

A Female Quazi Appointed in the Judicial Position: Islamic Law and Public Opinion in Sri Lankan Context.

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Abstract: A Woman's Competent to Be Appointed as a Judge in Quazi Courts. In Muslim Societies Has Been A Debated Issue For Decades. Although Some Muslim Majority Countries, Including Indonesia, Malaysia And Arab Countries, Have Allowed Women Judges (Qudath) In Shariah Courts, The Muslim Religious Leadership In Sri Lanka, Namely All Ceylon Jamiyathul Ulama (ACJU) As Opposed To Such Appointment To Administrate The Muslim Marriage And Divorce Act Of 1951 (MMDA) Which Is Administrated By The Quazi Court System On The Basis Of Classical Muslim Scholars' Discussion On The Qualification Of A Judge (Quazi), Particularly Referring To Their Debate On Gender; However, Women Activists In Sri Lanka Argue About Women Quazi On The Basis Of Women's Privacy And Fair Hearing. This Study, Therefore, Explores the Positive and Negative Opinion on the Appointment of Female Quazi in Sri Lanka. Hence, This Research Study The Classical Scholars' Discussions On The Qualification Of A Judge (Quazi) Critically And Understand Their Arguments Through Islamic Law. The Contextual Analysis Was Carried Out To Understand The Verses Of The Quran, Hadiths And Scholars' Argument Particularly In Connection With The Present Situation For Women In Sri Lanka. The Data Were Collected From Secondary Sources. The Study Recommends Sri Lankan Quazi Courts Systems Differences From Muslim Majority Context And Insignificance Of Classical Muslim Scholars' Debate On Gender As A Qualification Of A Judge (Quazi). In Contrast To This Should Be Appointed The Quazi On The Base Of Academic Qualification. The Study Categorized In Discussion Part Into Focus On The Quranic And Hadith Verses Which Are Relevant To The Argument, Qualification Of A Quazi In Principals Of Fiqh, Opinions Of Classical Scholars To The Appointment Of A Female Quazi To A Judicial Position, Female Quazi In Sharia Courts In Muslim Majority States And Status Of Female Quazi In Islamic Law.

Key Words: Quazi, Judicial Position, Islamic Law, Public Opinion, Sri Lankan Context

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I. BACKGROUND OF THE STUDY

Sri Lanka Is An Island Republic Of About 65,000 Km² Located 22 Miles South Of India.¹ In 2019 The Population Is 21,340,707.² Sri Lanka Has Been A Multi-Ethnic and Multi-Faith Society for Twenty-One Millennia and Currently Has Three National Languages Sinhala, Tamil and English. Between The Early 1500s and 1948, Sri Lanka Successively Hosted Three European Powers: The Portuguese, The Dutch And The British. In 1948, Sri Lanka Then Gained Full Independence from Britain and Became A Member of the Commonwealth of Nations.

Sri Lanka Has A Dual Legal System Regarding Marriage And Divorce. People Have The Choice Of Marrying Under Either The General Law Or The Specific Cultural Law (Personal Law). The Sinhalese Have The Option Of Marrying Under Whichever Law They Like, For Example, The 1952 Kandyan Marriage And Divorce Act Or The 1907 General Marriage Registration Ordinance (GMRO). Similarly, Sri Lankan Tamils Have The Option To Marry Under The Tamil Cultural Law, Namely Thesawalamai Law Or The 1907 GMRO. In The Case Of Muslims, Sri Lankan General Marriage Ordinance (GMO) Prohibits Muslim Marriages From Taking Place Under GMRO. It Provides The Legality Of Marriage For Muslims When It Takes Place Under The Muslim Marriage And Divorce Act Of 1951 (MMDA).³

The Muslim Marriage and Divorce Act Of 1951 (MMDA) Is Administrated By the Quazi Court System, and Presently 65 Quazi Courts Are Established In Island-Wide.⁴ The Board Of Quazi Under The Ministry Of Justice Appoints Quazi. According To MMDA Section 12 (1), The Judicial Service Commission Of Sri Lanka

¹CIA 2008; ABC Radio Australia 2008

²www.worldometers.info

³Sri Lankan personal laws, 2018.

