

THE AUTHENTICITY OF WOMEN'S WITNESS IN ISLAM: A STUDY IN THE LIGHT OF AL-QUR'AN

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By keeping in view the dignity, delicacy and natural shyness of womanhood, Islam designed such laws and regulations which widen the space and include women in every field of life and introduced that social structure by which women can play an active role in all institutions of Islamic civilization by remaining into the boundaries of their actual field of action which is the development of a progressive new generation for the glorious future of Islamic civilization, the important responsibility which men cannot perform due to their natural masculinity and no capricious state of mind. This is the reason that Islam prefers the man more than woman in assigning the financial responsibility which is one of the two basic institutions of human life. Apparently In *Al-Qur'an sūrah al-Baqara*: 282 the witness of one man is regarded as equal to two women which is unfortunately the most misunderstood phenomenon about the gender related verses of the holy *Qur'an* and is still remains in orientalist's writings which is actually the result of miscomprehension.

Key Words: authenticity, witness, testimony, women's witness, feminine testimony.

Introduction

The whole universe is sustained because of a very organized system as even a single cell of an organism and every unit of a structure in such process is created purposefully for the continuation of the complex universal system. But in the whole system, the humankind is given by the central position because it is endowed by the highest degree of creation; the huge phenomenon is not worthless as because its degree of creation is also parallel to its purpose of creation for example, man is endowed by such physical powers and mental abilities which facilitate him to earn wealth and livelihood, and woman's physic is fixed by a reproductive system which indicates towards her field of action, so the majestic Creator, Allāh, designed such rules, regulations and commandments in the holy *Qur'an* for womanhood which are just appropriate to her special creation, status, and which protect her sensitivity and enhance her ability of accompaniment.

Two departments of human life are of vital importance

- (i) Financial Resources: to survive by having basic needs of life
- (ii) Reproduction and good brought up of constructive group of

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people for the survival of humankind and progress of a civilized state. The existence of civilized human race is impossible without the proper handling of these two institutions, so are divided equally between man and woman where man is selected as financial maintainer of his wife so that she can only focus on development and training of new generation to make them a useful individual of Islamic state, so as she is given by the responsibility of second fundamental sector therefore Islam does not impose on her additional responsibility to also fulfill financial requisites of her family this is the reason that in the divine laws regarding testimony of financial transaction decreed in al-Baqara verse 282 apparently men are preferred as testifiers but a closer look shows that women are also regarded as the trustworthy testifiers irrespective of their actual field of action.

The Holy Qur'an on Women's Status as a Testifier

The Holy Qur'an is the first legislative book ever which considers and introduces woman also as capable of giving witness and testimony. There exist even not a single instance in both Testaments which can be presented as an example of such kind of feminine participation in civil matters, the only ancient and somehow notable tradition in this regard are some verses in Laws of Manū in which followers are warned of women as they are described as unreliable testifiers:

Women should give evidence for women...One man who is free from covetousness may be (accepted as) witness; but not even many pure women, because the understanding of females is apt to waver.¹

But such gender discrimination, which Ruth Roded, the author of article 'Women and the Qur'an' published in the latest Brill's Encyclopedia of the Qur'an, portrayed², is not found in the holy Qur'an because Qur'an regards women's testimony as authentic as men's, there not mentioned any particular gender which is made as specified witness in testimony-related verses of the holy Qur'an:

يَا أَيُّهَا الَّذِينَ آمَنُوا شَهَادَةُ بَيْنِكُمْ إِذَا حَضَرَ أَحَدُكُمُ الْمَوْتُ حِينَ
الْوَصِيَّةِ اثْنَانِ ذَوَا عَدْلٍ مِنْكُمْ أَوْ آخَرَانِ مِنْ غَيْرِكُمْ³

O you who believe! call to witness between you when death draws nigh to one of you, at the time of

making the will, two just persons from among you, or two others from among others than you.

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ⁴

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 transgressors.

فَإِذَا بَلَغَ الْأَجِلْنِ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوِي عَدْلٍ مِنْكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ⁵

Then when they are about to fulfill their term appointed, either take them back in a good manner or part with them in a good manner. And take for witness two just persons from among you (Muslims). And establish the witness for Allah.

