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Social Freedom and the Limits of Public Morality in Islamic Public Law: When May the State Restrict Individual Choice?

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Abstractt
Public morality is among the oldest justifications for coercive law and one of the least disciplined. In Islamic legal discourse the problem is especially acute because a norm may be religiously obligatory or prohibited without the further proposition that contemporary public authorities may police every departure from it. The classical law of commanding right and forbidding wrong recognized coercive dimensions, but it also developed limits concerning visibility, privacy, knowledge, juristic disagreement, competence, and the likely consequences of intervention. Modern states alter the problem by joining those norms to legislation, police powers, digital surveillance, licensing, and administrative sanctions. This article asks when Islamic public law may treat individual conduct as a legitimate object of coercive restriction in the name of public morality. Through doctrinal analysis of classical sources, engagement with contemporary Islamic legal scholarship, and functional comparison with modern rights law and constitutional practice, it argues that moral wrongfulness is a necessary but insufficient ground of public coercion. State restriction requires a public-law translation of the underlying norm. That translation is justified only where the wrong is sufficiently determinate, has a legally cognizable public nexus, falls within a defined public competence, and can be addressed by a necessary and proportionate measure whose evidentiary basis and consequences withstand review. Privacy and valid juristic disagreement strengthen the presumption against coercion. The proposed public-wrong threshold preserves a meaningful role for public morality while denying the state an undifferentiated jurisdiction over personal virtue.

Keywords: : Social Freedom; Public Morality; Islamic Public Law; Ḥisba; Privacy.

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1. Introduction

A legal order may disapprove of conduct without criminalizing it, regard a practice as morally defective without authorizing officials to investigate it, and encourage virtue without converting every religious duty into an administrative command. These distinctions are familiar in modern public law, yet they become unusually difficult when morality is itself understood as part of a revealed normative order. The difficulty is not resolved by asking whether Islam recognizes moral obligations. It plainly does. The harder question concerns institutional legal consequence: when does a religious or ethical norm become a reason that permits the state to constrain an individual choice through legislation, policing, licensing, punishment, or another coercive public device?

That question is obscured whenever three propositions are collapsed into one. A jurist may conclude that an act is prohibited; a community may judge its public prevalence corrosive; and a state may possess legal authority to coerce compliance. Each proposition requires a different argument. The first concerns the normative status of conduct. The second concerns social consequence and public reason. The third concerns competence, procedure, proof, and the limits of public power. Classical Islamic jurisprudence did not use the vocabulary of the modern administrative state, but its doctrines did not treat these questions as identical. The literature of ḥisba and al-amr bi-l-maʿrūf wa-l-nahy ʿan al-munkar contains rules about what counts as a cognizable wrong, when hidden conduct may remain hidden, what degree of knowledge is required, how valid juristic disagreement affects intervention, and what an official muḥtasib may do (al-Māwardī 1985, chap. 20; al-Ghazālī 1982, 2:325; Cook 2003, 57–72). Those qualifications are important precisely because commanding right could otherwise become a vocabulary for unlimited supervision.

Contemporary scholarship approaches this difficulty from several directions. Cook reconstructs privacy as a genuine internal constraint on forbidding wrong and shows that a wrong ordinarily had to become public knowledge permissibly before the duty attached (Cook 2003, 57–64). Safi separates the ethical from the legally enforceable and connects that distinction to the permissible reach of state power (Safi 2010, 212–213, 229–230). Reza and Saifee examine search, evidence, and privacy differently; both expose the mistake of treating substantive prohibition as a sufficient answer to the separate question of how public authorities may discover and prove conduct (Reza 2009, 703–709, 769–806; Saifee 2003, 390–417). More recent work carries the problem into informational privacy and contemporary religious enforcement. Osman develops satr, the norm against exposing private faults, as a resource for digital privacy (Osman 2023, 61–69), while Ismail identifies ambiguity, evidentiary difficulty, privacy, and the operational position of religious enforcement officers as recurring problems in Malaysia (Ismail 2025, 231–248). These literatures supply essential parts of the analysis, but they do not by themselves furnish a general public-law criterion for deciding when public morality can justify coercive restriction of individual choice.

This article develops such a criterion. Its central claim is that Islamic public law should distinguish a moral wrong from a public-law wrong. A moral norm can inform law without automatically conferring coercive jurisdiction. Before the state restricts choice in the name of morality, the norm must undergo public-law translation: the authority must identify a sufficiently determinate wrong; explain the public dimension that makes coercion, rather than counsel or social disapproval, a legitimate response; demonstrate legal competence; rely on evidence obtained through lawful and integrity-preserving means; and show that the chosen restriction is necessary, proportionate, and attentive to the foreseeable consequences of enforcement. Privacy and recognized juristic disagreement are not external liberal additions to this inquiry. They arise from materials within Islamic jurisprudence that limit the cognizability of hidden wrongdoing and qualify intervention where the alleged wrong cannot be established without contested ijtihād.

