

# The condition of confession in Imammi Fiqh and law of Iran (a comparative study)

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**ABSTRACT:** Confession means a critical principle for crime enlightenment in civil law. But it has not a place in criminal law. It can extract by court concluded for recognizing crime and offender. Confession is affected on his person or his agent; it is not affected on the other people. It is clearly that confession is one of the proven methods rights or other order. It applied in all human commitment very well in all ages. Therefore surveying of historical background of confession is necessary for this study. Quran states about confession in last ages in several verses. A major sector of civil law is about reasons of proof of claim. Articles of 1259 to 1283 are about reason is proof of claim. It has a notable share in Expedited procedure and more precise opinion of the court. Also, confession has a critical role in all legal systems as instrument of proof of claim.

## INTRODUCTION

Confession is one of the methods to proof of claim in all legal systems. It has many applications of human ages. Under Article 1262 of the Civil Code about confessor state "should be mature and wise confessor, and herald of governing. "The material conditions of 69, 116, 136, 154, 169 and 233 of the Penal Code for offenses confession and forgiveness as well. But except for in Article 194 of the Criminal Procedure Code and Article 193 paragraph 2 sentences in this case there is no explicit and detailed. Article 194 states: "If the accused confessed to the crime and his confession led to a clear subject then it is not no doubt and circumstantial evidence supports the conclusion that the meaning, the court will proceed to sentence the defendant if the denial or silence or hesitation in admitting or conflict with other evidence, the Court of witnesses research the accused and other evidence tending to it".

A very important point to consider is that you can admit in civil (or legal) or criminal (or punitive). The first relates to the obligations of the transactions and contracts and so on. To mature according to Paragraph 1 of Article 1210 of the Civil Code of reaching boys and girls as young as 9 years old 15 years calendar is lunar. As defined in Clause 1, Article 219 of the Criminal Procedure Code is adopted in some form, "a child who has not attained the legal age." And in Paragraph 1 of Article 49 of the Islamic Penal Code, "children," on the definition of responsibility absolved Criminal declared. The boy confessed that the 15-year AH and all the girls 9 lunar years behind, such as murder or adultery is valid and enforceable. It is important to remember that these boys and girls up to 18 years - according to the law of their property relative to the Trading can independently perform the same girl until the age of 13 no a court educated-on the right to marry. This study attempts to survey the condition of confession in Imammi Fiqh and law of Iran.

## The legal concept of confession

The purpose of definition Confession is recognizing basically of legal condition of confession in this section. Do confession is a legal report or it is reason of legal concept. Confession is a sector of legal act or it is a sector of legal events. Is it involved for division of legal act? The answer to layouts of confession is difficult. Is it similar to Ebra? Is it similar to documents or testimony? Is it's credited from satisfaction of sides of claim or it based on a legal act? (Katoozian, 2004).

### ***Defining elements of confession***

#### ***Report***

Confession has news conceptual. It has ability to recognize and reject. Therefore if offender say lie about crimes then it has not an effect on the claim<sup>1</sup>. Note that ability to reject confessions is based on its report conceptual. This subject proof that confession can be rejected by court and it don't accepted when person say to lie.

#### ***Correct report***

Confession is a type of report that presented for every right as a general concept (Karimi, 2009). Therefore report to any damages for self that caused to a benefited to other is a confession. Some report has not a legal affect in problems of rights that exited subject from discussion of law. It does not as evidence lawsuit in these cases.

#### ***Benefite for others***

Confession must create benefits for others with material and spiritual aspect. If report was own benefited then it is a claim and is not a confession. But sometimes confession has benefited for declaring.

#### ***self-damage in confession***

Self-damage in confession discussed in chapter of testimony. Testimony is a benefited report for a persona against others. But confession is a reported against declaring (with material and moral aspect). Therefore, it is a true rule in subject of claim. Sometimes confession has indirect benefit for declaring (Katoozian, 2004).

#### ***Evidence and documentation of confessions***

Fiqh accepted confession as a definitive proof therefore all religious orders are proofed with confession. There are several reason s for proofing of confession in Quran, Ejma, Sunat and Aghel.

#### ***The condition of confession***

Will is a necessary condition for correct confession. Mistake and reluctantly make confession disaffected in these cases, wills that presented confession is not accepted with court. Also madness and inebriation and has same cases destroyed confession (Imami, 1996).

#### ***The condition of confession impact***

Ability of lineage based on habit and law

Aver lineage of the person who presented confession

Lack of claimant for difference between sides of claim

#### ***Confessor and its conditions***

##### ***Maturity***

A minor cannot credit of proofing claim even if it do with parents allow. But jurist state " if will of minor is effectiveness then his confession is acceptable". But Ahmad Ben Hanbal believes that confession of minor is acceptable with parent's allow (Heli, 1994).

Article 1210, note1 of civil law state "maturity for male is 15 years ago and it is 9 years ago in female. But this age is not enough for financial material. Thus if the subject is financial material then maturity is 18 ages. Article 1262 of civil law state "the maturity of confessor is a critical condition for confession".

