

## Judicial Appointments in Islamic Law: An Analysis of the Essential Qualifications for Judges

التعيينات القضائية في الشريعة الإسلامية: دراسة تحليلية للمؤهلات الأساسية للقاضي

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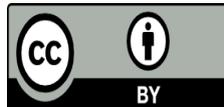
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التعيينات القضائية في الشريعة الإسلامية: دراسة تحليلية للمؤهلات الأساسية للقاضي

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### Abstract

The judiciary occupies a central and indispensable position in Islamic governance, tasked with safeguarding justice, preserving public order, and upholding the principles of Shariah law. The appointment of judges (qādīs) has historically been considered one of the most critical responsibilities of an Islamic state, requiring individuals of exemplary character, competence, and sound judgment. This study undertakes an analytical exploration of the essential qualifications for judicial appointments in Islamic law, drawing upon classical jurisprudence, Qur'anic injunctions, Prophetic traditions, and contemporary legal discourse. Foundational qualifications such as rationality, maturity, freedom, unimpaired sensory faculties, and sound legal knowledge are unanimously endorsed by Muslim jurists across different schools of thought. However, considerable debate emerges with respect to supplementary conditions, including religious affiliation, moral uprightness, gender eligibility, lineage, and the degree of independent legal reasoning (ijtihād) required for judicial authority. These differences reflect the dynamic interpretive approaches adopted by scholars and the evolving socio-political realities within which Islamic law has operated. By engaging critically with primary Islamic legal sources as well as modern judicial frameworks in Muslim-majority states, this research evaluates the relevance and applicability of these qualifications in the contemporary era. It further highlights the challenges and opportunities posed by integrating classical juristic principles with modern demands for inclusivity, efficiency, and justice. Ultimately, the study demonstrates that while the judiciary in Islamic law remains firmly rooted in timeless ethical and legal foundations, its implementation continues to require thoughtful adaptation in light of present-day contexts.

**Keywords:** Judiciary, Qazi, Judicial Appointments, Qualifications, Ijtihad, Shariah

### 1. Introduction

The judiciary holds a fundamental place in Islamic governance, ensuring justice, maintaining social harmony, and upholding divine law. A judge, in Islamic law, is not merely an arbitrator of disputes but a representative of the state, entrusted with the authority to implement the legal and ethical framework prescribed by Shariah. As a public office, the judicial position is akin to other key state roles, such as the caliph, ministers, and advisors, in that it requires individuals of exceptional integrity, competence, and knowledge. Given the significance of

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judicial authority in maintaining the rule of law, Islamic jurists have meticulously outlined the necessary qualifications for those who aspire to this role.

Classical Islamic scholars have laid down various conditions for the appointment of a judge, ensuring that only individuals with the requisite intellectual, moral, and legal capacities assume this critical responsibility. There is broad consensus among jurists on several fundamental qualifications, such as the necessity for a judge to be rational, of legal age, free, in possession of faculties such as hearing and sight, articulate in speech, and well-versed in legal rulings. These attributes are considered essential for the effective execution of judicial duties. However, scholars have historically debated additional criteria, including whether Islam is a prerequisite, the requirement of moral uprightness ('Adl), gender eligibility, and the necessity of Ijtihad (independent legal reasoning).

These differences in scholarly opinion stem from varying interpretations of legal texts, principles of governance, and the evolving needs of society. Some jurists emphasize strict adherence to classical qualifications, while others allow for flexibility based on changing socio-political contexts. This study aims to critically analyze the conditions for the appointment of a judge in Islamic law, exploring areas of consensus and divergence among the jurists. By examining primary sources, classical legal texts, and contemporary perspectives, this research seeks to provide an in-depth understanding of the principles that govern judicial appointments in Islamic jurisprudence.

Now that we have outlined the significance of the judiciary in Islamic governance and the necessity for judges to meet specific qualifications, we will proceed to examine the two broad categories into which these conditions can be classified: Agreed-upon Conditions and Disputed Conditions.

**1. Agreed-upon Conditions:** These are the essential qualifications that Islamic jurists unanimously consider indispensable for the appointment of a judge. They include fundamental attributes such as sanity, maturity, freedom, physical faculties (such as hearing and sight), the ability to communicate effectively, and sufficient knowledge of Islamic legal rulings. These conditions are deemed necessary for the proper discharge of judicial responsibilities, as they ensure that the judge possesses the intellectual and physical capabilities required to evaluate cases, interpret laws, and deliver just verdicts.

