

SAGACITY TO AVOID COITUS DURING MENSTRUATION

Muhammad Abid Nadeem *

Abstract: Islam is a religion of cleanliness and piety. In Islamic system of worship cleanliness is first and foremost requirement. Islam emphasizes on cleanliness in behavior, attitude and inclinations. This Islamic doctrine of cleanliness is in accordance with the human nature and also with the medical principles. Islamic dictate of hygiene incorporates into the human mind, a sense of purity, both internal and external. Internal decency brings man close to his Creator and external limpidness guarantees good health for him. Sagacity of Islamic teachings was remined before modern day research. With the progress of scientific knowledge, man is becoming aware of the importance of these principles for his health.

Coitus during menstruation is prohibited in Islām. If a person abstains from this, he will enjoy the pleasure of his Lord and will also benefit from this principle in the way that he will be saved from many diseases. In this article this has been depicted using the scientific data.

Man, like all sexually reproducing organisms has been provided with sexual hunch. Animals satisfy this lust according to their instinct. Likewise, man is also intrigued by this gut feeling. Among all these sexually reproducing animals, only primates and human beings face the phase of menstruation. Man, among all other living organisms is unique in this process. Besides menstruation, man has been provided with the disposition that his mate is always ready for mating, whereas in other living organisms, the female counterpart emits signals when she is ready for the process and when the process is complete, she does not allow its complement to copulate. Its opposite member remains restricted too when the mating partner is not ready for the process. In man, the situation is quite different. Male and female are ready to copulate whenever they desire. Sometimes the male is ready even at the time when the female perhaps is unwilling, On the other hand, both may have the lust during menstruation, before or after that

* Lecturer Department of Islamic Studies, GC University, Lahore, Pakistan

© rasailojaraid.com

WOMEN'S EVIDENCE IN ISLAMIC LAW

- 53 Ibn-abi Shaibah. Abdullah Bin Muhammad Bin Abi Shaibah. , Al-Musannaf Fi. Al-Ahadith-wa-Al-Aathar. Dar-Al-Fikr. Vol-5, P-331.
- 54 Al-Bukhari- Jame-As-Sahih, Vol-3, P-341 Abo-Dawōd. As-Sunun. Vol-2, P-118.
- 55 Al-Bowasairi, Ahmad Bin Abi Bakr Bin Islaeel, Ithaf-Al-Khiyarah. Al-Maharah., Dar-Al-Watan-Al-Riaz. First Edition- 1999- Vol-4, P-173.Majama-Al-Zawaed- Vol-4, P-201.
- 56 Al-Mōsali-Abdullah ibn Mahmōd Al-Ikhteyar Li-Taaleel-Al-Mukhtar. Dar-Al-Mirifah., Third Edition 1975. Vol-2, P-140.
- 57 Ibn-Al-Qayyem. Al-Turuq-Al-Hukmiah, P-152
- 58 Ibid- P-152
- 59 Ibn-Hazan-Al-Muhallah. Vol-9, P-396.
- 60 Ibn-Rushd- Bidayat-
Al-Mujtahid. Vol-2, P-465.
- 61 Al-Bukhari-Jame-As-Sahih Dar-Toaq-Al-Janat
First Edition. Mōqe-Al-Islam, Vol-6, P-359, Hadith number 2515-2516.
- 62 Ibn-Hazam Al-Muhallah Vol-9, P-393.
- 63 Ibid Vol-9, P-403
- 64 Saleem-Rustum Baz, Sharh, Majallah P-1004
- 65 Al-Margheenani Al-Hidayah Vol-3, P-117, Tabeen-Al-Haqaeq Vol-4, P-208, Badaye,
Vol-6, P-277, Fath-Al-Qadeer Vol-6, P-455
- 66 Al-Shashi-Al-Qafal, Helyat-Al-Ulama, Vol-8, P-278
Ibn-Najar Muntahi-Al-Iradat Vol-2, P-670
- 67 Al-Kosani, Al-Badaya-Wa-Sanae Vol-6, P-277
Al-Turuq-Al-Hukmia P-155, Kashaf-Al-Kanaa Vol-6, P-436
- 68 Al-Haisami- Nōr-Al-Din, Majma-Al-Zawaed Vol-4, P-201
Al-Sanaani, Subulus-Salalm Vol-3, P-218 Al-Bowasari, Al-Ithaf-Al-Kheyah-Al-Maharah Vol-4, P-173
- 69 Abo-Dawōd, Al-Sunun, Kitab-Al-Aqdiah (Book Decesms) Bab-Al-Shahādah Fi-Al-Ridha. (Chapter of Scukling) Vol-2, P-117-118
- 70 Al-Kasani-Al-Badaya, Vol-6, P-277
- 71 Al-Romli-Nihayat-Al-Muhtaj Vol-8, P-296
Al-Turuq-Al-Hukmiah P-154
- 72 Imam-Malik Al-Mudawwana Al-Kubra Vol-4, P-81, Bahaudin, Al-Maqdasi-Al-Hadithah, P-644
- 73 Ibn-Qudamah-Al-Mughni Vol-9, P-156

