ARTICLE

WOMEN'S RIGHT TO FREEDOM OF MOVEMENT IN ISLAMIC LAW AND UNDER TALIBAN-RULED AFGHANISTAN

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ABSTRACT[**]

The Taliban's claim to legitimacy is rooted in their assertion that between the time of the American invasion in 2001 and the Taliban's return to power in 2021, the Afghan government applied laws that were inconsistent with clear commands in Islamic scripture and with the rules of Islam that have been developed over the centuries by Islamic scholars associated with the Hanafi school[1] *of Sunni Islamic law. The Taliban claims that Islamic Sharia and the Hanafi school, which is the most widely followed school in Sunni Islam and the dominant legal tradition in Afghanistan, justify its restrictive measures. The Taliban claims they overthrew Afghanistan's recognized government to establish a society governed by Islamic Sharia. Their strict rules on women's movement, education, and public participation are justified as necessary regulations*

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1. The Hanafi school is the earliest established and most populous of the four major Sunni schools of jurisprudence. It was founded in Kufa by the eminent jurist Imam Abu Hanifa al-Nu'man ibn Thabit (699-767). In deriving legal rulings, this school relies not only on the Qur'an and the Sunnah but also extensively employs *ra'y* (independent juristic reasoning and scholarly opinion) and *qiyas* (analogical reasoning), a methodological approach that has endowed it with considerable flexibility and practical realism. Owing to these pragmatic characteristics, the Hanafi school was adopted as the official legal doctrine of major Islamic empires such as the Abbasids and the Ottomans. Today, it is followed by the majority of Muslims in Afghanistan, countries of Central Asia, Turkey, the Balkans, the Indian subcontinent, and parts of the Levant.

based on Islamic scriptures, as interpreted by Hanafi scholars. Western academics and policymakers have criticized the Taliban's rules as being clearly and flagrantly inconsistent with modern liberal ideas of women's dignity and as violations of international human rights treaties that Afghanistan has ratified. Because few Westerners have training in the classical Islamic tradition or in the Hanafi school of Islamic law, none have so far been willing to evaluate the Taliban's rules on their own terms. This Article argues, however, that even if one accepts that Afghanistan's laws should comply with Hanafi Islamic law, the Taliban's rules regarding women cannot be justified. Using close textual analysis of the Islamic scriptures and exhaustive engagement with Hanafi scholarship from the medieval period up to the present day, this article demonstrates that the Taliban's claim to be imposing Islamic restrictions on women cannot be accepted. Informed by years of classical training in Afghanistan and teaching in the Sharia faculties of Kabul University, followed by an LLM from an American law school and PhD studies in Germany in comparative law, this article demonstrates that the Taliban's claims are inconsistent with the tradition they claim to follow. The rules clearly conflict with the scriptural passages that address women's rights to movement. More importantly, they often contradict the mainstream Hanafi interpretations of these passages and, therefore, oppose the majority positions within Hanafi law for nearly a thousand years. After establishing that the Taliban's views are unusual within the mainstream Hanafi school, the article points out that, when it comes to women's rights, the Taliban's interpretation of Islam differs from that of the rest of the Islamic world, including other regimes that intentionally follow classical Islamic norms. The findings indicate that many of the restrictions imposed by the Taliban are based on socio-political beliefs rather than sound Islamic legal reasoning.

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I. INTRODUCTION

The Taliban's return to power on August 15, 2021, marked a significant turning point in Afghanistan's social and legal landscape, especially concerning women's rights. Between August 2021 and August 2024, the Taliban authorities issued over seventy formal directives[2] that have systematically curtailed the fundamental rights of Afghan women and girls, most notably through the restriction of their freedom of movement. Under the current Taliban regime, Afghan women have been excluded from secondary and tertiary education, denied employment in the vast majority of public and private sectors, and barred from accessing public venues such as parks, gyms, and recreational facilities. Moreover, women are prohibited from driving and traveling independently, both within the country and abroad, by road or air. These restrictions are so comprehensive and draconian that the Taliban has even decreed, in the Law on the Propagation of Virtue and Prevention of Vice, that a woman's voice is *'awrah* ("a private matter") and, therefore, must not be heard outside her home.

While Afghanistan's socio-cultural fabric has long been shaped by patriarchal structures, with customary, religious, and legal norms variably constraining women's mobility, the scope and intensity of the current restrictions under Taliban rule are unprecedented. Compared to other Muslim-majority societies, the present policies in Afghanistan stand out for their comprehensiveness and severity. It is important to note that this article does not deeply address women's freedom of movement in their daily lives. This is because Hanafi jurists permit women to travel alone without a legal male guardian (*mahram*) for up to

2. These directives include decrees, regulations, and policy announcements, issued through the Taliban's supreme leader, ministries, and affiliated institutions. *FAQs: What It's Like to Be a Woman in Afghanistan Today,* UN WOMEN (Aug. 7, 2025), https://www.unwomen.org/en/articles/faqs/faqs-afghan-women-three-years-after-the-taliban-takeover [https://perma.cc/74KQ-6NAY].

three days, or a distance of about 48 miles. In Islamic jurisprudence, this practice is known as *'hadhar,'* which means a state of being 'at home' or a resident (muqim). Instead, this article focuses on longer journeys that exceed this limit, which the Hanafi school specifically defines as *'safar,'* or 'travel.'

The Taliban has justified these measures by asserting that their governance is rooted entirely in Islamic Sharia, with particular reliance on the Hanafi school, the dominant legal tradition in Afghanistan. This assertion invites a series of critical inquiries: What are the normative rulings concerning women's freedom of movement in Islamic law, and more specifically, within the Hanafi school? To what extent do the Taliban's practices reflect or depart from these doctrines? Why does the Taliban adopt a markedly more restrictive interpretation than that found in mainstream Islamic legal discourse? And what role do political ideology and institutional power play in shaping their articulation of Sharia?

To address these questions, this study undertakes a detailed analysis of women's right to freedom of movement within Islamic law. It first reviews the right as articulated in foundational Islamic texts, including the Qur'an and the Prophet Muhammad's Sunnah. It then compares those sources to the Taliban's ideological and legal positions, particularly as articulated in the writings of Shaykh Abdul Hakim Haqqani, one of the Taliban's senior leaders and author of *The Islamic Emirate and Its System* (*al-Imārah al-Islāmiyyah wa-niẓāmuhā*). This comparison reveals that the Taliban's interpretation of women's mobility rights constitutes a departure, not only from contemporary Muslim scholarship, but also from classical Hanafi jurisprudence and *uṣūl al-fiqh* (the methodological foundations of Islamic legal theory). Rather than adhering to Islamic law principles, the Taliban's confinement of women to their homes reflects the influence of socio-political ideologies, including the imposition of rural values on urban areas, the training of Taliban fighters in extremist *madrasas* hostile to pluralistic religious interpretations and values, and the patriarchal norms of traditional Afghan society.

This Article constitutes the first substantive scholarly engagement with the contemporary women's right to movement in relation to Islamic mainstream jurisprudential schools and the

Taliban's distinctive and exclusivist interpretations of Islamic law. Moreover, the study situates these interpretations within the broader socio-political context that enables and reinforces the Taliban's divergence from mainstream understandings of women's right to freedom of movement across the Islamic world. In light of the reluctance among certain international actors to critique practices framed as religiously motivated, this work offers a timely and necessary contribution by providing a nuanced account of women's right to movement in Islamic law while demonstrating how the Taliban's interpretation is shaped less by jurisprudential consensus and more by cultural, ideological, and political imperatives.

This Article is divided into five sections. The first section provides a historical overview of women's mobility rights in Afghanistan prior to the Taliban's return to power. It also offers a close reading of classical and contemporary Islamic legal discourse on women's freedom of movement, with particular emphasis on juristic reasoning within the Hanafi school. The second section examines the Taliban's doctrinal positions, focusing on Shaykh Haqqani's legal reasoning and its divergence from broader Hanafi jurisprudence. The third section analyzes this divergence through the lens of Islamic legal theory, examining the extent to which the Taliban's approach aligns with or departs from established legal maxims (*qawāʿid fiqhiyyah*), interpretive principles, and jurisprudential ethics. The fourth section investigates the key factors that shaped the Taliban's distinct interpretation of Islam, especially in relation to women's rights. The article concludes by reflecting on the broader implications of these findings for debates on Islamic law and gender justice in today's Muslim world.

II. THE RIGHT TO MOVEMENT FOR MUSLIM WOMEN IN ISLAMIC LAW

The right of Muslim women to travel when accompanied by a *mahram* (a male relative with whom marriage is permanently prohibited)[3] or her husband has generally not been a matter of

3. MUHAMMAD AMIN IBN UMAR IBN ABDUL AZIZ, RADD AL-MUHTAR 'ALA AL-DURR AL-MUKHTAR 464 (Dar al-Feker 1992) [hereinafter HASHEYA IBN ABIDIN]. According to Ibn Abidin, the concept of *mahram* in Hanafi jurisprudence refers to a male relative with whom

contention among classical and contemporary Muslim jurists. However, scholarly debate has emerged around the permissibility of solo travel for women. Central to this discourse are questions regarding whether a Muslim woman may travel unaccompanied, and if so, under what specific conditions such travel is permissible. Furthermore, scholarly inquiry continues to examine the legal parameters and contextual conditions that define the circumstances under which a Muslim woman may legitimately exercise her right to freedom of movement within the framework of Islamic jurisprudence. Before analyzing women's right to freedom of movement under Islamic law and the current Taliban's governance in Afghanistan, it is crucial to first contextualize the discussion by examining the status of Afghan women's mobility rights in the pre-Taliban period, particularly following the promulgation of the 2004 Constitution.

A. Women's Right to Movement in Pre-Taliban Afghanistan

The modern legal history of Afghanistan is marked by considerable complexity, particularly concerning national legislation and the rights of women. Of these women's rights, the right to freedom of movement has remained a persistently contested issue. Throughout Afghanistan's modern legal development, this right has often been treated less as a matter of legal entitlement and more as a cultural or familial concern. In many regions of the country, even in the city of Kabul,[4] both historically and at present, women's mobility continues to be perceived as a private domestic matter. Decisions regarding a woman's ability to travel are frequently determined by the male head of the household, whether a father, grandfather, elder brother, husband, or uncle, rather than by legal or institutional frameworks that recognize individual rights.

The intervention of the North Atlantic Treaty Organization ("NATO") and the international community in Afghanistan in 2001, which resulted in the overthrow of the Taliban government, marked a significant turning point for human rights in the country,

marriage is permanently prohibited due to consanguinity, fosterage (*raḍāʿa*), or marital ties. This includes fathers, brothers, uncles, sons-in-law, father-in-law, and some other relatives.

4. Kabul is the largest city and capital of Afghanistan, with a relatively progressive, more educated population and, compared to other regions of Afghanistan, a culture influenced by Western lifestyles.

especially women's rights. In the aftermath of the invasion, the Bonn Agreement[5] enabled the formation of an interim government, one of whose main tasks was to draft and adopt a new constitution for Afghanistan. The government reinstated the 1964 Constitution, with certain modifications and exceptions, to serve until a new constitution was adopted.[6]

In 2004, the interim government of Afghanistan enacted a new constitution (the "2004 Constitution"). The preamble to the 2004 Constitution explicitly affirms that the people of Afghanistan, "in accordance with the United Nations Charter and the Universal Declaration of Human Rights [UDHR]," seek to "establish a civil society free from oppression, tyranny, discrimination, and violence, and rooted in the rule of law, social justice, respect for human dignity and rights, and protection of people's fundamental freedoms."[7] These principles are further reinforced throughout various provisions of the 2004 Constitution. For instance, the Constitution's first chapter proclaims the state's commitment to upholding the United Nations Charter, bilateral and multilateral agreements, and international treaties to which Afghanistan is a party, including the UDHR.[8] Additionally, the Constitution obliges the state to prevent all forms of terrorist activity, the cultivation and trafficking of narcotics, as well as the production and consumption of intoxicating substances.[9]

The 2004 Constitution is considered the first in the history of Afghanistan to embrace a wide range of international documents supporting human rights.[10] The 2004 Constitution enumerates a comprehensive set of fundamental rights, many of which align with those enshrined in international human rights instruments.[11]

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5. Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions, in letter dated Dec. 5, 2001 from the Secretary-General to the President of the Security Council, part II, § 1, U.N. Doc. S/2001/1154 (Dec. 5, 2001) [hereinafter Bonn Agreement].

6. *Id.*

7. THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN pmbl. Jan. 26, 2004 (Afg.).

8. THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN Jan. 26, 2004 (Afg.), art. 7.

9. *Id*. art. 7.

10. MOHAMMAD HASHIM KAMALI, AFGHANISTAN'S CONSTITUTION TEN YEARS ON: WHAT ARE THE ISSUES? 34 (2014).

11. THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN Jan. 26, 2004 (Afg.), ch.2.

Concerning the right to freedom of movement, the Constitution explicitly guarantees that every Afghan citizen has the right to travel and reside in any part of the country, subject only to legal restrictions. It further affirms the right of all Afghans to leave and return to the country, in line with the law. Additionally, it gives the state the responsibility to protect the rights of Afghan citizens living abroad.[12]

When the 2004 Constitution was enacted and the new post-interim government was elected, a wave of human rights supporters flooded Afghanistan. Hundreds of local and international NGOs and institutions have become active in the field of human rights, particularly in the area of women's rights. Moreover, the Afghan government adopted laws to provide further support for women's freedom of movement in society. For example, the Law on the Elimination of Violence Against Women ("EVAW"), which was enacted by presidential decree, criminalized the act of denying women their fundamental rights. The law states that anyone who prevents a woman from accessing her legally guaranteed rights, such as to education, employment, and healthcare, shall be subject to a short-term custodial sentence not to exceed six months.[13] The precise length of the sentence varies based on the specific details of the offense.

EVAW explicitly enumerates several rights and activities, including access to education, employment, and medical treatment, all of which inherently require travel, whether short or long distance.[14] The exercise of these rights may even require some women to travel abroad for educational or professional opportunities. Furthermore, the law refers to "other rights stipulated in the laws," which may specifically allude to the right to freedom of movement, as guaranteed under Article 39 of the 2004 Constitution. This right is also protected by the UDHR[15] and other international treaties,[16] adherence to which is mandated by Article 7 of the 2004 Constitution.

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12. *Id*. art. 39.

13. Law on the Elimination of Violence Against Women, art. 35, Official Gazette No. 989 (2009) (Afg.).

14. *Id.*

15. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948), art. 13 [hereinafter UDHR].

16. International Covenant on Civil and Political Rights art. 12, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

Additionally, the Law on the Prohibition of Harassment Against Women and Children, enacted in December 2017, imposes a fine (AF5000–10000) on any individual who harasses women or children in public areas, on public transportation, or in any other setting where such acts are proven by evidence or presumptive proof.[17] The monetary penalty range at the time of enacting the law was equal to US$70–140, which is a considerable amount in Afghanistan, where the vast majority of families have a US$200–300 monthly income or lower. The law aims to prevent people from harassing women so that they can freely and comfortably exercise their right to freedom of movement.

As discussed, before the Taliban's return to power in August 2021, women's right to freedom of movement in Afghanistan was formally recognized in the Constitution and supported by other legislation. In practice, decisions concerning women's travel were frequently subject to the discretion of the male head of the household, often shaped by prevailing socio-cultural conditions and the perceived safety and appropriateness of the travel circumstances. The four decades of war and conflict in Afghanistan prior to 2021, along with the country's deeply ingrained social and cultural structures, led to women's freedom of movement being governed more by internal family dynamics than by formal legal laws in this way. These familial restrictions applied not only to women but, in some cases, to young men as well.

It is important to note that women's mobility was generally not constrained by their families within their local neighborhoods or towns. In rural areas, women routinely engage in outdoor labor, including agricultural work and small-scale livestock rearing, without facing restrictions on leaving their homes.[18] Based on the common culture and social norms, the requirement to obtain permission primarily pertained to long-distance travel or journeys abroad, for which women were expected to secure consent from senior family members, particularly male relatives.[19] Regardless of

17. Law on Prohibition of Harassment against Women and Children, art. 25, Official Gazette No. 1280 (2018) (Afg.).

18. U.N. WOMEN, GENDER INDEX 2024: AFGHANISTAN 38 (2025), https://knowledge.unwomen.org/sites/default/files/2025-06/gender-index-2024-afghanistan-en.pdf [https://perma.cc/4EL2-NTT7].

19. HUMAN RIGHTS WATCH, HUMANITY DENIED: SYSTEMATIC VIOLATIONS OF WOMEN'S RIGHTS IN AFGHANISTAN 13 (2001), https://www.hrw.org/reports/2001/afghan3/afgwrd1001.pdf [https://perma.cc/GLR6-GCLA].

legal guarantees, authoritative family members frequently determine whether younger family members were permitted to travel alone within the country or abroad. This system of permission resulted in some women, who were usually educated or government employees, and largely from major cities, traveling abroad by plane without the accompaniment of a *mahram*. However, many international organizations, when inviting women from provincial areas to participate in events, commonly cover the expenses for a *mahram* to accompany the female participants.

B. The Right to Movement for Muslim Women in Islamic Law

Classical Muslim jurists predominantly focused on the issue of women's travel for the purpose of *Hajj*[20] and, to a lesser extent, for business, without a *mahram*. As a result, the subject is not extensively addressed in classical jurisprudential literature, and scholarly discussion on this matter in the works of earlier jurists is limited. Only some sources from Sunni schools, such as Shafi'i,[21] Hanbali,[22] Maliki,[23] and Hanafi,[24] opine that it is *mubah* (permissible) to travel for trade, but they have not deeply engaged with other types of mobilities that are common nowadays. This phenomenon regarding a new issue without much classical precedent is called *fiqh al-nawāzil*[25] in Islamic law.

Currently, many Muslim-majority nations do not regard women's right to freedom of movement as a significant issue. However, since the Taliban's return to power in August 2021, it has become an important topic among local and international human

20. *Hajj*, the pilgrimage to Mecca, Saudi Arabia, is one of the Five Pillars of Islam. In Islam, performing the pilgrimage to Mecca is a duty for every adult Muslim at least once in their lifetime, if they are physically and financially able to undertake the journey.

21. MUHAMMAD AL-SHARBINI, SHASUDDIN MUHAMMAD IBN AHMAD AL-KHATIB, MUGHNI AL-MUHTAJ ELA MAREFAT MAANI ALFAZ AL-MENHAJ 516 (Dar al-Kutub al-Elmeyah 1994).

22. 2 IBN QUDAMAH, ABU MUHAMMAD MUWAFFAQ AL-DIN ABDULLAH IBN AHMAD IBN MUHAMMAD, AL-MUGHNI FI FIQH AL-IMAM AHMAD BIN HANBAL AL-SHAIBANI 100 (Dar al-Feker, n.d.).

23. 1 ALI AL-RAJRAJI, ABU AL-HASAN ALI IBN SAEED, MANAHIJ AL-TAHSIL WA NATAYEJ LATAYEF AL-TAWIL FI SHARH AL-MUDAWANAH WA HAL MUSHKELATEHA 433 (Dar al-Hazm, 2007).

24. 1 ALA UDDIN ABUBAKER IBN MASUD IBN AHMAD AL-KASANI, BADAYE AL-SANAYE FI TARTIB AL-SHARAYE 93 (Dar al-Kutub al-Elmeyah, 1986).

25. Fiqh al-nawāzil refers to a new arising issue that did not exist in the era of classical jurists and needs to be addressed in the light of Islamic law principles.

rights communities. Consequently, the question of women's travel for other purposes, such as education, medical treatment, participation in conferences and events, tourism, and other activities, has emerged as a contemporary issue within Islamic legal discourse.

C. The Sources of Islamic Law

Islamic law comes from two main source types: primary and secondary. When handling legal questions based on divine texts, jurists first turn to the primary sources, which are the Qur'an and the Prophet Muhammad's (peace and blessings be upon him) Sunnah. When primary sources lack a clear ruling, jurists turn to secondary sources to form a legal judgment.

It is universally acknowledged among Muslim jurists that the Qur'an constitutes the supreme source of Islamic law. The Qur'an is an Arabic word that literally means "recitation" or "collection."[26] Muslim jurists define the source as a book that contains the speech of God revealed to the Prophet Muhammad in Arabic, recited in *Salah* (prayers), and transmitted to its readers by *tawatur* (continuous testimony).[27]

The Sunnah of the Prophet Muhammad is the second principal authority in Islamic law.[28] As Jonathan Brown notes, the normative legacy of the Prophet is known as the Sunnah,[29] which consists of the Prophet's sayings, practices, and deeds.[30] Significant differences persist among the Hadith scholars (*muḥaddithūn*) and jurists (*fuqahāʾ*) of the various madhāhib (schools of Islamic law) concerning the definition, authentication, hermeneutics, and legal scope of the terms of Sunnah and Hadith. For example, most Hadith scholars have used "Hadith" and "Sunnah" synonymously, and they believe that both terms carry the same meaning.[31] On the contrary, scholars of principles of Islamic jurisprudence (*Usul al-Fiqh*)

26. AYUB IBN MUSA ABU AL-BAQA AL-HANAFI, AL-KULLIYAT MU'JAM FI AL-MUSTALIHAT WA AL-FURUQ AL-LUGHAWYYAH 720 (Muasesah al-Resaalah, n.d.).

27. MOHAMMAD HASHIM KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE 22 (2003).

28. MATHIAS ROHE, ISLAMIC LAW IN PAST AND PRESENT 61–66 (Gwendolin Goldbloom trans., Brill 2015).

29. JONATHAN A.C. BROWN, HADITH: MOHAMMAD'S LEGACY IN THE MEDIEVAL AND MODERN WORLD 3 (2009).

30. KAMALI, *supra* note 27, at 58.

31. 1 MUHAMMAD IBN ABDUL RAHMAN IBN MUHAMMAD AL-SAKHAWI, FATH AL-MUGHITH BE SHARH ALFEYAH AL-HADITH, 22 (Maktaba al-Sunnah, 2003).

believed that the intended meaning of Sunnah, in the technical (*sharʿī*) sense, is the sayings, practices, and deeds of the Prophet—that which was established as normative practice (*sunnah*) by the Prophet.[32] They have limited the scope of Hadith to the sayings of the Prophet.[33] Hence, from their perspective, Sunnah refers to a wider concept and covers whatever is transmitted from the Prophet, whether in statements, actions, or tacit approvals, provided it is suitable to serve as evidence for a legal ruling. On the other hand, Sunnah has a different meaning from the Muslim Jurists' perspective. They define Sunnah as an act for which the doer is rewarded, while its omission does not incur punishment.[34] Jurists do not usually use the term "hadith"; instead, they use the term "sunnah" and limit it to the value of a rewarded action. These divergences reflect varying methodologies in Hadith criticism and legal theory, which in turn influence how the Sunnah is operationalized within each legal tradition. The third tier in the hierarchy of legal authority is *ijmāʿ* (juristic consensus), followed by *qiyās* (analogical reasoning), which functions as a method of deducing legal rulings in the absence of explicit textual evidence.

