

## Single Women's Testimony in Islam: A Comparative Analysis with the Pakistani Legal Framework

Namish Nadeem

M. Phil Scholar, Fatima Jinnah Women University, Rawalpindi

[namishhaseeb2023@gmail.com](mailto:namishhaseeb2023@gmail.com)

Dr. Nazia Zaman

Lecturer, Islamic Studies Department, Fatima Jinnah Women University, Rawalpindi

[nazia.zaman@fjwu.edu.pk](mailto:nazia.zaman@fjwu.edu.pk)

### Abstract

This study examines the function and legitimacy of women's testimonies in Islam by contrasting them with Pakistan's legal system. Though there are variations depending on the situation and case type, Islamic jurisprudence has historically recognized the testimony of women, particularly unmarried women, in a variety of legal problems. Examining how Islamic principles relate to or differ from the Pakistani judicial system in relation to single women's testimony is the aim of this study. This study specifically aims to ascertain the degree to which Islamic jurisprudence informs Pakistani law and to pinpoint areas where interpretation or application may vary. To define the Islamic position on women's testimony, the study technique uses a comparative analysis, drawing on traditional fiqh (Islamic jurisprudence) and primary Islamic texts, the Quran and Hadith. Using Pakistan's constitution, case law, and statutes as a guide, these conclusions are then compared to the country's legal provisions, especially in criminal and civil cases where testimony is crucial to the outcome. The findings show that whereas Islam permits women to testify in many situations, various interpretations of Pakistani law implement these principles differently, occasionally imposing restrictions based on gender or demanding supporting documentation. According to the report, Pakistan's court system does not always adhere to traditional Islamic standards on women's testimony because of colonial-era legislation and current geopolitical factors. The conclusion underscores the need for a more nuanced understanding and application of Islamic jurisprudence within the Pakistani legal context to ensure justice and equality. It suggests potential reforms in the legal system to more accurately

reflect Islamic teachings on women's rights and testimony. This research contributes to broader discussions on gender equity in legal settings within Muslim-majority societies.

**Key words:** Single women's testimony, Islamic jurisprudence, Pakistani legal system, Gender equity, Comparative study, Legal reform

## Introduction

Ibn Qudāmah stressed in his most recognized book the Islamic law *al-Mughni* that a single female witness is permitted in cases involving nursing, menstruation, infant suckling, childbirth, chastity, and physical deformities.<sup>1</sup> Islam fundamentally promotes full and sincere equality between man and woman. This is a reality readily accepted by everyone who knows Islam and understands Islamic law as contained in Allah

revelation in the Qur'ān and also in the acts and sayings of the Prophet Muhammad's

The Islamic faith holds both men and women (not just men) to equal levels of human responsibility. As an example, the husband is responsible for generating money and providing for his children's and his wife's fundamental needs. Women's primary responsibilities include household management and paying close attention to the physical and physiological development of their children. If Allah granted man a greater rank than women and women a higher rank than men, there should be wisdom behind it. It does not imply that Allah designed gender inequity rather we should endeavor to grasp the rationale behind such commands.

## Testimony is a Liability

To begin with, it should be recognized that testimony is an obligation, responsibility, liability, and duty and that hiding the testimony, it's a greater sin for which the whole community or society will be accountable in front of Allah. In the case in which only one witness means only one person present at the time of the incident then

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<sup>1</sup>Muwaffaq al-Dīn 'Abd Allāh ibn Ahmad Ibn Qudāmah, *Al-Mughni* (Bayru t: Dar al-Kutub al-Ilmiyyah, 1997.)

it's duty of that person to give testimony in every condition because it's the *fard-e-ain* of that person. The testimony or act as a witness is responsibility of the mankind if someone hide the testimony, he will be sinful in the way of Allah so it's the liability on the mankind if they see anything by their eyes give testimony on it<sup>2</sup>.

