

REEXAMINATION OF ISLAMIC LAWS: THE ENTRANCE OF WOMEN IN THE SHARIA COURTS

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There is a great fog that covers the question of whether there are consistent Islamic doctrines that prohibit women from becoming judges in Sharia courts. Due to interpretations from religious and legal texts that comprise Sharia law, women have often been prevented from entering the Sharia judiciary. Palestine's recent appointment of the first female Sharia judge in modern Middle Eastern history, Kholoud al-Faqih, has caused a reexamination of Islamic jurisprudence as it pertains to female judgeship. Although Muslims across the Middle East have mixed feelings regarding this change in the Sharia courts, many other women have now been appointed as Islamic judges throughout the world. This article examines the history of the Sharia courts and legal arguments that have been made to prevent women from entering the Sharia judiciary and offers recommendations for advocates seeking to increase female representation in the Sharia courts.

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I. INTRODUCTION

There is a great fog that covers the question of whether there are consistent Islamic doctrines that declare a woman incapable of becoming a judge in Middle Eastern societies.¹ Throughout Islamic history, women have often (but not always) been prevented from becoming judges.² These sentiments originated from popular interpretations of religious and legal texts and tools that make up the law of *Sharia* (“the right path”),³ including the Quran, the *Hadith* (sayings and conduct of the prophet Muhammad), *Ijma* (consensus), and *Qiyas* (analogical reasoning).⁴

Today, many Muslim women are active participants in nearly all aspects of life within Middle Eastern countries and throughout the world.⁵ In light of modern realities, these countries are beginning to reexamine the Islamic texts that suggest women are not allowed to become judges.⁶ Palestine’s appointment of the first female Sharia judge in modern Middle Eastern history, Judge Kholoud al-Faqih, has been a product of this

1. See Karen Bauer, *Debates on Women’s Status as Judges and Witnesses in Post-Formative Islamic Law*, 130 J. AM. ORIENTAL SOC’Y 21, 1 (2010), <https://www.jstor.org/stable/pdf/25766942.pdf?refreqid=excelsior%3A27b35c8e87ee17b2489f2b6410633d7f.f>

2. See *id.* at 1–2.

3. See *The Origins of Islamic Law*, CONSTITUTIONAL RIGHTS FOUNDATION, <http://www.crf-usa.org/america-responds-to-terrorism/the-origins-of-islamic-law.html> (last visited Sept. 13, 2019); Sayid Muhammad Rizvi, *An Introduction to The Islamic Shari’ah*, Ansariyan Publications 2, <https://www.al-islam.org/printpdf/book/export/html/38328> (“The word ‘shari’ah’ literally means ‘a way.’ In Islamic terminology, it means the legal system of Islam.”).

4. See JOHN L. ESPOSITO WITH NATANA J. DELONG-BAS, *WOMEN IN MUSLIM FAMILY LAW* 2 (2d ed. 2001).

5. Yousuf Ali, *The Appointment of Muslim Women as Judges in the Courts: A Textual Analysis from Islamic Perspective*, 17 INT’L PROC. OF ECON. DEV. AND RES. 200, 201 (2011), <http://www.ipedr.com/vol117/37-CHHSS%202011-H10039.pdf> (“In contemporary context, many women are participating actively in almost all aspects of life in Muslim countries such as Sudan, Egypt, Tunisia, Yemen, Bangladesh, Pakistan, Indonesia, Malaysia, and Maldives, but women’s appointment as judges in the courts is still a few.”).

6. See CONSTITUTIONAL RIGHTS FOUNDATION, *supra* note 3 (“Muslim legal scholars today believe that Sharia can be adapted to modern conditions without abandoning the spirit of Islamic law or its religious foundations. Even in countries like Iran and Saudi Arabia, the Sharia is creatively adapted to new circumstances.”).

reexamination process.⁷ The public has had mixed feelings regarding this development.⁸ Critics of females entering the judiciary in the Sharia courts have crafted a variety of arguments based on public policy, religion, gender equality, culture, and norms.⁹ Conversely, Judge al-Faqih and other Muslim women argue for the inclusion of women in the judicial system because women need spaces that are sensitive to their unique experiences and perspectives.¹⁰ Additionally, women who have gone through the Sharia court system at times declare that they have been discriminated against because of their gender.¹¹ Despite these proclamations, there has been major pushback from Islamic scholars due to interpretations of Islamic texts that may suggest women are deficient in rationality, are not capable of leading, and do not analyze issues in the same manner as compared to men.¹²

Nevertheless, other Middle Eastern countries have followed Palestine's footsteps by appointing female judges to their Sharia court systems, including the countries of Morocco, Israel, Tunisia, and Egypt.¹³ These Middle Eastern countries have reserved criminal matters to different courts, while leaving Sharia courts to focus on adjudicating family issues,

7. See Michel Comte, *First Palestinian Woman Sharia Court Judge Stars in Toronto Festival Doc*, THE TIMES OF ISRAEL (Sept. 12, 2017, 8:53 AM), <https://www.timesofisrael.com/first-palestinian-woman-sharia-court-judge-stars-in-toronto-festival-doc/>.

8. See Iyad Zahalka, *A Female Qadi Appointed in the Sharia Court: Religious Law and Public Opinion*, 11 BAYAN 3, 8 (2011), <https://dayan.org/content/female-qadi-appointed-sharia-court-religious-law-and-public-opinion>.

9. See *id.*

10. See Abeer Nouman, *Legal Experts Call for Gender-Sensitive Courts*, THE JORDAN TIMES (June 13, 2010).

11. See Zahalka, *supra* note 8, at 9 (“In their opinion, women should be allowed to be selected for the same positions as men in order to reduce the discrimination that they suffer.”).

12. See JUDITH E. TUCKER, WOMEN, FAMILY, AND GENDER IN ISLAMIC LAW 143–44, 167–68 (Themes in Islamic Law Ser. No. 3, Wael B. Hallaq ed., 2008).

13. See Sara Toth Stub, *Taking a Bench to a Glass Ceiling*, U.S NEWS & WORLD REPORT (Jan. 8, 2018, 12:21 PM), <https://www.usnews.com/news/best-countries/articles/2018-01-08/israels-first-female-sharia-judge-reflects-changes-for-israels-arab-community>. Although Israel is considered a Jewish state, it has many Muslim citizens and a Sharia Court system. See Melanie Lindman, *Israel appoints first female judge to Sharia Court*, TIMES OF ISRAEL (May 15, 2017, 10:36 PM), <https://www.timesofisrael.com/israel-appoints-first-female-judge-to-sharia-court/>.

such as marriage, divorce, child custody, and inheritance.¹⁴ Since Sharia courts preside over familial issues, different aspects of what affects a family such as Middle Eastern culture, traditions, and norms have heavily influenced the judicial appointments within its system.¹⁵ As a result of these factors, different Middle Eastern courts have implemented legal rulings that deem the appointment of female judges as inappropriate.¹⁶

Sharia courts are so influential in some Middle Eastern countries, such as Syria, that even non-Muslims are subjected to its authority.¹⁷ Not only does Sharia law hold in its authority within the court system, but some Middle Eastern countries' legislation is largely based on Sharia law.¹⁸ However, unlike judges in other countries, Sharia judges have no political affiliation.¹⁹ Similar to most court systems in the world, Sharia courts usually have an appeals court.²⁰

Given that several Middle Eastern countries have begun to allow women to become judges in their Sharia courts, this Note recommends that the rest of the Middle East should follow suit by reexamining the Islamic texts surrounding this issue to provide a more just legal system for all women. This Note will dive into the roadblocks that women who desire to become judges in the Sharia courts have faced and still face today. First,

14. Ministry of Justice, *The Sharia Courts*, GOV.IL, <http://www.justice.gov.il/En/Units/ShariaCourts/Pages/default.aspx> (last visited Aug. 29, 2019).

15. Hanim Muhammad Hassan, *Women Assuming Judgeships in Islamic Jurisprudence and Egyptian and International Law*, in *WOMEN JUDGES IN THE ARAB REGION* 12 (Abdel Moneim Muslim ed., 2001).

16. See Engy Abdelkader, *To Judge or Not To Judge: A Comparative Analysis Of Islamic Jurisprudential Approaches To Female Judges In The Muslim World (Indonesia, Egypt, And Iran)*, 37 *FORDHAM INT'L. L.J.* 309, 353 ("In 1953, following the Al-Azhar Fatwa, the administrative courts issued a ruling excluding woman from the judiciary, reasoning that 'traditions and customs' made the appointment of female judges 'inappropriate.'").

17. See International Legal Assistance Consortium [ILAC], *ILAC RULE OF LAW ASSESSMENT REPORT: SYRIA 2017* 35 (Mikael Ekman, ed. 2017) [hereinafter ILAC] ("All Syrians, regardless of religion, are subject to the jurisdiction of the Sharia Courts on these matters.").

18. See *id.* at 51 ("Article 3 of the 1973 Constitution provides that 'Islamic jurisprudence shall be a major source of legislation.'").

19. See *id.* at 94.

20. See *id.* at 93.

the Note will analyze the historical background of women in Islam and the structure of Sharia courts. Second, arguments made by Middle Eastern countries and Islamic scholars preventing women from entering the judiciary will be examined. Finally, a list of suggested strategies will be provided to increase female participation in the Sharia courts throughout the Middle East.

II. HISTORICAL BACKGROUND

Historically, Islam has represented a powerfully influential force on Middle Eastern laws and culture.²¹ Although, “no [Islamic] jurist is able to point to an explicit text in the Quran that categorically excludes women from any lawful type of employment, including the judiciary,” women are still being prevented from entering the judiciary because of the effect of historical interpretations of Islamic texts, which has influenced the culture, norms, and governments of the Middle East.²²

Following the death of the Prophet Muhammad, his companions and successors settled into numerous cities within the early Muslim empire attempting to incorporate Islamic beliefs and practices into existing legal institutions already in place.²³ Variations in custom and tradition characterized each of these cities, thus, influencing the practice and interpretation of the law including the Quran and *Sunnah*.²⁴ The Quran, the holy text of Islam, is the ultimate binding authority over any Islamic court system.²⁵ The *Sunnah*, the teachings and practices of the Prophet Muhammad, is the next source of binding authority.²⁶ The *Sunnah* is

21. See Keebet von Benda-Beckmann, *Balancing Islam, Adat and the State: Comparing Islamic and Civil Courts in Indonesia*, in *THE POWER OF LAW IN A TRANSITIONAL WORLD: ANTHROPOLOGICAL ENQUIRES* 216, 216–17 (Franz Von Benda-Beckmann et al. eds., 2009).

