



Witnesses: A Woman's Testimony Is Worth the Same as a Man's, Except in Two Cases Where It May Count for *More* or *Less*

QUR'ANIC VERSES ON GIVING TESTIMONY

One of the most humiliating things to hear as a Muslim woman is the claim that the Qur'an considers the testimony of a woman to be worth half that of a man.

Setting aside common sense, how anyone can believe this despite God's relentless insistence throughout the Qur'an on the essential and primordial equality between the male and female is beyond me. Most of us have simply shrugged off this claim throughout our lives in our firm belief in a logical and just God, relegating this egregious claim to an ever-towering pile of either misunderstandings or downright manipulations of God's words.

So where does this idea come from?

The Qur'an speaks of giving testimony in the context of five specific situations¹ it clearly considered either important or was moved to address because of an incident that had arisen among Muhammad's followers at the time. These contexts relate to financial transactions, the property of orphans, sexual misconduct by women and men, accusations of infidelity against a married woman, and divorce.

¹Barlas, Asma. 2015. *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an*. Texas: University of Texas Press, 190 and Lang, Jeffrey. 1995. *Struggling to Surrender: Some Impressions from an American Convert to Islam*. Maryland: Amana Publications, 165.

In only one of these five cases does the Qur'an make a distinction between witnesses on the basis of gender, namely in the case that relates to financial transactions, where two women may be required to testify in lieu of one man.

Meanwhile another one of these five cases outlines when a woman's testimony is worth *more* than a man's, namely when a husband accuses his wife of infidelity—although we never hear anyone mentioning this extraordinary verse or highlighting the principle behind it.

Finally, in the remaining three of these five cases—which relate to orphans' property, sexual misconduct by both women and men, and divorce, no distinction on the basis of gender is made between witnesses.

Here are the five cases in question:

The Cow, 2:282

Oh you who believe: when you contract a debt or loan for a fixed term, write it down. Let a scribe write it down between you justly, and let no scribe refuse to write as God has taught him. So let him write, and let the debtor dictate and reverence God, his Lord, and not diminish any of it. And if the debtor is feeble-minded or weak or cannot dictate himself, then let his guardian/protector (*wali*) dictate justly. And call two witnesses from among your men, or if not two men then a man and two women that you approve as witnesses, so that if one of the two forgets/errs the other can remind her. And let the witnesses not refuse if they are summoned...

Several scholars² have pointed out that since **the only time the Qur'an makes a distinction between men and women as witnesses is in relation to financial transactions, it should not be taken as a general rule.**

They point out that the phrase “so that if one of them forgets/errs the other can remind her” is a reference not to the inferiority of women but rather to the fact that **women at the time did not engage in borrowing or lending themselves and were moreover mostly illiterate, making them less effective witnesses than men to a debt contract should a dispute arise.**

²Abou El Fadl, Khaled M. 2003. *Speaking in God's Name: Islamic Law, Authority and Women*. Oxford: Oneworld Publications, 157-8; Barlas, Asma. *Ibid*; Asad, Muhammad. 2003. *The Message of the Qur'an*. Bristol, England: The Book Foundation, 76; and Lang, Jeffrey. *Ibid.*, 145, on similar views by scholars Fazlur Rahman and Badawi.

Given this, is it really surprising that the Qur'an would be so wise as to make allowance for this circumstantial shortcoming? If anything, **this verse is a measure of the Qur'an's unrelenting bid to incorporate women into every aspect of the community's life and affairs despite their circumstances. The Qur'an could have easily just said "call two men as witnesses" and left it at that—only it did not**, reaching out to bring women into the process in a manner that would not, at the same time, risk the fairness of the transaction.

For those who may still think that this verse laid down a universal rule despite the argument made thus far, I would point out two more things:

- Even the somewhat women-unfriendly (as explained in Part I) *had-ith* compilations classify many of the Prophet's sayings that had only a single woman as their source/witness as authentic.³
- Those who maintain that the statement "so that if one of them forgets/errs the other can remind her" is proof of women's inferiority and why their testimony should always count as half of a man's must then also answer the following question: **how much intelligence or expertise does anyone really need to testify on the handing over of orphans' property or on sexual relations or infidelity or divorce proceedings**, the other four cases where the need for witnesses is mentioned without gender stipulation?

Finally, a comment is in order on a short and overlooked phrase that appears in the above verse that I have translated as:

✓ "...or if not two men then a man and two women..."

Most translations (but certainly not all) render the Arabic original (*fa-in lam yakūnā rajulayn*) as some variation of

× "...and if two men are not available then a man and two women..."

which unquestionably skews the meaning because it suggests that we should seek women witnesses *only* when two men cannot be found, rather than recognise that the verse actually offers the option. This unfortunate translation undermines women, though I actually believe it is not

³Lang, Jeffrey. *Op. Cit.*, 166.

necessarily intentional by most translators but rather a reflection, once again, of the psycho-social baggage we have collectively inherited that starts from the premise that women were considered below par even by the Qur'an (which was obviously not the case).

