



Evaluation and Critique of the Arguments Supporting the Individual Nature of Hijab

■ Mohsen Malek Afzali Ardakani¹

■ Fatemeh Fallah²

Abstract

Hijab is a religious ruling the obligation of which is based on numerous jurisprudential sources and arguments. Some people say that hijab is an individual issue, not a social one; therefore, basically, it is not included in the circle of government and even other people's interference. This article deals with this important and key debate in the field of responsibility of the Islamic government and proves its social nature by criticizing the arguments of those who say that the hijab is an individual issue. These arguments are divided into two main categories jurisprudential-legal and Quranic arguments, and in this article, in addition to appropriate answers to each argument, the jurisprudential aspect of the issue is also analyzed. Of course, the social nature of hijab, chastity, and the duty of the Islamic government to protect and promote it, does not mean that the government should use force and judicial and penal measures for this purpose; rather, based on arguments from the jurisprudence, the government is obliged to adopt the best ways of invitation to establish this good practice.

Keywords: Hijab, Privacy, Devotional nature of hijab, Right of hijab, Social nature of hijab

1. Associate Professor, al-Mustafa International University.
mohsenmalekafzali@yahoo.com

2. PhD Candidate of Fiqh and Fundamentals of Islamic Law, University of Qom.
(Corresponding author)

Introduction

Hijab is a Quranic order whose obligation cannot be denied, and if a person intentionally abandons this obligation, he will be punished in the hereafter like other sins. The point of dispute is that some have said that although hijab is one of the essential rulings of religion, it is an individual obligation that every Muslim is obliged to observe; and since it is a personal matter, the government has no right to intervene in it by setting restrictive laws and creating enforcement guarantee, such as *ta'zirs* [discretionary punishments]; (Muhaqqiq Damād, 1380 SH, 1/78; Ayāzī, 1387 SH, 1/330) In his writing, this theory assumes that hijab is an individual matter, not a social one; which is basically not included in the scope of government's and even other people's interference; and because it is subject to individuals' will and desire, no legal enforcement can be considered for it by others.

Given this, the most important discussion to study the government's responsibility concerning hijab and public modesty is to determine whether this ruling is an individual ruling of Islam or a social ruling; because, based on the arguments of those who consider it an individual issue, by establishing its individual nature, the government's responsibility is automatically eliminated and there is no reason for its enforcement. Therefore, what is important is to analyze the arguments of those who say the hijab is individual and to review it. It should be mentioned that since hijab is the category of cultural obligation, it lies at the intersection of thought and emotion. In critiques and evaluations, this element has also been considered, and both theoretically and practically, it is not possible to address and critique perspectives solely through jurisprudential views.

Hence, the arguments for the individual nature of hijab are divided into two main categories: jurisprudential-legal and Quranic arguments. In this article, in addition to giving appropriate responses to each argument, the jurisprudential aspect of the issue is analyzed.

Jurisprudential-legal Arguments

Hijab as an example of personal privacy

The discussion of the individual or social nature of this ruling

has an inseparable connection with the concept of 'personal privacy'. In addition, in the definition of personal privacy, it is stated: "*Personal privacy is a realm of every human being's life, in which he enjoys freedom from prosecution and legal punishment, and any decision about it, as well as information, entry and monitoring of it, is exclusively in his authority and it is not allowed for others to interfere in it or access it without his permission.*" (Eskandari, 1389 SH, 157) Privacy can be examined in four separate but related areas:

- 1- Territorial privacy
- 2- Informational privacy
- 3- Communicational privacy
- 4- Physical privacy

Given this, it can be seen that those who support the individual nature of hijab, actually mean being committed to the requirements of personal privacy. This idea can be expressed in the following two manifestations:

Hijab as a manifestation of informational privacy: According to the examples of personal privacy, it may be possible to consider hijab as a part of informational privacy; because it is among personal beliefs, and according to the concept of 'freedom of belief', no one can be bound to a particular belief; and no one has the right to interfere or impose, be it the government or other people. Sometimes, to support this statement, they refer to articles 18 and 19 of the Declaration of Human Rights, which is related to freedom of thought, conscience, and religion, and it states that no one has any right to interfere with the expression of belief by another.¹ Of course also in article 23 of the Constitution of the Islamic Republic of Iran, ideological persecution has been prohibited.²

1. Article 18: Everyone has the right to enjoy the freedom of thought, conscience and religion. This right includes the freedom to change religion or belief as well as the freedom to express one's religion or belief in the form of education, performing rituals, praying and performing rituals either alone or collectively. Article 19: Everyone has the right to freedom of belief and expression. This right includes the freedom to hold a belief without interference and the freedom to search, receive and transmit information and beliefs through any type of media regardless of borders. (Approved: December 10, 1948)

². Ideological persecution is prohibited and no one can be assaulted or impeached for having a belief.

Review and Analysis

Regarding the above comment, the following points can be considered:

First: The usage of hijab or otherwise, according to the definition of informational privacy, which is also interpreted as data protection, is not one of the manifestations of personal privacy, because it is stated in its definition thus: "*Boundaries that include the rules governing the processing of data¹ and information related to individuals².*"

Second: On the premise of accepting hijab as an example of this privacy, one should know the difference between thought and belief: "The meaning of belief is a thought that has become deep and its owner has faith in that thought. In other words, he has accepted it as a reality; while a thought is a mere idea, which may be changed anytime, and its owner admits the possibility and probability of changing it if a better idea is presented." (Qāsimī Siyani, 1385 SH, 1/325) In other words, a thought is based on reason, knowledge, and proof; because, its owner is still in the research phase, but a belief sometimes uses this thought-oriented premise and follows the reality, and sometimes it is proved by imitation, pseudo-reasoning, prejudice, and maybe obstinacy and stubbornness, and so, likely, wrong belief cause the captivity of people and departure from the path of humanity, and these chains should be removed from humans' hands and feet; like a doctor who takes away the freedom of a person who enjoys itching his body and treats him. (Mutahhari, 1383 SH, 26/356) Therefore, it should be checked whether a person's disbelief in hijab is a correct belief or based on imitation or being under the influence or lack of knowledge, etc., in which case the grounds for informing the person should be provided.

Third: On the premise of accepting this matter that lack of hijab is a belief based on reason, it should be known that having or not having belief in hijab is different from expressing this opinion; and the system that has emerged based on religion and belief in

1 . Processing means any acquisition, maintenance, organization, storage, any modification, replacement, use, disclosure, transfer, publication and similar actions regarding data.

