

## Study of Women Witness Edict about Proving Claim

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### ABSTRACT

Nowadays, argument of observing woman right and equality of observation between genders is one of problems which draw international assembly attention. Witness argument is important problem in this direction. In all countries, although, witness is one of reason of claim proof and gender do not have effect on its validity in some countries. There are some differences between witness validity of women and men in law regulation of Iran, that writer investigates view which consider the difference of men and women's witness as deficient of woman value ,along with emphasis that witness is duty not right. Also, he has investigated juridical principles of such regulations. It seems that it is necessary to investigate the woman witness issue and such issue. According to draft of many propounded issues in Islamic Republic of Iran throughout issues which are related to human right and existing doubt to their juridical principle. In this paper, the subject has been investigated by using documentary method. Finally, it admitted that witness chapter does not have relation to wisdom and rationalities, but perceptible is discussed here. However, inequality of woman witness value to man is not a reason of inequality of physical and intellectual ability of woman. But it is a strategy on behalf of religious law for exemption from duty, not depriving of right.

**Keywords:** Woman, Witness, Claim, Right, Duty.

### Introduction

Nowadays, be man does not considered as the necessary condition for witness validity in some countries, while there are some differences between man and woman witness validity in law of our country. This issue is one of issues which is objected by some unaware people or begrudged people, and they believe that woman witness issue in some claims is incompatible with some western Convention, including an extremist of this issue declares among members of

monarchist foundation during a speech in France: "in criminal law of Islamic republic, a woman is not considered when a crime is just proved by men witness, such as article 74 of Islamic punitive law which states:" fornication which lead to punish by lashing or stoning , is proved by four just men or three just men and two women, in such case, just women witnesses do not prove the crime , and article 76of Islamic punitive law states :” women witness together with a man

witness do not prove the fornication ,but QAZF ( accusation of fornication) quorum is running about mentioned witnesses and we know that QAZF quorum is 80 lashes.” To respond mentioned doubts, first, this paper investigate cases that a woman can only bear witness or together with, and cases that a woman cannot bear a witness at all. Then it states different views which are presented about non-equivalent of men and women witness. Finally, it investigates these issues, basically.

## **Discussion**

### **Cases that women witness are not acceptable.**

According to Islamic jurists consensus (Najafi, 1983, v 159, 41),women witness are not acceptable in crimes which are not related to people right ,other that fornication which is frankly pointed by Quran verse 15 of Nesa chapter. Because the principle of Islamic law in punishment is that it does not running quickly and fewer pretexts. Lack of woman witness about this issue is one of achieving this purpose, means non-severity in punishing and running the punishment.

### **Cases which are differences about women witness.**

In some cases, Islamic jurists have divergence of views whether women witnesses are acceptable or not? Famous Islamic jurists disagree with women witness income cases such as proxy claim, recommendation, lineage, proving the new moon, and divorce claim (Moqadas Ardebili, 1414). Some of them attached deposing claim to divorce if disagreement is about divorce not fiscal problem (Imam Khomeini, v 2, p404). Of course it can be concluded by relative edicts that divorce is on the basis of non- proof and non- severity, like punishments. However, divorce is only case which need to witness, from the juridical

view among contracts and Eiqa (is a contract which does not need to agreement of two or three person) (Najafi, v,41, p 178).

Retaliation is another case that Islamic jurists have divergence of views about it. The reason of these divergence view result from narratives, because some narratives stated that this witness is not acceptable about blood of killed person (Ameli, Mohammad, v27). Blood term is more common that punishment and retaliation, but other Islamic jurists accept women witness in retaliation (Ameli, Mohammad, v 21, narration 1), and some of Islamic jurists have accepted women witness together with men witness in retaliation ,according to these narratives(Najafi, v 41, p162). The claim which is related to marriage is another case that Islamic jurists have divergence of views, because of narrative opposition. In this case some of Islamic jurists have accepted women witness in marriage (same reference, p 163).

### **Cases that women witness together with man witness are acceptable.**

Women witness together with man witness is acceptable in two cases which include:

a) Fornication: many Islamic jurists mentioned that woman witness is not sufficient for proving fornication, but they know that stone punishment proved by witnesses of three men and two women, and lash punishment is proved by witnesses of two men and four women. Sheikh Tosi, AllamehHelli, sahib Javaher, and Imam Khomeini are supporters of this view. So an article 74, 76 of Islamic punitive law which is criticized, is corresponding to edict of Islamic jurists.

b) Witness in financial affairs: just woman witness is not sufficient in financial affairs or affairs which their purpose is property. Although some of Islamic jurists believe in some limits in a man witness and claimant

oath about proving financial claim, they accept two women witness and a man witness in proving financial claim. (Najafi, v 40, p 432,433) additional to several narratives, the verse of Quran is the document of this edict (Baqareh, 282).Of course, Islamic jurists do not define financial affairs definitely. So they have divergence view in some evidence. Some of commentators cited this verse of Quran" if one of them forget the witness, another one remember it "in respond to this question why two women witness is necessary in financial affairs. Some of commentators believe that word" remember" is against the "for gotten". Late Feiz Kashani says about this holy verse:" forgotten is the reason of plurality of woman witnesses". Late Tabarsi who is one of the well-known commentators of Shiite, says about this verse:" women are forgetful more than men".