The argument is doctrinal and institutional rather than historical in the narrow sense. It does not claim that classical jurists anticipated constitutional proportionality or modern judicial review. It asks which limits embedded in Islamic legal reasoning remain normatively relevant once moral enforcement is exercised through a contemporary state. Comparative rights law is used functionally. The International Covenant on Civil and Political Rights and the European Court of Human Rights do not determine the content of Islamic public law, but their treatment of public morals reveals techniques for requiring legality, necessity, proportionality, and a concrete relation between a moral aim and coercive means (Human Rights Committee 1993, para. 8; Human Rights Committee 2011, paras. 22, 32–34; Dudgeon v. United Kingdom 1981, paras. 52–54, 60–61). A recent Malaysian constitutional decision adds a different lesson: even where legislation concerns an offense against Islamic precepts, the question whether the lawmaking body possesses constitutional competence must be answered independently of the moral merits of the prohibition (Nik Elin v. Kelantan 2024, para. 121).

2. The Missing Distinction: Moral Wrong and Public-Law Wrong

The debate over public morality often begins too late. It asks whether a state should enforce morality after assuming that the only relevant alternatives are enforcement or moral indifference. Islamic legal materials suggest a more differentiated field. Wrongdoing may generate duties of personal repentance, advice, familial responsibility, scholarly teaching, communal criticism, private ordering, or official intervention. The existence of one response does not establish the permissibility of all the others. Al-amr bi-l-maʿrūf wa-l-nahy ʿan al-munkar is therefore better understood as a family of responsibilities whose legal form depends on knowledge, capacity, office, risk, and the character of the wrong, rather than as a single undivided power to compel conformity.

The distinction becomes clearer if moral wrongfulness, legal prohibition, and coercive competence are separated analytically. Moral wrongfulness answers whether conduct departs from a norm of right action. Legal prohibition concerns whether the juristic system assigns the conduct a prohibitory legal status and with what degree of certainty. Coercive competence asks whether a public institution may impose a legal burden on the actor and, if so, under which procedures and evidentiary conditions. Modern legislation tends to compress these stages because the same enacted provision may define an offense, empower an agency, prescribe evidence, and attach a sanction. Classical juristic texts often reveal the stages more visibly. A wrong could be condemned yet remain outside ḥisba because it was hidden, because its wrongfulness depended on a disputed juristic position, or because intervention would create a greater harm (al-Ghazālī 1982, 2:325; Cook 2003, 57–64).

This is not a claim that Islamic law historically recognized a modern liberal harm principle or a categorical sphere of autonomous self-authorship. The jurisprudential sources are committed to a substantive account of good and wrong, and ḥisba could reach conduct that modern liberal law might leave unregulated. The point is different. Substantive morality did not eliminate jurisdictional questions. The law could regard an act as wrong before God while still controlling who may intervene, what may be investigated, and how certainty about the wrong is achieved. Saifee's study of sexual offenses makes this especially visible: substantive condemnation existed alongside demanding evidentiary and privacy-related constraints that sharply affected the legal exposure of private consensual conduct (Saifee 2003, 390–417; Quaraishi 1997, 287–320). Reza reaches a more cautious historical conclusion about claims of a fully developed Islamic search-and-seizure law, but likewise shows that Qur'anic and juristic materials provide authority for protections against intrusive search even if modern analogies should not be overstated (Reza 2009, 703–709, 769–806).

Classical ḥisba helps answer that question because it was concerned with cognizable wrong in a setting of public responsibility. Al-Māwardī presented the muḥtasib as an official with responsibilities that overlapped neither completely with the judge nor with ordinary individuals; his account covers markets, public dealings, worship-related matters, and other observable practices (al-Māwardī 1985, chap. 20; Amedroz 1916, 77–101; Stilt and Saraçoğlu 2018, 327–356). Stilt's historical analysis confirms that Mamluk muḥtasibs operated in a practical field of public order, market supervision, devotional behavior, and administrative discretion rather than as guardians of an unlimited interior morality (Stilt 2012, 38–72). To infer from the existence of ḥisba that the modern state possesses a general police power over virtue would ignore the jurisdictional architecture that made the office legally intelligible.

The distinction also protects the integrity of religious normativity. When every moral obligation is translated directly into an enforceable rule, officials must define its content, determine proof, prioritize violations, and select sanctions. That process can convert a norm addressed to conscience into a bureaucratic category detached from the virtues that gave the norm meaning. Fadel's account of public reason in Islamic law is useful here because it emphasizes modes of juristic reasoning that allow normative claims to be justified in terms capable of regulating disagreement rather than merely asserting theological truth (Fadel 2008, 5–18, 61–69; Jackson 2003, 94–102). Ahmed's recent normative theory similarly distinguishes the moral authority of revealed texts from the variable legitimacy of juristic rules produced through interpretation, while integrating uṣūl, qawāʿid, and maqāṣid in contemporary rulemaking (Ahmed 2025, 28–38, 52–58). For public law, the implication is demanding: state coercion requires an institutional justification in addition to the moral justification of the norm itself.