22. Abdelkader, *supra* note 16, at 329 n.147 (quoting MOHAMMAD HASHIM KAMALI, *PRINCIPLES OF ISLAMIC JURISPRUDENCE* 31 (3d ed. 2005)).

23. See SUSAN A. SPECTORSKY, *WOMEN IN CLASSICAL ISLAMIC LAW: A SURVEY OF THE SOURCES* 13 (Themes in Islamic Law Ser. No. 5, 2009).

24. See *id.*

25. See Lamya Hamad, *Shura: Islamic Approach to Decision-Making*, WHY ISLAM (Aug. 31, 2014), <https://www.whyyislam.org/social-ties-2/shura-islamic-approach-to-decision-making/>.

26. See *The Sunnah: Practice and Law (shari'ah)*, ISLAM.UGA.EDU, <https://islam.uga.edu/shariah.html> (last visited Sept. 13, 2019).

recorded as written narrations that make up the *Hadith*.²⁷ However, the Quran is the highest form of legal authority in Islamic Jurisprudence, greater than the Hadith.²⁸ If the Quran does not address a specific topic or provide a general principle, then Islamic jurists immediately will look for guidance in the Hadith.²⁹ Usually, there is general agreement regarding the proper steps when approaching Islamic law, “there were frequent disagreements about the most legally appropriate way to proceed in a specific circumstance.”³⁰ As a result of these early disagreements, there emerged a number of different schools of law (or *Madhhabs*) each “defined by foundational texts, teachings, and other scholarship consisting of rules and principles to assist subsequent scholars in deriving law.”³¹ “Each of the Sunni schools of law would come to be known by its eponymous founders”: Abu Hanifa, Malik ibn Anas, al-Shafi’i, and Ahmad ibn Hanbal.³² “Their teachings comprise the substantive material[s] of classical [Sunni] law.”³³

“Notably, the teachings and principles espoused by these founding scholars continue to resonate today with each holding sway in a specific region of the Muslim world.”³⁴ “[T]he majority of the Sunni schools of law [such as the] Maliki, Shafi’i, and Hanbali—opine that judges must be

27. Abdelkader, *supra* note 16, at 314.

28. *See id.* at 315 (“While no Hadith enjoys the legal stature of a Quranic verse, Hadith frequently complement and supplement the primary textual source.”).

29. *Id.*

30. *See id.* at 321. *See also* SPECTORSKY, *supra* note 23, at 13–14 (“Sometimes disagreement was between cities: the scholars of Kufa, for example, would disagree with those of Medina; at other times it was local, and the Kufans or the Medinese might disagree among themselves.”).

31. Abdelkader, *supra* note 16, at 322. *See also* SPECTORSKY, *supra* note 23, at 14 (“As part of this process, early on in the formative period, jurists developed a set of five qualifications into which all human acts can be divided. An obligatory act is a *fard* or a *wājib*. Performing it leads to reward, omitting it to punishment. At the other end of the scale are acts that are forbidden (*harām*) and lead to punishment. In between are those acts that are recommended (*mandūb* or *mustahabb*), neutral or indifferent (*mubāh*), and disapproved of (*makrūh*). These middle three categories, which provide room for nuance and interpretation, are the qualifications jurists were most concerned with evaluating.”).

32. Abdelkader, *supra* note 16, at 322.

33. *Id.*

34. *Id.*

male.”³⁵ The same is true for Twelver Shi’ites.³⁶ However, there have been instances where the Hanafi legal school and other schools that have not survived (namely, the Zahiri and Jariri schools) have allowed women to become judges, so long as their Islamic knowledge was legitimate to guarantee their rulings were valid.³⁷ Overall, these schools of legal thought have had a profound effect on the interpretations of the Quran and the *Sunnah* regarding women entering Sharia courts across the world.

III. ARGUMENTS AGAINST WOMEN ENTERING SHARIA COURTS

A. Emotional Argument

Critics of female judges tend to argue that women, by nature, deliberate more through emotion than logic, which is just enough to render them unfit to serve as judges need to make decisions based on logic.³⁸ As critics see it, women’s emotions may prevent them from arriving at wise and consistent decisions.³⁹ Critics argue that due to women’s consistent hormonal changes, a female judge may sympathize with a person placed on trial, thereby affecting her supposed objective judgment.⁴⁰ Additionally, critics argue that women may feel predisposed to favor

35. *Id.*

36. See WAEL B. HALLAQ, *SHARIA: THEORY, PRACTICE, TRANSFORMATIONS* 342 n. 3 (2009) (“The majority of the jurists, including the Twelver-Shi’ites, espoused the view that only a man can be a *qādi*.”).

37. See Mohammad Fadel, *Two Women, One Man: Knowledge, Power and Gender in Medieval Sunni Legal Thought*, 29 INT’L J. OF MIDDLE EAST STUD. 185, 196 (1997) [hereinafter Fadel, *Two Women*].

38. See Ann Bayefsky, *UN Outrage Over Human Rights Abuses Baldly Selective*, CHI. SUN-TIMES, Apr. 13, 2003 (“It was believed that women were unlike men physically, emotionally and in thought and that only a small number of women had shown the intellectual maturity to become a judge.”).

39. See Hassan, *supra* note 15, at 12.

40. See Mahmoud Hamdy Zaqzouq, *Why Does Islam Make the Testimony of Two Women Equal to That of One Man*, (Jan. 10, 2018), <http://www.azhar.org/observer-en/details/why-does-islam-make-the-testimony-of-two-women-equal-to-that-of-one-man> (“[Women] are more emotional and highly strung than men and they might be emotionally influenced by the position of a person on trial and might sympathize with him/her and that might unintentionally influence their testimony.”).

female litigants over male litigants.⁴¹ Also, some critics claim that “women lack the patience and stability required” for a role in the judiciary.⁴² Finally, certain Islamic schools of thought describe a Sharia judge’s qualifications as a person who is free, objective, male, stable-minded, well-versed in Sharia law, and among others.⁴³

Others see the problematic consequences of this mindset. In response to the critics, advocates of female judges have argued that male judges have greatly sympathized and bestowed mercy upon individuals who were presumed to be oppressed.⁴⁴ Furthermore, current female Sharia court judges have declared that simply being a woman does not automatically make them predisposed to favoring female litigants, as their rulings are based on an objective systematic approach to the Quran and Hadith.⁴⁵ Thus, gender should not be a consideration when determining whether a female judge’s ruling would be more sympathetic to a female litigant.⁴⁶

B. *Physiological Argument*

Critics of females becoming judges in the Sharia courts have formed various arguments revolving around a female’s physiological traits, which critics argue will inhibit her capability to be a judge. First, judicial administration may cause preventable injury to an unborn child and/or the expectant mother due to the stress that the job may entail.⁴⁷ Second, women’s menstrual cycles will cause undue delays to the court’s

41. See Nadia Sonneveld & Monika Lindbekk, *Introduction: A Historical Overview of Gender and Judicial Authority in the Muslim World*, in *WOMEN JUDGES IN THE MUSLIM WORLD: A COMPARATIVE STUDY OF DISCOURSE AND PRACTICE* 1, 4 (Women and Gender: The Middle East and the Islamic World Vol. 15, 2017).

42. Abdelkader, *supra* note 16, at 355.

43. See *id.* at 316–17, 318. See also Ali, *supra* note 5, at 201 (“About the qualifications of judges, *al-NawĒwĒ* describes a [judge] must be a Muslim adult, sane, free, male, good moral, sound of hearing, stable mind, and sights, speakable, learned, and prudent about the laws of the [Sharia], not a female that prevent women’s judgeship.”).

44. See Sonneveld & Lindbekk, *supra* note 41, at 4.

45. See *id.* at 9 (“[I]nternational organizations for women’s rights believed that female judges are better equipped to understand and care about women and their legal problems Women judges [], however, disagreed with this contention, arguing that like their male colleagues, their decisions were guided by adherence to the Qur’an, the *sunna*[], and the law.”).

46. See *id.* at 4.

47. See Hassan, *supra* note 15, at 13.

administration.⁴⁸ Third, women are unfit to hold judicial office because symptoms related to menstruation leave them in a weakened psychological state.⁴⁹ Accordingly, many female judges in the Middle East have hidden the fact that they were pregnant in order to avoid accusations of impaired judgment due to their health condition.⁵⁰ Proponents for female judges challenge the menstruation myth by characterizing it as a temporary state while citing to a variety of diseases and illnesses that may afflict sitting judges.⁵¹ Finally, critics are fearful that a woman displaying her face and attractive body figure (despite wearing Islamic attire) in a court setting may tempt individuals to commit adultery or other unethical acts.⁵² In contrast, advocates for female judges have countered that if female litigants do not usually cause corruption of morals in a male judge, then surely male litigants will likely not corrupt female judges.⁵³

C. *Hadith Argument*

Islamic scholars point to one particular Hadith spoken by Abū Bakra to prevent women from entering the judiciary. It states, “[a] people that make

48. See Essam Fawzi, *Women Occupying Judiciary Positions in Egypt*, in *WOMEN JUDGES IN THE ARAB REGION: POINT, COUNTERPOINT* 21, 29 (Abdel Moneim Muslim ed., 2001).

49. See *id.* (“This conception of women’s deficiencies was expressed by one of the Islamic leaders in the fifties when he said, ‘from a realistic point of view, a judge must be committed to work throughout the year and may be granted only a limited number of weeks vacation in the summer. If a woman were to be a judge or a prosecuting attorney, what would she do about menstruation, which takes a week of every month? Everyone knows the weak psychological state of women during menstruation. What would she do if the disturbances of pregnancy in its final months darken her mood and wear out her nerves and thus she becomes ill-tempered and unfit for the serious trusteeship of the judiciary?’”).

50. See Ibtissem Jamel, *Women Make Gains as Judges in Tunisia*, *AL-FANAR MEDIA* (Jan. 18, 2018), <https://www.al-fanarmedia.org/2018/01/women-make-gains-judges-tunisia/> (“‘Many of us have to hide being pregnant to avoid any accusations of default because of our health situation,’ said one of the judges, who asked not to be named. ‘We are making double efforts to prove our competence and trying to hide any feminine manifestations so as not to be criticized,’ she added.”).

51. See Hassan, *supra* note 15, at 13 (“If this opinion were sound, women would not be fit for any kind of work at all.”).

