

The Right of Muslim Woman to Become Judges

In some Muslim societies, this question is still being asked, although in other Muslim countries, women have made great strides and contributions in the areas of law and the judiciary. It is now the twenty first century and it is time to settle this question once and for all and empower Muslim women worldwide to exercise their right to serve society as judges. According to Islamic Shari'ah, there is neither a prohibition nor obstacles to women serving as judges. Indeed, many reliable and competent jurists such as al-Hasan al-Basri, Ibn Jarir al-Tabari, Ibn al-Qasim al-Maliki, Ibn Hazm, and al-Kassani argued convincingly that women have equal rights to those of men in the judiciary.

Yet a majority of jurists have argued in favor of prohibiting women from becoming judges (the "prohibition"). But when we examine their *fatwas* (legal religious opinions), we find that they are not based on clear evidence from the Qur'an or *Sunnah*, the two principle sources of Islamic legislation. Rather, they are based on interpretations colored by patriarchal bias.

In the absence of a prohibition in either of the Qur'an or *Sunnah*, no one has the right to prohibit women from joining the judiciary because of their own preferences, cultural beliefs or patriarchal customs. This fact is based upon a fundamental juristic principle which states that "no one may prohibit what God has permitted." The general rule in Islamic law is that everything is permissible by *al baraaa'h al asliyyah* (literally, "the original permission"). In other words, in Islam everything is presumed permissible unless it is prohibited by a divine text. In order to claim that something is prohibited, one must cite an authentic, correct and explicit divine text as evidence. There is no such text in the case of women and the judiciary.

Jurists and scholars who ban women from becoming judges offer two main arguments in support of their position. The first is based on a false interpretation of a *hadith* (a saying attributed to the Prophet Muhammad). The *hadith* says, "A people that make a woman their ruler will never prosper " *لن يفلح قوم ولو أمرهم امرأة*". This *hadith* has historically provided the principle

justification for the prohibition against women entering the judiciary, so let us examine it more closely. According to this reported *hadith*, when news reached the Prophet that the Persians had selected the daughter of their deceased Emperor as their ruler, he stated that a people ruled by a woman would never prosper. Patriarchal Muslim jurists use this *hadith* to argue that a woman should not become *Khalifa* (head of a Muslim state) nor even a judge, claiming that the role of a judge is part of that of the *Khalifa*.

More thoughtful jurists argued that this *hadith* cannot be used as justification for the prohibition for a number of reasons. One of these reasons is that this is an isolated (*ahad*) *hadith* which contradicts a Qur'anic verse, hence it is not reliable. Passages in the Qur'an suggest that leadership by women is acceptable. This is patently clear from the story of Balqees, the Queen of Sheba. The Qur'an criticized Balqees's worship of the sun, but it did not criticize her, not even in passing, for being the queen and leader of her people. Neither did the Prophet. To the contrary, the Qur'an praised Balqees as a wise queen, who consulted with her people and guided them. If there was anything fundamentally wrong with a woman being appointed leader over men, God or His Messenger would have said something to that effect, especially since the opportunity presented itself in that story.

Many jurists and scholars argued that the above-cited *hadith* addressed a specific historical situation. Looking deeper into the circumstances of the *hadith*, they concluded that the Prophet was communicating to his companions his view that the Persian Empire would fail because it was established on injustice and oppression. Thus the *hadith* does not articulate or justify a general rule or prohibition.

Jurists and scholars who support the prohibition offer a second argument based on a key Qur'anic verse (*Surat an-Nisa'* 4:34). They argue that this verse provides justification for both the prohibition and for subjecting women to male authority. The verse reads as follows:

“Men are *qawwamuna* over women because God has preferred (*faddala*) some of them over others and (on the basis) of what they spend of their property (for the support of women)…”

This verse has been consistently misinterpreted to mean that men have authority over women and that, in fact, men are superior to women in general, thus prohibiting women from being judges and leaders. To the contrary, this verse is intended to limit the interference of men in women's lives and to establish mutual responsibility in society, within a specific social context. (For more detailed analysis, see "Islam, Law and Custom" on Karamah's website). In the particular society in which the Qur'an was revealed, men, in general, supported their families economically, but this does not mean that this responsibility implies any sort of male superiority. The Qur'an considers men and women as equal in their individual and social responsibilities, and in the eyes of God. The Qur'an (*Surat al-Taubah* 9:71) goes so far as to regard men and women as being supporters or protectors (*awliyyaa'*) of each other. That being the case, arguing that the Qur'an prohibits women from becoming judges is simply an argument without basis in Islamic sources.

In short, the Qur'an and *hadith* (as limited to authentic reports), contain absolutely no statements that clearly prohibit women from being appointed as judges. Further, jurists follow the rule that everything is permissible by *al baraaa'h al asliyyah*, unless prohibited. Since there is no such prohibition in this case, it follows that women and men have equal rights in the judiciary.

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