- 24 An Nissa- 15
 25 Al-Baqarah- 282
 26 At-Talaq-2
 27 Ibn-Al-Aseer, Mujed-Ad-Din, Abo, Al-Sa'adat Al-Mubarak bin Muhammad Al-Jazri. Jame-Al-Usool Fi-Ahadith-Ar-Rasool, Maktabah Al-Hawani- Maktabah Dar-Al-Bayan., Maktabah, Al-Masjid An-Nabawi Al-Sharif. Available on www.Maktaba.org. Vol-10, P-V19, Al-Bukhari, Abo-Abdullah, Muhammad Bin Ismaeil Bin Ibrahim. Al-Jame Al-Masned -As-Sahih. Dar-Toaq-Al-Nijat. First Edition, Vol-II, P-509. Wording of Al-Bukhari Al- Bayyinah.
 28 Imam Muslim- Al-Jame Al-Sahih Hadith Number-15, Chapter Al-Lian - Istanbul - Vol-2, P-1135.
 29 Ibn-Abi-Shaibah in his book, narrated from Az-Zahri, (Az-Zailaee - Nasb Al- =Rayah-Li Ahadith, Al-Hadayah
 30 Al-Kasani, Al-badaye-wa-Sanaye, Vol-6, P-297, Az-Zailaee, tabeeyen-Al-Haqeq Vol-4, P-2.8
 31 Ibn-Hazam. Al-Muhalla - Al-Maktab, Al-Trjariah-Li-Tabaa wn Nashr-Bairöt. Vol-9, P-395.
 32 Ibn-Qudamah-Al-Mughni- Vol-9, P-148
 33 Al-Baqarah-282.
 34 An Nawawi, Abu Zakaria Yahya bin
 35 Al-Bukhari Al-Jame-As-Sahih, Vol-3, P-340.
 36 Al-Jawaini Imam-Al-Haramain, Al-Burhan published in Qatar, Vol-1, P-427
 37 An Nisapori, Muhammod bin, Abdullah, Abo Abdullah Al-Mustadrak Ala Al-Sahihain, Dar-Al-Kutub (Chapter of punishments), Vol-4, P-436
 38 Az-Zailaee, Sharh-Kans, Vol-4, P-209
 39 Al-Margheenani, Al-Hidayah, Vol-3, P-116
 40 Al-Sharbeeni- Mughni, Al-Muhtaj, Vol-4, P-441.
 41 Ibn-Qudamah- Al-Mughni, Vol-9, P-149.
 42 Ibn-Al-Qayyem, Al-Turuq-Al-Hukmia, P-151.
 43 Ibn-Rush, Bidayat-il-Majtahid, Dar-Al-Marifa 1987, Forth Edition, Vol-2, P-465. Ibn-Farhön, Tabsarat-ul-Hukkam, Dar-ul-Kitab-Elmia First Edition, Vol-1, P-214.
 44 Al-Baqara-282.
 45 Al-Talaq-2.
 46 Al-Tibrani, Al-Mujam, Al-Kabeer, Available www.ahlalhadeeth.com. Vol-19, P-464.
 47 Ibn-Hazam, Al-Muhallah- Vol-9, P-227
 48 Nihayat-Al-Muhtaj- Vol-8, P-295, Tabeen-ul-Haqaeq, Vol-4, P-209.
 49 Saleem Rustum Baz, Sharh Majallat-Al-Ahkam, Al-Adaliah, P-1003.
 50 Bidayat-ul-Majtahid- Vol-2, P-465, Al- Mughni- Vol-9, P-155,
 Tabsurat-Al-Hukkam. Vol-1, P-235, Nihayat-Al-Muhtaj. Vol-8, P-295.
 51 Al-Baihaqi-Sunan Al-Baihaqi-Al-Kubra. Vol-10, P-151.
 52 Al-Turkamani Alaw din Bin Ali Bin Usman Al-Mardini Dar-Al-Fikr Vol-10, P-151,
 Al-Baihaqi-Marifa-tu-As Sunun-wa. Al-Aasar. Mooq- 8 Jam-Al-Hadith.
www.alsunnah.com Vol-13, P-34.

