

# **Women judges in the Arab Region : Point, Counterpoint**

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## **Table of Contents**

1. Forward, Nasser Amin
2. Female Employment on the Judiciary: Legislative Authorization and Practical Barriers, Amira Bahay El Din
3. Women Assuming Judgeships in Islamic Jurisprudence and Egyptian and International Law, Hanim Muhammad Hassan
4. Women Occupying Judiciary Positions in Egypt, Essam Fawzi
5. The Principle of Equality in Egyptian and International Legislation, AlaaAbdAl-Muta'al
6. Women Occupying theRank ofJudge, Essam Al-Islambuli
7. Scope in Islamic Law for Women Judges, Abd Al-Hamid Mayhoub
8. Islamic Law and Permissibility of Women Being Judges, Al Bayoumi Abdou Bayoumi
9. Recommendations
10. Closing, Dr. Mona Makram Obeid

**Forward**  
***Nasser Amin***

The seminar that led to the publishing of this book was organized by the Arab Center for the Independence of the Judiciary and Legal Profession as a serious attempt to debate the topic of women as judges in Egypt. This book includes both supporters of women on the judiciary and detractors.

The judiciary's statutes, and indeed the constitution, provide every citizen the right to hold public positions without differentiation based on gender, language, or religion. Yet the constitution states that Islamic Law is also the basis of all laws, the combination of tradition, common law, and Islamic Jurisprudence have combined to create an effective embargo on women judges.

Workers in the field of human rights will find much to cause outrage. Much of the following research falls victim to the most entrenched of traditional stereotypes passed off as fact.

The first papers, including Amira Bahay Al Din's Introduction, and the works of Dr. Hanim Muhammad Hassan, Essam Fawzi and Alaa Abdel Mutu'al, are supporters of women judges. Notably, supporters are sometimes prone to making as stereotypical assumptions as detractors in the course of otherwise logical trains of argument.

But while supporters of women on the bench are often detractors in a larger feminist debate, Islamic jurists are overwhelmingly opposed to both.

Essam El Islambouli provides an overview of the State Council opinions on women as judges. The State Council bases much of its determinations on Islamic law, and is thus apropos.

He is followed by Abdel Hamid Mayhoub, who is clearly opposed to the idea of women as judges. Human rights workers will be struck not just at the position that many Islamic jurists take, but also at the type of argumentation used. Islamic jurisprudence (*Fiqh*) relies upon analogical reasoning, whose basis is an assured conviction that the Qur'an and acts and sayings of the Prophet are true and above question. The task of jurisprudence is to apply the lessons of these models in a modern context by way of drawing parallels.

Abdel Hamid Mayhoub's commentary gives an indication of the close-knit body of thought in what is the most common, if not prevailing, Islamic opinion on the issue.

Last of the researchers, Al Bayoumi Abou Bayoumi, uses similar analogical reasoning to demonstrate that the issue of women on the bench in an Islamic debate is open for interpretation. According to Bayoumi, it is possible under Islamic Law for women to serve in the judiciary, however dominant Islamic Law theories are against the idea.

The book closes with the recommendation of the ACIJLP and the majority of those present at the seminar and a brief call to policy action by Dr. Mona Makram Obeid.

We hope all readers find the debate informative. While the opinions expressed in this book should not be construed to be the opinions of the ACIJLP, we certainly support the debate itself, and we hope it continues.

*Nasser Amin*  
*Secretary General*  
*ACIJLP*

## **Female Employment on the Judiciary: Legislative Authorization and Practical Barriers**

**By Amira Bahay El Din**

This paper is not a research paper in the traditional sense, rather it is a collection of observations that require scientific exploration. Should these observations excite many questions, they should be pondered, followed up on until answers are found, and then problems surrounding them should be resolved.

This paper does not supply legal references. I am satisfied to simply point out content without referencing the texts. This is not so much an oversight as a product of time constraints and an understanding that most jurists know the texts without needing the actual references.

### **Introduction: A missing issue**

For the last 15 years women on the judiciary has never been an issue on the agenda of the feminist movement, which has so far content itself to amend laws of the personal statute. The complete silence around the issue is interpreted as a lack of interest in it. Female graduates seek employment where they may find it, without much consideration of discrimination against them and the promotion of their male counterparts on the basis of sex alone. The media and public opinion have propagated the notion that women university graduates work only as lawyers. They have praised Mofida Abdel Rahman, the acclaimed lawyer, making her a model. In effect, they have hemmed in her professional aspirations within confines that do not include the impossible dream of working in the judiciary .

### **Disregarding Experience and Knowledge**

It has been said, and only God knows, that Dr. Aisha Rateb graduated with high marks from a faculty of law and could not find a judicial posting. She was enraged and filed suit against discrimination in the field. The case was never decided, as she accepted a post at a university and traveled abroad for doctoral studies.

Even as an unsubstantiated story , for I have no evidence to corroborate it on hand, the story causes us to think truly. Why are women disregarded in the judiciary in spite of their ability -- indeed their excellence - vis-à-vis their male counterparts who do find jobs there?

This story , with respect to our generations of female lawyers and law graduates, would not have come to our attention until relatively late in our professional lives. It piques our interest on the case at hand, but it does not help us change the course of our jobs, whatever they may be.



### **Do Women work in the Judiciary?**

The answer to the question is both saddening and surprising!

I will not look to Europe, the USA, nor Canada, but I will note some countries that share with us similar social circumstances, level of economic development, political circumstances, and religious backgrounds, e.g. Syria, Tunisia, Morocco, Libya, Algeria, and Sudan, in addition to Islamic countries like Pakistan and Iran. So why do women not work as judges in Egypt?

### **Are there Constitutional or Legal Barriers?**

If the answer is no, then why is there a practical barrier and total silence surrounding the issue?

### **Constitutional Equality**

The Egyptian constitution places no restriction on women's employment in the judiciary. On the contrary, the Egyptian constitution stipulates equality in all public sector employment and forbids discriminating against citizens on the basis of gender, religion, confession or so forth.

### **Legal Permission and Practical Barriers**

Neither the Egyptian constitution nor laws prohibit women from working in the judiciary.

The four judicial bodies in Egypt are organized by laws setting similar conditions for employment. None of the four statutes organizing judiciary bodies put any limitation on employing women. Yet only the Administrative Prosecution and the State Cases Authority have appointed women to their offices, whereas the regular judiciary and the judiciary of the State Council has forbidden them as an actual fact, in spite of legislative stipulations to the contrary.

The four statutes open the door to employment, with certain limitations, to lawyers registered with the bar association and considered experienced in the practice of law. Even though both women and men freely join the bar association, and even though there is no legal barrier to women's appointment, only men receive appointments.

### **Do Women work in the Judiciary?**

The answer to this question is both saddening and surprising!

I do not repeat this question in error, I mean to make a point. After constitutional and legislative permission, do women work as judges?

Of course not .Why?

**Does religion create a practical restriction?**

If the answer to this question is yes, I would like to recall other Arab and Islamic nations' stance on the issue! If the answer is no, I would like to know what that answer may be. What is meant by religion? Is it the Qur'an and Hadith or opinions of the jurists? If it is the latter, then are their different interpretations by which we can place a certain group on one side of the issue and another on the other side?

If there is more than one interpretation, perhaps one allows women to work as judges. Why do we not rely on this interpretation and allow women to really work on the judiciary, especially because there is already constitutional and legal authorization? Are the barriers really traditional?

If that is the case, then how do we change tradition? If that is not the case, then what is the real obstacle? These two questions are preceded by another: does society gain by employing women judges?

**Another Question: Who will Answer Us?**

I do not know the specific answers to all of these questions, but they deserve our attention. What is important, is that we know the true reason behind preventing women from becoming judges. When we know that, we can talk again about how to deal with it and change it!

## **Women Assuming Judgeships in Islamic Jurisprudence and Egyptian and International Law**

**Dr. Hanim Muhammad Hassan**

### **General Director of Investigation and Cases**

Since the beginning of the Caliphate, woman and men have been equal and complementary partners, each incapable of being isolated from the other or living without the other's support.

However, women have long fallen behind in the course of development and education, convinced of their role within the family as wife and mother, and assured of men's dominion over them. They have therefore abstained from participating in public life. However, with the increasing burdens of economic life and its growing complexities, women have been driven to share these burdens with men. In the beginning, women became professionals in several occupations and practiced them within their homes so as to augment their income. Later, women emerged into public life and gradually found that there is a pressing need for education so as to raise their social, economic, and cultural level and thus be equal to men and occupy high positions. Women increased their knowledge and climbed academically attaining the highest degrees possible. They entered various fields, from nursing and teaching to ministerial posts. Women have assumed presidential functions in the legislative branch, and have headed several judicial bodies such as the Administrative Prosecution and the administration of disciplinary cases. They have also undertaken specialized positions in the Ministry of Justice and Forensic Medicine and headed specialized bodies of scientific research.

Women working alongside men and sharing the burdens of life has become an economic, political, social, and cultural necessity. Women comprise half of society, and were that half left ignorant and unemployed, that would create an undue burden on men. The education of women and their preparation for work is thus among the exigencies of modern life. As a poet said, "The mother is a school that, if you prepare, you have prepared a people of noble descent." A poet also said, "Raise girls with a love for the homeland, for girls are the partners of boys."

Women's participation in the workforce is an economic necessity due to the increasing rise of economic burdens. If women did not share these burdens with men, families would not be able to realize their dreams and raise the material standard of their life, rather, they would drown in debt. Thus, when considering marriage, men only choose working women with stable incomes.

Further, women's participation in the workforce is a political, social, and cultural necessity. Working increases women's awareness and yields a

higher standard of living and a better social and cultural standing. It allows them to learn about their country's problems and attempt to contribute to solving them. Furthermore, they may participate in representative life by practicing electoral rights and nomination to membership in the representative councils. The manner of treating women and the opening up of fields of work before them has become a measure of the progress of peoples.

The participation of women in the workforce is an economic, social, political, and cultural necessity, and this is particularly true concerning judgeships, as this kind of work requires a high educational and cultural level, and a complete immersion in all matters of life. When women assume the role of judge they become an effective element in society from many perspectives. For example, the state is presently suffering from a lack of judges and cases are piling up in the courts, cases that conceal economic, social, and political problems. The participation of women in the judiciary would help to solve these cases in a short time and eliminate these problems.

In spite of all that is said concerning the importance of women assuming the roles of judge, there are those who claim that women are not qualified to assume judicial positions. Thus, we will present in this research paper the position taken by Islamic jurisprudence and Islamic Law, the position of the Egyptian constitution and legislation, and the position of the international legislation, international human rights charters, and foreign legislation.

## **The Position of Islamic Jurisprudence and Islamic Law on Women holding the Rank of Judge**

### *1. The Position of Islamic Jurisprudence*

Many Islamic legists and jurists have expressed their opinion for or against women holding the rank of judge. Some have based their opposition on religious notions and psychological concepts. A number of legists view the judiciary narrowly as the arbiter in lawsuits and arguments. They hold that women's nature is governed by emotion, and thus they are incapable of deciding lawsuits that require objectivity and decisiveness.

Were we to use this definition for the administration of justice, we would be obliged to omit some of the state bodies in the field of justice that are not based on judging in lawsuits, such as the Administrative Prosecution, and the Bureau of State Cases, and yet no one would deny the judicial character of these bodies. As for women's nature being governed by emotion, emotion is not a flaw that should be held against women<sup>1</sup>. Rather, the very opposite is true. Emotion refines the senses and sensibilities and increases a perception of fairness. Judging in lawsuits does not require that the judge be hardened or oppress emotions and disregard humane considerations. Legislators often pay heed to such considerations when determining legislative texts, taking into consideration extenuating circumstances and extreme circumstances. Likewise, limits are placed on punishments in heed of such considerations.

We add to this that judges do not rule by emotions but rather are limited by texts. Judges research the rule of law in the case represented before them. When they apply to rule of law to these cases, they are subject to monitor by higher levels of the judiciary.

It is also said that the female nature of women exposes them to pregnancy and childbirth and are thus unfit to hold the position of judge as it would harm them physically. I would like to clarify that the nature God created for women is not a subject for condescension or insult by others. Furthermore, the state of pregnancy does not take but a short time. It is but a simple matter to grant women maternity leave.

It is also said that because women experience monthly menstruation they become bothered and unfit to decide cases. This opinion overlooks the fact that the situation is merely a temporary physical case, and illness is a reality for all judges as human beings, be they men or women. If this opinion were sound, women would not be fit for any kind of work at all.

Some hold that the administration of justice is a form of public authority, and there is a consensus among the Islamic legists that women are not qualified to hold public authority. In this case, authority is known as a power that allows its owner to issue orders to individuals by individual will.

In addition to this, forms of public authority are considered to include legislation of positive law, and work in the representative councils. Women have become representatives in the representative councils, and have even headed their committees. Dr. Amal Uthman holds the post of vice chairman of parliament, and Dr. Fawzia Abd Al-Satar heads the legislative committee in parliament. As women issue legislation, is it rational to prohibit them from applying it themselves were they to assume judgeships?

