

The Philosophical Investigation and Critics of the Opponent's Reason Against Women's Judgment

Elnaz Alineghad and Leila Mosafer Yadegar
Payame Noor University (PNU), Naghdeh, Iran

Abstract: One of the juridical and religious jurisprudence differences between men and women is their difference in jurisdiction. Jurisdiction is a kind of religious stewardship from God and in accord with that he has the right to seizure life, property and credit of the people. Therefore, it is very dangerous that doing it requires a special condition to be done properly which anyone cannot assume the responsibility. Hence, no one can be thought to be deserved this elevated status. Understanding of the rights and dignity of women is based on unbiased investigation which is firmed up on actual and natural basis. Unfortunately, most of the time, avoiding extreme will lead people to wastage. Or hating wastage they will be forced to boast and extreme. Therefore, this study is sought to investigate and criticize quite unbiasedly the arguments of opponents of women judges. The current study is a juridical-jurisprudence by the title. The data are collected in library research. The research purpose and question are functional.

Key words: Jurisdiction, woman, philosophi, traditions, consensus, criticize

INTRODUCTION

Undoubtedly the religious commandments are fabricated based on real corruption and interests and there is a relation between commandments and fabricated interests authentically. Also if no permission in women judgment is a real regulations, it is certainly based on interests that is religiously forbidden. Though from one hand, the evaluation of women's existence leaning to some traditions and attesting to some Quranic verses is accounted as not permitting license, the legal phase of the argument must be doubted in other words, introducing woman as an incapable creature and deducting not to give her the license for judgment can be argued in religious jurisprudence. Then, in none of the old disciple's book and even until and after the death of Allameh the deficiency in wisdom and weakness in belief have not been mentioned as a proof or emphasis not to give license. What in some of deductive books, like Maslek is specified is that woman does not have the qualification of this responsibility due to the reason that she has to be in touch with men, she cannot judge without being in touch as well.

The qualification of a man being a judge is from this view that woman is not qualified for this position because this is for man to raise his voice among other man which woman is not allowed to then it does not deserve her dignity and the judge will be forced to do these actions.

In any way, it is proper to present all view's of proponents against women being a judge one by one and at last being criticized, evaluated and concluded.

MATERIALS AND METHODS

Principle of lack or uncertainty principle: One of the important reasons that jurisprudences related to imam wrote about incapability of woman in judgment in their writings and mentioned it as a firm reason in the uncertainty principle regarding to the point that judgment is a religious order that is domineering over people's life and property, its permission requires a reason and its inexistence will led to the order of no license. Accordingly, Sheikh Tusi has broght in Daro-khelafe women cannot judge in any case because the license of judgment must be proved through reason as judging is a religious order and people's qualification for that must be proved by religious reason.

On the other hand, the traditions that have been brought for judgment are assigned to man and also some generality and applicability are assigned in this way and as there is no clear confirmation about woman's judgment her judgment is not acceptable with unpermitted license. Saheb Javaher also stated this issue in another way that understanding the positing in religious texts during the occultation is in relation to the exclusion of women. Meanwhile, there is a hadith from Imam Sadiq

(AS) that states: Avoid judgment because judgment is for the leader that is familiar with judgment and behaves judicially among muslims like Holy Prophet (PBUH) or successor of the prophet. According to contemporary jurists, Allameh Hosseini e Tehrani stated that jurisdiction is a branch of stewardship and must be with the permission of Imam (AS). He further added that “if with doubt on the masculinity of the judge with the assumption of no deducing facts, principle and regulation order the masculinity of the judge not reject the requirements principle of the lack of constitutional of men” (Hosseini and Tehrani, 1983).

Quranic reasons: One of the resources that stated the incapability of women’s judgment is Quran. Here, a Quranic verse will be given in this regard for the confirmation of this issue. Baqarah Sura, verse 228: Wives have a legal right over their husbands as well as husbands, however, there is abundance and superiority of men over women, God is able to do things and knows all aspects of reality.