In this verse, Allah told us that if we do not give testimony our hearts become sinful because giving testimony is trust (*Amanah*) in the person who is an eyewitness of that incident. We should deliver to this trust when to need to be by doing this is rights of other persons are fulfilled and the witness *Fard-e-ain* and *Amanah* also complete. When Allah makes this task and responsibility of a witness easier for a woman, He relieves her of a burden. It does not denigrate or diminish the position of women. We must also recognize that the qualifications that the witness must meet are not dependent on gender but on two additional conditions:

- i. The gender is regardless of the testifier but he should be a truthful, fair, unbiased person.
- ii. The testifier must be eye witness and have all the knowledge about the case. If the court determines that the witness is empathetic and kind-hearted, his evidence will be rejected since it suggests that his response to criminal concerns and capacity to speak about such matters is weak or missing.

### Specific Matters of Women's Testimony

Women's evidence is permitted in domestic matters and even only one woman can provide evidence. In the case of women's issues even the testimony of ten males is not accepted since only one woman may testify<sup>3</sup>. There are several special cases where women's testimony is allowed, which are listed below:

- i. Matters relevant to a woman
- ii. Menstruation
- iii. Lactation / Baby Suckling

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<sup>2</sup> Surah Al- Baqarah 2:283

<sup>3</sup> Ibn Rushd, *Bidayatu'l-Mujtahid*, 1st ed., vol. 4, (Beirut: Daru'l-Ma'rifah, 1997), 311.

- iv. Defects of women
- v. Child birth issues / Baby crying
- vi. Emergency and sudden matters
  - Rape,
  - Dying declaration.
- vii. li'ān

### Jurist's Views

Jurists have a different view on the selection of cases that allow the exclusive testimony of women. According to the opinion of Hanafī, which accepts only women's evidence in cases of female fertility, virginity, and defects that are unknown and unobservable to men. In the case of breastfeeding, a women's exclusive testimony will not be accepted as immediate relatives are allowed to know.

According to Abu-Hanifā, evidence that is exclusive to women will not be recognized in the case of Istehlal-u-Sabi (the groaning of a child after birth) to be inherited as men may know about it, and therefore the women's testimony is not evidence. "Exclusive testimony by women is also allowed in matters of inheritance, as Istehlal spoke that when the childbirth and at this time most men in general were absent."

According to legal scholars (Maliki, Shāfi'ī and Hanbāli) exclusive evidence for women is only when men cannot see women, such as women's virginity, widow, childbirth, menstruation, breastfeeding, and hidden matters will be recognized. Evidence of the women is enough in all those matters or issues which are usually and only seen by women, men do not have any link to these matters so the testimony of men is not acceptable. Only single women's evidence in these matters is sufficient<sup>4</sup>. According to the four Schools of thought jurists all unanimously agreed on the testimony of single women is adequate in these cases nevertheless<sup>5</sup>. Women are more experience in the private domain than the man, so the testimony in the private domain

<sup>4</sup> Ibrahim, Y. A., *Al-Shashi-Al-Qafal Helyat-Al-Ulama*, vol. 8 (Beirut: Mu'assasat al-Risala, 1980), 278.

<sup>5</sup> Ibn Qayyim al-Jawziyya, *al-Turuq al-Hukmiyya fī al-Siyāṣah al-Shar'īyya*, 430.

matters like virginity, widow, childbirth, menstruation, breastfeeding, etc<sup>6</sup>. Single women are acceptable. In his most famous compilation on Islamic law “al-mughni” by Ibn Qudāmah, (d. 620 H) he argued “that in areas of breastfeeding, childbirth, menstruation, chastity, and physical abnormalities, a single female witness is admissible<sup>7</sup>.”

The Muslim jurists uniformly agreed that the testimony of women is adequate in all areas relating to themselves or unrelated to males, such as proof of newborn presenting signs of life at birth<sup>8</sup>. In Islamic legal literature, some instances are appropriately witnessed by a woman, such as topics that men cannot see, such as childbirth, the virginity of women, and other cases that men are not permitted to watch or witness<sup>9</sup>. Ibn Rushd in *Bidayat ul Mujtahid* Its mentions that in subjects such as virginity, menstruation, childbirth, clarification of female sexual abnormalities and so on the evidence of a woman alone is accepted<sup>10</sup>. Following some other jurists, explanation to clear the topic more with a different point to view on this matter. Ibn Rushd said about this view in his book *Bidayat ul Mujahid* in the following:

When it comes to women as sole witnesses, the majority accepts it only in bodily issues about which men have no knowledge in usual circumstances, such as physical defects of women and a newborn wailing at delivery. So single women testimony is admissible in the matters which are relevant to women<sup>11</sup>.

