

Research in Women's Public Office Positions in Islām

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Abstract: *As far as research in the field of women's public office in Islāmic jurisprudence is concerned, a number of research studies have been examined from various sources. Analysis of the literature shows that fanatic adherence to preferred madhāhib (sections of fiqh) which normally confined to the views of local culture is the main factor of the disagreement. Another factor is the lack of profound understanding of the controversial nuṣūṣ (legal texts) which are related to the issue.*

Keywords: Islām, women's public office positions and disagreement opinions

1. Introduction

The disagreement opinions among Muslim scholars about permissibility for women to hold public office positions seem to be never ending episode. There are some scholars who are still adhering to traditional values of the culture of Muslims' societies that state women's main task is to be excellent housewives. They seem to be reluctant in allowing women to work outside home, except in necessity situation such as for divorcees or widowed women who have no source of sustenance, as well as those women whose husbands do not earn enough to properly maintain their household. At the same time, the arguments from the modern scholars who allow women to work outside home as well as to hold public office positions; seemed to focus a lot on society's expectation in their discussion.

The related literature has been reviewed and those arguments made by the Muslim scholars also have been analyzed. The researchers found that there is no absolute restriction in Islāmic law that says a woman cannot work outside home or to hold public office positions. However, there are some public office positions that women should avoid since the positions are supposed to be given priority for men to hold them. Researchers also found that those who support the idea that women working outside home as well as holding public office positions may have intentionally or unintentionally neglect to discuss the biological and psychological aspects of women. Therefore, the objective of the study is to examine the reality of differing opinions pertaining to the matter.

2. Women Differ from Men

Women and men in Islām are equal in terms of moral, spiritual duties and acts of worship (al-Qur'an, al-Nisā', 4:1, al-A'rāf, 7:189, al-Shūrā, 42:11); however, women have some concessions due to their feminine nature and roles. Women are different from men in biology and psychological aspects [Various sciences and researches have proven that women are different from men, no one can ignore the difference, except those who are stubborn and fanatic], this is what Allāh has clearly mentioned in al-Qur'an: "... *and male is not like female, I have named her Mary, and I*

commend her and her offspring to Your protection from the Satan (the evil and rejected one)" (al-Qur'an, Āli 'Imrān, 3: 35-36).

Moreover, history and our surrounding tell us that a society from past until nowadays, still does have its own perception of women compared to men. Past societies especially those who involved in war, preferred to have sons rather than daughters. Even the Arabs of Quraish who were merchants and frequently traveled for long distances to Sham [Sham is the former name for Syria nowadays. Since they travelled for long distance, naturally they were subject to any dangers such robbery. Hence, they would like to have many sons and men with them to make sure their journey was safe] also preferred boys to help them. Hence al-Qur'an says: "*What! For you the male sex, and for Him (Allāh) the female?*" (al-Qur'an, al-Najm, 53: 21).

In short, the view that holds there is no significant difference between women and men, or states that women are able to make all chores done by men (and vice versa); in reality does not stand on the facts of history, society practices and objective researches.

3. Muslims Scholars' Opinions on Women Holding Public Office Positions

All *fatwas* (Islāmic decrees) made by scholars should be based on the premier sources in Islām, i.e. the holy book al-Qur'an, then the authentic hadīth (Prophet Muḥammad's tradition) which is the second source after al-Qur'an. Other sources such as *Ijmā'* (consensus of Muslim scholars), *Qiyās* (analogy reasoning), *Maṣāliḥ Mursalah* (public interest), *Sadd al-Zarā'ie* (blocking the means to an evil), *al-Urf* (customary practice of society), etc; fall under the secondary sources. Any *ijtihad* (thorough process in extracting a fatwa) that is not based on the two main sources will be nullified and becomes invalid in Islām.

There is no major issue in regard with permissibility of women to work outside home; since the view holds that women could not work outside home is absolutely weak. It also does not be supported by any *sahīh naṣ* (valid evidence); whether it is either a Qurānic verse or a Prophetic

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hadīth. History of the life of people during the Prophet's time and his *ṣaḥābah* (the Prophet's companion) objects the *fatwa*. In fact, a truly Islāmic society must be comprised of women who work such as physicians, nurses and teachers. In fact it is also preferable to separate teenagers in the volatile years in the high school education (Asar AK, et al. 2014). Hence the main focus in this paper is about women hold public offices.

