
Testimony and its Importance in Islamic Law

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Abstract

Testimony is one of the main modes of proving or disproving the facts in matters and controversies arising amongst the people and brought before the courts of law for adjudication, be it civil, criminal or family. Testimony bears pivotal significance in special areas of Islamic Law as well as legislation in Pakistan, particularly, to resolve the disputes and controversies and to abstain from evils and committing crimes in the society. Laws, rules and regulations are made in order to maintain peace, promote justice and equality and to make the society law abiding and peaceful. This work mainly focuses on the importance of testimony in Islamic law to establish the offence or to prove or disprove the facts.

Introduction

In order to ensure justice and make the society peaceful, there must be some mechanism or a system of justice to control the crimes and ills of the society. If someone commits a crime, he must be punished in order to create deterrence and respect for the law. For the true administration of justice in the society we need to have a strong system called the judicial system. A good and strong judicial system ensures the implementation of rights of the citizens and provides justice above board. The courts do not act in abstract while adjudicating a matter, they have to rely heavily on evidences, testimony and records of a matter in controversy to prove or disprove the issue. Therefore, in a judicial system, testimony and evidence stand on a high stature and footing. They secure high significance for determining the innocence or delinquency of the litigants. Testimony or evidence may be assessed in various forms like oral, in writing,

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confessional, oath, circumstantial and documentary.

Evidence or Bayyinah means clear expression or irrefutable and clear proof which cannot be denied. It is a broader term which includes all kinds of evidences. Now we have to see what *Bayyinah* is?

Encyclopedia of Islam defines *Bayyinah* as below:

Bayyinah is a singular and its plural is *Bayyinat*, etymologically the feminine adjective “clear evident”, was already in use as a substantive with the meaning of “manifest proof”. In legal terminology the word denotes the proof *per excellentam* – that is established by oral testimony, although from the classical era the term came to be applied not only to the fact of giving testimony at law but also to the witnesses themselves.¹ And in Al-Majallah Al-Ahkam Al-Adliyyah, *Bayyinah* consists of the adduction of reliable testimony.²

Imam Ibn-e-Qayyim explains what *Bayyinah* means as he states:

“The word ‘*Bayyinah*’ in the language of the Qur’an, of the Prophet (PBUH) and of his Companions (RA) is the name of everything by which the truth becomes evident. Hence contrary to its connotations in the terminology of the jurists, it has a wider meaning because they only use it for two witnesses or an oath and a witness.”³

He further states that eye witness, documentary evidence, oath, admission and all kinds of circumstantial evidences includes *Bayyinah* and one from all of them is equal to one witness that is why if in any case eye witnesses are less than the required number or witnesses are not available then any kind of *Bayyinah* which is authentic, would be accepted and decision could be made on that as such.⁴

The word *Bayyinah* includes all kinds of evidences, testimonies, whether they are oral, documentary or circumstantial evidences. In relation to law of evidence we have to know that what evidence is!

¹*The Encyclopedia of Islam*, s.v. “Bayyinah”

²*Majallah Al-Ahkam Al-Adliyyah*, (Karachi: Ashraf Brothers), Art. 1676.

³Abu Abdullah Muhammad bin Abi Baker Ibn-e-Qayyim, *I’lamul Muwaqqe’in*, vol. 1 (Beirut: Dar-ul-Jail), 90.

⁴ *Ibid.* 91

Evidence as defined in Article 2 (c) of Qanun-e-Shahadat Order, 1984

"Evidence" includes;

- i. All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; and
- ii. All documents produced for the inspection of the Court; such documents are called documentary evidence;⁵

The term *evidence* according to its interpretation provided by article 2(1)(c) of the Qunoon-e-Shahdat Order, 1984 means “all statements that a court may permit or require to be made before it by witnesses in relation to matters of fact under inquiry and the documents produced for inspection of court”, evidence signifies all statements that a court may permit or require to be made before it by witnesses in relation to matters of fact under inquiry and the documents produced for inspection of the court.⁶ Evidence’ being a comprehensive word includes statements of witnesses, parties and documents which are produced in court or judicial forum to prove or disprove the case.⁷