2. For more information, see: Ḥamīd Shahriyāri, "Ḥarīm-e khoṣūṣī va jāmi'eh-ye ittilā'at", Pazhuhesh-ha-ye falsafi-kalāmi, Year 8, Issues no. 3 & 4.

God and the supernatural world, and its government is Islamic, must also observe Islamic laws, and there should be no display of unlawful things in the Islamic society. Even in the case of religious minorities who live in an Islamic country, one of the conditions is not to display what is considered unlawful in Islam. (Muḥaqqiq Ḥilli, 1/252; Ibn Fahd al-Ḥilli, 1411 AH, 2/308; Shahid Thāni, 1414 AH, 3/74; al-Najafi, 21/265; Khomeini, 1379 SH, 2/501)

Fourth: On the premise of accepting the freedom of expression of belief for everyone, it should be noted that this right conflicts with the right to benefit from an appropriate religious environment, which is one of the branches of the right to religion. The right to benefit from a conducive religious atmosphere is a certain matter approved in Islamic jurisprudence, and Islam sometimes sets regulations to ensure this right. For example, if someone openly breaks fast during the holy month of Ramadan, he will be punished. Also, during the hajj, special security regulations have been established for performing this divine duty, including the prohibition of carrying weapons, etc., so that Muslims can perform their hajj well. Considering this right and the fact that in an Islamic society where the majority are Muslims and must adhere to Islamic laws, if someone ignores the obligatory rule of hijab and publicly makes the environment un-Islamic, the public right takes precedence over individual rights; because, in all legal schools of thought, in the conflict between the rights of the individual and the interests of the society, public interest takes precedence over personal interests and, in a sense, it takes precedence over the personal privacy of an individual.

Hijab as an example of physical privacy: According to some individuals, hijab is related to physical privacy; because it is related to the type of clothes: “This is among issues related to physical privacy as well”; “What is mentioned in article 22 of the Constitution [of the Islamic Republic of Iran] as the physical integrity of individuals; also includes the manner of covering; i.e., privacy related to physical integrity includes the type of clothing people wear. Since 1921, we have witnessed and observed government interference in privacy with regards to physical integrity in 2 cases”, referring to the one related to Reza Khan’s era, when they forcibly removed hijab, and therefore he says,

“This is a violation of personal privacy”; and considers the second case in 1998 when “the police interfered in the privacy of the physical integrity of the people and shaved off men’s long hair and forced them to observe hijab.” (Quoted from Soroush Mahallati, meeting, 2010)

Review and Analysis

First: What the public conscience affirms is that clothing does not only have a personal aspect of covering the body, so that it stays warm in the winter or does not become discomforted in the heat of the summer; rather, it also has a social and external aspect, and a person changes the type of clothing according to the place where he goes; but, to what extent will the interference of the public aspect in this issue be. This is the beginning of the discussion that some people believe in the government’s interference in this issue and some do not, and the question is whether it is possible to ignore these effects.

Second: In the definition of this type of privacy, it is mentioned: “physical privacy is about protecting physical integrity and information related to human health.” (Nūrī & Nakhjavāni, 1383 SH, 35) According to this definition, different examples can be mentioned for this type such as any kind of inspection, physical examination, medical examinations, and tests; disclosure of information resulting from such actions; personal information related to physical and mental health; genetic and hereditary characteristics as well as personal-sexual information; and this type of privacy seemingly implies that not any type of covering can be considered as an example of this type of privacy.

Third: If we consider the type of covering to be a part of privacy, and in general, if an issue is a part of privacy, then this right of individuals is not absolute, and according to intellectual¹

1. The judgment of reason is the necessity of choosing the more important and sacrificing the less important in the conflict between them; meaning that, the judgment of common sense is upon the necessity of choosing the more important when there is an option between the more important and the less important.

and narrative¹ evidence, as well as the laws of Iran² and international societies³, it can be violated in some cases, specific conditions and within specific limits.

In addition to the above point, if hijab is considered a 100% private issue, it is still within the jurisdiction of the government, because crimes such as adultery, which may be committed in privacy and with the consent of the two parties, if proven before the authority, the right to punish the perpetrator exists for the authority, while in this case, a private and individual crime has occurred in a private place. Of course, this issue is not limited to Islamic society and authority, and governments in other societies too allow themselves to intrude into personal privacy, such as the use of drugs or psychoactive pills in privacy, the use of safety equipment while working, wearing seat belts while driving, different insurances, etc. (Ghulami, 1391 SH, 334)

Hijab as a right for women

Sometimes, it is thought that covering is considered an individual right for a man or a woman; and since it is their right and according to the revocability of the right (Khomeini, 1379 SH, 1/27), they can revoke this right or exploit it in any other way they wish.

Review and Analysis:

In criticizing the above statement, it is necessary to pay attention to the following points:

First Point: Islamic law is based on the will of the Legislator, Who is the Creator and Most Wise and has not created man in vain; and the will of the Legislator is based on the fact that wherever there is a right, there is also an obligation. (Miṣbāḥ

1. Verse 12 of Quran 49 “indeed some suspicions are sins” implies the permission of some conjectures while verse 148 of Quran 4 implies the permission to expose the oppressor “Allah does not like the disclosure of [anyone’s] evil [conduct] in speech except by someone who has been wronged, and Allah is all-hearing, all-knowing”; and among the narrations of the Infallibles (PBUT), there are hadiths implying the permission of investigation (Ahmadi Miyanji, 137; hadiths implying the permission of backbiting, Reyshahri, 7/3094).

2. Articles 14, 22, 24, 25, 142 of the Constitution; Articles 582, 648 and 606 of the Islamic Penal Code; Articles 96, 67 and 106 of the Criminal Procedure Law; Press Law.

3. For information on related legal articles of other countries, see: Ja’far Kousha. (1381 Sh). Jarā’im ‘alayh-e ‘Idālat-e Qaḍā’ei (First edition). Tehran: Mizan, pp. 19 onwards.