**2. Disputed Conditions:** In addition to the universally accepted qualifications, there are other conditions over which scholars have historically differed. These include requirements such as being a Muslim, possessing 'Adl (moral uprightness and integrity), eligibility based on gender, and the ability for Ijtihad (independent legal reasoning). While some jurists insist on these as necessary prerequisites, others adopt a more flexible approach, considering contextual factors and the broader objectives of Islamic governance. These differences arise due to varying interpretations of scriptural sources, differing methodological approaches among Islamic legal schools, and evolving socio-political considerations.

In the following sections, we will explore these conditions in detail, analyzing the perspectives of classical and contemporary scholars while assessing their relevance in modern judicial systems. This discussion will provide a comprehensive understanding of how Islamic jurisprudence defines the qualifications of a judge and how these criteria have been interpreted across different eras and legal traditions.

## 2. Agreed-upon Conditions:

The qualifications that scholars unanimously agree upon are considered essential for ensuring the integrity and efficiency of the judiciary. These conditions are fundamental to a judge's ability to comprehend legal matters, assess cases fairly, and deliver just rulings. Since the judiciary plays a crucial role in upholding justice and resolving disputes, these agreed-upon qualifications are designed to ensure that a judge possesses the necessary intellectual, moral,

and physical capabilities. By establishing these criteria, Islamic jurists seek to maintain the credibility of the judicial system and safeguard the rights of individuals in accordance with Islamic law.

### 2.1 Aql:

It is not permissible to delegate judicial authority to an insane person, someone suffering from intellectual impairment, or any other form of mental incapacity. This is supported by the Quranic verse:

وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ

*“Do not entrust the incapable ‘among your dependants’ with your wealth”.*  
(*Surah An-Nisa: 5*).

Which highlights the importance of sound judgment. This is analogous to the case of a child, as the judiciary is one of the highest offices, and thus, rationality is a fundamental requirement. If this significant position is entrusted to someone lacking rationality, their judgment is neither valid nor enforceable. The judiciary requires mature and discernible intellect, which is absent in insanity. An insane person, being intellectually deficient, has no authority over their own property, so it is illogical to grant them authority over others.<sup>(1)</sup>

### 2.2 Maturity:

The scholars of all schools of thought agree that a judge must have reached the age of maturity. It is not valid to appoint a child as a judge, as the Prophet Muhammad (peace be upon him) instructed us to seek refuge from the leadership of children, as narrated by Ahmad in his Musnad from Abu Huraira.<sup>(2)</sup>

Seeking refuge from something implies that it is harmful, indicating that appointing a child to the position of a judge is a source of corruption and evil. Islam forbids such corruption, as Allah says:

وَلَا تُفْسِدُوا فِي الْأَرْضِ بَعْدَ إِصْلَاحِهَا ذَلِكُمْ خَيْرٌ لَّكُمْ إِن كُنْتُمْ مُؤْمِنِينَ

*“And do not spread corruption in the land after it has been set in order. This is for your own good, if you are truly believers”.* (*Surah Al-A'raf, 7:85*)

Thus, appointing children to positions of judgment is prohibited. Since a child lacks full mental capacity, they have no authority over themselves, let alone others.<sup>(3)</sup>

### 2.3 Freedom:

The scholars of all schools of thought agree that the judge must be free, and it is not valid to appoint a slave to the position of a judge for several reasons. The position of the judge is one of the most significant offices in Islam, requiring full authority. A slave individual has no authority over themselves, so it is impossible for them to have authority over others. Additionally, since the judiciary is one of the highest offices in Islam, it is incongruous to appoint someone who lacks personal autonomy. Furthermore, a slave person is not capable of performing the duties of a judge, as they would be occupied with serving their master and may not have sufficient time or focus to carry out judicial responsibilities effectively. This would undermine the public interest in appointing them. Moreover, free people typically

(1) al-Ḥuṣnī, Taqī al-Dīn Abū Bakr ibn Muḥammad al-Shāfi‘ī. *Kifāyat al-Akhyār fī Ḥall Ghāyat al-Ikhtisār*. 1st ed. Beirut: Dār al-Khayr, 1991, p. 41.

