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**RESEARCH ARTICLE**

**CHALLENGING WITNESSES AND ITS EFFECT ON THE COURSE OF LEGAL  
PROCEEDINGS ( (FIQHIATI STUDY)**

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**Abstract**

Testimony is the cornerstone of a legal case, much like the pillars upon which a building rests. Islamic jurists have devoted considerable attention to studying testimony in legal proceedings, clarifying the nature of testimony before a judge, the necessary qualifications of witnesses, and the various categories of testimony, including bearing witness, giving testimony, and the conditions for each category. Among the issues discussed by jurists is the challenge to witnesses and the rejection of their testimony before a judge. They explored the grounds that allow a judge to reject testimony and challenge witnesses, the impact of such challenges on the course of legal proceedings in terms of acceptance or rejection, and the resulting consequences. This research paper attempts to examine the issue of challenging witnesses and the rejection of their testimony before a judge. It identifies who has the right to challenge testimony, the criteria for rejecting testimony according to Islamic jurists, methods for avoiding rejection through witness attestation, the conditions for attesting to witness reliability, and the consequences of such attestation. This is achieved by answering several questions through a comparative approach to presenting the issue and an analytical approach by presenting the opinions of jurists, analyzing and discussing their evidence, and identifying the most sound opinion.

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**Introduction:-**

Praise be to Allah, Lord of the Worlds, and peace and blessings be upon the Master of Messengers and the Leader of Prophets, our Prophet Muhammad, and upon his family and companions.

**To proceed:** Establishing justice among people is the message of the prophets and messengers, peace be upon them, from the time Allah Almighty created Adam, peace be upon him, until Allah Almighty inherits the earth and all that is on it. Allah Almighty says:

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conclusive statement, and in the terminology of the people of Sharia, it is a truthful statement establishing a right by the word 'testimony' in the court of law." [Al-Zayla'i: 4/206] It is derived from its meaning in the language; therefore, they said: it is derived from observation, which is based on witnessing, and the performance is called testimony by applying the name of the cause to the effect. It was also said: it is derived from witnessing, meaning presence, because the witness is present in the judge's court and the court of the incident. In the terminology of the people of Sharia, it is a statement of truth, conditional upon the court of law and the word 'testimony.' Its conditions are a complete contract, accuracy, authority, and the ability to distinguish between the plaintiff and the defendant. Its element is the word 'I bear witness,' meaning the statement without an oath. Its ruling is the obligation of the judge to rule according to what the testimony requires. Analogy rejects that testimony be a binding proof. Because it is a report that could be true or false, but this is left to the texts and consensus [Al-Zayla'i: 4/207]. Testimony is a means of establishing the truth, and the purpose of testimony is to establish the truth [Abu Al-Rish: 56].

Maliki jurists said something similar: "His statement (testimony) refers to its technical meaning. Linguistically, it means clarification. The witness is called a witness because he clarifies the truth from falsehood before the judge. This is one of the meanings of God's name, the Witness. Some scholars alluded to this in God's statement, {God bears witness that there is no god but He} [Al Imran: 18], meaning He clarified. It has also been said that in both cases, it means knowledge. (His statement, 'a judge's report' is an addition of the verbal noun to its object, meaning a report to the judge's witness. His statement, 'with knowledge,' means a report arising from knowledge, not from conjecture or doubt. This definition is the meaning of some scholars' statement: 'Testimony is reporting what was litigated and intended to adjudicate and decide the ruling. As for narration, it is reporting what was not litigated and not intended to adjudicate or decide the ruling, but rather merely to attribute it to its source, such that if the source retracts it, the narrator retracts it.' Is it a condition for giving testimony..." There are two opinions regarding the specific wording of the testimony, with the more apparent being that it is not required. Rather, the basis for it is what indicates the witness's knowledge of what he testified to, such as "I saw such and such," "I heard such and such," or "I am certain that this person has such and such with that person." Therefore, no specific wording is required for its performance. [Al-Dasuqi: 4/165] Testimony (shahadah) is derived from the root meaning "to witness," and it linguistically means "conclusive information." Legally, it is a truthful statement to establish a right using the wording of testimony in a court of law.

