

The Testimony of Women in Islamic Law

by Dr. Taha Jaber Al-Alwani¹

The only verse in the entire Qur'an to equate the testimony of two women to that of one man is the so-called verse of debt (*ayat al dayn*), which occurs in Qur'an 2:282. This verse contains a significant amount of material that later jurists categorized variously as recommended or merely instructional (*irshad*) and without legal import. However, a very few jurists opined that the recording of debts, witnessing, and all other matters dealt with in the verse may be categorized as obligatory (*wajib*).

Whether we agree or disagree with a particular school, there is near unanimity among all jurists that the Qur'an's mention of testimony in relation to transactions was revealed to advise Muslims on how they might reduce the possibility of misunderstandings arising among themselves. Therefore, the entire matter of testimony was revealed to humanity by way of instruction. Obviously, instruction is one thing, while binding legal precepts are another matter entirely.

The verse of debt, moreover, may be seen as connecting testimony, the taking of witnesses, the agreement of both parties to the contract at the time of its ratification, and the judge's (*qadi*) acceptance of testimony given by the witnesses, as follows:

and call upon two of your men to act as witnesses; and if two men are not available, then a man and two women from among such as are acceptable to you as witnesses... (2:282)

The verse goes on to explain the reason for seeking testimony from two women in place of the testimony of one man, by saying "...so that if one of them should make a mistake, the other could remind her" (2:282).

Thus, the verse indicates clearly that there are differences in the ability of women to serve, under the prevailing social conditions, as competent witnesses and givers of testimony in cases involving financial transactions. The relevant wording implies, that in general, transactions were not often matters of concern to women at that time. It also indicates that the actual witness would be one woman, even though her testimony might require the support of another woman who would "remind" her if necessary. Thus, one woman acts as a guarantor for the accuracy of the other's testimony.

Obviously, then, the two are not on the same level, for one witness is supposed to be knowledgeable and aware of that to which she is testifying. As such her testimony is legally acceptable. The other witness is considered merely a guarantor, for the basis of all legal testimony is that it should aid the judge in reviewing the case as if he/she had been an actual witness thereof. Moreover, testimony is considered a legal responsibility so as to instill within the witness a heightened sense of his/her awareness of God and of the importance of the undertaking, so that he/she will not be careless with the testimony or swayed by emotions

¹ Dr. Taha J. al-Alwani is a member of the Fiqh Academy of the Organization of the Islamic Conference, chairman of the Fiqh Council of North America, and president of the School of Islamic and Social Sciences in Herndon, Virginia. The foregoing is the first half of an article published in *The American Journal of Islamic Social Sciences* (Volume 13, Number 2, Summer 1996), a joint publication of The Association of Muslim Social Scientists and the International Institute of Islamic Thought (IIIT). For a copy of the entire article, which was translated from the original Arabic by Yusuf Talal DeLorenzo, contact the IIIT.

or personal feelings. If the verse were understood in this way, it is likely that many of the past and present disputes surrounding it could be avoided, for the main cause of such disputes has been the belief that the verse has binding and legal significance.

Furthermore, classical scholars appended another matter to the verse's guidelines concerning testimony, one that had absolutely nothing to do with the distribution of responsibilities addressed in the verse: their assumption that the verse pointed to women's natural inferiority, especially in terms of their mental and physical abilities, despite its clear reference to women living at the time of revelation—a time when there were few or no opportunities for women to receive an education, to occupy positions of responsibility in society, or to undertake work that would increase their experience in ways that would make "being reminded" unnecessary. However, once society passes beyond that stage and women are allowed to participate more fully in its affairs, and in transactions in particular, there should no longer be a need for such arrangements.

The question for consideration is whether or not, on the basis of the verse's circumstantial context (*'illah*), the testimony of one woman may be accepted even when the teaching of the verse is that two women should testify. Before dealing with this question, however, and before examining whether or not it is legitimate or whether it may be answered in the affirmative or the negative, we must reflect on several different issues.

The First Issue

The Qur'an, as discourse, was directed toward a people who, before its revelation, had little or no regard for women and who did not allow their inclusion in matters considered the domain of men. In fact pre-Islamic Arab society sanctioned female infanticide.

And they ascribe daughters unto God, who is limitless in His glory, whereas for themselves [they would choose, if they could, only] what they desire; for, whenever any of them is given the glad tidings of [the birth of] a girl, his face darkens, and he is filled with suppressed anger, avoiding all people because of the [alleged] evil of glad tiding which he has received, [and debating with himself:] shall he keep this [child] despite the contempt [which he feels for it]—or shall he bury it in the dust? Oh, evil indeed is whatever they decide! (16:57-59)

According to the Qur'anic commentator, Fakhr al Din al Razi:

Men in the period of *jahiliyah* would go into hiding when they knew that their wives were about to give birth. Then, if they were told they had fathered a son, they rejoiced. But if they learned that the newborn was a girl, they were saddened, and would stay in seclusion, trying to make up their minds about what they should do with the child: *shall he keep this [child] despite the contempt [which he feels for it]—or shall he bury it in the dust?* Should he keep the child alive, as an object of perpetual disdain, or simply do away with it?