Moreover, the conditions which are specified for trustworthy witness are also determined without concerning any gender difference, these are:

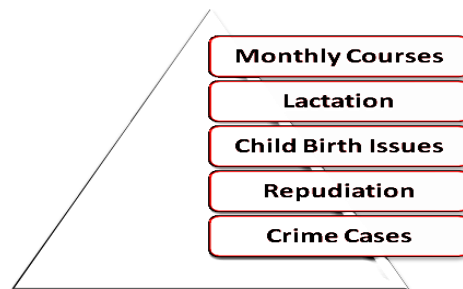
- i. the witness should be free (not slave);
- ii. adult;
- iii. Muslim;
- iv. Just;
- v. knowledgeable about the testifying matter;
- vi. should not testify for selfish ends;
- vii. should not be testifying to get out of a difficult situation;
- viii. should not known for making a great deal of mistakes;
- ix. or for neglecting human qualities;
- x. there should not be enmity between the witness and the one it is going to testifying against.⁶

'Alkāsānī regarded faculty of seeing, speech and mental power as compulsory conditions along with intellect, adulthood, liberty, knowledge and remembrance about the testifying matter, and excludes محدود في القذف (who has been punished for accusing chaste woman), خصم (enmity) and testimony of father for his child, of child for his father, of master for his slave, of slave for his master, of wife for her husband and of husband for his wife from the criteria of eligibility.⁷

In the fundamental criteria of trustworthy testifier set by the holy *Qura'n* and the jurists of Islam there fixed not a single condition even the slightest impression cannot be sensed by which the principle can be carried out as if only the witness of man is acceptable or the testimony of woman is inferior to man's by any reason or the masculine witness will be preferred etc. etc. but contrastingly it seems that the basic standards of testimony are made by keeping in view the provision of justice and the establishment of a peaceful and pious society.

Authenticity of Female Witness & Islamic Traditions

In Islam, even the single feminine witness is regarded as trustworthy and quiet sufficient to announce decree because if single feminine witness would determined as unreliable in Islam then the compulsion was declared clearly by authorities for the presence of two feminine witnesses for the trustworthy testifying process but reversely, there exist many examples in initial period of Islam when gigantic initiatives were taken on the base of just a single feminine witness. The phenomena thus provides evidence for not only the equality of male and female witness but also for the authenticity of woman's testimony in Islam in certain matters when only feminine witness would accepted; these are:



i. Monthly Courses/Menstruation

According to *Imām Bukhari*, *'Ibn Sīrīn* is reported to have said that women possess more knowledge in menstrual issues than men:

سألت ابن سيرين عن المرأة ترى الدم بعد قرنها بخمسة أيام ؟ قال النساء أعلم بذلك⁸

So in such regard the Holy Prophet (P.B.U.H.) made a religious decision on the sole witness of *Hazrat 'A'īsha*:

عَنْ عَائِشَةَ أَنَّ أُمَّ حَبِيبَةَ سَأَلَتْ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ الدَّمِ
قَالَتْ عَائِشَةُ رَضِيَ اللَّهُ عَنْهَا رَأَيْتُ مِرْكَنَهَا مَلَانًا دَمًا فَقَالَ لَهَا رَسُولُ اللَّهِ
صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ امْكُثِي قَدْرَ مَا كَانَتْ تَحْسُكُ خِضْتُكَ ثُمَّ
اغْتَسِلِي⁹

It was narrated from Hazrat 'A'isha that 'Umm-i-Habibah asked the Messenger of Allah (S.W.) about bleeding. Hazrat 'A'isha said: "I saw her wash tub filled with blood." The Messenger of Allah (S.W.) said to her: "Stop (praying) for as long as your period used to last, then perform (Ghusal)bath.

ii. Lactation

Once a Prophet's companion was separated from his newly wedded wife on the witness of only one woman who testified the relationship of lactation between both of them so the Prophet (P.B.U.H.) made the witness effective by separated 'Uqba (R.A.) from his wife:

عَنْ عُقْبَةَ بْنِ الْحَارِثِ: أَنَّهُ تَزَوَّجَ ابْنَةَ أَبِي إِهَابٍ بِنِ عَزِيزٍ فَأَتَتْهُ امْرَأَةٌ فَقَالَتْ
إِنِّي قَدْ أَرْضَعْتُ عُقْبَةَ وَالتِّي تَزَوَّجَ فَقَالَ لَهَا عُقْبَةُ مَا أَعْلَمُ أَنَّكَ أَرْضَعْتَنِي وَلَا
أَخْبَرْتَنِي فَرَكِبَ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِالْمَدِينَةِ فَسَأَلَهُ فَقَالَ
رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كَيْفَ وَقَدْ قِيلَ فَفَارَقَهَا عُقْبَةُ وَنَكَحَتْ
زَوْجًا غَيْرَهُ¹⁰