WOMEN'S EVIDENCE IN ISLAMIC LAW

Notes and References

- ¹ Al-Fairōz Abadi, Al-Qamōs-al-Muheet, Al-Moassisat-ul-Arabia for publication, Bairōt. Vol-1, Page-316
- ² Ali-Haider. Durr-al-Ahkam Sharh Majallatul-Ahkam, edited by Al Muhami, Fahmi-al-Husaini, Dar-al-Kutub-al Elmiah – Bairōt Lebnon, Vol-4. Page- 296. See also, Al-kamal-Ibn-Human Fath-ul-Qadeer , Dar Ehya-ul-turath Al-Arabi, Bairōt. Vol-6, page-2, IbnAbideen- Radd-ul-Mukhtar Vol-4, Page-385. Al-Sharbeeni, Muhammad, Mughni-al-Muhtaj Dar Ehya-al-Turath Al-Arabi, vol-4, Page-426. Zadah, Abdur Rahman bin Muhammad Sulaiman, Majma-Al-Anhar Fi Sharh-e-Multaqi-Al-Abhar. Mōqi'al-Islam-chapter Al-Shahadat Vol-6, Page-124.
- ³ Az-zuhaili- Dr.-Wahba, Al-fiqh-ul-Islami wa-Adillatuho. Dar-ul-Fikr- Domascus (1996) ,Vol-6, Page-556.
- ⁴ Al-Shashi-Al-Qafal, Hiliat-ul-Uluma, Maktab-Al-Resalah-Al- Hadithah, Umman 1985 Vol-8, Page 285.
- ⁵ Ibid, vol-8, P-291.
- ⁶ Az-Zuhaili-Al-Fiqh-ul-Islami, Wa Adillatuho-Vol-6, P-559.
- ⁷ Al-Kasani, Bada' Al-Sana-e-Dar-u;-Kiktab Al-Arabi, Bairōt 1982, Vol-6, P-282.
- ⁸ Al-Hisbah: it is an Islamic term which is used for an institution whose work to monitor and keep everything in order in market and affairs of worships, while ombudsman like a judge to decide cases of institutions and solve the problems of employees.
- ⁹ Ibn-e-jazzi- Al qawneeni-al-fiqheeyah- P-202.
- ¹⁰ Ibn-Najar Muntahi-Al-Iradat Alam-ulKutub Vol-2, P-158.
- ¹¹ Az-zuhaili-Doctor – Wahbah – Fiqh-ul-Islami wa Adittatuho, Vol-6, P-564
- ¹² Ibn-Jazzi, Al-Qawaneen, Al-Fiqhiyyat, Makka Mukarrama, P-202, Az-Zuhaili, Fiqh-ul-Islami-wa-Adillatuho, Vol-6, P-564
- ¹³ Irfani- abdul-malik, Islami Qanun-e-Shahadat. P-39, ed-1980, Qanuni kutub khana kachehri road Lahore. Reffered book is, Al-Hulei- Najmuddin Ja'fer bin hasan, Shara'-e Islam. Vol-4 p-135
- ¹⁴ Al-Kasani Al-Badee, wa-sanae. Vol-6, P-270.
- ¹⁵ Ibid., Vol-6, P-270
- ¹⁶ Ibid., Vol-6, P-272
- ¹⁷ Al-Kasani, Al-Badar-wa-Sanae. Vol-6, P-270 Wal-Qazi-Ahmad Dawood, Al-Qararat-Al-Istena'iah Fi-Ussol-Al-Mahakamat-Al-Shareeyah-wa-Manahij Al-Dawa. Dar-Al-Saqafah-wa-Toazee Umman, 1997. Vol-2, P-395.
- ¹⁸ Al-Baqara: 282
- ¹⁹ Imam-Malik, Al-Mudawwanah Al-Kubra, Vol-4, P-83
- ²⁰ Al-Sharbeeni, Mughni-Al-Muhtajj, Vol-4, P-441
- ²¹ Ibn-Qudamah, Al-Mughni, Vol-9, P-148
- ²² An-Nōr- 13
- ²³ An-Nōr - 4

When the consideration of evidence of men was suspended due to necessity then it was obligatory to depend upon the number of women.

Usman al-Batti said that in case where exclusive evidence of women is accepted, the number of women witnesses will be only three not less than that. The proof of this opinion is that in every case where evidence of women accepted, they were three in number. So, therefore, it is necessary that there must be three women witnesses such that there was a man with them.⁷³

After evaluating all view points of different jurists we can reach to the conclusion that the arguments of Hanafi jurists and of others with them are much strong, because they combined both narrated arguments and rationally proofs for proving their view point. While other jurists like Shafee, Maliki and Usman-al-Batti relied only upon rational arguments that is why opinion of Hanafi jurists is preferred to be accepted in this case.