(2) Aḥmad ibn Muḥammad ibn Ḥanbal, *Al-Musnad lil-Imām Aḥmad ibn Ḥanbal*, ed. Aḥmad Muḥammad Shākir, vol. 14 (Cairo: Dār al-Ma‘ārif, 1947–56), ḥadīth no. 8302, vol. 14, p. 68.

(3) Zayn al-Dīn ibn ‘Uthmān al-Tanūkhī al-Ḥanbalī, *Al-Mumtī ‘fī Sharḥ al-Muqni’*, vol. 4 (Riyadh: Dār al-Rukā’iz, 2022), vol. 4, p. 517.

resist being governed by a slave, which could lead to instability in the judiciary.<sup>(4)</sup> Therefore, appointing a slave to the position of a judge over free individuals is not valid, and this condition is no longer necessary in contemporary times.

### 2.4 Soundness of the Senses:

The judge must possess the full faculties of speech, hearing, and sight to adequately perform the duties of the judiciary. These abilities enable the judge to discern between right and wrong and to distinguish between disputing parties, ensuring the proper means of proving rights. The capacity to perceive and evaluate evidence is essential for delivering just judgments.<sup>(6)</sup>

### 2.5 Knowledge of Legal Rulings:

The scholars of all schools of thought agree that a judge must possess knowledge of the detailed rulings of Islamic law to be able to render judgments based on them.<sup>(6)</sup>

## 3. Disputed Conditions:

In addition to the universally accepted qualifications, there are certain conditions for the appointment of a judge that have been a subject of debate among Islamic jurists. These differences arise due to varying interpretations of religious texts, methodological approaches within different schools of thought, and the evolving needs of governance. Some scholars impose stricter requirements based on classical jurisprudence, while others adopt a more flexible stance, considering the broader objectives of justice and the realities of society. These disagreements highlight the diversity within Islamic legal thought and demonstrate the adaptability of judicial principles across different historical and cultural contexts. The following discussion will explore these conditions in detail, analyzing the arguments for and against their necessity in judicial appointments.

### 3.1 Islam:

It is not permissible to appoint a non-Muslim as a judge between Muslims, as the judiciary is a position of authority, and a non-Muslim cannot have authority over a Muslim. Allah (SWT) says,

"ولن يجعل الله للكافرين على المؤمنين سبيلاً"

*"And Allah will never grant the disbelievers a way over the believers".  
(Quran 4:141).*

There is consensus among scholars on this matter, as the judge must rule according to Shariah, believe in it, and fear Allah (SWT), which prevents injustice. A non-Muslim, who does not believe in Shariah, is not capable of fulfilling this responsibility.

### Disagreement Regarding Appointing a Non-Muslim as a Judge Among Dhimmi:

The scholars differ on whether a non-Muslim can be appointed as a judge over dhimmi (non-Muslims living under Muslim rule). The majority of scholars prohibit it, while the Hanafi school permits it.

### Evidence of the Majority:

1. The majority of scholars argue that the Muslim community must maintain supremacy, as indicated in the verse:

حتى يعطوا الجزية عن يد وهم صاغرون

<sup>(4)</sup> al-Ḥuṣnī, *Kifāyat al-Akhyār*, p. 549.

<sup>(5)</sup> 'Alā' al-Dīn Abū Bakr ibn Mas'ūd al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, vol. 3 (Beirut: Dār al-Kutub al-'Ilmiyah, 1986), vol. 3, p. 7.

<sup>(6)</sup> Shams al-Dīn Muḥammad ibn 'Abd Allāh al-Zarkashī, *Sharḥ al-Zarkashī 'alā Mukhtaṣar al-Khiraqī*, vol. 7 (Makkah: Dār 'Ālam al-Fawā'id, 2013), vol. 7, p. 236.

*"Until they pay the tax, willingly submitting, fully humbled". (Al-Quran 9:29).*

Appointing a non-Muslim as a judge contradicts the concept of humiliation that is associated with paying the jizyah.

But Hanafis respond to this ayah that the term "humility" refers to the act of submitting to paying the jizyah, which is present in the relationship between Muslims and non-Muslims under Islamic rule.

2. The Prophet (SAW) said:

"الإسلام يعلو ولا يعلى"

*"Islam is superior and nothing is superior to it." (7)*

This supports the idea that non-Muslims should not hold positions of authority in an Islamic society.

