
The Status of Woman as an Authority in The Light of Islamic Jurisprudence

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Abstract

Allah (S.W.T) has determined the importance of each thing, whether living or nonliving in the universe. Similarly, He has given proper status to man and woman among the humans. Allah (S.W.T) has given preference to man over woman about the social status. Allah (S.W.T) has created man out of woman in this world but when we closely observe the first creation of humanity, we can correctly evaluate the status of a man. In this universe, Hazrat Adam (A.S) was created without any woman and Hazrat Eve (A.S) was created out of Hazrat Adam's (A.S) rib. It clearly shows that woman is subordinate to man. It does not mean that we should overlook the capabilities of a woman, but we must determine her status keeping in view the laws of Shariah. Allah (S.W.T) Himself equated two female witnesses to one male witness. This Quranic example highlights the physical weakness of a woman. In this paper the leadership of a woman has been discussed from Sharia, History and Judicial points of view.

Keywords: Allah's wisdom, status of man and woman, creation of humanity, Shariah laws, physical weakness, women's leadership

Introduction

Allah (SWT) has appointed two female witnesses in comparison with one man but there are certain matters in which the woman cannot even appear as a witness according to Shariah for example the matters of "Haddood". Certain Fuqaha, basing on it, say that a woman cannot be assigned the duties of leadership, while some say that she can become a

leader, but one thing is crystal clear that she cannot decide the cases of “Haddood” as a judge. It means that in the cases other than Haddood-Qisas, it is not essential that the judge should be male. Basing on this assumption certain Foqaha has said that a woman can act in the capacity of the head of a state. However, the arguments of both the groups have been discussed in detail.

“الرجال قوامون على النساء بما فضل الله بعضهم على بعض”

“Men have an upper hand over Women because Allah (S.W.T) has given preference of someone over others” (Al-Quran 4:34)
The word “Qawam, Aqam, Qayyam” is used in Arabic language for that person who runs a system. The word “Qawam” here means ruler or higher authority.

“ولهن مثل الذي عليهن بالمعروف وللرجال عليهن درجة والله عزيز حكيم”

Women have right as men have over them according to the rule and men have Although the rights of men and women are preference over woman and Allah (S.W.T) equal yet at one point have get superiority is the wisest.” (Al-Quran 2:215) that they are the ruler/ superior ones.

Hafiz Ibne Kaseer (R.A)

“اي الرجل على المرأة اي هو رئيسها وكبيرها والحاكم عليها مودبها اذا عوجت ”

“Men are the rulers and caretakers of women. They are their elders and rulers and when the women divert from the path, then they are their tutors.”

Allama Aaloosi (R.A)

“ولذا خصو بالرسالة والنبوة على الاشهر والامامة الكبرى والصغرى واقامة الشعائر كالاذان والاقامة والخطبة

For this reason, men have been specified for prophet hood (Risalat-o-Nubuwwat). Ummah (Kubrah o Sughra) and Islamic rites e.g announcement for prayer (Azaan), stay for prayer (Iqaamat), sermon (Khutba) and Jumma prayer.

SUNNAT E NABWI (A.S)

Bukhari Sharif:

عن ابي بكره قال لقد نفعني الله بكلمة ايام الجمل لما بلغ النبي صلى الله عليه وسلم ان فارس ملكو ابنة كسرى قال لن يفلح قوموا ولو امرهم امرأة

“Abu Bakar (R.A) narrates that I got benefit through this Kalima (wordings) during the days of Jammal Expedition with the grace of Allah (S.W.T) that when Hazrat Muhammad (S.A.W) came to know that the people of Persia (Farus) appointed Chosroes (Kisra) daughter as king then He (S.A.W) said that

“Those nations will never flourish who hand over their government/power to the fair-sex.”

According to the well-versed scholars of Tradition (Hadith), all the narrators of this Hadith are reliable, trustworthy and authorized. That's why that the distinguished scholars of Hadith Imam Bukhari, Imam Tirmizi and Imam Nisai (R.A) have selected this Hadith in their anthologies.

