

ADMISSION/CONFESSION: A COMPARATIVE STUDY OF ISLAMIC AND PAKISTANI LAWS OF EVIDENCE

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Abstract

It is an established fact that peace, harmony and prosperity come in those societies where justice prevails. It is the responsibility of every one to struggle for the establishment of a just society. Islam demands from its followers to do justice even to yourself and to your enemy. When disputes arise amongst people, usually justice is sought in a court. The court asks the plaintiff for production of evidence in support of his claim and if he fails or the evidence is rejected due to some reason, then the defendant is asked to either admit/Confess or deny. In Islamic legal system confession/ admission carries an important place with other sources of proof like testimony, oath and circumstantial evidences. In Islamic law admission is used in civil matters and confession in criminal cases. Confession /admission has been recognized as a valid source of proof by the Holy Quran, Sunnah and Consensus. However, there are some conditions for its Validity

Which are as under:

- 1: A person who makes admission/confession must be adult and sane.
- 2: Admission/confession must be explicit.
- 3: A person who makes admission/ confession must bear the quality of self expression.
- 4: Admission /confession must be without any coercion.

In all civil matters only one time confession is sufficient for proving a right and retraction from it is not admissible. According to the majority of jurists in the crime of adultery four times confession is must. While in other Hudud and Qasis crimes one time confession is sufficient. However, retraction is admissible in all hudud and Qisas cases, except in theft, where retraction is admissible but the confessor would be responsible for the damage.

In Islamic perspective admission/confession is valid only for the confessor while for another person the confession of a co accused carries no weight.

In the Pakistani law of evidence, the Qanun-e-shahadat 1984. Confession/admission has been defined which is in total consonance with the teachings of Islam. However, Different Modes of Confession/admission have not been included in it which needs to be added.

Similarly Article 16 deals with the confession of a co accused and this kind of confession has not been considered valid for Hudud crimes. This is according to the teachings of Islam however, according to Islamic law the confession of a co accused is not valid in Qasis crime also, which is missing in this article which inclusion is needed. It would more suitable if totally new Islamic laws are formulated and implemented instead of examining the present laws from Islamic perspective. No doubt there are some hurdles in this way but if sincere steps are taken and the Higher Education Commission (HEC) is involved then this huge task can become easier.

Keywords: Admission/Confession, Pakistani Laws, Evidence, adultery, Qazf, Theft, Drinking, Murder

I: Introduction:

The religion of Islam has emphasized on the establishment of Justice in society.

The History of Islam shows that at the time of the advent of the Prophet (P.B.U.H) the whole world was full of Injustices. There was anarchy and disturbance in the whole world. No segment of the society was satisfied from their lives. There was the rule of "Might is Might" but when Islam came the whole scenario was changed. The Holy Quran emphasized that there should be justice; even one should do justice with his enemy. The Holy Quran says "And let not the detestation for a person who did bar you from the sacred Masque Cause you to commit aggression".¹

And

*"O Believers! Do stand up for the sake of God as a witness of justice, and never do leave justice for the hatred of a nation. Do justice- that is nearer to Piety. And fear you God. Allah is well aware of what you do."*²

Justice is a comprehensive terminology which means dealing without extremes. The balance of justice should be exact and accurate that even the deepest love or the most intense hatred may not disturb the equilibrium.³

So, it is required from all Muslims that they will not only do justice but has to bear the standard of justice in order to eradicate injustice and establish right and justice in its place.⁴

Establishment of justice will demand some time from a person to admit or confess in order to obey the teachings of the Quran. When disputes arise amongst people they seek justice in a court. The court seek evidence from the plaintiff and when he fails to produce witnesses or the court rejects that evidence then the court asks the defendant for admission or denial. In case of admission/confession the court follows some rules and regulations. what are these rules and regulation? It would be discussed in this article.

2. Definition:

In Islamic law *Iqrar* is used for admission in civil matter while *I,atiraf* is used for Confession of a crime against himself.

Admission has been defined as "Let knowing the court about the rights of others on him"⁵

While Dr.Anwarurulah has elaborated confession as "confession means the statement of a person before the court stating that he has committed the offence for which he is accused. It also means the evidence of a person against him self before a court."⁶

3. Authenticity of confession /Admission:

The Holy Quran has recognized in many verses confession/ admission as a valid source of proof.

