the 15th century. Kochi was the primary center of Makhdoom's missionary activities in Kerala. In 1481 CE, Qādi al-Ma'abāri and the entire Makhdoom family shifted their center from Kochi to the Ponnani region of central Malabar, accepting the invitation of Muslim leaders there (Kooria, 2016). Ponnani was called the "Mecca of South India" (*Daksinentiyade Makka*) or "little Mecca" (*Cerumakka*) after it became a center of Islamic knowledge production under the Makhdooms. According to Maḥmūd Kooria, due to the Ponnani-centered activism of the Makhdoom family, there was a partial translocation of Muslim families from the port cities of Malabar to the newly emerged knowledge city of Ponnani (Kooria, 2016, p. 209).<sup>9</sup> After settling in Ponnani, Qadi Ibrahim al-Ma'abāri began his educational activities at the Thottungal Masjid in Ponnani. Zainuddīn Makhdoom al-Kabīr (the Senior) and Zainuddīn Makhdoom al-Saghīr (the Junior) were two remarkable and revolutionary figures from the Makhdoom family who tremendously influenced the educational and social resurgence of Māppila Muslim society in 16th-century Malabar. Both played an important role in the spread of Shafi'ism in Malabar and the larger Indian Ocean world in the 16th century (Kooria, 2016; Raṇṭattāṇi, 2010).

Qadi Ibrahim was the first teacher of Sheikh Zainuddīn al-Kabīr, who, together with Zainuddīn Makhdoom al-Saghīr (the Junior), influenced the educational and social resurgence of Māppila Muslim society in the 16th century. After studying in Ponnani and Calicut, Sheikh Zainuddīn set off for Mecca to pursue higher studies in various Islamic fields. In Mecca, he studied hadith sciences and *fiqh* under Aḥmed Shihābuddīn Yemīni. After his education in Mecca, he went to Cairo, Egypt, to study at al-Azhar Islamic University. He was the first person from Kerala to study at al-Azhar. In al-Azhar, Zainuddīn al-Kabir studied under outstanding Islamic scholars such as Imām Jamāluddīn al-Suyūti (d. 1506), Imām Ḥāfiẓ Muḥammed al-Sakhāwī (d. 1496), Qadi 'Abd alraḥmān al-Adāmi al-Makki, and Imām Sayyid Muḥammed al-Sumḥūdī (d. 1508). During his studies in Mecca and Cairo, he acquired advanced knowledge in almost every important Islamic and non-Islamic field of knowledge of his time, such as logic and philosophy. His specialization was in *fiqh* and hadith. His return to Malabar in 1510 marked the beginning of a new era in his career and the religious history of Malabar. He built the renowned Ponnani Grand Juma Masjid, which became a center of excellence and higher studies from then until the 18th century.<sup>10</sup> He began his teaching career in this masjid and hundreds of 'ulama' graduated from there each year. The Ponnani Mosque College gave scholars confidence

9 The context of the ongoing Portuguese attack and atrocities in the coastal regions of Malabar in the 16th century may also have influenced this migratory tendency of the Muslim public at the time. For a more detailed reading of Portuguese atrocities in that century, see Panikkar, K. M. (1929). *Malabar and the Portuguese*, Salahuddeen, O. P. (2006). *Anti-European struggle by the Māppilas of Malabar 1498–1921 AD*, also Zainuddīn Aḥmed. *Tuhfat al-Mujāhidīn. Other books Calicut, 2005*.

10 Vellore became the locus of Islamic education and learning during this period under madrasas such as Bāqiyāt and Lateefiyya. Discussion forthcoming.

and encouragement to travel to international knowledge hubs of the 16th-century Islamic world such as Cairo and Mecca. It also made important changes in the local religious education landscape. The Muslim public began to learn new sciences of Islamic knowledge such as *hadith*, *tafsīr* (commentary of the Qur'an), and *tasawwuf* (Islamic mysticism), and also to engage in more sophisticated sources of knowledge that Zainuddīn al-Kabir popularized (Kooria, 2016, p. 211).

Zainuddīn al-Kabir contributed to many fields of Islamic law but made no direct contribution to *hadith* scholarship. He delved into the field of *hadith* studies to enrich his works on *akhlaq* (behavioral science) and *tazkiyat al-nafs* (purification of the self). His works *Siraj al-Quloob* and *Shua'b al-Iman*, which largely consists of *ahadith* in different chapters, is a great example of this approach in the field of *hadith*. He quotes almost a thousand *ahadith* in these works (Nellikuth, 1997). Another kind of literature that he contributed to and which is more directly related to *hadith* scholarship is the *Sīra* literature. He had two works in this field: a commentary on Qadi Iyad's famous *al-Shifa* entitled *al-Swifa min al-Shifa li al-Qādi Iyāl fi al-Sīrat al-nabawiyya* and the second entitled *al-Sīrat al-Nabawiyya*.