In the age of Risalat (prophet hood), the people of Persia (Farus) appointed Chosroes' (Kisra) daughter as king after the death of the king Chosroes' (Kisra). When the Holy Prophet (S.A.W) was informed about this, then He (S.A.W) said that "لن يفلح قوم ولو امرهم امرأة"

Those nations will never flourish who hand over their power to the "women folk Besides the Queen of Chosroes' (Kisra), Hazrat Abu Bakar (R.A) talked about the Queen of Saba before Rasool Ullah (S.A.W). At this Rasool Ullah (S.A.W) said that " those nations will never flourish who hand over the power to the women folk

TIRIMZI SHREEF

عن ابي هريرة رضي الله عنه قال قال رسول الله ص اذا كانت امراءكم خياركم و اغنياءكم سمعاءكم و اموركم شوري بينكم فظهر الارض خير لكم من بطنها واذا كان امراءكم شراركم و اغنياءكم بخلاءكم و اموركم الى نساءكم فبطن الارض خير من ظهرها.

"Hazrat Abu Huraira (R.A) narrates that Hazrat Mohammad (S.A.W) said that when your higher authorities are better than you, your rich are generous your affaires are settled with mutual consultation then it is better for you to remain on the surface of the earth rather than inside it. And when your higher authorities become corrupt, your rich became miser, and your matters are handed over to women then it is better for you to remain inside the earth rather than surface of it".

Sheikh Ul Islam Moulana Zafar Ahmad Usmani

According to the above-mentioned Hadith, the participation of women in assembly and parliament has been restrained. And it is obvious through some other Ahadith that Rasool Ullah (S.A.W) consulted with Hazrat Umme Salima (R.A) and so on or the companions of Rasool Ullah (S.A.W) consulted with the Ul Momeneen so the consultation was not concerned with state affairs but with the problems of Shariah. Those problems were related to obligatory prayers. It is of no consequence to rarely consult with the wisest lady about the state affairs. But it is against the Shariah to appoint the woman as a regular consultant minister or ambassador. Because it is a doorway to all mischievousness.

Imam Baghwi (The Reviver of Sunnah)

"لان المرأة ناقصة والامة والقضاء من كمال الولايات فلا يصلح لها الالكامل"

Therefore, woman as an authority is weak by nature and it is a fact that leadership and judgment require perfect authority. Thus, the perfect man has only this capability for it.

Explanation of Nasfi Creed

”ويشترط ان يكون من اهل الولاية المطلقة الكاملة-----والنساء ناقصات عقل و دين“

It is must for superior authority that he ought to be fit for perfect and absolute authority. Woman cannot become leader because; they lack wisdom and cannot practice the religion properly.

Allam Abdul Aziz Farhawi

”قد اجمع الامة على عدم نصبها في الامة الصغرى“

There is consensus of Muslim’s opinion that it is improper to make woman a leader (imam). Even it is unsuitable to make her the leader at the smaller scale.

Four School of thought and the creed of Zawahir

School of thought of Hanafi

ويشترط كونه مسلماً حراً عاقلاً بالغاً قادراً

School of Thought of Malaki

فيشترط فيه العدالة والذكورة والقطنة والعلم

School of Thought of Shafi

”ولا يجوز ان يكون امرأة-----والمرأة ممنوعة من مجالسته الرجال لما يخاف عليهم من الافتتان بها“

It is undue to make woman a judge..... the company of female is prohibited for males because of it there is fear of temptation.

School of Thought of Humbli

”وجملة ان يشطرة في القاضى ثلاثة شروط الاكمال وهو نوعان كمال الاحكام و كمال الخلقة اما

كمال الاحكام فيعتبر في اربعة اشياء ان يكون بالغاً عاقلاً حراً ذكراً“

Thus, there are three conditions for judge: and they are of two kinds----perfection in reinforcement and perfection in creation and perfection in reinforcement is reliable in four things---he must be mature, sensible independent and male.

Zawahir School of Thought

”عن ابى بكره قال سمعت رسول الله صلى الله عليه وسلم يقول لن يفلح قوم اسند وامرهم الى امرأة“

If a female is appointed as judge and her decision is in the light of Shariah, then according to the Hanfi School of thought, it can be promulgated, despite its fault, in the light of Shariah. Either it is caliphate or presidency, governorship or ministry---if she is appointed to any post then her order will be reinforced owing to her official status? Allama Shami (R.A) with the reference to Imam Abu-Saood (R.A) writes that as she is devoid of this ability so she cannot lead us in the light of Shariah.

