The Question of Women's Testimony ın Islamic Law

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ABSTRACT

In recent years, as debates over Islamic legal interpretations have moved to the forefront, especially in places where the expanded application of Islamic law is on the agenda, the issue of women's testimony particularly have been engaged. Most jurists arrived at a view of the matter that insinuated that women were less trustworthy and less appropriate as legal witnesses than their male counterparts. Thus, the jurists have made a little distinction between male and female testimony in terms of sexuality. In this proposal I will concern with the relationship between "gender" and "testimony" with regard to this sex-based distinction. İn this contex I will explain why women are less discerning than men as witnesses in some cases. My purpose is not, and cannot be, to engage in original interpreting of the law or to sit in judgment on how others have understood the rules of their religion. Rather, I approach the topic of testimony, women and gender as a study of a islamic law history. This proposal argue that the Qurʾan deals with women in an egalitarian and non-discriminatory fashion in terms of testimony and legal affairs, in reference to certain verses like en-Nûr 24/6 and en-Nîsâ 4/15. While Zahirisim, including İbn Hazm, and İzzet Derveze follow this agalitarian opinion, four sects which are Hanafis, Shafi'is, Malikis and Hanbalis don't follow by claiming that women's testimony can not be accepted in some circumstances like hadd, gadhf (slander) and qiṣāṣ (retaliation) penalties.

Keywords: Testimony, Shahadah, Muslim Women, Islamic Law, Religion, Gender, Sex Discrimination

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CLASSICAL STATEMENTS AND DISCUSSIONS ABOUT THE TESTIMONY OF WOMEN

We can explain the argument of the classical statements about the testimony of women as follows. In the Qur'an, the verse that states, "The testimonies of two women equal the testimony of a man"[1] and the *hadith* (saying) of Muhammad, "Women are incomplete in terms of mind and religion"[2] indicate that the testimony of a woman is less important and less valuable than the testimony of a man.

In defence of the classical statement, all Islamist legalists judged the testimony of women using this argument. For example, some sects, such as Zahirism, thought that two women were equal to one man in every case of law, including calumniation and adultery, because women were mentally weaker than men[3] and their potential to be distracted was greater, due to the Sura al Bakara verse 2/282. Using the same verse, Shafiism claimed that the testimony of women was limited to the subject mentioned in the verse and was not for other law cases. Although these debates considered the classical statement, the modern statement subsequently emerged as a reaction to this statement. We will talk about this statement in the second section.

To deeply analyse these two periods, we must first examine the Qur'anic verses about the testimony of women and rumours about them.

The most famous verse on this subject is Bakara 2/282, which considers the testimony of a woman half of the testimony of a man, as mentioned above. The verse says, "Oh ye believers! When you become indebted to one another for a fixed time, write it. Let a scribe write down faithfully as between the parties. Let not the scribe refuse to write: as Allah has taught him, so let him write. Let him who incurs the liability dictate…And get two witnesses, out of your own men, and if there are not two men, then a man and two women that you choose, for witnesses, so that if one of them errs, the other can remind her…."

In this verse, the important and controversial points are the following:

- …if there are not two men, then a man and two women that you choose, for witnesses, so that if one of them errs, the other can remind her… " و استشهدوا شهيدين من رجالكم فان لم يكنا رجلين فرجل وامرأتان ممن ترضون من الشهداء أن تضل احداهما فتذكر احداهما الأخري "

- Oh ye believers! When you become indebted to one another for a fixed time, write it.

Classical period Islamic scholars indicated that the testimony of women was suspicious by emphasising the phrase "en tedılle- أن تضل," suggesting the possibility of error by a woman in the verse above.[4] Because they believed that the error by women indicated in this verse about the law of obligations could occur in all cases, they considered the testimony of a

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[1] Al-Baqara, 2/282.

[2] Abū al-Husayn 'Asākir ed-Dīn Muslim ibn al-Hajjaj al-Qushayrī an-Naysābūrī al-Muslim, Sahih *al-Muslim*, (Beirut: al-Maktabah al-Salāmī, 1987), "Īman," 132.

[3] Nasr al-Dīn Abū Sa'īd Abdallah b. 'Umar al-Baidāwī, Envā*r al-Tanzīl wa Asrār al-Ta'wīl*, 3 vols. (1st ed., Beirut: Dār al-Rashid, 2000), I, 235.