### What is Position in Pakistani Law

Articles 3 and 17 of the QSO 1984 address the competency and number of witnesses. Article 3 states that witnesses must not be prevented from understanding and delivering testimony. Article 17 specifies the number of witnesses required to establish the truth in light of the Qur’ān and Sunnah injunctions.

<sup>6</sup> Fadel, Mohammad (1997-01-01). "Two Women, One Man: Knowledge, Power, and Gender in Medieval Sunni Legal Thought". *International Journal of Middle East Studies*. 29 (2): 198–199

<sup>7</sup> Ibn Quda mah, *Al-Mughni* (Bayru t: Da r al-Kutub al-İlmiyyah, 1997.), 210

<sup>8</sup> Ibn Hazm. *Al-Muhalla*. Vol. 1. Cairo, 1988.

<sup>9</sup> Shaltūt, M. (1996). *Aqīdah wa al-Sharīah*. Mesir: Dār al- Qalam, pg. 250.

<sup>10</sup> Ibn Rushd. *Bidayatu’l-Mujtahid*, 1st ed., vol. 4, (Beirut: Daru’l-Ma’rifah, 1997), 311.

<sup>11</sup> Ibn Rushd. *Bidayatu’l-Mujtahid*, 1st ed., vol. 4, (Beirut: Daru’l-Ma’rifah, 1997), 311.

**In Specific Matters:** Matters demanding a women's testimony are frequently important to women. A single lady's testimony can be utilized to determine if a certain child was born by a specific woman.

**Other Matter:** Once the tazkiya of Women has ruled that a woman satisfies all of the standards for a witness, a court may accept and act on her evidence. (Qualifications of a Competent Witness in Islamic Law, <https://legalversity.com/>)

### Female Witnesses' Credibility and Islamic Customs

Even in Islam, one testimony of a female is considered credible and gentle enough to resolve the issue. Existence of Two Female Witnesses for the Reliable Witness Process However, in the early days of Islam, there are many examples of huge initiatives taken based on only one female witness. Thus, this phenomenon proves the equality of male and female witnesses but also the legitimacy of female evidence in Islam in certain cases where only female testimony is allowed<sup>12</sup>. These include:

### Matters Relevant to a Woman

All jurists and Islamic scholars believe that single women should testify on all subjects about or concerning women. In topics about women, only the evidence of women is accepted; even if ten males assemble as witnesses their testimony is not accepted. Only one female witness is admissible. According to Hazrat Amir Bin Shurahbil Al Sha'bi , in all cases where males do not know, the testimony of four women is accepted. Prophet said all the matters which are relevant to women and man cannot see them, single women testimony is admissible in those matters.

” تجوز شهادة المرأة الواحدة فيما لا يطلع عليه الرجال“<sup>13</sup>

The matters in which male do not have any knowledge, the single female testimony is accepted or valid in those matters. According to Hazrat Ibrahim رضي الله عنه female testimony is only permissible in issues pertaining to women<sup>14</sup>.

<sup>12</sup> Rushd,I. (1997). *Bidayat al-Mujtahid (The Distinguished Jurist's Primer)*, Beirut: Dar ul Fikr, vol.1,

<sup>13</sup>San'ane,A.R. *Al-Moussannaf Abd al-Razzaq As-San'ane*, vol.7. 484, Ahādīth.13978

<sup>14</sup> Hazm,I. 1994. *Al Muhalla*. Beirut: Dar Al Afaq Al Jadidah, n.d.