3. Ḥisba and the Jurisprudence of Visibility

The most instructive feature of ḥisba for contemporary public law is not its capacity to enforce morality but the way jurists limited what could become an object of intervention. The classical materials do not yield a single constitutional doctrine, and schools differed over details. Yet several recurring qualifications are sufficiently clear to resist the proposition that any known sin automatically authorizes coercion. Visibility, knowledge, the absence of valid juristic disagreement, official role, and foreseeable consequences all affected the reach of intervention. These qualifications supply the doctrinal foundation for distinguishing the moral domain from the coercive jurisdiction of public authority.

3.1. Manifest wrong and the protected interior

Al-Ghazālī's treatment is unusually explicit. In the section on the conditions of the wrong that may be forbidden, he requires that the wrong be presently occurring, apparent to the person intervening without spying, and known as wrong without depending on ijtihād; he states that one who conceals a wrong inside a house is not to be investigated merely on suspicion (al-Ghazālī 1982, 2:325). Cook's reconstruction of the broader tradition reaches a similar conclusion: the wrong ordinarily had to be in some way public knowledge, and hidden wrongdoing lay outside the duty unless information arose through a permissible route or exceptional circumstances changed the analysis (Cook 2003, 57–64). This boundary is not equivalent to a modern constitutional right to privacy, but its legal logic is unmistakable. The state or individual does not acquire authority to create visibility merely because visibility would reveal a wrong.

Al-Māwardī's discussion of ḥisba contains a comparable restraint. His muḥtasib may respond to manifest prohibited conduct but is not generally entitled to investigate concealed wrongs or tear away the coverings behind which people keep private acts. Amedroz's abridged translation and analysis places this limitation within the final ḥisba chapter of al-Aḥkām al-Sulṭāniyya, a chapter whose jurisdictional detail distinguishes the muḥtasib from the qāḍī and other officials (Amedroz 1916, 77–101). The exception sometimes discussed for credible indications of an imminent grave violation, such as a threatened killing, confirms rather than destroys the principle. Investigation becomes defensible because the object has shifted from discovering private vice to preventing a specific and serious injury whose occurrence cannot sensibly await public manifestation.

Qurʾanic norms reinforce this reluctance to manufacture public knowledge. Qur'an 49:12 prohibits tajassus, spying into others' affairs, while 24:27 requires permission before entering houses other than one's own. These verses do not themselves specify a modern warrant requirement. Reza is right to caution against projecting a fully elaborated Fourth Amendment backward into Islamic doctrine (Reza 2009, 703–709). Their importance for present purposes is more modest and more secure: Islamic legal reasoning cannot treat the discovery of private moral fault as an unqualified public good. The route by which officials acquire knowledge has normative significance.

That proposition becomes more consequential in the digital state. Classical rules could assume that concealment depended largely on walls, curtains, private rooms, and the absence of public report. Digital conduct complicates the vocabulary of "manifest" and "hidden." A private message may be technically retrievable from a server; a location history may be visible to an agency after data aggregation; a closed gathering may become observable through remote surveillance. Technical accessibility should not be confused with juridical publicity. If an act becomes "manifest" only because the state deploys intrusive tools to uncover it, allowing the resulting visibility to justify the intrusion would make the classical limitation circular. The protected interior must therefore be defined normatively: conduct remains non-public when it is reasonably confined from general observation and can be discovered only through investigative penetration, even if technology makes that penetration easy.

3.2. Juristic disagreement and the demand for determinacy

A second boundary concerns knowledge of wrong. Al-Ghazālī's statement that there is no ḥisba in a matter whose wrongfulness depends on ijtihād is central to the present argument (al-Ghazālī 1982, 2:325). The rule has been discussed and qualified in later jurisprudence, and it should not be exaggerated into a general prohibition on legislation whenever jurists disagree. Public authority necessarily chooses among interpretations in many fields. Its deeper significance is that coercion requires a different degree of normative determinacy from private moral conviction. If learned jurists can reasonably classify the conduct differently within recognized methods of law, an official cannot treat his own preferred view as though it were an uncontested public wrong without further legal authorization.

This distinction matters especially where the state legislates through a particular school or official interpretation. Positive law can coordinate which norm officials apply, but enactment cannot turn a historically contestable juristic judgment into epistemic certainty. The underlying disagreement therefore remains relevant to sanction, proportionality, transitional treatment, and the intensity of review. A severe penalty for conduct within a substantial interpretive dispute needs stronger justification than a regulatory rule coordinating public administration. Determinacy accordingly has two dimensions. Normative determinacy asks how securely the wrong is established within recognized Islamic legal reasoning. Legal determinacy asks whether enacted law defines the prohibited conduct and enforcement power with enough precision to constrain officials and give fair notice. Codification settles an administrative rule; it does not erase reasons for caution in coercion.

Determinacy also bears on equality. Vague moral offenses invite selective enforcement because officials must decide which behavior counts as indecent, deviant, immodest, insulting, or contrary to public ethics. Where the content of the wrong is uncertain, discretion migrates from juristic reasoning into street-level enforcement. That shift is not neutral. Ismail's contemporary study of religious enforcement in Malaysia identifies ambiguity, evidentiary difficulty, and privacy tension among the practical problems facing enforcement institutions (Ismail 2025, 231–248). The rule against coercive ḥisba in genuine ijtihād can therefore be restated for a modern institutional setting as a presumption against punitive enforcement where the prohibited conduct cannot be defined through a stable, reviewable legal standard.

