

Jurisprudence and Legal Principles and Codes of Confession and Testimony Disclamation in Criminal Matters

Fateme Mohammadi and Ebrahim Seddiqi

Department of Jurisprudence and Fundamental of Islamic Law,
Faculty of Theology, Islamic Azad University, Karaj Branch, Karaj, Iran

Abstract: Confession and testimony are evidence in a trial; each has its own literal and phrasal definition. Confession and testimony are included in civil matters as well as criminal matters. Due to the importance of confession and testimony in law and jurisprudence, disclamation of confession and testimony is also very important. In criminal matters, disclamation of the confession and testimony is not without effect on sentencing; in some cases, disclamation of confession and testimony will also be accepted even without a good reason and the punishment shall be removed from the accused. Disclamation of the confessions and testimonies doubt in sentencing and leads to depunishment. Disclamation of the testimony of has its own rules to accept the disclamation of testimony and eliminate judgement with respect to the stage of the proceedings (before the verdict, the verdict and the sentence, following the issuance and execution, during execution). Most Muslim jurists agree on the effectiveness of testimony disclamation before sentencing in both criminal matters and in civil matters; they accept that it leads to depunishment. There is not an agreement in terms of testimony disclamation in other stages of proceedings. Some consider testimony disclamation in other stages of proceedings effective and a ground for depunishment while others consider testimony disclamation in other stages of proceedings ineffective and not a ground for depunishment. However, review of jurisprudential and juridical works about confession and testimony in criminal matter is one of the most important issues about confession or testimony. Different instances are imaginable for each case according to stages of the procedure; this article focuses on this issue.

Key words: Confession, testimony, disclamation the confession withdrawal of testimony, disclamation, punishment

INTRODUCTION

Confession and testimony have a particular place in evidence so that they are so widespread in both Islamic jurisprudence and different legal systems. With respect to the sensitivity of disclamation, the need for caution in it in terms of confession numbers, the number of witnesses and permission for disclamation of the confession and testimony, they have certain rules which are addressed in separate chapters. Style and manner of the wise persons are the most important reason authenticity of confession and testimony; verses and hadiths implying the authenticity of confession and testimony confirm God's verification of this practice. On the hudud and qisas in Islamic penal code, confession and the testimony are known as the most complete and most powerful reasons. While confession and the testimony are regarded as most important evidence and effective; person making confession or witness may disclaim his confession and testimony.

In criminal matters, the sacred religion has taken it easy about crimes proved through confession and testimony because of the possibility of falsity and preventing the loss of individual rights; hence, disclamation of confession and testimony is audible. As witness and confessor may deny their confession and testimony and it is necessary to know whether disclamation of confession and testimony is acceptable or not, if disclamation of confession and testimony is effective, what are the conditions for disclamation of confession and testimony? This study seeks to explain the idea of Muslim jurists about disclamation of confession and testimony. It also reviews the effects of disclaiming confession and testimony in hearing in relation to confessor and witness and those who testified about them. It will show the stages of proceedings in which disclaiming confession and testimony is effective. It describes effects and consequences predicted in law and jurisprudence for disclaiming. Thus, this study answers the following questions:

- What are legal and jurisprudential bases for disclamation of the confession and testimony in criminal matters?
- When disclamation of the confession and testimony is effective in sentencing in the process of hearing?
- If confession or testimony is disclaimed after the execution of sentence, what is the sentence for witness or confessor?

Literature review: There is no individual book in this regard by scholars; if there is one, the author has not found it. Studies indicate that no article or thesis have independently emphasized on this subject. An article about disclamation of the testimony in Shiite jurisprudence has considered only disclamation of testimony while it is silent about disclamation of confession. In addition, it studied disclamation in Shiite jurisprudence. Two these have studied witness's falsification, disclamation of confession and its effects in civil and criminal cases from the perspective of the Shiite jurisprudence. First thesis revises witness's falsification regardless of confession and testimony disclamation; the second studies only confession from the perspective of the Shiite jurisprudence.