⁴From Sri Lankan justice website.

Appoints A Male Muslim Of Good Character And Honour As Quazi. Hence, Quazi's Appointment In Sri Lanka Takes Place Based On Gender, Honour, Respect And Religiosity Of A Person Rather Than Academic And Professional Qualifications. Several Community Activists Have Concerns About The Quality Of The Service And Practices Of The Quazi Courts, While Some Muslim Women Activists Question The Provision Of A Compulsory Wali (Male Guardian) For Muslim Women In The MMDA. Women Activists Consider Preventing Women From The Appointment As Quazi S, Marriage Registrars, Adjudicators Or Members Of The Board Of Quazi S As Discrimination Based On Gender. Although The ACJU Is Opposed To Female Quazi Appointment To Administrate Of Quazi Courtbased On The Classical Scholar Debate On Gender As A Qualification Of A Quazi.

The Sri Lankan Government Has Taken Steps To Address These Issues And Set Up Three National-Level Committees Since 1970. The Most Recent Is The Muslim Personal Law (MPL) Reforms Committee Which Was Established In 2009 By The Then Minister Of Justice Mr. Milinda Moragoda Under The Heading Of The Retired Supreme Court Judge Saleem Marsoof. This Team Consisted Of 16 Experts On Muslim Personal Law Including Women As Well As Two Representatives Of ACJU. To Support This Commitment, The National Shoor Council Of Sri Lanka (NSC-SL) National-Level Muslim Religious Leaders And A Professional Forum Invited Experts In Muslim Family Law From Malaysia And Organized A Symposium Under The Title "Contemporary Thoughts On Muslim Marriage & Divorce Law" In January 2016.⁵ The Local And International Experts Presented Papers And Several Muslim Intellectuals And Representatives Of Ngos Including ACJU Participated In This Symposium. This Symposium Categorized The Appointment Of Female Quazi, Marriage Age, Wali (Consent From A Guardian) And Polygamy As Shariah Matters And Other Issues Including Irregularities In Quazi Courts As Administrative Problems. Since ACJU Is Also A Part Of The MMDA Reform Committee, It Worked With The MMDA Team And Provided Necessary Support And Suggestions To Review The Required Areas. However, ACJU Broke Away From The MMDA Reform Committee, Disputing Certain Issues Including Women Quazi.

The Objection Of ACJU To Women Quazi Was Found Based On Certain Nas (Verses Of The Quran And Hadiths) That Were Commonly Quoted By Opponents Of Women Judges (Qudath) As Discussed Above. Further, the Anticipated Methodology Adopted By Muslim Women Activists, Particularly Their Critiques of the Compatibility of the Islamic Legal System for Present Conditions, Created Suspicion of Their Motivations. Hence, The Issue Of Women Quazi In Sri Lanka Became A Matter Of Kudos Between ACJU And Women Activists. ACJU Rejected The Proposal To Reform The Act And To Allow The Appointment Of Quazi Based On Qualification, Ignoring The Gender Differences, Even Though They Realized Some Irregularities In The Present Quazi Court System Due To Unqualified Male Quazis. In The Meantime, Some Women Activists Insist On Changing The Entire Quazi Court System Even Though They Found Some Indiscretions In The Present Court System Due To Some Quazi S' Inadequate Administrative Skills Rather Than Their Gender Affiliation. Henceforth, This Research Explores The Positive And Negative Opinion On The Appointment Of Female Quazi In The Sri Lankan Context, Understand The Arguments About The Female Quazi Through The Islamic Law. Moreover, This Study Compares The Opinions To The Muslim Majority Countries, Particularly In The Countries That Adopted Shaifie Mazhab—The Shaifie School Of Law In Dealing With Religious Practices, Such As Malaysia And Indonesia.

Research Objectives

1. To Find The Positive And Negative Opinion On The Appointment Of Female Quazi In The Sri Lankan Context.
2. To Understand The Arguments About The Female Quazi Through Islamic Law.
3. To Compare These Opinions To The Muslim Majority Countries.