[(Ibn al-Human: 2/6, Ibn Abidin: 385/4, al-Dasuqi: 164/4, al-Shirbini: 426/4)] The wording of the testimony: the word "I bear witness" and nothing else; because the texts stipulate this wording, as the Qur'anic command is stated in it with this wording, and because it contains an added emphasis, since his saying: "I bear witness" is one of the words of an oath. It includes the meaning of witnessing, that is, being aware of something. So if he said: "I witnessed," it is not permissible; because the past tense is used to report what happened, and testimony is intended to report what is happening now [al-Kasani: 266/6, Ibn Qudamah: 216/9].

**The second requirement: The validity of testimony and the evidence for its legitimacy.** Testimony is considered the plaintiff's proof, as the Prophet (peace and blessings be upon him) said: "The burden of proof is on the plaintiff." This is because the plaintiff is claiming something hidden, and therefore needs to reveal it. Evidence has the power to reveal, hence the plaintiff is required to present evidence, foremost among which is testimony. This testimony is given by two male witnesses, as in the case of a marriage contract, murder, and prescribed punishments, or by four men, as in the case of adultery. The number of witnesses is usually two, except in the case of adultery, where four witnesses are required, as stated in the verse: {لولا جاءوا عليه بأربعة شهداء} [An-Nur: 24]. Or a man and two women, as in all financial contracts and transactions, or a witness and an oath, or four women in the case of witnesses concerning matters pertaining to women...etc. There is no disagreement among jurists regarding the permissibility of relying on testimony for proof, due to the existence of Qur'anic and Prophetic texts indicating its legitimacy and the ruling based on it [Al-Zuhayli: 7/5799].

**The basis for the types of witnesses before intercourse is the Quran and Sunnah.**

As for the Quran, it says: {واستشهدوا شهيدين من رجالكم، فإن لم يكونا رجلين، فرجل وامرأتان ممن ترضون من الشهداء} [Al-Baqarah: 282/2]. It also says: {وأشهدوا ذوي عدل منكم} [At-Talaq: 2/65], and {وأشهدوا إذا تبايعتم} [Al-Baqarah: 282/2]. These are guidelines, not obligations.

As for the Sunnah, it is like the Prophet's saying, may God bless him and grant him peace, to a claimant: "Your two witnesses or his oath" [Al-Bukhari: 827]. And a hadith in the Sunnah: "He, may God bless him and grant him peace, was asked about testimony, so he said to the questioner: Do you see the sun? He said: Yes. So he said: Testify to something like it, or leave it" [Al-Bayhaqi: 10469].

**The ruling on testimony is that judgment is based on it after its conditions are met.** As for the ruling on bearing witness and giving testimony, it is a communal obligation if the witnesses are called upon to do so, because if everyone were to abandon it, the right would be lost. Giving testimony after bearing witness becomes an individual obligation, so the witnesses are obligated to give testimony, and it is not permissible for them to conceal it if the plaintiff demands it from them, due to the Almighty's saying: { *ولا يَأْبُ الشُّهَادَةَ إِذَا مَا دُعُوا* } [Al-Baqarah: 282/2] and His saying: { *ولا تَكْتُمُوا الشَّهَادَةَ، وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثَمٌ قَلْبُهُ* } [Al-Baqarah: 283/2] and His saying: { *وأقيموا الشهادة لله* } [At-Talaq: 2/65] [Ibn Al-Humam: 3/6, Ibn Abidin: 386/4, Ad-Dasuqi: 199/4, Ash-Shirbini: 450/4, Ibn Qudamah: 146/9, An-Nawawi: 323/2.]

Testimony must be given without being requested in matters pertaining to God's rights, such as the irrevocable divorce of a woman, breastfeeding, endowments, the sighting of the new moon of Ramadan, khul' (divorce initiated by the wife), ila' (a vow of abstinence from marital relations), and zihar (a form of divorce). The Hanafis stated that there are fourteen matters in which testimony is accepted as a matter of public interest without a formal claim: endowments, divorce of a wife, conditional divorce, the freedom of a female slave, her conditional manumission, khul', the sighting of the new moon of Ramadan, lineage, the punishment for adultery, the punishment for drinking alcohol, ila', zihar, the prohibition of marriage due to affinity, and a master's claim of lineage to a slave. Ibn Abidin added: testimony regarding breastfeeding. [Ibn Abidin: 3/440] However, in matters of prescribed punishments, the witness has the choice between concealing the matter and disclosing it, as they are faced with two options for giving testimony as a matter of public interest: establishing the punishment and preventing the violation of a Muslim's honor by concealing it.

