

# **Two Women-Testimony Equals One Man , a Critical Analysis of Article 17 Qanun-e-Shahadat Order 1984 with the Constitution of Pakistan, 1973.**

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## **Abstract:**

This paper provides an analytical discussion on the provision of the QSO, focusing specifically on Article 17 and its questionable interpretation by lawmakers. Article 3 of the QSO explicitly states that all individuals are competent to testify as witnesses. However, Article 17 appears contradictory by requiring that a woman's testimony alone is insufficient, necessitating the presence of at least two women to give their statements legal validity and evidential standing. This paper addresses whether the provision of half-rights to women's testimony in the QSO aligns with the Constitution of Pakistan, which upholds the principles of equality and fair trial. The discussion includes an examination of the social position of women, supported by case studies and case laws, illustrating how courts, through a purposive approach, have shown leniency in the strict interpretation of laws. This leniency has allowed women's testimony to stand alone as legally sufficient. The paper concludes with recommendations for bridging the gap between these laws and suggests possible solutions.

## **Questions:**

1. Does Article 17 of QSO take away the right of testimony of one (individual) woman?
2. The Constitution provides fundamental rights of equality, no discrimination and fair trial to women and men both, how is QSO in conflict with this?

## **Introduction:**

The issue of a woman's social status has persisted as an unresolved matter, with the question of how a country or state, guided by religious ideologies and injunctions, can equitably address the fundamental rights of women compared to men still lacking a definitive answer. Among the many challenges women face in all aspects of life, gender inequality remains a significant obstacle. Even lawmakers appear conflicted, especially when debating the issue of testimony by women and men within both Islamic and social contexts, where the testimony of two women is considered equal to that of one man. This situation is fraught with ambiguity, as the Quran and Sunnah have repeatedly and explicitly set this standard, yet the fundamental rights promised and practiced over decades suggest otherwise. This discrepancy creates tension between religious and social interpretations, leading to the perception that women are less credible and reliable as witnesses in legal matters.

## **Background:**

This suggests that women endure a greater degree of oppression and injustice, and must struggle harder to attain their so-called fundamental human rights, such as honor, dignity, and social standing-rights that are not afforded to them equally compared to men. Additionally, the Constitutionally promised rights and religious rights have collectively been misunderstood. As a result, women face injustices rooted in traditional and cultural practices within a deeply entrenched and problematic patriarchal society. The social status of women before the advent of Islam was far from fair or upright, making it clear that such oppressive practices, established for centuries, continued even after the emergence of the religion. Women were treated as slaves and the property of men, especially their husbands, and were subjected to cruel and inhumane treatment to assert male dominance and superiority.

Since the emergence of Islam, however, equality between men and women has been explicitly emphasized regarding their obligations, rights, merits, and moralities. Islam has, on numerous occasions, prioritized women in matters of dignity and honor, condemning discrimination, inequality, and bias against them. The Prophet (peace and blessings be upon him) repeatedly urged believers to fear Allah in their treatment of women, strongly advocating for kindness, respect, and fairness towards them. Women are entitled to all these rights as dictated by Islam and by virtue of being citizens of the state where they reside. However, the Constitutional and religious elements have been mistakenly considered mutually exclusive, leading to friction between the two and causing interpretational issues in serious matters. While the Constitution grants all citizens equal rights in political, social, economic, and fundamental matters, religion imposes certain restrictions, creating distinctions between men and women in the exercise of these rights. These exceptions and limitations contribute to the divergence between the genders.

## **Current Social Status of Women in Society:**

Women are permitted to engage in only a limited range of socio-economic, political, and legal activities, and they often lack the autonomy and standing that men typically enjoy. Fundamental rights such as free consent and consideration in marriage, the authority to own and possess property, the right to a fair share in inheritance, the right to a fair trial, the right to freely express oneself and speak, the right to associate, and the freedom to engage in economic activities, start a business, and form contracts—are all rights that Islam grants to women. However, due to deeply rooted societal practices that have been ingrained over generations, these rights have been manipulated and reinterpreted by those in power according to their beliefs, leading to vague interpretations and indecisions within the justice system.