Research Methodology

This Is A Contextual Study. Data Of The Study Were Collected From Secondary Sources Such Asreport Of Appointed Parties For Amendment To The Muslim Marriage And Divorce Act From Website Of Ministry Of Justice- Sri Lanka, Books And Articles Of Research-Scientific And Educational Journals, Magazines, Newspapers And Websites For This Research, Collected Data Has Been Analysed And Used Descriptive Methodology To Establish Of Discussion Part.

II. LITERATURE REVIEW

- I. Faizun Zackariya, (2018). "A Women's Right To Be A Quazi Judge In Sri Lanka" The Book Focus On The Realities Of Minority Woman's Lives In The Multi-Ethnic Sri Lanka Context, And The Absurd Claim Being Made By The Report That Appointing Woman To The Position Of Judge Is A Sin Against Islam In Particularly Study Focusing On Verse 4:34 Of The Holy Quran Which Is Used To Deny Muslim Woman

Their Right Be Appointed As Quazi. Conclusion Of The Study Is Mention That The Call Of The Quran To Share Responsibility Of Woman And Man In The Political Management Of Society In The Equivalent Of A Key Democratic Principle Requiring Equal Responsibility Of All Citizens.

- II. Safi Iqbal,(2013). “Woman And Islamic Law” This Book Aims At Present The Crisis Faced By The Modern Woman In Such A Way As To Preserve A Balance Between Her Past And Her Present. It’s carried out the Misunderstanding Regarding the Women’s Rights in Islam Dispelled by Critical and Direct Study of the Rights Granted to Her in Islam. The End Result of the Kook in Mentioned In Conclusion That Women’s Rights Must Also Balance By Men’s Rights In Various Duties Of Day To Day Life Of Human Being.
- III. Al-Sheha A.R.,(1997). “Woman In The Shade Of Islam” This Book Aim At Misunderstanding Of The Status Of Women In Religion In General And Islam In Particular. Conclusion Of The Book Says “The Women Has All Right Of Property Ownership, Business Dealing And Choosing Her Husband. In Facing Responsibilities And Earning Rights She Is Perfectly An Equal To Man But This Equality Not The Leadership.”

III. DISCUSSION AND RESULT

I. Focus On Quranic Verses Which Is Relevant To The Argument.

Majority Muslim Community In Sri Lanka Has Vehemently Opposed Reform Of Section 12 (1) On The Ground That It Goes Against The Grain Of Islam. As Cited Verses 4:34, 2:228 Of The Holy Quran

The Argument Of ACJU Quoted Verses Of The Quran As Follow:

“Men Are The Protectors And Maintainers Of Women, Because Allah Has One Of Them To Excel The Other, And Because They Spend (To Support) From Their Means” (Verse 4:34)

“...Men Have A Degree (Of Responsibility) Over Them” (Verse 2:228)

According To The Above Verse 4:34 Women’s Honour And Dignity, And Men Having A Degree Over Women As Cited In The Report Of ACJU, We Are Made To Believe That Sri Lankan Muslims Live In An Alternative Reality And That Muslim Women Are Confined To Their Homes, Being Protected And Looked After By Their Fathers And Husband. In This Utopia Conjured By This Discourse The Real Lives Of Muslim Women Are Completely Erased And Wiped Out. There Is No Recognition Of The Hundreds And Thousands Of Muslim Women Who Go Out Work On Their Own Every Day To Make Living For Their Families Whether As Laborers, As Migrant Workers, Teachers, Accountants, Doctors, Librarians, Lowyers Etc

II. Qualification Of A Quazi In Principals Of Fiqh (Usulul Fiqh)

Lengthy Discussions About The Qualifications Of Quazi Have Been Made By The Fuqaha. According To Same Fuqaha, There Are As Many As About Thirty Of Eligibility For The Office Of Quazi, Whereas Some Fuqaha Reduce Them To Three. The Required Qualifications Of A Quazi Are Not Specified In A Single Nass (Quran Verse Or Hadith). Hence, The Qualification Of Quazi Mentioned By The Fuqaha Mostly Depend On Inferences And Deductions. The Best Discussion In This Connection Are Made By Ibn Jarir Al-Tabari, Ibnu Qudamah, Ibnu Farhan, Al-Margghinani, Muhammad Sallam Madkur And Muhammad Sangalaji. Hence, An Analysis Of The Arguments Of These Writers Well Serve The Purpose.