*"And when God took compact with the prophets: that whatever of the book and the wisdom I gave you, then comes to you any messenger confirming the book with you, you shall believe in that messenger and you shall help him? said He," Do you agree and on that condition acknowledge My covenant?" They answered," we acknowledge" He said," Now then be witness and I am also witness with you."*⁷

And

*"O Believers! stand on justice; give witness of the side of God, though there is a loss to you or to your parents or to your kinsmen, if any one is rich or poor then Allah is their well-wisher more than you, so do not follow the wish of the heart in doing justice; and if you will twist your tongue or evade, then God is aware of all your actions."*⁸

Similarly the Sunnah (traditions of the prophet (P.B.U.H) has recognized it as a valid source of proof . *"It has been related on the authority of Jabir Ibn Abdullah who said that a man from the tribe of Banu Aslam came to the Prophet (P.B.U.H) and confessed to have committed adultery and gave testimony against himself four times. The Holy Prophet (P.B.U.H) then ordered to stone him to death."*¹⁰

Besides, there is a consensus among All Muslim jurists that confession/admission is a valid source of proof like testimony and oath.¹⁰

4. Conditions for the validity of confession/admission:

Although confession/ admission are valid source of proof, however, the jurists have laid down the following conditions for its validity.

- 1: Adulthood & sanity: it is must that if a person confesses /admits should be adult & sane one. The confession/ Admission of a child, insane and sleeping person is not admissible. The Holy prophet (PBUH) said "Three persons have been exempted from any liability, the minor until he attains puberty, the insane until he attains sanity and the sleeping person until he awakes."¹¹
- 2: the Admission /Confession must be explicit and there should be no ambiguity in it.¹²
- 3: self expression is pre requisite for a person who confesses or admits. Wither confession/ admission of a deep and dumb person is admissible or not?

In this regard majority of the jurists say that it is admissible provided he or she can write his or her confession /admission. While Imam Abuhanfah says that admission is admissible while confession in Hudud crimes is not admissible.¹³

- 4: the confession/Admission must be without any coercion or compulsion. It must be with free consent. The confession /Admission given under threat inducement or promise is not Admissible.¹⁴

5. Mode of Admission:

Admission is a valid source of proof in all civil matters including family matters like marriage, divorce, fosterage etc.

For example in fosterage admission is valid like:

- 1: Admission of a person that he is the child of a person and pointed him out.
- 2: Admission of person about another one that he is his child.

This kind of admission is acceptable with the following conditions.

- a) The person for whom the Admission has been made, his lineage must be unknown .i.e. There should be no one who claims his fatherhood.
- b) Common sense should recognize this claim. For example there should be a reasonable difference of age which usually exists between a father and his child.
- c) The person who makes admission should be adult and sane.¹⁵

Similar is the case of admission which comes from ascendant to descendant. For example if a person admits that A is his brother. This kind of admission would be admissible keeping in view the above mentioned conditions.

While Hanfis add another condition that this admission would be valid only if the father also admits this one.¹⁶

Another example of admission in fosterage is admission of a couple. For example if A(male) or B(female) admits that they are brother and sister from the relation of fosterage. This is also admissible and such kind of admission bars the couple to marry with each other , and if such like admission is made after the marriage, then the marriage would be revoked.

The women would be entitled for half of the dowry if coition is not made and after the coition she would be entitled for full dowry¹⁷

Similar is the case of admission in all civil matters like sale purchase, partnership, leasing, mortgage, deposits, bill of exchange, will, endowment and inheritance etc.

In all these matters only one time admission is sufficient for proving a right.

Retraction from admission in civil matters is not admissible and once a person makes an admission he shall be liable for the right created therein .¹⁸

6. Mode of confession in adultery:

The crime of adultery may be proved by the confession in an authorized court. The opinion of the jurists differs regarding the number of confession in the court. According to Imam AbuHanfah and Imam Ahmad four times confession is must for proving the crime and punishment. They have based their opinion on the following tradition of the prophet (P.B.U.H).

“It has been related on the authority of Jabir Ibn Abdullah who said that a man from the tribe of Banu Aslam came to the Prophet (P.B.U.H) and confessed to have committed adultery and gave testimony against him four times. The Holy Prophet (P.B.U.H) then ordered to stone him to death.¹⁹

While according to Imam Malik and Imam Shafi if a person confesses one time only in an authorized court then it is sufficient for inflicting on him the penalty. They based their option on the following tradition.

The prophet (P.B.U.H) asked Unais to go and ask the woman. That wither she has committed the crime of Zina or not, and if she confesses then stone her to death. Unais went there and when she confessed, he stoned her to death.²⁰

Comparing both these view it seems that the first opinion carries more weight as Hudud crimes need much precaution.