3. Non-Muslims are ignorant of Shariah rulings, and thus cannot rule according to them.

But Hanafis respond that Non-Muslims may rule according to their own religious laws among themselves, and if the dispute requires applying Shariah, a legal framework can be created to ensure the application of Islamic law.

4. Since justice is a condition for a judge, and a non-Muslim cannot be just in the Shariah sense, the appointment of a non-Muslim as a judge is impermissible.

But Hanafis respond that the analogy made here is disputed among scholars.

#### **Evidence of the Hanafi School:**

1. The Hanafi scholars cite the verse,

"يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا الْيَهُودَ وَالنَّصَارَىٰ أَوْلِيَاءَ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ"

*"O believers! Take neither Jews nor Christians as guardians—they are guardians of each other." (Quran 5:51).*

The latter part of this verse implies that some of them have authority over others.

But this argument was contested that scholars interpret the verse as referring to alliance (muwalat) rather than authority (wilaya). There is a distinction between alliance, which denotes support and love, and authority, which involves enforcing rulings on others.

2. They argue that just as a dhimmi's testimony is valid for other dhimmis, a dhimmi can also act as a judge for fellow dhimmis.

3. Hanafi scholars point to historical practices, such as the appointment of Christian judges by Amr ibn al-As after the conquest of Egypt to rule between the Christian community, a practice which was accepted by Caliph Umar ibn al-Khattab (RA).

al-Mawardi in "Al-Ahkam al-Sultaniyyah" states that Abu Hanifa permitted appointing a non-Muslim as a judge between their co-religionists. He clarified that although this was a common practice, it was more about appointing a leader than a legal judge, and the rulings were only binding because of the dhimmis' voluntary submission, not because of an inherent legal obligation. Furthermore, the Islamic ruler's decisions would still take precedence over those of the non-Muslim judge.<sup>(8)</sup>

### **3.2 'adālah:**

Integrity is a fundamental requirement for all positions of authority, according to the majority of jurists. In the context of a judge, it means that he must be diligent in fulfilling religious

(7) Abū al-Ḥasan 'Alī ibn 'Umar al-Dārquṭnī, *Sunan al-Dārquṭnī*, ed. Shu'ayb al-Arna'ūt and Ḥusayn Salīm Asad, vol. 4 (Beirut: Mu'assasat al-Risālah, 2004), ḥadīth no. 3620, vol. 4, p. 371.

(8) Abū al-Ḥasan 'Alī ibn Muḥammad al-Māwardī, *Al-Aḥkām al-Sulṭānīyah*, (Beirut: Dār al-Kutub al-Ilmīyah, 1996), p. 111.

obligations, truthful in speech, evidently trustworthy, morally upright, refraining from prohibited actions, and avoiding any doubtful conduct.

The scholars have defined ‘adālah in various ways. Some describe it as

من لم يطعن عليه في بطن ولا في فرج.<sup>(9)</sup>

“one who is not accused in matters of eating or chastity.”

Al-Suyuti defines it as

ملكة في النفس تمنع من اقتراف كبيرة أو صغيرة دالة على الخسة أو ما يخل بالمروءة<sup>(10)</sup>؛

“an inner quality that prevents one from committing major sins or any minor acts indicative of baseness or that undermine dignity.”

Al-Dardir of the Malikite school explains dignity (murū’ah) as:

كمال النفس بصونها عما يوجب ذمها عرفاً، ولو مباحاً في ظاهر الحال.<sup>(11)</sup>

“an innate quality that protects the individual from actions that would conventionally bring reproach, even if permissible in appearance.”

Most jurists, including the Shafi‘is, Malikis (in the widely accepted opinion), Hanafis (in one narration), and Hanbalis, stipulate that a judge must possess integrity. They argue that it is invalid to appoint a corrupt individual to the judiciary, and any ruling issued by such a person would be null, even if it aligns with the truth<sup>(12)</sup>.

The Hanafi School, however, maintains that adalah is not an absolute requirement for judicial appointment but rather a condition of excellence. While it is ideal and preferable for the judge to be upright, the appointment of a morally corrupt person (fāsiq) is still legally valid in their view. Such a judge must adhere to the rulings of other qualified scholars, as the judiciary is a significant trust involving matters of wealth, reputation, and life, and is best fulfilled by one who embodies piety and religious integrity. Nonetheless, if a morally deficient individual is appointed, his appointment is deemed legitimate, and he assumes the role of a judge.