According To Al Marghinani, A Hanafi Jurist, The Authority Of A Quazi Is Not Valid Unless He Possesses The Qualifications Necessary For A Witness, And That He Should Be A Mujtahid.⁶ It Means That In The Opinion Of Al Marghinani, The Conditions Of Competence For The Office Of Quazi Tow Fold, That The Person Appointed To The Office Of Quazi Should Be Eligible For Becoming Witness And That He Should Be A Mujdahid,⁷ But To Be A Mujdahid, According To The Hanafis Is Not An Essential Condition For Holding The Office Of Quazi⁸. Explaining This Conditional Marghinani Remarks That The “More Approved” (Sahih) View Is That The Qualification Of Being A Mujdahid Is Merely A Preferable Condition And Not Indispensable For A Quazi Since The Appointment Of An Unlettered Person To The Post Of Quazi Is Valid According To The Hanafis. But Al- Shafii Holds That It Is Not Valid.⁹

Ibn Qudamah, A Hanbali Jurist, Lays Down Following Three Conditions For The Office Of Quazi :

1.Kamal (Perfection): Kamal Is Two Kinds: (1) Kamal Al Ahkam And (11) Kamal Al Khilqah. By Kamal Al-Ahkam Ibn Qudamah Means The Conditions Of Being: (A) Adult, (B) Sane, (C) Free And (D) Male. Kamal Al Khilqah Means Not To Suffer From Physical Deficiency That Is The Appointee Should Be Of Sound Organs Of Speech, Hearing And Sight.

⁶Navadi.M.I.,(2010). “Judicial system in Islam” vil-7.

⁷Navadi.M.I.,(2010). “Judicial system in Islam” vil-7.

⁸Navadi.M.I.,(2010). “Judicial system in Islam” vil-7.

⁹Navadi.M.I.,(2010). “Judicial system in Islam” vil-7.

2. Adalah (Probity): He Who Is Fasiq (Profligate) Is Not Competent For The Office Of Quazi.

3. Ijtihad: It Means That A Person Who Is Not Fully Conversant With The Quran, The Sunnah. The Ijma, The Different Opinions Of The Jurists, The Qiyas (Juristic Analogy) And The Arabic Language Is Not Eligible For The Post Of Quazi .

Al- Tabri Is Of The View That Deciding A Legal Point Is Like Expressing The Legal Opinion (Fatwa) In A Certain Case. Therefore, A Person Who Is Eligible For Issuing A Fatwa Is Qualification For Being A Quazi. By This Analogy, A Woman Is Eligible For The Post Of Quazi.¹⁰

According To Malikite Point Of View, A Man Is Not Eligible For Holding The Office Of The Administration Of Justice Unless He Is Cognizant Of Precedents And The Opinions Of His Predecessors, Taking Counsel Of Those Who Are Worthy Of Having A Say In The Matter. This View Is Based On A Ruling Of ‘Umar B. Abd Al-Aziz. Imam Malik Is, However Of The View That A Person To Be Appointed As A Quazi Must Be A Faqih. This Means That Only A Person Who Is Well Versed In Law Is Competent For The Post Of Quazi.¹¹ Ibnu Farhun, A Maliki Jurist, Relying Upon The View Of Quazi Lay Gives The Following Qualification Of A Quazi: Being A Muslim, Sane, Male, Free, Adult, Righteous, Knowledgeable Soundness Of Hearing, Sight, Soundness Of The Faculty Of Speech (Not Being Dumb).¹²

In Contrast Of These Argument, In Sri Lanka Muslim Marriage And Divorce, Section 12(1) Of The Act States That “Minister May Appoint Any Male Muslim Of Good Character And Position And Suitable Attainment To Be A Quazi.” MMD To Allow The Appointment Of Quazi Based On Qualification Of Gender Not Academic Qualification

