

## RESEARCH ARTICLE

# The Application of ‘Urf in Islamic Law with Regard to Hijāb

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## INTRODUCTION

There are numerous trends, beliefs, and opinions with regard to wearing *hijāb* in America, some of which may be based on scholarly research, while others are expressed by common people who feel they have the authority to give their opinions on Islamic rulings. The issue of *hijāb* is very complex and multidimensional, resulting in numerous dilemmas. However, it is beyond the scope of this paper to discuss all of these dimensions due to several limitations. This research will focus on the application of custom in Islamic law, specifically in the context of *hijāb*. In doing so, I will examine the commandment of *hijāb* in the *Qur’an* and *Sunna*, in order to demonstrate that it is a religious obligation, rather than cultural, a view that has gained some attention recently. In addition, I will investigate the role that custom plays in the Islamic legal system and identify how and where custom applies to the issue of *hijāb*. I will mention some trends with regard to *hijāb* that have become apparent in America today, highlighting whether or not ‘*urf* is a factor in determining their legitimacy.

**Keywords:** Veil, Hijab, Muslim women, ‘Urf, Islamic law

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## THE “HIJĀB”: DEFINITIONS, TEXTUAL INTERPRETATIONS, AND THE LEGAL RULING

It is important to note that the use of the word *hijāb* is the cultural reference to the article of clothing that is used to cover the hair, and this is how the word will be used here. The literal definition and the use of this word in the Qur’an do not mean the head covering that is associated with the word culturally. Thus, any argument stating that the Qur’an does not mention the word *hijāb* and it is therefore not obligatory is irrelevant, as will be explained by the words that are used in the Qur’an to cover the head. Furthermore, it is not the aim of this paper to discuss the debate over covering the face, culturally known as *niqāb*, so the concept that will be examined here is that of *hijāb* which refers exclusively to covering the entire body, excluding the face and hands.

The Qur’anic terms used to connote our understanding of *hijāb* (covering the head) are *khumur* and *jalābīb*. We will examine two verses to determine the obligation of *hijāb* in the Qur’an, focusing on the interpretations of these verses and defining the words mentioned to refer to the idea itself. These include a verse in Surat al-Nur and a verse in Surat al-Ahzab.

The obligation of veiling is mentioned in the Qur’an in the verse:

And say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and ornaments except what (must ordinarily) appear thereof; that they should draw their veils over their bosoms and not display their beauty except to their husbands, their fathers, their husbands’ fathers, their sons, their husbands’ sons, their brothers or their brothers’ sons, or their sisters’ sons, or their women, or the slaves whom their right hands possess, or male servants free of physical needs, or small children who have no sense of the shame of sex; and that they should not strike their feet in order to draw attention to their hidden ornaments. And O ye Believers! Turn ye all together towards Allah, that ye may attain Bliss [24:31].

The word used in this verse is *khumur*, which is the plural of *khimār*, linguistically meaning “what a woman covers the head with” (Ibn Manzour 2003, 258).<sup>1</sup> The commentators of the Qur’an interpret this verse in a few ways that are in harmony with one another, despite minor differences of opinion.<sup>2</sup> The great traditional Qur’anic exegete Ibn Jarir al-Tabari (d. 923) presents the opinions of numerous mufasssīrūn in his commentary. The summary of his interpretation of the verse mentioned above translates as follows:

His saying “and they should not display their beauty and ornaments”: He the Exalted says, they should not show (make apparent) their beauty to those people who are not their maḥram. And it is of two kinds. One is what is hidden like anklets, bracelets, earrings, and necklaces. The other is what is apparent and that differs in meaning in this verse. Some of them [interpreters] say the beauty that is

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1 The translations from Lisan al Arab are the author’s.

2 The translations of the Arabic commentary of the *Qur’anic* verses mentioned are the author’s.

apparent refers to the clothing. Other say the apparent beauty is that which is permissible for her to show: kohl, rings, bracelets, and the face. (Al-Tabari, n.d.)

