

Evidentiary Value of the Testimony: A Comparative Analysis of the Muslim Law and Indian Criminal Justice System

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Abstract

The present paper compares the evidentiary value of the testimony in Muslim law with the Bharatiya Sakshya Adhiniyam, 2023, which has superseded the Indian Evidence Act, 1872. Testimony is fundamental for judicial proceedings, as well as for religious practice, where it is a duty and moral obligation. The Qur'an, Sunnah, and consensus of scholars all hold a prominent place for testimony (shahādah) in Muslim law, which highlights the importance of truthfulness, justice, and spiritual responsibility. There are different levels of interpretation on the issue of competency of witnesses, gender and procedural requirements in the four major Sunni schools. The Indian law, on the other hand, is a secular approach with gender neutrality so that all competent persons can be called to give evidence irrespective of their religion. The BSA 2023 offers a number of big changes, such as the electronic testimony and video conferencing options, and the ability to take digital evidence as the first evidence. Although Muslim law gives greater weight to direct oral testimony, this law's requirements are more stringent, including the need for four male witnesses for hudud cases, as compared to Indian law, which also recognizes the use of circumstantial evidence and the extensive position protection procedures. In both, the only thing required for the establishment of justice is honesty (and integrity) of witnesses. The comparative study reveals the challenges of balancing moral duties with legal obligations in order to maintain social peace and public confidence in the rule of law in legal traditions.

INTRODUCTION

The primary goals of the criminal justice system are to protect the public, ensure that those who commit crimes are held accountable, and maintain social safety. As the last line of defense for social order, it enforces a set of laws and penalties that discourage criminal activity and give everyone a sense of security. The law itself is always changing and evolving to reflect what society values. One of its most significant instruments is testimony, which serves as a vital connection between actual occurrences and legal consequences. It's more than merely talking; it's a real commitment that the words are genuine, with moral, spiritual, and legal implications. A person's testimony can help resolve a case, affirm someone's rights, and maintain public trust in the legal system.

Testimony has traditionally been regarded as a legal and moral duty across religious traditions. In Islamic law, the "shahādah" principle is centered on truthfulness, justice, and accountability based on the Quran, Sunnah, and consensus of the scholars. These other religious traditions, such as Hinduism, Christianity, and Sikhism, also treat testimony as an obligation that maintains fairness and concord in society. In every

one of these traditions, providing evidence is not just a procedural routine; it is a promise of truth, justice, and the common good. Through understanding the place of testimony within legal and religious structures, we come to see how societies reconcile ethical obligation with the requirements of law in order to preserve justice.

THE CONCEPT OF TESTIMONY UNDER MUSLIM LAW

The word testimony is best understood as a solemn statement made under oath usually to a god an authority or a governing body about something which the person wanted to say in a particular case.¹ By its very nature, testimony is not so much a statement rather it is a binding promise that the words uttered bear moral, spiritual, or legal force. In the criminal justice system, the testimony occupies a position of great significance as it can seal the destiny of a person accused of a crime. A single valid statement can result in conviction, acquittal, or even harsh punishment. Due to this, testimony serves as a device used for seeking truth and as a weapon that has the the capacity to change life.

The idea of testimony is no recent development, but goes deep into history. For centuries, world societies, as well as ours, have been depending on sworn statements as a basis for justice. Testimony was a legal tool as well as a cultural artifact that carried the values of truthfulness, responsibility, and liability before a higher power, whether divine, sacral, or social. In ancient days, a vow before a deity or sacral authority was said to commit the speaker to veracity, on pain of religious sanctions in case the speaker uttered a lie. This notion did something to enhance the credibility of the process of justice and give stability to societies. Regardless of how different religious beliefs are, religious conventions are surprisingly similar in how they hold testimony. The wellbeing of society depends on justice in nearly every religious community, and testimony is a means by which equity is safeguarded. Giving a witness in a variety of religious settings including Islamic, Hindu, Christian, Sikh, and more, has been considered both a legal and a moral duty. By ensuring disagreements are resolved in a respectable fashion and truth stands, it upholds social trust. Through this, testifying is something more than a mere action; it is a collective vow that justice shall be, and harmony and bonds are sealed within the community.