Generally, there are three major opinions of Muslim scholars regarding the issue of women to hold public offices, they are:

- 1) Earlier scholars believe that women cannot hold any public positions (Ibn Ḍūyān. 1405H). Al-Khaṭīb al-Sharbīnī (n.d.) in indicating the conditions of the caliph, stated: "The fourth condition is being a male, to devote himself and be able to mix with men. So it is not valid for woman's leadership due to authentic hadīth ((*People who appointed a woman to be their leader will not succeed*)[*Ṣaḥīḥ al-Bukhārī*, hadīth no. 4136; *al-Mustadrak*, *alā al-Ṣaḥīḥaini*, hadīth no. 4608; *Sunan al-Tirmidhī*, hadīth no. 2262; *al-Sunan al-Kubrā*, hadīth no. 5937 J. The impermissibility also implies to a hermaphrodite although his masculinity is clear. This ruling was also held by al-Māwardī (1973M) and al-Maudūdī (1985M). Al-Qurṭubī in the interpretation of the verse of al-Qur'ān "*Men are the maintainers of women.*" [*Al-Qur'ān*, *Sūrah* (Chapter) *al-Nisā*; 4: verse 34.] said that men have virtue over women due to increase mind and administration in men; men also are stronger than women in physical strength and soul. Men - to him, are used to heat and dryness that make them strong and powerful; while women are used to moisture and cold that make them softer and weaknesses; making the right for men to be leaders (al-Qurṭubī. 1372H). This view is also held by current Muslim scholars such as „Adnān Bāḥārith (2005), professor of Islāmic Studies at the University of Umm al-Qurā, and „Abd al-Majīd al-Zindātī (2000M), the Chairman of Shūra Council for Yemen Congregation Party.
- 2) This sect believes that women are permissible to hold any public positions, except the highest position in a country. The most prominent scholar that clearly states this was al-Būṭī (1996). Yūsuf al-Qarāḍāwī (1998) says that the prevention of women to be the caliph or the head of a country and the like, it is because women's ability usually could not bear any conflict that requires such huge responsibility.
- 3) This sect believes that women are permissible to hold any public positions, even to the extent that a woman can become the head of country such Prime Minister or President. This opinion is held by some of current Muslim scholars such as Jamal Badawī (1995) and Hibāḥ Raūf „Jzzat (1995M). In fact there is also a Master thesis written by Nazīla Mat Ṣālih (2012) which states that the evidences of the opponents are weak. They reasoned out their *fatwa* as what the second group has reasoned. However they argue that the Prophetic tradition (hadīth) that states that people who appointed a woman to be their leader will not success falls under news category and it could not be applied to Islāmic legislation.

4. Discussion

After analyzing all related legal texts and arguments from all sides, researchers found slip records in their arguments and they are as follows:

Group 1: The opponents

- 1) They focus a lot on the *qiwāmah* (stewardship) verse, i.e. "*Men are the protectors (and maintainers) of women*" (Ibid). However the verse indicates the *qiwāmah* of husbands to their wives. It actually could not be applied to other situation. They do not discuss much about other verses that related very much to the leadership such:
 - i. The story Ṭālūt who had been chosen by the Allāh because his knowledge and physical strength: ((... *he (the Prophet) said: "Allah has chosen him above you all, and has gifted him abundantly with knowledge and bodily prowess* ...))- (al-Qur'ān, Sūrah al-Baqarah, 2: 247).
 - ii. The story of prophet Shu,aiḥ's girl who asked her father (the prophet Shu,aiḥ) to hire prophet Mūsā who was trustworthy and strong person: ((... *O my father! engage him on wages: truly the best of men for you to employ is the man who is strong and trusty*")) – (al-Qur'ān, Sūrah al-Qaṣaṣ, 28: 26).
- 2) They circulate rule preventing women from all types of public office or leadership positions according to the *hadīth* of people success. This hadīth however refers to the caliphate or the highest position in a country. This kind of opinion is excessive and exaggeration, it does not consistent with the spirit of Islām that promotes balance.
- 3) They do not look at the reality in the Muslim community and other communities in the world. They have forgotten the *maṣlaḥah* concept of the nation due to their exaggeration in exercising *sad al-dharā, i*.

Group 2: The proponents for all public office positions except the position of caliph

- 1) They do not discuss in detail about their opinion, al-Būṭī (1996M) for instance was still discussing the issue as what the previous scholars have discussed it, i.e. by focusing the public position posts which were existed during the *khilāfah* (caliphate) period. The current surrounding shows us that public positions in this day are various and some of them in fact should be given to women to hold them such Ministry of Women, Family and Community in Malaysia.
- 2) They also do not detail out the real meaning of highest position post, i.e. the Caliph. Does the Caliph mean the King, President, Prime Minister; or perhaps the Caliph for all Muslim countries who obviously does not exist nowadays? Malaysia for instance, follows the British colonial system, in which "*Yang di-Pertuan Agong*" (the King/ Ruler) is the Head of State; however the administration should be given to the Prime Minister whom was chosen through a democratic system. The Prime Minister is the one who will advise the Ruler in the administration (Malaysian Bar; Tommy Thomas. 2008).

