



Topical Issues Related To The Rights Of Female Witnesses In Muslim Law

Azizkhon Pulatov

Independent Researcher At Tashkent State University Of Law, Uzbekistan

Journal Website:
<http://usajournalshub.com/index.php/tajpslc>

Copyright: Original content from this work may be used under the terms of the creative commons attributes 4.0 licence.

ABSTRACT

This article addresses current issues related to the rights of witnesses and testimony in Muslim law. In particular, the relationship between male and female testimony in Muslim law, the views of different school representatives, and the specifics of female testimony are analyzed. It also focuses on issues related to the ability of female witnesses to understand social life and evaluate surrounding events.

KEYWORDS

Muslim law; Qur'an and Sunnah, male and female witnesses, testimonies of female witnesses, rights and freedoms, school representatives, Sharia.

INTRODUCTION

The basis of Islam, which is valuable for the peoples of our country, is the Book of Allah - the Holy Quran. It is also an important historical source that regulates the social, spiritual and cultural life of the societies that have emerged in the territory of our country

and have replaced each other, shaping moral and life practices.

Although the Qur'an is considered a normative and moral source of a religious nature, many rational rules of conduct have been developed on its basis. As Islamic scholar

L. R. Syukiyainen writes, Muslim law has no concept of law specific to the law of the post-Roman period, nor to Western law. Theoretically, Allah alone has the power to legislate. In practice, however, the works of jurists are the sole source of Muslim law. Muslim law was created and developed by experts. It is not the state but jurisprudence that plays the role of legislator¹.

Islam and Muslim law, the history of the state and law has had a profound impact on a number of states as well as on the development of human rights and freedoms. In Islam, Sharia is seen as a legal code and is mandatory for all Muslims. The Qur'an and Sunnah are one of the main sources of Sharia and set out legal principles and provide general rules. In this changing world, the rules of Sharia can also be interpreted differently depending on the situation. This, in turn, encourages him to do more research.

Many Muslim-majority countries have reaffirmed their commitment to Islamic principles in their laws and even in their constitutions. Some countries that adhere to these principles include Saudi Arabia, Morocco, Tunisia, Algeria, Mauritania, Iran, Pakistan, Sudan, Yemen, Iraq, Indonesia, and Egypt, all of which adhere to the principles of Muslim law. However, in practice, these countries adhere to these principles even if they are a secular state (political regime).

It should be noted that the peculiarity of Muslim law is that its norms have a religious-doctrinal character. The relationship between the elements of nature, being, man and the

soul takes place directly in the presence of Allah, in accordance with His will and instructions. Therefore, many procedural and legal issues have a divine basis, with the exception of the participation of witnesses.

In Surat al-Baqara 282 of the Qur'an, the presence of a man and two women as witnesses was revealed as a surah. It reads "O you, who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has the obligation dictate. And let him fear Allah, his Lord, and not leave anything out of it. But if the one who has the obligation is of limited understanding or weak or unable to dictate himself, then let his guardian dictate in justice. And bring to witness two witnesses from among your men. And if there are not two men [available], then a man and two women from those whom you accept as witnesses - so that if one of the women errs, then the other can remind her. And let not the witnesses refuse when they are called upon" Thus, one woman comes out as a guarantee that the testimony of another woman is true. The content of this verse was later classified by lawyers in different senses².

The status of men and women in Muslim law is distinguished by their role and function in traditional Muslim society. In a Muslim society, men and women complement each other and perform different functions in the family. It is well known that in Muslim law it is obligatory for men to provide family in all financial

¹ Сюкияйнен Л.Р. Доктрина как источник мусульманского права //Источники права. М., 1985. С.65-83.

² The Holy Quran. Author of translations and comments. Alouddin Mansur. - T.: Cholpon, 1992. Surat al-Baqara. Verse 282. 34 page.

aspects. Hence, a man performs a function that requires (responsible) physical strength in relation to a woman. Women, on the other hand, focus on caring for the family, educating the next generation, and strengthening the family.

It is these rules that reflect the gender-specific nature of the procedural status of witnesses in Muslim law. In Muslim law, it is the male witness who is more trusted than the female witness. The testimony of female witnesses was always questionable.

There are several reasons for distrust in the testimony of female individuals in Muslim law, the main of which is related to the social status of women in society. In Muslim countries, women have a much weaker status than men in terms of social activism, and their participation in social relations is limited. As a result, women's participation in a number of social spheres, such as education and employment, has been criticized. In turn, this situation has a negative impact on women's ability to communicate socially, understand social life, and evaluate surrounding events.