52. See Ali, *supra* note 5, at 201.

53. NIK NORIANI NIK BADLISHAH & YASMIN MASIDI, *WOMEN AS JUDGES* 33–34 (Sister in Islam ed., 2009), http://www.sistersinislam.org.my/files/downloads/women_as_judges_final.pdf.

a woman their ruler will never prosper.”⁵⁴ A variant of the same Hadith that is also used to prevent women from entering the judiciary states, “[n]ever shall a folk prosper who delegate their affairs to a woman.”⁵⁵ These different versions of the Hadith stem from the alleged reaction of the Prophet Muhammad upon learning “the Persians had selected the daughter of their deceased Emperor as their ruler.”⁵⁶ One version of the conversation between the Prophet Muhammad and Abu Bakra has the latter recounting this conversation: “Prophet [Muhammad] said [to me], ‘Who governs Persia?’ [I] replied, ‘A woman.’ He said, ‘No folk that a woman governs has prospered.’”⁵⁷ Not only has this particular Hadith been used to prevent women from entering the judiciary, but it has prevented women from entering different types of political positions.⁵⁸

Many progressives have criticized the misogynistic stances that this Hadith has been used to justify.⁵⁹ They argue that the circumstances surrounding the Prophet’s statement allow us to see the matter differently.⁶⁰ Indeed, progressives argue that the Prophet Muhammad was not making a general statement about women, but rather a particular comment about the kingdom that the Persian queen ruled over.⁶¹ The Prophet’s response may have been made “in a non-literal or figurative sense.”⁶² Moreover, individuals have criticized the accuracy of Abu Bakra’s narration of the Prophet Muhammad’s words due to the Hadith’s

54. *The Right of Muslim Woman to Become Judges*, KARAMAH: MUSLIM WOMEN LAWYERS FOR HUMAN RIGHTS, <http://karamah.org/wp-content/uploads/2011/10/Women-and-judiciary-edited-2.pdf> (last visited Sept. 21, 2018) [hereinafter KARAMAH].

55. Mohammad Fadel, *Is Historicism a Viable Strategy for Islamic Law Reform? The Case of ‘Never Shall a Folk Prosper Who Have Appointed a Woman to Rule Them’*, 18 ISLAMIC L. & SOC’Y 131, 141 (2011) [hereinafter Fadel, *Historicism*].

56. See KARAMAH, *supra* note 54.

57. See Fadel, *Historicism*, *supra* note 55, at 142.

58. See Fatima Mernissi, *A Feminist Interpretation of Women’s Rights in Islam*, in LIBERAL ISLAM: A SOURCEBOOK 112–13 (Charles Kurzman ed., 1998) (describing the use of this *hadith* in Moroccan culture to exclude women from political life).

59. See *id.* at 113; KHALED ABOU EL FADL, *SPEAKING IN GOD’S NAME: ISLAMIC LAW, AUTHORITY AND WOMEN* 111–14 (2001).

60. See FADL, *supra* note 59, at 111–14.

61. See *id.* at 113.

62. Fadel, *Historicism*, *supra* note 55, at 144 (referring to the Arabic term of *majaz*, indicating that a speaker literally “crosses” the proper boundaries of the word’s original meaning).

complexity and reliability.⁶³ Additionally, critics of this Hadith note the Quran itself does not restrict judgeship and leadership to men; rather, it simply calls for justice: “when you judge between the people, ... judge with justice.”⁶⁴ Furthermore, because of social hierarchy and gender roles, critics also argue that Islamic jurists did not use all available resources to critically analyze this Hadith to the fullest extent, perhaps to affirm male dominance.⁶⁵ Finally, this Hadith is classified as an *Ahad*, otherwise known as an isolated Hadith.⁶⁶ *Ahads* are Hadith where the narrators of a specific Hadith do not exceed two persons per generation, therefore, leaving room for possible inaccuracies.⁶⁷ Thus, *Ahads* need not be binding authorities in Islamic Jurisprudence—a point stressed by advocates of female judges.⁶⁸

D. Protectionist Argument

Another argument that scholars make to exclude women from the judiciary is to preserve a women’s dignitary and reputational interests against immoral men by distancing women from these types of men.⁶⁹ For example, some Sharia courts have excluded women from providing testimony in major criminal cases or cases regarding retaliation to protect them from the sites of the crime and distancing them from aggressive individuals.⁷⁰ Notably, however, other Sharia courts do not follow the protectionist approach and allow women to become judges in matters where they could testify.⁷¹ Furthermore, in Middle Eastern Muslim

63. See BADLISHAH & MASIDI, *supra* note 53, at 14–15.

64. See Fawzi, *supra* note 48, at 22; Quran Surah An-Nisa 4:58.

65. See Fadel, *Historicism*, *supra* note 55, at 166.

66. BADLISHAH & MASIDI, *supra* note 53, at 8.

67. See *id.*

68. See *id.*

69. Abd Al-Hamid Mayhoub, *Scope in Islamic Law for Women Judges*, in WOMEN JUDGES IN THE ARAB REGION: POINT, COUNTERPOINT 44 (Abdel Moneim Muslim ed., 2001).

70. See Yusuf Al-Qaradawi, *The Status Of Women In Islam*, ISLAMIC ARTICLES, <http://www.iupui.edu/~msaiupui/qaradawistatus.html> (“The exclusion of woman’s testimony, altogether, from cases of major crimes, and cases requiring retaliation in kind, is meant to protect women and distance them from sites of crime and aggressions against souls, honour and property.”).

71. See Zahalka, *supra* note 8, at 4.

culture, it is the duty of the man in the household to protect his wife and daughters from any potential danger.⁷² Some protectionists claim that allowing women to become judges may cause social distortion and devastate Muslim countries because the idea of having female judges is an imported Western ideal.⁷³

E. *Position of Authority Argument*

In the Middle East, there is a general prohibition against women assuming positions of sovereign power and the judiciary is viewed as an extension of such power.⁷⁴ Women's rights detractors accuse women of holding such authority of having committed a sin.⁷⁵ Additionally, some Islamic scholars have characterized judgeships as a form of public authority for which women are unqualified and should not be granted due to the authority the position holds over men.⁷⁶

However, advocates of female judges offer multiple responses to the "Position of Authority" argument.⁷⁷ For instance, there is no Islamic legal text or doctrine that explicitly prohibits women from exercising power over some men in most situations.⁷⁸ For example, in the past, women could serve as *Muftis*, who are experts in Islamic laws and jurisprudence.⁷⁹ Specifically, a *Mufti* is someone who issues fatwas, which are scholarly opinions (typically on matters of Islamic law).⁸⁰ In past cases, *Muftis* would act as consultants to Sharia judges in complex cases because of their

72. See *Meaning of the Lack in Reason and Religious Commitment in Women*, ISLAM QUESTION & ANSWER (Apr. 4, 2008), <https://islamqa.info/en/answers/111867/meaning-of-the-lack-in-reason-and-religious-commitment-in-women> ("Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means' [al-Nisa' 4:34].").

73. See Ali *supra* note 5, at 201.

74. Mayhoub, *supra* note 69, at 43–44.

75. See *id.* at 44.

76. See *id.* at 43.

77. See Mohammad Fadel, *Muslim Reformists, Female Citizenship and the Public Accommodation of Islam in Liberal Democracy*, 5 POL. & RELIGION 2, 19 (2012) [hereinafter Fadel, *Muslim Reformists*].

78. See *id.*

79. See *id.*

80. See Abdelkader, *supra* note 16, at 318–19.

expertise with Islamic Jurisprudence.⁸¹ Advocates argue because women have become *Muftis* in the past, then gender should not be a barrier for women to become judges as well.⁸²

F. *Financial Argument*

Some Muslim scholars point to one particular verse of the Quran, which designates men as the financial providers for the household, arguing that a man should enjoy the ultimate legal rights of authority to all members of his household.⁸³ In various Muslim cultures, it is the duty of a husband to provide for his wife.⁸⁴ The bread-winner argument has caused a ripple effect beyond solely the domestic realm and has previously led some Middle Eastern countries to prohibit women from participating in outside social activities.⁸⁵ On the other hand, Islamic texts dictate that women may channel their finances in numerous ways such as inheritance, lending, donating, and contracting.⁸⁶ Although when discussing financial affairs in Islamic courts, a woman's testimony tends to carry less weight than that of a man; yet the testimony can still be critical.⁸⁷ Moreover, according to the Quran, a daughter may receive half the share of her brother (if she has a brother). Thus, critics argue that it would take two women's judicial rulings to equate to one man's ruling.⁸⁸ However, advocates of female judges entering the Sharia courts counterargue that a mother receives the same share of inheritance as that of the father (and the mother's brother

81. *See id.* at 319.

82. *See* Zahalka, *supra* note 8, at 4.

83. *See* TUCKER, *supra* note 12, at 24–25 (explaining one interpretation of Quran 4:34).

84. *See* ILAC, *supra* note 17, at 55 (2017).

85. *See* TUCKER, *supra* note 12, at 25 (“Although this was interpreted strictly speaking as a familial relationship, with no necessary implications for social roles outside the household, the construction of financial responsibilities as male and financial dependence as female, domestic authority as male and domestic subservience as female, inevitably resonated in the world outside the domestic sphere.”).

86. *See* Al-Qaradawi, *supra* note 70 (“As a rule, Islam acknowledges the woman's rights to all kinds of ownership, spending and channeling of her money. It gives her the rights of inheritance, selling, buying, renting, donating, lending, allocating property for religious and charitable purposes, giving alms, legal transfer and mortgage, as well as many other forms of contracts and actions.”).

87. Fadel, *Two Women*, *supra* note 37, at 196.

88. *See* Sonneveld & Lindbekk, *supra* note 41, at 12.

may receive nothing).⁸⁹ Despite these roadblocks, some Sharia courts, such as in Malaysia, have allowed female judges to rule on cases involving family finances.⁹⁰

G. Guardianship Argument

The Quran establishes that men are *Qawwamuna*, meaning that they are known to be responsible for women.⁹¹ Critics of women in the judiciary use this interpretation to argue that “the verse presumably assigns men guardianship over women;” therefore, “women cannot undertake judicial authority because they could then exercise guardianship over men.”⁹² This idea is evident in some Middle Eastern countries, such as Syria, where the law dictates that judges act as guardians for whoever has no guardian, and in Syria women cannot act as the guardian for a minor or a marriage guardian.⁹³ Thus, in Syria, critics argue that based on this provision, women cannot become Sharia court judges.⁹⁴ However, progressives have countered, arguing that the Quran phrase means “to provide with the means of subsistence” for their families; and thus, this phrase has no clear relationship with the judicial setting.⁹⁵ Additionally, this phrase should be read in conjunction with another Quran verse to provide clarity on what specifically a man’s guardianship role entails, which states that “men and women are protectors of one another.”⁹⁶

89. *Id.*

90. See Heather Chen, *100 Women: The Woman Who Decides if Men Can Take a Second Wife*, BBC NEWS (Nov. 20, 2018), <https://www.bbc.com/news/world-asia-45771248>.

