

Woman's Judicial Empowerment in the Developmental Stages of Islamic Judiciary

Abdullah Bin Muhammad Al-Somaaeil¹, Basil Mahmud AlHafi², Hanan Mosalm Yabroudy², Dr. Ibrahim Abdulrhman aljendan³, Dr. Muhammed Khalifah Al-Madin³

¹Professor of Jurisprudence, faculty of Law and Islamic Studies, King Faysal University.

²Professor of Jurisprudence and its Principles, faculty of Law and Islamic Studies, King Faysal University.

³Associate Professor of Jurisprudence, faculty of Law and Islamic Studies, King Faysal University.

Abstract

This research revolves around the study of the judicial role played by Muslim women throughout the stages of the Islamic Jurisprudence development and the quantum of inclusion she enjoyed from scholars and rulers in all fields of educational, teaching, verdict-giving, authoring and contribution in the socio-religious lives. This study unravels certain findings the prominent of which is the fact that woman was not excluded from the intellectual, jurisprudential and social activities; and the role she played in nurturing scholars intellectually and jurisprudentially.

Keywords: Islamic Jurisprudence, women.

1. Introduction

Islamic jurisprudence went through multiple phases from the legislation stage to the documentation up till the phase imitating. Scholars have exerted lots of their efforts in preserving this jurisprudence vis-à-vis collation and documentation; building and weighting and checking alongside juristic efforts in verdict-giving and imitating consequent of the efforts brought up by the jurists in preserving the religion and stabilizing its rulings and sources. The efforts expended in preserving the Islamic Jurisprudence and related sciences were not exclusively for the male jurists, but were all the fruits of the labor of the jurists that were carried out side by side also by the female jurists.

Whoever follows up with the women's activity in the servitude of the religion generally and specifically the Jurisprudence would totally understand the amount of what the womenfolk have given in the servitude of her religion via learning; reaching; memorizing and reporting. Hence, preserving the religion is a shared responsibility between the two parties and not an exclusive right of a party while neglecting the other party.

Ibn Hajar has mentioned in his book "Al-Isabah Fi –Tamyiz Hayati-Sahabah" about one thousand, five hundred and forty-three (1,543) women among which were jurists and Hadith scholars. While studying the efforts of scholars I am preserving and documenting the Fiqh (Islamic Jurisprudence) we would notice the important role played by Muslim women in all phases and stages of jurisprudential preservation and documentation.

In this research, concentration will be on women's role in the development of Islamic Jurisprudence in all the phases of its development and growth by sampling out some women who contributed in every phase of the Islamic Jurisprudential development, since it is hard to bring all their names in one academic paper.

There is no iota of doubt that Islamic Jurisprudence were through five phases which are:

Phase One: The Prophetood Era (Era of Origin) this spans from the call to the Prophetood until his death year 11 A.H.

Phase Two: The Rightly Guided Khaliphs and The Senior Tabi'een (the Foundational era) which spans from the death of the Prophet year 11 A.H- 132 A.H.

Phase Three: The Era of the Tabi'een (the era of Prosperity) which spans from year 132 A.H till mid of the fourth century.

Phase Four: The Imitation stage which started from the mid of the fourth century spanning through 1285A.H

Phase Five: the awakening stage that started via the jurisprudential movement that emerged year 1285A.H which still remains active through the recent time.

Research Plan: this research is divided into five chapters in accordance to the phases that Islamic Jurisprudence went through:

Chapter One: Woman's judicial empowerment in the Prophetood Era (Era of Origin) this spans from the call to the Prophetood until his death year 11 A.H.

Chapter Two: Woman's judicial empowerment in The Rightly Guided Khaliphs and The Senior Tabi'een (the foundational era) which spans from the death of the Prophet year 11 A.H- 132 A.H.

Chapter Three: Woman's judicial empowerment in The Era of the Tabi'een (the era of Prosperity) which spans from year 132 A.H till mid of the fourth century.

Chapter Four: Woman's judicial empowerment in the Imitation stage which started from the mid of the fourth century spanning through 1285A.H

Chapter five: Woman's judicial empowerment in the awakening stage that started via the jurisprudential movement that emerged year 1285A.H which still remains active through the recent time.

Chapter One: Woman's judicial empowerment in the Prophetood Era (Era of Origin) this spans from the call to the Prophetood until his death year 11 A.H.