Narrated 'Abdullāh bin Abū Mala'ika from 'Uqba bin Al-Hārith: 'Uqba married the daughter of 'Abū 'Ithab bin 'Azāz, and then a woman came and said, "I suckled Uqba and his wife." 'Uqba said to her, "I do not know that you have suckled me, and you did not inform me." Then 'Uqba went to the Prophet (S.W.) in Medina and asked him about it. The Prophet (S.W.) said to him, "How (can you keep your wife) after it has been said (that both of you were suckled by the same woman)?" So, he divorced her and she was married to another (husband).

So the consensus made in this regard is:

¹¹ تجوز شهادة المرأة الواحدة في الرضاع

The single feminine witness is legitimate in the (the case of) lactation.

iii. Child Birth Issues

It is accepted by Muslim jurists and scholars that witness of even one woman would be regarded as sufficient in those birth issues which are however, inconceivable by men i.e. crying of infant etc.:

و يقبل فى الولادة والبكارة و العيوب بالنساء فى موضع لا يطلع عليه الرجال شهادة امرأة واحد¹²

Because men cannot participate in these feminine issues, *Sanānī* says:

تجوز شهادة المرأة الواحد فيما لا يطلع عليه الرجال¹³

The witness of single woman is legitimate in those issues by which men cannot be aware.

According to *Ibn Qayyim* :

تجوز شهادة امرأة واحدة فى الحيض والعدة و السقط و الحمام و كل ما لا يطلع عليه الا النساء فقال تجوز شهادة امرأة اذا كانت ثقة¹⁴

The witness of a single woman is legitimate in (the cases of) menstruation, waiting period, abortion, bathe issues, and in all those matters which cannot be informed but women so he said that witness of a woman is acceptable if she is trustworthy siqa

Neither determining witness's number nor specification of their gender is the core purpose of the *Qur'anic* verse but the central destination for which such procedure introduced is to minimize the chances of dispute in financial transaction and delivery of justice and right to its entitled one for which ratio and gender of witnesses could be modified according to sensitivity of faced situation, *Ibn-Kathīr* says that majority of jurists are of this opinion that this verse is recommendatory not mandatory:

وهذا الأمر محمول عند الجمهور على الإرشاد والندب، لا على الوجوب¹⁵

Such argument is actually supported by a tradition when once the Prophet Muhammad regarded testimony of one of his companions in a financial issue as equal to two witnesses:

عَنْ عُمَارَةَ بْنِ حُرَيْمَةَ أَنَّ عَمَّهُ حَدَّثَهُ وَهُوَ مِنْ أَصْحَابِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ابْتِاعَ فَرَسًا مِنْ أَعْرَابِيٍّ فَاسْتَتَبَعَهُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

لِيَقْضِيَهُ ثَمَنَ فَرَسِهِ فَأَسْرَعَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمَشْيَ وَأَبْطَأَ الْأَعْرَابِيُّ فَطَفِقَ رَجُلًا يَعْتَرِضُونَ الْأَعْرَابِيَّ فَيَسْأَلُونَهُ بِالْفَرَسِ وَلَا يَشْعُرُونَ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ابْتِغَاةُ فَنَادَى الْأَعْرَابِيُّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ إِنْ كُنْتُ مُبْتَاعًا هَذَا الْفَرَسِ وَإِلَّا بَعْتُهُ فَقَامَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ حِينَ سَمِعَ نِدَاءَ الْأَعْرَابِيِّ فَقَالَ أَوْ لَيْسَ قَدْ ابْتِغَيْتَهُ مِنْكَ فَقَالَ الْأَعْرَابِيُّ لَا وَاللَّهِ مَا بَعْتُكَ فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بَلَى قَدْ ابْتِغَيْتَهُ مِنْكَ فَطَفِقَ الْأَعْرَابِيُّ يَقُولُ هَلُمَّ شَهِيدًا فَقَالَ خُزَيْمَةُ بْنُ ثَابِتٍ أَنَا أَشْهَدُ أَنَّكَ قَدْ بَايَعْتَهُ فَأَقْبَلَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَلَى خُزَيْمَةَ فَقَالَ بِمَ تَشْهَدُ فَقَالَ بِتَصَدِيقِكَ يَا رَسُولَ اللَّهِ فَبَجَلَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ شَهَادَةَ خُزَيْمَةَ بِشَهَادَةِ رَجُلَيْنِ¹⁶

