

## Islamic Perspective on Confession to a Police Officer: An Appraisal of *Qānūn-e-Shahādat* Order (1984)

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### Abstract

Indian Evidence Act 1872 (IEA, 1872) modified as *Qānūn-e-Shahādat* Order, 1984 (Q.S.O, 1984) was one of the major laws altered in Pakistan with the intention of bringing them in conformity with Islamic injunctions. This study intends to explore whether the provision of the referred law saying: “No confession made to a police officer shall be proved as against a person accused of any offence”, conforms to the Injunctions of Islam? It finds that the referred provision is against Islamic teachings, as it creates suspicion about police officers which is sin. It cannot be presumed that all confessions made to police officers are procured dishonestly or by unfair means. The fact that some elements are founded in police having involvement in corrupt practices of torture may not be applied as a general rule. There are number of honest police officers deserving credit in the context of performing their professional duties.

**Keywords:** *Qānūn-e-Shahādat* Order, Confession, Police, Islam

### Introduction

One of the laws altered with the intention of bringing them in conformity with the injunctions of Islam in the early legal history of Pakistan was Indian Evidence Act, 1872 which is replaced with *Qānūn-e-Shahādat* Order, 1984



(Q.S.O, 1984). Critics are of the view that nothing has been Islamized except the change of format, and it was just a game to gain the favor of the people for the then dictatorial government of military ruler. There are numbers of provision which have been incorporated in the Q.S.O, 1984, same as they existed in the Evidence Act 1872. Among other provisions, the article related to the confession before police officer is of significant concern, and needed to be studied from Islamic perspective. This paper intends to explore: “Whether the law of evidence concerning the confession before a police officer as provided in the *Qānūn-e-Shahādat* Order, 1984 conforms to the Injunctions of Islam as it is envisioned in the preamble of the same law?”

## **2. Law of Confession: Concept, Need, and Legal Provisions**

### **2.1 Concept of confession**

The evidence may be deduced and produced through different modes, and one of them is confession. The concept and practice of confessing and taking it as evidence in criminal matters is prevailing since the early history of criminal administration of the justice system. There are various reasons behind the recognition of such type of evidence, and these reasons may include psychological, rational, conscience, and circumstantial factors. In Pakistan confession related law is available in terms of the Q.S.O, 1984 read with certain provisions of the Criminal Procedure Code, 1898. The term ‘confession’ has not been defined as such either in the Q.S.O, 1984, or in its predecessor E.A, 1872. It is, indeed, an admission of certain relevant facts, of a person who is allegedly committed an offense. According to Black’s Law Dictionary a statement that is communicated to another person, by acknowledging to be guilty of the offense charged, and discloses the facts of the criminal act either he committed independently or participated with others.<sup>1</sup> According to Stephen, “A confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime.”<sup>2</sup> However, this definition has been dissented by Lord Atkin who said that “The definition is not contained in the Evidence

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<sup>1</sup> Black, Henry Campbell, M.A. Black’s Law Dictionary, 296 (Sixth Edition)

<sup>2</sup> Stephen’s in “Digest of the law of Evidence”.

Act, 1872, and in that act, it would not be consistent with the natural use of language to construe confession as a statement by an accused ‘suggesting the inference that he committed, the crime.’<sup>3</sup> The reported cases show that there could not have been a consensus in judicial opinion as to the definite meaning of ‘confession’. The situation has been made clear by a pronouncement of judicial committee in *Pakala Narayana v. S*<sup>4</sup> relying on *Palvinder v. S*<sup>5</sup>, where Lord Atkin said, “confession must either be an extract acknowledgment of guilt of the offence charge certain or complete in itself, or it must admit substantially all the facts which constitutes the offence.”<sup>6</sup>

The confessions are of two types, namely, judicial confession and extra-judicial confession. Judicial confessions are made before the court while criminal legal proceedings are in process, and such confession includes the confessions made in preliminary examinations before Magistrates. Such confessions are recorded in compliance with statutory provisions of law and have great sanctity as evidence. On the other side the confessions which are made beyond the Court, or made to any person either official or otherwise, other than judicial examination or investigation.<sup>7</sup> Such confessions are usually the weak type of evidence until and unless corroborated by other valid pieces of evidence. Of course, through such confession help is sought to find the truth, and this extra confession almost will become the norm when the prosecution could not otherwise succeed.<sup>8</sup>

## **2.2 Confession Related Legal Provisions**

The law of confession in Q.S.O, 1984 is majorly the same as in the previous law of E.A, 1872 as made by the British. There were 167 sections in the E.A, 1872. Among which 161 have been just replaced with the Section numbers,

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<sup>3</sup> *Pakala Narayana v. S*, 66 IA 66: A (1939) P.C. 47.

