

EXAMINING CONFESSIONS FROM THE POINT OF VIEW OF JURISPRUDENCE AND LAW

HedayatHosseinzadeh*

Dr.Seyed Hassan Hosseini**

Abstract

Legislators of the holy religion of Islam have established a principle called "the confession of the rational" to protect the people's rights and to regulate affairs as far as judicial hearings are concerned including legal and criminal hearings as well as to realize a rightful judgment. One of the essential precepts in Islam includes a case in which a person makes a confession to his own detriment. Nonetheless, the confession becomes binding and the person is committed to what he has acknowledged. Accordingly, confession means a person admits to the fixed right bestowed on him by another person. Therefore it is not considered as a confession when somebody acknowledges a right to the future, rather it's called an empty promise. Although it is a moral obligation to fulfill a pledge but legally speaking it's not imperative to keep a promise. The reason why you could trust the validity of a confession lies within the popular divinely saying: "It is allowed for wise people to confess to themselves". In addition to that, the impression you receive from the Holy Qur'an could be considered as a reason why a confession becomes trustworthy. The verse says "... O' ye who believe! Firmly establish justice and act as witnesses to God although it may lead to your loss." Now the concordance of this principle to the wise men's procedures and methods could be considered as another reason why a confession becomes reasonable. It appears that the principle was not fully investigated to become understandable. And

*** PhD candidates, Department of Law, Ramhormoz Branch, Islamic Azad University,
Ramhormoz, Iran**

****Faculty Member Department of Law, Ramhormoz Branch, Islamic Azad University,
Ramhormoz, Iran**

the principle's resources and documents as well as its concept, reasons, instances and its applications have not so far been made clear in the field of criminal law. An effort has been made in this article to simultaneously investigate the principle in the context of jurisprudence and law and to analyze and explain what was explained.

Key words: Confession, denial, confession of the rational, the principle "who's the king", clear evidence, true demonstration, devoted demonstration.

Introduction:

Confession is the most powerful reason to confirm the action. So, it is interpreted as the “mother of reasons”. According to article 1259 of the civil law, “the confession consists in affirming a right for others against oneself interest”. The lexical meaning of confession is consolidation or affirmation, but in the juridical term, it means announcing that there is a right against oneself interest and in favor of others. Confession is a kind of news; it means the confessor acknowledges that there was something previously. Hence, confession is not a creation to have a right. It may be stated that, confession is unlike the claim; because the claim means to declare a right in favor of oneself interest and against others.

According to definition and above mentioned issues, confession is not considered as a contract or a unilateral obligation. But it is a kind of news that could be false or true. More specifically, the probability of its truth is increased in the court, because the defendant confesses given its legal effects.

As it has been anticipated in the law, although the confessor is responsible to affirm its converse, but it doesn't lead to its presumption even there would be an official document like a confession in favor of covenanted, so governmental and juridical authorities should consider it (1).

According to jurisprudence, the presumption is everything that, firstly it has the exploration and narration aspect of another thing like possession which apparently speaks about the possession in the possessed object (possession law), and secondly the exploration is not definite but it is

conjecture (like possession), and thirdly, the legislator has considered and used the mentioned exploration as a means to prove it (like article 35 of the civil law) (2).

According to above, it should be noted that, confession is a kind of presumption, as the legislator in various articles of the civil law such as 1259, 1267, 1270, 1274, 1275 and 1277 has emphasized it implicitly and expressly, again, Juris consults believe that the presumption is the decisive reason to affirm the claim. So, the statement that confession is just an announcement lacks any legal reason.

So, the present research aims to assess confession from the view point of the jurisdiction and law.

Regulation documents

Regulation documents are reasons implying on the validity and argument of confession, moreover, they are dependable and reliable concerning the confession argument. The reasons are consist of:

1- Verses of the holy Quran:

a) Ali- Imran, verse 81: "And [recall, O People of the Scripture], when Allah took the covenant of the prophets, [saying], "Whatever I give you of the Scripture and wisdom and then there comes to you a messenger confirming what is with you, you [must] believe in him and support him." [Allah] said, "Have you acknowledged and taken upon that my commitment?" They said, "We have acknowledged it." He said, "Then bear witness, and I am with you among the witnesses".

b) Al- Taubah, verse 102: And [there are] others who have acknowledged their sins. They had mixed a righteous deed with another that was bad. Perhaps Allah will turn to them in forgiveness. Indeed, Allah is Forgiving and Merciful.

c) Al- Nesa, verse 135: O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives.

2) News and traditions

a) Prophet Mohammed says (3): Confessions of wise men against themselves is permissible.