III. Opinions Of Schools Of Scholars To The Appointment Of A Female To A Judicial Position

The Dispute Stems From The Varied Exegeses Of The Koranic Verses And The Hadith Of Each Of The Four Main Islamic Schools: The Shafi’it, The Hanbali, The Malikite And The Hanafi. Not Only Is This But Among Each Of The Islamic Schools, There Debate Amongst Its Scholars. According To Hanafis A Woman May Become Quazi, As She Possesses The Qualification Of A Witness.¹³ But She Is Not Competent To Pass Orders Of Hadd And Retaliation Because, In Such Matters, Her Evidence Is Not Admissible. While Shafis, Maalikis, Hanabalis Say That She Is Altogether Disqualified For The Office Of Judgement. And If She Is Appointed, The One Who Appointed Her Is Sinning, And Her Appointment Is Invalid, And Her Judgements Carry No Weight, No Matter What Ruling She Passes.¹⁴

IV. The Appointment Of Female Quazi (Judge) To Judicial Position In Sharia Courts In Muslim Majority States

The Division Amongst Religious Scholars On The Appointment Of Women To Judicial Positions Influenced The Positions Adopted By Muslim States On The Matter. Many States Which Allowed For Female Judicial Appointments In Sharia Courts (Like Quazi Court Of Sri Lanka).

- a) **Indonesia:** In 1964 The First Female Quazi S Were Appointed To The Sharia Courts, Most In Part-Time Positions And One Full-Time. Only In 1989 Did The State Formally Anchor The Right Of Women To Hold This Role. The Law Of Administration Of Religious Adjudication Determines What Qualifications Are Required of a Quazi, For Example, A Bachelor’s Degree In Law And Islamic Law. The Rate Of Female Quazi S In The Shari’a Courts In Indonesia Stood Around 15% Of All Quazi S In 2011, And Women Even Head Shari’a Courts Across The Country.
- b) **Malaysia:** In 2003, The Malaysian Government Decided To Appoint Female Quazi S To The Shari’s Courts Although Women Had Been Appointed As Judges In Civil Courts Since The 1960s (The Malaysian Judicial System Consist Of Civil Courts And Shari’s Courts). Afterwards, A Controversy Arose Regarding The Authority Of Female Quazi S On Certain Issues, Even Though In 2006 The National Fatwa Council Of Malaysia Ruled That Qualified Women Could Serve As Religious Judges. In The End, It Was Decided That The Authority Of Female Quazi S Would Be Identical To That Of Male Quazi S.
- c) **Egypt:** After The Free Officers’ Revolt In 1955, Gamal Abd Al-Nasser Decided To Abolish The Institution Of The Shari’a Courts Which Had Functioned Since The Ottoman Era. From The Same Year, Cases In The Realm Of Personal Status Were Discussed In Civil Courts Or In Family Courts, And Citizens Of All Religions Were Judged Within Them. In The Year 2000, President Hosni Mubarak Ordered The Appointment Of A Female Judge To A Court Which Had No Dealings With Civil Or Criminal Cases. In 2007, He Appointed 31 Female Judges To Family Courts. These Appointments Of Women Judges Are Equivalent To The

¹⁰Navadi.M.I.,(2010). “Judicial system in Islam” vil-7.

¹¹Navadi.M.I.,(2010). “Judicial system in Islam” vil-7.

¹²Navadi.M.I.,(2010). “Judicial system in Islam” vil-7.

¹³Ramzy,M.I.,&Fekr, S.G.(2019)

¹⁴Ramzy,M.I.,&Fekr, S.G.(2019) pg-02

Appointment Of Female Quazi S In Shari'a Courts Because In Both Courts They Adjudicate Matters Of Personal Status Whose Laws Are Drawn From Islamic Shari'a. As In The Rest Of The Muslim World, There Is Also Controversy Regarding The Appointment Of Female Judges In Egypt. For Example, As Early As 1952, The Council Of Al-Azhar University, The Most Prestigious Learning Institution For Shari'a Law, Issued A Fatwa That It Was Forbidden To Appoint Women To Judicial Positions, And The Matter Was Not Open For Discussion.