Zainuddīn Makhdoom al-Saghīr (the Junior), also known as Makhdoom al-Thani (the Second), was the most important member of the Makhdoom family in 16th-century Malabar. We have no contemporary references or biographies about the career of Makhdoom al-Saghīr, as in the case of his grandfather Makhdoom al-Kabir, which was written in the form of a detailed biography by his son 'Abd al-Aziz. However, Malabar historians have written a vast amount of scholarship on his life in later periods (Kooria, 2016). Although we can find extensive details of each step in Makhdoom the Second's life in the different accounts of Malabar historians, they provide few references from the primary sources for these claims. Their accounts are marred by contradicting dates, confusing explanations, and sometimes exaggerations. Although many studies have dealt with the history of Makhdoom in general or the life of Makhdoom the Second in particular, the truth about his life remains partly proven and partly a myth, as we have no scientific evidence that indisputably confirms the exact dates of his birth, travels to Mecca and other destinations, and the date of his death, apart from some narrations by him about the date of completion of some of his works (Kooria, 2016, p. 195).<sup>11</sup> Despite the issue of historical accuracy, we rely on what is available to us now without neglecting how weak it is.

11 See example of doctoral dissertations: Muḥammed Kunju, P. (2004). *The Makdoods of Ponnani* (Doctoral dissertation). University of Kerala; Rafiq 'Abd al-Barr al-Wafī. (2014). *al-Juhud al-fiqhiyyat li al-Imām Aḥmed Zayn al-dīn al-Makhdoom al-Malibāri wa duwaruhu fi nashr al-Madhab al-Shafi'i fi al-Hind* (Doctoral dissertation). al-Azhar University; Mayankutty, O. P. (2007). *Role of Makdoods in the anti-colonial struggles of 16th-century Malabar* (Doctoral dissertation). Calicut University. Hagiographical type of works is another kind of literature about Makhdoods. For example, Birqankutti Fayzi, M. A. (1994). *Sheikh Zain al-dīn Makdumum Ponnani Jumu'attu palliyum* (Ponnani: Ponnani Juma Masjid paripalana Committee); Hussain Rantattani. (2010). *Makhdumum Ponnaniyum* (Ponnani: Juma Masjid Paripalana Committee).

Like his grandfather, Makhdoom the Second received his primary education from his father, Muḥammed al-Ghazali, in his homeland of Chombal, near the French-occupied Mahe. He then moved to Ponnani Mosque-college *dars* (a religious lecture), where he studied under Allāma Ismail al-Sukri (d. 1005 AH/1597 CE) and his uncle Abd al-Aziz, who was the chief instructor and professor there. He memorized the Quran and some hadith texts, and studied various sciences. After graduating from Ponnani, he went to Mecca for further studies. After spending almost a decade of academic life under prominent scholars, he returned to Malabar, took up the position of chief mentor at Ponnani Mosque College, and taught there for three decades. Towards the end of his life, he moved from his father's house in north Malabar to a small village called Kunjippally, where he spent the last years of his life and was buried in the Juma Masjid of Kunjippally (Nellikuth, 1997; Raṇṭattāni, 2010).

Makhdoom the Second was also fortunate to meet and study under the greatest scholars of his time, like his grandfather. He learned under 16th-century Shafi'i theologian Ibn ḥajar al-Haytamī (d. 1566), Izzuddīn bin 'Abd al 'Azīz al-Zumari, Wajīhuddīn 'Abd alrraḥmān bin Ziyād, Sheikh al-Islam 'Abd al Raḥmān al-Sufawi, and Sufi scholar Abul Hasan Siddīq al-Bakari (d. 1585/993) in Mecca. Renowned hadith scholar and author of *Mirqat al-Mafatih alā Mishkāt al-Masabih* Mulla 'Ali al-Qāri (d. 1605), famous Shafi'i jurist and author of *Nihāyat al-Muḥtaj ila Sharḥ al-Minhāj* Imām Shihābuddīn al-Ramli (d. 1595/1001), Abubakr bin Sālim al-Ḥadhrāmī (d. 1584/992), and Allāma Sayyid 'Abd alrraḥmān bin Shihābuddīn al-Ḥadhrāmī (d. 1606/1014) were his classmates during his Meccan years. He gained much expertise in hadith studies, to the level where many Meccan scholars called him al-Muḥaddith (*Raṇṭattāni*, 2007).