- b) Prophet Mohammed says: tell the truth even it is against your interest.
- c) Morsalol Attar in Imam Sadegh words (3): A pious who speaks against his interest is more truthful than seven believers.
- d) A narration from JarrahMadaeni in Imam Sadegh words (3): I do not accept an offender's martyrdom except for his own harm.

3. Consensus among thinkers

Consensus among intellectuals and thinkers is considered as another reason provided by Islamic scholars for the confession argument. It could be stated that, “all nations have reached a consensus over confession of a wise against their own interest. So confession of a wise confessor against themselves is a way which affirms the subject of confession. A wise does not confess against their own interests, when they are aware about confession. Hence, if one confessed against their interests, it indicates that they want to tell a fact.

4. Consensus among Islamic scholars

All Islamic scholars are unanimous in the argument of confession and they believe that it is enough to affirm the subject of confession. It is obvious that, the mentioned consensus is not idiomatic. Since, the consensus is idiomatic when it lacks specified document. But, when there is a specified document such a consensus is called a “documentary consensus” and it is valid.

Assessing the context of the confession anecdote

The lexical and idiomatic meaning of confession

Confession in the word is the infinitive of the “Efa'al” from the “Gharar” root and it means to affirm, establish, place, consolidate, acknowledge and accept. As, when something is placed on its position, Arab says (the encyclopedia of the private law, vol.1, p.408).

Therefore, confession in the word means to stabilize something or someone in a place and according to article 1259 of the civil law, confession means to announce about a right in favor of others and against oneself interests. There is no difference between its semantic and lexical meaning. Indeed, confession is used to prove one's claim (4).

The lexical and conventional meaning of confession is. It means to state and to locate something. The term “means to stabilize someone in their career. According to article 1259 of the civil law, confession is comprised of information and right.

Information is a word or a set of words relating a kind of specific neural-mental actions and it is stating the existence of an affair in the present or past. Equally, declaration is a word or a set of words relating a kind of specific neural-mental actions which creates an affair. On other words, specific mental actions representing the existence of a right for others and against oneself interests could not be used merely as a reason for confession. But, they need to be announced by another something implicating in them it which is mostly a word. According to article 1260 of the civil law, any word implicating the confession is used to affirm it (5). According to jurisprudence, confession means to announce the existence of a right in favor of others and against one’s interest.

B) The right is an option that the law recognizes to someone in order to be able to do something or abandon it. Therefore, in the confession, the news must be right, whether direct, as in the lawsuit by someone on the other, the claimant claims to him or indirectly, as in the claim for compensation from the failure to perform the obligation, the reader acknowledges the delay in fulfilling the obligation. The confession, the news because of the right to the claimant. (6)

Review of the word "rational:"

The jurists, in the first place, consider the basis of confession as reason. Because when someone pleases one another in favor of another and at his own expense, in that case, it must definitely have to do that. (4)

Confession to the detriment and confession for the benefit

If a person pledges to be harmed in some way from the point of view of his favor and in another direction, this confession shall not be valid in the first place. (6)

In short, confession has two aspects;

1 That it is only harm to the headquarters.

2 That it is at the expense of both the headquarters and the other.

The second face also has two species;

A. The distinguished owner (the object of confession) can be distinguished from headquarters and inedible. Like a person admitting that I sold the house to Zaid, and that the house was between the headquarters and the other, then it would seem obvious that the confession of the headquarters would be effective, but it would not be effective in relation to its partner share.

B) That the "mistress" of the inseparable commonplace is inferior to the domicile, and that the person confesses to a child. At the same time, the "childhood" is not something that is related to one, but is added to the category, and it is a marriage to a father and a son (6)

Conditions of confession

Confessions: Among the conditions of confession, it is a confession that is decisive and obligatory; confession of confessions is a confession that is not suspended on the condition or attribute. (6)

Suspended Confession: A suspended confession is such as, for example, that a person admits that if he returns from a trip, I owe you a million rials. This confession is not correct and not rational. Suspension may be suspicious, such as debts on travel, or on something, such as being indebted to the condition of the sunrise.

Occupation of the headquarters: As the passage of the headquarters or confession is one who informs himself at a loss and in favor of another. According to Article 1262 of the Criminal Code, "The confessant must be mature, wise, and free of charge; therefore, the confession of the minor and the insane is not insoluble and inconsequential" (also in accordance with Article 69 of the Islamic Penal Code: "Confessions in the form of It is admitted that the adherent has the characteristics of maturity, reason, discretion, intention) .

A) Admissible Mentor: As stated above, the confession is valid if the headquarters first must be mature. Therefore, a minor confession, though a verdict, will not be credible unless it can be done independently by a minor, such as acceptance of peace or charity (Article 1212 of the Code). The refusal of the minor's confession is due to his lack of ownership in the possession of his property and his financial rights, and in the above cases, the law itself has allowed him to be seized.