Conclusion:

This article concludes that all jurists of different school of thoughts have discussed evidence of women in detail and have deferent view point about it. This article can be summarized regarding the admissibility of women's evidence as that it cannot be accepted in cases of Hudūd and Qisas. Secondly evidence of women is admissible along with men in cases of civil rights like contracts and family cases. Thirdly evidence of one woman is acceptable in those cases where men cannot be informed or it is impossible for men to have access. This is the view point of Hanafi jurists which is preferred due to their strong arguments from the text of Quraan and Sunnah and rationally. Their view point suits to the nature of women and their behavior and also in the better interest of the muslim society. It also secures the rights of the woman as well as their honor in the muslim society.

WOMEN'S EVIDENCE IN ISLAMIC LAW

3. In a tradition Uqbah Ibn-e-Al Harith said, "I married with Umme-e-Yahya bin-Abi Ihab, then Umme Saoda, came and told that I have suckled both of you, then I went to Rasōlullah (S.A.W.) and told Him that, in response He (S.A.W.) turned His back. Then again I told Him (S.A.W.) and He (S.A.W.) said, "how and you were asserted indeed."⁶⁹
4. The stipulation of number in evidence has been laid down in fact as taabbud (to be followed as it is and cannot be explained logically) not having wisdom meaning. So, therefore, a khabar information or knowledge about something) from that man who is not innocent of lie, it does not give certain and authentic information but it gives frequent opinion and more supposition and that was proved by just one informer (Khabar-al-Wahid, al-adl).

Therefore there is no condition of number of witnesses in giving information but when we know that the number of witnesses has been stipulated by text.

In quarreling circumstance, the evidence of women remained exclusive in the text, Allah (S.W.T) said one man and two women witnesses.⁷⁰

Imam Al-Shafayee and Dawōd have the opinion that evidence of less than four women will not be accepted but Dawōd exempted suckling and permitted in it evidence of one woman. Imam Al-Shabi, Al-Nakhee, Qatadah, Ata and Ibn-e-Shibramah are also agreed with them.⁷¹

Arguments for their Opinion

In Shariah (Islamic law) two women witnesses substitute for one man witness. The rule is that two men witnesses are only sufficient, so therefore less than four female witnesses will not be sufficient.

Maliki jurists make two women witnesses sufficient to prove the case. Imam-al-Hakem, Ibn-e-Abi Laila, Ibn-e-Shibrama, As-Soari and in another tradition from Imam Ahmad.⁷² According to Maliki jurist it is a condition in accepting their evidence that this may be prevailed in neighborhood and propagated.

Proof of this School of Thought:

defects which men have not information and impossible to see. Exclusive evidence of women will not be accepted in case of suckling because it is permissible for close relative to know it. According to Abu-Hanifa, exclusive evidence of women will not be accepted in case of Istehlal-u-Sabi (crying of child after his birth) for inheritance because men can know it, therefore exclusive evidence of women is not a proof. Sahibain (two companions of Abu-Hanifa, i.e., Imam Abu yousaf and Imam Muhammad) said, "Exclusive evidence of women is also acceptable in inheritance, because Istehlal in a voice at the time of birth of child and at this time almost, men are not present usually. That is why their exclusive evidence in this case becomes like in case of child birth. And this is preferred opinion according to Al-Kamal Ibn-e-al-Human, the writer of Fath-ul-Qadeer.⁶⁵

- (2) Maliki, Shafayee and Humbali jurists said that exclusive evidence of women will only be accepted in those cases where men cannot see mostly such as virginity, widowhood, birth, menses, suckling and covered defects of women.⁶⁶

Measure of Exclusive Evidence of Women

Jurists disagreed on the number of exclusive evidence of women.

1. Opinion of Hanafi jurists and in a tradition from Imam Ahmad is that the evidence of woman witness is acceptable. Ibn-e-Abas, Ibn-e-Umar, Al-Hasan, Al-Basri and Az-Zahri are also agreed with Hanafi jurists. But Ibn-e-Hazam accepts one just woman witness or one just man witness only in suckling.⁶⁷
2. Their Argument in this Regard
 - (a) Hazaifa narrated that Rasōlullah (S.A.W.) permitted the evidence of midwife.
 - (b) Ibn-e-Umar narrated that Rasōlullah (S.A.W.) said or someone asked Rasōlullah (S.A.W.) then He (S.A.W.) said, "Who is permitted as witness in case of Suckling? Rasōlullah (S.A.W.), replied that one man or one woman and in another tradition one man and one woman.⁶⁸

WOMEN'S EVIDENCE IN ISLAMIC LAW

- (4) Ibn-e-Rushd said, "That Zahiriah or some of them are not permitting exclusive evidence in every case while they are permitting evidence of women alongwith men in every case."⁶⁰

Arguments of those Jurists who are against Exclusive Evidence of Women

- (1) Command of Allah (S.W.T) regarding four men witnesses in case of Zina (adultery) and of two men witnesses or one man and two women witnesses in case of delay debt, and for will in journey of muslims witnesses or of two non-muslims with oaths and in divorce and Recourse (Rajoo'e) two just men witnesses.