واما تقريرها نحو وظيفة الامام فلا شك في عدم صحة لعدم اهليتها خلافا لما زعمه الجهلة انه يصح

تشنيب لان الصحة التقرير يعتمد وجود الاهلية وجواز الاستبابة فرع صحة التقرير

Women as Judge and Imam Abu Hanifah:

Some of the scholars derived this opinion from Imam Abu Hanifah's thought that if a woman can become a judge, then why would not, she become a president or prime minister? The problem that a woman should be appointed as judge ---it has difference of opinions according to the Muslim jurists. Muslim jurists have been divided into three groups having their own difference of opinions in this regard.

CLASSIFICATION OF JURISTS

Ahnaf

Besides restrictive panel ordinance of Islam and Retaliation Law, there is no strict rule for judge to be a male sex in other case.

Sahib-E-Hidayah Al Marghnani (R.A)

A female can be appointed as judge. Although she can take decisions, she cannot hear the cases of restrictive or penal ordinances and of capital punishment. Therefore, her decision in these matters will not be correct.

Ibne Najeem (R.A)

It is not essential for judge to be a male jurist entitled to independent opinion. Three school of thoughts—Shafia, Malkia and Hanabila have this opinion that it must judge to be a male sex for hearing of all the cases. There is no justification for woman to become a judge.

Ibne Hazim (R.A) and Ibne Tareer Tibri (R.A)

It is not essential for judge to be a male jurist entitled to be a male sex only. Even it is not a must in the case of Restrictive and penal ordinance and capital punishment.

Argument:

كلكم راع وكلكم مسئول عن رعيته والامير راع والرجل راع على اهل بيته والمرأة راعية على بيت زوجها

و ولده وكلكم راع وكلكم مسئول عن عيته

They refer to this Hadith "Lo! All of you are leaders and shall be questioned on the Day of Judgment in respect of your trust. So, the king is a head unto his subjects and shall be questioned in respect of them; the husband is a head unto his wife and shall be questioned in respect of her; the wife is the head unto her husband's house and the children and shall be questioned in respect of them all.

So, you are all shepherds, and you shall be questioned in respect of those entrusted to you. They argue from this Hadith that Rasool Ullah (S.A.W) said that a woman is a guardian, and guardian is appointed for the settlements of all matters. And as a judge, one must guard people's matters. That's why a woman should be handed over this responsibility.

Rational Presumption:

There is justification for woman as jurist because one must reinforce order in the light of Shariah in Islamic jurisprudence. Same is the case with judgment and when there is justification for woman as jurist then why should not there be a justification for woman as judge.

Allama Marwi:

In this Hadith, the guardianship of woman is confined to the life expectancy.

“Woman is the head unto her husband’s house.” The guardianship of household affairs does not mean guardianship of judgment and it is improper to presume judgment over legal opinion. This presumption has a distinctive feature. In legal opinion (Islamic Jurisprudence), one has to reinforce order in the light of Shariah. While in the administration of justice, the reinforcement of order in the light of Shariah is made expedient and compulsory. Thus all the three schools of thoughts are against the categorical Quranic injunctions and the consensus of Muslim opinion.

Second School of Thoughts:

Arguments

“الرجال قوامون على النساء بما فضل الله بعضهم على بعض”

Sunnat-e-Nabwwia (S.A.W)

“عن ابي بكره قال لما بلغ رسول الله صلى الله عليه وسلم ان اهل الفارس ملكوا عليهم بنت كسرى قال لن

يفلح قوم ولو امرهم امرأة

The status of administration of justice is just like leadership. Because both deal with commonness of order. As the woman is not fit for the perfection in guardianship, acceptance as guardian and acceptance as witness in the light of Shariah. So, it is important to hand over the post of judge to her. The status of administration of justice is just like leadership. Because each rank has got the position of guardianship, and a woman is weak in perfection in guardianship and acceptance as witness.

