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ISLAMIC LAW OF CONFESSION: A COMPARISON WITH WESTERN AND INDIAN LAWS

FAIZAN MUSTAFA

One of the most important methods through which guilt of the accused is brought home is confession or admission of the guilt by the accused. A confession is an acknowledgement, in express words, by the accused in a criminal case, of the truth of the guilty fact charged or of some essential part of it.¹

Almost all legal systems attach great importance to this method of proof. Confession is admissible in evidence and there can be a conviction on the sole basis of it. Human experience shows that a person is not likely to say things against his own interests unless they were true.² No one will condemn himself and invite serious punishment including death. Except in cases of crimes when a person, for some reason, can take pride in having committed it, it is unusual for confessions to be made. It is in this background that voluntariness of confession becomes highly important.

The English Common law and Indian law relating to confession are well-defined and very well-known. In the following, pages an attempt will be made to discuss the lesser-known Islamic law and to present its comparative assessment with the Western and Indian law. Our study leads us to the conclusion that Islamic law is much more humane, just, mature and developed than its counterpart in Western law. The discussion of Islamic law is mainly based on the decisions given by the Prophet Muḥammad (peace be upon him).

CONFESSION UNDER ENGLISH COMMON LAW

Four distinct stages are perceptible in the history of the use of confession in the English Common law.³ In the earliest stage (going, for the present

purposes, no farther back than the times of the Tudors and the Stuarts), there is no restriction at all upon their reception. In the next stage, covering the second half of the eighteenth century, the matter begins to be considered, and it is recognised that some confessions should be rejected as untrustworthy. In the third stage, covering the nineteenth century, the principle of exclusion is developed, under certain influences, to an abnormal extent so that exclusion becomes the rule and admission the exception. In the last phase a reaction sets in here and there, but it represents the future rather than a present movement and little is accomplished in the way of changing the law or practice.⁴

Thus, for centuries under the Western law, confessions extracted by torture were freely received.⁵ The reports of trials, down, at least to the middle of seventeenth century, show the tribunal questioning the accused, and proceeding, without let or hindrance, upon whatever they could get from him by way of confession. The use of torture to extract confessions was common, and confessions so obtained were used evidently without scruples.⁶ Confession was itself regarded as conviction, in fact, the "highest conviction that can be made".⁷

But at present a confession is admissible in evidence only when it is made voluntarily, i.e. provided it was not made in consequence of a temporal inducement relating to the prosecution held out by a person in authority, or of any threat made by him. Furthermore, it is probably necessary that the confession should not come from a person with so unsound or unbalanced a mind that no attention ought to be paid to it.⁸

The legal burden of proving that a confession was voluntary rests on the prosecution.⁹

Anything suggesting that the outcome of a confession might have some beneficial result in connection with the prosecution will render it inadmissible. Some of the expressions which have been held to have this exclusionary effect are: "Tell me where the things are and I will be favourable to you."¹⁰ "If you don't tell me you may get yourself into trouble and it will be worse for you",¹¹ and "I want my money, if you give me that you may go to the devil".¹²

A threat of violence or, still more, the use of violence by a person in authority would plainly render a confession inadmissible, but confessions have been excluded when the menace was of a less brutal nature. A sailor's confession after the following discourse from his captain was held inadmissible: "That unfortunate watch has been found, and if you do not tell me who your partner was, I will commit you to prison as soon as we get to

Newcastle. You are a damned villain, and the gallows is painted in your face." After this it is hardly surprising that the words are, "If you don't tell me I will give you in charge of the police until you do tell me."¹³

Thus it is an accepted fact now that for many centuries confessions in England were extracted either by a promise of some favour or benefit or by torture. Voluntariness in confessions was nowhere evident.

INDIAN LAW

Confession as a word is nowhere defined in the Indian Evidence Act, 1872. In *Pakala Narayanswami v. Emperor*¹⁴ the Privy Council explained what confession is and what is not. In an oft-quoted passage, Lord Atkin said that the word "confession" as used in the Evidence Act cannot be construed as meaning a statement by an accused "suggesting the inference that he committed" the crime. A confession must admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not by itself a confession. A statement that contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which, if true, would negate the offence alleged to be confessed.¹⁵

A confession must thus admit expressly and unequivocally all the minimum facts that constitute the crime charged leaving no room for the calling in of any proof of any fact other than the facts proved.¹⁶

Scheme of the Evidence Act

The substantive law of confession is contained in Ss. 24 to 30 of the Evidence Act and the adjective law, in Ss. 164, 281 and 463 of the Code of Criminal Procedure, 1973.

