

them according to the rule and men have preference over woman and Allah (S.W.T) is the wisest.” (Al-Quran 2:215)

Although the rights of men and women are equal yet at one point have get superiority that they are the ruler/ superior ones.

Hafiz IbneKaseer (R.A)

“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.”

AllamaAaloosi (R.A)

For this reason men have been specified for prophet hood (Risalat-o-Nubuwat). 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:

“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

authorized. That’s why that the distinguished scholars of Hadith Imam Bukhari, Imam Tirmzi and Imam Nisai (R.A) have selected this Hadith in their anthologies.

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

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

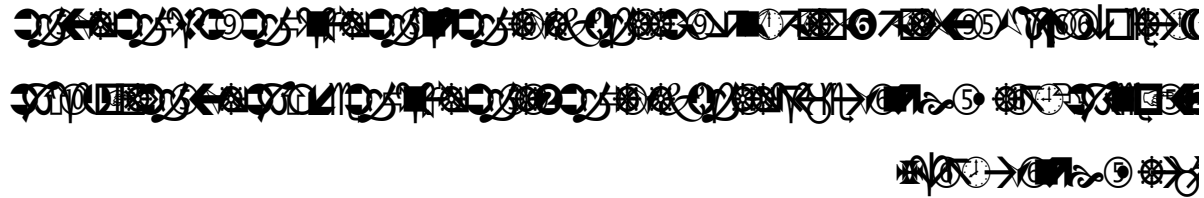
According to the well-versed scholars of Tradition (Hadith), all the narrators of this Hadith are reliable, trustworthy and

“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 RasoolUllah (S.A.W). At this RasoolUllah (S.A.W) said that “ those nations will never flourish who hand over the power to the women folk”.

TIRIMZI SHREEF



“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 yours 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 MoulanaZafar Ahmad Usmai

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 RasoolUllah (S.A.W) consulted with HazratUmmeSalima (R.A) and so on or the companions of RasoolUllah (S.A.W) consulted with the UIMomeneen so the consultation was not concerned with state affairs but with the problems of Shariah. Those problems were related with 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)



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



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



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.

School of thought of Hanafi



School of Thought of Malaki

Four School of thought and the creed of Zawahir



School of Thought of Shafi



It is undue to make woman a judgethe company of female is prohibited

for males because of it there is fear of temptation.

School of Thought of Humbli

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

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 at any post then her

order will be reinforced owing to her official status? AllamaShami (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.

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 regards.

CLASSIFICATION OF JURISTS

Ahnaf

Besides restrictive panel ordinance of

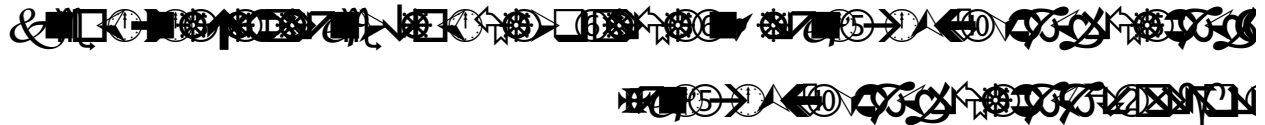
Islam and Retaliation Law, there is no strict rule for judge to be a male sex in other case.

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

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

IbneNajeem (R.A)

Argument:



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 that entrusted to you.

They argue from this Hadith that RasoolUllah (S.A.W) said that a woman is

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 is must judge to be a male sex for hearing of all the cases. There is no justification for woman to become a judge.

IbneHazim (R.A) and IbneTareerTibri (R.A)

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

a guardian and guardian is appointed for the settlements of all matters. And as a judge, one has to 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 has to 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.

AllamaMarwi:

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.

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

Rational Presumption:

The status of administration of justice is just like leadership. Because both deals 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 improper 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?

While in the administration of justice, the reinforcement of order in the light 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

Quran Majeed:

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

Every kind of male attends the law court. It needs matured 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,

“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, RasoolUllah (S.A.W), the Caliphs (R.A) and the letter rulers neither made woman a judge nor the

head of the province. As for as we know, it did not happen so. Had it lawful, there would not have any vacuum 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 Imam 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 (Aima Sasa) has presented in favour of their creed. There is a light difference between three schools of thought and Hanafi School of thought. According to Hanafi'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 Hanafi 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 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 despite the fact that 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 any one 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.