3.3. From personal responsibility to official competence

The Qurʾanic injunctions to command right and forbid wrong are addressed in a moral community, not drafted as a statute conferring enumerated powers on a ministry (Qur'an 3:104; 3:110; 9:71). Classical doctrine accordingly discussed both individual responsibility and public office (Ezzat 2020, 665–684). Cook's account shows that rulers could be understood as especially capable agents of forbidding wrong, while their power also made them especially capable of wrongdoing (Cook 2003, 65–82). Al-Māwardī's muḥtasib institutionalizes part of the duty, but the very existence of an office with defined jurisdiction demonstrates that official coercion is not conceptually identical to the moral duty borne by believers.

Stilt's reconstruction makes the institutional character difficult to ignore. The Mamluk muḥtasib was appointed, operated within a geographical and functional jurisdiction, drew on manuals and legal learning, and interacted with other offices (Stilt 2012, 38–72). His powers were broad by contemporary standards, but they were powers of an office. The difference matters today because the modern state distributes coercion among legislature, police, prosecutor, regulator, court, school, municipality, and licensing authority. An appeal to ḥisba cannot tell us which of these bodies is competent. That question must be answered by public law.

The Saudi regulation governing the General Presidency of the Commission for the Promotion of Virtue and Prevention of Vice illustrates institutional differentiation. Article 6 assigns the Commission the duty of promoting right and forbidding wrong through gentleness and with attention to the purposes of Sharīʿa. Article 7 requires apparent violations encountered in that function to be reported to the police or anti-narcotics authority and reserves subsequent enforcement measures, including arrest, detention, pursuit, interrogation, identity verification, and investigation, to legally competent bodies (Saudi Arabia 2016, arts. 6–7). The example is not a universal model. Its importance lies in separating a substantive mandate of moral guidance from coercive procedural powers. Competence remains an independent question even where commanding right is institutionalized.

Malaysia's Federal Court made the same structural point from a constitutional rather than classical perspective in Nik Elin v. Kelantan. The case concerned provisions of the Kelantan Syariah Criminal Code and was framed as a challenge to legislative competence, not as a judicial verdict on whether the impugned behaviors were morally acceptable in Islam. Most of them noted the difference between the federal and state legislative spheres and regarded the constitutional division of powers as prior to the merits of the moral prohibition (Nik Elin v. Kelantan

2024, para. 121). This distinction is transferable at the level of public-law method. A claim that conduct violates an Islamic precept does not answer whether a particular public body has authority to criminalize, investigate, or punish it.

Once competence is taken seriously, legal form matters. Criminal punishment, administrative fine, licensing condition, educational rule, public-employment standard, and non-coercive guidance impose different burdens and require different justifications. An agency empowered to advise may not possess authority to search; an institution empowered to discipline its own officers may not regulate private citizens; a legislature may define offenses only within constitutional fields assigned to it. Islamic public law therefore needs a doctrine of means as well as ends. The moral desirability of the end cannot enlarge an institution's lawful competence.

4. Translating Moral Norm into Public Power

If neither substantive wrongfulness nor the existence of ḥisba is enough, the next task is to explain when moral reasons may properly become public reasons for coercion. Three bodies of Islamic legal reasoning are especially useful: maṣlaḥa, the requirement to consider maʾālāt al-afʿāl, and maxims concerning public authority and harm. Their role is not to provide a convenient vocabulary for approving a policy already chosen. They help identify the institutional conditions under which coercion serves a legally cognizable public purpose rather than merely forcing personal virtue.

4.1. Maṣlaḥa and the object of government

Al-Ghazālī's classic account of maṣlaḥa ties legally cognizable welfare to preservation of the fundamental purposes of the law rather than to whatever rulers happen to prefer (al-Ghazālī 1993, 174). In public law this prevents "public morality" from functioning as an empty phrase. If a restriction is justified as protecting public welfare, the authority should identify the interest at stake with enough precision to permit evaluation. Protection of children from exploitation, prevention of coercion, preservation of the security of public spaces, prevention of fraud, or protection of another person's rights can be assessed. The assertion that a behavior is simply "bad for society" cannot be assessed until the alleged social interest is specified.

Al-Suyūṭī's maxim that the ruler's disposition over subjects is contingent on maṣlaḥa further connects authority to public purpose (al-Suyūṭī 1983, 121). The maxim does not constitutionalize modern rights or prescribe a single governmental structure. It does, however, resist the idea that office carries a personal jurisdiction to impose a ruler's moral preferences. Public power is teleological: it is justified by legally relevant welfare. That point changes the structure of the morality inquiry. The state must show not only that the underlying conduct is morally objectionable but also that coercive intervention protects a public interest entrusted to the institution.

A public nexus can arise in several ways. Conduct may violate another person's rights, create serious risk, exploit vulnerability, obstruct access to a public institution, use commercial power to organize others' conduct, or alter a shared space subject to legitimate regulation. The criterion is broader than a liberal harm principle: an Islamic public order may protect institutional integrity and genuinely shared goods not reducible to individualized injury. Yet the nexus must remain relational and legally specified. Mere visibility, offense, or official disapproval cannot supply it. A private act seen by accident differs from organized commercial promotion, coercive solicitation, or conduct that disables others from using a common institution. What matters is the public relationship affected, not the bare fact that government can observe the act.