Nor was this phenomenon very far removed from the period of revelation. In fact, some early Muslims had killed their infant daughters. Qays ibn 'Asim once said to the Prophet: "O Prophet of God! In the days of ignorance I buried alive seven daughters." The Prophet replied: "For each one of them, set free one slave." The man said: "But I have only camels." So the Prophet told him: "Then for each one, sacrifice a camel (at the Hajj)."

Another man told the Prophet: "I have never been able to taste the sweetness of faith, even though I have accepted Islam. In the days of ignorance I had a daughter. One day, I told my wife to dress her up. When my wife sent her out to me, I took her to a distant valley in the desert where nothing grew. At that place, I threw my daughter down from my camel, and rode away. When I left her, I heard her calling to me: 'Father! You have killed me!' Now,

whenever I think of her and what she said, I find that nothing helps me." The Prophet replied: "Whatever wrongs took place in the days of ignorance are abolished by Islam. And whatever wrongs take place in Islam may be abolished by repentance (*istighfar*)."

The Qur'an transported the people of those times to the realm of faith in absolute gender equality. This single article of faith, perhaps more than any other, represented a revolution no less significant than Islam's condemnation of idolatry, and its censure of blind faith passed, without examination, from one generation to another. Theoretically, such equality may seem a relatively simple matter to accept. But when it comes to the practical implementation of any new social model, problems are certain to arise. In the case of early Muslim society, given the long-established customs, attitudes and mores of pre-Islamic Arabia, it was necessary to implement such changes in stages and to make allowances for society's capacity to adjust itself accordingly. For example, if God had prohibited wine by degrees, as related by 'A'ishah, it follows that He would do the same in the case of an issue of far greater importance and sensitivity in that society, namely, the equality of men and women. It would appear that the Qur'an sought gradual change via prudent and judicious means, rather than all at once, in which case the possibility of rejection and negative reactions might have been greater. Thus, its initial intent was to instruct Muslims in the ways of a truly civilized society, one in which economic, social, or other changes would be integral to its development. Such change, moreover, is designed to occur in accord with the Qur'anic teachings for introducing reform on the basis of the two readings: that of revelation and that of the natural universe. And this is what the verse of debt brings to us.

The Qur'an, in its own subtle manner and with characteristic sagacity, places the reclassification of women as fully participating members of society on its agenda for reform. By establishing a role for woman in the witnessing of transactions, even though at the time of revelation they had little to do with such matters, the Qur'an seeks to give concrete form to the idea of woman as participant:

and if two men are not available, then a man and two women from among such as are acceptable to you as witnesses (2:282)

The objective is to end the traditional perception of women by including them, "among such as are acceptable to you as witnesses," and to bring about their acceptance as full partners in society by means of this practical recognition. In this way, the Qur'an seeks to overcome the psychological impediments of men that prevent them from accepting women as their equals in society. At the time of revelation, the question of numbers was irrelevant, as it was the equality of women that the Qur'an sought to emphasize. Even the matter of witnessing served merely as a means to an end or as a practical way of establishing the concept of gender equality, for what was critically significant was the Qur'an's application of the principle of equality, not only on a religious or otherworldly level, but on the levels of human society, interpersonal relations and, most pointedly, commerce. Under the prevailing circumstances, all of this was extremely important.

Thus, it was as if the Qur'an, in its subtle attempt to bring about major change in a society whose customs constituted a major obstacle in the way of that change, sought to address that society in an "acceptable" manner by implying that women were somehow less important as witnesses in such matters. As a result, the testimony of two women would equal that of one man. It was as if the Qur'an had recognized society's view that women, in general, are quicker to forget matters related to affairs with which they had little or nothing to do, especially when these were usually conducted and concluded orally.

Furthermore, the society's oral culture was dominated by two cultures: that of pagan Arabia and its female infanticide and that of the People of the Book (Christian and Jewish inhabitants of Arabian towns) who considered woman the chief reason for humanity's fall from Paradise. Under those circumstances and by means of this approach, the change sought by the Qur'an was not change that would overturn completely the society's customs, but rather a modification or a judicious laying of foundations for the acceptance of Qur'anic teachings about equality in general. Otherwise, it is more than obvious that the "forgetfulness" taken as a circumstantial context for the legal ruling regarding the acceptance of two women's testimony in place of one man's is a trait shared equally throughout the world. From the beginning of history, each man and woman has been subject to it. In fact, Adam is characterized as having forgotten the covenant of his Lord, a matter of far greater importance.

