A comparative study of criminal evidence in Iran and Egypt law

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**Abstract**

Crime is an action which disrupts the principle of society. According to this case and for the purpose of punishing convicted, some principles like procedural and substantive rules have been formed. One of the most important and at the same time the most controversial procedural retribution law issue, is criminal evidence issue. Because of some ambiguity reasons in quiddity of evidence rules and regulation which overcome them, it is necessary to focus on surveying of other countries law retribution. The result of this survey is that legal basis including confession, testimony and sworn are similar to laws of Iran and Egypt because both systems use legal resources in general and the major difference in both of these systems is in detail of them. In intellectual evidences like judge and new evidences like electronic and experimental it has been observed fundamental differences, which even it can be considered two different and distinct systems.

**Keywords:** confession, testimony, sworn, judge, electronic reasons, Egypt laws

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**Introduction**

In the society that we live because human beings are avaricious and want to enjoy their life and the sense of being selfish and egoism make some differences and contentions in human society and such contentions that occur among people create a sense that they get they need equity and justice.

Getting familiar with judgments and absolutism of different rules during past time approach us to the perfect system of justice in Islam. The order of divine to justice, judging of prophet and using divine judgment which is alleged by the claimant, and defendant must swear, application of this method in the time of Islam rule establishment in Medina and actions of Imam Ali in obvious way when rule established, and his statesmanship, are all expressing perfectness of Islam judgment system.

Of course it doesn't mean that we should be apathetic to rules of other countries and we according to cases like dynamic law and being jurisprudence to arising issues and considering two time and place elements make innovations in our jurisprudence which are basis of our rules in this case and studying of other countries rules in this issue will help us. In this article we will try to study evidence on Iran and Egypt laws based on four major classifications which are confession, testimony, sworn and judgment. And we chose these criteria because of its oldness and traditional dimensions and although evidences like swore or new evidences like electronic evidence and document evidence are disputable, but Islam set the basis of argument classification according to four reasons which mentioned and we will study comparatively other evidences inside it.

Evidences are collection of reasons and evidence that judge get satisfy conscience by paying attention to the reasons that can be given the defendant or its original position and what that satisfy conscience in proof of law is called reason and importance of evidence especially in action is valuable, because law courts only accept laws that individual can prove its existence.

Reason explanation: reason in vocabulary means guidance and sign and in laws expression it refer to any kind of tools or confirmed issue which legally is used in law courts that both of the parties by witnesses, records, and other documents and etc. make believe in the opinion of judge that he can infer. In Article 353 of civil procedure code states that "reason is that parties invoke for prove or defend of quarrel".

This explanation relates to the quarrel and refers to code of civil procedure, but explanation which Britannica Encyclopedia presents about reason is almost further. There "reason" is what comes to someone mind.
that with these cases he could judge about matter. Occurrences in these cases in this definition is like examining scene or things that are trace from crime or is proof, testimony or evidence or expert or events and consequences. Reason in its limited meaning in Britain laws is testimony or documents from events that in law judgment is presented for accepting and rejecting cases and law court research about it. According to this definition testimony is one of the reasons.

In Egypt rules also reason is used for events and conformity which relates to quarrel. Some people believe that “reason is any kind of tool which prove presence or absence of something, or correctness or falsity of the alleged”. Because of these evidences are not limitative, and for this reason the code of criminal procedure just pay attention to some real aspect of that not all of them. Dr. Langroudi also said that everything that guides you in jurist opinion is reason. In code of criminal procedure term reason is a tool that by confession of individual or inner belief and faith of judge happen, and they need to research about crime or some testimonies about convict.

**Different types of prove a quarrel:**

Evidence is very important in demonstration and satisfaction of case and without these matters right is null, in civil code every kind of evidence is not valid, evidence is valid that has judicial and legal validity and different kinds of it is limited to cases that legislators have determined.

Evidences of quarrel in Article 1258 of civil code have been determined by confession, document, testimony, evidence, and swore, but in code of civil procedure in sixth section (Article 439 onwards) and seventh section (Article 444 onwards) from tenth unit they were added proceeding of examining crime spot and refer to expert. But in criminal justice systems every kind of tool that help judge to approach on truth, is used. Because of these penal evidences it isn’t recognized solely in criminal procedure laws. At the same time usually mentioned laws cited important penal evidences with certain formalities. Confession, testimony, judgment, sworn, examining crime spot, expert about it, documents and indications are the most important evidences that will be explained in expressing conditions and features of both Iran and Egypt codes.

