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Female Judges in Islamic Law
An analytical reading of the related texts
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Introduction

Over years of studies in the area of Islamic jurisprudence and sources of legal rulings and their related arguments, a researcher of this discipline encounters several problematic cases that may have somewhat apparently strong arguments in their support. Meanwhile, they go against the dominant spirit and clear texts of Islamic Sharī'ah. Conservative students of Islamic laws, such as the offspring of grand institutes like Al-Azhar, always feel reluctant to hold opinions against those of the majority of jurists. Some may attribute it to scrupulousness and deep trust usually placed in the early authorities of fiqh.

Imams of fiqh and tafsīr, who devoted their life to learning and education and wholly proved free from seeking any worldly desires, are certainly more knowledgeable and worthy of trust. However, re-reading the contexts and observing the dominant customs of time make it plain that the imams are the children of their time. They ate, dressed, learned, traveled, thought, lived, agreed, differed, interpreted and misinterpreted in the very way usually known to their times and customs.

It is a truism that time and custom have influentially affect the theories and practices of Sharī'ah. This fact does not affect in the least the eternal compatibility and viability of Sharī'ah. It only aims to stress the fact that the dominant valid customs had their admitted impact on the interpretation and application of sacred texts of Sharī'ah. Ibn al-Subki emphatically expressed this fact in his statement: "For the jurists, it is famously acknowledged that anything that has no referential rule in language or Sharī'ah [for interpretation] should be referred to custom."¹

In other words, new generations of different times may experience new incidents and have new customs that inspire them with more insight about the right interpretations and implementation of Sharī'ah in the same manner the early Muslims did.

Given this fact, this study seeks to examine the early Muslim customary interpretations that went contrary to the fundamental rules of Islamic Sharī'ah but continued to hold significant status in the structure of Islamic laws. The focus of this

study is exclusively concerned with the modern-day crucial issue of "women's appointment in posts of judges." It reconsiders the legal texts and rules related to them with a view of uncovering the fairness of sacred texts and highlighting the unfair customary misinterpretations.

Strong Women of Arabia and Old World

Before anything else, it is seriously important to observe the conditions of women in pre-Islamic Arabia to get the bottom—rather to test the customary interpretations— of texts. In Arabia, women had somewhat conflicting images and situations. In one situation, the masters of Quraysh advise 'Abd al-Muttalib—the Prophet's grandfather—to go to a female diviner of Medina and consult her about the proper decision concerning his vow to sacrifice one of his children, if he had ten powerful males who can give him protection. Actually, he went to her in the company of some Qurashites. After postponing them a day, she gave them the judgment.² History tells that they did accurately what she said and acted upon her judgment. Male masters of Arabia seek the advice of a female and act upon her decision.

Evidently, woman is highly appreciated in this crucial dilemmatic situation. A remark may be raised that she was not a judge. However, it is clear that they went over there for her in submission to her discretionary decision and seeking her advice—if she ever had. She has a post higher than a judge has, as no one forced them to consult her. However, they did and obeyed her judgment.

By the 3rd century CE, parts of southern Mesopotamia had a substantial Arab population where Malik Ibn Fahm al-Qudā'ī founded the Kingdom of Hirah as the first historic Arab kingdom outside Arabia. His son Jazīmah, a very powerful Arab leader, succeeded him in rule and, after fierce wars against 'Amr Ibn al-Zarab, he killed him and won the battle. Here, the queen Na'ilah, famously known as al-Zabbā', the daughter of the killed king 'Amr Ibn al-Zarab, comes to the scene. She succeeded her father in rule and governed a kingdom that contained the Levant and parts of Mesopotamia. Na'ilah had her cities on the eastern and western banks of Euphrates.³ Succeeding her father in kingdom, she was resolute to take revenge. She went to Jazīmah and encouraged him to visit and marry her, a request that he welcomed.

Cunningly enough, she plotted to kill him and mercilessly did it.⁴ It is just another example of a strong female monarch, who assumed power and leadership and plotted against ambitious male enemies.

Furthermore, the Jewish, Christian and Muslim scriptures mention the wisdom and discretion of the Queen of Sheba or the Queen of the South.⁵ The bible also mentions some influential women, such as Athaliah, the queen regnant of Judah for six years,⁶ and Deborah, the fourth Judge of pre-monarchic Israel and the only female judge mentioned in the Bible.⁷ The case in the Eastern Roman empire and in Persia was not different from that of Arabia. For example, the Roman Empress Pulcheria (d. 453 CE), the second child of Eastern Roman Emperor Arcadius, proclaimed herself regent over her brother Theodosius II, and made herself Augusta and Empress of the Eastern Roman Empire on July 4, 414 CE.⁸ More to the point, two Sasanian women assumed the throne of Persia: Borandukht and Azarmidokht—the daughters of Khosrau II— were the queens and monarchs of Persia.⁹

Likewise, in a study of ancient Egyptian monuments and statutes, scholars founded that even female workers are usually portrayed with grace and dignity. Tomb inscriptions provide insight into the professional lives of women from the elite class in ancient Egypt in which a woman acted as the overseer of physicians. Some inscriptions use honorific titles such as vizier and judge when referring to women.¹⁰ It is well known that Hatshepsut (i.e. Foremost of Noble Ladies) was the fifth pharaoh of the eighteenth dynasty of Egypt.¹¹

It is fair to say that women, like men, were generally recognized and accepted in leading posts as queens of the client kingdoms of Arabia and empresses of other neighboring empires of the old world. The preIslamic Arabs even viewed that angles were female beings.¹² However, this fact should not delude readers to think that all Arab women enjoyed such exceptional status. Indeed, women's leading roles over history—including modern times— were always exceptions from the general rule.

This fact does not exclude the infamous conditions that the Arab women suffered in various situations of social life, especially among the central population of Arabia in Mecca. This fact finds further support in the statement of Umar:

“By Allah, during the pre-Islamic days we had no regard for women until Allah revealed about them what He has revealed and allocated for them what he has allocated.”

He went on to say, it so happened that I was thinking about some matters when my wife intervened, saying: “If only you had done that and that.” In reply, I said, It does not concern you. Why should you intervene with any of my businesses? She said, it is wonder, O son of al-Khattab, that you do not like anyone to question you whereas your daughter question Allah's Messenger until he sometimes remains a day angry.

Umar put on his garment and came out to visit Hafṣah. He said to her, “O daughter, you question Allah's Messenger until he becomes angry for a full day. Whereupon, Hafṣah said: By Allah, we do question him. I said: You should bear in mind, my daughter, that I warn you against the wrath of Allah and the wrath of His Messenger. Do not be misled by the one whose beauty and Prophet's love urged her [to argue with the Prophet].”¹³

Evidently, the pre-Islamic patriarchal Mecca had no regard for women. This was the case commonly shared by different parts of Arabia. For example, the pre-Islamic Arabs—men and women alike—practiced female infanticide burying their female children alive for fear of poverty or disgrace.¹⁴ They denied them any right to inheritance¹⁵ and, worse indeed, the stepsons used to inherit their stepmothers after their fathers passed away and some even dared to marry them or give them in marriage to others whom they desired. They also used to persecute women in an attempt to force them to give up some their financial rights.¹⁶ Others forced their female slaves to practice prostitution.¹⁷ These and many other misogynic practices prove the deteriorated conditions of pre-Islamic woman.

However, an in-depth evaluation of the historic facts survived in the ancient chronicles and limitedly documented in the Jewish, Christian and Muslim scriptures and of the deteriorated conditions that women suffered in Mecca—refers to some civilized parts of Arabia, including the Yemen, Hirah, Bahrain and Medina, where women received greater recognition than was the case in Mecca.

Here, it is also noticeable that the Islamic progress achieved in the area of women's rights was historic and unprecedented. The Islamic laws improved the status of women giving more rights to females and safeguarding them from several customary evils. As regards women's competence for judicial and leading posts and the social acceptance of female leadership, it remained as before in the extremities of Arabia— acceptable but of limited occurrences.

Indeed, no document is there to deny women's right to assume judicial or even presidential posts. The historic events that took place at the early times of Islam stand for this fact; for example, the two women of Al-Ansār¹⁸ took part in the famous Bay'at al-Aqabah i.e. agreement of faith and support solemnly promised by Al-Ansār to the Prophet in Mecca.

Likewise, Aishah—the Prophet's wife, led the political opposition against the fourth caliph 'Ali Ibn Abi Talib and some leading companions followed her.¹⁹ Some famous women also played significant roles in Muslim migration, wars and promotion of knowledge and education.²⁰

Evidently, several of the Prophet's female Companions narrated the prophetic statements and issued fatwa. They were reliable teachers and muftis.²¹ After the first generation, several famous influential women assumed the roles of teachers, Hadīth narrators, muftis and influential rulers. For example, Ḥafṣah Bint Sirīn (d. 110AH), was a famous Hadīth source²² and teacher²³ and so was 'Amrah Bint Abd al-Rahmān (d. 80AH).²⁴ Likewise, Fatimah Bint Muhammad—the daughter of Muhammad Ibn Ahmad al-Samarqandi (d. 539AH) and the wife of Abu Bakr al-Kasani (d. 587 AH);²⁵ and Fatimah Bint Ahmad Ibn 'Ali, the author of al-Badī' in usūl al-Fiqh.²⁶ Similarly, Sit al-Wuzarā' (the mistress of ministers) Bint 'Umar Ibn Asad (d. 710AH/1310 CE) was a famous narrator of al-Bukhari's Authentic collection insomuch that she dictated it in Cairo and Damascus;²⁷ and Sit al-Fuqahā' (the mistress of jurists) Bint Taqī al-Dīn Ibrāhīm Ibn 'Ali al-Wasiṭi (d. 726AH/1326 CE) was a famous Ḥadīth source and taught Ibn Majah's sunan collection.²⁸

Some other Muslim females played influential roles in politics and governance, such as Sit al-Mulk Sulṭana, the daughter of the fifth Fatimid caliph al-'Azīz Billah and the sister of the sixth Fatimid caliph al-Ḥakim bi-Amrillah (d. 411AH/1020).²⁹

Likewise, Shajar al-Durr Umm Khalīl (d. 650AH), the widow of the Ayyubid Sultan Aṣ-Ṣalih Ayyub, played a crucial role after the death Sultan Aṣ-Ṣalih Ayyub during the Seventh Crusade against Egypt (1249–1250 CE). Coins were minted with her titles, prayers were announced for her in Friday sermons and she signed the royal decrees with the name "Walidat Khalīl."³⁰

Thus, for numerous Muslim scholars, the patriarchal dominant patterns in Muslim states shall be understood in the light of the nature of the state, cultural practices that may have nothing to do with Islam, the history of a particular society, women's social class and the choices available to them.³¹ Affected by their social male-oriented education, the dominant custom restricting women's participation in social and political life³² and the society's image of an "ideal woman", the early Muslim scholars gave somewhat masculinized reading and patriarchal interpretations of texts and disqualified women for posts of judges or rulers. Later, the Muslim jurists held different views concerning women's competence for judicial and presidential posts.³³ Following is an abstract of the juristic views, arguments and polemics on the issue.