According to Section 24 a confession by an accused is irrelevant if it is caused by (a) inducement; (b) threat; or (c) promise. The inducement, threat, or promise should have (i) reference to the charge against the accused; (ii) proceeded from a person in authority; and (iii) sufficiently give the accused person reasonable grounds for supposing that by making a confession he would gain any advantage or avoid an evil of a temporal nature in reference to the proceedings against him.

A confession is relevant in the following cases:

1. If it is not made to a police officer (S. 25).¹⁷
2. If it is made in the immediate presence of a Magistrate when the

- accused is in the custody of a police officer (S. 26).
3. If certain facts are deposed to as discovered in consequence of information received from an accused person in police custody (S. 27).¹⁸
 4. If it is made after the impression caused by any such inducement, threat or promise has been fully removed (S. 28).

Section 29 provides that if a confession is otherwise relevant it does not become inadmissible in evidence just because it was made under a promise of secrecy, or in consequence of a deception practised on the accused or when he was drunk etc. Then Section 30 lays down that a confession can be used not only against the person who made it but also against accomplices.

Section 164 and 281 of the Criminal Procedure Code, 1973 (Ss. 164 and 364, Cr.P.C. 1898) provide that a Magistrate must warn an accused that he need not make a confession and that any such statement made by him can be used against him; if the accused is even then prepared to make a statement, the Magistrate must question him in order to assure himself that the statement is voluntary. A violation of these requirements has been held to automatically render such confession inadmissible in evidence.¹⁹ And also when an accused is brought before the Magistrate, he must be isolated from police influence and allowed adequate time to decide whether he should make a confession at all.²⁰

Judicial Responses

Indian courts have done a commendable job in protecting the rights of the accused and have always laid much emphasis on voluntariness of confession. Deliberate and voluntary confessions of guilt if clearly proved, are among the most effectual proofs in law.²¹ The court should not start with the presumption that extra-judicial confession is a weak type of evidence.²² The court should apply two tests. Is it voluntary? Is it true?²³ If these two conditions are met there can be conviction on the sole basis of confession.²⁴ A confession must either admit in terms the offence or at any rate substantially all facts that constitute the offence.²⁵

Section 30 which provides that a confession operates not only against its maker but also against other accused persons who are tried jointly is a clear departure from the English and Roman law. Hence this provision is criticised by the courts. Section 30 is characterised as introducing a “rather dangerous element” by J. Grover,²⁶ and “as a very exceptional and extraordinary provision” by J. Reilly.²⁷ Similarly Supreme Court has also held that confession of a co-accused is not substantive evidence against the other accused.²⁸

Though there has been some controversy about retracted confession but Supreme Court has ruled that there can be a conviction on basis of a retracted confession and it is not necessary that it must be supported by independent reliable evidence corroborating it in material particulars.²⁹ Not only this, a retracted confession can also be used against the co-accused. In *Ram Parkash v. State of Punjab*,³⁰ Supreme Court made following observation.

The Evidence Act nowhere provides that if a confession is retracted it can't be taken into consideration against the co-accused, or the confession accused, there is nothing to prevent the court from taking a retracted confession into consideration not only against its maker but also against the other accused. However, although retracted confession may be taken into consideration against the co-accused, its value is extremely weak and there can be no conviction without the fullest and strongest corroboration or material particulars. . . .

ISLAMIC LAW OF CONFESSION

A brief discussion of general principles of Islamic law of evidence applicable to criminal law would not be out of place and would be helpful in proper understanding of law relating to confessions.

Scheme of Islamic Law of Evidence³¹

Under Islamic law, following are the three types of evidence in order of preference:

- | | |
|--------------------|-----------------------------------|
| (a) <i>Tawātur</i> | Full corroboration. |
| (b) <i>Aḥād</i> | Testimony of a single individual. |
| (c) <i>Iqrār</i> | Admission, including confession. |

At the outset it is very clear that as opposed to the Western law, confession is not attached much importance in bringing home the guilt of the accused.