Women have also held posts in ministries, such as the Ministry of Social Affairs, the Ministry of Scientific Research, and the Ministry of Economics. The ministries are considered an authority, as they vest power to issue orders and declarations by individual will and may make allowances or prohibit as it sees fit. Women have also headed the administration of disciplinary cases, which is another public power. In this capacity, women have individually issued a resolution for people to be transferred to the disciplinary courts.

Judges are restricted in their investigation to the rule of law and its application to the conflict represented before them; they do not rule on emotion. Likewise, they may not refrain from deciding cases they are required by law to determine, as this would be considered a refusal of justice. Should we consider the work of a judge to be a kind of authority, it falls in a rank below that of the ministry of justice and legislation.

## *2. The Opinion of the Judiciary on Women holding the Rank of Judge*

In the early years of the State Council's administration of justice, a young woman applied to be appointed in to the State Cases Bureau. When she was denied, she brought suit in case (*no.61243*), dated 22 December 1953. The edict judged that high principles of the constitution prescribe equality between men and women in rights and duties. Application of this equality in the workforce and public posts requires that women not be absolutely excluded from assuming these positions. Doing so would contravene the principle of equality, which is an essential and founding principle of the constitution.

Administration has the authority to appraise whether women have reached a stage of development that enables them to successfully undertake a particular position. Should the administration hold that women have made great progress and have fulfilled the necessary qualifications, it must open the same doors to women that it has opened to men, with full equality between them. At the present time, Egyptian women have exhibited competency in many fields and positions such as medicine, nursing, and education, as well as many positions in the Ministry of Social Affairs, the Ministry of Religious Endowments, positions in the Probate Court Prosecution, land register, etc.

No matter how the administration treats these lawsuits, it should not be concluded that it has determined a general and absolute rule that Egyptian women in any age are unfit to assume the rank of judge, positions in the public prosecution, or the administration of cases. Such a rule may not be established. Likewise, such a statement cannot be made with the rulings of Islamic Law, whose texts of jurisprudence do not prohibit Muslim women from assuming the post should they be qualified to do so.

In the "Bida'i" of AI-Kasani there is an account of the conditions of qualification to assume judgeships. It states, "being male is not a condition for being appointed a judge for women have the credentials of judge."

The State Council rejected two cases brought by women to obtain judgeships in a ruling issued 2 June 1979. The ruling cast aside considerations of common law, but upheld the oft-held stance of Islamic Law proponents.

"It is clear from the cases' records, evidence, and surrounding conditions, that the factors upon which the administrative body based its appraisal of inappropriateness in appointing the plaintiff to the rank of judge are found in the Egyptian environment, and are embodied in two essential fundamentals. The first of these is the common law exemplified in society's longstanding view towards women. This view holds that women are of a lower level than men, and less significant, either due to the nature of their very being or because of their falling behind men in standards of knowledge and culture. The second factor is the widespread belief that the rulings of Islamic Law prohibit appointing women in any public powers, including the judiciary."

In regards to common law, the court confirms that the administrative judiciary's ruling of 1953 rejected the existence of an absolute common law that rules Egyptian women to be unfit, in all times and locations, to assume the role of judge.

The Egyptian constitutions and positive law of nearly a quarter a century ago, have opened the doors to women to hold the highest ranks and posts in public authorities in the legislative and executive branch. Women have also worked in other public posts including specialist positions in several judicial bodies. Women have truly assumed the burdens of these positions and carry their responsibilities, after have been excluded from these very jobs by men. Thus, the court has concluded that due to the persistence of the constitutions and positive legislation on these concerns, that the rules of common law in Egyptian society have developed and progressed in the acknowledgement of women's right to hold public posts. It thus no longer remains possible to rest one's case on common law, customs, environmental

conditions, or the circumstances surrounding jobs so as to exclude women from assuming the post of judge. In a telling move, the State Council nominated the plaintiff of this case for the position of deputy in 1973, after it had refused nomination two years earlier.

Thus the court conceded to the plaintiff that it is inappropriate to rest one's case on common law. However, the constitution determines in article two that the principles of Islamic Law are the primary source for legislation, and article 11 charges the state with providing equality between men and women in the political, cultural, and economic arenas of life, keeping in accordance with the rulings of Islamic Law. The State Council's statute does not include an explicit text prohibiting the appointment of women to specialized positions, yet neither provides a text requiring equality between men and women in these positions. Some schools of Islamic jurisprudence do not permit women to be appointed judges and other schools do permit this; each opinion being supported with evidence. Thus, the administrative body, when implementing its power of appraisal in this regard, is licensed to take either of these views, depending on what it views as more appropriate for circumstances at the time it issues its ruling,

Thus the administrative body rejected the appointment of the plaintiff on the basis of its license to follow the legal opinion that prohibits women from holding the rank of judge. Furthermore, there is no monitor of this decision and no textual basis for a legal violation or misuse of power.

This, then, was the ruling of rejection issued on the two appeals of refusal to appoint this woman a judge in the State Council. It is clear that the evidence used to justify this ruling was based on an opinion of Islamic Law, as well as a ruling issued in 1953, which affirmed that there are legal objections in Islamic Law to women holding judicial posts. The case was later appealed and the State Council rescinded its previous ruling and nominated her for appointment in judicial posts in the State Council. This nomination was presented to the Supreme Council of Judiciary Bodies.

### *3. Islamic Law and Women Assuming the Ranks of Judge:*

Islamic Law has honored women and raised their standing. Women had been poorly neglected in pre-Islamic society, God Almighty said in his Revered Book, And do not covet that by which Allah has made some of you excel others; men shall have the benefit of what they earn and women shall have the benefit of what they earn; (The Women, 32)"

The late Grand Imam Mahmoud Shatout said in his book: "Islam is a creed and a law", which invites one to contemplate its meaning,

The Grand Imam continued to say that in the early years of Islam, women participated in raids with the Prophet Muhammad. He relates that one of his female Companions said, "we participated in raids with the Prophet,



PBUH, giving drink to the people and serving them, and returning those killed or injured to Medina." He continued to say that the Prophet, PBUH, gave loot to women, just as to men.

The Grand Imam examined what has been said concerning women's lack of competence and equality with men, based on the fact that Islam gave women half the inheritance it gave to men, and what Islamic Law determined in regards to women's witness. God Almighty said,

"call in to witness from among your men two witnesses; but if there are not two men, then one man and two women from among those whom you choose to be witnesses, so that if one of the two errs, the second of the two may remind the other; (Cow, 282)"

The Grand Imam clarified that the ruling on women concerning inheritance in Islam is not based on their humanity being less than men's but rather on the nature of women in public life, which necessitates that men bear family expenses as well as a bride price. He added that the balance between men and women shows that women are favored over men in Islam.

B. We also examine the opinion of one of the legists in Islamic Law concerning equality between men and women. This legist is the late Shaykh Ahmed Ibrahim, Dean of the Faculty of Law at Cairo University and Professor of Islamic Law. His opinion was expressed in an article he wrote for Law and Economics journal, Year 6, Issue 8, in February 1936 under the title, "Rulings on Women in Islamic Law ." He said, "creed encompasses belief in God and his Angels, his Book, his Messengers, and Judgment Day. Men and women are equal in this, with no fundamental difference between them. They are equal in preparation for discretion on that, and are each rewarded for what they have accomplished. I cite the saying of God Almighty,

"And do not covet that by which Allah has made some of you excel others; men shall have the benefit of what they earn and women shall have the benefit of what they earn; (The Women, 32)"

Regarding the witness of women in Islam, the Shaykh Mahmoud Shaltout said in the previous reference that God Almighty said, "if there are not two men, then one man and two women from among those whom you choose to be witnesses, so that if one of the two errs, the second of the two may remind the other; (Cow, 282)"

This was found in a context of guidance to the verification and ascertainment of rights between subjects under treatment, not in the context of witness. by which a judge rules.

"That I will not waste the work of a worker among you, whether male or female, the one of you being from the other; (Family of Imran, 195)"

**"And at the time when the hour shall come the guilty shall be  
in despair. (The Romans, 12)"**

These and the other quotes above do not imply the testimony of a sole woman or of women not accompanied b)' a man does not verify the truth and thus judges cannot rule on it. The very least the judiciary requires is evidence. The consideration of two women in verification as equal to one man is not due to a weakness of their intellect resulting from a weakness in their human it)!. Rather, as Shaykh Muhammad Abdu said, it is not among the concerns of women to deal with finances and the like in terms of compensation. Thus, women's memory is weak in this regard, unlike their memory concerning household matters, which is their field of work and for which their memory is better than men's. It is human nature to have a strong memory in matters of concern in which one is active. The Shaykh added that there are cases in which the sole witness of women are accepted. These are cases that men do not usually take up, such as childbirth, and the women's issues.

We conclude from the opinions of the most esteemed Islamic legists that Islamic Law does not require two women with one man to witness because of any shortcoming in female competency or humanity that renders them inferior. Rather, legislation is concerned that in matters of compensation, women's memories will not recall all the necessary details because it was outside of their traditional realm of affairs. Thus, there must be other women to corroborate. This does not imply the judiciary would not accept a solitary woman's witness, because the very mission of courts is to gather evidence for a ruling, and evidence is more general than simply testimonies of witnesses.

Referring to the schools of the four Imams, we find that all the legists conferred on the stipulation of being male to become a judge. Imam Abu Hanifa and his companions, and this is the school implemented in Egypt, stated that women may be judges in that which they may witness. They may witness in everything except legal punishment and requital. Likewise, Abu Jarir al- Tabari spoke of the sanction for women to be judges in everything, there being no difference between them and men.

**The Position of the Egyptian Constitution, Legislation, and Common Law on Women occupying Judgeships**

Those that doubt the competence of women to undertake judgeships hold conceptions that have no basis in reality. However, are there other legal concepts that may justify denying women judgeships? The following is a short discussion on the opinion of the Egyptian constitution and legislation, as well as the common law.

*I. The Position of the Egyptian Constitution and Legislation concerning Women occupying the Rank of judge:*

All Egyptian constitutions have conferred upon equality between men and women, and the lack of discrimination between them on the basis of sex. This has been the case since the issue of the 1923 constitution, and on through to the 1971 constitution. None of these constitutions have deprived women of any rights.

The constitution of 1923 determined in Article 3 that "Egyptians are equal before the law, and equal in society in civil and political rights. There is no discrimination between them on the basis of origin, language, or religion concerning their public duties and obligations."

The constitution of 1956 stated in article 31 that "Egyptians are equal before the law, and equal in rights and public duties. There is no discrimination between them on the basis of sex, origin, language, religion, or conviction."

The constitution of 1971 determined in article II that "the state guarantees accommodation between women's duties to the family and to work within society; the state guarantees equality between men and women in the arenas of political, social, cultural, and economic life, keeping in accordance with the rulings of Islamic Law."

Article 40 of the same constitution states, "citizens are equal before the law and in rights and duties; there is no discrimination between them on the basis of sex, origin, language, religion, or conviction."

Egyptian legislation is completely devoid of any text that deprives women from the right to occupy any public post.

Thus it is clear that there is no legal objection to women occupying the post of judge either in the Egyptian constitution or legislation.

*2. The position of Common Law on Women occupying. Judgeships:.*

There is no doubt that common law forms an official source for law, as the first article of the Civil Law states that, "if there is no legislative text, the ruling of a judge may be applied as common law dictates."The legal base that is founded on common law may not contravene legislative text.

The truth is that there is no common law that prohibits women from occupying any post. The matter essentials stems from a period of time when women fell behind men in terms of education and in emerging into public life. This had an effect on women's culture and experience in life. The first school for girls was established in the late 19th century . This was the beginning of the development and education of women, and by the end of the twentieth century women had attained the highest levels of education and occupied the most important posts in the state. Women have held positions in

the Ministry and membership and representation in parliament, membership in the consultative council and the presidency of many scientific centers in the state. Women have worked in forensic medicine, the body of state cases, and the administrative prosecution, and have headed the administration of disciplinary cases.

If we were to suppose, for the sake of argument, that there was a common law in its previous meaning, how would it be strong enough to annul the legislative or constitutional text when all legislation and all constitutions have been void of a text prohibiting women from working as judges. Since women have reached the highest posts and attained the highest academic qualifications, there remains no justification to prohibit women from undertaking judgeships.

### **The Position of International Legislation and Islamic Legislation on Women holding Judgeships**

We turn now to the examination of the opinion of international legislation and Islamic legislation so as to understand their position on women's rights to undertake judgeships.

#### *1. The Position of International Legislation*

The charter of the United Nations includes in its text the wish for human progress in all locations and the protection of human rights.

Article 55, paragraph C of the Charter determines that the United Nations strives to "spread respect for human rights and basic freedoms for all throughout the world, without discrimination on the basis of sex, language, or religion, and without differentiation between men and women." The main import of this text is that there is a degree of basic rights and freedoms to humans in any location, whether they are male or female. These rights and freedoms are preserved without discrimination between people on the basis of sex, language, or religion.