4.2. Maʾālāt al-afʿāl and the costs of coercion

Al-Shāṭibī's doctrine of ma'ālāt al-afʿāl requires legal judgment to attend to the consequences of acts because a measure that appears beneficial in isolation may generate equal or greater harm in operation (al-Shāṭibī 1997, 5:177–178). In the context of morals regulation, this principle should apply to the state's own enforcement acts. The question is not only whether the individual behavior has bad consequences; it is also what policing, prosecution, publicity, punishment, and surveillance will do to the persons, institutions, and norms affected.

This shift is crucial. Moral legislation is often defended at the level of statutory abstraction, while its most serious effects arise through enforcement. A vague rule may generate selective policing. A public-arrest strategy may expose private conduct more widely than the conduct itself ever would have become known. Surveillance designed to locate hidden wrongs can normalize investigative techniques that later migrate to political, familial, or religious dissent. Severe sanctions may encourage concealment, bribery, or avoidance of public institutions. None of these consequences proves that enforcement is impermissible, but ma'ālāt makes them part of the legal judgment rather than unfortunate externalities.

The maxim that harm should be removed, together with the companion qualification that harm is not removed through comparable harm, points in the same direction (al-Suyūṭī 1983, 83). It would be methodologically incomplete to invoke al-ḍarar yuzāl against private conduct and ignore the harm created by the chosen mode of enforcement. The state's action belongs inside the same evaluative field. Where enforcement exposes a person's concealed fault, injures family members, invites discriminatory targeting, or uses investigative methods disproportionate to the public interest, those harms must be weighed as legal considerations rather than dismissed as administrative details.

4.3. Legality, evidence, and institutional competence

Public law translation also requires a rule to survive the movement from juristic discourse into positive legal authority. The state must identify who acts, under what source of competence, using what procedure, on what evidence, and subject to what review. This demand is particularly important for public morality because moral vocabulary can be broad while coercive power must be administrable. Words such as indecency, corruption of morals, improper appearance or behavior contrary to religious values, can be used as exhortative language in ethical discourse but they become dangerous when they are used as triggers for arrest or punishment without further specification.

Evidence is part of legality, not a secondary procedural matter. Classical Islamic criminal doctrine distinguished among domains governed by different procedural and evidentiary rules (Peters 2006, 186–190), while modern privacy scholarship shows how proof requirements and investigative limits can protect persons even where underlying conduct remains religiously prohibited (Saifee 2003, 390–417). Those rules vary by offense and cannot be collapsed into one evidentiary code for contemporary regulation. Their public-law lesson is precise: a state cannot define a private moral wrong and then use investigative powers that dissolve the limits surrounding its enforcement. What government may know, by what lawful means, and what proof authorizes sanction belong to the same coercive judgment.

Contemporary religious enforcement illustrates why this is not a theoretical concern. Ismail's Malaysian study discusses the legal framework for religious enforcement officers while identifying practical challenges involving evidence, privacy, and the reach of enforcement (Ismail 2025, 231–248). The problem is structural wherever morality rules depend on observations of intimate behavior. If officials need to enter private spaces, infer intention from appearance, or rely on broad discretionary assessments, the risk of unequal and arbitrary enforcement rises. A defensible public-law rule should therefore require an evidentiary basis proportionate to the intrusion and should exclude the manufacture of proof through unauthorized spying.

5. Public Morality in Comparative Rights Law: A Functional Reading

Modern human-rights law approaches public morality from premises that are not identical to Islamic jurisprudence. It protects individual rights through treaty commitments and secular constitutional structures, and the Human Rights Committee has warned that morality restrictions cannot be based exclusively on a single tradition (Human Rights Committee 1993, para. 8; 2011, para. 32). An Islamic legal order may understand the substantive source of morality differently. For that reason, comparative law should not be used to announce that international doctrine has already answered the Islamic question. Its value lies in the legal techniques developed to prevent an indeterminate morality clause from becoming an unlimited power.

The ICCPR illustrates this technique through several rights. Article 17 protects against arbitrary or unlawful interference with privacy (ICCPR 1966, art. 17; Human Rights Committee 1988, paras. 3–8). Articles 18(3) and 19(3) allow certain restrictions, including for protection of public morals, only under conditions defined by law and tied to necessity. General Comment No. 22 requires restrictions on manifestation of religion to be prescribed by law, directed to an enumerated purpose, and directly related and proportionate to the specific need; it also emphasizes non-discrimination (Human Rights Committee 1993, para. 8). General Comment No. 34 applies strict tests of necessity and proportionality to expression and requires the state to demonstrate the specific threat addressed by the restriction (Human Rights Committee 2011, paras. 22, 32–35). The important public-law idea is not that morality is an illegitimate aim. It is that naming morality does not complete the justification.