91. See BADLISHAH & MASIDI, *supra* note 53, at 5. See also Quran 4:34. This should be read in conjunction with Quran verse 9:71, which states that men and women are supporters of one another. See Quran 9:71.

92. Abdelkader, *supra* note 16, at 323.

93. See ILAC, *supra* note 17, at 37 (“Article 24 of the SLPS states that ‘[t]he judge is the guardian of whoever has no guardian.’ Some officials argue that based on this provision, a woman may not function as a Sharia Court judge because a woman cannot act as the guardian of a minor or a marriage guardian.”).

94. See *id.*

95. BADLISHAH & MASIDI, *supra* note 53, at 6.

96. *Al-Quran Surah 9. At-Tauba—Yusuf Ali Translation*, ALIM, <https://www.alim.org/library/quran/surah/english/9/YAT#71> (last visited Sept. 21, 2019).

H. Testimony Argument

In regards to a woman's testimony in court, the Quran indicates that one man's testimony is equivalent to two women in the context of business or debt contracts.⁹⁷ When there is conflicting testimony between both genders, some jurists argue that the testimony of two men is superior to that of a man and two women.⁹⁸ By extension, critics argue that women cannot preside over a court in which her testimony is not accepted or not regarded as highly as that of men.⁹⁹ However, other Quranic verses that make no gender distinction with witnesses.¹⁰⁰ Additionally, some prominent Islamic scholars, such as Ibn Qayyim al-Jawziyya, disagree with the notion that a man's testimony should be weighted more than a woman's testimony in all cases.¹⁰¹ In any case, in explaining the gender testimony discrepancy, many jurists offered sociological rather than biological explanations. For example, some jurists argue that if a man loses his lawsuit in court because of women testifying against him, due to misogynistic views, these men may not respect the court's decision.¹⁰²

In legal practice, the ruling in Quran 2:282 is usually applied to cases involving transactions and documentation, rather than female-specific

97. See Al-Qaradawi, *supra* note 70 (“And get two witnesses out of your own men. And if there are not two men (available), then a man and two women, such as you agree for witnesses, so that if one of them (two women) errs, the other can remind her. And the witnesses should not refuse whethe[r] are called on (for evidence). [Quran] Surah 2:282.”). Note that other Quranic verses make no gender distinction with witnesses. See, e.g., Quran 5:106–108; 65:2, and 24:4. Specifically, 24:6–9 indicates that a woman overrules a man when he as a husband accuses his wife of infidelity and she denies it. See Quran 24:6–9.

98. See Al-Qaradawi, *supra* note 70; Quran 9:71. However, prominent scholars like Ibn Qayyim al-Jawziyya say the exact opposite as Mohammad Fadel notes in his article “Two Women, One Man.” See generally Fadel, *Two Women*, *supra* note 37, 146.

99. See Salah Nasrawi, *Woman Pursues Egyptian Judgeship*, ASSOCIATED PRESS (July 14, 1998), <http://www.apnewsarchive.com/1998/Woman-Pursues-Egyptian-Judgeship/id-7f46e49d0e327a4c32a3b1ec2e31968c>. (“As for the law, many of Lashin's opponents base their arguments on the [Quran], the Muslim holy book. It stipulates that two women are equal to one man if they are called as witnesses in a court. So, by analogy, they say, a woman cannot be a judge as long as she cannot be a witness by herself.”).

100. See, e.g., 5:106–108, 65:2, 24:4. 24:6–9 states a woman overrules a man when he a husband accuses his wife of infidelity and she denies it.

101. See Fadel, *Two Women*, *supra* note 37, at 197.

102. See *id.* at 192.

issues.¹⁰³ Because this verse revolved around loan agreements and women were not involved in business contracts during the verse's revelation, advocates argue that the inequality of a woman's testimony is due to inexperience in the subject matter, not gender.¹⁰⁴ Therefore, Sharia courts tend to focus more on testimony whose declarant is experienced and knowledgeable of the topic at hand and less on gender.¹⁰⁵

Despite this Quranic verse, it seems that an Islamic judge does have room for interpretation. For example, a judge may not accept the testimony of an illiterate and inexperienced man over the testimony of an educated woman who is knowledgeable of the topic about which she is speaking.¹⁰⁶ Additionally, there are instances where women were appointed to be court appointed expert witnesses.¹⁰⁷ In such cases, the court would accept her analysis without seeking corroborating evidence.¹⁰⁸

Based on the Islamic responsibility that a man holds in the financial role, critics of women entering the judiciary argue that a male testifying about financial matters is stronger than a female's testimony.¹⁰⁹ Because of this sentiment, critics have asserted "more broadly that female testimony is tainted with disability."¹¹⁰ Thus, particular gender hierarchies tend to prevail when considering testimony in court.¹¹¹

I. *Deficient Intellect Argument*

Finally, individuals who prevent women in the Middle East from becoming judges sometimes view women as intellectually inferior, lacking in religious knowledge, and "inherently incapable of fulfilling

103. See Zaqzouq, *supra* note 40 ("[T]his rule . . . does not necessarily mean that a woman is viewed as an inferior being. The primary concern behind such a rule is merely to confirm the validity of a testimony . . . the purpose is not to jeopardize the integrity of the witness but simply to be reassured about the truth of the testimony.").

104. *Id.*

105. *See id.*

106. *See id.* ("Furthermore, no judge would accept the testimony of an illiterate, inexperienced man and refuse the testimony of an educated woman who is successful in her career.").

107. See Fadel, *Two Women*, *supra* note 37, at 196.

108. *See id.*

109. See Abdelkader, *supra* note 16, at 323–24.

110. *Id.* at 324.

111. *See id.*

judicial functions.”¹¹² These critics argue that women would be unable to deal effectively with the death penalty in criminal matters and cultural exceptionalism.¹¹³ Additionally, advocates of the “Deficient Intellect Argument” reason that the judiciary demands full thought and mental awareness, which they argue women are not fully capable of because they “are too weak to arrive at a decision refusal or defense, or face the difficulties of judging with sureness and composition.”¹¹⁴ In response, advocates for female judges have attempted to undermine this “Intellectual Deficiency Argument” by pointing to various passages from the Quran and various Hadith.¹¹⁵ Furthermore, advocates argue that a woman’s intellect has not been an issue when appointing them to civil courts; therefore, it should not be in question for the Sharia courts.¹¹⁶

IV. CALL TO ACTION: STRATEGIES TO INCREASE THE NUMBER OF WOMEN JUDGES IN THE MIDDLE EAST

A. *Do Not Try to Recreate, Rather Use Old Texts to Your Advantage*

Despite the numerous arguments that prevent females in the Middle East from entering the judiciary, there are Muslims in the Middle East who have committed themselves to gender equality and are known as “Progressive Muslims.”¹¹⁷ These individuals often find themselves

112. *Id.* at 327. “Furthermore, the judiciary demands full thought and mental awareness. Women are not fully capable of this and are too weak to arrive at a decision of refusal or defense, or face the problems and difficulties of judging with sureness and composition. Women are considered to be lacking in religion and intellect.” *Id.* at 327, n.136 (quoting Mayhoub, *supra* note 69, at 44).

113. *See id.* at 327. “According to the cultural exceptionalism argument, proponents assert their society has its own special customs and values.” *Id.* at 327 n.137.

114. Mayhoub, *supra* note 69, at 44.

115. *See* BADLISHAH & MASIDI, *supra* note 53, at 13. Advocates have countered this idea when stating, “[i]f this tradition [men are intellectually superior to women] is assumed to be true, it would conflict with various injunctions in the Qur’an itself and also in other traditions. It would also conflict with several historical facts in the Prophet’s time and that of the rightly-guided Caliphs.” *Id.*

116. *See* Sonneveld & Lindbekk, *supra* note 41, at 9.

117. *See* Jaweed Kaleem, *Progressive Muslims Launch Gay-Friendly, Women-Led Mosques in Attempt To Reform American Islam*, HUFFPOST (Jan. 30, 2013),

arguing against “textual fundamentalists” who believe in the absolute sovereignty of the letter of the Quran and use verses in it to prevent women from becoming judges.¹¹⁸ Rather than making appeals to the original meaning or intent of the Quran, Muslim feminists would profit by using the tensions within Islamic jurisprudence as a source of authority for legal change in Muslim countries.¹¹⁹ Muslim women seeking a role in the judiciary should leverage long-established Quranic interpretations that promote equal participation, collaboration, and contribution in the public.¹²⁰ If Muslim feminists follow this path, they will likely not hit the roadblock of “Reformers’ Dilemma.”¹²¹ This theory elaborates that it is less “costly” in terms of moral capital to make revisions to applied doctrine

https://www.huffingtonpost.com/2012/03/29/progressive-muslims-launch-gay-friendly-women-led-mosques_n_1368460.html.

118. See Ebrahim Moosa, *The Debts and Burdens of Critical Islam*, in PROGRESSIVE MUSLIMS ON JUSTICE, GENDER AND PLURALISM, 123, 125 (Omid Safi ed., 2003).

119. See Fadel, *Two Women*, *supra* note 37, at 200.

120. See JAMAL BADAWI, GENDER EQUITY IN ISLAM: BASIC PRINCIPLES 8–10 (1995). “The Quran states: . . . ‘And their Lord has accepted of them and answered them: ‘Never will I suffer to be lost the work of any of you, be he/she male or female: you are members one of another . . .’ (Quran 3:195) ‘If any do deeds of righteousness, be they male or female, and have faith, they will enter paradise and not the least injustice will be done to them.’ (Quran 4:124) ‘For Muslim men and women, for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and woman who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in Allah’s praise—for them has Allah prepared forgiveness and great reward.’ (Quran 33:35) ‘One Day you shall see the believing men and the believing women, how their Light runs forward before them and by their right hands. (Their greeting will be): “Good News for you this Day! Gardens beneath which flow rivers! To dwell therein forever! This is indeed the highest Achievement!”’ (Quran 57:12).” Islamic scholars “observe that the verse states that all human beings are created *min thakarin wa-untha*, which can be translated literally as “of male and female”. This means in pairs, as the Quran explicitly mentions elsewhere (78:8). Each component of the pair is as necessary and as important as the other and hence is equal to him or her. The wording of this verse has been commonly translated also as “from a (single pair of) a male and a female,” referring to Adam and Eve. This serves as a reminder to all that they belong to the same family, with one common set of parents. As such they are all equal, as brothers and sisters in that broad and “very extended” family.” See Abdelkader, *supra* note 16, at 328 n. 145 (quoting BADAWI, *supra* note 120, at 54).

