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## **Confessional Evidence under the Qanun-e-Shahadat Order, 1984: A Critical Appraisal**

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### **ABSTRACT**

Confessional evidence has traditionally held an advantaged but highly debated place in criminal justice systems, especially those in which the investigative capacity is still poor and the use of testimonial evidence is acute. The confession regulation in Pakistan is mainly as provided in the Qanun-e-Shahadat Order, 1984, which tries to balance the value of the confessions of the accused with the need to prevent coercion, abuse and miscarriage of justice of the accused persons. The law officially separates judicial and extra-judicial confessions, puts limitations on the admissibility of statements given to officers of the police, and underlines voluntariness as the determinant condition of admissibility. Regardless of these precautions, the confession evidence in jail settings continues to have a disproportional impact on the criminal adjudication process, typically in the context of custodial abuse, investigatory lapses, and structural pressures to dispose of cases quickly, in lieu of the rigor of the evidence.

This paper is a criticism of the legal system in the confessional evidence contained in the Qanun-e-Shahadat Order, 1984, its doctrinal presuppositions, judicial interpretation, and functioning. It is based on the view that although the law states a wary and rights-defensive cost, the weaknesses inherent in the system of policing, prosecution, and trial-level adjudication seriously limit its effectiveness. Their continued use of confessions is demonstrated to be a less indication of its own reliability than it is a symptom of wider institutional failures such as a lack of forensic competence and institutionalized coercion. Placing confessional evidence into the framework of the constitutional rights to the fair trial and due process, the article reveals the pressing necessity of the redefinition of the evidentiary priorities and the reinforced protection against the miscarriage of justice to guarantee the integrity of the criminal justice system.

**Keywords:** Confessional Evidence, Qanun-E-Shahadat Order 1984, Criminal Justice, Voluntariness, Police Coercion, Fair Trial, Due Process

### **Introduction**

Confessional evidence has been considered as one of the strongest types of evidence in a criminal law as it has been seen to provide a first hand view on the guilt of the suspect. A confession made out of self-interest is intuitively compelling and has been historically regarded as an effective evidentiary weapon that can reduce the process of fact finding. Through the same features that make confessions look decisive, however, confessions are



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also singularly susceptible to abuse. In legal traditions and historical periods, confessions were obtained by coercion and enticement, by intimidation and mind games and have led to a myriad of miscarriages of justice. Contemporary criminal jurisprudence thus views confession evidence with acute ambivalence as it is said to potentially be beneficial but at the same time, the threat it carries to fairness and accuracy is severe.<sup>1</sup>

This ambivalence is experienced in the legal system of confessional evidence in the Qanun-e-Shahadat Order, 1984, in Pakistan. The Order, which superseded the rules of evidence that existed during the colonial era, was aimed at Islamizing and rationalizing the law of evidence, with a consideration of protection against injustice. Concerning confessions, it tries to balance admissibility and protection by excluding confessions, made to police officers, regulative judicial confessions as well as stressing on voluntariness as the primary factor to confession admissibility. The above provisions show that the legislature is cognizant of the risks that are posed by forced confessions, especially in a criminal justice system where law enforcement has broad authority and additional checks are lacking.<sup>2</sup>

Regardless of the official protection granted by the legislation, the role of the confession evidence still remains disproportionate in Pakistan criminal justice. Practically, confessions tend to fill in gaps in the investigation, forensic analysis, and preparation of the prosecution. Police officers are often under great pressure to resolve cases within a short period of time, particularly the high profile or serious cases, and confessions are a quick way of showing that there is progress. Structural limitations, such as the lack of forensic facilities, the lack of training in current methods of investigation, and a consistent lack of resources, only strengthen this dependency. Consequently, very often confessions are not considered as a single piece of evidence that should be closely corroborated but as the very cornerstone of the prosecution case.