<sup>4</sup> *Pakala Narayana v. S*, 66 IA 66: A (1939) P.C. 47.

<sup>5</sup> *Palvinder Kaur v. State of Punjab* A (1952) S.C. 354,357.

<sup>6</sup> Singh, Vijay Pal, “Law of confession in India ...”, Accessed on 17-7- 20, [https://shodhganga.inflibnet.ac.in/bitstream/10603/207487/7/4\\_%20chapter%201.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/207487/7/4_%20chapter%201.pdf)

<sup>7</sup> Black, Henry Campbell, M.A. Black’s Law Dictionary, 296 (Sixth Edition).

<sup>8</sup> See, *Abid Mahmood v. State*, 2009 P Cr. L.J 894.

whereas 6 new have been inserted. Confession related provisions which earlier were in Sections 24-30 of Evidence Act 1872, now have been embodied in the Articles 37-43 of Q.S.O, 1984. The mode of recording the judicial confession is governed by Sections 164, 364, and 533 of the Code of Criminal Procedure, 1898.

### **3. Why New Law of Evidence?**

Though not mandatory, it is the practice of the legislators that they initially put the Preamble of the law to explain the objectives of making such law. The same appears in the law of evidence. Its Preamble pronounces that. "Whereas it is expedient to revise, amend and consolidate the law of evidence so as to bring it in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah..."<sup>9</sup> So, the Preamble discloses legislative-intent of replacing the then existing Evidence Act, 1872 which was considered not to be according to the Islamic injunctions.

### **4. Confession and Police Officer: A Critical Appraisal**

Confession related to legal provisions is available in Articles 37- 43 of Q.S.O, 1984. These provisions embodied certain principles for making the confessional statements and proving them as pieces of evidence in criminal matters. The police-related confessional statement, however, is regulated by Articles 38, 39, and 41 which explain the conditions and circumstance for the determination of the validity of such confession as evidence.

#### **4.1 Confession to Police Officer**

Article 38 provides that confession made to a police officer is not to be proved. This Article expressly pronounces that "No confession made to a police officer shall be proved as against a person accused of any offence."<sup>10</sup> This Article excludes such confession under any circumstance, and there is no exception to it. The underplaying ground for the rejection of such confession is based on the reservations that making or obtaining such confession may not be trustworthy. These reservations have been developed in the society and even in the mind of legislators since the early days of the

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<sup>9</sup> The *Qānūn-e-Shahādat* Order, 1984, Preamble.

<sup>10</sup> The *Qānūn-e-Shahādat* Order, 1984, Article 38.

justice system in the subcontinent. The ground for not admitting a confession made to the police is to avoid the danger of admitting a false confession. This prohibition under Article 38 is argued for several reasons. The wisdom underlying is that a police officer should not be encouraged to extort confession for showing efficiency by securing convictions. Further, as Police Officer is part of the prosecution, so he may not be given a chance to get such a confession for strengthening the case of the prosecution. Moreover, such prohibition has become necessary to escape the influences of torture culture, on the merit of the case. In addition, the object of such inadmissibility is to prevent the practice of torture by the police for collecting evidence from accused persons.

#### **4. 2 Confession in Police Custody**

The said principle of prohibition has been further explained in Article 39 which provides that "...No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person."<sup>11</sup> This provision deals with the inadmissibility of confession which is made to a person other than a police officer, while in police custody, and such confession may be referred to as made to a fellow prisoner, a doctor, or a visitor, etc.<sup>12</sup> Such police custody may have the same influences as of confessing directly to police officers. In both cases, the consequences may be the same which may disturb the sanctity of the confession, and based on which a confession made by an accused person has been declared irrelevant in a criminal matter.