The Prophet (P.B.U.H) said “Repeal the Hudud crimes to the extent you can”²¹

The jurist also say that confession must be the detailed one, explicit and without any ambiguity. As it is evident from the following tradition of the Holy Prophet (PBUH)

“It has been related that the prophet (PBUH) asked Ma,az Ibn Malik” Are you insane?” He said “No” The Holy Prophet (PBUH) then asked” you might have kissed her?”” He replied,”No, I had intercourse with her. ”The Prophet (PBUH) then asked: “Have you made penetration?” He said,” Yes” Then the Prophet (PBUH) asked,”Do you know what is Zina?” He said,” Yes, that what a husband does legally with her, I have done that illegally.” The Prophet (PBUH) also turned his face from him f in order to give him the opportunity of retraction, but despite this he came again and again till confessed four times. After this the Prophet (PBUH) ordered to stone him to death.¹⁹

Retraction from the confession would be credited whether it is made before the decision of the judge of or after decision. When the confessor orally retracts from his confession, no penalty would be inflicted. Similarly if the

confessor starts running during the execution of penalty, it would be considered as the retraction also. It is based on the tradition of the Prophet (P.B.U.H) when the people started stoning Ma,az Ibn Malik he ran away and said.

“O, people! Return me to the Prophet (P.B.U.H). My people killed me and deceived me because they told me that prophet (P.B.U.H) will not kill me. But he was stoned to death. Later on when the Prophet (P.B.U.H) was informed of his running away. He said “why did not leave him and bring him to me.”²²

7. Mode of confession in Qazf (accusation of Zina):

If a person confesses in an authorized court about the accusation Zina, then the judge would ask him to produce four witnesses on his claim, failing so, he would be liable for punishment of false accusation.²³

7. Mode of confession in Theft:

The punishment of theft may be awarded by an authorize court by making confession, and one time confession would be enough for proving the crime. However, if the accused retracts then hadd would not be implemented on him and he will be held responsible for the stolen property or its compensation .²⁴

9. Confession in Drinking:

One time confession before a court is sufficient for inflicting the punishment of Drinking wine or intoxicant. But if a person makes confession to the drinking of wine or any intoxicating liquor, and afterwards retracts from such confession, punishment would not be inflicted upon him.²⁵

The delay in confession does not affect its authenticity because one can not be doubted with respect to his own confession.²⁶

10. Confession in Murder cases:

According to the majority of the jurists, murder is of three kinds.

- 1: Intentional murder (Qatle-al-amad)
- 2: Quasi-intentional murder (Qatle-shibh-al-amd)
- 3: Murder by mistake (Qatle-al-Khata).

Intentional murder is a murder when an adult and sane person willfully and with the intention of causing death makes another person the direct object of his action which is in general fatal and that person dies as a result of that action .²⁷

Quasi-intentional murder means some one intentionally makes another person the direct abject of some action, not usually fatal, and he dies as a result of that action.²⁸

While murder by mistake means some one without intention to cause death of or cause harm to a person, causes the death of a person either by mistake of intention or by mistake of act.²⁹

As for as the proof of intentional murder is concerned in this regard, besides other sources of proof like testimony and circumstantial Evidence, confession is also a valid source of proof.

The confession is a valid source because no one can give testimony against himself without a valid reason.

The jousts agree upon that this confession must be with the free consent of the accused and without any coercion. Similarly it is essential for execution of the penalty that the accused who is offender must be adult and sane.

The confession must be explicit with respect to the time, place and weapon used and the method adopted for the commission of the murder of the victim. This confession must be before a competent authorized court.³⁰

Confession in the murder of mistake is also admissible but in this case the blood money will be paid by the confessor and brotherhood (aqila) would be exempted.

The reason is that probably he might has confessed to benefit some one in sympathy or love.³¹

As retaliation (Qisas) is the right of individual so, retraction is not permissible and only one time confession is sufficient for inflicting the punishment.³²

Similar is the case of all hurts. Once confession is made, the confessor would be responsible for all the consequences of the confession.³³

11. Confession of co accused:

In Islamic perspective the confession of a co accused carries no Wight. It is based on the following Hadith.

Sa,ad al- sa’idi says that a man came to the Holy prophet (P.B.U.H) and committed adultery with a women whom he named. The Holy prophet (P.B.U.H) sent for the women and enquired from her about that whether she has committed adultery she denied the allegation. The Holy prophet (P.B.U.H) punished the man and acquitted the female.³⁴

Similar is the case of accomplice, who associates in crime of, or who makes admission of facts showing that he had a conscious hand in offence. This is an established Islamic maxim that “Admission binds the person who makes it” .³⁵

Therefore confession/ admission is restricted to the person who makes it, and due to his confession/ admission no other person can be punished.³⁶

12. Pakistani law of evidence and admission/of confession:

When Pakistan came in to being in 1947, it was felt necessary to bring all the laws in conformity with the teachings of Islam. For this purpose, examination of the existing laws was started and many laws were examined including the Evidence Act 1872. After examining some new articles were introduced while a few were nullified which were found against the teachings of Islam. Then it was named as Qanun e Shahadat 1984.

