



FEMALE JUDGES IN MUSLIM-MAJORITY COUNTRIES: THE RECONFIGURATION OF JUDICIAL AUTHORITY IN ISLAMIC POLITICAL JURISPRUDENCE



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Abstract

This article examines the position of female judges in Islamic political jurisprudence (*fiqh siyasah*) and its institutionalisation across Muslim – majority countries. Two central questions guide this study: first, how classical and contemporary Islamic jurisprudence has positioned female judicial authority within the doctrine of *wilāyat al-qaḍā'*; and second, whether the incorporation of female judges into the constitutional frameworks of Muslim – majority states reflects a reconfiguration of the normative foundations of judicial legitimacy. This study employs a normative legal research design combining comparative and conceptual approaches. Primary legal materials consist of classical juristic texts, constitutional provisions, and judicial appointment statutes from selected Muslim – majority jurisdictions. In contrast, secondary legal materials include peer – reviewed scholarship on Islamic constitutionalism, judicial reform, and gender in Islamic legal systems. These materials are analysed through doctrinal interpretation and thematic comparative evaluation. The findings reveal, first, that classical jurisprudence did not produce a binding consensus (*ijma'*) categorically prohibiting female judges, as minority opinions and divergent methodological approaches demonstrate the tradition's inherent plurality. Second, the comparative constitutional analysis shows that the majority of Muslim – majority states have formally institutionalised female judges by reframing judicial authority in terms of professional competence, constitutional equality, and institutional legitimacy rather than in terms of gender. This article concludes that these developments reflect a structural transformation in Islamic political jurisprudence: a reconfiguration from a classical configuration premised on the convergence of sovereignty, religious legitimacy, and male guardianship, toward a constitutional paradigm grounded in institutional competence and equality before the law.

Abstrak

Artikel ini mengkaji kedudukan hakim perempuan dalam fikih siyasah serta institusionalisasinya di negara-negara mayoritas Muslim. Dua pertanyaan utama yang memandu penelitian ini adalah: pertama, bagaimana fikih siyasah klasik dan kontemporer memosisikan otoritas yudisial perempuan dalam doktrin *wilāyat al-qaḍā'*; dan kedua, apakah pengangkatan hakim perempuan dalam kerangka konstitusional negara-negara mayoritas Muslim mencerminkan rekonfigurasi fondasi normatif legitimasi yudisial. Penelitian ini menggunakan desain penelitian hukum normatif dengan menggabungkan pendekatan komparatif dan konseptual. Bahan hukum primer meliputi teks-teks fikih klasik, ketentuan konstitusional, dan peraturan pengangkatan hakim dari sejumlah yurisdiksi negara mayoritas Muslim yang dipilih, sedangkan bahan hukum sekunder mencakup karya ilmiah yang telah melalui penelaahan sejawat dalam bidang konstitusionalisme Islam, reformasi peradilan, dan gender dalam sistem hukum Islam. Bahan-bahan tersebut dianalisis melalui interpretasi doktrinal dan evaluasi komparatif secara tematik. Temuan penelitian ini menunjukkan, pertama, bahwa fikih klasik tidak menghasilkan konsensus (*ijma'*) yang mengikat dan secara kategoris melarang hakim perempuan, karena pandangan-pandangan minoritas dan keragaman pendekatan metodologis mencerminkan



pluralitas yang inheren dalam tradisi fikih. Kedua, analisis konstitusional komparatif menunjukkan bahwa sebagian besar negara mayoritas Muslim telah secara formal mengangkat hakim perempuan dengan mereformulasi otoritas yudisial berdasarkan kompetensi profesional, kesetaraan konstitusional, dan legitimasi institusional, bukan berdasarkan gender. Artikel ini menyimpulkan bahwa perkembangan tersebut mencerminkan transformasi struktural dalam fikih siyasah, yakni rekonfigurasi dari konfigurasi klasik yang bertumpu pada konvergensi kedaulatan, legitimasi keagamaan, dan perwalian laki-laki, menuju paradigma konstitusional yang berlandaskan kompetensi institusional dan kesetaraan di hadapan hukum.

INTRODUCTION

The question of female judicial authority is deeply contested within Islamic political jurisprudence (*fiqh siyasah*) (Mahbuba & Rabeya, 2023). Classical *fiqh siyasah* situated judicial power (*wilāyat al-qaḍā'*) within a hierarchical structure of delegated sovereignty under the *imām* or caliph, where legal authority was embedded in broader conceptions of political leadership, public guardianship, and gendered assumptions about eligibility for office (Sudirman et al., 2022). Within this doctrinal architecture, a substantial body of juristic opinion restricted or rejected the appointment of female judges, grounding such positions in prevailing theories of representation, public authority, and political sovereignty (Sulistiyawati & Yamani, 2025). This classical configuration of judicial authority was thus premised on the convergence of sovereignty, religious legitimacy, and male guardianship, in which the office of judge was conceived as an extension of political and religious leadership structurally inaccessible to women.

