

# Women as Prosecutors & Judges in Kuwait: Aspirations & Obstacles



Dr Myra E.J.B. Williamson  
Associate Professor of Law  
Kuwait International Law School

[drmyrawilliamson@gmail.com](mailto:drmyrawilliamson@gmail.com)  
[www.drmyrawilliamson.com](http://www.drmyrawilliamson.com)

# Kuwait International Law School





*“There are perceptions that we have, because we are women. It’s a subtle difference”*

-Ruth Bader Ginsberg, Associate Justice, US Supreme Court, appointed by US President Bill Clinton in 1993



*“I take the view that ‘difference’ is important in judging, and that gender diversity...is a good, indeed, a necessary, thing”*

Baroness Lady Hale, first and only judge on the UK Supreme Court, delivering the Fiona Woolfe lecture on 29 June 2014



*“I would hope that a wise Latina woman with the richness of her experiences would, more often than not, reach a better conclusion than a white male who has not lived that life”*

Justice Sonia Sotomayor, US Supreme Court judge, nominated in 2009, first Latina Supreme Court judge, 3<sup>rd</sup> female – this remark was recorded several times in speeches and articles between 1994 and 2003



Kuwait should not have women judges because:

*“...it conflicts with Islam and there are some psychological reasons why it is better to let men take this job...women can be affected by feelings and emotions which can be used by criminals...I think men can provide justice more than women...women are more affected by emotions...” - Male 3<sup>rd</sup> year law student at Kuwait International Law School, June 2015, in file with the author*

# Key questions



1. Are there any women serving as prosecutors and/or judges in Kuwait?
2. Should women be able to serve without restrictions as prosecutors and judges?
3. What are the main arguments for and against women judges in Kuwait?
4. What does the future hold?

# Overview



1. Kuwait's legal system
2. Women in Kuwait – political and legal participation
3. Arguments **against** women judges
4. Arguments **for** women judges
5. Conclusion
6. Aspirations and obstacles

# 1. Kuwait's legal system



- ∞ Kuwait became independent on 19 June 1961 – ending the British Protectorate in existence since 1899
- ∞ **Civil law** legal system
- ∞ Origins in Egyptian and French systems
- ∞ All judges in Kuwait come from the prosecution service
- ∞ Compare with common law countries (eg US, UK, NZ)
- ∞ But women were not allowed to be prosecutors (until 2013 – see next slide)
- ∞ In civil law legal systems, women are usually well-represented in the judiciary...

# Female judges in other civil law countries



- ∞ In France, 64% of judges are women
- ∞ Four European countries have judiciaries with 70% or more female judges
  - ∞ Slovenia 78%
  - ∞ Latvia 76%
  - ∞ Romania 73%
  - ∞ Serbia 71%
- ∞ Worst performing country in Europe is the UK – a common law legal system – with 26%
- ∞ ‘Professional judiciary’ v ‘career judiciary’
- ∞ So, civil law countries usually give women greater opportunities to be judges – but not in Kuwait

# 2. Women in Kuwait – political & legal participation



- ❧ Women received right to vote quite recently:
  - ❧ Law change in 2005
  - ❧ First women (4) were elected to the National Assembly in May 2009 (1<sup>st</sup> National Assembly/Majlis al-Umma sat in 1963)
- ❧ Legal system still lagging behind
- ❧ Women were not allowed to be prosecutors until 2013
- ❧ There is no law preventing them: Articles 19-61 of the Judicial Organization Law No.23 of 1990 said prosecutors must be Kuwaiti, Muslim and have full capacity (no mentioned of gender)
- ❧ But the job applicants usually state that only men may apply
- ❧ In 2013 – decision made to allow women to apply
- ❧ 22 women were accepted to begin training
- ❧ They began work as prosecutors in Nov 2014
- ❧ I tried to speak to them...

# 3. Arguments against women judges



1. “The woman’s place is in the home”
2. “Women are too emotional”
3. “Shari’a does not permit it”

## 3.1 A woman's place is in the home



- ⌘ Some MPs stated this when opposing women's right to vote, finally granted in 2005 – same sentiment might apply to judges
- ⌘ E.g.. MP Ahmed Baqer said in 2000 said:
  - ⌘ “The men take the responsibility for politics, the women take the responsibility for the family”
- ⌘ Opposition to women mingling with men – difficulties with accepting a new role for women in a traditionally male-dominated society
- ⌘ But actually, judging is a good job for women (e.g. Lebanon)

# Students' opinions...



Q: *Do you believe women should be judges in Kuwait?*

A: 1. *No, because women by nature do not have enough time "if she is a mother"*

A: 2. *No, because women are emotional*

- Male 3<sup>rd</sup> year law student at Kuwait International Law School, June 2015, on record with the author

## 3.2 Women are too emotional



- ⌘ A common stereotype of women at least in Kuwait
- ⌘ They are “too emotional” to judge cases
- ⌘ Men are seen as being more impartial, more suitable for judging
- ⌘ Judging is an intrinsically male activity??
- ⌘ This phenomenon is voiced by both men and women
- ⌘ It has been raised outside of Kuwait too – Shultz and Shaw note that the emotionality/mood swings of women used to stop them from becoming judges around the world...

