

# Comparative analysis of Women Judging in Islamic Jurisprudence and Sunnis

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**ABSTRACT:** The purpose of this research is the review of inheritance of women in Imamate and Sunni jurisprudence. This research comprises of four sections: the first section of the study is the general overview of the research which is the definition, explanation and subject matter of the research, review of literature, main and secondary research questions, research methodology, key words (inheritance, jurisprudence, wife, Imamate and Sunni). This research try to answer these questions: conditions of wife inheritance, the properties which wife can get inheritance, difference between wives. Based on research hypothesis, in Islam women like men have the right of inheritance. But it depends on terms of inheritance and the type of property. In this research, referring to the books and literature, after a general overview, as outlined. Bases on the evidence of wife inheritance have been studies. In next section, conditions of wife inheritance and its obstacle with different topics such as: the existence of clot wed couples, keeping the relationship till death, permanent marriage, wife inheritance, non-prohibition of the wife from inheritance which is essential to inherit has also been investigated. Later we discussed the different views and opinion regarding the issue of wife inheritance and her exclusion from inheriting to some property of the husband, which coordinates from Imamate jurisprudence. Each of the heirs entitles inheritance has a share of the properties. The Quran and the verses which determine the inheritance of wife from her husband estates like expression of people inheritance and state that the wife has a portion also the right to have her share from the husband assets and properties. Quran: in the same statements says: The Sunni jurist with regard to this verses argues that the wife has the right to have share of husband assets. Majority of Shia jurists excludes wife inheriting some properties such as land, buildings. Sheikh Tooi in his books says: wife has no share from building and lands instead the bricks and woods values to be estimated and wife share is to be paid to her. Majority of the jurist objected this statement and argued that "the wife inherits the entire property. Our reason is the narratives of Imamate consensus. "Seyed Morteza in his book Entesar quoted that deprivation of wife from the some assets especially land is only in Imamate.

**Keywords:** Inheritance, jurisprudence, wife, Imamate and Sunni.

## INTRODUCTION

Judgment has prominent and special position in Islam law and for this purpose, special jurisprudence books. Judgment status is important and very responsible. On one hand judge duty is adjustment of general law on detailed cases. Doing this duty wasn't simple and easy regarding various events and persons and subjected to errors personal moral and spiritual risks have always threaten judge and may fall judge from honor to lowliness famous jurists believe that only men can judge in contract some believe that woman can also judge.

The under-representation of women in judicial office in many countries<sup>1</sup> has led to a range of rationales for their increased representation. These rationales include equality of opportunity, representativeness, and, most recently, the need for diversity. Some of these rationales are based on broader arguments favoring, for instance, democratic legitimacy or enhancement of public trust and confidence in the judiciary. It has also been argued that women will improve justice by judging differently from men, by bringing a different voice, perhaps even changing the position of women in law more generally. There has been little attempt, however, to work through the relationship between these

arguments, some of which bear different theoretical underpinnings.<sup>2</sup> Similarly, there has been little academic attempt systematically to survey the views of women judges about rationales for reform of the system of appointments. Nonetheless, significant reforms of the processes, procedures, and criteria for appointment have been implemented in the United Kingdom and elsewhere. Most of these reforms are based on equal opportunities measures. Few have engaged with the structural or symbolic discriminations facing women. As the momentum develops for diversity in judicial office nationally and at the international level,<sup>3</sup> it will become increasingly important to clarify the relationship between these rationales, with particular reference to the experience of those under-represented groups. This article notes, however, that these rationales do not address the symbolic exclusion of women from traditional notions of judging and judicial authority. These notions are based primarily on male-centered perspectives, norms, and images, which are linked to historic broader structural exclusion of women from judicial office. The article argues, with reference both to the existing literature and data from a small survey of women judges, that this traditionally under-represented group appears to offer additional understandings of the role of judging which challenge traditional notions of judging and judicial authority. It is suggested that such understandings, which emphasize the distinctiveness of background and experience (contrapuntal to the assumed neutrality of judging), can enhance the diversity rationale for more women (and indeed other under-represented groups) being appointed to judicial office.

### **RATIONALES FOR MORE WOMEN JUDGES**

An early rationale for greater representation in the United States of America was that women judges would 'improve the legal status of women', a hope that was not fully realized.<sup>4</sup> Subsequently, a different argument emerged, energized by Carol Gilligan's thesis that women bring an ethic of care to issues of justice in contrast to the rights-based approach of men.<sup>5</sup> One of the better-known judicial views in support of this thesis came in 1990 with the paper by Justice Bertha Wilson, of the Supreme Court of Canada, 'Will Women Judges Really Make a Difference?'<sup>6</sup> While there has been some rehabilitation of Gilligan's thesis,<sup>7</sup> her approach has sustained heavy criticism.<sup>8</sup> Former Justice Sandra Day O'Connor of the US Supreme Court regarded the very question of whether women would judge differently as both 'dangerous and unanswerable'.<sup>9</sup> The key objections – with which this author agrees – are that such an argument risks reifying certain 'feminine' ideals perceived as unique to women, and fails to account for significant differences between women based, for example, on sexual orientation, class, caste, and race. A further objection is that it does not account for the constraints on women of legal professional socialization. Even those surveys which attempt to detect difference, struggle, perhaps unsurprisingly, to support the claim, and, indeed, some negate the assertion.

