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## Research Article

### Prohibition of women's judgment, discrimination or beneficence

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#### Abstract

One of the most important subjects in Iranian legal system, which has been attended by many viewers, is prohibition of women's judgment. The majority of Shia jurists have adduced Quran and Islamic tradition, in order to prove this issue. On the other hand, some viewers objecting to this view, believe that reasons adduced by the first group are not predicative. These viewers assume that there is not convincing evidence for prohibition of women's judgment. They believe that there is a difference between having rights and using them, meaning that women have the right to judge, but they are not necessarily obliged to judge. But the important point is that both mentioned groups agree that, the principle by which women are not obliged to judge, is a beneficiary rule. Because judgment is a burdensome obligation, and elimination of this responsibility is a privilege, whether we believe in absolute prohibition, or assume that its prohibition is based on respite, and judgment by women is not absolutely undesirable.

## Introduction

Judgment is one of the most essential issues for eradicating corruption and developing justice in various communities. Regarding this momentous responsibility, judges must have some qualifications. One specification, is virility. This has been claimed to be a discrimination against women. As (convention on the elimination of discrimination against women) considers that an instance of discrimination, which should be eliminated. In this article we try to prove that prohibition of women's judgment is a beneficiary rule, and judgment is merely an obligation and not a post.

### 1-The meaning of judgment

((Ghaza)) is an Arabic word which has several meanings: decree, disengagement and finishing something, declaration, ordering (Ibn Manzoor, *LesanolArab*, volume1, p133, Vaseti zobeidi, *Tajolaroos*, volume 10, p297). Some philologists have translated all meanings to settlement and decree (Ibn Athir, *Alnahaya fi gharibolhadith*, volume 4, p78). By reviewing the works of Islamic jurists, one may conclude that judgment means settlement of disputes (Khoei, Seyyed

Abolghasem, *Alghaza va shahadat*, volume1, p11, Golpaiegani, Seyyed Mohammad Reza, *Ketabolghaza*, volume1, p10). Imam Khomeini in ((*Ketabolbeia*)) proposes that ghaza (judgment) includes orders and decrees of the ruler. (Moosavi Khomeini, Seyyed Rooholla, *Ketabolbeia*, volume2, p642). Ghaza has a broader usage in Quran. (Joma-10, Hajj-29, Ahzab-27, Nesa-65), as some interpreters of Quran assume that this word includes establishment of rules by God (Tabatabai, Seyyed Mohammad Hossein, *Almizanfi tafsirelghoran*, volume16, p327). In this article we focus on settlement of disputes. According to Islam, judgment is adequately essential (anyone who is qualified is obliged to do it) (Allame Helli, *Ershad olazhan*, volume2, p138, Ansari, Sheikh Morteza, *Alghaza voshahadat*, p227, Najafi, Mohammad Hasan, *Javaherolkalam*, volume, p10). At the time of immaculate Imams, they were obliged to appoint judges, and when immaculate Imams are not among us, an Islamic jurist ((faghih)) who is qualified is obliged to do that (The second martyr, *Alrozatolbehia fi sharhello matolde mashghia*, volume3, p61, 62)

## 2-The meaning of beneficence

((Ementan)) which is translated to beneficence, is an Arabic word which is derived from ((mann)). Ibn Fares assumes that it has two meanings: interruption and beneficence (Ahmad ibn Fares ibn Zakaria, Moajam Maghaisolloghat, volume5, p267). When this word is applied along with Gods names, it means beneficence. ((Mannan)) is one of Gods names, and means ((donor)) and ((gracious)) (Vaseti Zobeidi, Mohebodin, Tajolaroos, volume13, p418) Three points should be attended in studying beneficiary rules: 1-Beneficence is not existent, where there is possibility of damaging others. Because beneficence is established for all Islamic Ommat ((Moslem people)) and is not for a particular person or group of people. Sheikh Ansari says: there is no beneficence in eliminating the effects of a service by damaging others (Ansari, Morteza, Faraed olosool, volume2, p35)

2-Beneficence has different forms; sometimes establishing rules is based on it, and sometimes eliminating rules is beneficiary. (Ansari, Morteza, Faraed olosool, volume 1, 164). An example of beneficiary establishment is the narrated saying ((Anything is allowed unless you know that it is a taboo)), and examples of beneficiary elimination are religious acquittal and negation of damage (Ameli, Sheikh Horr, Vasaelolshia, volume 1, p256)

3-Beneficence is realized where reason is not able to rule out an obligation independently. Therefore, rules about elimination of obligations of oblivious and impelled persons are not beneficiary.

### Evidence and reason

As it was said, judgment is a momentous and heavy obligation, therefore some qualifications are considered for it, including virility. In this part, we will review the views of Islamic jurists about this matter. Many Islamic jurists have stipulated virility for incumbency of judgement (Judge Ibn Baraj, Almohazzab, volume2, p86, Mohaghegh Helli, Mokhtasarolnafeaa, p271, Allame Helli, Ghavaedolahkam, volume3, p421, Allame Helli, Ershadolazhan, volume2, p138, The first martyr, Aldoroos, volume2, p70, The second martyr, Almasalek, volume3, p327, Ansari, Sheikh Morteza, Alghaza valshadat, volume1, p40, Yazdi, SeyyedKazem, Orvatolvothgha, volume6, p418, Khansari, Seyyed Ahmad, Jameolmadarek, volume6, p7). Recent jurists adjudicated that only men could judge, (Moosavi Khomeini, Seyyed Rooholla, Tahrirolvasila, volume2, p407, MoosaviKhoei, Seyyed Abolghasem, Mabani Takmeltol menhaj, volume 1, p10, Moosavi Golpaiegani, Seyyed Mohammad Reza, Ketabolghaza, volume 1, p44). These jurists have adduced Quran, narrated sayings, consensus and other evidences.