The empirical trajectory of female judicial appointment across Muslim – majority states, however, tells a markedly different story. Iraq appointed its first female judge as early as 1959, followed by Morocco in 1961, Tunisia and Lebanon in 1966, and a succession of Arab and non – Arab states through the subsequent decades (Al – Agha, 2021; ESCWA, 2019). Indonesia has permitted women to serve in all judicial sectors, including the Constitutional Court, reflecting a comprehensive institutional acceptance of women's judicial authority (Rohmah et al., 2025). By contrast, several states, including Saudi Arabia, Kuwait, Oman, and Somalia, have yet to appoint female judges, reflecting persistent doctrinal and institutional resistance (Al – Shibli, 2025). This uneven pattern demonstrates that the question of female judicial authority is not merely a theological debate but a measurable institutional phenomenon shaped by constitutional design, political will, and the manner in which Islamic law is embedded within state structures.

The disjunction between the classical configuration of judicial authority and contemporary constitutional practice thus raises a more fundamental question concerning the transformation of sovereignty and the institutional basis of legal authority in Muslim – majority states (Tampubolon et al., 2025). The tension is not merely a matter of doctrinal reinterpretation or evolving social attitudes toward gender equality. If classical judicial authority derived its legitimacy from personal delegation within a caliphal political theology, contemporary judicial systems operate within constitutional frameworks in which sovereignty is vested in the state and mediated through codified legal institutions (Belhaj, 2025). The emergence of female judges, therefore, invites a reassessment of whether the underlying theory of judicial authority in Islamic political jurisprudence has itself been reconfigured. In this sense, the presence of women on the bench may signal not simply inclusion within an existing structure, but a structural shift in the foundations of legitimacy that govern Islamic legal and political thought.

Scholarly literature on female judicial authority in Muslim – majority contexts has developed along two broad trajectories. The first is jurisprudential, focusing on classical doctrinal debates among Islamic legal scholars. Kholiq *et al.* (2024) demonstrate that juristic disagreement on this question is shaped by divergent methodological approaches to scriptural interpretation and differing conceptions of judicial competence. Sumantri (2024) further shows, through a comparative analysis of Abu Hanifah and al – Shafi'i, that classical Islamic legal thought is inherently multi – interpretive rather than monolithic in its treatment of female judicial eligibility. Chadziq (2021) contextualises this spectrum within Indonesian Islamic law, noting that scholarly opinion ranges from unconditional permissibility to absolute prohibition, reflecting the absence of doctrinal consensus.

The second trajectory is empirical and institutional. Kholiq and Halimatusa'diyah (2023) find that gender – neutral judicial policies in Indonesia's Islamic court system have not eliminated structural inequality, as formal neutrality within judicial organisations sustains informal barriers to women's advancement to senior judicial positions. Sonneveld and Tawfik (2015) show that resistance to female judges in Egypt reflects deeper contestations over gender roles and the fragmentation of religious authority. Jones (2019), examining India's all – female *shar'ah* court network, argues that female judicial participation in non – state settings represents a deliberate reorientation toward community – based dispute resolution rather than mere inclusion within existing structures. Taken together, the two trajectories reveal a persistent gap between doctrinal debates and institutional realities, underscoring the need for an analytical framework that addresses the structural, rather than merely interpretive, dimensions of this transformation.

However, the broader implications of the institutionalisation of female judges for Islamic political jurisprudence remain insufficiently theorised. Existing literature largely treats the issue as a matter of gender inclusion or interpretive flexibility, without situating it within the structural transformation of judicial authority or examining it systematically across Muslim – majority jurisdictions. As a result, the question of whether the normalisation of female judges reflects a reconfiguration of judicial legitimacy remains underexplored. By employing a comparative approach to selected Muslim – majority countries, this article moves beyond debates on permissibility and representation to analyse female judges as indicators of a deeper transformation in the foundations of judicial authority within Islamic political jurisprudence.

This article examines the institutionalisation of female judges in Muslim – majority countries as a manifestation of a broader transformation in the foundations of judicial authority within Islamic political jurisprudence. By employing a comparative approach, the study seeks to analyse how selected Muslim – majority jurisdictions have incorporated female judges into their judicial systems and to assess whether this development reflects a reconfiguration of judicial legitimacy—from classical doctrines of delegated sovereignty within caliphal political theology to modern constitutional frameworks grounded in institutional state authority. Through this analysis, the article intends to contribute to contemporary debates on Islamic constitutionalism, sovereignty, and the evolution of judicial power in post – caliphal governance structures.