”وقبل في الولادة والبركة والعيوب بالنساء في موضع لا يطلع عليه الرجال شهادة امرأة واحد“<sup>15</sup>

Single women testimony is acceptable in matters relevant to women and also in child birth. Single women testimony is acceptable. Men are not aware of these subjects so their testimony is not valid in matters relevant to women. Imām Abu Hanifā believes that except in circumstances of Hudūd and financial transactions, women evidence is permissible in physical matters like as divorce, marriage, slave-emancipation, and raju (restitution of marriage).

Imām Malik is of the view that their testimony is not acceptable in bodily affairs. There is however a difference of opinion among the companions of Imām Malik regarding bodily affairs which relate to wealth like advocacy and will-testaments which do not specifically relate to wealth. Hazrat Sufyan Sauri said that in all cases where women are involved or the testimony of a single woman is accepted, one woman is sufficient. Imām Shāfi‘ī says in all cases concerning women, the testimony of a single woman is admissible<sup>16</sup>.

### Monthly Courses/Menstruation

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

*I asked Ibn Sirin about a woman who sees blood after five days? Then Ibn Sirin reply women knows better about this matter<sup>17</sup>.*

So in such regard the Holy Prophet made a religious decision on the sole witness of Hazrat ‘A’isha:

*“It was narrated from Hazrat Aishah that Umm Habibah asked the Messenger of Allah*

*about bleeding. Hazrat Aishah said: “I saw her (Umm Habibah) wash tub filled with blood. The*

<sup>15</sup> Al-Hidayah al- Marghinani . 154

<sup>16</sup> Hazm,I. 1994. Al Muhalla. Beirut: Dar Al Afaq Al Jadidah, n.d.

<sup>17</sup> Sahih al-Bukhari, Al-Jami, Book 6 Menstrual Periods, chapter 24

Messenger of Allah said to her: Stop (praying) for as long as your period used to last, then perform Ghusl."<sup>18</sup>

## Lactation / Baby Suckling

In the life of the Prophet women came to holy Prophet and give testimony. On her single testimony Holy Prophet ordered the newlywed couple. The whole is discussed below. Abdullah bin Abu Mulaika narrated from Uqba bin Al-Harith: Uqba married the daughter of Abu Ihab bin 'Aziz, and then a lady came and stated, I suckled Uqba and his wife. She claims that both husband and wife sucked by me. Uqba stated to that lady I don't know you suckled me, and you didn't tell me before. He immediately sent someone to Abu Ihab's house to enquire about it, but they had no idea she had suckled their daughter. Uqba then went to the Prophet at Medina and inquired about it. "How (can you maintain your wife) when it has been claimed (that both of you were suckled by the same woman)?" the Prophet said as a result, he divorced her and she married another (husband)<sup>19</sup>.

In this ḥadīth it has been stated that just one lady gave evidence of the feeding, and the decision was taken by the Holy Prophet . According to Hazrat Ibrahim the testimony of one woman is sufficient for suckling. (Hazm, 1984) He further stated that the evidence of one woman as a midwife is acceptable in the case of a baby screaming at birth. The testimony of a midwife lady in the weeping of a newborn at the moment of delivery is acceptable by Hazrat Qāzī Shuraih . Another narrates: According to Shab'ai and Hassan, the only testimony of women is sufficient in subjects on which males are not well-informed<sup>20</sup>. Qāzī Abu Yusuf and Imām Muhammad Al Shibani are Imām Abu Hanifā's students, however,

<sup>18</sup> Sunan Al-Nasi, Ḥadīth no. 352

<sup>19</sup> Sahih Al-Bukhari, Ḥadīth no. 2640

<sup>20</sup> Razzaq, A. *The Musannaf of 'Abd al-Razzaq Al-San'ani*. (1991). Vol 5. 21. 3333-3334



they disagree with him. They claimed that in the case of a baby wailing at birth just one women's testimony is accepted while Abu Hanifā requires a male as well<sup>21</sup>.