[4] Abdallaziz Bayındır, *Islām Muhakeme Hukuku (Islamic Procedure)*, (Istanbul: The Foundation for Research in İslamic Sciences Press, 1986), 158

woman equal to half of the testimony of a man. Thus, they considered this verse about the law of obligations valid in all other law cases. For instance, a woman would be considered half of a man in cases related to testaments, marriage, and divorce because their testimonies were not reliable. In some special cases, women were completely removed from the situation because, with the exception of Zahiris and other individual scholars, the four sects unanimously denied the testimony of women in religious crimes *(ḥadd)*[5] (such as adultery, theft, drinking, sedition, or riots) and talion *(qiṣāṣ)*.[6]

To demonstrate how the classical jurists considered this subject in their conflicting comments, we will examine the testimony of women in law cases and the debates of the sects individually.

I- THE DEBATE ON THE TESTIMONY OF WOMEN IN ADULTERY AND OTHER PUNISHMENTS

Adultery is an important religious crime in Islamic law. It is directly cited by God in the Qur'an, with the obligation of four witnesses to carry out the punishment.[7] The gender of these "four witnesses" was an important topic of discussion among Islamic legalists. The majority of the classical Islamic jurists (Hanafis, Shafiis, Hanbalis, Malikis) said that witnesses should be males by looking only at the appearance of the verse without interpreting it.[8] According to these jurists, the pronoun "kum - كم" and the number "four- أربعة " in the "erba'aten mikum - أربعة منكم" phrase in the verse indicate males in Arabic. Thus, the testimony of a woman in adultery is not possible upon consideration of the pronoun and numeral adjective in this verse.[9]

Of course, not all of the sects limited the testimony of woman like this. For example, Zahiris thought that the testimony of a woman in cases including adultery could be accepted with the condition of accepting two women as one witness, regardless of whether they were with a man.[10] According to them, if two women were equal to one man, then eight women could take the place of four men as witnesses in adultery cases. As a Zahiri, Ibn Hazm said, "In this view of ours, people who are opposed to us do not have any reasonable proof even in the Qur'an and Sunnah. Every view propounded by other Islamıc schools on this subject limited the doctrine of Qur'an. For this reason, we have considered the limitations of the testimony of women in some areas as an arbitrary application and adopted this view."[11]

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[5] *Ḥadd (*حد*)*: a punishment for which God and his prophet define the measure and criteria.

[6] Abū al-Barakāt 'Abd Allah ibn Ahmad ibn Muhammad al-Nasafī, *Madārik al-Tanzīl wa Hakāiku al-Ta'wīl*, (Beirut: Dār Kalime al-Tayyib, 1995), 228

[7] al-Nīsa, 4/1

[8] İbrāhim Burhān 'ad-Dīn b. Ali Ibn Farhun, *Tabsirāt al-Hukkām*. (Riad: Dār al-Ālem al-Kutub, 2003), II, 319; 'Alā al-Dīn Ebū Bakr b. Mas'ūd al-Kāsānī, *Badāi' al-Sanāi' fī Tartīb al-Sharāi',* (Beirut: Dar al-hadis, 1986), VII, 48; İbrāhim ibn 'Abd Allāh Ibn Abi al-Dam**,** *Kitāb Adab al-Qazā.* (Damascus: Dār al-Fikr, 1982), 424; Muhammad ibn Ahmad ibn Abū Sahl al-Sarakhsī, *al-Mabsūd*, (Beirut: Dar aI-Maghrifah, 1989), XVI, 114; Muhammad ibn Ahmad Ibn Rushd**,** *Bidāyah al-Mujtahid wa Nihāyah al-Muqtasid*, (Istanbul: Kahraman Press, 1985), II, 387; Muhammad al-Khatīb al-Shirbīnī, *Mughni al-Muhtāj ilā Mā'rifati al-Ma'āni Alfadh al-Minhāj*, (Beirut: Dār al-Maghrifah, 1958), IV, 441; Burhan al-Dīn Abū al-Hasan Ali ibn Abi-Bakr al-Marghināni, *al-Hidaya: Sharḥ al-Bidāyah al-Mubtadi*, (Beirut: Dar al-Kutub aI-Ilmıyyah, 1990), III-IV, 129-130; 'Ala al-Dīn Abū al-Hasan Ali ibn Khalil al-Tarablusi, *Mu'īnu al-Hukkām*, (al-Halabi publications, 1973), 90; Muhammad b. Abū aI-Abbas Ahmad ibn Hamza al-Ramlī, *Nihāyah al-Muhtāj*, (Beirut: Dar al-Fikr, 1984), VIII, 310.