METHODS

This research employs a normative legal research design to examine the position of female judges within Islamic political jurisprudence and contemporary judicial systems in Muslim – majority countries (Susanti & Efendi, 2014). As a doctrinal study, the research focuses on legal norms, principles, and concepts derived from classical Islamic jurisprudence and modern constitutional frameworks. The study applies two main approaches: a conceptual approach and a comparative law approach (Efendi & Ibrahim, 2018). The conceptual approach is employed to examine key theoretical constructs, including *wilāyat al-qaḍā'* (judicial authority) in Islamic political jurisprudence. A comparative approach is used to analyze how different Muslim – majority countries have institutionalized female judges within their respective judicial systems. The countries selected for comparative analysis represent four constitutional trajectories: the early post – independence reform model (Iraq, Morocco, Lebanon, Tunisia, Yemen, Syria, and Sudan), the interrupted reform and gradual reintegration model (Palestine, Jordan, Libya, Egypt, Bahrain, UAE, Qatar, Malaysia, Mauritania, and Kazakhstan), the constitutional equality model (Indonesia and Turkiye), and the doctrinally restrictive model (Saudi Arabia, Iran, Kuwait, Oman, and Somalia). This typological selection enables a systematic analysis of how varying configurations of Islamic law within constitutional structures have shaped the institutionalization of female judicial authority.

The data used in this study consists of primary and secondary legal materials (Muhaimin, 2020). In the context of normative legal research, legal materials refer to written legal sources that carry normative force or scholarly authority, distinguishing this study from empirical research that relies on field data. Primary legal materials include classical juristic texts discussing judicial authority in *fiqh siyasah*, constitutional provisions regulating judicial power in the selected countries, statutory regulations concerning judicial appointments, and official legal documents related to the institutionalization of female judges. Secondary legal materials include scholarly articles published in peer – reviewed journals, academic commentaries on Islamic constitutionalism, and contemporary studies on judicial reform and gender in Islamic legal systems. These materials are collected through library – based legal research and analyzed to identify both normative doctrines and institutional practices related to judicial authority (Efendi & Ibrahim, 2018).

The method of analysis is qualitative and interpretive, combining doctrinal analysis with thematic comparative evaluation (Bahtiar, 2018). First, classical and contemporary Sharia doctrines on judicial authority are reconstructed to determine their normative foundations. Second, the legal frameworks of the selected countries are examined to assess how judicial authority is constitutionally structured and how female judges are legally recognized within state institutions. The mechanism for analyzing Sharia issues involves interpreting authoritative juristic opinions, identifying their underlying principles, and assessing whether contemporary institutional arrangements reflect continuity, modification, or reconfiguration of those principles.

In this analytical framework, reconfiguration is understood as a structural transformation of the normative basis of judicial authority, shifting from a classical paradigm grounded in gendered *wilāyah* doctrine to a modern constitutional paradigm grounded in institutional competence and equality before the law. The indicators examined to trace this transition include: the formal recognition of gender – neutral judicial appointments in constitutional provisions, the removal of gender – based restrictions in judicial recruitment statutes, the incorporation of professional qualification frameworks rather than religious – political eligibility criteria, and the actual appointment

of women to judicial office across multiple tiers of the national judiciary. Through this analytical process, the study evaluates whether the institutionalization of female judges represents a transformation in the conceptual basis of judicial legitimacy within Islamic political jurisprudence.

RESULT AND DISCUSSION

Gender and Judicial Authority in Fiqh Siyasaḥ: Classical Foundations and Contemporary Reinterpretations

Within classical *fiqh siyasaḥ*, judicial power was understood as a component of public authority (*al-wilāyah al-‘āmmah*) endowed with binding and coercive force (*al-sulṭah al-mulzimah*). The office of the judge was therefore conceived as an institutional expression of delegated state power in the administration of Islamic law (Muhammad, 2019). Classical jurists generally agreed upon a set of essential qualifications for judicial appointment: the judge had to be Muslim, legally competent, mature, free, physically capable, morally upright, and well-versed in the substantive and procedural dimensions of Sharia. However, the question of whether gender constituted an additional requirement generated considerable juristic disagreement (Al-Zuhaylī, 1984; Rushd, 1960).

One dominant position, articulated by Malik ibn Anas, al-Shafi‘i, and Ahmad ibn Hanbal, held that judicial authority should be confined to men, and their reasoning combined doctrinal, sociological, and historical considerations. Doctrinally, the judge was expected to demonstrate intellectual completeness and sound judgment (*kamāl al-ra’y wa tamām al-‘aql*), qualities which, within the prevailing epistemic framework of the time, were assumed to be more fully realized in men. Sociologically, the public nature of court proceedings—requiring interaction with male litigants and participation in open hearings—was regarded as potentially leading to social impropriety (*fitnah*). Historically, the absence of female judicial appointments during the Prophetic period and the era of the Rightly Guided Caliphs was interpreted as reinforcing the view that adjudicative authority formed part of male public leadership (Al-Farra’, 1983; Al-Ghazzi, 1964; Al-Mawardi, 1960; Al-Shirbīnī, n.d.; Rushd, 1960).