1. The Majority of jurists including the Malikis,³⁴ the Shafi'is,³⁵ the Ḥanbalis,³⁶ the Zaydis,³⁷ the Imamis³⁸ and the Ibadis³⁹ held the opinion that women are not legally qualified for the posts of judges. Imam Zufar, an eminent student of Abu Hanifah, also maintained that a woman should not be appointed in the post of judge and the ruler commits a mistake by this appointment. However, if appointed, her judgments are valid and effective.⁴⁰
2. Abu Hanīfah and his followers maintained that women are qualified to the posts of judges in all financial transactions and marital issues. However, they are not qualified to stand as witnesses or judges in the criminal disputes in which the Hudūd (prescribed penalties) and qisās (retribution) are prescribed, such as theft, robbery, murder and injuries.⁴¹
3. Abu Muhammad Ibn Hazm al-Zahiri (d. 456AH) and Muhammad Ibn Jarīr al-Ṭabari (d. 310AH) maintained that women are competent for the posts of judges.⁴² For Ibn Jarīr, women are also qualified for the leadership of Muslim community.⁴³ Al-Hasan al-Basri and Ibn al-Qasim al-Maliki also maintained that women are eligible for posts of judges.⁴⁴ The Grand Sheikh of Al-Azhar

Muhammad Sayyid Tanttāwi also ruled that nothing in Islamic law prevents women from being judges. Likewise, the Grand Mufti of Egypt Sheikh Ḥali Gomaa supported the appointment of women in judicial positions stating that it is not in contradiction with Sharīah principles.⁴⁵ Dr. Ḥabd al-Karīm Zidān⁴⁶ and Dr. ḤAlī alQaradaghi⁴⁷ also advocate this view.

Polemics about Women's Access to Judicial Posts

Legal indications of the first view:

1. The Qur'ānic Indications:

- Allah (may He be Exalted) says, “Men shall be qawwamūn over women because of what Allah has given one over the other and because of the maintenance they spend from their wealth” (the Qur'ān 4: 34).

The advocates of this view argue that qawwamūn in this context implies that men are the leaders, keepers, governors and educators of women. Men are endowed with greater faculties in reasoning and thinking, so they are better than and in charge of women, like rulers over subjects. That is why men are exclusively qualified for the missions of prophets, imams and judges.⁴⁸

According to the traditional interpretations, the rationale behind this merit is explained in two facts; one that is divinely conferred on men: 'what Allah has given one over the other' e.g. perfect reasoning, good management, greater abilities for good deeds and acts of worship. The other is acquired, namely, the maintenance they provide from their wealth, such as the ṣadaq i.e. a gift that husbands present to women for marriage, and the maintenance of wives.⁴⁹

In reply, the word qawwamūn i.e. keepers or preservers, is not an exclusive merit to men. Indeed, there is a prophetic narration, in which women are also declared as keepers of men and in charge of their affairs. It is narrated that a woman came to the Prophet and said, I am the delegate of women to you; Allah ordains jihad on men; if they are injured, they earn the divine reward and if killed, they live with their Lord and get their provision. We, the women, naqūmu [a verb derived from the same root “qāma” from which qawwamūn is derived] keep/are in charge of their affairs, what is our reward? He said, “Inform women who met you that your

obedience and recognition of your husbands' right receive reward equal to that of jihad.”⁵⁰

Evidently, men and women exchange the duty of good care and keeping one another according to the changing needs and situations of life as the cited tradition proves.⁵¹

In his Qur'ānic dictionary, Imam Majd al-Dīn al-Fayrūzabādī stresses that the word *qawwamūn* signifies the "careful keepers of" women's affairs."⁵² In other words, men shall be sincere in their support of and care for women and should look after them. It has no legal indication to disqualifying women for posts of judges.

Furthermore, in his interpretation of the verse in question Muhammad Rashīd Reda pays attention to the fact that Allah's statement: "...because of what Allah has given one over the other..." is a well-said precise statement comprehending the graces whereby Allah prefers some men over other men and some women over other women. Likewise, some men may excel over some women and some women over some men.⁵³

Evidently, Rashīd, a pioneer of Islamic revivalism in modern times, just says that the verse announces a general natural rule and implies that some women may excel many men. It does not mean that all men are always superior to women or all women are superior to all men. Consequently, the claim that the verse gives men authority over women and that they are superior to women is groundless. The verse only intends to establish mutual responsibility in society. The fact that men are financially responsible for women is not and cannot be legally or literally interpreted as superiority. The divine writ speaks of "care and responsibility" within the social and familial contexts but not of superiority or competence for posts of judges.⁵⁴

Actually, we know for sure that Khadīja excelled many male Companions in firm faith and charitable acts. Likewise, Aishah excelled many of the male Companions in knowledge, especially in inheritance, rulings of lawful and unlawful matters insomuch that Masrūq ibn al-Ajda' said, "I have seen the elites of Prophet's Companions asking Aishah about the shares of inheritance."

Her nephew 'Urwah Ibn al-Zubayr also said, "I have never sat with anyone more aware of legal rulings and pre-Islamic events nor more narrating lines of poetry

of different cadence, nor of medical treatment than ‘Aishah.’⁵⁵ The same goes true when we speak of Nusaybah's courage and of Asmā's hardworking and eloquence. Court judgment shall not be an exception from this rule. Evidently, the claim that the verse gives men absolute superiority over women is factitious and custom-biased conclusion. It is a subjective choice inspired by the dominant conditions at this early era.

- Allah (may He be Exalted) says, “O You who believe, whenever you give or take credit for a stated term, set it down in writing. And, let a scribe write it down equitably between you; and no scribe shall refuse to write as God has taught him... There shall be two witnesses to the transaction from among your men. If they are not two men, a man and two women⁵⁶ [are acceptable] who are competently satisfactory as witnesses to you. Thus, if one of them should tadilla i.e. make a mistake or err, the other could remind her” (the Qur’ān Surat al-Baqārah, 2: 282).

It is argued that two women's testimony is only equal to a man's testimony, how can woman thus act as a judge when she is not acceptable as an independent witness? Moreover, if she, as a witness, is prone to error and forgetfulness, she is not suitable for judicial posts.⁵⁷

However, Imam Muhammad ḌAbduh challenged this notion and denied that requirement of two female witnesses was based on the different natures of men and women. Instead, he argued that women are less familiar with financial transactions and other compensatory contracts, so she is vulnerable to forgetting those things, which were not part of her daily experiences. While a woman is more prone than a man to make a mistake in a commercial transaction, she will be most likely more correct than a man in household affairs.⁵⁸

In other words, men and women alike can better remind the affairs with which they are familiar and have much concern.⁵⁹ In this context, women are not accustomed to concluding contracts and transactions in markets and may forget measures while men are always there. The Qur’ānic verse makes it more difficult for a contractor to have women as witnesses, because they are usually in homes and preoccupied with domestic and familial affairs apart from markets and

commercial disputes. Furthermore, their future husbands and families may dislike seeing their wives and women in the court involved in males' disputes.

To summon a wife, the court may find her in crucial moments of pregnancy or nursing or in travel with her husband and family. In other words, taking recourse to women's testimony could impede the quick dispensation of justice by accidental exigencies. The Qur'ānic verse thus reveals the practicability of Islamic legislation and does not intend to underestimate women in the least.

- The Qur'ān relates the statement that the wife of 'Imrān said when she gave birth to Mary: "My Lord, I have delivered a female." And Allah was most knowing of what she delivered, and the male is not like the female," (the Qur'ān 3: 36). Here, woman as argued here is declared different from men in religious duties. Since the post of judge is religious, she is not proper for it.

In reply, woman is biologically different from man. However, their roles shall be integral to, not exclusive of, one another. The wife of 'Imrān only said that woman is not proper to fulfill her vow of devoting her child to the religious services. Unlike a man, a woman may suffer some social obstacles, so the mother of Mary thought that had the child been a boy he would have been more suitable to achieve the purpose for which she had consecrated the child as having stronger physical powers to observe the Temple of Jerusalem.⁶⁰ She did not speak of legal competence. Furthermore, against the vision of the mother of Mary, she was admitted to the religious services on equal footing with men.⁶¹ In other words, woman is equal to men even in this ritual area.