The fact that the practice has been maintained is deeply worrying to the quality of criminal adjudication. Various studies, court observations, and human rights reports have reported various tendencies of abuse of custody, illegal detention, and forceful interrogation techniques in the policing system of Pakistan. Under these circumstances, the voluntariness of confessions is under suspicion. Even in cases where the confessions are taken in the presence of a magistrate, there are questions of whether the pre-trial pressure affects the post-trial confessions and whether the judicial control is adequate to counter balance the pre-trial oppression. The legal assumption that judicial confession is voluntary tends to conceal the complicated facts of custodial force relations and the mental susceptibility of accused individuals.<sup>3</sup>

It is indicative of awareness of these dangers that judicial interpretation of confessional evidence under the Qanun-e-Shahadat Order takes such considerations into account. Confessions should not be accepted blindly by superior courts which have pointed out severally that they should be voluntary, truthful and supported by independent evidence. Courts have also appreciated extra-judicial confessions as weak in nature and should be done with a lot of care. Even with this jurisprudence, trial courts often give confessions decisive effect, even without any substantial corroboration. This disjuncture between the appellate doctrine and the practice on the trial level points to one of the problems of the

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<sup>1</sup> Abbasi, H. A. H., & Iqbal, A. I. A. (2021). Authentication of Oral Evidence in Islamic Law of Shahadah: A Critical Analysis of Qanun-e-Shahadat Order in the Light of Shariah Teachings. *Al-Meezan Research Journal*, 3(2), 1-24.

<sup>2</sup> Akhtar, R., & Rizwan, S. Admissibility and Credibility Oral Evidence under Qanun-e-Sahadat Order, 1984. *EDITORIAL BOARD*, 7.

<sup>3</sup> Hussain, A., & Khan, I. A. (2023). Scope and Admissibility of Circumstantial Evidence in Criminal Cases in Pakistan. *Law and Policy Review*, 2(2), 111-129.



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system: the legal protections which are spoken of by the doctrinal means, do not tend to influence the daily adjudication.<sup>4</sup>

The persistence of the confessional evidence should thus be interpreted as the reflection of deeper structural flaws of the criminal justice system of Pakistan. The combination of ineffective investigative capability, ineffective prosecutorial autonomy and limited judicial resources results in a situation where confessions are available to provide an easy substitute to effective evidence gathering. Such a dynamic not only heightens the chances of a wrongful conviction but also reduces the level of confidence in the justice system by the people, especially those at the periphery who are disproportionately subjected to coercive policing strategies.

The current paper attempts to critically evaluate confessional evidence by the Qanun-e-Shahadat Order, 1984, with the purpose of analyzing the normative framework and its real work. It says that, any serious change does not come through small tweaking of doctrines; it is a need to redefine the priorities of evidentiary reform, the focus of investigations and the accountability of institutions. The study can hopefully illustrate the fact that the safeguard against forced confessions is not an evidentiary issue but a constitutional requirement that is vital to the legitimacy of criminal justice in Pakistan, by placing the confessional evidence in the context of the constitutional guarantees of fair trial and due process.<sup>5</sup>

### Literature Review

Confessional evidence treatment has taken a leading role in the study of criminal law, in large part due to the fact that it is at the crossroads of evidentiary efficiency, human rights and state power. In both common law and civil law jurisdictions, it has been long asserted by legal scholars that confessions are distinctly susceptible to coercion and manipulation especially in a system where law enforcement agencies have wide-ranging discretionary authority and significant under-checking and balancing. The literature points out that, although, confessions might seem to provide the direct evidence of guilt, the empirical and doctrinal research proves that false confessions are not occasional. Rather, they usually arise as a result of structural factors like pressure in custody, psychological susceptibility, extended interrogation, and lack of good legal protection. This international scholarship offers a significant context in which the issues relating to the use of confession evidence in Pakistan can be learned.<sup>6</sup>

