

علمی و تحقیقی مجلہ فقہ اسلامی ﴿۸۵﴾ جمادی الاولیٰ ۱۴۲۵ھ ☆ جولائی ۲۰۰۴ء

(khimars) to cover their bosoms (jaybs), and not to display their beauty except to their husbands, or their fathers, or their husband's fathers, or their sons, or their husband's sons, or their brothers, or their brothers' sons, or their sisters' sons, or their womenfolk, or what their right hands rule (slaves), or the followers from the men who do not feel sexual desire, or the small children to whom the nakedness of women is not apparent and not to strike their feet (on the ground) so as to make known what they hide of their adornments. And turn in repentance to Allah together, O you the faithful, in order that you are successful

Surah al-Ahzab ayah 59 says:

Ya ayyuha an-Nabiyy qul li azwajika wa banatika wa nisa al-mu'minin yudnina alayhinna min jalabib hinna: dhalika adna an yu'rafina fa laa yu'dhayn. Wa kana Allahu Ghafur Rahim

O Prophet! Say to your wives and your daughters and the women of the faithful to draw their outergarments (jilbabs) close around themselves; that is better that they will be recognized and not annoyed. And God is ever Forgiving, Gentle.

Together, these two ayat lay out seven commandments for Muslim sisters:

1. "to lower their gazes"
2. "to guard their private parts"
3. "not to display their beauty except what is apparent of it"
4. "to extend their headcoverings to cover their bosoms"
5. "not to display their beauty except to their husbands or their fathers..."
6. "not to strike their feet (on the ground) so as to make known what they hide"
7. "to draw their outergarments close around themselves"

It can be seen that three of these commandments relate to behavior. These are:

- lowering the gaze
- guarding the private parts
- not striking the feet on the ground so as to give knowledge of what is hidden

Lowering the gaze means not looking at what is forbidden to be seen of others. Guarding the private parts means that only the husband is allowed to see or touch them. Not giving knowledge of what is hidden means not posturing or strutting around so as to jangle hidden jewelry

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he ordered, judged, and decided. It shows what he has given us and what he has prohibited to us. It shows how he explained the Quran.

If we do not obey what the Prophet (sAas) has ordered, or abide by what he has judged, or submit to what he has decided, or take what he has given, or refrain from what he has prohibited, or follow his explanation of the Quran - then we have disobeyed Allah SWT.

That is why, if we are sincere about obeying Allah SWT and following His commandments, we should follow both the Quran and the Sunna.

Hijab: A commandment of the Quran and Sunna

In the first part of this article, I have argued that part of our commitment to Allah SWT is to trust that He knows what is best for us and that what He has commanded is what is right. I said that if we find ourselves disliking the way that He has set for us, our challenge is not to ignore or to try to change His command, but rather it is to seek for ourselves the wisdom in the command and to surrender to His will. If we don't like what He has commanded, we should try to change ourselves not Him. We should try to find reasons why His command is right and will be beneficial for us, and we should try to motivate ourselves through this to obey the command.

In the second part of the article, I have established why the Quran and Sunna are where we look to find what Allah SWT has commanded. Neither one can be taken alone but they both go together.

So, what do the Quran and Sunna say about hijab? There are two ayat of the Quran that deal with hijab. These are Surah an-Nur ayah 31 and Surah al-Ahzab ayah 59. Let's look at what these ayat say, and how the Prophet (sAas) has explained them.