### 3-1-Quran

A) Men are guardians of women (Nesa -34). Tabarsi assumes that this Quranic verse implies that men are superior to \

women, in regard to expedience, educating, and correction. Tabarsi assumes that men are guardians of women for two reasons. First, men have greater competence in reasoning, thinking and decision making, and second men are obliged to pay alimony and Mahr (An amount of money, which should be paid by men to women after marriage). (Altabarsi, Fazl ibn Hasan, Majmaol baianni tafsirolghoran, volume 3, p79). Allame Tabatabai also believes that men have higher degree of wisdom and endurance (Tabatabai, Mohammad Hossein, Almizan tafsirolghoran, volume4, p343). Some jurists believe that if women have the right to judge, then women would be guardians of men (Golpaiegani, Seyyed Mohammad Reza, Ketabolghaza, volume1, p44). Ayatolla Khoei also believes that the mentioned Quranic verse demonstrates guardianship and superiority of men (Moosavi Khoei, Seyyed Abolghasem, Seratolnejat, volume1, p464)

B) Women must be chaste and men have higher degrees and Allah is wise (Albaghara, 228). Some jurists have adduced this verse to prove that women don't have the right to judge (Golpaiegani, Seyyed Mohammad Reza, Ketabolghaza, volume1, p44).

C) And remain in thy houses and do not demonstrate your bodies like the age of ignorance (Ahzab-33). Some jurists who adduce this verse believe that in order to judge, women have to go out of their houses and work with men, and it is against the implication of the mentioned verse (Golpaiegani, Seyyed Mohammad Reza, Ketabolghaza, volume1, p47)

### 2-3-Narrated sayings

In arguing prohibition of judgment for women, jurists have adduced many narrated sayings (Ravaiat).

A) ((You must find men among you who could settle disputes)) (Alameli, Sheikh Horr, Vasaelolshia, (AlEslamia), volume27, section1 in qualification of judges, Hadith 5, p13). The writer of Javahe rolkalam, assumes that the word ((Men)) stipulates virility, and therefore judgment is not incumbent on women (Najafi, Mohammad hasan, Javahe rolkalam, volume40, p14).

B)

B) Imam Sadegh said: The prophet said; women should not judge. (Alameli, Sheikh Horr, Vasaelolshia, volume27, section2, p16). There are other sayings narrated, and written in the books ((Khesal, Manlayahzaraholfaghih)), which have the same implication (Golpaiegani, Seyyed Mohammad Reza, Ketabolghaza, volume 1, p48). Some jurists have expressed the view that although some of those narrated sayings are not reliable, but the practice which has been dominant during centuries, corroborates this claim (Hosseinolameli, Mohammad javad, Meftaholkarama, volume10, p10, Khansari, Seyyed Ahmad, Jameolmadarek, volume 1, p7, Golpaiegani, Seyyed Mohammad Reza, Ketabolghaza, volume 1, p44).

### 3-3—Consensus

One of the most important reasons, adduced for prohibition of judgment by women is consensus. (The first martyr, Aldoroos, volume2, p70, the second martyr, Almasalek, volume 3, p327, Alameli, Mohammad Javad, Meftah ol karama, volume10, p9, Sabzevari, MohammadBagher, Kefaiatolahkam, volume 2, p660, Feiz Kashani, MohammadMohsen, Mafatihol sharaiea, volume3, p246, Tabatabai, Seyyed Ali, Riazol masael, volume15, p8, Najafi Mohammad hasan, Javaherol kalam, volume40, p14, Naraghi, MolaAhmad, Mostanadoshia, volume17, p34, MoosaviKhoei, Seyyed Abol ghasem, Mabani Takmelatolmenhaj, volume1, p10). Some Islamic Jurists have adduced other reasons, for example some of them claimed that subtle nature of women is not adequate for judgment (Ghorban nia, Naser, contemplation in Fegh (Islamic jurisprudence), Evolution of law, p143-153)

### 4-beneficence of the rule

As it was said, judgment is a momentous obligation; therefore judges should have special qualifications. Some contemporary writers have doubted incompetency of women for judging. They believe that women have the right to judge, but applying this right is a different issue (Ibid, p154-155). Ayatollah Javadi Amoli writes: ((It is incumbent on men to accept the difficult obligation of judgment, but it is not incumbent on women, but it is not deprivation of the right, it is rather elimination of an obligation (Javadi Amoli, Abdollah, Women in the mirror of magnificence and beauty, p350 and 351). Thus, elimination of this obligation is a privilege, and beneficiary. As it was mentioned, judgment is not a position, but it is a heavy obligation, and it is a beneficiary rule.

### Conclusion:

In regard to judgment, many Islamic jurists have considered virility as a qualification, and adduced Quran and Islamic tradition. They believe that judgment is a heavy and momentous responsibility, and thus it is not proportionate to women. Some Islamic jurists have believed that women are sensational and intellectually weak. Some jurists don't agree, and believe there is no evidence on incompetency of women. This group of jurists assume that judgments is a momentous responsibility which its elimination is a privilege and not a discrimination.

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