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Confession (Iqrar) :

A Comparative Study between Islamic Law and Modern Law

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A dissertation submitted
in partial fulfilment of the requirements
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Acknowledgment

In The Name of Allah
The Most Beneficent and The Most Merciful

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Abstract

This dissertation is an attempt to compare, generally, between Islamic law of Evidence and Procedure with the Modern law of Evidence and Procedure. It concentrates on admission/confession (iqrar) because in modern situation, confession or iqrar was made nearly in all transaction and it becomes part of our life.

An accused person's decision to confess his guilt has been described as "the single most important aspect of decision making in the penal process". Regrettably, it is also one of the most under-researched and complex of all. No one would dispute the importance of an act by which the accused person waives his right to trial and surrenders the chances of acquittal which the trial procedure offers whether in Islamic law or Western law.

The purpose of this study is three fold. Firstly, it seeks to study the law governing admission and confession (iqrar) in Islamic law comparatively made with Modern law especially under Criminal Procedure Code and Malaysian Evidence Act 1950.

Secondly, a research is undertaken to study the evidence and procedure as practiced by the both Courts (Islamic

law and Modern law) when an accused person confesses his guilt. The comparative approach was made to justify the applicability of one of the legal principle in Islamic law in the relevant court of law.

Thirdly, to show that the tools used in that comparison are suitable and reliable, therefore they are unbiased. This approach proves that the Islamic solution is the best. In other words, Islam has a glarious part to play in this modern world.

ABBREVIATIONS
References To Law Reports

A.C.	Appeal Cases
A.I.R.	All Indian Reports
All E.R.	All England Reports
A.L.J.	Allahabad Law Journal
B. & Ad.	Barnwall and Adolphus's Reports
Bom.	Bombay Series.
C.A	Court of Appeal.
Cal.	Calcutta Series.
C. & P.	Carrington and Payne.
C.C.R.	Crown Cases Reserved.
C.J.	Chief of Justice.
C.L.R.	Calcutta Law Reports.
Col. L.R.	Columbia Law Review.
C.L.J.	Calcutta Law Journal.
Cr. App. Rep.	Criminal Appeal Reports.
Cr. L.J.	Criminal Law Journal.
Cr. L. R.	Criminal Law Review.
Exch.	Exchequer Reports.
E.R.	Equity Reports.
F.J.	Federal Judge.
I.L.R.	Indian Law Reports.
I.C.	Indian Cases.
I.A.	Indian Appeals.

J.	Judge.
K.B.	King's Bench.
L.J.K.B.	Law Journal King's Bench.
L.L.J.	Lahore Law Journal.
L.P.	Lord President.
L.R.C.C.R.	Law Reports Crown Cases Reserved
L.Q.R.	Law Quarterly Review.
M.L.J.	Malayan Law Journal.
M.L.R.	Malayan Law review.
H & W	Heeson and Welby.
N.Y.	New York.
P.C.	Privy Council
P.R	Punjab Records.
Q.B.	Queen's Bench.
Q.B.D.	Queen's Bench Division.
R	Regina.
Sup. Ct.	Supreme Court.
S.C.	Supreme Court Series.
S.C.R.	Supreme Court Report.

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CHAPTER ONE

- *Introduction*
- *Scope*
- *Research Methodology*
- *Objectives*
- *Al Iqrar (confession) and Its
Legal Requirements*

CHAPTER ONE

Introduction

The Law of evidence and procedure form a foundation for every system of justice. So is the case in Islamic System of Administration of Justice. In systems other than Islam, the development of Law of Evidence and Procedure are attributable to History of Judicial Organisations. The rules of evidence and procedure were framed by the people as and when it was considered expedient by them whereas in Islamic System of Justice, the sources of Law of Evidence and Procedure are the Quran and the *Sunnah* of the Prophet (PBUH). The principles are set out in Quran and *Sunnah*, while the details of Law of Evidence and Procedure are worked out by *Ijma'* and *Ijtihad* and other methods such as analogy (*Qiyas*), etc.

The cornerstone of the both Islamic law of Evidence and Procedure and Western system is that everyone is presumed innocent unless proven guilty in a court of law. In Islamic law, this principle is fundamental. The corollary to this principle is that the burden of proof is on the complainant. These rules are revealed in the Quranic verse :

"And those who produce not four witnesses to support their allegation, flog them with eighty stripes"

al-Nurr : 4

The rules are also found in the following tradition of the Prophet :

"If men were to be granted what they claim, some will claim the wealth and lives of others. The burden of Proof is on the proponent; an oath is incumbent on him who denies"

These fundamental principles run throughout both Islamic law and Western law. They are especially important in criminal law as they embody the presumption of innocence and place the burden of proof on the accuser.

The object of the Islamic law of evidence is to formulate principles which are essentials for proving facts relevant for disposal of a case. In article 77 of the Mejjella it is provided :

"The object of evidence is to prove what is contrary to the apparent fact, the object of oath is to insure the continuance of the original state".