### **Basic Investigation of Woman Witness**

Ill-informed or begrudged people combine duty with right in study of woman right. In many cases that the Islamic law has removed duties which lead to difficulties for them, they consider this removing the duty as privation of right, and they engage in shouting as defending woman right. So, it should be investigated whether witness is right or duty? Before suggesting mentioned doubt as privation. Because, if we consider some cases as duty by maintaining its quality, it cannot be part of law. Because, right and duty do not gathering (Katoozian, 1991, p267).

### **Right Definition**

One of jurist define:" right is an ability that law of every country give to people so that use property directly, or convey the property or they want something from other (Katoozian, 1370).

Other said:" right is affairs which are predicted in law .if people are allowed to change it for their purpose, these changeable affairs are right. Also it is said:" right is valid affair which is laid down for some and against other (Mesbah Yazdi, 1995).

### **➤ Duty definition**

Duty is defined:" duty is an affair that a person is obliged to do it, and him / her is punished whenever he/she act as opposed to it. (Seyyed HasanImami, v4, p11).Also it is defined:" person's duty in non- asset affairs is duty, even though he/she is the observer of that work." (Katoozian, 1990, 267)

### **Relation of Right and Duty**

As mentioned before, right and duty do not gathering. It means that owner of right and duty cannot be one person. But everywhere the law officially recognizes aright for someone, so there are a duty for other.

### **Relation of Duty and Witness**

From the view point of jurists and status law, witness is a duty, not right, because many jurists know that the witness is necessary if a person who is gave evidence against him/her, invite. Just, some of jurists including Bin Edris disagree with this subject (AllamehHeli, 2006).

Also, although consensus of jurists is that witness discharging is religious duty (which may be performed voluntarily), some of jurists consider it as religious duty for everyone. (Khoei, Bit, vol.1, p 139), some believe that it is superiority, and said:"if the witness is called for testimony, its discharging is necessary. But witness claim is not necessary, if he/she does not call for testimony (Najafi, 1983).

Also, from the view point of status law, whenever it is spoke about witness, it emphasize on summons and arresting. Article 224 of punitive law says:" research

witnesses are summoned by court, if two parties did not bring them." And article 225 of this law say: "whenever witnesses do not present at the appointed day, without good excuse, and their place of resident is not more than two 10 kilometers, they will be arrested by the edict of court". Also, article 409 of mentioned law say: "every witness who is summoned, bathe/she did not present at court, he/ she will be summoned again. If he/she did not present for second time, the court can arrest him/her. Series of mentioned cases confirm that testimony is a duty and witness is a duty bound, from the view point of jurists and status law.

### **Cases that witness of women is accepted alone.**

Just women witness is acceptable in cases that it is difficult for men to know such as birth, inner defect of women. But, it is said about plurality of women witnesses acceptable in mentioned cases: "two women witness is accepted about birth, and women disease. Witness of a woman is accepted, if there are not two women, and documentary of this word is imam Sadeq (sixth imam of Shiite), when witness of midwife is asked in birth, he said: just her witness is acceptable (Masalek-AlAfham, 1994).

Moreover, Sahihe Abdullah Ibn Sanan said: I heard that Imam Hussein say: "witness of woman is not lawful about seeing the new moon, and stoning, but witness of woman is lawful in cases that man is not allowed to see it, and midwife witness is lawful about birth (HOr Ameli, 1920). Abdullah Ibn Bakir Quoted from Imam Hussein: "witness of woman about virginity and every disease that man does not see, is lawful

### **Philosophy of Inequality of Woman Witness to Man**

There is different commentary about reason of inequality of woman witness to man, including: some have said that we should not

be after reason and providence of Islamic law, but it is our duty to obtain god's edicts from the Islamic law reason. But obtaining edicts philosophy is not our duty, nor we are able to do this duty. Just as Islamic law obtained through book and tradition, we should accept it and we should not distinguish and justify its philosophy. Because, it is possible that God edict is on the basis of secret philosophy which is not comprehensible for

Human (Ibn- al Arabi, v1, p 253). Some other Islamic jurists considered such edict about inequality of women witness to men, because of women's wisdom and intelligence are lower than men, and they resorted to some narratives for proving their claim.

a) It is a narrative from Abo Horaireh that Islamic prophet say: women ask prophet why women are foolish? Islamic prophet say: witness of a man is equal with two women witness and it is foolish, and they do not pray several days and night, and they do not fast in Ramathan month during their menstruating are their religious defect (Al Sivati, jalal -Aldin, v 1, p 371).