**Testimony, as previously stated, is the declaration of a right** belonging to one party against another before a judge. Jurists distinguish between two levels of testimony: the level of bearing witness and the level of giving testimony.

**First: The level of bearing witness, which refers to knowledge of the right being testified to;** or, more accurately, knowledge of what is being testified to through experience. [Ibn Arafah: 9/374]. The obligation to give testimony is not contingent upon the fulfillment of the obligation. The level of bearing witness is considered the broadest category of testimony, applicable to all contracts and transactions, and the requirements for a witness may be less stringent than those for giving testimony. Jurists maintain that the fundamental principle regarding bearing and giving testimony is that they are communal obligations. If a group bears witness and a sufficient number of them give testimony, the obligation is lifted from the rest, as the purpose is to preserve rights, which can be achieved by some. If all refuse, they are all considered sinful.

Giving testimony may become an individual obligation if there is no one else capable of fulfilling the obligation, and the right depends on their testimony. In such a case, it becomes incumbent upon them to give testimony, as the objective cannot be achieved otherwise. To bear witness, a set of conditions must be met by the witness, some of which are agreed upon by the jurists and some of which are subject to disagreement. Among the conditions for bearing witness is that the witness must meet a set of conditions.

1- Sanity: It is required that the witness be of sound mind and aware of the true nature of the testimony at the time of giving it. Therefore, it is not permissible for a minor or an insane person to give testimony, because giving testimony requires knowledge and understanding of the truth being testified to, and this is not achieved by an insane person or a minor who lacks discernment, as stated in the hadith: "The pen is not to be written about three: the sleeper until he awakens, the child until he reaches puberty, and the insane person until he recovers." [Al-Bayhaqi: 8380]

2- That the witness be sighted at the time of giving testimony. It is not permissible for a blind person to give testimony, because giving testimony requires describing the person being testified against, and this is not possible with a blind person. The Hanafis stated this condition among the conditions for giving testimony: the testimony of a blind person is not accepted because giving testimony requires distinguishing between the one for whom and the one against whom the testimony is given, and a blind person can only distinguish through tone of voice. [Ibn Nujaym: 7/77] The majority of scholars disagreed with this. The Malikis, Shafi'is, Hanbalis, and Zufar from the Hanbalis held

that a blind person's testimony is valid in matters where hearsay evidence is accepted, such as testifying to a marriage contract, the appointment and dismissal of a judge, and other matters where hearsay is accepted, provided that the voice is recognizable and its owner can be identified [al-Zayla'i: 4/217, Ibn Farhun 2/80, al-Nawawi: 2/336, Ibn Qudamah: 12/61, 62, al-Dasuqi: 12/67].

3- Knowledge of the matter being testified to, or the specific nature of the matter being testified to, is necessary for the testimony to be valid. This is why the Sunnah emphasized the necessity of verifying the testimony, as stated in the hadith: "Do not testify except to something that is as clear to you as the light of this sun" [al-Bayhaqi: 50579]. This can only be achieved through knowledge or direct observation, except in matters where hearsay evidence is valid, such as marriage, lineage, death, and other matters stipulated by the jurists (3). As for anything else, it requires inspection. [Al-Kasani: 9/4024, Al-Shirazi: 2/335.] The following are not conditions for bearing witness: puberty, freedom, Islam, and uprightness, even if the witness at the time of bearing witness was a sane boy, a slave, an unbeliever, or a sinner, and then the boy reached puberty, the slave was freed, the unbeliever converted to Islam, and the sinner repented, and they testified before the judge, their testimony would be accepted. If an adult bore witness during his childhood and gave testimony after reaching puberty, it is valid. His statement, "if he was reliable," means if he bore witness while he was young. [Al-Dasuqi: 4/165]

**Secondly: The level of giving testimony, which means informing** the judge of what the witness knows and has witnessed, and the witness informing the judge of his testimony so that he becomes aware of what he has testified to. [Ibn Arafa: 9/377] This is one of the most important pillars of a legal case. For this reason, jurists have established a set of rules and conditions, some relating to the witness giving the testimony, some relating to the person against whom the testimony is given, some relating to the matter being testified to, and some relating to the quorum (i.e., the number of witnesses). [Kuwaiti Encyclopedia: 26/220] What concerns us in this research are the conditions related to the witness at the time of giving the testimony, and among these conditions mentioned by jurists are those pertaining to the witness at the time of giving the testimony.

