

Writing contracts for debt and women as witnesses

Friday Khutba by Dr Zahid Aziz, for Lahore Ahmadiyya UK, 12 February 2021

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ ۚ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ ۚ وَلَا يَأْب كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسْ مِنْهُ شَيْئًا ۚ فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمْلَئَ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ ۚ

“O you who believe, when you contract a debt for a fixed time, write it down. And let a scribe write it down between you with fairness; nor should the scribe refuse to write as Allah has taught him, so let him write. And let him who owes the debt dictate, and he should observe his duty to Allah, his Lord, and not diminish anything from it. But if he who owes the debt is unsound in understanding or weak, or (if) he is not able to dictate himself, let his guardian dictate with fairness.” (The Quran, 2:282)

I have read out the first part of the longest verse of the Holy Quran. The words which occur immediately *after* this point are the source of much misconception. From those words — which I will quote later — the wrong conclusion is drawn that in Islam the evidence of a woman is regarded as of half the value of the evidence of a man. But first we need to look at the opening part which I have recited above first.

The Quran was revealed in a society which attached little importance to writing. In fact, only a few people could read and write. The Arabs were known as an *ummī* people, meaning a people who were not literate. It is stated in the Quran regarding God sending the Holy Prophet Muhammad: “He it is Who raised among the *ummī* people (illiterates) a Messenger from among themselves” (62:2). Then there is a well-known hadith about determining the start of the lunar month, in which the Holy Prophet himself said: *إِنَّا أُمَّةٌ أُمِّيَّةٌ، لَا نَكْتُبُ وَلَا نَحْسُبُ*: “We are an illiterate people,

we neither write nor keep account” (Bukhari, hadith 1913). It is nothing short of a miracle that the Quran is requiring such a people to “write down” any debt agreements. It is teaching them the importance of making written records, instead of merely relying on human memory, and it is encouraging society to become literate.

Naturally, the question would arise from such people: how do we write these agreements? The Quran then tells them that they can ask a scribe to write for them, and it lays down the conditions for the scribe. These are that the scribe should be fair and just between the two parties: the lender and the borrower; nor should a scribe refuse to provide the service of writing. But when the society is literate, or becomes literate from a state of illiteracy, finding and asking a scribe to write becomes unnecessary. Instead of the borrower dictating to the scribe as to what to write, and the lender listening to it, the borrower could write it himself with the lender checking that what he was writing was true and fair. Then this verse says that if the borrower, due to some disability of mind or body, is unable to dictate, then his guardian should dictate on his behalf. In other words, the guardian has what we now call power of attorney.

We can see from this that the Quran is removing all obstacles that lie in the way of composing a formal agreement, because that is the purpose to be attained. It must be put into words in a proper way. In a non-literate society it is to be dictated by word of mouth and that word is also to be preserved in writing. The verse then continues:

وَأَسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَيْنِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الْأُخْرَى ۚ وَلَا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا^ط

“And call to witness from among your men two witnesses; but if there are not two men, then one man and two women from among those whom you choose to be witnesses, so that if one of the two commits error, the one may remind the other. And the witnesses must not refuse when they are summoned.”

Let us consider the question of what these witnesses are required to do. In our times, when someone acts as a witness to a document of agreement between two

persons they are witnessing that those persons have signed the document. The witnesses are not concerned with the contents of the agreement, with what is in the document. They are *only* witnessing that the parties to the agreement have signed that document and entered into the agreement laid down in that particular document, whatever may be in that document. The witnesses do not need to go through the agreement itself and understand it. But in the case mentioned in the Quran, it is dealing with illiterate people. The lender and the borrower are not signing any document, so the witnesses are not witnessing the signing of a document. The agreement is being dictated and that oral dictation is what the witnesses are witnessing. They have to be able to remember it. In the society of that time and place, a male witness was more likely to be familiar with such transactions than a female witness. A male witness was also far more likely to be literate than a female and even be able to read the document written by the scribe. This made it easier for man to act as a witness than a woman. The verse also adds: “And the witnesses must not refuse when they are summoned”. A man would have much less difficulty than a woman in responding to a summons to appear in court. In such situations, two women witnesses would be able to help each other. Only one woman actually needs to go to give evidence, and she would have compared her testimony with the other woman to remove any errors.