Tabarsi in the interpretation of the verse says: “this verse means that men manage over women like rulers over their citizens through ordering and forbidding and reasons are brought for the superiority of men over women like wisdom, foresight, Jihad, sermon, izan, the number of wives, divorce, etc.” Sheikh Jamal Uddin Miqdad Sewry in describing the verse states that: this is for men to manage and punish women for two reasons; first a blessing from God that gave a higher degree and abundance to men over women like perfection of wisdom, good policy, abundance of strength in behavior and servitude, therefore, Imamate, stewardship, maintaining the ceremonies of jihad much interest in inheritance. Another reason which is arbitrary includes covering the cost of living for women and giving dowries to them”.

However some wanted to use from this phrase (men are given a higher degree (over women) by reference to its ascription that this superiority is also existing in the issue of statesmanship and judgment, therefore, the judge must be a man not a woman. Hence, statesmanship and judgment are neither legitimate nor dominant (Almabssot, 1972).

Traditional reasons: Other resources that deducted the incapability of women in judgment is the traditions that prophetic narration will be criticized and investigated below.

Prophetic narration, a known narration is said by the Holly Prophet (PBUH) though it is from prophet, it is said in different ways. However they all have the same or near

provision that: If a state gives its statesmanship to a woman, it will never be satisfied and blessed. In respect of issue of this narrative reads after the killing of Khosrow Parviz by Shiroyeh one of the people who succeeded Khosrow Parviz was his daughter Pourandokht. When the prophet was aware of this said the above-mentioned sentence that was stated in different ways. Those who deducted from this saying state that judging is the best example of stewardship over others a community that hand over the stewardship to women will not have a good outcome.

Consensus: Consensus will be tackled here as it is of importance for jurists: Analogist of consensus what at first step must be traced is that who resort to consensus as a reason in problem and basically when did the claim of consensus, occurrence or denial of misdeed start? It must be said that who resorted consensus are these people: Allameh Helli in Nahj-ul-Haq, the first martyrdom in the courses with the interpretation Atbaq Alslf, the second martyrdom in describing Brightness and masalek, Sabzwari in Kifayat, Seyed Javad Ameli in Meftah Karama, Seyed Ali Tabatabai in Riaz AL Masa’il, Naraqi in Mostan Ul-shia, Saheb Javaher in Javaher Al-Kalam, Sheikh Ansari in the book of Judicial, Seyed Mohammad Mujahid in Al Manahel and some contemporaries such as the deceased Khansari (Javad, 1999; Mohammad and Hasan, 2012; Toosi, 1986; Nematollah, 2004). Accordingly and up to the point investigated no one has claimed the consensus and occurrence before Allameh Helli, this is an attractive issue especially someone like Sheykh e Tusi who neither mention the name of consensus in detail nor in transgression. Though Sheykh usually in consensus, considers consensus sect as one reason in disputable issue and in this book Al-Qaza in other branches against the principle of tradition he has considered consensus as a reason for seventeen times, however in Eshtrat Zokorat resorted to another reason did not say anything about consensus (Sadoogh, 2006). Among those named here there are some people that claim consensus, denial of misdeed, presence of occurrence and some were satisfied to rely on other’s claim about consensus.

RESULTS AND DISCUSSION

Uncertainty Principle: Since judge is a clear dominance over others it can be assumed that the first principle is the denial of this domination, therefore, wherever its proof is doubtful what the practical requirement of the principle is its denial. However, the hostility between people, the punishment of the offender and dissuading others from committing sin are clear

examples of enjoining good and forbidding wrong and as an efficient duty like other duties it must be fulfilled properly. That group of reasons that generally requires doing this duty including general reasoning enjoining good and for bidding wrong or those arguments that were presented according to the necessity or permission of license for judgment the mentioned doubt will be turned into a primitive doubt and absolute proof of license withdrawal, especially men are not fixed so there will not remain any place for adhering to the principle and in doubtful cases these categories of generality and attribution shall be referred. On the other hand in some interpretation of traditions about the man in fact, the gender of the person was not meant but his capabilities and the independence from the kind of the system administration were meant. As it was said before, the intention of mentioning the word man is to show domineering.