**Confession:**

**The literal definition:**

Confession is infinitive from literal aspect and inference from word and different close meaning is presented in different cultures. Include, preservation an individual in place, deviation to the right, saying your words clearly, and firming something in its work.

The meaning of confession is determine owner of something and confirm it or confirm someone in his work. Of course individuals doubt about something, call it confession too.

**Terminology meaning:**

Islamic jurisprudence definition about confession as it was mentioned in civil code Article 1259 and most of the jurists used definition similar to it is:

"Confession is saying true words about someone else that these words are detriment to him-self."

Civil code of Egypt also in Article 408 according to mentioned definitions presented some definitions too: " European jurists also presented definition about confession like definition that Islamic jurists presented. Well-known French jurist, Savatiye, said definition about confession: " Confession is admission that an individual admit something that is legally against him.

**Types of confession:**

A) Written and oral confession, verbal and implicit:

In recognizing examples of confession, standard is norm and holy lawgiver dose not created other truth legally. According to this, norm admit certainty of confession which refers to it, whether it will be in term or verbal or implicit or written.

B) Hanging and proved confession:

Validity condition of confession is to be proved and not to suspension about something. If someone suspend his confession about an issue, this kind of confession is non-validity and from jurists and law opinion is null.

Legislators also in continuous of juristopinion in Article 1268 of civil code says that: "Hanging confession is not effective" but if someone says that appoint such a person testify your right in my obligation or if such a person said about my duty his saying are true, these kinds of sayings are not confession. Of course it should be focused that norm is along with criteria diagnosis.

C) Implicit and explicit confession:

Implicit confession is a kind of confession which is based on professed clause of justification in implied indication.
This kind of confession is from speech, and collection of words and phrases. In other side we have explicit confession, that is a kind of confession which means appearance of speech to listener and of course viewer present full meaning of confession and in terms being absolute claim and not to be any ambiguity and overview.

D) Initial confession and confession in answering to question and firmed confession to claim:
Initial confession means that confessor himself express without being any request from claimant and accept it during investigation about claim and perhaps in this confession without being any claim against confessor or even if a claim doesn't have any proof, confessor himself confess to his crime.

E) Simple, bound, and compound confession:
Simple confession means that confessor admit claimant claims without adding anything to it and also accept it like what is it. Bound confession means that confessor along with admitting his claims add some points to it which could change opinion of court of laws. For example, a person claims that he has a carpet in hands of someone else and wants it. Confessor admits this claim but add that this carpet was as a gift.

Compound confession means that confessor admits claims like how it is but after that express something that is detriment to other party, in fact it means that his confession was compound of one confession and one claim.

F) Total and partial confession:
Total confession means that confession overcome all claims, may be claimant or claim cases have elements and confessor confess to all claims. For example complainant claims that libelee seized his property and farming there, destroyed his building and in addition he is owe to him because of one year residency there and libelee admit and confess it.

Partial confession is against of total confession and it means that libelee admit some parts of his complaints and confess it and his confession is limited to something that he confessed and addition confession don't included complainant claim.

G) Confession in court of law and out of court:
All mentioned confessions maybe discussed in or out of court. According to Article 366 of civil procedure law, confession during discussion in court is a kind of confession that one of the parties in official judicial meetings happen. And judicial is court and magistrate.

Types of confession in Egypt rules:
In Egypt rules confession is divided into two explicit and implicit confession, which explicit confession is complete confession but implicit confession that can be gained in some cases is accounted as a non-fully confession. And from other aspect confession has been divided into judicial and non-judicial: judicial confession means that confesses has been told in the court and non-judicial means it has been held outside the court.

Non-judicial confess and confession is written or oral, if it is in a written form it is used like other documents but if it is oral it should be proved in court by eye witness.