Yazdī, 1388 SH, 1/153; Javādi Āmoli, 1388 SH, 257) A deep and unbiased look at the Verses of hijab also clearly shows that hijab, in addition to being a personal right and obligation of Muslim women, has a stronger obligatory aspect. The religious society also has an obligation toward this right; and of course, the reasons for the obligation of covering and *hijab*, mentioned in these verses, confirms this matter. (Quran 33:59)

Second Point: It should be known that the right to wear a hijab does not mean that it can be removed; rather, it means that no one else, including the government and non-government, cannot order not to have it. This right is like the right to life, which no one can violate; while the owners of the right cannot renounce this right for themselves either and such action will not have legal legitimacy. (Hikmatnia, 1390 SH, 326)

Third point: Even if it can be accepted that covering is a woman's right; but, the hijab in its Islamic sense is not at all among the rights of a woman to renounce, and it is among divine rights. That is because when the Glorious Quran recounts the necessity of hijab, it states the reason and justification of the necessity of hijab as follows: *"that makes it likely for them to be recognized and not be troubled,"* because they are the embodiment of sanctity and chastity of the society and they are respected. (Javādi Āmoli, 1388 SH, 438)

Javādi Āmoli writes in this regard: *"... A woman's protection is the right of God and has nothing to do with anyone... A woman is considered as the guardian of God's right according to the Quran; that is, God Almighty has given this position, honor and dignity to a woman, which is her right, and said: 'Keep this right of Mine as a trust.'"* (Ibid, 438)

Elsewhere, he writes: *"The explanation of hijab in the view of the glorious Quran is that a woman must fully understand that her hijab is not only about her, so that she can say, 'I renounce my right'. A woman's hijab does not belong to the man [husband], so that he can say, 'I am fine'. A woman's hijab is not related to the family so that the family members give their consent. A woman's hijab is a divine right."* (Ibid, 437)

Hijab as an act of worship

Some believe that since hijab is a part of devotional and

individual rulings; it is a purely personal duty, not a social issue; and the religious government does not have the right to obligate devotional practices and duties; because, acts of worship depend on the intention of gaining proximity to God, and such an intention must be made out of heartfelt belief. A hijab is an act of worship that requires the intention of gaining proximity to God. (Ayāzī, 1387 SH, 1:356)

In addition, it has been said: “hijab is volitional and optional, and no punishment has been set for those who do not observe hijab, and it is only a sin that can only be held accountable by God.” (Neshat Newspaper, 07/06/1999, 3)

Review and Analysis

This reason itself consists of several issues, each of which will be reviewed separately.

First: Hijab is a devotional act, so it is considered individual, not social. Second: since hijab is devotional, it requires the intention of gaining proximity to God, therefore, no one can be forced to wear it, and this shows the individual nature of the issue, not its social nature.

The criticism about the first statement is that, firstly, only certain actions that include worship will be titled as acts of worship, and hijab is certainly not among such acts. Secondly, if we consider hijab among non-devotional acts for gaining proximity to God, then this issue must be resolved as to whether any action that requires the intention of gaining proximity to God is individual in nature or there is no concomitance between the two.

By referring to different chapters in Islamic Jurisprudence, we find that some acts of worship such as *Khums* and *Zakat* have both individual and social aspects, and perhaps the social aspect of these acts prevails over their individual aspect; and even some acts of worship, such as daily ritual prayer and hajj, which are considered individual acts of worship, are also connected with social and political issues and worldly affairs; as Imam Khomeini believed: “*They also have social and political dimensions linked to worldly life and living.*” (Khomeini, 1379 SH, 2/617) Therefore, there is no similar relationship between the act intended for gaining proximity to God and individual action, and these are not correlative, and at

most, a relationship of partial synonymy can be imagined between them¹.

In criticizing the second statement, it should be said that performing non-devotional obligations does not mean non-devotional action, and any time it is done to gain proximity and obedience to God, it is considered an action to gain proximity to God. Thus, how and to what extent a religious government can oblige its citizens to do something depends on the acceptance of the obligation itself which is possible according to logical and textual evidence.

However, the more fundamental response is that, in Islam, observing hijab is not conditional to having the intention of gaining proximity to God. No jurists have made the observance of hijab conditional on the intention of gaining proximity to God. The jurists have concluded that a woman must cover her body and hair, except her face and hands, from non-*mahram* men. (Bani Hāshimi Khomeini, 1391 SH, 2/488) Therefore, *hijab* is not among the actions to be done to gain proximity to God, and the basis above-mentioned evidence is incorrect.

Absence of Punishment in Early Islam

It has been said that “regarding *hijab*, not only is there no evidence that it is governmental, but there are no cases in Shiite history where a woman has been punished for not observing *hijab*.” Whereas things which violation entails punishment are documented is mentioned in the books of hadiths, but regarding *hijab*, not only that we not have a narration, but many hadiths leave the obligation of women to observe *hijab* and [also] their failure [in abandoning *hijab*] to their husbands, not to the government. Even the punishment of not wearing *hijab* as a discretionary punishment [Ta‘zir] has no history. The rulings related to *hijab*, like daily ritual prayer and fasting, and not like

1. It should be noted that some worships, such as the daily ritual prayers are carried out with the intention to gain proximity to God and likewise, they are individual in nature while and some others, such as purification of clothes are not done to gain proximity to God and they individual in nature. Some worships, such as *zakat* and *khums* are carried out with the intention of gaining proximity to God and likewise social in nature. Some others such as, enjoining good and forbidding evil are not done with intention of gaining proximity to God but they are social in nature.

legal rulings, have no enforcement guarantee of social implementation.” (Şadr, 1382 SH, 16/103) *“In none of the historical texts either has there been any action [against lack of hijab] reported by the Islamic government or by an Infallible Imam (‘a.s). Thus, it is a completely private issue that the government has no right to interfere.”* (Ayāzī, 1387 SH, 1/325-368; Maftāḥ, 1387 SH, 1/325-295) This statement considers two issues to be interconnected: the absence of punishment for abandoning the hijab in early Islam and the social nature of certain matters. It implies that whenever an issue becomes purely individual, its abandonment will not warrant punishment.

Review and Analysis

In response to the above statement, first, it should be said that the existence of a historical report or lack of it is not considered jurisprudential evidence; because the jurist, after obtaining convincing verbal evidence, never waits for a historical document for the execution of a ruling, because never all social activities have been supposed to be recorded in historical documents! (Zibainejad, 1387 SH, 30)

In addition, if it is claimed that this issue is raised as the common conduct of religious people, which is one of the genuine sources of Islamic jurisprudence, and because there was no such practice at the time of the Prophet (PBUHH) and Imams (‘a.s), then it can be inferred that *hijab* is not a social matter and the government does not have the right to interfere in it. In response, it should be said that first of all, custom is among non-verbal evidence that must be acted upon just like convincing evidence, but it cannot be generally applied like verbal evidence. With this description, if we accept that in early Islam, the phenomenon of not wearing the *hijab* was not treated as prohibited, the only conclusion is the unnecessary of the intervention of the government, not its impermissibility. Similarly, if the historical reports showed the Infallibles’ compromise regarding the execution of the ruling of hijab, it could be considered as evidence along with other evidence, and such an issue is not proven and can be refuted with narrative evidence.