#### ***Judgment nature and concept:***

Literally judgment has various meanings like order obligatory command creation, deed completion separation and some considered ten meanings for them and for each one, they state definitions (tbn mancor, 1408, najafi 1266). In jurisprudence different definitions have been presented. Some jurists considered vilayet and count it as the main definitions of judgment.

First martyr states it includes legal vilayet on order and public interest, before Imam (first Martyr 1417) of course the most important critics that if judgment means legal vilayet on order it will be descriptive and creditable not deed while jurists know judgment as obligatory recommended and sometimes forbidden and the nature of one deed is to describe with obligatory recommended forbidden not vilayet that is just descriptive and creditable (yazdi taba tabaei 1418).

The other probability about the concept and nature of judgment is that judgment includes solving hostility and settling conflict the third probability is that judgment is solving hostility from appointed person the best definition is that includes order between people at moment of conflict and solving hostility between them from competent persons.

#### ***Juridical base of man judge:***

Now we must study this problem that what was base of man judge at the time of sheikh?

Is there credit hadith that isn't available?

Has It been Induced From .....? Or are some acceptable and acrudl based on this Condition? In Fact, has this condition been judgment condition or Vilayer Candition?

It seems that Condition (being man) at first, has been Vilayet Condition and gradually has been judgment condition, because jurists believe that vilayet states is equal to judgment status and this issue has been caused to know same the conditions and features of bath status. For example, absolute religious leadership in guardian has been condition and gradually this condition transfers to judge, because jurists have known judgment as dignity of society guciyet guardian. Sheikh Mofid in Maghnaei and sheikh toosi in Nahayeh, explained this condition for judge

and other jurists also followed them and mentioned this condition for judge. In fact, separation between judgment and Vila yet haven't been conceptualize outside view and decree, of imamate jurists.

In this section, we speak that where was the origin of decree on forbidding women judgment and what time is it in jure and dido ullema have assembly? People that say, it was an assembly :which period did they consider for consensus and coordination of jurists? Al- Reza jurisprudence.

In Al-Raza juris prudence, women judgeneut hasn't been expressed.

Sheikh Sodogh (381 Hejra) in Al-Maqhna and Al-Hedayeh, women judgement hasn't been discussed.

In Bad ghazi also, we haven't observed a hadith, to far bid women judgment and so on.

Sunnite view .

Sunnite ulemas-except Ibo Hanifeh and Ibn jarir tabari prononounced decree to forbid woman judgment.

It seems that some conditions and characteristics of judge ,like (being man) first has been discussed in Sunnite society and then entered to shilte junsprudence. As said, first time, sheike has brought in caliph and also, their argument style has been repeated in some shilte books we can say some of them has been.

### **Judge Abo yahya**

Judge Abo yahya writes:

Judgment isn't allowed except for some one that has below conditions Man, mature, wise, free, Muslim, just, healthy from eye and ear and scholar.

But being man condition is for this reason that woman hasn't the ideal of accepting ruling and testimony.

### **Abo Hanifeh**

Abo Hanifeh says: woman con testify in each case, can Judge and their judgment isn't allowed in other cases.

But Ibn jarir tabari speak is rare decree that he allow woman judgment in all cases and hasn't been attend to decree that its assembly is rejected God says(continuity of woman life is based on men).it means that men are responsible for woman in wisdom and thought, then it isn't allowable that women are dominant on men .

### **Conclusion:**

This research try to answer these questions: conditions of wife inheritance, the properties which wife can get inheritance, difference between wives. Based on research hypothesis, in Islam women like men have the right of inheritance. But it depends on terms of inheritance and the type of property. In this research, referring to the books and literature, after a general overview, as outlined. Bases on the evidence of wife inheritance has been studies. In next section, conditions of wife inheritance and its obstacle with different topics such as: the existence of clot wed couples, keeping the relationship till death, permanent marriage, wife inheritance, non-prohibition of the wife from inheritance which is essential to inherit has also been investigated. Later we discussed the different views and opinion regarding the issue of wife inheritance and her exclusion from inheriting to some property of the husband, which coordinates from Imamate jurisprudence. Each of the heirs entitles inheritance has a share of the properties. The Quran and the verses which determine the inheritance of wife from her husband estates like expression of people inheritance and state that the wife has a portion also the right to have her share from the husband assets and properties. Quran: in the same statements says: The Sunni jurist with regard to this verses argues that the wife has the right to have share of husband assets. Majority of Shia jurists excludes wife inheriting some properties such as land, buildings. Sheikh Tooi in his books says: wife has no share from building and lands instead the bricks and woods values to be estimated and wife share is to be paid to her. Majority of the jurist objected this statement and argued that "the wife inherits the entire property. Our reason is the narratives of Imamate consensus. "Seyed Morteza in his book Entesar quoted that deprivation of wife from the some assets especially land is only in Imamate.

Notwithstanding the lack of a radical voice among women judges , there appears to be evidence of some acknowledgement of difference to men judges, namely: experiential sensitivities that may inform judging, changes to the working environment, and being role-models for other women.

Women judges elsewhere have argued for attaining a judiciary that broadly reflects a spectrum of experience and awareness: a `multiplicity of voices or `multiple consciousnesses'.

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