Although Makhdoom the Second had much expertise in hadith, we cannot find any major literary contributions to hadith literature from his side. His most important works were on the Islamic law and history of Malabar.<sup>12</sup> His magnum opus is *Tuḥfat al-Mujāhidīn*, written in 1583 to mobilize the Muslim community of Māppila to fight against the Portuguese invaders. This work is considered to be the first authentic historical account of Kerala's history.<sup>13</sup> His major contributions concerned Islamic law, especially Shafi'i law. *Fath al-Muīn*, which he wrote as a commentary on his own text *Qurraṭ al-ain*, was a revolutionary contribution to the field of Shafi'i fiqh (Husain, 2004).

Although there are no exclusive hadith studies of Makhdoom the Second, as was the case with his grandfather Makhdoom the Senior, he did engage in hadith extensively in his different dogmatic texts written in the field of *tasawwuf* or *tazkiyat al-naḥs*. For example, his work *Irshād al-'Ibād ilā sabīl al-rashād* includes more than 900 ahadith with its *isnād* (a list of authorities who have transmitted a hadith) and deals with many ethical and legal issues ranging from alcohol consumption, apostasy, and stealing to the practice of different rituals and character cultivation. His works such as *al-Jawāhir fi 'Uqūbat Ahl al-Kabāi'r*

12 For a detailed description and list of Makhdoom Junior's works, see Nellikuth Muḥammed Ali's *Malayalathile Maharadanmar* (pp. 22–31) and Raṇṭattāni, *Makhdoomum Ponnaniyum* (pp. 124–125).

13 It was translated into different European languages such as English, Portuguese, and French, followed by multiple Indian translations (Kooria, 2016).

(on major sins and its penalties in Islam) and *Sharḥ al-Sudūr fi ahwāl al-mawtā wa al-Qubūr* (on the life in graves and hereafter) also included hundreds of hadith, but only as a supporting source for the actual content of these works. In short, in the pre-modern period, Malabar scholars such as the Makhdooms of Ponnani and qadis as well as teachers of different Mahals did not make significant scholarly hadith contributions, apart from *tasawwuf* and *akhlaq* texts, which extensively use ahadith for the purpose of preaching to people (Aḥmed Maulavi, & Muḥamad ‘Abd alKarim, 1978).

## POSSIBLE REASONS FOR THE LACK OF CONTRIBUTIONS TO HADITH SCIENCES IN MEDIEVAL MALABAR

Both Makhdoom the Senior and the Junior have composed texts that contain a large number of ahadith throughout their careers. Analyzing these texts and other *tasawwuf* and *akhlaq* works containing ahadith written in the 16th century, we may argue that Malabar scholars in this period considered the field of hadith as a mature field of study that does not require further scholastic research contributions as other disciplines of Islamic studies such as *fiqh*, *‘ilm al-Kalām* (a science that studies fundamental beliefs and doctrines of Islam), *tasawwuf*, and *akhlaq*. Both Makhdooms, who learned the hadith discipline from its heartlands and were known as muḥaddithūn even among Arab scholars, made no literary contributions to hadith scholarship throughout their careers. Their contribution to all other major fields of Islamic studies of their time supports this argument.

According to Malabar hadith scholar Mukhtar Ḥaḍrat,<sup>14</sup> one of the main reasons for the relative lack of hadith literature production by South Indian Shafi‘i scholars in the medieval centuries could be due to the legalistic orientation of Shafi‘i scholars in that period. Shafi‘i ‘ulama’s literary contributions to subjects such as hadith and *tafsir* in the medieval centuries are very rare worldwide, while they produced many legal accounts and conducted research on *fiqh*-related subjects. In addition, the influence of Ibn Ḥajar al-Ḥaytamī (d. 1566), the author of *Tuhfat al-Minhāj*, a groundbreaking Shafi‘i *fiqh* text, and who was the chief teacher of Shafi‘i law in 16th-century Mecca, also inspired Shafi‘i scholars around the world, including Makhdoom the Second, to concentrate more on legal subjects in that period. Legal contributions of Ibn-Ḥajar al-Ḥaytamī’s other Shafi‘i disciples such as Imām Shihābuddīn al-Ramli (d. 1595) (author of *Nihāyat al-Muhtāj ila Sharḥ al-Minhāj*), Abubakr bin Sālim al-Ḥadhrami (d. 1584/992), and ‘Allama Sayyid ‘Abd alraḥmān bin Shihābuddīn al-Ḥadhrami also reinforce this argument (Ḥaḍrat, 2013).