And Prophet Muhammad (S.A.W.) said that in litigation of earth(Property), two men witnesses from you or oath from defendant, nothing for you only that.⁶¹

Allah (S.W.T) and his Prophet (S.A.W.) have mentioned number of witnesses and their conditions only in these texts and we have to stop here and to obey it because Muslims Jurists are also agreed on accepting it.⁶²

- (2) It is not necessary that only women can see "a'wart" (parts between the navel and knee) because women are like men, that what are permissible for women to see are also permissible for men. And it is permissible for both of them to see these parts of adulators for the purpose of evidence or in case of necessity. Due to these reasons both men and women are alike and equally eligible to see.⁶³

After evaluating the arguments of both groups, the opinion of majority of jurists has to be preferred for acceptance due to its strong arguments. Accepting of exclusive evidence of women and dropping of men in these cases and circumstances is because of light sight and because sight of a gender to same gender is easy. And that is why Majallat-ul-Akkam, A'daliah has accepted this opinion in article 1685, that exclusive evidence of women is accepted only in those circumstances and conditions where it is impossible for men to see it.⁶⁴

Circumstances in which Exclusive Evidence of Women is Permissible

The jurists have different opinion in selection of circumstances in which exclusive evidence of women is permissible.

- (1) Opinion of Hanafi school of thought: They are accepting exclusive evidence of women in cases of birth of child, virginity and women's

2. Prophet (S.A.W.) said "Evidence of women is permissible in those cases where men cannot see."⁵²
3. Abdul-Razzaq narrated from Al-Zahri said "It is impossible to be informed except them like in birth cases of women and their defects."⁵³
4. From Uqbah Ibn-e-Harith that he married with Umm-e-Yahya bint-e-Abi-Ahab then a women came and said, "indeed I have suckled both of you then Rasōlullah (S.A.W.) asked him how it is? Uqbah replied, "it has been said," then Uqbah divorced her and she married with another person."⁵⁴
5. In a Hadith (Verse of Holy Prophet S.A.W.) that a person asked Rasōlullah (S.A.W.) and Rasōlullah (S.A.W.) replied, "one man or one woman and in another tradition, a man and a woman."⁵⁵
6. And therefore it is necessary that these ahkam (commands and rules) must be proved while it is impossible for men to be informed and to be witnesses on these things and it is only for women that they can get informations and are eligible to be witnesses exclusive in these matters. Therefore, exclusive evidence of women has to be accepted and to get benevolence and advantage for Ummah-al-Islamiah to get justice.⁵⁶

The Jurists in the second group who are not allowing exclusive evidence of women, they are Ali Bin-Abi Talib Ata, Makhol, Umar Bin Abdul Aziz, some of Az-Zahiriah and Imam Zufar from Hanfi jurists. Their statements are as below:

- (1) Ali Ibn-e-Abi Talib said, "Evidence of women is not permissible at all, although there is a man with them." Ata and Umar Bin Abdul Aziz also accepted this statement of Ali (R.A).⁵⁷
- (2) Ibn-e-Abi Shaibah narrated from Makhōl, "Evidence of women is not permissible but only is admissible in debt."⁵⁸
- (3) Imam Zufar said, "Exclusive evidence of women is not acceptable in anything in fact, not in birth, not in suckling, not in defect in women and not other than these."⁵⁹

WOMEN'S EVIDENCE IN ISLAMIC LAW

First, verse is a text upon the acceptance of evidence of women along with men in fiscal matter. While the second verse is a text upon the evidence of two men in case of Ruja (recourse after divorce).

- (b) Ibn-e-Masōd (R.A) narrated that Rasōlullah said, "that marriage is legal only when there is a guardian and two just persons witnesses."⁴⁶
- (c) Imam Al-Zahri said in this respect that there is Sunnah from Rasōlullah (S.A.W.) and two Caliphs that evidence of women is not acceptable in Hudōd in marriage and in divorce.⁴⁷
- (d) In fact non-admissibility of women's evidence is due to defect in their wisdom and lack of remembrance and shortcoming of guardianship. And she is unfit for khelafat (vicegerency), and their evidence is not acceptable in Hudōd and Qisas but their evidence is admissible in fiscal matters because of necessity and happens many times and have to less risk, while these things are not available in other matters.⁴⁸

Majallat-ul-Ahkam-al-Adaliah has taken view point of Hanafi jurists in article 1685 that proper measure of shahādah (evidence) in the rights of people is two men witnesses or one man and two women witnesses."⁴⁹ And this view point has been preferred.

