

Chapter 6: Testifying & Judging

Fatma: In all Qur'an verses regarding testimony or witnessing the mention of a "one man, two women" policy is only regarding transactions. All other related verses are general and state two witnesses with no references of gender made.¹ The prolonged verse on testimony is directed at transactions of business affairs. Why is the ratio scaled, and would this be the case for all witnessing or testifying?

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 forgets the other can remind her. (2:282)

In addition to that, there seems to be an exception to the ratio where the testimony of women is equal to that of men, in fact, it rebuts and overrides the testimony of a husband accusing his wife of adultery, hence vindicating her.

For those who launch a charge against their spouses, and have no support or evidence but their own, their solitary evidence can be received if they bear witness four times with an oath by God that they are telling the truth; but it would avert the punishment from the wife if she bears witness four times with an oath by God that her husband is telling a lie. (24:6-8)

Sayyid: Although the Qur'anic references you cite do not mention the ratio of witnesses, most of them are mainly governed and restricted to the legislated verse in 2:228 that mentions the ratio.

Nonetheless, there are some cases or issues that require the expertise, knowledge, and experiences to which only women can testify. A woman's testimony or witnessing is not always or necessarily in the ratio of "one man–two women" in all cases.

When it comes to women's issues such as menstruation, pregnancy, marital consummation, or childbirth, Muslim scholars or judges will, in most cases, agree that a woman's testimony takes precedence over that of a man.

Concerning the verse on transactions, generally in the past, women were not as familiar with contracts and negotiations as men. Business was a man's profession. Men were more informed and experienced

in commercial trade, transactions, loaning, and so forth. In general, men knew more about business than women, hence the ratio of two women as testifiers was mainly based on a woman's inexperience in transactions, not on her ability, intelligence, or lack of trust.

“And get two witnesses out of your men.” (5: 106)

The Qur'an is strict when securing transactions, one man is not sufficient for a transaction to be binding; it requires two men. Again, it is not gender based. Imam Sadiq said, “A

person who wishes to engage in business, should learn its rules and laws, and if he makes any transaction without learning them, he may suffer because of entering into a void or doubtful transaction.”

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Regarding your second point, the verse that could refute the husband accusing his wife of adultery is not related to testifying or witnessing. It serves as a means of self-defense.

Fatma: Based on your explanations that women in the past were inexperienced in business dealings. Yet, in our time, women are graduating with degrees in business and becoming very prominent in the field. Would this rule still apply to those women whose profession is business?

Sayyid: Islamic injunctions conform to the standards of society, not to the exceptions. Agreeing with your point that women are becoming professional businesswomen, be that as it may, Islamic rules cannot be overturned simply because some women are becoming experts in certain fields.

Muslim judges are extremely cautious when investigating, examining, and interrogating witnesses. Given a scenario in which a professional businesswoman was the testifier in a business dispute, then the Muslim judge may consider her testimony by examining her credentials, experience, knowledge, and credibility in the matter, just as he would if she were a man, furthermore, because she is an expert in the field, her testimony may be tantamount to that of a man. Yet, scholars would not alter the rules of ratio in witnessing, although they may consider exceptional cases.

Fatma: But the general clause of “one man–two women” would still stand as an obstacle for those women whose expertise would have to be contested in order to prove their legitimacy, as opposed to men who initially do not have to validate the extent of their expertise or knowledge.

Sayyid: In Islam there are numerous subjects governing litigation such as commercial laws, criminal laws, civil laws, family laws, and so forth. Defining the religious formality of each area would not only divert us from the main issue, but would require writing several books on the subject. To answer your question accurately, to a certain extent this may be the case in some instances and for others it may not apply. It all depends on the case and the circumstances surrounding it.

Most importantly, when it comes to witnessing or testifying, regardless of the gender or suit, the parties that are involved in the hearing would be thoroughly scrutinized; therefore, the testifiers will be contested

in order to prove their legitimacy.

