

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Series of Answers by Eminent Scholar Ata bin Khalil Abu Al- Rashtah, the Ameer of Hizb ut Tahrir to Questions by the Followers of his Facebook Page “Fiqhi”

Answer to A Question

Is it Permissible for a Kaffir Woman to become a Shariah Judge?

To: Husam Y Dawoud

(Translated)

Question:

Assalamu Alaikum Wa Rahmatullah Wa Barakatuh. Our dear Sheikh, I pray that Allah bestow upon us His victory by your hand and honor us soon with the Khilafah (Caliphate) state, this is easy to Allah to achieve. I would like to know when the Khilafah (Caliphate) state is established; will a kaffir woman take the position of a Shariah judge?

I have a question: it was stated in the *Social System* book, page 91, that it is permissible for a woman to become a judge, this is because of the general expression of the Hadith: «لَنْ يَفْلِحَ قَوْمٌ وَلَوْ أَمَرَهُمْ امْرَأَةٌ» **“Never will a nation be successful if they appoint a woman (as leader) over them”**. It states that this is the evidence of the permissibility that she can become a judge. I had a thought that crossed my mind; that the kaffir woman or one from the people of the book can become a judge.

I did not find a text in the past that a non-Muslim woman took a position the judiciary in Islam from the above. What is the significance of that? Is it permissible for the kaffir women to become a Shariah judges? I mean in the personal status (law): marriage and divorce ... We have defined the judiciary as delivering the verdict for the purpose of enforcing it... So is not believing in the verdict makes it binding? In conclusion, I hope that you will have patience with the question and that I receive from me a satisfactory answer. I pray that you will be in the best of health, and may Allah (swt) protect you from all evil

Your brother, Hussam Dawood / Palestine

Answer:

Assalamu Alaikum Wa Rahmatullah Wa Barakatuh,

It appears that you are referring to the following text in the book, *The Social System*, under the chapter: “The Activities of Women”

(However, it is not permitted for the woman to take up positions of ruling whether as leader of a state, his Mu'aawin (assistant), Waali (governor), 'Aamil (district governor) or any other activity considered as ruling. This is due to what has been narrated by Abu Bakrah that he said: When the news reached the Messenger of Allah (saw) that the people of Persia had appointed the daughter of Chosroes (Kisra) as queen over them he (saw) said: «لَنْ يَفْلِحَ قَوْمٌ وَلَوْ أَمَرَهُمْ امْرَأَةٌ» **“People who appoint a woman to run their affairs shall never succeed.”**

[Reported by al-Bukhari] This is clear in its prohibition of women assuming the position of ruling and in its censure for those who appoint a woman to run their affairs. And the person in authority (wali al-amr) is the ruler. Allah (swt) says: يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي

«الْأَمْرِ مِنْكُمْ» **“Oh you who believe! Obey Allah and obey the Messenger, and those of you who are in authority (ulu al-amr minkum)”**. [An- Nisaa` : 59] Thus, the authority of ruling is not permitted for the women. As for positions other than ruling, the woman is allowed to undertake them. Therefore, women can be appointed to government civil-servant positions because they do not constitute ruling, rather they fall under employment. An employee is a private government worker. They are like the employee of any other individual or company. It is allowed for a woman to assume the position of judge because the judge is not a ruler but settles disputes between people and informs the disputants of the rule for the purpose of

enforcement. Therefore, the judiciary (alqadaa) can be defined as the delivering of the verdict for the purpose of enforcing it. So the Qaadi is an employee and not a ruler. He is a government employee like the rest of the workers. It has been reported from 'Umar bin al-Khattab that he appointed al-Shifa - a woman from his folk - as a market judge (inspector) i.e. a judge of Hisbah who passes judgement on all violations. However, the permissibility for a woman to be a judge, relates to the text of the hadith and its applicability to the reality of the function of a judge. If the hadith which forbids the appointment of women over peoples' affairs is applicable to the judiciary, then appointing them as judges would not be permitted. And if the hadith does not apply, then it cannot be used as an evidence to prevent women from being appointed to the judiciary. Looking at the hadith, we find that the Messenger (saw) dispraised the people who appointed a woman over their affairs in response to the news that reached him that the people of Persia had appointed a woman as queen. It is, therefore, a comment on a piece of news, and in of the form of a response to a question. It is specific to the topic of the report and to none other. The subject matter of the news is the rule (mulk) i.e. the leadership of the state. The comment was on this topic and it is specific to the issue of state leadership and whatever is related to that, which is governance. This is from one perspective. From another angle we see that the prohibition is directed towards the general authority because it is the authority over the affairs (of people). This is what the hadith means and this is what it indicates. As for the role of a judge, it is different to the role of the Khaleefah or the Waali. The role of the Khaleefah and the Waali is the execution of the rule directly by themselves, regardless of whether a case has been raised to them or to a Qaadi or if no case has been raised at all, but he views the issue to have contravened the Sharee"ah. So the ruler judges against the transgressor without the presence of a claimant and he applies the ruling on him. As for the Qaadi, he cannot pass a judgement without the presence of a case, i.e. that a case is referred to him and there are two claimants present. So he passes judgement when there is a case, but he has nothing to do with it if no one initiates a legal action. In the event of looking into the case, he informs the people of the shar"i ruling with regards to the case in a manner that is binding. He has no authority of execution, unless if he is appointed as judge and ruler. Then, he will execute the rules in his capacity as a ruler and pass judgement in his capacity as a judge. The reality of the judiciary is different to the reality of ruling and therefore the hadith does not apply to the judge...) **End.**