TESTIMONY UNDER MUSLIM LAW

In the intricate matrix of Muslim law, testimony, or “*Shahadah*” is a cornerstone of the legal process. It is as religious as it is a legal form, based in the fundamental sources of the Quran and the Sunnah (the sayings and deeds of the Prophet). The principle transcends a verbal recital of facts and it enshrines the doctrine of truth, justice, and social responsibility.²

In Arabic, the word for testimony is “*al-shahādah*”, which derives from the verb (*shahida*). This verb carries multiple connotations, including being present, conveying certain knowledge, and serving as evidence. The person who gives testimony is called (*al-shāhid*) so named because they present before a judge what is true and what is false. Within Islamic jurisprudence, testimony plays a central role as a means of establishing rights. It operates as a form of legal proof, used to demonstrate and validate the claims being made.³

¹ *Definition of Testimony*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/testimony> (last visited Sept. 1, 2025).

² A.I.M. Al-Oqaili, *The Testimony as Evidence in the Light of Islamic Sharia Provisions (Applied Study of the Decisions of the Shari’a Court of Appeal and the Decisions of the Supreme Sharia Court in Jordan)*, 12 *Info. Scis. Letters* (2023).

³ Hijrian Angga Prihantoro, *Examining Witness Interest: The Obstacles of Testimony in Islamic Jurisprudence and Positive Law*, 21 *Justicia Islamica* (2024).

INTERPRETATIONS OF TESTIMONY IN ISLAMIC JURISPRUDENCE

In the context of Islamic law “*shahādah*” or bearing testimony is essential to maintaining justice and safeguarding individual liberties. It's a moral and legal pillar, not merely a formality of procedure. However, each of the four major schools of Islamic jurisprudence Hanafi, Maliki, Shafii, and Hanbali brings a unique perspective for understanding and applying this idea, formed by centuries of academic interpretation. They differ slightly but significantly in how they handle who can testify, under what circumstances, and in what kinds of cases, even while they all acknowledge its basic significance.⁴

The *Hanafi School* considers testimony as a solemn, true statement that is intended to establish a legal entitlement. To them, it is never a mere informal statement; it is a clear legal action. They stress that testimony is necessarily to be made clearly and conscientiously, and often in the presence of a judge. The intention is to make an accurate statement in legal terms in order to establish a claim by a party against another, irrespective of whether a formal lawsuit has been instituted or not. The idea is a solemn, legally binding affirmation in fact.⁵

Under the *Maliki School*, testimony is viewed as a statement made by a rightful authority, such as a ruler or a judge, based on actual knowledge. This school attaches an enormous amount of significance to certainty and actual knowledge. In order for a statement to be regarded as valid testimony, it has to be founded on substantiated truth, and not on assumptions, conjecture, or individual bias. They feel that if a ruler is acting on substantiated truth, his statement can actually be a general directive, giving an idea of how important they regard the originator of the information.⁶

In the *Shafii* tradition, giving testimony isn't just about telling the truth it's about doing it in a very precise way. They believe that for a statement to count as legal testimony, the person must clearly say “I bear witness”. Without those exact words, the testimony doesn't hold up in court. It's like signing a contract without actually putting your name on it everything else might be true, but it's not legally binding.⁷

The *Hanbali* School also takes testimony seriously, but they focus more on sticking closely to the Qur'an and Hadith. They're known for being strict about using only clear, authentic sources and avoiding personal opinions or local customs when making legal decisions. When it comes to testimony, Hanbali's emphasize honesty, reliability, and the moral character of the witness.

8

LEGITIMACY AND PURPOSE OF TESTIMONY

The legitimacy and purpose of testimony in Islamic law are firmly rooted in its primary sources, namely the Qur'an, the Sunnah, and Ijma (consensus of scholars), which together establish testimony as a sacred and fundamental mechanism to uphold justice.

1. **Qur'an:** The Qur'an makes it clear that speaking the truth and being fair are not just good habits they're spiritual responsibilities. It tells believers to judge fairly⁹ and to give honest testimony for the sake of Allah¹⁰ and not to hold back when asked to be a witness.¹¹ These verses show that giving testimony

⁴ Khalifa Hamed Saleh Shabal Altamimi, Nurazmallail Bin Marni & Ahmed Shehab, *Criminal Evidence System in Islamic Jurisprudence*, 12 IJARBS, (2022).

⁵ *Supra*. at. 3.