Exclusive Evidence of Women

This topic can be covered in three stages. At first stage, the view points and arguments both sides of jurists who accept and those who reject the exclusive evidence of women will be discussed. while in the second stage, the circumstances in which admissibility of exclusive evidence of women will be discussed and the third stage will cover, Nisab (measurement) of exclusive evidence of women.

View Point of Jurists regarding Exclusive Evidence of Women

In this issue Jurists have been divided into two groups.

Majority of jurists of four schools of thought are in the first group.⁵⁰ They are allowing exclusive evidence of women and their arguments are as below:

1. It has been narrated from Prophet (S.A.W.) that the evidence of Al-Qabila (Mid wife or Nurse) is permissible.⁵¹

property, in civil contract and in contracts of Iqalah, Hawala (In language of law it means the shifting of debt from the liability of the original debtor to the liability of another person) surety and in rights of property like option and in dates of payments.⁴¹

In the book At-Turuq al Hukmiah, it is written that the case of Khula, can be decided on the base of evidence of one man witness and two women witnesses when husband claims. If wife claims then the case will be decided only on the base of two men witnesses. The difference between them that in case, when husband is claiming, he is claiming property only and this can be proved by one man witness and two women witnesses. But when wife is claimant then she is claiming dissolution of marriage and her prohibition upon him and it can only be proved by two men witnesses. There is also a narration from Imam Ahmad that the evidence of women will not be accepted in marriage and divorce. And he said in case of Wakalah (agency) if debt has been claimed, then the evidence of one man and two women is accepted and except of that evidence will not be accepted.⁴²

In the Book of Bidayat-ul-Mujtahid, that according to Imam Malik, "Evidence of women with men will not be accepted in rules and matters relating to body. Companions of Malik have difference among them relating to the acceptance of women's evidence in rights of bodies in fiscal matters such as, agencies and wills of money only.

Evidence of one man and two women is acceptable according to Malik and Ibn-ul-Qasim, while Ashhab and Ibn-e-Majeshōn said that only evidence of two men is acceptable.⁴³

Arguments of Those Who are Accepting Evidence of Women Along with Men in property Rights

- (a) They are arguing on the bases of verse of Holy Qurān, "O, you who believe! When you contract a debt for a fixed period, write it down..... and get two witnesses out of your own men. And get two witnesses out of two men (available), then a man and two women, such as you agree for witnesses."⁴⁴ And also Allah says, "And take as witness two just persons from among you (Muslims)."⁴⁵

WOMEN'S EVIDENCE IN ISLAMIC LAW

women's evidence particularly in Hudōd & Qisas. And it is known to us by jurisprudential rule that a particular is preferred over general one in case of conflict.³⁶

3. There is a substitute doubt in women's evidence because both of them stand for one man. And hudōd suspended because of doubt. Messenger Muhammad (S.A.W.) said "To suspend Hudōd when there is doubt."³⁷

It is an extra burden and trouble to impose shahādah on women particularly in Hudōd and Qisas which are very heinous and serious punishments. So therefore, the view point of the majority of the jurists is preferred and to be accepted and obeyed.

Women's Evidence in Civil Rights

1. Umar and Ali (R.A) said that evidence of women along with men is permissible in marriage and divorce.³⁸
 - (a) Women have eligibility of evidence because evidence completed by observing, keeping remember and delivering in the court. A witness gets knowledge by observation (Mushadah) and keeps for a long and continuing time by remembering it and a Qazi get knowledge by delivering it by a witness in the court. It was necessary that their evidence might be accepted like men but the text came against it because of their less outgoing from their homes and due to defect in the memory because of forgetfulness, an another women was added so that she may remind her.³⁹
 - (b) These rights can be proved by evidence associating with doubts. That marriage can be proved with joke, likewise and divorce, freeing of slaves, and there is no stronger doubt than joke. These rights can be suspended and cancelled that is why these rights can be proved by a man and two women witnesses as in fiscal matters like in property.⁴⁰
2. Imam Malik and Ahle-Madina (Residents of Madina city), Al-Shafyee, An-Nakh'ee, Al-Zahri and preferred view point of Hanbali have also the same opinion that only in fiscal matter and property, evidence of women along with men is accepted. In Mughni-al-Mahtaj that two men or one man and two women in

defect in number of men which removed by two women like in money and property.³²

Arguments of the Jurists who approved the general application of Women's Evidence in all rights and cases

Allah Ta'ala said "And get two witnesses out of your own men. And if there are not two men (available), then a man and two women, such as you agree for witnesses."³³

This verse points out that two women stand for one man in case of shahādah.