Secondly, what can be observed in reality is that historical reports indicate the sensitivities of the Infallibles (‘a.s) and the

Islamic society about this phenomenon. For example, the noble Prophet (PBUHH) in a decree addressed to ‘Amr ibn Hazm, who was appointed as the governor of Najran, *"This is a word from God and His Messenger... and prohibit people from wearing short clothes that expose their private parts and forbid anyone from piling their hair behind their heads..."* (Al-Ḥamīrī 4/1015; Miyānjī, 1419 AH, 2/527)

In addition, Imam Ali (‘a.s) said to the people of Iraq during his caliphate as the ruler: *"Do you not feel ashamed and feel responsible that your women go to markets and shops and talk to faithless people?"* (Kulaynī, 1429 AH, 11/232)¹

Thirdly, it seems that there is no connection between the individual nature of an action and not setting punishment for it in the early period of Islam; because, to determine punishment for an act, there are certain stipulated criteria, not its individual or social nature. Some punishments in Islam are in the four areas of *hudud* (prescribed punishments), *Qisas* (retribution), *Diyyat* (blood money), and *Ta'zirat* (discretionary punishments), and the criterion for the criminalization of an action is different in each part, and in none of them, there is a concomitance between individual nature of an action and the punishment. For example, the crime of adultery or the use of drugs and psychotropic substances is considered an individual crime, however, a punishment has been determined for it. Therefore, the basis of the above argument is not correct. Having said that, if it is claimed that because Islam has not set a penalty for not wearing *hijab*, then there should not be a penalty for it now. This is another claim that considers specification and clarification in Islamic jurisprudence as the criterion for the criminalization of action, and it is clear that this issue has nothing to do with the individual or social nature of a ruling.

Fourthly, the point that is noteworthy in the discussion of the criminalization of not observing *hijab* is the attention to the elements of time and place. In the last few decades, the idea of

1. It should be noted that referring to the option of punishment in this section does not mean the government's limitation to this option in dealing with vices such as not observing *hijab*, but according to what is mentioned in hadiths, the government has the duty of educating the public in addition to the duties of enforcing prescribed punishments.

maximum interference of governments in economic, cultural, and social affairs has been raised, while in the past, many interventions were carried out by families, clans, and people, and the government played the role of a general observer and guide and intervener in just a few cases. In the past societies, the governments were often small and the police forces were formed by a small number who were responsible for dealing with insecurity, responding to pleas, and enforcing prescribed punishments; and not necessarily because the government saw itself disallowed from dealing with any sin or crime, but because the people acted themselves and the government did not see the need to intervene in any matter. Therefore, the lack of government intervention in matters such as maintaining *hijab* will not mean that modern governments, which consider themselves in the position of intervention in many matters, do not have the right to interfere in matters such as *hijab*. (Zibainejad, 1387 SH, 31)

It is clear that the government's intervention in social affairs does not always mean violent and judicial actions such as considering punishment or enforcing it. Rather, it can be said that there is a concomitance between the promotion of cultural issues, including *hijab* and chastity, and cultural and rational measures in this regard.

Quranic evidences

Not Clearly mentioning it as having a Social nature

Qāsim Amin was an Arab Muslim theorist who studied in Paris. His studies in France had a special influence on him. Qāsim Amin first wrote the book titled "*Tahrir al-Mar'at*" [The Liberation of Women], and after that, he responded to the criticisms made against him in the book "*al-Mar'at al-'asriyya*" [The Modern Women] or "*al-Mar'a al-jadida*".¹ He considered the issue of *hijab* as an obstacle to the growth and progress of women and believed that *hijab* is an individual matter. In this regard, he writes: "*If there is a prohibition in religious texts that indicates the obligation of hijab, it is definitely not a proof that it is social,*

1. For more information, see: Rasul Ja'farian, "*Mas'aleh-ye Hijab va Ta'sir-e Andisheh-ha-ye Qāsim Amin-e Mişrī dar Iran*", A'ineh-ye Pazhuhesh Journal, No. 70, 1380 SH.

because there is nothing in the Quran or traditions that indicates that hijab is social, so if its obligation is proven, its social nature would definitely not be inferred; because, that ruling only indicated its obligation and not its social nature." (Amin, 1381 SH, 26/237)

Another author writes, "In almost all the books of the Quranic exegeses [Tafsir al-Quran], it is stated that the reason for the revelation of the verses of hijab was to distinguish free women from slaves in order to prevent the men of Medina from assaulting them. Then, can hijab be considered a social issue?" (Şadr, 1382 SH, 14/103)

Review and Analysis

The basis of the above argument is based on the fact that the reasons presented in the verses are not in agreement with the social nature of *hijab*; but by examining the verses on *hijab*, it is clear that firstly; Almighty God has mentioned some reasons for this obligation, including preserving the honor and respect of women, reducing the error and danger and providing immunity of women (Quran 33: 59)¹, avoiding corruption (Quran 24: 60)² and the purity of human's hearts (Quran 33: 53)³ and expressing these reasons do not mean that the whole reasoning for *hijab* lies in these matters; rather, the glorious Quran has mentioned some of these aspects. Secondly, although maintaining honor, avoiding corruption, or purity of heart, etc. are considered a personal matter, but their definition and requirements are not exclusive to the personal domain. For example, in the case of honor and dignity, this issue is formed in interaction *with others* as 'Allamah Ṭabāṭabā'ī commented on the above verse, "*Covering all the body helps them [women] to be recognized as the people of chastity, hijab, righteousness and honor. As a result, when they are recognized as such, they will no longer be harassed, i.e., the people of debauchery will not bother them.*" (Ṭabāṭabā'ī, 1417 AH, 16/340) It shows that the dignity expressed in this regard should be achieved as a result of dealing with other people and of course, no one can claim that he does not want to receive this

1. "...That makes it likely for them to be recognized and not be troubled..."