- d) **The Palestinian Authority (PA):** The PA Allowed Women To Be Appointed As Judges In The Sharia Courts. In 2009, Two Quazi S Were Appointed - One In Ramallah And One In Hebron And Thus, The Palestinian Authority Adopted Without Reservation The Position Permitting The Appointment Of Women To Judicial Positions.
- e) **Pakistan:** Pakistan Is Considered An Extremely Conservative Country. It Subscribes To The Hanafi School Of Islam In A Strict Manner, And In Spite Of This, In The End Of 2013 It Was Decided To Appoint The First Woman To The Position Of Quazi To The State's High Shari's Court.

V. Status Of A Female Quazi In Islamic Law

The Question Of The Appointment Of Women As A Quazi Require Our Consideration. With The Development Of Modern Society, Women Are Taking An Active Part In Almost All Walks Of Life. In The Muslim Countries, A Tendency Of Equal Participation Of Women In The Affairs Of Government Is Prevalent Though Not Still In Practice. According To The Discussions Of The Fuqaha As Shown Above, There Seems No Absolute Restriction Of The Appointment Of Women As Quazi Because She Is Capable Of Issuing A Fatwa And In Many Cases Her Evidence Is Admissible. It Has Broughttwo Scholars' Discussion Related To Eligibility Of Woman To The Judicial Position As Follow:

a) Ibn Qudamah

The Formula Laid Down By Ibn Qudamah Impliedly Excludes Women From Being A Quazi As The Appointee To The Office Of Quazi Ought To Be Kamil Al-Ahkam And Kamil Al-Kilqah. Not Only By the Above-Mentioned Formula but Also By the Express Argument of Ibn Qudamah a Women Cannot Be a Quazi for the Following Reasons

- I. She Is Not Kamil Al-Ahkam Whereas Man Is Kamil Al-Ahkam.
- II. She Is Not Kamil Al-Khilqah Because She Is Given To Forgetfulness According To The Following Quran Verse.¹⁵

“And If Two Men Are Not Available Then A Man And Two Women, From Among Those Whom You Approve As Witnesses, So That If Either Of Two Errs, The One May Remind The Other. (2:282)

Ibn Qudamah Quotes A Hadith Which Reads: A Nation Who Entrusted Their Affairs To A Woman Will Never Prosper.

It Is Noteworthy That Kamal Al-Khilaqah Has No Relevance With Eligibility For The Post Of Quazi. Only Those Requirements Of Physical Fitness Are Necessary That Have A Direct Connection With The Performance Of Quazi. For Example, A Lame Person Is Not Disqualified For The Post Of Quazi, Whereas The Dumb And Deft Are Not Competent For The Job. The Only Defect Of Womenfolk Pointed Out By The Learned Author Is Their Forgetfulness. Now The Question Is Whether A Strong Memory Is Indispensable For A Judge Or Not. It May Be Better Determined By The Judges Who Have Been Practically Performing The Function Of Judgment. The Argument Advanced By Ibn Qudamah, However, Is Not Forceful And Convincing.

Woman Have Been Prohibited From Performing Some Duties Which Have Not A Direct Effect On The Performance Of Judicial Work. In A Certain Case, If Only Woman Is Available And She Is More Learned And Prudent Than The Man Available, Especially When No Qualified Man Is Found, There Seems No Reason For Disqualifying A Woman For The Post Of Quazi As For The Hadith Is Not Relevant To The Question Under Discussion. Al- Bukhari Narrates This Hadith As Follow:

Abu Bakrah Narrates That When It Reached Allah's Messenger That The People Of Persia Have Appointed The Daughter Of Kisra Their Ruling Queen, He Said, Never Will Prosper Nation That Has Entrusted Its Affairs To A Woman.

Ibn Qudamah Himself Believes That A Slave Is Not Eligible For The Post Of Quazi, But The Hadith In The Context Of Imarah (Rulership) Says That “If Maimed Salve Is Appointed Your Ruler And He Leads You By The Book Of Allah, Listen To Him Obey Him.” For This Hadith, One Can Infer, Following The Argument Of Ibn Qudamah, That A Slave Is Competent For The Post Of Quazi Whereas The Inference Is Not Acceptable To Ibn Qudamah Himself.