121. See Andrew F. March, *Law as a Vanishing Mediator in the Theological Ethics of Tariq Ramadan*, 10 EUR. J. POL. THEORY 177, 196 (2011).

than to methodological or foundational doctrines.¹²² In order to be less costly, advocates for female judges should point to verses in the Quran that explicitly support gender equality to prove that women are capable of being judges.¹²³ For instance, the Quran encourages all Muslims to be just and uphold justice where it is needed.¹²⁴ Additionally, advocates should also point out Hadith that promote gender equality as well.¹²⁵

Progressives may have success countering history-based arguments by reminding the masses that some pre-modern societies may have “lacked the financial and institutional means to support a system of gender egalitarianism.”¹²⁶ In order to achieve a more welcoming society towards gender equality, progressives who implement these types of counter measures will likely have to defend these ideas from Islamic traditionalists, who are against Western cultural domination.¹²⁷ The critics of female judges in Sharia courts often argue that Western influence has given women too many leadership positions.¹²⁸ However, many Muslims believe that it was Islam that elevated women in Middle Eastern societies with rights that many countries did not allow women to have, such as “the right to education, to marry someone of their choice, to retain their identity after marriage, to divorce, to work, to own and sell property, to seek protection by the law, to vote, and to participate in civic and political

122. *See id.*

123. *See* BADLISHAH & MASIDI, *supra* note 53, at 33–34. “The Believers, men and women, are protectors of one another, they enjoin what is just and forbid what is [E]vil.” *Id.* at 12.

124. *See id.* at 32 (“There are certain injunctions in the Qur’an that are common to both men and women, regarding the duty of all Muslims to be just and do justice.”). For example, “Surah an-Nisa 4:58, which states: ‘Allah doth command you to render back your trust to those to whom they are due, and when you judge between people that you judge with justice.’” *Id.* at 37.

125. *See id.* at 33. “A hadith narrated by Sayyidinna Ali and reported by Ibn ‘Asakir states that, ‘One who honours women is himself honourable, and one who insults women is himself lowly.’” *Id.* at 13.

126. Fadel, *Historicism*, *supra* note 55, at 135.

127. Sa’diyya Shaikh, *Transforming Feminisms: Islam, Women and Gender Justice*, in PROGRESSIVE MUSLIMS ON JUSTICE, GENDER AND PLURALISM 147, 155 (Omid Safi ed., 2003) (“Muslim women and men with feminist commitments need to navigate the terrain between being critical of sexist interpretations of Islam and patriarchy in their religious communities while simultaneously criticizing neo-colonial feminist discourses on Islam.”).

128. *See* BADLISHAH & MASIDI, *supra* note 53, at 25.

engagement.”¹²⁹ It is critical to use arguments that are already widely known to win over the masses within the Muslim community.¹³⁰

B. *Point out Non-Existent Explicit Prohibitions in Islamic Jurisprudence*

Since binding Islamic texts such as the Quran and Hadith empower women and do not explicitly state the prohibition of female judges, there is a possibility for women to enter the judiciary without contradicting Islamic laws. Furthermore, the Quran is silent regarding a judge’s qualifications, the appointment process, and the responsibilities.¹³¹ Additionally, some (not all) Islamic scholars argue that there is a Quranic verse in which God declared that men are preferred to women.¹³² However, nowhere in the Quran does it explicitly state that men are superior to women, as some Islamic scholars have noted God is merely stating that men have specific advantages over women.¹³³

Finally, advocates for female judges in the Sharia courts should attempt to work with religious leaders to educate the Muslim masses that female judgeship does not contradict Islamic precepts. Egypt’s former Grand Mufti, Ali Gomaa, has declared in the past that appointing a woman to the judiciary does not contradict Islam.¹³⁴ Additionally, Kenya’s Chief Justice, Willy Mutunga, followed Palestine’s example when he appointed the first female Sharia court judge in Kenya.¹³⁵

129. *Women in Islam*, WHY ISLAM? (Sept. 24, 2014), <https://www.whyyislam.org/brochures/statusofwomen/>.

130. See Fadel, *Historicism*, *supra* note 55, at 173.

131. Abdelkader, *supra* note 16, at 329.

132. See BADLISHAH & MASIDI, *supra* note 53, at 6.

133. See *id.* (“The Qur’an does not say that ‘all men are superior to or are better than all women’, or that all men are preferred by Allah over all women. When it says that ‘some (unspecified gender) are preferred by Allah over others’, it uses general language that reflects an observable reality: some creatures have some advantages over others.”). Examples of this advantage may include physical prowess. *Id.*

134. See Aishath Muneeza, *Appointment Of Female Judges In Muslim Countries*, REHENDHI (May 9, 2010), <https://rehendhi.wordpress.com/2010/05/09/appointment-of-female-judges-malaysia/>.

135. OnIslam, *Shari’ah Female Judges Irk Kenya Muslims*, MUSLIM WOMEN’S NETWORK UK (May 10, 2011), http://www.mwnuk.co.uk/Shari_ah_Female_Judges_Irk_Kenya_Muslims_79_news.php.

C. Empowering Women

It is critical that parents advocate and empower the women in their families with the confidence and the capability to succeed in diverse professional contexts, including embarking upon a judicial career.¹³⁶ Currently, some women in the Middle East feel as though they are inadequate and lack the qualifications to become a judge.¹³⁷ Other women believe they cannot become judges because of their emotions.¹³⁸ Additionally, some Middle Eastern women feel insecure regarding their ability to excel as a judge due to traditional Middle Eastern cultural norms that impose a belief that they are not suited for such a position.¹³⁹ To combat this lack of confidence, progressive Muslims should prioritize empowering women with the confidence and the capability to succeed in diverse professional contexts, including embarking upon a judicial career.¹⁴⁰ The idea of female judges has already been successful, as many women across the Middle East are judges in criminal and civil courts. Although advocates argue that Islamic courts are more formidable in terms of gendered social barriers to entry, it does not mean that all is lost.¹⁴¹ Most Islamic scholars agree that the qualifications for an individual to become a judge include, among other things, maturity, sanity, being a Muslim, and

136. See Thuwayba Al Barwani, *Women, Education, and the Redefinition of Empowerment and Change in a Traditional Society: The Case of Oman*, in *WOMEN IN THE MIDDLE EAST AND NORTH AFRICA: AGENTS OF CHANGE* 215, 215 (Fatima Sadiqi & Moha Ennaji eds., 2011). See *GCC 'Needs More Female Judges'*, *GULF DAILY NEWS* (Nov. 3, 2008), <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=233519> (“She said the struggle wasn’t just to convince men they could do the job, but also to get women to believe in their ability.”).

137. See Erika Cohn, *THE JUDGE*, *YOUTUBE* (Aug. 25, 2017), <https://www.youtube.com/watch?v=FsoM7uB66OE>.

138. See Valentine M. Moghadam, *Foreword* to *WOMEN JUDGES IN THE MUSLIM WORLD: A COMPARATIVE STUDY OF DISCOURSE AND PRACTICE* 13 (Nadia Sonneveld & Monika Lindbekk eds., 2017) (“Even women can believe that: Women are emotional by nature . . . It is better for women to stay away from politics.”).

139. See Abdelkader, *supra* note 16, at 347. (“[Advocates] cite to traditional cultural norms . . . that pressures women to restrict their contributions to their families and households—the private domain.[] Women have internalized a sense of gendered inferiority informed by an insecurity concerning their ability to excel in political work.”).

140. See Barwani, *supra* note 136, at 215.

141. See Abdelkader, *supra* note 16, at 348.

being fair-minded.¹⁴² While the Sharia courts differ on the gender aspect, some scholars argue a woman can meet these qualifications.¹⁴³

If Middle Eastern countries empower women to pursue judicial roles, their societies will become more peaceful and prosperous because there will be a variety of perspectives in the Sharia courts that may lead to improvements within the system.¹⁴⁴ Different approaches Middle Eastern countries can take to empower their women include: providing them with agency (the ability to make decisions, despite opposition); resources (providing a medium to execute the agency); and achievements (recognizing when decisions are correctly made).¹⁴⁵ Examples of resources Middle Eastern countries can provide to their female judges are childcare facilities at work to help balance their personal lives and adjusting bathrooms for female necessities.¹⁴⁶ Since women have made and will continue to make valuable contributions to Islam, it is critical that women are given full agency and are acknowledged when they make valuable contributions.¹⁴⁷ Appointing females to Sharia courts is a prime example

142. See Zahalka, *supra* note 8, at 3 (“Among Muslim scholars, there is agreement regarding the qualifications required for a qadi [judge]—he must be mature, sane, Muslim, fair-minded, free, industrious, and without any blemishes.”).

143. See *id.* at 4 (“On the other hand, some adjudicators unrestrictedly allow for the appointment of women to the role of Qadi. These scholars believe that gender is not included in the conditions for judicial fitness.”).

144. See Anita F. Hill, *What Difference Will Women Judges Make? Looking Once More at*

the “Woman Question,” in WOMEN AND LEADERSHIP: THE STATE OF PLAY AND STRATEGIES

FOR CHANGE 175, 184–85 (Barbara Kellerman & Deborah L. Rhode eds., 2007) (“The face of judging, in an emblematic way, matters as a reflection of access to justice; the diversity of the bench affects public perceptions of fairness. Finally, diversity among judges is a reflection of how power is distributed in the justice system.”).

145. See Naila Kabeer, *Gender Equality and Women’s Empowerment: A Critical Analysis of The Third Millennium Development Goal*, 13 GENDER & DEV. 13, 14–15 (2005).

146. See Sonneveld & Lindbekk, *supra* note 41, at 14. (explaining currently women face challenges at work regarding these type of facilities.)

147. See Amina Wadud, *Islam Beyond Patriarchy Through Gender Inclusive Qur’anic Analysis*, in WANTED: EQUALITY & JUSTICE IN THE MUSLIM FAMILY 95, 107 (Zainah Anwar ed., 2009) (“Women have made and will continue to make valuable contributions in all areas, private and public, and these realities must be reflected in the reform of laws and policies to acknowledge women’s valuable contributions and full human agency.”).

of agency and achievements, allowing them autonomy without the fear of overturning due to their gender, and praising their deeds in public.