2. Prophetic Indications:

- The Prophet's famous tradition in which he said: "I have never seen more defective ones in respect of perception and religion, yet robbing the wisest men of their acumen, than you are." A woman asked, "Which deficiency we have in perception and which in religion?" He replied, "The testimony of two women is equal to that of one man⁶² and you do not offer Salah (prayer) and break the fasting of Ramadān on days [of monthly periods]."⁶³

Evidently, since women are imperfect in perception and religion, they are not qualified for the post of judges; judiciary is one of the important religious and public posts. It needs acumen and tentativeness, for encountering litigants and disputes or

having jurisdiction over the trials of misdemeanors and felonies.⁶⁴ Furthermore, women's testimony is not independently accepted— even if they are thousands of women, unless a male witness is with them. God pays attention in women's liability to error and forgetfulness in the Qur'ān (2: 282) and they are not qualified to imamate and governance, so they should not hold the posts of judges.⁶⁵

- In reply to the Prophetic statement: "I have never seen more defective ones in respect of perception and religion, yet robbing the wisest men of their acumen, than you are," it is argued that this prophetic statement reveals the merits of women who, though weak, can overcome men in their usually recognized powers and wisdom. For example, Ibn Battal indicates that a man is not blamed for his overwhelming love of his wife, because the Prophet excused him in this statement. If they can 'rob the wisest men of their acumen,' how about others?⁶⁶
- The claim that women's testimony is not accepted unless there is a man with them is not absolute and rather controversial. It is proved that 'Umar Ibn al-Khaṭṭāb, 'Ali Ibn Abi Ṭalib, Iyas Ibn Mu'awiyah, Muhammad Ibn Sirīn and 'Aṭā' Ibn Abi Rabāḥ accepted the testimony of women independently in financial rights, divorce, marriage, manslaughter and Ḥudūd (prescribed major penalties).⁶⁷ Imam Malik also allowed women's testimony in manslaughter lawsuits.⁶⁸

Furthermore, how could a claim discrediting women's perception and insight stand against the clear text of the Qur'ān in the account of Moses with the daughter of Reuel, the priest of Midian. Reuel sent his two daughters to water his flock but there they set aside by the well until the shepherds finish. Moses drew water for them and watered their flock. Relating the account to their father, he sent one of them to tell him: "My father invites you to reward you for watering for us" (the Qur'ān, 28: 25). In the house, "Said one of the two daughters: O my father! Hire him: for, behold, the best [man] that you could hire is one who is [as] strong and worthy of trust [as he]!" (the Qur'ān, 28: 26).⁶⁹ This was a woman's judgment issued out of a female evaluation of Moses; neither the Qur'ān nor the course of history belied it. Doubting woman's insight after this delicate and fair judgment is thus groundless.

In conclusion, the suggested narration's semantic meaning is only speculative and open for various interpretations. Attempts to twist the meaning in trying to forbid women from assumption of the posts of judges are groundless. Actually, there is no relationship between this statement and the women's competence for the posts of judges. It is famous that many men may have different aspects of imperfections, but they are still qualified for judicial posts if they fulfill the necessary legal prerequisites. Evidently, no jurist claims that the judges are impeccable. If men are prone to sin and acceptable as judges, women shall take the same ruling as well.

- Abu Bakrah said, "During the days when al-Jamal Battle (the Camel Battle) occurred, Allah benefited me with a word that I heard from the Prophet when I was about to join the people of al-Jamal to fight on their side. When the Prophet heard the news that the people of Persia tapped the daughter of Khosrau as their Queen regnant, he said, "Never will succeed such a nation that makes a woman their ruler."⁷⁰

In their comments on this tradition, commentators usually conclude that women are not qualified for the posts of imams and judges, nor should they conclude the contract of marriage.⁷¹ Apparently, they attempt to avoid the causes of failure and attain the means to success.

However, the conclusion made by Narrator-Companion Abu Bakrah, which is traditionally followed and advocated by commentators did not receive the approval of the Prophet's Companions, who conversely joined Aishah in her opposition and fought by her side in Al-Jamal Battle. Although the outcome of this opposition proved failure, no one said that it was due to Aishah's imperfect mind or knowledge. Evidently, some famous Companions like al-Zubayr and Talḥah followed her amongst others who are more knowledgeable in legal understanding because of their longer company of the Prophet and their better knowledge of Islamic Faith and Laws.

Again, understanding the tradition to disqualify women as judges or rulers is a form of misinterpretation as it goes against the Qur'ānic merits attributed to another powerful queen in the Yemen (the Qur'ān, 27: 23-35). For Sheikh al-Ghazali, it is simply a truthful remark said by the wise Prophet in evaluation of the whole events

over there in the defeated empire of Persia. If the government of Persia had followed the democratic consultative formula of rule similar to that of Golda Meir (d. 1978 CE), a Jewish woman who ruled the occupied Palestine leaving the military affairs to the military generals, another different comment would have been expected. The Prophet read Surat al-Naml in which the lofty merits and powers of the queen of Sheba are celebrated and it is impossible for him to declare a statement against the revelation.⁷²

Taking the prohibitive view for granted, there is a great difference between the post of a caliph or imam and that of a judge. Furthermore, the modern post of a president is also different from that of a caliph or imam. Modern presidency is not an individualistic job but a constitutional and organizational mission shared by many specialized persons and authorities who cooperate for the process of decision-making. Actually, there is no decisive clear indication in Sharī'ah excluding women from either the post of a judge or that of a president.

Rational Arguments:

- Posts of judiciary are similar to the post of the supreme grand imamate or governance for which men are only qualified.⁷³

However, the statement that only men are qualified for the grand imamate is also debatable. The aim of imamate and governance is to defend the borders, administer the public affairs, collect taxes and other financial entitlements and redistribute them among the due recipients. Men and women can equally do these jobs of governance.⁷⁴ Although al-Baqillani declared these facts for sake of debate—as he did not support women judges, they are right and well-said. Realities of life and stories of the Qur'ān even support them as the account of the Queen of Sheba proves.

- Judges usually have the opposing litigants and men in their sessions. They may need to consult male jurists, inquire criminals and examine witnesses while women should not expose herself to such sessions for her to avoid evil and temptation. Furthermore, if she is young, it is forbidden to look at or talk to her.⁷⁵

Legal indications in support of the second view:

- Allah (may He be Exalted) says, “O You who believe, Whenever you give or take credit for a stated term, set it down in writing. And let a scribe write it down equitably between you; and no scribe shall refuse to write as God has taught him... There shall be two witnesses to the transaction from among your men. If they are not two men, a man and two women [are acceptable] who are competently satisfactory as witnesses to you. Thus, if one of them should make a mistake, the other could remind her” (the Qur'ān, Surat al-Baqārah, 2: 282).

For the Hanafi jurists, women are qualified as judges in the same areas where they act as witnesses, namely, in all transactions excepting Hudūd and retribution.⁷⁶ They build this view on the basis of women's accepted testimony in financial issues—as the verse declares and the requisites of testimony are equally required in judicial offices.⁷⁷

Legal indications in support of the third view:**1. The Qur'ānic Indications:**

- Allah (may He be Exalted) says, “And whoever does good deeds, whether male or female, and s/he is a believer, they shall enter Paradise and they will not suffer the least injustice,” (the Qur'ān Surat al-Nisā', 4: 124). Likewise, Allah (may He be Exalted) says, “Whoever does good, whether male or female, and s/he is a believer, we shall certainly grant him a good life, and We shall certainly reward them with the best for what their good deeds,” (The Qur'ān Surat al-Naḥl, 16: 97).⁷⁸

It is evident that both verses equally encourage men and women for good deeds and equally promise them good reward for the best of their deeds. Sorting out people's problems and ending their disputes are forms of good deeds for which a right judge expects good rewards from the Lord. What ground is there for anyone who denies women's right to this post while she can share in fight, work in farms and plants, nurse and diagnose, educate and lecture? Now, why should she not judge and rule?

- Allah (may He be exalted) also says, “And Allah puts forth an example of those who believed: the wife of Pharaoh, when she said, "My Lord, build for me near

You a house in Paradise and save me from Pharaoh and his deeds and save me from the wrongdoing people” (the Qur’ān, Surat al-Tahrīm, 66: 11).

This verse significantly presents two proofs for women's equality and even superiority to men. First, Allah says, “wadaraba Allahu Mathalan lil-Ladhīna āmanu, which literally means: "And Allah puts forth an example of those men who believed" because the masculine inflectional form "āmanu" is basically used for males while the feminine inflectional form "āmanna" is used for females.⁷⁹ However, the example presents of those men who believed is the wife of Pharaoh, which is symbolic of perfect egalitarianism.

Furthermore, the wife of Pharaoh's wisdom, discretion and faith led her to guidance and paradise lending her position entirely higher than that of her husband (king) and his retinue (ministers, priests and advisors who followed him to ruin) in terms of wise thinking and decision-making. This female example stands for a Qur’ānic lofty woman who excels her nation including her husband, the Pharaoh.

- Allah (may He be exalted) also says, “And, the believing men and the believing women, they are bosom friends of one another. They enjoin right and forbid wrong, and keep up prayer and give the obligatory charity, and obey Allah and His Apostle. They are the ones upon whom Allah will bestow His Mercy. Surely, Allah is Mighty and Wise!” (the Qur’ān Surat al-Tawbah, 9:71). This verse declares the friendship, i.e. support, unity and alliance, of the believers, men and women, and commend their merits of enjoining right and forbidding wrong. Undoubtedly, the work of a judge belongs to the enjoinder of what is right and forbidding what is evil.
- Relating the account of Solomon with his soldiers of humankind, jinn and birds, the Qur’ān mentions the story of Solomon and the absent Hoopoe. "I will punish him severely or I will slaughter him. Or else, he should bring forth a clear excuse, Solomon said. The Hoopoe did not stay for long before he came and said, I have news that you do not have. I brought to you from Sheba some important information. The Qur’ān then relates the Hoopoe's account of the Kingdom of Sheba: “I found there a woman ruling over them. She has been given of all good things⁸⁰ and hers is a mighty throne” (the Qur’ān 27: 23).