The bases for the exclusion of confession either made to the police officer or to any other person but in police custody have been explained in Article 37. This Article expressly pronounces that, "...the ...confession ...caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority ... by making it he would gain any advantage or avoid any evil of a temporal nature in reference

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<sup>11</sup> The *Qānūn-e-Shahādāt* Order , 1984, Article 39.

<sup>12</sup> See: Sh. Muhammad Amjad v. The State, PLD 2003 SC 704.

to the proceedings against him.”<sup>13</sup> However, the Court must be satisfied regarding the presence of the circumstances rendering the confession inadmissible.

### **4.3 Exceptions to the Confession to Police or in Police Custody**

#### **4.3.1 Immediate Presence of Magistrate**

Article 39 of Q.S.O, 1984 provides two exceptions, where such confession may be proved against the maker. The first exception is available in Article 39 which though comprehends the general principle but creates the exception for such confession as well, and made it admissible if given in the presence of Magistrate, because such confession has been made in the ‘immediate presence of a Magistrate’.<sup>14</sup>The presence of the magistrate secures the free and voluntary nature of the confession and the confessing person has an opportunity of making the statement uncontrolled by any fear of the police. This exception seems to have the justification that making a confession in the presence of Magistrate, provides the environment free from any sort of compulsion, and the careful mode of recording such statement as required by the relevant procedure under the Criminal Procedure Code, 1898.

#### **4.3 .2 Facts Discovered under Information**

The other exception to the principle of Article 39 comes within the phrase ‘Subject to Article 40’. This phrase in Article 39 employs that the principles in Article 39 are within the control of Article 40 which explains that ‘how much information received from the accused may be proved. According to this Article 40, “When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved”. From this provision, it is inferred that a commission made during the due course of an investigation may be proved against the accused/makers. This second exception is established on the ground that such confession is discovered in the consequences of information.–This exception also appears legitimate on the ground that the discovery of the information

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<sup>13</sup> The *Qānūn-e-Shahādat* Order, 1984, Article, 37.

<sup>14</sup> The *Qānūn-e-Shahādat* Order, 1984, Article 39.

regarding the act alleged in due course of law may be presumed to have been taken as per the due process of law. When any fact is revealed in consequence of information received from any accused in the custody of a police officer, such information whether it amounts to a confession or not as it related distinctly to the fact thereby discovered, may be proved. Thus in a case, the apex court held that the information supplied by the appellant, under Article 40 relating to incriminatory instruments, is admissible.<sup>15</sup> This Article is founded on the principle that if the confession of the accused is supported by the discovery of a fact it may be presumed to be true and not to have been extracted. In another case, the Court held that the necessity for the exclusion disappears when the truth of the confession is guaranteed by the discovery of facts in consequences of the information given.<sup>16</sup> The similar verdict was given in another case that this Article is based on the view that if a fact is actually discovered in consequences of information given some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence.<sup>17</sup>

##### **5. Law of Confession: Islamic Perspective**

In the Islamic criminal justice system, confession is one of the most important proofs to establish the guilt of an accused.<sup>18</sup> The classical jurists have described in detail the Islamic law of confession under the heading of “*Kitāb al-Iqrār*”. They have mentioned in detail the meaning, elements, and conditions of *Iqrār* and other relevant aspects.

The first condition of *Iqrār* is that the person who confessed must be adult and sane, otherwise, the confessional statement will not be admissible. Secondly, it is required that confession must be made voluntarily and with free consent. Therefore, any confession having the element of coercion, threat, pressure, undue influence shall not be proved. Thirdly, the confessor would not have been interdicted by the court. Fourthly, the confession should

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<sup>15</sup> Sh. Muhammad Amjad v. The State, PLD 2003 SC 704.

<sup>16</sup> Mangal Singh vs King-Emperor, (1928) 9 Lah. 671.