[9] Abū Bakr ibn Muhammad Ibn al-Arabī, *Ahkam al-Qur'ān*, (Beirut: Dar al-Fikr, 1988), I, 460; Ahmad İbrahim Beg, *Turuk al-Isbat al-Şariyyah*, (Cairo: Matbaah al-Cairo, 1985), 169-70

[10] Abū Muhammad Ali ibn Ahmad Ibn Hazm, *al-Muhallā fī Şerh al-Mucellā bi al-Hucac wa al-Āthār* (Beirut: Bait al-Afkār, 2003), VIII, 476.

[11] Ibn Hazm, *al-Muhallā*, VIII, 484

Other classical Islamic jurists have similar views as the Zahiris, who allow women as witnesses in adultery cases even if two women are equal to one man. For example, Hammad (CE738) and Ata (CE 733) claimed that the testimony of a woman could be valid in all cases, including adultery, on the condition that they were with men.[12] İn addition to this, one of the early scholars Sufyan al-Thawri (CE 777) writes that the testimony of women in the law of reprisal could be acceptable on the condition that they testify alongside a man.[13]

Some of the Islamic jurists of the classical period do not entirely exclude the testimony of women in issues of adultery or *Ḥadd*. However, they do not allow a woman to testify "on her own" either. They even add that another woman and a man should be present to support and to "remind" the woman if necessary. In this case, it is obvious that none of the classical jurists believe that a woman is able to witness on her own and agree that the testimony of two women equal that of one man.

Thus, we need to raise a question: why is a woman not allowed to witness on her own in cases involving adultery or other punishments?

First, classical scholars support their argument with the following verse: "Women shall not testify in cases involving adultery." The reason for this is based on Nīsa 15, " فاستشهدوا اربعة منكم *Bring against them four witnesses from among you,"* in which the pronoun كم and the numeral adjective اربعة are used to indicate men. In this context, we can conclude that women cannot testify to adultery.[14]

However, when Qur'anic verses are analysed, all of the pronouns referring to men refer to women as well. This is called the rule of *taglib* in Arabic rhetoric. The same rule can be found in Hebrew. If there is one man among several women in a given setting, the masculine pronoun is used to express that group. According to this rule, unless there is a contrary presumption, the expression used in the Qur'an is general. In short, the expression of men in the plural implies women as well.[15] Furthermore, unless a word is specific, even the singular masculine pronoun is inclusive of women.[16] If we follow the reasoning applied by the classical scholars, we can infer from the expression يا ايها الذين امنوا that it only relates to men because the verb applied in the expression is used for men. However, none of the Islamic jurists alleged that the expression implies only men.

In the context of these explanations, if we analyse the verse according to the rule of *taglib* we realise that the pronoun كم and the numerical adjective اربعة are applicable to women as well. Thus, the presumption of inequality between genders in the Qur'an in terms of testimony is abrogated. In the context of this information, it can be concluded that it is not the Qur'an that leads to gender inequality but Islamic jurists.

Second, the expression in Bakara 282, "... And if there are not two men [available], then a man and two women from those whom you accept as witnesses - so that if one of the women errs, then the other can remind her," and some *hadiths* are presented as proof that

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[12] 'Abd al-Rahman ibn Muhammad Ibn Qudāmah al-Makdīsī, *al-Mughnī wa al-Sharḥ al-Kabīr,* (Beirut: Dar al-Fikr, 1994), XII, 6-7.