Therefore, is misfit for the post of Judge? Every kind of male attends the law court. It needs mature opinion, perfect wisdom and sagacity to tackle with them. While women are nothing in comparison to men in this regard. Allah (S.W.T) says about their forgetfulness.

ان تضل اهدهما فتذكر احدهما على الاخرى

“If the first one forgets, the second one should remind her.” (Al-Quran 2:282)

Besides it, a woman is misfit to take the responsibilities as the head of the state or some key posts. Because Rasool Ullah (S.A.W), the Caliphs

(R.A) and the letter rulers neither made woman judge nor the head of the province. As far as we know, it did not happen so. Had it been lawful, there would not have any vacuume in this regard throughout the ages. Ibn-e-Hajr Al Asqalani, Shareh Bukhari Badarud Din Aani (R.A), reviver of Sunnah Imam Baghwi (R.A) the renowned Shafi Iman Novi (R.A) have the same opinion.

Hanafi School of Thought and Woman as Judge:

The main arguments of Hanafi School of thoughts are the same as (Aiema Slasa) has presented in favour of their creed. There is a light difference between the three schools of thought and Hanafi School of thought. According to Hanafie's opinion, if a woman is appointed as judge in those matters where she may be accepted as witness then her decision will be promulgated. It is a point of special decision, either it right to appoint a woman as judge or not. Hanafi School of thought has the same opinion as other three schools of thoughts. It means that an abominable to appoint a woman as judge and such a person will be sinful in the eyes of God, in this regard. In the clarification of this point, the argument of Hanfi Muslim Jurists can be presented which was about the deed of divorce. A person who gives divorce three times at random, then this deed of divorce is against Sunnah. It is an abominable and sinful act it does not mean that the act of divorce is invalid. Besides restrictive and panel ordinances of Islam and Retaliation Law, if a woman is brought forward as Judge, then even though it is sin but if her decision is in the light of Shariah, it will be promulgated. Because in some cases, a woman as witness is accepted. In those matters where she as an authority is accepted as witness, her decision will be promulgated.

ARGUMENTS OF HANAFI SCHOOL OF THOUGHT:

Allama Kasaani (R.A)

The court decision depends upon witnesses only. Therefore, the status of justice and witness is just like an authority. In Islamic jurisprudence, terminology an authority means a position or power assigned to a person. It cannot be imposed on anyone else without his approval/opinion. Therefore, a person who is fit for witness (keeping in mind other conditions) will be fit to become a judge.

“كل من كان اهلا للشهادة يكون اهلا للقضاء وما يشترط لاهلية الشهادة يشترط لاهلية القضاء”

“Although in restrictive and panel ordinance of Islam and capital punishment and in those matters where men are not informed, the judgment of women is correct there. Because their witness is accepted; and in restrictive and panel ordinances retaliation Law, the witness of women is not reliable. Therefore, the judgment of woman in this case is not correct.”

As for as the case decided by women, as justified by Imam Abu Hanifa (R.A) or Ibn-e-Jareer, are concerned, those were the settlement of individual cases as mediators. Allama Aloosi (R. A) narrated -that Sheikh Abo-Hayyan (R.A) has also explained this argument given by Hazrat Imam (R.A)

As it is narrated by Imam Abo Hanifa (R.A) that besides restrictive and penal ordinances of Islam and capital punishment cases, a woman can become judge in rest of the matters- It does not mean that it is lawful to appoint a woman on the post of administration of justice. But the fact is that as a woman can be a witness and in all she gets an authority. Therefore, suppose she is appointed as judge or both the rival parties accept her order in any case, and then besides the restrictive and penal ordinance of Islam and retaliation law cases, her decision will be promulgated, if it must be in the light of Shariah.

Allama Ibn-e-Hammam (R.A):

Whatever arguments are mentioned most of the time, it proves one thing that it is forbidden to appoint a woman as judge. It is unlawful and if a woman is appointed as judge, though it is a sinful act, yet both the parties made her an authority and a woman took such a decision which was according to the commandments of Allah (S.W.T); would her decision be proclaimed or not? There is no argument against it as it is according to the commandments of Allah (S.W.T).