Regardless of these issues, nowadays learning and education is natural for women as well as for men and there are no problems for women's education and their separation from community and policy because the entrance of women into the community and social activity is practically allowed and there is not proclamation of any kind of legal prohibition from jurists against women's activity. In this situation what justification can be brought for the prohibition of judgment and order according to legal standards and within legal framework for women those who have educational capability as well as men and have moral competence. In any case, the principle of the reasoning cannot be used that women do not have right to judge and jurist's religious decree have also changed over the time. Quranic Reasons: For example, Baqarah Sura, verse 228, firstly, this verse is related to the common life of men and women and the rights of each of the two over the other. Secondly, it must be understood what is degree meant? Is judgment a degree? The word degree is mentioned with indefinite article and there is no reference for it to prove that the word degree is meant judge and stewardship for ordering.

The researcher of the Family Paradise stated that the word degree is meant that guardianship that husband has over wife it means that the almighty God has assigned husband for a daughter after her father and mother in order not to be without companion and assistant. Although, husband is a guardianship he has the responsibility to protect his wife and provide her cost of living. If a thief or an enemy attacks the family decision making and guardianship is husband's responsibility to shout and protect his property because woman's voice is charming and not repulsive.

Generally, woman's life is full of sense and affection and man's life is full of wisdom and thoughtfulness and

due to this fact Islam decided to give the responsibility of jihad, judgment and battle to men because these affairs need the power of thought and wisdom and in return gave the responsibility of breeding of children, their education and managing house affairs to women because these affairs requires affection and kindness.

Traditions reasons: For example, Prophetic narration: this hadith which was just mentioned in traditional books like Tohfah Ul-Oqoul, according to the existing testimony in hadithology that their narrators are from among Sunni is accounted as weak hadith and there is no reliance on it. And Sheykh's statement in Al-Khalaf became clear that it was said as a general matter and did not mention about specific matter. According to implication, the reason for issuing this hadith raise this possibility that this saying dates back to the late Iran's sociopolitical situation in Sasanian's kingdom. Secondl If prohibition could be deducted from this hadith that is in the realm of leadership and guardianship. But there is no reason for the issue that judgment is prohibited for women.

Thirdly, lack of fellah is not at odds with license and this the second dispute that the deceased Khansari had raised (Hosseini, 1990). Fourthly, this hadith says that, women do not have the capability to take this responsibility and the analogist say that therefore women should not take this responsibility. Although this kind of analogy is not right but against it can be referred to the issue of the Queen of Saba who lead to her salvation and her people as examples of contradictory. Fifthly did the Holy Prophet (PBUH) meant to say that if the ruling of a state was given to a woman like Zahra would it de lead to the misery of the people there?

Imam Ali (AS) states that: "Think about the news you hear with reasoning and deliberation not with carelessness." After thinking deep into details, it can be deducted from the Prophet that he meant the range of general and some women because most women are influence emotions and a community that is being ruled by emotions will go ashtray. With this reason it can be said that if a woman who has a capability more than the man or equals with him it cannot be said that this hadith is prohibiting the judge for such a woman. In any case, this narrations cannot be relied according to its testimony and also it cannot prove the prohibition of woman right for judgment according to reasoning principle. Evaluation of consensus: the above-mentioned consensus is a narrated consensus that cannot give evidence for issuing order from Imam. In addition, the acquisition of consensus in a way to show that it is stated by the Imam itself is usually impossible for the narrators. And if according to

basic principle, people like Sheykh Ansari focus on this consensus it should be said that this view point or consensus should not be regarded as an independent reason.