If there is someone in the community who meets the criteria of adalah, the Hanafis hold that appointing someone without this quality is legally impermissible. However, if such an appointment does occur, it is considered valid, and the judge’s rulings are enforceable, provided they do not violate the bounds of Shariah. This stance mirrors their view on testimony: although the testimony of a corrupt individual is not admissible, if accepted by a judge, the ruling remains valid despite the judge’s sin in accepting it<sup>(13)</sup>.

Their reasoning is that anyone qualified to bear witness is also qualified to judge, and vice versa, as both roles represent a form “Wilayah” i.e. authority in enforcing decisions upon others, whether they agree or not. Furthermore, they argue that adalah is not an essential requirement for testimony because, by default, a Muslim is presumed free from major sins or religious violations.

(9) . ‘Alā’ al-Dīn Abū Bakr ibn Mas‘ūd al-Kāsānī, *Badā’i’ al-Şanā’i’ fī Tartīb al-Şarā’i’*, Vol. 6, P. 268.

(10) Jalāl al-Dīn ‘Abd al-Raḥmān ibn Abī Bakr al-Suyūṭī, *Al-Ashbāh wa al-Nazā’ir*, (Cairo: Maktabat Dār al-Turāth, 1965), p. 384.

(11) Abū al-‘Abbās Aḥmad ibn Muḥammad al-Şāwī, *Hāshiyat al-Şāwī ‘alā al-Şarḥ al-Şaghūr*, vol. 4 (Beirut: Dār al-Ma‘rifah, n.d.), vol. 4, p. 240.

(12) Shams al-Dīn Muḥammad ibn Muḥammad al-Ṭarābulusī, known as al-Ḥaṭṭāb al-Ru‘īnī, *Mawāhib al-Jalīl fī Sharḥ Mukhtaşar Khalīl*, vol. 6 (Beirut: Dār al-Kutub al-‘Ilmīyah, 1992), vol. 6, p. 87. Aḥmad ibn Ḥamzah Shihāb al-Dīn al-Ramlī, *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj*, vol. 8 (Beirut: Dār al-Kutub al-‘Ilmīyah, 2003), vol. 8, p. 235. Muwaffaq al-Dīn ‘Abd Allāh ibn Aḥmad Ibn Qudāmah al-Maqdisī, *Al-Mughnī*, vol. 9 (Cairo: Hajr, 1986), vol. 9, p. 108.

(13) Kamāl al-Dīn Muḥammad ibn ‘Abd al-Wāḥid Ibn al-Humām, *Faṭḥ al-Qadīr*, vol. 7 (Beirut: Dār al-Fikr, n.d.), vol. 7, p. 253.

The majority of scholars, however, rely on the verse:

"يَا أَيُّهَا الَّذِينَ آمَنُوا إِن جَاءكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا"

"O believers, if an evildoer brings you any news, verify it". (Quran 49:6).

It is improper for a judge to be someone whose word is not accepted, and whose rulings require further verification. Similarly, *adalah* is a requirement for witnesses in their view. If no one is available who fully meets the integrity requirement, then the best-qualified and least sinful individual should be appointed.

### 3.3 Masculinity:

This condition is a point of contention among jurists.

#### 1. The Majority View:

The majority of scholars, including the Maliki, Shaf'i, and Hanbali schools, as well as Zufar from the Hanafis, believe that a woman cannot be appointed to any judicial position. Even if appointed, her rulings are considered invalid, even if they align with the truth and concern matters in which her testimony is acceptable.<sup>(14)</sup>

#### 2. The Hanafi View:

Contemporary interpretations of the Hanafi position on this issue vary:

- Some interpret the Hanafi view as permitting a woman to serve as a judge in cases where her testimony is acceptable, namely, in matters other than criminal punishments (*hudud*) and retribution (*qisas*), based on apparent readings of Hanafi texts<sup>(15)</sup>

- Others argue that the Hanafis align with the majority, holding that a woman's judicial appointment is impermissible. They, however, consider it a disliked (*makruh tahrimi*) action rather than outright invalid. They state that, while appointing a woman to a judicial role is impermissible and sinful, her rulings are enforceable if they conform to Shariah—except in cases of *hudud* and *qisas*, where her rulings would not be valid, even if consistent with Islamic law. Ibn al-Humam explains this distinction:

"غاية ما يفيد منع أن تستقضي وعدم الحل، والكلام فيما لو وليت وأتم المقلد بذلك فقضت

قضاء موافقاً لدين الله أكان ينفذ أم لا؟ لم ينتهض الدليل على نفيه"<sup>(16)</sup>

*The prohibition signifies that her appointment is impermissible and sinful, yet if she judges in accordance with God's law, her judgment stands valid.*

#### Evidence of the Majority View:

1. Quranic Evidence, They cite the verse:

"الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ"

"Men are the caretakers of women". (Quran 4:34).

Interpreting it as limiting authority to men. This verse, they argue, implies that women should not hold positions of authority, such as judgeship, since this would entail authority over men. However, some rebut this argument by asserting that this verse refers specifically to the authority within a family context rather than general leadership.

#### 2. Prophetic Tradition (Hadith):

(14) 'Abd Allāh ibn Maḥmūd al-Mawṣilī, *Al-Ikhtiyār li-Ta'līl al-Mukhtār*, vol. 2 (Beirut: Dār al-Ma'rifah, n.d.), vol. 2, p. 84. Abū al-Ḥasan 'Alī bin Muḥammad al-Māwardī, *al-Aḥkām al-Sultānīyah*, p. 72. Ibrāhīm ibn 'Alī Ibn Farḥūn al-Yamānī, *Tabṣirat al-Hukkām fī Uṣūl al-Aqḍīyah wa Manāhij al-Aḥkām*, vol. 1 (Beirut: 'Ālam al-Kutub, 1986), vol. 1, p. 23. Ibrāhīm ibn Muḥammad Ibn Muflih, *Al-Mubdi' fī Sharḥ al-Muqni'*, vol. 2 (Beirut: Dār al-Kutub al-'Ilmiyah, 1997), vol. 2, p. 609.

(15) Muḥammad Amīn ibn 'Umar al-Shāmī, Ibn 'Ābidīn, *Radd al-Muḥtār 'alā al-Durr al-Mukhtār*, vol. 5 (Beirut: Dār al-Fikr, n.d.), vol. 5, p. 440.

(16) Kamāl al-Dīn Ibn al-Humām, *Faṭḥ al-Qadīr*, Vol. 7, p. 298.

They reference the hadith of the Prophet (SAW):

"لن يفلح قوم ولوا أمورهم امرأة"<sup>(17)</sup>!

"People who place their affairs in the hands of a woman will not succeed."

This hadith, they argue, applies specifically to leadership roles, particularly the supreme leadership of a nation, and implies that such leadership should be exclusive to men.

### 3. Qiyas (Analogical Reasoning):

The majority make analogies between the judiciary and other roles from which women are excluded, such as leading the state, arguing that judicial positions require qualities perceived as less compatible with women's natural dispositions, such as a greater tendency toward emotionality and limited decision-making capacity.

4. They also draw analogies to the prohibition on women leading men in prayer, reasoning that similar logic applies to judicial roles.

5. They point out that no example exists from the era of the Prophet (SAW), the Companions, or the early generations of appointing women as judges, suggesting that if it were permissible, there would have been at least one historical precedent.

6. They argue that judgeship involves significant interaction with men—scholars, witnesses, and litigants—whereas women are generally advised to avoid unnecessary contact with men to prevent potential fitnah (temptation), which makes the position unsuitable for them<sup>(18)</sup>.

### Evidence for the HanafPosition:

The Hanafis use the majority's evidence for disallowing the appointment of a woman to a judicial role but argue for the validity of her rulings by analogizing judicial authority to testimony. Since a woman may provide testimony in matters excluding hudud and qisas, they reason that she may also serve as a judge in these same matters. They also cite her potential appointment as a custodian of endowments (Waqf) and guardian over orphans, further supporting her eligibility for limited judicial roles.

Evidence for the Third View:

This group argues that anyone with the ability to adjudicate legal matters should be considered for the position of judge, barring only the head of state from this principle. They hold that gender does not impact one's ability to comprehend evidence and settle disputes.