Hazrat Aysha (R.A) as a leader in Jamal Expedition:

On the issue of leadership of woman, the argument is often given from the incident of Jamal expedition that the mother of the faithful Hazrat Aysha (R.A) led the Jamal expedition and the glorious followers of the Prophet (S.A.W), Hazrat Talha (R.A) and Hazrat Zubair (R.A) admitted her (R.A) leadership. The fact of this incident is that Hazrat Aysha (R.A) along with the others. Mothers of the Faithful went to perform Hajj (pilgrimage). The noble Sahaba (companions of Rasool Ullah S.A.W) gathered there and they insisted that she should perform her duty as an affectionate and reform the Umma which was disorganized. Because of this insistence when she (R.A) enquired at Basra and Qa'qa bin Hakeem (R.A) enquired at her (R.A) purpose of arrival then She (R.A) explained it clearly. "My son! My aim is to reform and unite the people".

Sheikh ul Islam Imam Ibn-e-Tamia) R.A)

“وانا خرجت لقصد الاصلاح بين المسلمين ووطننت ان في خروجها مصلحة المسلمين-----فوقعت

الفتنة بغير اختيارهم ----و عائشة راكبة لقاتلت ولا امرت بالقتال”

Masnad Ul Hind Shah Abdul Aziaz Muhadith Delhwi

Thus Hazrat Aysha (R.A) set out to Basra to reform and organize the Umma.

نا چار عائشة بقصد اصلاح و انتظام امور امت بست بصره حرکت فرمود

In short, the mother of the faithful was neither a leader, nor a commander. Neither had she political aims nor had she aims to fight with Hazrat Ali (R.A). There was no concept of statesmanship in her mind, more than that she (R.A) as a mother of faithful set out to create harmony among Umma. But unfortunately, the incident of Jamal Expedition occurred.

That's why whenever she (R.A) recollected the Day of Jamal, she (R.A) wept so bitterly that her (R.A) lap would become wet.

بر گاه يوم الجمل را ياد می فرمودان قدر می گریست که معجز مبارکش باشک تر می گشت

The honour of Rasool Ullah (S.A.W) Hazrat Aysha Siddiqa (R.A) remain behind the scenes on Howdah of she-camel throughout this journey. And Her (R.A) close relatives remained beside her (R.A). Hafiz Ibne Kaseer (R.A) narrated a unique incident in this context that at the end of Jammal Expedition, the noble of the area came to great her (R.A). One of the nobles peeps through the Howdah, Hazrat Aysha (R.A), the mother of the Faithful said,

”الیک لعنک الله متک الله سترک وقطع يدک وابدی وعورتک“

“Go out! May Allah (S.W.T) curse on you! May you be betrayed! May your hands be cut! And may your private part be exposed to all!”. This man was killed in Basrah, and his hands were served, and his naked dead body was laid in depopulated land. This is the gist and reality of Jamal Expedition. The character and action of Hazrat Aysha (R.A) did not set an example of women's leadership.

Queen Saba Bilqees, The head of the State and its Justification:

Surah Namal (the Ant) of the Holy Quran:

وجئتک من سباء بنی یقین۔ انی وجدت امرأة تملکهم واولیت من کل شیء ولها عرش عظیم

“I come unto thee from Sheba with sure tidings. Lo! I found a woman ruling over them, and she hath been given (abundance) of all things, and hers is a mighty throne”. (Al-Quran 27:22,23)

”وجدتها و قومها یسجدون للشمس من دون الله و زین لهم الشیطان اعمالهم فصدھم عن السبیل

فھم لا یھتدون“

“I found her and her people worshipping the sun instead of Allah (S.W.T); and Satan maketh their works fair-seeming unto them, and debarreth them from the way (of truth), so that they go not aright”. (Al-Quran 27:24)

Hazrat Abu Bakra (R.A) mentioned the incident of Queen of Saba apart from the Queen of Choseroes (Kisra) before Muhammad (S.A.W), then He (S.A.W) Said,

لن فلیح قوموا ولو امرھم امرأة

Allama Mahmood Aloosi (R.A)

“وليس في الآية ما يدل على جواز ان تكون المرأة ملكة ولا حجة في عمل قوم كفره على مثله هذا المطلوب

In the verse of Holy Quran, there is no such point to be presented as a proof that a woman can become a head of the state in Islam. The Holy Book Quran refers to the Queen of Saba as the head of the state of infidel it.