In addition to these primary sources, the Islamic legal tradition also recognizes a range of subsidiary or supplementary sources, such as *istiḥsān* (juridical preference), *istiṣḥāb al-ḥāl* (presumption of continuity), *ʿurf* (customary practice), *maṣāliḥ mursalah* (consideration of unrestricted public welfare), *qawl al-ṣaḥābī* (individual opinions of the Prophet's companions), *sadd al-dharāʾiʿ* (preventive blocking of means leading to harm), and *sharʿ man qablana* (the legal prescriptions of previous prophetic communities as affirmed in Mecca).[35]

Consensus exists among all modern and classical Islamic jurists that every issue must be referred first to the Qur'an, and if the answer is not found in the Qur'an, then it should be referred to the Prophet's Sunnah. If there is still no clear answer to the

32. 2 ABDUL KARIM IBN ALI IBN MUHAMMAD AL-NAMLA, AL-MUHAZHAB FI ILM USUL AL-FIQH AL-MUQAREN 637 (Maktaba al-Rushd, 1999).

33. 2 S'ADUDDING MASOOD IBN UMAR AL-TAFTAZANI, SHARH AL-TALWIH ALA AL-TAWZIH (Maktabah al-Sabih, n.d.).

34. IBN NUJAIM, ZAIN AL-DIN IBN IBRAHIM IBN MUHAMMAD, AL-ASHBAH WA AL-NAZAYER ALA MADHAB ABI HANIFA AL-NUMAN 31 (Dar al-Kutub al-Elmeyah, 1999).

35. LUTFORAHMAN SAEED, ISLAM, CUSTOM AND HUMAN RIGHTS IN AFGHANISTAN: A LEGAL AND EMPIRICAL STUDY OF CRIMINAL CASES IN AFGHANISTAN AFTER THE 2004 CONSTITUTION 30–33 (2022).

question, then the jurists should do *ijtihād* (independent legal reasoning by an Islamic Jurist) to find the answer.[36] This principle has its roots in the Prophet's practice.[37]

While the Qur'an and the Sunnah are universally acknowledged as the principal and foundational sources of Islamic law, the secondary sources serve a vital function in the formulation of rulings on novel and context-specific legal matters. These sources facilitate the dynamic responsiveness of the Sharia to diverse temporal, spatial, and societal developments. Although the interpretive methodologies and criteria for the application of these sources differ across the various schools of Islamic jurisprudence (*madhāhib*), there remains a broadly accepted procedural norm: in cases of apparent conflict among legal sources, jurists are to follow an established hierarchy of authority. In cases where a conflict arises between sources of equivalent legal authority, such as between authenticated[38] Hadiths addressing women's rights to freedom of movement, jurists are required to engage in a critical appraisal of the narrations in question. This evaluative process involves examining the relative degrees of *ṣaḥīya* (authenticity), *siyāq* (contextual relevance), and the *maqāṣid* (specific legal objectives) underlying each report in order to determine the most appropriate

36. *Id*. at 29.

37. When Prophet Mohammad was sending one of his companions, Muʿādh ibn Jabal, as a judge and his representative to Yemen, the Hadith says, "He asked: How will you judge when a case arises? He replied, he shall judge in accordance with the Qur'an. The Prophet asked, what if you do not find any guidance in the Qur'an? He replied, he shall act in accordance with the Sunnah of the Prophet. Then the Prophet asked what if you do not find it in the Sunnah? Muʿādh said, then he will do ijtihād. The Prophet Mohammad patted him on the chest and said praise be to Allah who has helped the representative of the Messenger of Allah to find something which pleases the Messenger of Allah." SULAIMAN IBN AL-ASH'AS IBN ISHAQ IBN BASHIR AL-SAJESTANI ABU DAWUD, SUNAN ABU DAWUD Hadith No. 3592 (Dār al-Risāla al-ʿĀlamiyya, 2009).

38. Hadith scholars define an authentic Hadith (*al-ḥadīth al-ṣaḥīḥ*) as a narration with a continuous chain of transmission (*isnād*) in which each narrator, characterized by moral integrity (*ʿadl*), precision, and a reliable memory (ḍābiṭ), reports from a narrator of similar standing from the beginning of the chain to its end. Furthermore, it must be free of both anomaly (*shādhdh*) and any hidden, disqualifying defect (*muʿallal*). Each of these conditions has a detailed explanation in the Hadith sciences literature; for example, ʿadl refers to being a Muslim, having attained legal majority (*bulūgh*), being of sound mind (*ʿaql*), and possessing moral probity, that is, being upright and not characterized by sinfulness (*fisq*).

basis for legal judgment.[39] If a conflict arises between two prophetic traditions (*Sunnahs*) and their chronology cannot be determined, recourse is made to the next source in the hierarchy of legal proofs to establish the ruling for the case in question. This would be the opinion of a Companion (*qawl al-ṣaḥābī*) or sound analogical reasoning (*qiyās*). The rationale is that when two proofs are in opposition, acting upon either becomes impracticable. Consequently, for the purpose of practical application, both are treated as nullified (*ka-l-maʿdūm*), as if they were non-existent from the outset.[40] In such circumstances, the principle of *al-aṣl fī al-ashyāʾ al-ibāḥah* (the presumption of permissibility) is often applied, prioritizing the interpretation that allows, rather than restricts, the conduct in question.

1. Right to Movement in the Qur'an

The imposition of prohibitions or unwarranted restrictions on women's right to freedom of movement conflicts with numerous Qur'anic verses that emphasize the importance of travel and exploring the earth as a means of reflection and learning. Several Qur'anic verses detail Allah ordering humans to explore the world for various purposes. For instance, the Qur'an says, "Travel through the earth and see how God did originate creation . . . ."[41] These verses emphasize that exploring the world is an essential way to acquire knowledge, particularly about God's diverse creations. This teaching encourages individuals, regardless of their gender, to travel, allowing them to deepen their understanding of the world and its intricate design. Additionally, numerous other verses promote travel as a way for humans to visit historical sites, reflect on the fates of past civilizations, and derive lessons from their successes and failures. The Qur'an states: "Say: travel through the earth and see what was the end of those who rejected the truth."[42] Another verse warns, "Say: travel through the earth and see what was the end (aftermath) of those

39. DR. ALI GOMAA, *Al Shaykh Ali al Gomaa was the former Grand Mufti of Al Azhar University in Egypt* (YouTube, Oct. 27, 2016), https://www.youtube.com/watch?v=L3ZR0C4ZzOY (on file with the Fordham International Law Journal).

40. 2 MUHAMMAD IBN AHMAD IBN ABI SAHL AL-SARAKHSI, AUSUL AL-SARAKHSI 13 (Dar al-Kutub al-Elmyyah 1993).

41. QUR'AN 29:20.

42. *Id.* at 6:11.

guilty (of sin)."[43] It also says, "Why do they not travel through the earth and see what was the end (aftermath) of those who were before them (the previous nations)?"[44]

Besides these, several other verses in the Qur'an recommend exploring the world and learning through travel.[45] Based on these verses, the right to movement is generally promoted by the Qur'an, even though it primarily focuses on travel as a means of gaining knowledge about different nations and creations. These Qur'anic verses suggest that engaging with and exploring the world constitutes a persuasive moral and intellectual act, particularly for Muslims, as it represents one of the most effective means of fulfilling the religious obligation to seek knowledge, as the primary sources of Islamic law emphasize. Thus, in light of these verses, travel should be understood as a means of obtaining greater knowledge.

2. Women's Rights to Movement in the Prophet Muhammad's Sunnah

The right to movement is addressed in numerous prophetic narrations, which are recorded in various Hadith collections. These narrations offer guidance regarding travel for Muslims generally, as well as for Muslim women specifically. In broad terms, the Hadiths (Prophetic narrations) pertaining to travel may be categorized into three principal groups. The first category consists of reports that impose restrictions on a woman's travel in the absence of her husband or a *mahram.* The second category comprises Hadiths that articulate restrictions on the mobility of Muslim men depending on their companionship. The third category includes narrations that affirm the permissibility of women's travel without constraint, notably omitting the requirement for *mahram* accompaniment. This tripartite classification underscores the interpretive diversity within the Hadith corpus and reflects the evolving juristic engagement with issues of gender, mobility, and social context.

43. *Id.* at 27:69.
44. *Id.* at 40:82.
45. *Id.* at 30:9, 42.

a. Muslim women's travel without a *mahram*

The first category comprises Prophetic narrations that restrict women's travel without their husband or a *mahram*. These narrations specify various thresholds concerning both distance and duration. Some reports suggest an absolute prohibition on unaccompanied women traveling,[46] while others introduce conditional limitations, such as restricting travel to distances not exceeding twelve miles[47] or limiting the trip's duration to one night,[48] one day and night,[49] two days and nights,[50] or three days and nights.[51] These variations reflect a spectrum of legal interpretations and contextual applications within the classical jurisprudential tradition.

The majority of classical jurists have generally classified these narrations as *ṣaḥīḥ* (authentic) and have recognized their cumulative legal significance. Within Islamic legal theory, the prevailing principle holds that in the event of a conflict between two or more divine texts, the later revelation abrogates the earlier one (*naskh*). However, due to the absence of precise chronological indicators concerning the temporal sequence of these narrations, scholars have found it methodologically untenable to determine which, if any, function as *nāsikh* (the abrogating, or superseding, ruling) and which as the *mansūkh* (the abrogated, or voided, command). As a result, these texts are typically analyzed collectively, with interpretive efforts focusing on harmonization rather than legal supersession.

b. Muslim men's travel without proper companionship

The second category comprises a set of Hadiths that advise against Muslim men traveling alone without the companionship of other Muslims. For example, Ibn ʿUmar narrated that the Prophet prevented a man from spending the night alone and going on a trip

46. MUHAMMAD ISMA'IL AL-BUKHARI, SAHIH AL-BUKHARI Hadith No. 1862 (Dār Ṭawq al-Najāt 2001).

47. MUHAMMAD IBN ISHAQ IBN KHUZAYMAH AL-NISHAPURI, SAHIH IBN KHUZAIMAH Hadith No. 2526 (n.d.).

48. MUSLIM IBN AL HAJJAJ, SAHIH AL MUSLIM, at Hadith No. 3245 (Dar al-Jil, 1916).

49. AL-BUKHARI, *supra* note 46, at Hadith No. 1088.

50. *Id.* at Hadith No. 1197.

51. MUSLIM, *supra* note 48, at Hadith No. 3239.

alone.[52] Additionally, Ataa ibn Abi Rabah[53] narrated that the Prophet prevented a man from taking a trip alone.[54] The Prophet reportedly stated that an individual male traveler is akin to a devil, and two male travelers are like two devils; only a group of three men constitutes a proper company of companions on a journey.[55] These narrations reflect overarching concerns related to individual safety, communal responsibility, and the observance of religious and social obligations.

Some classical jurists and Hadith scholars have emphasized *ḍarūra* (necessity) and *amān* (security) as key factors in determining the permissibility of solitary travel for men.[56] A prominent Hanafi jurist and Hadith scholar, Al-'Aini, emphasized that necessity and safety are the primary conditions for undertaking travel; without both, travel is not considered permissible.[57] Despite numerous narrations warning against men traveling alone, this issue has received significantly less attention in legal discussions than the topic of women traveling without companions. This difference indicates the varying normative focus within the Islamic legal tradition regarding male and female mobility, influenced in part by sociocultural and legal assumptions about gender roles and public safety.

c. Muslim women's travel without constraints

The third category of Hadiths comprises narrations that affirm the permissibility of women traveling unaccompanied without duration and time constraints, provided the conditions of safety and security are met. A prominent example is found in many Hadith collections, such as *Ṣaḥīḥ al-Bukhari*, wherein the Prophet Muhammad, while addressing his companion 'Adī ibn Ḥātim, prophesied that a time would come when a woman would travel alone from al-Ḥīrah, a city near present-day Najaf in Iraq, to Mecca to perform the *Hajj* pilgrimage without fear. In the same Hadith 'Adī

52. *See* AHMAD IBN MUHAMMAD IBN HANBAL, MUSNAD AL-IMAM AHMAD IBN HANBAL, Hadith No. 5650 (Dar al-Hadith 1995).

53. Ataa ibn Abi Rabah (647–732) was a well-known jurist and Hadith scholar.

54. ABDULLAH IBN MUHAMMAD IBN IBRAHIM IBN UTHMAN IBN ABI SHAIBA, MUSANAF IBN ABI SHAIBA, Hadith No. 26900 (Dar al-Faruq 2009).

55. ABU DAWUD, *supra* note 37, at Hadith No. 2607.

56. 6 AHMAD IBN ALI IBN HAJAR AL-'ASQALANI, FATH AL-BARI SHARH SAHIH AL BUKHARI 138 (Dar al-M'arefah, 1959).

57. 14 MAHMOOD IBN AHMAD IBN MUSA IBN HUSAIN BADRUDDIN AL-'AINI, 'UMDATUL-QARI SHARH SAHIH AL-BUKHARI 248 (Dar al-Ehya al-turath al-Arabi, n.d.).

confirmed the fulfillment of this prophecy, stating that he had witnessed such an occurrence with his own eyes.[58] Some jurists have cited this narration as evidence that women's travel without a *mahram* may be permissible under circumstances that ensure her safety during the trip.

3. Practice of the Prophet's Household

It is well established in the Islamic historical tradition that the Prophet Muhammad had three sons, all of whom died in infancy, and four daughters, each of whom married during his lifetime.[59] He also had several wives, of whom only nine were still alive at the time of his death.[60] In relation to the subject under discussion, it is essential to examine how the Prophet's wives and daughters exercised their right to movement both during his lifetime and after his passing. Were they always confined to their homes, never leaving them? More importantly, did they travel, and if so, who, if anyone, accompanied them on such journeys?

An examination of the practices of the Prophet's daughter and wives indicates that it was not uncommon for female members of the Prophet's household to undertake long-distance travel without a *mahram* or husband. Such travel occurred during the Prophet's lifetime, with his explicit instruction or approval, and continued as standard practice after, during the era of his companions. Such precedent supports the permissibility of women's travel without male accompaniment, particularly in contexts where safety is reasonably assured.

One instance pertains to Zainab, the daughter of the Prophet, who resided in Mecca and married Abu al-'As ibn Rabi'. Following the Battle of Badr, in which Abu al-'As was taken prisoner by the Muslims, the Prophet negotiated his release on the condition that Abu al-'As was to send Zainab to Madina upon his return to Mecca. Abu al-'As complied with this condition and ensured her safe passage.[61] Thus, the Prophet then dispatched Zayd ibn Ḥāritha and

58. AL-BUKHARI, *supra* note 46, at Hadith No. 3595.

59. 2 ABDUL MALIK IBN HISHAM IBN AYUB, AL-SEERAH AL-NABAWIYAH LE IBN HISHAM, 9 (Dar al-Jil 1991).

60. MUHAMMAD ISMA'IL AL-BUKHARI, SAHIH AL-BUKHARI Hadith No. 4780 (Dar Ibn Kathir 1987).

61. 9 MUSA SHAHEEN LASHIN, FATH AL-MUN'EM SHARH SAHIH MUSLIM 416 (Dar al-Shuruq 2002).

a man from the *Ansar*[62] and told them, "Wait for Zainab in the valley of Ya'jaj," a location near Mecca. Her husband, Abu al-'As, took her out by night until he handed her over to Zayd ibn Ḥāritha and his companion.[63] Once Zainab joined them, the group traveled together to Madina.[64] The distance between Mecca and Madina required approximately eleven days of travel by camel or walking.

Another significant example is the case of Umm Ḥabībah, one of the Prophet's wives, who was among the early Muslim emigrants to Abyssinia (present-day Ethiopia), where her first husband passed away. The Prophet Muhammad subsequently dispatched 'Amr ibn Umayya to Abyssinia with a written request to the Negus, the Christian ruler of Abyssinia, to arrange a marriage with Umm Ḥabībah on his behalf.[65] The Negus fulfilled this request, and thereafter Umm Ḥabībah traveled from Abyssinia to Madina, accompanied by an envoy, who was not her *mahram*.[66]

A third example is found during the caliphate of 'Umar ibn al-Khaṭṭāb, when several of the Prophet's wives requested to undertake the 'Umrah optional pilgrimage to Mecca. Caliph 'Umar permitted them to do so.[67] Two of the Prophet's wives, Sawdah bint Zam'ah and Zaynab bint Jaḥsh, chose not to participate, explaining that after the Farewell Pilgrimage (*ḥajj al-wadāʿ*), the Prophet's statement was, "This is the pilgrimage; thereafter remain upon the backs of the mats." They interpreted it as imposing an obligation upon themselves and, by extension, upon the Prophet's wives, to remain in their residences.[68] However, the rest of the Prophet's wives, including Aisha and Umm Salamah, both renowned for their extensive knowledge and jurisprudential authority among the Prophet's spouses, proceeded with the pilgrimage. They were accompanied and escorted by two prominent companions, 'Uthmān

62. The term *Ansar* refers to the group of people from Madina, who embraced Islam and entered a pact to support the Prophet and the Muslims from Mecca.

63. 2 ISMAEEL IBN UMAR IBN KATHIR, AL-SEERAH AL-NABAWIYA LE IBN KATHIR 517 (Dar al-Marefa 1976).

64. ABU DAWUD, *supra* note 37, at Hadith No. 2692.

65. 4 MUHAMMAD IBN ABDULLAH IBN MUHAMMAD IBN HAMDUYAH AL-HAKIM AL-Naishapuri, AL-MUSTADRAK ALA AL-SAHIHAIN 104 (Dar al-Haramain 1997).

66. 3 SHAMS AL-DIN MUHAMMAD IBN AHMAD IBN UTHMAN IBN QAIMAZ AL-DAHABI, SEYAR A'LAAM AL-NUBALA 478 (Dar al-Hadith, 2006).

67. AL-BUKHARI, *supra* note 46, at Hadith No. 1860.

68. 5 ABU YA'LA AL-MUSELI, AHMAD IBN ALI IBN AL-MUTHANNA, MUSNAD ABI YA'LA 324 (Dar al-Tasil, 2017).

ibn ʿAffān and ʿAbd al-Raḥmān ibn ʿAwf, who would not have qualified as *mahram* under Islamic Law.

Furthermore, Aisha said that she asked the Prophet, "O Messenger of Allah, should we not go out for battle and *jihad* (strive) with you?" He replied, "The most excellent and beautiful form of *jihad* is a *Hajj al-Mabrūr* (accepted pilgrimage)." Upon hearing this, Aisha said, "After hearing this from the Prophet, I will never abandon the performance of *Hajj*."[69] According to the majority of sources, Aisha lived for forty-seven years after the Prophet's death.[70] Based on this Hadith, it appears that she regularly performed the *Hajj* pilgrimage and traveled to Mecca from Madina with a group of trusted, non-relative companions. Notably, there is no recorded objection from the companions regarding Aisha's practice.

A well-known early Hadith scholar, al-Zuhrī, narrated an account in which Aisha is reported to have said that a woman should not travel except with a *mahram*. However, Aisha simultaneously acknowledged that not all women possess a *mahram.*[71] This implies a degree of flexibility in application depending on individual circumstances. Furthermore, Ibn Umar, one of the famous jurists among the Prophet's companions, allowed a single non-related woman to join him on a trip from Madina to Mecca for *Hajj*.[72] The above narrations concerning the travels of the Prophet Muhammad's wives and daughter are documented in several authoritative Hadith compilations. If it were categorically prohibited for a woman to travel without a *mahram*, it would raise a significant question: How could the Prophet, whose actions are regarded as exemplary, permit his female family members to engage in what would be deemed a *haram* (prohibited act)?

These reports indicate a broader and contextually responsive understanding of women's mobility as reflected in the practices of the Prophet Muhammad and the early generations of the Islamic community, particularly the *Ṣaḥābah* (companions of the Prophet). Drawing upon the aforementioned Hadiths and the lived practices

69. *Id*. at Hadith No. 1861.

70. 7 EIZ AL-DIN IBN AL-ATHIR, ALI IBN ABI KARAM MUHAMMAD IBN MUHAMMAD IBN ABDUL KARIM, AUSD AL-GHABA FI MAREFAH AL-SAHABAH 186 (Dar al-Kutub al-Elmeyah, 1994).

71. IBN ABI SHAIBA, *supra* note 54, at 386.

72. 4 ALI IBN KHALAF IBN-E BATTAL, SHARH SAHIH AL-BUKHARI LE IBN BATTAL 532 (Maktabah al Rushd, 2003).

of the Prophet and his esteemed companions, it becomes evident that women during the Prophetic period and the early Islamic era exercised a considerable degree of freedom with respect to travel and movement. Where restrictions were imposed, they appear to have been driven primarily by contextual factors, namely, specific security concerns and exceptional circumstances, rather than by any absolute legal or theological prohibition.

D. Women's Right to Movement in the Major Schools of Islamic Jurisprudence

No religious text imposes any restrictions on a woman's ability to travel when she is accompanied by a *mahram* or her husband, and the major schools of Islamic jurisprudence agree on this point. However, Muslim jurists have drawn differing inferences regarding the permissibility of a woman traveling without the accompaniment of a *mahram* or husband from the above-mentioned Hadiths and the practices of the Prophet and his companions. The diversity of Prophetic narrations on this point has led Muslim jurists to formulate a spectrum of *fatāwā* (legal opinions) regarding Muslim women's right to movement. The following section presents a selection of these juridical positions, highlighting the interpretive diversity inherent within the Islamic legal tradition.

Some classical Hadith scholars, along with Wahhabi[73] intellectuals, assert that a Muslim woman's travel without a *mahram* is strictly prohibited,[74] irrespective of the duration or distance of the journey.[75] In contrast, the dominant opinion in the Hanafi school of thought, shared by both modern and classical scholars, holds that a

73. Wahhabi refers to the followers of Muhammad ibn Abd al-Wahhab (1703–1792). This movement emerged in the eighteenth century in the region of Najd (present-day Saudi Arabia). Rooted in the Hanbali school of thought, Wahhabism advocates for focus on the Qur'an and the Sunnah of the Prophet, grounded in the doctrinal framework of the *Salaf al-Ṣāliḥ* (the pious predecessors). Wahhabi systematically reject beliefs and rituals that they deem to constitute religious innovation (*bidʿah*) or polytheism (*shirk*), as defined by their interpretive methodology.

74. *See* ISLAM-ANCIENT, *Shaykh Abdullah Ibn Baaz* (YouTube, July 23, 2019), https://www.youtube.com/watch?v=HaYlXKOKY08 (on file with the Fordham International Law Journal); AL-ALBANI, *Shaykh al Authaimin and Al Shaykh Albani* (YouTube, June 29, 2021), https://www.youtube.com/watch?v=R6r1jPCqMMY (on file with the Fordham International Law Journal); DR. OTHMAN ALKAMEES, *Shaykh Authman al Khamis* (YouTube, Dec. 16, 2015), https://www.youtube.com/watch?v=JLDAlYprjSI (on file with the Fordham International Law Journal).

75. 4 IBN HAJAR AL-'ASQALANI, *supra* note 56, at 75.