Abo Huraira narrates that Muhammad (S.A.W.) said "O, troop of women given alms, do more repentance because I have seen most of women in fire. Among them one intelligent and prudent woman asked why most of us will be in fire? He replied that you (women) abuse mostly and infidel of your husband and that I have seen them defective in religion and wisdom, then she asked O, Rasōlullah what is meant by defective in religion and wisdom? He (S.A.W.) replied that defective in wisdom is that the shahādah of two women is equal to shahādah of one man. While defective in religion means that they spend nights and have not to pray and they have not to fast in Ramadhan (at the time of menses).³⁴

Abo Saeed Al-Khudri narrated that Rasōlullah (S.A.W) asked , "Is shahādah of women half of the shahādah of men?"

We replied "Yes O Messenger of Allah".³⁵

So these Ahadith (sayings of Messenger of Allah) have general grammatical form of words "Al-Mara't" (women) and "Al-Rajul" (man) and these words are general words. In Arabic language when a word has before it "AL" becomes general word and has general application. Therefore, these words have general application in all types of cases. Therefore shahādah of women is accepted in all cases and rights, whether these cases are civil or criminal.

Evaluation of the arguments of approvers

1. The Qurānic text is to prove fiscal rights, because it is known to us by the consequence of the verse.
2. Ahadith (Verses of Prophet P.B.U.H) have general application of permissibility of women's evidence in all cases while the arguments of majority of the jurists are on impermissibility of

WOMEN'S EVIDENCE IN ISLAMIC LAW

Arguments from Sunnah (Sayings of Muhammad S.A.W.) , Rasōl-u-Allah (Swallala hu alahe Wassalam) said "Four men witnesses if not then Hadd (punishment) on your back."²⁷

In Hadith, Sa'd Bin Ubadah that he asked Rasōlullah ((S.A.W.) "If I found a man with my wife (who commits illegal sexual intercourse) should I wait till I bring four witnesses. He (Muhammad S.A.W.) replied, "Yes"²⁸

Imam Az-Zahree said in this respect that there are precedents of Rasōlullah (S.A.W.) and of His two successors after him that shahādah of women is not admissible in prescribed punishments and Retaliation (Hadōd & Qisas).²⁹

Rationale:

Hudōd and Qisas must be proved by evidence which must be free from any kind of doubt and suspicion. It is an established rule in Islamic procedural law that Hudōd punishments and Qisas are suspended and are not implemented when any doubt or suspicion is found in evidence and shahādah of women is not free from doubt because forgetfulness, carelessness and negligence are in nature of women. And there is defect in their wisdom and religion (naturally they are weak in wisdom and less responsible in action of religion). Due to these reasons their shahādah inherits doubt in cases of hudōd and Qisas but except these punishments their shahādah is accepted with doubt in all other cases.

The permissibility of shahādah of women is alternative of shahādah of men. And an alternative is not accepted in Hadōd punishments.³⁰

Second view point that the shahādah of women is accepted in all cases and rights, and has general application whether they are only women or with men. This is the view point of Zahiriah (who see to the apparent text). Atta and Hamad have also this view point. Their arguments and statements are as below:

Imam Ibn-e-Hazam said that shahādah in case of adultery will not be less than four probit and Muslim men or two probit Muslim women in place of one man, so they will be three men and two women or two men and four women or one man and six women, or eight women only.³¹

In Al-Mughni, it has been reported from A'ta and Hamad that said "shahādah of three men and two women is permissible because there is one

which negates the probity but if he repents and his good condition appeared then his shahādah will be accepted.¹⁷

The Rights Which Can Be Proved By Shahādah of Women With Men

Jurists are agreed on permissibility of shahādah of women with men. In this respect they bring forth proof from the Holy Qurān. Allah (S.W.T) said, "Have two witnesses from among your men, and if two men are not there, then one man and two women from those witnesses whom you like, so that if one of the two women errs, the other woman may remind her."¹⁸

But in this respect the Jurists are disagreed upon the selection of rights which can be proved by shahādah of women with men. This can be discussed it into two topics.

1. Shahādah of women in Hudūd (prescribed punishments) and Qisas (Retaliation). In this case the jurists divided into two groups.

