

IN THE FEDERAL SHARIAT COURT

(Appellate/Revisional Jurisdiction)

PRESENT

MR. JUSTICE AGHA MUHAMMAD RAFIQ, CHIEF JUSTICE.

MR. JUSTICE SYED AFZAL HAIDER, JUDGE.

MR. JUSTICE SHAHZADO SHAIKH, JUDGE.

SHARIAT PETITION NO.1/L of 2010

Mian Hammad Murtaza son of Mian Ghulam Murtaza, resident of Mian Cottage, Mian Park, Badami Bagh, Lahore.

... Appellant

VERSUS

1. Federation of Pakistan through Secretary, Justice and Parliamentary Affairs, Pakistan Secretariat, Islamabad.
2. Federal Minister for Religious Affairs, Government of Pakistan, Islamabad.
3. Islamic Ideology Council of Pakistan through its Chairman, Islamabad.
4. Law Commission of Pakistan through its Chairman, Supreme Court Building, Islamabad.
5. Islamic Republic of Pakistan through Attorney General of Pakistan, Islamabad.
6. Government of Punjab through Secretary Law, Civil Secretariat, Lahore.
7. Advocate General Sindh, Karachi.
8. Advocate General NWFP, Peshawar.
9. Advocate General Baluchistan, Quetta.

..... Respondents

Counsel for the appellant ... Malik Muhammad Rabnawaz Khan, Advocate

Counsel for the respondents ... Ms. Salma Malik, Assistant Advocate General

Law challenged ... Sections 3 (1) & (2) and 4 of the Family Courts Act, 1964

Date of institution ... 06.04.2005:

Date of hearing ... 29.09.2010

Date of Order 29.09.2010.

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ORDER

This Shariat Petition No.1/L of 2010 has been filed by the petitioner Mian Hammad Murtaza challenging Section 3 (1), (2), (3) and Section 4 of the Family Courts Act, 1964 on the ground that the same are repugnant to the Injunctions of the Holy Quran and the Sunnah. The main contention of the petitioner is that a woman cannot act as a Qazi/Judge or Munsif and is, therefore, not competent to decide matters between the litigants in respect of family cases and vice-versa. It has also been asserted that a Muslim Ruler or Head of the State cannot appoint a woman as a Qazi/Judge with powers to record evidence of the parties and decide cases between the litigants.

2. We have heard the learned Counsel for the petitioner at quite some length. He has urged the following points in support of his contentions:-

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ix) That Mufti Azam of Saudi Arabia namely Abdul Aziz-bin-
Abdullah bin Baaz issued "*FATWA*" that woman cannot become
Head of Islamic State or Qazi.

3. We have perused the material brought on the record with
the assistance of the learned Counsel for the petitioner.

4. Allah Almighty in Ayat 28 Sura 2, Al-Baqra, enunciated a
general principle of gender equality in the following terms:

*"The women have the rights similar to those (of men) over them
in kindness"*

Discrimination between women and men on the basis of sex is violation
of Article 25 of the Constitution of the Islamic Republic of Pakistan,
1973 wherein it has been laid down:-

*"Nothing in this Article shall prevent the State from making
any special provision for the protection of women and
children".*

This Court had already, after hearing arguments of the parties and
discussing all the relevant Injunctions of the Holy Quran and Sunnah,

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dismissed Shariat Petition No.K-4 of 1982, titled "*Ansar Burney Vs. Federation of Pakistan and others*" reported in PLD 1983 Federal Shariat Court 73, wherein the same question regarding appointment of a woman as Qazi/Judge or Ruler/Hakim was challenged. This Judgment was assailed in the Hon'ble Supreme Court of Pakistan through Shariat Appeal No.K-1 of 1983 which was also dismissed as time barred vide order dated 02.11.1983 by the Apex Court. Therefore, the aforesaid judgment of this Court has attained finality. This Court has no reason to interfere with the same at this belated stage after elapse of about 28 years.

5. On a Court question, the learned Counsel admitted that he was not aware of the said judgment of this Court, in which the question of a woman being appointed as "*Qazi/Judge*" had already been decided. The petitioner inspite of opportunity could not refer to any specific NASS from the Holy Quran in support of his plea that a woman is disentitled to be appointed as Judge/Qazi.

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v) That Imam-e-Shafi has said:-

“It is not just (Jaiz) for a female to lead the congregational prayers;

vi) That men are superior than the women because Hazrat Hawwa was created after the birth of Hazrat Adam (May he be blessed).

vii) That in Article 227 of the Constitution of the Islamic Republic of Pakistan, 1973, requires that all existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, and no law shall be enacted which is repugnant to such Injunctions.

viii) That women undergo menstruation periods (*Haiz*) every month for a few days and during this period, they cannot offer prayers. Likewise, after giving birth to a child (*Zachgi*) for about 40 days, it is not permissible for the women to offer prayers. Therefore, women are inferior to men.

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i) That according to Ayat 34 of Sura Al-Nisa Allah Almighty has declared that men are rulers over the women.

ii) That the Holy Prophet (May peace be upon him)

declare:-

“That nation cannot succeed at all who entrusted the rulership of his country to the woman”.

Hafiz Ibn-e-Hajr Asqlani while interpreting this

tradition states:-

“No doubt the woman will not become Imam and Qazi”.

iii) That according to the Ahadith of the Holy Prophet (peace be upon him) *men are superior:*

“You don't forbid the women from going to mosques, whereas their houses are better for them”.

iv) That Hazrat Aisha (May Allah be pleased upon her), used to make “*Imamat*” of the women but her highness used to stand in the same line (“*Saf*”).

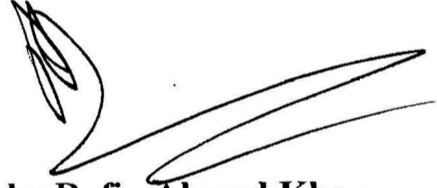


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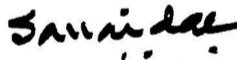
6. The petitioner has not challenged any specific of law. The learned Counsel, notwithstanding repeated questions, did not refer to any Injunction of Islam under which a female is barred from holding the office of a judge.

7. In this view of the matter, this Shariat Petition No.1-L of 2010 is dismissed in limine.

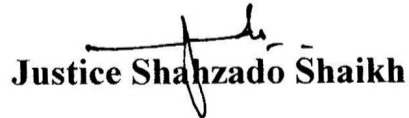
8. These are reasons of our short order dated 29.09.2010.



**Justice Agha Rafiq Ahmed Khan
Chief Justice**



Justice Syed Afzal Haider



Justice Shahzad Shaikh

Date Lahore the 7th October, 2010.

Fit for reporting



**Justice Agha Rafiq Ahmed Khan
Chief Justice**