¹⁵Navadi.M.I.,(2010). “Judicial system in Islam” vil-7.pg-84

Likewise, The Former Inference From The Hadith In The Context Of The Rulership Of Woman Is Not Credible. Secondly, When A Solitary Tradition (Khabr Al-Wahid) Conflicts With The Agreed Practice Of The Senior Companions Of The Prophet And The Derivative Laws Based On The Quran And Sunnah, Does Not Entail Certainty, Particularly When It Is An Unfamiliar And Disapproved One, About Obligation According To The Principles Of Jurisprudence Laid Down By The Hanafis. The Hadith Narrated By Al- Bukhari About The Rulership Of Women Requires Detailed Discussion And The Following Two Important Points Are To Be Kept In View In This Connection: Abu Bukrah Recalled This Saying Of The Prophet On The Occasion Of The Battle Of Jamal (Waqat Al Jamal) And Before This Critical Juncture Neither Abu Bakrah Nor Any Other Companion Narrates The Hadith Cited Above. According To The Commentaries Of Sahih Al- Bukhari, The Prophet Spoke These Words Either When He Heard Making The Daughter Of Kisra Their Ruler Or He Was Informed That His Letter Was Torn Into Pieces By The Kisra. This Was A Great Incident. Had The Prophet Said These Words Narrated By Abu Bakrah On This Occasion, Many Other Companions Would Have Transmitted This Report, Particularly On The Occasion Of The Battle Of Jamal, To Save The Companions Of The Prophet From Fratricidal War.

a) Ibn Farhan

Ibn Farhan, A Maliki Jurist, Advances Another Argument As To The Ineligibility Of Woman For The Post Of Quazi: A Woman Is Not Eligible For The Post Of Quazi Because Of Her Defect And Her Speech Is (Sometimes) An Allurement And Because Only The (Beautiful) Figure Of Some Woman Is An Allurement.

The Argument Of Ibn Farhan Leads Us To Permissibility Of Woman As A Quazi Amongst Women Because In This Case Neither Her Speech Nor Face Will Prove An Allurement.

There Are, However, Some External And Circumstantial Checks That Make The Performance Of Judicial Work By A Woman Rather Difficult. Hence It May Be Recommended That Woman Should Not Be Appointed Quazi. They May Be Appointed As Juris Consults To Allow Them To Play Their Role In The Affairs Of Government.

In *Ansar Barni Vs Federation Of Pakistan (2000)*, A Petition Was Filed Before The Federal Shariat Court Of Pakistan To Challenge The Appointment Of Women As Judges Or Magistrates For The Following Reasons:

- I. They (Woman) Discharge Their Functions Of Quazi Without Observing Pardah Which Is A Clear Violation Of The Injunctions Of Islam.
- II. During The Period Of The Holy Prophet And His Rightful Companions, The Duties Of Quazi Were Never Entrusted To Female Since It Appears To Be A Violation Of The Injunctions Of Islam.
- III. According To Muslim Law, The Evidence Of A Women Is Half Of That Of Man And Her Share In The Inheritance Is Equal To Half Of Her Brother. The Judgment Of Two Ladies Only Can Be Equivalent To That Of A Male.
- IV. The Ladies Do Not Fulfil The Qualification Of Quazi According To The Established Principles Of Muhammadan Jurisprudence.¹⁶

Mr Justice Aftab Hussain, The Chief Justice, While Examining The Third Argument Observed That It Is Impossible To Accept Because It Means That The Number Of Judges Should Correspond To The Number Of Witnesses Required To Prove It. Thus, There Should Be Four Quazi S To Decide A Case Of Adultery Which Is Not Acceptable To Anyone.

Mr Khalid Ishaq Submitted That It Was Not Correct That The Evidence Of A Woman Is Half Of The Evidence Of A Male. Referring To Verse 6 Of Surah Nun About Lian, He Submitted That It Is Clear That The Oath Of A Woman Is Equal To The Testimony Of One Witness. He Also Submitted That Quazi Shuraih Decided A Matter On The Solitary Evidence Of A Lady. Similar Arguments Were Given By Mrs. Saleema Nasiruddin And Mrs. Rashida Patel. After Giving Full Consideration To, And Making A Crudit  Analysis Of, All The Arguments Advanced By The Petitioners, The Chief Justice Observed As Follows:

Before Finishing This, It May Be Clarified That We Have Not Been Able To Find Any Justification For The Imposition Of Conditions On An Appointment Of A Woman Quazi. In Act. The Opinion Of Dr Tanzilur Rahman In His Book, *Islam Ka Nizam-E-Adalat*, P. 41 Is Also Without Any Condition Since He Agrees With The View Of Imam Abu Hanifa. In This Regard Woman Has Competent To Be Appointed As A Judge (Quazi). This Judgement Acceptable For Sri Lanka.