2. "...But it is better for them to be modest..."

3. "...That is more chaste for your hearts and theirs..."

respect due to personal freedom; because this personal freedom is bounded by the rule of *hijab*, one of the justifications of which is to preserve respect.

In the same way, this point also applies to the purity of the heart. Although the personal nature of purity is more evident here, when we pay close attention to this reason mentioned in the Quran regarding *hijab*, we find out that "...that is more chaste for your hearts and theirs..." also expresses the manner of communication of women and men and it refers to the effect of non-*mahram* people's looking at each other in their hearts. (Ṭabāṭabā'ī, 1417 AH, 16/337; Ṭabrisī, 1372 SH, 8/576; Qara'ati, 1383 SH, 9:391)

What was stated included some reasons mentioned in the verses, which also indicate the social nature of this issue; while, what is mentioned regarding the reasons for *hijab* from various aspects, including the rule of reason, sociology, psychology, etc., is mainly referring to its social nature rather than its individual nature.

Quranic Arguments on the individual nature of *hijab*

Dr. Mohammad Shahrūr is among the new Syrian Quran researchers who have expressed different views on *hijab*. He has sometimes rejected *hijab* and sometimes introduced it as a personal obligation. He referred to the verse "...and not to display their charms, beyond what is [acceptably] visible..." (Quran 24: 31) and said, "in the Quran, the term "*Zīna*" is used in three meanings: (a) An ornament of object (b) An ornament of place, (c) An ornament of object and place. In the above-mentioned verse, the term "*Zīna*" is the ornament of place and it means the body of a woman and not the jewelry and makeup of a woman." From the statement "...and not to display their charms, beyond what is [acceptably] visible...", it can be deduced that women have two types of beauty: apparent beauty and hidden beauty. What God has made visible in the creation of women is external beauty, such as the head, stomach, back, hands, and feet; and what God has hidden in the woman's creation is a hidden beauty." (Shahrūr, 1999, 606)

Then, he discusses the root of the term "*juyūb*" and says: "*Juyūb*, the plural of *jayb* means to make a collar for a shirt and the like and *jayb* is a cleavage with two sides. The origin of the

term *jayb* comes from the term *jawb* which in Arabic language means “to cleave something and respond to the word - question and answer”. Therefore, *jayb* in women refers to an organ that either has two parts or has two parts with a cleavage; therefore, a woman’s *juyūb* consists of: two breasts and under the two breasts, under the armpits, vulva and buttocks. Thus, a woman should only cover this type of *juyūb*.” (Ibid, 607)

It is quite clear that from Shahrūr’s point of view, it is obligatory to cover only the part of *juyūb* which according to his given definition is related to the inner nature of a woman. Then, Shahrūr, stating these introductions in lexical analysis of *juyūb*, states that this type of covering is also individual. He writes: “*This extent of covering is both a personal order and at the same time, for moral education, and has been issued in order to educate women morally and prevent them from acting against their chastity, and nothing else, nor a harsh order, or a ruling in the realm of law and prosecutable.*” (Ibid.)

Another author has relied on a different Quranic argument to prove the personal nature of hijab. He says: “*Regarding hijab, religion is absolutely in agreement with democracy; because, the ruling of hijab in the Quran addresses men and women believers; meaning that, observing the ruling is left to the faith of individuals, which is a matter of choice and desire, and it is just a sin that can only be questioned by God.*” (Mortazavi, 116)

Review and Analysis

Although Shahrūr believes that he infers all his statements in this context from the Quran, reflecting on his words and checking the compatibility of his words with the Quran, as well as understanding the conflicts in his speech, completely reveal irrelevance of his views with the Quran. It should be mentioned that the criticism of the meaning of the words that Shahrūr brought is only mentioned to expose the conflicts in his speech, which led to his special conclusion that *hijab* is individual.

He states that there are three types of “*Zīna*”, but the “*Zīna*” in the verse in question is only the ornament of place, which refers to a woman’s body. Therefore, “beauty” and makeup are not prohibited by the Quran. To find out this matter, the meaning of “*Zīna*” and the implication of the verse must be specified. In a

general statement, Ibn Manẓūr considers "Zīna" as a broad term that includes everything that beautifies (Ibn Manẓūr, 1414 AH, 13/121) and the author of Majma' al-Bahrayn considers it limited to what a person adorns himself/herself with. (Ṭurayhi, 1375 SH, 6/262) However, Rāghib, in a comprehensive analysis, divides "Zīna" into three categories and includes spiritual "Zīna" such as good knowledge and beliefs, physical "Zīna" such as physical strength and body beauty and external "Zīna" like wealth, etc. (Rāghib Iṣfahānī, 1412 AH, 388) Therefore, the literal meaning of Arabic term "Zīna" is much broader than its meaning in Persian usage. On the other hand, this verse prohibits women from revealing their "Zīna". There are two exceptions to this order, one is "*beyond what is [acceptably] visible*" and the other is "*...except to their husbands, or their fathers.*" The first exception excludes the beauty that is visible by itself from the prohibition of revealing the beauty. Therefore, the verse refers to two types of women's beauty, one type that is visible by itself and the other that is usually hidden unless a person intentionally wants to reveal them, and the verse has prohibited women from doing so. The question here is "Which beauty is intended in this verse; the 'visible' or the 'hidden' beauty?" This is a question that has been a source of disagreement since the past among those who tried to explain the verse or who wanted to refer to it in Islamic jurisprudence.

If the examples of visible beauty (i.e., what is excluded) are identified, then there will be certain cases of beauty that are obligatory to cover in front of *non-mahrams*. For this, there is no way but to determine the examples of beauties in the first phrase, those from which the exclusion is made, and by clarifying those examples, the cases of visible beauties will be known; because, according to the pronoun in "*min-ha*" [from it], which refers to the term "Zīna", determining the examples of beauty in both phrases are related to each other. In explaining the examples of "beauty" in the verse, there are three major opinions:

a) The main meaning in the verse is the beauty of a woman's body. Therefore, if there is a prohibition, it is about the place of jewelry and ornaments, even though there is no prohibition in displaying and looking at the ornaments themselves, such as earrings, bracelets, and armlets. The late Ṭabrisī (Ṭabrisī, 1372

SH, 7/217), ‘Allamah Ṭabāṭabā’ī (Ṭabāṭabā’ī, 1417 AH, 10/111) and some others have adopted this opinion.