MATERIALS AND METHODS

This is a theoretical-descriptive research that has collected data by library and computer base methods through note taking. In the process of information, different contradictory and consistent ideas have been classified, compared, contrasted; then, the researcher makes a conclusion. It emphasizes first on the applicable conditions and terms of confession and witness; the, it examines confession and witness as well as the effects of disclaiming confession and witness from the perspective of Shiite jurisprudence and Iran's law. Finally, it makes a conclusion and presents suggestions for further studies.

Research concepts

Confession: According to Dehkhoda Dictionary, confession has been defined as "to set, to prove, to affirm and to assert" (Dehkhoda, 1962). Lawyers have also defined confession as it is a criminal term to express a conscience assertion by one who is ware of the criminal consequences of a part or all of a case having been raised against him in a court (Shambiani, 2004). In jurisprudence, confession means giving news about a certain event against one's own (Mosavi, 1999).

Testimony: The term implies giving the report of an event (Jafari, 2002). The religious implication of the term

has also been stated in legal books, "Testimony is defined as declaration of a third party of commission or non-commission of an offense by the accused or any other matter before the judicial authority" (New Islamic Penal Code, Article 174). In fiqh, testimony refers to definitive report of loss of one's right (Najafi). Thus, testimony is report with certainty and confidence of a right for another person by a person rather than a judge.

Disclamation: it literally means to return or to withdraw (Albasani).

Disclamation of confession and witness: Disclamation of confession means to withdraw from the certain report of a former right for another person in favor of another party or in against himself; in other words, contrary to his former sayings, he report of the absence of a right for a person against himself. Thus, disclamation of confession means to deny one's own confession after its issuance.

Disclamation of testimony refers to a either case in which one assert that his testimony at the court has not been true intentionally or unintentionally (Computer Research Center of Islamic Sciences).

RESULTS AND DISCUSSION

Validity of confession and testimony and the terms for their authenticity

Validity of confession: Quran, Sunnah, Ijma' and rational argument are evidence proving the principle of confession.

Quran: Jurists have mentioned many verses of Quran as the reason for confession meaning "O you who believe! Be maintainers of justice, bearers of witness of Allah's sake, though it may be against your own selves or [your] parents or near relatives;" (Al-Nisa). It is said in reference to this verse that God's order and command indicates the obligation of a witness claim for God and against his own and accepting the testimony of a person against himself. The general principle of confession is inferred from this issue (Mosavi, 1990).

Sunnah: There are many reports in Sunnah indicating the validity of confession. For instance, Imam Sadeq has noted "meaning 'a believer is more truthful than seventy other believers against himself' (Najafi). There is some criticism of the Hadith. First, the narrative is allocated to believers and it does not to prove a general rule. Second, it does not imply directly to the influence of confession against oneself; it indicates each individual's awareness of his own inner emotions. Such expression is clearer than

anything even in comparison to more than seventy just persons. Needless to say, this is different from the influence and authority of wise people to confess their losses (Mohaqq Damad).

Ijma: The consensus or agreement of the Muslim scholars on the validity of confession is another reason mentioning in religious texts. Due to the presence of an expressive scripture, Ijmâ' cannot be regarded as independent evidence; but it is not rejected to confirm the rule (Qebleie Khoei). In al-Mabsut, Shaykh Tusi states, meaning 'There is no disagreement on the veracity of the confession and the necessity of right through its tools; the dispute is on its interpretation'.

Rational argument: Human reason dictates that confession shall have enough validity because human being seeks his own interest and when he confesses against himself, it indicates his truth (Madani, 1991).

Conditions for authenticity of confession: Confession has four pillars and the authenticity of each pillar requires specific conditions. Confession elements are confessor, confession beneficiary, object of confession and confession utterance.

Confessor: The following conditions must be observed for confessor: maturity, wisdom, growth, forming intention, freedom and being identified.

Maturity: The confession of immature children is not valid even if with the order of their parents (Alameh Hilli). However, jurists state that maturity is not a condition in some cases such as testament, giving charity and devotion because a child can devote his property or pay for charity or make a will as much as one third of his assets. According to the principle, 'Every person having an affair has an effective confession in its regard.' (Al'Amili).