A final method that Middle Eastern countries can employ to empower their women is promoting several female leaders in Islamic history that were heavily involved in legal matters such as Aisha bint Abi Bakr, the youngest wife of the Prophet Muhammad.¹⁴⁸ Not only did the Prophet Muhammad declare Aisha as an important transmitter of Islam, but she has been recognized as an important legal authority by a variety of Islamic scholars and jurists.¹⁴⁹ Additionally, Aisha issued legal opinions in a capacity similar to a *Mufti*.¹⁵⁰ Furthermore, during the time of the Prophet Muhammad, women were given academic titles such as *al-Musnida*, which can be translated roughly as “the authority.”¹⁵¹ Moreover, the Quran presents the Queen of Sheba, who later became a Muslim, rather favorably despite her ignoring the counsel of her male advisors when asked to go to war against Solomon.¹⁵² Finally, after the Quran was completed, Prophet Muhammad entrusted the holy text to one of the wives, Hafsa, and she became the sole trustee.¹⁵³

D. *Establishing Representation in the Judicial System*

Through appointing or electing women into the judiciary, Middle Eastern countries will establish a more representative system of its citizens.¹⁵⁴ For example, the first female Palestinian Sharia judge, Kholoud al-Faqih, was a domestic violence prosecutor who felt as though women

148. See Fadel, *Two Women*, *supra* note 37, at 190.

149. *Id.*

150. *Id.* at 191 (explaining how Aisha issued legal opinions on controversial legal matters). See Fadel, *Muslim Reformists*, *supra* note 77, at 19; Abdelkader, *supra* note 16, at 318–19.

151. *Id.* at 191. See also MUHAMMAD ZUBAYR SIDDIQI, HADITH LITERATURE: ITS ORIGIN, DEVELOPMENT, AND SPECIAL FEATURES 117–23 (Cambridge: Islamic Texts Society, 1993).

152. See *Does Islam consider Women deficient in intelligence and religion*, ALSIRAJ (last visited Aug. 28, 2019), <https://www.alsiraj.net/English/misc/women/html/page20.html> (“After witnessing what God gave Solomon, she became a Muslim, while still the Queen of Sheba.”).

153. BADLISHAH & MASIDI, *supra* note 53, at 21.

154. See Kabeer, *supra* note 145, at 21 (“Electoral systems are also important. The ones more likely to bring women into political office are those where more than one person can represent a constituency[.]”).

needed representation on the bench to feel comfortable telling a judge about the abuse they have gone through.¹⁵⁵ Legal experts “stress[] the need for women to be tried in an environment that is more sensitive to their needs[;]” for example, domestic violence cases that Judge al-Faqih has discussed in the past.¹⁵⁶

Advocates for female judges in the Sharia courts argue that male judges are sometimes biased in favor of men regarding divorce and custody cases.¹⁵⁷ As a result, both advocates and critics of female Sharia judges reason that having a woman preside over familial affairs would be more effective because these judges would likely better understand female litigants’ issues that are brought to court.¹⁵⁸ For example, a legal expert, Mohammad Musa, presented for an Arab Women’s Legal Network (AWLN) roundtable discussion, and “explain[ed] that such an environment is needed at times to help female defendants overcome fear and feel comfortable to give testimony.”¹⁵⁹ In domestic violence cases, women at times never bring forward a complaint against their husband due to social constraints or reprisals from their husband, or their own families.¹⁶⁰ However, it is critical that advocates illustrate that all female Sharia judges, if appointed, will not be solely in favor of female litigants.¹⁶¹ At the same time, advocates should reassure others that not all male Sharia judges are biased against females.¹⁶² This must be done to avoid any damage to the integrity of the Sharia court system, which is not

155. See Vanessa H. Larson, *This Palestinian Lawyer is One of the First Women to Preside Over a Sharia Court. ‘The Judge’ is Her Story*, WASH. POST (May 2, 2018), https://www.washingtonpost.com/goingoutguide/movies/this-palestinian-lawyer-is-one-of-the-first-women-to-preside-over-a-sharia-court-the-judge-is-her-story/2018/05/01/cf9b30ba-499e-11e8-827e-190efaf1f1ee_story.html?utm_term=.a6903423609f.

156. Nouman, *supra* note 10.

157. ILAC, *supra* note 17, at 56 (“The majority of female lawyers and activists interviewed felt that this discretion allows a manifest bias by male Sharia court judges in favour of men. This bias was noted particularly in divorce and custody cases.”).

158. See Sonneveld & Lindbekk, *supra* note 41, at 11–12.

159. Nouman, *supra* note 10.

160. ILAC, *supra* note 17, at 57.

161. See Sonneveld & Lindbekk, *supra* note 41, at 3.

162. See *id.* (“It should, however, not be assumed that female judges will adjudicate in a manner favorable to female litigants, nor that male judges profess a misogynistic attitude.”).

the goal of the advocates.¹⁶³ If the Sharia courts appoint more women, these appointments will signal to the public that the Sharia Courts are fair and non-discriminatory.¹⁶⁴ Finally, judicial systems that are more representative of the people that they preside over will likely be considered more legitimate, trustworthy, and functional from the public at large.¹⁶⁵

E. *Economic Improvements*

Gender rights advocates can explain the economic, political, legal, and cultural necessity that dictates female participation in the public square.¹⁶⁶ For example, the presence of women in the workforce, including as judges, alleviates economic hardships confronting many struggling families.¹⁶⁷ Facilitating women's ability to make meaningful contributions, they argue, also enhances women's cultural and social stature.¹⁶⁸ Additionally, advocates argue that female participation on the bench may positively advance judicial administration in a number of states that suffer from a shortage of qualified judges and a large number of cases.¹⁶⁹ Overall, having women become judges is a sound use of human resources as "[m]odern societies cannot afford to lose the intellectual power and energy" of bright-minded women.¹⁷⁰

F. *Teaching about Gender Equality in the Legal Field*

Middle Eastern law schools can adopt curricula and courses that focus on gender equality to have future attorneys adhere to female judges and

163. *Id.*

164. Rosemary Hunter, *More than Just a Different Face? Judicial Diversity and Decision-making*, 68 CURRENT LEGAL PROBS. 119, 123 (2015), <https://academic.oup.com/clp/article/68/1/119/337616>.

165. Sital Kalantry, *Women in Robes*, AMERICAS Q. 83, 87 (2012).

166. *See* Hassan, *supra* note 15, at 11.

167. *See id.* ("Women's participation in the workforce is an economic necessity due to increasing rise of economic burdens. If women did not share these burdens with men, families would not be able to realize their dreams and raise the material standard of their life, rather, they would drown in debt.")

168. *Id.*

169. *Id.* at 12.

170. Brenda Hale, *Welcome to the White Men's Club*, GUARDIAN (Oct. 29, 2003), <https://www.theguardian.com/world/2003/oct/30/gender.uk>.

their decisions.¹⁷¹ Additionally, Middle Eastern judicial systems could also partner with national and local bar associations to host speakers, workshops, events, or create task forces in support of women in the judiciary.¹⁷² However, these teachers should not recreate the legal system solely based on these ideas, but fuse the past and present by “incorporate[ing] a tolerance and respect for the traditional values” that many Middle Eastern individuals may still hold.¹⁷³ Finally, if women teach gender equality courses or Islamic law classes in Middle Eastern law schools and bar associations, law students and practitioners in the field will be more receptive to gender equality in the judicial system.¹⁷⁴

V. PROOF OF CONCEPT: FEMALES WITHIN THE UNITED STATES AND UNITED KINGDOM JUDICIAL SYSTEMS

If advocates for female judges in the Sharia courts implement the strategies proposed above, an increase of female participation will likely occur. Currently, there is precedent for women entering judicial systems in their own countries and causing a positive effect in their societies.¹⁷⁵ Two examples of this are the United States and United Kingdom.¹⁷⁶ Although both countries’ judicial systems are not religiously oriented like the Sharia courts, the stories, experiences, and barriers to entry women

171. See, e.g., *Law, Gender, Equality*, YORK U. OSGOODE HALL L. SCH., <https://www.osgoode.yorku.ca/courses-and-seminars/law-gender-equality/> (last updated 2016) (describing a seminar offered by Osgood Hall Law School that covers the topic of law, gender, and equity).

172. See, e.g., *American Bar Association Commission on Women in the Profession*, A.B.A., https://www.americanbar.org/groups/diversity/women/about_us/ (last visited Sept. 6, 2019).

173. See Joel L. A. Peterson, “5 Reasons to Teach Gender Equality in Schools”, HUFFPOST (Dec. 6, 2017), https://www.huffingtonpost.com/joel-l-a-peterson/post_10328_b_8307744.html. (providing that in America, American teachers should do the same with other minority groups.)

174. See generally Eric P. Bettinger & Bridget Terry Long, *Do Faculty Serve as Role Models? The Impact of Instructor Gender on Female Students*, 95 AMERICAN ECON. REV. 153, (2005) (arguing the results suggest that female faculty members do have the potential to increase student interest in a subject as measured by course selection and major choice).

175. See *infra* VA & VB.

176. *Id.*

have faced in these countries in entering the judiciary are quite similar to Middle Eastern Muslim women.

A. *United States*

1. *Historical Background Regarding the First Female American Judge*

In the United States, the first female to be elected to a judgeship was named Florence Allen.¹⁷⁷ During her law school studies, “she was the only women in a class of about 100 in the University of Chicago Law School.”¹⁷⁸ Judge Allen’s life was a catalog of legal firsts, and she became a popular role model for women suffrage groups across the United States.¹⁷⁹ Similar to Judge al-Faqih, Judge Allen was a prosecutor prior to becoming a judge.¹⁸⁰ She was the first woman in the United States to be appointed Assistant Prosecutor.¹⁸¹ Not only was Judge Allen the first woman to sit on a state supreme court, but she also was the first woman to sit on an Article III federal appellate court.¹⁸² In 1934, Judge Allen was appointed to the Sixth Circuit and served for twenty-five years.¹⁸³ In 1959, she was the first woman in the United States to become a Chief Judge on a federal court.¹⁸⁴ Justice Ruth Ginsburg of the United States Supreme Court has dubbed Judge Allen as one of the “way pavers” for women in

177. See *Florence Ellinwood Allen*, NAT’L WOMEN’S HALL OF FAME, <https://www.womenofthehall.org/inductee/florence-ellinwood-allen/> (last visited Sept. 13, 2019) [hereinafter WOMEN’S HALL OF FAME].

178. See “Women as ‘Way Pavers’ in the Federal Judiciary,” U.S. CTS. (Feb. 26, 2015), <https://www.uscourts.gov/news/2015/02/26/women-way-pavers-federal-judiciary> [hereinafter *Way Pavers*].

179. See *Florence Ellinwood Allen*, SUP. CT. OF OHIO & OHIO JUD. SYS., <https://www.supremecourt.ohio.gov/SCO/formerjustices/bios/allen.asp> (last visited Sept. 13, 2019).