They also argue by analogy to the permissibility of a woman issuing religious verdicts (fatwas), as both positions involve interpreting and announcing religious rulings.<sup>(19)</sup>

### 3.4 Ijtihad (Independent Jurisprudence):

Ijtihad is defined as:

"بذل الفقيه وسعه في استنباط الأحكام الشرعية العملية من أدلتها التفصيلية"

"The exertion of a jurist's utmost ability to deduce legal rulings from detailed sources."<sup>(20)</sup>

This condition pertains to the judge's comprehensive practical capability to interpret Shariah rulings in the cases presented to them. In the classical era of jurisprudence, judges did not rely on codified laws but rather issued judgments based on their understanding of Shariah.

### Scholarly Disagreement on the Requirement of Ijtihad in Judges:

<sup>(17)</sup> Muḥammad ibn Ismā'īl al-Bukhārī, *Al-Jāmi' al-Ṣaḥīḥ*, vol. 8 (Beirut: Dār Ṭawq al-Najāh, 2001), ḥadīth no. 4425, vol. 8, p. 6.

<sup>(18)</sup> Muḥammad Ra'fat 'Uthmān, *Al-Niẓām al-Qaḍā'ī fī al-Fiqh al-Islāmī* (Cairo: Dār al-Fikr al-'Arabī, 1998), p. 130 onwards.

<sup>(19)</sup> Muḥammad Ra'fat 'Uthmān, *al-Niẓām al-Qaḍā'ī fī al-Fiqh al-Islāmī*, p. 135 Onwards.

<sup>(20)</sup> Abū al-'Abbās Aḥmad ibn Muḥammad al-Ṣāwī, *Hāshiyat al-Ṣāwī 'alā al-Sharḥ al-Ṣaghīr*, Vol. 4, p. 188.

Scholars differ on whether *ijtihad* is a requirement for a judge, holding two main views:

### 1. First Opinion:

Some Maliki scholars, as well as Shafi'i, Ahmad, and certain Hanafi jurists, consider *ijtihad* essential. According to them, a judge should not be an uninformed or merely imitative follower (*muqallid*) unfamiliar with the intricacies of the legal school. However, they acknowledge that, in cases of necessity, a *muqallid* judge may be appointed if no *mujtahid* is available.<sup>(21)</sup>

### 2. Second Opinion:

Abu Hanifa and some Malikis argue that *ijtihad* is not a strict requirement. Instead, knowledge of Shariah is sufficient. Nevertheless, they maintain that if a *mujtahid* is available, it is not permissible to appoint a non-*mujtahid* judge.<sup>(22)</sup>

### Evidence Supporting the Requirement of *Ijtihad*:

1. Proponents of this requirement cite the verse:

"إِنَّا أَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا أَرَاكَ اللَّهُ"

*"Indeed, We have sent down the Book to you 'O Prophet' in truth to judge between people by means of what Allah has shown you". (Quran 4:105).*

They argue that those lacking *ijtihad* do not possess the capacity for the necessary insight; a *muqallid* lacks the practical aptitude to discern the correct rulings from the Shariah texts.

2. They also cite the hadith of the Prophet (SAW):

"إِذَا حَكَمَ الْحَاكِمُ ثُمَّ أَصَابَ فَلَهُ أَجْرَانِ، وَإِذَا حَكَمَ وَاجْتَهَدَ ثُمَّ أَخْطَأَ فَلَهُ أَجْرٌ"<sup>(23)</sup>

*"If a judge makes a ruling and is correct, he will receive two rewards; and if he makes a ruling and errs, he will receive one reward."*

This implies a requirement of *ijtihad*, as the hadith refers to effort in deriving rulings, which is not expected of a mere follower.<sup>(24)</sup>

### Evidence Supporting the Absence of an *Ijtihad* Requirement:

The second group argues that the primary purpose of the judiciary is to resolve disputes and to ensure the rightful delivery of entitlements. If a judge can fulfill these duties by relying on the fatwas (legal opinions) of other scholars, then their rulings are valid, similar to a judge's ability to consult experts in other specialized fields<sup>(25)</sup>

### 4. Recommended Traits for a Judge:

After outlining the essential conditions that must be fulfilled by a judge, it is important to highlight certain qualities that are highly recommended for a judge to possess. These traits contribute to the effective and just administration of justice. It is recommended for a judge to:

**Be patient:** A judge should exercise patience in all matters, especially when dealing with long, complex, or contentious cases. Patience allows the judge to listen attentively to all parties involved, without rushing to conclusions, ensuring that fairness prevails.