International legislators did not stop there, but rather explicitly stated there should be no differentiation between men and women in rights and freedoms.

Thus international accords have acknowledged that women have equality with men in basic human rights and freedoms, and that they have the right to occupy different posts in complete equality with men.

#### *2. The Position of Islamic and Arab Legislations on Women occupying Judgeships:*

Many Arab and Islamic countries have preceded Egypt in this concern and have permitted women to assume judgeships for some time now. These countries include Turkey, Morocco, Tunisia, and the Sudan. It is strange that Egypt, which is the source of civilization from which the world learned the

arts and sciences is discussing the right of women to hold the post of judge as we are approaching the 21<sup>th</sup> century,. Further, the dependence of the Ministry of Justice on women for many years proves their aptitude and holding of complete responsibility. Thus the matter is no longer a concern of time, convention, or religion; rather it is now a case of male bigotry. Men have discovered that they have the power to outweigh women in at least one field, that being judgeships, the only position that has not fallen from their hands. This is a prejudiced attempt inappropriate for a civilized people, and it results in men. Men become the isolated and overworked. The participation of women would lighten the load.

The matter does not stop at prohibiting women from judgeships. Terrorist groups and extremist opinions have arisen. Voices calling for the return of women to the home are rising, declaring that women are not competent to work. There have been job announcements that specify applicants must be men, although women have previously held these positions. We consider this a call to retreat after women have advanced to the highest levels in the workplace.

**Women Occupying Judiciary Positions in Egypt:  
A Sociological Reading of Responses from a Limited Sample of Cairenes**

**By Essam Fawzi**

**Director of the Center of Municipal Development Studies**

**In lieu of an introduction:**

What would Abn Al-Thayna ' say were he to know that the notion of women occupying judgeships was being discussed? In his work known as "the correctness of prohibiting women from writing" he said, " As for teaching women reading and writing, God forbid, I see nothing more dangerous for them. They are predisposed to treachery and thus for them to obtain this talent would be for them to obtain the greatest means of evil and corruption. As soon as women are able to compose in writing, there would be a letter to Zayd and a note to Amr and a line of poetry to Azab and something else to another man. Women and writing is like an evil man given a sword, or a drunkard who is given a bottle of spirits. Men who keep their wives in a state of ignorance and blindness are sensible, as this is more suitable for them and more useful."<sup>(1)</sup>

Sufficing with theoretical and Islamic juristic discussion on an issue such as women becoming judges, in spite of its importance, leaves the discussion incomplete. Such an approach does not attempt to understand the opinions of the wider public, which will become subject to the law's application. Juristic and legal development is not isolated, but rather is a social manifestation. It is founded on the size, nature and effectiveness of social groups with interests in either implementing or terminating such change and development. This implies that any legal or juristic development within a society's ideology is no other than a direct and necessary reflection of the dynamism of groups and segments in the underlying social fabric which possess varying and conflicting interests. Fuliher, this does not occur without evaluation of the controversial influence between these levels. History has taught us that social forces laden with a false ideological conscious have emerged to defend interests contrary to its real interests. This may occur if discussion is not held concerning women and this issue in particular, that being women occupying judgeships, a position that has long been monopolized by men. Therefore, we have attempted to delineate, within the limited time available, some of the social responses to this controversial question: Should women occupy judgeships?

When an unexpected question is put forth, the initial reaction is usually surprise that one did not raise it oneself. Once the initial moment of surprise

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(1) Appeared in Abdallah Muhammad Al-Ghazali, "Al-Mar'a wa Al-Lugha" (Women and Language), p.111, 112.

passes, the respondent begins to mentally prepare his fundamental references, be they religious, rational, or official, on which to base his response. The public has accustomed to being questioned on its position on women in the workforce in general. Discussion on the issue has become widespread on many levels, from those in the media who summon women to return to the home, to those who defend women's right to work. The discussion might be heard between any two people riding public transport for example, and usually one of them will cry, "Qasim Amin, he caused women to emerge into the workplace and made them crowd us everywhere and in everything!" However, the questions we have put forth to the public are further removed from what they have accustomed to think about, and some were surprised that such ideas could even be thought of.

### **The Legal Status of the Issue**

Since its conception, Islamic Law has determined regulatory rulings that limit women's rights and status. Examples of this include the right of polygamy given to men yet not to women. Another example is the allocation of inheritance to daughters being half that given to sons, and allocation to the wife, if she is the sole wife, being half of the inheritance given to her husband. These rulings appear in Qur'anic texts that Islamic scholars view as completely impermissible for discussion, as no interpretive effort is allowed in the textual source.

There is a Hadith on women occupying the position of prayer leader, this being a general ruling that is only determined by the text. It was thus given consensus, as the text only made an exception for prayer leader. Entering the judiciary is considered to have not been specified, and thus AI-Tabari does not accept it.

Ibn Hazim agrees with AI-Tabari when he affirms that women may not hold the position of the Caliphate or the presidency, based on the saying, "a community that rests its case on a woman will not succeed." However, women may hold judgeships, for although they are not qualified to be Caliph, they are qualified to be judges. Ibn Hazim replied to the jurists when they drew conclusions from this Hadith, explaining that the Prophet's saying concerned the Caliphate only, which indicates the correctness of the Prophet's saying that women are the guardians of their husband's money and are responsible for their children. Ibn Hazim also drew his conclusions from the saying of God Almighty, "God commands you to deliver trusts back to their owners; and when you judge between the people, that you judge with justice." (Sirat AI-Nisaa', Verse 58)<sup>12</sup> This discourse is directed at men, women, slaves, and freemen, for the religion is one. However, the text also

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<sup>(2)</sup> J. Arberry, *The Koran Interpreted*. p.109, George Allen & Unwin Ltd : London 1963

differentiated between them and made exceptions. As for Abu Hanifa, he took a position between the public and AI- Tabari. He neither completely denied women authority in the judiciary nor did he completely condone it, rather he said, 'Women may be judges in finances,' by analogy with their license to witness for finances, for they judge on what they are permitted to witness.<sup>3</sup>

Reviewing the requisite specifications of a judge according to Ibn Taymiyya, we find that a judge must be "pious, and a possessor of three essential traits; a witness for the prosecution, a definer of supreme authority, and having jurisdiction in compulsion. The least essential of these specifications is that of a witness, as he must rule in fairness, and a formal legal opinion may not be requested except from those who decree legal opinions with knowledge and justice. The provisions of the judiciary are considered based on faculty, and it must be entrusted with the most ideal, as indicated by Ahmed and others. The most useful and least evil of the unrighteous, and the most just of the imitators and most knowledgeable of tradition should be appointed over others. If one is more knowledgeable and the other more pious, the pious will fear the abyss and the knowledgeable will fear misgiving."<sup>4</sup> Reviewing these stipulations we find that he did not mention that a judge must be male.

From another perspective, Justice Ahmed Kamil sees that Islam permits women to undertake appraisal as this is not judiciary function. The appraiser does not issue judgments but rather takes measures to prevent wrong and instate good. Thus the Caliph Amr bin AI-Khattab appointed a woman named AI-Shifaa' to the city market and a woman named Samra' bint Nahik AI-Asadiya also held this position. They patrolled the markets and ordering, forbidding, and beating people with a whip.<sup>5</sup> As for Shaykh Muhammad AI-Ghazali, he affirmed in his book "Sunna: between Jurisprudence and Hadith" that women are able to hold any position they have qualifications for with the exception of the Caliphate.<sup>6</sup>

These are the conceptions of the Islamic jurists. As for the Egyptian legislator, he does not address the issue on that basis but rather leaves the appointing of judges to the executive branch. Judges were appointed by decree-law no.66 of 1943, and no. 188 of 1956 and by a consensus on the

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(3) Justice Abd AI-Hamid Sulaymall, "AI-Qada' ti AI-Islam" (Judiciary ill Islam), AI-Dawa', Issue 39, Year 28, August 1989

(4) Muhammad AI-Ghazali. "AI-Sunna Bayna AI-Fikh wa AI-Hadith" (Sunna between Jurisprudence and Hadith), Cairo, Oar AI-Shuruq, ] 989, Second printing, I 990

(5) Justice Ahmed Kamil, "AI-Qada' wa AI-Qadaa" (The Judiciary and Judges) , in a social survey of Egyptian society form 1952- I 980, Cairo, The Natioanl Center for Social and Penal Studies, p.37, 38

(6) [extend my thanks to my colleague Mahmoud Murtada, who was one of the trainers in this workshop and aided mc in his observations on it.



laws subsequent to that. The legislator gave responsibility of judicial appointments to the executive branch and determined requisite conditions for one to hold a position, they being nationality, qualifications, age, knowledge of law, and a condition based on trust and behavior. It is noteworthy that the laws do not restrict judgeships to men. In spite of this, no woman has been appointed judge.<sup>7</sup>

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<sup>(7)</sup>The group consisted of women and girls who are leaders of social work in the field of women and youth. They were from three villages in Minya, Atsa AI-Balad, Oair AI-Bursha, Sharuna. Their level of education ranges from holders of intermediary degrees (technical, commerce) to university students. Most of them are married and do not work. They were divided into three groups, each one including seven women and girls.

**General Results:***Characteristics of the Sample (54 cases)*

The sample was divided among four age groups: from 18-29, 30-39, 40-49, and 50 and older. It was divided between the sexes: 61.1% of the sample were men and 38.9% women. Due to the circumstances surrounding the research, it was not possible to take samples distributed across socio-economic characteristics.

**Table One: Characteristics of the Sample**

Characteristic	Frequency	Percentage
Sex		
Male	33	31.1
Female	21	38.9
Age group		
18-29	9	16.7
30-39	29	53.8
40-49	11	20.4
40 and order	5	9.3
Religion		
Muslim	42	77.8
Christian	12	22.2
Social Status		
Single	8	14.8
Married	29	72.2
Divorced	5	9.3
Widowed	2	3.7
Educational level		
Illiterate	5	9.3
Literate	3	5.6
Elementary	4	7.4
Intermediate	8	14.8
High	3.4	63

**The Results:**

- No correlation was found between the age group and a position on the

issue raised. This may suggest that ideological stances on issues concerning women are formed at an early age and continue without change.

- A strong correlation was found between social status and a position on the issue raised. Divorced women are the most enthusiastic about women holding judgeships, especially in personal status cases. The two divorced women in the sample expressed unconditional agreement to women holding judgeships, whereas the divorced men held the opposite view; two out of the three of them did not agree to this, and especially not for personal status cases.

**Table Two: Positions on Women Holding Judgeships  
According to Gender and Social Status**

Type	Agree	Agree on Condition	Refuse	Frequency percentage	Frequency percentage	Frequency percentage
Single (Total)	8	14.7	-	-	1	1.8
Male	3	5.5	--	--	1	1.8
Female	5	9.2	--	--	--	--
Married (Total)	10	18.5	5	9.2	19	35.1
Male	6	11.1	5	9.2	14	25.9
Female	4	7.4	--	--	5	9.2
Divorced (Total)	2	3.7	5	9.3	2	3.7
Male	--	--	1	1.8	2	3.7
Female	2	3.7	4	7.4	--	--
Widowed (Total)	--	--	--	--	2	3.6
Male	--	--	--	--	1	1.8
Female	--	--	--	--	1	1.8
Total	20	37	10	18.4	24	44.4

- A number of the female respondents held the same view as men in regards to the inadequacy of women and their lack of qualifications for the role of judge, This suggests women's self image is based on a

- historically contrived model by men,
- There was a strong correlation between religion and a position on the issue, 45 of the Muslims in the sample (44.4%) opposed women holding judgeships in Egypt (18 male Muslims of a total of 24 and 6 females) whereas none of the Christians opposed,

**Table 3: Positions on Women Holding Judgeships According to Gender and Religion**

Type	Agree	Agree on Condition	Refuse	Frequency Percentage	Frequency Percentage	Frequency Percentage
<b>Male</b> Muslim	3	5.5	3	5.5	1	33.3
Christian	2	11.1	3	5.5	--	--
<b>Female</b> Muslim	8	14.8	4	7.4	1	1.11
Christian	3	5.5	--	--	--	--

- No correlation was found between economic level and a position on the issue.
- The conditions stipulated by the respondents differed, yet most of them indicated a lack of confidence in the ability of women to fulfil such a role, thus agreeing with those who completely refused the issue. Among these conditions were the necessity of female judges being decisive, wise, not changing decisions, and not allowing emotions to rule decisions. Others stipulated that someone must assist female judges in making decisions, and that they may not issue a judgment until after they have discussed the case with others.

### **The Respondents' Conception of the Position in Islamic Law**

Half of the respondents thought that Islamic Law prohibits women from holding judgeships. More than a quarter of the respondents claimed to not know the position in Islamic Law on this matter, and slightly less than a quarter of the respondents stated that Islamic Law allows this. When questioned as to the source of religious knowledge on this issue, many of the respondents said they based this opinion on the Hadith that warns of women having guardianship. However, they admitted that they had not come across reference to the issue itself and thus relied on the position of religion towards women in general. This position characterizes women as inadequate in terms of reason and religion, and that implies that men are superior to women.