In response, Solomon sent the Hoopoe with a letter to the queen of Sheba, which she received and said: “O commanders, a noble letter has been delivered to me. It is from Solomon, and it says, 'In the name of God, the Most Gracious, the Most Merciful, proclaiming: Do not be arrogant toward me and come to me in peaceful surrender. She said, "O my advisers, counsel me in this matter, for I would never take a decision unless you testify to it. They said: "We are endowed with strength and with mighty prowess. But the decision is yours, so see what you will command. Said she: Surely, whenever kings enter any land they destroy it, and turn the noblest of its people into the most abject. This is what they usually do. Yet, I will send to them a gift and see what the messengers come back with” (the Qur’ān Surat al-Naml, 27: 29-35). These verses speak of the good administration of the queen of Sheba and the way she led her people through consultation and rightly guided polity. Woman as a queen is thus approved in the Qur’ān and the post of judge is only one of the early duties of a ruler. Before leaving this context, I would like to indicate the natural queen in the realm of ants that the Qur’ān mentioned in the same Surah prior to the account of the Queen of Sheba. The Qur’ān uses the term *namlah* i.e. female ant, to indicate a guiding ant that forewarned the members of her kingdom against the impending dangers of Solomon and his soldiers, who may unknowingly crush them. Relates her speech, the Qur’ān states: “When they [Solomon and his soldiers] came to a valley of ants, a female ant said: "O ants, enter your homes else you will be crushed by Solomon and his soldiers while they do not notice” (the Qur’ān 27: 18). It is worth mentioning that no one of the contemporaries of Prophet Muhammad knew that there is a female leading ant, which is the queen or knew about the ant colony life cycles.⁸¹ However, the Qur’ān presents precise indications to the leading queen using the feminine form “*Namlah*.” which is also indicative of the natural abilities of females in the natural world, of which humankind shall not be an exception.

- Allah (may He be Exalted) says, “Allah commands you to render trusts to whom they are due and whenever you judge between people, to judge with justice”, (the Qur’ān Surat al-Nisā’, 4: 58). Clearly, the command to issue a fair judgment is equally applicable to men and women. Simply, because the first command, that is to render trusts to whom they are due is unanimously applicable to them. Any claim of exceptional implementation has no evidence to support. It is logically and

legally impossible to separate the two orders from each other unless otherwise is proved by specific declaration to the same effect.

- The Qur'ān prescribes strict punishment for those who accuse chaste women of adultery: "Those who accuse chaste women [of adultery] and fail to produce four [just] witnesses, then flog them eighty stripes and do not accept their testimony ever after. Indeed, they are the transgressors," (the Qur'ān, Surat al-Nūr, 24: 4). However, what if the accuser is the husband and he fails to produce the four just witnesses? The familial relationship can fall to suspicion and doubt, which leads to hate and domestic conflict. An exception is made to relieve the husband from this dilemmatic situation: "And those who accuse their own wives [of adultery] and have no witnesses except themselves, each of them shall swear four times by God that he is indeed telling the truth and the fifth time, that God's curse be upon him if he is telling a lie. Yet, the punishment is averted from her if she swear four times by God that he is indeed telling a lie and the fifth time, that God's wrath be upon her if he is telling the truth" (the Qur'ān, Surat al-Nūr, 24: 6-9).

Clearly, a man's four times of swearing by God are equal to woman's four times. In other words, their legal capacity and declaration are the same. The lawgiver does not ask her to swear eight times. It is another proof for the circumstantial necessity that imposed the law of testimony.

A. The Prophet's Indications:

- "A woman is legally responsible for her husband's property and is accountable for what is in her charge."⁸² Here, a woman is in charge of her husband's house, which is a form of responsibility equally attributed to men in the introductory statement of the same tradition: "a man is legally responsible for his family and is accountable for what is in his charge." The responsibility is genderneutral, reciprocal and integral and there should be no gender-based discriminative scales.
- "Women are the equal sisters of men."⁸³ This statement declares that women are equal to men; they belong to the same origin. AlKhattabi also concluded that legal commands expressed in the masculinized formula are equally applicable to women unless otherwise is proved by law.⁸⁴

B. Rational Arguments:

- For IbnHazm, women received prophecies from angels such as the mother of Isaac (the Qur’ān, 11: 71-73), Mary (the Qur’ān, 19: 19) and the mother of Mūsa (the Qur’ān, 28:7) and those who denied women's capacity for prophethood have no evidence whatsoever to support their view.⁸⁵ Now, if some women were proved prophetesses and qualified for chosen men's position of a prophet, then female gender should be qualified for positions less important than that of a prophet; the post of a judge is not greater in importance than that of a prophet.
- The narration of women is unanimously accepted in Hadīth; many female Companions reported the rules and tenets of Muslim Faith, Sharīah and ethics from the Prophet. Some of them like 'Aishah⁸⁶ and Um Salamah⁸⁷ are among the most authentic abundant sources of Hadīth. After them, women like HafHah Bint Sirīn⁸⁸ and Amrah Bint Abd al-Ramān,⁸⁹ narrated scores of prophetic statements from the Prophet's Companions. Women's narrations of prophetic statements are acceptable, and judgments can unanimously depend on their narrations, why should not their judgments in courts be thus also acceptable?
- The fatwa of women is unanimously accepted and women can act as muftis and the judge is no more than an official mufti whose judgments are effective and binding by the force of the state.⁹⁰
- As far as the legal rulings are concerned, the judge only aims to implement them after hearing the evidence to decide on the disputes. Men and women can equally do this duty.⁹¹
- Anyone who can judge disputes and sort out problems may assume the post of judges and some women can do this job, so permissibility of women's right to judicial posts prevails.⁹²

CONCLUSION

Reviewing the main juridical views on this controversial issue reveals that there are at least three traditional trends:

- First: The advocates of the patriarchal interpretations of texts excluding women from the posts of judges and presidents.
- Second: The proponent of a midpoint position, who allowed women to be a judge in financial and marital issues and excluded here from other areas.
- Third: The advocates of women's right to judicial posts, who give full support of female judges.

The key argument in support of the first opinion is seated on unfair general discrimination between men and women that goes against logic, normal rules and universal principles of Sharī‘ah. For example, the Qur’ānic verse (4: 34) is taken out of the context of family relationships and marital life to the area of judiciary and government.

In this context, they even quote another Qur’ānic verse to support their view: “The divorced women shall wait for three menstruation periods. And, it is not lawful for them to conceal what Allah has created in their wombs, if they believe in Allah and the Last Day. Yet, their husbands would then have just cause to return together if they both wish to reconcile. For women are rights equal to their obligations according to the recognized norms. But the men will have a greater darajah [degree] over them in this. Surely, Allah is Noble, Wise” (the Qur’ān, 2: 228).

For Ibn Kathīr, men have “greater degree in virtue, ethics, creation, positions, right to obedience, expending, undertaking the interests and excellence in this life and in the Afterlife.” He then cited verse (4: 34) in assertion of his interpretation.⁹³ It is a truism that all of these meanings have no relationship whatever to the word "darajah" in the context of divorce and these numerous excellent traits claimed to men.

According to al-Maturīdi and al-Baghawi, the greater darajah refers to man's right to divorce.⁹⁴ Actually, this interpretation stands most preponderant as it befits the context. Other interpretations are debatable and commonly shared by men and women. It is undeniable that some men have greater merits over others and some

women over others, then some women may prove of greater merits and virtues than many men.

Considering the context in question and the universal principles of Sharīah, darajah must be restricted to the subject at hand. To attribute an unrestricted value to one gender over another contradicts the Qur'ānic principle of equality: each person shall have in accordance to what s/he earns.⁹⁵

As to the prophetic statement about the new queen of Persia, it should be noted that the Prophet sent Abdullah Ibn Hudhayfah al-Sahmi as a delegate to the Persian governor of Persia, who sent the Prophet's message to Khosrau but the latter arrogantly tore it into pieces. He even issued his orders to his client ruler in the Yemen to send two powerful men and bring Muhammad to his court.⁹⁶

Thereupon, the Prophet supplicated Allah to devastate his kingdom. Badhan, the Persian governor in Yemen, sent two men presumably to bring the Prophet by force. To their surprise, when they arrived at Medina and informed the Prophet of their mission, he told them to tell their master that Allah killed Khosrau at this very night. When the news of Borandukht's ascension to the Persian throne came to the Prophet, he again predicted the Persian destruction.⁹⁷ He even declared this prophesy in the authentic tradition narrated by Ahmad from Jabir Ibn Samurah that the Prophet said:

“When Khosrau dies no other Khosrau will succeed him and when Czar dies no other Czar will succeed him.”⁹⁸

To conclude, the deniers of women's competence to the posts of judges only resorted to general texts and confined their interpretations to a specific area, which is the area of leadership and judiciary excluding several declarations in support of women's good judgment, acumen and excellence. Anyway, there is not one text in the Qur'ān or in the Sunnah that precludes women from assuming the post of a judge.

As to the second view of the Hanafis, it has a positive point and a negative one. For example, they draw analogy between the case of a witness and a judge. Then, they restricted permissibility to the area where women were contextually approved as acceptable witnesses in texts. However, the text in question according to the decisive semantic meaning only speaks of the proper way of contract writing and the necessity

of satisfactory witnesses. It has no indication whatsoever to the case of female judges. I believe the notion of excluding women from being witnesses to criminal felonies, injuries, and the like only followed the custom, not the text. In this regard, the most eminent authority in Hadīth Muhammad Ibn Muslim Ibn Shihab al-Zuhri said:

“The frequent practice of Allah's Messenger and his two succeeding caliphs proved that women's testimony is not acceptable in Hudūds.”⁹⁹

Similar statements came from Ibrāhīm al-Nakha‘ī and ‘Amer al-Sha‘bī.¹⁰⁰ However, this kind of assertion only relies on patriarchal reasoning affected by the dominant customs. More to the point, Imam Malik—against this dominant custom—allowed women's testimony in manslaughter lawsuits.¹⁰¹ Actually, Malik lived in Medina and knew well the Madinan inherited and “legally considered” practices. However, he found nothing wrong with female witnesses in manslaughter incidents. It seems that the masculinized process of reasoning led men's interpretation and experience to prevail and excluded women's experiences or interpreted them through the male vision.¹⁰²

Apparently, the early patriarchal interpretations verged into somewhat well-established opinions widely defended by the classic schools of law even if they are essentially custom-affected conclusions. This kind of customary interpretation goes against the ahistorical reading of the Qur’ān as an eternal text perfectly valid and creative beyond time and place.