Woman participation was well covered since the early stages of Prophetic call. Wives of the Prophet (Peace be on him) and female companions were active in knowledge collection and dissemination as they would ask the Prophet (Peace be on him) questions and study under him and report his sayings. There are numerous cases that support this assertion such as when Ummu Salamah asked the Prophet (Peace be on him) : " why are we not mentioned in the Quran the same way men are mentioned"? thus Allah's statement was revealed: " Surely 'for' Muslim men and women, believing men and women,1 devout men and women, truthful men and women, patient men and women, humble men and women, charitable men and women, fasting men and women, men and women who guard their chastity, and men and women who remember Allah often—for 'all of' them Allah has prepared forgiveness and a great reward" (Suartul-Ahzab:35).

The role of the Prophet's wives and other female companions was not confined to only studying. Also, they had clear roles in cognitive productions where they led the women intellectual movement through which the Prophet's households became beacons of intellectual radiation where women would attend to learn about their religions and where answers about their religion would be provided directly from their own knowledge of rom the knowledge transmitted from the Prophet (Peace be on him). The most prominent in this aspect are the following female jurists of the companions:

- Aishah Bint Abu-Bakr As-Siddeq (the Mother of believers): she narrated about 2210 hadith from the Prophet (peace be on him). Ad-Dhahabi said regarding her: " I do not know among the nation of Muhammed and even among the womenfolk any woman who is more knowledgeable than her". Aishah was the watchful eye that follow up with diaries of the Prophet (peace be on him) memorizing his statement and narrating from him coupled with the fact that she was blessed with fast memorization and good understanding.

- Others include Asma' bint Abu-Bakr As-Siddeq, Asma' bint Umais, Hafsa bint Umar the mother of believers and many other female companions may Allah be pleased with them.

Chapter Two: Woman's judicial empowerment in The Rightly Guided Khaliphs and The Senior Tabi'een (the foundational era) which spans from the death of the Prophet year 11 A.H- 132 A.H.

In this era, Muslim woman was an exact replicate of what it is in the time of the Prophet (peace be on him) in the first era as they emulated the female companions in spreading knowledge, transmission of the prophetic Ahadith, answering religious questions when asked the same way the female companions contributed in teaching them their religious studies so that they could be the carriers of religious jurisprudence after them. Prominent among the women of this era are:

- The mother of believers Aishah (May Allah be pleased with her): Aishah remained a beacon of knowledge after the demise of the Prophet (Peace be on him) as many senior companions would come to her asking her and seeking for her religious clarifications especially in matters of marital affairs. Prominent among her student is Urwah bin Az-Zubayr. At-Tirmidhi recorded in his As-Sunan that Abu Musa Al-Ash'ari (May Allah be pleased with him) said: "No hadith becomes unclear to us- we the companions of the Prophet- and we ask Aishah except that we find a clarification". Al-Hakim An-Naysaburi said " one fourth of the Shariah was taken from her".

- Umrat bint Abdu-Rahman Al-Ansariyah An-Najariyyah Al-Madaniyyah the Jurist (29-106 A.H): the student of Aishah (May Allah be pleased with her) and the women leader in this era after Aisha. She grew up under her and studied under her the sciences; she was born during the reign of Uthman bn Affan. Al-Hafidh Yahya bn Ma'een said about her "Umrat bint Abdur-Rahman was trustworthy and reliable". Ad-Dhahabi said concerning her "she was a scholar, jurist, reliable with numerous knowledge and her narrations are numerous in hadith collections of the Muslims". It was said that Al-Qasim bn Muhammad said to Imam Zuhri: "I know you are interested in (gathering) knowledge should I direct you to its container? He said: "yes", he told him: "you should meet with Umrat bin Abdur-Rahman; indeed, she was under the tutelage of Aisha (May Allah be pleased with her). Zuhri said: "and I went to her and found her an inexhaustible sea".
- Zainab bint Abdullah (Abi Salamah) bin Abdul-Asad Al-Makhzumiyah (Died 73A.H):
- The stepdaughter of the messenger of Allah (Peace be on him). She is the daughter of the mother of believers Ummu Salamah (May Allah be pleased with her). Her name was Barrah and the prophet named her Zainab. She was one of the most prominent jurists of her time. She narrated seven Hadith and she died in Madinah.