While other areas such as socio-cultural, political, and economic matters have progressed, legal issues concerning women remain stagnant. Even in the 21st century, women continue to be denied basic legal rights, such as the ability to testify on their own behalf or being recognized as credible witnesses in cases where they have been

victims of crimes. The alarming rise in crimes against women and their inadequate representation in courts highlights the urgent need for reform. The blending of socio-cultural and religious interpretations has created significant obstacles, making it nearly impossible to achieve fair and just outcomes in legal matters involving women.

### **The conflict of provisions of QSO and its nexus with the Constitution:**

Article 3 of the Qanun-e-Shahadat Order 1984 stipulates that all individuals, including minors and those with mental incapacities, are competent to testify. The only exception to this rule is when the court determines that a person under oath cannot comprehend the proceedings or provide rational answers to the questions posed. In such cases, the individual is exempted under Article 3. This Article grants the court the discretion to assess and determine the competency of a witness. This provision is further connected to Article 17 of the Qanun-e-Shahadat Order 1984, which elaborates on the principle of *tazkiya al shahud*. This principle is used to evaluate a witness's competency based on qualifications prescribed by Islamic injunctions as outlined in the Holy Quran and Sunnah.

Article 17 addresses both the number and competency of witnesses. Specifically, Article 17(2)(b) refers to matters of *Hudood (Hadd)* and criminal cases, while Article 17(2)(a)- which is central to this discussion-focuses on civil matters involving financial or future obligations unless otherwise provided by law, particularly concerning Hudood Laws or other special laws.

The controversy surrounding the interpretation of legal rights arises from Article 17 of the Qanun-e-Shahadat 1984, which some interpreters argue contradicts the fundamental rights guaranteed by the Constitution. This Article restricts the testimony of women in matters involving *Hadd (Hudood)* in criminal cases as well as in financial and civil obligations. Consequently, even if women are direct and primary witnesses in a Hadd offense (as discussed later in the case of Mukhtaran Mai), their testimony may not be considered legally valid.

The specific provision under scrutiny is Article 17(2) of the Qanun-e-Shahadat Order 1984, which jurists argue is in direct contradiction to the Constitutional chapter that guarantees fundamental rights to all citizens, regardless of gender.

Many human rights activists firmly believe that Islam, at its core, advocates a gender-neutral and impartial belief system. However, they argue that this essence has been obscured by a flawed patriarchal structure, manipulated by certain practitioners and preachers through vague and subjective interpretations. As a result, the genuine belief in gender equality-fundamental to Islam-has been proclaimed from pulpits but in a monotonous and diluted manner. According to Article 17, fiscal matters and future obligations require either two male witnesses or one male and two female witnesses to establish credibility.

Jurists have debated that as societies evolve, so should the interpretations of religious injunctions, which were written many decades ago, if not more. These injunctions may not provide detailed guidance on contemporary issues. Therefore, jurists have sought to bridge the gap between the established old laws and the current socio-economic context. Consequently, fiscal and future obligation matters, such as debt transactions, usurpation, embezzlement, inheritance, waqf (endowment), lease, gift, compromise, partnership, torts, and other similar issues, were revised to permit women's testimony in certain exceptional cases.

### **Does Article 17 of QSO take away the right of testimony of one (individual) woman?**

QSO Article 17 refers to a verse in the Quran, specifically from Surah Al-Baqarah (Chapter 2, Verse 282), which discusses the requirements for witnesses in financial transactions. This verse is often cited in discussions about the role of women's testimony in Islamic law. Here is the relevant part of the verse:

"And bring to witness two witnesses from among your men. And if there are not two men [available], then a man and two women from those whom you accept as witnesses - so that if one of the women errs, then the other can remind her."

This verse establishes that in the case of a financial contract, if two male witnesses are not available, then one man and two women can serve as witnesses. The reasoning provided is that if one woman forgets or errs, the other can remind her.

### **Does It Take Away the Right of Testimony of an Individual Woman?**

**No, it does not take away the right of testimony of an individual woman in general.** The verse specifically addresses the context of financial transactions and the requirement for witnesses in such matters.

**Contextual Considerations:** The verse applies to financial transactions and is not a blanket rule for all types of testimony. In other matters, such as in cases of family law, inheritance, or other legal contexts, the testimony of women can hold significant weight, sometimes equal to that of men, depending on the school of Islamic jurisprudence and the specific context.