It appears that the Islamic law is a definite improvement on the Western and Indian laws because, as opposed to them, the Islamic law has varied rules of evidence for various offences.³²

Under the Islamic law, all duties and obligations are divided into two categories: one is known as *ḥuqūq Allāh* (rights of God), and the other is *ḥuqūq al-nās* or *ḥuqūq al-'ibād* (rights of human beings). As used in the

Islamic legal sense, the word *ḥadd* (plural, *ḥudūd*) means a punishment which has been prescribed by God in the revealed texts of the Qur'ān or the *Sunnah*, the application of which is the right of God.³³

The six offences generally recognised as offences of *ḥudūd* are the drinking of alcohol, theft, armed robbery, illicit sexual relations, slanderous accusation of unchastity, and apostasy. A punishment which is classified as *ḥuqūq Allāh* embodies three main features. The first is that such a punishment is prescribed in the public interest. The second is that it can not be lightened nor made more severe. The third is that after conviction it may not be pardoned either by the judge or by the executive or by the victim of the offence.³⁴ Apart from retaliation or *qiṣās* which is the punishment for homicide and injury, in the Islamic penal system all other offences are punishable by discretionary punishments known as *ta'zīr*.³⁵ As *ḥudūd* offences involve capital punishment,³⁶ every care is taken to prove the case beyond any shadow of doubt and thus every effort is made to give maximum protection to the accused.³⁷ Thus the relationship between the infliction of punishment and the evidence required to prove crimes is a clear one. Where the judge is not absolutely certain of the guilt of the accused, the punishment may not be inflicted. Methods of proof in the penal system reflect the legislator's desire to widen or limit the number of cases in which a particular punishment may or may not be inflicted.³⁸ The Islamic law clearly favours a restrictive application of the criminal law in almost the same fashion as is evident under the modern Western legal systems³⁹ and thus starts with the presumption of innocence and *bona fides* of the accused.

Emphasis on Voluntariness

For centuries, the greatest problem in the Western law of confession has been the extraction of confession by torture. Torture was a common practice in Europe. It was, to some extent, one of the fundamental institutions of the old criminal procedure.⁴⁰ The judge must strive to obtain the confession by every means, and to obtain it, seize whatever method, effective albeit cruel, was open to him.⁴¹

As opposed to this, Islamic law in the seventh century itself was absolutely against torture being employed for the purposes of extracting confession. Not a single instance can be cited from the life of the Prophet (peace be upon him) where torture was used to obtain a confession. Various devices were used by the Prophet (peace be upon him) to ascertain voluntariness of a confession.

Detailed Confession

Even when a man had voluntarily confessed before the Prophet (peace be upon him), he used to emphasise detailed admission of guilt and confession was admitted in evidence only when it satisfied every ingredient of an offence while even the present-day Indian and Western laws require only substantive admission of all the facts which constitute the offence.⁴² The emphasis on detailed confession is clearly aimed at ascertaining the voluntariness of the confession.

Confession to be Made Four Times

As has been pointed out above, the Islamic law has varied rules of evidence for various offences, it also has different rules in case of confessions as well. Thus in case of adultery and other sexual offences where four witnesses are required, a confession of such an offence should also be made four times. The four times confession was probably the best mode of achieving the desired voluntariness. As a matter of fact no other legal system known lays so much emphasis on the element of voluntariness. For instance

A man from the tribe of Aslam came to the Prophet (peace be upon him) and confessed that he had committed on illegal sexual intercourse. The Prophet (peace be upon him) turned his face away from him till the man bore witness against himself four times.”⁴³ In another decision where the accused confessed twice, he was not punished:

Mā'iz ibn Mālik came to the Prophet (peace be upon him) and admitted fornication twice. But he drove him away. He then came and admitted fornication twice. He (the Prophet) said: “You have testified to yourself four times, take him away and stone him to death.”⁴⁴

Specific Confession

For centuries under Western law, even on the basis of vague and wide confessions, accused were convicted and punished. Due to ethical and moral influence of canon and Roman law from sixteenth century onwards, Europeans started laying emphasis on specific admission of guilt by the accused. But centuries before that, the Islamic law had made it a condition pre-requisite for the admission of confession and punishment. Thus it is reported.

A man came and said, “O the Messenger of Allah! I have committed a legally punishable sin, please inflict the legal punishment on me.”

The Prophet (peace be upon him) did not ask him about what he had done. The time for the prayer became due and the man offered prayer along with the Prophet (peace be upon him) and when the Prophet (peace be upon him) had finished his prayer, the man again got up and said, "O the Messenger of Allah! I have committed a legally punishable sin; please inflict the punishment on me according to Allah's laws." The Prophet (peace be upon him) said, "Haven't you prayed with us!" He said, "Yes". The Prophet (peace be upon him) said, "Allah has forgiven your sin."⁴⁵

Thus if a person confesses that he has committed a sin which is punishable with one of the legal punishments but does not specify what offence it has been, the judge can't screen it for him because the law is that confession must be specific and not vague. This principle of Islamic law is similar to Western notion of legality of criminal law.⁴⁶ The essence of the principle of legality is the limitation on penalization by the State's officials, effected by the prescription and application of specific rules.⁴⁷ In Europe, this principle is called *nulla poena sine lege*, no person may be punished except in pursuance of a statute which prescribes a penalty. Employed narrowly as *nullum crimen sine lege*, the principle means that no conduct may be held criminal unless it is precisely described in a penal law.⁴⁸ The rule of specific confession is a vital step to restrict criminal sanctions.