According to the above-mentioned narrations in circumstances when males are less involved, testimony from only one woman is sufficient. According to Hazrat Amir Bin Shurahbil Al Sha'bi only the evidence of one woman is accepted in suckling. So, the consensus made in this regard is: In the case of lactation the single women testimony is legitimate or acceptable<sup>22</sup>.

### Defects of Women

According to the majority of scholars the testimony of solitary women is acceptable in the defects of women. According to Imām Abu Hanifā the testimony of one lady in foster care and wailing the infant at the moment of delivery is admissible in court with one man. However, in the case of birth abnormalities in women, only one witness is admissible. Imām Mālik stated that in cases of deformities of women, birth, fosterage, and newborn wailing the evidence of one male with Qasm is valid as is the testimony of two women with Qasm<sup>23</sup>. (Qayyim, n.d.)

By the above ḥadīth, it's clear that Imām Mālik point of view is different from others. He stated that both men and women are admissible for testifying on subjects concerning women, but that both must testify with Qasm. According to Hazrat Sufyan Sauri the testimony of single women is admissible in cases of women's deformities<sup>24</sup>. (Hazm, 1984)

### Child Birth issues / Baby Crying

If there is a disagreement over the birth of a kid and the wailing of a child, only a women's evidence will be accepted, not a man's. Because it's one of those things that many men are unaware of. In this circumstance, the Holy Prophet has decreed that only the evidence of the midwife is admissible. (Rahman, 1969). Birth

<sup>21</sup> Hazm, I. 1994. *Al Muhalla*. Beirut: Dar Al Afaq Al Jadidah, n.d

<sup>22</sup> San'ane, A.R. *Al- Moussannaf Abd al-Razzaq As-San'ane*, vol.7, 335

<sup>23</sup> Qayyim, n.d. pg 115

<sup>24</sup> Hazm, I. 1994. *Al Muhalla*. Beirut: Dar Al Afaq Al Jadidah, n.d

Problems Muslim jurists and scholars agree that the testimony of merely one female is adequate in some birth concerns that men find incomprehensible, such as child wailing.

الرجال شهادة امرأة واحد و يقبل في الوالدة والبكارة و العيوب بالنساء في موضع ال يطلع عليه <sup>25</sup>

It's mentioned that child birth issues is related to female so the testimony of one female in this issue is acceptable. Male testimony is not admissible in this issue.

تجوز شهادة المرأة الواحد فيما ال يطلع عليه الرجال <sup>26</sup>

All in matters of women male testimony is not acceptable because male is unaware of the all situations/ matters. Single women testimony is only admissible in these matters. A single women's testimony is valid in cases where males are unaware of the situation.

According to the Prophet the evidence of Al-Qabila (Midwife or Nurse) is permitted<sup>27</sup>. Abdul-Razzaq narrated from Al-Zahri said "It is impossible to be informed except them like in birth cases of women and their defects<sup>28</sup>." According to Ibn Qayyim

*"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.<sup>29</sup>"*

Neither determining witness's number nor the specification of their gender is the core purpose of the Qur'ānic verse but the central destination for which such procedure is introduced is to minimize the chances of dispute in financial transactions and delivery of justice and right to its entitled one for which ratio and gender of witnesses could be modified according to the sensitivity of the faced situation Ibn Kathīr says that majority of jurists are of this opinion that it's the recommendatory not mandatory that men do not give testimony in women matters; According to Ibn-Kathīr

<sup>25</sup> Al-Hidayah al- Marghinani . 154

<sup>26</sup> San'ane, A.R. Al- Moussannaf Abd al-Razzaq As-San'ane, vol.7

<sup>27</sup> Bayhaqi, A. n.d. Sunan Al Kubra Bayhaqi, Vol.10, 151

<sup>28</sup> Shaibah, A.B.M. Al-Musannaf Fi. Al-Aahādīth-wa-Al-Aathar. Vol. 5, Beirut: Dar-Al-Fikr. 331.

<sup>29</sup> Qayyim, I. n.d. I'lām al-Muawaqe'īn. Vol. 1. Beirut: Dar-Al-Jail, 90

male cannot give testimony in the matters of women it's just a recommendation not a requirement<sup>30</sup>.