**Interpretation and Jurisprudence:** The interpretation of this verse can vary among scholars and Islamic schools of thought. Some argue that the requirement for two female witnesses in place of one male witness in financial matters is due to the historical context in which women were less likely to be involved in such transactions. Others believe that this rule is intended to protect the fairness of the process rather than to diminish the value of a woman's testimony.

In summary, Article 17 does not take away the right of testimony of an individual woman in all contexts but specifies the need for an additional female witness in certain financial transactions.

In Pakistan, the interpretation and application of Quranic verses, including the one mentioned in Surah Al-Baqarah (2:282), particularly regarding women's testimony, have evolved through the country's legal history. Courts in Pakistan have approached this issue with a combination of traditional Islamic jurisprudence and modern legal principles. Here's how courts have generally interpreted the matter:

### **Legal Framework and Constitutional Context:**

Pakistan's legal system is based on a combination of British common law and Islamic principles. The Constitution of Pakistan includes provisions that require laws to be consistent with Islamic teachings. The Federal Shariah Court (FSC) is empowered to review laws for their conformity with Islamic injunctions.

Article 25 of the Constitution guarantees equality before the law and equal protection of the law for all citizens, regardless of gender.

### **Specific Interpretation of Women's Testimony:**

**Financial Matters:** Consistent with the Quranic verse, courts in Pakistan have generally upheld the requirement that in financial matters, the testimony of one man is equivalent to that of two women. This is in line with traditional Islamic jurisprudence.

**Non-Financial Matters:** For non-financial matters, such as in criminal cases, family law (including issues of marriage, divorce, and custody), and civil matters, the testimony of a woman is often treated equally to that of a man. The courts have recognized the importance of context in interpreting the Quranic injunctions.

### **Important Judicial Rulings:**

**Qanun-e-Shahadat Order, 1984:** This law, which governs the admissibility and evaluation of evidence in Pakistani courts, reflects the traditional Islamic rule in financial transactions but does not generally impose a distinction between male and female witnesses in other types of cases.

**High Courts and Supreme Court Rulings:** The higher judiciary in Pakistan has, in several rulings, emphasized that the requirement of two female witnesses in place of one male witness is specific to financial transactions and should not be extended to other areas of law. This approach reflects a more balanced interpretation that seeks to protect the rights of women while adhering to Islamic principles.

### **Evolving Interpretation:**

Over time, there has been a growing recognition of gender equality in the legal interpretation of women's rights in Pakistan. The courts have increasingly focused on ensuring that interpretations of Islamic law are consistent with principles of justice and equality, particularly in the modern context.

### **Influence of Federal Shariah Court:**

The Federal Shariah Court (FSC) has played a role in reviewing laws and court decisions to ensure their conformity with Islamic teachings. However, its rulings are sometimes seen as more conservative. Even so, the FSC has not universally mandated the exclusion or diminished value of a woman's testimony in non-financial matters.

### **Case Laws Regarding Article 17 of QSO in Civil and Criminal Matters:**

Several case laws have set precedents that clarify the debate surrounding Article 17 of the Qanun-e-Shahadat Order 1984. One notable case is the 1991 decision by the Federal Shariah Court (FSC) in PLD 1991 FSC 139 (at p.159) [Haider Hussain v. Government of Pakistan]. The court ruled that all monetary matters must be proven by either two male witnesses or, in their absence, one male and two female witnesses. The court interpreted this judgment strictly, stating that this matter is not open to interpretation or debate, as it is an Islamic injunction. The ruling laid down three essential points regarding women's testimony:

1. The contract of debt must be in an expressed form, meaning it must be in writing.
2. The written contract must be witnessed by two men or, if one man is absent, by one man and two women.
3. If a witness is summoned, they must not refuse to appear.

And matters pertaining to this provision must be read in its entirety and not in parts. It is because the text will have different meaning and will be prone to various interpretations if read as a part and not whole. And also, what has been penned down as an absolute rule leaves no room for confusions or further elaboration, and is to be fairly observed in its absolute true form.