Dudgeon v. United Kingdom demonstrates the same structure in relation to intimate private life. The European Court accepted protection of morals as a relevant aim, yet required particularly serious reasons for interference with an intimate aspect of private life and held that moral concern, without a demonstrated pressing social need for the breadth of criminal prohibition, was insufficient (Dudgeon v. United Kingdom 1981, paras. 52–54, 60–61; Toonen v. Australia 1994, paras. 8.5–8.6). The judgment is not transposable as an Islamic rule governing sexual ethics. Its value here is institutional: it separates the state's moral position from the legal necessity of punishment. Decriminalization, the Court observed, does not itself amount to moral approval (Dudgeon, para. 61). Islamic public law can make the same institutional distinction without adopting the Court's substantive theory of sexuality: declining to coerce a private wrong does not convert the wrong into a virtue.

The Human Rights Committee's insistence that "morals" arise from multiple traditions creates a point of genuine normative tension rather than easy convergence. An Islamic public-law theory cannot simply reproduce that proposition if the legal order recognizes Islamic normativity as a constitutional source. Yet the institutional concern underlying the Committee's doctrine remains relevant: a general reference to morality can mask discrimination or suppress disagreement without showing a concrete public need. The Islamic answer need not be to erase the religious source of the norm. It can instead demand public-law translation. An authority may identify an Islamic moral norm as part of the legal order, but coercion still requires determinacy, competence, a public nexus, lawful proof, necessity, and proportionate means. The norm's source and the state's power to enforce it are related questions, not the same question.

Nik Elin is useful because its majority separated moral characterization from the antecedent question of legislative power. Applying the constitutional division of legislative fields, the Federal Court treated state competence over offenses against the precepts of Islam as limited by matters reserved to federal law and asked whether the challenged provisions were, in pith and substance, within federal criminal jurisdiction (Nik Elin v. Kelantan 2024, para. 121). The earlier Iki Putra litigation framed the same problem at its threshold: whether the Selangor legislature possessed competence to enact the challenged offense at all (Iki Putra v. Selangor 2021, paras. 1–3). The public-law lesson precedes judgment about moral merit. A public institution may regard conduct as religiously wrong and still lack authority to criminalize it.

6. A Public-Wrong Threshold for Islamic Public Law

The preceding analysis supports a public-wrong threshold rather than either a categorical ban on morals legislation or an unlimited authority to enforce virtue. The threshold is cumulative. A state that restricts individual choice in the name of Islamic public morality should be able to establish four connected propositions: the underlying wrong is legally cognizable with sufficient determinacy; the conduct has a public nexus that makes state intervention institutionally relevant; a competent authority has acted through law and lawful evidence; and the coercive means are necessary and proportionate after the consequences and less intrusive alternatives have been considered. Failure at any one of these stages should alter the legal response, often from coercion to non-coercive forms of guidance or regulation.

6.1. Cognizable wrong and public nexus

The inquiry begins with the norm itself. A coercive rule should identify conduct whose wrongfulness is sufficiently established for public enforcement. Where the issue lies within substantial and recognized juristic disagreement, especially disagreement affecting the very classification of the act as prohibited, punitive intervention should face a strong presumption of restraint. Positive law may sometimes choose a rule for coordination, but criminal or quasi-criminal punishment requires more than an official preference among contested positions. The classical refusal to make ḥisba turn on disputed ijtihād supplies the jurisprudential basis for this heightened caution (al-Ghazālī 1982, 2:325).

Determinacy must also be legal. Individuals should be able to know what conduct triggers sanction, and officials should be constrained by a rule that can be reviewed. A statute prohibiting a specific act in a defined public setting differs from a general mandate to punish behavior "contrary to morality." The latter transfers norm-definition to enforcement personnel and encourages inconsistent application. The problem is amplified when appearance, style, or expressive conduct is used as a proxy for inner intention. Public law should regulate observable legal facts, not authorize officials to infer the quality of a person's faith.

Even a determinate wrong requires a public nexus. It is strongest where conduct threatens the rights or safety of others, involves coercion or exploitation, affects access to common institutions, or uses organizational power to shape third parties' conduct. A weaker nexus may arise from deliberate manifestation in settings that public law legitimately structures, including schools, professional offices, or shared facilities. This is not merely a liberal harm test: institutional integrity and genuinely shared goods may count, but their legal content and impairment must be identified. The weakest case remains concealed self-regarding conduct disclosed only through intrusive investigation; classical privacy restraints make that weakness legally significant.

Publicity should therefore be treated as a relational fact rather than a binary label. An act is not public merely because another person can glimpse it, nor private merely because it occurs behind a door. Commercial advertising directed to thousands may have a public nexus even when sent electronically. A conversation in a closed home retains a private character despite the possibility of technical interception. The controlling question is whether the actor has placed the conduct into a public relationship in a manner that affects interests the state is competent to protect. This approach prevents officials from manufacturing publicness through surveillance.

6.2. Competence, necessity, and proportionate means

Once a public nexus is established, the state must identify the source and extent of its competence. Does this legislature, agency, police body, university, municipality, or professional regulator possess authority to impose this restriction on this class of persons for this purpose? The answer may differ across institutions even when the moral norm is the same. Nik Elin demonstrates why constitutional allocation cannot be bypassed by characterizing the disputed rule as religious (2024, para. 121). The Saudi 2016 regulation demonstrates at the administrative level that a body charged with promoting virtue can be denied independent arrest and investigative powers and required to refer apparent violations to competent authorities (Saudi Arabia 2016, arts. 6–7).