Narrated Uncle of 'Umārah 'ibn Khuḏīmah: The Prophet (S.W.) bought a horse from a Bedouin. The Prophet (S.W.) took him with him to pay him the price of his horse. The Messenger of Allah (S.W.) walked quickly and the Bedouin walked slowly. The people stopped the Bedouin and began to bargain with him for the horse as and they did not know that the Prophet (S.W.) had bought it. The Bedouin called the Messenger of Allah (S.W.) saying: If you want this horse, (then buy it), otherwise I shall sell it. The Prophet (S.W.) stopped when he heard the call of the Bedouin, and said: Have I not bought it from you? The Bedouin said: I swear by Allah, I have not sold it to you. The Prophet (S.W.) said: Yes, I have bought it from you. The Bedouin began to say: Bring a witness. Khuzīmah 'ibn Thābit then said: I bear witness that you have bought it. The Prophet (S.W.) turned to Khuzīmah and said: On what (grounds) do you bear witness? He said: By considering you trustworthy, Messenger of Allah (S.W.)! The Prophet (S.W.) made the witness of Khuzīmah equivalent to the witness of two people.

Following two incidents of Islamic history also potent the thesis that female testimony was accepted even in matters of divorce and assassination where there is a common notion that woman's witness is not acceptable in such cases.

iv. Repudiation

'Ibn Qayyīm mentioned an instance when in a case of divorce the separation was declared by Caliph 'Umar (R.A.) himself on the witness of four women, when there exist a general view that women cannot be considered as the competent witness in the

matters of divorce and *nikkāh*: 'Abū 'Ubaīd said on the authority of 'Abī 'Ubaīd that a person divorced his wife thrice under the influence of liquor. The case was taken to Hazrat 'Umar, four women appeared as witnesses and the Caliph made the talaak effective.¹⁷

v. Crime Cases

Although there is a dispute among Muslim jurists whether a woman's testimony in matters of *hudūd* (punishments prescribed by the *holy Qur'an*) and *qisās* (retaliation) is admissible or not¹⁸ but if examples of Prophetic era are consulted there found certain instances when the Holy Prophet himself decreed about crime cases on the base of just a single woman's testimony for example, there occurred a case when a woman was raped by an unknown man while she was going for the Morning Prayer. The rapist ran away after committing the crime, the woman raised an alarm and someone ran after the offender, other men joined the pursuit but mistakenly, they caught a man who was also pursuing the culprit and the woman said that he was the culprit, the man protested but ignoring his protestations, he was presented before the Holy Prophet. The woman accused him of committing the rape and the Prophet (P.B.U.H.) sentenced him. As he was being taken away for the execution of the sentence, the real culprit appeared before the Prophet and confessed his crime¹⁹. In another instance which is narrated by Hazrat 'Anas that once a girl, wearing silver ornaments, was robbed by a Jew who crushed her head with a stone. The Messenger of Allah entered upon her when she had still some breath. He asked her: (مَنْ قَتَلَكَ فَلَانْ قَتَلَكَ) *who has killed you? Had so and so killed you?* She replied: No, making a sign with her head. He again asked: *Who has killed you? Has so and so killed you?* She replied: No, making a sign with her head. He again asked: *Has so and so killed you?* (قَالَتْ نَعَمْ بِرَأْسِهَا فَأَمَرَ بِهِ رَسُولُ اللَّهِ فُقْتُلَ بَيْنَ) (حَجْرَيْنِ) She said: Yes, making sign with her head. The Messenger of Allah commanded regarding him, and he was killed between two stones²⁰.

When third caliph Hazrat 'Usmān was martyred the only eyewitness was his wife Nā'ilah and no one else was present on the very moment to testify the assassins of the third Caliph of Islam²¹, the point to be noted here is that *Sharī'ah* does not bind the court to follow the prescribed procedure to ascertain a crime,

even in cases of *hudūd* punishments or in any other crimes, it has been left to the discretion of the judge whether he accepts someone as witness or not.