Even in matters concerning issues of *Hadd (Hudood)* as has been laid down in Article 17(2)(b), yet another landmark case of year 2002 that attracted attention of millions, took the internet by storm and made headlines on both national and international platforms was the heinous rape case of Mukhtara Mai who, in the name of honor and for an act that she had not even committed was dreadfully and ghastly punished by the village leaders of the panchayat. Her brother, who was found having an intimate relationship with another woman, was believed to be made even by giving orders of the man's sister (who was Mukhtara Mai) to be raped. And so, she was dragged in a place nearby the village and gang raped by 5 men. At the time when the case was brought, the act of 'rape' was rather considered to be under the scope of 'forced adultery' and

was hence, dealt in Islamic laws governing adultery. According to which, a woman's testimony alone could not hold enough basis or form enough satisfactory grounds, regardless of herself being the victim of rape. And an uproar by rights activists and many others lead to the changes lead to changes in women testimony in cases of rape. And thus, in the Supreme Court's landmark judgment, although not absolutely but a woman is now independently treated as an eligible and sufficient witness to her own rape.

However, cases of civil nature like that of in PLD 1991 FSC 139 [Haider Hussain v Government of Pakistan] highlight and unravel the debate that's making waves up to the surface regarding leverage and relaxation to be granted in what is known to be an "old and strict" law and aid in giving a purposive interpretation rather than construing such matters stringently. The jurists are of the view that very strict implementations of such old drafted injunctions leaves no room for improved solutions for matters in today's day and age where the scope has widened to an extent that the centuries old laws hold little or no practical implementation. For instance, in claims like that of property, where oath of the claimant and one witness would amount sufficient.

In such a matter the two equals one; two women and one man, doctrine would rather be negated and strict off. Yet another case revolving around the concern, that's similar to the discussion of the implementation of Article 17 of Qanun e Shahadat 1984 (QSO) was observed in PLD 2021 SC 583 [Sheikh Muhammad Munir v Mst. Feezan] that was brought on appeal to the Supreme Court from the Lahore High Court (LHC) where the question of number witnesses was yet again raised by the petitioners. The matter in controversy concerned a woman arguing in light of 17(2)(a) of the Qanun e Shahadat Order that deals with "matters pertaining to fiscal or future obligations".

The claim regarding payment of money and delivery of the possession of her house was only to be accepted on the condition that if the primary documents of that demised property were officially attested in by two men, or in absence of one man, would require two women and one man. Whereas, only one witness was present there, before the court which directly and unquestionably meant that the elements of the provision do not fulfill, they are incomplete and hence, it won't suffice to be in the respondent's favor.

Whereas, in case of 2017 CLC 996 Lahore High Court [Nazir Abbas v Ghulam Muhammad] which was similar to the case of Mst. Feezan where the response of the court favored the petitioner's argument and the ruled that under Article 17 of QSO matters pertaining to financial or future obligations, it is required under the statute that either two men or in case of absence of one man, two women and one man to be presented as witnesses and hence, the petition was allowed accordingly.

The above explained cases are the ones that were presented before the court objecting to the provision of civil (monetary matters and other future obligations) that concerns Article 17(2)(a) of Qanun e Shahadat Order. Although, it lays down a clear and an unambiguous distinction regarding the "two equals one" doctrine, meaning that in matters pertaining to fiscal affairs and future obligations, it shall under any and all

circumstances, require the aforementioned criteria, that is two men or one man and two women to form a credible and reliable source to prove their claim. This has been widely opposed in Constitutional terms mainly on grounds that it contradicts certain provisions of the Constitution which in its early chapters, promises certain fundamental rights to all citizens. There have been objections raised regarding the disparity and variation in two immensely significant statutory documents, i.e. the QSO and the Constitution. As has been extensively elucidated below that the Constitution has framed and guarantees rights like that of fair trial and due process under Article 10A, the right to freedom of speech and expression under Article 19, and most significantly Article 25 which emphasizes upon equality of all citizens. All these fundamental human rights form a nexus with Article 17 of QSO which has been a subject for critics to confer on. The provision of QSO directly is in contradiction to the above mentioned Articles and restricts right and power of women particularly to testify; where one woman is not considered credible enough to solely be considered as a witness and her alone enough to testify for a civil matter that pertains fiscal or future obligations. The argument is backed by the thought that women are rather less credible and less reliable than men in the practicality of issues like such and which in one way implies that women have less cognitive capability and mental capability than men.