Surah an-Nur ayah 31 says:

Wa qul li al-mu'minat yaghdudna min absarihinna wa yahfazna furujahunna wa laa yubdina zenatahunna illa maa zahara min haa wal-yadribna bi khumurihinna ala juyubihinna: wa laa yubdina zenatahunna illa li bu'ulatihinna aw aba'ihinna aw aba'i bu'ulatihinna aw abna'ihinna aw abna'i bu'ulatihinna aw ikhwanihinna aw bani ikhwanihinna aw bani akhawatihinna aw nisa'ihinna aw maa malakat aymanu hunna aw at-tabi'ina ghayri ulu'l-irbat min ar-rjial aw at-tifl alladhina lam yazharu ala avrat an-nisa wa laa yadribna bi arjulihinna li yu'lama maa yukhfina min zenatahinna. Wa tubu ilaAllahi jami'an, ayyuha al-mu'minun la'allakum tuflihun

And say to the faithful women to lower their gazes, and to guard their private parts, and not to display their beauty except what is apparent of it, and to extend their headcoverings

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should try to seek its wisdom for ourselves and to change our own minds.

Now, the testimony of faith that we make to become Muslims, or when we assume adult status in the deen, has two parts: laa ilaha ill'Allah and Muhammadan rasul Allah. The first of these, none has the right to be worshiped except Allah, is a statement of our belief that Allah SWT is ruler of all, judge of all, all-knowing, all-powerful. It is He who must be obeyed, and obedience to anybody else is merely conditional and must not be done if they ask us to disobey Allah SWT. And Allah SWT has given us everything we have, our existence, our life, our capabilities, our goodness. If He took any of it away, there is no power that could help us get it back. And we could never repay Him to match what He has given us, or even begin to. However, in his infinite mercy, Allah SWT asks of us only that we obey Him. Isn't it the least that we can do for Him after all that He has done for us?

There is also the second testimony, Muhammad is the messenger of Allah. The Prophet (sAas) would not be a messenger if he did not come with a message. And his message is the Quran. We are really also testifying that the Quran is a message from Allah SWT, and therefore, obedience to Allah SWT entails obedience to the Quran, because it is His word.

The Quran also tells us to obey the Prophet (sAas) as well as Allah SWT (see for example Surah an-Nisa ayah 59). It tells us that if we have faith we will take the Prophet (sAas) as the judge of any dispute (Surah an-Nisa ayah 65). It tells us that when both Allah SWT and the Prophet (sAas) have decided a matter it is not for a Muslim or Muslimah to have any further say in that matter (Surah al-Ahzab ayah 36). It tells us that what the Prophet (sAas) has given us, we should take and what he has prohibited to us, we should refrain from (Surah al-Hashr ayah 7). And it tells us that the Prophet (sAas) has been sent not just to deliver the Quran but also to explain it (Surah an-Nahl ayah 44). How do we determine what the Prophet (sAas) has ordered, in order to obey it?

How do we find out what he judged in disputes so that we can abide by it?

How do we know what he has decided on matters, so that we can submit to it?

How do we discover what he has given, so that we can take it, or what he has prohibited, so we can abstain from it?

How do we learn how he has explained the Quran, so that we can follow that explanation and not other explanations?

The answer to all these questions is that we look at the Sunna. The Sunna is the Quran put into action by the Prophet (sAas). It shows what

"Why Should I Wear Hijab?"

Introduction

This article is intended for my Muslim sisters who don't wear hijab and are not sure they want to. Sisters who have already decided to wear hijab but are nervous about actually doing it should read my article Tips for Beginning to Wear Hijab instead.

Islam: Submitting our will to the will of Allah SWT

The Arabic word islam simply means "surrender (to Allah)". The essence of our religion is this surrender or submission. It requires trust on our part. Trust that Allah SWT will be there for us, trust that He knows what is best for us.

Submission to Allah SWT requires that we put Him before ourselves. That we put our desires second to His desire for us. That we acknowledge that He knows better than we do what is right for us.

Very often, such submission is difficult. Sometimes it seems that everything that happens is bad, and we wonder how Allah SWT could desire this for us. And sometimes the things He asks of us are difficult to do, either because it seems too much to ask, or because it seems pointless or out of date. In times like this, submission becomes a struggle. We really have to work to find our trust in Allah SWT. We really have to do battle with our souls to admit that what we want or what we think doesn't seem to be what's right or best. Should we bother?