Ibn Kathir (d. 1372), another well-known exegete, interprets this verse saying, “that they should not display their beauty except what is apparent,” means they shouldn’t show anything from their beauty to foreign [men] except what it is not possible to hide.” Like al-Tabari, he also highlights the different understandings of the definition of “apparent” beauty. As he states, “Ibn Mas‘ud said: it is like the outer garments and robes. Ibn ‘Abbas said: it is her face, hands, and rings.” Ibn Kathir also defines the meaning of the “veils”:

*Khumur* is the plural of *khimār* and it is what one covers with. Meaning, it covers the head and it is what people call the veil. Sa‘īd ibn Jubayr said: drawing their veils means they should pull [them] tightly and drawing them over their bosoms means the neck and chest so that nothing of it is seen. (Ibn Kathir, n.d.)

Thus, Ibn Kathir clarifies that the head, neck, and chest of a woman must be covered in accordance with this Qur’anic verse. Like Ibn Kathir, Al-Qurtubi (d. 1172), another respected interpreter of the Qur’an, explains the meaning of “veils,” which translates as follows: “*Khumur* is the plural of *khimār* and it is what covers her head. From this word comes the verb, which would mean the woman veiled” (Al-Qurtubi, n.d.). It is apparent from the *tafāsīr* of these exegetes that the *hijāb* is an obligation for the Muslim woman, and includes the covering of her head, neck, chest, as well as debatably her face and hands.

The other verse that discusses the *hijāb* is: “O Prophet! Tell thy wives and daughters, and the believing women, that they should cast their outer garments over their persons: that is most convenient, that they should be known (as such) and not molested. And Allah is Oft-Forgiving, Most Merciful.” [33:59]

The word *jalābīb* is the plural of *jilbāb*, which means a garment that is larger than a *khimār* and smaller than a *ridā’* with which a woman covers her head and chest, and it is said that it is an overgarment that is worn over [her clothes] (Ibn Manzour 2003, 272–73).

Al-Tabari interprets the verse as follows: “They should draw over themselves their *jalābīb* so that they are not exposed to evil people.” He mentions the various opinions of what the *jalābīb* entail, and concludes that “the interpreters differ on the description. Some say to cover their faces and heads so that nothing is seen except one eye” (Al Tabari, n.d.). Ibn Kathir defines *jalābīb* as:

*Jilbāb* is the outer garment worn over the *khimār*. ‘Ali ibn Abi Talha said that Ibn ‘Abbas said: Allah ordered the believing women when they go out of their houses for their needs to cover their faces from over their heads with *jalābīb* and they can show one eye. (Ibn Kathir, n.d.)

Al-Qurtubi explicates the details of *jalābīb* as:

*Jalābīb* is the plural of *jilbāb* and it is a garment bigger than the *khimār*. It is reported according to ibn ‘Abbas and ibn Mas‘ud that it is an over garment. It is

also said that it is a veil. The correct opinion is that it is a garment that covers the whole body. (Al-Qurtubi, n.d.)

All of these exegetes are therefore in consensus that the Qur'an requires a Muslim woman to be fully covered, and they debate whether or not she should cover her face or just her head, based on their different understandings of the terms used. The latter of the two quoted verses also reveals the wisdom and reasoning behind the veil, with its reference to protection from harassment. Accordingly, the implication is that modesty is a safeguard.

Several *ahadith* also indicate the obligation of *hijāb*, where one of them is:

'A'isha relates what the women at the time of the Prophet (salla Allah Alaihi wa sallam (SAW) (peace be upon him)) did when the verse of the veil was revealed by saying, May Allah bestow His Mercy on the early immigrant women when Allah revealed: "They should cover (draw their veils over) their bodies, faces, necks, and bosoms"—they tore their *murūt* (a woolen dress, or a waist-binding cloth or an apron, etc.) and covered their faces with those torn *murūt*. In another narration—(the ladies) cut their waist sheets at the edges and covered their heads and faces with those cut pieces of cloth. (Al-Asqalani 1986, hadith 4481, 345)

Thus, it is clear that the commandment of *hijāb* exists in both the Qur'an and Sunna, but the form or appearance of how the commandment is to be fulfilled is open to cultural modification because the text does not indicate a specific form.