Three of the Christians in the sample stated that Islamic Law permits women to be judges, all three of which (two male and one female) are degree-holders and in the course of their different studies were exposed to sources of Islamic Law which influenced their position. Seven of the Christians stated that Islamic Law does not permit this, and most of them based this on a verse that says that men are superior to women.

Most of the respondents (specifically the Muslims) who stated that Islamic Law prohibits women from holding judgeships determined menstruation and its associated physical, nervous, and psychological manifestations as one of the main reasons for this. One of the respondents with a high understanding of politics said, "in my opinion, women may hold judgeships with the condition that they take time off during menstruation due to the physical and hormonal changes they are exposed to during this period and which affect their behavior with extreme irritability. This is a natural justification for them not to work during this specific period. For the remainder of the month they have the right to be judge."

**Table 4: The Respondents' Conception of the Position in Islamic Law on Women Occupying Judgeships**

Type	Agree	Agree on Condition	Refuse	Frequency Percentage	Frequency Percentage	Frequency Percentage
<b>Male (Total)</b>	8	14.8	12	29.2	5	16.2
Muslim	2	11.1	11	20.4	7	12.9
Christian	3	3.7	5	9.2	2	3.7
<b>Female (Total)</b>	20.4	11	9.2	5	9.2	5
Muslim	4	4.7	9	16.2	5	9.2
Christian	1	1.8	2	3.3	--	--
Total	13	24	27	50	14	25.8

Slightly less than half of the sample stated that there are no historical cases of women holding judgeships, and 16.6 affirmed that there have been. However when they were asked to give examples most of them mentioned cases in which women played a military role or decreed a fatwa (the name of Aisha was oft repeated.)

**Table 5: The Respondents' Conception of Existing Historical Cases of Women holding Judgeships in Islamic History**

Type	Exists	Does not exist	Unsure	Frequency Percentage	Frequency Percentage	Frequency Percentage
<b>Male</b> (Total)	6	11.1	21	38.8	6	11.1
Muslim	4	7.4	15	27.7	5	9.2
Christian	2	3.7	6	11.1	1	1.8
<b>Female</b> (Total)	3	5.5	5	9.2	13	24.1
Muslim	3	5.5	5	9.2	10	18.6
Christian	--	2	6	--	3	5.5
Total	9	16.2	29	48	21	25.2

A large percentage of the respondents affirmed that the men and women who work in development organizations would accept women holding judiciary positions, especially organizations involved in women's development and the feminist movement. They stated that such organizations would support women in this endeavor as it provides hope for solving some of the problems facing women, such as the personal status laws that rely on the letter of the law and not the spirit of the text.

Most of the respondents do not trust the position of the political parties. In their opinion they are either not real parties, have no coherent vision, or are Oppolunist and concerned only with obtaining women's votes.

There was a near consensus among the respondents that the rural communities, particularly in Upper Egypt, would refuse this notion.

### **Observations and a Comprehensive Reading**

The results of the research agree to a large extent with the conclusions of a workshop held recently by UNICEF on the topic of gender specification. It conducted an exercise on the specification of social roles for men and women, and the model included two lists of occupations held by men and women. The task was to determine which of these occupations the other gender could hold.

The conclusions of this exercise confirmed the ability of women to hold most jobs and positions normally held by men, from carpentry and simple mechanics to administration in mines. However, two of the three groups determined that women cannot hold the position of judge. The reasons given for this opinion were:

1. Women, by their very nature, are emotional, and the work of a judge demands decisiveness and neutrality. (the majority)
2. Religion prohibits women from taking this role.
3. Lack of confidence in women's ability to issue the death penalty, for example. (this alone was cause for opposition)
4. In response to a reference that women in the U.S. and some European countries hold the role of judge with success and competency, they answered that our society has its own special customs and values. When it was mentioned that women in some Islamic Arab countries such as Tunisia and Libya practice this profession some of the participants responded that Egyptian women are not qualified to do so. Some of them referred to the religious prohibition.
5. A discussion was held that treated the dominant views on the nature of women and the incorrect view of their role. It also addressed the fact that judiciary professions are governed by rules and fundamentals and are not subject to personal evaluation of the judge, when conditions are met by a candidate to hold the position, and that society accustoms to the acceptance of women as judge. After this discussion some of the attendees changed their minds and became convinced that such a situation is possible. (As the question had not been put forth to them previously, their responses had been a kind of generalization or a previous view on similar topics.) Some of them remained committed to religious reasons.

Based on the results of this study, which were confirmed by results in UNICEF's workshop, we may draw several conclusions. The most important of these is that the religious basis on this topic is very strong and influential due to the effect of its close connection to male ideology.

Both men and women have contributed to the creation, growth, and preservation of the menstruation myth. There is no doubt that physiological changes and fleeting irritability occur to women during this period, yet in reality this is not entirely a physical reaction, but rather is also social and psychological. Men see the symptoms of menstruation as proof that women are intrinsically nervous, . unstable, and prone to sudden changes. This conception of women's deficiencies was expressed by one of the Islamic leaders in the fifties when he said, "from a realistic point of view, a judge must be committed to work throughout the year and may be granted only a limited number of weeks vacation in the summer. If a woman were to be a

judge or a prosecuting attorney, what would she do about menstruation, which takes a week of every month? Everyone knows the weak psychological state of women during menstruation. What would she do if the disturbances of pregnancy in its final months darken her mood and wear out her nerves and thus she becomes ill-tempered and unfit for the serious trusteeship of the judiciary?<sup>8</sup>

The transformation of women's bodies from gender to administrative and legal worth perplexes many men and invites research on second-class citizens who are denied such rights. Women are considered weak and not able to bear the responsibilities of jurisdiction, and further subject to monthly physical weakness and nervous breakdowns as a result of menstruation. Thus, due to the physiological differences between female and male bodies, two reasons arise for refusal:

1. It is impure.
2. It is unnatural during that period.

Opposition based on the impurity of women was a surprise to me. It was mentioned in only two cases, but it is noteworthy that these two cases were women.

In the responses of some, there appeared what may be termed reference to emasculation, and it manifested in narration of the decline of men's status, "Women embody emasculation. Thus the notion that females are lacking creatures and that effemination is an insult, diminution, and debasement. Every interpretation of AlRashid AI-Asabi says that every experience of frustration is an act of emasculation."<sup>9</sup> "Always having our heads beaten all day...As if we don't have enough already without women judging us!"

Many of the respondents referred to Islam as an essential source for their acceptance or refusal of women occupying judiciary positions. This discourse and the practices based on it are ruled by verses that differ entirely from those that rule textual religious discourse, be it official or interpretive. Religious text (AI-Qur'an and Hadith) does not directly enter the framework of popular

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(<sup>8</sup>) Al-Bahi Al-Khowli, "AI-Mar'a", p.131, 132

(<sup>9</sup>)Gorge Tarabishi, "AI-Muthaqafun AI-Arab wa AI- Turath: AI- Tahiil AI-Nafsi ii l'sab Jima'I", The United Kingdom, Oar Riyad AI-Rayis, ] 99] , p.40.

2. Muhammad Kamil Muhammad Abd AI-Nabi, "Istiqlal AI-Qada': Oirasa Muqarana" (The Independence of the Judiciary: An independents Study), PhD thesis, Faculty of Law, Cairo University, Beni Suef Branch, p. 138

3. Al-Bahi Ai-Khawli, "AI-Mara' Bayna Al-Bayt wa AI-Mujtamia'" (Women between the home and society), a report by the Muslim Brotherhood (introduction Hassan AI-Hudaybi, Oar AI-Kitab AI-Arabi, Cairo, publication date missing, p. ] 30, ] 3] )

4. Ibn Taymiya "AI-Fitawi AI-Kubra", Part 4, Chapter on the Judiciary, Beirut, Oar AJ-Ma'arif, date of publication missing, p. 624,625



discourse. If it has a place, it is interpretation that completely transforms it into merely a floating specter or distorted quotations in the popular memory that are often cited out of place. Illiteracy no doubt plays an important role in keeping the religious text beyond the comprehension of the populace. However, the most important factor in distancing the masses from religious text is their total closure to outside problems and their focus on their real every day concerns.

The focal point in women's issues, particularly the possibility of their holding the position of judge, should not remain limited to discussions of jurisprudence, legislation, and the constitution. Such discussions will not influence the decision makers. So as to influence the masses to place pressure on decision makers, we must start with a study of the mass' orientation.

## **The Principle of Equality in Egyptian and International Legislation And Administration of the Law by Women**

**By Dr. Alaa' Al-Muta'al**

The issue of women holding the rank of judge is closely connected to an evaluation of the principle of equality between men and women, specifically in occupying public posts of varying levels. Equality is fundamentally and essentially unrestricted, and thus law should apply to all on an abstract level, without consideration to specific, individual circumstances. However, from a practical perspective this is impossible, as the legal basis comprises rules and stipulations that cannot be fulfilled without exception. Thus equality is relative, in the sense that the legal basis must take note of the circumstances and capacities of its proponents.

The principle of equality between the two sexes did not exist in nations of antiquity, whose principles and dominant thought effected differentiation among people from many perspectives. The majority of ancient regimes and legal systems differentiated between men and women, and viewed women as having an inferior nature, occupying a position subordinate to men, and deriving value from the benefits they provide men. Consideration of women as inferior justified a total deprivation of rights, and thus stripped them of a right to assume public posts of all levels, including sophisticated ranks such as judgeship.

### **The position of the Egyptian legislator on women holding the rank of judge**

The status of women in Pharaonic Egypt was completely different to their status in the majority of ancient regimes. Women held an eminent position among the ancient Egyptians, founded on the firm conviction that women are more complete than men. Evidence of this is found in the exalted positions women held, such as ruling queen, fair judge, and sacred priestess, with acknowledgement that these posts were limited to members of the royal family.

As for the modern age, an examination of the different constitutions of Egypt, be they of the monarchy or the republic, shows them to all lack an explicit text prohibiting women from occupying a judgeship. On the contrary, these constitutions provide for individual rights and freedoms, and further address the principle of equality. However, they differ in providing an explicit text on non-discrimination between sexes.

Article three of the 1923 constitution provided, "Egyptians are equal before the law and in holding civil and political rights. There is no discrimination among Egyptians concerning public duties and obligations on the basis of origin, language, or religion." This provision clarifies that the constitution determined equality among citizens in all domains, including the

occupation of public posts. However, it did not include equality between the sexes among the basic rights, either concerning the right to election or to hold public posts. This notion was perhaps far from the thoughts of the constitutional legislator at the time, and even from the minds of women themselves.

Article 3 1 of the first constitution of the Revolution, issued in 1956, determined that Egyptians are equal before the law, and are equal in rights and duties, there being no differentiation between them on the basis of sex, origin, language, religion, or conviction. Hence for the first time the Egyptian constitution provided for equality between the sexes in rights and public duties, and this implies equality in occupying public posts. The subsequent constitution repeated this, and article 7 of the temporary constitution issued in 1958, article 24 of the temporary constitution issued in 1971, and article 40 of the present constitution issued in 197 1, all provided for the principle of equality without discrimination on the basis of sex, origin, language, or conviction.

The National Labor Charter issued on 30 June 1962, which is equivalent to a declaration of rights, stated that women must be equal to men. It declared that the chains hindering women's free movement must fall, so that they may participate fully and positively in the creation of social life. The Charter also clarified that equality between men and women must fall within the scope of Islamic Law provisions, that society prepare women with work opportunities and conditions, and that these opportunities always protect women and their dignity. This is verified in article 11 of the current constitution, which stipulates, "the state guarantees conciliation between women's duties to the family and their work in society, as well as their equality to men in the arenas of politics, society, culture, and economics, without opposing the provisions of Islamic Law."

As for the laws issued by the judicial body, none of them limit their posts to men, and do not differentiate between men and women in the conditions that must be fulfilled for one to take the rank of judge. Rather, the texts of these laws are general and unrestricted, and thus do not prohibit women from holding judgeships.

It is noteworthy in this regard that the Juvenile Law number 3 1 of 1974, provided for the formation of a juvenile court consisting of a judge aided by two specialist experts, at least one of whom must be a woman, and who must attend court proceedings. However, this does not imply that this law granted women the right to hold the rank of judge in juvenile courts, as these two specialists are not judges but rather are I considered expert assistants to the judge.

Significantly, provisions of the constitutions and laws of the judicial body are one matter, and their application in reality is quite another. Convention and judicial custom fail to recognize the right of women to hold the rank of judge, on the basis that their right to hold public post is not an unrestricted right. This right is subject to administrative evaluation of the qualifications of women to be appointed certain posts according to their experience and characteristics. This evaluation draws on social customs and conceptions of texts and limitation. The administration is not criticized for this evaluation as long as it does not misuse its power, and remains committed to public interest.

### **The position of foreign legislation on women holding the rank of judge**

The position of different legislations and systems on this issue is determined in accordance with the position women hold in that society. The scenarios of the contemporary world indicate that women have gradually widened their scope of participation in public life, and have increased their effective and complete contribution to society's progress and prosperity.