[13] Ibn Hazm, *al-Muhallā,* VIII, 48

[14] Sa'id Hawwa, *al-Asās fi al-Tafsir,* (Cairo: Dar al-Salam, 1985), II, 1019; Hamdi Donduren, *Insanlıġa Son Çaġrı (the Last Call to Humanity)*, (Istanbul: Yeni Şafak Publications, 2003), I, 150; Abū 'Abd Allah ibn Muhammad ibn Ahmad al-Qurtubī, *al-Cāmī' li-Aḥkāmal-Qur'ān*, Published by Ahmad 'Abd al-Hālim al-Burdūnī, (Beirut: Muassasah al-Risālah, 2006), III, 1160.

[15] Abdulkerim Zeydān**,** *el-Mufassal Fi Aḥkāmal-Mer'e*. (Beirut: Muassasah al- Risālah, 1993), IV, 174-180

[16] Zeydān, *al-Mufassal,* IV, 181

arouses doubt against the capacity of the testimony of women. Some of these *hadiths* are as follows:

- "The Prophet's *hadith* which is related to the issue we are discussing and revealed to be directed to his Companions in a day of 'id is 'O you assembly of women, give sadaqah and appeal for mercy (ask for repentance - istighfar) for I have seen most of the residents of hell are women.' The Companions asked: 'For what reason, O Prophet, why are women most of its residents?' He replied: 'For the curse and ingratitude to their husbands. Never have I seen so intellectually or religiously a deficient a person, or one more capable of driving away the good judgement of a man than one of you.' The woman asked, 'And how are we intellectually and religiously deficient?" The prophet replied, 'Is the testimony of two women not equal to the testimony of one man, and is it not true that you do not pray or fast when you have your period? There is your deficiency of religion."[17]

- According to the account of Zuhri: "Neither the Prophet nor at the time of the following caliphs was it lawful for women to testify in hudud cases (adultery, *qadhf*, theft, alcohol etc.)."[18]

- "In suspicious circumstances, save cases of hudud...."[19]

The verse and *hadiths* we have presented suggest that the possibility of error in legal matters is higher for women, and their testimony is not acceptable. Classical Islamic scholars who base their interpretation on this impression note that accounts of "intellectual deficiency" and "erring or forgetfulness" arises from the inherent disposition of women. According to these scholars, characteristics such as forgetfulness, confusion, error and intellectual deficiency indicate a flaw in women's competence to perceive and recount events accurately. Therefore, their testimony is disputable. In suspicious circumstances, as mentioned in the third article above, there is no legal authority for women in *hudud* cases (adultery). In other words, if one or more than one woman is associated with adultery, theft or *ḥadd* cases such as *qadhf*, her testimony is not acceptable for reasons justified in *hadiths* and verses. There is unanimity on this issue, with the exception of Zahirists and some individual Imams.

We must note the following issue: Islamic jurists conclude from the expression "if there are not two men [available], then a man and two women from those whom you accept as witnesses - so that if one of the women errs, then the other can remind her" that "women are forgetful and intellectually deficient." However, does the same verse not assign the same condition to men? Although the verse does not clearly state, "Let there be two men so that if one errs then the other can remind him," the first condition of "two men" in the verse implies the possibility for "one of the men to forget or err." If one man has intellectual competence, then why is testimony sought from four men in adultery and two men in theft? This condition clearly indicates that the Qur'an seeks to establish that men have characteristics such as "forgetting" and "erring" like women because it seeks testimony from more than one man in

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[17] Al-Muslim, *Sahih al-Muslim,* "Īman", 132; Abū 'Abd Allah Muḥammad ibn Ismā'īl ibn Ibrāhim ibn al-Mughīrah ibn Bardizbah al-Bukhārī, *al-Jami' al-Sahih (Sahih al-Bukharī),* (Riad: Maktabah al-Rushd, 2006), "Hayız", 6; " Zakah", 44; "Shahadah", 10; SulaĪman al-Ash'ath al-Sijistānīl-SijiDawud, *Sunan Abū Dāwud,* (Beirut: Bait al-Afkār al-Duvaliyyah, 2000), "Sunnah", 15; Abū 'īsa Muahmmad ibn 'Īsa al-Sulamī al Darīr al-Tirmidthī, *al- Jami' al-Tirmidhi (al-Jami as-Sahih)*, (Riad: Bait al-Afkār al-Duvaliyyah, 1999), "Īman", 6

[18] Abdullah b. Yusuf al-Zaylaī**,** *Nasb al-Rāya li Ahādīs al- Hidāyah*, (Jeddah: Dār al-Qıblah li-Theqafiyah al-Islāmıyah, 1938), IV, 79.