# ...so women are no good at judging because of their emotions?



- ⌘ Study of women judges in the US by Choi, Gulati, Holman and Posner 2009
- ⌘ Looked at evidence - whether women are better or worse than male judges (Sotomayor: women are better?)
- ⌘ 3 criteria:
  - ⌘ Opinion production
  - ⌘ Outside state citation
  - ⌘ Co-partisan disagreement
- ⌘ Findings: **women perform at the same level, except on outside state citation and co-partisan disagreement, where women perform better than men**
- ⌘ Stereotypes v evidence

## 3.3 Shari'a prohibits women judges



- ☞ Feminism in Kuwait acts within the constraints of Islam
- ☞ Women want to act in compliance with Shari'a
- ☞ This is probably the strongest argument against women judges
- ☞ Consult Qur'an and Sunnah

# Sharia: does it stop women from judging?



## Yes, Shari'a prohibits women judges

- ☞ Men are the protectors and maintainers of women (4:34)
- ☞ Men have a degree of responsibility over them (2:228)
- ☞ 3 out of 4 scholars say 'no' - Abu Hanifa - can judge in some cases
- ☞ Hadith: "no nation shall prosper with a woman as its leader"

## No, Shari'a doesn't stop women

- ☞ There's nothing in the Qur'an or Sunnah that expressly prohibits women from judging
- ☞ Everything is permitted unless prohibited
- ☞ Historically, women had 'a degree' over men e.g.. Aisha (RAA) led the army in the Battle of the Camel
- ☞ Almost all Muslim countries have female judges (Kuwait, KSA do not)
- ☞ The Hadith about "no nation shall prosper" should be interpreted within its context

## 3.4...So what if Shari'a prohibits women judges?



- ⌘ Even if Shari'a prohibits women becoming judges, that is not fatal
- ⌘ Kuwait Constitution Article 2: Sharia is *a source* of law
- ⌘ Shari'a is not *the* source of law
- ⌘ "Interest" (*riba*) example – 1992 Constitutional Court confirmed that interest can be claimed in legal proceedings even though its against shari'a
- ⌘ So, I argue that even if Shari'a does not permit women judges, that might not be fatal to women's aspirations – perhaps they could still become judges

# 4. Arguments for women judges



- ∞ 1. Judicial diversity and judicial independence
- ∞ 2. Solve staffing problems – 1/3 of judges are Egyptian and on short contracts
- ∞ 3. Internal consistency – women detectives already prosecute misdemeanors; women already hold leadership positions (MPs, Ministers etc)
- ∞ 4. Women are less corrupt (Transparency International)

# 4. Arguments for women judges

## *continued...*



- ❧ 5. Eliminate gender bias:
  - ❧ Art 7 “justice, freedom and equality are the pillars of society”
  
- ❧ 6. Women make different decisions?
  - ❧ UK Supreme Court decision *Yemshaw v Hounslough Borough Council* – redefined ‘domestic violence’ – Lady Hale wrote the leading opinion
  
- ❧ 7. To improve Kuwait’s pretty poor human rights record:
  - ❧ Nationality laws
  - ❧ Marriage laws – age, wali requirement
  - ❧ No laws against:
    - ❧ Domestic violence
    - ❧ Rape within marriage
    - ❧ Sexual harassment
  - ❧ Discounts for men who commit ‘honour killings’

# 5. Conclusion



- ☞ To answer the key questions:
- ☞ Are there any women serving as prosecutors and/or judges in Kuwait? *Yes, there are 22 prosecutors but no female judges. There might be female judges in 5-15 years time if no law is passed to prevent it*
- ☞ Should women be able to serve without restrictions as prosecutors and judges? *Yes, for the 7 reasons outlined above, and because nothing in Shari's expressly prohibits it*

# Aspirations...



- ❧ Women want to become prosecutors and judges in Kuwait
- ❧ There is no shortage of applicants for the role of prosecutor
- ❧ They realise that is the first step to becoming a judge
- ❧ Some men agree then women can be judges

# Obstacles...



- ❧ Men!
- ❧ Attitudes! Of men *and women* – stereotypes regarding women as ‘emotional’ creatures
- ❧ Interpretation of Qur’an and Sunnah
- ❧ The law? Not really
- ❧ The existing judges – don’t allow women prosecutors to sit in court
- ❧ The existing Public Prosecution Service within the Ministry of Justice: doesn’t allow any further applications from women, only from men
- ❧ Social attitudes?
- ❧ Can women overcome?

# Are social attitudes the biggest problem?



❧ *“I disagree that women becomes [sic] judges in Kuwait, I refuse that hardly [sic], I would not marry to some woman who works as a judge, it just can't be in our society”*

❧ 3<sup>rd</sup> year male law student, Kuwait International Law School, June 2015, on record with the author

To be continued...

# Thank you



---

Dr Myra E.J.B. Williamson  
Associate Professor of Law  
Kuwait International Law School

[drmyrawilliamson@gmail.com](mailto:drmyrawilliamson@gmail.com)