A second, more flexible opinion emerged within Abu Hanifah (Hanafi school). This view did not treat maleness as an absolute precondition for judicial office. However, it did introduce a functional limitation: women could adjudicate matters outside the scope of *hudūd* and *qisās*. The argument was grounded in analogical reasoning, particularly the acceptance of women’s testimony in certain civil matters, and in a conceptual distinction between political sovereignty and judicial function. Judges were understood not as political rulers but as executors and transmitters of legal norms, analogous in some respects to muftis. Furthermore, proponents of this view challenged the application of hadith concerning female political leadership to the judicial sphere, arguing that adjudication does not equate to supreme governance.

A third position, attributed to Ibn Jarir al-Tabari, Hasan al-Basri, Ibn Hazm al-Zahiri, and Ibn Al-Qasim (belonging to the Maliki school), adopted a broader interpretive approach, permitting women to serve as judges without categorical restrictions. Their reasoning was premised on doctrinal consistency: if women are recognized as competent to perform *ijtihad* and issue legal opinions as muftis, then excluding them from judicial office lacks a coherent normative basis. The distinction between mufti and judge was framed primarily in terms of institutional authority rather than substantive legal competence—the former acting through personal scholarly

responsibility, the latter through state delegation (Al–Mawardi, 1960; Al–Ra’ini, 2010; Al–Shirbīnī, n.d.; Ḥazm, 2005; Rushd, 1960). Nevertheless, this position faced opposition from scholars such as al–Mawardi, who contended that it departed from established scholarly consensus (*ijmā’*) and conflicted with his reading of Qur’an 4:34 (Al–Mawardi, 1960).

Classical juristic debates demonstrate that the permissibility of female judges was never entirely settled within *fiqh siyasah*. Although restrictive interpretations became dominant in the classical canon, divergent opinions preserved interpretive flexibility that later informed contemporary developments. Contemporary discourse on female judicial authority reveals a marked departure from classical frameworks, extending beyond permissibility to the reconceptualisation of judicial authority within constitutional structures of modern Muslim–majority states. A significant body of progressive scholarship has converged on unconditional permissibility, advancing arguments that challenge classical restrictions and have shaped judicial reforms across multiple jurisdictions.

In contemporary Islamic legal thought, many prominent jurists adopt a more expansive view of women’s eligibility for judicial positions. Scholars such as Muhammad al–Ghazali, Muhammad Sa’id al–Buti, Yusuf al–Qaradawi, ‘Abd al–Karim Zidan, Samir Aia, and ‘Abd al–Halim Abu Shaqqah maintain that women may assume any public role for which they possess the requisite competence, with the notable exception—according to some of them—of the supreme political leadership (*khilāfah*) (Abdelhay, 2015; Al–Agha, 2021; Zidan, 1989). Their reasoning reflects a shift from gender–based presumptions to a qualification–based framework, in which legal authority is grounded in expertise, integrity, and institutional legitimacy rather than biological distinction (Al–Agha, 2021).

Muhammad Sayyid Tantawi also ruled that nothing in Islamic law prevents women from serving as judges. ‘Ali Jum‘ah articulates this perspective explicitly, arguing that appointing women as judges does not contravene Islamic principles. In his formulation, the judicial role is defined by mastery of legal knowledge and fairness in its application. He further frames women’s inclusion not merely as a matter of individual eligibility, but as a societal right, linking judicial participation to broader concerns of justice and public welfare (Abdelhay, 2015; McClain & Grossman, 2009). Taken together, these contemporary positions mark a substantive transformation in Islamic political jurisprudence. Gender thus shifts from being a determinative legal category to a secondary consideration measured against competence, justice, and public interest.

Table 1. Typology of Juristic Positions on Female Judicial Authority in Islamic Political Jurisprudence

Legal Position	Representative Scholars	Period	Doctrinal Basis
Absolute Prohibition	Malik ibn Anas, al-Shafi'i, Ahmad ibn Hanbal, al-Mawardi	Classical	Judicial authority viewed as part of male public leadership (<i>al-wilāyah al-‘āmmah</i>); reliance on Qur'an 4:34, historical precedent, and assumptions of male normative authority
Conditional Permission	Abu Hanifah (Hanafi School),	Classical	Permissible in non- <i>hudūd</i> and non- <i>qiṣāṣ</i> matters; analogy with admissibility of women's testimony; distinction between judicial function and political sovereignty
Full Permission	Ibn Jarir al-Tabari, Hasan al-Basri, Ibn Hazm al-Zahiri, Ibn al-Qasim al-Maliki	Classical	No explicit textual prohibition; consistency with women's capacity for <i>ijtihad</i> and <i>iftā</i> ; judicial authority framed as functional rather than gendered
Full Permission	Muhammad al-Ghazali, Muhammad Sa'id al-Buti, Yusuf al-Qaradawi, 'Abd al-Karim Zidan, Samir Aia, 'Abd al-Halim Abu Shaqqah, Muhammad Sayyid	Contemporary	Competence, integrity, and public interest as