The second reason for the lack of confidence in the testimony of women, in our view, is related to their psychological state, which is directly related to gender. It is well known that women by nature have traits that are caring, compassionate, and overly emotional. Therefore, the chances of perceiving and evaluating an event in a very emotional way are much higher in women. In the example above, if one forgets and goes astray, another reminds her - she comes to witness. This means that whoever forgets (intentionally or unintentionally) has gone astray. One serves as a guarantee. However, Hidoya cites grounds and reasons that prevent women

from testifying in criminal proceedings. In this regard, the views of Imam Shafi'i, one of the mujtahids of Muslim law, are quoted. According to Mujtahid, women should not be allowed to participate as witnesses in criminal proceedings. Imam Shafi'i had linked this issue to the defects inherent in the nature of women, i.e., their lack of mental and recollection abilities, their inability to control their spiritual emotions³.

There were also several other solutions related to the testimony of women in Muslim court proceedings. This procedural option was expressed in the presence of one man and two women, or in the absence of a male witness, four women as witnesses in the case. Such procedural procedures were mainly recommended in property-related cases as well as in civil and economic cases. In criminal cases, however, such procedural solutions were considered inappropriate⁴. However, there were also cases in which a woman could testify alone. For example, it has been used in midwifery, in the identification of idda, in the detection of obesity, in the detection of breastfeeding, in the detection of leprosy, in the identification of specific signs and conditions in the bodies of women who are out of sight of men, and in the examination of women's bodies⁵.

Undoubtedly, the above procedural solutions will surprise the modern reader. The surprising question is why it is necessary to show two or

³ Хидоя. Комментарий мусульманского права. –Т.2. /Перевод с английского, под редак. Н. И. Гродекова. –С. 415.

⁴ Хидоя. Комментарий мусульманского права. –Т.2. /Перевод с английского, под редак. Н. И. Гродекова. –С. 415

⁵ 416 page of aforementioned work.

four women at a time, not one woman, in resolving the case. In this regard, the foundations of Imam Shafi'i's approach also play an important role. Defects related to the sexual nature of women in particular are a reason to constantly question someone's testimony. Muslim scholars, on the other hand, viewed the skepticism of women as witnesses instead of men as a sign that their participation as witnesses in the case was generally unsatisfactory, preventing women from being present in public in large numbers⁶.

Nevertheless, women also have an obligation to testify and are recognized as members of society. In Muslim law, too, specific symbols have been developed that constitute the status of a witness. According to the guide, the status of any witness, especially a female witness, can be based on three elements. The first is to be able to see the event with the eye; the second is to remember the event; the third is to provide information about the incident. According to religious scholars, the presence of these elements entitles any person to participate in the trial as a witness or eyewitness. This is because the witness acquires knowledge about the incident using the first element, retains that knowledge on the second, and conveys the information through the third⁷.

So, the concept of witness in Muslim law are
a) *who is a direct witness to a particular event or has information about a particular situation;*
b) *physically and mentally remembering the event (that is, he had the ability to*

comprehend); c) *S/he is a person of procedural legal status who has the power to convey the circumstances of the incident (i.e. to be able to present the information truthfully).* Translating this concept into modern scientific and legal language, a witness is a person who has important information for the case, has the ability to understand the situation correctly and reasonably, and to convey it correctly and completely.

In Muslim law, along with the identity of the witness, the requirements for his spiritual and moral aspects were also important. In addition to being a Muslim believer, the witness also had an important role to play in his personal qualities. Witness status required an individual to be an honest, truthful person⁸. There are also requirements not to drink alcohol, to be sane and, most importantly, not to have been previously convicted of perjury. According to Abbas Tahani, such people fall into the category of those who have lost confidence because they have deceived justice, and therefore such people are not allowed to testify⁹.

Such a requirement for a witness is stated in the verse of the Qur'an: "Listen to the testimony of two believers. The correct testimony of witnesses is the basis of truth"¹⁰. Muslim law is based on many narrations as to which of the witnesses is the right word. One of them is related to the narrations that when a witness is asked to do something wrong, an honest and truthful witness refuses to do it, and a false witness does the suggested thing

⁶ The same work, page 416

⁷ Идoуа. . Комментарий мусульманского права. – Т.2. /Перевод с английского, под редак. Н. И. Гродекова. –С. 416.