If the judge proved that the testifiers were incompetent or unreliable, irrespective of whether the testifiers were several men, or the judge suspected uncertainty, then the judge would disregard all of their testimonies. Again, it is not merely gender based; credibility also plays a significant role.

Fatma: It seems that most of the injunctions, exclusions, and guidelines for women in Islam appear to encircle their dispositions —their physiological and psychological states. Islamic scholars attempt to justify the logic of the rules or guidelines as being based on a woman's nature, in particular with the injunctions on witnessing or judging matters.

Islamic scholars claim most of a woman's judgments are governed by her emotions, such as a female's fluctuating mental and emotional states before or during menstruation and stages of pre-and post-natal pregnancy, as justification to the status quo on witnessing or exclusions to judge. Since you have clarified that testimony is heavily dependent upon the case and credibility of the individual, not necessarily gender in all cases, could you then elaborate upon the subject of women judges in Islam and the claim of emotionalism?

Sayyid: Let me share with you a story. Years ago, when I lived with my parents and siblings, one night we heard an intruder in one of the back rooms. When we went to investigate, we found a young man in the process of stealing our television. We caught him and wanted to call the police when he began to sob and cry that if we turned him in he would be sent to prison.

Upon hearing his weeping, pleading, and apologies, my mother who had witnessed the whole incident felt compassion and sympathy for him. She appealed to us not to call the authorities and to release him. Although, my brothers also felt sympathy for him, they knew that his actions had consequences for which he should be accountable.

The story is not related to our discussion; nonetheless, the incident demonstrates well the sensitive qualities of women, in general. Emotional qualities of women are not a mark of perceptual incompetence or limitation of intelligence. In fact, the emotionalism of women is complimentary and an integral feature of her well being. It is also essential for the contentment of the family and social welfare.

As I mentioned, the emotional features of a woman is by no means a deficiency in her creation, but in some instances, and in some women, her emotionalism may be too overwhelming to contain, or it may become difficult to manage. Take, for example, acts of atrocities, violent murders, or combats of warfare.

These are very serious matters; even some men are not capable of handling or judging them. Again, in most instances, it would be very difficult for women to deal with these issues. Scholars state that men are usually better than women at handling these situations. Therefore, in some areas of judiciaries, male judges would be better suited to administer to such matters.

Regarding women being judges, there are female Muslim judges presiding over cases. Women in Islam are not exempt from becoming judges in certain courts.

Fatma: An 'Alim is one of the highest levels of Islamic leadership and a Mujtahid is an Islamic research scholar. Could a Muslim woman ever become a 'Alim or Mujtahid, and could you support your response with any sources from the Qur'an or traditions of the Prophet?

Sayyid: "Seeking knowledge is incumbent upon every Muslim, male and female," said the Prophet. Note how the Prophet solidifies the tradition by stating the genders individually. A 'Alim is someone who has reached a high level of Islamic study, and becoming a 'Alim is acquiring knowledge. Knowledge is limitless and never gender based.

Ijtihad is the highest religious degree in Islamic study. When a person reaches the level of Ijtihad, then that person is referred to as a Mujtahid. A Mujtahid is one who is capable of deducing commandments and religious injunctions from their original sources such as the Qur'an and traditions of the Prophet. Many Muslim women have reached the level of Ijtihad.

There are many prominent Muslim women Mujtahids who are professors in Islamic seminaries, educating collegians on Islam, and authoring books on Islamic jurisprudence, as well.

A female Mujtahid is not something unprecedented. The daughter of the Prophet, Fatima was one of the most knowledgeable person concerning Islam. She taught others about Islam. Notable companions of the Prophet used to consult Fatima on religious matters. Fatima's daughter, Zaynab also taught in the city of Kufa. Zaynab, like Fatima, was well known as a distinguished religious scholar.

1. Qur'an, 65:2, 5:106, and 4:15.

2. Usul al-Kafi, Mu'aMalat.

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