

The Acceptance of a Claim without Proof

We have referred above to the acceptance of the woman's word in matters concerning *'iddah*. Here it is appropriate to explain an important rule of the Shari'ah closely related to our present discussion that has often been referred to in the works of the legists, especially those of the Imami and the Hanafi schools. However, these legists have discussed it as a side issue, in the context of other related issues. I have not come across in the sources I know of anyone who has written a separate section on this problem except my brother, the late al-Shaykh 'Abd al-Karim Maghniyyah,¹ in his work *Kitab al-qada'*.

It is a known fact that both in the ancient and modern system of law the burden of proof lies on the claimant and the negator is burdened with an oath. The rule under discussion is just the opposite of it. According to it, it is binding to accept the claimant's word where it concerns his intention and cannot be known except from him, and which cannot possibly be witnessed. Examples of it abound in law, both in matters related to rituals (*'ibadat*) and transactions (*mu'amalat*). Some of them are the following:

1. If something is entrusted to a person and he claims having returned it, or claims its destruction without any negligence or misuse on his part, his word will be accepted on oath despite his being the claimant.
2. When a marriage contract is concluded between two minors by an officious third party, if one of them, on maturing, agrees and gives his/her consent to the contract and then dies before the other's majority, a part of his/her estate, equal to the minor's share will be set apart, and on his/her majority and agreement to the contract, he/she would also be required to take an oath that his/her consent is not motivated by greed for the legacy. On his/her taking the oath, he/she will take his/her share of the deceased's estate. This is so because the intention of a person can be known only from him.
3. If a person pronounces the divorce of his wife and then claims that he did not intend it, his claim will be accepted as long as she is undergoing *'iddah*.
4. The claim of a person to have paid *zakat* or *khums* will be accepted.
5. The claim of a woman concerning her state of menstruation, purity, pregnancy and *'iddah* will be

accepted.

6. The claim of indigence and need.

7. The claim by a woman that she is free of all impediments to marriage.

8. The claim of a youth that he has attained puberty (*ihtilam*).

9. The husband's claim that he has had intercourse with his wife, after she claims that he is impotent and the judge grants him a year's time. Details of it were mentioned while discussing impotence (in the chapter on marriage).

10. The claim of a working partner in a *mudarabah* partnership (where one partner contributes capital while the other contributes his skill, labour and know-how) that he has purchased a particular commodity for himself, which the partner contributing capital denies. Here the purchaser's word is accepted because he knows his intention better. There are other such examples.

Al-Shaykh 'Abd al-Karim has mentioned three proofs in his *Kitab al-qada'*:

The first proof is confirmed consensus, both in theory and practice. I have seen legists invoking this principle in all instances of its application, issuing *fatwas* on its basis in different branches of law, considering it as one of the most incontrovertible of principles. All this points towards a definite proof and a consensus regarding its being a general premise referred to in instances of doubt. The legists invoke this principle as a cause while accepting the word of an insolvent person, because if his word is not accepted, it will result in a sentence of perpetual imprisonment due to his inability to prove it..

The second proof is that which has been explicitly reported in some traditions. A certain narrator says. "I asked al-Imam al-Rida (A), '(What is to be done) if a man marries a woman and then a doubt arises in his mind that she has a husband?' The Imam (A) replied, 'He is not required to do anything; don't you see that if he asks her for a proof, she will not be able to find anyone who can bear witness that she has no husband?' "

Thus, the impossibility of producing witnesses is common to all these instances where another person's testimony is not possible due to the act being a private fact between the person and his Lord, which cannot be known except from the person himself. This is in addition to what has been narrated in the tradition regarding the acceptability of women's claim concerning menses, purity, *'iddah* and pregnancy.

The third proof is that in the event of not accepting the claimant's word in matters that cannot be known except from him, the dispute would of necessity remain unresolved and there would be no means in the Shari'ah for deciding disputes, and this is contradictory to the basic principle that says that there is a solution for everything in the Shari'ah. Therefore, in such circumstances the claimant's claim will be accepted after his taking an oath, because apart from this there is no other way to settle the dispute.

As to the need for an oath, it is in line with the consensus that in every claim in which the claimant's word is given precedence, he is bound to take an oath, because disputes are solved either by evidence or oath, and when it is not possible to produce a proof, the claimant's oath is the only alternative. Here it is not possible to burden the negator with an oath, because among the requirements of an oath is certain knowledge of the fact for which the oath is being taken, and there is no way a negator can have knowledge of the claimant's intention. It is necessary to point out that the need to make such a claimant take an oath arises in the case of a dispute that cannot be settled except by his oath. But if there is no such dispute, his word will be accepted without an oath (e.g. his claim of having paid *zakat* and *khums*, or his claim of their not being *wajib* upon him because he does not fulfil the conditions for their incidence).

Also necessary for accepting the claim of such a claimant is the absence of circumstantial evidence refuting the veracity of his claim. Thus if an act of his proves his intention – such as when he buys or sells and then claims that it was unintentional – it would result in his proving his own falsity because the apparent circumstances establish his intention. As to the acceptance of a claimant that he did not intend divorce, it is limited, as mentioned earlier, to a revocable divorce as long as the divorcee is undergoing *'iddah*, and this claim of his is considered his reclaiming her. Hence his word will not be given credence and his claim will not be heard if the divorce is irrevocable or if he makes the claim after the completion of *'iddah*.

1. He died in 1936 and left behind many compilations, all of them related to law and jurisprudence, and none of which have appeared in print. Among them is a good and useful treatise on 'adalah. The best of these works is a big book on qada', and there exists only a single copy of this work written in his own hand. It is a unique work and no other book like it has been compiled on this issue. My first reliance in writing this section has been on that book, then on al-Jawahir and the appendices of al-'Urwah.

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