The Qanun e Shadat 1984 deals with admission/confession as follows.

ADMISSIONS:

The Qanun-e-Shahadat deals with admission as follows:-

1. Article 30 has defined admission and article 31 has elaborated five kinds of persons who can make admission. According to article 30 is a statement, oral or documentary, which suggests any inference, as to any fact in issue or relevant fact, and which is made by—
 - I. a party to the proceeding;
 - II. an agent authorized by such party;
 - III. a party suing or sued in a representative character making admission while holding such character;
 - IV. a person who has a proprietary or pecuniary interest in the subject-matter of the suit during the continuance of such interest;
 - V. Article 31 says that if a person from whom the parties to the suit have derived their interest in the subject-matter of the during the continuance of such interest.
 - VI. According to article 32 a person whose position is necessary to prove in a suit, if such statements would be relevant in a suit brought by or against himself;
 - VII. According to article 33 when a person to whom party to the suit has expressly referred for information in reference to a matter in dispute;
2. Article 34 lays down two rules (a) an admission is relevant and may be proved against the person who makes it or his representative in interest; (b) an admission cannot be proved in favor of the person making it or his representative in interest. However, there are some exceptions which are:
 - (1) when it is of such a nature that, if the persons making it were dead, it would be relevant as between third person under Article;
 - (2) when it consists of a statement of the existence of any state of mind or body made at or about the time when such state of mind or body existed and is accompanied by conduct rendering its falsehood improbable;
 - (3) if it is prevalent otherwise than as an admission
3. Article 35 enacts that oral admission as to the contents of a document are equally excluded except in two cases;
 - (1) the party proposing to prove them show that he is entitled to give secondary evidence of the contents of such documents, or
 - (2) According to article 35 the genuineness of the document produced is in question;
4. According to article 36 an admission is not relevant in a civil case if it is made:
 - (1) upon an express condition that evidence of it is not to be given, or
 - (2) under circumstances from which the court can infer that the parties agreed together that evidence of it should not be given;
5. Article 45 says that an admission is not a conclusive proof of the matter admitted, but it may operate as estoppels;

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CONFESSION:

In article 30 admission has been defined which a generic term applicable both to civil and criminal proceedings. Article 37 has laid down the law of confession as :

1. A confession is irrelevant,--
 - (1) if it is obtained by any (a) Inducement, (b) threat, or (c) Promise;
 - (2) such inducement, etc., must have reference to the charge;
 - (3) such inducement, etc., must proceed from a person in authority;
 - (4) such inducement, etc., must be sufficient to give the accused avoid an evil of a temporal nature in reference to the proceedings against him;

However, according to article 41 a confession made after the removal of the impression caused by such by inducement, threat, or promise, is relevant;
2. Article 38 says that a confession made to a police officer is not admissible;
3. Article 39 says that a confession made by a person in police custody is not admissible, unless it is made in the presences of Magistrate;
4. According to article 42 if confession is otherwise relevant, then it does not become irrelevant if it is made-

- (1) under a promise of secrecy; or
- (2) in consequence of a deception practiced on the accused; or
- (3) when the accused was drunk; or
- (4) in answer to questions which the accused need not have answered; or
- (5) Because he was warned that he was not bound to make such confession, and the evidence of it might be given against him. However, this article shall not apply to trials of hudud cases.

5. Article 43 provides that where an accused confesses his own guilt some time implicates another person who is tried jointly with him for the same offence, his confession may be taken in to consideration against himself and against such other person as a circumstantial evidence.³⁸

From Islamic perspective all the aforementioned articles are in total consonance with the teachings of Islam.

However, the Qanun-e-shahadat 1984 is silent about the different of modes and quantum of Admission/Confession.

Article 16 is about the confession of a co accused which says.

“An accomplice shall be competent witness against an accused person except in the case of an offence punishable with Hadd; and conviction is not illegal merely because it proceeds upon uncorroborated testimony of an accomplice.”

In this article the testimony of accomplice has not been considered valid for Hadd crimes, it is in consonance with the teachings of Islam, but according to Islamic law his testimony is also not valid for Qasis. (Retaliation) which is missing in the article. Its inclusion is needed.

Conclusion:

In a nutshell we may say that the present legal system fulfills the need of the masses to some extent but however, to ensure speedy justice it is needed to re examine all the laws or to formulate new laws based on the basic Principle of Islam.

Nowadays the academicians and lawmakers have recognized the pertinence of Islamic laws in all walks of life.

No doubt, there are some problems and hurdles in this way but however, if sincere struggle is initiated, then it formulations would not be so much difficult.

In this regard the HEC can play a positive role by introducing complete Islamic laws in all law institutions. Similarly Holding of seminars and conference would be very helpful in this regard.

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