

Components of Valid Interrogation Techniques under Islamic Law

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ABSTRACT

Valid interrogation of the accused is an art or skill in today’s modern world. The law and techniques of interrogation varies in the developed and developing world. Similarly, the Islamic law is not silent about the techniques of valid interrogation. There are specific rules and procedures for the interrogation of an accused either a criminal, an enemy, a spy or a war prisoner. This paper gives a detailed analysis about the principles and procedures of a valid interrogation process in Islam and its computability with the International Human Rights standards of interrogations. The paper argue that understanding the psychic-analytical niceties of interrogation helps an investigator to reach the truth. The paper finds that Islamic law gives full protection and safeguard to the rights of persons under custody and restrict the authorities to follow free and fair interrogation for ensuring justice. In this regard Islam presents a balanced view of the rights of the persons under custody and the executives exercise of legitimate force for interrogation. Islam strongly forbids torture and other inhuman ways of interrogation.

Keywords: *Political Islam, Law, Shari‘ah, Justice, Trial, Judiciary and Human Rights*

1. Introduction

This paper focuses on the axis of interrogation as allowed, practiced and rather prescribed by Islamic Law. There also exists a line of thinking in International Human Rights regime about the ‘Do’s and ‘Do Not’s of interrogation. Such pieces of international advice on the subject, whether sternly followed or not is a separate debate and may not be placed in the premise of this paper. Interrogation has doctrinal significance. The meaning extended by interrogation has a legal affinity with the use of all effort to extract truth from the accused criminal. What this paper claims to explore is the stance of Islamic Law on interrogation and its compatibility with International Human Rights standards of interrogation. The paper invests considerable efforts in reaching to questions on interrogations as practiced across the globe.¹ Understanding the psychic-analytical niceties of interrogation helps an investigator to reach the truth. This is a good strategy and beneficial to a major extent. The problem starts only when such process is motivated by fear and coercion on the part of the suspect. Interrogation rights for this paper refer to the pre and during trial rights of a suspect. The paper looks to the legal status of such actions that are done under duress or influence. There can be no larger legal catastrophe if interrogation is reduced to a merely stubborn attempt or an arduous campaign directed towards the already designed goals from a weak and abused convict.

2. Research Questions and Approach

The paper is a well thought attempt to establish the attending stance of Islam for the guidance of all active actors in interrogation. The paper is a meaningful consultation of Islamic Law on interrogation and establishing its compatibility with International Human Rights Law. The paper focuses on the Islamic Version of Interrogation. It is a matter of common understanding that the quest for justice in interrogation is juxtaposed by the introduction of force in the process. This paper

asks four important questions: I). Has Interrogation been an institutionalized component of Islamic Criminal Justice system? If yes, II). What then is the scientific procedure of Interrogation in Islam? III). How the Islamic practices on Interrogation can be separated from the present day “cruel, inhuman and degrading treatment’ interpretation of Torture under modern conventions? And; IV). What are the human rights standards of interrogation in Modern Western Law? Because among internationally recognized set of rights, the most prominent is the right of accused to consult a council during interrogation.²

These questions have been investigated through a critical analysis of secondary data. For this paper qualitative analysis has been used as a methodology to conceptualize Islamic ingredients of interrogation that displays human rights protection. For this purpose, the published materials, scholarly articles and reports were reviewed.

3. Islamic Law and Interrogation

Law in classical Islamic history is the revealed will of God,³ a divinely ordained set of precepts that controls all aspects of a Muslim life.⁴ Human Rights have received complex and controversial acceptance in Islamic World.⁵ In vast number of Muslim states, when invaded by colonial rule, the Sharī‘ah Law was replaced by Western Principles of Jurisprudence and Criminal Justice System. The British ruled the Indian Sub-continent; however, there was an exception till 1861 where the Islamic Criminal Law remained in force with slight influences entered by Western Penal Law.⁶ Islam has certain well defined social codes, which according to Shah Wali Ullah is very dynamic and subject to change.