For me, the answer is yes, we should bother. Allah SWT tests us. He sends difficulties our way to see how we cope. He wants to see if we will keep trying even when it's a challenge. He wants to see if we will maintain our faith in Him, and trust in Him. If we do continue to have faith and to trust in Him, then He may reward us with Jannah for our sabr, inshallah. And Jannah is the everlasting reward. Any difficulty we face in the world will seem as fleeting as a nightmare when we look back from the Hereafter, and any ease we face in the world will also seem as fleeting as a dream. We shouldn't set these fleeting states as our goal; we should set the ultimate happiness as our goal. And the ultimate happiness is Jannah.

So if we have hope of Jannah, we should persevere even when it's a struggle for us, and we should keep on trying to perfect our submission to Allah SWT. This is what the religion is about: sabr, jihad, and islam.

Quran and Sunna: The way that Allah SWT has commanded

I mentioned above that part of Islam is trusting that Allah SWT knows what is best for us, and it is submitting to His judgment even if we don't think we agree. If Allah SWT has commanded something that we don't understand or don't like, we shouldn't reject that thing. Instead, we

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the legal documentation of Islamic financial products in Malaysia. They reported that hitherto in Malaysia, cases involving Islamic banking and finance have not tested the fundamental basis of Islamic contracts; instead, they are concerned with procedural law. As a result, under the current regime it is immaterial whether a contract is shari'a - based, since the applicable law and principles are identical to what governs conventional banking.

The forum was concluded by S. Nazim Ali, Director of IFP, who thanked the faculty, staff, and volunteers for their help in organizing the Forum. Special recognition was accorded IFP sponsors—First Islamic Investment Bank, Kuwait Finance House, Citi Islamic Investment Bank, and HSBC Amanah Finance - for their vision and support for the continued existence of Islamic finance activity at Harvard. Ali closed by reporting that a collection of papers presented at the conference would be published in the Proceedings of the Sixth Harvard University Forum on Islamic Finance.

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May Allah give you every Success.

(From: Editorial Board Majallah Fiqh-e-Islami)

کسی سر زمین پر ایک حد کے نفاذ کی برکت وہاں چالیس روز نماز ہونے والی بارش کی برکت سے بھر ہے
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Dr. M. Fahim Khan and Dr. Layachi Feddad of the Islamic Research and Training Institute at the IDB then discussed the need for standards for shari'a supervision and shari'a boards in the context of corporate governance. They emphasized the necessity of codifying the fiqh (Islamic law) diversity for Islamic finance as well as standardizing the application of the shari'a in the industry. They also proposed establishing an Islamic Organization of Standards of Shari'a, an Association of Research and Management for Shari'a Application in the Islamic Finance Industry, or simply an Association of Shari'a Experts for the Islamic Finance Industry.

Acting as moderator, Professor Vogel proposed a range of workshops and seminars for the future to enhance understanding of Islamic finance. He indicated that Harvard, a relatively isolated and therefore neutral locale, could be a forum of philosophical and academic debates. Vogel suggested that a debate in which premises Islamic and non-Islamic were placed at the same level, and in which there is a dialogue between traditional and more modernist interpretations of Islam, would increase scholarship in Islamic finance. He said he would like to see a Forum session in which arguments would be put forward and ijihad (legal reasoning) would be undertaken solely on the basis of the arguments presented, without being subject to the structure of authority. If the industry has matured, which it has, it is time for a self-critique and self-assessment. Vogel said that in such a debate, the only protocol to be followed would be an academic one. He pointed to some of the issues that had been raised at the Forum—form vs. substance, and the micro vs. macro focus of the industry—as potentially forming the topics for the debate he proposed.