B) The wise confessant: Secondly, the headquarters must be wise. Therefore, if a person is insane and does not pay attention to the works and results of his speech, his confession is not accepted. Also, a person who is forbidden to seize property and financial rights by virtue of his confidentiality will not be credible to them.

C) The confidentiality of the consignor: thirdly, the headquarters must be a messenger. The value of confessing to the validity of the discovery is that the existence of the right does not in fact cause loss to the home. Therefore, if there is a valid confession that the headquarters is the adherence to its confession.

D) The confessant is free: Fourth: the headquarters must be free. Confessions that can be of legal value are confessions that have a domicile, namely, moderation in the assessment of their benefits and disadvantages. And if he is not obliged to be a lawyer and has been compelled to confess to arbitrary deeds, whether it is material or spiritual, and his confession will not be legally valid. (4)

ConfidentialityTerritory

One of the remarkable points about the principle of confession is that everyone confesses only to his own harm, and the scope of this rule is only one that confesses to his own loss, and that the confession of each person is limited to that person and his substitute And is not permissible in any other way, except in the case that the law requires it" .

Therefore, the confession does not spread to the non-infect, and the infamy is not a confession but, unlike Evidence, it is also a mistake for others. Evidence is a hijab that spreads to others, but confessions from a confessional do not go further. (7)

Article 368 of the Code of Civil Procedure stipulates that "the confession of a lawyer in a manner that is firm in the lawsuit is valid if it is established in his power of attorney". And adds Article 369 of the law; "the claim for confession by a lawyer outside the court will not be heard". And in accordance with article 9, paragraph 9, of the same law, "the right to confess (the purpose of

confession in the nature of the claim or to the extent that it is fully resolved) is something that must be specified in the power of attorney".

Confessions Effects

1 -The validity of the confession: According to Article 1275 of the Criminal Code; "Anyone who confesses to a non-custodial right will be required to confess".

The provisions of the confession to the extent that the claim of the existence of the right to another is adversely affected by the court is subject to the court's order and the benefit of the claim does not have any other grounds for entitlement. That is, Article 365 of the Civil Procedure Code states that "whenever someone confesses to the fact that it is the cause of the lawfulness of the party, no other reason to justify that right is required." Because the confession itself is the most complete proof of the right and, if it is proved, it is redundant by proving the case to the court to review the other pleading. (8)

2 -Denial after confession: This issue is examined from two legal and legal points of view.

A) Denial after confession from a jurisprudential point of view:

In jurisprudential terms, denial after confession is not relevant because the confession of the Temple is for the sake of "Close" And the denial that comes after it is not compatible with its continuity. (6)

B) Denial after confession from a legal point of view: from a legal point of view, according to the first part of Article 1277 AD; "denial after confession is not ..." Denial, contrary to confession, and that news is the lack of rights for non-losses itself. And, as it passed, a wise and righteous person who, according to the important works of confessing the existence of a right to non-loss, should have the right to believe that this right is actually available, and that no wise time with freedom has been made. (4)

3 -Abuse of confession: According to legal analysis, any person who does not have the right to do so by that person can do so in another way.

4 .Confessions and private plaintiffs: The question that arises is: Is confession sufficiently feasible to have a private plaintiff? In answering this question, the adherence to the principle of confession is that the perception of the confession is not allocated to the case that exists in front of the headquarters, the plaintiff and the claimant, but if a person confesses to property or rights,

his confession is valid, Whether or not there is a court or prosecutor. If anyone has or has not made a claim against the headquarters(4).

5 .Confession in the court and confession in the court: "Some people believe that the defendant must confess to the law in Allah. For example, if a woman or a man confesses to the prosecutor four times but denies the court, the head of the criminal court should not arrange the effect of the confession that the defendant has brought to the court. Check out both legal and legal aspects.

A. Reviewing the subject in legal terms: From a legal point of view, what is the meaning of the concept of confession in the court and what is the definition of the concept of a court in principle. The late Seyed Hassan Emami, a prominent Iranian lawyer, explains the confession in the court as follows: (4)

B) Reviewing the issue from a jurisprudential point of view: Believers that the head of the criminal court should not arrange the work of the accused in the court of law to arrange the work, arguing that; confession must be with the ruler who wants to make a ruling(4).

Confessions Types

Iranian law writers have identified a variety of confessions, including the late Professor Seyed Hassan Emami, confessing his classification in two ways:

1. Confession in court 2 .confessions outside the court

Documentation to Article 336 of the Civil Procedure Code, which states: "Confessions shall be divided if they are heard in court or in one of the bills given to the court, confessed in court and admitted outside the court", and confession Separates outside the court on two occasions: written confession and verbal confession; "Oral confession is a confession that has been performed verbally outside the court. The confession can only be a reason for the loss of the confidentiality, which will be established in court. "He also says: "A written confession outside the court is a confession that has been made to a court in a plain text other than the bills, such as confessions in ordinary documents, friendly letters, and the like."