It is clear that the custom-based conclusions from the practice had exceptionally substantial effect in issues of judiciary and governance.¹⁰³ However, the mere fact that the Prophet and his caliphs did not do a specific practice or did not decide on a certain option is not a Sharī‘ah evidence against permissibility unless otherwise is proved by direct texts of Sharī‘ah.¹⁰⁴ Clearly, the Prophet did not collect the Qur’ān and his Caliphs did not collect the prophetic statements. Again, he and his first caliph did not organize the process of enlistment or the salaries of armed forces but ‘Umar Ibn al-Khaṭṭāb did.

Again, they used to give the share prescribed to the muallafati qulubihim i.e. powerful Arab chiefs, who recently came to Islam, to guarantee their support but ‘Umar suspended it. Further to the point, the Prophet discouraged people from sailing

at times of high waves and dangerous conditions,¹⁰⁵ but after him Muslims sailed through seas and oceans surrounded with impending dangers in their endeavors to impose the freedom of religion and guarantee the freedom for all.

In a word, it was not the Prophet's job to give a specific ruling to each case or to observe and judge all possible choices in indication of their permissibility. He appointed some men in some executive positions, just because they were more qualified and skillfully well-qualified at this moment to do the job. However, if women or some of them had challenging abilities, he would have surely appointed them.

Here, the third view adopted by the famous exegete and jurist Ibn Jarīr and defended by Ibn Ḥazm follows the universal principles of Sharī'ah apart from the customary effects. However, the majority's proscriptive dominating view resulted in excluding women from executive and judicial posts as intrinsically incapable and legally disqualified for them. It finally went against the welfare of Muslim society.

Fair judgment of this juridical controversy indicates that female judges are legally authorized as clear from the several practical examples cited in the arguments in support of the third view.

Taking the prohibitive majority's view for granted, it is clear that there is a great difference between the post of a judge, caliph or imam in the past and in modern times. The modern post of a judge, caliph or imam is not individualistic or solitarily decided. Rather, it is constitutional and organizational. Many specialized persons and authorities share responsibilities in legal courts and presidential institutions. The image of past judge thus does not exist today, even if there is no decisive clear indication in Sharī'ah excluding women from either the post of a judge or that of a president.

It is seriously important to note that some key Muslim writers of modern times regretted the deficiency in female Muslim leaders. For alQaradāwi, it is due to the constant male attempts to dominate women leaving them no sufficient opportunity to express their abilities and special talents and skills.¹⁰⁶

To sum up, the preponderant view built on strong arguments and direct indications firmly rooted in the universal principles of Islamic Sharī'ah proves that

women are legally qualified to act as competent judges under Sharī'ah whenever they fulfill other necessary conditions equally required from men. These qualifications include honest conduct and integrity, age of majority, sound mind, deep and wide knowledge, tentative intellect, freedom,¹⁰⁷ analysis of dialogues, competence for exercising legal reasoning and extracting conclusions, and isolation from misbehaviors and illegal practices.¹⁰⁸ Furthermore, the appropriate conditions must be guaranteed for women to undertake their judicial duties in compliance with the rules of Sharī'ah.¹⁰⁹

Over the past few decades, several Muslim countries took active steps to introduce women into the judicial arena. For example, some Indonesian women had already sat at Islamic courtrooms and heard cases on family law issues as early as in 1960s.¹¹⁰ Farida Ibrahim was the first Arab female judge nominated to the criminal court north of Khartoum in 1972. Farida Ibrahim was later appointed to the post of Chief Justice of Khartoum State. Currently, there were more women judges than ever before.¹¹¹ Jordan also began to appoint female judges in 1996. Currently, 148 female judges work across the Kingdom with the women total percentage of about 17%.¹¹²

In 2003, Egypt's first female judge became the vice-president of the Supreme Constitutional Court.¹¹³ Pakistan's National Sharī'ah Court also appointed Ashraf Jehan, as the first female judge in its 33-year history. For Agha Rafiq Ahmed, the chief justice of the Federal Shariat (sic) Court of Pakistan, "It was a historic oath-taking ceremony today when an able lady judge had joined the Shariat Court...there is no discrimination between men and women."¹¹⁴

This attitude gains more ground by day. Actually, it is a considerable step on the way of introducing women into the public space and giving them more positions in judiciary and governance. It will soon become a familiar custom and a natural development of human modern life. Keeping in mind the objective Sharī'ah evidence in support of women's equal rights to judicial posts, a caveat shall be stressed that only a few number of men and women can fulfill the prerequisites for judicial posts. Hence, our endeavors to introduce women to judicial posts and enhance their engagement in this serious sector should not lead to any neglect in ensuring the fair and perfect fulfillment of the requirements of this post. Some may argue that

women's post as a judge should not hinder her basic role in social and familial life but the same goes true for men.

At last, the divine texts are evidently gender-neutral and universal; they declare both men and women equal to one another. They must achieve integration and cooperation in the optimal manner befitting their time and circumstances for the welfare of humankind as a whole. Bearing in mind the nature of eastern and western societies, allowing women to hold judicial and presidential posts, even an emphatically Sharī'ah-proved ruling, should not confuse her life or cause her any disorder. Deciding on the optimal position of a person will ultimately depend on one's special faculties and skills, social and economic status, education and inclinations as well as viability and achievements.

Endnotes

1. Ibn al-Subki. *Al-Ashbāh wa al-Naẓa'ir*, (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1411 AH/1991 CE), 1:51.
2. She judged that divination arrows shall be drawn with respect to ‘Abdullah against ten camels and the lots shall be repeated adding ten more camels every time until the arrow shows 'Abdullah; then he is saved and the camels are accepted. See, e.g., Ibn Hisham, *al-Sirah al-Nabawiyyah*, ed. 'Umar 'Abd al Salam Tadmuri, (Beirut: Dar al-Kitab al-'Arabi, 1410 AH/1990 CE), 1:176-177; 'Abd al-Rahman Ibn Ahmad al-Suhayli, *al-Rawd al-Unuf*, ed. Magdi Mansur, (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1997 CE), 1:273.
3. ‘Ali Ibn al-Ḥusayn al-Mas‘ūdi, *Murūj al-Dhahab wa Ma'adin al-Jawhar*, ed. M.M. Abd al-Ḥamid, (Beirut: Dar al-Fikr, 5th ed. 1393 AH/1973 CE), 2: 90-93.
4. Al-Mas‘ūdi, *op. cit.*, 1:94-95; Ibn al-Athīr, *al-kamel fi al-Tarīkh*, ed. 'Abdullah al-Qaḍi, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1st ed. 1407 AH/1987 CE), 1: 264-266.
5. See e.g., the Qur'ān, 28: 23-44; the Bible, I Kings, 10:1-14; Luke, 11: 31; Matthew, 12:42. More details to come on this issue when exploring the textual evidence in support of women's right to posts of judges and presidents.
6. The Bible, Book of II Chronicles, 22: 10-12; see also <https://en.wikipedia.org/wiki/Athaliah>, retrieved on October 10, 2015.
7. The Bible, Book of Judges, 4-5.
8. <https://en.wikipedia.org/wiki/Pulcheria>, retrieved on October 11, 2015.
9. See, e.g., Ibn al-Athīr, *al-kamel fi al-Tarīkh*, p. 1: 386-387; Ibn al-Athīr praised Borandukht for justice, reformation and peacemaking. However, when the news of Azarmidokht's ascension to the throne reached the Prophet, he predicted the destruction of the Persian Empire. <https://en.wikipedia.org/wiki/Azarmidokht>.

10. Rutb Margolies and Angelica R. Martinez, *Women's Roles in the Middle East and North Africa*, (GREENWOOD: Santa Barbara, California/Oxford, England: 2010 CE), p. xvii.
11. <https://en.wikipedia.org/wiki/Hatshepsut>. Retrieved December 2, 2015.
12. The Qur'ān, 16: 57.
13. Al-Anṣārī, *Minḥat al-Bari Bi-Sharḥ Ṣaḥīḥ al-Bukhari*, ed. Sulaiman al-ʿAzimi, (Riyadh: Al-Rushd Publishers, 1426 AH/2005 CE), 8: 206-207.
14. The Qur'ān, 16: 59; 81: 8-9; 6:151. Contrary to this cruelty, Islam strictly forbade this practice and the Prophet even advised those who committed this wrong to offer as a sacrificial animal as expiation and promised the wronged female children paradise in the Afterlife. Abu al-Fidā' Isma'īl Ibn Kathīr (d. 774 AH/1373 CE), *Tafsīr al-Qur'ān al-ʿAzīm*, ed. Muṣṭafa al-Sayyid et. al., (Jīza: Qurtubah Foundation, 1st ed. 1421 AH/2000), 14: 264.
15. Ibn Jarīr al-Ṭabari, *Tafsīr (Jami' al-Bayan 'an Ta'wīl al-Qur'ān)*, ed. Ahmad Shaker and Maḥmūd Shaker, (Cairo: Maktabat Ibn Taymiyah, n.d.) 8: 265.
16. The Qur'ān prohibits these heinous acts stating, "O Believers, it is not lawful for you to inherit women by force; nor should you bother them to take part of what you have given to them...and do not marry women whom your fathers married, except what has already passed. Indeed, it is indecent, hateful and an ultimately evil way" (the Qur'ān, 4: 19, 22). For more details, see, e.g., Muhammad ibn Aḥmad Ibn Juzay al-Maliki (d. 741AH), *al-Tashīl li-'Ulūm al-Tanzīl*, ed. Muhammad Salem, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1415 AH/1995 CE), 1: 181; Ibn Kathīr, *Tafsīr al-Qur'ān al-'Azīm*, 3: 400.
17. The Qur'ān, 24: 33.
18. They are Nusaybah bint Ka'b from the clan of Mazen and Asmā' Bint 'Amr from the clan of Salamah. See Ibn Hisham, *al-Sirah al-Nabawiyyah*, 2: 107-108.
19. See, e.g., al-Dhahabi, *Tarīkh al-Islam wa Wafayāt al-Mashahīr wal A'lām*, ed. 'Umar 'Abd al-Salam, (Beirut: Dar al-Kitab al-'Arabi, 2nd ed. 1410 AH/1990 CE), 3: 482-487; Ibn al-Jawzi, *al-Muntazim fi Tarīkh al-Mulūk wa al-Umam*, ed.