In this regard, there is to be no discrimination between men and women; for example if a woman like *Hazrat Nā'ilah*, whose husband is killed in front of her and she can recognize the assassinate/assassinates thus testifies in a clear and definite manner, her testimony cannot be turned down simply on the basis that there is not another woman and a man to testify alongside her. If a court is satisfied by the statements of witnesses and by any circumstantial evidence, it has all the authority to pronounce a case as proven and if it is not satisfied, it has all the authority to reject it even if ten men have testified. Therefore according to section 134 of the 'Law of Evidence Act' of Pakistan, no particular number of witnesses has been fixed for the proof of any fact, and in cases of a dire necessity a case can be proved even on the evidence of one person as held by the Lahore High Court in *Fidā' Hussaīn vs Nasīm Akhtar*.²²

Al-Baqara 282: Apparent Comprehension, Lexical Meanings and Construction of Equations

A closer look of *al-Baqara* 282 shows that neither women nor their testimony or intellect is regarded as inferior but women are also given by an important role to play in the most sensitive part of financial transaction whereas before the advent of Islam there was the masculine monopoly and authority on commerce, finance, business, money matters etc. but for the first time in the history of mankind by some holy text womanhood was endowed by such dignity and pride to be the part of financial issues, it is stated in *al-Baqara* 282:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ وَلْيَكْتُبَ بَيْنَكُمْ
كَاتِبٌ بِالْعَدْلِ وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي
عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسَ مِنْهُ شَيْئًا فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ
سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمِلَّ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ وَاسْتَشْهِدُوا
شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ
الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الْأُخْرَى²³

O you who believe! When you contract a debt for a fixed period, write it down. Let a scribe write it down

in justice between you. Let not the scribe refuse to write as Allah has taught him, so let him write. Let him (the debtor) who incurs the liability dictate, and he must fear Allah, his Lord, and diminish not anything of what he owes. But if the debtor is of poor understanding, or weak, or is unable himself to dictate, then let his guardian dictate in justice. 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, so that if one of them (two women) errs, the other can remind her

According to the Holy Qur'an two men are required for veracity of a written document of financial transaction as testimony of only one man is not considered to be enough. It doesn't mean that the Qur'an regards single male witness as incomplete, but to make it doubly ensured the second man is required to act as a supplement, so that if there is any deficiency in the first witness it can be made flawless by the accompaniment of another male witness. Such process does not declare men as inferior, incapable or deficient and same is the case when male testifiers are replaced by those of females. As the equation, if observes in fragments, is similar in both cases, i.e.:

Witness	Trustworthy Witness Requires: 1 Male Witness + 1 Male
Witness + 1 Female Witness	: 1 Male Witness + 1 Female

Rather than declare her as incompetent two women are required just to recover any deficiency, so if two women are required for a reliable witness then two men are also essential for an authentic financial testifying procedure.

If the Qur'anic principle be that a financial issue can be proved only by the evidence of one man and two women it would obviously mean that all the three should prove the matter fully but if, as the word (فُتْزَكِرَ fatuzakira) indicates, one of them for example man says that he does not remember or pleads ignorance then it cannot be held to be witness. The exclusion of his evidence from consideration would reduce the number of witnesses to less than the required number, so the requirement of two male witnesses or

of one male or two female witnesses before a court of law cannot be taken as a hard and fast rule but it must have been evolved a restoration to analogy (Qiyās) by the jurists.

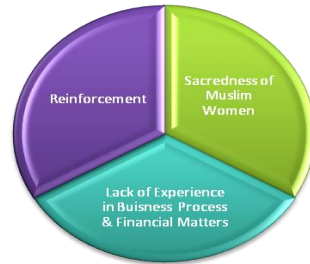
In this respect two words used in the holy verse are of vital importance; the words and their literal meanings are as follow:

- i. **تَضَلَّ** *Tazillā*
- ii. **فَتَذَكَّرَ** *fatuzakira*

By mentioning of the two words, it is criticized by Ruth M. Roded that Qur'an regards women as mentally inferior to men but the actual situation is in contrast if the dissection of these two words is made. The words used for forgetfulness in Arabic are [نسيان، نسي] etc. which are not used in the verse but the word [ضل] is used which means to get confuse, become perplex, deviate from what is right²⁴, to err, lose one's way²⁵ etc. whereas the second woman is not a witness actually but a [تذكرو]²⁶ who acts as a reminder when the female witness becomes confuse thus supplements her just like a male witness do to his male fellow. So in this way the equation becomes entirely different to that of which is presented by the author of Encyclopedia of the Qur'an:

Equation Presented by the Critic:	1 Male Witness = 2 Female Witnesses
Actual Equation:	1 Male Witness + 1 Female Witness + 1 Female Reminder [تذكرو]
Basic Witnesses:	1 Man + 1 Woman
So:	1 Male Witness = 1 Female Witness