1- Puberty: The testimony of children and boys is not valid, based on the verse: {And call to witness two witnesses from among your men. And if there are not two men [available], then a man and two women} [Al-Baqarah: 282]. A boy is not considered a man, as the Prophet (peace and blessings be upon him) said: "The pen is lifted from three: from the sleeper until he awakens, from the child until he reaches puberty, and from the insane person until he regains his sanity or recovers" [Al-Bayhaqi: 8380]. Furthermore, if a boy cannot be trusted to safeguard his own property, then he is even less likely to be trusted to safeguard the rights of others [Al-Shirazi: 2/325]. Some Malikis and Hanbalis held that the testimony of boys is permissible among themselves in cases of injury and murder before they separate. The Malikis added that their testimony must be consistent and that no adult should be present between them [Ibn Farhun: 2/8].

2- Sanity: The testimony of someone who is not of sound mind is unanimously considered invalid, because they do not understand what they are saying. This applies whether their sanity is impaired by insanity or intoxication, as they are not in a state of mental capacity, and their word cannot be trusted. 3- Freedom: The testimony of a slave is not admissible according to the majority of scholars, just as it is not admissible in other legal capacities. This is because testimony involves the enforcement of one's word against another, which is a form of legal authority. Furthermore, a slave is occupied with serving his master and therefore cannot be free to give testimony.

4- Sight: The testimony of a blind person is not valid under the Hanafi school of thought. The majority of scholars disagree with this, accepting the testimony of a blind person in matters of hearsay, as previously mentioned in the conditions for bearing witness.

5- Islam: The basic principle is that a witness must be Muslim. The testimony of non-Muslims is not accepted, whether the testimony is against a Muslim or a non-Muslim, based on the verse: {And call to witness two witnesses from among your men} [Al-Baqarah: 282] and the verse: {And call to witness two just men from among you} [At-Talaq: 2]. A non-Muslim is not considered just and is not one of us. He is among the most wicked of the wicked and lies about God, so he cannot be trusted not to lie about His creation. This is the opinion of the majority of scholars from the Maliki, Shafi'i, and Hanbali schools of Islamic jurisprudence. The Hanafi school permits the testimony of a dhimmi (non-Muslim living under Islamic rule).

6- Speech: The testimony of a mute person is not valid according to the majority of scholars. Malik held that their testimony is valid if their gestures are understood, and the Hanbalis accept the testimony of a mute person if they give it in writing [Al-Hattab: 6/154].

7- Uprightness: There is no disagreement among scholars regarding the requirement of uprightiness for witnesses, based on the verse: {And call to witness two just men from among you} [At-Talaq: 2]. Therefore, the testimony of a transgressor, such as an adulterer or a drunkard, is not accepted [Az-Zuhayli: 8/6037].

8- Vigilance or Accuracy: The testimony of a foolish person who is not always or generally accurate is not accepted due to the lack of reliability in their statement. However, the testimony of someone who is rarely accurate but is generally reliable and accurate is certainly accepted, as no one is entirely free from such errors. [Al-Mawsu'ah Al-Kuwaitiyah 26/223]

As for the Sunnah, the Prophet (peace and blessings be upon him) gave an example to a claimant: "Your two witnesses or his oath"

### **Third Topic: Challenging Witnesses and Reasons for Rejecting Witness Testimony Before the Judge:**

Challenging testimony means rejecting the witness's testimony before the judge and not accepting the witness's testimony in a case. This rejection of testimony may be due to a defect in the witness, or an accusation that invalidates the testimony from the outset. The general principle is that an accusation invalidates testimony, based on the Prophet's saying (peace and blessings be upon him), "There is no testimony for an accused person." An accusation can be established either through a lack of integrity or a lack of discernment, even if integrity is established [Ibn al-Humam 7/397].