At the time of revelation, the society had a few articles of clothing that were known and worn. Culturally, there was a certain manner or style of clothing that existed, and these vestments were then ordained to be used in order to cover specific parts of the body that were not previously covered. This is an example of how Islam did not abolish everything that existed in pre-Islamic culture, but modified it so that it was in accordance with the rules of the *sharī'a*. Similarly, the obligation of *hijāb* leaves room for various cultural attire as long as the guidelines of *hijāb* are fulfilled.

In her extensive research about dress in the Arab world from the time of the Prophet (SAW), Stillman elucidates:

The basic articles of clothing at the time of the Prophet for both sexes consisted of an undergarment, a body shirt, a long dress, gown, or tunic, and an overgarment such as a mantle, coat, or wrap, footgear consisting of shoes or sandals, and a head covering. A person might wear many garments or only one depending upon a variety of factors including weather, occasion, economic means, etc. Many of the items of clothing worn by men and women were identical. Indeed, many of the articles were simply large pieces of fabric in which the wearer wrapped himself, the basic fashion that Ibn Khaldun associated with the ahl al-badw, "the people of the desert." What must have set off male from female fashion in many instances was the manner of draping, the accessories (jewelry, head- and footgear, and veils), as well as colors, fabrics and decoration. (Stillman 2003, 10)

The Qur'anic terms used to convey the commandment of *hijāb* correspond to these known articles of clothing that were customarily worn, and the Qur'an simply outlined guidelines as to how to wrap these clothes differently. Stillman also mentions that:

The practice of women veiling which most commonly meant enveloping the body from head to toe and under certain circumstances wearing a cloth or mask over the face when going out was widespread in the eastern Mediterranean in Antiquity, long before the rise of Islam. Veiling in various ways and social contexts was practiced in ancient Persia, Mesopotamia, Israel, Greece, and pre-Islamic Arabia. (Stillman 2003, 140)

Clearly, the idea of *hijāb* or even *niqāb* was not completely a new concept, which might indicate why the women at the time of the Prophet (SAW) so easily complied with the order. Thus, the concept of not introducing a new, foreign type of apparel that is not customary is a principle that we can apply today, while ensuring that the religious requirements are fulfilled.

What are the requirements of the *hijāb*? Legal scholars have extracted from the quoted texts that obligate the *hijāb* and the conditions that must be met in upholding this commandment. Jurists came to these conclusions by looking at the texts and analyzing the objectives of the rulings. Two of the main objectives of *hijāb* are covering the *'awra* (parts of the body that should be covered) and distinguishing Muslim women to prevent them from harm (Abu Shuqqa 1995, 22–24). These guidelines slightly vary from jurist to jurist, but the general principles are the same and one might combine different guidelines into one heading, while another may enumerate each one separately. Looking at the guidelines logically, the conditions mentioned make sense in conforming with the textual requirements as well as fulfilling the purposes behind the ruling. We will examine here two sets of requirements mentioned by Al-Albani and Abu Shuqqa. Al-Albani explains that there are eight requirements that must be met to comply with the obligation of *hijāb*. They are as follows: the woman's entire body must be encircled [in clothing] other than what is the exception (hands and face); the clothing is not a *zīna* (adornment) in and of itself; it is thick enough so as to not show the skin; it is loose and not form fitting; it is not perfumed; it does not resemble men's clothing; it does not resemble non-Muslim women's clothing; and finally it is not extravagant and worn to be recognized, distinguished, and to show off (*libās al-shuhra*) (Al-Albani 2002, 37). Al-Albani provides textual proofs for these conditions, which I will not mention due to previously mentioned constraints. Abu Shuqqa mentions the following five requirements: the entire body is covered, excluding the face, hands, and feet; moderation is used in the apparent *zīna* of the clothing and face, hands, and feet; the clothing and *zīna* are customarily acceptable among Muslims; the clothing in its entirety is different from men's clothing; and finally the clothing in its entirety is different from what non-Muslim women are known to wear (Abu Shuqqa 1995, 30). He then goes into extensive detail explaining these conditions and mentions the numerous proofs for this position. Like Al-Albani, he provides textual proof for each of the conditions he delineates. He describes the *jilbāb* as an outfit that is recommended to be put over the

clothing when going out and this is what distinguishes a free woman from a slave girl (Abu Shuqqa 1995, 44). In essence, the conditions required by Al-Albani are the same as those required by Abu Shuqqa; however, they differ in the area of permissible *zīna* as Abu Shuqqa states that moderation is required and custom is the determining factor, whereas Al-Albani limits the *zīna* more by mentioning that clothing should not be *zīna* in and of itself.

