

**STUDYING AND CRITICIZING THE REASONS OF DIFFERENCES OF TESTIMONY
IN MEN AND WOMEN IN THE FIELD OF LAW AND JURISPRUDENCE****Azam Khosh Surat Movafagh^{*1} and Mohammad Hosein Dorafshani¹**¹Ph.D. Student of Religions, Qom**ABSTRACT**

One of the controversial issues which have the considerable consequences in the field of women's problems is their testimony. If the Islamic teaching(s) are logical and the Islamic system is based on the justice and also the views of jurisprudents are limited to the equality between men and women, so why there are unequal rights for them in divorce, nemesis, testimony, etc? The discriminating structures between men and women indicate that the claimants who support the rights of women believed that their inequality in testimony is not fair whereas the jurisprudence fields show that this right or order is not along with their limitation and also it is accounted as an exemption and additionally, it is not only indicate the predominance of men to the women but also, it supports the rights of women and it is a fair judgment. Based on Islam, there is a vast of equalities among men and women in spite of the differences of value and rights between them as these differences are not limited to the values of men and women and also their gender is not associated with the real value of humans. The sophism in the laws of convention for removing the discrimination against the women which is not along with exceptions or limitations and also showed that any discrimination is oppression to the women must show that discrimination is against the injustice not difference. In this convention, there is not any justification toward the differences of talents and the genetic conditions of women. So, Islam ordered the philosophy and the doctrine of law differences of men and women based on the other expedients.

KEY WORDS: Philosophy, Doctrine, Women, Testimony, Right, Responsibility/Task.**Introduction**

One of the strict questions about the women among the young generation and our scholars is the philosophy of differences between men and women about the legal rights and tasks such as: what are their differences in divorce, hereditary issues, testimony, nemesis etc. Whether these differences show the discriminating approach among men and women in the legal system of Islam or not? Whether our Islamic jurisprudents consider the women as humans or they are not certain about it? If the women are the same as men, so why there are unequal rights for them? Whether these differences are based on the Islamic justice or not? Whether these orders are compatible with the wisdom of humans or not? And if we accept that the Islamic teaching(s) are logical, so how we can justify these orders? For this reason, some scholars said: if the issues about women which were presented by Quran and Islam are ignored and are objected by the humans as they are not fair, so these issues must be removed based on the justice and fair viewpoints. The reality is that there is no doubt in the inelegance of discrimination and also the humanity of women and their similarity with the men; so for this reason, we cannot accept that any legal differences between men and women is

only limited to the discrimination as the convention of removing the discrimination against women in its initial article noted that any difference is discrimination and also it is an oppression to the women; however, discrimination is against injustice not removing the differences. So, the aforementioned convention and the other doctrines based on the feministic approach (as this convention) not only seeks the legal justice, equality and removing the discrimination, but also they seek the mechanical similarity of the rights of men and women without considering their differences, talents and also their genetic conditions. One of the main desires of feminism is the principle of equality by ignoring or rejecting the differences between the rights of men and women. In the present times with all occurred changes and also the developments of women, oppressions will be imposed on most of them and also their respect won't be observed as one of the female authors in her article "Are Women Human" (in the 50th anniversary of the approval of global manifesto of human's rights) wrote: in spite of the discriminations, violence, oppressions and the instrumental use of women, can we say that they are human and they can access the equal rights as noted in this manifesto or not? Some of the scholars about the inequality of men and women in testimony believed that we must not seek the reasons of the legal rights about this issue because our task is to obtain the order of God based on the legal evidences but getting the philosophy and expedient of orders is not our task and limited to our ability; so, getting the legal order means Shariat through the traditions and books is sufficient and we must obey it, though the divine order might be based on the hidden expedients which are not understandable for humans. The view of Ibne Arabi, the author of Ahkamol Quran, about the ayat 282 of Baqareh said: God issues the order as He wants and He knows it or His order and He is not forced to inform the people about His order (*Ibne Arabi, 2004, vol.: 1, p.: 255*). But some of the scholars talkd about the expedients and benefits of this difference as well, the others noted the low level of intelligent and wisdom of women to the men and said that this difference refers to the intelligent of women because the men are more intellectual than women and in such case, they refer to the related hadith such as the hadith of Mohammad prophet (P.B.U.H): He said the women as your intelligent and religion is less than men; and when the women asked him: what is it reason? He answered: the shortage/failure of religion is the days of menstruation as you cannot pray or fast and the failure of wisdom is that the testimony of each of you is half of the testimony of men (*Ibne Arabi, 2004, vol.: 1, p.: 255*). Ignoring the accuracy of the narrations in this field shows that this kind of thought was existed or exists now. In this domain, the task is obvious and also the understanding or the intellectual power of women is weaker than men. And for this reason, the sayings, ideas and points either cannot be the origin of decision making or they can be effective by adding them to the testimony of men. In such approach, this difference is related to the genetic conditions of men and women as well, the spatial and temporal changes and also the developments of women in terms of science and wisdom cannot compensate that inherent failure. This kind of approach is the one as the advocates of the rights of women in particular the equality of men and women try to overcome it and the international documents of human rights try to remove this negative attitude to the women. The convention of removing the discrimination against women (approved in 1979 by the general council of UN) as many governments were joined it rejected all kinds of distinction, exclusions or restriction based on the gender of people (article 1) and forced the membered governments to do required measures in order to remove the unacceptable habits and practical methods which prefer one gender to the other one such as men to the women in spite of creating or establishing equality between men and women in the field of civil and political rights (article 5 of this convention) and