Sanity of the Accused to be Ascertained

In most of the cases even after the accused had confessed voluntarily and that too four times, the Prophet (peace be upon him) used to ask his Companions "Is he mad?" It is thus reported:

An accused came to the Prophet (peace be upon him) and confessed his crime and he (the Prophet) turned away from him. He asked his people: "Is he mad?" They replied: "There is no defect in him."⁴⁹ This question of the Prophet appears to have served two vital purposes, First, it satisfied the requirement of voluntariness and was a self-designed and effective mode of ascertaining that no torture, inducement, threat or promise etc. have been employed and secondly it tried to achieve the desired effect of legality. Under the whole of Western law, once the accused has made a confession it is the end of the matter. As noted above, for a very long period of time, confession itself was regarded as conviction.⁵⁰

Confession Operates only Against its Maker

Another significant feature of Islamic law is that confession operates only

against the person who confesses and not against anybody else while under Indian law, even an accomplice can also be convicted and punished on the basis of a confession by a co-accused. For instance:

A man came to the Prophet (peace be upon him) and made acknowledgement before him that he had committed fornication with a woman whom he named. The Apostle of Allah (peace be upon him) sent someone to the woman, he asked her about it. She denied that, she had committed fornication. So he gave him the prescribed punishment of lashes and left her.⁵¹

This clearly shows that Islamic law is more favourable and humane to the accused than that of its counterpart in the Indian Evidence Act.

Retraction even During Infliction of Punishment

Under the Western and Indian laws a confession can only be retracted in the appellate court but not afterwards and there can be conviction on the basis of retracted confession not only of its maker but also of his accomplices. Islamic law is a certain improvement on these legal systems as it protects accused in much greater way than that of its counterparts under the latter systems of law because under it an accused has a right to retract his confession even when punishment is being inflicted and thus escape liability. For instance, an accused came and confessed his crime and after all the formalities discussed above had been completed, the Prophet (peace be upon him) gave order that he should be stoned to death.

He was then taken out to the Harrah⁵² and while he was being stoned he felt the effect of the stoning and could not bear it, and fled. But 'Abd Allah ibn Unays encountered him. When those, who had been stoning him could not catch up with him they threw the bone of a camel's foreleg at him, which hit him and killed him. They then went to the Prophet (peace be upon him) and reported it to him. He said why had they not left him.⁵³

Majority of Muslim jurists also agrees that on retraction of confession even during carrying out of the sentence, accused should be left free. Thus Abū Ḥanīfah, al-Shāfi'ī and Aḥmad ibn Ḥanbal maintain that if the criminal runs away while he is being punished, he should be left alone. If he plainly withdraws from his confession, he will not be punished. But if he does not withdraw, he will be punished. According to Mālik, he will not be left if he runs away. According to another statement of Malik, if he is seized immediately he will be punished, but not later on.⁵⁴

Delayed Infliction of Punishment

In the interest of society and those who can never be blamed in any way for the commission of crime, Islamic law favours a delayed execution of sentence. Thus it is reported—

‘Abd Allāh ibn Abī Mulaykah reported that a woman came to the Apostle of Allah (peace be upon him) and told him. I have committed adultery, and she was pregnant. The Apostle of Allah (peace be upon him) asked her to come after delivery. When she delivered, she came. He said: “Go and come when your child is weaned.” She came after weaning. The Apostle of Allah (peace be upon him) said: “Go and deliver your child to the care of someone.” She did so and came (back), and she was stoned.”⁵⁵

Indian Law also makes a similar provision and death penalty can be executed only after the delivery of the child.⁵⁶ But Islamic law does not punish accused just after the delivery but also takes care of first few years of newly born and thus by all measurements is a better system of law. The Repeated coming of the accused to receive punishment also proves voluntariness of confession.