The last session of the conference covered corporate governance in Islamic financial institutions and was moderated by a noted Islamic economist Dr. M. Nejatullah Siddiqi. K. Salman Younis of Kuwait Finance House discussed the importance of risk management by Islamic banks. He observed that market and stakeholder dynamics pose a challenge to strengthening the risk management infrastructure of Islamic financial institutions. Dr. Ibrahim Warde of MIT spoke on corporate governance and the Islamic moral hazard, suggesting that a better understanding of the Islamic moral hazard, common standards and norms, and increased due diligence would help deal with it. Following that examining corporate governance for public and private companies from Islamic and non-Islamic perspectives Dr. A. Rushdi Siddiqui maintained that effective corporate governance would reduce costs, lift profits, and attract better human assets toward Islamic financial institutions. Saiful A. Rosly, M.M. Sanusi, and N.M. Yasin from the International Islamic University Malaysia presented a study on

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estate agent, briefed participants on the regulatory framework of Germany and opportunities and methods there for structuring shari'a - compliant financial products. M. Kabir Hassan and M.A. Mannan Chowdhury of the University of New Orleans discussed Islamic banking regulation in light of Basel II in detail. They argued that in light of increased financial innovation and the diversity of instruments offered in Islamic finance, improving the transparency of operations is particularly relevant for Islamic banks. Effective transparency in this area would greatly enhance the credibility of Islamic banks and boost the confidence of depositors and investors.

The second session of the second day, entitled "Revisiting Shari'a Issues" and moderated by Professor Vogel, generated the most debate, and it was here that the discussion of form vs. substance reappeared. Professor Mahmoud El-Gamal of Rice University led off by speaking about the limits of shari'a arbitrage and the unrealized potential of Islamic finance, questioning how "Islamic" Islamic banking truly is. He also questioned the alleged layering of products offered by Islamic banks. El-Gamal argued that financial institutions could avoid riba and gharar through mutualization and prudential regulation of investments through community-based mutual-banking and risk-sharing institutions, which would be development-oriented and not a "trade" (parallel-salam fatwa). His presentation sparked a very lively discussion in which participants discussed the validity of the argument that Islamic banking is merely layering and vulnerable, more so than its conventional counterpart, to money laundering. His suggestion of utilizing a logical analogy instead of a juristic analogy, in the economic analysis of law to meet the social objectives of Islam, also sparked heated debate.

Next, Nizam Yaquby, the shari'a scholar, analyzing tawarruq, another hot topic in Islamic finance, explained that in such a transaction, the buyer is obligated to make deferred payment, while the end purchaser is an independent third party. According to him, a majority of jurists permit tawarruq, in its simplest form. Their argument is based on the ruling for buying and selling, since tawarruq is but a mechanism for acquiring cash that involves two sale contracts.

Abdulkader S. Thomas who read the paper of Yusuf Talal Doleranzao, drew the attention to classical works which remain unexplored from an Islamic finance point of view. He said that the scholarship on Islamic finance has focused on standard works of classical jurisprudence that deal with commercial transactions. He expanded on the theme of how scholarship on works from the classical period may contribute in significant ways to our understanding of finance from the perspective of Shari'a and, in turn, to the development of modern Islamic finance.

☆ الاجتهاد لا ینقض بالاجتهاد ☆ اجتهاد اجتهاد کے ساتھ باطل نہیں ہوگا ☆

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He observed that although regulators would bear in mind the functioning of Islamic banks and the creation of a level playing field for Islamic banks vis-à-vis conventional banks, Islamic banks need to consider separating their demand and investment deposits in order to reduce risk. Tarik Dahir of Columbia Business School analyzed shari'a-compliant hedge funds, arguing that the Islamic financial industry would soon look into hedge funds given the industry's need for medium-term investment vehicles and the received wisdom of portfolio diversification, higher returns, and an ability to profit in bull and bear markets alike. Abu Umar Faruq Ahmad of the University of Western Sydney shared insights into the legal and regulatory issues facing Islamic banks in Bangladesh. He reported that Islamic banks in Bangladesh face legal constraints that limit their ability to compete with conventional banks and suggested that Islamic banks have their own banking acts to provide proper legal support.