Wisdom: Article 1262 of Iran's Civil Code states, "The person making a confession must be sane". Thus, the confession of an insane is not effective. If the confessor is a periodic insane and confesses in mental health, his confession is effective.

Growth: One who has been prohibited to seize his assets due to stultification, his confession is not valid because according to Article 1263 of Iran's Civil Code, "The confession made by a person of unsound mind in financial matters is of no effect." It should be noted that the confession by slutfier in non-financial matters is

effective. Article 170 of Islamic Penal Code stipulates, "Confession of an individual who has no competence in financial issues according to a court decision and also that of a bankrupt (individual) shall be admissible in criminal matters; however, their confessions shall be inadmissible regarding the financial liability resulting from the offense." For instance, the confession of slutfier-committed crimes deserved had or qisas or ta'zir like Qazaf or adultery as well as his confession to evacuation and divorce is valid (Mosavi Khomeini). If a slutfier confesses a crime with financial and criminal aspects, only the non-financial (criminal) aspect is effective. For example, if he confesses to thievery, he will be punished by hadd; but he is not obliged to pay for stolen asset.

Intention: At the time of confession, confessor should intend to state; indirect expressions and implications have no legal effects. Thus, confessions by a sleeping, unconscious, or drunk person as well as confession as an expression of mockery or example while teaching are not valid (Alameh Hilli).

Freedom: Confessor should confess freely and without any reluctance unless his confession is invalid either in criminal or civil affairs (Iran's Civil Code, Article 1262).

Being identified: Confessor should be identified.

Confession beneficiary: Confession beneficiary shall have the following conditions.

Enjoyment capacity: Confessor announces a right for confession beneficiary; thus, the beneficiary should be able to enjoy the right or be capable of using the right (Hilli and Hasan, 1991).

Being identified: The confession beneficiary should not be completely unknown unless confession is void. In Tazhkara, Alameh Hilli states the validity of confession for a known beneficiary (Hilli and Hasan, 1990). The confession beneficiary should not deny the right. This term is added by Mohaqq Kurki as he says that if it is denied by confession beneficiary, it is not submitted to him (Kurki, 1998).

Object of confession: Confession to a right is valid only when it has the following conditions.

- It is possible rationally or normally
- The object of confession should be legal (Mosavi, 1990)

- The object of confession should be known
- The object of confession should not be estate of confessor unless confession is void (Hilli and Hasan, 1991)

It should be possessed by confessor (Hilli and Hasan, 1990).

Confession utterance: The conditions for confession utterance are as following. Confession utterance in proving the truth should be clear and unambiguous (Mosavi, 1990), it can be expressed by any words (Hilli and Hasan, 1990). Confession must be incontrovertible and suspended confession is invalid (Hilli and Hasan, 1990). Confession should be purposeful; Confession number: Confession is divided based on its subject to confession to God's right, confession to people right and confession to sharing right. In confession to adultery, there is a disagreement among Shia scholars. Some announce that several times is required and others state that four times are enough.

Validity of testimony: Quran, traditions and consensus Quran, traditions and Ijma? are evidence proving the principle of testimony.

Quran: Jurists have mentioned many verses of Quran as the reason for testimony; for instance, meaning call in to witness from among your men two witnesses but if there are not two men, then one man and two women from among those whom you choose to be witnesses so that, if one of the two errs, the second of the two may remind the other.

Traditions: Many traditions have been narrated by Shiite and Sunni scholars indicating this principle. For example: Avari Al-Lali narrates from the Prophet, meaning 'the evidence by the plaintiff and denial by defendant' (Noori and Mirza, 1988).

Ijma?: The consensus or agreement of the Muslim scholars on the validity of testimony. Although, ijma does not refer to its literal meaning, it implies the confidence in the truth of Hadith by the Prophet (Mohaqiq Damad).