- i. The Arabs had been divided into tribes before and during the advent of Islam. They had no settled constitution and laws. If the offender would be belonging to a powerful family, his tribe and the family often forbade to surrender him to the interrogation or any legal machinery. Torture was

inflicted on weak and slaves with no recognized rights for eliciting information. Oaths were administered by the accused to prove his innocence. After the death of the Holy Prophet (S.A.W), the task of spiritual and worldly upliftment of the Arabs devolved on the Companions (Saḥabah). The companions had to guide themselves through reason in the absence of any clear instructions from Quran and Sunnah.⁷ Classical doctrine recognizes three important law enforcing agencies in Islam. First and foremost is the Qaḍi (or Qaḍi) i.e., the Judge. The role of Qadi was passive because he could not investigate the case. In criminal cases, the executive and officers in-charge of the public such as police officials and the military commanders had the authority to take and decide a case. During the thirteenth century, the suspected perpetrator had to be handed over to the police for investigation. The Chief of Police (Saḥib ul Shurṭah) and the Market Inspector (Saḥib ul Suq) had to investigate the crime.⁸ There existed multiple versions on subjecting a suspect to torture in the Sunni Muslim discourses. In the early centuries of Islam, the prevalent opinion among the Islamic jurists had been that beatings are forbidden. The supporters of this view include Ibn Ḥazm of the Zāhiri School of Law and al Ghazāli of the Shāfi School of Law. The second view includes that beating is allowed for a suspect who is habitual offender. In this case, a certain quantum of circumstantial evidence and the suspect's reputation allows a competent authority to exercise the torture. The influential Ḥanbali jurist Ibn Taimiyya was the chief proponent of this view and his disciple Ibn Qayyim (d 1351) adopted and adhered to it. Ibn Qayyim's formulation was in turn copied by the Maliki jurist Ibn Farḥun (d 1396) and the Ḥanafi jurist al-Ṭarābulusi. According to a third view, investigative beatings are forbidden for a Qadi or a Judge but are allowed for the executive authorities of the state. The foremost holder of this view was the Shaf'i jurist al

Māwardi (d 1058), most probably Islam's most influential political theorist. He holds that the rulers and their agents were authorized to flog suspects to obtain confessions in accordance to the strength of the accusation (Mawā'ūat al-tuhmah).

4. Ingredients under Islamic Law

Self-incrimination, confession and information collection are three important elements of any purposeful interrogation. It also applies interrogation under Islam.⁹ However, the credibility of any action that is the result of coercion is looked with doubt in Islam.¹⁰ There exists a greater cleavage between those who welcome Western achievements keeping intact their indigenous Islamic identity and those who clearly oppose them. Interrogation is more a social and not a secluded reality. It is becoming a legal specialty, therefore, to be taken very sensitively. While deciding interrogation one should not jump out of the religious container. It is a well thought out statement that interrogation supplies important information on what is well. Much more intense and far complex is the rhetoric of interrogation.

One thing however is clear and that is Islam's attitude towards the admissibility of actions. Be it religious observances or day to day transactions, Islam advocates free will. Islam has a clear confession paradigm, which excludes the statements and information given under threat or force from acceptability and reliability in legal proceedings. It is important to understand the two possible¹¹ kinds of coercion under Islamic Law. The first consists of destroying a man's life or limb called in the language of Arab writers, "constraining" (Maljiūn) and the second kind is caused by imprisoning, confining or beating a man called non-constraining (ghair maljin). Both the forms deprive a man from exercising a free consent.¹² Interrogative torture is a recognized and the mostly debated category of torture standing apart from its other counterpart's namely punitive torture, judicial torture, sedative torture, deterrent torture and terroristic torture. Exchanging information

with pain has its basis in the Economic Model of torture. Under Islamic Law Interrogation should be based on justice and equality. The Interrogation has its own psychodynamics.¹³