Speaking at the banquet, Dr. Nurcholish Madjid, Rector of Universitas Paramadina in Indonesia, elaborated on the social sciences of Islamic finance. He suggested that experimentation with Islamic banking based on the shari'a would allow Muslims to again offer productive solutions to contemporary economic predicaments and thereby benefit humanity as a whole.

The second day of the Forum was as exciting and rewarding as the first. Professor Samuel L. Hayes from Harvard Business School said in introductory remarks that he sensed, from the discussions at the Forum, that it is important in Islamic finance that investments be in line with the social and ethical teachings of Islam. Moreover, he emphasized the need for greater harmonization with the prevailing financial system. Ahmad Jachi, First Vice Governor of the Central Bank of Lebanon, discussed the Lebanese experience with Islamic banking, noting that Lebanon started without a clue as to what Islamic banking was.

The first session of the day, moderated by Professor Hayes, was on "Financing, Regulatory and Contractual Issues in Islamic Finance." Nicholas Foster of the University of London explored the concept of owing and owning in Islamic and western law within the general area of property rights. Dr. M. Imran Usmani of Meezan Bank discussed the treasury operations of Islamic banks, stressing the need for greater interaction between shari'a scholars and finance professionals in order to develop smooth and practicable shari'a-compliant systems and procedures. Rafe Haneef of HSBC Amanah Finance examined the key products currently available in the Islamic financial market. He further explored the reasons behind the lack of solutions in the Islamic finance industry based on profit sharing. Michael Gassner, an international real

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The second session of the day, "Legal Trends and New Challenges," was moderated by Professor Frank Vogel and covered the legal developments occurring in the field. Kilian Bälz of Gleiss Lutz explained that when drafting shari'a -compliant agreements, the reference to the shari'a in the agreement should be specific enough for a court in a non-Islamic environment to enforce it. Husam El-Khatib of the Royal Bank of Scotland proposed that Islamic banks set up a permanent court of arbitration in order to provide flexibility and transparency and interface easily with existing regulatory and financial intuitions. Michael McMillen of King & Spalding discussed the issue of structuring securitized shari'a -compliant real estate acquisition financing in the light of a deal in South Korea.

Several papers, questions, and discussions in this session and in those following it revolved around the question of form vs. substance. If an instrument resembles the risk and reward profile of a conventional instrument, how really "Islamic" is it? On the other hand, if all the components of a financial product are independently permissible, how could the combination of these components be considered impermissible? Umar F. Moghul of Ahmed & Moghul said that following the letter of the law does not necessarily imply following its purposes/rationale, whereas fulfilling the purposes/rationale may necessitate departure from old modes or forms.

These sessions were followed by two parallel sessions on graduate research. The first session was moderated by Dr. Ibrahim Warde of MIT. Walid Hegazy spoke about fatwas (Islamic legal opinions) and the fate of contemporary Islamic finance.

Hegazy's paper was followed by a presentation on Islamic banking and the politics of international financial harmonization by Kristin Smith of Harvard University. Nicolas Hardy of Ecole des Hautes Études en Sciences Sociales then discussed the role of shari'a scholars as a gateway between legal systems, and Islamic banking as an example of legal pluralism. Abdur-Rahman Syed of the University of Chicago delved into how the philosophical justification of Islamic finance is made by its proponents and providers.

Dr. M. Fahim Khan of IDB moderated the other parallel session on graduate research. Aamir Rehman of Harvard Business School discussed the establishment of shari'a -compliant endowments in the United States. He observed that service providers targeting Islamic endowments need to cultivate endowment clients, focus on services, develop multiple revenue streams from single clients, and recognize positive externalities. Mansoor Shakil of Harvard Law School analyzed the risks facing Islamic banks and the impact of Basel II on their future.

☆ لا اجتہاد عند ظہور النص ☆ نص کی موجودگی سے اجتہاد جائز نہیں ☆

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developments in the field such as the work of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB).