Chapter Three: Woman's judicial empowerment in The Era of the Tabi'een (the era of Prosperity) which spans from year 132 A.H till mid of the fourth century:

The jurisprudence in this phase a great prosperity and growth due to many factors; the fact that the Abbasid rulers were concerned about jurisprudence and the jurists; spread of freedom of opinion, acculturations that was consequent of Islamic conquests and emergence of Jurisprudential schools and documentation of sciences such as Fiqh-sciences. Women were active in this era in the spread of knowledge generally and specifically jurisprudential sciences the same way they were actively involved in raising great scholars of this era. Prominent among the women who participated in the jurisprudential development in this era are:

- Asma' bint Asad bin Al-Furat At-Tunisiyah (D: 250 H): she studied under her father Asad bn Al-furat the prominent Maliki scholar and Justice. She participated in the sittings of intellectual debates and questionings that her father used to hold. She studied the Jurisprudence of Abu Haneeffah. She was the only child of her father hence; she was well trained and nurtured until she became an authority on fatwas.
- Khadija bint Imam Sahnun At-Tunisiyah(D: 270 H): she is Khadijatul-Qayrawaniyah the daughter of Imam Sahnun At-Tanukhi the jurist and Justice of Qayrawan and the compiler of Al-Mudawwanah of the Maliki Jurisprudence. She was trained by her father and she studied under him and learnt the Jurisprudence from him. Women would seek from her fatwas of the religion and would stick to her position in puzzling matters primarily because she was gifted sound mind. Her father would seek for her opinions in important matters.
- Ummu Eesa Bint Ibrahim Al-Harbi (D 328 H): a prominent scholar who gives Jurisprudential opinions. She was buried beside her father.
- Amatul-Wahid bintul-Husain bin Ismail Al-Muhamili (D: 377 H) : a scholar and Shafi'i jurist who was versed in Islamic law of Inheritance, mathematics and syntax. She would five

fatwas alongside Ali Ibn Abu Hurayrah while he would learn Hadith from her. She was very generous. Ad-Dhahabi said:" the daughter of Al-Muhamili, the scholar, the jurist, the fatwa-giver, Amatul-Wahid bintul-Husain bn Ismail. She studied under father and narrated from him and from Ismail Al-Warraq, Abdul-Gaffar Al-Himsi. She memorized the Quran and the Shafi's Jurisprudence and was versed in Islamic law of inheritance".

- Tahirah bint Ahmad bn Yusuf At-Tanukhiyyah (D 436 H): the mother of the Jurist Muhammad bn Ahmad Al-Muhamili. Prominent Khatib Baghdadi mentioned her that he learnt from the Jurist and Hadith scholar Tahirah bint Ahmad At-Tanukhiyyah. According to Az-Zirkili, she was a prominent hadith scholar, she studied hadith and it was studied under him and she died in Basrah, she was from Bagdad.

Chapter Four: Woman's judicial empowerment in the Imitation stage which started from the mid of the fourth century and spanned through 1285A.H

This era is being referred to as imitation stage due to the fact that the jurists stopped by the existing jurisprudential schools that emerged and known in the previous era hence people only imitated them and benchmarked juristic discussions on them. This does not mean in any way juristic stagnation but only mean that all juristic activities were confined to these schools either deriving juristic rules for new occurrences or in basing the new cases on the earlier decided matters or explaining the weightier of two views alongside summarizing previous juristic manuals that were authored in the earlier era via commentaries and annotations. In every activity of this judicial stage, women have also participated in the jurisprudential production vis-à-vis learning and teaching jurisprudence, giving fatwa and spreading knowledge. Female jurists are numerous in this era as many of their names are recorded and some of them will only be mentioned as samples:

- Kareemah bint Ahmad bn Muhammad Al-Marwaziyyah (D 463 H): Jurist and Hadith Scholar, she lived for hundred years, she studied Fiqh under senior scholars and jurists such Zahir bin Ahmad As-Sarakhsi, Abdullah bn Yusuf Al-Asbahani. Khatibul-Bagdadi studied under her and she lived all her live in studying and collecting Hadith, learning and teaching. She was prominent for collecting manuscript of Sahihul-Bukhari and disseminating it.

- Shahidah bint Ahmad Ad-Dinawariyyah (D 484-574 H): Hadith Scholar and Jurist from whom many scholars and Hadith scholars have studied such as: Ibn 'Asakir and Ibnul-Jawzi. Her collections include the "Kitabul-Ilm" by Justice Yusuf bn Ya'qub; 'Kitabul-Amwal' by Abu 'Ubayd. She died at the age of ninety (90) in Baghdad.