5. Human Rights Ethics of Interrogation

Volumes speak on the techniques and procedures adopted for a fruitful interrogation. All the guidelines have one thing in common, the urge for a free and just procedure. The procedure is said to be free when it does not involve a deterministic control over victim that is beyond his casual control.¹⁴ The work in hand is a useful corrective to interrogation practice. The skilful criminals are not easy to interrogate. Almost, naturally enough effort is exercised or at least claimed so, by every officer to perform interrogation. The paper dwells on the issue of corrupt practice in interrogation.¹⁵ Criminal liability if established is the most serious foundation of depriving one of social liberties. Interrogation is the gateway to this liability. The constitutional exercise of powers by interrogators must ensure the need for due criminal process by keeping fair procedures and public confidence intact. The opponents of this proposition may suggest that the interrogator is never meant to be an enthusiastic guardian of the offender's interest; he must perform a duty for which he is paid. And during that duty he will have to exert all possible effort to find truth.

A careful evaluation of the accused's behavioural responses may lead one to the truth.¹⁶ The three general types of false confessions that are in practice are voluntary false confessions, coerced compliant false confessions.¹⁷ The questions should be asked in a non-accusatory fashion. All these techniques, however, need to be based on human rights principles of dignity of man, equality before law and right of access to justice.¹⁸ The interrogator should avoid false promises of leniency or intimidation to obtain false statements of self-incrimination. Right, however, does not mean unlimited liberty.¹⁹ Lending aid to the criminal element

cannot be favoured nor the unbridled individual liberty at the cost of a safe and secure state.²⁰ Should law enforcing authorities be allowed to administer post arrest questioning? The guarantees of the Bill of Rights can provide a relevant answer. Torture is not an advisable method of any valid interrogation. Torture leads to false confessions.²¹ False confessions lead to wrongful convictions.²² Torture even fails as a counter terrorist technique to ensure public peace. Islam accommodates the interests and rights of accused while side by side keeping intact the deterrence effect of any criminal inquiry for future crime.²³ Interrogation should not be designed to give the accused an impression that he had no choice but to confess.²⁴ Investigative methods have a role in manufacturing a narrative of crime.²⁵ The potential evidential value of all facts collected during interrogation carries weight.²⁶ Scientific evidence can be relied upon to establish guilt. But this factor has gone almost entirely unheeded. A good interrogation should allow for research, analysis and evaluation.²⁷ The interrogator needs the information.²⁸ It is a moral necessity that the practice of torture should be prohibited absolutely for the attainment of this information. Interrogation should not be a professional confusion.²⁹ State actors should work on facts and does not separate the duty towards God and religion from the duty to serve humanity. Protecting moral truth is like protecting one's religion. Freedom in any of its forms is the best pursuit of truth.³⁰ The things cannot be accepted at face value only during interrogation, diving deep into the process to reach to conclusion is important. The modern-day techniques like³¹ behavioural analysis interview as used in Reid's Technique are the most heralded ones for interrogation.³² The interrogation of an expert is supposed to be far better than that of a layman's interrogation.³³ We need to add experts and equipment to interrogation to add public respect to the profession. The paper is a catalogue course on interrogation and the serpentine twists involved. There exists a relationship between the liberal philosophy of punishment and the central categories of interrogation.³⁴ Interrogator should not get the style of a crazy

man at any point. We have a sorry record of interrogation in the police stations. Contemporary interrogations are mostly saturated with intense human rights failures. The process indeed needs to be rekindled with Islamic opprobrium. The background beliefs of interrogation should be equity indicators. The evidence for acceptability needs to be beyond reasonable doubt. The suspects situated in similar situations are considered to have similar convictions. The values of interrogation should not contradict the values of human rights. Interrogation should be tightly woven, nonviolent and innately moral.³⁵ Interrogation cannot exist in vacuum.³⁶ Among other distinctions between West and Islamic thinking is the reliance on timeless moral principles. There is a difference between a guilty suspect and truthful suspect.³⁷ This difference should be clearly premised in the mind of the interrogator as a part of moral necessity. A consistent persuasion, in a controlled, private and free environment is an essential prerequisite of a symmetrical interrogation. An effective interrogation must not lead to mere determination but a truthful determination. The confessions cannot however be scientific truths with minimal chances of deviation rather these can be deductions with preponderance of content that will lead to truth. This is acceptable.