Competence must then be exercised through a legally defined rule. The more coercive the measure, the greater the need for statutory precision, fair notice, and constrained discretion. Educational guidance can properly employ broader moral language than a penal offense. A professional code may regulate conduct linked to role integrity without acquiring jurisdiction over an employee's entire private life. A licensing body can impose conditions related to the licensed activity but should not use the license as leverage to regulate unrelated personal morality. This differentiation reflects the basic public-law principle that powers are purposive and limited.

Necessity asks whether coercion materially advances the identified public interest and whether a less intrusive measure can achieve a substantially comparable result. It is here that ma'ālāt becomes operational. The authority should examine how enforcement works in practice, not merely how the rule reads on paper. If education, warning, spatial regulation, civil remedies, targeted protection of vulnerable persons, or professional standards can address the public problem, criminal punishment may be unnecessary. Conversely, where conduct involves coercion, exploitation, serious rights violations, or organized practices that non-coercive measures cannot realistically prevent, stronger intervention becomes easier to justify.

Proportionality concerns both sanction and method. A modest administrative requirement imposed in a genuinely public institutional setting may be justified where imprisonment or public shaming would not be. An otherwise defensible rule can become unlawful through the means used to enforce it. Search of homes, seizure of devices, compelled disclosure of intimate information, publication of allegations, or detention impose distinct burdens and require distinct authority. Islamic jurisprudence's concern with tajassus and concealment makes investigative proportionality especially important. The state should not inflict a greater legal and moral injury in the process of exposing the wrong it seeks to prevent.

6.3. Reasons, evidence, and judicial review

A public-wrong threshold requires reasons. An authority should be able to state the underlying norm, the public interest at risk, the legal source of its competence, the evidentiary basis for believing the restriction is needed, the alternatives considered, and the reason the selected burden is proportionate. Reason-giving serves more than procedural elegance. It separates public-law judgment from the official's personal moral certainty. It also makes review possible in a field where broad references to religion or morality can otherwise insulate discretion from scrutiny.

Evidence should be evaluated at two levels. The first concerns proof of the individual violation. Evidence obtained through unauthorized intrusion should not become a routine foundation for moral punishment, especially where the underlying wrong was concealed. The second concerns the policy justification. If government claims that a form of conduct threatens families, children, public order, or a vulnerable group, it should provide a rational evidentiary basis rather than rely exclusively on assertion. The type of evidence will vary with the claim. Some harms can be established doctrinally; others are empirical and require social or institutional evidence. Public morality does not exempt the state from distinguishing between these categories.

Judicial review should likewise vary with context. Courts need not decide contested theological questions de novo whenever the political branches regulate morality. They should, however, examine competence and legality closely, because those are ordinary public-law questions. Review should also be intensive where enforcement intrudes into a home, searches personal data, penalizes expression, or relies on a vague standard susceptible to selective application. Greater deference may be appropriate when a competent institution chooses among several modest, evidence-based means within a clearly public setting. This calibrated review respects institutional competence without turning morality into a review-free zone.

7. Hard Cases: Privacy, Contested Morality, and Public Expression

Four recurring situations test the proposed threshold. Consider first concealed conduct discovered only through surveillance. Assume officials suspect adults of privately engaging in conduct that a settled juristic rule regards as prohibited, but no complaint alleges coercion, exploitation, injury, or public manifestation. The wrong may be morally clear, yet the public-law case for investigation is weak. Qurʾanic prohibitions on spying, al-Ghazālī's visibility condition, and the broader juristic reluctance to pursue hidden wrong all weigh against creating knowledge through intrusion (Qurʾan 49:12; al-Ghazālī 1982, 2:325; Cook 2003, 57–64). A search cannot justify itself by revealing the very wrong that the law lacked authority to investigate. The state may teach, counsel, or maintain its substantive moral position; it should ordinarily refrain from coercive discovery.

The analysis changes when credible information indicates imminent grave harm to another person. A private setting does not immunize violence, coercion, abuse, or exploitation. Under the proposed threshold, the object is no longer discovery of concealed vice but prevention of a specific public wrong. Evidence authorizing intrusion must therefore be tied to that threatened wrong and reliable enough for the gravity of the measure. This distinguishes entering a home to discover prohibited conduct from intervening because evidence indicates that someone inside faces serious and imminent harm. Privacy limits moral fishing expeditions; it does not disable legally grounded protection against injury.

A second case concerns conduct whose moral status is genuinely disputed among recognized juristic positions. Dress and personal appearance often generate this difficulty because legal characterization may depend on the specific garment, setting, degree of exposure, gender norms, local custom, and the legal status assigned to particular forms of covering. The public-wrong threshold does not settle the underlying fiqh. It asks what the state may do amid that disagreement. The stronger the juristic contestation, the less defensible it is to use vague offenses or street-level discretion. If the legislature adopts a rule for a defined institutional context, it should specify the rule, explain the public interest, and employ proportionate means. Punishment designed primarily to force conformity with one disputed interpretation requires a substantially stronger justification than a role-specific regulation linked to an institution's function.