Not all countries have taken the same approach concerning women holding judgeships, and the countries that have applied this, have done so only recently. In France for example, women long remained deprived of civil and political rights, their role being limited to the home and family. However, with the onset of the French Revolution in 1789, the principle of equality became a fundamental principle with indications of freedom. The promulgation of its constitution issued in 1791 stated that all citizens are equal before the law and acceptance for public posts, in accordance with their qualifications, and without any discrimination but that based on their virtues and talents. However, this did not grant women the total right to occupy public posts, as they were prohibited from holding some, including the rank of judge.

At the beginning of this century French women began to intensify their efforts to obtain complete equality between men and women, particularly in public positions. This feminist battle had results, and on 11 April 1946 the Teitgen Law provided, "all French citizens, be they male or female, who meet the conditions stipulated by law to hold the rank of judge may apply." Since this time, French women have had the right to hold the rank of judge, and the proportion of women in the judiciary has risen to 50% of the judges.

In Spain, equality was not established between men and women in the appointing of public posts until 1931 when the constitution of the Republic was issued. Subsequent to this constitution, women have been appointed many important posts, and worked as diplomats, engineers, and attorneys. On 22 June 1961 the Law of Women's Basic and Occupational Rights was issued, which determined equality between men and women to participate in competitions and other forms of being appointed public posts with a few exceptions, among them the rank of judge. The exception concerning judgeships was later abrogated in 1966, yet the number of women who hold the rank of judge in Spain remains very limited. This may be due to Spanish women's preference for other fields that do not require narrow specialization, or it may be due to the examination board which appoints judgeships being predominantly composed of men, which is not in the interest of women or equality between the sexes.

In England the principle of equality was applied completely in a law issued in 1919, thus ending discrimination between citizens, on the basis of sex or other characteristics, in holding public posts. Thus, women were given the right to hold a number of posts previously prohibited to them, have become judges, and have even held posts in the Ministry.

Likewise, article 16 of the Indian constitution issued on 29 November 1949 provided, "equal opportunities are guaranteed to all citizens in matters concerning the appointing of any post in the state. Determination of the incompetence of any citizen or distinction in treatment of a candidate for any post on the mere basis of religion, ethnicity, denomination, sex, origin, place of birth, or place of residence is prohibited."

It is noteworthy that legislation of some other Arab states do not differentiate between men and women in this regard. Chapter three of the constitution of the Kingdom of Morocco, issued in 1962, provides, "men and women are equal in the enjoyment of political rights." Chapter twelve of the same constitution provides, "all citizens may assume public posts if they are equal in the conditions required to obtain these posts." Likewise, chapter thirteen provides, "education and employment are the right of all citizens." These provisions are truly applied in Morocco; there are female judges in all levels of the court system, and the percentage of female judges in the juvenile courts reaches 50%.

The Kuwaiti constitution issued on 11 November 1962, determined this equality in article 29, which provides, "the people are equal in human dignity and before the law in rights and public duties; there is no discrimination between them on the basis of sex, origin, language, or religion."

### **The position of international charters and declarations**

The principle of equality between men and women in holding public posts is found among constitutional principles worldwide. The strongest example of this is the Charter of the United Nations, which was issued on 26 June 1945 and which recorded this principle in articles 13 and 55. Article 13 provides, "the General Assembly produces studies and orders commissions with the intention of aiding the realization of basic human rights and freedoms to the people, without discrimination of sex, language, or religion, and without differentiation between men and women." Article 55 includes, "a desire to accommodate the conditions of stability and prosperity necessary to instate peaceful and friendly relations between nations. . . The United Nations strives to spread respect for basic human rights and freedoms to all throughout the world, without discrimination between men and women."

The principle of equality is originally found in the International Declaration of Human and Citizen Rights, which was issued in France after

its revolution in 1789. The General Assembly of the United Nations affirmed equality in its declaration issued on 10 December 1948, the 21 Islamic of which provided the principle of equality between all people in the right to be employed, "every person has the right to be accepted in a public position in the state of which he is a citizen."

Acknowledgement by an international organization such as the United Nations is considered international recognition of this principle, and thus all states that acknowledge this declaration are considered to have also recognized the principle of equality, even if this is not provided for in their constitutions. In this regard, it is necessary to refer to the accords agreed to by the General Assembly of the United Nations concerning the basic rights of women. It was submitted for ratification on 20 December 1952 and began implementation on 7 July 1954; Egypt ratified it on 8 September 1981. These accords included three primary principles, one of them being the necessity of ensuring the right of women to hold all public posts provided for in the national laws, in equality with men.

The Agreement to Eliminate of all Forms of Discrimination against Women was passed by the United Nations and submitted for ratification on 18 December 1979. It began implementation on 3 September 1981, and Egypt ratified it on 18 September 1981. This agreement clarified that the term "discrimination against women" is the removal of any differentiation or limitation based on sex. It summoned all countries to take all appropriate measures to eradicate discrimination against women in the arenas of education, employment, health care, etc. It also affirmed women's right to be employed, enjoy equal pay opportunities, and the application of a sole standard of selection in employment concerns, without male discrimination.

The first African Women's Parliamentary Conference was convened in Cairo in 1974, and included delegates from 38 countries. This conference issued numerous recommendations, including a recommendation to issue the legislation necessary to implement equality and non-discrimination between the two sexes in education and occupation of posts. The first international conference of women was convened from 19-22 July 1975 and was attended by 8,000 women representing 133 countries and 113 non-governmental organizations. At the conference's conclusion a work document was issued comprising several fundamental principles, including the realization of complete equality between men and women, particularly in holding public posts and at their highest levels.

This was also expressed in article 11 of the International Statement on Justice issued by the international conference convened in Montreal, Canada. It states, "all candidates for the post of judge are to be honorable, competent, and trained in law and its application; they all enjoy equality in entering the

judiciary." Article 12 of the same declaration provided, "selection of judges must take place without discrimination on the basis of ethnicity , color, sex, language, religion, political or other opinions, national or social origin, affluence, or civil status, with the exception of requisite citizenship."

This notion was affirmed in article five of the Basic Principles of Independence of the Judiciary prepared by a committee of experts that assembled in Italy. The article stated that selection of judges to be appointed must take place without discrimination based on sex, color, gender, language, religion, political or other opinion, national or social origin, property, birth, or social status. This article does not contradict the demand that a judge must be a citizen carrying the citizenship of the state he is selected in.



## **Conclusion**

We can conclude from this presentation that the principle of equality between men and women in occupying public posts is oft repeated in many countries of the contemporary world. Furthermore, it has become an international principle since its recognition by the General Assembly of the United Nations in its declaration issued in 1948, that is recognized by nearly all nations.

It must be taken into consideration that implementation of this equality in an unrestricted form is considered an impossible direction from the practical perspective. Unrestricted equality is subject to meeting conditions, and only exists among equals who hold the same legal position and whose personal circumstances resemble one another. It is not fulfilled in application of equality between men and women, as they differ from several standpoints, perhaps the most important of which are their psychological and biological nature. In addition, the requirements and specific nature of some posts prescribe the lack of unrestricted equality between the two sexes.

This overview has established that legislation, be it national or international, confirms the equality of men and women to occupy public posts and that the legislator did not explicitly state the prohibition of women taking the post of judge.

However, in our view, this does not imply consent to women being employed in the judiciary without restriction. There are posts that should be limited to men, as they are abler to bear its burdens and more capable of suffering its hardship. In spite of this, women may hold judgeships in juvenile courts, on the basis that the nature of juvenile problems has a social characteristic that requires an atmosphere of familiarity and security to the juvenile. Women are closer to the heart of young ones and more understanding of their behavior and habits.

Attention must also be given to the religious factor in excluding women from holding judgeships in Islamic countries. The dominant opinion in Islamic jurisprudence is that public powers, including judging among people, are to be held by men and not women. This opinion was supported by the Fatwa Committee of Al-Azhar responsible to the assembly of senior scholars, in a fatwa issued in June 1952.

## **Women Occupying the Rank of Judge: Rulings of the State Council**

**By Essam Al-Islambuli**

The question of appointing women to judiciary posts has been brought before the State Council since its inception, due to its jurisdiction in appealing resolutions that deny women this right. When judging on this matter, the State Council is governed by the principle of equality regarding public posts. Fuliher, the Administrative Judiciary Court has determined that the principle of equality demands neutrality in selection of candidates for a post, as deviation from neutrality is a form of misuse of power. This was determined in ruling no.246 issued by the Administrative Judiciary Court on 24 June 1953.

The court ruled that equality demands non-discrimination between Egyptians in employment; all Egyptians are equal before the law. This ruling stipulated Egyptian citizenship as a condition, but that aside, the constitution provides for equality between all Egyptians to enjoy civil and political rights, and equality in public duties and obligations, without discrimination on the basis of origin, language, or religion. This ruling was issued on 27 December 1939 in case number 80, and has been criticized for not including sex as a category not to be discriminated against. The Administrative Judiciary Court, and the primary court that issued the ruling, was headed by the president of the State Council, Dr. Abd Al-Raziq Al-Sunhuri. The court was joined by Justices Mahmoud Sabir Al-Aqari, Muhammad Abd Al-Salam, Abd Al-Rahman Al-Gabri, and Badawi Hamuda.

The French State Council had determined the principle of equality between men and women in occupying all posts, stating that except in cases in which the facilities demand specific restraints, or which are explicitly determined by law, women have the same civil rights as men in obtaining public posts. This was the official position of the French Judiciary, and in spite of determining the principle of equality between men and women, it provided for an exception in regards to special constraints or legal provisions. The French Civil Service Law subsequently issued in 1942 explicitly stipulated the principle of equality between men and women in occupying public positions. The following question was thus presented before the Egyptian State Council: does the principle of equality demand equality between men and women in all posts?

The first treatment of this issue was taken by the State Council when Dr. Aisha Ratib, Professor of International Law and former Minister of Social Affairs, applied for the post of Assistant Deputy to the State Council while she was pursuing a law degree. The State Council rejected her

application, and appointed a colleague with lower grades than hers. She appealed this decision, yet the State Council rejected the case. The ruling (no.33, year 4) was issued by the secondary court of the Administrative Judiciary Court on 20 February 1952. The court was headed by Justice Ali Al-Sayyid, court attorney, and was joined by Justices Habashi Ibrahim Samri, Sidi Ali Al-Damrawi, Ibrahim Al-Diwani, and Muhammad Dhihni.

The court explained the reasons behind its rule of refusal thus: "There is no dispute in cases other than those in which the power of appraisal in the administration is restricted by a provision of law, an edict, or in accordance with a general organizational precept. Administrative appraisal is otherwise unrestricted, licensed upon selection, and assumes the weight of its decisions and their appropriateness. It is not reviewed by the Administrative Judiciary Court as long as there is no evidence that its decision was based on a misuse of power." The court concluded that "the plaintiffs defense reiterated that appraisal of appropriateness be based on acceptable reasons subject to monitoring by the court. This would ascertain whether the administration surpassed the boundaries of the power of appraisal vested to it." The court saw that this stipulation would preclude the freedom of the administration, and stated that the administrative law is based on there being no means to monitor this power, except should the matter involve the misuse of power.

The court concluded that the restriction of some posts to men, such as those in the State Council, office of the district attorney, or the rank of judge, is not considered a diminution of women's ethical or cultural standing, nor is it in under "Valuation of their talent or high performance, or a bias held against them. This restriction is merely the administration's licensed discernment of appropriateness in appointing posts, based on its appraisal of the circumstances surrounding the situation. Thus the court concluded that such appraisal does not violate the principle of equality from a legal perspective, and therefore need not be monitored, provided that it not misuse power. The plaintiff in this case had offered no evidence of misuse of power."

The Administrative Judiciary Court repeated these very reasons on the occasion of a lawsuit raised by a young woman who had applied to be appointed to the office of public attorney. This case (no. 243/6) was ruled on 23 December 1953 by a court of first instance under the Administrative Judiciary Court, which was headed by Dr. Abd Al-Raziq Al-Sunhuri and joined by Justices Abd Al-Aziz Al-Bablawi, Abd Al-Rahman Nasir, Ali Baghdadi, and Muhammad Abd Al-Nabi. The court ruled against the woman's suit, on the basis of the constitutional principles that determine equality between men and women in rights and duties, and require the application of this equality in employment and positions, and yet which also vest the

administration with the power of appraisal. This power of appraisal allows the administration to determine whether women possess the true qualifications required for employment in a particular position. Should the administration determine that women have fulfilled the qualifications of a position, it would become open to women in complete equality with men.

Furthermore, the court reiterated that women have attained competency in many occupations and positions such as medicine, nursing, education, the Ministry of Social Affairs, the Ministry of Religious Endowments, Probate Court Prosecution, and the Bureau of Land Registry . Women are even preferred to men in these occupations when they have qualifications superior to men. Preference for women in such activity is not considered a violation of equality between men and women but rather is a matter of discernment. The administration must justly appraise whether the time is appropriate for women to assume certain positions and public and administrative posts, taking into consideration social factors, the weight of the surrounding circumstances and environment of the occupations, and limitations and mores set by custom. In addition, the administration may determine whether the time has arrived for women to assume public duties such as military service, which is varied enough that women are qualified to assume portions thereof. The court's appraisal is valid as long as it serves the public interest.