CONCLUSION:

Thus it can safely be said by way of conclusion that Islamic law of confession, when compared with the Common law of England, and that of Indian Law, is certainly more humane, just, fair and much more mature. While for centuries, confessions in the West were extracted by employing torture and other harsh methods, Islamic law, from the very beginning, laid a great deal of emphasis on voluntariness of confessions through many devices such as detailed and specific confession, four time repetition of confession and questioning as to the sanity of its maker. The principle of making the confession operative only against the accused and its retraction even during the infliction of punishment are a step forward in comparison to Western law. Even the Western emphasis on the principle of legality appears to be clearly established and emphasised in Islamic law much before Europeans started attaching importance to it. It has also been proved by a survey of the application of Islamic law conducted by Anderson in the British Colonial Territories in Africa and in Colony and Protectorate of Aden. Anderson clearly writes that most of the *Qādīs* contended themselves that capital punishments can never be inflicted due to stringent rules of evidence and law relating to confession.⁵⁷

NOTES AND REFERENCES

1. *Wigmore on Evidence*, vol. III, third ed., p. 238.
2. *Phispon, Law of Evidence*, sixth ed., p. 629.
3. *Wigmore on Evidence*, p. 232.
4. *Ibid.*
5. See Jardine, *Use of Torture in the Criminal Law of England*; *Phispon Law of Evidence*, p. 242.
6. Lawrence A. Lowell, "The Judicial use of Torture", 11 *Harvard Law Reports*, p. 239.
7. *Wigmore on Evidence*, p. 232.
8. Rupert Cross, *Evidence*, Second ed. (1963), p. 445; R.V. Baitry (1852), 2 Den. 430; R.V. Jarvis (1867), L.R. 1 C.C.R. 96.
9. R.V. Thompson (1893), 2 Q.B. 12.
10. R.V. Thompson (1783), 1 Leach 291.
11. R.V. Colèy (1868), 10 Cox C.C. 536.
12. R.V. Jones (1809), Russ & Ry. 152.
13. (1831), 4 C & P. 570.
14. AIR 1939 P.C. 47.
15. *Ibid.* p. 52; Also see J. F. Stephen, *A Digest of the Evidence* (12th ed), 1946.
16. Ram Jethmalain, "Confession and Criminal Trials", *Lex Et Juris*, vol. I, no. 8, p. 11; *Queen Empress v. Babu Lal* (1884), 6 All 509; *Queen Empress v. Nana*, (1889) 14 Bom 260. FB.
17. Law Commission of India has opposed this provision and has suggested that certain measure of confidence be reposed in independent India's police. See Law Commission of India Report No. 14, "Reforms of Judicial Administration" (1958), pp. 749–50.
18. For the constitutionality of Section 27, see *State of Bombay v. Kathikalu Oghad*, AIR 1961 SC 1808; Also see Walli Hyder, "Developments in the law of confessions—some Trends", 1991 CRI L.J. (Journal Section), p. 81.
19. *M. Gowda v. State*, 1957 CRI L.J. 521 (Mysore).
20. *Sarwan Singh v. State of Punjab*, AIR 1957 SC 637; *Nathu v. State of U.P.*, AIR 1956 SC. 56; *Aher Raja Khima v. State of Saurashtra*, AIR 1956 SC 217; *Findal v. State*, AIR 1954 (H.P.) 11; *State v. Thingnam Dhabalo Singh*, AIR 1955 (Manipur) 1.
21. *Emperor v. Narayan*, (1907) 9 Bom LR 789, 801.
22. *Narayan Singh v. State of M.P.*, AIR 1985 SC 1678.
23. *Shankaria v. State of Rajasthan*, AIR 1978 SC 1278; Also see *State of Punjab v. Bhajan Singh*, AIR 1975 SC 258.
24. *Jagta v. State of Haryana*, AIR 1974 SC 1545; *Maghar Singh v. State of Punjab*, AIR 1975 SC 1320; *Modi Ganga v. State of Orissa*, AIR 1981 SC 1165; *State of U.P. v. M.K. Anthony* AIR 1985 SC. 48.
25. *Hanumant v. State of M.P.*, AIR 1952 SC 343; *Palvinder Kaur v. State of Punjab*, AIR 1952 SC. 354.
26. *R. v. Jaffar Ali*, 29 WR 57 Cr.
27. *Periyaswami v. R*, 54 Mad. 75.
28. *Nathu v. State of U.P.*, AIR 1956 SC 96.
29. *Subramania Goundan v. State of Madras*, (1958) SCR 428; *Pyare Lal v. State of Rajasthan*, AIR 1963 SC 1094; *Abdul Ghani v. State of U.P.*, AIR 1973 SC 264. For a contrary view see *Puran v. State of Punjab* (5), AIR 1953 SC 459.
30. AIR 1959 SC 1.
31. See, *Hedaya*, translated by Charles Hamilton (1982), pp. 353–372.
32. Indian Evidence Act, 1872 is the general law applicable to all cases, Civil and Criminal.
33. Qarāfi, *al-Furuq*, vol. I, pp. 140–42.
34. Kāsānī, *Badāi' al-Sandī'*, vol. VII, pp. 33–56; The unchangeability of *hadd* punishment is based on the Qur'ānic verse, "These are the limits of Allah. Do not transgress them" (2: 299); Also see Ibn Taymiyyah, *al-Siyasah al-Shar'iyyah*, pp. 69–70.
35. See M.S. El-Awa, *Punishment in Islamic Law: A Comparative Study*, 1st ed. (1983).