Muslim woman may travel for up to three days and nights without a *mahram*.[76] According to this interpretation, a journey of less than three days is not classified as a "trip" in the context of Islamic law.[77]

Scholars of the Maliki school[78] and certain scholars within the Shafi'i school[79] maintain that, irrespective of the duration of the journey, a woman may undertake her obligatory *Hajj*[80] without a *mahram*, provided she is accompanied by a trustworthy group of individuals with whom she feels secure, referred to as *Rifq Aamenah* (a safe and reliable group). This view emphasizes the importance of safety and trust in the group, rather than the strict requirement of *mahram* accompaniment.[81]

Ibn Taymiyyah (1263–1328), a prominent Hanbali jurist, believed that any woman who feels safe may perform the *Hajj*, even without a *mahram*.[82] His student Ibn Mufleh (1310–1362) narrowed this position, asserting that it applies only to journeys undertaken for an act of worship.[83] Additionally, a minority of contemporary Hanbali scholars permit Muslim women to travel without a *mahram* regardless of the distance, if they can reach their destination within a twenty-four-hour period.[84]

The majority of contemporary Islamic scholars hold that a Muslim woman may travel without a *mahram* or husband, regardless of time and distance, as long as she feels safe. They emphasize the importance of modern facilities and safety measures available to travelers, prioritizing the establishment of a secure and safe environment for travelers. The Shafi'i school jurists

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76. 2 ALA UDDIN ABUBAKER IBN MASUD IBN AHMAD AL-KASANI, BADAYE AL-SANAYE FI TARTIB AL-SHARAYE 128 (Dar al-Kutub al-Elmeyah 1986).

77. 2 HASHEYA IBN ABIDIN, *supra* note 3, at 464.

78. The Maliki school is one of the four major schools of jurisprudence in Sunni Islam, founded by Imām Malik ibn Anas in the 8th century in the city of Madina.

79. The Shafi'i school is one of the four primary Sunni schools of Islamic jurisprudence, founded by Imām Shafi'i in the 9th century.

80. Generally, there are two kinds of *Hajj*. One is obligatory, where every Muslim must go to Mecca during the *Hajj* time if they are physically and financially capable. Another, *Umrah,* is non-obligatory, and a Muslim can visit Mecca at any time, except during the obligatory *Hajj* period.

81. 3 MOHAMMAD IBN- MUFLEH IBN-E MOHAMMAD IBN MAFRAJ IBN-E MUFLEH AL-MAQDASI, AL-FURU' WE TASHIH AL-FURU' 177 (Dar al-Kutub al-'Elmeyah, 1998).

82. 5 AHMAD IBN ABDUL HALIM IBN ABDUL SALAM AL-HERRANI IBN TAYEMYAH, AL-FATAWA AL-KUBRA LE IBN TAYEMYAH 381 (Dar al-kutub al-Elmeyah, 1987).

83. 5 MUHAMMAD IBN MUFLEH IBN MAFRAJ IBN MUFLEH, AL-FURU'A WA TASHIH AL-FURU'A 245 (Massesa al-Resala, 2003).

84. 5 MOHAMMAD HASAN ABDUL GHAFAR, MUKHALEFAAT TAQA'A FEEHA BA'DH AL-NESA 8 (n.d.).

and most modern Islamic scholars, including Shaykh Qardhawi,[85] Shaykh Ali Jum'ah,[86] Shaykh Wasim Yusuf,[87] Dr. 'Adnan Ibrahim,[88] a renowned Hanafi scholar, Dr. Abdul Qader al-Hossain,[89] and the Egyptian Dar al-Ifta[90] (House of *Fatwā*)[91] support this perspective.

While not exhaustive, the foregoing views represent the principal legal positions articulated across various Islamic schools of jurisprudence concerning women's right to movement. A significant majority (an estimated 80–85 percent) of the Afghan population adheres to Sunni Islam.[92] In particular, the Hanafi school of thought has historically served as the primary legal reference in Afghanistan. Moreover, the current Taliban administration has formally declared that only Hanafi legal doctrines are to be recognized as authoritative within the courts of the Islamic Emirate of Afghanistan.[93] Accordingly, this study undertakes a detailed examination of the position advanced by the Taliban's Chief Justice, Shaykh Abdul Hakim Haqqani, as articulated in his book, *The Islamic Emirate and Its System*, with particular attention to his interpretation of women's rights to mobility.

III. RIGHT TO FREEDOM OF MOVEMENT FROM THE TALIBAN PERSPECTIVE

Since their return to power in August 2021, the Taliban has undertaken a systematic campaign of enacting decrees,

85. *Id*.

86. DR ALI GOMAA, *Ruling on a woman traveling alone* (YouTube, Oct. 27, 2016), https://www.youtube.com/watch?v=L3ZR0C4ZzOY (on file with the Fordham International Law Journal).

87. WASIM YUSUF, *Al Shaykh Wasim Yusuf* (YouTube, Dec. 15, 2019), https://www.youtube.com/watch?v=zfOsHDp9Py4 (on file with the Fordham International Law Journal).

88. RUTANA AL-KHALIGIYAH, *Adnan Ibrahim* (YouTube, Sept. 2, 2017), https://www.youtube.com/watch?v=ViqaYaHVIqw (on file with the Fordham International Law Journal).

89. DR. ABDULKADER AL HOUSIEN, *A woman traveling by plane without a male guardian* (YouTube, Feb. 13, 2021), https://www.youtube.com/watch?v=hor0d6OeAx8 (on file with the Fordham International Law Journal).

90. Mahmoud Rabie Gomaa Abdel-Ghaid, *Women Traveling Without a Mahram, Past and Present: A Contemporary Jurisprudential Study*, 14 DAR AL-IFTA AL-MASRIYA 174 (2022).

91. Fatwā is an official legal opinion, or an authoritative ruling issued by a qualified Islamic jurist called a mufti in response to a question or problem regarding Islamic law.

92. U.S. DEP'T OF STATE, 2022 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: AFGHANISTAN (2022).

93. The Taliban's Court Procedural Law (*Layeha Mahakim*) art. 8 (2018).

regulations, and policy measures that severely curtail the rights of women. Among the fundamental freedoms most directly targeted is the right to freedom of movement, which occupies a pivotal role in the broader human rights framework. This right is foundational, as it constitutes a necessary precondition for the exercise of other essential rights, including the rights to education, employment, and public participation. The Taliban not only restricts women's access to this right but also regards others' failure to prevent women from exercising it as a violation. In such cases, individuals are subject to investigation and potential punishment. For instance, the Law on the Propagation of Virtue and Prevention of Vice mandates that drivers "not . . . transport any woman who is not in the company of a sound-minded *mahram*."[94]

A critical analysis of the Taliban's legal rulings and decrees regarding women indicates that their interpretation of Islamic doctrine is significantly influenced by the writings and ideological orientation of Shaykh Abdul Hakim Haqqani, one of the top leaders of the Taliban movement and the current Chief Justice of the Taliban's Supreme Court. In order to develop a more nuanced understanding of the Taliban's gender ideology, particularly with respect to women's right to freedom of movement, it is imperative to examine the doctrinal foundations articulated in Haqqani's legal and theological works. This study, therefore, provides a concise overview of Shaykh Haqqani's scholarly background and the relevance of his book *The Islamic Emirate and Its System*,[95] followed by a thorough examination of his views on women's mobility. These views will be analyzed in relation to the primary sources of Islamic law and the classical and contemporary jurists, particularly the Hanafi school of jurisprudence.

A. Shaykh Abdul Hakim Haqqani: The Principal Ideologue and Chief Justice of the Taliban

Shaykh Abdul Hakim Haqqani has been a pivotal figure in shaping the Taliban's ideological and legal framework since its inception in the 1990s. Haqqani is arguably the Taliban's single most

94. Law on the Propagation of Virtue and Prevention of Vice, art. 20, Official Gazette, No. 1452 (Afg.).

95. *See* SHAYKH ABDUL HAKIM HAQQANI, THE ISLAMIC EMIRATE AND ITS SYSTEM (Maktaba Dar al-Utum al-Sharaeyyah, 2022).

important intellectual leader. Renowned for his comprehensive expertise in Islamic sciences, Haqqani has played a crucial role in influencing the Taliban's Sharia interpretation and governance model structure. In addition to his current role as Chief Justice of the Supreme Court, he acts as a close advisor to the Taliban's highest levels of leadership, including the current *Amir al-Mu'minīn,*[96] Mullah Hibatullah Akhundzada.[97] In the preamble of Haqqani's book, *The Islamic Emirate and its System*, Hibatullah Akhundzada conferred several honorary titles upon Haqqani, including *Austad al-Ulama* (Educator of the *Ulama*),[98] *Sanad Fuqaha al-'Asr* (Muniment of the Jurists of the Era),[99] *al-Mujahid fi Sabil Allah*,[100] *al-Shaykh*,[101]

96. Amir al-Mu'minin literally means "Commander of the Faithful" or "Leader of the Believers." This title holds profound significance for the leader of the Taliban because it is not merely a political designation; it also constitutes a claim to religious and juridical authority. Historically, the title has been used for caliphs and major Muslim rulers, thereby conferring a form of religious legitimacy, obedience, and authority that extends beyond that of an ordinary head of state. By adopting this title, the Taliban seeks to portray their leader not simply as the head of government, but also as the religious leader of the Muslims under their rule.

97. *Who are the Taliban leaders now controlling Afghanistan?*, AUSTRALIAN BROADCASTING CORP. (Aug. 19, 2021), https://www.abc.net.au/news/2021-08-20/who-are-leaders-taliban-afghanistan/100390308 [https://perma.cc/Q9DD-7S4C].

98. Hibatullah Akhundzada, *Foreword* to SHAIKH ABDUL HAKIM HAQQANI, ISLAMIC EMIRATE AND ITS SYSTEM (Maktaba Dar al-Utum al-Sharaeyyah, 2022). *Austad al-Ulama* is an honorary title signifying an individual whose level of knowledge surpasses that of established *ulama* (Islamic scholars). The title implies that the individual possesses the intellectual and scholarly capacity to serve as a teacher and mentor to recognized scholars.

99. *Id. Sanad Fuqaha al-'Asr* is an honorary title denoting a scholar of exceptional expertise in Islamic jurisprudence. This designation implies that the individual's knowledge and authority are so esteemed that other *fuqaha* (jurists) regard his opinions as fundamental to their own arguments and rely on his judgments as authoritative evidence in legal and scholarly discourse.

100. *Id.* The Arabic phrase *al-Mujahid fi Sabil Allah* translates to "the one who strives in the path of Allah" or "the one who fights in the cause of Allah." It is composed of two essential terms: The term *al-Mujahid* derives from the word *jihad* (جهاد), which means "struggle" or "effort." The other term, *fi Sabil Allah*, means "for the cause of Allah" or "in the path of Allah." A person who practices *jihad*, whether it be intellectual, physical, or spiritual, with the earnest goal of furthering God's cause, is known as *al-Mujahid fi Sabil* Allah. The term has historically been used to characterize people who engage in righteous or defensive combat to defend or propagate Islamic principles. However, *jihad* also has less combative meanings, like "self-control" or "the pursuit of morality."

101. *Id.* In many Islamic and cultural traditions, the term "*Shaykh*" (also spelled "Sheikh" or "Sheik") refers to a person of high rank, respect, or authority. However, it can have multiple connotations depending on the context. Shaykh literally translates to "elder" or "leader," although its precise meaning can vary, including "religious scholar or teacher," "Sufi leader," "honorific title," "title for graduates in Islamic studies," and more.

al-Allamah,[102] and *al-Mawlawi*.[103] These titles, unprecedented in any other documents issued by the Taliban's supreme leader, highlight the remarkable prestige and respect Shaykh Haqqani holds within the movement's hierarchy. Mullah Hibatullah Akhundzada further emphasized the significance of Haqqani's work, acknowledging it as a critical source in the field of *Siyasah Shar'iyah*.[104] He wrote, "*Siyasah Shar'iyah* is a broad doctrine of Islamic law that authorizes the ruler to determine the manner in which the Sharia should be administered."[105] The above-mentioned honorary titles by the supreme leader of the Taliban also underscore the intellectual and authoritative weight of Shaykh Haqqani's scholarship and his contribution to the discourse on Islamic governance.

In his book, Shaykh Haqqani bases many of his legal arguments on non-Hanafi sources or on rare and atypical opinions within the Hanafi school rather than following the mainstream positions supported by most Hanafi jurists.[106] Additionally, his work consistently relies on direct quotes from the Qur'an and the Hadith collection books, a method more typically employed by Wahhabi scholars rather than the Hanafi school's distinctive approach of inferring laws from scriptures through detailed juristic interpretation or critical legal analysis.

The impact of Shaykh Haqqani's scholarship is evident in various Taliban edicts and decrees, including the recently enacted Law on the Propagation of Virtue and Prevention of Vice (PVPV) which closely reflects the ideas presented in his prominent work,

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102. *Id.* In Islamic culture, a highly accomplished and renowned Islamic scholar is referred to by the honorific term *Allamah* (Arabic: 'Allama). In Arabic, the word, 'ilm, signifies "knowledge" or "science." The exact meaning of *Allamah* is "the very knowledgeable" or "one who possesses vast knowledge."

103. *Id. Mawlawi* (also spelled *Maulvi*, *Mawlana*, or *Molavi*) is an honorific title used in Islamic cultures, particularly in South Asia, Central Asia, and the Middle East, to refer to a respected Islamic scholar, cleric, or religious leader. In the context of the Taliban movement in Afghanistan, *Mawlawi* is used to refer to individuals who have considerable religious authority and have studied Islamic law deeply, often in connection with Deobandi or Hanafi Islamic traditions. In short, *Mawlawi* refers to someone who is both a scholar of Islam and a priest.

104. SHAYKH ABDUL HAKIM HAQQANI, ISLAMIC EMIRATE AND ITS SYSTEM 6 (Darul Uloom al-Sharia, 2022).

105. Mohammad Hashim Kamali, *Siyasah Shar'iyah (The Policies of Islamic Government)*, 6 AM. J. ISLAMIC SOC. SCI. 59 (1989).

106. SHAIKH ABDUL HAKIM HAQQANI, THE ISLAMIC EMIRATE AND ITS SYSTEM 68, 69, 70, 74, 76, 82, 88, 90, 99, 104, 167, 210, 246, 249, 254–262 (Maktaba Dar al-Utum al-Sharaeyyah, 2022).

Islamic Emirate and Its System. His writings' influence is particularly apparent in Article 13 of the PVPV Law, which outlines the legal rules governing women's appearance in public places, including the *ḥijāb* and other attire.[107] The article reproduces not only the content but also the exact phrasing and sources cited in Haqqani's work, reflecting a direct adoption of his interpretations. The general perspective articulated by Shaykh Haqqani in his book on issues such as girls and women in education[108] is echoed verbatim in the edicts and directives issued by the Taliban authorities.[109]

Shaykh Haqqani's ideas are rooted in the tradition of *madrasas* (religious seminaries) associated with the Deobandi school of thought. The *Darul Uloom Deoband*, founded in 1865 in the town of Deoband, Uttar Pradesh, northern India, serves as the intellectual center of this movement. The Deobandi school is characterized by its conservative interpretation of Islam, privileging the understanding of the *Salaf al-Ṣāliḥ* (the pious predecessors)[110] while rejecting modernist reinterpretations of Islamic doctrine.[111]

1. Shaykh Haqqani's Biography and Education

Analyzing an individual's upbringing, educational background, and the intellectual and socio-cultural environment in which their worldview developed is essential for a thorough understanding of how they perceive and interpret the world. Accordingly, to gain a clearer understanding of Shaykh Haqqani's worldview, it is necessary to examine the circumstances of his birthplace and the educational milieu in which his intellectual formation occurred.

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107. Law on the Propagation of Virtue and Prevention of Vice, art. 13, Official Gazette, No. 1452 (2024) (Afg.).

108. SHAIKH ABDUL HAKIM HAQQANI, THE ISLAMIC EMIRATE AND ITS SYSTEM 246 (Maktaba Dar al-Utum al-Sharaeyyah, 2022).

109. *Taliban suspends girls' education in public and private universities*, BBC NEWS (Dec. 20, 2022), https://www.bbc.com/persian/afghanistan-64039997 [https://perma.cc/S5LB-MN96].

110. *Salaf al-Sālih* commonly refers to early Muslims, particularly the first three generations, including the era of the Prophet Muhammad's companions.

111. *See* NICOLE M. WARREN, MADRASSA EDUCATION IN PAKISTAN: ASSISTING THE TALIBAN'S RESURGENCE 5 (2009).

Shaykh Haqqani was born in 1956 in Talukan, a village in the Panjwai District, southeast of Kandahar City.[112] Kandahar, the largest city in southern Afghanistan, is widely recognized as the birthplace and stronghold of the Taliban movement.[113] Shaykh Haqqani's father, Mawlawi Khudaydad, who was locally known as Haji Mullah Saheb, was a prominent religious scholar in the Panjwai District.[114] His last name "Haqqani" comes from the Haqqani *madrasa*[115] (seminary), formerly known as Darul Uloom Haqqaniya.[116] This *madrasa* was founded in 1947 by eminent Deobandi scholar Mawlana Abdul Haq.[117] Like nearly all graduates of this seminary, Shaykh Haqqani's surname, "Haqqani," signifies his link to the Haqqaniya *madrasa*, one of the largest and most influential Islamic schools in northern Pakistan.[118] Darul Uloom Haqqaniya is well known for having trained most of the Taliban leaders.[119] The *madrasa* adheres to the Deobandi tradition within Sunni Islam; however, the Soviet invasion of Afghanistan, along with broader social and political developments in the region, has led to notable changes in the curriculum of *madrasas* in this context.[120] To contextualize the educational environment in which Taliban leaders were trained, it is necessary to briefly examine how Pakistani *madrasas* adapted their pedagogical approaches in response to the emerging socio-political circumstances in the region.[121]

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112. SHAIKH ABDUL HAKIM HAQQANI, THE ISLAMIC EMIRATE AND ITS SYSTEM 10 (Maktaba Dar al-Utum al-Sharaeyyah, 2022).

113. Ikramullah Ikram & Abubakar Siddique, *Southern Afghan City Becomes De Facto Capital As Taliban Chief Tightens Grip On Power*, RADIO FREE EUR. – RADIO LIBERTY (Apr. 18, 2023), https://www.rferl.org/a/afghanistan-kandahar-taliban-akhundzada-capital/32369212.html [https://perma.cc/HR7R-YKX3].

114. SHAIKH ABDUL HAKIM HAQQANI, THE ISLAMIC EMIRATE AND ITS SYSTEM 10 (Maktaba Dar al-Utum al-Sharaeyyah, 2022).

115. In Islamic tradition, *madrasas* were a place where Muslims, particularly the young generation, learn religious sciences such as Qur'anic recitation and exegeses, Prophetic traditions, Islamic theology, Islamic jurisprudence, Arabic language, and many other relevant fields related to divine law.

116. Shaikh Abdul Haq completed his religious education at Darul Uloom Deoband in Deoband, India. After he graduated, he taught at Deoband for four years until the independence of Pakistan. In 1947, he founded Darul Uloom Haqqaniya in Akora Khattak, Khyber Pakhtunkhwa province of Pakistan, which is one of the first Islamic seminaries to be established in Pakistan.

117. JONATHAN L. LEE, AFGHANISTAN: A HISTORY FROM 1269 TO THE PRESENT 630 (2018).

118. *Id.*

119. *Id.*

120. WARREN, *supra* note 111, at 9–10.

121. *Id.*

In contemporary history, significant changes have occurred in the field of Islamic education in Pakistani *madrasas*, which have had a substantial impact on war and conflict in Afghanistan. This change primarily occurred because Pakistan emerged as a primary refuge for Afghan refugees during the 1980s and 1990s[122] following the Soviet invasion of Afghanistan. In this context, Pakistani *madrasas* assumed a critical role in the mobilization and ideological preparation of combatants for participation in the conflict.[123] The traditional *madrasa* curriculum, rooted in classical Islamic pedagogy, was deemed insufficient to meet the emergent ideological imperatives of *jihad* against Soviet forces. Consequently, a shift was initiated to reformulate the educational content and orientation of these institutions, aligning them more closely with the objectives of the Afghan-Soviet war and the cultivation of ideologically motivated fighters.

Another significant transformation that shaped radicalism in religious education in the region, particularly in Afghanistan and Pakistan, has been the evolving role of *madrasas* which promoted thinking that was at odds with the values of human rights and especially women's rights as they have been understood in the West. Traditionally, these institutions concentrated on training individuals to serve their communities as *imāms* and religious scholars, with limited engagement in political or state-building discourses.[124] However, religious education in these contexts has undergone marked changes over the past four decades. Clerics have increasingly asserted their presence in political affairs, and some have notably rejected the views of other Muslim scholars, advancing the claim that their interpretation of Islam represents the sole authentic and authoritative understanding of the Islamic faith.[125] These transformations resulted in a significant departure from the traditional *madrasa* curriculum, marked by an increased emphasis on militant and extremist interpretations of Islamic texts.[126]

122. LEE, *supra* note 117, at 615.

123. Alexander Evans, *Understanding Madrasahs: How Threatening Are They?*, 85 FOREIGN AFFS. 10 (2006).

124. MUSTAFA IBN HASANI AL-SUBA'EE, MUTATEFAT MIN KETAB MIN RAWAE'Y HEZARATUNA 205–06 (Dar al-Waraq Le al-Nasher wa al-Tazi', 1999).

125. Shaikh Abdul Hakim Haqqani, The Islamic Emirate and Its System 18, 29 (Maktaba Dar al-Utum al-Sharaeyyah, 2022).

126. WARREN, *supra* note 111, at 10.

Following the collapse of the first Taliban regime and the subsequent NATO intervention in Afghanistan, these *madrasas* in Pakistan continued to function as pivotal centers for the indoctrination and training of Taliban combatants and leadership.[127] A particularly consequential development during this period was the reported establishment of specialized classes dedicated to the ideological and operational preparation of suicide bombers within specific *madrasas*.[128]

Shaykh Haqqani received his foundational education in religious sciences[129] from his father.[130] In 1977, seeking a more profound understanding of Hadith and other Islamic sciences, he relocated to a traditional Islamic *madrasa*, Darul Uloom Haqqaniya in Akora Khattak, Khyber Pakhtunkhwa province, Pakistan, a prominent center for the Hanafi Deobandi school of Sunni Islamic learning.[131]

Traditionally, the transmission of Islamic sciences has occurred through a direct, in-person teaching process, where knowledge is passed from a *Shaykh* (experienced scholar) to a younger student (Talib), which has been discussed in detail in Islamic education methodology sources.[132] Throughout history, Islamic scholars have been recognized by their chain of *Shoyukhs* (teachers), and it is through this lineage that one can gain insight into the methodology and intellectual worldview of a scholar.[133] Consequently, within the sphere of Islamic education, understanding the lineage of a scholar's training is essential, as it provides critical insight into their academic and theological orientations.[134] This mentorship and transmission of knowledge reflect the continuity and authenticity of religious

127. *Id.* at 14–15.

128. *Id.* at 14.

129. In Islamic Tradition, religious sciences commonly refer to those fields of knowledge related to divine law, such as Qur'anic sciences, Hadith sciences, Islamic theology, Islamic jurisprudence, and others.

130. SHAIKH ABDUL HAKIM HAQQANI, THE ISLAMIC EMIRATE AND ITS SYSTEM 10 (Maktaba Dar al-Utum al-Sharaeyyah, 2022).

131. *Id.*

132. *See* TAZKERAH AL-SAAMI WA AL-MUTAKALLEM FI ADAB AL-AALIM WA AL-MUTA'LEM, BADRUDDIN MUHAMMAD IBN IBRAHIM IBN SA'D ALLAH IBN JAMA'AH LA-KENANI (Maktaba Mushkat al-Islameyah n.d.).