These requirements comply with the Qur'anic injunction of *ḥijāb*, and demonstrate that custom can play a significant role in determining how it will be fulfilled. The condition of not resembling non-Muslim women may be somewhat of a gray area among Muslim Americans, because part of their culture is comprised of American culture as a whole, so to say that a maxi skirt, for example, which has recently been in fashion among non-Muslims, would fall into the category of resembling them would be problematic. However, something like skinny jeans or leggings, which are also in fashion, are easier to dismiss, as they do not fulfill some of the other conditions. By the same token, the argument that pants or jeans are a man's dress, which some eastern scholars say, is not cogent in the Muslim American culture. In fact, the argument that pants are a man's dress in the West is preposterous, because culturally both genders wear pants, which is now also the case across the Muslim and non-Muslim world. However, men's and women's pants differ, and for the most part do not resemble each other and on the occasion that they do, the condition of not resembling each other would come into consideration.

Thus, in today's society, culture can be a factor in determining how these same guidelines are met, so as to not make the concept of *ḥijāb* "foreign" to Muslim women of different cultures by imposing one specific style. However, before we examine the precise function that custom has in delineating *ḥijāb*, we have to investigate the role of 'urf in the Islamic legal system in general.

## **URF (CUSTOM): DEFINITIONS, LEGAL ORIGINS, CONDITIONS, AND APPLICATION IN ISLAMIC LAW**

Muslim jurists realized very early on that the texts of the *sharī'a* are finite, but the changing social circumstances give rise to new issues and questions. At the same time, the *sharī'a* as the final Divine revelation is suitable and fulfills the needs of Muslims at all times and in all places until the end of time. Jurists therefore reasoned that the means of constructing rulings is not limited to the texts alone, and this is where other derived and rational sources, custom being among them, serve to complement the texts and solve the problems of different times and places (Shabana 2010, 48).

The word 'urf is derived from the root 'arafa "to know," which literally means "what is known." The word has many meanings, but it is primarily used as "what is known" as opposed to "what is unknown." It is also used to mean what is "good, wholesome, or commendable." It refers to "any common practice whether good or bad." Oftentimes 'urf and 'āda are used interchangeably, but some jurists distinguish between them. The word 'āda is derived from the root that means to "return" or "to repeat" (Shabana 2010, 50). It

therefore means a recurrent or continuous practice. The majority of jurists held the view that *'āda* is more general than *'urf* because *'āda* can be individual or collective, whereas *'urf* only refers to collective habits. Thus, *'urf* is not used to refer to individual habits, unlike *'āda*. Juristically, *'urf* means common practice that has been established as good by reason and has become acceptable to people of sound disposition. Hence, in order for *'urf* to be valid as a legal basis in rulings, it needs to be sound and reasonable. Customs that are bad, unsound, or corrupt are therefore not given any legal consideration (Kamali 2003, 369).

The word *'urf* and its derivative *ma'rūf* are used synonymously in the Qur'an, while the word *'āda* is not actually mentioned. Generally, the word *ma'rūf* is used in the Qur'an to denote the concepts of kindness, goodness, benevolence, and justice, as well as in contrast to *munkar* (evil, detestable, condemned). However, there are some verses in which the word implies consideration of custom such as in verse 2:233, where the Qur'an orders husbands to provide financially for their nursing wives and children "*bil ma'rūf.*" Al-Tabari states that this means "according to common standards in comparable situations" (Shabana 2010, 51). In addition to direct and indirect references to *'urf* and *ma'rūf*, the Qur'an also includes implied references to the concept of custom in the context of verses that deal with legal issues. Shabana notes in his extensive study of the concept of custom in legal theory that:

...these verses are seen as closely linked to the social realities they address. Whenever a command is given without further details on the mode of application, it is considered applicable to any relevant context. Part of the jurist's task is to relate *Qur'anic* instructions to particular contexts. The *Qur'an* repeatedly reiterates the notion that duties and obligations fall within human capacity. In other words, in stipulating the different legal enactments, the Lawgiver has already taken into account the different psychological, social, and economic dimensions of the human condition. For example, in verse 57:7, which refers to non-obligatory charitable donation, Muslims are invited to spend from what they are entrusted with. The verse...specifies neither the item nor the amount. These details are left to the light of common customs or *'urf*. The common standards determine what is deemed valuable in a given society, whether knowledge, wealth, or other types of items. (Shabana 2010, 52)

The reliance on custom in determining legal rulings is also based on the Sunna of the Prophet (SAW) as several *ahadith* include the word *'urf* or *ma'rūf* or that refer to the concept itself without any mention of the words. One example is the *hadith* that 'A'isha (May Allah be pleased with her) narrated:

Hind, the wife of Abu Sufyan, said to the Prophet (SAW): Abu Sufyan is a niggardly man and does not give me and my children adequate provisions for maintenance unless I take something from his possession without his knowledge. The Prophet (SAW) said to her, "Take from his possessions on a reasonable basis that much which may suffice for you and your children." (Al-Nawawi 2007, *hadith* 1535, 428)

In this *hadith*, the word *ma'rūf* clearly indicates the common custom and practice. Al-Bukhari mentioned this *hadith* in a chapter titled “On the consideration of common customs of the different regions,” which distinctly shows juristic consideration of custom early on. Numerous other *ahadith* deal with the concept of custom, especially those dealing with transactions. Another well-known example is the advanced payment (*salam*) sale which the Prophet (SAW) initially prohibited, but later allowed with conditions because he found the custom of the people of Madina to engage in this type of transaction (Shabana 2010, 54–55). Another category of the *Sunna* that gives consideration to *'urf* is due to some pre-Islamic customs that were adopted after amendment or adjustment. Once these customs were in accordance with the *sharī'a*, they were acceptable. Examples of this type are evident in a narration by 'A'isha where she mentioned that before Islam, the Arabs knew four types of marriage, all of which were forbidden except one which was allowed to continue (Shabana 2010, 56). The rulings regarding the liability of the kinsmen of an offender (*'āqila*) for the payment of blood money is another example of this category (Kamali 2003, 372). These examples, among many others, indicate that the concept of custom is evident in the *Sunna*—in its literal definition as the way or path—of the Prophet.

Both Shabana and Kamali indicate that the use of custom as a juristic consideration dates back to the time of the Prophet (SAW) and was used afterwards, although it did not receive the acknowledgment as an independent source until later and was initially only considered under *ijmā'* or *'amal* in the case of Imām Mālik. As the science of jurisprudence developed, custom was later recognized on its own in the field of both legal maxims and legal objectives (Kamali 2003, Shabana 2010).

What is the scope of custom within the *sharī'a*? The permissibility of custom to be valid legally depends on it not contradicting the texts of the Qur'an and Sunna (Abu Zahra 1957, 273). Abu Zahra classifies *'urf* into two types: valid custom (*'urf saḥīh*) and invalid custom (*'urf fāsīd*) that contradicts the texts. Invalid custom is not taken into account at all, while valid custom is considered when there is no clear text on a ruling. In this situation, valid custom is given legal consideration in the rulings that are based on indicators (*adilla*) that are speculative (*dhannī*), such as analogical reasoning (*qiyās*), or rational indicators (*adilla 'aqliyya*). This is because jurists who engage in independent examination of the primary sources (*ijtihād*) take, and should take, into account the customs of the people and place while deriving their rulings. Many legal rulings vary based on different locations and times; therefore, failure of the jurist to take custom into account in these various locations and times results in difficulty for the people, which is contrary to the objectives of the *sharī'a* (Abu Zahra 1957, 275). Thus, the rules of fiqh that are based on *ijtihād* and the use of custom can change along with the changes in time and place.