Findings

1. The Appointment Of A Female To The Judicial Position Has Been A Debated Issue For Decades In Muslim Counties Particularly Sri Lanka Muslim Society Who Has Governed By MMD.

¹⁶Navadi.M.I.,(2010). "Judicial system in Islam" vil-7. Pg-86

2. In Sri Lanka, There Are Positive And Negative Opinions On The Appointment Of Female Quazi. All Ceylon Jamiyathul Ulama (ACJU) As Opposed To Such Appointment On The Basis Of Classical Muslim Scholars' Discussion On The Qualification Of A Judge (Quazi) On Gender. Although, Women Activists In Sri Lanka Has Been Arguing About Women Quazi On The Basis Of Women's Privacy And Fair Hearing.
3. Muslim Majority Countries Such As Indonesia, Malaysia, Egypt, The Palestinian Authority (PA), Pakistan And Arab Countries, Have Allowed Women Judges (Qudath) In Shariah Courts.
4. The Qualification Of Quazi Is Debated Issue Among The Islamic Scholars, Most Of The Scholars Deny To Appointment Of Femal.
5. Opinions Of Schools' Scholars Dispute Stems From The Varied Exegeses Of The Quranic Verses And The Hadith. According To Hanafis A Woman May Become Quazi, As She Possesses The Qualification Of A Witness. But She Is Not Competent To Pass Orders Of Hadd (Punishment Order) While Shafis, Maalikis, Hanabalis Say That She Is Altogether Disqualified For The Office Of Judgement. And If She Is Appointed, The One Who Appointed Her Is Sinning, And Her Appointment Is Invalid, And Her Judgements Carry No Weight, No Matter What Ruling She Passes.
6. In The View Of Islamic Law, If Only Woman Is Available And She Is More Learned And Prudent Than The Man Available, Especially When No Qualified Man Is Found, She May Appointed As Quazi.

IV. CONCLUSION

In The Absence Of A Precise Direction In The Quran And Hadith On The Qualification Of A Judge (Qadi), The Female Judge (Qadi) Has Been A Matter Of Discussion Among Muslim Scholars Throughout History. The Differences Of Opinion Among Them On Qualifications Have Been Summarized In This Study And The Dispute Among Them Regarding Gender Has Been Shown. Even Though Some Of Them Opposed The Appointment Of Women Judges (Qudath) On The Basis Of Gender, Others Approved Women's Appointment For The Post Of A Judge (Qadi) On The Basis Of Qualifications. This Shows That The Scholars Opined On Women Judges (Qudath) Based On Their Understanding Of Certain Quranic Verses As Well As Hadiths Related To Women Leadership In Their Contexts. Hence, Considering The Context And Needs, The Muslim Countries Appointed Women Judges (Qudath) To Administrate The Shariah Law. Thus, The Prohibition Of The Appointment Of Women Judges (Qudath) Is Not Ijma Consensus Or Agreement Of The Muslim Scholars—As Claimed By Some Scholars, Whereas A Considerable Number Of Main-Stream Muslim Scholars Have Different Opinions On The Issue. Hence, This Research Found The Discussion On The Qualifications Of A Judge (Qadi) Among The Classical Scholars To Be Extraneous And Irrelevant To The Discussion On Appointing Women Quazi In Sri Lanka As Their Context Is Different From The Context Of Muslims In Sri Lanka. In This Perspective, It Is Inappropriate To Prohibit The Appointment Of Women Quazi In Sri Lanka Based On Classical Scholars' Discussion On The Qualifications Of A Judge (Qadi). Further, Women Have Been Appointed To Many Leadership Posts, Including Judiciary As Judges (Qudath), To Administrate Shariah Law During The Early Period Of Islam As Well As Throughout History.

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