##### ***Being wise***

Confessor must be wise. Based on this condition the confession of juts is not acceptance. But if madness is cyclic then confession is true and court accepts it.

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<sup>1</sup> It is based on Aritcle1276 of civil law

### ***intent***

Confessors must have intent for confession. In other words he had confession for benefit to others and damage to own. There for a confession without intention is not accepted in court. In other words confessor must have intent to explain subject. In these cases all expression has not legal effect on the confession. Therefore confession of drunk and unconscious is not acceptance for court (Heli, 1994). A clearly example is frenzy mode. In this case Article 262 of civil law state frenzy mode nullifies confession of person. But if person has a cyclical frenzy then its confession is correct.

### ***Freedom of confession (liberty)***

While a confession is correct that person does it with a free will. Thus a forced confession is not acceptance by court. Forced confession is not accepted in civil and criminal law (Mansoor, 2014). Liberty is critical condition of all legal activities. Therefore Article 38 of civil law state "any torture and forced activities for giving confession is forbidden and confession is void in this condition". Articles of 203 to 207 state about condition of reluctance.

### ***Growth***

Another condition of confessor was Rashid. This concept is against daffy. In other words a daffy has not ability to thinking correctly and he cannot manage his property. The condition of Rashid isn't stated in Article 1292 of civil law. But Article 1263 of civil law states "confession of daffy is not accepted by court." It means that while a confession is correct in financial subjects that confessor must be Rashid. But the confession of daffy is correct in non-financial subjects even if it involved financial subjects because; these materials affected on the subject indirectly (Karimi, 2009).

Article 1208 of civil law defined non- wise as whom that his management is not logical in his properties. Daffy is forbidden from seized property thus his confession is rejected for court in property and legal financial subject but it is correct in in non-financial subjects. Article 1263 civil law state "the confession of daffy is not affected in financial subjects". Khomeini (2000) believes that daffy is not forbidden in legal subjects.

### ***Right of confession***

One of the fiqh rules state " while a person can confession that he has right of them" thus agent can expressed confession of offender or testifier in an exceptional cases. Article 1287 state that confession of everybody is affected based on own or his testifier. It is not accepted in others unless in a specially law (Matin Daftari, 2002).

### ***Not to bankruptcy***

Article 1264 of civil law state " confession of bankruptcy is not accepted about myself property against creditors". "Not accepted" means that it is not correct for court to proofing claim against third-people because, confession is not a legal action. In other Worde the confession is not cited for court. Since bankruptcy is facing charges thus his confession is not proofing about others but it is accepted between confessors and accused. Based these sentences we can state that lack of bankruptcy in not a condition of confession. Article 1265 state "confession of bankruptcy is not accepted about his property die to protecting from right of others. While this confession is corrected that confessor is bankruptcy" (Karimi, 2009).

### ***permit of Occupancy***

Fiqh added permit of Occupancy to maturity and wisdom and discretion. This condition created two results: a. bankruptcy is not similar to incapables but, he is forbidden from permit in occupancy to protecting right of creditors. His losses competence to confess finance also<sup>2</sup>. b- For recognizing effective confession created a rule. This rule states that " everybody has right of authority to seize and freedom to confession is one of them.

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<sup>2</sup> Article 1264 of civil law

***Benefited of confession and its conditions  
confessor has right of authority and enjoyment***

Features and functionality is a condition for confessor. Therefore confessor must be live. Article 1266 of civil law speaks about capacity of enjoyment. This article state "qualification is not a condition for confessor but he can used benefit of confession" (Diyani, 1998).

***Claimant must be live***

Article 1266 of civil law states "while claimant is live then he can used from benefited of confession". Article 1270 of civil law states "when confession has effectiveness that an embryo is born lively. In other words confession is not effectiveness for died embryo".

***There is not legal and religious forbidden for acquisition what benefited for confessor***

Article 1266 of civil law state "claimant should be extracted from confession based of legal Act. For example, confession of debt is not accepted in law for magnets because it is a illegal activity" (Mahmoodi, 1994).

***Claimant should be determined***

Article 1271 of civil law state "if claimant is not determined what confession has not any effective". This Article shows that a non-determined person cannot be a claimant and confession for his benefited is not correct. If claimant is not determined and there is doubtful between many people then confession is correct and it has a legal aspect. Not that in this case confessor must be determined lastly (Karimi, 2009).

***Failure to deny claimant***

Some jurist state that failure or deny of confession is one of the condition for claimant. Other jurist believes that it is the condition of a correct and effectiveness confession. Also civil law of Iran state that failure to deny of claimant caused to revocation of confession. It states "the verification of claimant is not a condition but if he denied material of confession then it has not any effect on the legal subject" (Mansoor, 2014).