Testimony:

Literal definition:
One of the evidences in prove of quarrel is testimony. Testimony in vocabulary: can mean present there. The god says that "If someone is present in Ramadan month he should be fast”

Or it means knowledge and because of this call the God as martyr that means a person who has knowledge about everything: martyrs are those who believe that the Jews and the Christians and Sabean and imprisoned, and idolaters, Allah will judge among them on the Day of Resurrection, Allah is aware of everything.

In religious testimony: is the definitive news to rights that is proved provided that issued by non-dominant.

The results of above opinions are that infinitive of testimony in vocabulary means presence, knowledge, see, and inform.

Literal meaning:
Testimony literally means that informing from occurrence of actions to one of the senses and if not, it means informing someone to right that is detriment and benefit of someone else(because in this position its confession not testimony) a person who is witness should be there in the past or in the time of testimony be there.

Dr. Seyyed HasanEmami says about testimony that:
"Testimony or proof is informing about something that is detriment to someone and benefit of someone else"
Dr. Katouziyan in introduction of law science said that: “Testimony or proof is expressing information that individual is inform about it directly”

**Testimony in Iran rules (past and present):**

In our current law, civil law, is as one of the most fundamental source of law in the country devoted his Article from 1306 to 1320 in witness, testified profile control and conditions of testimony, and also from Article 406 to 426 civil procedural law is devoted to imitation of testimony and presence in court of law and accepting or rejecting proof and recognizing identity of witness.

But in the past (Before the Revolution) it seems that civil code of Iran according to following and affection of French rule limited value of certification and only in the following cases it is valuable:

- Contracts and commitments to be similar or the price or value of it don't be more than 500 Rials. G.M in Article 1306 says that “Except in cases that the rule determined it, none of the contracts and commitments to be similar or their price to be more than 500 Rials cannot be proved by oral or written testimony but this provision cannot prevent the courts for further information and knowing truth attend to statements of witness.

- Comply or release from doing works is arising from contracts and commitments which means the goods similarly or the price of that not to be more than 500 Rials.

- Article 1307 G.M says “about contracts and commitments in the last article a person who claims that he has done his commitment or in some way is free from rules cannot prove his claim jut by testimony.

- To complete or make strong evidence if it will worth more than 500 Rials it looks likes that it is a document which mentions that the writer is says he is debt to someone else but types of debt and amount of that because of some reasons like non-legibility or tearing of paper. In such position creditor can cite to testifying witness to prove type or amount of credit.

- Subparagraph of Article 1312 G.M:
  - In the cases that adduced evidence be to complete or make strong evidences…
  - Subparagraph of Article 1312 G.M. 2.in the cases that because of events approach to document are impossible.

**View of Egypt rule about testimony:**

In Egypt rules it is legitimate and necessary that everyone testimony but there are some exceptions that will mention in the following:

- According to Article 198 quarrel of people who didn’t witness to this quarrel cannot be as testimony, being lack of capability because of age it means that being too older or too younger or because of specific deficiency in his body or intellectual deficiency or other cases like being sleepy or drunk.

- But in Article 200 of mentioned rule a person who doesn't have capability to speak (and is deaf) if he has ability to write and it is understandable by writing or by body language can express something, his testimony is acceptable.

- In Egypt rules witness should sworn before testimony, but testimony of people who their age is lower than 14, they don't sworn and just they express their testimonies.

- And their evidence is that the people who their age is lower and don't understand meaning of sworn their desire to say lie and affection on them is possible.

According to Article 25 of quarrel rule, convicts who have criminal penalties cannot be as witness.

**Oath:**

**Literal definition:**

Oath include all oaths and a person who oath. If murder takes place and parents of killed person accuse individuals and oath about it, these groups are called people that oath about something. Oath in vocabulary that was used in different meaning like: Create peace among enemies and Muslims, beauty, and a group of people who get their right by oath and testimony.

**Idiomatical definition:**

Oath (Qassameh) in jurists idiom is said to a kind of oaths that the party of claimant or relatives killer to prove killing or hitting claim or from defendant to reject claim with conditions that will be discussed in the following units, is done and also a group of people who oath are called Qasameh or a person who oaths.

Islamic law, count oath as one of the evidences to killing and hitting but does not presented any definition about it.