The rejection of testimony may be due to a flaw in the witness, such as immorality; it may be due to a flaw in the person for whom the testimony is given, such as a relationship to the accused, implying favoritism towards the one against whom the testimony is given, such as through blood ties; it may be due to a defect in the witness's ability to discern, such as blindness; or it may be due to an accusation of perjury, even if the witness is deemed to have acted justly based on legal evidence. This latter type of perjury is punishable by the prescribed penalty for slander after repentance according to our school of thought, and before repentance according to the Shafi'i school (may God have mercy on him). [Al-Badr al-'Ayni: 9/134] The jurists have detailed the reasons for rejecting testimony, which the appellant relies upon to reject a witness's testimony before the judge. These reasons can be traced back to two main issues, from which a number of other reasons branch out, which we will briefly mention below.

First: Rejection of testimony due to a defect. This refers to the presence of a defect in the witness that renders their testimony inadmissible to the judge and unacceptable in proving the claim. Jurists have mentioned the reasons for rejecting testimony due to defects, clarifying that they amount to twelve reasons, some agreed upon and others disputed. [Al-Zayla'i: 4/206 and onwards, Sulayman: 2/195, Al-Mawwaq: 8/162, Al-Qarafi: 10/259, Ibn 'Arafa: 9/270, Ibn Rushd: 4/245, Al-Sa'di: 2/796]. One of them: The testimony of an apostate is not permissible against anyone under any circumstances.

The second: The testimony of non-Muslims against one another is permissible, even if their religions differ, according to Abu Hanifa and his two companions and Abu Abdullah. According to Ibn Abi Layla and al-Awza'i, it is permissible within the same religion but not between different religions. According to Malik and al-Shafi'i, their testimony is not permissible. [Al-Sa'di: 2/796] Third, the testimony of a non-Muslim granted safe passage in a Muslim land is not admissible against a Muslim, nor against another non-Muslim granted safe passage. Fourth, the testimony of a non-Muslim subject of a Muslim state (dhimmi) is also not admissible against a Muslim, nor against another non-Muslim subject. However, the testimony of a non-Muslim subject is admissible against another non-Muslim subject, whether it is for a Muslim or another non-Muslim subject. Fifth, the testimony of a minor is not admissible against anyone under any circumstances. Sixth, the testimony of an insane person is not admissible. Seventh, the testimony of a mentally deficient person is not admissible. Eighth, the testimony of a blind person is not admissible according to Abu Hanifa, Muhammad, and Abu Abdullah. According to Abu Yusuf, Ibn Abi Layla, and al-Shaykh, it is admissible if a sighted person testifies to it and then a blind person testifies to it. According to al-Layth ibn Sa'd, his testimony is admissible. [al-Sa'di: 2/796] The ninth is that the testimony of a mute person is not permissible except through gestures, according to Malik. The tenth is that the testimony of a slave is not permissible, according to Abu Hanifa and his two companions, Malik, and al-Shafi'i. However, his testimony is

permissible, according to Abu Abdullah, Ahmad ibn Hanbal, Ishaq ibn Rahwayh, and Abu Thawr. The eleventh is that the testimony of a woman is not permissible without men, except in matters that men cannot witness. The twelfth is that testimony based on writing is not permissible, according to Abu Hanifa and his two companions, Abu Abdullah, and Ibn Abi Layla. However, it is permissible, according to Bishr ibn al-Mubarak and Tawus. According to Sufyan, if he mentions that he witnessed and that he wrote it down, and he does not mention anything else, then he may testify based on the writing. It should be noted that any testimony rejected due to a reason is accepted if the reason is removed. For example, if a disbeliever testifies while in a state of disbelief, or a child testifies in childhood, and the testimony is rejected, then the disbeliever converts to Islam, and the child grows up and testifies to that same testimony, then it is accepted, according to Abu Hanifa and his two companions and Abu Abdullah, but not according to Malik. [Al-Sa'di: 2/802]

**Secondly: Rejection of testimony due to accusation.** As for testimony rejected due to accusation, there are sixteen types. One is the testimony of the Khattabiyya sect, because they testify to the testimony of those who share their sect. The second is the testimony of someone who openly commits immorality and debauchery. The third is the testimony of a suspicious person accused of wrongdoing. The fourth is the testimony of a partner for his partner, according to Abu Hanifa. According to Abu Yusuf, Muhammad, and Abu Abdullah, it is permissible even if they are not partners.