- Fatimah Bint Muhammad bin Ahmad As-Samarqandiyyah (D 581 H): she was a Hanafi Jurist, she was born in Turkustan and her father was the great scholar Muhammad bn Ahmad As-Samarqandi the author of " Tuhfatul-Fuqaha". Her husband was " 'Alaudeen Al-Kasani" who was nicknamed 'the king of scholars' the author of " Bada'iu-Sana'I Fi Tartibi-Shar'I". she studied Jurisprudence under her father and memorized the book " At-Tuhfah" and was nurtured on good characters; loving knowledge; striving for it and she studied to the extent that her father would not issue any fatwa except that he sought her input such that the fatwa would have two endorsements, that of her father and her own and she had a beautiful handwriting. Her father married her off to his student 'Alaudeen Al-Kasani after his commentary on his book "Tuhfatul-

Fuqaha" in his book "Bada'iu-Sana'I fi Tartibi-Shar'I" which made her bride price. The scholars would say "he explained his Tuhfah and he married his daughter off to him". Her knowledge became known after her marriage as she would narrate scholarly opinions with expertise. Her husband may sometimes err in her fatwa and she would correct her hence he would prefer her stance. It was said that the Ayubi king would seek for her advice in his personal matters and on matters relating to his government. She stayed in Aleppo till her death in the year 581 H.

- Zainab bint Makki bn Ali Al-Harani (D 594-688 H): a jurist, scholar around whom students of knowledge would be crowded learning their religious studies. She was prominent and was among the pious. She died Damascus.

- Fatimah Bint Ali bn Al-Husain bn Hamzah known as "lady of kings" (D 710 H): a Hanbali Jurist who studied and taught Hadith. She taught 'Musnadu-Darimi', books of Al-Bagawi and certified some of her contemporaries with some books. She hailed from Wasit but lived and died in Baghdad.

- Fatimah bint Abbas bn Abul-fath Al-Baghdadiyah Al-Hanbaliyyah (D 714 H): the jurist and Hanbali scholars who was grounded in Jurisprudence. She would recall many cases from the book "Al-Mugni". She learnt from the Maqadisah scholars and whenever she had issue understanding any matter she would consult Shaykh Taqiyyu-Deen Ibn Taymiyyah who would answer her. He would marvel with her sound understanding and would excessively praise her. Many Damascene and Egyptian women benefited from her and Ibn Rajab praised her by qualifying her as "prominent jurist, scholar, chain narrator, fatwa-giver, expert and checker, multidisciplinary and the one -and-only female scholar of her time whom everyone would want to meet". Every scholar who address her as the chairperson of her time. It was said that she would mount the pulpit sermonizing the womenfolk and many Damascene women became pious via her efforts after which she moved to Egypt and many Egyptian women also benefitted from her. She founded a building in Egypt which was named after her where she would keep women that were divorced or boycotted until they remarried or returned to their husbands in order to safeguard their sacredness since the building is well secured with high religious atmosphere.

- The lady of the Ministers Bint Umar At-Tanukhiyyah (D 624-716 H): she was the lady of the ministers Bint Umar bn As'ad bn Al-Munja At-Tanukhiyyah Ad-Dimashqiyyah Al-Hanbaliyyah, a long-lived Ummu Abdillah and Ummu Muhammad and would be called the Minister. A Hadith scholar and the female Chain narrator of her time. A damascene who was born and died in Damascus and was one of the pious with good traits. She learnt from her father two parts, and learnt Musnad of As-Shafi' from Abu Abdullah Az-Zabidi and Sahihul-Bukhari. She taught at Damascus and Egypt. Ad-Dhahabi said:" she had long breath in studying Hadith and she was the last person to teach Al-Musnad with short chains of narrators. Ibn Tagri Bardi said:" She became the most visited of her time as many people would come visiting her from different cities. She died in Damascus at about 92 years.

- Zainab Bint Abdullah bn Abdullah bn Abdul-Haleem bn Taymiyyah (D 799 H.): the daughter of Shaykh Ibn Taymiyyah's brother. She was a scholar who certified Ibn Hajar Al-'Asqalani in Fiqh and Hadith and studied from the prominent scholars of her time.