Your question, my brother, is not clear, and it confused matters. Are you asking about the ruling of kaffir women becoming a Shariah judge for the Muslims, that is, to judge between Muslims? Or are you referring to the ruling of a woman becoming a judge between the kuffar, from the people of her religion in matters of marriage and divorce (that Shariah permitted them to have the judgments in those matters according to their religions?)

1- As for the first case, which is the judging between Muslims, it is not permissible for a kaffir woman to be a judge for Muslims on any issue, just as it is not permissible for a kaffir man to be a judge for Muslims on any of the issues, **because one of the conditions of a judge in Shariah is that he is a Muslim, whether the judge is a man or woman**, this is because Allah (swt) says: ﴿وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا﴾ "...and never will Allah give the disbelievers over the believers a way [to overcome them]" [An-Nisa: 141].

This contains a definite prohibition, because the expression "Lan (will never)" is a notification with the meaning of a request, and since Allah (swt) has forbidden the disbelievers to have a way (authority) over believers, then it is forbidden to make a disbeliever a judge to judge between them, because this (judiciary post) will give an authority to the Kuffar over the believers.

We have mentioned the condition of Islam for a judge in more than one place of our books, for example:

In the book, *The Institutions of the Khilafah State*, the chapter "conditions of the judges":

(Anyone taking up the post of judge must be a Muslim, free, mature, sane, just, a Faqih (learned scholar), and aware of how to apply the Islamic rulings to the reality (li-tanzil al-ahkam 'ala 'l-waqi'). **End.**

And in the book, *The Introduction of the Constitution, Volume I*:

(Article 78 Whoever undertakes the responsibility of judgement must be a Muslim, free, adult, sane, just, a Faqih (person who knows jurisprudence/Fiqh), and aware of how to apply the rules to the events. And the person who undertakes the judiciary of injustices (Madhalim) in addition to the conditions mentioned, must also be male and a Mujtahid (capable of deriving his own Fiqh/conducting Ijtihad). Its evidence is what was mentioned previously for the evidence for the Supreme judge, except that it is not a condition in the judge who settles the disputes and the judge of Hisbah to be male, rather it is permitted for the judge to be a woman, since it is not a position of ruling but rather a judge, in other words, they convey the Shari'ah rule while they are not the one who implements it. Accordingly, the narration: «لَنْ يُفْلِحَ قَوْمٌ وَلَوْ أَمَرَهُمْ امْرَأَةٌ» **“Never will succeed such a nation that makes a woman their ruler.”** reported by Al-Bukhari, does not apply, since it is regarding governorship which is ruling. And the reason for the narration was when the people of Persia were ruled by a woman; it is narrated from Abu Bakrah who said “When the Messenger of Allah was notified that the people of Persia were ruled by the daughter of Kisra, he said: «لَنْ يُفْلِحَ قَوْمٌ وَلَوْ أَمَرَهُمْ امْرَأَةٌ» **“Never will succeed such a nation that makes a woman their ruler”** (reported by Al-Bukhari).

So, the reason for the words of the narration was a specific subject which was mentioned explicitly in the text of the narration, which is ruling, in other words, authority, and the judiciary is not an authority. Accordingly, the narration is specific to ruling and does not encompass the judiciary... End.

2- As for the second case, the Shariah has permitted the state to permit the people of dhimma (non-Muslim citizens of the state) to judge among themselves in accordance to their religions in matters of marriage, divorce, and related issues ... So, Muslim judges do not judge between them according to Islamic law nor according to their laws, but rather the judging between them will be by judges from them, i.e. non-Muslims. However, these judges do not have special courts. Rather, they have judicial chambers within the buildings of state courts and they are part of the administrative section of the state courts. The appointment of judges is not given to them, rather it is carried out by the state, the state appoints their judges, from them, who judge between in matters of marriage, divorce, and what is related to them, according to their religions and laws, as approved by Shariah.

If their laws allow them to have a woman judge to judge between them in matters of marriage and divorce, then kaffir women can be appointed as judges by the state for the dhimmis, that is, the Kaffir woman in this case may be a judge who judges between the people of her religion according to their laws

I hope this answers your questions, and Allah (swt) Knows Best and is Most Wise.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

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The link to the answer from the Ameer's Facebook page:

<https://web.facebook.com/HT.AtaabuAlrashtah/posts/2689743384605002>