Tantt	wi,	primary criteria;
'Ali Jum'ah		judicial office distinguishe d from supreme political leadership; constitution al and institutional legitimacy emphasized

Source: Author Analysis

This approach reorients the classical debate by distinguishing between political sovereignty and judicial function. Whereas earlier jurists often subsumed judicial authority within broader notions of male public guardianship, contemporary scholars increasingly conceptualize the judiciary as a professional and institutional domain regulated by constitutional norms. Within this framework, the central criterion becomes legal competence and the capacity to administer justice impartially. Consequently, judicial authority is no longer treated as an extension of gendered leadership doctrine, but as a functional component of the rule – of – law system in modern governance.

Comparative Constitutional Approach to Female Judges in Muslim-Majority Countries

The constitutional incorporation of women into judicial office across Muslim – majority countries reflects a gradual yet uneven transformation shaped by political structures, legal traditions, and socio – religious dynamics. While classical *fiqh siyasah* debates centered on doctrinal permissibility, modern constitutional frameworks have reframed the issue in terms of equality before the law, professional qualifications, and institutional independence. A comparative examination reveals that the appointment of female judges has not followed a uniform trajectory; rather, it has evolved through distinct regional waves influenced by broader political developments.

In several Arab states, women's entry into the judiciary began relatively early. A landmark moment occurred in 1959 when Zakia Hakki of Iraq became the first female judge in the Arab world (Hussein, 2023). This breakthrough was followed by Morocco in 1961, Lebanon and Tunisia in 1966, Yemen in 1971, the Syrian Arab Republic in 1975, and Sudan in 1976. These early appointments coincided with post – independence constitutional reforms and modernization efforts that emphasized state – building and bureaucratic professionalization (Al – Agha, 2021; Economic and Social Commission for Western Asia (ESCWA), 2019). In these contexts, the judiciary was increasingly conceptualized as a state institution governed by statutory law rather than exclusively by traditionalist interpretations of Islamic jurisprudence. Consequently, women's participation became a matter of administrative inclusion and constitutional equality rather than purely theological legitimacy.

However, progress did not continue uninterrupted. The late 1970s witnessed a resurgence of religious and political conservatism in parts of the Arab world, producing a backlash against women's expanded public roles. As a result, the pace of appointing

female judges slowed considerably. Only in the 1990s and early 2000s did new appointments resume, albeit gradually. The State of Palestine appointed female judges in 1982; Libya in 1991; Jordan in 1996; Egypt in 2003; Bahrain in 2006; the United Arab Emirates in 2008; Qatar in 2010; and Mauritania in 2013 (Al – Agha, 2021; ESCWA, 2019; Menawi, 2025). This staggered pattern illustrates how judicial gender inclusion is deeply intertwined with broader constitutional politics. In many cases, reforms were driven not solely by religious reinterpretation but by commitments to international human rights norms, constitutional guarantees of non – discrimination, and evolving perceptions of state legitimacy.

Notably, a small number of Arab Muslim – majority countries—Kuwait, Oman, Saudi Arabia, and Somalia—have yet to appoint female judges (Al – Shibli, 2025; Economic and Social Commission for Western Asia (ESCWA), 2019). The reasons vary, ranging from institutional conservatism and particular interpretations of Sharia – based legal systems to structural limitations within judicial recruitment frameworks. In some of these states, debates remain framed primarily in theological terms, whereas in others, the issue reflects broader questions of political reform and judicial restructuring (Al – Agha, 2021). This divergence underscores that constitutional accommodation of female judges depends less on demographic or religious identity and more on the interplay between legal institutions and political will.

Beyond the Arab world, Muslim – majority countries present a more diverse constitutional landscape. Kazakhstan, Indonesia, Malaysia, and Turkiye have long permitted women to serve as judges across multiple judicial sectors. In these jurisdictions, judicial office is constitutionally structured as a professional function grounded in statutory law, and gender equality provisions are embedded within national constitutions (Baisakalova & Tankibayeva, 2025; Crouch, 2021; Sonneveld & Lindbekk, 2017). The case of Indonesia is particularly illustrative. Women may serve in general, religious, administrative, and military courts, reflecting comprehensive institutional acceptance of female judicial authority (Crouch, 2021; Khamim, 2024). Moreover, Indonesia has appointed female justices to its Constitutional Court, demonstrating not only formal eligibility but substantive representation at the highest level of constitutional adjudication (Rohmah *et al.*, 2025).