⁸ 418 pages of the mentioned work.

⁹ Abbas Muhammad Taxa, *Ahkam El-Isbat*, Khartoum, 1998, p.70 (in Arabic).

¹⁰ The same work, page 419

in order to prove himself to be honest, so that he can tell who is telling the truth. Muslim law has made extensive use of a similar comparative method in resolving disputes in witness testimony. If we talk about the physical defect, in some cases it is allowed. For example, it is not permissible to testify as a blind and deaf witness. However, some school representatives may be allowed to prove the testimony of blind and deaf witnesses. If a blind witness has spoken to a person for a long time, he knows his voice and can testify that he recognizes his voice¹¹. Other Muslim lawyers do not allow the testimony of blind and deaf witnesses as evidence, especially in crimes of the "Hadd" level¹².

It is important to note that women's testimony in Islamic jurisprudence can be crucial in some cases. It is mandatory for the judge to accept the testimony of women on any questions related to the detection of tearing and squealing, which are as follows. Taking into account the above considerations, the scholars confirm that it is permissible for women to testify in the following cases, where the law allows it. For example, reproductive function (description of what is remembered) and breastfeeding (in Muslim lands, other women are often involved in child care and education after childbirth, often such women are hired to nurse the baby for a certain period of time and for a certain amount, such women are considered second

mothers) also emphasize the importance of women's representation¹³.

Different Muslim schools also have different views on this¹⁴. For example, Abu Hanifa school officials say only one woman can testify¹⁵. Malik and Ibn Hanbali school officials say that two women can testify¹⁶. Representatives of the Shafi'i school, on the other hand, confirm that there should be no less than four women¹⁷.

Indeed, verse 282 of Surat al-Baqara of the Qur'an states that a man and two women will testify. However, scholars say that four women will have to testify in Hadd and revenge crimes¹⁸. For example, in verse 15 of Surat an-Nisa, the Holy Qur'an says, "Those who commit unlawful sexual intercourse of your women - bring against them four [witnesses] from among you. And if they testify, confine the guilty women to houses until death takes them or Allah ordains for them [another] way." It should be noted that the judgments in this and the following verse were a temporary punishment imposed on adulterous women and adulterous men. Surat an-Nur, which was revealed later, deals extensively with this subject, and the ruling on flogging an adulterous man and woman if

¹¹ Ahmed al-Hasirib, *Ilm al-Qada*, Cairo 1977, T.I, p.74, (in Arabic)

¹² Mohamed Ibn Ahmed Ibn Bokr Shams El-aymma ElSarakhi, *El-Mbsut*, Beirut, 1331hijriya, T.XXIV, p. 148 (in Arabic).

¹³ Tareq Saeed Alshammari. Special measures for witnesses in the criminal justice system: from England and Wales to the Kingdom of Saudi Arabia. School of Law University of East Anglia April 2016

¹⁴ Abu al Bassal Ali, 'The women's testimony in Islamic jurisprudence ' (2001) 2 Journal for Economic and Legal science 143-161

¹⁵ The same work, page 158

¹⁶ The same work, page 158

¹⁷ The same work, page 159

¹⁸ Holy Quran, surat Al-Nisa, verse 15.

they are unmarried and stoning them if they are married is firm and permanent¹⁹.

According to the scholars, Hadd and the revengers did not allow women to testify as much as possible in their crimes. Because they viewed the show with insecurity, incompetence, and suspicion for their quick forgetfulness and indifference to the incident²⁰. Scientific studies show that women are considered weaker than men. We can see in scientific sources that many scientific knowledge (such as physics, chemistry, astronomy) and hadiths are still memorized and transmitted by men today. However, in some cases we can also see the advantages of women over men. For example, in some schools, women are more successful in learning than men²¹. Muslim scholars argue that the natural weakness of women, especially their mental and physical abilities, is due to the fact that during the development of Islam, women had little access to education or did not hold positions of responsibility in society (in such jobs).

However, scholars say that in the absence of male witnesses, female testimonies were accepted. For example, a group of women were allowed to testify to another woman, or if both the complainant and the accused were women, whether it was a civil or criminal case. According to Ali ibn Abu Talib, in many cases it

¹⁹ The Holy Quran. Author of translations and comments. Alouddin Mansur. - T.: Cholpon, 1992. Surah Nisa. Verse 15. 56 pages.