Moreover, they believe that socio-cultural and religious elements have been mingled together and wronged to be perceived as one, hence why, women have always been subjected to discriminatory and gender biased differences in all walks of life. Where the other issues like social, economic and other fundamental ones are being progressively enhanced, the legal ones remain at a standstill. The case laws show how in Pakistan, statutes have been rigidly interpreted in support of Islamic Laws and with such strict interpretation of laws that were introduced centuries ago, leave absolutely no room for flexibility and leverage for amendments.

### **How are the Constitutional Articles in conflict?**

Fair trial and principles of natural justice are rights available to citizens of any country by virtue of being a citizen only. Unfortunately, the lawmakers of Pakistan never thought of this until the 18th amendment to the Constitution. The Constitution of Pakistan in practicality does recognize that some principles of UDHR have been incorporated in the Constitution of 1973 and till the 18th amendment no one thought to make fair trial part of the Constitution. It definitely does occur to a sane mind as to why this was never a part, but that is a whole new discussion (Ishaq, 2014).

The fact that testimony has a major role in the evidence procedure of a suit and Article 17 of QSO does consider it, but with an exception that conflicts with the object of Article 10A. It reads as follows:

For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process. The term 'fair trial' refers to fair trial for all as Article 10A reads, there is no discrimination as to men will get a full right and women will get half of what men will get. The Article uses the term 'persons' are entitled to this right; hence it is available to all. This is where the point



comes in hand, fair trial and women testimony work hand in hand. Article 17 of QSO discusses that in civil matters and future obligations if reduced to writing shall be attested by one man or two women. The case *PLD 2021 538 SC [Sheikh Muhammad Muneer v Mst. Feezan]*, discusses how one woman witness was not presented by the plaintiff in a matter pertaining for a financial and future obligations which refers directly to Article 17(2)(a) of QSO. The courts decided to back pedal to the Islamic injunctions as mentioned in the Article 17(1) of QSO.

The essence of fair trial to provide equal opportunities for both the genders, as discussed before it talks about persons; as discussed in the above Sheikh Muneer judgment that the plaintiff was not able to present the other women witness which lead to the matter being referred to Islamic injunctions which directly relate back to the Quran, where in Surah Baqarah it is said that witness of one man and two women shall be acceptable so if one forgets the other can remind the one who forgets (2:282). If only the law provided something that would provide a remedy then the matter would not have been referred to Article 17(1) of QSO. CPC 1908 does provide remedies as to non-appearance of the witness in case the summons were served. Rule 10 of order 16 discusses this, that if the summons were served and the witness fails to present themselves in front of court then as per rule 12 they might have to pay a fine not less than 500 rupees and all this can be avoided if they present sufficient cause or a lawful explanation as to their absence in courts (CPC, 1908). The reason why CPC 1908 has been referred to is because rather than immediately shifting to the Islamic injunctions the honorable courts could have allowed a remedy. This gives can consider that one woman's testimony isn't considered half and rather complete. If we consider the possible facts the list will be very long, but to generally consider this point if one of the women witnesses is not available due to illness or maybe now lives abroad such exceptions can be considered in intelligible differentia. Hence the courts have also drawn a possibility as reasonable classification when the question of equality shows up.

Therefore, it can be established once more that QSO is in conflict with the Constitution of Pakistan in light of this very recent judgment. Article 27 of the Constitution of Pakistan discusses non discrimination in services of Pakistan. If this is read with Article 25 based on equality, aa nice and fair chance to the plaintiff in order to present the aforesaid witness in court. The essence of fair trial is within the Constitution of Pakistan which is the supreme law of the land, but QSO conflicts with it.