Conditions for authenticity of testimony: The conditions for authenticity of testimony are studied in two groups: conditions for authenticity of testimony provisions and the requirements for witness. Conditions for authenticity of testimony provisions: certainty of testimony, matching the testimony with the case, matching the testimony of witnesses, non-beneficiary witnesses.

Requirements for witness: Maturity, reason, faith, justice, non-beneficiary witness.

Confession and its disclamation: This section is divided into three parts: first, confession in crimes deserving had and its disclamation. Second, confession in ta'zir and its disclamation. Third, confession in murder and its disclamation. Confession in crimes deserving had and its disclamation: In Arabic had means prohibition; in fiqh, it refers to punishment and retribution determined by religion and should be executed without increase or reduction; the governor is not allowed to change it. In terms of criminal matters, some Shiite scholars believe that confession shall be performed in court and for the judge. This sentence seems to be good because criminal matters, unlike civil matter that relates to property and material things, relate to life, honor and so on. Thus, it is reasonable that the judge hear confessions personally and issue a sentence with certainty. Legal experts also believe that the magistrate must hear the confession of the accused person personally; otherwise, the validity of confession is not proved (Sadeqi, 2009). The point that should be noted about confession for the examining magistrate is that when the accused's confession for judge is effective, hearing by examining magistrate is not performed. Therefore, in divine hudud such as adultery and sodomy which confession should be performed at the presence of judge, referring the case to examining magistrate is not permitted (Mahmood, 2005). Some crimes deserving had are adultery, sodomy, lesbianism, qazf, qadat, drinking, theft, enmity, apostasy, etc., each has its own punishment. For example, jurists agree on adultery that the confessor should remain on his confession to the time of punishment; if he disclaims his confession, his punishment is eliminated. There are some differences in the scope and amount of this condition (Haeri, 1998). Shia scholars such as Sahib Riadh believe that if a person confesses a crime deserving stoning and he denies his confession, stoning will be withdrawn (Haeri, 1998).

Confession in ta'zir: Ta'zir literally means discipline. It is a punishment that its punishment has not been determined by religion; it depends on the idea of ruler to decide based on expediency. Therefore, there are differences between had and tazir. The punishment for had is determined in religion while the punishment for ta'zir is not determined in religion. Shia scholars believe when four times confession is required to execute had, fewer confession leads to ta'zir; when twice confession is required, once confession leads to ta'zir. This is true in

the case when the judge is sure that he will not confess again; if he suspects that the accused will confess twice or more, he cannot execute ta'zir.

Confession in qisas and its disclamation: Confession to the premeditated murder is punishable by qisas. The reason for qisas is exclusion of innocent and equal soul purposely and by oppression. Soul refers to a life that its waste is not permissible. Confession is a reason to prove murder. Most jurists state that once confession is enough for proving murder since 'confession against one's own is effective' as a rule. Some state that twice confession is necessary, but they are less. Once confession is more popular (Mosavi, 1990). Confession to murder will be accepted when confessor is capable. Capability means to be wise, mature, autonomous and free. Islamic Penal Code asserts that confession to premeditated murder prove it even if it is once. Following the jurists and law, lawyers believe that once confession is enough.

It is narrated for an infallible (AS) in Wasail ush-Shia, 'meaning 'If someone confess to murder against himself, he will be killed; if there is no witness and he deny the murder after his first confession, he will be released'. Most Shia jurists agree that if one confesses to premeditated murder by another person, a third person also confesses to murder against himself and the first confessor deny his sayings, qisas is terminated for both and dia is paid from national treasury. The book Al-nitisar regards Ijma for this rule.

Disclamation of testimony

The sentence for disclamation of testimony: Where witnesses testify on the right, denial of the testimony is prohibited (haram) because denial of testimony causes the loss of other party's right and wasting others' right is prohibited in Islam according to verse 283 of Al-Baqara. In verse 30 of Al-Haj, God commands human beings to avoid falsehood and baseless speeches which includes perjury. If the witnesses have committed perjury, denial of the testimony is obligatory because their testimony is perjury and by force while perjury is among sins promised to be punished by fire. It is not permissible for anyone to commit perjury against others either in favor of another person or against him. He must not testify to anything without knowledge (Terablosi, 1906).