[19] Al-Tirmidthī, *al- Jami' al-Tirmidhi (al-Jami as-Sahih),* "Hudūd", 2.

every legal issue. However, for unknown reasons, Islamic jurists developed misconceptions about women based on that verse and concluded that women have an inherent disposition to forget.[20]

- **A Short Evaluation of the Three Mentioned *Hadiths***

The first revelation to express intellectual and religious deficiency was significantly controversial in both the classical and modern periods. I would like to note the approaches that oppose the misunderstandings suggesting that women do not have the legal authority to testify because of "intellectual deficiency."

- The main subject of the *hadith* is not the regulation of testimony but sadaqah.
- The *hadith* does not address all women in general but women present at the time of its articulation.[21]
- The "intellectual deficiency" in the *hadith* does not signify an inherent disposition but ordinary "forgetfulness."[22]
- The Prophet made a joke to ease the tension among women there.

The first rejection is about the *hadith*, which is not directly related to the testimony of women. We cannot ascertain a single sign that the *hadith* is primarily about the testimony of women. The subject of the *hadith* was a warning to women who do not give sadaqah to poor people and an encouragement for them to fulfil their social and economic duties. Therefore, it is clear that the *hadith* does not address the issue of testimony.

The second rejection maintains that the *hadith* does not address all women in general but only women of that period or women who were present at the time of its articulation. The dominant culture of that time excluded women from any scientific, economic, cultural, legal and artistic practises. It is clear that women were minimised to the role of domestic life at that time. The conditions of women did not allow their inclusion in matters that would create a space for their intellectual development. Consequently, Arabic women's undertaking of only passive roles compared to men's active involvement in every sphere of social life was formulated as women being "intellectually deficient (ضعيف العقل)" and incompetent in terms of comprehension "(قليل الضبت)".

We raise the following question at this point: are these formulations viable for every period and for all women? Is the sanction on women's intellectual capacity still valid for contemporary women?

It is obviously not possible to cast doubt on women's intellectual capacity today because women are able to engage in the same activities as men, and they play an active role in cultural, economic, scientific, commercial and legal practises. It is therefore intellectually more plausible to maintain that the *hadith* addresses the women of that period whose scientific, cultural and artistic capacity were lower than that of women of our own time because of social conditions.

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[20] Hidayet Şafkatli Tuksal, *Kadın Karşıtı Soylemin Islam Geleneghine Izduşumleri (The Discourse Against the Women and It's Projections on the Islamic Culture),* (Istanbul: Otte Publication, 2012), 171.

[21] Ahmed Davudoghlu, *Sahih al-Muslim Tarcamah ve Sharḥ (Explenation and comments on the Sahih al Muslim),* (Istanbul: Sonmez Publication, 1977), I, 351-352.

[22] Sa'id Şimşek, *Gunumuz Tafsir Problemleri (Hermeneutics Problems on the Qur'ān in Recent Days),* (Istanbul: Duşunce Publication, 1995), s.225.

This debate demonstrates that none of the *hadiths* or revelations can be interpreted without profound considerations. However, the conclusions of classical Islamic scholars were based on a preliminary interpretation that led them to treat women as intellectually deficient and to ignore their testimony in legal cases.[23]

The issue we are discussing is not different for cases of adultery or other hudud cases. According to the four sects that form the majority of Islamic jurisprudence, the testimony of women in cases such as *qadhf*, alcohol, sedition and theft is not acceptable.[24] In adultery, four men are required, but here, two men suffice as witnesses.[25] According to Islamic jurists, the requirement of four men is not introduced either in the Qur'an or in *hadiths*, with the exception of adultery. In this case, we can raise questions regarding the justification of two witnesses. According to classical Islamic jurists, the Qur'an usually required two witnesses; therefore, two witnesses are required for these *ḥadd*s. As an example, in the Qur'an, in the second article of the verse, two witnesses are required for divorce (Bakara 282). Similarly, two witnesses are required to prove debt and related obligations.[26]

II- THE DEBATE ON THE TESTIMONY OF WOMEN IN FINANCIAL AND CIVIL CASES

The Islamic law of the classical period based its regulation of the testimony of women in financial cases on Bakara 282. This verse, which we discussed above, addresses the debts and obligation of the related parties to each other and requires two men as witnesses when a debt is contracted. The verse requires a man and two women if two men are not available.