133. *Id.*

134. *Id.*

scholarship, anchoring a scholar's perspectives within established intellectual traditions.[135]

At the beginning of *Islamic Emirate and Its System,* Shaykh Haqqani listed his esteemed teachers and noted that he studied key Islamic texts such as *Tafsir al-Qur'an* (Qur'anic commentary), major Hadith collections, and Hanafi jurisprudence under these prominent scholars, including Maulana Abdul Haq,[136] the founder of the Haqqani *madrasa*,[137] Shaykh Mufti Mohammad Fareed,[138] Allama Abdul Halim Zarubawi,[139] Mawlana Sami al-Haq, Mawlana Mohammad Ali Sewati, and Shaykh Fazel al-Mawla.[140] He graduated with distinction from Darul Uloom Haqqaniya in 1980.[141] Following his graduation, he relocated to Ziarat city in Pakistan's Baluchistan province, where he continued his studies in *Tafsir* (Qur'anic commentary) under Shaykh Jan Muhammad.[142] He received his training under direct graduates of Darul Uloom Deoband or their students. It is, therefore, unsurprising that his scholarly contributions align closely with the intellectual tradition, methodology, and teachings of the Deobandi school of thought,[143] rather than Wahhabism in Saudi Arabia, or Islamic Brotherhood in Egypt.[144]

Nevertheless, the imprint of Islamic political ideologies propagated by *madrasas* in Pakistan is evident in his doctrinal positions, setting him apart from other scholars situated within the broader Deobandi tradition. This divergence is largely attributable to

135. *Id.*

136. Maulana Abdul Haq, the *madrasa's* founder, gave the Darul Uloom Haqqaniya name "Haqqani" to his newly established *madrasa*. So, the name "Haqqani" is a reference to Abdul Haq, and "Haqqaniya" is derived from his name.

137. SHAIKH ABDUL HAKIM HAQQANI, THE ISLAMIC EMIRATE AND ITS SYSTEM 11 (Maktaba Dar al-Utum al-Sharaeyyah, 2022).

138. Mufti Muhammad Fareed was a great *mufti* of Pakistan. He belonged to Zarubawi, a village in the Sawabi district. He served as Shaykh al-Hadith and president of Dar al-Ifta in Darul Uloom Haqqaniya Akora Khattak. He was famous for his book Fatawa Fareediya.

139. Allama Abdul Halim Zarubawi was a notable Islamic scholar affiliated with Darul Uloom Haqqaniya. He was a graduate of Darul Uloom Deoband, and he typically follows the Deobandi school of thought, which emphasizes adherence to classical Islamic jurisprudence and theology.

140. SHAIKH ABDUL HAKIM HAQQANI, THE ISLAMIC EMIRATE AND ITS SYSTEM 11 (Maktaba Dar al-Utum al-Sharaeyyah, 2022).

141. *Id.*

142. HAQQANI, *supra* note 106, at 11.

143. Abdul Kabir Salehi, *An Inquiry on Talabani Theology: Deobandism with a Pashtun flavor*, AFG. INST. FOR STRATEGIC STUD. 12–19 (2023).

144. LEE, *supra* note 117, at 631.

the intensified establishment and funding of *madrasas* in Pakistan, especially those located along the Afghanistan-Pakistan border region, in the aftermath of the Soviet invasion of Afghanistan. The educational mandate of these institutions extended beyond traditional Islamic sciences to include the ideological and military training of Afghan youth in the ethos of *jihad* and armed resistance.[145] This transformation in pedagogical emphasis was intended to ensure a steady supply of combatants for the Afghan *jihad*. Concurrently, many of these seminaries received substantial financial backing from Saudi Arabia, which facilitated the dissemination of Wahhabi doctrine, a theological orientation that the Saudi state actively promoted.[146] As a result, the educational trajectory of these *madrasas* began to diverge from their earlier Deobandi foundations, increasingly aligning with a more politicized and militarized interpretation of Islam.

2. The Significance of Shaykh Haqqani's Book

Shaykh Abdul Hakim Haqqani distinguishes himself from other Taliban leaders through his extensive religious scholarly work, having published on a variety of topics.[147] As security conditions deteriorated for Taliban members in Pakistan during this period, he was compelled to remain at home, ceasing both his teaching and regular attendance at the mosque for prayers.[148] This unexpected confinement, however, allowed him to engage deeply in research and study, leading to an increased output of written works. At the beginning of his book, *Islamic Emirate and Its System*, he lists twenty-eight of his publications, comprising books and enchiridions.[149]

In *Islamic Emirate and Its System,* Haqqani systematically articulates the religious, political, and social frameworks that underpin the Taliban's vision for governance.[150] The book addresses pivotal issues, including human rights, particularly women's rights,

145. WARREN, *supra* note 111, at 15.

146. *See* INT INSIGHTS, *Hillary Clinton- We funded al Qaeda and the Wahhabi brand of Islam* (YouTube, Dec. 17, 2014), https://www.youtube.com/watch?v=9tY2C2dTkWM (Hillary Clinton discussing the role of Wahhabis in Afghanistan); *see also* LEE, *supra* note 117, at 617.

147. SHAIKH ABDUL HAKIM HAQQANI, THE ISLAMIC EMIRATE AND ITS SYSTEM 12–15 (Maktaba Dar al-Utum al-Sharaeyyah, 2022).

148. *Id.* at 12.

149. *Id.* 11–15.

150. *Id.* at 6.

and delves into matters related to the judiciary, legislation, and the overall principles essential for establishing and sustaining an Islamic state.[151] Haqqani also emphasizes the rejection of Western-style democracy and secularism, contending that these systems are fundamentally at odds with Islamic values.[152] In their place, he advocates for a governance structure where power is centralized, with religious scholars playing a pivotal role in decision-making and advising the leadership.[153] The book further addresses the judiciary, economic policies, foreign relations, and social structures within the Islamic Emirate, all articulated through a conservative Islamic worldview.[154]

The book's authority within the Taliban movement is considerable, serving as one of the principal sources informing the formulation of Taliban policy. *Islamic Emirate and Its System* is the first work authored by a principal intellectual figure of the Taliban movement, and includes a partial review conducted by the movement's supreme leader, Amir al-Mu'minin Mullah Hibatullah Akhundzada.[155] Following his initial assessment of select sections, Hibatullah Akhundzada referred the book to a committee of senior and highly respected *ulama* (Islamic scholars) he assigned for further examination to ensure its accuracy and reliability.[156] After a comprehensive review, this committee provided its full endorsement. Consequently, the book is validated by two authoritative Taliban sources: Mullah Hibatullah Akhundzada and a group of senior *ulama*.[157]

Although some other members and supporters of the Taliban, such as Abdul Hai Mutma'in,[158] Abdul Salaam Zaeef,[159] Ahmad Wahid

151. *Id.*
152. *Id.* at 27.
153. *Id.* at 237–44.
154. *Id*. at 74–77.
155. *Id.*
156. *Id.*
157. *Id.* at 5.
158. Abdul Hai Mutma'in is the author of the book *Taliban: A Critical History from Within*. He was also a prominent leader within the Taliban movement and served as an advisor to the second leader of the Taliban, Mullah Akhtar Mohammad Mansoor.
159. Mullah Abdul Salam Zaeef is the author of the book *My Life with the Taliban* and a prominent Afghan figure, best known for his role as a leader within the Taliban movement. He was a close associate of Mullah Muhammad Umar, the founder of the Taliban, and held significant positions during the group's rule over Afghanistan from 1996 to 2001.

Muzhdah,[160] and others have written about the Taliban movement and its worldview, their works are not widely recognized as authoritative sources. Rather, their writings fail to provide a comprehensive and officially endorsed account of the Taliban's perspective, as they lack the approval of the movement's leadership.[161] By contrast, Shaykh Haqqani's book is widely regarded as the official manifesto of the Taliban movement, reflecting his role as a key intellectual authority within its ranks.[162] It addresses pivotal issues, including human rights, particularly women's rights, and delves into matters related to the judiciary, legislation, and the overall principles essential for establishing and sustaining an Islamic state.[163] Haqqani's comprehensive approach demonstrates his effort to provide an ideological and theological foundation for the movement's governance model.

Broadly speaking, *Islamic Emirate and Its System* is considered the foundational manifesto of the Taliban movement and serves as one of the principal sources informing the formulation of Taliban policy.

B. Shaykh Haqqani on Women's Mobility: Between Traditional Norms and Legal Discourse

A significant portion (46 out of 302 pages) of Shaykh Haqqani's book is dedicated to examining issues related to women, including their societal status and rights.[164] While a comprehensive analysis of the entire text lies beyond the scope of this study, the present inquiry focuses specifically on Haqqani's interpretation of women's right to freedom of movement.

In various sections of his book, Shaykh Haqqani discusses the issue of women's right to movement, grounding his position in the views of Qur'anic exegetes, Hadith scholars, and jurists from both

160. Wahid Muzdah is an Afghan political figure, analyst, and author of *Afghanistan and Five Years of Taliban Rule.* He is known for his involvement in Afghan political affairs and his work on the dynamics of the Afghan conflict. He is particularly recognized for his expertise on the Taliban and the broader political and security issues in Afghanistan.

161. To the best of my knowledge, with the exception of Shaikh Haqqani's book, none of the aforementioned publications have a foreword endorsed by the supreme leader of the Taliban.

162. *See* SHAIKH ABDUL HAKIM HAQQANI, THE ISLAMIC EMIRATE AND ITS SYSTEM 17–30, 58–91, 163–201, 242–293 (Maktaba Dar al-Utum al-Sharaeyyah, 2022).

163. *See id.* at 58–91.

164. *See id*. at 81–85, 248–293.

the Hanafi and non-Hanafi schools of thought.[165] This analysis seeks to examine Shaykh Haqqani's arguments, in light of the fundamental doctrines of the Hanafi school and the prevailing views of the majority of scholars, to determine whether he genuinely relies on the mainstream positions of these authoritative scholars or whether he selectively adopts opinions that align with the ideological framework and policies of the Taliban movement, presenting them as the overarching position of Islamic law. Since the original Haqqani book is written in Arabic and has not been translated into English, this study provides the first detailed explanation of relevant parts of his book in English, along with an analysis that highlights the author's methodological and evidentiary approach, to help readers gain a nuanced understanding of his legal reasoning.

1. Homebound: Shaykh Haqqani's Perspective on Female Seclusion

According to Shaykh Haqqani, the fundamental reason women should stay home and not leave their houses is the Qur'anic verse that orders the Prophet's wives to stay home and not make a dazzling display.[166] This Qur'anic verse serves as the primary scriptural basis for Shaykh Haqqani's ruling that prohibits women from leaving their homes. The verse emphasizes the importance of modesty and the restriction of movement for the Prophet's wives. He asserts that this verse is part of a group of Qur'anic verses that outline a list of regulations for the Prophet's wives.[167] Shaykh Haqqani draws upon *Tafsir Rooh al-Bayan,* a Qur'anic exegesis by the Hanafi scholar Ismail Haqqi, and *Tafsir Al-Qurtubi*, a Qur'anic exegesis written by a Maliki scholar, which assert that, although the command in question is directed at the wives of the Prophet, it extends to all Muslim women.[168] Haqqani then discusses *Jahiliyah* (the era of ignorance), the pre-Islamic period in which women were treated as men's property without any basic rights.[169]

165. *See id.* at 254–263, 288–293.

166. QUR'AN 33:33.

167. The previous verse started with the direct order to the Prophet's wives and states, "O wives of the Prophet! You are not like any other woman . . . and then listed a group of orders that they should consider as the Prophet's wives."

168. 14 MUHAMMAD IBN AHMAD IBN ABI BAKER AL-QURTUBI, AL-JAMI' LE-AHKAM AL-QUR'AN 179 (1964) [hereinafter TAFSIR AL-QURTUBI].

169. HAQQANI, *supra* note 106, at 250–51.

Shaykh Haqqani does not engage with the interpretations of this verse presented by the many other Hanafi or non-Hanafi Qur'anic exegetes who have addressed this matter. Thus, examining the perspectives of a broader range of classical and contemporary Qur'anic commentators is necessary to develop a more comprehensive understanding and to reflect the predominant scholarly consensus.

In contrast to Haqqani's interpretation, the prevailing view among both classical and contemporary Muslim scholars, including Hanafi jurists and Qur'anic exegetes, is that this verse was specifically addressed to the wives of the Prophet Muhammad and is not directed to Muslim women more broadly. This interpretation is based on the unique and distinguished position of the Prophet's wives within society, which necessitated particular regulations regarding their behavior and public presence.[170] Consequently, this instruction is considered contextually specific, rather than universally applicable, within mainstream Islamic jurisprudence. To clearly understand the verse, it is essential to read it in context, rather than by itself. The Qur'an says:

> O Prophet! Say to thy Consorts: "If it be that ye desire the life of this world, and its glitter, then come! I will provide for your Enjoyment and set you free in a handsome manner. But if ye seek God and His Apostle, and The Home of the Hereafter, Verily God has prepared for the well-doers amongst you a great reward." O Consorts of the Prophet if any of you were guilty of evident unseemly conduct, The Punishment would be doubled to her, and that is easy for God. But any of you that is Devout in the service of God and His Apostle, and works righteousness, to her shall We grant her reward twice: and We Have prepared for her A generous Sustenance. O Consorts of the Prophet! Ye are not like any of the [other] women: If ye do fear [God], be not too complaisant of speech, lest one in whose heart is A disease should be moved with desire: but speak ye A speech [that is] just. And stay, [in another translation based on a grammatical point discussed below, it means act and behave with solemnity and elevation] in your houses, and

170. ALMODIFER, *'Usam al Bashir* (YouTube, Mar. 10, 2012), https://www.youtube.com/watch?v=oYz_iqpGs-k; MOHAMED EL HASSAN OULD DEDEW CHANNEL, *Al Shaykh Mohammad al-Hasan al-Dadu* (YouTube, Mar. 13, 2021), https://www.youtube.com/watch?v=pTNUptXkNw0 (on file with the Fordham International Law Journal).

> make not a dazzling display, like that of the former Times of Ignorance; and establish Regular Prayer and give Regular Charity; and obey God and His Apostle. And God only wishes to remove all abomination from you, ye Members of the Family, and to make you pure and spotless.[171]

Firstly, an analysis of these verses collectively indicates that the primary addressees are the wives of the Prophet, rather than all Muslim women. The text of the verses specifically points out that the Prophet's wives are "not like any of the (other) women," which suggests that the rules and religious obligations that apply to them may well differ from the rules for other women.[172] Moreover, when the Qur'an intends to address all Muslims or Muslim women, it consistently employs inclusive language or directly addresses the intended group. For instance, the Qur'an states, "O Prophet! Tell your wives and daughters and the believing women to draw their cloaks over themselves."[173] The Qur'an's explicit use of general terms reflects its distinctive method of addressing the broader Muslim community. Frequently, the Qur'an employs expressions such as "O you who believe!" "To those who believe in God and His Messengers,"[174] or "For Muslim men and women, for believing men and women"[175] when issuing commands or guidance intended for all Muslims. In contrast, the verse in question specifically addresses the Prophet's wives, stating, "O Prophet! Say to your wives . . . ."[176] This particular mode of address indicates that the directive is intended exclusively for the wives of the Prophet, rather than for all Muslim women.

Furthermore, from the perspective of the principles of *uṣūl al-fiqh* (Islamic jurisprudence principles), Hanafi scholars have reached a consensus that when a divine legal text stipulates a command related to a specific incident and qualifies it with a description, condition, explicit purpose, or numerical limitation, the scope of that ruling remains confined to the particular context identified in the text.[177] Such a command is not to be generalized

171. QUR'AN 33:28–33.

172. 22 MUHAMMAD AL-TAHIR IBN ASHUR, AL-TAHRIR WA AL-TANWIR 10 (Dar al-Tunisiya lel-nasher 1984).

173. QUR'AN 33:59.

174. *Id.* at 4:136.

175. *Id.* at 33:35.

176. *Id.* at 33:28.

177. ABDUL WAHHAB KHALLAF, 'ILM USUL AL-FIQH 157 (Matb'ah al-Madani n.d.).

beyond the circumstances explicitly outlined and characterized in the original revelation.[178] Applying this principle to the aforementioned Qur'anic verses, it is evident that they are specifically addressed to the wives of the Prophet and contain legal injunctions tailored to their distinctive status. Given that these rulings were issued in response to their particular circumstances, they remain applicable solely to the Prophet's wives and do not extend to other Muslim women. If the verse "And stay in your houses" were to be considered universally applicable to all Muslim women, then by the same reasoning, other verses addressing the wives of the Prophet, such as "If any of you were guilty of evident unseemly conduct, the punishment would be doubled for her" or "And whoever among you is devoutly obedient to Allah and His Messenger and works righteousness, to her We shall grant her reward twice,"[179] would also need to be applied universally. However, Islamic scholars have agreed that these rulings are specific to the Prophet's wives and have not extended their application to all Muslim women.[180] This distinction underscores the unique legal and moral framework that governed the household of the Prophet.

As noted above, the majority of classical and contemporary Muslim Qur'anic exegetes maintain that the verse in question is directed exclusively toward the wives of the Prophet, rather than to all Muslim women. For instance, the renowned modern jurist and Qur'anic commentator Ibn ʿĀshūr interpreted the command "Remain in your homes" as being specifically addressed to the Prophet's wives.[181] He argued that this injunction was intended to honor them and preserve their sanctity, framing their remaining within their homes as an act of devotion.[182] The sanctity of their domestic space, he noted, is further elevated by the presence of divine revelation and the frequent visits of the Prophet. Ibn ʿĀshūr further clarified that while this *ḥukm* (command) constitutes a *wājib* (obligation) for the Prophet's wives, it should be understood as a

178. *Id.*

179. QUR'AN at 33:30.

180. 3 AHMAD IBN ALI ABUBAKR AL-JASSAS, AHKAM AL-QUR'AN 470 (Dar al-Ehya al-Turath al-Arabi, 1985).

181. 22 MUHAMMAD AL-TAHIR IBN ASHUR, AL-TAHRIR WA AL-TANWIR 10 (Dar al-Tunisiya lel-nasher, 1984).

182. 22 MUHAMMAD AL-TAHIR IBN ASHUR, AL-TAHRIR WA AL-TANWIR 10 (Dar al-Tunisiya lel-nasher, 1984).

faḍīlah (expression of virtue and a recommended act) for other Muslim women, rather than a binding legal requirement.[183] Moreover, Ibn Furāk (941–1015 CE), a prominent Muslim theologian and Qur'anic exegete, stated in his exegesis that the verse in question is specifically directed toward the Prophet's household, meaning his wives.[184] He supported this view by referencing the interpretation of ʿIkrimah Mawlā ibn ʿAbbās (d. 723 CE), a distinguished Qur'anic commentator, who also understood the verse to apply exclusively to the Prophet's wives.[185]

Wahba al-Zuhaili, a famous contemporary jurist and scholar, in his commentary on the Qur'an regarding the verses, said these special treatments were granted to the wives of the Prophet as a counterpart to the responsibilities entrusted to them.[186] Within the Islamic tradition, the women of the Prophet's household hold a distinct and unparalleled status among all women.[187] Their elevated position reflects both their unique role and the exceptional virtues they embodied, distinguishing them as the most honored among women.[188]

Further evidence that these verses apply only to the Prophet's wives comes from the particular context of these verses. Imām Shawkani, a renowned Qur'anic commentator, noted that Muslim exegetes have observed that these verses were a divine revelation in response to a time when the Prophet's wives sought to increase their financial provisions and requested additional material support.[189] Moreover, their mutual jealousy was causing distress for the Prophet.[190] In response to these circumstances, the Prophet swore to abstain from them for one month.[191] Later, a Qur'anic

183. 22 MUHAMMAD AL-TAHIR IBN ASHUR, AL-TAHRIR WA AL-TANWIR 10 (Dar al-Tunisiya lel-nasher, 1984).

184. 2 MUHAMMAD IBN AL-HASAN IBN FURĀK, TAFSIR IBN FURĀK 107 (Jame'ah Aum al-Qura, 2009).

185. *Id.*

186. 3 WAHBA AL-ZUHAYLI, AL-TAFSIR AL-WASIT 2069 (Dar al-Fikr, 2001).

187. 14 MUHAMMAD IBN AHMAD IBN ABI BAKER AL-QURTUBI, AL-JAMI' LE-AHKAM AL-QUR'AN 173 (1964).

188. *See* 3 WAHBA AL-ZUHAYLI, AL-TAFSIR AL-WASIT 2069 (Dar al-Fikr, 2001).

189. *See* 4 MUHAMMAD IBN ALI IBN MUHAMMAD ABDULLAH AL-SHAWKANI, FATH AL-QADIR 317 (Dar Ibn Kathir, 1994).

190. MUSLIM, *supra* note 48, at Hadith No: 3670.

191. MUHAMMAD ISMA'IL AL-BUKHARI, SAHIH AL-BUKHARI Hadith No. 5201 (Dār Ṭawq al-Najāt, 2001).

revelation addressed this issue, offering divine guidance.[192] It demonstrates that, first, these verses directly address the Prophet's wives and, second, relate explicitly to them because of such a particular occasion.

Furthermore, some Islamic scholars argue that the directive to "Stay home"[193] does not impose an absolute prohibition on the Prophet's wives from leaving their homes. The author of *Al-Tawzih le-Sharh al-Jami al-Sahih* contends that remaining within the confines of the house is not a binding obligation, contrary to the claims of those who criticized Aisha, the wife of the Prophet, for her journey to Iraq to mediate between warring Muslim factions.[194] According to this interpretation, the Prophet's wives are not required to remain confined to their homes, as some have argued in response to Aisha's travels.[195] This Hadith serves as a clarification of the verse in question and challenges the interpretation that imposes an absolute restriction on their mobility.[196] In response to those who have construed the verse commanding the Prophet's wives to "stay in your houses" as an unequivocal prohibition against leaving their homes, this Hadith provides a more nuanced understanding, demonstrating that such an interpretation is neither absolute nor universally binding.

Additionally, from a Qur'anic sciences perspective, there is an important grammatical consideration that must be addressed. Most Qur'anic commentators have noted that the pronunciation of the word *Qarna* (translated as "stay" [at home]) in the verses quoted above varies across different styles of recitation of the Qur'an, known as *Qira'at*.[197] The term *Qira'at* refers to the various methods

192. *See* 4 MUHAMMAD IBN ALI IBN MUHAMMAD ABDULLAH AL-SHAWKANI, FATH AL-QADIR 317 (Dar Ibn Kathir, 1994).

193. QUR'AN 33:33.

194. 4 MUHAMMAD IBN JARIR AL-TEBARI, TARIKH AL-Tebari 458–461 (Dar al-Turath, 1968).

195. 11 SARAJ AL-DIN UMAR IBN ALI IBN AHMAD IBN MULQAN, AL-TAWDIH LI-SHARH AL-JAMI AL-SAHIH 40 (Dar al-Nawader, 2008).

196. 7 MUHAMMAD THANAA ALLAH AL-MAZHARI, AL-TAFSIR AL-MAZHARI 388 (Maktaba al-Rushdeyah, 1992).