b) The meaning of "Zīna" is the adornment itself, but not alone, when it is used and worn on the body. Naturally, revealing the adornments is usually along with revealing the body adorned with them. It has been said that: *"Visible ornaments such as rings, wedding rings, henna, and kohl have no problem if revealed, but hidden ornaments such as bracelets, anklets, armbands, necklaces, crowns, belts, and earrings must be covered, except for those who are exempted in the mentioned verse."* (Fāḍil Miqdād, 1419 AH, 2/222; Makārim Shīrāzī, 1374 SH, 14/440; Zamakhsharī, 1407 AH, 3/61)

c) Apparently, the term "Zīna" means something by which an object is adorned, and adorning anything is suitable for it. Apparently, two conditions are understood from the expression (*Zīnata-uhunn-a*): One is the body parts of a woman, which is the place of adornment, and the other is objects such as earrings, bracelets, necklaces, and the like, and anything that adorns a woman and adds to her beauty and none of them alone is considered an example of "Zīna" without the other. (Beygum Amin, 1361 SH, 9/104)

In the review and evaluation of each of the three mentioned opinions, if we consider the appearance of the verse to be referring to the adornment itself and not its place, and on the other hand, as it is understood from some narrations, we limit it to artificial ornaments such as jewelry, we conclude that it is necessary to hide ornaments such as necklaces, bracelets, earrings, and belts from the eyes of non-*mahrams*; and items such as rings, earring, kohl and henna on the hands, which are normally visible by themselves, are allowed to be uncovered; but if we choose one of the other two opinions and consider the example of "Zīna" to be the beautiful body itself or the place of adornment, or both of them, then we must say that the meaning of the exception in the phrase *"beyond what is [acceptably] visible"*, which is not obligatory to cover, is the face and hands up to the wrists. It seems that the third opinion is more correct, taking into account the literal meaning of "Zīna", which included all types of "Zīna", as well as considering the narrations. One of the narrations that consider "Zīna" to include ornaments is a narration from Imam al-

Sadiq (‘a.s) about the interpretation of the expression “*beyond what is [acceptably] visible*” that he (‘a.s) said, “*The most visible adornment is kohl and ring.*”¹ (Kulaynī, 1429 AH, 11/197)

Among the hadiths that consider "Zīna" [ornament] to include the body, is the narration of Fuzayl from Imam al-Sadiq (‘a.s) who says: “*I asked about women’s forearms, whether they are considered as an ornament about which God said: (and not display their charms except to their husbands)? Imam (‘a.s) said, “Yes, as well as below the scarf and below the bracelets.”* (Ibid)

Matching between the said narrations, which are authentic regarding their chain of narration, requires that the example of "Zīna" [an ornament] is considered general and includes the body itself, even if it is without ornaments and makeup, and as it was mentioned, this meaning is more compatible with the general use of the term "Zīna" in the discussed verse. However, in Islamic jurisprudence, there are other reasons for arguing about the necessity of covering a woman’s body except the parts that are visible by themselves, i.e., the face and hands that even assuming that an ornament is limited to ornaments in the discussed verse, the same reasons are sufficient to prove the obligation of covering. Due to what has been said, Shahrour’s interpretation of the term "Zīna" and limiting it to physical adornment is not acceptable.

The second point is about the term "*Juyūb*". The term "*Jayb*" is not used in the absolute sense of "cleft" or "cleavage" in the case of a human being, so the verse would refer to the parts of a woman’s body, as Shahrour thinks. Rather, when it is used about human beings, it means a split in a person’s shirt or armor.² It has only been used in one case about the human being, and it means the heart and chest: "*So-and-so is nāṣiḥ al-jayb*" meaning [*So-as-*

1. Abu Masir, one of the companions of Imam al-Sadiq (a), said that I asked Imam (a) about this expression “*and not to display their charms, beyond what is [acceptably] visible*” and Imam (a) said, “The ring, and *masaka* which is the wristlet” (ibid.). Ali ibn Ibrahim Qommi, the author of the famous narrative commentary, quoted from Imam al-Baqir (a) regarding the interpretation of the verse in question, that he (a) said, “it [“Zīna”] includes clothing, kohl, ring, palm henna, bracelet, and “Zīna” has three types: Zīna for people, Zīna for *mahram* ones, and “Zīna” for the husband; as for the Zīna [allowed to be shown] for people, we mentioned it, and as for the “Zīna” [allowed to be shown] for *mahram* ones, it is the place of the necklace and above it, the armlet and below it, the anklet and below it; and the “Zīna” allowed to be shown] for the husband is the whole body.”
2 . Cf. Lisān al-‘Arab, al-‘Ayn, Mufradat gharīb al-Quran, al-Miṣbāḥ al-Munīr, etc. under the term “*Jayb*”.

so is sincere at heart]. It means that his heart and his chest, or that he is trustworthy”¹, and in this case, the allegorical meaning is meant, not the apparent meaning.

Despite this, he has not given any explanation as to why the contextual meaning (*Juyūb*) which is used in all Arabic dictionaries and usages for (collar) suddenly changed its meaning and was used for parts of the female body having cleavage. If we apply the meaning of a term to an object only because of the connection between them without any evidence, there will not be any term that is an exception to this rule, then too many terms can be used for different objects and situations with the least of connections.

In the criticism of the second argument, it should be said that studying the social verses of the Quran clearly shows that most of the social verses address the believers, such as, “*O you who have faith! Retribution is prescribed for you regarding the slain...*” (Quran 2:178); then, is not the ruling of retribution, which addresses people of faith, one of the social rulings of Islam?

In addition, the noble verse, “*O you who have faith! When you contract a loan for a specified term...*” (Quran 2:282), which is the longest verse in the Quran, mentions various aspects of trade and commerce in the form of debt and addresses the people of faith. Is not this among the social verses of the Quran? Therefore, addressing believers does not mean that the obligation is not individual.

On the contrary, in some cases, common people, including both believers and non-believers, are commanded to piety, although piety is a completely personal matter: “*O mankind! Be wary of your Lord who created you from a single soul...*” (Quran 4:1); and sometimes, all people are addressed with the expression “*Yā ayyuhā an-nas*” [O you people] to benefit from nature, such as, “*O mankind! Eat of what is lawful and pure in the earth...*” (Quran 2:168)

Sometimes to receive such benefits, they are addressed with expressions like “*Ya ayyuh al-ladhina āmanu*”, “*O you who have faith! Eat of the good things we have provided you...*” (Quran 2:172)

1 . Lisan al-‘Arab, under the word “*Jayb*”.