Despite of having gender fellowship, there are following important significances by which accompaniment of female reminder [تذكرو] is essential:



i. Sacredness of Muslim Womanhood

It is undesirable for Muslim women to appear frequently at those places which are often visited by criminal sort of persons i.e. courts. An instance is found from Prophet's era when even the adulteress was restricted to appear in front of judiciary and the case was summoned and adjudication was made without her public appearance in the court:

عَنْ أَبِي هُرَيْرَةَ، وَزَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ، أَنَّهُمَا أَخْبَرَاهُ أَنَّ رَجُلَيْنِ اخْتَصَمَا إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ أَخَذَهُمَا أَقْضِ بَيْنَنَا بِكِتَابِ اللَّهِ . وَقَالَ الْآخَرُ وَهُوَ أَفْقَهُهُمَا . أَجَلُ يَا رَسُولَ اللَّهِ وَانْدَنْ لِي فِي أَنْ أَتَكَلَّمَ . قَالَ إِنَّ ابْنِي كَانَ عَسِيفًا عَلَى هَذَا فَرَزَنِي بِامْرَأَتِهِ فَأَخْبَرُونِي أَنَّ عَلَى ابْنِي الرَّجْمَ فَأَفْتَدَيْتُ بِمِائَةِ شَاةٍ وَبِجَارِيَةٍ لِي ثُمَّ إِنِّي سَأَلْتُ أَهْلَ الْعِلْمِ فَأَخْبَرُونِي أَنَّ عَلَى ابْنِي جَلْدَ مِائَةٍ وَتَغْرِيبَ عَامٍ وَإِنَّمَا الرَّجْمُ عَلَى امْرَأَتِهِ . فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " وَالَّذِي نَفْسِي بِيَدِهِ لَا أَقْضِيَنَّ بَيْنَكُمَا بِكِتَابِ اللَّهِ أَمَا غَنَمُكَ وَجَارِيَتُكَ فَرَدُّ إِلَيْكَ " . وَجَلَدَ ابْنَهُ مِائَةً وَغَرَبَهُ عَامًا وَأَمَرَ أُتَيْسًا أَنْ يَأْتِيَ امْرَأَةَ الْآخَرِ " فَإِنْ اعْتَرَفَتْ فَارْجُمُهَا " رَفَاعَتُهَا .²⁷

It was narrated from 'Abū Hurīrah and Zāid bin Khālīd Al-Juhnī that: Two men referred a dispute to the Messenger of Allah [SAW]. One of them said: "O Messenger of Allah, pass judgment between us according to the Book of Allah." The other, who was wiser, said: "Yes, O Messenger of Allah, and allow me to speak." He said: "My son was a laborer serving this man, and he committed Zinā with his wife. They told me that my son was to be stoned to death, but I ransomed him with one hundred sheep and a slave girl of mine. Then I asked the people of knowledge, who told me that my son was to be given one hundred

lashes and exiled for a year, and that his (the man's) wife was to be stoned to death." The Messenger of Allah [SAW] said: "By the One in Whose hand is my soul, I will pass judgment between you according to the Book of Allah. As for your sheep and your slave girl, take them back." Then he gave his son one hundred lashes, and exiled him for one year, and he ordered 'Unaīs to go to the wife of the other man and if she confessed, to stone her to death. She did confess, so he stoned her to death.

If the adulteress was treated in such courteous manner than privacy and sacredness of modest ladies of noble families is most laudable so instead of one, two women are required to appear for testimony. So it is not inferiority but superiority of Muslim woman that she is considered to testify financial matters (which are regarded as male domain issues) by having a privilege of another female partner in the court.

ii. Lack of Experience in Business Process & Financial Matters

Being not responsible for financial duties, most of the women do not take much interest and participation in complex business matters, so stipulation of two female witnesses is due to the fact that they are more liable to commit mistakes because of less familiarity to economics and finance and men can remember related facts and figures better than women so such ratio is determined to minimize the chances of injustice which could affect either party of the case.²⁸

iii. Reinforcement

Presence of the reminder with female witness is mandatory not to reduce the status of her testimony but only to reinforce her by another female partner on the occasion of her appearance in public court (which usually possess male dominant environment) by keeping in mind the natural feminine shyness and perplex methods of interrogation moreover, it has explored by recent studies that women are recessive to opposite sex because unlike men, women can influence other women but are unable to influence men as they simply use to avoid feminine advices, orders and prohibitions but on the other hand, women can hardly resist to masculine influence.²⁹