The details in the verse quoted above are based on the assumption that there is general illiteracy prevailing in society. This is why it is asking that a scribe should write the agreement. If we skip forward to the next verse, it says:

“And if you are on a journey and you cannot find a scribe, a security may be taken into possession. But if one of you trusts another, then he who is trusted should deliver his trust, and let him keep his duty to Allah, his Lord. And do not conceal testimony. And whoever conceals it, his heart is surely sinful. And Allah is Knower of what you do.” (2:283)

Again, the inability of finding a scribe, mentioned here, indicates that this relates to a society in which very few people are literate. In a literate society, even if a third party could not be found who could write the debt agreement, the borrower could

write it himself and let the lender read it and confirm that it is correct, and both keep a copy. The *principles* that these two verses are emphasizing are: (1) the keeping of written records, in an accurate and truthful way, (2) the right of the debtor who is the weaker party to get the agreement written, so that the lender, the stronger party, does not exploit him, but the debtor on his side should also be just, (3) the use of a guardian if the debtor is not judged capable, and (4) of course the importance of witnesses who are chosen for their suitability, and their availability to give evidence if it becomes necessary. This shows that it is the aim of Islam to create an organized, civilized society whose basic principles are justice, truth, and giving everyone their due rights.

Whatever interpretation may be given to the requirement of having two women witnesses, there is an interesting point to note. The lender or the borrower or both could be women themselves. According to the teachings of Islam, a woman can own property and money, spend it and dispose of it in any legal manner. No one can deny that in Islam a woman may lend money or borrow money. What is more, the scribe could be a woman. So it would be a strange situation that a woman is regarded as responsible enough to be a lender of money, a woman is regarded as responsible enough to undertake a debt which she must return and moreover she is regarded as capable of dictating the agreement, and a woman is regarded as competent enough to write down the agreement, but the witnesses must be two men or one man and two women. Visualise the situation: a woman is lending money to another woman, this other woman, the borrower, is dictating the agreement to a third woman who is the scribe. Yet men are required as witnesses, either as two men or as one man and two women. Which is the position of greater responsibility: being merely a witness or being a party to the agreement who has to fulfil the conditions of the agreement?

I may add that the Quran mentions having witnesses in two other cases: when writing a will (5:106) and at the time of a divorce (65:2). On both these occasions it says that you should call “two just ones from among you” to be witnesses. These could be men or women. Another occasion of giving testimony which is stipulated in the Quran arises if a husband accuses his wife of illicit sexual relations but he cannot bring forward any witnesses except himself, and his wife denies the accusation. The

wife's denial is not given an inferior position to the husband's accusation, but an equal position. As the matter cannot be settled by human knowledge, the Quran specifies a procedure to settle the matter in the eyes of God. It says that the husband should "testify four times, bearing Allah to witness, that he speaks the truth, and the fifth time [he shall swear] that the curse of Allah be on him, if he is lying. And it shall avert the punishment [of God] from her, if she testify four times, bearing Allah to witness, that he is lying, and the fifth time [she shall swear] that the wrath of Allah be on her, if he speaks the truth" (24: 6–9). They are then divorced. You can see that the testimonies of the husband and the wife, which are exactly opposite to each other, are treated equally.

There is a hadith relating that a man's brother died and the Holy Prophet advised that man to pay his brother's debt out of what he had left behind. The man said: "Messenger of Allah, I have paid it off apart from two Dinar, which a woman is claiming but she has no proof." The Holy Prophet said: "Give them to her for she is telling the truth." So the Holy Prophet accepted the statement of a woman as against the rejection of her statement by a man (Ibn Majah, book 15: Charity, hadith 44).

In modern societies, we could have a standard printed form for debt agreements. Into this form the borrower would fill in the details of the debt, and have these confirmed by the lender. They would sign the form and any witnesses would merely witness their signing without needing to memorise the agreement. In more complicated cases, a lawyer would take the place of the scribe and draw up a legal document according to the instructions of the borrower as agreed with lender. And it would be signed in the same way.

بَارَكَ اللهُ لَنَا وَكُنْمُ فِي الْقُرْآنِ الْعَظِيمِ، وَنَفَعْنَا وَإِيَّاكُمْ بِالآيَاتِ وَالذِّكْرِ الْحَكِيمِ، إِنَّهُ تَعَالَى جَوَادٌ كَرِيمٌ
مَلِكٌ بَرٌّ رَوْفٌ رَحِيمٌ-