- (a) They are majority of the jurists i.e. Hanafia, Maliki, Shaf'ee and some statements of Humbali jurists are as below:

In Mudawwana, the statement is as "Are you accept shahādah of man and two women on shahādah of one man in retaliation, said: shahādah of women are not admissible in prescribed punishment and retaliation."¹⁹ While in Mughni-al-Muhtaj four men as witnesses are stipulated in case of adultery.²⁰ In book of Al-Mughni of Ibn-e-Qudama, the punishments are only Hudūd (prescribed punishments) and Retaliation, only evidence of two men is admissible.²¹

Arguments of These Jurists:

Allah (W.W.T) said in verse, An-Nur "Why did they not produce four witnesses? Since they (the slanderers) have not produced witnesses, then with Allah they are the liars" ²² and in other verse that "And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever. They indeed are the Fasiqun (liars, rebellious, disobedient to Allah).²³ Allah's saying is that "And those of your women who commit illegal sexual intercourse, take the evidence of four witnesses from amongst you against them."²⁴ And in other verse of Al-Baqara, and get two witnesses out of your own men."²⁵

In part of At-Talaq Allah (SWT) said "And make two just persons from among you (Muslims) witnesses."²⁶

WOMEN'S EVIDENCE IN ISLAMIC LAW

and challenged by the adverse party and he is also true in his suspicious. A conflict is created between these two apparent so therefore one will be preferred and this is the role of judge to decide the statements before giving a judgment. There are some important and preferred suspicious which we are going to discuss as below:

1. That the shahādah may not be for repelling of damages and taking benefit.

Shahādah of Usōl (parentage ancestors), is not permissible for furoo' (off spring), and also shahādah of a lawyer is permissible for his client and shahādah of a partner is not admissible for his partner in their partnership case. And a shahādah of a servant is not permissible for his lord or master and likewise where ever it leads to attract benefit and repel damage or loss.

2. If shahādah is given in anticipation in the rights of people are also leads to suspicion because the rights of people cannot be proved without their claim. But the rights of Allah can be proved without claiming.
3. Evidence will also not be accepted in cases which cannot be perceived. For example if shahādah of eye witness on the death and life of a man.
4. Shahādah of a friend is permissible and can be accepted for his friend. But if their friendship is finished and they interfere and control in the property of his friend then their shahādah will not be accepted for each other.
5. That there is no enmity between Shahid and Mashhōd alaih (against whom shahādah is given).
6. That one person may not be eye witness and plaintiff at the same time. Therefore shahādah of a testator will not be accepted for orphan and also of a lawyer for his client.¹⁶
7. Shahādah of fornicator is also not acceptable. Like who has committed adultery, has taken wine, false allegation. Likewise false statement, false evidence, to leave prescribed prayers, fasting and commits any act which leads to fornication or un-believing in God (in-fidelity) and also shahādah of an Murtad (converted from Islam to any other religion), magician, or who is playing game of chance etc,

While Maliki jurists and Hanbali jurists have permitted the shahādah of a blind man when a voice is recognized and familiar due to the generality of verses in shahādah.¹¹

4. Al-Nutq (Speaking):

According Hanafi, Shafayee and Hambali jurists shahādah of a dumb is not accepted although he can understand gesture because gestures and signs are not amounting to evidences and because evidence a firm belief and indubitable truth and these can be achieved by uttering words. But according Maliki jurists a shahādah of dumb man is accepted when he can understand the gestures because gestures can be taken as words in cases of divorce, marriage and Zihar.¹² According to shiah school of thought, shahādah of a dumb is acceptable but it is better that two men assist him and explain his gestures.¹³

5. Al-adalat (Probity)

Al-adalat technically means to avoid Al kabayer (Big vices) and not repeat Al-Saghaer (small vices). Adalat is considered apparently in every Muslim and the witnesses will not be asked until the opposite party of the case abuses them and refuses to accept the evidence on the base of the probity of witness. But they will be cross examined in cases of Hudōd and Qisas (punishments and Retaliation) although they may not be abused by the opposite party. Most of the jurists have preferred this view point.¹⁴

And that is why shahādah of a blind man is not permissible in case of murder, Ghasb (Taking property by force), zina (Fornication), and in statements like in contract and leasing, but shahādah of blind is permissible in case of publication and translation.

Abuse in Shahadat:

The apparent probity of a person is to be defended and this to be proved by isteshab al-hal (they thing remains in condition as it was in past) not on proof. And that the probity must be proved by proof while Abu Hanifa recommended only apparent probity, because Allah (S.W.T) praised and described this nation (Ummah Islamia) by Ummah alwasatah (just and equitable nation) which means probity.

So therefore the probity is the original condition of Muslim which may be suspended accidentally.¹⁵ (16) Apparent probity is sufficient until suspected