In his Keynote Address, John B. Taylor, Under Secretary for International Affairs at the U.S. Treasury, spoke on "Understanding and Supporting Islamic Finance: Product Differentiation and International Standards." He stated that as with conventional financing, Islamic financing will benefit from transparency, good governance, and an internationally accepted regulatory framework. He said that in order to understand Islamic finance better, the U.S. Treasury has developed a Scholar in Residence program.

The President of the Islamic Development Bank (IDB), Dr. Ahmad Mohamed Ali, delivered the Sixth Forum Address on "Development of the Islamic Financial Industry and the Need for Regulation and Supervision." He emphasized that effective supervision is a must for Islamic financial institutions. He commended the work done by IFSB and AAOIFI, among the many organizations working to develop the required paraphernalia of the Islamic banking industry. He pointed out that the infrastructure required for an efficient Islamic financial industry is by no means complete and that IDB will continue supporting capacity building for regulation and supervision of the Islamic financial industry.

These three introductory speeches were followed by the lead session, on "Regulatory Challenges to Islamic Finance," moderated by Professor Samuel L. Hayes of the Harvard Business School. Usman Ahmed of Citibank spoke about the legal and regulatory challenges facing the sukuk market. He said that sukuk bond is essentially an "interest-free" variant of a conventional bond that is structured to comply with Islamic investment principles. Abdulkader S. Thomas of Shape Financial spoke about the problems facing Islamic banks in the U.S. He observed that following the event of September 11th, there is much skepticism about Islamic finance, and Islamic banks such as Amana and Khazana have been discouraged from applying for licenses. Dr. M. Nejatullah Siddiqi, a distinguished researcher of Islamic economics, analyzing the tension between ethics and efficiency vis-à-vis the maqasid (objectives) of Islamic law and its juristic derivations he suggested that economists/social scientists should be involved in debates about what are currently purely legal/juristic issues. Finally, Pervez Said of the State Bank of Pakistan briefed participants about the market-based regulatory framework for the Islamic banking industry in Pakistan. He noted that this framework is comparable with and parallel to the existing system for regulating financial services in which users determine the pace and scope of change.

☆ الفقہ حقیقہ الفتح والشرح ☆ فقہ کے معنی ہیں کھولنا اور بیان کرنا ☆

Reports on the Sixth Harvard University Forum on Islamic Finance

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The Sixth Harvard University Forum on Islamic Finance was held in May 8-9, 2004, at Harvard University, Cambridge, Massachusetts (USA).

The Forum is organized annually by Harvard Islamic Finance Information Program (HIFIP). The title of the forum for this year was "Islamic Finance: Current Legal and Regulatory Issues".

The Forum had an international flavor with participant from as far places as Indonesia, Malaysia, Australia, the Middle East and Europe. Participants at the forum were comprised of many finance industry representatives, university professors and graduates as well as the Central Banks of some countries. There were also a number of experts in Islamic Economics and Finance, like Dr. Ibrahim Warde, Dr. M. Nejatullah Siddiqi, Shaikh Nizam Yaquby, Dr. Mahmoud El-Gamal, and Dr. Frank E. Vogel. Many other participants were simply looking to educate themselves about the principles of Islamic finance and the current legal and regulatory issues pertaining to Islamic banks and financial institutions over the globe.

Overall the Forum was more of an opportunity for those interested in the field of Islamic finance to meet each other, network and present some of their latest Islamically approved financial instruments and contracts. The Forum had a few research papers but many case studies. Most of the presentations and panel discussions focused on the current legal and regulatory issues of the Islamic finance industry, challenges facing the development of new financial instruments, effectively marketing and delivering products to end users and the areas where the application of ijtiḥād is most needed and promising. The participants also discussed the need to develop the relevant financial institutions to strengthen the stability and performance of the providers of Islamic financial services.

In the first day of the Forum, Professor Frank Vogel of Harvard Law School in his Forum Chair's Welcome address stressed the importance of the fast-growing field of Islamic finance. He cited inter alia the