⁶ *Supra* at. 3.

⁷ A.I.M. Al-Oqaili, *The Testimony as Evidence in the Light of Islamic Sharia Provisions (Applied Study of the Decisions of the Shari'a Court of Appeal and the Decisions of the Supreme Sharia Court in Jordan)*, 12 Info. Scis. Letters (2023).

⁸ *Id.* At 7.

⁹ Quran 4:58.

¹⁰ Quran 2:283.

¹¹ Quran 24:4-7.

isn't just a legal act it's a sacred duty. By tying it directly to faith, the Qur'an treats testimony as a powerful tool for justice and a way to protect the rights of others in society.

2. **Sunnah:** The Prophet Muhammad emphasized the critical role of testimony in legal processes "Proof lies with the claimant, and an oath with the one who denies" (Sahih al-Bukhari) highlights testimony as central to safeguarding rights and resolving disputes. False testimony is regarded as one of the most serious moral and ethical transgressions. It is not merely the act of speaking untruthfully, but the deliberate violation of trust that forms the foundation of justice and social order. When a witness distorts or conceals the truth, the consequences extend far beyond the individual, potentially leading to miscarriages of justice, harm to innocent lives, and the erosion of public confidence in legal systems. For this reason, both religious and legal traditions have consistently condemned false testimony, recognizing that truthful witness statements are essential to the preservation of fairness, accountability, and the sanctity of justice.
3. **Ijma (Consensus):** Since the Prophet's time, Muslim jurists have reached unanimous consensus on the legitimacy of testimony as a valid means of establishing rights and obligations. False testimony is strictly prohibited in Islamic legal proceedings, reinforcing its authoritative status across both the classical and contemporary Islamic legal tradition as a fundamental safeguard for justice and social trust.

TYPES OF TESTIMONY

In Islamic law, testimony is either direct or indirect. Direct testimony comes from personal experience what a witness saw or heard and is the most reliable form of evidence. The Qur'an supports this by urging believers to testify truthfully and knowingly.¹²

Indirect testimony, or hearsay, is based on second hand information and is generally limited. However, it may be accepted in financial or civil cases when direct witnesses are unavailable due to illness, absence, or fear. Its use depends on the credibility of both the original source and the intermediary.¹³

Overall, testimony in Muslim law is more than a mere procedural formality rather it is a religious trust whose scope covers the moral, religious, and legal aspects of justice are grounded in the holy texts. It is an effective tool in protecting rights, settling conflicts, and maintaining social order. Direct or indirect, testimony is most weighty in deciding individual matters, as well as in upholding the credibility of the legal process itself. By requiring every witness to be honest, upright, and responsible, Muslim law raises the testimony into a religious obligation before God and a social obligation before all humans, so that justice is the foundation of society.

THE CONCEPT OF TESTIMONY UNDER THE INDIAN LEGAL SYSTEM

In every nation, testimony is an essential part of court rulings. India's witness laws have been reformed, moving from the colonial era Indian Evidence Act, 1872¹⁴ (*hereinafter referred as IEA*) to the more contemporary Bharatiya Sakshya Adhiniyam, 2023¹⁵ (*hereinafter referred as BSA*). The basic components of both laws are the same that are they emphasize direct evidence, uphold the idea that anybody is qualified

¹² Acceptable witnesses, Islamic Fiqh, <https://islamicfiqh.net/en/articles/acceptable-witnesses-250> (last visited Sept. 1, 2025).

¹³ A.I.M. Al-Oqaili, *The Testimony as Evidence in the Light of Islamic Sharia Provisions (Applied Study of the Decisions of the Shari'a Court of Appeal and the Decisions of the Supreme Sharia Court in Jordan)*, 12 *Info. Scis. Letters* (2023).

¹⁴ The Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).

¹⁵ The Bharatiya Sakshya Adhiniyam, 2023, No. 1, Acts of Parliament, 2023 (India).

to testify, and provide stringent protocols for assessing a witness's credibility. The BSA does, however, include significant modifications, particularly addressing the contemporary need for distant and digital testimony.

As regards to the compatibility of the witnesses all the persons are competent to testify who can fully understand the question which is presented to them and can give rational answers to the same. This same provision is there in IEA and BSA too.