197. 1 MUHAMMAD SALIM MUHAISEN, AL-HADI SHARH TAIYEBAH AL-NASHER FI AL-QIRA'AT AL-'ASHER 14 (Dar al-Jil, 1997). In fact, there are mainly seven different (Qira'at) styles of recitation of the Qur'an, which are: (1) Qira'at Naafi' Al-Madani (Madina), (2) Qira'at ibn Katheer Al-Makki (Mecca), (3) Qira'at Abu Amr al-Basri (Basra), (4) Qira'at ibn Aamir ash-Shami (Syria), (5) Qira'at Asim Al-Kufi (Kufa), (6) Qira'at Hamzah al-Kufi (Kufa), (7) Qira'at Al-Kisaa'i (Kufa).

of recitation of the Qur'an, as transmitted by renowned authorities. Al-Qurtubi, a prominent Qur'anic exegete, and most of the Qur'anic exegetes assert that in five out of the seven recognized recitations of the Qur'an, the term is pronounced as *Qerna*,[198] not *Qarna.*[199]

Importantly, the difference in pronunciation conveys different meanings. Some scholars favor the pronunciation of "Qarna" with a fatḥa on the letter qāf, arguing that this term is derived from the root of the infinitive qaraar, meaning "to remain" or "to stay."[200] Subsequently, these scholars interpret the verse as instructing the Prophet's wives to remain in their homes, asserting that their primary status is defined by staying at home rather than venturing outside, and Muslim women should follow their example.[201]

In contrast, the majority of Qur'anic commentators assert that, from both an etymological and philological perspective, the term *Qerna* (Arabic: .قِرنَ), is derived from the root *Waqar* (Arabic: وقار), which denotes solemnity, dignity, and elevation, rather than from *Qaraar* (staying).[202] Abu Hatam (788-869), a famous classical Arabic language scholar, believed that the reading "Qarna" has no valid basis in Arabic.[203] According to this perspective, grounded in the conventional understanding of the majority of classical and contemporary Muslim jurists, the interpretation of the verse would differ substantially from that of a few scholars who believe women must stay home.

Furthermore, the Hanafi scholars hold that the action of the Companions (fiʿl al-ṣaḥābī) serves as an elucidation (tabyīn) of the Prophet's statement.[204] Additionally, they believe that among the Companions of the Prophet, there were jurists who issued legal opinions (fatwas), and it is obligatory to adhere to their

198. 14 MUHAMMAD IBN AHMAD IBN ABI BAKER AL-QURTUBI, AL-JAMI' LE-AHKAM AL-QUR'AN 178 (1964); HAQQANI, *supra* note 106, at 250–51.

199. *See* 14 AL-QURTUBI, *supra* note 198, at 178.

200. *See id.*

201. 14 MUHAMMAD IBN AHMAD IBN ABI BAKER AL-QURTUBI, AL-JAMI' LE-AHKAM AL-QUR'AN 179 (1964).

202. *See* 20 AL-TABARI, JAMI AL-BAYAN FI TAWIL AL-QUR'AN 259 (Musesa al-Resalah, 2000) [hereinafter JAMI' AL-BAYAN FI TAWIL AL-QUR'AN].

203. *See* 4 MUHAMMAD IBN ALI IBN MUHAMMAD ABDULLAH AL-SHAWKANI, FATH AL-QADIR 320 (Dar Ibn Kathir, 1994).

204. 5 AL-KASANI, 'ALA' AL-DIN ABUBKER IBN MASUOD IBN AHMAD, BADA'I AL-SANA'I FI TARTIB AL-SHARAEY 131 (Dar al-Kutub al-Elmeya, 1986).

opinions.[205] The Hanafi jurists stated that if a conflict arises between two Prophetic reports (*sunnah*), preference is accorded to the statements of the Companion (*aqwāl al-ṣaḥābī*).[206] With respect to the statement of a Companion (qawl al-ṣaḥābī), the Ḥanafī jurists agree that it constitutes probative authority (ḥujjah).[207] Ibn Abedin, a well-known Hanafi jurist, unequivocally asserted that the saying of the Companions is a probative authority for us, and it is obligatory to follow it, provided that nothing else in the Sunnah negates or contradicts it.[208] This conclusion is grounded in the presumption that such a statement may derive from direct audition from the Prophet, as well as in the enhanced likelihood of sound judgment attributable to the blessing (barakah) of companionship with him.[209] There is no credible evidence to support the assertion that the Prophet's wives were entirely confined to their homes and never left them. In contrast, reliable evidence indicates that they frequently traveled to Mecca for Umrah[210] and left their homes as personal necessities arose. For example, the second caliph, ʻUmar ibn Khattab, sent Uthman ibn Affan and Abdul Rahman ibn A'uf with the Prophet's wives in order to conduct their pilgrimage. ʻUthmān would proceed ahead of them, not allowing anyone to draw near to them or to see them except from a distance. Abdul Rahman ibn A'uf would follow behind them, doing likewise, while they were carried in howdahs. When they halted, the two would lodge them within the mountain passes, allowing them to rest there at midday, while the two themselves would remain in the shaded part of the pass, and they would not permit anyone to pass by them.[211] This preference

205. 1 AL-KASANI, 'ALA' AL-DIN ABUBKER IBN MASUOD IBN AHMAD, BADA'I AL-SANA'I FI TARTIB AL-SHARAEY 24 (Dar al-Kutub al-Elmeya, 1986).

206. 3 MOHAMMAD UBAIDULLAH IBN MASOOD IBN TAJ AL-SHARIAH, AL-TAQZIH FI HAL GHAWMIDH AL-TANQIH 282 (Al-Shamela al-Zhahabeyah n.d.).

207. 2 MOHAMMAD UBAIDULLAH IBN MASOOD IBN TAJ AL-SHARIAH, AL-TAQZIH FI HAL GHAWMIDH AL-TANQIH 411 (Al-Shamela al-Zhahabeyah n.d.).

208. 2 HASHEYA IBN ABIDIN, *supra* note 3, at 158.

209. 2 MOHAMMAD UBAIDULLAH IBN MASOOD IBN TAJ AL-SHARIAH, AL-TAQZIH FI HAL GHAWMIDH AL-TANQIH 411 (Al-Shamela al-Zhahabeyah n.d.).

210. AL-BUKHARI, *supra* note 46, at Hadith No. 1861.

211. 8 IBN SA'D, MUHAMMAD IBN SA'D IBN MANEE', TABAQAT AL-KUBRA 168 (Dar al-Kutub al Elmeyah, 1990).

highlights their emphasis on dignity and honor, rather than a literal command to remain confined to the home.[212]

This interpretation is consistent with the lifestyle and practice of the majority of the Prophet's wives and the understanding of the Prophet's companions, who viewed the verse as emphasizing dignity and elevated status rather than merely prescribing the physical act of remaining at home.[213] This interpretation is further substantiated by historical accounts indicating that the Prophet's wives occasionally undertook extended journeys, such as performing the Umrah (non-obligatory *Hajj* pilgrimage to Mecca)[214] or fulfilling their personal needs outside the home, thereby demonstrating the permissibility of women's mobility.[215] However, some Qur'anic exegetes sought to reconcile both perspectives, acknowledging that the term *Qarna* signifies dignity and honor.[216] According to this view, staying at home is the most appropriate way for the Prophet's wives to embody dignity and honor.

Shaykh Haqqani, in his book, accepts the interpretation that women must stay at home and reinforces his view by citing a narration about one of the Prophet's wives, Sawdah bint Zamʿah, that she refused to travel to Mecca from Umrah.[217] According to this narration, she refrained from leaving her residence even for acts of worship such as attending congregational prayers at the mosque, performing the obligatory pilgrimage to Mecca, or undertaking *Umrah* (the optional pilgrimage) until she died.[218] A

212. *E.g.*, IMAM ABU MUHAMMAD HUSAYN B. MAS'UD AL-BAGHAWI, MA'ALIM AL-TANZEEL (Dar al-Tayyebah le Nasher wal Tawzi, 1997); ABU ZAKARIYYA YAHYA IBN ZIYAD AL-FARRA, MA'ANI AL-QUR'AN (n.d.); ABU AL-LAYTH AL-SAMARQANDI, BAHR AL-'ULUM (n.d.) [hereinafter TAFSIR AL-SAMARQANDI]; IBN-E FURAK, TAFSIR IBN-E FAURAK (n.d.); ALI IBN-E MOHAMMAD IBN-E HABEEB AL-MAWARDI, AL-NUKAT WA AL-'UYUN (n.d.) [hereinafter TAFSIR AL-MAWARDI]; ABU MUHAMMAD ABD AL-HAQQ IBN 'ATIYYA AL-ANDALUSI, AL- MUHARRAR AL-WAJIZ FI TAFSIR AL-KITAB AL-'AZIZ (n.d.); ABDULLAH IBN AHMAD IBN MAHMUD AL-NASAFI, MADARIK AL-TANZIL WA HAQA'IQ AL-TA'WIL (n.d.) [hereinafter TAFSIR AL-NASAFI]; 4 MOHAMMAD IBN MUHAMMAD IBN ABD ALLAH AL-SHAWKANI, TAFSIR FATHUL QADIR 319 (Dār al-Fikr, 1973).

213. 8 IBN SA'D, MUHAMMAD IBN SA'D IBN MANEE', TABAQAT AL-KUBRA 169 (Dar al-Kutub al Elmeyah, 1990).

214. MUHAMMAD ISMA'IL AL-BUKHARI, SAHIH AL-BUKHARI Hadith No. 1861 (Dār Ṭawq al-Najāt, 2001).

215. AL-BUKHARI, *supra* note 46, at Hadith No. 4795.

216. 3 AL-HUSAYN IBN MAS'UD AL-BAGHAWI, MA'ALIM AL-TANZIL 528 (Dar Tayyiba li-I-Nashr wa al-Tawzi', 1997).

217. 5 ABU YA'LA AL-MUSELI, AHMAD IBN ALI IBN AL-MUTHANNA IBN YAHYA, MUSNAD ABU YA'LA AL-MUSELI 80 (Dar al-Tasil, 2017).

218. HAQQANI, *supra* note 106, at 252.

critical examination of this argument, however, reveals significant evidentiary and methodological flaws. An alternative interpretation, supported by various sources, suggests that Shaykh Haqqani's argument can be examined from several perspectives. First, he does not identify the source of this report in his work; rather, he merely states in a general manner that it is narrated from Sawdah that she said such-and-such. Second, this report does not appear in the canonical ḥadīth collections; however, a similar context is available in some historical works, such as Ṭabaqāt al-Kubra by Ibn Saʿd.[219] Given that historical reports do not possess the same evidentiary authority for the derivation of legal rulings, it is methodologically unsound to ground a legal judgment on a purely historical narration.

Moreover, this historical report stands in tension with the established practice of the other Mothers of the Believers and the Companions, as the majority of the Prophet's wives repeatedly undertook the pilgrimage (ḥajj and ʿumrah). Umar ibn Khattab, the second caliph, and other Companions not only refrained from objecting to their journeys but, in fact, actively facilitated and supported them.[220] As previously noted, the statements and actions of a Companion constitute probative authority (*ḥujjah*) only insofar as they do not conflict with the Prophetic Sunnah or stand in opposition to the practice of other Companions.[221] More importantly, the companions and others followed him in this view without objection.[222] Even assuming the authenticity of the report attributed to Sawdah bint Zamʿah, it appears that this report is at variance with the position of the majority of the Companions, including most of the Prophet's wives. This circumstance calls into question the appropriateness of relying upon the statement attributed to Sawdah as a basis for legal determination.

Accordingly, reliance on a solitary historical report in opposition to the collective practice of the Companions is not methodologically tenable.

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219. 8 IBN SA'D, MUHAMMAD IBN SA'D IBN MANEE', TABAQAT AL-KUBRA 168 (Dar al-Kutub al Elmeyah, 1990).

220. AL-BUKHARI, *supra* note 46, at Hadith No. 4795.

221. 2 HASHEYA IBN ABIDIN, *supra* note 3, at 158.

222. 3 MUHAMMAD IBN ISMAEIL IBN SALAH AL-SANA'NI AL-AMIR, AL-TAHBIR LE EEZAH M'ANI AL-TAISIR 493 (Maktabah al-Rushed, 2012).

This narration, however, is a subject of scholarly debate. Some Hadith scholars, including Ḥāfiẓ al-Sahāranpūrī (1852–1927), a prominent Hanafi Deobandi scholar, have regarded this report as reflecting the personal choice of Sawdah bint Zamʿah and Zaynab bint Jaḥsh (two of the Prophet's nine surviving wives)[223] rather than establishing a normative precedent applicable to all of the Prophet's wives or the broader community.[224] In fact, the majority of the Prophet's wives appear to have understood the reason for the denial of Sawdah and Zaynab differently. They interpreted the Prophet's saying to mean that performing Hajj would not be an obligation in the future, and that it did not include the optional Hajj (*Umrah*).[225]

If one were to assert that only Sawdah bint Zamʿah adhered to the Qur'anic directive by remaining at home, such a position would entail a problematic and potentially untenable implication, namely, that the other wives of the Prophet, by undertaking the Hajj pilgrimage, deliberately contravened a Qur'anic injunction. This conclusion is not only difficult to reconcile with their status as close companions of the Prophet but also overlooks the broader historical and textual evidence. Notably, Aisha herself practiced travel for *Hajj* and other purposes,[226] which proved to be a common and accepted practice among the Prophet's wives, as well as among the wives of his companions. A number of Hadiths further substantiate the view that the normative practice among the Prophet's household and the early Muslim community diverged from the interpretation attributed to Sawdah bint Zam'ah. For example:

> Aisha, one of the Prophet's wives, asked the Prophet, "O Prophet! Shouldn't we participate in jihad along with you?" He replied, "The best and the most superior jihad (for women) is *Hajj*, which Allah accepts." Aisha added, "Ever since I heard that from the Prophet, I have determined not to miss *Hajj*."[227]

223. Following the death of the Prophet Muhammad, nine of his wives survived him and lived as his widows.

224. *See* 7 KHALIL AHMAD SAHĀRANPŪRĪ, BADHL AL-MAJHUD FI HALL SUNAN ABI DAWUD 10 (Markaz al-Shaykh Abi al-Hasan al-Nadawi lil-Buhuth wa al-Dirasat al-Islamiyya, 2006).

225. *See* 3 MUHAMMAD IBN ISMAIL IBN SALAH IBN MUHAMMAD, AL-TAHBIR LI IDAH MA'ANI AL-TAYSIR 493 (Maktabat al-Rushd, 2012).

226. Her trip to Iraq was intended to mediate between two Muslim groups but ultimately led to a battle with Ali ibn Abi Talib, the fourth caliph.

227. AL-BUKHARI, *supra* note 46, at Hadith No. 1861.

> Once, Sawdah, one of the Prophet's wives, went out at night for some need, and 'Umar saw her, and recognizing her, he called upon her, "By Allah, O Sawdah! You cannot hide yourself from us." So, she returned to the Prophet and told him the story of 'Umar. The Prophet told his wives: "O women! You have been allowed by Allah to go out for your needs."[228]

> Hafsah bint 'Umar, one of the Prophet's wives, said, "We used to forbid our young women to go out for the Eid prayers." A woman narrated about her sister, who was with her husband in six battles along with the Prophet. She said, "They used to treat the wounded warriors, look after the patients, and once she asked the Prophet, "Is there any harm for any of us staying at home if she doesn't have a veil?" He said, "She should cover herself with the veil of her companion and should participate in the good deeds and the religious gathering of the Muslims."[229]

These authentic narrations, cited from *Ṣaḥiḥ al-Bukhari*, which is widely regarded as the most authoritative collection of Hadith, show that the standard practice of the Prophet and his companions differed significantly from the interpretation attributed to Sawdah bint Zam'ah. The evidence presented in these reports shows that women, including the wives of the Prophet, actively participated in public life and engaged in outdoor activities, such as accompanying military expeditions. These situations involved significant danger and appear incompatible with any strict prohibition on leaving the home. In this context, Abū al-ʿAbbās al-Bāslī al-Tūnisī (d. 1427 CE), a notable Qur'anic scholar, argued that the verse "stay quietly in your houses . . . "[230] does not place an absolute ban on the Prophet's wives leaving their homes. Instead, it forbids them from appearing in public with *tabarruj*, a form of showy or immodest display similar to pre-Islamic custom.[231]

Furthermore, Ibn Baṭṭāl (d. 1057), a renowned jurist and Hadith scholar, held the view that the verse in question does not establish a *fard* (obligatory) ruling requiring the Prophet's wives to remain

228. *Id*. at Hadith No. 4795.
229. *Id*. at Hadith No. 324.
230. QUR'AN 33:33.
231. 2 ABU AL-ABBAS AL-BASILI AL-TUNISI, NUKAT WA TANBIHAT FI TAFSIR AL-QUR'AN AL-MAJID 402 (Ministry of Islamic Affairs 2008).

confined to their homes.[232] The eminent Hanafi Qur'anic exegete al-Maẓharī (1730–1810) shared this interpretation, asserting that the verse does not impose an absolute prohibition on the Prophet's wives with regard to leaving the house, whether for prayer, pilgrimage, or personal necessities. He critiques the interpretations propagated by groups such as the *Rāfiḍah*,[233] who have historically criticized Aisha for undertaking the pilgrimage after the Prophet's death without a *mahram* or for her involvement in the political unrest that led her to confront the fourth caliph, 'Alī ibn Abī Ṭālib. According to al-Maẓharī, the verse conveys two principal points: first, that it specifically addresses the wives of the Prophet, rather than Muslim women in general; and second, that it does not institute an unconditional restriction on their mobility.[234]

2. Imprisoned or Protected? The Ideology of Home as Woman's Ideal Space

Shaykh Haqqani further substantiates his position that women should primarily remain within the domestic sphere by referencing a Hadith that states, "It is better for a woman to pray in her house than in her courtyard, and more excellent for her to pray in her private chamber than in her house."[235] This narration is often interpreted to emphasize the virtue of enhanced seclusion, suggesting that greater privacy provides increased protection from public visibility.[236] It is widely recognized among Islamic scholars that performing acts of worship in a tranquil and undisturbed setting yields considerable spiritual benefit because performing supererogatory (*nafl*) prayer in the home renders it more concealed and thus further removed from ostentation (*riyā'*), better safeguards it from external distractions, and brings blessing (*barakah*) to the household, wherein mercy and the angels descend, and from which Satan is repelled.[237] Therefore, it is considered ideal for both men and

232. 4 ABU AL-HASAN ALI IBN KHALAF IBN ABD AL-MALIK IBN BATTAL, SHARH SAHIH AL-BUKHARI LI IBN BATTAL 191 (Maktabat al-Rushd, 2003).

233. Rāfiḍah means "rejectors," refers to those *Shia Muslims who "reject" the "legitimacy" of the caliphates of Abu Bakr.*

234. 7 MUHAMMAD THANA ALLAH AL-MAZHARI, AL-TAFSIR AL-MAZHARI 402 (Maktabat al-Rashidiyya, 1992).

235. ABU DAWUD, *supra* note 37, at Hadith No. 570.

236. HAQQANI, *supra* note 106, at 251.

237. 4 BADRUDDIN AL-'AINI, MAHMOOD IBN AHMAD IBN MUSA, SHARH ABI DAWUD LEL 'AINI 352 (Maktabah al-Rushd, 1999).

women, at least with respect to non-obligatory prayer to pray in a quiet and isolated place. This practice was prevalent among the Prophet's companions and remains common among devout individuals devoted to prayer and spiritual discipline. Besides, the Hadith in question employs the phrase (Afdhal)"It is better ... ,"[238] thereby suggesting that the most meritorious location for a woman's prayer is the innermost and most secluded area of her home. This preference is rooted in the Islamic emphasis on modesty, privacy, and the minimization of external distractions, all of which contribute to greater spiritual focus and sincerity in worship. Further, interpreting this Hadith as imposing an obligation would not align with the broader Hadith corpus, particularly considering that several authentic narrations addressed to men also emphasize the superiority of performing *nafl* (non-obligatory) prayers at home while specifying that only the *fard* (obligatory) prayers are to be performed in congregation at the mosque. For example, Prophet Muhammad said, "You should pray in your houses; the best prayer of a person is that which he prays in his house except the compulsory prayers."[239] Abdullah ibn Sa'd also said,

> I asked the Messenger of Allah: "Which is better, prayer in my house or prayer in the mosque?" He said: "Do you not see how close my house is to the mosque? But praying in my house is dearer to me than praying in the mosque, apart from the prescribed prayers."[240]

Finally, the Prophet said: "The prayer a man offers in his house is more excellent than his prayer in this mosque of mine except obligatory prayer."[241]

Moreover, a more rigorous academic approach necessitates examining the subject not solely based on a single Hadith but by considering multiple Prophetic narrations from various perspectives and subsequently deriving legal principles from their collective evidence. Numerous Hadiths indicate that the Prophet explicitly instructed Muslim men not to prevent the women of their

238. ABU DAWUD, *supra* note 37, at Hadith No. 570.

239. AL-BUKHARI, *supra* note 46, at Hadith No. 731.

240. MUHAMMAD IBN YAZID AL-QAZWINI, SUNAN IBN MAJAH Hadith No. 1378 (Dar al-Risalah al-'Ilmiyya, 2009).

241. ABU DAWUD, *supra* note 37, at Hadith No. 1044.

households from attending the mosque.[242] These narrations underscore the permissibility and legitimacy of women's presence in places of worship. For instance:

> One of the wives of 'Umar bin Al-Khattab used to offer the Fajr and the 'Isha prayer in congregation in the Mosque. She was asked why she had come out for the prayer, as she knew that 'Umar disliked it, and he has great *ghaira* (self-respect). She replied, "What prevents him from stopping me from this act?" The other replied, "The statement of Allah's Messenger: 'Do not prevent God's female servant (Muslim women) from going to Mosques.'"[243]

> The Prophet Muhammad said: "Do not prevent God's female servant (Muslim women) from going to Mosques."[244]

> 'Abdullah ibn 'Umar said that the Messenger of Allah said: **"**When women ask permission for going to the mosque, do not prevent them."[245]

These narrations collectively indicate that women exercised a recognized degree of freedom of movement during the lifetime of the Prophet Muhammad and that this autonomy was similarly acknowledged and respected by his companions. Even the second caliph, 'Umar ibn Khattab, did not prevent his wife from going to the mosque in the darkness of the aurora and in the evening.[246] On another occasion, when Ibn 'Umar reported that the Prophet said, "Do not prevent your women from attending the mosques at night," Sālim, one of Ibn 'Umar's sons, replied, "By Allah, we will not allow them, lest they use it as a means of deception." Upon hearing this, Ibn 'Umar struck his chest and told him, "I am narrating to you from the Messenger of Allah, and you say this."[247] These narrations demonstrate that women's attendance at congregational prayers in mosques was a well-established practice during the lifetime of the Prophet and his companions.

Thus, a renowned Hanafi and Deobandi jurist, Anwar Shah Kashmiri (1875–1933), in his famous commentary on Sahih al-

242. MUSLIM IBN AL-HAJJAJ, SAHIH AL MUSLIM, Hadith No. 920 (Dar al-Jil, 1916).
243. AL-BUKHARI, *supra* note 46, at Hadith No. 900.
244. MUSLIM, *supra* note 48, at Hadith No. 920.
245. *Id*. at Hadith No. 922.
246. MUHAMMAD ISMA'IL AL-BUKHARI, SAHIH AL-BUKHARI Hadith No. 900 (Dār Ṭawq al-Najāt, 2001).
247. IBN HANBAL, *supra* note 52, at Hadith No. 5021.

