

ADMISSIBILITY OF THE EVIDENCE OF A CHILD IN ISLAMIC COURTS

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ABSTRACT

One of the pre-requisite of giving evidence in Islamic court is Adalah (Justice). This means, the evidence of a minor is not admissible, because of his immaturity, which rendered him incapable of dealing justly and hence incapable of giving evidence in Islamic court. As a result of this, the paper attempted to highlight the position of minor's witness in Islam and the circumstances that can render his evidence admissible in Islamic courts.

1. INTRODUCTION

Islam has given great importance to the issue of justice, this can be seen clearly when the Prophet Muhammad (peace be upon him) migrated from Makkah to Madinah, he appointed some of his learned companions as Judges to administer Justice and settle disputes at various provinces where Islam spreads. Amongst those sent was Mu'adh bn.Jabal who was sent to Yemen, he also entrusted judicial task to Ali bn. AbiTalib and IbnYassar (I. Doi; 1984 p.14).

A judge cannot pass judgment without the presence of a valid witness who will testify or falsify the case being raised to a court of law. That is why in Islam, *Shahada* (witness) is also an important factor in the establishment of justice, confirming rights and applying punishment to those who deserve it. Allah Has mentioned in the Glorious Qur'an that:

O ye who believe; Stand out firmly for justice, as witness to Allah, even as against yourselves, or your parents, or your Kin, and whether it is (against) rich or poor. For Allah can best protect both. Follow not the lust (of your hearts), lest ye swerve, and if you distort (justice) or decline to do justice, Verily Allah is well acquainted with all that you do (Qur'an 4: 135)

One of the pre-requisite of giving evidence in Islamic court is Adalah (Justice). This means, the evidence of a minor is not admissible, because of his immaturity, which rendered him incapable of dealing justly and hence incapable of giving evidence in Islamic court. Therefore, the aim and objective of the laws of evidence in Shari'ah, is to lay down principles to prove the facts relevant for decision of a case.

1.1 Meaning of Shahada (witness)

Muhammad (1997: vol. 2 p. 33) and Anwarullah (2006, P19) defined *shahada* as information of what one has witnessed or seen or beheld with his eyes, declaration of what one knows, decisive information before a competent court of law or what one has been or known for the purpose of proving or disproving a right or a crime. Hence, a witness is a person who will stand before a court of law for the purpose of proving or disproving of a right, a case or crime against or in favor of a complainer or a defender.

1.2 Conditions of a witness under Islamic Law

Jurists have unanimously agreed that, at the time of giving evidence, a person must be:

1. A Muslim
2. An Adult and sane
3. Adalah (justice)
4. Free person
5. Must not be of questionable character

1.3 The Age of Minority

A minor passes through the following stages:-

1. Prior to the Age of Discretion
This stage extends from birth to the age of seven. In this stage, the law regards the child as non-discriminating. Like the insane person, he is considered unfit and is not held responsible.
2. The Age of Discretion
This is the period between 7 years of age and the onset of puberty. It is determined by age, by the signs of puberty or both. The child at this stage has the same status as a mentally retarded person.

3. The Stage of Puberty

A person becomes major at the age of puberty which is determined by the physical signs which denotes that state. Failing such signs, minors of either sex are held to have reached the age of puberty or majority on completing their fifteenth years, (Bambale; 2003: P.15).

2. THE POSITION OF A MINOR'S WITNESS IN ISLAM

In Islam, great importance has been given to witness to the point that a number of Qur'anic verses and Prophetic traditions have addressed the issue of witness. Allah stated in the Glorious Qur'an:

And get two witnesses out of your own men. (Quran 2:282)

And

And for witness, two persons from

Among you endued with justice and

Establish the evidence as before God. (Quran 65:2)

Ibn Abbas reported that the Messenger of Allah (p.b.u.h)

"Pronounced judgment on the basis of an oath and a witness "

(Muslim; book 30: Hadith 3)

Note that, at the time of giving evidence; the witness must be adult and sane. Meanwhile, the evidence of a minor is not admissible in Islamic court. This is based on the tradition of the Prophet (P.B.U.H) who said: "Three persons have been exempted from every kind of obligation.

1. The minor, until he attains puberty
2. The mad, until he recovers
3. The sleeping person until he awakes (Anwarullah; 2006: p.21).

This means, the evidence of a minor is not allowed in Islamic court. The reason is that, he is charged with limited obligations that are:

1. He is supposed to be under the care and control of a guardian.
2. He is not liable to punishment in criminal cases. For example where a minor tell lie. E.g in giving evidence related to adultery, he will not be punished (Bambale; 2003: p).