TYPES OF EVIDENCES

The Indian evidentiary framework is primarily divided testimony into two basic types which are basically direct evidence and circumstantial evidence. The Direct testimony is that which comes straight from the witness's own observation. It serves as the most direct connection between the facts at hand and the evidence offered in court since it is founded on what the person saw, heard, or experienced firsthand. Courts typically see such testimony as the most trustworthy type of proof due to its immediate nature. Circumstantial evidence is generally based on logical deductions rather than direct observation. It requires drawing conclusions from a series of facts to infer what likely happened, rather than relying on what a person directly witnessed. It is accumulated by gathering facts in the neighborhood and by drawing rational conclusions in regard to the fact in question. The courts have, from early days, insisted on a strict test before acceptance. In *Sharad Birdhichand Sarda v. State of Maharashtra*, the Court “enshrined the doctrine that the circumstances, in order to be admissible, shall be so complete that there shall remain no reasonable hypothesis capable of being put in defense of innocence”¹⁶. Hence, circumstantial evidence, as admissible, places a heavier onus of proof: it must point, not only towards guilt, but it must, in addition, exclude every other possible explanation.

Both the IEA and the BSA maintain these distinctions, and Indian courts regularly use both forms of testimony. Where there are no eye-witnesses, circumstantial testimony usually provides the foundation-stone of criminal conviction, if the chain of inference be a clear and continuous one.

EXAMINATION OF WITNESSES

The reliability of testimony is not assumed rather it is tested thoroughly through a rigorous structured process of examination. This procedure has three stages which are as follows:

1. **Examination-in-chief:** Leading questions are generally prohibited, except with the court's permission, to elicit a spontaneous narrative of facts. The aim is to allow the witness to provide their version without suggestive prompting.¹⁷
2. **Cross-examination:** After a witness is examined by the party who called them, the opposing lawyer conducts a cross-examination. This is widely considered the most crucial part for testing a witness's reliability famously referred to by the Supreme Court as the "acid test." In this phase, the lawyer can ask leading questions to challenge the witness's memory, perception, and honesty. This is done to find any inconsistencies or weaknesses in their testimony. Its main purpose is to expose any inconsistencies or weaknesses in the testimony and ultimately determine how reliable the witness is.¹⁸

¹⁶ (1984) 4 SCC 116.

¹⁷ *What Is Section 157 Of BSA?*, Lead India, <https://www.leadindia.law/blog/en/what-is-section-157-of-bsa/> (last visited Sept. 2, 2025).

¹⁸ *What Is Section 157 Of BSA?*, Lead India, <https://www.leadindia.law/blog/en/what-is-section-157-of-bsa/> (last visited Sept. 2, 2025).

3. **Re-examination:** Conducted by the lawyer who originally called the witness to the stand, re-examination serves as an opportunity to clarify any ambiguities or new issues that arose during the cross-examination. This stage is strictly limited to addressing points brought up in the cross-examination and cannot be used to introduce entirely new evidence without the court's approval. Its purpose is to ensure that the witness's testimony remains clear and coherent despite the challenges posed by the opposing counsel.¹⁹

TRANSITION FROM INDIAN EVIDENCE ACT, 1872 TO BHARTIYA SAKSHYA ADHINIYAM, 2023

The Indian Evidence Act 1872 has been superseded by the Bhartiya Sakshya Adhiniyam 2023, representing a major revision of India's evidentiary rules after more than 150 years. The new legislation modernizes procedures by treating electronic and digital documents equally with conventional evidence and streamlining standards to meet modern demands. It strives to make trials more efficient, transparent, and in line with current technical and social realities. This change shows India's transition away from colonial-era frameworks and toward a more indigenous and modern legal system.

The BSA²⁰ gives Indian evidence law a historic makeover by formally endorsing modern technology as now it permits electronic testimony for example via video conference.

Even it makes easier to adopt digital evidence too as under Section 57 it treats electronic records as primary evidence, making it significantly simpler to adopt them in court.²¹ This abolishes the cumbersome and often problematic requirements of the earlier law in Section 65B.²² The new law also contains special protections in Section 63 in ensuring that digital evidence is original and has not been compromised.²³

The BSA also gives legal admissibility in court hearings to new forms of communication, such as emails, text messages, and social media communications, provided their authenticity can be proved.