Bukhari, stated that the Prophetic traditions indicate that women consistently participated in congregational prayers, including both the obligatory prayers[248] and the two Eid prayers,[249] without any restrictions. This is further supported by the Prophetic directive, "Do not prevent the female servants of Allah from attending the mosques." This reflects an established practice, as it is a direct statement. Nonetheless, jurists gradually adopted a more restrictive approach, and later scholars ultimately enforced a complete ban on women's attendance at mosques.[250]

Taking all of these considerations into account, the issue of women attending prayers in mosques has been a subject of considerable debate among classical Muslim scholars. The renowned jurist and Hadith scholar, Imām al-Shawkani, provided a comprehensive summary of the five diverging principal legal opinions held by Muslim jurists on this matter:

> First: It is *mustahabb* (recommended) for women to attend, and the command regarding it is understood as encouragement rather than obligation. This view does not differentiate between young and elderly women. It is the opinion of Abu Hamid, a Hanbali scholar, and al-Jurjani, a Shafi'i scholar, and aligns with the general position of Imām al-Shafi'i.
>
> Second: a distinction is made between young and elderly women, allowing elderly women to attend, but not young women. Al-Iraqi stated that this is the predominant view among the Shafi'i scholars, following the explicit statement of Imām al-Shafi'i in *al-Mukhtasar*.

248. Within the Islamic tradition, daily prayers (ṣalawāt) are generally classified into two categories: obligatory (fard or wajib) and optional (nafl) prayers. The five daily obligatory prayers are prescribed at specific intervals throughout the day: before sunrise (ṣalāt al-fajr), afternoon (ṣalāt al-ẓuhr), late afternoon (ṣalāt al-ʿaṣr), after sunset (ṣalāt al-maghrib), and evening (ṣalāt al-ʿishāʾ). Muslims are strongly recommended to perform the obligatory prayer collectively in a mosque. In addition to these mandatory acts of worship, Muslims are also encouraged, but not required, to perform a range of optional prayers, which remain at the discretion of the individual.

249. Within the Islamic tradition, two principal festivals, Eid al-Fiṭr and Eid al-Aḍḥā, are widely observed by Muslims across the world. A central ritual associated with both occasions is the performance of the ʿĪd prayer. According to the authoritative opinion within the Hanafi school of law, the ʿĪd prayers are deemed legally obligatory.

250. 2 MUHAMMAD ANWAR SHAH AL-KASHMIRI, FAYD AL-BARI ʿALA SAHIH AL-BUKHARI 412 (Dar al-Kutub al-ʿIlmiyya, 2005).

> Third: It is merely *ja'iz* (permissible) but not *mustahabb* (recommended) for women to attend in general. This appears to be the view of Imām Ahmad, as transmitted by Ibn Qudamah.
>
> Fourth: It is *makrūh* (disliked) for all women to leave their home for Eid prayers. Al-Tirmidhi attributed this view to al-Thawri and Ibn al-Mubarak. It is also the position of Malik and Abu Yusuf, and was reported by Ibn Qudamah from al-Nakha'i and Yahya ibn Sa'id al-Ansari. Ibn Abi Shaybah narrated from al-Nakha'i that he specifically disliked young women going out for the Eid prayer.
>
> Fifth: Attending Eid prayers is an obligation upon women. Qadi Iyad attributed this view to Abu Bakr, the first caliph, Ali ibn Abi Talib, the fourth caliph, and Abdullah ibn ʿUmar. Ibn Abi Shaybah also narrated that Abu Bakr and Ali said, "It is a right upon every woman who wears a belt (*nitaq*) to go out for the two Eids."[251]

Al-Shawkānī offers a critical examination of the views above, asserting that the fourth position, which deems it *makrūh* (disliked) for all women to attend the Eid prayers, stands in direct contradiction to authentic Prophetic traditions and rests upon unsound juristic reasoning. He further argues that the selective exclusion of young women from attending the Eid prayer is inconsistent with the explicit and well-substantiated Hadith texts, which unequivocally encourage the participation of all women, including young, unmarried women. Then he argues that multiple Hadiths affirm that women, including virgins, widows, young women, elderly women, and menstruating women,[252] are permitted to attend the prayer area on the two Eids without differentiation based on marital status or age.[253] This ruling applies provided that the woman is not in the *ʿiddah* (waiting

251. 3 MUHAMMAD IBN ALI IBN MUHAMMAD IBN ABDULLAH AL-SHAWKANI, NAYL AL-AWTAR 342 (Dar al-Hadith, 1993).

252. In the Islamic tradition, women who are *ḥā'iḍ* (menstruating) are not permitted to perform *ṣalāh* (ritual prayers) and *sawm* (fasting). However, the Prophet Muhammad instructed menstruating women to attend the congregational gatherings of the Muslim community, such as the Eid prayers, not to engage in the prayer itself, but to be present to partake in the spiritual atmosphere and to visibly contribute to the strength and unity of the Muslim *ummah*.

253. 3 MUHAMMAD IBN ALI IBN MUHAMMAD IBN ABDULLAH AL-SHAWKANI, NAYL AL-AWTAR 342 (Dar al-Hadith, 1993).

period),[254] her presence does not lead to *fitnah* (temptation), and she does not have a valid excuse preventing her attendance.[255]

As previously noted, several authentic Hadiths directly encourage men to perform their *Ghair al-Fard* (*Nafilah*) prayers at home rather than in the mosque. However, these narrations should not be interpreted as a prohibition against men attending the mosque for prayer. Rather, they underscore the merit, for both men and women, of offering voluntary prayers in the privacy of one's home.

Shaykh Haqqani nonetheless seeks to establish that, from a Sharia-based perspective, the greater a woman's distance from the public sphere and the more concealed she is from public view, the more her conduct aligns with Islamic legal and ethical principles. To support this argument, he cites a statement attributed to Aisha, the wife of the Prophet Muhammad, in which she is reported to have said, "Had the Messenger of Allah seen what women do now, he would have forbidden them from attending the mosque, just as the women of the Children of Israel were forbidden."[256]

Shaykh Haqqani also cites al-Ḥāfiẓ al-ʿAini (1360–1453), a renowned Hanafi jurist and Hadith scholar, who reflects on the statement attributed to Aisha concerning women's conduct in her time. Al-ʿAini remarks that had Aisha witnessed the conduct of some women in later generations, such as wearing ornamental clothing, applying cosmetics, using perfume, and engaging in other forms of public adornment, she would have expressed even greater disapproval and concern than she did regarding the women of her own era. Al-ʿAini further asserts that if such behavior was deemed objectionable in Aisha's time, it is difficult to imagine her reaction to the more excessive and widespread manifestations of these practices in contemporary urban settings. He then rhetorically questions how Aisha would have responded to the women's presence in public space and their behavior in contemporary times, which he considers far more egregious than those she originally criticized.[257] Haqqani then

254. According to Islamic family law, if a woman's husband dies or gets divorced, she must wait for a certain amount of time before she gets remarried to another man. The waiting period (*'iddah*) of a divorced woman is three menstrual cycles; a woman whose husband has died must wait for four months and ten days. If she is pregnant, her waiting period ends upon giving birth.

255. 3 MUHAMMAD IBN ALI IBN MUHAMMAD IBN ABDULLAH AL-SHAWKANI, NAYL AL-AWTAR 342 (Dar al-Hadith, 1993).

256. AL-BUKHARI, *supra* note 46, at Hadith No. 869.

257. 6 BADRUDDIN AL-'AINI, *supra* note 57, at 15.

concluded the discussion by asking a similar question of his own: If Imam al-Aini, a 14th-century scholar, expressed such dissatisfaction with women's presence outside the home that it facilitated inappropriate behavior in his time, how can we accept women's right to freedom of movement when the conditions of society and the status of women in modern times are a thousand times worse than in Imam al-Aini's time?[258]

Referring to Aisha's statement as cited by Shaykh Haqqani above, the well-known Hadith scholar al-Mubarakpuri acknowledges that some individuals have invoked this narration to justify a broad ban on women leaving their homes. Al-Mubarakpuri contends, however, that this interpretation cannot serve as a valid basis for altering the existing rulings that permit women to attend congregational prayers at the mosque or to leave their homes for legitimate needs. He highlights that Aisha's statement was both conditional and hypothetical as it was based on a scenario that did not occur. Aisha expressed that, had the Prophet witnessed the situation, he would have prohibited women from going to the mosque. Yet, as it stands, the Prophet did not issue such a prohibition, and thus, his ruling permitting women to leave their homes remains in effect. Moreover, while Aisha's words suggest her inclination toward such a prohibition, she did not explicitly declare one or issue a fatwa on prohibition that could serve as a basis for women's mobility in public places. Further, it indicates the conditional nature of her statement.[259]

Thus, although Aisha disapproved of certain practices observed by some women during her time, she did not prohibit them from engaging in such activities, nor did she issue any *fatwā* to discourage women from leaving their homes. This is particularly significant because she was one of the seven *muftis* (prominent jurists) among the Prophet's companions, known as *Al-Mukthirun*.[260] Therefore, if Aisha truly believed that women leaving their homes was a prohibited act, she presumably would have declared the activity as unlawful. While it is recognized that some women may not have

258. HAQQANI, *supra* note 106, at 251–52.

259. 3 MUHAMMAD ABD AL-RAHMAN IBN ABD AL-RAHIM AL-MUBARAKPURI, TUHFAT AL-AHWADHI BI SHARH JAMI' AL-TIRMIDHI 76 (Dar al-Kutub al-'Ilmiyya, 1990).

260. *Al-Mukthirun* refers to a group of the Prophet's companions who, compared to others, issued a greater number of legal opinions and provided more frequent rulings on jurisprudential matters.

adhered to ideal standards of conduct if their actions had indeed been unlawful or impermissible, it is highly improbable that Aisha would have refrained from objecting to a prohibited act occurring in her presence.

Additionally, several scholars have argued that Aisha's statement represents her personal *ijtihād* rather than a divinely mandated command, given that the ultimate lawgiver in Islam is *Allah* alone. Divine injunctions were revealed to the Prophet based on *ʿilm ilāhī* (God's perfect, absolute, infinite, and all-encompassing knowledge), which encompasses complete awareness of human conditions across time: past, present, and future. Consequently, if the appearance of women in public were inherently detrimental or likely to worsen societal conditions, Allah, in His absolute knowledge, would have explicitly prohibited it through divine revelation.[261] This truth indicates that God's revelation to the Prophet Muhammad is the only primary source of divine law, based on *'Ilm Ilahi*, which is neither constrained by time nor subject to limitation. It follows that if the Prophet not only refrained from prohibiting women from attending the mosque but, in multiple authentic Hadiths, actively encouraged their participation in congregational prayers while instructing his companions not to prevent their female family members from leaving their homes to do so, these Hadiths carry inherent wisdom and significance that cannot be overridden by personal opinion. As noted by some Hadith scholars, Aisha observed the conduct of certain women, though not all, whose behavior she found displeasing.[262] Consequently, her statement reflects a personal interpretation of particular practices she deemed less than ideal, and does not constitute a formal *fatwā* prohibiting women from attending the mosque.

Furthermore, Shaykh Muhammad al-Kheder al-Shanqiti, a prominent Hadith scholar and jurist, in his renowned commentary on *Sahih al-Bukhari*, commented on Aisha's aforementioned opinion. He stated that *Allah,* in His complete and perfect knowledge, was fully aware of how women would behave, and had revealed to His Prophet the prohibitions He deemed necessary.

261. 1 ABD AL-AZIZ IBN ABD ALLAH IBN BAZ, AL-HULAL AL-IBRIZIYYA MIN AL-TA'LIQAT AL-BAZIYYA 'ALA SAHIH AL-BUKHARI 253 (Dar al-Tadmuriyya li-l-Nashr wa al-Tawzi', 2007).

262. 6 ABD AL-MUHSIN IBN HAMD IBN ABD ALLAH IBN HAMD AL-ABBAD AL-BADR, SHARH SUNAN ABI DAWUD 78 (n.d.).

Had He determined that women's presence in public was inherently problematic, the prohibitions would logically have extended from the mosque to other public places, like markets. However, no authentic Hadith prohibits women from leaving their homes to fulfill their needs. Moreover, the behavior in question was exhibited by some women, but not by all. Consequently, if a prohibition was considered necessary, it would have been explicitly directed at those individuals who engage in such behavior.[263]

As noted above, Shaykh Haqqani also bolsters his conclusion that the behavior of modern Muslim women justifies their restriction to the home by relying on the observations of al-Hafiz al-'Aini, who believed that Aisha would have been so displeased by the actions of women in Egypt that she would have ordered them to stay home. Al-'Aini remarked:

> Among these women are those who ride donkeys with their sleeves hanging loosely on both sides, wearing extremely thin garments. Others ride boats on the Nile and its canals, freely interacting with men. Some sing loudly and melodiously while drinks are passed among them. Furthermore, some women have gained dominance over men, imposing harsh demands upon them. Among these women are those who openly sell forbidden items and engage in transactions with men in matters that violate Islamic law. Additionally, some women engage in prostitution, corrupting both men and women, thereby spreading immoral behavior that is contrary to Islamic teachings.[264]

Shaykh Shanqiti observed that al-Ayni's depiction of the situation of women in Egypt was specific to his era. He contended that if the Prophet had witnessed the conduct of women in Egypt during his time, he would likely have viewed the transgressions of his period as relatively more acceptable in comparison.[265] Al-ʿAini's reasoning forms the primary foundation for Shaykh Ḥaqqānī's theory concerning the prohibition on women leaving their homes.

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263. 9 MUHAMMAD AL-KHIDR IBN SA'ID ABD IBN AHMAD AL-SHANQITI, KAWTHAR AL-MA'ANI AL-DARARI FI KASHF KHABAYA SAHIH AL-BUKHARI 481 (Mu'assasat al-Risalah, 1995).

264. 6 BADRUDDIN AL-'AINI, MAHMOOD IBN AHMAD IBN MUSA IBN AHMAD, 'UMDATUL-QARI SHARH SAHIH AL-BUKHARI 158 (n.d.).

265. 9 AL-SHANQITI, *supra* note 263, at 481.

However, most Hanafi jurists, including al-ʿAini, generally maintain that women are not categorically prohibited from leaving their homes to fulfill essential needs. In his commentary *al-Bināyah Sharḥ al-Hidāyah*, al-ʿAini affirms that, according to the Hanafi school, it is permissible for a woman to undertake a journey of less than three days and nights without the accompaniment of a *mahram* or husband.[266] From this perspective, such a movement does not require the accompaniment of a *mahram*. Therefore, based on the mainstream opinion of the Hanafi school, there is no restriction on women leaving their homes for their essential daily needs. Furthermore, this view is supported by an authentic Hadith in which Sauda, the Prophet's wife, was seen going out at night. When ʿUmar saw her, he recognized her and then informed the Prophet. The Prophet responded that it is acceptable for women to go out to meet their needs.[267]

Shaykh Haqqani's reliance on the reported statement of ʿĀ'isha, expressing disapproval of women's presence outside their homes, stands in tension with numerous authentic Prophetic traditions, as well as with the predominant interpretation of her position by both classical and contemporary scholars. Such reports must be contextualized within the broader framework of Prophetic traditions and juristic discourse, wherein scholars of Islamic law and Hadith have offered diverse interpretations. It is widely acknowledged among jurists and Hadith scholars that ʿĀ'isha's statement does not constitute a Prophetic Hadith but rather reflects her personal legal judgment (*ijtihād*). In contrast, a substantial body of sound Prophetic traditions affirms women's participation in public life, including their involvement in critical settings such as military expeditions and battlefield support. Thereby, it establishes the normative permissibility of women's public engagement within the bounds of Sharia.

Accordingly, the majority of both classical and contemporary Muslim scholars do not regard women's engagement in the social sphere, particularly for the purpose of fulfilling legitimate needs, as problematic or impermissible. Given the background details provided by al-ʿAini, it is clear that the societal conditions of Egypt

266. 4 MAHMUD IBN AHMAD IBN MUSA IBN AHMAD IBN HUSAYN BADR AL-DIN AL-'AYNI, AL-BINAYA SHARH AL-HIDAYA 152 (Dar al-Kutub al-'Ilmiyya, 2000).

267. AL-BUKHARI, *supra* note 46, at Hadith No. 4795.

during his era are very different from today's circumstances in Afghanistan. Therefore, the issue reverts to its core legal foundation, namely, the application of authentic Prophetic traditions that support women's right to attend mosques.

IV. THE STATUS OF MUSLIM WOMEN'S RIGHT TO MOVEMENT WITHIN THE PRINCIPLES OF ISLAMIC LAW

This section analyzes this divergence between the Taliban's approach to women's right to movement and the approach of mainstream Islamic thought through the lens of Islamic legal theory, examining the extent to which the Taliban's approach aligns with or departs from established Islamic legal maxims (*qawāʿid fiqhiyyah*), interpretive principles, and jurisprudential ethics. A comprehensive juristic inquiry, particularly within the scope of *fiqh al-nawāzil* (the jurisprudence of contemporary or unprecedented cases), necessitates not only a review of juristic opinions and interpretations but also a systematic evaluation of the issue in light of the broader normative foundations of Islamic law. Engaging with overarching legal principles and maxims is essential for assessing the extent to which a given ruling coheres with the methodological standards and foundational objectives that guide the process of *ijtihād*. Accordingly, this section analyzes the question of women's freedom of movement in light of established juristic principles, with the aim to ensure that the conclusions reached are consistent with the methodological and epistemological rigor that characterizes scholarly inquiry in Islamic legal thought.

In Islamic jurisprudence, jurists derive legal rulings from the sources based on principles and maxims. Without adherence to these foundational principles, the process of legal deduction is incomplete and may not align with the spirit of Islam, which is grounded in justice and *maṣlaḥa* (public interests). Broadly speaking, Islamic legal rulings are categorized into two main areas: acts of worship (*ʿibādāt*) and civil transactions (*muʿāmalāt*). Given these considerations, it is essential to examine how fundamental principles of Islamic jurisprudence can inform the most appropriate interpretation of women's right to travel in the present day. Such principles involve determining the legal status of an injunction in relation to the parties it governs. Two foundational legal principles

must be taken into account in this context. The first is the presumption of permissibility (*al-aṣl fī al-ashyāʾ al-ibāḥa*), which holds that actions are presumed lawful unless proven otherwise by definitive textual evidence. The second is the principle of legal causality, encapsulated in the maxim *"al-ḥukm yadūru maʿa ʿillatihi wujūdan wa ʿadaman,"* that is, "the legal ruling is contingent upon its effective cause (*ʿillah*); it applies when the cause is present and ceases when the cause is absent."[268]

A. The Permissibility Principle and Women's Freedom of Movement in Islamic Jurisprudence

Under *aṣl al-ibāḥah* (the principle of permissibility) as it relates to human actions, Islamic jurists generally hold that all acts are assumed to be permissible unless there is a clear and explicit prohibition from divine sources.[269] This foundational principle affirms that permissibility does not require affirmative proof, as it is assumed by default. In contrast, the assertion that a given act is prohibited or impermissible necessitates the production of definitive textual evidence to justify its exclusion from the realm of lawful conduct. Accordingly, based on this principle, women's right to freedom of movement is, in its essence, considered legally permissible. Therefore, any claim challenging its permissibility bears the burden of proof and must be substantiated by authoritative evidence from the primary sources of Islamic law.

In Islamic legal tradition, the concept of permissibility is articulated in various forms. For example, "the fundamental ruling on things is permissibility."[270] Another closely related principle asserts that "there is no legal ruling concerning human actions without a legal text."[271] These principles establish that all human actions are inherently permissible unless explicitly prohibited by divine texts. In other words, it indicates that legal normativity is understood to derive exclusively from revealed law. These

268. 2 MUHAMMAD IBN AHMAD IBN ABI SAHL AL-SARAKHSI, AUSUL AL-SARAKHSI 180 (Dar al-Kutub al-Elmyyah, 1993).

269. Ibn Nujaim, ZAIN AL-DIN IBN IBRAHIM IBN MUHAMMAD, AL-ASHBAH WA AL-NAZAYER ALA MADHAB ABI HANIFA AL-NUMAN 56 (DAR AL-KUTUB AL-ELMEYAH, 1999).

270. BUL KALAAM SHAFIQ AL-QASIMI AL-MUZAHERI, AL-QAWA'ED AL-FIGYIYAH AL-MAHMUDA 32 (Mufti Muhammad Yusuf al-taauluy, ed., Maktaba Zikreya Deo Band, n.d.).

271. ALI IBN ALI IBN MUHAMMAD IBN SALEM AL-AAMEDI, AL-EHKAM FI AUSUL AL-AHKAM 79 (Al-Maktaba al-Islamyyah, n.d.).

foundational principles are derived from both Qur'anic verses and the Hadith of the Prophet Muhammad. For instance, the Qur'an states, "It is He who hath created for you all things that are on earth."[272] Scholars interpret this verse to mean that, since God has created all things for human benefit, the default assumption is that all actions are lawful unless specifically restricted by divine injunctions.[273] Elsewhere, the Qur'an states, "He has explained to you in detail what is forbidden to you."[274] Ibn Taymiyyah (1263–1328) interpreted this verse as an explicit indication that all *haram* (prohibitions) have been clearly articulated in the Qur'an. According to his view, if the Qur'an does not explicitly prohibit something, it is to be considered permissible, affirming that individuals are free to engage in any action unless expressly forbidden by divine law.[275]

Several Prophetic narrations further explain this concept and are considered sources for the principle. For example, the Prophet said, "The lawful (*halal*) is what God has declared lawful in His Book (Qur'an), and the forbidden (*haram*) is what God has made forbidden in His Book, and what He is silent about is what He has pardoned."[276] This narration supports the concept that everything is lawful, and only God has the authority to declare what is unlawful. Therefore, any claim that an act is unlawful must be grounded in a divine reason to prevent people from doing it. The principle of permissibility also helps resolve the question of which text should be prioritized when there is a discrepancy between divine law texts regarding the same issue. Islamic scholars propose that, when there is conflict between sources, we should prioritize those sources that affirm the permissibility of a particular action.

As previously discussed, Prophetic traditions and juristic opinions both permit and limit women's travel. In principle, where scriptural texts present evidence for both permissibility and

272. QUR'AN 2:29.

273. *See* ZAKRIA IBN GHULAM QADER AL-PAKISTANI, MIN AUSUL AL-FIQH 'ALA MANHAJ AHL AL-HADITH 166 (Dar al-Kharaz, n.d.).

274. QUR'AN 6:119.

275. *See* 21 AHMAD IBN ABDUL HALIM IBN ABDUL SALAAM IBN AFI QASEM IBN-E TAYEMYAH, MAJMU'A AL-FATAWA 536 (Dar al-Wafa, 2005).

276. *See* IBN MAJAH, *supra* note 240, at Hadith No. 3367.

impermissibility and where the principle of abrogation (*naskh*)[277] is inapplicable,[278] established juristic methodology accords priority to the evidence affirming permissibility, insofar as it is consistent with and upholds the foundational legal presumption of permissibility in Islamic law.[279] Thus, any attempt to reclassify the ruling on a woman's travel without a *mahram* from the default status of permissibility (*ibāḥa*) to that of prohibition necessitates definitive evidence derived from the primary divine textual sources (*nuṣūṣ sharʿiyya*).