The Islamic government can take action against usurers, those who consume unlawful earnings, and those who generate income through prohibited means. Violators of the Prophet's (PBUHH) order and government decrees, as well as violators of the command of Jihad, are punished. Therefore, there is no correlation between addressing believers and the optionality of the tasks assigned to them.

Conclusion

By analyzing the arguments of those who say that *hijab* is individual, on the one hand, its social nature, and its divine obligatory on the other hand, the responsibility of the Islamic government to promote the culture of *hijab* and fix the problem of not observing *hijab* properly are proven. Considering that *hijab* has a social nature and observing it in society results in effects such as mental peace of citizens in the society, both men and women, the strength of family ties, the stability of the society, and its immunity from the domination of sexual atmosphere, etc., and lack of means the absence of the mentioned effects and rights in the society. Of course, this does not mean the absence of many individual benefits of *hijab*; however, in case of conflict between interests and social and individual rights, priority is given to social interests and rights. Thus, the government should restore social rights and stand against those who violate these rights.

It is obvious that the government's special function in this regard is not limited to the judicial option or irrational and ill-considered punitive measures, and since *hijab* is one of the important cultural issues, paying attention to this element can lead to the development of a reasonable and well-considered solution by those in charge of this issue. Following the orders of religion, including observance of enjoining the good and forbidding the evil, using the best arguments, the language of advice and benevolence on the one hand, cultural and educational planning and applying preventive measures on the other hand, are among the most important rational actions, expected from responsible institutions.

References

1. Amin, Mahdi. (1381 SH). "Mas'alah al-Hijāb fī al-Qur'ān, Waqfah ma'a al-Doktor Muḥammad Shahrūr." *Al-Minhāj Journal*, Volume 26, Summer.
2. Ayāzī, Muḥammad 'Alī. (1387 SH). *Naqd va Barresī Adilleh Fiqhī Iltizām Hukūmatī Hijāb, Hijāb: Mas'ūliyyathā va Ikhtiyārāt Dawlat-i Islāmī* (First edition). Qom: Research Institute of Islamic Culture and Thought.
3. Bani Hāshimi Khomeini, Muḥammad Ḥasan. (1391 SH). *Tawdīh al-Masā'il Marāji'* (Nineteenth edition). Qom: Daftar-i Intishārāt-i Islami.
4. Beygum Amin, Nusrat. (1361 SH). *Makhzan al-'Irḥān dar Tafsīr-i Qur'ān*. Tehran: Nahzat Zanan-e Musalman.
5. Eskandari, Mustafa. (1389 SH). "Māhiyyat va Ahamiyyat Ḥarīm-i Khūṣūṣī." *Hukumat-i Islami*, Year 15, Volume 4, Winter.
6. Fāḍil Miqdād, Miqdād ibn 'Abd Allāh. (1419 AH). *Kanz al-'Irḥān fī Fiqh al-Qur'ān* (First edition). Tehran: Majma'-ī Jahānī-yi Taqrīb Mazāhib Islāmīyah.
7. Farāhīdī, Khalīl ibn Aḥmad. (1409 AH). *Kitāb al-'Ayn* (Second edition). Qom: Hīrat Publications.
8. Fayyūmī, Aḥmad ibn Muḥammad. (1414 AH). *Al-Miṣbāḥ al-Munīr fī Gharīb al-Sharḥ al-Kabīr* (Second edition). Qom: Mu'assasat Dār al-Hijrah.
9. Ghulamī, 'Alī. (1391 SH). *Maṣ'aleh Hijāb dar Jumhūrī-i Islāmī-i Īrān* (First edition). Tehran: University of Imam Sadiq (a.s).
10. Hikmatnia, Mahmoud. (1390 SH). *Huqūq va Mas'ūliyyathā-yi Farzī va Ijtīmā'ī-yi Zan*. (First edition). Qom: Research Institute of Islamic Culture and Thought.
11. Ibn Faḥd al-Hillī, Aḥmad ibn Muḥammad. (1411 AH). *Al-Muḥadhdhab al-Bārī' fī Sharḥ al-Mukhtaṣar al-Nāfi'*. Annotator: al-Ḥujja al-Shaykh Muḥtabā al-'Irāqī. Qom: Mu'assasat al-Nashr al-Islāmī.
12. Ibn Hishām, 'Abd al-Malik ibn Hishām. (1963). *Al-Sīrah al-Nabawīyyah*. Annotator: Muḥammad Muḥyī al-Dīn 'Abd al-Ḥamīd. Cairo: Maktabat Muḥammad 'Alī Ṣabīḥ wa Awlāduh.
13. Ibn Manẓūr, Muḥammad ibn Mukarram. (1414 AH). *Lisān al-'Arab* (Third edition). Annotator: Jamāl al-Dīn Mīr Dāmādī. Beirut: Dār al-Fikr.
14. Ja'farīyān, Rasūl. (1380 SH). "Mas'aleh Hijāb va Ta'thīr Andīsheh-hā-yi Qāsim Amīn Miṣrī dar Īrān," *Ā'īnah Pajūhish*, Issue 70.
15. Javādi Āmoli, 'Abdullah. (1388 SH). *Ḥaqq va Taklīf dar Islām* (Third edition). Annotator: Mustafa Khalili. Qom: Isra.
16. Javādi Āmoli, 'Abdullah. (1388 SH). *Zan dar Ā'īnah-yi Jamāl wa Jalāl* (Nineteenth edition). Annotator: Maḥmūd Laṭīfī. Qom: Isra.
17. Kadīwar, Muḥsin. (1387 SH). *Ḥaqq al-Nās: Islām va Huqūq Bashār*. Tehran: Kuyir Publication.
18. Khomeini, Ruhollah. (1379 SH). *Tahrīr al-Wasīlah*. Qom: Dār al-'Ilm.