The meaning of the word *evidence* given in the definition is not exhaustive. This word denotes the state of being evident i.e., plain or apparent. It includes in its parlance oral evidence and documentary evidence. The former speaks of all statements permitted by the court or required to be made before it by witnesses in the context of matters of fact under inquiry while the latter covers all documents produced for the inspection of the court. A statement made by a witness before the court is evidence unless such a statement was made by a person who is dead or cannot be found as provided in Art.46 of Qanun e Shahadat Order,1984.⁸

The word *evidence* considered in relation to law includes all legal means, exclusive of mere arguments, which tend to prove or disapprove any matter of fact, the truth of which is submitted to judicial investigation. It also means testimony, whether oral,

⁵M. Mahmood, *Qanun-e-Shahadat Order, 1984*, (Lahore: Pakistan Law times Publications, 2007), 70.

⁶KLR 1997 civil case, 399.

⁷PLD 1994 SC 501.

⁸PLD 1985 Kar. 35.

documentary or real, which may be legally received in order to prove or disapprove some fact in dispute.⁹

The definition of evidence covers the evidence of witnesses and documentary evidence, evidence can be both oral and documentary and also the electronic record can be produced as evidence. This means that the evidence, even in criminal matters, can also be by way of electronic records. This would include video-conferencing etc.¹⁰

In Black's law dictionary, evidence is defined as "any species of proof or probative matter, legally presented at the trial of an issue by the act of the parties and through the medium of witnesses, records, documents, concrete objects etc., for the purpose of including belief in the minds of the court or jury as to their contention."¹¹

Webster's new world dictionary of American languages defines evidence as "Something legally presented before court, as a statement of a witness, an object, etc; which hears or on establishes the point in question: distinguish from testimony and proof a person who presents testimony; witness as states evidence."¹²

Encyclopedia of Britannica defines "evidence" as a term which may be defined briefly as denoted the facts presented to the mind of a person for the purpose of enabling him to decide a disputed question. Evidence in the widest sense includes all such facts. In the narrower sense employed in English law, however, it includes only such facts, testimony and documents as may be received in legal proceedings in proof or disproof of the fact under inquiry.¹³

The very first mode to prove or disapprove the fact and matter in issue for the decision of the case is "testimony". Testimony secures an important position in judicial system because without it we cannot be able to decide as to who is right and who is wrong. In every dispute, there are at least two parties, plaintiff and the defendant. The plaintiff claims what is contrary to the apparent facts and defendant denies the claim. The burden of proof lies on the plaintiff and oath on the defendant. As the Holy Prophet (PBUH) has said:

⁹Ratanlal & Dhirajlal's *The Law of Evidence*, 1872, (India: Wadhwa and Company Nagpur Publishers, 2007), 8.

¹⁰*State of Maharashtra v. Dr. Praful B. Desai*, AIR 2003 SC 2053-2059.

¹¹*Black's Law Dictionary*, s.v. "evidence"

¹²*Webster's new world dictionary of American languages*, s.v. "evidence"

¹³*Encyclopedia of Britannica*, s.v. "evidence"

“To substantiate a crime is the claimant’s responsibility, and the person who refutes it will have to swear on oath”¹⁴

Here firstly, we have to know what testimony is then we go in detail for its importance.

Testimony –Definition

Testimony is an account of facts before a court of law by a person, concerning any matter which he has personally seen, observed and perceived. The word *Shahadah* frequently appeared in the Holy Qur’an has a particular significance in connection with the testimony. It literally means to watch, to be present and to inspect. Technically it means conveying true information to a court of law in connection with a matter pending adjudication before it. As defined in The Encyclopedia of Islam as below:

The literal meaning of *Shahadah* (testimony) is irrefutable and clear proof and *shahid* (witness) is that person who prescribed what he knows.¹⁵

Testimony (*Shahadah*) literally means information of what one has witnessed or seen or beheld with his eyes, declaration of what one knows, decisive information, as in Encyclopedia of Islam different literal meanings are prescribed as under:

- i. To be present somewhere as opposed to be absent
- ii. See with one’s own eyes, be witness of an event
- iii. Bear witness to what one has seen

Attest or certify something *tout court Shahadah* can thus mean in the first place that something which is there, whence that which can be seen, as in the Qur’anic formula in which God has described it as:

علم الغيب والشهادة

“He who knows what is invisible and the visible.”¹⁶

Another sense more commonly used is that of witnessing, the declaration by means of which the witness to an event testifies to the reality of what he has seen or claims to have seen.¹⁷

In terms of Islamic law, testimony means, to give true information of what one has seen or known for the purpose of proving or disapproving a right or crime before a court as is stated in Encyclopedia:

¹⁴ Abu ‘Isa Muhammad Bin ‘Isa Al Tirmazi, *Sunan Tirmazi*, Hadith No.1261.

