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THE EXTENT OF THE ADMISSIBILITY OF EVIDENCE OF WOMEN IN ISLAMIC LAW

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1. Introduction

The position of women since the beginning of history to date is viewed from different perspectives, especially as it affects the admissibility of their evidence. In many places, women had no rights at all and treated worse than animals; and had no say in anything whatsoever. Their proper place was considered to be in the home or working in the fields and at other medial duties, with no regard for their identity or concern for their feelings. In some parts of the world, men doubted whether women even had souls or could be regarded as human beings.[1]

It is this appalling situation of women that prompted the West to believe that women have no rights in Islamic law comparable to those enjoyed by European women. The fact remains that not until very recently, throughout the western world the situation was no better at all. For example, in England over nine (9) million women were burned alive in the 16th century, and were only considered to be citizens in 1850 and by 1882 entitled to own property.[2] In France, only in 1938 were women allowed to deal in property and operate bank accounts.[3] In other words, it was until very recently women had no public voice, and were excluded from education and public affairs[4].

Viewing the above and looking at the enhanced status of women in Islamic law, it is a misnomer to view women as inferior.

In Islamic law, men and women are equal and no difference exists between them except in their physique which makes them perform different roles in the society. Even where the distinction exists, it is intended to enable them give genuine expressions of their faith. One such area of distinction is in relation to evidence. There are circumstances where the evidence of one man equals to that of two women. Also, there are situations where the evidence of women only or that of men only shall be required. Likewise, there are situations where the evidence of men and women are equally required.

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[1] Nazlee, S (1996), Feminism and Muslim Women; Ta-Ha Publishers Ltd, London; p 9.

[2] Ibid, P 11.

[3] Ibid.

[4] See generally, Figes, E (1978), Patriarchal Attitudes, London, P 152.

Therefore, this paper is a humble attempt to clarify those circumstances, particularly the extent to which the evidence of women is admissible in Islamic law.

2. Women in Islamic Law

In Islamic law, the position of women has been enhanced and honoured. This can be seen from the following Quranic verses thus:-

> *"And we have enjoined on man (to be good) to his parents: in travail upon travail did his mother bear him, and in years twain was his weaning: (hear the command), "show gratitude to me and to thy parents: to me is (thy final) goal."*[5]

> *"We have enjoyed on man kindness to his parent: in pain did his mother bear him, and in pain did she give him birth. The carrying of the (child) to his weaning is (a period of) thirty months....."*[6]

The above two verses are in relation to woman as a mother. It is because of the revered position of mother, that when a man came and asked 'to whom should he be more dutiful between father and mother, the Holy Prophet Muhammad (S.A.W) replied' 'To your mother' twice and only at the third instance he said To your father'.[7]

The Holy Qur'an, also speaks of a women as a wife thus:-

> *"And among His signs is this that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts); verily in that are signs for those who reflect."*[8]

Also that even if a man wants to divorce his wife a way out for him is stated thus:-

> *"When ye divorce women, and they fulfill the term of their (Iddat), either take them back on equitable terms or set them free on equitable terms"*[9]

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[5] Holy Qur'an, Chapter 31 V. 14.
[6] Chapter 46. V 15
[7] Reported by Bukhari and Muslim as quoted in Y. al-Qaradawi (1984), The lawful and the prohibited in Islam, The Holy Koran Publishing House, Beirut, Lebanon, P232.
[8] Chapter 30 v. 21
[9] Chapter 2 v. 231.

In short, a woman has full and similar rights as that of a man, as evidenced in the following Quranic verse thus:-

> *"And women shall have rights similar to the rights against them, according to what is equitable, but men have a degree (of advantage) over them. And Allah is exalted in power, wise."*[10]

From the above verse, there is no marital difference at all existing between a man and a women except when it comes to the different roles that is performed by the two.

3. Evidence of Women

As a general rule, there is no provision express or implied in the Holy Qur'an or Sunnah of the Holy Prophet Muhammad (S.A.W) which prohibits the admissibility of the evidence of a woman in Islamic law.

The exceptions to this general rule are hereunder discussed.

3.1 *Financial Matters*

In financial or monetary transactions the evidence of one man is equal to the evidence of two women.

This fact is evidenced by the Quranic verse thus:-

> *"And get two witnesses out of your own men, and if there are not two men, then a man and two women such as you choose for witnesses, so that if one of them errs, the other can remind her."*[11]

The Holy Prophet Muhammad (S.A.W) corroborated the above Quranic verse when he said to a delegation of women thus:-

> *"Is the evidence of one male not equal to the evidence of two women?." They said, "yes"*[12]

The rationale of two women witnesses as equal to one male in this circumstance is because on the average women tend to concentrate more on the affairs of the home and many of them are not particularly familiar with financial matters. Thus, the above Quranic verse is to forestall the possibility of any problem arising in monetary transactions in which the

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[10] Chapter 2 v 228

[11] chapter 2 v. 282.

[12] Ibn al-Qayyim al-Jawziyyah Muhammad Ibn Abu Bakr Shams al-Din (1973); Al-Turuq al-Hukmiyyah fi al-Siyasah al-Shar'iyyah, Matbah al- Muhammadiyyah, Cairo, PP 154-155.

majority of women are unfamiliar with, confusing and rather uninteresting, so that if one errs, the other can remind her of the correct situation.