3. ADMISSIBILITY OF THE MINOR'S WITNESS

Various scholars have given different views regarding the admissibility of the minor's witness in Shari'ah court. Jurists have unanimously agreed that, at the time of given evidence, a person must possessed certain qualities as mentioned above before he is considered as a valid witness before Shari'ah court and his evidence is admissible. So a minor's evidence is not admissible in Shari'ah court because Shari'ah never considers him as a just person. But, Imam Malik is of the view that evidence of a minor is admissible in Shari'ah court provided that:

1. They dispersed before any adult mixed with them
2. They are males.

But some of his students differ regarding the sex of a minor, some of them are of the view that only the evidence of a male child is admissible, while others said, even the evidence of a female minor is admissible if they are many. (Ibn Rushid; 2011: p. 379)

According to Ismail (1997: p.333). Evidence of a minor is not admissible in Shari'ah court even if he is Mumayyiz (teenager) because he is not just. However, according to Maliki, the evidence of a child is admissible in the following circumstances:

1. When the Incidence of Homicide takes place among minors only
2. When the incidence of wounds takes place among minors only, though they lack the requirement of Adalah (justice).

It is important to understand that Imam Maliki reported in his Muwatta that Qadi Abdullah bn.Zubair was admitting the evidence of a minor in wounds cases that take place amongst them only. But according to Assayuti (N.D, P.438), the evidence of a minor is admissible in the following circumstances:

1. When incident happens among minors only.
2. The minors disperse before any adult mixed with them
3. Even if they disperse, their evidence is admissible, provided that they have reported the incident to an adult Muslim who is pious and just. So such adult will be the one to give evidence in court.

According to Alkafi (2012, P.33) Shari'ah court allowed the evidence of a minor in favour or against themselves in the following circumstances:

1. When incident of homicide takes place among minors only e.g. when one of the minors killed the other.

2. When incidents of wound takes place among minors e.g. a minor cause grievous injury to another minor's head or body.
3. The minor witnesses are male only.
4. They agree with each other in their evidence i.e. they should direct themselves.
5. The minors dispersed and before any adult mixed with them.
6. The minor witnesses should be capable of understanding things.

If the above conditions are certified then their evidence is admissible in Shari'ah court. According to Alkirawani (1999, p.449) A minor evidence is admissible in Shari'ah court when he attains the age of puberty, in which, he will be called to testify what he witnessed at his infancy.

According to Rabi'u (N.D, P.25) one of the prerequisites of a witness is to be an adult according to the four schools. But in the Maliki School exception has been permitted for the minor to give evidence in homicide cases and wounds and not otherwise, on certain conditions. This view was originally attributed to some companions like Caliph Ali, Judge Shureih, Urwa bn. al-Zubair and others.

The Maliki school of law allows such evidence of minors on the following conditions:-

1. When incident of homicide or wounds take place among minors only without any adult being with them.
2. The minor witnesses should be capable of understanding things.
3. They should be at the minimum of two, and more are preferable.
4. They should be males and not females.
5. They should be sons of Muslims.
6. The minors dispersed before any adult mixed with them.
7. Their evidence should be in favor or against minors and not adults.
8. They should agree with each other in their evidence i.e. the evidence given by the minors should be similar in substance.
9. The minors cannot withdraw their evidence even after they become adults.

4. CONCLUSION

The specific reasons why the majority of the Muslims jurists refused to admit the evidence of a minor in Shari'ah court are as follows:

1. A child's power of observation and memory are less reliable than that of adults.
2. Because of their immaturity, they can easily be influenced by adults and other children. One lying child may influence other to lie. Most especially in Nigeria where lying becomes the order of the day, and most adults and minors are indulged in it. A child below the age of seven (7) is possibly more under the influence of his parents and he is apt to allow his imagination to run away with him and to invent untrue stories.
3. Children who are old enough to understand what they are doing may yet be so young that their comprehension of events and of questions put to them, or their own powers of expression, may be imperfect.

In Nigeria where citizens are in the habit of reporting all the matters to the police station for investigation, and most of these police men lack the legal knowledge, a police man taking a statement from a child may use leading questions so that the child tends to confuse what actually happened with the answer suggested by the question.

Finally, minors have little notion of the duty to speak the truth, and they may fail to realize how important their evidence is on a case and how important it is for it to be accurate. However, Imam Malik is of the view that minor's evidence is admissible on certain conditions, because some of the companions of the Prophet (PBUH) and Tab'iun (the followers of the Companions) have admitted the evidence of minors when they were judges on certain cases and conditions.

5. RECOMMENDATIONS

Since lying becomes the order of the day, where both adults and minors indulged in it, this research work wishes to recommend as follows: that for the court to admit the evidence of a minor;

1. Such minors must be honest, and their parents must be honest and just.
2. That they must not be taken to the police station.
3. That they must not be interrogated by the police.
4. That a minor must be taken to the court from the scene of the incident.

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