Classical Hanbeli, Maliki and Shafi jurists interpreted the verse about debts and obligations to mean that a woman is equal to a half of a man in terms of testimony for all financial issues.[27] Shafi jurists who interpreted that the verse was about financial issues did not accept the testimony of women with men in issues related to civil law, such as marriage, divorce, guardianship, and authority. In other words, these sects considered Bakara 282 their reference for financial issues because it contains regulations for relationships developed through obligations in conjunction with issues related to civil law. They interpreted the verse in its own context without comparison and generalised it to all legal issues.[28]

However, Hanefis generalised[29] a verse about "debts" to all legal issues and therefore started the debate over "generalisation"[30] in classical Islamic law. Classical Hanefi jurists followed this logic for a long time. Whenever a sign or a regulation was interpreted in the

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[23] Nihat Dalgın, *Islam Hukukunda Boşama Yetkisi (The Capacity of Divorce in İslamic Law)*, (Istanbul: IFAV, 2001), 83.

[24] Abū al-Fadl Macd al-Dīn 'Abd Allah ibn Mahmud al-Mavsılī, *al-Ikhtiyār li- Ta'lil al-Mukhtār,* (Beirut: Dar al-Erqam, 1756), II, 141.

[25] Abū al-Qāsım Jār-Allah Mahmūd ibn 'Umar al-Hawarizmī al-Zamahsharī**,** *al-Keşşaf an Haqāiqi Ghavāmizi al-Tanzīl we 'Uyūn al-Aqāvīl fī Vucūh al-Te'wīl,* Taḥqiq Sheikh Adil Ahmad 'Abd al-Mavjud, (Riad: Maktabah al-'Ubayda, 1998), I, 513.

[26] Look at Baqarah 2/282 واستشْهِدُوا شهيدين من رجالكم ve Talaq 65/2 وأشهدوا ذوي عدل منكم ; Wahba Zuhaylī, *al-Fıqh al-Islāmī wa Adilātaha,* (2th ed., Damascus: Dar al-Fikr, 1985), VI, 570.

[27] Ibn Farhun, a.g.e., II, 325; al-Shirbīnī, *Mughni al-Muhtāj,* IV, 441- 443; al-Kāsānī, *Badāi' al-Sanāi',* VII, 46.

[28] al-Qurtubī, *al-Cāmī' li-Aḥkāmal-Qur'ān,* XVIII, 154; Ibn Hazm, *al-Muhallā,* VIII, 481; Ibn Qudāmah al-Makdīsī, *al-Mughnī,* XII, 7.

[29] al-Qurtubī, *al-Cāmī' li-Aḥkāmal-Qur'ān*, III, 388.

[30] Amina Wadud Muḥsin**,** *Qur'an and Woman,* (New York: Oxford Press, 1999), 98.

Qur'an, they immediately applied it to all cases regardless of its context as a general rule. They applied the same logic to the testimony of women as well.

Scholars of Hanefism interpreted the two expressions, "...if there are not two men available then a man and two women from those who you whom you accept as witness" and "so that if one of the women errs then the other can remind her," as meaning that the testimony of women is absolutely worthless. They stated that the reason for this is women's inherent disposition to forget because they have an intellectual deficiency and a weak memory, unlike men, who have powerful abilities in this context. Therefore, Hanefism generalised the verse (Bakara 282) on debts and obligations to all issues related to civil law and equated the testimony of two women to that of one man in civil cases such as marriage, divorce and guardianship.[31]

We can raise the following question in this case: does the Qur'an confirm the assumption that two women equal one man in civil cases? It is possible for us to argue that the verse that is related to debts and obligations, Bakara 282, does not consider or state that two women equal one man in any issue. Therefore, we can effectively highlight the following idea: *Hanefi jurists generalised Bakara 282 to all legal cases and derived interpretations from what the Qur'an and the Sunnah did not articulate***.** Furthermore, they called that generalisation a comparison and jurisprudence (or *ijtihād*).