Conclusion

According to Islam, man is the most esteemed creation of universe; he is the in-charge of physical world. Interrogation is very important for deciding the merits of any case in a Criminal Justice System. Islam has championed free will in actions. Human Rights is the most favourite theme of Islam. Islamic law protects the rights of the captured, the detained and the one under custody. Free and fair interrogation is inevitable for the better pursuit of justice. Islam has balanced the civil liberties of citizens and the power of state executives to exercise legitimate force for interrogation. The efficacy of an interrogation motivated by torture and other inhuman and degrading ways enjoys no dignity in Islam. Interrogation is the

strongest determinant of criminal responsibility. Interrogation should pass through a stringent test of human rights to avoid it to be a propelled and induced sequence of cause and effect.³⁸

Bibliography

Anderson, B. (2010). We not only have a right to use torture. We have a duty. *The Independent*, 15.

Arrigo, J. M. (2004). A Utilitarian Argument Against Torture Interrogation of Terrorists. *Science and Engineering Ethics*, 10(3), 1.

Arzt, D. E. (1990). The application of international human rights law in Islamic states. *Human Rights Quarterly*, 12(2), 202-230.

Ashworth, A., & Horder, J. (2013). *Principles of criminal law*. Oxford University Press.

Bennett, W., & Hess, K. (2006). *Criminal investigation*. Cengage Learning.

Chapra, M. U. (1993). *Islam and economic development: A strategy for development with justice and stability* (Vol. 14). International Institute of Islamic Thought (IIIT).

Coulson, N. J. (2011). *A history of Islamic law*. Aldine Transaction.

False Confessions and Threats of the Death Penalty | Death Penalty.

<https://deathpenaltyinfo.org/false-confessions-and-threats-death-penalt>

Fleisher, W. L., & Gordon, N. J. (2010). *Effective interviewing and interrogation techniques*. Academic Press.

Friedmann, Y. (2003). *Tolerance and coercion in Islam: interfaith relations in the Muslim tradition*. Cambridge University Press.

Grano, J. D. (1979). Voluntariness, free will, and the law of confessions. *Virginia Law Review*, 859-945.

Halstead, J. M. (2007). Islamic values: a distinctive framework for moral education? *Journal of Moral Education*, 36(3), 283-296.

Improved Crime Scene Investigations - North-western University...

scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=5058...jclc
last accessed on 25th July 2017.

Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. C. (2011). *Criminal interrogation and confessions*. Jones & Bartlett Publishers.

- Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. C. (2011). *Criminal interrogation and confessions*. Jones & Bartlett Publishers.
- Innes, M. (2003). *Investigating murder: Detective work and the police response to criminal homicide*. Oxford University Press.
- Kamisar, Y. (1962). Public Safety v. Individual Liberties: Some " Facts" and " Theories". *The Journal of Criminal Law, Criminology, and Police Science*, 53(2), 171-193.
- Lawrence, B. B. (2000). *Shattering the myth: Islam beyond violence*. Princeton University Press.
- Leo, R. A. (2008). *Police interrogation and American justice*. Harvard University Press.
- McMahan, J. (2008). Torture in Principle and in Practice. *Public Affairs Quarterly*, 22(2), 91-108
- Meissner, C. A., & Russano, M. B. (2003). The psychology of interrogations and false confessions: Research and recommendations. *The Selected Works of Christian A. Meissner, Ph. D.*, 11.
- Meissner, C. A., Horgan, A. J., & Albrechtsen, J. S. (2009). False confessions. *Applied Criminal Psychology: A Guide to Forensic Behavioural Sciences (Springfield, Ill.: Charles Thomas, 2009)*, 191-212.
- Meissner, C. A., Russano, M. B., & Narchet, F. M. (2010). The Importance of a Laboratory Science for Improving the Diagnostic Value of Confession Evidence.
- Muhammad, A. F., Burfat, F. M., & Muhammad, G. Sociological Thought of Shah Wali Ullah.
- Norrie, A. (1999). Subjectivity, morality and criminal law. *Edinburgh Law Review*, 3(3), 359-367.
- Pennebaker, J. W. (1989). Confession, inhibition, and disease. *Advances in experimental social psychology*, 22, 211-244.
- Pereboom, D. (2006). *Living without free will*. Cambridge University Press.
- Peters, R. (2005). *Crime and punishment in Islamic law: theory and practice from the sixteenth to the twenty-first century* (No. 2). Cambridge University Press.
- Peters, R. (2009). Sharī‘ah and ‘natural justice’: the implementation of Islamic criminal law in British India and colonial Nigeria. *Journal of Semitic studies. Supplement*.
- Rahim, A. (1968). *The principles of Muḥammadan jurisprudence according to the Ḥanafī, Maliki, Shāfi‘i and Hanbali schools*. Lahore: Indus Publishers