Both the pagan Arabs and the Arabian People of the Book believed that women were somehow a lesser breed than men. Indeed, the dominant culture on the Arabian peninsula at the time was that of the Christians and the Jews, both of which refused to grant equality to women.

The Second Issue

It must be admitted that Christian, Jewish, and Muslim scholars have neglected the wisdom of their respective revelations concerning the equality of the sexes. Qur'anic commentators and jurists in particular seem to have ignored the broader intellectual aspects of a woman's testimony. In addition, some seem to have allowed themselves to completely overlook the basic Qur'anic principle of gender equality, even though this teaching is mentioned in literally hundreds of Qur'anic verses. Instead, they have engrossed themselves in studies emphasizing biological and psychological differences, thereby attempting to derive evidence from divine revelation to support the attitudes and customs of their pre-Islamic heritage.

Such a decidedly un-Islamic bias has prevented Muslim scholars from considering the issue of a woman's testimony in light of the broader Qur'anic teachings of equality. Instead of looking at the issues as a mere division of labor, they considered it as one based on natural incompetence. Taking their cue from Jewish, Christian, and pagan Arab traditions and attitudes, they dwelt on a "woman's natural tendency to be forgetful and fall into error" and her physical "disabilities." Did God not say, they argued: "*if one of them should make a mistake, the other could remind her*" (2:282), thereby reading nor more than the letter of revelation and without taking into consideration the verse's context or attempting a balanced reading of woman or of nature?

In essence, Muslim jurists and Qur'anic commentators allowed their cultural prejudices to color their discussions on the subject of women. In their ignorance, they used those verses declaring the competence and equality of women to "prove" the contrary. Using the same perverted logic, they dealt with the subject of the shares due to women through the laws of inheritance.

The Third Issue

Let us turn now to a discussion of the meaning of "mistake" (*dalal*) in the verse in question. According to the *Arabic Lexicon*, the underlying meaning is "absence." Later, the word was used to indicate any turning from the right way, whether intentionally or otherwise. The word came to be used in the sense of "to forget," for the reason that one who forgets is one for whom the right way is absent. The wisdom in the Qur'an's choice of this word, rather than the one usually chosen to mean "to forget" (*nisyan*) or "to err" (*khata*) is perhaps that the

meaning of *dalal* is broader and more comprehensive than the other two, as a mistake in testimony may be either intentional or unintentional.

The Fourth Issue

Since most commentators have explained that the meaning of *dalal* in this verse is probably "to forget," it would be best here if we paused to consider the meaning of the infinitive, "to forget," which is oversight and dereliction. This too may come about either intentionally or unintentionally.

The Fifth Issue

Commentators differ in their interpretations of "reminding" in the verse: "*if one of them should make a mistake, the other could remind her,*" (2:282). For example, Sufyan ibn 'Uyaynah opined that a woman who gives testimony, and who is helped through another woman's reminding, becomes legally equal to a man. Other commentators, including al Tabari, rejected this view on the grounds that the other's "reminding" has the effect of causing the first woman to remember something she had forgotten:

Clearly, the mistake that might be made by one of the women in the testimony she gives would be her forgetting, like the mistake made by a person in a matter of religion, when they are unsure of something and stray from the truth. So, if one woman should become this way, how is it possible that another's reminding her will make her as if she remembered the testimony she had forgotten and mistaken?

Qur'anic commentators who came after al Tabari did not go beyond these two positions, namely, that the woman remembered after being reminded (and could then be legally equal to one man, but only with the help of a "reminder") or that the combination of the reminding woman and the forgetful woman is, in legal terms, equal to one man who remembers.

In his *Ahkam al Qur'an*, Ibn al 'Arabi, after mentioning the opinions summarized above, asked rhetorically: "What if there is one woman with one man, so that the man can remind her if she forgets? What is the wisdom in that?" Immediately, however, he goes on to nullify the question by stating: "The answer is that Allah legislates what He wills, and He knows better what wisdom lies behind His legislation. It is certainly not essential that His creation should know and understand the wisdom in what He legislates for their betterment and welfare."

In their interpretations of "mistake" and "remind," Qur'anic commentators have approached the issue from a perspective based on the assumption that the division of testimony for women into halves is somehow connected with women's inherent inequality to men. This idea has been shared by classical and modern commentators alike, so that generation after generation of Muslims, guided only by *taqlid* (imitation), have continued to perpetuate this faulty understanding. Certainly, the attitudes engendered by such a misunderstanding have spread far beyond the legal sphere.