**Egypt views about rules of oath:**

- From rule view of some countries like Egypt, Syria, Lebanon, Iraq and Libya each of the combatants can ask from other parties to absolute oath (Hasmeh) of claimant. But civil code of Egypt has been predicted that if judge realized that a person who asks to oath wants to deceive can prevent from referring of oath.
Exactly because of view of civil rule Senhori believe that Hasmeh oath that is from anyone who has duty to prove claimant to other one and claimant is a person who has responsibility of proving claim and defendant is a person who wants to remove claims that was said about him. Therefore each of the combatants can refer his oath to anyone else.

**Ideal reasons in rights of Iran and Egypt:**

**A) Knowledge of judge:**

**Literal and idiomatic definition of knowledge:**

Knowledge from some view of people who is master in vocabularies is against ignorance and means know something and it means understanding truth of matter and in legal terms it talks about concept and meaning of knowledge, specially in the judge's knowledge, there are different kinds of interpretations and for expurgate the spot of dispute the purpose of jurists from knowledge in judicial matter should be determined not to be surprised in application of it.

**Literal and idiomatical definition of judge:**

Judge in vocabulary is originated from Qaza which means a person who is commander and decisive to quarrel among combatants but in norm jurist and ruler is a person who has the following features:

The judge should be knowledgeable, capable and confidant of doing justice and this confidant is accessible if this person be professional in intellectual perfection, knowledge about God's book and convention of innocents it means that they have ability to recognize abrogating and abrogated, solid and similar, general and specific, absolute and bound verses and about convention matter know successive sections of news, attached, bench, pulse, general, special, abrogating and abrogated. He should know consensus issues and different decree because consensus issues should be necessary to be done. And also know different matters but he should be aware that his interpretation agree with jurisprudence or not. He must be familiar with Arabic language and functions of that. Because in this language there are many words and phrases which the God words and convention of prophet and Imams are expressed like that language, he should avoid sins, lust and being greedy in gettingiousness, doing good deeds, being just in all jurisprudences that are among city jurists or other places which are close to him, and Mutigan (a person who is cautious) is that the judge not to be forgetful because if he is forgetful in such a way that trust devest from him we will say that admission of justice is wrong for him.

**Knowledge of judge in civil claims:**

It is proved that knowledge is a way not a matter and also proved that knowledge of judge in all claims like judicial and civil are valid. In a theory of legal department of the Judiciary of the Islamic Republic of Iran it was expressed: according to Article 105 of civil code: knowledge of judge isn't effective just in some cases of law rules and court of law should decree according to this.

**View of Egypt rules about knowledge of judge:**

From Egypt jurists point of view the source of knowledge of judge can be gained by recording and listening to witnesses and views of parties or according to personal knowledge of judge out of court. Now this knowledge is not counted as evidence in civil code of Egypt.

According to lawgiver of Egypt when judge have personal information about quarrel it is necessary to him in the time of judging don't refer to his information. And because of this, Article 125 of criminal investigation verdict that the judge should not use his past information that he judged before.

**Other evidences:**

**A) Research, examine the spot of crime and collect evidences:**

Other judicial affairs evidences are research and examine the spot of crime, which was mentioned in Articles 248 to 265 of civil procedure code and after Article 78 of criminal procedure. These cases which were interpreted as judge's remark, are strong and important evidences which can be as basis of judge knowledge.

Examining the crime spot is presence of court justice or representative in disputed spot (event) and represent what is objective and situation in dossier that is under consideration to assist decision making. Actually examining crime spot is a tool, that puts the event spot in court. And by directly seeing the crime spot it can be provided the data about event, as other evidences that exist in dossier or lonely. Maybe by examining crime spot the data sentencing to court and these cases be basis of sentencing. So, examining crime spot in Islamic rights is called Shiya or Estefaze (profusion), although from jurisprudence view profusion is not as equal as testimony.

Researching and examining crime spot and also probing evidences that exist in crime spot are strong and important evidences that can be set as basis of judge knowledge. For example maybe judge himself wants to go to killing or accident spot and get information about quality and quantity of event, or maybe he send an expert
that is reliable. If the judge himself does this job it is as examining the crime spot and if he is lack of profession or because of complexity of crime he gives this to other professional persons it is as ‘expert’.

Article 78 of civil code says that "examining crime spot is done by judge of court or judge of research or by order of them to retentive of ministry or professionals that are accepted by judge" and also report of justice archivists and agent of guide and driving about errors are a kind of imperator and they have the value of imperator too not the reason for the special meaning.