also in article 15 of clause 2, it said that: these governments must allocate the legal capacity to the women as the men accesses it and also provide the equal felicities for them; additionally, they must have the same behavior with them in all stages of procedures in the courts (*human rights in the international documents and also the position of the Islamic Republic of Iran. publications of information, 1995, p. 239*). Nowadays, the global thoughts reject the inherent failure of women and also the low level of their intellect or wisdom and the others who accept or believe this approach must prove their views by the scientific or objective and experimental reasons otherwise, their ideas about the rights of women to the testimony as their rights are half of the rightd men won't be acceptable; and for their reason, it is not possible to accept the hadiths which were presented by Mohammad prophet (P.B.U.H) as mentioned before and also the words of Imam Ali (P.B.U.H) which were mentioned in Nahjol Balagheh such as Khotbeh 80, otherwise, we say that there other points about the failure of women to the men which were not mentioned in the saying(s) of these great persons and what is being cited is not their real ideas. Some of the great scholars of Islam said that the reason of the aforementioned difference is not the inherent failure of women but also it is related to their practical situation which diverted their attention from considering the social events and issues as well, the other reason in such case is the lack of their intellectual growth. About the philosophy of the difference between men and women in the Islamic law, it must be considered that one of the oldest reasons which was used by all nations during the various histories in order to prove their claims is the issue of testimony that had the unlimited value in most of the international old laws and by which they can prove each kind of claim. The main reason was that most of the nations during the various periods were not familiar with the manuscripts or handwritings in order to rank their documents in their legal relationships. In the nations which had their handwriting, a few groups of people such as the religion heads were familiar with this handwriting and they could use it in the rank of their documents. For this reason, the deeds were ranked and arranged by the religious scholar and heads. When handwriting becomes usual, the people used it for arranging their deeds and contracts under the supervision of some persons who can testify it. This trend was continued for a time; and nowadays, it is usual among most of the people in the villages and rural parts. Gradually, the value of testimony in some fields such as the ones as you can arrange a written deed for them, for example the contract of marriage was decreased. By studying the books, ..., we can find that all jurisprudence schools of Islam accepted the testimony of women such as this Ayat noted this point (*Baqarah, 282*):

Additionally, the narrations of Mohammad prophet and the others indicate this point. It must be noted that in different religions such as Imamiyeh, Isna Ashariyeh, Hanfiyeh, Shafiyeh, Malekiyeh, Hanbaliyeh, Zeydiyeh and Zaheriyeh, the issues about masculinity did not mentioned as the conditions of testimony. In such case, Ibne Aqil as one of the jurists of Shiite said that the testimony of the women is right until they are trusty. He added that the testimony of women without men in some cases is so effective (*Helli, 1418 B.C., vol.: 2, p. 474*). But the other points is that in some cases the testimony of men is accepted as mentioned in some narrations and fatwa of jurists and in addition, in some of the Ayats, the testimony of two persons was mentioned as they are two righteous men (*Seyyed Morteza, 1990, vol.: 11, p.: 40*). For this reasons, the jurists considered and discussed about the gender of testifiers as male and female (*Toosi, 1972, p.: 172; Helli, 1413 B.C., vol.: 2, p.: 229 and Khomeini, 1410 B.C., vol.: 4, p.: 159*).