<sup>(21)</sup> Shihāb al-Dīn Aḥmad ibn Aḥmad ibn Ḥamzah al-Ramlī, *Fatḥ al-Raḥmān bi-Sharḥ Zubad Ibn Raslān* (Cairo: Maṭba'at al-Madanī, n.d.), p. 981. Muḥammad ibn 'Abd Allāh al-Ḥusayn, *Sharḥ Zād al-Mustaḥqni*, vol. 4 (Riyadh: Dār Ibn al-Jawzī, 2009), vol. 4, p. 88. Muḥammad ibn 'Abd Allāh al-Ḥusayn, *Sharḥ Zād al-Mustaḥqni*, vol. 4 (Riyadh: Dār Ibn al-Jawzī, 2009), vol. 4, p. 88.

<sup>(22)</sup> 'Alā' al-Dīn Abū Bakr ibn Mas'ūd al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, vol. 7, p. 3.

<sup>(23)</sup> Muḥammad ibn Ismā'īl al-Bukhārī, *Al-Jāmi' al-Ṣaḥīḥ*, Vol. 9, p. 108, ḥadīth no. 7352.

<sup>(24)</sup> Yaḥyā ibn Sharaf al-Nawawī, *Al-Minhāj Sharḥ Ṣaḥīḥ Muslim*, vol. 4 (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, n.d.), vol. 4, p. 121.

<sup>(25)</sup> Kamāl al-Dīn Ibn al-Humām, *Fatḥ al-Qadīr*, Vol. 7, p. 253.

**Be knowledgeable in the languages of the litigants:** A judge should be proficient in the languages spoken by the parties involved in the case. This eliminates the need for a translator and ensures that the judge fully understands the arguments and testimony presented, leading to more accurate and just decisions.

**Be gentle in speech:** The tone and manner of communication are important for maintaining a respectful and calm atmosphere in the courtroom. A judge should speak in a way that is clear, respectful, and composed, which encourages decorum and fairness in proceedings.

**Possess calmness and dignity:** A judge should exude a sense of calm and dignity, both in their demeanor and behavior. This creates an environment where all parties feel respected and assured that their case is being handled with seriousness and integrity.

**Not be arrogant or tyrannical:** A judge should avoid arrogance, pride, or any form of tyranny in their decision-making. They should be humble, recognizing that their role is to serve justice and not to impose their will on others. This humility helps in making impartial and unbiased rulings.

**Not be weak or dishonorable:** A judge should possess strength of character and moral integrity. Weakness or dishonor could undermine the trust of the litigants in the judicial system. A judge must stand firm in their principles, ensuring that justice is served regardless of external pressures or influences<sup>(26)</sup>.

## 5. Conclusion:

The appointment of judges in Islamic law is a matter of great significance, ensuring the proper administration of justice and the preservation of social order. This study has demonstrated that Islamic jurists have outlined strict qualifications for judges to ensure their intellectual, moral, and legal competence. While there is broad consensus on fundamental conditions such as sanity, maturity, freedom, physical faculties, and legal knowledge, jurists have historically debated additional criteria, including religious affiliation, moral uprightness (*‘adālah*), gender, and the necessity of independent legal reasoning (*ijtihād*). The diversity of opinions among classical scholars highlights the adaptability of Islamic jurisprudence to different historical and social contexts. While some jurists advocate for strict adherence to traditional qualifications, others allow flexibility, emphasizing the overarching objective of justice. The evolution of modern legal systems and the codification of laws have further influenced contemporary perspectives on judicial appointments, leading to discussions on the relevance and application of these classical conditions in today’s judicial frameworks.

Ultimately, the qualifications for judicial appointment in Islamic law reflect the broader objectives of Shariah: ensuring justice, protecting rights, and maintaining social harmony. While certain conditions remain universally accepted, others may require contextual consideration to align with contemporary legal and governance structures. This study underscores the importance of balancing classical Islamic legal principles with modern judicial needs to uphold justice effectively in contemporary Muslim societies.



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<sup>(26)</sup> Aḥmad ibn Ḥamzah Shihāb al-Dīn al-Ramlī, *Nihāyat al-Muhtāj ilā Sharḥ al-Minhāj*, Vol. 8, p. 244.

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