In order for *'urf* to be authoritative, it has to fulfill certain requirements. First, a custom cannot contradict the text (*naṣṣ*). As its definition indicates, it must be a recurrent and common practice, as the practice of a few people or a small group does not constitute the custom that would be considered as a basis for legal rulings. Another requirement is that the custom must already exist at the time of taking it into account. Customs must not

violate the clear conditions of an agreement, and they are only valid in the absence of an agreement (Kamali 2003, 372–74).

The genre of legal maxims includes five cardinal maxims, the last of which is custom. Under this maxim, there are sub-maxims which all take into account custom as an analytical tool in legal theory. The third sub-maxim is that “any general unspecified ruling that is found in the text without a textual or linguistic specification is determined by custom” (Ismail 1997, 156). As Ismail explains, this maxim demonstrates that texts from the Qur’an and Sunna obligate certain actions on the legally accountable person (*mukallaf*); however, the exact specifications of this obligation are left to the customs and habits of people as a mercy and in order for those obligations to be easy for them, keeping their best interest in mind. In addition, it ensures that the law is suitable for changing times and places, and that the legally accountable person is able to fulfill the religious obligation based on his or her ability. Moreover, using custom as an analytical tool legally is a means to safeguard the removal of difficulty and hardship, the attainment of benefits (*masalih*), and the fulfillment of needs (Ismail 1997, 156–57). This maxim can be applied to the ruling of *hijāb*, as the textual and linguistic specifications provide general guidelines as mentioned above, the details of which leave room for *urf* to determine.

Historically, the rulings of many of the issues related to women have been referred to custom such as menstruation, pregnancy, and the age of puberty (Al-Nadwi 299-300). This is evident from instances in the Sunna where the Prophet (SAW) instructed women to follow what was customary among most women and apply it to themselves. From the above discourse and explanation of the effect of custom in legal theory, it can be suggested that *hijāb* is a ruling in which *urf* can serve to detail its general guidelines.

## APPLICATIONS OF CUSTOM IN THE PRACTICE OF *HIJĀB*

On the basis of the discussion of the religious obligation of *hijāb* and the application of custom in Islamic legal theory, I will examine some topics that demonstrate where *urf* can and cannot be applied to the example of *hijāb*. For example, the popular belief among some orientations with regard to *hijāb* is that it should be a certain color, preferably black or other dark colors, and a certain style (*‘abāya/jilbāb* in the modern sense of these words). This group usually belongs to what Woodlock classifies as the “fundamentalist” orientation towards *hijāb* (Woodlock 2011, 405–08). However, this belief is not supported by evidence from the texts, and therefore leaves room for cultural consideration. Abu Shuqqa explains that the *shari’a* does not obligate a specific style or color for women’s clothing, but instead outlines conditions that must be met regardless of color or style which differs from culture to culture and country to country (Abu Shuqqa 1995, 28–29). In relation to the second requirement that he mentions, which is moderation in *zīna*, he states that Muslim culture is what determines what is moderate in the *zīna* of the parts of the body that do not have to be covered (Abu Shuqqa 1995, 251). Therefore, in a Muslim country where the majority of women wear black, if a woman were to wear red, she would obviously stand out and draw unwanted attention to herself. Similarly, in another Muslim society, where bright colors are the norm, a woman wearing black would stand out. Thus, the society determines,

based on the prevalent custom, what would be considered moderate and what would not, keeping in mind that the objective is to not attract unwanted attention. The same applies to the other forms of *zīna* that are permissible to display, such as jewelry, henna, and kohl. Anything that goes beyond what is customary, or that attracts extra attention, would therefore not fulfill the Islamic requirement of *ḥijāb*.

Thus, in cultures where different colors and articles of clothing are worn, those colors and styles can be worn as long as they conform to the guidelines. The American Muslim society is composed of numerous Muslim cultures, as most communities reflect the melting pot that America is. Muslim communities in America are usually comprised of individuals who are immigrants from various Muslim countries or American-born Muslims originally from Muslim countries, in addition to converts. Muslim American culture is therefore a mix of all of these cultures in the context of American society, so the customs with regard to dress are likewise a blend of all of these factors. Therefore, American Muslim women should dress upholding the guidelines of loose, modest clothing that does not attract unwanted attention, which also allows taking into consideration what is customarily accepted among the Muslim community. A trend that is gaining popularity is *ḥijāb* fashion, which oftentimes oversteps the guidelines of *ḥijāb* in an effort to keep up with popular fashion (Hassan and Harun 2016). This would be an example where American culture should not define *ḥijāb*, as it must be determined by Muslim culture and not defeat the purpose of modesty by attracting unnecessary attention.