180. *Id.*

181. See WOMEN’S HALL OF FAME, *supra* note 177.

182. See *Women’s History Month*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/educational-resources/annual-observances/womens-history-month>. (last visited Sept. 6, 2019).

183. *Id.*

184. *Id.*

the legal profession.¹⁸⁵ Overall, Judge Allen opened doors in the legal profession that had been previously closed to women.

After Judge Allen's career, Sandra Day O'Connor became the first female United States Supreme Court Justice in 1981.¹⁸⁶ Today, three women sit on the United States Supreme Court, which includes Ruth Bader Ginsburg, Sonia Sotomayor, and Elena Kagan.¹⁸⁷ Slowly but surely, female participation within the judiciary is growing in the United States. Since 2018, there are 5,947 female state court judges in the United States, which make up a third of the state court judge population.¹⁸⁸ Additionally, since 2017, sixty of the active judges that are sitting in federal courts are women, which is approximately thirty-six percent of the federal judge population.¹⁸⁹ While these numbers have increased since Judge Allen's appointment to the bench, progress should not be grounds for complacency as further progress can still be made.¹⁹⁰

2. *Barriers to Entry for American Women*

Despite these numbers, women entering the judiciary in the United States face similar barriers to entry as women entering the Sharia courts. For example, just as Sharia court judges are appointed by their judicial peers, there are judges in the United States who are appointed either by the executive or legislature branches of government.¹⁹¹ When seeking

185. *Way Pavers*, *supra* note 178.

186. Steven R. Weisman, *Reagan Nominating Woman, an Arizona Appeals Judge, to Serve on Supreme Court*, N.Y. TIMES (July 7, 1981), <https://archive.nytimes.com/www.nytimes.com/learning/general/onthisday/big/0707.html>

187. Meghan Keneally, *Meeting All of the Sitting Supreme Court Justices Ahead of the New Term*, ABC NEWS (Nov. 30, 2018), <https://abcnews.go.com/Politics/meet-sitting-supreme-court-justices/story?id=37229761>.

188. *2018 Representation of United States State Court Women Judges*, NAT'L ASS'N. OF WOMEN JUDGES, <https://www.nawj.org/statistics/2018-us-state-court-women-judges> (last visited Sept. 6, 2019).

189. Barry J. McMillion, *U.S. Circuit and District Court Judges: Profiles of Select Characteristics*, FED. AMERICAN SCIENTISTS (Aug. 1, 2017), <https://fas.org/sgp/crs/misc/R43426.pdf>.

190. DEBORAH L. RHODE, ABA COMM'N ON WOMEN IN THE PROFESSION, THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION 9 (2001), <http://womenlaw.stanford.edu/pdf/aba.unfinished.agenda.pdf>.

191. Kalantry, *supra* note 165, at 85.

appointment, women in the United States tend to need strong political connections, despite their strong credentials.¹⁹² This becomes an issue as some women feel as though they are excluded from formal and informal networking events.¹⁹³

Another barrier to entry is the male judiciary members and public opinion regarding a woman being a judge.¹⁹⁴ Particularly, Judge Allen could not overcome this barrier as President Truman was going to nominate her for a United States Supreme Court Justice, but due to pressure from the male justices and public opinion at the time, he decided against it.¹⁹⁵ American women who do decide to run for elected judgeships come across the implicit or explicit biases of some male party officials, activists, and other gatekeepers who may prefer candidates who are more like themselves or view women as less competitive candidates.¹⁹⁶ Furthermore, some women have reported male biases against women during the selection and confirmation processes of judicial appointments.¹⁹⁷ According to studies conducted by the American Bar Association, “judicial performance evaluations found that female judges are rated consistently lower than their male counterparts, and that male lawyers are particularly critical.”¹⁹⁸ If female judges attempt to make changes to the performance evaluations or the judicial system, some women fear being branded as “oversensitive,” “difficult to work with,” a “feminist,” or “rocking the boat.”¹⁹⁹

The next barrier to entry for women in the United States to become judges is “gendered political opportunity structures and[] differences in

192. *Id.*

193. *Id.*

194. Meg Penrose, *The Way Pavers: Eleven Supreme Court-worthy Women*, HARV. J. L. & GENDER 20 (2018), <https://harvardjlg.com/2018/07/the-way-pavers-eleven-supreme-court-worthy-women/>.

195. *Id.*

196. See David Niven, *Party Elites and Women Candidates: The Shape of Bias*, 19 WOMEN IN POL. 57, 61 (1998).

197. See NEW JERSEY SUPREME COURT TASK FORCE ON WOMEN IN THE COURTS, GENDER BIAS SURVEY REPORT 20 (July 1998) (reporting that about two thirds of women believed that female judicial candidates were treated less favorably often or most of the time, while about three quarters of men believed that such bias occurred rarely).

198. Rhode, *supra* note 190, at 27.

199. Susan J. Ashford, *Championing Charged Issues: The Case of Gender Equity Within Organizations*, in POWER AND INFLUENCE IN ORGANIZATIONS 369–70, 375 (Roderick M. Kramer & Margaret A. Neale eds., 1998).

gender socialization.”²⁰⁰ The Bureau of Labor Statistics surveyed the United States population and found that American women continue to hold a far larger household and caregiving burden than men, thus, leaving women with fewer resources and time to run for an elected judge position.²⁰¹ Similar to women in the Middle East, some women in the United States view themselves as unqualified and “more likely to perceive the electoral environment to be highly competitive and biased against them.”²⁰² Some women in the United States dislike the treatment famous female politicians face such as the lack of privacy, fundraising burden, and lack of civility in campaigns.²⁰³ Finally, these perceptions of gender differences are widely shared in the United States legal profession. In an American Bar Association Journal poll, “fewer than a fifth of women lawyers believed that male and female lawyers had the same strengths and weaknesses.”²⁰⁴ Additionally, “slightly under half of male lawyers believed that men and women had the same strengths and weaknesses.”²⁰⁵

An additional barrier to entry for women in the United States to become judges is the lack of empowerment of female candidates. A 2014 report from the Institute for Women’s Policy Research “found that 51 percent of female candidates and elected officials said they had never been encouraged by party leaders to run for office.”²⁰⁶ Additionally, some women even reported being subtly discouraged from mounting primary challenges to incumbents.²⁰⁷ Finally, “[f]emale judges often receive criticism for strong and decisive action, while the same behavior by male judges attracts praise.”²⁰⁸

200. Saskia Brechenmacher, *Tackling Women’s Underrepresentation in U.S. Politics: Comparative Perspectives from Europe*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Feb. 20, 2018), <https://carnegieendowment.org/2018/02/20/tackling-women-s-underrepresentation-in-u.s.-politics-comparative-perspectives-from-europe-pub-75315>.

201. See *American Time Use Survey*, BUREAU OF LABOR STATISTICS, <https://www.bls.gov/tus/charts/household.htm> (last updated Dec. 20, 2016).

202. Brechenmacher, *supra* note 200.

203. *Id.*

204. Rhode, *supra* note 190, at 30.

205. *Id.*

206. Judith Warner, *Opening the Gates: Clearing the Way for More Women to Hold Political Office*, CENTER FOR AMERICAN PROGRESS (May 19, 2017), <https://www.americanprogress.org/issues/women/reports/2017/05/19/427206/opening-the-gates/>.

207. *Id.*

208. Rhode, *supra* note 190, at 27.

B. United Kingdom

1. Historical Background Regarding the First Female Judge in the United Kingdom

Just as Judge al-Faqih and Judge Allen are famous for being the first female judges in their respective judicial systems, Elizabeth Lane holds the same honor in the United Kingdom.²⁰⁹ In 1962, Judge Lane became the first female county court judge.²¹⁰ In 1965, Judge Lane became the first woman to sit as a judge on the High Court.²¹¹ During her time on the High Court, Judge Lane was “assigned to the Probate, Divorce, Admiralty, and later the Family Divisions.”²¹² After her career concluded, Judge Lane became an honorary fellow of Newnham College at the University of Cambridge.²¹³ Additionally, Judge Lane was made a Dame Commander, “an honor corresponding to the knighthood customarily conferred upon male High Court judges.”²¹⁴ Finally, similar to Judge al-Faqih and Judge Allen, Judge Lane always encouraged young women contemplating a career in the legal profession, and opened many doors for future women in the United Kingdom to become judges.²¹⁵

Today, there are three female Supreme Court Justices in the United Kingdom, which include Lady Black, Lady Arden, and Lady Hale (The Court’s President).²¹⁶ In 2017, eighteen to twenty-four percent of Court of

209. Lane [née Coulborn], *Dame Elizabeth Kathleen*, OXFORD DICTIONARY OF NAT’L BIOGRAPHY (Sept. 23, 2004), <http://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-40092> [hereinafter *Dame Elizabeth Kathleen*].

210. Sarah Thomas, *Gender inequality in the legal profession – distant past or a current concern?*, DANGEROUS WOMEN PROJECT (Apr. 15, 2016), <http://dangerouswomenproject.org/2016/04/15/gender-inequality-legal-profession/>.

211. *Id.*

212. *See Dame Elizabeth Kathleen*, *supra* note 209.

213. *See Thomas*, *supra* note 210.

214. *See Dame Elizabeth Kathleen*, *supra* note 209.

215. *See id.*

216. Owen Bowcott, *UK Supreme Court to Get Third Female Justice*, THE GUARDIAN (Jun. 28, 2018), <https://www.theguardian.com/law/2018/jun/28/uk-supreme-court-to-get-third-female-justice> [hereinafter Bowcott Jun. 28].

Appeal judges were female.²¹⁷ Additionally, twenty-two percent of judges within the High Court were women.²¹⁸ Within the United Kingdom judicial system, there is a Judicial Diversity Committee of the Judges Council that focuses on appointing under-represented groups.²¹⁹ When appointing a judge in the United Kingdom, there is an equal merit provision that allows diversity to be considered and has led to an increase in female appointments.²²⁰ Furthermore, the United Kingdom's appointment committee explicitly recognizes that a more diverse judiciary can bring different perspectives on the law and justice due to the different experiences that each judge holds within themselves.²²¹ In fact, the committee declares that adding women into the judiciary would not undermine the quality of the judiciary, but would increase society's trust in the judicial system.²²² However, the United Kingdom is still lagging behind other European countries as it has one of the lowest proportions of female judges in comparison to other countries within the European Union ("EU") due to the many barriers of entry for its female legal professionals.²²³

217. THE LORD CHIEF JUSTICE'S REPORT, JUDICIARY OF ENGLAND AND WALES 2017, at 11 (2017), <https://www.judiciary.uk/wp-content/uploads/2017/09/lcj-report-2017-final.pdf>.