The author also admits three confessions to the "headquarters" (confessed) credentials: simple confessions, confessions and confessional confessions. Then defines them as follows;

Simple confession: And that acknowledgment rightly claims, as claimed. Like someone else on the basis of a standard document asking for a hundred thousand Rials with a profit of twelve per year from April 1958, the other will respond and say that I owe it or acknowledge it. The headquarters unconditionally accepted the claimant's claim and confessed to his religion. Accordingly, the confession in France's law is a simple confession, and it is against the headquarters, and the judge will issue a ruling.

Confidentiality: This attestation affirms the claim of the claimant by the constraint or nature of the claim. It is less likely to happen in a lawsuit that the party will accept the claimant's unchanged subject, but often the nature of it changes or reduces by defining or refracting it and giving it another way that the subject matter of the claim will not be(2).

In French law, this confession is known as "confession." The choice of the name of the confession is in the terms of the statement above, and its circle is a confession.

Confidentiality: It is a confession that has two components, such as a confession from a claimant who claims to be denied, that confession can be decomposed.

Analytically, a confession is a confession that has two parts, one attached to another and is in a sentence. That is, it is not divorced between the two parts that the mystics are two separate entities and there is no composite confession, but two separate ones, the first part is an end to the confession and the second part is a confession or claim that needs to be proved.

Analytically, according to the assumptions of composite confessions, we are confronted with two different types, each with a special status and a special decree, which is stated below:

A) Compound Compensation: It is in the case where the confession is composed of two or more related components that, if not the first, were not in the second and third parts. This confession means a related compound confession which is twofold:

B)

1 .The relevant confession, the second part with the first component

2 .The relevant confession, the second part having no conflicts with the first component:

B) Unconnected Composition: An unconnected compound statement is a confession consisting of two components, the second part not related to the first part, so that if the first part is not present or is ineffective, the second part is available.

Existence and non-confessional confession: confession includes existential and non-existent affairs. Sometimes the head says: I owe it to Zaid (he). This confession is called an existential confession, and sometimes a person says: I owed Zaid, but he says that he does not owe me. This confession (which he does not owe to me) is called a non-existent confession.

Confirmation of current promise: There is a confession in addition to a promise of confession, including a confession. The explanation of the headline says: "I am paying a million rials to my debtor." The confession is a promising confession(9)

Conclusion

From jurisprudential point of view, because of its importance and importance, Islamic jurists have arranged the principle of "confession of Wise ", which is a consensus with a rational and rational basis, yet prophetic narrative. Regarding the realm, this rule only includes a case that confesses to its own losses. Consequently, the claim does not apply to its benefit, nor does it cover the confession of the attorney at the expense of the client and the confession but to the detriment of the moles. (10)

In these cases, it seems that minor confessions are not valid. Because the word "The wise" is alphanumeric with "alphabet" and "lam" and it is such a group of public, but it is inconsistent with the minor, and the withdrawal is a barrier to generality. (11)

According to what was said, in civil proceedings, without any need for any investigation and that the existence of the "martyr" is known, is a recognized confidentiality and is firmly established, as well as the likelihood that the confession may be a mockery or a joke or, for example, and the like These are stated, or that the headquarters are incorrect or have a specific purpose, does not undermine the validity of the confession unless it proves to be the case.

In criminal matters, the recognition of the value of confession is made by the investigator and the prosecutor. Because in such cases, the confessional may wish to return the course of the claim by way of confession to the truth, and distract them from the truth.

Confessions on civil rights issues and issues are enough once, but in criminal matters depending on the type of crime, the frequency varies. For example, in accordance with Article 231 of the Islamic Penal Code (Penal Code, punishment and wergild), adopted in 1991: "The ways of confirmation of murder in court are as follows: 1) confession of 2 testimonies; And according to Article 232 of the law: "By deliberate murder, with the admission of deliberate murder, even once, is proved."

According to what has passed, the confession is on the legal issues of the lawsuit and it has a certain value and has had a criminal aspect in the past, and has helped the judge in reaching the truth, but since the adoption and enforcement of the law "Amnesty and retaliation And its provisions ", adopted on August 3, 1981, in 195 articles and approved on 20/7/1984 from Articles 196 to 218 and the Islamic Penal Code (wergild), adopted on December 24, 1981, and the Islamic Penal Code (Penal Code, punishment and wergild), adopted in 1993, 497 The material is a positive means of confession of the most important reasons and even effective in the type of punishment and its amount and the execution time of the punishment, and it is said that the "subject matter" The bottom is.

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