Legal Cause and Effect: Bridging Law with Its Underlying Reasons

The second principle concerns the relationship between implementing a legal rule and its underlying cause and circumstances. A well-established maxim in Islamic jurisprudence states, "The ruling (Hukum al-Shara'i) is contingent upon its cause (*ʿillah*)*;* the rule applicable if the cause exists and rule ceases when the cause ceases."[280] This principle signifies that the applicability of a legal ruling is dependent on the presence of the rationale or cause upon which it is based. The identification of such a cause may be explicitly stated in the divine texts or inferred by jurists through *ijtihād* (independent legal reasoning). Consequently, if the original cause or rationale for a particular legal ruling has changed or is no longer present, the ruling itself ceases to be applicable.

Islamic scholars distinguish between two broad categories of *ahkām* (legal rulings). The first category, *ʿIbādāt* (acts of worship), encompasses obligations that primarily govern the relationship between humans and God. In Islamic jurisprudence, the term *ʿibādah* refers to any act that, when performed, brings God's reward and is contingent upon intention (*niyyah*). Such acts include the five daily prayers, fasting (*Saum*), almsgiving (*zakāh*), and pilgrimage

277. The principle of abrogation applies when there is a conflict between two divine texts; the later text nullifies the earlier one. If there is no evidence regarding the timing of revelation, the principle of abrogation does not apply.

278. 2 SA'D AL-DIN MASUD IBN UMAR IBN ABDULLA AL-TAFTAZANI, SHARH AL-TALWIH ALA AL-TAWZIH 205–09 (MAKTABAH AL-SABIH, n.d.).

279. *See* DR ALI GOMAA, *Al Shaykh Ali al Jumaah was the former grand Mufti of Al Azhar University in Egypt* (YouTube, Oct. 27, 2016), https://www.youtube.com/watch?v=L3ZR0C4ZzOY (on file with the Fordham International Law Journal).

280. *See* 2 AL-SARAKHSI, MUHAMMAD IBN AHMAD IBN ABI SAHL, AUSUL AL-SARAKHSI 180 (Daar al-Kutub al-Ilmyyah, 1993).

(*Hajj*).[281] The second category, *Muʿāmalāt* (transactions and social dealings), pertains to matters that regulate interactions among individuals, such as family law, contract law, inheritance law, commercial law, and labor law.[282]

A fundamental principle in Islamic jurisprudence pertains to the nature of divine injunctions and their interpretative framework. Specifically, it raises the question of whether such legal directives are subject to reasoned analysis. Is their application contingent upon the continued relevance of the circumstances that initially justified them? Do they represent absolute devotional mandates that must be observed irrespective of whether their underlying rationale remains discernible and applicable in contemporary contexts?

This topic holds significant importance among jurists specializing in the principles of Islamic jurisprudence (*uṣūl al-fiqh*), often referred to as the logic of Islamic law. *Uṣūl al-fiqh* is a distinct field with its own foundational methodologies, one of which concerns the nature of divine texts. Understanding these fundamental principles is crucial, as they shape the legal opinions (*fatāwā*) issued by Islamic jurists and serve as the basis for their interpretations. Accordingly, classical Islamic scholars have long debated[283] whether the injunctions of Sharia are subject to rational analysis and contextual interpretation or whether they constitute purely devotional mandates that must be accepted and obeyed without recourse to reason or rationality.

The perspectives of Islamic scholars affirm that all divine injunctions serve a specific purpose. As scholars have emphasized, it is inconceivable for divine commands to be devoid of meaning or utility; rather, each injunction is inherently directed toward achieving an objective that ultimately benefits humanity.[284] A central question in Islamic jurisprudence concerns the methodology for identifying the causes and underlying rationales of divine injunctions, which requires an examination of their objectives and benefits. The majority of scholars assert that the objectives of divine law must either be

281. *See* HASHEYA IBN ABIDIN, *supra* note 3, at 79.

282. *See* ROHE, *supra* note 28, at 15.

283. 3 ALA AL-DIN AL-BUKHARI, ABDUL AZIZ IBN AHMAD IBN MUHAMMAD, KASHF AL-ASRAR SHARH USUL AL-BAZDAWI 431 (Dar al-Kutub al-Elmeyah, 1997).

284. 3 AL-AAMEDI, ALI IBN ALI IBN MUHAMMAD IBN SALEM, AL-EHKAM FI AUSUL AL-AHKAM 285 (Al-Maktaba al-Islamyyah, n.d.).

explicitly stated in the sacred texts or inferred through analogous texts and references.

The Hanafi school's jurists have agreed that the foundational principle governing scriptural texts is that they are predicated upon legal causes (*ʿilal*).[285] Furthermore, Al-Zarkashi asserted that all Muslim scholars hold to the opinion that every divinely ordained legal ruling has an underlying rationale or cause, even if human understanding does not always fully grasp it.[286] In instances where the rationale behind a particular Sharia ruling remains unknown or beyond human discernment, such injunctions are classified as purely devotional matters (*taʿabbudī*), to be followed without the necessity of identifying their underlying justification.[287]

From the Sunni perspective, Islamic jurists have taken varying approaches to this matter. For example, a modern Islamic scholar, Abdullah ibn Yusuf al-Jadee, believes that there are two main viewpoints regarding this topic. One is Imām Shafi'i's opinion, and the other is Imām Abu Hanifa's. Imām Shafi'i thought that the main principle in divine law is that all devotional matters must be practiced without any consideration as a form of worship. In contrast, Imām Abu Hanifa and his followers believed that all divine legal orders are subject to cause and reason.[288] However, there are some other narrations stating that Imām Shafi'i also agreed with Imām Abu Hanifa and others, accepting the idea that every Sharia order has a cause and reason.[289]

The prominent Mālikī jurist, Imām al-Shāṭibī (d. 1388), argued that the legal causes underlying the detailed rulings in the Qur'an and the Sunnah are too numerous to be exhaustively enumerated.[290] He argued that the establishment of legal rulings is not futile and arbitrary but rather grounded in wisdom (Hikma).[291] He continued

285. *See* 2 SA'D AL-DIN MASUD IBN UMAR IBN ABDULLA AL-TAFTAZANI, SHARH AL-TALWIH ALA AL-TAWZIH 129 (Maktabah Sabih, n.d.).

286. *See* 4 ABŪ ʿABDULLĀH BADR AD-DĪN MUḤAMMAD IBN BAHĀDUR IBN ʿABDULLĀH AL-ZARKASHĪ, AL-BAHR AL MUHEET FI AUSUL AL-FIQH 283 (Dar al-Kutub al-Elmeyah, 2000).

287. *See* MAHMOOD IBN MUHAMMAD IBN MUSTAFA AL-MAYAWI, AL-SHARH AL-KABIR LE-MUKHTASAR AL-AUSUL MIN 'ELEM AL-AUSUL 511 (al-Maktaba al-Shamelah, 2011).

288. *See* ABDULLAH IBN YUSUF AL-JADEE, TAISEER 'ELM AUSUL AL-FIQH 175 (Musesah al-Rayyan Publications, 1997).

289. *See* 4 IBN NEZAAM AL-ANSARI, FAWATEH AL-RAHAMUT BE-SHARH MUSALLAM AL-THUBUT 117 (n.d.).

290. *See* 2 IBRAHIM IBN MUSA IBN MUHAMMAD AL-LAKHMI AL-SHATEBI, AL-MUWAFEQAT 12 (Dar ibn 'Affan, 1997).

291. *Id.* at 293.

that the fundamental principles governing acts of worship are inherently devotional (*taʿabbudī*) and not necessarily subject to rational inquiry. In contrast, he maintained that rulings concerning transactions and other legal provisions within Sharia are contingent upon identifiable causes and underlying rationales, making them subject to reasoned analysis and contextual interpretation.[292] Scholars assert that although the rationale or objective behind every divine injunction may not always be understandable to human beings, the lack of such recognition does not suggest the absence of an underlying reason or purpose.

Considering these perspectives, the primary issue is to determine whether the right to freedom of movement falls within the realm of acts of worship (*ʿibādāt*) or if it belongs to the category of transactions and daily affairs (*muʿāmalāt*). Islamic scholars have generally held that travel, including women's mobility, does not constitute an act of worship. Accordingly, it is appropriate to interpret that the restrictions on women's travel mentioned in certain Prophetic narrations are best understood as being driven by context, primarily by concerns for the safety of travelers. This interpretation is further supported by other narrations in which the Prophet advised that even a Muslim man, or in some cases two Muslim men, should not undertake a journey unaccompanied, reinforcing the notion that such restrictions were guided by practical considerations rather than absolute legal prohibitions.[293] Furthermore, as previously mentioned, the Prophet foretold to ʿAdī ibn Ḥātim that a time would come when a woman would travel alone between the city of Hīrah, located near present-day Najaf, Iraq, and Mecca without fearing anyone except God.[294] This narration further underscores the idea that travel restrictions were contextually based and that evolving security conditions could lead to greater freedom of movement.

If the original rationale for the Prophetic restrictions on Muslim women's unaccompanied travel was rooted in safety concerns, contemporary legal interpretations must consider how changes in facilities and security conditions affect the applicability of these rulings. In addressing this issue, other fundamental principles of

292. *See id.* at 300.
293. *See* ABU DAWUD, *supra* note 37, at Hadith No. 2607.
294. *See* AL-BUKHARI, *supra* note 46, at Hadith No. 3595.

Islamic jurisprudence provide important guidance in reassessing the relevance of such restrictions in modern contexts.

In the context of women's right to movement, the issue of security and safety emerges as a central rationale for restrictions, based on both Prophetic narrations and juristic interpretations. First, the importance of safety is explicitly referenced in certain Hadiths attributed to the Prophet Muhammad. Secondly, the primary justifications advanced by Muslim jurists across various schools of thought, particularly within the Hanafi tradition, for prohibiting a woman from undertaking travel independently revolve around the apprehension of *fitnah* (i.e., the risk of moral or physical harm) and the absence of adequate legal or physical protection. Accordingly, they maintained that the prohibition does not apply when a woman perceives herself as safe and secure from potential harm.

Thus, al-Nawawī (1233–1277), in his commentary on *Ṣaḥīḥ Muslim*, reports that numerous early authorities, including ʿAṭāʾ al-Khurāsānī (d. 752), Saʿīd ibn Jubayr (d. 714), Ibn Sīrīn (d. 729), Imām Mālik (d. 795), al-Awzāʿī (d. 774), and Imām al-Shāfiʿī (d. 820), held that the presence of a *mahram* is not a necessary condition for a woman to travel. Instead, they asserted that the determining factor is the assurance of safety during the journey.[295] This interpretive approach reflects a nuanced understanding of legal reasoning (*taʿlīl*) in Islamic jurisprudence. In the case of women's right to movement, the legal requirement is not contingent upon the fixed presence of a *mahram* per se, but rather on achieving the underlying objective, namely, the preservation of dignity and protection from harm.

The conditions and facilities for travel have undergone significant transformations over time. In the past, travelers relied on camels, donkeys, mules, or horses, or traveled on foot across vast and often treacherous terrains, including mountains, wilderness, and deserts. Such journeys posed significant risks, including threats from wild animals and hostile individuals. Under these circumstances, solo travel was hazardous not only for women but also for men. However, contemporary travel conditions have fundamentally changed. Modern modes of transportation, such as airplanes, trains, buses, and cars, provide extensive safety measures, and security standards at airports and other travel hubs are

295. *See* 9 YAHYA IBN SHARAF AL-NAWAWI, AL-MENHAJ SHARH SAHIH MUSLIM IBN HAJJAJ 104 (Dar Ehya al-Turath al-Arabi, 1973) [hereinafter SHARH AL-NAWAWI ALA MUSLIM].

generally higher than those in rural areas. Given these advancements, the vast majority of contemporary Islamic scholars, along with many classical jurists, argue that, since the primary reason for restricting women's travel without a *mahram*, namely, the lack of security, is no longer a prevailing concern, Muslim women should be permitted to travel alone if they feel safe.

According to Hanafi doctrine, the decisive factor in determining the obligation of Hajj is the existence of security along the travel route. Therefore, Hanafi jurists maintain that the presence of a *mahram*, in itself, may not be a sufficient condition for the obligation of *Hajj*. If a woman is accompanied by a *mahram* but the travel route remains unsafe, the obligation to perform *Hajj* does not apply. While the presence of a husband or *mahram* serves to prevent *khalwa* (seclusion) with a non-*mahram*, particularly in isolated or desert areas where such interactions could give rise to *fitnah*, this alone does not satisfy the legal requirement. Moreover, jurists acknowledge that perceptions of safety for men and women, may vary from individual to individual. In general, the criterion for determining the safety of a travel route does not require absolute or complete security. Instead, a route is considered safe if, most of the time, it is regarded as secure for the majority of travelers.[296] In this context, it is pertinent to examine the concept of safety as articulated within the Hanafi legal tradition.

B. The Scope and Definition of Safety (ʿAmn) from the Hanafi Jurists' Perspective

In Islamic jurisprudence, particularly within the Hanafi school, the condition of route safety constitutes a fundamental prerequisite for establishing *istitaʿah* (prerequisite capacity for religious obligation) in matters of travel, particularly with respect to obligatory acts such as *Hajj* (pilgrimage).[297] Thus, the condition of safety holds primacy in determining the feasibility of undertaking the journey. Hanafi jurists assert that the determination of safety is based on the prevailing conditions at the time of departure, rather than on potential future developments. Accordingly, if the travel route is deemed secure at the time of departure, the legal ruling concerning the permissibility or obligation of travel is issued according to that

296. *See* 4 AHMAD IBN MUHAMMAD IBN AHMAD IBN JA'FAR AL-QUDURI, AL-TAJRID AL-QUDURI 2177 (Dar al-Islam, 2006).

297. *See* BADRUDDIN AL-'AINI, *supra* note 57, at 148.

existing state of safety. Within this framework, the concept of safety entails the predominance of security along the intended travel route. This means that if safety is the dominant condition along the route, it is deemed safe; otherwise, it is not. This ensures that the likelihood of harm is minimized and that the presumption of safety remains the prevailing norm.[298] According to Hanafi jurists, if such safety is absent, *istitaʿah* is not considered fulfilled, and thus the obligation associated with the journey, such as *Hajj*, does not become binding.[299]

According to the doctrinal framework of the Hanafi school, the requirement of safety constitutes a fundamental prerequisite for travel, applicable to both men and women, when the journey exceeds the duration of three days. This principle is illustrated by the prominent Hanafi jurist ʿAlāʾ al-Dīn al-Kāsānī (d. 1191), who affirms that if a Muslim is separated from Mecca by a turbulent sea without access to a ship, or if hostile forces obstruct his path to the *Kaʿba* (Sacred House), the obligation of *Hajj* is suspended, despite the fulfillment of all other requisite conditions for its performance.[300] That the absence of a safe route can nullify the immediate obligation of *Hajj*, even though it remains one of the five fundamental pillars of Islam, underscores just how central safety is to the Hanafi determination of when travel becomes obligatory.

In Islamic jurisprudence, the concept of women's *amn* (safety) is defined in relation to three essential aspects: *amn al-nafs* (personal security), *amn al-māl* (protection of property), and *amn al-ʿirḍ* (protection of modesty or honor).[301] This definition implies that when a woman undertakes a journey, her life, property, and personal honor must be safeguarded. Hanafi jurists hold that the requisite standard of safety need not correspond to the elevated levels of security characteristic of urban or settled environments. Instead, what is required is a degree of safety that is considered customary and adequate within the context of desert or nomadic settings. It is acknowledged, of course, that the desert is not free from afflictions, meaning it is not devoid of hardships such as water scarcity, extreme heat, scorching winds,

298. *See* 2 ZAINUDDIN IBN IBRAHIM IBN MUHAMMAD IBN NUJAIM, AL-BAHR AL-RAYEQ SHARH KANZ AL-DAQAYEQ 550 (Dar al-Kutub al-Elmeyah, 1997).

299. *See* 2 HASHEYA IBN ABIDIN, *supra* note 3, at 463.

300. *See* AL-KASANI, *supra* note 24, at 122.

301. *See* BADRUDDIN AL-'AINI, *supra* note 57, at 148.

widespread theft, and high prices.[302] Nonetheless, such inherent challenges do not nullify the fulfillment of the legal condition of safety, provided they do not constitute a predominant or exceptional threat.[303] This means that as long as the risks remain within customary and manageable limits, the legal presumption of safety stays valid, thereby permitting Muslims to exercise their right to travel and mobility.

In light of the aforementioned Hanafi doctrines, it is apparent that the security and safety of the travel route constitute a foundational element in determining the permissibility of women's travel in Islamic law. When this condition is met, the right to mobility is generally affirmed for women, even in the absence of a *maḥram*. This principle reflects a broader juristic understanding that legal rulings are often contingent upon contextual factors, particularly those related to safety, dignity, and public welfare (*maṣlaḥah*).

Moreover, from the perspective of Islamic political theory, safeguarding the community falls within the essential responsibilities of the *imām* (ruler). Among these obligations is the protection of individual honor and dignity, which is deemed indispensable for enabling the general population, men and women alike, to pursue their livelihoods and move freely without fear for their lives, property, or moral integrity. Ensuring a secure environment for travel is thus not merely a legal consideration, but a political and ethical imperative within the Islamic governance framework.[304]

Accordingly, the responsibility to restrict one's right to travel and mobility does not rest solely upon individual citizens. Rather, based on the foundational principles of Islamic political jurisprudence, it is among the core obligations of the *imam* or governing authority to ensure public security and to facilitate the conditions necessary for a dignified and stable life. The establishment of societal security directly addresses and mitigates the concern of *fitnah*, a key rationale often cited in limiting women's mobility. Once this barrier is removed through the effective governance and moral safeguarding of the community, the broader spectrum of citizens' fundamental rights, including

302. *See* NOORUDDING ALI IBN SULTAN MUHAMMAD MULLAH ALI QARI, FATH AL-BAB AL-ENAYAH BE SHARH AL-NEQAYAH 604 (Dar Arqam Publication, 1997).

303. *See* BADRUDDIN AL-'AINI, *supra* note 57, at 149.

304. *See* ALI IBN MUHAMMAD IBN MUHAMMAD IBN HABIB AL-MAWARDI, AL-AHKAM AL-SULTANEYAH 40 (Dar al-Hadith, n.d.).

women's right to movement within society, can be preserved and upheld in accordance with both legal and ethical mandates of Sharia.

V. EXCEPTIONALISM IN INTERPRETATION: UNDERSTANDING THE TALIBAN'S DISTINCT APPROACH TO ISLAMIC LAW

A. The Distinctiveness of the Taliban's Interpretation of Islam

One of the defining characteristics of Islamic legal tradition is its recognition of interpretive diversity and jurisprudential plurality. This diversity is rooted in well-established legal methodologies and principles developed by *mujtahidūn* (qualified jurists), which led to the formation of the *madhāhib* (major schools of Islamic law). Each school interprets the divine texts in accordance with its own coherent legal framework, and adherence to a school entails commitment to its doctrinal corpus as an integrated system. Despite their professed allegiance to the Hanafi school, the Taliban's interpretations and policy implementations, particularly in matters concerning women's rights, frequently diverge from the normative positions of the Hanafi tradition. Their approach represents a marked departure from the jurisprudential understandings of mainstream Hanafi scholars and jurists across the broader Muslim world.

The preceding analysis demonstrates that women in the early Islamic period had relatively broader rights to travel and move freely. This conclusion is backed not only by Qur'anic verses that encourage believers to explore and contemplate the world but also by numerous authentic Prophetic traditions. Additionally, this opinion is supported by the documented practices of the Prophet's wives and daughter, as well as by the permissive Hanafi ruling that permits women to travel without a *mahram* for up to three days and nights.

Given the weight of these sources and the Taliban's professed commitment to Islamic law, particularly their claimed adherence to the Hanafi *madhhab*, an important question emerges. What accounts for their markedly more restrictive stance on women's freedom of movement? An analysis of Shaykh Haqqani's book, *Islamic Emirate and Its System*, alongside the laws and policies promulgated by the Taliban

authorities, indicates that their interpretation of Islamic legal texts, particularly concerning women's right to mobility, has been significantly influenced by the rural cultural values and the unique educational environment in which Taliban leaders and rank-and-file members were trained. This interpretive approach appears to be further shaped by the deeply patriarchal social structures characteristic of rural Afghan society. It represents a synthesis of local socio-cultural norms rather than a strict adherence to the Hanafi legal tradition's mainstream juristic methodologies and doctrinal positions.

Before examining the socio-political environment in which the Taliban emerged and consolidated power in Afghanistan's political landscape, it is crucial to first consider the etymological and cultural origins of the term *Ṭālibān* within Afghan tradition. *Ṭālib* is an Arabic word meaning "seeker" that has two plural forms in Arabic: *tullāb* and *ṭalabah*.[305] However, in Afghanistan's two official languages, Pashto and Dari, *Ṭālibān* serves as the plural form of *Ṭālib*. The full expression *Ṭālib al-ʿIlm* means "a person seeking knowledge or science." In classical Islamic culture, especially within the context of Islamic sciences, the term *ʿilm* (knowledge) is primarily associated with *ʿUlūm al-Dīn* (religious sciences), which are considered obligatory and essential for Muslims to pursue. Consequently, in Afghan culture, *Ṭālib al-ʿIlm* explicitly refers to a student enrolled in a *madrasa* (seminary).

With the emergence of the Taliban movement in 1994, the term *Ṭālibān* evolved beyond its original association with *madrasas* and entered the global political lexicon as a distinctive socio-political phenomenon. To gain a more nuanced understanding of the Taliban's worldview toward women, it is essential to consider the socio-political context and geographical setting in which the movement originated and developed.

B. The Environment of the Emergence of the Taliban

Examining the socio-cultural context and origins of the Taliban movement reveals the particular segment of Afghan society from which the movement draws its primary support. Following the fall of the communist regime in April 1992, central government authority in Afghanistan collapsed. Civil war

305. *See* MUHAMMAD IBN MUKREM IBN ALI IBN MANZUR, LESAN AL-ARAB (Dar Saader, 1994).

intensified, and each faction of the *mujahideen* ruled its own region in a feudal-like manner. The people faced dire security and economic conditions. It was during this period of insecurity and internal conflict that the Taliban movement in Afghanistan emerged, under the banner of restoring security and implementing Sharia law.

As Abdul Hai Mutma'in, one of the Taliban's high-ranking members, recounts in his book *Mullah Muhammad Umar, the Taliban, and Afghanistan*, Mullah Umar[306] stated in his first public declaration that the security situation in Kandahar had deteriorated to the point where no one's honor, life, or property was safe. While enroute to a *madrasa*, he encountered the corpse of a man lying by the roadside, along with other visible manifestations of violence and lawlessness. This experience left a profound emotional and psychological impact on him. It led him to conclude that serious action was needed to stop such crimes and brutality. Mullah Umar left the *madrasa*, accompanied by a friend. They traveled from the Sangisar area to the village of Zangawat. There, he asked a man named Sarwar from the village of Talokan to lend him his motorcycle. He and his companion then went to several *madrasas* in the surrounding areas, calling upon their *ṭālibān* (students) to rise against the oppression and crimes being committed by armed groups. During this initial phase, the movement successfully mobilized the support of fifty-two students. Then, with the provision of two vehicles and a cache of weapons by Haji Basheer, the group advanced toward the district of Kishk-e-Nakhud. There, they attracted additional followers and formally commenced their military operations.[307]

In contrast to most political movements in Afghanistan's modern history, which have originated in urban centers and were imposed on rural areas, the Taliban movement followed a reverse trajectory. The movement emerged from severely underdeveloped remote Pashtun rural villages in southern Afghanistan and imposed

306. Mullah Muhammad Umar was the founder and first leader of the Taliban movement. He was born around 1960 in the Khakriz district of Kandahar Province, Afghanistan. After graduating from his religious studies at Pakistani *madrasas*, he joined the *jihad* against the Soviet Union, during which he lost one eye. He died on April 23, 2013. However, the Taliban leadership did not announce his death until 2015.