36. Under the Indian Law, the number of capital offences is much larger and for centuries English law had more than two hundred capital offences.
37. Indian Law also seeks to achieve this object through many other devices such as these offences are to be tried by the superior judicial officers, Ss. 225–237 Cr. P.C. 1973, death penalty can be awarded only by the Supreme Court, High Court, Sessions Judge or Additional Sessions judge (S. 28, Cr. P.C. 1973); special reasons are to be recorded for awarding death penalty (S. 354 (3), Cr. PC 1973); death penalty can't be executed unless it is confirmed by the High Court (S. 366, Cr. PC 1973); death penalty is to be awarded only in "rarest of the rare cases", *Bachan Singh v. State of Punjab* (1980) 2 SC (684).
38. Joseph Schach, *An Introduction to Islamic Law* (1982) p. 176.
39. See Jerome Hall, *General Principles of Criminal Law*, second ed. p. 28.
40. A. Esmein, *A History of Continental Criminal Procedure with Special Reference to France* (1986), translated by John Simpson, p. 9.
41. *Ibid.* p. 113.
42. *Pakalanarain Swami v. Emperor*, AIR 1939 P.C. 47.
43. Bukhārī, *Ṣaḥīḥ*, Kitāb al-Ṭalāq, Bāb al-Ṭalāq fi'l Aghlāq wa'l-Kurh wa'l-Sakrān wa'l-Majnūn wa Amri Himā wa'l-Ghalāṭi wa'l-Nisyān fi'l-Ṭalāq wa'l-Shirk wa Ghayruhima. *Ḥadīth* No. 4969 (497). Many instance are reported in the collections of *Ḥadīths*, from the life of the Prophet (peace be upon him) from which the requirement for making confession for times is proved. All schools of jurisprudence have a consensus on this point.
44. Abū Dā'ūd, *Sunan*, Kitāb al-Ḥudūd, Bāb Rajm Mā'iz ibn Mālik, *Ḥadīth* No. 4426 (3723).
45. Bukhārī, *Ṣaḥīḥ*, Kitāb al-Mahāribīn min ahl al-Kufr wa'l riddah. Bab Idha Aqarra bi'l Ḥad wa lam yubayyin, Hal li'l-Imam an yastura Alayhi.
46. Hall, *Criminal Law*, chapter II.
47. PCIJ, Series A/B, No. 65 p. 56 (Advisory opinion, 1935).
48. Schacht, *Islamic Law*.
49. Abū Dā'ūd, *Sunan*, Kitāb al-Ḥudūd, Bāb Rajm Mā'iz ibn Malik. *Ḥadīth* 4421 (3718).
50. *Wigmore on Evidence*, p. 232.
51. Abū Dā'ūd, *Sunan*, Kitāb al-Ḥudūd, Bāb adha aqarra al-Rajal bi'l Zinā' wa lam Tuqir al-Mar'ah.
52. A place with black stones near Madinah.
53. Abū Dā'ūd, *Sunan*, Kitāb al-Ḥudūd, Bāb Rajam Mā'iz ibn Malik. *Ḥadīth* No. 3716 (4419).
54. *Sunan Abu Dawūd*. English translation by Ahmad Hasan (Lahore: Sh. Muhammad Ashraf, 1984), vol. 3, p. 1233, foot-note 3853.
55. *Mu'atta Imām Mālik*, translated by M. Rahimuddin (Lahore: Sh. Muhammad Ashraf, 1980), p. 350.
56. Section 416 of Code of Criminal Procedure, 1973 provides, "If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed. . . ."
57. J.N.D. Anderson, *Islamic Law in Africa* (1970), p. 19.

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