b) In the justice discussion about non-permitted women's justice, also, Ibn Qodameh said that Islamic prophet say: "do not bless who give their reins of power to women". Thus it is said: group of men and claimants moved to judge. The judge need to perfect judgment and view, perfect wisdom, cleverness for judging, while a woman is in captivity of foolishness, imperfect judgment, and she cannot present between men group. Although several thousand women go with her, her witness is not accepted, unless a man bear witness together with her. Also, God attend taxwoman's deviance and say: "if one of them forgot it, other one will warn her "Finally, neither the woman has the merit of leadership, nor has she the merit of governing the city. (Ibn-qodameh, Bit, 378). Some other of Islamic authorities have

said that their practical condition which cause to become far from social events and issues and lack of mental and intellectual growth are reasons of inequality of women witness to men, that the writer of Alminar say:” some of commentators have said that women’s foolish and religious deficient is the reason of women exposed to fault and forgetfulness and their witness value is considered as half of men witness in related verse. Some said that its reason is triumph of moisture over women’s health that its result is forgetfulness speed and lace of memory. But they are not the correct justification”. Then he quoted from his professor, Sheikh Mohammad Abdoh that the correct of this issue is that employing transactions and financial affairs are below woman's dignity, so she is weak in this field. But her memory is more powerful than man in dealing with house work which is her job. In principle, human nature is that he/she can remember better the job that he/she deal with it more. The basis of law-making and edicts fabrication consider majority of present condition. Because the woman does not attend to financial affairs and transaction, thus she is weak in this field, and she is exposed to forgetfulness and fault. So two women's witness is equal to a men’s witness .he respond the mentioned problem: employment of some women in financial affairs in some countries is not consistent with this philosophy and edict. Because, the base of edict is majority of present condition, as it is mentioned (Seyyed Mohhamad Rashid Reza, v2,p 124).

### **Findings; Study and Critique of Mentioned Views about Foolishness of Women**

Suggested doubt about mentally deficient and foolishness of women is the narrative content of Nahjolbalagheh that said: belief of woman is deficient. Because she is deprived of pray and fast in all day of her

menstruating, and her wisdom is law, because witness of two women is equal with a man and her enjoyment of property is half of man. But, Ayatollah Javadi-Amoli say about this: “sometimes, event or issue is scolded or praised as a result of series of historical factors, time, people’s place, and its condition and causes. But meaning of praise or scold of some event does not mean that nature of that thing is praised or scolded, and this Nahjolbalagheh’s scold to woman refers to Jamal war event. Because Imam Ali said this speech, when Ayeshamounted s camel and she encouraged Talheh and Zobeir and other and many people were killed in Jamal war. Also, Ayatollah Mohammadi Gilani said against people's view which considered mentally deficient and belief as reason of non-merit of woman for judgment post: “there are not firm reasons that being man is adjudge condition so that the heart finds peace. According to this, Ardabili said that it’s no problem that the woman hear the witness of two women, provided that thank to her necessary condition for judging, if her judgment is unlawful, such edict is ordered.( jurisprudence of Imams, merit of woman for responsibility of judgment,number10,p 146).

According to this, it is said that witness chapter does not related to wisdom and rationalities. But perceptible and sense is suggested about this case. In other word, witness is just accepted in perceptible such as head and seen. It is interesting that some of sunny jurists consider the mentally deficient of woman as inequality reason of witness value of woman to man they state subjects so that, finally, forgetfulness of woman and her weak are obtained during their explanation and interpretation of this word. Also, it is the emphasis of Quran that two witnesses of woman is equal with a man witness in financial affairs, that if one of two forgets the case of witness, other one warns

her. Thus, inequality of woman witness value to man is not the reason of their ability of comprehension. But it is a management of Islamic law for reducing fault and error probability in affairs which are related to prestige and lie and social position of people. Although witness of woman is limited, but woman expertise in all economic, scientific fields is correct. So, there are no differences between men and women. Because, criteria of witness are report from sense and feeling, and criteria is scientific and mental guess, according to expert's view. The value of scientific guess and expertise report is clear, completely. Assuming that it will not woman's privation in mentally, assuming affairs, and expertise affairs, if she is limited in some affairs, because of lack of her presence in social environment. Of course, the value of mentally expertise is more than feeling reports; witness edict is not running in it, because proof of experts is not about the witness. But, it should be confessed that reason of inequality of woman witness to man does not refer to mentioned cases, regardless of correctness and non-correctness of mentioned reasons about inequality of woman witness to man. To remove this doubt, perhaps, we investigate principles of this issue so that issue edict identify.

### Conclusion

It is concluded that from the viewpoint of jurists and status law of Iran, discharging testimony and witness is a duty, not right. Because, it show that non acceptance of woman witness is not depriving of right, but it is exemption from duty, according to edicts related to witness which has ordered aspect and the witness does not have any option. Because, additional to summon and arrest which is the effect before testimony, the witness will face its effect after bearing witness. Because, witness is not out of three aspect: first, it is proved for judge that the

witness lie, second, the witness himself confess that he/ she bears witness against the truth, third, his/her

Witness is correct that the testimony is dangerous and it will followed different punitive, civil responsibility in every mentioned aspect, and the witness does not benefit. So, witness is duty not right by mentioned condition that people call for it, and if they do not do it, they will punish. Finally, it is worth mentioning that we have to thank those who assisted us and helped us. Moreover, we should also thank those who wrote the materials on which our present essay has been based.

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