a- The cases as the testimony of two righteous men is required except the women such as attorney, wills, observing the crescent, divorce, etc. (*Khomeini, 1988, vol.: 4, p.: 159*). There are evidences

about this point as the testimony of women is not acceptable in such cases but there are not evidences in order to prove the incompetency of the women's testimony in the cases such as observing the crescent; for instance the narrations of Halabi, Abu Basir Mohammad ibne Fazil and Ibrahim and also Mohmmad ibne Moslem as this narration is that (*Hore Ameli, 1988, vol.: 1, pp.: 2, 4 and 5*):

The testimony of women for observing the crescent and divorce is not allowable (*Hore Ameli, 1988, vol.: 1, pp.: 2, 4 and 5*). The other sages and scholars said that the testimony of one man or two women is sufficient in the marriage and nemesis (*Helli, 1994, p.: 344 and Helli, 1413 B.C., p.: 449*).

a- The cases of men's testimony are divorce, attorney, will and observing the crescent in which the testimony of women was rejected.

b- What is being proved by two male testifiers means one male and two women and also a male testifier and the oath of the claimant. The cases of this category are debts and assets such as loans, usurpation, the contracts as interactions, peace, rent, mortgage, ownership and criminal wills which lead into atonement.

But the benefits or expedients of these legal differences of men and women are justifiable from the other viewpoints; first, the women are creatures whose emotions form their personal characters. It must be noted that this issue is not the failure of women and if it was wrong, so the mechanism of the creation won't be complete because the men and women complete each other and also their personal characteristics. For this reason, the women are mostly under their emotions more than men – however the other reject this idea – and also their testimony may be under their emotions or based on their emotions and feelings. The presence of two women in order to testify increases the confidence level of testimony. In the other hand, the vulnerability of a woman in the case of testimony and also the effects (after it) will decrease. So, in the legal procedure of Islam, testimony of women was considered as a principle such as the testimony of men, eve though, in some cases, the power of men in the field of testimony is different from the women as mentioned in the holy Quran (*Baqarah Surah, Ayat 2*):

In the other hand, in the case of testimony, the women are under their emotions and feelings such as positive or negative ones and also they affect their attitude toward the testimony (*a group of authors, 2008, pp.: 205-207*). So, the testimony of women in various cases is different. In some cases, there is not difference between the testimony of men and women. Some fields such as proving the birth and the virginity is possible by the testimony of women and the testimony of several men is not compatible with the testimony of one women as well, in the other cases, only the testimony of men is acceptable and the testimony of women is rejected such as divorce and murder. As mentioned before, the aim of this issue was to protect the women from the social dangers and also maintain the rights of the others because testimony in the Islamic system is a task. The person who witnessed an event and also his/her testimony is acceptable must be present in the trail in order to testify it. For this reason, if the testimony of women was acceptable in some cases such as murder, so she must be present in the court and accept it (for testifying the event as she saw it). Islam removed this issue from the responsibilities of women because the woman who testifies the scene of murder may be threat by the families or the relatives of the person as she testified it (*Hosseini, 2010, code: 500038/55*). But the question arises in such case is that what the testimony of two women is equal with the testimony of one man? In most of the legal field, the men and