Another Constitutional concept, equality which is discussed in the Article 25 of the Constitution of Pakistan and is one of the integral parts of the fundamental rights chapter. The right to testify under the Article 17(2)(a) of QSO is in direct violation with Article 25 of the Constitution of Pakistan. The case *2022 SCMR 1691 SC [Hadayat Ullah v Federation of Pakistan]*, discusses that the Constitution of Pakistan envisages the right to equality to all citizens, it also provides for different treatment who are not similarly placed under a reasonable classification. To justify this difference of treatment in reasonable classification needs to be based on intelligible differentia that has a reasonable nexus with the object being sought to be achieved. As per this case law, if this reasonable test is cleared only then may the difference of treatment in reasonable nexus can be drawn. When the Constitution talks about equal opportunities and equal

services that means it is referring to equal treatment despite the sex. In the case 2022 SCMR 201 SC [*Syed Azam Shah v Federation of Pakistan* through secretary cabinet division, cabinet secretariat, Islamabad], the intelligible differentia for reasonable characteristics was discussed as referred above in the Hidayat Ullah case. It was discussed in the Syed Azam Shah case that the classification must be based on intelligible differentia which should distinguish the persons that were grouped together from others left out of the group and the differentia or categorization must have a logical nexus with the object sought to be achieved. The 'persons that were grouped together from others left out of the group' can be interpreted to consider that the half testimony right of provided to one women is almost like marginalizing the position of women in the society as well as the civil matters, and it is discriminatory and in conflict with the right of equality to all persons under the Constitution. classification be accepted, referred to in 2021 SCMR 440 [*Commissioner Inland Revenue v Tariq Mehmood*]. What means when intelligible differentia is referred to is as follows: it is basically the difference capable of being understood. It's a factor that distinguishes or in a different state or class from another which is capable of being understood. So maybe in future we A report was submitted by Ms. Irene Khan to the UN where she discussed: 'Gender justice requires not only an end to unlawful interference with women's freedom of opinion and expression but also the creation of an enabling environment in which women can exercise their agency and participate safely, fully and equally in the political, social, cultural and economic life.' Article 19 of the Constitution discusses freedom of speech and expression. Gender equality is a right that the Constitution of Pakistan provides under Article 25. QSO Article 17(2)(a) refers to one women's witness as half, this is against the equality principle and as per the report admitted to the UN, gender justice requires equal participation in social and economic life and any unlawful interference with women's freedom of expression should not be present. So, one way or the other freedom of speech does relate to women's testimonial rights and any unlawful interference and non-representation will be gender injustice. And any injustice to gender is inequality which is not in line with Article 25. The Hidayat Ullah case discusses how equality is a right of every citizen of Pakistan, and its absence leads to gaps in application and implementation of the supreme law of the land.

### **Miscellaneous situations and the remedies in law exclusive of QSO 17(1):**

If any woman falls under the exemptions of section 132 of cpc which reads: (1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court. (2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code. The courts allow a recorded version of evidence if it is established that the woman is a *pardanashin* lady. It must be truthfully established that the issue of non-appearance of such a woman is due to observation of *parda*. 'The court is obligated to determine first whether the exemption claimed is permissible within the grounds and purview of Section 132 CPC or not, which is meant for a particular class of women, so that the privilege/exemption should not be misused but allowed only in genuine cases. However, once it is proved that applicant is a *pardanashin* lady, she cannot be compelled to

appear in the court and in such eventuality, the court may appoint the commission to record evidence in the interest of justice at any convenient place; even samples of thumb impression can be drawn on commission to verify with the documents in issue through any forensic lab if deemed fit by the Court for deciding the lis in just manner. In the families where ladies observe strict *parda*, it is considered by them most objectionable to appear in public even with their faces covered and to respect such sentiments and values, the legislature has provided a remedy under Section 132 CPC

[Muhammad Naeem Khan & another v Muqadas Khan (decd) through LRs and others].’

This means that where there is a right there is a remedy *ubi jus ibi remedium*. So, the law has remedy for women who observe *parda* and in the above aforesaid judgment they have created such exceptions as to when non presence is acceptable. Rather than referring back to Article 17(1) of QSO it is a lot better to allow exceptions to women who observe *parda*. If a *pardanashin* lady is a witness in a civil matter and she cannot present herself to court, we do have an exception in law which now allows use of electronic mediums as to recording of evidence, and since the judgment uses the term ‘evidence’ it means it would include all kinds of evidence, written and oral, documentary or testimonies. And for the purpose of it, to provide safeguard and equality to women such exceptions are allowed.