Quran Majeed:

“انه من سليمان وانه بسم الله الرحمن الرحيم الا تعلوا على وأتوني مسلمين”

“Lo! It is from Solomon, and Lo! It is in the name of Allah the Beneficent, the Merciful; Exalt not yourselves against me, but come unto me as those who surrender”. (Al-Quran 27:30,31)

The Queen of Saba-Bilqees as woman was the head of state and her nation was polytheist. According to the verses of Holy Quran Hazrat Sulyman (A.S) wrote a letter to the Queen of Saba, the title of it was-the invitation to the submission of One God the most Merciful. According to the historical narrations, there are differences of opinion that Hazrat Sulyman (A.S) did not get married with the Queen of Saba himself and He (A.S) got married with the Queen of Hamdan named Zateba and her husband was made the king Saba.

Mufti Muhammad Shafi (R.A)

As far as Balquees-the Queen of Saba is concerned, there is no proof of Divine law. So, for as it is not proved that Hazrat Sulyman (A.S) himself got married with her and maintained her sovereignty and it is not proved from any correct statement, where we should repose confidence in the light of Islamic Jurisprudence.

Hakeem Ul Ummat Molana Ashraf Ali Thanwi

Molana Ashraf Ali Thanwi (R.A) wrote a judicial Verdict in the light of Shariah and its background was that after the English domination of India some of the ancestral states remained as it were. These were like Semi-autonomous States. Some of them were the Muslim States and there remained no male legal heirs except Pardah observing ladies. Now there were two options.

Pardah observing ladies (who were considered the inheritors of English Law) would not have been entrusted with governorship of state. The status of these semi-autonomous states would have been abolished in his regards and they would have been merged in English dominion. Certainly, it was a great loss.

Second option was that these women would have considered as state adviser. And all the administrative works of state would have been handed over to all the men with their consultation/advice. This form was adopted in these states practically. One of the enquirers enquired about

this from that either these states are according to the Hadith or not. Keeping in mind the above-mentioned situations, Molana Ashraf Ali Thanwi (R.A) wrote the following judicial verdict in the light of Islamic jurisprudence that there are three kind of government.

It should be perfect and common. Perfect in the sense that the ruler should be independent/free to decide. It means that it should be one man rule, and he needs no one's approval for his decision. He should be endowed with full power. And common in the sense that his subject must not be a limited group. It should be perfect but uncommon. It should be common but not perfect one. For instance,

- i-a) The government of woman should be like one man rule.
- ii-b) A woman should act as an administrator of a small group of society without any partnership.
- iii-c) The government should be a democratic one where the status of governor should be like an advisor. The governorship is the group of advisers. If we inquire the wording of Hadith thoroughly, it shows that the first kind of government is mentioned in Hadith.

It is observed from the writing of Molana Ashraf Ali Thanwi (R.A) that the states are exempted from threat of the above-mentioned Hadith where the status of women's governorship is like an adviser or member of group of advisers, and they have no powers to enforce the orders. Molana Thanwi (R.A) has mentioned this cause "There is a secret that the basic of this government is just like an advice/consultation and the status of woman is like an adviser". The difference of opinion is about the reality of the democratic government. The viewpoint of Hazrat Thanwi (R.A) about the democratic government is that in this type of government the head of the state is powerless. And his status is just like an adviser only. As Moulana Thanwi (R.A) has mentioned its cause "There is a secret that the basic of this government is just like an advice/consultation and the status of woman is like an adviser".

Conclusion

Such a state where the status of head of the parliament is just like a member of a council, the justification of the leadership of woman is possible. Where the president or prime Minister is an independent head of the state, and he had the full power and control over the administrative machinery legally and they are independent in the formation of the cabinet. Then the justification and application of the judicial verdict of Molana Ashraf Ali Thanwi (R.A) is not in favour of them. And there is no place for it in Shariah. No one can deny this fact that the head of the state in the democratic government is not only an adviser but also a powerful administrator. Therefore, a woman cannot become the head of the state in a democratic government.

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