At the same time, Ibn-Ḥajar’s Ḥanafī interlocutors made some important hadith contributions such as Imām Mulla ‘Ali al-Qāri, who composed *Mirqāt al-Mafāṭīḥ*, a detailed eleven-volume commentary on *Mishkāt al-Maṣābīḥ* (Mukhtar, 2020, interview). Before Ibn Ḥajar influenced Makhdoom the Second, his grandfather Makhdoom the Senior also might have had the same influence from his teacher Faqrudīn Abū Bakr

14 Sheikh Mukhtar Ḥaḍrat is the head of the Ḥadīth Department in Jamia Markaz al-Saqafat al-Sunniyya.

al-Kālikūti (d. 1489), who was said to have studied under Jalāluddīn al-Mahallī (d. 1459), the renowned Shafī‘ī jurist and commentator of Minhāj al-Ābidīn of Imām al-Nawawī (Nasīr, 2012).

Although the medieval Malabar ‘ulama’ did not make significant contributions to hadith literature, this does not mean that they excluded hadith studies from their madrasa curriculum. When it comes to the madrasa curriculum in the 16th-century Ponnani Mosque College and the wider Malabar region, Mahmood Kooria notes that it could be said to be more adherent to the syllabi that existed in Hijāz and Mecca in the 16th century more than any other syllabi in the contemporary Islamic world such as the Ottoman, Safavid, and Mughal domains. Kooria developed his argument by analyzing contemporary trends in texts and debates in Mecca and Hijāz, which focused significantly on legalistic, theological, and mystical areas. He says that the curriculum of Mecca and Hijāz in the 16th century focused primarily on *fiqh*, and included *tafsir*, hadith, and *tasawwuf* as complementary studies. The same curriculum was probably used in Ponnani as well, since Meccan influence is visible in almost all areas of Makhdoom’s life<sup>15</sup> (Kooria, 2016). Moreover, after graduating from the college of Ponnani, several Malabar students began to pursue further studies in Mecca after Makhdoom the Second (Anuzsiya, 2004).

## HADITH SCIENCES IN MALABAR FROM THE 16TH TO THE 18TH CENTURIES CE

According to some modern Malabari ‘ulama’ and historians, after the rise of Islamic knowledge in the 16th century led by the Makhdooms, there was a decline in Islamic literary production in Malabar. The time of this decline in literary production may have begun after the period of Qadi Muḥammed al-Kalikūti (d. 1616), who contributed valuable works in *fiqh*, *tasawwuf*, and Arabic grammar. According to Kunji Aḥmed,<sup>16</sup> this period of decline lasted until the second-half of the 19th century when Islamic institutional reform took place in Tamil Nādu, triggering a revival of Islamic education in South India at large (Kunji Aḥmed, 2004). The works of Malabar historian Nellikkuth Muḥammed Ali and ‘Abd al Nasir on the biographies of Malabar scholars and authors,<sup>17</sup> which list all available Islamic literature produced in Malabar since the pre-modern period, support this argument. Their list of authors and works shows a notable gap in the production of Islamic literature between the early 17th and 19th centuries (Nasīr, 2012; Nellikkuth, 1997). Although the history and biographies of the scholars among the successors of the Makhdoom family and the Qadi family of Kozhikode in this period of decline are well documented as well as

15 According to later indigenous narratives, Ibn Hajar came to Malabar and visited the Makhdoom College of Ponnani, accepting the invitation of Makhdoom al-Saghīr (Kooria, 2016, p. 196).

16 Velliyath Kunji Aḥmed (d. Hijri 1331) was a northern Malabar scholar, poet, and author who contributed to different Islamic disciplines, including Hadīth scholarship. His thousand-line poem on Hadīth “*Alfiya fi istilāhat al-Ḥadīth*” is his masterpiece.

17 ‘Abd al Nasir. (2009). *Tarājim ulamāi al-Shafī‘iyyati fidiyāri al-Hindiyyati* and Nellikkuth Muḥammed Ali. (1997). *Malayalathile Maharadanmar*.

demonstrate their role in community building and religious teaching and preaching in the Malabar, we cannot find many notable intellectual contributions to major Islamic disciplines. Thus, hadith scholarship in Malabar also witnessed a decline during this period as all other sciences of Islamic knowledge witnessed a relative decline (‘Ālim, 1993).