19. Khomeini, Ruhollah. (n.d). *Kitāb al-Bayʿ*. Tehran: Institute for Compilation and Publication of the Works of Imam Khomeini.
20. Kulaynī, Muḥammad ibn Yaʿqub. (1429 AH). *Al-Kāfī* (First edition). Qom: Dār al-Ḥadīth.
21. Kūshā, Jaʿfar. (1381 SH). *Jarāyīm ʿAlāyhi ʿIdālah Qaḍāʾi* (First edition). Tehran: Mīzān.
22. Līthī Wāsītī ʿAlī ibn Muḥammad. (1376 SH). *ʿUyūn al-Ḥikm wa al-Mawāʾiz (Li al-Līthī)* (First edition). Annotator: Ḥusayn Ḥusnī Bīrjandī. Qom: Dār al-Ḥadīth.
23. Maftāḥ, Muḥammad Hādī. (1387 SH). *Wazīfeh-yi Ḥukūmat-i Islāmī dar Zamīnah-yi Pūshish-i Banawān: Hijāb, Masʿūliyyathā wa Ikhtiyārāt Dawlat-i Islāmī* (First edition). Qom: Research Institute of Islamic Culture and Thought.
24. Makārim Shīrāzī, Nāṣir. (1374 SH). *Tafsīr-i Nemuneh* (First edition). Tehran: Dār al-Kutub al-Islāmīyah.
25. Miṣbāḥ Yazdī, Muḥammad Taqī. (1388 SH). *Mishkāṭ (Nazariyyah-yi Huqūqī-yi Islām)* (Fifth edition). Qom: Imam Khomeini Educational and Research Institute.
26. Miyanji, ʿAlī Aḥmadi. (1419 AH). *Makātīb al-Rasūl Ṣallā Allāh ʿAlayh wa Ālīh wa Sallam* (First edition). Qom: Dār al-Ḥadīth.
27. Muḥammad Ḥasan ibn Bāqir. (1362 SH). *Jawāhir al-Kalām fī Sharḥ Sharāʾiʿ al-Islām* (Third edition). Annotator: al-Shaykh ʿAbbās al-Qawchānī. Tehran: Dār al-Kutub al-Islāmīyah.
28. Muḥaqqiq Dāmād, Mustafa. (1380 SH). *Majmūʿah-yi Goftogūhā-yi Ham-andīshī Barresī-yi Masāʾil wa Mushkilāt Zanān: Awlawīyat-hā wa Rūykardhā* (First edition). Qom: Markaz-i Tahqīqāt Zan va Khānuwādeh.
29. Mutahhari, Morteza. (1383 SH). *Majmūʿeh-yi Āthār* (Fifth edition). Tehran: Sadra.
30. Nūrī, Muḥammad ʿAlī and Nakhjavāni, Reza. (1383 SH). *Huqūq Ḥimāyat Dādehā*. Tehran: Presidential Technology Law Study Committee.
31. Qāsimī Siyānī, ʿAlī Asghar. (1385 SH). "Barresī-yi Taṭbīqī Maḥmūm-i Āzādī dar Nīzām-hā-yi Lībrāl Dēmokrāsī va Mardumsālārī Dīnī," (First edition). Religious Democracy Conference. Qom: Daftar-i Nashr-i Maʿārif.
32. Qarāʾatī, Muhsin. (1383 SH). *Tafsīr-i Nūr* (Eleventh edition). Tehran: Cultural Center For Lessons from the Quran.
33. Qommi, ʿAlī ibn Ibrahim. (1404 AH). *Tafsīr al-Qommi* (Third edition). Annotator: Tayyib Mūsawī Jazāʾirī. Qom: Dār al-Kitāb.
34. Rāghib Iṣfāhānī, Ḥusayn ibn Muḥammad. (1412 AH). *Mufradāt Alfāz al-Qurʾān*. Annotator: Ṣafwān ʿAdnān Dawūdī. Beirut: Dār al-Qalam.
35. Representation of the Supreme Leader of the Islamic Revolution Guards Corps. (1378 SH). *Āzādī az Dīdgaḥ-i Imam Khomeini (Raḥmatullāh ʿalayhi)*. Tehran: Islamic Research Institute, Headquarters of the Supreme Leader's Representation in the Islamic Revolution Guards Corps.

36. Šadr, Šādī. "Āyā Ḥukūmat Mas'ul bī-Ḥijābī ast?" *Māhnāmeḥ Zanān*, Volume 103, 1382 SH.
37. Šahīd Thānī, Zayn al-Dīn ibn 'Alī. (1414 AH). *Masālik al-Afhām ilā Tanqīḥ Sharā'i' al-Islām* (First edition). Qom: Mu'assasah al-Ma'ārif al-Islāmīyah.
38. Šahriyari, Ḥamīd. "Ḥarīm-i Khūšūšī wa Jāmi'ah-yi Ittilā'ātī." *Pajūhishhā-yi Falsafī Kalāmī*, Year 8, Issues 3 and 4.
39. Šaḥrūr, Muḥammad. (1999). *Al-Kitāb wa al-Qur'ān: Qirā'ah Mu'āširah*. Damascus: the official site of Muḥammad Šaḥrūr www.shahrour.org.
40. Subhani, Ja'far. (1381 SH). *Tahdhīb al-Uṣūl, Taqarrārāt Bāḥṡh Uṣūl Sayyid Ruḥullah Musavi Khomeini*. Tehran: Institute for Compilation and Publication of the Works of Imam Khomeini.
41. Ṭabarsī, Faḍl ibn Ḥasan. (1372 SH). *Majma' al-Bayān fī Tafsīr al-Qur'ān* (Third edition). Tehran: Nasir Khosrow.
42. Ṭabātabā'ī, Muḥammad Ḥusayn. (1417 AH). *Al-Mīzān fī Tafsīr al-Qur'ān* (Fifth edition). Qom: Daftar-i Intishārāt-i Islāmī.
43. Ṭurayhī, Fakhr al-Dīn ibn Muḥammad. (1375 SH). *Majma' al-Bahrayn*. Annotator: Aḥmad Ḥusaynī. Tehran: Ashkūrī.
44. Ṭūsī, Muḥammad ibn Ḥasan. (1387 SH). *Al-Mabsūt fī Fiqh al-Imāmīyah* (Third edition). Tehran: Maktabah al-Murtaḍawīya.
45. Zamakhsharī, Maḥmūd ibn 'Umar. (1407 AH). *Al-Kashshāf 'an Ḥaqā'iq Ghawāmiḍ al-Tanzīl* (Third edition). Beirut: Dār al-Kitāb al-'Arabī.
46. Zibajnejad, Muḥammad Reza. (1387 SH). *Niẓām-i Islāmī va Mas'aleh-i Hijāb* (First edition). Qom: Daftar-i Muṭāla'āt va Taḥqīqāt Zanān.