Women, 4:6

And test the orphans [in your charge] until they reach marrying age, then if you find them to be mature, deliver to them their property. And do not consume it wastefully and in haste before they grow up, and let whoever is rich abstain entirely [from touching their wards' property] and let whoever is poor consume honourably [with *maaroof*]. And when you deliver to them their property, bring witnesses. And God suffices as a Reckoner.

The above appears in the middle of the impassioned defence of orphans that opens the chapter entitled "Women" (verses 4:2–12) already referenced in Part III. **There is no specification of the number or gender of witnesses at the handing over of orphans' property**, and it is somewhat ironic that this verse appears early on in the long chapter where most women's issues are covered.

Women, 4:15–16

As for those of your (pl.) women who commit an indecency (*fahisha*), call four witnesses against them from among you. Then if they (so) testify, confine them in their houses until death overcomes them or God provides them a way.

And as for the two among you who commit it, punish them both. But if they repent and make amends, then leave them be. For God is ever-Relenting, ever-Merciful.

In these two verses, the indecency in question appears to be of a sexual nature as evidenced by the reference in the second verse to two people being involved. Here, **no less than four corroborating witnesses of unspecified gender are required, the Qur'an effectively raising the bar of proof so high as to make it virtually impossible for sexual accusations to actually trigger societal punishment.**

Importantly, both parties would be considered equally guilty in this case, while both parties should be left alone if they show remorse and are promised God's forgiveness (4:16), which is also repeated later (3:135–136). However while 4:15 stipulates what a woman's punishment would be if found guilty *and is unrepentant* (confinement at

home), there is no stipulation for what a man's punishment would be save that it should be commensurate: "...punish them both".

Personally, I think this must be because unlike women in those days, men would still have had to go out and make a living to support their dependents, so the Qur'an left it to society to decide what such a guilty man's punishment would be if four witnesses of his pre-marital sexual acts were indeed produced. However when enforced in some parts today, it is women who usually pay the price (and not simply by being confined to their homes), while men mostly get off scot-free. Even more unfortunate is the fact that no one today ever speaks of repentance being sufficient for both protagonists being left alone, as the Qur'an says they must. (A consolidated look at the specific question of sexual misconduct will be covered in Part V.)

Light, 24:4-9

As for those who accuse chaste women⁴ (*mubssanat*) but do not produce four witnesses, then flog them eighty times and do not accept a testimony from them ever [again]. Those—they are the immoral ones. (24:4)

...

And those who accuse their spouses but have no witnesses except for themselves, then the testimony of such a one is to swear (testify) four times by God that he is truthful,

and a fifth time that may God's curse be upon him if he is lying.

And her punishment is averted if she swears (testifies) four times by God that he is lying,

and a fifth time that may God's wrath be upon her if he is telling the truth. (24:6-9)

In yet another example of Qur'anic advocacy on behalf of women, most of the first 26 verses of chapter 24 are an angry defence of married women

⁴Some translators take *mubssanat* in verse 24:4 to refer to chaste *married* women only, i.e. to women who are faithful to their husbands. I am among those who understand this word to refer here to all chaste women generally, i.e. including single women who do not have sex outside marriage, even though the previous two verses 24:2-3 refer specifically to unfaithful *married* persons as they stipulate a different punishment ("flogging") from the one prescribed elsewhere (in 4:15-16) for persons of unspecified marital status who engage in sexual misconduct (confinement for women, unspecified punishment for men, i.e. no "flogging" for either). This is because the subject of these verses is falsely accusing innocent women of sexual misconduct and the penalty incurred by the false accusers, *regardless* of the marital status of the woman. A consolidated look at the question of sexual misconduct is dealt with in Part V.

who are falsely accused of infidelity. Most of these verses (24:11–26) were in response to the slandering of the Prophet’s wife, Aisha, over supposed infidelity committed with another man.⁵ The later verses in this group go on to condemn those who were quick to accept and spread such slander.

What is usually overlooked in these verses is that in this instance a woman’s testimony would actually outweigh that of a man: specifically, a wife’s testimony on her own behalf would be worth more than her husband’s against her.

Also overlooked in these verses is the Qur’an’s a-symmetrical approach in such a case towards the husband and wife: whereas an unfaithful and unrepentant married woman would incur God’s wrath, an untruthful accusing husband would incur no less than God’s *curse*.

Divorce, 65:2

So when they (the women) have reached their terms, either you (pl.) retain them honourably or separate from them honourably. And call to witness two just people from among you, and bear witness before God [regarding what you have decided]. Whoever believes in God and the Last Day is thus counselled, and whoever reverences God, He will find them a way out (of distress).

Finally, the above verse which was already cited in Chap. 15, entitled Divorce, makes clear that **in calling witnesses to divorce proceedings, two fair-minded witnesses of whatever gender** is the simple Qur’anic instruction.

⁵Nasr, Seyyed Hossein (editor-in-chief) et al. 2015. The Study Quran: A New Translation and Commentary. New York: HarperCollins Publishers, 870.

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