women are different; for instance, if the man was heterodox, his order will be murder based on some conditions and if a woman was heterodox, so her order won't be a murder or the tasks which were defined for the men are not considered for the women. The mechanism of creating men and women is different because their spirit is not same. The expectation of God from the men is different from the women because God created men for something and women for the other things or works. Since these two are from the same materials but they are not equal. In addition, the testimony of the men and women in the courts is not related to their identity or nature. In some cases as the testimony of women is right, the testimony of men is not acceptable because the men cannot testify it at the same time. in the events which occur in the alleys and squares or the other places, men are involved more than women because they face various social events in order to provide the requirements of their families and if an event occurs, they will be informed more than women. Assume that two persons are in a fight with stones and sticks. And after a moment, the people try to separate them. So, in such case, if someone kills, the people who witness this event can testify it. And also the women do not interfere in this case or the men do not allow them. So, accepting the testimony of men and rejecting the testimony of women is a natural issue and it does not relate to the perfection of the men and the failure of the women. Therefore, based on the viewpoints of psychologists, the women are so sensitive and they accept the issues quicker than the men because all of their ideas are under the emotions. In other words, testimony is the juridical rules of Islam are not limited to the field of Law. Testimony is not based on rights but it is task and responsibility; means that the humans must testify about something as they saw it in order to protect the others' rights. So, based on the saying(s) of the holy Quran, avoiding the right and true points is not permissible (*Baqareh Surah, ayat, 283*). If the testimony rejects in the court or its acceptance level is low, it indicates the easiness of a task or responsibility not the weakness of law. Islam also exempted the men and their testimony in some cases and also considered the significance of the testimony of women; however, in some cases, the testimony of two women is the same as the testimony of one man. All of these rules are based on the coordination and doctrine between the canonization systems with the evolutionary /genetic one as well; there are two systems for the humans such as canonization and genetic ones. The genetic system refers to the rules, tasks and responsibilities which are determined by God and forced on the humans and they do not related to the will of humans. In this domain, different tasks are considered for two genders "the men and women" which are compatible with the capacities of men and women and they cannot reject or ignore them. The canonization system refers to the rules which are related to the wills of humans as they have authority in such case; and if this system is not compatible with the aforementioned one, so it will be valueless. The value of the canonization system is compatible with the capacities of the genetic system but in this system, there are difference among men and women which are mentioned as follows:

- Their body and limbs: there are differences in the physical form of men and women as their productive ones or the other ones; for instance, hair, subcutaneous fat, textures, thickness of the skin, shape and weight of the bones, the amount of organic matter and minerals in the bones, big muscles, power of hands or arms, geometry and volume and the weight of brain, heart weight, pulse rate , blood pressure, body temperature, respiration rate per minute, height, weight, sound vibrations, body fluids, the white blood and red cells in blood, volume and lung capacity, and physical growth pattern at the beginning of these two sexes "male

and female". In short, everything is different in men and women, even in their hair (*Pak Nezhad, 1989, vol.: 19, pp.: 280-293*).

- Their feelings, emotions, tendencies and ethics: based on the psychological views, kindness, the emotional and supportive behaviors are the characteristics of women and also the dependency, authority and power are the characteristics of men (*a group of authors, 1993, vol.: 1, p.: 330*). And the others said: having the kindness heart, or having a heart full of emotions, feeling, kindness, amiability and affability are the characteristics of women (*Pak Nezhad, 1989, p.: 281*). In addition, it must be noted that the women in terms of immediate, model, fashion, luxury thins and also cry are superior than men (*a group of authors, 1993, vol.: 1, p.: 320*).

So, the judgment of women is based on their feelings and for this reason, when they face the emotional sciences, their feelings will dominate the other aspects (*Pak Nezhad, 1989, p.: 281*). The differences in the creational system lead into differences in the canonization system and this issue indicates that there are differences in the tasks and responsibilities of men and women such as the aforementioned question. In the women, two dimensions are additional (more than men): emotional dimension and also their shame and modest. The psychologists said that forgetting something is in a direct relationship with the emotions, feeling and the modesty of women. When such characteristics exist in the genetic system, so a solution must be sought in the domain of canonization in order to protect the rights of people, in particular, the field of testimony. In this case, three forms are assumed:

- Due to the emotional aspect, women are able to testify or their testimony is not acceptable because their judgment is based on their feelings and for this reason, they come to a conclusion earlier than men. So their testimony is not valuable. Therefore, this word may weaken/loss the rights of people when the testimony of women considers.
- If we consider that the testimony of women is like the testimony of men, so the rights of people will be lost. In such case, God Who is the Creature of humans and also He Knows the hidden secretes of the world said that the testimony of people will be considered in some cases which are related to the rights of people (not My Rights) and the testimony of women will be valid if there are two women in the cases as one man is required or in the other cases as four women along two men are required.