307. *See* ABDUL HAI MUTMA'IN, MULLAH MUHAMMAD UMAR, TALIBAN AND AFGHANISTAN 78–79 (2017).

its system on the country's urban centers.[308] This is notable because the sociocultural norms and gender-related attitudes in traditional rural Afghan society differ significantly from those in urban settings in the following ways.

Approximately seventy-one percent of Afghanistan's population lives in rural villages.[309] Rural inhabitants often lack essential urban infrastructure, such as electricity, internet access, educational institutions, public transportation, healthcare facilities, and law enforcement services. Combined with a high degree of dependency on, and confinement within, the village environment, these deficits significantly limit exposure to social diversity and constrain the development of a broader, more pluralistic worldview. The daily lives of rural villagers are predominantly centered around three domains: the household, the mosque, and agricultural or sheepherding activity. A highly standardized lifestyle prevails in rural areas, especially in the southern and southeastern regions of Afghanistan, where most of the Taliban leadership comes from. In these communities, men typically adopt a uniform appearance from a young age, characterized by wearing turbans, growing long beards, and dressing in traditional attire. Movement beyond the village is infrequent and generally driven by necessity, such as procuring essential goods from nearby markets. The villagers are seen as members of a kinship network, and the village makes up their entire socio-cultural world. Their way of life is marked by simplicity and lack of pretension.

The primary source of information and authority within these rural communities is typically the local *Mullah Imām*[310] (prayer leader in the mosques).[311] The literacy rate in Afghanistan stands at approximately thirty-seven percent, with literacy concentrated mainly

308. *See* LEE, *supra* note 117, at 629–30; *see also* MULA ABDUL SALAAM ZA'EF, MY LIFE WITH THE TALIBAN 57–67 (2011).

309. U.N. INT'L CHILDREN'S EMERGENCY FUND (UNICEF), AFGHANISTAN EDUCATION EQUITY PROFILE FOR ADOLESCENT GIRLS (2019).

310. The *Mullah Imām* serves as the primary religious authority within the community, leading the five daily prayers as well as the Friday congregational prayer. In practice, he functions not only as a spiritual leader but also as a judge, teacher, and moral guide for the villagers.

311. LUTFORAHMAN SAEED, ISLAM, CUSTOM AND HUMAN RIGHTS IN AFGHANISTAN: A LEGAL AND EMPIRICAL STUDY OF CRIMINAL CASES IN AFGHANISTAN AFTER THE 2004 CONSTITUTION 5 (2022).

in urban centers.[312] In rural areas, literacy is exceedingly rare; often, only a few men possess basic reading skills, and in some villages, there may be no literate individuals at all. Typically, the village *imām* is the sole person capable of reading religious texts and divine law sources.[313] The widespread reliance on the village *imām* as the sole authority for all forms of inquiry reinforces villagers' common belief that any pronouncement made by the *imām*, irrespective of the subject matter, is inherently Islamic. The *imām* serves the community not only as a religious leader but also as a judge, a teacher, and, in the absence of accessible healthcare infrastructure, as a healer.[314] Despite recent changes in some villages, in many places, the *imām* may still utilize a combination of prayers and amulets and, at times, invoke the perceived spiritual efficacy of local graves to provide treatment for both human and animal ailments.[315] The limited interaction with the outside world, coupled with restricted access to external sources of knowledge, fosters the development of a highly conservative and insular worldview, characterized by pronounced social conformity. Within such a social context, diversity and change are often perceived as threats to communal cohesion and are consequently met with resistance.

From the standpoint of many rural communities, urban life is frequently associated with adopting Westernized cultural values perceived as incompatible with local Islamic traditions. Practices such as girls' education, women's participation in the public workforce, and Western styles of appearance, including clean-shaven faces and abandoning traditional clothing, are often seen as being at odds with Islamic norms. This view was strengthened after the 1978 coup in Afghanistan, when the communist party took power[316] and adopted

312. *See Afghanistan – Education sector– Afghanistan*, WORLD BANK, https://documents.worldbank.org/en/publication/documents-reports/documentdetail/308881468196446312#:~:text=Afghanistan%20%2D%20Education%20sector%20(English),six%20million%20in%202008 [https://perma.cc/H8AS-QKLS] (last visited June 18, 2025).

313. Sharif Akram, *Living a Mullah's Life: The evaluation of Islamic knowledge among village clerics*, AFG. ANALYSTS NETWORK (July 20, 2025), https://www.afghanistan-analysts.org/en/reports/political-landscape/living-a-mullahs-life-2-the-evolution-of-islamic-knowledge-among-village-clerics/ [https://perma.cc/4LQP-G4VG].

314. *See* JENNIFER BRICK MURTAZASHVILI, INFORMAL ORDER AND THE STATE IN AFGHANISTAN 115–20 (2016).

315. *See* SAEED, *supra* note 35, at 5.

316. The government of Dawood Khan was overthrown on April 27–28, 1978, in a violent military coup known as the Saur Revolution, orchestrated by the pro-Communist

policies widely viewed as hostile to traditional religious values.[317] The regime's repression, which involved the persecution and killing of thousands of Afghans committed to Islamic principles,[318] deepened public sentiments that such practices represented a rejection of Islam and an imposition of foreign ideological frameworks. Within this interpretive framework, relying on religious leaders as the primary source of information, the projection of rural cultural values onto urban environments is not merely seen as a cultural imposition but as an attempt to affirm and reassert Islamic norms in the face of perceived un-Islamic influences. Since the implementation of Sharia is viewed as one of the primary responsibilities of a Muslim ruler in an Islamic state, the Taliban strive to reshape urban life to reflect rural ways of living to fulfill their Islamic duty. Mullah Mohammad Ghaus, the Foreign Minister during the first Taliban regime, discussed the issue of women's education and employment in a meeting with a United Nations delegation:

> We have certain commitments to our military personnel, one of which is the prohibition of women's education and employment. If we violate this commitment, our fighters will abandon the frontlines and return to their villages. Therefore, as long as we face armed opposition and continue to rely on rural and tribal fighters, we are compelled to maintain this policy.[319]

As noted above, in rural Afghanistan, for centuries, prevailing norms have dictated that women should remain within the confines of the household. At the same time, there is little justification for women to venture outside the home, because there are no educational institutions and employment opportunities in rural areas. In cases of necessity or emergency, a female family member is typically accompanied by a male relative to ensure her safety and to prevent her from becoming disoriented or lost. From the villagers' perspective, such practices are viewed as appropriate and consistent with Islamic principles regarding the treatment and protection of women.

People's Democratic Party of Afghanistan. A few weeks after taking power, Noor Muhammad Taraki, the president and leader of the communist party, began to issue a series of decrees designed to revolutionize Afghan social life along Marxist–Leninist lines.

317. LEE, *supra* note 117, at 598.

318. *Id.* at 600.

319. *See* WAHID MUJDAH, AFGHANISTAN, AND FIVE YEARS OF TALIBAN RULE 110 (2003).

The imposition of rural culture on urban life extends beyond women; it also applies to men. For instance, wearing *Perahan o Tunban* (traditional clothes), often including a turban, is a prevalent cultural practice among rural populations. Wearing a turban, particularly in Afghanistan's southern and southeastern regions, is regarded as a symbol of respect and social propriety. In contrast, this practice is relatively uncommon among urban residents and does not significantly contribute to one's social standing within urban contexts. For this reason, the Taliban have compelled city residents, particularly school students and government employees, to wear traditional outfits with a turban or customary hat.[320] The criticism directed at urban populations for not wearing the turban has often been framed as a transgression against Islamic norms.[321] However, wearing the Taliban-style turban has no strong basis in Islamic doctrine. As even a famous contemporary Hadith scholar, Shaykh Albani, said, "An oversized turban is considered a non-Arab innovation (*bidʿah*)[322] because it excessively wraps and enlarges the turban, contrary to the Sunnah practiced by the Prophet and the righteous predecessors (*Salaf al-Ṣāliḥ*)."[323] Furthermore, the eminent Hadith scholar al-ʿAllāmah al-Sakhāwī (1428–1497), in his well-known work *al-Maqāṣid al-Ḥasanah*, asserted that all the Prophetic narrations extolling the virtue of wearing the turban are weak in their chains of transmission.[324] Thus, this critique appears to derive less from a genuine breach of established Sharia principles and more from a conflation of local village customs with religious mandates. This conflation elevates culturally specific norms to the

320. *Tunics & turbans: Taliban-imposed school uniforms add an extra financial burden*, AFG. ANALYSTS NETWORK (Apr. 30, 2025), https://www.afghanistan-analysts.org/en/recommended-reading/tunics-turbans-taliban-imposed-uniforms-an-extra-financial-burden/#:~:text=The%20uniforms%20have%20added%20an%20extra%20financial,for%20the%20shalwar%20kameez%20and%20black%20turban [https://perma.cc/L6RJ-UBGD].

321. *See Tunics & Turbans: Afghan Students don Taliban-Imposed Uniforms*, FRANCE 24 (Apr. 30, 2025), https://www.france24.com/en/live-news/20250430-tunics-turbans-afghan-students-don-taliban-imposed-uniforms [https://perma.cc/99GY-A2G5].

322. In Islamic tradition, innovation (bid'ah) refers to a newly invented path in the religion, made to parallel the Sacred Law, by which the practitioner intends to show excessive devotion in worshipping God Almighty.

323. Muhammad Nasiruddin Albani, *Hadiths Regarding Turban*, KULALSALAFIYEEN https://www.kulalsalafiyeen.com/vb/showthread.php?t=47787 [https://perma.cc/C96J-CNPY].

324. *See* MUHAMMAD IBN ABDUL RAHMAN IBN MUHAMMAD AL-SAKHAWI, AL-MAQASID AL-HASANAH FI FAYAN KATHIR MEN AL-AHADITH AL-MUSHTAHARA ALA AL-SENAH 466 (Dar al-Kutub al-Arabi, 1985).

level of religious obligation, thereby facilitating the imposition of rural sociocultural practices upon urban populations under the guise of Islamic legal authority.

C. The Educational Background of the Taliban Members

The *madaris* (seminaries) where the Taliban leaders and members have received their religious training are mostly located in northern Pakistan, which is characterized by a predominantly Pashtun populace. These regions exhibit significant cultural and linguistic continuity with their counterparts on the Afghan side of the Durand Line, which influences the shared religious practices and social norms between the two populations, including similar interpretations of Islamic teachings and communal rituals that strengthen their ties across the border.

These *madaris* are characterized by a complete absence of female presence. Moreover, the entrance of women in these institutions is often regarded as both un-Islamic and socially unacceptable. The presence of women in religious seminaries is usually perceived as a source of *fitnah* as it is believed that they divert male students from their academic and devotional focus. Therefore, these male students were socialized and educated in environments that were exclusively male. They had no interaction with women during their entire formal religious education, which in some cases lasted a decade or more. Based on this fact, engaging with women in urban environments may evoke a sense of sin among Taliban members, distracting their thoughts from focusing on their primary duties and causing them to feel morally compromised or sinful. Supporting this line of thought, Shaykh Haqqani repeatedly insists in his book that women should stay home to avoid *fitnah* in society.

Furthermore, the focus of religious teachings in these *madaris* emphasizes the primacy of the afterlife and underscores the insignificance of worldly existence and its material values. Within this framework, any act considered a violation of religious principle is perceived as a fundamental impediment to attaining spiritual fulfillment and ultimate salvation. Consequently, from the perspective of an ideal Islamic society, the most effective strategy involves eliminating all means, instruments, or environments that may potentially lead to sin or moral degradation. Furthermore, individuals are expected to maintain a concentrated focus on their

religious duties and obligations, despite the presence of any elements that may divert attention from these commitments. Accordingly, the restriction of women to the domestic sphere and their exclusion from public life are commonly viewed as strategies to minimize the risk of *fitnah* and potential transgressions for both genders. Within this framework, female seclusion and limited public visibility are perceived to be practices that contribute to the preservation of a morally secure and sin-free social order and women's honor and dignity.[325]

Another principal factor regarding the Taliban's position toward women is the Deobandi way of thinking.[326] Basically, the Deobandi approach is rooted in the Hanafi legal tradition but influenced by Wahhabi thought; it stresses strict, traditional textual interpretation based on the practices of the *Salaf al-Sāliḥ* and the rejection of *bidʿah*.[327] This approach shaped the Deobandi movement's emphasis on religious purity; it was against modern interpretations of Islam. Furthermore, the Wahhabi way of thinking is one of the strictest approaches toward women and contemporary interpretations of Islam. This synthesis of Deobandi and Wahhabi doctrinal instruction illustrates a deliberate convergence of two ideological traditions, strategically aligned to cultivate operational readiness for a broader struggle against modernity and gender-related issues. The followers of these two mentalities often view modernity and gender issues as Western concepts designed to weaken Islamic values. As a result, they are highly sensitive to these topics and attempt to block them by any means necessary.

Notably, the vast majority of *madrasas* in northern Pakistan that supplied ideological resources to the Taliban were founded by graduates of Darul Uloom Deoband or their immediate disciples. A significant development in these Pakistani institutions has been the incorporation of military training alongside the traditional

325. *See* LUTZ RZEHAK, DOING PASHTO: PASHTUNWALI AS THE IDEAL OF HONORABLE BEHAVIOR AND TRIBAL LIFE AMONG THE PASHTUNS 9–10 (2011).

326. Darul Uloom Deoband was founded in 1866 during British colonial rule in the small town of Deoband, in northern India. It became a leading Islamic madrasa aiming to preserve Islamic scholarship and Sunni orthodoxy in the face of Western influence and internal religious deviations.

327. Lauren Frayer, *The Taliban's Ideology Has Surprising Roots in British-Ruled India*, NPR (Sep. 8, 2021), https://www.npr.org/2021/09/08/1034754547/taliban-ideology-roots-deobandi-islam-india [https://perma.cc/NTD7-RPMD].

curriculum of classical Islamic sciences. Materials to make roadside bombs, as well as assault rifles, RPGs, heavy machine guns, hand grenades, and communications equipment, have been found on the premises of some of these *madrasas*.[328] This marks a departure from the original pedagogical focus of Islamic educational institutions, particularly within the Deobandi *madrasa*-based curriculum tradition.[329] After the Taliban returned to power in August 2021, the supreme leader of the Taliban officially called these institutions *"jihadi madrasas"* rather than *"madrasa"*,[330] reflecting a dual formation: a theoretical foundation rooted in a rigid interpretation of Islam based on the practices and interpretations of the *Al-Salaf al-Ṣāliḥ* and practical training in militant *jihad*. This combination of extreme doctrinal instruction and military preparation reflects an intentional alignment between ideological indoctrination and operational capability, serving the cause of armed struggle. These dynamics contributed to the shaping of the Taliban's ideological framework. As a result, the movement is characterized by a resolute opposition to gender issues and modernity, as well as an aggressive stance toward the social, educational, and economic opportunities that enable women to participate as active and autonomous members of society.

D. Patriarchal Culture of Rural Afghanistan

Within the patriarchal framework of Afghan society, particularly in rural contexts, women are symbolically associated with *nāmūs* (family honor) and *ʿizzat* (dignity and respect). The perceived threat posed by non-kin male access to women is believed to endanger a family's reputation. It reinforces the norm that secluding women within the domestic sphere and limiting their visibility in public life serves as the most effective means of safeguarding familial honor.

From an Islamic textual standpoint, the Qur'an instructs Muslim men to lower their gaze and refrain from looking at women

328. *See* WARREN, *supra* note 111, at 10.

329. *Id*. at 8.

330. *See Taliban leader issues decree on establishment and spending of "jihadi schools"*, ETILAATROZ (June 19, 2022), https://www.etilaatroz.com/145288/the-taliban-leader-issued-a-decree-on-the-establishment-and-use-of-jihadi-schools/ [https://perma.cc/7BZ2-MPB2].

inappropriately.[331] The Prophetic traditions equate the act of intentionally staring at a non-*mahram* woman with a form of the eye *zinā* (illicit sexual conduct).[332] This is a symbolic way of preventing men from lustfully gazing at women. However, within the patriarchal cultural frameworks that dominate much of Afghan society, these religious principles are often reinterpreted or overshadowed by prevailing norms that tend to shift responsibility away from male misconduct. In Afghanistan's patriarchal society, acts like leering, making sexually suggestive remarks, verbal harassment, or physical contact are frequently attributed not to male perpetrators but are often wrongly blamed on women or their male family members who let them be out and accessible to other men. In May 2022, the Taliban issued an edict that criminalized the act of allowing female family members to go outside without fully covering their bodies, including their faces.[333]

In such settings, a woman's public presence is not only a matter of personal agency but is also deeply embedded in communal constructions of honor, respect, and dignity.[334] An affront against a woman is perceived not merely as an individual violation but as a collective dishonor to her family and, at times, to her entire tribe. The perceived breach of this honor can provoke intense retaliatory violence, occasionally resulting in serious injury or even death. As a preventative measure, culturally sanctioned practices have developed that advocate for restricting women's mobility, effectively confining them to the domestic sphere as a strategy to avert potential transgressions and preserve familial honor.

In this socio-cultural context, the responsibility for maintaining a woman's honor is initially assigned to her male kin, particularly her father and brothers, and upon marriage, is transferred to her husband and his family. Women are generally expected to remain within their households but may be allowed to participate in some agricultural activities within the spatial

331. QUR'AN 24:30.

332. MUSLIM, *supra* note 48, at Hadith No. 6847.

333. Fariba Akbari & Diaa Hadid, *For years the Taliban told women to cover up in public. Now they're cracking down*, NPR (Feb. 20, 2026), https://www.npr.org/2026/02/20/g-s1-110736/taliban-afghanistan-women-face-covering#:~:text=The%20crackdown%20was%20ostensibly%20for,female%20relatives%20did%20not%20obey [https://perma.cc/77CZ-M2LD].

334. LUTZ RZEHAK, DOING PASHTO: PASHTUNWALI AS THE IDEAL OF HONORABLE BEHAVIOR AND TRIBAL LIFE AMONG THE PASHTUNS 9 (2011).

boundaries of the village, where the residents are known to each other and it seems like a kinship family life in one area. Should a woman need to leave the home to travel a long distance, custom dictates that a male relative accompany her to ensure both her safety and the protection of the family's reputation.

Underlying these practices is a pervasive analogy that likens a woman to a valuable possession whose exposure in public spaces without a protector is seen as an invitation for harm. This reasoning reflects a broader societal analogy in which, if a valuable item is left exposed and unprotected and later stolen, the blame falls more on the caretaker than on the thief. Consequently, in cases involving sexual harassment or physical contact directed toward women, prevailing social attitudes frequently ascribe disproportionate blame to the victim and her family rather than attributing full responsibility to the perpetrator. This framework not only reinforces gender-based restrictions on mobility and autonomy but also perpetuates a structure of impunity for male transgressions under the guise of protecting communal honor.

VI. CONCLUSION

The right of women's freedom of movement in contemporary Islam has gained renewed significance since the return of the Taliban to power in August 2021. The Taliban's imposition of dramatic restrictions on Afghan women's mobility has had far-reaching implications, as this right serves as a foundational prerequisite for the exercise of other fundamental rights, including access to education, employment, and public participation.

Generally, the principle of freedom of movement is recognized in the primary sources of Islamic law, namely the Qur'an and the Sunnah of the Prophet Muhammad. A consensus among Muslim jurists is that women are permitted to exercise the right to movement without any limitation when accompanied by a *mahram* or their husband. Additionally, there is no issue if women walk around the city or village to meet their daily needs. However, juristic disagreement emerges concerning women's travel over longer distances without a *mahram* or husband. This divergence is rooted in the multiplicity of Prophetic traditions that prescribe varying time constraints for unaccompanied female travel. Some classical jurists and Wahhabi modern scholars adopted a restrictive stance, asserting a categorical prohibition on women traveling without a

mahram. In contrast, the prevailing view among classical jurists from the major schools of Islamic jurisprudence holds that a woman may travel if accompanied by her husband or a *mahram*. However, these schools differ regarding the maximum permissible duration of such travel, with opinions ranging from one day up to three days. Notwithstanding these traditional restrictions, some classical scholars and most contemporary Muslim jurists have permitted women to travel without a *mahram* or their husband, regardless of distance or duration, provided their safety is reasonably assured.

One of the key features of Islam is the diversity and plurality of interpretations of its texts and religious sources. This diversity in understanding the sacred texts is grounded in well-established principles and methodologies developed by qualified jurists (*mujtahidūn*). The leaders and theorists of the Taliban claim to adhere strictly to the Qur'an, the Sunnah, and the Hanafi school of law. However, their interpretations, especially regarding women's rights, are often distinct and deviate from the understandings of other scholars and jurists across the Muslim world.

As explored in the preceding analysis, the Taliban's distinctive interpretation of Islam is shaped by a confluence of three principal factors: the socio-cultural environment of Afghanistan's rural communities, the structure and curriculum of *madrasas* influenced by the Deobandi tradition, and the deeply entrenched patriarchal norms that dominate Afghan society. This convergence of context, pedagogy, and social values has given rise to a narrow and ideologically rigid religious worldview. The Taliban tends to selectively appropriate theological positions and juristic opinions, both classical and contemporary, that resonate with their own rural, patriarchal, and Deobandi-informed orientation.

In such a context, it becomes difficult to envisage a fundamentally different ideological outcome. For instance, if a child were transplanted from another part of the world into a remote Afghan village, raised within the confines of its socio-cultural norms, and educated in a *jihadi madrasa* under a pedagogical model that promotes a specific set of values, that child would be highly likely to internalize and reproduce the same worldview espoused by the Taliban. Thus, the surrounding sociocultural conditions, moral frameworks, and educational environment ultimately shape one's religious and ideological outlook rather than the innate disposition of the individual.

This insular formation process may explain why the Taliban often expresses bewilderment or suspicion toward differing interpretations of Islam found across the Muslim world. It may perceive alternative views not as legitimate expressions of the religion's inherent diversity, but as signs of deviation or corruption. Such a perspective highlights the self-reinforcing and exclusionary nature of the ideological system developed within their specific sociocultural and educational context.

The Taliban leadership asserts that its rules and policies are grounded in the principles and doctrines of the Hanafi school of jurisprudence. In examining the regulation of women's mobility under Taliban rule in Afghanistan, it is essential to underscore the Taliban's selective engagement with Islamic jurisprudential doctrines. As seen in Shaykh Haqqani's writings and the Taliban's legal and policy frameworks, the Taliban consistently emphasizes interpretations aligned with rural culture and a patriarchal worldview, which help persuade its fighters and bolster the political foundations of its regime. Notably, the movement's repeated reliance on the opinions of a few Hanafi or non-Hanafi jurists sometimes contradicts the established rulings of the Hanafi school, which it claims to uphold. This pattern of selective appropriation is most clearly illustrated in Shaykh Haqqani's book and the Taliban's law on the Propagation of Virtue and Prevention of Vice. Overall, a close and systematic analysis reveals that tribal norms and rural customary practices are the foundation for the Taliban's approach to women's mobility rights. Their approach departs substantially from the established positions of the Hanafi school and the foundational principles underlying its legal theory.