- Dahma' bint Yahya Al-Murtadha (D 837 H): a noble scholar from 'Tala' in Yemen, she studied under her brother Al-Mahdi Ahmad bn Yahya and wrote great books such as ' Sharhul-Azhar' on Zaydi's jurisprudence in four volumes, and 'Sharhu Mandhumatul-kufi' on Fiqh and Inheritance , and ' sharhu Mukhtasarul-Muntaha'. She taught many students and died in 'Tala'.
- Fatimah Bint Abdul-Qadir bn Muhammad bn Uthman Al-Halabiyah known as Bint Quraymazan (D 878-966 H): she was the scholar of the two Adiliyah and Rawahiyah tabernacles. She became the women leaders of her time in Aleppo due to her beautiful handwriting, eloquent speech and chastity. She scribed numerous books and married Shaykh Kamalu-Deen Muhammad bn Kamalu-Deen Al-Ardibili and studied under him.
- Aishah bin Yusuf bn Ahmad bn Nasir Al-ba'uniyah (922 H): a poet, laureate and jurist. She was from Ba'un a province in 'Ajlun eastern area of Jordan. She was born and died in Damascus and was allowed to give fatwas and teach. She authored many books and had numerous annotations and summaries of books, she was a poet.
- Khadija Bint Muhammad Al-Amiri (935H): Khadija bint Muhammad bn Ibrahim Al-Muqri' Al-'Amiri Al-Hanfi was a pious eminent jurist who studied under many scholars including Imam Radiyyud-Deen the grandfather of Imam Najmu-Deen Al-Gazi the author of " Al-Kawakibu-Sa'rat", she also studied Sahihul-Bukhari and Fiqh under her father.
- Khadijah Bint Muhammad Al-Bayluni (930 H) she was Khadijah bint Muhammad bn Hasan Al-Babi Al-Halabi who was known as 'Ibnul-Bayluni'. A pious scholar and Hanafi jurist whom Kamal Ibn An-Nasikhut-Tarbulsi certified to narrate Sahihul-Bukhari. She preferred Abu Hanifah's school even though her father and brothers were Shafawis in safeguarding her purity from destruction with what could occur from the touch of her husband. She memorized the Hanafi's school as book and was religious, chaste with much interest in Quranic reading till her death on Ramadan of year 930H.

Chapter five: Woman's judicial empowerment in the awakening stage that started via the jurisprudential movement that emerged year 1285A.H which still remains active through the recent time.

This era started from late thirteenth century up till today where successive attempts appeared in progressing jurisprudence and linking it up with new trends. Just like in every era, Muslim female jurists have equally remained creative in this era and participated alongside the male jurists in carrying the burdens of advancing jurisprudence via authoring and studying prominent among them is:

Fatimah Bint Hamad Al-Fudayliyah (1200-1247H): she was a Hanbali hadith scholar from Zubayr Province in Sothern Iraq. She was known as pious ascetic scholar who was born in the town of prominent companion Az-Zubayr, she grew up there and studied under its scholars and gave the knowledge her wholeness as she wrote in different fields and was known for amassing books. She was a scribe who scribed many books such as 'Hilyatu-Tiraz fi Halli Masailil-Algaz' and 'Hashiyatur-Rawdil-Murbi'. She wrote the book ' Al-Galib min Kitabid-Daleel' on Hanbali's school which was published year 2007 C.E.

We noticed in this era a clear turnout of women towards the study of Fiqh and its spread in the universities and Islamic institutions and leaning centers in addition to authoring, checking, bagging post graduate certifications in Shariah studies.

2. Research Findings:

1. The role of women was well-felt in all the legislative stages of Islamic jurisprudence.
2. The research affirms the inaccuracy of the claim being spread by charlatans who claim that women were being neglected by the jurists and that they were excluded from both intellectual and jurisprudential fields.
3. Women Jurists was actively involved in serving the jurisprudence with all available means at her disposal in her time such as learning, teaching, fatwa-giving, scribing, authoring and advisory services for scholars and rulers.
4. It is however noted that contribution of women in authoring is lower compared to other areas. This could be linked to the fact that she was not that devoted like the men; difficulty in movement; devotion for writing and authoring alongside marital and parental responsibilities.
5. Women Jurists contributed in breeding of scholars and preparing them intellectually; jurisprudentially and educationally hence many scholars would mention those women in the list of their teachers.

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