Muhammad A. Aṭa and Muṣṭafa A. Aṭa, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1st ed. 1412 AH/1992 CE), 5:79 ff.

20. For more details, see 'Abd al-Ḥalīm Muhammad Abu Shuqqa, *Taḥrīr al-Mar'ah fi 'Aṣr al-Risalah*, (Kuwait: Dar al-Qalam, 5th ed. 1420 AH/1999 CE), 1: 80-89; 118-126; 2: 414-422.
21. See al-Ḥusayn Ibn Mas'ūd al-Baghawi (d. 516), *Sharḥ al-Sunnah*, ed. Shu'ayb al-Arnā'ūt and Muhammad Zuhayr al-Shawīsh, (Beirut: al-Maktab al-Islami, 2nd ed. 1403 AH/1983 CE), 2: 5.
22. For example, in Ahmad's Musnad, (Ḥadīth numbers: 20668, 20670, 20671, 20672, 20673, 20674, 20675, 23142, etc.).
23. Al-Ṣafadi, Ṣalaḥ al-Din Khalīl Ibn Ayyak, *Kitab al-Wafī bi al-Wafayāt*. ed. Ahmad al-Anā'ūt and Turki Muṣṭafa. (Beirut: Dar Iḥyā' al-Turāth al-'Arabi, 1420 AH/2000), 13: 67.
24. See, e.g., Abu Dawūd, *Sunan*, Ḥadīth numbers (3207, 4383, 4384); Al-Ṣafadi, *Kitab al-Wafī bi al-Wafayāt*, 13: 67.
25. Fatimah used to sign the fatawa along with her father and husband. It is also said that it was common in Transoxania that fatwa was signed by the wife, sister or daughter of the male mufti. See Abu al-Wafa al-Qurashi, *al-Jawahir al-Muḍiyyah fi Tabaqāt al-Ḥanafiyyah*, ed. Abd al-Fattaḥ al-Ḥilw, (Cairo: Dar Hajar, 2nd ed. 1413 AH/1993 CE), 3: 18, 4: 25-26, 120.
26. Al-Qurashi, *op. cit.*, 4:122.
27. Al-Ṣafadi, *Kitab al-Wafī bi al-Wafayāt*, 15: 73.
28. Al-Ṣafadi, *op. cit.*, 15: 74.
29. Aḥmad Ibn 'Ali Taqī al-Dīn al-Maqrīzi, *Iti'āz al-Ḥunafā' bi Akhbār al-A'immah al-Faṭimiyyīn al-khulafā'*, (Cairo: al-Hay'ah al-'Ammah li-Quṣūr al-Thaqafah, n.d.), 2: 115-117.
30. Abu al-Maḥasin Yūsuf Ibn Taghri Bardī, *al-Nujūm al-Zahirah fi Mulūk Miṣr wa al-Qahirah*, ed. Muhammad Ḥusayn Shams al-Dīn, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1st ed. 1413 AH/1993 CE), 6: 332-337; Abu al-Fidā' Ibn Kathīr, *al-Bidayah wa al-Nihayah*, 17: 308.

31. See Asma Barlas, *Muslim Women and Sexual Oppression: Reading Liberation from the Qur'ān*. Macalester International: Vol. 10, Article 15, p. 118.
32. For this customary restriction, it is morally and religiously repugnant for women to converse or appear in any male-involved conversations or gatherings. See, e.g., al-Qurṭubī, *al-Jami' li Aḥkam al-Qur'ān*, ed. 'Abdullah al-Turki et. al., (Beirūt: al-Risalah Foundation, 1st ed., 1427 AH/2006 CE), 1: 292; 15: 293; 17: 141; al-Suyūṭī, *al-Ashbāh wa al-Naẓa'ir fi Qawa'id Furū' al-Ḥanafīyyah*, ed. Ṭaha 'Abd al-Ra'ūf and 'Imād al-Barūdi, (Cairo: al-Maktabah al-Tawfīqiyyah, n.d.), p. 414.
33. The judicial posts refer to the jobs of Qadā' (judiciary). Qadā' literally means accomplishment and achievement of something, an ordainment and judgment. It is technically defined as the declaration of Sharī'ah ruling in a binding manner to end disputes. Like imamate, it is a collective necessary duty for the welfare of the community. See, Mar'ī Ibn Yūsuf al-Ḥanbali, *Ghayat al-Muntaha fi Jam' al-Iqnā' wa al-Muntaha*, ed. Yaser Ibrahīm and Ra'id Yūsuf, (Kuwait: Ghiras Foundation, 1st ed. 1428 AH/2007 CE), 2: 569.
34. Al-Qaḍī 'Abd al-Wahhab, *al-Ishraf 'ala Nukat Masa'il al-Khilaf*, (Cairo: Dar Ibn 'Affan, 1st ed. 1429 AH/2008 CE), 5: 18; Ibn Rushd al-Maliki (d. 595AH), *Bidayat al-Mujtahid wa Kifayat al-Muqtaṣid*, ed. Radwān Jami' Radwān, (Mansurah: Maktabat al-Imān, 1st ed., 1417/1997), 2: 555; Abū al-Barakāt Aḥmad al-Dardīr, *al-Sharḥ al-Kabīr*, (Al-Azhar Institutes' Sector Press, 1429 AH/2008 CE), 4: 129; Ibn Farḥūn al-Maliki (d. 799AH), *Tabṣirat al-Ḥukkam fi Uṣūl al-Aqḍiyah wa Manahij al-Aḥkām*, (Beirut: Dar al-Ma'rifah), 1: 23.
35. Muhammad Ibn Qasim al-Ghazzi, *Fath al-Qarīb al-Mujīb*, (Cairo: Muṣṭafa al-Babi al-Ḥalabi, 1343 AH), p. 65; Ibn Abi al-Damm: Ibrahīm Ibn 'Abdullah al-Shafī'I, *Adab al-Qaḍā'*, ed. Muḥy Hilal al-Sarḥān, (Iraq: Ministry of Awqaf and Religious Affairs, al-Irshad Press, 1st ed. 1404 AH/1984 CE), p. 271.
36. Abu Ya'la al-Farrā', *al-Aḥkām al-Sulṭaniyyah*, ed. Muhammad Ḥamid al-Fiḍi, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1421 AH/2000), p. 60; Abu al-Faraj Ibn al-Jawzy al-Ḥanbali, *Zad al-Masīr*, (Beirut: al-Maktab al-Islami and Dar Ibn Ḥazm,

- 1st ed. 1423 AH/2002 CE), 2:74; Ibn Qudamah al-Ḥanbali (d. 630AH), al-Mughni, (Beirut: Dar al-Kitab al-‘Arabi), 11: 380.
37. Al-Shawkani, al-Sayl al-Jarrār al-Mutadaffiq 'ala Ḥada'iq al-Azhār, ed. Maḥmud Ibrahīm Zayed, (Cairo: 1408 AH/1988 CE), 4: 254.
38. Ja‘far Ibn al-Ḥasan al-Ḥilli, al-Mukhtaṣar al-Nafi‘ fi fiqh al-Imamiyyah, (Beirut: Dar al-Aḍwā', 3rd ed. 1405 AH/1985 CE), p. 279; Muhammad Ḥusayn al-Ṭabaṭibāī, al-Mizān fi Tafsīr al-Qur‘ān, (Beirut: Al-A‘lami Foundation, 1st ed. 1417 AH/1997 CE), 4: 355.
39. Muhammad Ibn Yūsuf Aṭfīsh, Sharḥ Kitāb al-Nīl, (Jedda: Al-Irshad Bookshop, 3rd ed. 1393 AH/1973 CE), 16: 523-524.
40. As to the area where her judgment is effective, two views are there. The reliably apparent view restricts women's valid judgment to areas outside Ḥudūd and retribution. See Naṣr Farīd Waṣīl, al-ṣulṭah al-Qaḍā'iyah wa Nizām al-Qaḍā' fi al-Islam, (Cairo: al-Maktabah al-Tawfīqiyyah, n.d.), p. 136.
41. Al-Jaṣṣaṣ cited several lawsuits in which ‘Umar Ibn al-Khaṭṭab and ‘Ali Ibn Abi Ṭalib accepted the testimony of women in marriage contracts and divorce. See, e.g., Aḥmad Ibn ‘Ali al-Jaṣṣaṣ, Aḥkam al-Qur‘ān, ed. Muhammad al-Ṣadiq Qamḥawi, (Beirut: Dar Iḥyā' al-Turāth al-‘Arabi, 1412 AH/1992 CE), 2: 231; Al-Qaduri: Abu al-Ḥusayn Ahmad Ibn Muhammad al-Baghdadi (d. 428AH), Al-Kitāb: Mukhtaṣar al-Qaduri, ed. ‘Abdullah Nadhir, (Beirut: al-Rayyan Foundation, 1426 AH/2005 CE), p. 553; Ibn Rushd, op. cit., 2: 555; Ibn Qudamah, op. cit., 11: 380; ‘Abd al-Karīm Zidān, Nizām al-Qaḍā' fi al-Sharī‘ah al-Islamiyyah, (Al-Risalah Foundation, 2nd ed. 1409 AH/1989 CE), p. 30.
42. See, e.g., Ibn Ḥazm, al-Muḥalla, ed. Ahmad Shaker, (Cairo: Dar al-Āthār, 1426 AH/2005 CE), 9: 558.
43. Ibn Rushd, Bidayat al-Mujtahid, 2: 556; Ibn Qudamah al-Ḥanbali, al-Mughni, 11: 380.
44. Some Malikis interpreted Ibn al-Qasim's view to mean issues where women's testimony is acceptable only. See, al-Ḥaṭṭab al-Ra‘īni, Mawahib al-Jailīl fi Sharḥ Mukhtaṣar al-Shaykh Khalīl, ed. M. Salem et. al., (Mauritania: Dar al-Riḍwān,

1431 AH/2010 CE), 6: 294. Imam Ibn Hajar also attributed this view to Imam Malik as one of his two dependable views, see *Fath al-Bari*, 7: 735.