It is quoted for the Prophet (pbuh), meaning 'A forced witness is resurrected on the Day of Judgment while his tongue will be licking fire as a dog licking a dish with his tongue (Tabarsi and Husain, 1990; Malekzadeh, 2009).

The conditions for disclamation of testimony: The following conditions should be met to give effect to disclamation. It must be clear, it must take place in court.

Disclamation of testimony has three different modes

Disclamation before sentencing and emergence of its associated effects: If the witnesses testify and deny their claims before sentencing, different cases will rise, including is the sentence issued? Is the testimony rejected? Is there any sanction for witnesses? These cases will be discussed in this section. If some witnesses, who are known jus, testify on a right and deny their claims before sentencing, no sentence will be issued; this idea is agreed by all Muslim jurists. In this case, there is no difference between God's right and people's right. The reason for such action relies on the fact that no testimony will remain by their disclamation; hence, sentencing will not be permitted because no religious evidence is available. This is similar to the case in which a Mujtahid disclaims his fatwa before its issuance that practicing this fatwa is not correct. If the witnesses do not deny their testimony clearly, but they tell the governor to suspend the issuance of sentence and then say to begin sentencing, two propositions are presented) sentencing license) restitution of testimony (Hilli and Hasan, 1990).

If the testimony is about adultery and the witnesses deny their claims before sentencing, no sentence will be issued. Nevertheless, because the testimony was on adultery and religion emphasizes much on not accusing each other to adultery, different effects can be applied on intuition witnesses. If they disclaim before sentencing on adultery, they will be punished by had due to the insult.

Disclamation after sentencing, before execution and emergence of its associated effects:

If the witnesses testify and remain on their testimony before execution of punishment but they deny their claims before execution, different ideas have been presented about whether to execute the sentence or not. If they testimony leads to killing the accused, his stoning, cutting his fingers, partial qisas, or flogging and the sentence has not been executed, it shall not be executed because the punishment is cancelled by acquisition of a doubt.

If the disclaimed testimony leads to qisas (for murder), two different propositions have been presented: first, qisas is changed to financial retribution because blood money is a substitute punishment. Second, blood money is also canceled because blood money is a substitute punishment for qisas and it seems irrational without proving qisas as the fall of qisas means the fall of punishment and reversal of judgment. If the subject of case depends on the disclaimed testimony for another had punishment, the had punishment is canceled either it is God's right or people's right because disclamation of testimony a doubt rises and doubt removes had (Ansari, 2008).

Disclamation after sentencing and execution of sentence and its associated effects: This is when the witness confesses after issuance of sentence and its execution that he has deliberately committed perjury. If the disclamation of deliberate testimony has been after execution of mentioned punishments such as killing the accused, his stoning, cutting his fingers, partial qisas or flogging, the owner of the wasted blood can request qisas for all persons committed perjury and pay for their blood money or he can request qisas for some of them by paying for their blood money; other witnesses who has not been punished should pay for their share in the crime to the owner of the wasted blood (Ansari, 2008). If the witnesses argue that they have claimed false testimony by mistake after execution, they shall pay its blood money.

CONCLUSION

The principle for Shiite jurists is disclamation after confession is valid; but if disclamation leads to doubt in sentencing, disclamation is effective. In criminal matters, disclamation of confession is effective on the God's right. In sharing rights, disclamation of people's right is also effective; thievery is an instance where disclamation of confession leads to cutting one's hand. The confessor's hand is not cut after disclamation but he is obliged to return the stolen asset. Disclamation should be made before Judge and sufficient reasons should be presented for disclamation of confession. After testimony, a witness is faced with wanted and unwanted consequences because witness's testimony is often included in one of three modes: correct witness and in accordance with reality leading to the issuance of a sentence. Second, witness's perjury or forceful testimony is proved for the judge or the witness confesses that he committed perjury; in other words he disclaim his testimony. If false testimony is proved, the witness must pay a heavy price with respect to the criminal and civil cases. Law and jurisprudence have predicted imprisonment or a fine, even death in some cases, for perjury. This study described the effects of disclaiming testimony and confession.