Another trend in America that has gained some attention is the argument that *ḥijāb* is not a religious requirement, but a cultural dress (Bullock 2002, 26). This argument contradicts both the clear evidence of the religious commandment in the Qur'an and the reasons for *ḥijāb* which are the protection from harassment and upholding modesty as detailed previously. Khaled Abou El Fadl insinuates that the terms used in the Qur'an do not clearly indicate covering the hair, and that the definitions are ahistorical and lack evidence of the social practices of the time (Abou El Fadl 2016). However, the linguistic definitions indicate, in and of themselves, that those particular items of clothing (e.g. *khimār*) existed and were used in a way that conformed to their linguistic definitions. For example, if we say a "hat," we know that a hat is worn on the head, so any commandment that states to wear the hat so that it is tilted to cover the left ear is a modification of how the hat is traditionally used. Does that imply that hats were not previously worn straight on the head? Abou El Fadl himself explains that many scholars have maintained that the *khimar* by definition was used to cover either a woman's entire body, including the face, or her entire body, excluding her hands and face; yet, in his opinion, "the evidence that the *khimār* in pre-Islamic Hijaz covered the face or covered the hair is simply not there...and the historical evidence is far more diverse and complex than many contemporary scholars assume it to be" (Abou El Fadl 2016). While the definition of technical terms (*khimār*, *jilbāb*, etc.) may be more fluid at times, as is the nature of the Arabic language, there is ample evidence that the practice of covering a woman's hair (and face) existed both in pre-Islamic times and with the onset of Islam as is apparent in the works of Stillman and others who have studied the history of Arab dress (Stillman 2003, El Guindi 1999). This

is clear through Stillman's statements: "Already in the Prophet's time the ancient Near Eastern practice of covering the head out of modesty and respect was the norm for both men and women," and "women in early Islamic times normally covered their head and face with any of a variety of veils when appearing in public. In addition, they were usually entirely enveloped in the large *jilbāb* from head to foot leaving only one eye free..." (Stillman 2003, 16, 19–20). Moreover, there is clear evidence that women from the time of the Prophet (SAW) until today have covered their hair under the conviction that they are fulfilling a religious obligation and that is of great consequence, as the Muslim community (*ummah*) would not agree on falsehood. Furthermore, it is significant to note that most of the ambiguity in the use of these terms revolves around the debate of veiling the face in addition to the hair versus covering the hair alone, whereas the concept of not covering the hair at all has not even been discussed until recently, as covering the hair is considered what is commonly known in matters of religion by necessity (*ma'lum min al-din bi al-darura*) among jurists.

With regard to the objectives of *ḥijāb*, protecting women from harassment and embodying modesty, Abou El Fadl advocates for revisiting the texts, implying that social circumstances may have a factor in determining modesty and whether or not *ḥijāb* is obligatory. He takes into account the concept of hardship, which is also considered in legal rulings, as one of the aims of the *sharī'a* is the removal of difficulty. With regard to the verse mentioned in Surat al-Nur [24:31], he states that:

The vast majority of Muslim jurists asserted that the phrase "what would normally appear" refers to two distinct elements, the first is *'urf* or *'āda* (custom and established practice) and the second is *ḥaraj* (hardship). Meaning, this phrase refers to what are admittedly adornments, and perhaps objects of enticement, but they are adornments that do not have to be covered because they "normally appear" either as a matter of custom or because they need to appear to avoid and alleviate potential hardship... What normally appears as a matter of practice, what needs to appear so that the law will not impose undue hardship, and how can these two elements be accommodated within the bounds of modesty? (Abou El Fadl 2006)