B) The opinion of experts in clarification and necessity of expert in justice:

The most important verifications for orders of justice are expertism. A person who has duty to expertsm is called expert or professional. In many cases because the judge cannot overcome the matter and get information to determine subject they need to refer to professional and in other case the professionals inform the judge in knowing truth

The cases of referring to expert: of course getting the opinion of expert is when that there is one special subject and the court cannot directly just refer to the written opinion, and at this time refer to expert and in documents that has been alleged of forgery, expert should adjust the spot and evidences then give his opinion, and should determine damage in car accident and also determine faulty.

According to 444 article of civil code “in the cases that referring to expert is necessary, the judge court can with its opinion or asking of people let the expert to examine.”

Expert in Egypt law:

The expert in Egypt law is similar to that meaning which presented in Iran law. Determination of testimony value is related to judge as the evaluation of testimony of witness is to him. Article 243 of cases and controversial law and 165 of Egypt law with abundant vote from Supreme Court accepted and presented this law for judge.

Therefore the court is not has to admit the opinion of professionals, it also can collect information about experts and professionals and then present its point of view. This is a result of the adoption of the principle of moral persuasion of judge in Egypt law.

C) Document:

Document in literal meaning is: “What we trust it”. And this document can be presented as written or spoken or even on stone figure form, pottery object, nickel metal, clothing and even electronic format like flash, floppy and CD.

In legal terms means "any written document that is supportable to as the fight or defend.” "Text is handwriting or sign that appears on a page, whether with conventional or non-conventional handwriting, like passwords and signs that just definite people can communicate with them. The page that handwriting appear on that does not make any difference to be a paper, cloth, wood, stone, brick or other materials like copied or printed or written with hand. Although the documents is written in a legal acts like contracts and unilateral obligations of such sale, lease, marriage, divorce and annulment, it can also be written in economical and legal events. Anyway such events are acceptable as document that contain signature and fingerprint which shows the document attributed to him.

Anyway documents which have above conditions specially in physical punishment and deterrence of crimes if the judge be sure about subject by document, these documents will be evidences to prove the crime.

D) Telephone conversation, film and tapes:

Telephone conversation, movies and photos and tapes, home searches and wiretapping telephone conversations, to be sure about crime encounter with limitations. And it should be pointed that these acts which the judge selects them must be commensurate with the dignity of the judiciary. Controlling telephone or internet or cell phone of the individuals with respect of the law contained in Article 104 (code of criminal procedure is possible in Iran's law.

E) Electronic evidence:

The definition of electronic evidence:

Every kind of electronic data, hardware or software that can give valuable data in order to prove claim, defense, crime detection or legal reasoning, account as electronic reason. This kind of information that may not be available in paper document, can play an important role in the process of prosecution or litigation. And with the development of electronic technologies, especially information and communication technologies are counted as one of the most important tools in getting legal information.
The importance of electronic evidence:
With the increasing use of technology in the field of information management and use of the computerized system of records instead of paper, computer systems of valuable information is created that discovering and invoking of them is important, as almost all developed countries will work in the courts for decades. The matter of discovering electronic evidence is also called discovering electronic media. In different latest dossiers of developed countries in many cases like sex, publishing unauthorized, fraudulent, the relationship of the victim and the accused in the murder cases deliberately, prove theft, trade secrets, and discover what reason and evidence of other criminal acts, etc. used electronic evidences. There is so much information that is appeared in electronic evidences but it cannot be found anywhere. There are texts that were not printed or some important electronic evidences that both parties are unaware of existence or storage of it. so electronic evidences are important evidences that guide the judge to overcome the matter of it.

Result:
There are similarities between two legal evidences of Iran and Egypt. Legal evidences are like confession, testimony and oath. At the same time there are some differences between them that is apparent in their detail. In spiritual evidences that is knowledge of the judge and in modern evidences like electronic evidences and expertism among them, there are major differences that it can be called as two separate systems. The basis of this matter in Egypt law is getting from activism thoughts law of French. While the idea of spiritual Criminal Justice Systems reasons followed activism and in all spiritual reasons is mentioned about it apparently.

REFERENCES