45. Linda C. McClain and Joanna L. Grossman, *Gender Equality: Dimensions of Women's Equal Citizenship*, (Cambridge University Press 2009), p. 404.
46. Zidān, *Nizām al-Qaḍā' fi al-Sharī'ah al-Islamiyyah*, p. 31.
47. In his article entitled "Preventing Woman from Judicial Posts," on his website: <http://www.qaradaghi.com>, accessed October 10, 2015.
48. Cf. al-Mawardi, *al-Aḥkām al-Sulṭaniyyah*, ed. Dr. Ahmad Mubarak, (Kuwait: Dar Ibn Qutaybah, 1409 AH/1989 CE)p. 88; Ibn Kathīr, *Tafsīr al-Qur'ān al-ʿAzīm*, 4:20.
49. Al-Khaṭīb al-Sherbīni al-Shafī'i, *al-Siraj al-Munīr*, 1: 300.
50. This tradition is narrated by ʿAbd al-Raziq, al-Bazzar and al-Ṭabarāni, see al-Suyūṭi, *al-Durr al-Manthūr*, 4: 390.
51. In his critical view of classic interpretations, Naṣr Farīd Abu Zayd believed that the woman-related discourse in the modern Arab is by and large sectarian and discriminatory. He maintained that Qawama is a form of responsibility associated with the preferable party who can spend. For him, both man and woman can share or replace one another in this responsibility. See, Naṣr al-Juweili, *al-tafsīr al-Mu'āṣer li al-Qawama*. An article in *al-Nasawiyyah wa al-Manzūr al-Islami*, Umaymah Abu Bakr (Editor), (Cairo: 2013 CE), p. 183-184.
52. Al-Fayrūzabadi: *Majd al-Dīn Muhammad ibn Ya'qūb* (817), *Baṣa'ir Dhawī al-Tamyīz fi laṭa'if al Kitāb al-'Azīz*, 6 vols. ed. Muhammad al-Najjar (Cairo: al-Majlis al-A'la li al-Shu'ūn al-Islamiyyah, 1421/2000), 4: 309.
53. See Muhammad Rashīd Reḍa, *Tafsīr al-Qur'ān al-Ḥakīm*, (Cairo: Al-Manār Press, 1328 CE), 5: 59.
54. Cf. Dr. Nik Noriani and Yasmin Masidi, *Women as Judges*, (Malaysia: Sisters in Islam, 2009), p. 5-7.
55. Ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'īn ʿan Rabb al-ʿAlamīn*, (Cairo: Dar al-Ḥadīth, 1427 AH/2002 CE), 1: 25.

56. For the Ḥanafīs, women's testimony is accepted in all matters, financial, marital and other entitlements, excepting the prescribed penalties and retribution. However, the Shafī'is restricted this acceptance to financial transactions only. See, Isma'īl Ibn Muhammad al-Ḥanafī (d. 1195AH), Ḥashiyat al-Qawnawi 'ala Tafsīr al-Bayḍāwi, ed. 'Abdullah Muhmud, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1st ed. 1422/2001), 5: 480.
57. Naṣr Farīd Waṣīl, al-ṣulṭah al-Qaḍā'iyyah, p. 135.
58. In support of this conclusion, it is meaningful to cite the jurists' agreement on women's testimony as accepted in determining the start and end of waiting period, delivery and the physical defects of women. Furthermore, the Prophet approved the testimony of a woman who claimed that she breastfed 'Uqbah Ibn al-Ḥarith and his wife (al-Bukhari, Ḥadīth number (2659 and 2660). The Prophet commanded him to leave his wife and dissolve the marriage upon the testimony of this only woman. Her testimony here is accepted and she was not accused of being prone to error or forgetfulness. Abu 'Isa al-Tirmidhi said, "the frequent practice of some scholars follow this tradition; they permit the testimony of one woman in breastfeeding. Ibn 'Abbas also approved her testimony in breastfeeding and accepted her oath." First, it is her personal affair. Second, the Prophet did not ask for more witnesses though 'Uqbah accused her of telling lies (al-Tirmidhi, Ḥadīth number: 1151). Third, her statement stands for full reliable testimony. At last, the matter of marriage is unquestionably more important than that of sales and loans. We conclude that woman's testimony in transaction is not equal to a man just because it is not her daily concern. Finally, I have to denote that the Ḥanafīs did not act upon these authentic narrations. For them, it is a work of religious precaution to leave your wife upon the testimony of one woman. For Qaḍi Khan, it is accepted before marriage, but not after it. For more details about women's testimony on breastfeeding, see Ibn Ḥajar, Fath al-Bari, 5: 316-318; Muhammad Anwar Shah al-Kashmiri, al-'Urf al-Shadhi Sharh Sunan al-Tirmidhi, ed. Mahmud Shaker, (Beirut: Dar Ihyā' al-Turāth al-'Arabi, 1st ed. 1425 AH/2004 CE), 2: 398.

59. Imam Muhammad 'Abduh, *al-A'mal al-Kamilah*, ed. Muhammad 'Imarah, (Cairo: Dar al-Shorouq, 2nd ed. 1427 AH/2006 CE), 4: 752; Rashīd Reḍa, *Tafsīr al-Qur'ān al-Ḥakīm*, 3:124-125; Muhammad Fadel, *Two women, One Man: Knowledge, Power and Gender in Mediaeval Sunni Legal Thought*. *International Journal of Middle East Studies*, Vol. 29.2 (May 1997), p. 187.
60. Abu Manṣūr al-Maturīdi, *Ta'wīlāt al-Qur'ān*, 2: 357; Ibn Kathīr, *Tafsīr*, 3: 48; Abu al-A'la al-Mawdūdī, *Towards Understanding the Qur'ān*, Trans. Zafar Ishaq Ansari, (London: the Islamic Foundation, 1408 AH/1988), 1: 249.
61. *The Qur'ān*, 3: 37.
62. In their comments on this narration, commentators averred that the testimony of two women is equal to that of one man because of women's little attentiveness. Ibn Ḥajar, *Fath al-Barī*, ed. Muhammad F. 'Abd al Baqi et. al., (Cairo: Dar al-Rayyan, 1407 AH/1986 CE), 1: 484; al-Suyūṭī (d. 911AH), *al-Dibāj 'ala ṣaḥīḥ Muslim Ibn al-Ḥajjaj*, (KSA: Dar Ibn 'Affan, 1st ed. 1416 AH/1996 CE), 1: 96.
63. Al-Bukhari, *Ṣaḥīḥ*, Book of Menstruation, Ḥadīth number: (304); Muslim, *Ṣaḥīḥ*, Book of Imān, Ḥadīth number: (132).
64. Cf. Al-Khaṭīb al-Sherbīnī al-Shafī'i, *Mughni al-Muḥtāj ila Ma'rifat Ma'ani AlFaz al-Minhaj*, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1421 AH/2000 CE), 6: 262; *Jawdat al-Mazlūm*, Ḥaqq al-Mar'ah fi al-Wilayah al-'Ammah, (Gaza Islamic University: Faculty of Sharī'ah and Law, 1427 AH/2006 CE), p. 66; Waṣīl, *al-sulṭah al-Qaḍā'iyyah*, p. 135.
65. Ibn Qudamah, *al-Mughni*, 11: 380.
66. Ibn Baṭṭal: 'Ali Ibn Khalaf al-Maliki, ed. Abu Tamīm Yaser Ibn Ibrāhīm, (Riyadh: Maktabat al-Rushd, 2nd ed. 1423 AH/2003 CE), 1: 420.
67. 'Aṭā' Ibn Abi Rabāḥ even said, "If eight women declare their testimony against a woman that she committed adultery, I will stone her." See, e.g., Ibn Ḥazm, *al-Muḥalla*, 9: 514-516.
68. Ṣaḥnūn Ibn Sa'īd al-Tanūkhi (d. 240AH), *al-Mudawwana al-Kubra*, ed. 'Amer al-Jazzar and 'Abullah al-Minshāwi, (Cairo: Dar al-Ḥadīth, 1st ed. 1426 AH/2005CE), 5: 131.

69. For more details about this account, see the Qur'ān, 28: 23-28; the Bible, Exodus, 2: 15-22.
70. Al-Bukhari, Saḥīḥ, Book of Battles, Ḥadīth number: (4425); al-Nasa'i, Sunan, Book on the Morals of Judges, Ḥadīth number: (5403);
71. See, Ibn Ḥajar, Faṭḥ al-Bari, 7: 735; Ibn al-‘Arabi (d. 543AH), Aḥkām al-Qur'ān, ed. Muhammad ‘Abd al-Qadir ‘Aṭa, (Beirut: Dar al-Kutub al-‘Ilmiyyah, 3rd ed. 1424 AH/2003 CE), 3: 482.
72. Muhammad al-Ghazali, al-Sunnah al-Nabawiyyah Bayn Ahl al-Fiqh wa Ahl al-Ḥadīth, (Cairo: Dar al-Shorouk, 12th ed. 1421 AH/2001), p. 57.
73. It is evident that this rule is debatable and controversial, so it should not be taken as a basis for judgment and analogical deduction. Most of classic references indicate to this proposition as rule. See, e.g., Ibn Rushd, op. cit., 2: 556; Ibn Qudamah, al-Mughni, 11: 380; Zidān, Nizām al-Qaḍā' fi al-Sharī‘ah al-Islamiyyah, p. 30.
74. This is a piece of a virtual debate between Abu al-Faraj Ibn Ṭarar al-Shafī‘i and Abu Bakr Ibn al-Ṭayyeb al-Baqillani al-Maliki in virtual defense of women's right to the posts of judges. Ibn al-‘Arabi al-Maliki, Aḥkām al-Qur'ān, 3: 483.
75. Ibn al-‘Arabi al-Maliki, Aḥkām al-Qur'ān, 3: 483; Waṣil, al-Ṣulṭah al-Qaḍā'iyyah, p. 134.
76. Abu al-Su‘ūd Ibn Muhammad al-imadi al-Ḥanafī, Irshad al-‘Aql al-Salīm Ila Mazaya al-Kitāb al-Karīm, ed. ‘Abd al-Qadir Aḥmad ‘Aṭa, (Cairo: al-Sa‘ada Press/Riyadh: Maktabat al-Riyadh al-Ḥadīthah), 1: 417.
77. See Ibn Rushd, op. cit., 2: 556; Waṣil, al-ṣulṭah al-Qaḍā'iyyah, p. 134.
78. For some, this equality is only spiritual, not legal. Nevertheless, this is a baseless view. See, Muhammad Zafarullah Khan, Woman In Islam, (London: Islam International Publication, 2008), p. 3, adapted
79. For the major view of uṣūl scholars, the masculine inflectional form of a verb is essentially used for men unless otherwise is proved by evidence and the same goes true for the feminine inflectional form of a verb that is essentially used for women. For the Ḥanafīs, the Ḥanbalīs and the Ṣāḥibīs, the plural form is