Civil Procedure of Testimony & Gender Equality

The previously illustrated equations which are derived from the *Qur'anic* verse proves it more than obvious that testimony is to be rendered by only one woman not by two the *تذكرة* will participate only to remind her but if she errs. As Justice *'Aftāb Hussāīn* of Pakistan states that jurists differ whether at the time of examination in court both women should be present before the *Qāzī* or the other should stay out until summoned for her own evidence. If both women are appearing simultaneously in court, obviously the role of one is to remind the other and the only witness is the one who is reminded to correct herself. If, on the other hand, one of them is to stay out to be summoned if the other woman errs on account of forgetfulness and she merely discharges the function of the one who reminds, in that case also the evidence would be of the woman who had erred. If in either of the two cases the independent evidence of the two women is recorded, of whom erred and the other made a correct statement then the *Qāzī* would in effect be relying upon the evidence of one woman and not two.³⁰

The first and foremost purpose of Islamic judiciary system is the provision of justice and protection of rights and not the determination of quality of testimony on the gender scale. Consequently, according to the actual spirit of the *Qur'an* and the *Sharī'ah*, woman's testimony is regarded as authentic as of man; even in some crucial cases the only feminine testimony can be accepted as the decisive one, this is the reason that in the chapter devoted for testimony, there are 51 articles (1684-1735) in *Mujallah Al-Ahkām Al- 'Adliya* and not a single article represents such differentiation in testimony, rather than any gender discrimination, it is stated clearly in the article 1685 that woman testimony is acceptable in financial matters also if it is not possible for the men to approach on the exact occasion.³¹

Conclusion:

It seems that woman-related commandments of the *holy Qur'an* are composed with accordance to feminine design and purpose of creation so she is given by that privileges through these *Qur'anic* teachings which would facilitate her to attain her prime objective. It should be noted here that instead of man-made, these commandments are divine-made so not similarity but the element of equality is dominant in them because these commandments are for that category of creation which are although similar in class but

unique in their type and this major difference does not require similarity to attain equality. So, following two abilities are extensively required to understand the meaning and actual spirit of *al-Baqara* 282 : i) The ability to read the selected sacred text with a neutral and scientific mode of thought and, ii) a certain degree of knowledge about that connection which is found between specific creation and special commandments about that particular creation.

NOTES & REFERENCES

¹ *Manū, Laws of Manū*, 8:68,77

² *Women's testimony is another ambivalent issue in the Quran. When two male witnesses are required but no men are available, the testimony of one man and two women is specified. The reason for this inequality is clearly stated in the relevant verse... In other words, women are reliable enough to provide legal testimony but their memory is not as accurate as that of men.* Encyclopedia of the Qur'an, vol. 5 , p. 525

³ *Holy Qur'an, Al-Mā'idah*, 5:106

⁴ *Holy Qur'an, Al-Nūr*, 24:4

⁵ *Holy Qur'an, Al-Talāq*, 65:2

⁶ *Fakhr al-Dīn Abū 'Abd Allāh ibn 'Umar al-Rāzī, Maḥāṭib al-Ghayb also known as Al Tafsīr Al Kabīr*, Vol.7 (Beirut: Dār al-al kutub al- 'ilmīyya, 2000), 99

⁷ *'Alkāsanī, Bidā'y Al-Sanā'y*, trans. Mūlānā Dr. 'Abdul Wāhid , Vol. 6, 633-644

⁸ *'Imām Bukhari, Al-Jāmi' Al-Sahīh*, Book on Menstruation Periods, Chapter: If a Woman gets Menses Thrice a Month

⁹ *'Imām Nasā'ī, Sunan Al- Nasā'ī*, The Book of Menstruation and *Istihādah*, Chapter: A Woman Who Has Regular Days During Which She Menstruates Each Month, Hadith No. 352 [قال الألباني : صحيح]

¹⁰ *'Imām Bukhari, Al-Jāmi' Al-Sahīh*, Book: Witnesses, Chapter: When a Witness or Witnesses Give Evidence, Hadith No. 2497

¹¹ *'Abū Bakar bin Hamām bin Nāfa' Sanānī* , *Al-Musanif*, Vol.8 (Beirut: Al-Maktab Al- Islāmī, 1403Hj.), 335

¹² *Burh ān-ul-Dīn 'Abul Hassan 'Alī bin 'Abī Bakar Marghīnān ī, Al-Hid āya'*, Vol.2 (Karachi: Muhammad 'Alī Kārkh ānah Islāmī Kutab, N.D.), 154