<sup>17</sup> AIR 1962 Cut. 1955

not be on the unknown matter. Fifthly, it is also required that no evidence should be found contrary to confession.<sup>19</sup>

It is pertinent to note that these conditions of *Iqrār* are applied both in criminal and civil cases and there is no division of *Iqrār* into confession in criminal law and admission in civil law. There is also no division of judicial or extra-judicial confession in Islamic law. There are some traditions of the Holy Prophet (PBUH) about confession which are basic guidelines for the criminal justice system. These traditions confirm that confession must be proved with free consent. No single example could be reported from the life of the Holy Prophet in which confession was proved with maltreatment or torture. In order to ascertain the willingness and free consent of confessor, different methods were used by the Holy Prophet. Even whenever a person had admitted the criminal liability by his own choice before the Holy Prophet, he was asked different questions to remove all types of doubts and when the confessor left no doubt of his guilt, then he was sentenced accordingly.<sup>20</sup>

The police system of the then colonial period might have had many weak ends. Resultantly, it was presumed that confession before the police are recorded by unfair means by the police, and the same notion has been developed in Pakistan. There is no place for such adverse presumption in Islam as the Islam ensures the dignity of all humans and directed to avoid suspicion because it culminates the trustworthiness of the people. In Islamic law, statement given by a sane and adult person is presumed true except proved otherwise. Almighty Allah has commanded that **“O you who believe, avoid suspicion, for surely suspicion in some cases is a sin.”**<sup>21</sup> **The Holy Prophet (PBUH) has said that "beware of suspicion, for suspicion is the**

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<sup>19</sup> AL-kāsānī, Badā‘ al-Şanā‘ (Beirūt, Dār al- Kutub al- Ilmiyyah, 1986), 7: 224.; Majallah al-Aḥkām al-‘adaliyya (Karachi, Maktaba Noor Muhammad, n.d), 308.

<sup>20</sup> See for detail: Muhammad Ibn Ismā‘ al -Bukhārī, Saḥīḥ al- Bukhārī (Beirūt, Dār Touq al-Najāt, 1422AH), 8: 167.

<sup>21</sup> Al-Hujurāt 49: 12.



worst of false statement.”<sup>22</sup> Furthermore, the dignity of every human is protected. Almighty Allah said that, “We have honored the children’s of Adam.”<sup>23</sup>

In the light of above mentioned dictation, the wording of Article 38 of Q.S.O, 1984, “No confession made to a police officer shall be proved as against a person accused of any offence”, is giving the impression that the police role is not fair. This impression spoils the dignity of police officers and investigators. As a result, the society at large presumes, as it was presumed in the colonial system, that the role of the police is not delivering justice rather it is a hindrance before justice. Hence, the police-related confession provisions of QSO, 1984 seem not in accordance with the letter and spirit of the Islamic teachings.

From another angle, all Confessions are ultimately proved by the court; therefore, no use to say that “No confession made to a police officer shall be proved as against a person accused of any offence”; because if the confession (for example) is procured by police dishonestly, then ultimately it shall be proved by the court.

Although, the language of the said article is seemingly securing the interest of the confessor, it is actually discouraging the role of police officer. Since it is the language of law, which has great importance, it must not be used in a way that damages the image of police or puts their bad impression on the masses as we are observing it everywhere in our societies. The police officer is the state representative, constitutionally bound to help out the court for delivering criminal justice. So, such a person should not be discouraged by presuming him involved in torture and dishonest practices unless on any solid and sufficient grounds. Rather, he should be encouraged for performing his duty effectively. Though some elements are founded in police having involvement in corrupt practices of torture, however, this principle may not be applied as a general rule. Therefore, it cannot be presumed generally that all confessions made before police officers are procured dishonestly or by

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<sup>22</sup> Al-Bukhārī, 7: 19.

<sup>23</sup> Al-Isrā 17: 70.

unfair means. There are numbers of honest police officers deserving credit in the context of performing their professional duties.

### **8. Conclusion**

The provision related to the status of confession to police officer in *Qānūn-e-Shahādat* Order, 1984 is not in conformity with the Islamic teachings. It creates suspicion about police officers and culminates their trustworthiness which is sin. Some practices of maltreatment and maladministration are, no doubt, found in police officers, but number of honest police officers performing their professional duties honestly and deserve credit. Therefore, it is recommended that the referred provision may be amended by adding the phrase that “the confession made to any person may be proved subject to the satisfaction of the Court.”