“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 are 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. AllamaAloosi (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; provided that it must be in the light of Shariah.

AllamaIbn-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).

HazratAysha (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 HazratAysha (R.A) led the Jamal expedition and the glorious followers of the Prophet (S.A.W), HazratTalha (R.A)

and HazratZubair (R.A) admitted her (R.A) leadership.

The fact of this incident is that HazratAysha (R.A) along with the other Mothers of the Faithful went to perform Hajj (pilgrimage). The noble Sahaba (companions of Rasoolullah 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):

And then the Mother of the Faithful (R.A) along with HazratTalha (R.A) and HazratZubair (R.A) practically made a program of Reformative discussion with AmeerulMomeneenHazrat Ali (R.A) about the reformation of Ummah. But for the murderers of HazratUsman (R.A), it was difficult to digest / tolerate this reformation. They attacked on the camp of HazratTalha (R.A) and HazratZubair (R.A) at night in the pitch dark. Both thought that this attack was made from the side of Hazrat Ali (R.A). They made a defensive attack. Hazrat Ali (R.A) misunderstood this attack and started a defensive war and in this way a mess was created without their favour. HazratAysha (R.A) was riding on a Howdah of she camel. Neither did She (R.A) fight nor She (R.A) ordered to fight.

MasnadUl Hind Shah Abdul AziazMuhadithDelhwi:

Thus HazratAysha (R.A) set out to Basra for reforming and organizing the Umma.

In short, the mother of the faithful was neither a leader, nor a commander. Neither had she political aims nor had she 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.



The honour of Rasoolullah (S.A.W) HazratAyshaSiddiqa (R.A) remain behind the scene on Howdah of she-camel throughout this journey. And Her (R.A) close relatives remained beside her (R.A). Hafiz IbneKaseer (R.A) narrated 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 peep through the Howdah, HazratAysha (R.A), the mother of the Faithful said,



“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 HazratAysha (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:



“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)



“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,

﴿قَالَ أَبُو بَكْرٍ رَضِيَ اللَّهُ عَنْهُ قَالَ سَأَلْتُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ قَبْرِ الْمَلِكَةِ الْكَبْرَى فَقَالَ فِيهَا نِسَاءٌ يَتَّبِعْنَ فِي الْبَيْتِ مَا يَتَّبِعْنَ فِي الْبَيْتِ﴾

Allama Mahmood Aloosi (R.A)

﴿قَالَ أَبُو بَكْرٍ رَضِيَ اللَّهُ عَنْهُ قَالَ سَأَلْتُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ قَبْرِ الْمَلِكَةِ الْكَبْرَى فَقَالَ فِيهَا نِسَاءٌ يَتَّبِعْنَ فِي الْبَيْتِ مَا يَتَّبِعْنَ فِي الْبَيْتِ﴾

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. As a whole the Holy Book Quran refers to the Queen of Saba as the head of the state of infidelit

Quran Majeed:

﴿قَالَ أَبُو بَكْرٍ رَضِيَ اللَّهُ عَنْهُ قَالَ سَأَلْتُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ قَبْرِ الْمَلِكَةِ الْكَبْرَى فَقَالَ فِيهَا نِسَاءٌ يَتَّبِعْنَ فِي الْبَيْتِ مَا يَتَّبِعْنَ فِي الْبَيْتِ﴾

“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)

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.

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 marry 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.

Hakeem UI Ummat Molana Ashraf Ali Thanwi:

Mufti Muhammad Shafi (R.A)

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.

As for as Balquees-the Queen of Saba is concerned, there is no for proof of Divine

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 ones'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 democratic one where the status of governor should be like an advisor. Actually 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. MolanaThanwi (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". Actually the difference of opinion is about the reality of the democratic government. The view point of HazratThanwi (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 MoulanaThanwi (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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