Where did the problem of "generalisation" originate? The answer to this question arises "from the anticipation of reconciling everything with Qur'an and from the attempt to find out everything in it." For example, there is no verse in the Qur'an about marriage. However, because Islamic jurists conform and reconcile every contract with the Qur'an, they would like to apply the same practise to marriage contracts. They expend efforts to seek "a sign-manifestation" on which they can base their judgement. In the end, they encountered *Ṭalāq* 2, "...accept two witnesses from amongst you," to compare and apply as the basis for their final judgement about marriage. However, there is no verse or verdict revealed by God about the issue. Thus, the jurists found evidence for an issue that does not have a specific verse in the Qur'an through the method of "comparison." According to them, because it is indisputable that there should be a verdict on everything in the Qur'an, there is an explicit or implicit verdict applicable to marriage as well.

Their methodology draws the following conclusion: "God does not present us everything with its exact nature or complete and thorough information on every issue. However, *we can derive what is implied to us through manifestations and signs in light of the Qur'anic epistemology. The Qur'an is abundant with such manifestations, for those who comprehend...."*

In light of this information, we can draw the following conclusion: in the development of classical Islamic law, it was the Hanefi, Shafi, Maliki and Hanbeli scholars who established gender inequality in terms of the testimony of women rather than the Qur'an.

[31] Al-Qurtubī, *al-Cāmī' li-Aḥkām al-Qur'ān,* III, 393.

EVALUATION AND CONCLUSION

The interpretations of Islamic jurists who have influenced Islamic culture since the 3rd and 4th centuries regarding the testimony of women based only on one verse have created significant gaps in women's rights. These jurists generalised the *hadith* containing the expression "intellectually deficient" and the verse interpreted as "the testimony of two women equals that of one men" to all legal cases. They neglected the role of women during the Prophet's period and maintained Hebrew culture. However, the wives of the Prophet, Aisha, Hafsa and Ummu Gulsum, and most of the women of that period were literate, memorising Qur'an and teaching men. Aisha even issued fatwas for legal cases after the death of the Prophet, and almost one-fourth of Islamic law consisted of fatwas Aisha issued. After the Hudaibiya treaty, when Muslims coming from Medina were not allowed to make *tawaf* (circumambulation), Muslims took the advice of the wife of the Prophet, Ummu Gulsum, and made sacrifices.

If women were intellectually deficient, why did the Prophet act on the advice of his wife? This means the *hadith* interpreted as "women are intellectually deficient" is not applicable to all women and therefore is an incorrect application. It is an expression signifying the women of the days of ignorance, who were limited to milking the animals and raising the children. It was normal for women in the days of ignorance to confuse debtors and creditors or to forget the amount of a debt. Therefore, it was a usual practise to require another woman to remind her.

I would like to emphasise a point once again: the issues addressed in Bakara 282 could easily lead anyone to forget or to be confused because of the mathematical accounts they require. Even debtors and creditors forget amounts after a long time. The women of that period were excluded from social life and restricted to domestic duties and raising children. Therefore, their testimony in matters of debts and obligations had the potential to lead to confusion and cause injustice. This is the reason why another women was required during the testimony so that if one forgot, the other might remind her. The real aim was not to establish men's superiority in legal testimony. The same rule was applicable to men as well. The primary reason for the requirement of two men in the testimony to theft, murder, divorce, marriage, debts and obligations was so that if one of them made a mistake, the other could remind him. Men might forget and make mistakes as well. This does not indicate that the testimony of two men equals that of half of a woman, and the testimony of two women should not be considered likewise. The chief reason for the requirement of two women is, as we have mentioned above, her status within the society. Women have the potential to forget as much as men do.

Moreover, whereas some verses in the Qur'an clearly indicate equality between men and women, it is a contradiction of the Qur'an to follow traditional Islamic jurists and to regard women as "intellectually deficient" and treat them as though they were incomplete.

Consequently, the idea that the testimony of "two women equals that of one man" was the basis of testimony for all legal issues is not integral to Qur'anic teachings. However, classical Islamic jurists established rules through the assumption that the Qur'an required two women to be equal to that of one man in testimonies for all legal cases. As a result, a system of testimony based on gender inequality developed. Therefore, we need to underline the following: *It is not Qur'anic teachings that consider the testimony of women unreliable but the interpretations perpetuated by classical Islamic scholars.*

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