¹⁵ Muhammad bin Mukrim bin Mazoor Al Afriqi *Lisanul ‘Arab*, vol.

3(Beirut: Dar Sadir), 239

¹⁶ Al Momenoon: 92

¹⁷ *The Encyclopedia of Islam*, v.s. “shahadah”

Testimony is a statement in courts based on observation, introduced by the words, I testify (Ashhadu), concerning the right of others.¹⁸

Ibn e Abdin defines testimony as “testimony is telling the truth to prove the right in the court of judge with the word of *shahadah* (testimony)”.¹⁹

In other words, testimony is giving information truthfully in a court what he has seen or heard.²⁰

Majallah Al Ahkam Al Adliyyah defines *Shahadah* as it consists of the giving of information by a person in Court and in the presence of the parties by employing the word "evidence", that is to say, by saying formally; "I give evidence", in order to prove the existence of a right which one person seeks to establish against another.²¹

Testimony is to give true information before a court of what one has seen or knows for the purpose of proving or disapproving a right or a crime.²²

It is the duty of witnesses to bear testimony and it is not lawful to conceal it, when the party concerned demands it from them. In Islam, the testimony of a witness is very significant. Adducing the testimony before a court of law is the collective duty of those who have the information or knowledge of the facts of an incident. As Ibn-e-Qudama stated in Al- Mughni:

تحمّل الشهادة وأداؤها فرض على الكفاية لقول الله تعالى: ”ولا يَأْبُ الشُّهَدَاءُ إِذَا مَا دُعُوا“،²³ وقال تعالى: ”ولا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثَمٌ قَلْبُهُ“،²⁴ وإنما خص القلب بالإثم لأنه موضع العلم بها، ولأن الشهادة أمانة فلزم أداؤها كسائر الأمانات. إذا ثبت هذا فإن دعي إلى تحمل شهادة في نكاح أو دين أو غيره لزمته الإجابة، وإن كانت عنده شهادة فدعي إلى أدائها لزمه ذلك، فإن قام بالفرض في التحمل أو الأداء اثنان سقط عن الجميع، وإن امتنع الكل آثموا.

“Bearing out the testimony and giving it before a court is *Fard kifaya* based on these two verses as Allah has said “The witness should not refuse when they are called on for evidence” and “Conceal not evidence; for whoever conceals it his heart is tainted with sin” and sin has specified

¹⁸Ibid.

¹⁹Ibn e Abdin, *Raddul Muhtar ala Durril Mukhtar*, vol. 7 (Egypt: Mustafa Al baba Al Halbi), 64.

²⁰Abu bakr Jabir Al Jazaeri, *Al Ta'rifat*, (Jaddah: Dar Al Shuruq), 69.

²¹*Majallah Al Ahkam Al Adliyyah*, (Karachi: Ashraf Brothers), Art. 1684.

²²Dr. Anwarullah “*Islamic law of evidence*” (Islamabad: Shariah Academy IIU, 2007), 4.

²³Al-Baqarah: 282

²⁴Ibid., 283

to the heart because that is a place of knowledge. Bearing out the testimony is a right, and to protect is like other rights. When someone has testimony in marriage or debt or in other matters and called to bear it, it is necessary to give it. If someone gives testimony, done by others too, but if they all denied then all of them are sinful”.²⁵

As Allah said in Holy Qur’an:

وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ وَلَا يُضَارَّ كَاتِبٌ وَلَا شَهِيدٌ

“But take witnesses whenever you make a commercial contract and let neither scribe nor witness suffer harm”.^{26 27}

Imam Al Nawavi states about the testimony as under:

The testimony would be with knowledge based on the verse of the Holy Qur’an, “And pursue not that of which thou hast no knowledge; for every act of hearing, or of seeing or of (feeling in) will be enquired into (on the Day of Reckoning)”²⁸ without knowledge giving testimony is inadmissible). He also quoted a narration which has been narrated by Ibn e Abbas (RA) that when the Holy Prophet (PBUH) was asked about *shahadah*, he replied, are you seeing the sun? The questioner said yes then the Holy Prophet (PBUH) said to him, when you have seen something like this then give testimony otherwise leave it.²⁹

He further states that bearing out the testimony is a right, if that is not the right of Allah almighty but it is the right of man, and is an individual’s duty. If someone gives testimony, done by others too, but if no one does the same, then the person available is liable to give testimony.³⁰

As is laid down in the Holy Qur’an:

وَلَا يَأْتِبُ الشُّهَدَاءُ إِذَا مَا دُعُوا

“The witnesses should not refuse when they are called on (for evidence)”³¹

Not discharging this duty and concealing it is a great sin and the entire community will be held responsible for it, when there is

²⁵Abdullah bin Ahmad bin Qudama , *Al Mughni* , vol. 10 (Beirut: Dar ul Fikr ,1984), 154-155.

²⁶Al Baqra:282

²⁷The English Translation has been used of Pikhtal, the electronic link is available at <http://quranexplorer.com/quran/>

²⁸Al Isra: 36

²⁹Abu Zakaria Muhyuddin Bin Sharaf, An-Navavi, *Al-Majmoo’ Sharh Al-Muhazzab*, vol.20 (Beirut: Dar Al-Fikr), 261.

³⁰Ibid., 267

³¹Al Baqara: 282

only one witness, evidence becomes individual duty(*Fard Ain*).

The Holy Qur'an says:

وَمَنْ أَظْلَمُ مِمَّنْ كَتَمَ شَهَادَةً عِنْدَهُ مِنَ اللَّهِ وَمَا اللَّهُ بِغَافِلٍ عَمَّا تَعْمَلُونَ

“Ah! Who is more unjust than those who conceal the testimony they have from Allah? But Allah is not unmindful of what ye do!”³²

It is incumbent upon witness to bear testimony as it is not lawful for them to conceal it as Allah Almighty says in the verse of Surah Al Baqrah in The Holy Qur'an :

وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آتَمٌ قَلْبُهُ

“Conceal not evidence; for whoever conceals it his heart is tainted with sin”³³

In this verse Allah has specified the heart with sin and that is a place of knowledge from that we do give testimony in trust (*Amanah*) and delivery of this trust is necessary like other trusts.³⁴

Generally a witness cannot refuse to give evidence when he is called upon to do so, but he should go to the court when he is called by the party that wants to produce him as a witness. If it is apprehended due to the absence of a witness, right of party will be destroyed. Then it is obligatory for him to go to the court voluntarily and to give evidence to indicate the right of aggrieved party.³⁵

When a plaintiff calls a witness to give a testimony he has to be there because that is a right of plaintiff to call him for testimony like all other rights.³⁶

If a person has the information as to the existence of fact and he withholds the information there is very likelihood that the right of the aggrieved party will be destroyed causing injustice to that party.³⁷

The object of testimony should be for the sake of Allah alone, as He describes that the rights of the people must be indicated. As Allah has stated in the Holy Qur'an;

³²Al Baqara: 140

³³Ibid., 283

³⁴Ibn-e-Qudama, vol. 9, 146.

³⁵Dr. S.M.Haider, ed., *Shariah and Legal Profession: Islamic Law of Evidence* by Qazi Muhammad Hussain Siddiqui (Lahore: Feroz Sons, 1985), 349.

³⁶Imam Muhammad Bin Abdul Wahid, *Sharh Fath ul Qadir*, vol. 2 (Beirut: Dar Ahya ul Turath Al Arabi), 447.

³⁷Dr. S.M.Haider, ed., *Shariah and Legal Profession: Islamic Law of Evidence* by Raja Bashir Ahmad Khan (Lahore: Feroz Sons, 1985), 337.

وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ

“And keep your testimony upright for Allah”³⁸
يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاَنُ قَوْمٍ عَلَى
أَلَّا تَعْمَلُوا إِعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ

“O ye who believe! Stand out firmly for Allah as witnesses, to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to Piety: and fear Allah for Allah is well-acquainted with all that ye do.”³⁹

Allah enjoins upon in the Holy Qur‘an to be witness for this sake even if the testimony is against them or their close relatives.