Group 3: The proponents for all positions

- 1) They do not discuss the nature and specific circumstances of women, as if the women are like men in all things. This error is clear and sane imagined.
- 2) They argue with some weak possibilities, to the extent they compare a just female leader to an unjust male leader. Such reason is unacceptable since it's well known to all Muslim scholars that in Islām "necessity permits the prohibition".
- 3) They do not understand the story of the Queen of Saba" Balqīs in a real way. Balqīs was a non-Muslim, and when she converted to Islām, she gave her thrown to Prophet Solomon.
- 4) They do not discuss the verses of al-Qur'ān that related to the story of Tālūt and prophet Shu,ai'b's girl.
- 5) Most of the evidences provided by the proponents are based on reason; hence they are not strong enough to cope with texts from the al-Qur'ān and Sunnah which provided by the opponents. In fact, there is no need to hold to the reason by leaving the valid revelation evidences.

Generally, reseachers see that the majority of the previous dan traditional Muslim scholars actually do focus a lot on the traditional way in their arguments i.e. by interpreting *Shāri'ah* texts based on their respective understanding. They seem to judge with negative results for women to hold public office posts; in fact some of them still reason their arguments with the main argument of those who oppose women to work outside home; i.e. it may cause disobediences as the result of promiscuity among men and women. In some countries, women population is more than men, many of the women are educated persons who need to contribute their knowledge and skills to the development of their nation. Even though, there were some Muslim scholars such al-Būṭī and al-Qarāḍāwī who stated that women can work outside home and to hold any public office positions, but their explanation was general and not in detail. Their *fatwā* was more likely affected by their current patriarchal culture which obviously prevails in the Arab world.

On the the other hand, some current/ modern Muslim scholars who support the idea of women to work outside home as well as to hold any public office positions, seem to ignore the nature of women in their arguments. Finding from 369 Malaysian Muslims respondents who have met certain criteria set by the study conducted by the researchers shows that the society also support the idea that women to hold those public office positions that suit their nature, but not all the public positions are suit it (Asar AK, et al. 2015). In addition to that, Noor (2006) stated that eventhough the number of employed women in Malaysia will keep on increasing; the extended family network and support are slowly eroded. Reports of work-family conflict, child care problems and overload are also on the increase. In other words, proponents' evidences are weak and not strong enough to cope with the arguments made by traditional Muslim scholars. It is not fair to give a fatwa on this issue without extensive discussion about the nature of women's and its ability; there are of course some positions that are not worthy for women to be the leaders; moreover when the women are also being busying with household chores and raising children.

For Malaysian context, even though the government does not prevent women from any education and job; yet the number of women participation in those jobs that require manhood strength is low, such as in 1- agriculture, forestry and fishing, and 2- construction, is very low compared to men. Meanwhile women's participation in jobs related to 1- accommodation, food and beverage activities, 2- education, and 3- human health and social work activities is higher than men (Department of Statistics Malaysia, *Labour Force Survey Report 2013*). The few women that work in the quarry are mostly engaged in administrative works which do not require great physical strength. Even Perna Puri and Nidhi Saxena (2013) also stated that females reflect figures which contrast to male figures. They get involved in their job if they are having cooperative, reliable, and healthy environment.

The Mulims scholars seem do not concern much on discussing the detailed discussion about the Islāmic guidelines for women to work outside home as well as to hold public office positions. Our surrounding proves that there are still many women who can keep the teachings of Islām while they work outside the home (Asar AK, et al. 2014).

5. Conclusion

In short, the researchers see that the scholars' rulings which prevents women from holding any public office positions as well as allowing them in all positions, is not based on valid and clear evidence from Islāmic sources. In fact it obviously originates from fanaticism, current patriarchal culture and lack of profound understanding of the related texts (Asar AK, et al. 2015). Researchers support the second *fatwā* by some Muslim scholars who state that women can hold any public office positions, except for the highest position of the country and a-like positions in its meaning. Researchers also would like to add that the prohibition is also applied to any positions that require manhood and great physical strength such the positions as Defense Minister, War Commander, etc [This fact that we could not deny is women also do not suit to work with some jobs that require men's physical strength such fisherman, road builders, etc]. Other public office positions such as judiciary, *shūrā* member or university leadership; especially with regard to matters of women and the nature of women, then qualified women have the right to hold the positions based on *shāri'ah* guidelines. The main issue is giving the right job to the right person; it is not about discriminating women because of their gender. However, in cases of necessity cases, the prohibition is permitted.

Collective fatwa is seen to be more appropriate for this issue nowadays and any *fatwā* made should be confined to the specific place they belonged to. There is no generalization to all Muslim world since each country has a different environment: some conditions may not suit for women to hold public office positions due to some conditions such security, war, etc... Hence what matters to Muslims and people all over the world is to educate men and women on how women can work outside home and hold those public positions. We also should provide helping means and

facilities for working women to work. Men and women complete each other with his or her own strength; there is no such competing against each other as what is being promoted by some movements, as what is being seen or believed by some cultures. This is the culture of Muslims; the culture associated with their religion, Islām. Hence one cannot generalize a finding without considering the culture of a society.

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