218. *Id.*

219. *See id.*

220. Owen Bowcott, *Women Make Up Only 25% of Judges in England and Wales*, THE GUARDIAN (Oct. 9, 2014), <https://www.theguardian.com/law/2014/oct/09/uk-lags-europe-gender-balance-judiciary> [hereinafter Bowcott Oct. 9]. *See also* JUDICIAL APPOINTMENTS COMMISSION, JUDICIAL SELECTIONS AND RECOMMENDATIONS FOR APPOINTMENT STATISTICS, APRIL 2015 TO MARCH 2016, at 11 (2016), https://jac.judiciary.gov.uk/sites/default/files/sync/about_the_jac/official_statistics/statistic_bulletin-jac-2015-16-revised.pdf (Although the idea of an equal merit provision (EMP) is an admirable one, in 2015-16 just 14 out of 308 recommendations were made using the EMP, and it is unclear if it has ever been used at senior levels).

221. CONSTITUTIONAL COMMITTEE, JUDICIAL APPOINTMENTS, 2012, HL ¶ 70 (UK) (“[I]t is necessary for judges to understand the wide array of concerns and experiences of those appearing before them.[] A more diverse judiciary can bring different perspectives to bear on the development of the law and to the concept of justice itself”).

222. *Id.* ¶ 73.

223. Owen Bowcott, *Proportion of female judges in UK among lowest in Europe*, THE GUARDIAN (Oct. 6, 2016), <https://www.theguardian.com/law/2016/oct/06/proportion-of-women-judges-in-uk-among-lowest-in-europe> [hereinafter Bowcott Oct. 6]. *See UK has lowest proportion of female judges in EU*, BBC NEWS (Oct. 6, 2016), <https://www.bbc.com/news/uk-37575212>. It is important to note that the United

2. Barriers to Entry for Women in the United Kingdom

First, some people in the United Kingdom judicial system are not accepting that there are already talented women in the legal profession who can adequately perform the duties of a judge. There is a preconceived notion from a historical lens that there is an insufficient number of women who are not qualified for judicial appointments.²²⁴ Additionally, there is an argument that women in the United Kingdom do not put themselves forward as candidates for judicial appointments.²²⁵ However, the appointment committee recognizes that senior judges should encourage potentially diverse candidates to apply for judgeships.²²⁶ Finally, the judicial committee that is responsible for the appointment process of judges has determined that merit should be the sole criteria when appointing a judge.²²⁷ Although diversity may be considered, merit and diversity are “distinct concepts.”²²⁸ Second, there is a substantial turnover rate for women in the United Kingdom’s legal field, which leads to many women not reaching the level necessary to apply to become a judge.²²⁹

Third, studies suggest that parts of the application process and perceptions about the culture of the judiciary itself could be discouraging underrepresented groups, such as women, from attaining roles within the

Kingdom’s judicial system does recognize there is still work needed to be done as Justice minister Shailesh Vara stated, “we recognise there is still more to do, which is why we will continue to work with all concerned towards a judiciary that reflects the society it serves.” Bowcott Oct. 9, *supra* note 220.

224. Nathalie Lieven, *Increasing Judicial Diversity*, JUSTICE 8 (April 2017), <https://2bqk8cedew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2017/04/JUSTICE-Increasing-judicial-diversity-report-2017-web.pdf>.

225. *Id.* at 9. See also CONSTITUTIONAL COMMITTEE, *supra* note 221, ¶ 68 (“Many of the causes for this appear to stem from the structures of the legal professions (barristers and solicitors) and the pool of available mid-career legal professionals eligible and interested in putting themselves forward for selection.”).

226. CONSTITUTIONAL COMMITTEE, *supra* note 221, ¶ 79 (“Whilst individual judges cannot, and should not, determine the outcome of a specific application, senior judges should be sufficiently well-informed about the process to be able to advise candidates and encourage them to apply.”).

227. *Id.* ¶ 97.

228. *Id.* ¶ 94.

229. *Id.* ¶ 76.

judiciary.²³⁰ The judicial selection committee recognized that there could be unconscious biases that result in the appointment of judges that hold characteristics and credentials that are very similar to the judges already sitting on the bench, the majority of which are male.²³¹ These biases within the application process are quite similar to the obstacles Muslim and American women face when applying to Sharia courts and the judiciary respectively.

Fourth, socioeconomic advantages play a large role in the appointment of High Court and Court of Appeal judges.²³² In 1989, seventy-six percent of High Court and Court of Appeal judges were privately educated.²³³ In 2004, the number decreased to seventy-five percent and in 2015 lowered to seventy-four percent.²³⁴ Additionally, in 2015, seventy-four percent of these top judges were Oxbridge graduates.²³⁵ In over twenty-five years, this staggering number has remained consistent perhaps due to unconscious bias and a tendency to mimic the characteristics in the existing judiciary.²³⁶

Overall, many of the barriers of entry for the Middle East, the United States, and the United Kingdom were quite similar. Despite these similar obstacles, the women in the United States and the United Kingdom face, their numbers have been improving since the first female judges. Just as Judge Allen and Judge Lane's entry into the judicial field encouraged women in the United States and the United Kingdom to join the judiciary,

230. *Barriers to Application for Judicial Appointments Research*, BRITISH MARKET RESEARCH BUREAU, at ii (July 2013), https://jac.judiciary.gov.uk/sites/default/files/sync/about_the_jac/research-attitudes-to-judicial-appointment-2013.pdf. The perceived requirement to go on Circuit (among other factors) was identified as an off-putting factor for women. BAME respondents were twice as likely as white respondents to say the fear of failure would deter them from applying for judicial office. *Id.* at iii.

231. See CONSTITUTIONAL COMMITTEE, *supra* note 221, ¶ 86 (“Lord McNally drew attention to the danger of appointers looking to appoint ‘chaps like us’ whilst Baroness Neuberger stressed the wide-scale nature of this problem.”).

232. Paul Kirby, *Leading People 2016: The Educational Backgrounds of the UK Professional Elite*, THE SUTTON TRUST 30–32 (Feb. 2016), http://www.suttontrust.com/wp-content/uploads/2016/02/Leading-People_Feb16.pdf.

233. *Id.*

234. *Id.*

235. *Id.*

236. See ERICKA RACKLEY, *WOMEN, JUDGING AND THE JUDICIARY: FROM DIFFERENCE TO DIVERSITY* 187–195 (Routledge-Cavendish ed., 2012).

a similar effect will likely occur in the Sharia court systems throughout the Middle East because of Judge al-Faqih's appearance.

VI. CONCLUSION

Gender inequalities are multi-dimensional because they cannot be reduced to one universally agreed upon set of priorities.²³⁷ However, if female judges are not supported by their legal colleagues, then citizens may not respect their decisions, and female judges' presence will be nominal at best. Although it may take time for Middle Eastern countries to completely support female judges in Islamic courts, there are methods that exist to influence cultures to become more receptive to this novel modification.²³⁸ The key is not to impose this idea through outside pressures; otherwise, critics will claim that female judgeship was created through external forces, not through Islam.²³⁹ As it is, critics claim that female judgeship is an idea that was introduced as a result of "European and American agendas."²⁴⁰ Although some may believe that appointing women to become judges in the Sharia court system is for political grandstanding, many in the public believe this is the correct path for Islam, and appointing females into the Sharia courts is history in the making.²⁴¹ While there are many critics of female judgeship in the Sharia courts, over

237. See Kabeer, *supra* note 145, at 23.

238. *Gender Mainstreaming*, THE EUROPEAN FOUNDATION FOR THE IMPROVEMENT OF LIVING AND WORKING CONDITIONS (Dec. 2, 2010), <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/gender-mainstreaming> ("Gender Mainstreaming is a globally accepted strategy for promoting gender equality. Mainstreaming is not an end in itself but a strategy, an approach, a means to achieve the goal of gender equality. Mainstreaming involves ensuring that gender perspectives and attention to the goal of gender equality are central to all activities—policy development, research, advocacy/ dialogue, legislation, resource allocation, and planning, implementation and monitoring of programmes and projects").

239. See Sonneveld & Lindbekk, *supra* note 41, at 10 ("[I]n the second phase of appointing women as judges, international discourses on equality between the genders and pressure from international organizations played an important role in governments' policies.").

240. Abdelkader, *supra* note 16, at 54.

241. See Zahalka, *supra* note 8, at 9–10 ("[T]he appointment of a female qadi is nothing but a political deal carried out in the Sharia court system . . . in spite of the troubles that arose from the appointment, many in this public believed that the move was correct from both a religious and social standpoint, and accepted.").

time, their male judicial colleagues will likely come to accept them as a part of the judicial family.²⁴²

Slowly but surely, this change is happening throughout the world as more Muslim countries are becoming receptive to accepting women in leadership positions.²⁴³ For example, Indonesia, the country with the largest Muslim population, has around one-hundred female judges in their Sharia court system.²⁴⁴ Moreover, not only has Indonesia become the frontrunner in appointing female judges into the Sharia court system, but it has also actively encouraged women to become judges.²⁴⁵ Furthermore, conservative Muslim countries such as Pakistan are allowing women to become judges in the Sharia court system.²⁴⁶

It is important to stress that female presence in the judiciary has the potential to improve Middle Eastern laws and societies.²⁴⁷ To quote Judge Nenny Shushaidah Binti Shamsuddin, “[w]hen I’m on the bench, I’m not a woman, I’m not a man. I’m a judge.”²⁴⁸ If other Middle Eastern countries follow Palestine’s example by appointing women such as Judge Kholoud al-Faqih in the Islamic courts, such courts will provide greater justice to all its citizens.

242. See Sonneveld & Lindbekk, *supra* note 41, at 15.

243. See BADLISHAH & MASIDI, *supra* note 53, at 30.

244. *Shariah High Court appoints First Women Judges in Malaysia*, MALAY MAIL (June 27, 2016), malaymail.com/news/malaysia/2016/06/27/the-first-two-women-shariah-high-court-judges-in-malaysia/1150203.

245. See Sonneveld & Lindbekk, *supra* note 41, at 8.

246. See Zahalka, *supra* note 8.

247. See Hanim Muhammad Hassan *supra* note 15, at 11–12.

248. Liz Gooch, *The Female Face of Islamic Law in Malaysia*, ALJAZEERA (Aug. 16, 2017), <https://www.aljazeera.com/indepth/features/2017/08/female-face-islamic-law-malaysia-170802110726630.html>. Judge Nenny was one of the first female judges appointed to the Sharia court in Malaysia. *Id.*