The matter at hand here is the fact that we have observed previous such judgements like the Sheikh Muneer judgments where courts refer to QSO Article 17(1), and leap directly to the injunctions of Islam. The issue is not whether the courts should or should not refer to the injunctions of Islam rather it is the use of remedies that exist within the ambit of laws of Pakistan. *Parda* has been observed many ladies since a very long time now and if the law is providing an exception for *pardanashin* ladies then maybe the law can provide for situations where there is no other witness other than the one women, or where only one can present herself as a witness either due to non-presence of the other due to illness, or any disease etc. failure to present shouldn’t reverse back to treating the women witnesses testimony as half rather allow a reasonable explanation.

*PLD 1990 SC 642 Janat Bibi versus Sikandar Ali and others*. It was held that the question whether a lady is a *pardanashin* lady is a question of fact (See *Bank of Khulna Ltd. v. Jyoti Prokash Mitra and others AIR 1940 Privy Council 147*).

The privilege of exemption in court appearance to a *pardanashin* lady as provided under Section 132 of C.P.C is to be read with Section 75 and Order 26 Rule 1 C.P.C (Cases in which Court may issue commission to examine witnesses. Any court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it) wherein the Court may appoint commission to record the evidence of *pardanashin* lady. In unison, under Order X, Rule 1-A C.P.C., the Court may adopt any lawful procedure not inconsistent with the provisions of this Code to (i) conduct preliminary proceedings and issue orders for expediting processing of the case; (ii) issue, with the consent of parties,

commission to examine witnesses, admit documents and take other steps for the purposes of trial; (iii) adopt, with the consent of parties, any alternative method of dispute resolution including mediation, conciliation or any such other means. If a woman falls within the exemption clause as cited under Section 132 C.P.C, the court has to issue commission as the matter of course or right, provided such plea was taken in the pleadings and the court is obligated to determine first whether the exemption claimed is permissible within the grounds and purview of Section 132 CPC or not, which is meant for particular class of women, so that the privilege/exemption should not be misused but allowed only in genuine cases. However, once it is proved that applicant is a pardanashin lady, she cannot be compelled to appear in the court and in such eventuality, the court may appoint the commission to record evidence in the interest of justice at any convenient place; even samples of thumb impression can be drawn on commission to verify with the documents in issue through any forensic lab if deemed fit by the Court for deciding the lis in just manner. In the families where ladies observe strict parda, it is considered by them most objectionable to appear in public even with their faces covered and to respect such sentiments and values, the legislature has provided a remedy under Section 132 C.P.C.' reads the Naeem Khan case. It further included: 'In this advanced era of computer age, the information technology is progressing and growing manifold with rapidity. Even under Article 164 of Qanun-e-Shahadat Order 1984, in such cases as the Court may consider appropriate, the Court may allow to produce any evidence that may have become available because of modern devices or techniques. [Muhammad Naeem Khan & another v Muqadas Khan (decd) through LRs and others].

Now if the Naeem Khan case judgment is read with Sheikh Muneer case we observe that the only resort isn't referring back to Article 17(1) of QSO, when possible under reasonable justifications the law does permit it. But the matter being addressed in this paper is not whether the courts allow exceptions, but rather the fact that courts can use the discretionary powers to give equal positions and rights to women when possible. The issue is that one right available in the Constitution of Pakistan, let's say equality under Article 25, is directly in conflict with QSO Article 17. Pakistan is a free country, with a legislature which is responsible for law making.

When it is being said that courts can use their discretionary powers, that may not stand very well, since it is not never the job of courts to make or amend the law, they can only interpret it and interpretations can have variations. It is hence the legislature's job to make sure that all the laws stand by each other not against each other. Fair trial and non-discrimination, free speech and expression are also Constitutional rights that do one way or the other conflict with QSO Article 17 as already discussed. So, it can be established at this point that laws for women in Pakistan are inconsistent with the Constitution of the state.