Imām Abu Hanifā said that in birth and defects of women, the testimony of one is accepted<sup>31</sup>. Imām Malik (R.A) said that in defects of women, birth, fosterage and crying of the baby, the testimony of one man with *Qasm* is admissible, there also the testimony of two women with *Qasm* is acceptable<sup>32</sup>.

### Emergency and Sudden Matters

In the events taking place suddenly the evidence of women is also accepted when man is not available according with the situation like Theft, Rape, and Dying declaration. In this regard Allama Bajauri mentions that:

“The matters in which Allah the Almighty has called the evidence of two men or one man and two women of his liking are deliberate, which are in the control of man, but if the events suddenly taking place there would have been the evidence of women invalid then the human rights would have been wasted. In the controversial matters if non-Muslims and even infidels can produce evidences then why not the Muslim women who enjoy superior status over them<sup>33</sup>.”

This suggests that when in a contentious position, the woman can offer evidence, but she has been kept away from men's subjects of interest on purpose because there is a risk of deprivation of human rights in the contentious situations. There is also the threat of oppression and injustice and Islam is the only faith that protects human rights. So it has been decreed for women to give evidence, but not in intentional issues where no such threat exists.

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<sup>30</sup> Tafīsr Ibn-Kathīr, 449

<sup>31</sup> Qayyim, I. n.d. *I'lām al-Muwaqqe'īn*. Vol. 1. Beirut: Dar-Al-Jail, 165

<sup>32</sup> Ibid

<sup>33</sup> Bajauri, M. *Fiqh-ul-Rasul al-Mara'at fī Fikr al-Islami* (Baghdad: Matabei Jamiat-ul-Mosal, 1986), vol. 2, 54–55.

## Cases of women testimony in Emergency and sudden matters by Federal Shariah Court

The single women testimony is acceptable in shariah as well as in the Pakistani legal system in the emergency and sudden matters like rape, theft, dying declaration. In some recent years the Court cases of Federal Shariah, they acceptable the testimony of women in the matters of Hudūd. About rape, theft, dying declaration matters cases are mention below.

### Rape Cases

“Penal Code (XLV of 1860) Ss. 302(c), 324, 147, 148 & 149 Qatl-i-amd, attempt to commit Qatl-i-amd, rioting, rioting armed with a deadly weapon, unlawful assembly. Appreciation of evidence Statements of interested witnesses Defence had objected that only interested witnesses were produced in the trial court and the case of prosecution lacked independent corroboration, Effect, Record showed that all the witnesses were not interested witnesses, Injured lady was the sister of two accused and the close relative of remaining culprits, who received grievous injuries on her person; she was also closely related to the accused party thus, it did not appeal to the logic that both the witnesses having blood relations with the accused party, would falsely involve them. Admittedly, in a male-dominated society, the womenfolk would not come forward against the male specifically against their blood relatives like father, brother, cousins, and tribal elders---In the present case, both the women witnesses at the risk of their lives came forward and nominated the culprits in their testimonies--- Testimonies of said women were not only worth confidence, but also most reliable evidence in the case and defense had failed to give jolt or shake their testimonies--- Evidence of sole lady witness was enough to establish the charge against the accused persons.”

This judgment is taken from Pakistan Criminal law Journal 2018 in this case two women who were witnesses of the incident came forward as a witness against their own blood relations. The testimony of the two women was acceptable and charges were established against the complaint. In this judgment it's clearly mentioned that in rape cases even the evidence of sole women is also acceptable.

“S.10 (3) Offence of Zina Ordinance, S.103. When the defense is unable to refute the truth of the victim's account, the victim's testimony alone will suffice to prove the Zina case against the accused. A 5-day delay in the medical assessment of Zina sufferer would not evaporate semen, since semen remains active and alive for up to 17 days at the most, according to medical opinion. Conviction recorded by trial Court on the basis of victim's statement upheld by Federal Shariat Court, with sentence reduced from 18 years R.I. to 15 years R.I.”<sup>34</sup> In this case single women testimony was sufficient on this medical opinion despite the delay of medical examination.