In contrast, Iran represents a notable example of continued restriction. Although women may serve in certain judicial capacities, such as advisory roles, they are not appointed as full judges with the same authority as their male counterparts. The Iranian constitutional system, which integrates elements of Islamic jurisprudence within a theocratic – political framework, has maintained a more cautious stance toward female judicial leadership (Kadivar, 2016; Kholiq & Halimatusa’diyah, 2023). This comparative divergence highlights that the permissibility of female judges is mediated by how Islamic law is institutionalized within state structures—whether as a source of legislation subject to parliamentary codification or as a constitutional principle interpreted through religious oversight bodies.

Table 2. Typology of Constitutional Trajectories of Female Judicial Appointment

Constitutional Trajectory	Representative Countries	Legal Status	Historical Pattern	Institutional Character
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Early Post – Independence Reform Model	Iraq, Morocco, Lebanon, Tunisia, Yemen, Syria, Sudan	Allowed	Initial wave of judicial inclusion during state – building	Judiciary professionalized within a statutory modernization framework
Interrupted Reform & Gradual Reintegration Model	Palestine, Libya, Jordan, Egypt, Bahrain, UAE, Qatar, Malaysia, Mauritania, Kazakhstan	Allowed (gradual expansion)	Post – conservatism reintroduction through constitutional and human rights reforms	Gender inclusion framed within constitutional equality discourse
Constitutional Equality Model	Indonesia, Turkiye	Allowed	Consistent institutional acceptance	Judicial authority is constructed as professional and gender – neutral
Doctrinally Restrictive Model	Saudi Arabia, Iran, Kuwait, Oman, Somalia	Restricted/No Appointment	Persistent reliance on conservative <i>fiqh</i> interpretations	Judicial authority linked to traditionalist readings of <i>al-wilāyah al-‘āmmah</i>

Source: Author Analysis

The comparative perspective also extends beyond national jurisdictions to the international arena. Female judges from Arab countries have attained positions within prominent international courts and tribunals, signaling an outward – facing dimension of constitutional reform. In 2003, Jordanian Judge Taghreed Hikmat became the first Arab woman elected by the United Nations General Assembly to serve on an international criminal tribunal. In 2009, Lebanese Judge Micheline Braidy joined the Trial Chamber of the Special Court for Lebanon. In 2017, Judge Chafika Bensaoula of Algeria was elected to the African Court on Human and Peoples' Rights. These appointments reflect the growing recognition of professional competence among female judges from Muslim – majority states and their integration into transnational judicial networks (Economic and Social Commission for Western Asia (ESCWA), 2019).

Nevertheless, the representation of female judges from Arab and Muslim – majority countries in international courts remains limited. This underrepresentation mirrors a broader global pattern of gender imbalance in international judicial institutions but is particularly pronounced in the Arab context. Structural factors contribute to this phenomenon, including the relatively smaller pool of female judges within some national systems and the limited participation of certain states in international tribunals. As appointments to international courts are often drawn from national judicial ranks, domestic inclusivity directly shapes global representation.

Overall, the comparative constitutional experience of Muslim – majority countries demonstrates that the question of female judges has shifted from a primarily doctrinal dispute to an institutional and constitutional issue. In many jurisdictions, gender no longer functions as a categorical barrier but as a variable assessed within broader frameworks of professional qualification, constitutional equality, and judicial independence. Where restrictions persist, they are often linked to specific political – constitutional configurations rather than an uncontested theological consensus. This comparative diversity reinforces the argument that Islamic political jurisprudence in the modern era operates within plural constitutional trajectories, in which judicial authority is increasingly

defined by institutional competence and rule – of – law principles rather than by gendered assumptions inherited from classical discourse.

Reconfiguring Judicial Authority in Islamic Political Jurisprudence

The contemporary debate over female judges in Muslim – majority societies ultimately reveals a deeper, more consequential transformation: the reconfiguration of judicial authority itself within Islamic political jurisprudence. While classical discourse centered on the permissibility of women occupying judicial office, modern constitutional developments compel a more fundamental inquiry: what constitutes judicial authority in the first place, and on what basis does it derive its legitimacy? The shift from a gender – centered debate to a structural and institutional analysis marks a decisive transition in the evolution of *fiqh siyasah*.

In classical formulations, judicial authority was subsumed within the broader doctrine of *wilāyah al-‘āmmah* (general public authority) (Muhammad, 2019). The judge functioned as an extension of sovereign power, exercising adjudicative responsibility as part of the ruler's delegated mandate (Al – Mawardi, 1960). Because sovereignty was conceptually intertwined with male guardianship and political leadership, restrictions on judicial office were often justified by analogical reasoning that linked adjudication to forms of public leadership (*imāmah*) (Kamila *et al.*, 2026). Thus, the exclusion of women was not merely a procedural rule but a derivative outcome of a gendered political theology that conflated authority with masculine guardianship.