The same reasoning applies to symbolic behavior that is disapproved of but does not materially obstruct others. Public visibility increases the state's regulatory interest, yet visibility alone is not enough. If the alleged harm consists only in the possibility that observers may dislike, resent, or imitate the conduct, the authority should explain why coercive restriction is necessary. This requirement prevents the concept of "public" from swallowing the distinction between social disapproval and public injury. It also avoids treating the most offended segment of the community as the measure of everyone else's legal freedom.

A third case involves expression. Islamic public law can recognize limits concerning incitement, defamation, fraudulent religious representation, threats, and direct injury without making every dissenting moral claim punishable. Expression about moral norms frequently includes criticism of prevailing interpretations. A state that criminalizes disagreement as such risks using public morality to close the interpretive process through which law itself develops. Fadel's discussion of public reason within Islamic jurisprudence is relevant because disagreement is not foreign to the tradition; juristic practice developed techniques for reasoned contest over truth and law (Fadel 2008, 5–18, 61–69). Where speech crosses into a specific rights violation or incitement, regulation can be justified on that basis. Where it merely challenges the dominant moral view, the public nexus is weaker and the demand for precision and necessity becomes correspondingly stronger.

Comparative rights law illustrates why the distinction matters. General Comment No. 34 insists that expression restrictions be connected to a specific need and satisfy necessity and proportionality rather than rely on an abstract invocation of morals (Human Rights Committee 2011, paras. 22, 32–35). An Islamic order need not adopt the Committee's full account of the substantive scope of expression to benefit from that discipline. Requiring government to identify the precise public injury separates the protection of a moral order from suppression of intellectual disagreement.

A fourth case concerns commercial facilitation. Suppose a business openly organizes, markets, or profits from conduct that is legally prohibited and structures access for a large public. Here the public nexus is stronger than in concealed individual behavior. Commercial organization affects third parties, public space, consumer relations, and market institutions; it may also make the prohibited practice systematic. The state can more plausibly use licensing, advertising rules, zoning, or targeted sanctions because the regulation addresses a public mode of facilitation rather than searching for private vice. Even here proportionality matters. A restriction on the commercial activity does not automatically justify searching customers' homes, publishing their identities, or punishing unrelated private conduct.

Digital platforms blur these categories because the same infrastructure amplifies public promotion and stores private communication. Under the proposed threshold, possession of data cannot become lawful visibility. Platform regulation and user surveillance require separate legal grounds. Government may regulate public advertising, commercial facilitation, or unlawful content through defined competences, while access to private messages requires an independent basis, safeguards proportionate to the intrusion, and evidence connected to a cognizable public wrong. Otherwise technical access silently enlarges state moral jurisdiction over a digital interior far beyond the public field historically associated with ḥisba.

These hard cases also reveal why enforcement design affects the substantive legitimacy of the rule. A modest restriction can become oppressive through publicity, data retention, humiliating arrest practices, or discriminatory targeting. Conversely, a sensitive moral issue can sometimes be regulated lawfully through a narrow institutional rule, confidential procedure, warning, or non-punitive remedy. The public-wrong threshold therefore directs attention away from slogans about whether "Islam enforces morality" and toward the concrete legal relationship among norm, institution, evidence, means, and review.

8. Conclusion

Islamic public law has reasons to care about public morality, but those reasons do not confer an undifferentiated power over personal virtue. The decisive distinction is between moral wrong and public-law wrong. Classical ḥisba did more than authorize intervention: it also limited intervention through requirements concerning visible wrongdoing, knowledge, juristic disagreement, office, and consequences. Modern state coercion, with its vastly greater investigative and administrative capacities, makes those limits even more important.

The article has argued that a moral norm must undergo public-law translation before it can justify restriction of individual choice. There must be a public nexus sufficient to be legally cognizable between: (a) a sufficiently determinate wrong; (b) a competent institution acting thru a defined legal rule and lawful evidence; and (c) the chosen intervention being necessary and proportionate, after consideration of less intrusive alternatives and foreseeable consequences. Privacy reinforces the presumption against coercion because public authorities should not create visibility by spying. Valid juristic disagreement weakens the case for punishment because official preference cannot be treated as uncontested moral knowledge. Serious harm to others, coercion, exploitation, or organized public facilitation moves the analysis in the opposite direction by strengthening the public nexus.

This account leaves public morality with a real legal role while subjecting that role to the disciplines of public law. It neither treats non-enforcement as moral approval nor assumes that every prohibition carries a police power. The state may defend a substantive moral order, educate, regulate shared institutions, and intervene against genuine public wrongs. What it may not do is substitute the existence of a moral norm for proof of competence, necessity, lawful evidence, and proportionate means. The question "is this wrong?" remains indispensable in Islamic law. For public authority, however, a second question must follow: "why is coercion by this institution, in this form, legally justified?" The legitimacy of morals regulation depends on keeping those questions connected without allowing the first to swallow the second.

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