“S.10 (3) Offence of Zina Ordinance, 1979. When P.Ws. presented consistent statements and supported/corroborated each other on all important issues, the conviction/sentence for Zina-bil-jabr with a girl of 11/12 years of age would be impregnable. The mere discovery of ancient hymen tears does not imply that the victim was not treated to Zina-bil-jabr as she claimed. The statement of the victim of Zina-bil-jabr, a little girl of 11/12 years old, would be adequate for recording conviction/sentence under S.10 (3). The failure to provide the victim's shalwar, kameez and dupatta would not be fatal to the prosecution case under S.10 (3), which cannot be thrown out for such omission by the prosecution. The conviction/sentence was maintained by the Federal Shariat Court, and an appeal to oppose it was dismissed<sup>35</sup>.”

In the above case, the testimony of 12 years old girl was accepted by the Federal Shariah Court upheld the sentence and dismissed the appeal in spite of omission to procedure circumstances pieces of evidence. Appreciation of evidence, Statements of interested witnesses Defense had objected that only interested witnesses were produced in the trial court and the case of prosecution lacked independent corroboration, Effect, Record showed that all the witnesses were not interested witnesses, Injured lady was the sister of two accused and the close relative of remaining culprits who received grievous injuries on her person; she was also closely related to the accused party thus, it did not appeal to the logic that both the witnesses

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<sup>34</sup> (Federal Shariat Court 2004 SC 159)

<sup>35</sup> (Federal Shariat Court 2004 SC 352)

having blood relations with the accused party, would falsely involve them. Admittedly, in a male-dominated society the womenfolk would not come forward against the male specifically against their blood relatives like father, brother, cousins, and tribal elders---In the present case both the women witnesses at the risk of their lives came forward and nominated the culprits in their testimonies---Testimonies of said women were not only worth confidence but also most reliable evidence in the case and defense had failed to give jolt or shake their testimonies---Evidence of sole lady witness was enough to establish the charge against the accused persons.

This judgment is taken from Pakistan Criminal law Journal 2018 in this case, two women who were witnesses of the incident came forward as a witness against their own blood relations. The testimony of the two women was acceptable and charges were established against the complainant. In this judgment it's clearly mentioned that in rape cases even the evidence of sole women is also acceptable.

### Cases of Dying Declaration

It reads as follows:

“46 (1) When it relates to cause of death: When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which cause of his death comes into question<sup>36</sup>.”

“Penal Code (XLV of 1860)--- ---Ss. 302(b) & 109---Khyber Pakhtunkhwa Arms Act (XXIII of 2013), S. 15--- Qatl-i-amd, abetment, possessing unlicensed weapon---Appreciation of evidence--- Ocular account---Scope---Accused was charged for committing murder of his daughter/complainant by firing---Ocular account of the occurrence had been furnished by two ladies---Record showed that the occurrence had taken place inside the house---One of the eye-witnesses had been a minor daughter of the deceased lady while the other woman had been the lady hosting the

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<sup>36</sup> Article 46(1) of the QSO 1984

deceased---In the given circumstances, their presence at the scene of occurrence had been very much natural and confidence inspiring---Said fact that the deceased lady while recording her dying declaration could not name them as eye-witnesses might not be taken as a reason for excluding their testimonies---Circumstances established that the prosecution had proved its case against the accused, however due to some compelling circumstances, death sentence was reduced to life imprisonment--- Appeal was partially allowed.” (2021 P Cr. L J SC 1323)

This judgment is taken from Pakistan Criminal law Journal 2021 in this the accused was given life sentence on the basis of testimony. Evidence of the women who hosting the accused murdered his wife and a minor daughter and hostess were eye witness of the dying declaration of the deceased.