Modern constitutionalism disrupts this conceptual architecture. In contemporary Muslim – majority states, judicial authority no longer emanates from the personal sovereignty of a ruler but from constitutional order. The judiciary is institutionally separated from the executive and legislative branches, operating within a framework of checks and balances and governed by formal legal procedures (Alfikri & Fadil, 2024). Legitimacy derives from constitutional mandate, statutory regulation, and professional qualification – not from gendered notions of guardianship (White *et al.*, 2024). In this reconfigured structure, the analogy between judicial authority and political sovereignty loses much of its doctrinal force.

This transformation necessitates a functional reinterpretation of *wilāyah*. Functionally reinterpreting *wilāyah* means reconceiving it not as a form of personal sovereign authority vested in an individual by virtue of gender and religious – political standing, but as an institutionally delegated competence defined by constitutional mandate, procedural accountability, and professional qualification. In classical jurisprudence, *wilāyah* implied hierarchical authority rooted in personal competence and moral standing, often integrated into a unified conception of governance (Al – Mawardi, 1960). In the modern state, however, authority is institutionalized and compartmentalized. Judicial power is defined not as dominion over subjects but as the competence to interpret and apply law within procedural constraints (Alfikri & Fadil, 2024). The judge does not embody sovereignty; rather, the judge exercises constitutionally delimited authority subject to appellate review and legal accountability (Mariyatni & Kristanto, 2024; Mubriani & Yasin, 2025). Consequently, the structural premises that once supported gender – based exclusion are substantially altered.

The reconfiguration of judicial authority also finds normative support in the objectives of Islamic law (*maqāṣid al-sharī‘ah*) (Siddiq & Asmuni, 2025). Classical restrictions frequently relied on assumptions concerning women's rational capacity or public visibility,

premises deeply embedded in particular historical contexts (Muhammad, 2019). A *maqāṣid*–oriented framework, by contrast, evaluates legal rules according to their capacity to realize justice (*al-ʿadl*), equality (*al-musāwāh*), and the protection of rights (*hifz al-ḥuqūq*). Judicial authority exists to secure these ends (Ibrahim *et al.*, 2025). If competence, integrity, and impartiality are the operative criteria for achieving justice, then gender becomes normatively secondary unless demonstrably relevant to the realization of these objectives.

Indeed, the ethical telos of adjudication—ensuring fairness, resolving disputes, and safeguarding rights—does not inherently depend on biological sex. Modern legal systems institutionalize judicial training, evidentiary standards, and appellate mechanisms precisely to ensure objectivity and procedural fairness. These institutional safeguards diminish the relevance of assumptions historically invoked to justify exclusion. From a *maqāṣid* perspective, barring qualified women from judicial office may undermine rather than advance the objectives of justice, particularly where constitutional frameworks explicitly guarantee equality before the law.

Another dimension of this reconfiguration concerns the depoliticization of gender within judicial structures. In classical discourse, public authority was embedded within broader sociopolitical hierarchies that conferred symbolic and normative weight upon male leadership. Contemporary constitutional regimes, however, differentiate between political governance and judicial adjudication. Political leadership may involve policy–making and executive discretion; judicial authority, by contrast, is constrained by legal texts and procedural norms. This differentiation weakens the analogy that once equated judgeship with forms of supreme political authority such as the *khilāfah*. Where judicial office is framed as a professional legal function rather than a sovereign command, arguments premised on gendered political guardianship lose coherence.

Furthermore, the global entrenchment of constitutional equality norms exerts interpretive pressure on Islamic legal thought. Many Muslim–majority constitutions enshrine principles of non–discrimination and equal access to public office (Zakın *et al.*, 2024). While constitutional provisions do not automatically resolve theological debates, they reshape the institutional context in which juristic reasoning operates. Islamic political jurisprudence today must engage not only with scriptural sources but also with constitutional commitments and international human rights frameworks that structure state legitimacy. The question thus becomes not whether classical doctrine permitted female judges in isolation, but how Islamic legal principles can be articulated coherently within contemporary constitutional orders.

This does not imply a rupture with tradition. Rather, it reflects an internal dynamic within Islamic jurisprudence that accommodates contextual reinterpretation. Classical juristic plurality—evident in the existence of permissive and qualified–permissive opinions—provides doctrinal elasticity for contemporary reconstruction. The presence of early dissenting views demonstrates that exclusion was never an uncontested consensus immune to reinterpretation. Modern constitutional realities foreground dimensions of those earlier debates that were historically marginal.

Reconfiguring judicial authority, therefore, entails shifting the axis of analysis from ontological suitability to institutional function. The central inquiry is no longer whether women, as women, possess inherent qualities compatible with authority, but whether the institutional criteria governing judicial appointment—legal expertise, ethical integrity, procedural competence—are satisfied. Authority becomes a matter of delegated constitutional responsibility rather than embodied patriarchal hierarchy. In this

framework, gender operates neither as a qualification nor as a disqualification, but as an incidental characteristic irrelevant to the functional demands of adjudication.