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَىٰ أَنفُسِكُمْ أَوِ الْوَالِدِينَ
وَالْأَقْرَبِينَ إِن يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللَّهُ أَوْلَىٰ بِهِمَا فَلَا تَتَّبِعُوا الْهَوَىٰ أَن تَعْدِلُوا ۗ وَإِن تَلَوَا
“O ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts) lest ye swerve and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do”⁴⁰

Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts) lest ye swerve and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do”⁴⁰

One of the essentials of bearing out testimony that the witness should depose in accordance with best of his knowledge and belief and a witness should not follow a thing for which he has no information or knowledge. This principle is enunciated in the following verse of the Holy Qur‘an:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِن جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا أَن تُصِيبُوا قَوْمًا بِجَهَالَةٍ فَتُصْحَبُوا
عَلَىٰ مَا فَعَلْتُمْ تَلْمِيزِينَ

“O ye who believe! If a wicked person comes to you with any news, ascertain the truth, lest ye harm people unwittingly, and afterwards becomes full of repentance for what ye have done.”⁴¹

The Holy Qur‘an has also enunciated this principle in Surah Al Maida:

ذَٰلِكَ أَدَّتْهُنَّ أَن يُبَيِّنْنَ بِاللَّهِ عَلَىٰ وَجْهَيْهَا أَوْ يُخَافُونَ أَن تَرُدَّ آيْمَانُهُنَّ بَعْدَ إِيمَانِهِنَّ
وَآتَوْا اللَّهَ وَاسْتَمَعُوا وَاللَّهُ لَا يَهْدِي الْقَوْمَ الْفَاسِقِينَ

"That should make it closer (to the fact) that their testimony would be in its true shape (and thus accepted), or else they would fear that (other) oaths would be admitted after their oaths. And fear Allâh and listen (with obedience to Him). And

³⁸ Al Talaq: 2

³⁹ Al Maida: 8

⁴⁰ Al Nisa: 135

⁴¹ Al Hujrat:6

Allah guides not the people who are Al-Fâsiqûn (the rebellious and disobedient).”⁴²

Islam is the most favorite Din (religion) of Allah; Allah has made it perfect from every aspect. Qur’an provides extreme moral consideration and any act individually discredit to such moral consideration is taken as highly obnoxious and severely condemned. It is therefore ordered by Allah that the witness should not bear false evidence, as Allah states;

وَالَّذِينَ لَا يَشْهَدُونَ الزُّورَ وَإِذَا مَرُّوا بِاللَّغْوِ مَرُّوا كِرَامًا

“Those who witness no falsehood and, if they pass by futility, they pass by it with honourable (avoidance)”⁴³

The Holy Qur’an does not approve the practice of following information for which one has no knowledge as states:

وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ إِنَّ السَّمْعَ وَالْبَصَرَ وَالْفُؤَادَ كُلُّ أُولَئِكَ كَانَ عِنْدَهُ مَشْرُوعًا

“And pursue not that of which thou hast no knowledge; for every act of hearing, or of seeing or of (feeling in) will be enquired into (on the Day of Reckoning).”⁴⁴

The Holy Qur’an has in no way bound the Muslims to adopt a particular method in proving a crime, it is absolutely certain that a crime stands proven in Islamic law just as it is in accordance with the universally acceptable methods of legal ethics endorsed by sense and reason. Consequently, if circumstantial evidence, medical check-ups, post mortem reports, finger prints, testimony of witnesses, confession of criminals, oaths and various other methods are employed to ascertain a crime, then this would be perfectly acceptable by Islamic law.

Conclusion

To conclude, we can assert that testimony assumes a great deal of significance in Law as well as in Islamic law. The Holy Quran, Sunnah and the classical work of Muslim jurists bear eloquent testimony to this fact. As discussed above that without testimony we cannot approve or disapprove the facts and Allah Almighty has stated in the Holy Quran that concealment of the testimony is a sin so we have to be ready to testify in the courts of law and to encourage others as well to record their testimonies for the protection of rights to aggrieved parties. It can be concluded that without testimony no offence can be established and no fact can be approved or disapproved in all disputed matters.

⁴²Al Maida: 108

⁴³Al Furqan: 72

⁴⁴Al Isra: 36