- Rahim, A. (1968). *The principles of Muhammadan jurisprudence according to the Hanafi, Maliki, Shafi'i and Hanbali schools*. Lahore: Indus Publishers
- Reza, S. (2007). Torture and Islamic law. *Chi. J. Int'l L.*, 8, 21.
- Silving, H. (1956). Testing of the Unconscious in Criminal Cases. *Harvard Law Review*, 69(4), 683-705.
- Turkey, B. Ea. (2011). *Criminal profiling: An introduction to behavioural evidence analysis*. Academic press.
- Weisberg, B. (1961). Police interrogation of arrested persons: A sceptical view. *The Journal of Criminal Law, Criminology, and Police Science*, 52(1), 21-46.
- Westin, A. F. (1968). Privacy and freedom. *Washington and Lee Law Review*, 25(1), 166.
- White, W. S. (1997a). False confessions and the constitution: Safeguards against untrustworthy confessions. *Harv. CR-CLL Rev.*, 32, 105.
- Wisnewski, J. J., & Emerick, R. D. (2009). *The Ethics of Torture*. A&C Black.
- Witt, J. W. (1973). Non-coercive interrogation and the administration of criminal justice: The impact of Miranda on police effectuality. *The Journal of Criminal Law and Criminology (1973)*, 64(3), 320-332.

References

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- ¹: Fleisher, W. L., & Gordon, N. J. (2010). *Effective interviewing and interrogation techniques*. Academic Press.
- ²: Weisberg, B. (1961). Police interrogation of arrested persons: A sceptical view. *The Journal of Criminal Law, Criminology, and Police Science*, 52(1), 21-46.
- ³: Coulson, N. J. (2011). *A history of Islamic law*. Aldine Transaction.
- ⁴: Arzt, D. E. (1990). The application of international human rights law in Islamic states. *Human Rights Quarterly*, 12(2), 202-230.
- ⁵: Peters, R. (2009). Shaṛī'ah and 'natural justice': the implementation of Islamic criminal law in British India and colonial Nigeria. *Journal of Semitic studies. Supplement*.
- ⁶: Muhammad, A. F., Burfat, F. M., & Muhammad, G. Sociological Thought of Shah Wali Ullah.
- ⁷: Peters, R. (2005). *Crime and punishment in Islamic law: theory and practice from the sixteenth to the twenty-first century* (No. 2). Cambridge University Press.
- ⁸: Reza, S. (2007). Torture and Islamic law. *Chi. J. Int'l L.*, 8, 21.