¹³ *'Abū Bakar bin Hamām bin Nāfa' Sanānī* , *Al-Musanif*, Vol. 7, 484

¹⁴ *'Ibn Qayyīm, Atturūk Al-Hikmīyah fī Asīyāsah Al-Sharī'yah*, (Cordova: Matba' Al-Madnī, N.D.), 115

¹⁵ *'Ibn Kathīr*, *Tafsīr Al-Qur'an Al-Azīm also known as Tafīsr Ibn-Kathīr*, Vol.1, 449

¹⁶ *Abū Daw'ūd, Sunan 'Abī Daw'ūd*, Book: The Office of the Judge, Chapter: If the Judge knows that the Testimony of one Person is True, is it Permissible for him to Pass Judgment on the Basis of That, Hadith No.3609 [قال الألباني : صحيح]

¹⁷ *Ibn Qayyīm, Atturūk Al-Hikmīyah fī Asīyāsah Al-Sharī'yah*, 115

¹⁸ *'Alkāsanī, Bidā'y Al-Sanā'y*, trans. Mūlānā Dr. 'Abdul Wāhid , Vol.6, 659 (according to Ahl-i-Z āhir, women's testimony is admissible in all types of cases)

if the witness is consists of more than one woman along with a male testimony; to 'Abū Hanīfa female witness is admissible in all cases but 'Imām Mālik says vice versa), 'Ibn Rushd, *Bidāya 'tul-Mujtahid*, 830.

¹⁹ 'Imām Tirmidhī, *Al-Jāmi' Al- Tirmidhī*, Book on Legal Punishments, Chapter: What Has Been Relates About A Woman Who Is Forced To Commit Adultery, Hadith No. 1454 (قال الألباني : حسن); 'Ibn Qayyim, *Attūrūk Al-Hikmīya*, 86

²⁰ 'Abū Daw'ūd, *Sunan 'Abī Daw'ūd*, Book: Types of Blood-Wit, Chapter: Retaliation On The Killer, Hadith No. 4531 (قال الألباني: صحيح)

²¹ al-Ṭabarī, 'Abū Ja'far Muḥammad b. Jarīr, *Tārīkh-i- Ṭabarī*, trans. Sayyīd Muḥammad Ibrāhīm M.A. Nidvī, Vol.2 (Karachi: Nafīs Academy 'Istrīchan Road, 1986), 464; Muḥammad 'Ibn Sā'd, *Tabqāt Ibn Sā'd*, trans. 'Allāma 'Abdullāh Al- 'Amādī, Vol.2 (Karachi: Nafīs Academy 'Urdū Bāzār, N.D.), 144; Shāh Mu 'īn-ud-Dīn Ahmad Nīdvī, *Tārīkh-i-Islām*, Vol.1 (Lahore: Maktaba 'Rahmanīya Ghaznī Strīt 'Urdū Bāzār, N.D.), 259

²² PLD 1979, Lahore: 328

²³ Holy Qur'an, Al-Baqarah, 2:282

²⁴ Al-Mū'rid Al-Wasīt, 7th ed., s.v. “ذكر”

²⁵ Bey's Arabic-English Dictionary, 2nd ed., s.v. “ذكر”

²⁶ تُذَكِّر means to remember, recall, recollect, keep in mind, bear in mind etc (Al-Mawrid Al-Waseet, 7th ed., “تذكر”) from which the word تذكُّره is derived which means reminder, memento etc. (Ibid)

²⁷ 'Imām Nasā'ī, *Sunan Al- Nasā'ī*, Book: Etiquette of Judges, Chapter: Sparing Women the Need to Attend the Ruling, Hadith No. 5410, [قال الألباني : صحيح]

²⁸ Muhammad Asad, *The Message of the Qur'an*, (Gibraltar: Dār Al- 'Undalas, 1980), 63

²⁹ Thomas Eckes and Hanns M.Trautner eds., *The Developmental Psychology of Gender*, 56

³⁰ Justice 'Āftāb Hūsain, *Status of Women in Islam*, (Lahore: Law Publishing Company, 1987), 245,246

³¹ Mujallah Al-Ahkām Al- 'Adliya, trans. 'Abdul Qudūs Hāshmī, (Lahore: 'Ulmā' Academy Shuba 'i-Matbū'āt Mehkama Aū 'kāf Punjāb, 1981), 393