### li'ān

There are some ulama who equate the testimony of man and woman, such as the testimony of li'ān because they both give testimony four times then the fifth time they oath that curse of Allah upon both of them if they are liars. So the testimony of males and females is equal in the matter of li'ān. Here the status of both husband and wife is equal. Both men and females have equal status in the testimony of li'ān. Li'ān is stated in Al Qur'ān<sup>37</sup>:

Taymiyah, Ibn Al-Qayyīm and Muhammad 'Abdu. He said “that when a women's testimony in the issue of li'ān is equal to that of a man, it vindicates her capabilities and contradicts what the critics allege. It's clearly mentioned in this ḥadīth Holy Prophet did the li'ān between the couple in His life.” Sheikh Mahmud Shaltut agreed with the independent reasoning of Ibn Taymiyah, Ibn Al-Qayyīm, and Muhammad 'Abdullah (The Testimony of Women in Islam, para, 5). Li'ān is stated in Al Qur'ān: Nur 24: 6-9

The ayahs of Surah An- Nur 24:6-9, Allah clearly describe the equality between the matter of li'ān. If a man accuse of adultery on his wife then he oath for the four times and in fifth time he say that if I am lair then Allah's curse on me. Same produce

<sup>37</sup> Al Qur'ān : An: Nur 24: 6-9

should be attempt by the wife. She oath that I do not commit adultery, if I am lairs then Allah's curse upon me. If a wife accuse of adultery to his husband same process will be follow. So in the matter of li'ān the both spouse testimony is equal.

Sheikh Mahmud Shaltut agreed with the independent reasoning of Ibn Taymiyah, Ibn Al-Qayyīm and Muhammad 'Abdu. He said that when a women's testimony in the issue of li'ān is equal to that of a man, it vindicates her capabilities and contradicts what the critics allege. According to Ibn 'Abbas, Hilal bin Umaiya accused his wife in front of the Prophet **صلى الله عليه وسلم** of having unlawful sexual relations with Sharik bin Sahma. The Prophet stated Produce a proof or else you will bear the lawful punishment (by being lashed) on your back, Hilal said O Messenger of Allah Would any of us go looking for proof if another man had cheated on his wife? The Prophet said Produce a proof or else you will get the lawful punishment (by being lashed) on your back. The Prophet then mentioned the narration of li'ān. (Sahih al-Bukhari *ḥadīth* no. 2671). It's clearly mentioned in this ḥadīth, Holy Prophet did the li'ān between the couple in His life.

### Discrimination Against the Women

Section 17 of QSO 1984 do the directly discrimination against the women.

*"The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Qur'an and Sunnah"*

The rights of women are violated by the Pakistani legal system. It claims that all the laws and decisions are done according to the teachings of the Quran and Sunnah, but it is not implemented in the courts of Pakistan.<sup>38</sup> There is no case law report filed by the courts about the matters of women. By this, it seems like there is no implementation of the laws and statue in practical life.

<sup>38</sup> The discriminations against the Christian women in Pakistan see: Ali, F., Ahmad, H., & Salahuddin, A. (2022). Christian Feminist Theology in Pakistan. *Feminist Theology*, 31(1), 9-19. <https://doi.org/10.1177/09667350221112871>.



## Conclusion

Women's evidence is acceptable and holds a high position in the Shariah and legal system of Pakistan. If the information cannot be provided to the man or if the man does not have access the evidence of the woman is accepted. This is the position of a Hanafī legal scholar and is reasonably favored for strong discussions on the injunction and teaching of the Qur'ān and Sunnah. Her view also corresponds to the nature and behavior of women and the goodness of Islamic society. It also secures the rights and honor of women in Muslim society. Two famous jurists "Imām Abu Hanīf" and "Imām Ahmad" both agree that single women's testimony is enough in the matters of women means private matters of women in which there is no involvement of the man. But on the other hand, another more famous jurist Imām Shāfi'ī not agree with this point they said that in the testimony of women in private matters of women there should be four women present the witness. Hence, these *ahkam* (orders and rules) need to be proven while men cannot be informed and witnessed about these and only women can get information and qualify to be an exclusive witness in specific cases. Therefore, women-specific evidence must be accepted and benevolent, and beneficial to *Ummah-al-Islamiah* in order to achieve justice.