In addition, the court stated that "no matter how administration deals with these cases, it should not be inferred that the administration has determined a general and absolute base that rules women to always be unfit to assume judgeships, the position of public prosecutor, or administration of cases." However, the court concluded that, "the administration has determined in these cases that the time has not arrived for women to assume positions in the administration of cases or in public prosecution. No evidence of arbitrariness or deviation has been shown in this appraisal, and thus may not be appealed. The plaintiff's appeal is denied."

From another perspective, the liberal rulings of Islamic Law on this matter may not be opposed, as Islamic jurisprudence allows Muslim women to assume judgeships should they possess the required qualifications. Kasani's " Al Badai'" (Part 7 p. 3) lists the conditions of qualifications for assuming judgeships, and these conditions do not state that judges must be men. On the contrary, the companion to "Al-Badai'" states that being male is not a condition for assuming any roles as women hold credentials in everything.

### **Observations on the Two Rulings**

The first case concerned application for appointment in the position of Assistant Deputy to the State Council. Thus, the source of decision was the president of the State Council, and appeal should have been viewed by the second court, headed by the council deputy, rather than the first court, headed by the late Abd Al-Raziq Al-Sanhuri. The second case concerned an application for a position in administering government cases or public prosecution. It was thus entrusted to the first court of the Administrative Judiciary Court, headed by the president of the council.

#### **Secondly: The High Administrative Court had not yet been established.**

Thirdly: Although the two cases had the same results, that being the rejection of the lawsuit, and were given similar reasons for rejection, the ruling issued in the second case, by the first court of the Administrative Judiciary Court, confirmed a number of matters. The most important of these matters was that of the prohibition of absolutely preventing women from assuming positions and occupations, as this contravenes the principle of equality. The ruling also confirmed the competency of Egyptian women to assume varied occupations, including the positions of probate court prosecution.

Fourthly: The second ruling also affirmed without a doubt that the texts of Islamic jurisprudence do not object to Muslim women occupying posts of judge if they are qualified to do so. This ruling also presented a condition taken from the companion to AI-Bidai' (being male is not a condition for any positions as women hold credentials in everything.). The conditions stated in AI-Bidai' do not stipulate that judges must be men.

Fifthly: The ruling adjured the administration to heed all considerations and developments in its power of appraisal.

Sixthly: The statements made, particularly in the first case, concerning the unaccountability of administrative appraisal before the monitor of the Judiciary are counter to the regulations of the State Council. No administrative decisions are exempted from judicial monitor except functions of rule.

Seventhly: The two rulings overstepped the role entrusted to administrative judge. Judges are charged with ruling on legitimacy, not appropriateness. The two rulings should have determined whether women being appointed positions contravene the law or the constitution. Instead, the two rulings exceeded all bounds in justifying the action of the administration on the topic of appropriateness. Equality between men and women is realized as long as the necessary legal stipulations for being appointed positions are implemented.

Eighthly: Women have been appointed in many judicial fields, such as administrative prosecution, probate court prosecution, and the State Cases Organization, dealing with land registry and the legal profession. There remains only the State Council, which to a large degree resembles the State Cases Authority. There is no justification to continue to prohibit women to assume the role of judge, particularly as Islamic law does not oppose this.

Ninthly: The two rulings discussed were issued after the issue of the International Declaration of Human Rights in December 1948, the second lance of which prohibits any kind of discrimination based on origin, color, or sex (as well as articles 23 and 21 ). This was followed by the International Agreement for Civil and Political Rights issued in December 1966 (articles 2, 3, and 4) and in effect in Egypt from March 1976. Following this was the International Agreement for Economic, Social, and Cultural Rights issued in December 1966 (article 2) and in effect from January 1976. Finally, this was followed by the Agreement to eradicate all Forms of Discrimination against Women issued in December 1979 and in effect from September 1981 which in its entirety, and palrcularly in article 1,2,3,4, 15, and 23, confirmed the absolute right of equality

It is noteworthy that Islamic law preceded all of these agreements and charters, as it did not place a prohibitive condition in this regard. Practical application of this was witnessed in the era of the Caliph Amr bin Al-Khattab when he appointed a woman the position of accounting in the markets. Al-Mawardi listed the sayings of jurists who permitted women to hold tile rank of judge, Abu Hanifa determined the right of women to judge in matters they are qualified to do so, and Ibn Harir Al- Tabari permitted women to judge in all cases.

## **Scope in Islamic Law for Women Judges: The Condition of Being Male**

**By Dr. Abd Al-Hamid Mayhoub**

### **Islamic jurists have stipulated that judges must be men.**

This position was taken by Imam Malik, Imam Al-Shafa'i, Imam Ahmed, and others. Ibn Jarir said, "being male is a condition and yet women are freely permitted to assume judgeships." Abu Hanifa said, "women may judge except in legal punishment."

Ibn Jarir based allowance for women to hold judgeships on analogy. He said, "women may be muftis and thus may be judges, based on the analogy of rendering judgments to that of rendering Islamic judgments (*fatwa*)."

Abu Hanifa said, "that which women may witness for, they may judge on." Al-Kasani Al-Hanafi noted, "'being male is not a condition for assuming judgeship, as women hold the credentials to judge, however, women may not judge in legal punishment because they have no credentials to do so." According to the Hanafis, judicial qualification is related to credentials.

Of much greater weight is what the Prophet, PBUH, related indicating prohibition. Abu Bakr attested, "when the Prophet, PBUH, learned that the Persians 'ere ruled by a princess he said, 'those who appoint a woman over them will not succeed.'"

This is evidence that women should not hold sovereign power. A nation may not appoint women sovereigns, as avoidance of matters that induce failure is a duty, and this is what the Hadith explicitly indicated.

It has been said that the intended matter in this Hadith is the Grand Imamate. Evidence of this is that the Persian princess assuming the public affairs of the state was the cause for the statement of this Hadith. Furthermore, the term, "their affair" is singular and general. That which embraces all state affairs is the Grand Imamate.

### **In response:**

1. That which is of consequence is the general term, not the specification, according to the legists.
2. Legists conferred that general rulings in any case apply to all individuals of that generalization. For, were a person to say, "my children attended," implies all their children, as if one had said, "so and so came and so forth." Thus this Hadith implies all public authorities of the state. This is as if the Prophet said, "a people who entrusts a woman with the Caliphate, or an Emirate, or a judgeship, or any other public authority, will not succeed." Should the intended meaning be all state affairs, which is only the position of the Caliphate, this would not be in conformity with what the legists have agreed upon concerning the significance of the

general. Thus, the Hadith cannot be interpreted as intending the Caliphate only.

3. The general consensus was that women having judiciary authority is invalid, and their charge of judiciary is a sin. Those who claimed women's right to assume positions in the judiciary after the age of consensus ended have no legal evidence for their opinion. God Almighty said, "But whoso makes a breach with the Messenger after the Guidance has become clear to him, and follows a way other than the believers', him We shall turn over to what he has turned to and We shall roast him in hell- an evil homecoming"
4. The attendance of women in the judiciary council does not conform to the mores of Islam concerning the protection of women, the preservation of their dignity , and the goodness of their reputation. There are men of a]] types in the judiciary council, with morals of all kinds, be they noble or base. Furthermore, the judiciary demands full thought and mental awareness. Women are not fully capable of this, and are too weak to arrive at a decision of refusal or defense, or face the problems and difficulties of judging with sureness and composition. Women are considered to be lacking in religion and intellect.

The Prophet, PBUH, confirmed the shortcoming in women's intellect and religion, with due explanation of the cause of the rule. He said, "what I have seen of shortcomings in the intellect and religion of women affirm the rationality of the sensible man among you." The women said, "what is that, Messenger of God?" He said, "don't you spend nights without praying or fasting?" That is an example of their shortcomings in religion. "Is not the witness of one of you worth half that of a man's witness?" This is due to their shortcomings of women's intellect. This is a natural disposition God Almighty has created women with. The conclusion of this guidance is that women are unfit to assume judgeships.

**Claim: the shortcomings of women, compared to men do not reach the point of justifying the refusal of their sovereignty over men.**

Evidence of this is found in that women are qualified to be witness and manage religious endowments and be guardians of orphans. If women's competency to rule is established, they would be able to assume the administration of justice. Should they be denied sovereignty, this does not require that they be denied assuming judgeships as sovereignty comprises duties beyond the concerns and talents of judging.

This has been responded to thus: denying women's rule in specific powers has not been discussed by anyone. The topic of debate is in women undertaking public authorities in the state. All of this is supported by the saying of God Almighty, "Men are the managers of the affairs of women for



that God has preferred in bounty one of them over another, and for that they have expended of their property." According to a grammatical analysis of the structure of this verse, the meaning is: men have guardianship over women, not the opposite. In other words, men assume guardianship, and are not guarded over. This notion thus requires: It is inappropriate and prohibited for women to assume judicial authority, as this would give women guardianship over men, and this is the opposite of what the Qur'anic verse conveys. In this evidence, it is said that the intended meaning of guardianship is the authority for husbands to discipline their wives.

The Prophet said, PBUH, "a nation will not succeed if a woman rules it." The Fatwa Committee stated, "the Prophet, PBUH, did not intend by this Hadith to merely communicate that nations whose affairs are in the control of women will not succeed. The Prophet's function, PBUH, is to elucidate what is permissible to his community so as to succeed and do good, and so as to avoid evil and loss. Using the Persians as an example, he pointed out bad administration and called for good administration in the Islamic nation. There is no doubt the Hadith is understood to prohibit all women in all ages from assuming any public authority. The Hadith's style supports such generality, as well as the meaning of the prohibition. Such was understood by the Companions of the Prophet, PBUH, and all of the early imams. They were not wont to give exceptions to any women, people, or matters of public concern. They concluded from this Hadith that women may not assume the Grand Imamate, the administration of justice, command of the armies, or other positions of authority. The ruling concluded from this Hadith is the prohibition of women from public authority. It is not a divine ruling that must be obeyed without understanding its wisdom, rather it is a ruling supported by concepts and notions that cannot be overlooked concerning the natural differences between the two human sexes - male and female. The ruling does not depend upon a factor underlying femininity, and which the word "women" symbolizes in the Hadith, but rather femininity itself is the flaw.

It is clear that femininity does not necessarily imply lack of knowledge and cognizance or intellect and sagacity, and thus it is not, in itself, a shortcoming. Reality demonstrates that women have cognizance and an ability to learn like that of men. Indeed, women may excel men in knowledge, intellect, and cognizance, and thus there must be another reason for this ruling. Women, by the exigencies of creation, have an instinctual nature that conforms to the task they were created to fulfil, that being motherhood and child rearing. This may make women especially influenced by emotion. They are also exposed to natural symptoms that repeat over months and years and which weaken their morale and their resolution in forming opinions and sticking to them, as well as the ability to resist and struggle for the sake of these opinions. This matter is not denied by women

themselves, nor is there a lack of realistic examples that indicate that extreme excitement and a tendency towards sympathetic emotion are among the characteristics of women in all their life stages.

Thus the wording of this Hadith indicates prohibition. Many of the Hadith that address the administration of justice indicate through their significance that women are prohibited from assuming judgeships, and that being male is a stipulation for doing so. An example of this is the Prophetic Hadith, "There are three kinds of judges, one in heaven and one in hell. The judge in heaven is a man who knew truth and judged by it. The man who knew truth yet wronged in judgment is in hell, and the man who judged people on ignorance is in hell." Men are mentioned in this Hadith, and thus its meaning indicates the exclusion of women. All Hadith that treat the administration of justice are in the masculine form, and everything found in the feminine form is evidence of prohibition, and thus being male is a stipulation and being female prohibited.

Secondly: A woman's witness is not accepted even if there are a thousand women together so long as there is no man among them. God Almighty called to attention that women are astray and forgetful when He said, "that if one of the two women errs the other will remind her."

Women are lacking intellectually and are subservient to emotion. How then, could they alone determine who deserves execution and who may leave behind small children! Women's emotions are incredibly strong, especially concerning the wives of those who have been sentenced with capital punishment, who will be widowed, and whose children will be orphaned. Women share their pain and their healing, ruled by emotion, are torn, and they may break into sobs. Thus women have functions that conform with their femininity and the fragility of their emotions.

Justice Ahmed Mufawi, may he rest in peace, was a man who spent his life in the judiciary and taught penal law in the School of Islamic law at Al-Azhar University. During one of his lectures I heard him say that a prosecuting attorney once found himself defending a murderer who deserved capital punishment. He was drawn to this by his compassion, for how could someone kill him? The head of the court said to him in private, "I saw a driving force behind your compassion. Remember my boy, that this man sentenced with capital punishment killed someone and orphaned children and widowed a wife and split up a happy family. Doesn't someone who has committed all this deserve to die?" If this situation occurred with a man, what would happen with women who are overcome by emotional viewpoints? God created them thus, and this is not a fault, but rather enables them to continue in a wide variety of functions that require extra emotion.