3.2 *Criminal Cases*

There are divergent views on the evidence of women in criminal cases. According to the majority view to which the jurists of Hannafi, Maliki, Shafi'i and Hanbali schools subscribe to it, is that the evidence of women in Hudud and Qisas is not admissible. Only the evidence of men is admissible.[13] The evidence of women is admissible in other criminal matters such as Ta'azir[14]. But, according to Imams Ibn Taymiyyah and Ibn al-Qayyim, the evidence of women may be admissible in Hudud and Qisas if their evidence is authentic and the evidence of men is not available in such a cases.[15]

Zahiri School is of the view that the evidence of one man and two women is admissible in Hudud and Qisas cases.[16]

3.3 *Women Affairs.*

Generally, in matters that exclusively relate to women like virginity, menstruation, birth suckling, divorce, Iddah, cries of the child, paternity, and secrets of women etc, the evidence of women alone is admissible in them[17].

Shafi'i jurists are of the view that the evidence of four(4) women is necessary in the matters exclusively relating to women discussed above.[18]

While Hannafi, Maliki and Shafi'i jurists are of the view that the evidence of only one woman is sufficient in the matters relating to women discussed above[19].

Caliph Ali B. Abi Talib is of the view that even in matters exclusively relating to women, the evidence of women is admissible only when there is a man with them[20].

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[13] Ibn Rushd al-Qurtabi, Muhammad Ibn Ahmad Ibn Muhammed Ibn Ahmad, (n.d) Bidayatul Mujtahid wanihayatul muqtasid, vol. 1, Pp. 346-348.
[14] Ibid
[15] Ibn Rushd al-Qurtabi (n.d) Ibid, Pp. 346-348.
[16] Ibid, Pl' 156-157.
[17] Ibid, PP 154-155
[18] Ibid
[19] Ibid
[20] Ibid

And among the matters relating to women, Caliphs Umar and Ali are of the view that the testimony of women is not acceptable in marriage and divorce.[21]

3.4 *Recovery of Debt.*

In recovery of debt, the jurists differ on the evidence of women on it. Imam Malik says that the evidence of women along with that of at least a man is admissible in cases of debt.[22] Ibn al-Qayyim says that the evidence of women is admissible in cases of debt[23].

3.5 *Property and its Related Cases:*

In property cases (landed or movable), agency, wills etc, it is the view of Imam Malik and Ibn Hajr that the evidence of women is admissible only along with that of men.[24] That is the evidence of one man and two women, or that of two women in addition to an oath by the two women.[25]

3.6 *Expert Evidence*

According to the Mashhur (Majority) opinion of the jurists the solitary evidence of a woman as an expert is admissible and shall form the basis for the decision in any given case or matter.[26]

3.7 *Lian (Mutual imprecation) proceedings.*

Li'an is a pre-Islamic form of divorce which has been modified and accepted by Islam. It arises in a situation where the husband accuses his wife of committing zina and has no witness except his solitary evidence. In this circumstance, the requirement of four witnesses is dispensed with, and the husband shall be required to take an oath four times, the fifth time invoking the wrath of Allah in order to avert punishment of Qadhf (Slander). The wife is also required to take an oath four times, the fifth time invoking the wrath of Allah upon him if he is lying, in order to avert the punishment of qadhf (slander). The wife is also required to take an oath four times, the fifth time invoking the wrath of Allah upon her if the husband is telling the truth, in order to avert punishment of zina (adultery).

At this juncture, the Holy Qur'an has equated the evidence of a man with the evidence of a woman. The Qur'an says thus:-

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[21] Ibid

[22] Ibn al-Qayyim al-Jawziyyah, Muhammad Ibn Abu Bakr Shams al-Din (1973) Ibid P 154

[23] Ibid.

[24] Ibid

[25] Ibn Juzay, Muhammad Ibn Ahmad (n.d) Qawanin al-Fiqhiyya, Dar al Fikr, Beirut, Pp. 265-266.

[26] Ibid, P123.

And for those who launch a charge against their spouses, and have (in support) no evidence but their own, their solitary evidence (can be received) if they bear witness four times (with an oath) by Allah that they are solemnly telling the truth. And the fifth (oath) (should be) that they solemnly invoke the curse of Allah on themselves if they tell a lie.[27]

"But it would avert the punishment from the wife if she bears witness four times (with an oath) by Allah, that (her husband) is telling a lie. And the fifth (oath) should be that she solemnly invokes the wrath of Allah on herself if (her accuser) is telling the truth."[28]

4. Conclusion

From the totality of the foregoing, it is crystal clear that there are situations where the evidence of a man is equal to that of two women. There are other situations where the evidence of women only is required. In the other situations the evidence of women along with men is required. And there are situations where the evidence of a man is equated with the evidence of a woman.

In concluding this paper it is to be noted that the distinction exists between the evidence of men and women because of their different physique requiring different roles and behaviours. It is not because of the inferiority or lack of possessing normal common sense as is being stigmatized to women. The attention of women is focused to the home and familial matters more than that of the men. Thus, more competent to give evidence in those areas than men.

[27] Chapter 23 v. 6-7
[28] Chapter 24 v. 8-9.