He implies that covering the hair may need to be re-examined in light of what *'urf* considers modesty, as well as what is considered a hardship. With regard to custom, as was explained earlier, there are requirements in order for it to be taken into account, so considering non-Muslim American culture, as he insinuates, would not be acceptable. Non-Muslim American culture cannot be a factor in determining what modesty is, as it is obviously at odds with the Islamic concept. Abou El Fadl also focuses on the interpretation that the verse was revealed to combat social circumstances of harassment and to distinguish between a free woman and a slave girl. This discussion is a lengthy one, and scholars of the past did not agree on the issue either. The fact that remains unchanged throughout time and place is that women are attractive to heterosexual men, and therefore oftentimes subject to harassment. Therefore, if the verse was revealed to protect women from harassment, this situation remains applicable today. Covering and modest behavior is

ordained because Islam is a religion of modesty. The Prophet (SAW) said, “Every religion has an innate character. The character of Islam is modesty” (Al-Zarqani 2003, 406). Therefore, donning the *hijāb*, in a manner that maintains the condition of modesty, serves to achieve that goal of protection in that a woman who is covered does receive more respect than the one who does not. This is evident in the West, with the rise of the “#Me Too” movement, where we are now being made aware on a huge scale the harassment women face in all different areas of society. Thus, claiming that the harassment mentioned in the Qur’anic verse does not apply today and therefore women do not need to cover is a ludicrous argument. On the contrary, the experience of most women in America who wear the *hijāb* will indicate that men treat them with more respect than those who are uncovered because the *hijāb* connotes respect. Needless to say, the burden of modesty is not solely placed upon women, but also men are required to behave modestly and to lower their gaze. The issue of possible harm to Muslim women in the West who can be identified and targeted as Muslim is another topic of discussion and needs to be assessed in a different light, which is not the focus of this paper.

With regard to any possible hardship in wearing the *hijāb*, we also have to look at the issue within the greater objective of the *sharī’a*, which is achieving people’s benefit. Therefore, *hijāb*, from the perspective of ensuring modesty and protection, aims to achieve what is best for women. However, as is the case with many purposes within the law, there is a degree of hardship that may accompany achieving the greater benefit. The obligations of the *sharī’a* are not always easy to uphold, and that is part of the test to see which individual strives against their own desires in order to cooperate with the Divine decree and seek the pleasure of the Divine. These concepts are elucidated by Shabana who also highlights the aspect of *‘urf* in achieving benefits in his statement:

...when the law upholds a benefit, it purports to achieve the beneficial elements within such a benefit. Any incidental discomfort that it may entail is not intended for its own sake. It is rather an expression of the trial factor embedded in the law. Such a factor is meant to test the individual’s degree of deference to the law and sense of compliance even when it goes against his own liking. But this incidental discomfort does not often exceed the customary limit that determines the difference between customary benefits and harms. (Shabana 2010, 131)

Thus, it is clear that when taking into account the hardship aspect of *hijāb*, we do not make the determination based on invalid customs nor on whims and desires.

## CONCLUSION

The topic of *hijāb* and the application of custom pertaining to it is a broad topic that includes numerous factors, both legal and social. The aim of this paper was to outline the foundations upon which the relationship of custom vis-à-vis *hijāb* can be examined, and draw attention to some examples of this relationship, specifically concerning the issue among American Muslims. All of the topics discussed are vast and multifaceted, but due to the limitations of this study I was obligated to focus only on essential concepts. It is

clear that the obligation of *ḥijāb* is religious. Thus, American culture in general is not a qualifier in defining the concepts of modesty, which must be determined by Muslims in light of the *sharī'a*. On the other hand, Muslim American culture does contribute to shaping the “style” of *ḥijāb* that can be worn, thereby making the obligation easier for Muslim women in America. In fact, not taking into consideration their social and cultural circumstances and requiring them to wear a certain color or specific article of clothing would result in hardship, which is contrary to the objectives of the *sharī'a*. At the same time, suggesting that Muslim women in America do not have to wear the *ḥijāb* for cultural reasons is an invalid argument, but there may be other factors taken into account if the issue of safety is in question which are not based on the application of *urf*. As mentioned previously, examining the issue from this perspective is not within the scope of this research.

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