***Subject of confession and its condition***

Correct confession has some conditions that expressed follow as (Mahmood Dashti,1994):

***Being right***

Confessor must be right. The right can be financial or non-financial. Financial rights can be objective or subjective. Also it can be beneficial OT damaged. Non-financial rights have several sample so confession of parity or confession of parentage.

***Probability***

Confession must be logic because confession is a conscious action and must create logically. If the logical confession is not probability then confession has not effectiveness (Mahmood Dashti, 1994).

***Being known and designated***

Confession must be known. Some legislator states that confessor must be known. They argue if confessor is not known then we cannot condemn claimant (Imammi,1996).

***It must be based on law***

If claimant is confession logically but it was not correct based on law then confession is not accepted by court (Mahmoodi Dashti, 1996).

***Confession has damage for confessor***

If confession is about debt then he must compensation. If confessor stated to foreign objective so a determined home or a determined person then this foreign factor must be under Occupation and domination of confessor but if it is under occupation of other person then confession don't damage to confessor. It damage to other person in this case therefore this testimony is not a confession (Mahmood Dashti, 1994).

***The condition of correct confession***

Differences between confessor and claimant in cause of confession

Maybe there is a difference between confessor and claimant about cause of confession in some cases, therefore legislator accepted this different in Article of 1274 (Mansoor, 2014).

### ***Correct confession in not the condition for confessor***

Verification of confessor means accepting confession by claimant. Not that court distinguishes between mature and minor person in accepted confession. If confessor is minor then his confession is not necessary in court. Article 1273 of civil law accepted these documents although this confession is accepted while there is not any other lineage. Therefore confession is not enough for these cases alone and his lineage must be proven in other way.

### ***Disclaimer of confessor after confession***

Legislator state that " the verification of confessor is not necessary for correct confession in confesses to parentage first child. It is emphasizes in Article 1272 of civil law and its affect caused to lack of acceptance confession.

### ***The term of confession***

Confession is correct while it has a legal reason that proves it. The foreign will without foreign reason is not a confession. It expressed with term. There is not a special term as condition of confession therefore it can state by any language. Article 1260 of civil law states "confession can say by any language that proven it". In other word if a person cannot speak then he can use sign language. In this cases condition is explicitly in confession.

### ***The effects of confession***

The disclaimer after confession is not accepted in Fiqh because it is a reason for proofing claimants and disclaim is not compatible. In other word the condition of confession is a term and sentences. The confession cannot disclaim his confession without a logical reason. Moreover, the basic of logical confession is lack of pointed to disclaim after confession. Not that disclaim caused to decreasing the penalty in case of adultery (Marashi, 1997). The first sector of Article 1277 of civil law state " disclaim after confession is not accepted" disclaim is against confession and it is not right for benefited other. While a logical person confessed against himself then it is assumed that the right of confession is correct because if logical person has not any freedom then he never state it. If confession is a joke with claimant then these raiders are not cited. Therefore if confession is with aim to disclaim, it not rejected by court (Imammi, 1996).

### ***Strips of effects confession***

The effect of confession is just only about sides of claim and Legal deputy in legal aspect. Steps of confession are stated in 1287 of civil law. Legislator has not a definition about legal deputy in this Article. Inheriting is one of the classical examples for legal acting. The purpose of acting is civil acting and no trading acting in this article.

### ***Compound confession***

Civil law state that confession is not decomposition. Article 1282 of civil law state " if subject of confession is related to describing an adjective then confessor cannot composited it and use some sector of confession". Article 1283 civil law state "if confession has two differences sector that they are integrated then confessor cannot decomposition it" (Diany, 2009).

### ***Denied, after confession***

Civil law state that "the general rule is that while everybody confession for other then he must accept his confession. Therefore denied after confession has not any place unless denied was reasonable (Rostami Chalkasery, 2011).

## **CONCLUSION**

Imammi jurist and legislator of Iran believe that confession has four conditions to acceptance by court. These conditions are: Maturity, wisdom, discretion, and growing. Confession is not acceptance if gives by torture and threats. Also the confession of a daffy person is not correctly. Any confession has three sections. 1- Confessor, 2- claimant and 3- person who give benefit of confession. Jurists and legislator are disagreed in some aspect

confession definition. For example legislator state that confession of bankruptcy is not accepted by court. But jurists are disagreeing with this condition. Jurist believes that bankruptcy doesn't create a negative condition for confessor. Fiqh states that disclaimer after confession decreases penalty. For example when an adulteress has four confessions to his crime then it accepted by court but if she denies after confession then penalty decreases. In this case law of Iran state then denies is not accepted after confession unless she proves that confession is false. Confession is not an instrument in penalty cases. In other Worde confession is a sub factor for proving crime because only reason s and persuasive evidence are instrument to proving crimes. Confession is not decomposition in penalty code because judge has freedom in selection all or some section of confession but it is decomposition in civil law. Therefore judge can accept or reject confession of accused based on esoteric doctrine. Also judge can mitigate sentence of crime based on all or some section of confession. For summarizing we can state that "the confession is not same in civil law and criminal law".

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