This does not mean that scholars of this period did not produce any literary works at all. One of the most notable scholars who made intellectual contributions during this period was al-Sayyid Muḥammed al-Jifri al-Ḥadhrami, who came to Kozhikode from Yemen in 1746 and settled there. According to records, he has three works: *Kanz al-Barāhīn*, which is on Sufi doctrines and spiritual paths; *al-‘Alawiyya*, *al-Irshādāt al-Jifriyya* which is on refuting fundamentalist ideologies; and *Dīwān al-Makhtūt*, which is on *tasawwuf*. Qadi ‘Umer Veliyankod, born in Malabar in 1765, was another important figure and a famous poet. He has nearly a dozen collections of poetry in different Islamic disciplines such as *sīra*, *shamāil al-nabawiyya*, and *usūl al-dīn* (a compilation of hadith or reports of the sayings and actions of the Prophet), and *fiqh*. *Al-Qasīdat al-Umariyya* and *Qasīdat Nafāis al-Durar* are his major poetry collections (Nasīr 2012; Nellikkuth, 1997). During this period, there were many prominent scholars in Malabar who taught in different madrasas in Ponnani and other parts of Malabar but did not make any significant literary contributions. Qadi Ramadān al-Shāliyāti al-Kalikūti (d. 1747), who taught for several years at a notable college in Kuttichira Juma Masjid; Sheikh Nūruddīn al-Makhdoom (d. 1740); his disciple Khaja al-Makhdūm bin Muḥammed Labba al-Makhdoomi (d. 1747), who taught in Ponaani; and Aḥmed al-Makhdoom al-Awwal (d. 1765) were all taught in madrasas of Ponnani and were each referred to as Makhdooms of their time; and Sheikh Qadi Muḥammed al-Ghazali (d. 1747) is also amongst list of prominent scholars from Malabar who made no literary contributions (Shāliyāti, 1987; Nasīr 2012).

## CONCLUSION

The Muslim scholars of Malabar were interested in establishing scholarly cosmopolitan connections even before the advance of modernity, including through sources such as travelogues of Ibn Battuta, textual records of the life and activities of some early Malabar scholars such as the *Mu‘jam al-Buldān* of Shihābuddīn Yāqūt al-Ḥamawī (d. 1228), and records of Shams al-dīn Muḥammed ibn ‘Abd al-Rraḥmān al-Sakhāwī (d. 1497). The biography of the pre-modern Malabar ‘ulama’, such as Makhdoom the Senior and the Second, supports this statement. The presence of Malabar Muslim scholars in some of the major Islamic knowledge hubs such as Damascus, Basra, and Egypt during the canonization of hadith and in subsequent periods, as well as their involvement in the process of transmission and teaching of hadith, indicate the Malabar affiliation and interconnectedness with the hadith scholars of the larger Muslim world even in the pre-modern era (Koya, 2012).

Although we cannot find any significant contributions to hadith literature by medieval Malabar ‘ulama’ of that period, this does not mean that they excluded hadith studies from their madrasa curriculum. As Mahmood Kooria noted, the madrasa syllabus designed by



Makhdooms could be said to be more in line with the syllabi that existed in the Hijaz and Mecca, which gave an important place to hadith learning. Most of the Makhdooms were Meccan graduates (Anuzsiya, 2004; Kooria, 2016). Moreover, as mentioned above, the expertise of medieval Malabar scholars in the field of hadith is very evident in their works in the fields of *tasawwuf*, *fiqh*, and *akhlaq*, since they quoted ahadith extensively in these works.

Although the hadith contributions of Malabar scholars over the centuries were very small compared to other regions, especially northern India, this fact needs to be contextualized. Southern India did not have a similarly diverse landscape of traditional or modernist and reformist religious movements such as the Deobandi, Ahl-i-Hadith, and Bareli that northern India witnessed in the context of colonial India. As scholars such as Mukhtar Ḥaḍrat argued, the *madhhab* (a school of thought within Islamic jurisprudence) disparity between the scholars in southern and northern India could possibly play a role in these differences, as Shafi‘i scholars were less engaged in hadith scholarship. Also worth noting is the socio-economic context of the Malabar Muslim community, which was unfavorable for producing major research in this field (Ḥaḍrat, 2013).

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Muhammed Ramsan Cheerakkolil is a graduate of the Master’s program in Contemporary Islamic Studies (Class of 2022) from the College of Islamic Studies (CIS) at Hamad Bin Khalifa University (HBKU). He also holds a Master’s degree in History from Indira Gandhi National University in India. He completed traditional madrasa education from Jamia Markaz of Malabar, South India. He is currently working as a faculty of Islamic Studies at Madrassathu Imam Rabbani in Kozhikode, South India. His current research interests include Malabar Muslims, the history of Islamic literature, and hadith scholarship in South India.

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