This issue is like justice and based on the genetic system. First, we must consider that testimony is a social task, however it is a right and its loss or interest is limited to the others. So, the patter of claim and its proof is categorized into three groups: claim, profession and testimony. In some cases, a person testifies as I am the owner of this thing; the other claims that I did this bad work and I am responsible for its compensation; and also in the other cases, a person does not testify because of his/her loss or interest. In the domain of claim as its effect is limited to the claimant, the men and women are equal but in the domain of profession as the effect of its loss are limited to the person who confessed it, there is not any difference. So, the difference exists in a case in which the social task is based on justice and the rights of people and also the loss and interest of words as well, the testimony of people is related to the others; so for preventing the loss of others' rights in terms of the emotional structure of women, the testimony of women is limited. In the Islamic jurisprudence,

the testimony of women is restricted to the especial cases or its acceptance must be along with the testimony of men and also the testimony of women is like the testimony of one man. The Islamic authors mentioned various points about the analysis of these inequalities and also pointed the different points as the philosophy of these inequalities. The view of Shahid Motahari about the inequality of the value of testimony among men and women is:

- The logical weakness of women; since Islam said that the intellectual power of women is not perfect, therefore the testimony of two women is equal with the testimony of one man means that the wisdom of women is half of the wisdom of men. So in Islam, the humanity of women equals the partial of the men's humanity. However, this issue is being rejected because testimony is not related to the wisdom and also it is about the tangible things (*Motahari, 1992, p.: 11*).
- Failure/shortage of justice and the purity: as mentioned in the jurisprudence books, one of the conditions of testimony is justice (*Najafi, Mohammad Hassan, p.: 34*). But Shahid Motahari said that justice in the other cases is like Imam Jama'at as the men cannot obey the women in the Jama'at. For answering this question as obeying the women by men in the Jama'at is due to the failure of women's justice, Motahari said: the answer of this question is negative and it does not relate to the justice of women and the other women can obey a woman.
- The other reason is the partial weakness of the mind or memory as Motahari believed that the women care something which are important for them. Fakhre Razi and Moqadase Ardabili believed that some of the Ayats refer to the power of women as they can record and memorize something (*Ardabili, BITA, p. 446; Razi, BITA, p.: 123*).
- The other one is about the philosophy of the lack of acceptance of women's testimony in the especial cases: this category noted that in some cases such as observing the crescent, which are considered as the God's Rights, the women's testimony is not acceptable unless in the case of as the testimony of three men with two women and also two men with four men is acceptable. Additionally, in the other cases as the rights of people are not associated with the financial aspects such as divorcee, attorney, nemesis, ..., the testimony of women is rejected and two men must testify it. And for answering this question as why the legislator rejected the testimony of women or did not accept it, the following points are mentioned:
 - Observing the respect of women: this point is a solution in order to prevent the presence of women in the fields which are not important
 - Considering the importance of: the provisions of this point are derived from the narrations such as: "limitations or restrictions must be removed by the doubts" (*Mostafa, 1412 b.C., p.: 113*). Motahari said that the other cases such as adultery must be proved however, the person who committed it may repent or her repentance may be occurred between God and her.

- Preventing the separation and divorce of couples: Motahari mentioned the other philosophy and said that in divorce, a separation occurs between men and women, so the women must not testify because their feelings and emotions are superior to the other aspects.

Conclusions

Testimony is the jurisprudence of Islam and the rules of the Islamic Republic of Iran and the other countries is one of the tasks not the rights. Based on the concept of right, task and their relationship, we realize that the lack of acceptance of women's testimony refers to their exemption from their tasks not depriving them from their legal rights. So, in the countries which accept the women's testimony not only a high burden is imposed on them but also a right did not allocate for them. Adding the women's testimony to the men's testimony is to support the women in some dangers and also refers to the bad effects of the consequences of testimony between men and women. It can be said that the feelings and emotions of women in the juridical issues is superior to the other aspects and for this reason, their feelings affect their judgment. So this point is considered in the field of testimony. Therefore, the reason of this inequality does not relate to the wisdom of men and women and if it was true, so the women must be different from the men; however, this is not true. As a result, the effort of legislator is based on the fair judgment and the realities not the emotions. So, in order to accomplish the fair judgment, the emotions must be prevented; however, in Islam, the testimony of the persons such as women whose judgment is enriched with feelings was accepted but for preventing the errors and mistakes, it decreased the level of emotion through increasing the number of witnesses. In the genetic system, the results of this legal difference between men and women in terms of the feelings of women in the conflicts or fights were mentioned and we cannot consider masculinity as one of the general conditions of witness because in some cases, the testimony of women is acceptable based on the testimony of men as well, in the other cases, the testimony of one women is acceptable such as will. Therefore, in all cases which are about the difference between the testimonies of men and women, the philosophy of the lack of acceptance of women's testimony in terms of the following points is important:

- Observing the respect of women
- Considering the significance of rule
- Preventing the separation and divorce of couples and also
- Reinforcing the place of women in the societies.

References

- A group of authors. (1993).** Psychology of Growth. Tehran. organization of studying and compiling the books of humanity (SAMT).
- A group of authors. (2008).** Textbook of Law Philosophy. Qom. Searching institute of Imam Khomeini.
- Ebadi, Shirin. (2006).** Women's Rights in the Law of Iran. Tehran. Ganje Danesh.
- Gorji, Abolqasem. (1998).** Newspape of Zan.

- Hakim Poor, Mohammad. (2002).** Women's Right in the Struggle of Tradition and Modernism: A Study on the Field of Hermeneutics of Women's Rights. Tehran.
- Hashemi, Seyyed Mohammad. (2000).** Basic Law of Islamic Republic of Iran. Dadgostar publication. Tehran. 3rd edition.
- Hekmat Nia, Mahmood. (2011).** Philosophy of the Legal System of Women. Tehran. Organization of the publication of research center of Islamic thoughts and culture.
- Hosseini, Abbas. (2007).** Women's Right in Iran and the International Documents. Tehran. Publication of Ganje Danesh.
- Hosseini, Ibrahim. (2010).** Position and Rights of Women. Tehran. Kanoon Andishe Javan.
- Hosseini, Seyyed Ahmad Reza. (2001). Journal of Revaqeh Andisheh. Looking at the basics of the convention for removing each kind of discrimination against the women. P. 114.
- International conference of women's rights philosophy in Islam. (2013). A collection of the oral conferences of this internal conference about the philosophy of women's rights in Islam. University of Hazrate Masumeh. Qom. Ayeen Mahmood publication.
- Javadi Amoli, Abdolah. (2008).** Women in the Mirror of Beauty. Qom. Asra publication
- Katuzian, Naser. (1991).** Introduction of the Science of Law. Tehran. Sherkate Sahami Nashr.
- Makarem Shirazi, Naser. (1996).** Tafsire Nemuneh. School of Imam Ali (P.B.U.H).
- Malek Zadeh, Fahimeh.** Jurisprudence and Legal Principles of Women's Testimony in Proving the Claims. Seasonal journal of Islamic Law and Jurisprudence. Number 39
- Mehr Angiz Kar. (1989).** Removing the Discrimination from Women. Parvin publication. Tehran
- Mehra Poor, Hossein. (2000).** Issues about the Women's Rights based in the internal Law and the Jurisprudence Basics and also the International Principles. Tehran. Etela'at publication.
- Mehra Poor, Hossein. (2001).** Human Rights in the International Deeds and the Position of Islamic Republic of Iran. Tehran. Etela'at publication.
- Mesbah Yazdi, Mohammad Taqi. (2004).** Law and Policy in Quran. By Mohammad Shahrabi. Qom. Searching institute of Imam Khomeini.
- Mirzaeei Nezhad, Kazem. (2012).** Different Rights of Women and Men in Islam (Heritary, nemesis, atonement, testimony). Qom.
- Mohammad Hussein Zadeh Abdo Reza.** Value of Women's Testimony in Proving the Claims. Kerman. Vadiat
- Motahari, Morteza. (1992).** Women and Society based on the Attitude of Women. Payame Zan. 1st year. Number 7. P. 11
- Pak Nezhad, Seyyed Reza. (1989).** The 1st University and the Last Prophet. Tehran. Islamiyeh.
- Qorban Nia, Naser. (2005).** Reviewing the Rights of Women. Tehran. New day publication
- Qorban Nia, Naser. (2009).** International Law and Ethics. Tehran. research center of Islamic culture and thoughts. Organization of studying and compiling the books of humanity (SAMT).