Some propositions is proposed for disclamation testimony; there is disclamation before sentencing that is regarded effective according to the ideas of Muslim scholars. If the testimony is about adultery, insult punishment is predicted for witness.

If the disclamation is after sentencing and before its execution, the sentence shall not be executed according to majority of Shia scholars; if the sentence is killing, stoning, cutting fingers and so on it shall not be executed because this sentences are canceled due to doubt as the disclamation signifies doubt. If disclamation of testimony

is after issuance and execution of sentence, the testimony is on killing, stoning, cutting fingers and so on, the accused dies due to execution of penalty and witnesses confess to perjury, the owner of wasted blood can request for killing all witnesses and pay the blood money for their death. If some have not been killed, they must pay blood money to the owner of wasted blood. If the witnesses' testimony has been made by mistake, all must pay blood money while it is divided among them evenly. If some witnesses confess to perjury and some confess to testimony by mistake, each will be punished according to his own confession. Qisas is executed for one who confesses to perjury and blood money is forecasted for one who has testified by mistake. Disclamation during execution is also effective in had punishments. In this case, the witness is obliged to compensate for losses if the accused has been harmed.

REFERENCES

- Ansari, V., 2008. Comparative Jurisprudence and Law. Research and Development Center of Humanities (SAMT), Tehran, Iran, Pages: 141.
- Dehkhoda, A.A., 1962. Dehkhoda Dictionary. Vol. 7, Publication of Tehran University, Tehran, Iran, Pages: 3159.
- Haeri, S.A.I.M.T., 1998. Riyadh al-Masail. Alal Bayt (AS) Institutue, Qom, Iran, Pages: 456.
- Hilli, A. and I.Y.I.A. Hasan, 1991. Tabsirat Al-Muta Allimin Fi Ahkam Al-Din. Publishing Institution Ministry of Culture and Islamic Guidance, Tehran, Iran, Pages: 122.
- Hilli, A. and I.Y.I.M. Hasan, 1990. Irshad Al-Adhhan Ila A-Kam Al-Iman. 1st Edn., Office of Islamic Publications, Qom, Iran, Pages: 408.
- Jafari, L.M.J., 2002. Encyclopedia of Islamic Judicial Sciences. Treasure of Knowledge, Tehran, Iran, Pages: 788.
- Kurki, A.H.A., 1998. Jame Al-Maqasid fi Sharh Al-Maqasid. Ahd Bayt (AS) Institute, Amman, Jordan, Pages: 230.
- Madani, S.J., 1991. General Principles of Law. First Printing Press, Tehran, Iran, Pages: 269.
- Mahmood, A., 2005. Code of Criminal Procedure. Majd Publication, Tehran, Iran, Pages: 1389.
- Malekzadeh, F., 2009. Anatomical Terminology of Procedure Code (criminal and civil). Majd Publication, Tehran, Iran, Pages: 223.
- Mosavi, B.M.H., 1999. Principles of Fiqh. Vol. 3, Al-Hadi Publication, Qom, Iran.
- Mosavi, K.A., 1990. Menhaj Al-Saleh. 28th Edn., City of Knowledge Publication, Qom, Iran, Pages: 196.

- Noori, T. and H. Mirza, 1988. Mustadrak Al-Wasail Wa-Al-Masail Mustanbat. Alal Bayt (AS) Institutue, Beirut, Lebanon, Pages: 368.
- Sadeqi, M.M., 2009. Crimes Against People. Mizan Publishing, Tehran, Iran, Pages: 391.
- Shambiani, H., 2004. Penal Law. Vol. 1, Majd Publications, Tehran, Iran, Pages: 198.
- Tabarsi, N. and M. Husain, 1990. Mustadrak Al-Wasail Wa-Al-Masail Mustanbat. Revival of Heritage, Beirut, Lebanon, Pages: 414.
- Terablosi, A.A., 1906. Al-Muhadhib. Islamic Publishing Corporation, Qom, Iran, Pages: 563.