applicable for men and women alike. See, 'Abd al-'Ali al-Laknawi (d. 1225AH), *Fawatih al-Rahamut Sharh Musallam al-Thubut*, ed. 'Abdullah Maḥmūd, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1st ed. 1423 AH/2002 CE), 1: 262-264; al-Qinnawji, *al-Jami' li-Aḥkām wa Uṣūl al-Fiqh*, ed. Ahmad M. Qasim al-Ṭaḥṭawi, (Cairo: Dar al-Daḍilah, undated), p. 220.

80. For Ibn Kathīr, she was given all the worldly means necessary for a well-established rule (*Tafsīr al-Qur'ān al-'Azīm*, 10: 401). Should we not ask if she was given wisdom, perfect intellect, necessary skills for good administration and knowledge? Simply, yes because the general declaration is open for all graces human beings admire in this world. Now, what else, a judge or president may need?!
81. For more on the discoveries of ant colonies, see, e.g., Edward O. Wilson and José M., José Celestino Mutis and the Dawn of Natural History in the New World, (USA: 2010).
82. Ibn Ḥazm, *al-Muḥalla*, 9: 558.
83. Abu Dawūd, *Sunan*, on the authority of 'Aishah, (Ḥadīth Number: 236); Al-Tirmidhi, *al-Jami' al-ṣaḥīḥ*, on the authority of 'Aishah, (Ḥadīth Number: 113); Ahmad, *Musnad*, on the authority of Um Sulaym Bint Milhān, [Ḥadīth number: 26997].
84. Sharaf al-Ḥaqq al-'Azīmabadi, *'Awn al-Ma'būd 'ala Sunan Abi Dawūd*, ed. Abu 'Abdullah al-Nu'mani al-Athari, (Beirut: Dar Ibn Ḥazm, 1st ed. 1426/2005), p. 150.
85. Ibn Ḥazm, *al-Faṣl fi al-Milal wa al-Ahwā' wa al-Niḥal*, ed. Muhammad Ibrāhīm and 'Abd al-Raḥmān 'Umayrah, (Riyadh: 'Ukāz, 1st ed. 1402 AH/1982 CE), 5: 119-121.
86. In his *Musnad*, for example, Imam Ahmad narrated 2400 Ḥadīth from 'Aishah from Ḥadīth number (23892) to Ḥadīth number (26292).
87. In his *Musnad*, for example, Imam Ahmad narrated 279 Ḥadīth from Um Salamah from Ḥadīth number (26351) to Ḥadīth number (26630).

88. For example, in Ahmad's Musnad, (Ḥadīths: 20668, 20670, 20671, 20672, 20673, 20674, 20675, 23142, etc.).
89. See, e.g., Abu Dawūd, Sunan, Ḥadīth Numbers (3207, 4383, 4384, etc).
90. For the rule that women are qualified for fatwa, see e.g., Ibn Qudamah al-Ḥanbali, al-Mughni, 11: 380; Mar'ī al-Ḥanbali, Ghayat al-Muntaha, 2: 563.
91. This is a piece of Abu al-Faraj Ibn Ṭarar's virtual debate with Abu Bakr Ibn al-Ṭayyeb al-Baqillani in his virtual defense of women's right to the posts of judges. Ibn al-'Arabi al-Maliki, Aḥkām al-Qur'ān, 3: 483.
92. Ibn Rushd, op. cit., 2: 556.
93. Ibn Kathīr, Tafsīr, 2: 339.
94. Although other suggestions are made such as man's right to supervise his wife and have her obedience, or man's double-share of inheritance or man's duty to undertake jihad, it is clear that all these suggestions have no relevance to the context. See, e.g., Abu Maṣṣūr al-Maturīdi (d.333AH), Ta'wīlāt Ahl al-Sunnah, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1426 AH/2005 CE), 2: 163; Abu al-Ḥusayn Ibn Mas'ūd al-Baghawī, Ma'alim al-Tanzīl, (Riyadh: Dar Ibn Ḥazm,), p. 133.
95. Cf. Amina Wadud, Qur'ān and Woman: Reading the Sacred Text from a Woman's Perspective, (New York: 199), p. 68.
96. Muhammad al-Ghazali, Fiqh al-Sīrah, (), p. 388.
97. In this context, Al-Bukhari's inspiring order proves very useful as he cited both reports one after the other (Kitab al-Maghāzi, Chapter on the Prophet's Message to Khosrau and Czar, Ḥadīth numbers (4424 and 4425). For more details, see Ibn Ḥajar, Fath al-Barī, 7: 734-735.
98. Ahmad, Musnad, Ḥadīth number (20761), 15: 246.
99. Ibn Abu Shaybah, 'Abu Bakr 'Abdullah Ibn Muhammad (159-235AH), al-Muṣannaf, ed. Ḥamad Ibn 'Abdullah and Muhammad al-Laḥidān, (Riyadh: Maktabat al-Rushd, 1st ed. 1425/2004 CE), (Ḥadīth number: 29185), 9: 403.
100. Ibn Abu Shaybah, op. cit., 9: 403.
101. Saḥnūn, al-Mudawwana, 5: 131
102. See, Amina Wadud, Qur'ān and Woman, p. 2.

103. For example, the majority of jurists viewed it necessary for a caliph (in modern terminology: president) to be from Quraysh and again they did not restrict it to the Prophet's family simply because Abu Bakr was from Taym clan, 'Umar from 'Adiyy clan and 'Uthman from Umayyah clan. Evidently enough how they submitted the universal principles of Sharī'ah to the accidental practices of the early Muslims. See, al-Dardīr, *al-Sharḥ al-Kabīr*, 4: 130; Muhammad Ibn 'Arafah, *Ḥashiyat al-Dusūqi 'ala al-Sharḥ al-Kabīr*, 1: 130.
104. When the Prophet does not do something and we fail to identify the rationale behind his behavior, it is indicative of permissibility. It is not obligatory upon us to follow the Prophet's example in this case unless it is proved by evidence as forbidden. In other words, when the Prophet abstains from doing something without any further clarification or direction, it is only a permission to do or not to do that very thing. It is not an indication of proscription. See, e.g., Aḥmad Ibn 'Ali al-Jaṣṣāṣ, *al-Fuṣūl fi al-Uṣūl*, ed. 'Ujayl Jasim al-Nashami, (Kuwait: Ministry of Awqaf and Islamic Affairs, 2nd ed. 1414 AH/1994 CE), 3: 228; Muhammad Ibn Aḥmad al-Tilmisani, *Miftāḥ al-Wuṣūl Ilá Binā al-Furū' 'Ala al-Uṣūl*, ed. Muhammad 'Ali Farkūs, (Mecca: al-Maktabah al-Makkiyyah, 1st ed. 1419 AH/1998 CE), p. 580.
105. Ahmad, Musnad, Hadīth Number (20626).
106. Dr. Yūsuf al-Qaradāwi, *Awlawiyyat al-Ḥarakah al-Islamiyyah*, (Al-Taqwa Bank Publishers: 1990) p. 64.
107. For the Imamis' preferable view, it is not a requisite for a judge to be a free person and a slave can be a judge. See, al-Ḥilli, *al-Mukhtaṣar al-Nafi' fi fiqh al-Imamiyyah*, p. 279.
108. Al-Dardīr, *al-Sharḥ al-Kabīr*, 4: 129; Ibn Qudamah al-Ḥanbali, *al-Mughni*, 11: 380-381; al-Ḥilli, *al-Mukhtaṣar al-Nafi' fi fiqh al-Imamiyyah*, pp. 279-280.
109. For some jurists, the judicial post should not negatively affect her duties towards her children and husband. See 'Ali al-Qaradaghi, "Preventing Woman from Judicial Posts," on his website: <http://www.qaradaghi.com>, accessed October 10, 2015.

110. Euis Nurlaeawati and Arskal Salem, Gendering the Islamic Judiciary: Female Judges in the Religious Courts of Indonesia, (Al-J āmi'ah, Vol. 51, No. 2, 2013 M/1435H), pp. 248-249.
111. David Hoile, Women in Sudan, Media Monitors Network, dated July 9, 2002. See, <http://www.mediamonitors.net/espac22.html>, retrieved on October 5, 2015.
112. Abeer Numan, Female judges: 'paving the way for equality in the judiciary,' dated Sep 9, 2013. For more details see: <http://www.jordantimes.com>.
113. Reem Leila, Madame magistrates. Al-Ahram Weekly, issue 1250, June 11, 2015. See <http://weekly.ahram.org.eg/News/12527/17/Madame-magistrates.aspx>. Accessed on Oct. 5, 2015.
114. "Pakistan appoints first female judge to sharia court", dated Dec. 30, 2013 an article on the following link: <http://www.dawn.com/news/1077328>, retrieved Oct. 1, 2015.