- ⁹: Friedmann, Y. (2003). *Tolerance and coercion in Islam: interfaith relations in the Muslim tradition*. Cambridge University Press.
- ¹⁰: Lawrence, B. B. (2000). *Shattering the myth: Islam beyond violence*. Princeton University Press.
- ¹¹: Rahim, A. (1968). *The principles of Muhammadan jurisprudence according to the Hanafi, Maliki, Shafi'i and Hanbali schools*. Lahore: Indus Publishers
- ¹²: Wisniewski, J. J., & Emerick, R. D. (2009). *The Ethics of Torture*. A&C Black.
- ¹³: Pennebaker, J. W. (1989). Confession, inhibition, and disease. *Advances in experimental social psychology*, 22, 211-244.
- ¹⁴: Pereboom, D. (2006). *Living without free will*. Cambridge University Press.
- ¹⁵: Ashworth, A., & Horder, J. (2013). *Principles of criminal law*. Oxford University Press.
- ¹⁶: Meissner, C. A., & Russano, M. B. (2003). The psychology of interrogations and false confessions: Research and recommendations. *The Selected Works of Christian A. Meissner, Ph. D.*, 11.
- ¹⁷: Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. C. (2011). *Criminal interrogation and confessions*. Jones & Bartlett Publishers.
- ¹⁸: *False Confessions and Threats of the Death Penalty | Death Penalty...*
<https://deathpenaltyinfo.org/false-confessions-and-threats-death-penalt>
- ¹⁹: Kamisar, Y. (1962). Public Safety v. Individual Liberties: Some " Facts" and " Theories". *The Journal of Criminal Law, Criminology, and Police Science*, 53(2), 171-193.
- ²⁰: Witt, J. W. (1973). Non-coercive interrogation and the administration of criminal justice: The impact of Miranda on police effectuality. *The Journal of Criminal Law and Criminology* (1973-), 64(3), 320-332.
- ²¹: Meissner, C. A., Horgan, A. J., & Albrechtsen, J. S. (2009). False confessions. *Applied Criminal Psychology: A Guide to Forensic Behavioural Sciences* (Springfield, Ill.: Charles Thomas, 2009), 191-212.
- ²²: Arrigo, J. M. (2004). A Utilitarian Argument Against Torture Interrogation of Terrorists. *Science and Engineering Ethics*, 10(3), 1.
- ²³: Leo, R. A. (2008). *Police interrogation and American justice*. Harvard University Press.
- ²⁴: Innes, M. (2003). *Investigating murder: Detective work and the police response to criminal homicide*. Oxford University Press.
- ²⁵: *Improved Crime Scene Investigations - North-western University...*
scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=5058...jclc last accessed on 25th July 2017.
- ²⁶: White, W. S. (1997a). False confessions and the constitution: Safeguards against untrustworthy confessions. *Harv. CR-CLL Rev.*, 32, 105.
- ²⁷: Anderson, B. (2010). We not only have a right to use torture. We have a duty. *The Independent*, 15.

- ²⁸: McMahan, J. (2008). Torture in Principle and in Practice. *Public Affairs Quarterly*, 22(2), 91-108
- ²⁹: Turkey, B. Ea. (2011). *Criminal profiling: An introduction to behavioural evidence analysis*. Academic press.
- ³⁰: Bennett, W., & Hess, K. (2006). *Criminal investigation*. Cengage Learning.
- ³¹: Meissner, C. A., Russano, M. B., & Narchet, F. M. (2010). The Importance of a Laboratory Science for Improving the Diagnostic Value of Confession Evidence.
- ³²: Silving, H. (1956). Testing of the Unconscious in Criminal Cases. *Harvard Law Review*, 69(4), 683-705.
- ³³: Westin, A. F. (1968). Privacy and freedom. *Washington and Lee Law Review*, 25(1), 166.
- ³⁴: Norrie, A. (1999). Subjectivity, morality and criminal law. *Edinburgh Law Review*, 3(3), 359-367.
- ³⁵: Chapra, M. U. (1993). *Islam and economic development: A strategy for development with justice and stability* (Vol. 14). International Institute of Islamic Thought (IIIT).
- ³⁶: Halstead, J. M. (2007). Islamic values: a distinctive framework for moral education? *Journal of Moral Education*, 36(3), 283-296.
- ³⁷: Inbau, F. E., Reid, J. E., Buckley, J. P., & Jayne, B. C. (2011). *Criminal interrogation and confessions*. Jones & Bartlett Publishers.
- ³⁸: Grano, J. D. (1979). Voluntariness, free will, and the law of confessions. *Virginia Law Review*, 859-945.