Furthermore, women do not have many opinions due to their lack of experience in life. When women get involved with life they do so with caution, whereas men throw themselves into the vastness of life with all its battles to affirm their presence and success without being timid or apprehensive. It is said, "Desires are not obtained by wishing, the world is taken by force."

Women are not qualified to attend the meetings of men. The judiciary council is an assembly of opposing parties and men, and thus full awareness, thought and intellect are required.

Thus, neither the Prophet, PBUH, nor any of the Caliphs or their successors have entrusted women with the administration of justice or the governance of a country. This indicates that women are unfit for the Grand Imamate, the governance of countries, and judiciary authority.

Just as women may not be imams for men, they may not be judges, as the judiciary is to the state what the imamate is in prayer. Thus being indisputably male is a stipulation. Hermaphrodites, like women, are not considered fit to assume judgeships.

**Claim: Evidence that being male is not an absolute stipulation, neither for legal punishment nor requital, nor any other issue.**

Firstly, everything is initially permissible, given that no evidence for its prohibition is raised. Thus, everyone who is fit to judge in a lawsuit may administer justice. Women are capable and fit to judge lawsuits; there is no objection to that.

But there is a consideration in response to this point. While women assuming judgeships is not precluded, judging in lawsuits is not completely feasible to women. Without difficulty, due to their being driven by compassion, their natural shortcomings, and the many factors that affect them over the course of time such as nursing infants. The stages of life affect women more than men, and this influences their comprehension of arguments and the formation of sound rulings.

**Claim: Women were not judges in the Grand Imamate, based solely on an objection to their femininity .**

Abu Bakr bin Al-Arabi related a debate on this issue between the judge Abu Bakr bin Al Tayyib, Al-Maliki and Abu-Faraj Ibn Tarar, a Shafi'i Shaykh in Baghdad debated the topic in the Sultan's Supreme Council room. They concluded women should be universally prohibited from being judges.

Abu Al-Faraj Ibn Tarar said proof women may judge is that the rulings must include the implementation of rulings, the listening of evidence, and judging between opponents, and this may be done by women as well as men.

The Judge Abu Bakr opposed him and refuted his speech using the Grand Imamate, the goal of which is the protection of ports and the management of affairs. Again, both women and men are capable of doing this.

Abu Bakr bin Al-Arabi opposed what the two highly respected debaters said. He claimed their talk meant nothing; it was not feasible for women to attend assemblies and mix with men, and confer with them as an equal. If they were girls it would be forbidden to look at them or pay heed to their speech, and if they were married women, they could not convene with men and mix with them in the assembly, nor be a debater for them. Those who conceive of this or believe in it will not succeed.

According to Ibn Al-Arabi, if the woman was very young, her speech and appearance would invite temptation to some of the men, and thus the jurists would not allow her to enter the mosque to pray. If she were aged, she would not be strong enough for the men's assemblies except with great difficulty. She would have to pull herself together, for she will have significantly weakened over the years. No doubt her comprehension will have weakened, as well as her awareness in listening and judging.

Shaykh Abu Ishaq AI-Shirazi says: Women are prohibited from convening with men, as it is feared they will be tempted by them. These were the final words on the matter.

**Claim: women may issue legal opinions, then by analogy, they may judge.**

This analogy is not sound because issuing legal opinions differs from administering justice and departs from it on two issues. The first: Legal opinion is not forced upon the querying party; it is information that has no compulsion. This differs from arbitration, which is compulsory to the subject parties. The administration of justice is the notification of a legal ruling without compulsion. The administration of justice is an authority; rendering legal opinions is not.

**Claim: women may administer justice by analogy with accounting.**

It is related that Amr bin Al-Khattab, may God be pleased with him, appointed a woman named Umm AI-Shifaa' to account the market. Thus women may administer justice as each of these are public powers.

This has been opposed with the claim that his tale concerning Amr, may God be pleased with him, is not true. Abu Bakr AI-Arabi claimed the anecdote was invalid and should be ignored.

He supports that statement with two facts. The first: It is not possible for Amr, may God be pleased with him, to act counter to what has been

stated in Hadith, whose veracity has been proven. The Prophet, PBUH, said, "A nation that appoints a woman over it will not succeed." The second: Amr, may God be pleased with him, was the originator of the veil in Islam. He suggested it to the Prophet, PBUH, for his womenfolk. A verse was then revealed that sanctioned what Amr's suggestion and turning it into legislation. It is impossible that he would then contradict his own opinion and appoint a woman in the marketplace to spend her entire day mixing and jostling with men, blatantly contravene the Qur'an and Sunna.

**Claim: administration has been approved by analogy with the marital home.**

The Prophet, PBUH, acknowledged that women have authority in their husband's homes, and carry out its administration and management of its general affairs. The Prophet, PBUH, said, "women are the keepers of their husband's homes and are responsible for their children." This would indicate that women are qualified for all authorities by analogy, but the analogy is not sound because the Hadith of the Prophet, PBUH, acknowledged a specific authority for women, that being their husband's homes and the management of their affairs. As for the administration of justice, this is a public power and thus it is not a sound analogy. The soundness of appointing women authority does not enjoin the soundness of appointing a woman public authority.

**Claim: the Hanafi school permits women to be appointed judges except in punishment and requital.**

They say judging is like witnessing. Everything women are qualified to be witness for, they may judge on.

There is no doubt that this is not sound, due to the difference between authority in witness and authority in judging; the two authorities cannot be equalized, as that would necessitate permitting the common ignorant person to be appointed if his witness is accepted.

The Fatwa Committee of Al-Azhar said that there are two kinds of authority, public authority and private authority. Public authority is a coercive power in affairs of the masses; such as the power to judge in lawsuits and implement rulings, and supervise those who undertake the implementation.

Private authority is the authority by which one treats private matters such as guardianship over minors, authority over finances, and management of religious endowments.

Islamic Law has opened this field of private authority for women. Women possess the same private authority as men as well, i.e. the authority to handle their own private affairs, such as handling their finances by selling, donating, pawning, endorsing, and so on. Neither their husbands nor any member of their families share this right. Islamic Law provided women with all this, in addition to guidance to preserve their dignity and protect their standing.

As for public authorities, Islamic Law limits them to men if they fulfill specific conditions. This has been applied since the dawn of Islam and to this day. There is no proof that any public authority has been appointed to women, either individually or with other men, in spite of there being many distinguished women in the first age. Many of these women were greatly

honored as the mothers of the believers. Although there were many occasions for women to participate with men in public concerns, women were not requested to participate in any of the public authorities. If there had been justification in a book or in the Sunna, its implementation would not have been continually neglected by men and women.

Upon the Prophet's demise, PBUH, there was a great deal of dissent concerning the selection of a Caliph to take his place. After deliberation, Abu Bakr was chosen and pledged allegiance to, followed by a public pledge of allegiance in the mosque. Women neither participated with men in the deliberation nor in the public pledge of allegiance, and they were not invited to do so either.

Of all the consultative assemblies held by the Prophet, PBUH, his Companions, the rightly-guided Caliphs and their brethren concerning general affairs, women were neither invited to nor attended any of them.

Some women are entrusted with occupations such as teaching girls and children, and practicing medicine and nursing in the treatment and care of women. These occupations and their like do not fall among the public authorities forbidden to women, which comprise the power of governance and coercion.

We conclude that the school of the masses carries the most weight, and its evidence supports prohibiting women from assuming judicial authority. This conforms with the foundations of Islamic Law and its branches, as well as with the work of the Prophetic era, the era of the Companions, and the era of the Followers, all of which are closer to the era of divine inspiration. Without doubt, they were the most cognizant of the secrets of Islamic Law and the intended meaning of the Revelation.

Consensus was held on this until dispute appeared, whose evidence is found to be lacking upon examination and discussion, without any discrimination to a particular idea. The legal evidence is the basis we consider and are committed to.

Reality supports this school. For example, the Hanafis claim the license of appointing women except for legal punishment and requital. This is written in their books that are based on the school.

However, in practical reality they do not appear convinced of this opinion. The Hanafis II' held at one time authority over appointing judges, and in most ages the head of judges, was Hanafi and entrusted with appointing judges. Furthermore, the judiciary was based on the Hanafi school. However, not one woman was ever appointed judge in any of the Islamic countries, although there were intellectual women learned in the legal sciences and qualified to judge, especially as interpretive effort () was not required.

If this carries significance, it is that those who state the permissibility of women being appointed favor the judicial evidence of the majority that women may not be appointed judges.

Justice Jamal Al-Marsafawi defends true believers and refutes their saying that being male is not a stipulation. He stated in his research: being male is a stipulation.

Some have misunderstood the Hanafi school and have attributed to them that women may be appointed judges other than for punishment and requital. A judge issued a ruling on this error of this attribution and he said this understanding is incorrect.

We reply that only the Hanafi legists stated this; it was not attributed to them. The word "attributed" invites speculation of this correction - is it true or a saying of true believers? The senior Hanafi legists state that there is no stipulation, and in his explanation is this statement, "being male is not a stipulation except for judging in legal punishment and homicide cases. Women may judge in everything except these two." This does not require explanation or commensally as it is clear that being male is not a stipulation except in the cases mentioned. The matter became even more clear when he said, "thus women judge."

Al-Kasani Al-Hanafi says: Being male is not a stipulation in appointing judges, as women have credentials in judging with the exception of legal punishment and requital, as they have no credentials for that. Qualifications for the administration of justice are found in credentials. He says concerning judging: Women are qualified to be appointed judge in that which they are qualified to act as witness. The statements of the legist Al-Kasani Al-Hanafi are clear in that being male is not a stipulation.

In the commentary of Ibn Abidin: Those qualified for administering justice are those qualified for witnessing. According to the Hanafis the crucial factor for judging is qualification in witnessing. As long as women's witness is accepted for some concerns, they may assume judgeships concerning those same matters.

The origin of the misunderstanding of the Hanafi school is ascribed to a phrase that appeared in "Al-Hadaya wa Al-Fath wa Al-Inaya". This text states: "The judging of women is permitted for everything except legal punishment and requital." Some understood the term "judging" to imply appointment and thus implied that women may be appointed judges. Others, such as Justice Al-Marsafawi, understood that the term "Judging" implies jurisdiction. As jurisdiction and its implementation is an element of being appointed judge, its permissibility entails permissibility of women being appointed judges.



He then stated these concepts are wrong. The intended meaning of judging in this statement is not appointing. Appointing is the function of the commissioner, and judging is the function of the judge. They are different and do not imply one another, just as sanction to jurisdiction and implementation does not require sanction to be appointed. It is possible that women being appointed is prohibited.

We ask: How can one not imply the other? This is astonishing. Judging bespeaks appointment as the commissioner has assigned someone to this function. If it were said that a judge has come to this town, that implies that the Imam appointed him and sent him, and thus he has jurisdiction. There is no difference between appointing and judging, as judging is the result of appointing. Who differentiates between something and its result?

Sanction to judge and implement judgment does not require sanction to be appointed. Legal evidence has confirmed that women may not be appointed. All this is based upon a statement in "Al-Hadaya wa Al-Fath wa Al-Inaya". This statement is: "The judging of women is permitted in everything except legal punishment and requital." He wants to say that the permissibility referred to in the statement is not that of appointing but rather of judging and implementing judgment.

He further wishes to state that sanction to judge does not require sanction to be approved. He based his speech on the first part of the statement. We say: We grant him that if the text is as he refers to it. However this statement is not found in "Al Hadaya" or "Fath AI-Qadir" or in "Inaya". Thus the foundations and deductions on which he based his statement, have collapsed. Everything he said, and his assumption of the scholars' misunderstanding is baseless and founded on a source that does not exist. What was actually stated in "AI-Hadaya" is: One may not be appointed a judge until meeting the conditions of credentials and being qualified for interpretive effort (*ijtihad*).

In "Fath AI-Qadir": "Everyone who is qualified to witness is qualified to judge; what is stipulated for qualification to witness is stipulated for qualification to judge." It then continues to treat the topic of the unrighteous. In "AI-Inaya": "Being male is not a stipulation except for judging in legal punishment and homicide cases. Women may judge in everything except these." It then continues to treat the unrighteous. The statement that Justice AI-Marsafawi mentioned as being in the text is not found.

Perhaps the judge, and God knows best, understood the phrase, "and thus judges" in the mentioned book "AI-Hadaya", "and thus judges in everything except these two fields," as implying permissibility. He then based his statement on what he understood. We do not say that he misunderstood" but rather the phrase does not imply permissibility but rather

duty . Those who assume judgeships must judge between people; there is a difference between permissibility and obligation. Disregarding permissibility is not punished, but disregarding obligation is.

In conclusion, women should not be judges. As for the soundness of the Abu Hanafi's understanding, nothing can be proven except that Hanafi legists *said* that being male is not a stipulation.