A fact can be proved in four ways before a Court of Law :

- (1) Admission/Confession;
- (2) Testimony of Witnesses;
- (3) Oath;
- (4) Documentary and Circumstantial Evidence

Every man is entitled to a fair trial when charged with an offence. The drama of criminal and civil trials has always been the focus of public attention. For a

layman, a trial is the machinery by which guilt or innocence is determined. Little does he realize that it is not the only way in which a man may be convicted of an offence. Neither does he know that Courts devote a large portion of their time to dispose of cases wherein the accused person pleads guilty or makes an admission or confession and waives his right to a trial.

In USA, it was discovered that nine out of ten convictions on serious charges were based on pleas of guilty¹ or confessions. In less serious misdemeanor cases (for example, drunkenness, disorderly conduct and other non traffick offences), the percentage may be as high as 95 percent. The Criminal Investigations in London initiates about seventy thousand prosecutions a year for indicatable offence and it is thought that 90 percent or more of these are settled by a plea of guilty. In the High Courts, the rates may drop to about 75 percent.

1. See Arthur Rosett in "The Negotiated Guilty Plea", Annals of the American Academy of Political Sciences p. 71 - 81, Reprinted in Crime and Justice, Vol. 2, Leon Radzinowicz (ed) 1971, New York : Basic Books Inc., p. 436 - 448.

Research Methodology

I spent about seven months to collect whatever materials regarding this subject. Initial information was obtained through reading and research in IIU Library, Law Library of Malaya University and the Pusat Islam library. Books, journals and articles were referred to, besides judgements of local and foreign Courts.

The perusal of source materials was not restricted to local materials. Regrettably, local materials are lacking. Foreign materials from Arab countries, India, Pakistan, England and USA were referred to as well.

From the administrative point of view, a decision to make an admission and confession is always welcomed because it saved judicial time and expences for all parties concerned. A trial takes days and weeks or months as in the trial of Datuk Mokhtar Hashim in 1983. Notwithstanding, the judge must satisfied that the accused has confessed his guilt with free-will and without any undue influence or duress whether in Shariah law and Modern law.

In the usual cases, no witnesses need be called and no arguments are required on questions of law. A Confession signifies legitimacy of prosecution and accurancy of the prosecutor's judgement pertaining to the guilt of

the accused persons.

The aspects which give rise to concern is whether these guilty pleaders know the nature and consequences of their pleas. Some may be forced to plead guilty, or it may be a result of extrinsic pressure which renders the notion of free choice to a fair trial illusory, plea bargaining may have come to play. Persons have not committed the offences may plead guilty to the charges. Thus, the writer sees the need to examine these questions in great detail between Shariah law and Modern law.

Objectives

The writer's primary objective in writing this paper is to examine the law governing admission and confession comparatively between Islamic law and Western law and their reasons. Besides that, the writer interested to know the reasons which prompt an accused to make an admission and confession. Does he makes freely without any inducement, threat, promise or vice versa. Since the decision of the accused to waive his right to a trial is an important decision made in the penal process, there should be rules to govern the acceptance of such plea. It is the writer's intention to reveal any viola

tion of such rules laid down by the legislature and the Courts in the Course of Practice. In Modern Law, law as it exists on paper may not be fully headed by Magistrate or other persons involved in the administration of justice.

Secondly, a confession is often regarded as a manifestation of guilt-ridden conscience, contrition and remorse. Based on this rationale, the Courts came to regard a confession an admission as a mitigating factor in sentencing. It is submitted, however, that accused confesses his guilt for every practical reasons which do not involve contrition and remorse. More disturbing is the fact that a confession of guilt may be the result of bargain made with the prosecutor especially in Civil / Modern law.

Lastly, the writer wishes to show that the comparison made between Islamic law and Western law in the law on admissions and confessions is in practical approach and the conclusion drawn from that comparison shows that the tools used are suitable and reliable, therefore they are unbiased. This approach proves that the Islamic solution is the best. In other words, Islam has a glorious part to play in this modern world.

Al Iqrar (Confession) and Its Legal Requirement

In Islam, iqrar or confession is one of the important legal methods to convict an accused in the court of justice. The admission before a court of a charge of commission of offence is technically known as confession. It is a relative proof in that it affects only the person making such confession (iqrar). Great importance has been attached to confession in the Quran and *Sunnah*.

In Islamic Criminal Procedure, when someone is brought before a court, not only must the charge be read to him but each of the ingredients and elements involved shall be explained. The charge must be explained to the accused in a language which he understands. It is difficult for a person not normally acquainted with legal language to understand a charge. The problem will be acute if it is explained in what is in the accused person's opinion, a foreign language. This procedure is the same with Modern Criminal Procedure. The case of *Huang Chin Shin v. Rex*, decided that the accused must be entirely conversant with the language used in court.

The duty of the Court is therefore to ensure that the accused has no difficulty in understanding the charge and the interpreter must inform the Court of any difficulty.