SAFEGUARDS AND PROTECTIONS OF THE WITNESS

The Indian legal system utilizes special protections in protecting vulnerable witnesses, including children and persons with disability, in ensuring their testimony is both credible and secure. These involve a preliminary *voir dire* inquiry, whereby courts test a vulnerable witness's competency in testifying by establishing whether or not they are capable of understanding and rationally answering inquiries. To ensure added safety, the Witness Protection Scheme, 2018 provides comprehensive protections ranging from offering anonymity and identity changes, relocating witnesses, and facilitating evidence through special in-camera court hearings. The scheme, financed by a dedicated fund, is supplemented by the BSA whereby electronic and virtual testimonies are permitted.

These, in totality, allow vulnerable witnesses to take part in legal hearings without fear of intimidation, balancing their well-being against the need by the judiciary for credible evidence

¹⁹ Ruchika Mohapatra, *Cross-Examination of Witness under Indian Evidence Act*, CLATAllogue, <https://lawctopus.com/clatalogue/clat-pg/cross-examination-of-witness-the-indian-evidence-act/> (last visited Sept. 2, 2025).

²⁰ The Bhartiya Sakshya Adhiniyam, 2023, No. 1, Acts of Parliament, 2023 (India).

²¹ The Bhartiya Sakshya Adhiniyam, 2023, § 57, No. 1, Acts of Parliament, 2023 (India).

²² The Indian Evidence Act, 1872, § 65B, No. 1, Acts of Parliament, 1872 (India).

²³ The Bhartiya Sakshya Adhiniyam, 2023, § 63, No. 1, Acts of Parliament, 2023 (India).

Comparative Analysis of the Evidentiary Value of the Testimony under Muslim Law and Indian Criminal System

The comparative analyses of the evidentiary value of the testimony are as follows:

1. Competency of Witnesses:

Under Muslim Law it presumes that every adult Muslim is a competent witness unless they are too young, too old, ill, or otherwise incapable of giving rational answers. A key distinction is that non-Muslims cannot testify against Muslims whereas in the Indian legal system operates on a secular principle of competency, assuming "every person" is competent to testify, regardless of their religion, gender, or caste. The only disqualification is if a person cannot understand the questions or provide rational answers. Special provisions are also in place to ensure that mute or disabled witnesses can testify with assistance.

2. Gender and Testimony:

Under Muslim Law in certain criminal cases (*Hudud*), the testimony of four adult Muslim men is required whereas in financial matters the requirement is either two men or one man and two women giving a woman's testimony half the weight of a man's in these specific contexts. While women can testify in other cases, their role is often conditional.

In Indian law the provisions are completely gender neutral regarding testimony. The testimony of a man and a woman holds equal weight, with no differentiation in criminal, civil, or electronic evidence provisions.

Here is the information organized under different headings:

3. Types of Evidence

The Muslim Law places a strong emphasis on oral testimony and confessions, with a secondary role for circumstantial evidence. Documentary evidence must be attested by witnesses. There is no formal legal recognition of electronic records or exceptions to the rule against hearsay whereas the Indian law accepts a wide range of evidence, including oral, documentary, electronic, and digital communications. Under the BSA the electronic records are now considered primary evidence. The authenticity of such data is ensured by expert certificates. Hearsay is generally excluded unless a specific statute allows for an exception.

CONCLUSION

Testimony is a critical tool for justice, connecting what's true with what's legal. In Muslim law, giving testimony isn't just a legal step; it's a moral and religious duty based on Islamic teachings. This system emphasizes that witnesses must be honest and reliable, seeing their testimony as a way to ensure both social order and spiritual accountability. The law gives the most importance to direct, firsthand accounts, only accepting indirect evidence when absolutely necessary. This careful structure shows how much Islamic law values a witness's moral character alongside the facts. The India's legal system had adapted its laws to modern times. The BSA keeps key principles like ensuring a witness is competent and credible while also embracing technology. This new law recognizes electronic evidence and video testimony, and it has special protections for witnesses who might be at risk. Unlike Muslim law, the Indian system is secular and gender-neutral, treating everyone as equally capable of testifying, regardless of their background.

Ultimately, both legal systems show a fundamental truth: justice relies not just on legal rules but on the honesty of the people who come forward to speak. Whether driven by religious obligation or modern legal standards, testimony is what protects rights and keeps the public's faith in the justice system.