Ultimately, the evolution of judicial authority in Islamic political jurisprudence reflects a broader transformation in the relationship between law, state, and society. As Muslim – majority states institutionalize constitutional governance and professional judiciaries, the conceptual foundations of authority are redefined. Islamic jurisprudence, far from being static, engages these transformations through reinterpetive methodologies grounded in *maqāṣid*, public interest (*maṣlaḥah*), and contextual reasoning (Nurussa'adah & Yamani, 2025). The debate over female judges thus becomes emblematic of a larger jurisprudential shift: from authority justified by inherited sociopolitical structures to authority legitimized by constitutional order and the ethical imperatives of justice.

However, the persistence of restrictions in certain Muslim – majority states, such as Saudi Arabia and Iran, indicates that this reconfiguration is not uniform. In these contexts, limitations on women's judicial appointment are sustained by conservative *fiqh* doctrines that continue to associate public authority with male guardianship (Al – Agha, 2021; Kadivar, 2016). Gender stereotypes and entrenched patriarchal assumptions about women's social roles further reinforce institutional resistance. This demonstrates that the transformation of judicial authority depends not only on doctrinal reinterpretation but also on broader socio – political change.

In this reconfigured paradigm, judicial authority is best understood as a gender – neutral institutional competence grounded in constitutional legitimacy and oriented toward the realization of justice. Authority no longer derives from gendered hierarchies or assumptions of male guardianship, but from professional qualification, legal expertise, and accountability within a rule – of – law system. The judiciary operates as a constitutional institution tasked with safeguarding rights, ensuring procedural fairness, and upholding legal order, rendering biological distinction normatively irrelevant to adjudicative function. Accordingly, the question of female judges is not a peripheral gender issue within Islamic law, but a decisive test of Islamic political jurisprudence's capacity to reinterpet its foundational principles in light of evolving constitutional realities.

CONCLUSION

The findings of this study show that the permissibility of female judges was never conclusively settled in classical jurisprudence. Although restrictive views became dominant, minority opinions allowed conditional or even full participation, demonstrating the absence of a binding consensus (*ijma'*) on categorical prohibition. Contemporary scholars have largely advanced a qualification – based approach, arguing that judicial authority rests on competence, integrity, and the public interest rather than on gender, thereby reinforcing the doctrinal space for inclusion in modern contexts. The comparative constitutional analysis further reveals that contemporary states have reframed the issue from a gender – based doctrinal question into one of institutional design and constitutional legitimacy. In many jurisdictions, judicial office is defined as a professional function grounded in equality before the law, competence, and institutional independence. Where Islamic law operates within codified constitutional frameworks, broader inclusion of women has generally followed. Conversely, restrictions persist where judicial authority remains closely linked to conservative interpretations of male public leadership.

These findings collectively illuminate a directional transformation in Islamic political jurisprudence: from a classical configuration in which judicial authority was premised on the convergence of sovereignty, religious legitimacy, and male guardianship, toward a reconfiguration in which authority is grounded in constitutional mandate, institutional competence, and equality before the law. This transition is evidenced by several interconnected indicators: the formal recognition of gender – neutral judicial appointment in constitutional provisions, the removal of gender – based restrictions in judicial recruitment statutes, the incorporation of professional qualification frameworks instead of religious – political eligibility criteria, and the substantive appointment of women to judicial office across multiple tiers of the national judiciary in the majority of Muslim – majority states examined. Where these indicators are present, the reconfiguration of judicial authority is most pronounced; where they remain absent, the classical configuration persists in modified form.

The central contribution of this research is the articulation of the reconfiguration of judicial authority in Islamic political jurisprudence. The debate over female judges serves as a lens through which broader transformations in the relationship between Sharia, constitutional governance, and gender can be understood. Rather than representing a rupture with tradition, contemporary inclusion reflects an evolution rooted in classical plurality and adapted to modern constitutional realities. Nevertheless, this study has certain limitations. As a normative legal analysis grounded in doctrinal and constitutional comparison, it does not examine empirical judicial practice or the lived experiences of female judges. Future research may therefore integrate socio – legal and empirical approaches to assess further how doctrinal and constitutional developments operate in practice.

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AUTHOR CONTRIBUTIONS STATEMENT

AF conceptualized and designed the study, developed the theoretical and analytical framework, conducted the primary legal analysis, and led the drafting and overall revision of the manuscript. MR contributed to the comparative constitutional research and assisted in data analysis. AZ supported the literature review and contributed to manuscript editing and refinement. All authors reviewed and approved the final version of the manuscript.

CONFLICT OF INTEREST

The author declares that there is no conflict of interest regarding the publication of this article. The research was conducted independently, and no financial or personal relationships have influenced the analysis, interpretation, or presentation of the findings.

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