As for all my arguments, I desire only what is right and proper. God is the guide to the straight path.

## **Islamic Law and Permissibility of Women Being Judges**

**By AI Bayoumi Abdou Bayoumi**

Before we look into this issue from the legal and Islamic Law points of view, let us account for Islam's position on women. Although Islam establishes women's main functions are motherhood and marital duties, it does not turn a deaf ear to their other responsibilities in society. These include learning and working, as approved by Prophet Mohamed.

At present, women have access to a high degree of education. They have joined vocations like university professors, physicians and engineers. There are even women lawyers, some winning widespread professional acclaim and recognition in State Council cases. There is female representation in the Administrative Prosecution. Still, they have not yet managed to enter the mainstream judiciary or the administrative judiciary. They still cannot be judges.

We should not, however, be like the West and use women up in different professions in a way that renders them incapable of performing their duties as mothers. Their work should not stand between them and the performance of these sacred duties, the pinnacle of their joy and femininity.

On the other hand, we are against people who claim women should not work unless there is a pressing need (this stems from the Islamic Law principle that necessity sets its own rules, e.g. one could eat an unclean animal rather than die.) Women's work is acceptable in its own right.

There must be equilibrium between women's duties and their careers.

### **Women and the judiciary:**

Islamic Jurists have set out a number of conditions that must be met for anyone to become a judge. There is disagreement on some conditions. Being a man is a common, although not universal, condition.

In medieval Islam, only once is a woman recorded as becoming a judge. There is no mention of the issue in the Qur'an and *Sunna* (Prophetic traditions) - a fact that prompted jurists to rely on independent interpretations. Many differences have ensued.

I, and the people who believe women should be able to enter the judicial profession, cannot ascribe our views to the need to keep abreast of modern times. I cannot try to interpret the Qur'an accordingly in order to show the validity of my view, because God's Islamic Law was not meant to be subjected to people's whims. It sets rules for people to follow.

Most jurists believe women must be categorically denied judicial rank. Others ascribe to them full rights.

The Hanbali and Shafii schools of jurisprudence ban women from being judges unless there is pressing need. The Maliki school is unconditionally against women being judges. Ibn Al Qasem, however, believes they should be on equal footing. Shiites, like the Maliki, do not allow women to be judges at all.

Most Hanafi proponents believe women can enter the judiciary, as long as they rule on financial issues. They are not to be given discretion in cases of legal punishment, e.g. murder .

Some jurists do not believe in gender restrictions. Notable examples: Ibn Gareer AITabary, AI-Hassan AI-Basry and Ibn Al-Qasem, as well as the entire Khawarej school.

A number of reputable modern jurists believe women should be granted the right to be judges, including Dr Mohamed Said AI-Bouty, Yusef AI-Qaradawy, Abdel Karim Zedan, Samir Alia, AI-Bayoumy Mohamed, Abdel Halim Abu Shaqa.

The Official Gazette, the official registrar of Egyptian laws and regulations, does not restrict judicial posts by gender.

### **Refutation of Claims Women be Banned from the Judiciary:**

#### *1. The power of men*

Proponents of denying women a foothold in the judiciary believe the Qur'an supports their view. "Men are more powerful than women," they cite from its pages. More realistically, men's power is restricted to their domestic role as breadwinner. It does not incorporate non-domestic issues such as the judiciary.

Proponents of gender restrictions also cite the Suma. The Hadith (Prophetic Tradition) says, "The people who put a woman in charge of them will never be successful." But this Hadith does not refer to the judiciary. It is about the head of state. Being a judge means simply to be just and have power, and women can do that as well as men.

In more practical terms, if women made less efficient judges than men, the various countries that have female judges would not have taken such a step if they were serious about justice. The judiciary should not be considered akin to the head of state. Heads of state do not have any jurisdiction over judges.

#### *2. Consensus*

Detractors of women judges point out the consensus of Islamic legists on women's unsuitability for judgeships in the Umma. In] 952 the Fatwa Council of AI Azhar issued the following ruling: "There is general consensus that women are not suitable for judicial authority and that it is sinful to charge her with such, The matter is not open for interpretation unless binding

proof is had, for there is consensus on the matter."

Imam Al Mawardi and Shadh Ibn Garir Al Tabiri ruled women were allowed to be judges. However, they left us no argument to reconsider the issue. We simply have no Idea how Ibn Garir Al Tabiri, Ibn Al Qasem, Al Hassan Al Basri, Ibn Hazem, or the entire Hanafi school came to the conclusion without precedent. For that matter, the Khawarij empowered women in every part of the judiciary .

The position of consensus can be reassessed. The large number of opinions alone suffices to look at the consensus on the issue again. Increasing the scope of the consensus has never won widespread acceptance. Imams Shafii and Ahmed rejected widening or constraining the ruling of the consensus, leaving it as an issue 'religiously accepted as true'. Imam Ahmed suggested legists admit in such cases 'I know no one who disagrees with such and such.'

The kind of consensus that allows for no differences is a 'sound' consensus, derived logically from an unchanging law or ruling.

### *3, The sovereignty of marriage vs. the sovereignty of the law*

Detractors of women judges also argue that women do not have custody over themselves in marriage, so how could they have custody over the marriages of others as judges?

The reply is that the matter is truly a cause for division in the ranks of the legists. Abu Hanifa and others that allow women to marry as they wish also allow them to marry others with vested authority and consider it lawful. Therefore, any woman who attains the rank of judge has, by virtue of that fact, a high degree of knowledge on rulings. As a judge, she may order divorces and marriages even though she does not have that right as a wife. But for that matter, no ordinary man may document the marriage of others or order another's wife to be divorced. This is a right only unto judges.

### *4. Mental weakness of women*

This is a huge topic. Detractors of women judges claim judges must be wise, upstanding, and intelligent, while women are substandard in these. God says, "but if there are not two men, then one man and two women from among those whom you choose to be witnesses, so that if one of the two errs, the second of the two may remind the other." (The Cow, 282)

Women's religious and mental frailty is based upon the true saying of the Prophet regarding women's testimony. The inadequacy of women as judges is based upon their lack as witnesses,

**Saad AI Khidri said:**

"God's prophet went out on the feast of Ramadan to the Mosque. When he happened upon the women, he said, 'O, women of the world, I have never seen a gender so lacking in religion and intelligence, you drive serious men crazy.' They said, 'How are we lacking in religion and intelligence?' He responded, 'Is not the witness of a woman half that of a man?' They answered, 'Yes.' So he said, 'That is the lack in your intelligence, as for religion, do you not pray or fast on your period?' They responded, 'Yes.' So he said, 'That is the lack in your religion.'"

We respond that "mental faults" are not a mental incapacity. It is not foolishness nor insanity. That would be impossible, because women are given responsibility over their legitimate expenses like men.

Neither does mental lack refer to retardation, as psychologists refer to it. That term has no bearing on our subject here. Rather, it refers to those who have failed to develop mature, mental faculties. It is linked to physical or mental defects and includes an inability to adapt, mature mentally, learn or fit in socially.

So mental faults do not detract from women's mental capacities nor their ability to take responsibility for those many things they have been charged with, like raising children. These responsibilities and others - indeed our children - could not be entrusted to stupid, religionless people.

Women do not lack intelligence, rather they lack rationality, comprehension, the ability to manage and efficiency. If they lacked intelligence, they could not oversee their own finances nor transact in full freedom as is their lawful right.

This is all to say, that there is no denying women intelligence nor her ability to remember, as some have done. As for the faults in a woman's testimony, it should be mentioned first that women are accepted as conveyors of the Prophet's sayings, or Suma. Both conveying the Suma and giving testimony is the relation of factual events.

Giving testimony is based upon certainty, not upon surmising. As the Hadith says, "If you see the sun, bear witness to God or say nothing." As for the rulings of Islamic Law and their relation, they require only rulings based upon a preponderance of evidence and not pure certainty, as opposed to testifying. The work of judge is the relation or conveying of rulings that already exist. As such, it is similar to the office of Mufti, which women are allowed to attain by consensus.

### **A question: Does bearing witness imply powers?**

Legitimate powers are based upon receiving testimony and executing justice on third parties. Private powers are the ability to carry out one's will in a private, limited sphere, whereas public powers are the authority over an unlimited number.

Bearing witness is a public announcement. Legally, it is a binding oath on behalf of a party against another party, whether this be a right of God or humans, based upon certain knowledge and not reckoning. Once upon a day, testimony was the most powerful means of establishing fact. It was practically the basis for ruling in cases, verifying events, or so forth in transactions, legal punishments, etc. Therefore, legists were supremely concerned with the issue of testimony in order to ascertain the legitimacy of cases and determine them.

Oral testimony, however, has lost ground to modern forensic techniques. No single piece of evidence is relied upon to determine a case. Bearing witness does not even constitute a determining factor in deciding a case. For that reason, bearing witness is no longer a sound measurement of public power because public powers now rely on other means. We can say confidently that inadequacy of being a witness no longer implies inadequacy of assuming judgeship.

### **5. *Women's emotions***

Many argue women are unsuited to be judges because they are possessed of more powerful emotions than men and are more easily carried away by them.

But the actual facts refute this. Women around the world have been appointed judges. They have succeeded as a matter of fact.

We can conclude that prevailing conditions disallowing woman judges stem from the prevalence of common law and traditions in the judiciary in spite of the presence of voices, ancient and modern, contrariwise. It is upon researchers and those who seek truth to distinguish between tradition and Islamic legal texts without mixing them. It is illogical to link texts with traditions.

### **Carrying Out the Claims of Those who Allow Women Judges:**

1. "If you judge between people then do so justly," said one legist. The counsel applies to both men and women.
2. As the legists' consensus allows women to be muftis, then the judiciary is also suitable. Women are able to gather information and rule accordingly. Imam Al Qura'fi says, "Delivering frontal legal opinions and determining cases is simply making the rule of God known."
3. The goal of the judiciary is to decide justly between litigants and

apportioning each side their due. Ibn Rushd said, "Those who believe women may judge believe that whosoever is decisive is able, except for the Grand Imamate that consensus has reserved [for men]."

4. Samra, the daughter of Nahil AI Assadiya, took charge of accounting in Mecca in the time of the Prophet. Accounting was a branch of the judiciary, and she was given the ability to execute her judgments immediately with a whip.

The above evidence should demonstrate the tenuousness of prohibiting women from the judiciary from an Islamic law standpoint and the preponderance of evidence allowing them.

As for the view of secular law on the matter, I know of no legal text in Egypt that prohibits women from being judges. The constitution declares that "Citizens are equal before the law, without prejudice based on gender, religion..."

All restrictions to women entering the judiciary full force are a product of the influence given to tradition and common law. It is incumbent upon us to distinguish between tradition and texts, without mingling them.

Should I have erred in these arguments, let God reward me for my honest attempt to find the truth. Should I have been correct, let me be twice recompensed.



## **Recommendations**

The majority of those present at the ACIJLP's Conference on Women Obtaining Judgeships, although by no means unanimous, concluded the following:

The Ministry of Justice's silence on the issue constitutes a violation of the principle of equality, constitutional precepts and international treaty obligations of the state.

Discrimination violates the International Covenant on Civil and Political Rights, the International Convention against all Forms of Discrimination against Women, and the UN Basic Principles on the Independence of the Judiciary, all of which Egypt is party to.

We call upon the Ministry of Justice to take immediate steps to appoint women to the Egyptian judiciary.

***Nasser Amin***

## **Closing**

**By Dr. Mona Makram Obeid**

In spite of the state's continuation to adopt women's issues, opponents wearing "religious" cloaks have often become excessive in their measures, challenging the state through peaceful and aggressive means. Women have thus remained targeted and marginalized as a preliminary step towards their total subjugation and the abrogation of their gains made over the last two centuries.

The marginality of women and the violation of their rights are rooted in social and cultural factors, and thus the methods of overcoming such circumstances are found first and foremost in policy. It is hence necessity that non-governmental organizations and civil society, particularly feminist organizations, determine a bold and incursive strategy based on an enlightened alliance with the state.

The most important requirement of such an approach is the increase of women's participation in public life through the power granted to them by the constitution and the law. Further, serious thought must be given to constitutional amendments that would provide for a fair representation of women in all popular and elected assemblies such as the parliament, the Shura, local councils, etc. The presence of women in these assemblies would bring a decisive halt to the goals of the opposition that threaten the modern state of Egypt, which considers women to be full citizens and one of its fundamental supports. This would open the doors of the judiciary to women to hold positions equal to those of men. Egyptian women are equally as competent as men in this field, and are equal to their peers in Tunisia, Pakistan, Turkey, and Iran, not to mention American women who now hold the position of judge of the constitutional court. There is no justification to continue prohibiting Egyptian women from occupying judgeships, especially as this does not conflict with the rulings of Islamic Law.

Egyptian women are the forefront of progress in the twenty-first century, as expressed by the sign that Egyptian women raised before the first representative parliament in 1924: 'educate your daughters and respect the rights of your women for women are the measure of a community's progress'. More than seventy years later, we are in dire need of affirming these basic human demands.