Based on the above, I would like to say that the purpose of this particular article of legislation was to emphasize the Qur'anic principle of gender equality by means of a practical formula. The subject of this principle is, furthermore, by no means limited to witnessing and legal testimony, regardless of whether we consider this a right, a responsibility, or a partnership in the affairs of society. The important thing is that the presence of two women as witnesses to such affairs is held to be essential, even if one is there only to remind the other in the event that she forgets. Thus, Ibn al 'Arabi's question is valid: What if a man is there to remind the woman witness? If the point is to remember the event after it has been forgotten, it should

suffice that a man remind the woman if she forgets. The emphasis, however, on the necessity of having two women is so that they may support one another in the matter of the testimony and in breaking down the psychological barriers erected by society, regardless of their numbers. All of this is a part of the miraculous nature of the Qur'an, which has paved the way for major social changes in the spheres of economics, law, relationships and social structures within one single verse.

The Sixth Issue

But how was this "miracle" perverted into the indictment (or the insinuation) that it became, and one that generations of Muslims have had little success in refuting? There are several reasons for this, among them:

1. The dominant culture at the time of revelation was, as mentioned earlier, a mix of pagan Arab, Christian, and rabbinical Jewish, all of which had little regard for women, minimized their role, stressed their natural inferiority to men, and refused to grant them equality.
2. The prevailing social customs were dictated by an oral legal tradition passed down from generation to generation by the male elders of the tribes. This tradition was perpetuated via the proverbial Arab veneration of their elders and their ancestors.
3. The prevailing social structure was predicated on military and commercial success, and both, owing to their physical nature, were the domain of men— military success depended on the force of arms and commercial success depended on the movement of caravans across great expanses of desert.
4. Family honor was a key element in that society, and women were perceived as weak links in the chain that made up the preservation of that honor. Thus, men felt it was their duty to control women.

These and other factors led Islamic-Arabic thought to dwell upon the physical and mental differences between men and women whenever it encountered texts from the Qur'an or the sunnah that dealt differently with men and women, especially in matters of witnessing, inheritance, and indemnity for bodily injury. For example, consider al Razi's extraordinarily biased commentary, written in the seventh century A.H., on Qur'an 2:282.

The nature of women is dominated by forgetfulness owing to a predominance of cold and wetness in their physical constitution. The joining of two women in forgetting is less likely than the occurrence of forgetting in just one woman. That is why two women are to take the place of only one man.

He also maintains that the verse in question could be read in different ways, namely, "so that when one makes a mistake," as if making a mistake is a foregone conclusion, and, "willing that when one makes a mistake," as if to say that it is the will of God that one of them make a mistake. He justifies this bizarre assertion by saying:

Here, there are two purposes. The first is to bring about testimony, and that will not take place unless one of the two women reminds the other. The second is to explain that men are better than women, so that it becomes clear why it is just to equate two women to one man. Now this explanation will be served only if one of the two women actually forgets. Moreover, if both purposes are to be served, and there is no way that will happen unless one of the women forgets and the other reminds her, then without doubt that is what is sought.

The reader will note how this greatly respected scholar attempted to put words in the mouth of the Qur'an for the sole purpose of supporting prevalent social ideas, despite the fact that this would result in the destruction of a principle that the Qur'an seeks to establish as one of the most important of all its principles—gender equality! But consider how a scholar of al Razi's stature could state with authority that God stipulated that there be two female witnesses just so He could cause one of them to forget and thereby establish the principle of male superiority!

...[W]itnessing (*shahadah*) and legal authority (*wilayah*) are two totally separate matters. This point, however, is one that was ignored by many jurists in their discussions of why a woman's testimony is equal to only half of a man's testimony. Rather, witnessing should be understood as an attempt to present the judge with an objective picture of something that took place so that he/she can make a fair judgment. All of the ten or more conditions stipulated by the jurists for witnesses were formulated in order to achieve the objective of not dictating the ruling to the judge. Since Islam considers the ruler as God's deputy (*khalifah*) and as responsible for carrying out His will by implementing the Shari'ah (i.e., the ruler has no sovereignty in his/her own right), then how can one say that a witness has legal authority over a judge or that a witness dictates the judgment to the judge?

To summarize, then, there is no difference between men and women in terms of their abilities, their propensity to forget, in the possibility of their colluding to present false witness, or in their ability to speak either the truth or fabrication. Moreover, the objectives of the Qur'an do not include anything that would indicate otherwise. Therefore, there is no evidence to suggest that there is anything other than equality between the sexes.

These have been some reflections on the subject of women's testimony, and I hope that they may serve to inspire others to ponder that subject, and those related to it, in greater detail and from the perspectives of their respective disciplines. Clearly, owing to shortcomings in our intellectual history, attitudes toward women and their roles in society have been less than the Qur'anic ideal. If we are to progress in this particular matter, or in any other of the imbalances that exist in our societies, we will have to reconsider the teachings of the Qur'an and the Sunnah and the ways in which we deal with these sources.