The fifth is the testimony of a worker for his master, according to Abu Hanifa. According to Abu Yusuf, Muhammad, and Abu Abdullah, it is permissible in matters other than his work. The sixth is the testimony of someone who works in entertainment. The seventh is the testimony of a beggar, which, according to Ibn Abi Layla, is not permissible in any matter. According to Abu Hanifa and his two companions, it is accepted if he begs out of need. However, if he begs constantly, whether out of need or not, or if he is suspected of begging without need, his testimony is not accepted. The eighth is the testimony of someone who gains a benefit for himself through his testimony or averts harm. The ninth is the testimony of someone who averts harm from himself through his testimony. The tenth is the testimony of one spouse, specifically a husband's testimony for his wife. The twelfth is the testimony of a father for his son. The thirteenth is the testimony of a son for his father. According to Abu Hanifa, his two companions, Malik, and al-Shafi'i, this is not permissible in these four cases. However, according to Abu Abdullah, Abu Thawr, and Ubayd, all four are permissible. The fourteenth is the testimony of a witness if the person for whom he testifies refutes him. The fifteenth is the testimony of a witness if he testifies to his own actions. There are three points of disagreement:

One: If a judge testifies to his own ruling after being dismissed, his testimony is not accepted according to Abu Hanifa and his two companions, but it is accepted according to Malik. The second: If the one who divides inheritance testifies to the division and the receipt of each man's share, it is accepted according to Abu Hanifa and Abu Yusuf, but not according to Muhammad and in one narration from Abu Yusuf. The third: If a wet nurse testifies to breastfeeding, her testimony is accepted according to al-Shafi'i, but not according to Abu Hanifa and his two companions. [Al-Zayla'i: 4/206]

The sixteenth: The testimony of one who has been punished for slander is not accepted according to Abu Hanifa and his two companions, even if he repents. According to Malik, al-Shafi'i, and Ahmad, it is accepted if he repents because he is no more wicked than a disbeliever who repents, since his testimony is accepted, so too is he. [Al-Zayla'i: 4/218, Ibn Rushd: 4/245] Testimony rejected due to suspicion: Every testimony is rejected because of suspicion. If the suspicion is removed, then it is not accepted. Like the case of a transgressor who testifies and his testimony is rejected, then he repents and testifies with that same testimony, it is not accepted, and the same applies to similar cases. [Al-Saadi: 8/162]

**Conclusion and Key Recommendations:** By the grace of God Almighty, this research paper on the topic of "Challenging Witnesses and Their Impact on the Course of Legal Proceedings (A Jurisprudential Study)" has been completed. Through this study, we arrived at several conclusions and recommendations, some of which we will mention below:

- Testimony is considered the fundamental pillar upon which the legal case is built, enabling the resolution of disputes and the establishment of justice.
- The judge relies on evidence to issue a ruling and adjudicate a dispute, and at the forefront of this evidence is testimony.

- Testimony is the knowledge of the right being testified to and the informing of this right to the judge. Therefore, it involves two stages: the stage of bearing witness and the stage of giving testimony. Each stage has specific conditions and criteria that must be met by the witness.
- Challenging testimony means rejecting the witness's testimony in the case. This rejection falls within the judge's authority in the court and is also the right of the defendant if the conditions for rejection are met.
- Challenging testimony may stem from a defect in the witness or from an accusation against the witness that constitutes grounds for rejecting the testimony. • A challenge to a witness's testimony based on a defect in the witness ceases or disappears, and the witness is no longer affected by it. For example, a minor before puberty is a reason for not accepting testimony; however, if the minor reaches puberty and is deemed of sound mind, their testimony is accepted, and the challenge is dropped.
- A challenge to a witness's testimony based on suspicion of bias is not dropped, because suspicion of bias against a witness is not dropped, unlike a defect that would disqualify testimony.

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