²⁰ Al-Maqdisi Ibn Qudamah, *Al-Muqni' 'Explain the jurisprudence of Imam Ahmad ibn Hanbal'* (8 edn, Dar 'Alam al kutub 2013)

²¹ <https://islamqa.info/en/answers/20051/why-is-the-witness-of-one-man-considered-to-be-equal-to-the-witness-of-two-women>.

prevents women from accepting the testimony of men when their testimony is available.

Representatives of the second school accepted the testimony of women in the criminal and civil cases of Imam ibn Hazm. Ibn Hazm and his followers claim that witnessing certain verses in the Qur'an is not gender specified²².

For example, "O, you who believe! Witness for Allah with a witness who is against yourself, your parents or relatives, and the rich and the poor. And the witnesses shall not be refused when summoned.

Some scholars have argued that men are clear and confident in their orientation towards objects and men, while women have hypothesized that they will be clear and confident in their orientation towards women and objects. Interestingly, it has been found that men and women can give equal, clear and convincing instructions on the subjects they are interested in and pay attention to²³.

Concerning false testimony, the Qur'an states in Surat an-Nur verse 4 as follows: "And those

²² Ali ibn Ahmad ibn Hazm, known as al Zahiri (994 – 1064) was a leading scholar of the Zahiri School of Islamic Thought, The Encyclopaedia of Islam refers to him as having been one of the leading thinkers of the Muslim world. It is worth noting that the views of Hazm and his followers tend to cite text from the Quran and Sunnah in a manifest, literal sense without explanation, whereas the four schools interpreted the text. Goldziher Ignaz, 'The Zahiris: Their Doctrine and Their History' (1971) A Contribution to the History of Islamic Theology, tr Wolfgang Behn Leiden: EJ Brill

²³ Лофтус Э.Ф., Банаджи М.Р., Скулер Дж.В. и Фостер Р. (1987). Кто что помнит? Гендерные различия в памяти. *Мичиганский кварталный обзор*, 26, с.

who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever. They indeed are the rebellious. Except those who repent thereafter and do righteous deeds; (for such) verily, Allah is Oft-Forgiving, Most Merciful.”²⁴. Note that one of the things that are known to disrupt public discipline is the spread of various rumors. Therefore, in Islam, spreading rumors and accusing someone of immorality is called wickedness and is strongly condemned, and such people are punished in this verse and declared liars who should not bear witness²⁵.

However, if we look at the surahs of the Qur'an, Muslim jurists have said that such people may be allowed to testify as witnesses if the witness is "except those who repent thereafter and do righteous deeds." Allah is Oft-Forgiving, Most Merciful²⁶.

In addition, the Qur'an also gives the duties of witnesses. In particular, in verse 283 of Surat al-Baqara, “Do not conceal your testimony. Whoever conceals it, his heart is sinful. Allah is Aware of what you do”²⁷.

However, Muslim jurists acknowledge that there are also restrictions on not testifying. If their testimony is a family secret, service secret or state secret (even if the witness has

worked in the civil service or before and the family secret only relates to the time they lived together during the family period), such information is not allowed to be disclosed²⁸.

Thus, the Qur'an has changed all of them, but not at once, yet step by step and gradually through rational and sensible media. If done in a hurry or quickly, there was a high probability of failure and adverse reactions. The primary goal was to memorize and teach the revelation that fell to Muslims, and then to study and interpret the ways of society in relation to economic, social, or other changes.

Furthermore, as a result of the analysis of the above, we can note that representatives of different schools have different attitudes towards the status of female witnesses. Of course, some Muslim countries follow different schools of thought, which, in turn, mean that schools are also different. This leads to controversy. There was also a strong emphasis on women testifying, depending on the gravity and severity of the crime.

In our opinion, the changes taking place in the world require a new interpretation of the Qur'an.

We believe that not accepting women's instructions in society can lead to a high probability that criminals will escape punishment, prevent crime from being uncovered, criminals go unpunished, and most importantly, this is the biggest obstacle to justice. Of course, the above analyzes were some comments on the topic of women's testimonies, which can hopefully inspire others to consider their respective views on the subject in more detail.

²⁴The Holy Quran. Author of translations and comments. Alouddin Mansur. - T.: Cholpon, 1992. Surah Nur. Verse 4. 250 pages.