### **Current situation, two women still equal one man:**

A story covered by Yusra Salim for express tribune discusses how the private banks in Pakistan are now in efforts to entirely abolish the witness or testimonial value of women

in financial and future obligations. The banks now prefer to do it the easy way with two men rather than four women or two women and one man. The baseline reason for this is to escape the paperwork and avoid any hassle for future purposes (Salim, 2022). The point that floats above all this is the infringement of women rights that the Constitution provides for. Article 25, equality is being referred to again and again throughout this paper since as citizens of Pakistan everyone has the right to equal treatment exclusive of sex. Knowing this, the private banks through it on the SBP, SBP is the regulatory authority for all the banks operating in Pakistan and has a set of rules according to the Constitution about how private financial institutions should operate. As per the report shared by express tribune; SBP believes they don't have any regulations that are discriminatory and unequal. According to SBP, all policies and regulations for the banking system of Pakistan apply to men and women equally. The following are the customer complaints shared by people who very recently experienced the discriminatory treatment of private banks of Pakistan:

1) Hafsa (names have been changed so as to not expose identity) recently experienced this when she went to a private bank for a loan of xxx,xxx rupees. She was asked for documents from her workplace and then was told by a liabilities officer to get forms attested by two men. When she asked why female witnesses weren't allowed, she was told the bank doesn't accept female witnesses because of SBP regulations (Salim,2022).

2) People who've tried to use female witnesses for simple transactions say they've faced challenges. One customer shared, "I was denied a credit card from the bank just because my form has a male and a female witness," According to Shariah law, four women should be an acceptable replacement for two male witnesses, but the bank wouldn't accept women witnesses at all. "I don't understand why they don't consider the witness of women", shared the customer. (Salim, 2022).

3) "I was told to bring my father or brother along," She later gave up on getting a car loan from the bank because of this hurdle. She said the form for financial declaration or loan has two columns for witnesses, and they must be men. (Salim,2022).

Most of the customers who talked with express tribune shared that they personally believed that the adaptations (previous 1872 law of evidence that was amended almost entirely to the 1984 version in Zia's era) of QSO is the reason for these rules. According to that law, the testimony of two women is equal to one man. In practice, this should apply to banks, too. But to avoid extra work, they ask for two male witnesses instead of four female witnesses. Over time, banks have stopped giving the option of having four female witnesses, and now only accept witness statements from men (Salim,2022).

In Pakistan, the interpretation and application of Quranic verses, including the one mentioned in Surah Al-Baqarah (2:282), particularly regarding women's testimony, have evolved through the country's legal history. Courts in Pakistan have approached this issue with a combination of traditional Islamic jurisprudence and modern legal principles. Here's how courts have generally interpreted the matter:

## **Recommendations:**

The following are a few recommendations as to what may be done in order to provide safeguard to women testimonial rights:

- 1) Amendments be made to the QSO Article 17(2)(a) since it is not in line with the Constitution of Pakistan (fundamental rights). 2022 SCMR 1691 SC [Hadayat Ullah v Federation of Pakistan]. Pakistan is signatory to UDHR, CEDAW and many other international treaties, covenants and conventions that discuss equality, non-discrimination and fair trial to which QSO Article 17(2)(a) is not in line with, this gap can be covered if amendments are made to QSO Article 17(2)(a).
- 2) Exceptions must be allowed in case one of the testifying women is not able to present herself, look into Civil procedure code 1908 for further references.
- 3) The exceptions to women must be allowed generally and not in genuine cases only, since this takes away the right to fair trial of women. [Muhammad Naeem Khan & another v Muqadas Khan (decd) through LRs and others].

## **Conclusion:**

The right to testify is a right given to all persons under the QSO 1984, and by the above discussion it can be inferred that this right is not equally available to women. Article 3 of QSO creates this right available to all 'persons' regardless of sex. Under Article 3 of QSO it is discussed that this right is available to even lunatics, so the question remains as to why women testimony is considered half till date (mainly in financial and future obligations). The Constitution of Pakistan Article 25 discusses equality which is not in line with Article 17 of QSO according to which two women testifying is equal to one man testifying. Case laws and case studies referred to in this paper have helped to deduce this outcome. The Qanun-e-Shahadat Order, 1984 does raise potential conflicts with the Constitutional guarantees of equality, non-discrimination, and fair trial, particularly in its provisions regarding the testimony of women in financial matters. However, the courts have generally tried to balance these provisions with the Constitutional rights by limiting the scope of such rules and ensuring that they do not lead to broader discrimination or unfairness in other areas of law. The ongoing debate and calls for reform reflect the tension between traditional religious practices and modern Constitutional principles in Pakistan.

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