Also some phrases give evidence to the point that consensus is related to the absolute judgment. But there is possibility that it is related to principle of stewardship and general positioning not specifically judgment is meant separating animosity. It should be notified that Sheykh is apparently referring to the extensive permission of the position of judgment and its unexclusiveness regarding cutting animosities and we interpret it as Hasbiyeh affairs. According to the mentioned possibility he believes the mentioned consensus according to all its principles and not cutting animosities which is one its principles. Therefore, if anyone accepts the mentioned interpretation and regards the Astrat zkurt peculiar to the principle of stewardship and responsibility of the position of leader but doing judgment and taking the responsibility peculiar to the position of the separation of animosity and vindication of rights and judging in punishment do not regard this contingent on the mentioned condition he/she did not disagreed with the consensus.

One of Ayatollah Borojerdi's student says about consensus and the validity of Ayatollah Borojerdi's statement. Imamieh's jurisprudence is of two types:

- The main issues in that have been taken hand to hand from the infallible Imams (AS)
- Secondary issues that jurists elicit from the main issues with their discretion

Primitive jurists were at odds with the first type they often tried to preserve the terms used in traditions in a way that anyone should read their books they would think they are not mojtahed and the latter would imitate from the primitive. And Shaykh Tusi authored Nhayh book with method of early imami jurists for quotation of main issues and wrote the book as a comprehensive principles and secondary book (Zeyn, 1992). Therefore if an issue is raised in a book which is for quotation of main issue from Imam can be assumed that it is taken from infallible Imam (AS) and the consensus of the jurists to this issues is also a publicity of a problem among jurists that is a legal reasoning because it is taken from the infallible (AS).

CONCLUSION

But inferential secondary issues, the existence of consensus among them is not a reason because in these affairs the likeliness of consensus in intellectual issues. From the view of imami jurists consensus and occurrence is not correct merely from the consensus side and consensus is valid for the discovery of the quotation from infallible Imam (AS). According to topic in current study, means prohibition of women's judgment, the issue does not seem to be quoted from infallible Imam (AS) but not written in any primitive jurists books. Therefore, the consensus that was quoted in this regard, even though people like Saheb Javaher have relied on it cannot be proper and used as a reference. Because the jurists have just claimed the consensus which is not always provable and just a claim and many have quoted the contradiction of the claim. Therefore, according to what has been mentioned there is no convincible reason for the prohibition of license for taking the responsibility of judge for women.

REFERENCES

- Almabssot, F.F.A.E., 1972. Al maktabeye al Mortazavie Le Ehya al Asar al Jafarieh. Heydari Publication, Tehran, Iran.
- Hosseini, A.M., 1990. The Islamic Jurisprudence Rule: Studies in Faqih and in Islamic Government. Tafakkor Publication, Qom, Iran.
- Hosseini, M. and H. Tehrani, 1983. Men are Protectors on Women. Hekmat Iran, Iran, (Badiya).
- Javad, M., 1999. Family Paradise. Hatef Publication, Mashhad, Iran.
- Mohammad, B.A., A.H.A.A. Hasan, 2012. Vasayel al Shia ela Tahsil Masael al Sharaaieh. Dar al Ehya al Taras al Arabi Publication, Beirut, Lebanon.
- Nematollah, S.N.A., 2004. Judgment of Women in Islamic Jurisprudence. Omid Farda Publication, Tehran, Iran.
- Sadooghi, M.B.A.B.A.H., 2006. Those who cannot Judge. Dar al Kitab al Eslamiyah, Tehran, Iran.
- Toosi, A.J.H.B.A.A., 1986. Al Khalaf. Islamic Publication Institution, Qom, Iran.
- Zeyn, A.D.E.A.A., 1992. Masalek al Afham Ela Tanqihe Sharaye al Islam. Maaref al Eslamiyah, Qom, Iran.