²⁵ The Holy Quran. Author of translations and comments. Alouddin Mansur. - T.: Cholpon, 1992. Surah Nur. 250 pages.

²⁶ The Holy Quran. Author of translations and comments. Alouddin Mansur. - T.: Cholpon, 1992. Surah Nur. Verse 5. 251 pages.

²⁷ The Holy Quran. Author of translations and comments. Alouddin Mansur. - T.: Cholpon, 1992. Surat al-Baqara. Verse 283. 34 pages.

²⁸Аббас Мухамед Таха, указ. Соч. С.72-73.

REFERENCES

1. Сюкияйнен Л.Р. Доктрина как источник мусульманского права //Источники права. М., 1985. С.65-83.
2. The Holy Quran. Author of translations and comments. Alouddin Mansur. - Т .: Cholpon, 1992. Surat al-Baqara. Verse 282. 34 page.
3. Хидоя. Комментарий мусульманского права. –Т.2. /Перевод с английского, под редак. Н. И. Гродекова. –С. 415.
4. Хидоя. Комментарий мусульманского права. –Т.2. /Перевод с английского, под редак. Н. И. Гродекова. –С. 415
5. 416 page of aforementioned work.
6. The same work, page 416
7. Хидоя. . Комментарий мусульманского права. –Т.2. /Перевод с английского, под редак. Н. И. Гродекова. –С. 416.
8. 418 pages of the mentioned work.
9. Abbas Muhammad Taxa, Ahkam El-Isbat, Khartoum, 1998, p.70 (in Arabic).
10. The same work, page 419
11. Ahmed al-Hasirib, Ilm al-Qada, Cairo 1977, T.I, p.74, (in Arabic)
12. Mohamed Ibn Ahmed Ibn Bokr Shams El-aumma ElSarakhi, El-Mbsut, Beirut, I33Ihijriya, T.XXIV, p. 148 (in Arabic)
13. Tareq Saeed Alshammari. Special measures for witnesses in the criminal justice system: from England and Wales to the Kingdom of Saudi Arabia. School of Law University of East Anglia April 2016
14. Abu al Bassal Ali, 'The women's testimony in Islamic jurisprudence ' (2001) 2 Journal for Economic and Legal science 143-161
15. The same work, page 158
16. The same work, page 158
17. The same work, page 159
18. Holy Quran, surat Al-Nisa, verse 15.
19. The Holy Quran. Author of translations and comments. Alouddin Mansur. - Т .: Cholpon, 1992. Surah Nisa. Verse 15. 56 pages.
20. Al-Maqdisi Ibn Qudamah, *Al-Muqni' 'Explain the jurisprudence of Imam Ahmad ibn Hanbal'* (8 edn, Dar 'Alam al kutub 2013)
21. <https://islamqa.info/en/answers/20051/why-is-the-witness-of-one-man-considered-to-be-equal-to-the-witness-of-two-women>.
22. Ali ibn Ahmad ibn Hazm, known as al Zahiri (994 – 1064) was a leading scholar of the Zahiri School of Islamic Thought, The Encyclopaedia of Islam refers to him as having been one of the leading thinkers of the Muslim world. It is worth noting that the views of Hazm and his followers tend to cite text from the Quran and Sunnah in a manifest, literal sense without explanation, whereas the four schools interpreted the text. Goldziher Ignaz, 'The Zahiris: Their Doctrine and Their History' (1971) A Contribution to the History of Islamic Theology, tr Wolfgang Behn Leiden: EJ Brill
23. Лофтус Э.Ф., Банаджи М.Р., Скулер Дж.В. и Фостер Р. (1987). Кто что помнит? Гендерные различия в памяти. Мичиганский кварталный обзор , 26, с.
24. The Holy Quran. Author of translations and comments. Alouddin Mansur. - Т .:

- Cholpon, 1992. Surah Nur. Verse 4. 250 pages.
25. The Holy Quran. Author of translations and comments. Alouddin Mansur. - T .: Cholpon, 1992. Surah Nur. 250 pages.
26. The Holy Quran. Author of translations and comments. Alouddin Mansur. - T .: Cholpon, 1992. Surah Nur. Verse 5. 251 pages.
27. The Holy Quran. Author of translations and comments. Alouddin Mansur. - T .: Cholpon, 1992. Surat al-Baqara. Verse 283. 34 pages.
28. Аббас Мухамед Таха, указ. Соч. С.72-73.