In the legal literature of Pakistan, the confession evidence has always been evaluated through the prism of the Islamic jurisprudence and the criminal procedural laws. According to scholars, Qanun-e-Shahadat Order, 1984 was made with the aim of harmonizing the law of evidence with the Islamic law and preserving procedural protections established in common law traditions. Confessions, in this respect, are handled with the doctrine of care, especially in view of the Islamic rules of law which stress the voluntariness, moral accountability and injustice aversion. As has been noted by academic commentators, the history of Islamic jurisprudence imposed very rigid

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<sup>4</sup> Dharalah, A. A., Baig, K., Hussain, K. A., & Sattar, S. (2025). An Analysis of the Evidentiary Value and Implications of an Accomplice Witness in the Criminal Justice System of Pakistan. *The Critical Review of Social Sciences Studies*, 3(1), 342-356.

<sup>5</sup> Siddiqua, B. A. (1994). *Development of the law of evidence in Pakistan and Bangladesh with special reference to witness testimony*. University of London, School of Oriental and African Studies (United Kingdom).

<sup>6</sup> Siddiqua, B. A. (1994). *Development of the law of evidence in Pakistan and Bangladesh with special reference to witness testimony*. University of London, School of Oriental and African Studies (United Kingdom).



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restrictions on the admissibility of confessions, particularly instances in which the confession was in any way coerced, induced or caused by fear. The normative justification in this doctrinal heritage is also frequently invoked as the reason in the strict protections of contemporary evidentiary law.<sup>7</sup>

In law, the study of the Qanun-e-Shahadat Order provisions governing confessional evidence have been considered at the statutory level, especially the exclusion of confessions made to law enforcement agencies and the conditional admissibility of confessions obtained in a court of law. The consensus among commentators is that these measures indicate the realization of the coercive capability of custodial interrogation. According to critical analyses, however, the statutory framework presupposes a certain degree of institutional integrity and compliance with procedures that is not always present in practice. According to scholars, even though the law establishes a formal distinction between voluntary and involuntary confessions, the law does not give much insight on how voluntariness can be meaningfully measured in settings where there are custodial abuse and power imbalance.<sup>8</sup>

Much literature has been devoted to the judicial role in controlling confessional evidence. Pakistan Superior courts have expressed several times, its values of being cautious, corroborating, and scrutinizing. Scholarly studies of the case law of appellate jurisprudence emphasize that the courts have recognized the weakness of extra-judicial confession and have demanded that judicial confessions should not be under duress, should be audio-taped with sufficient precautions, and should be backed up by independent evidence. This jurisprudence has been applauded as rights-protecting in its nature. Nevertheless, researchers also observe that there has always been a gap between the appellate doctrine and the practice on the trial level. Empirical research and theoretical critique indicate that trial judges often give confessions great evidentiary effect, often disregarding discrepancies or neglecting to thoroughly assess the context within which confessions were elicited.<sup>9</sup>

The other theme that is evident in the literature is the aspect of the connection between confession evidence and investigational inadequacies. Researchers believe that overreliance on testimony is symptomatic of structural inadequacies of the criminal justice system. Without modernized forensic centers, professional inquiry and prosecutorial autonomy, confessions will serve as a convenient alternative to an intensive process of evidence gathering. Legal pundits point out that this dependence produces perverse incentives of coercive interrogation since investigators do not aim at the collection of corroborative evidence but at the collection of admissions. Such a dynamic, as the literature states, undermines not only the reliability of convictions, but also the legitimacy of the justice system in general.<sup>10</sup>

The study of human rights has also contributed significantly to the debate by placing the confession in the context of larger human rights discourses of due process, human

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<sup>7</sup> Hayat, M. F. (2025). The Constitutionality of Article 40 of the Qanun-E-Shahadat Ordinance 1984 in the purview of Article 13 (B) of the Pakistani Constitution. *Journal of Law, Justice and Human Rights*, 1(1).

<sup>8</sup> Anisuzzaman, S., & Efat, S. I. J. (2015). Admissibility and evidentiary value of confession: conflicts and harmony between rules of law and rules of prudence in Bangladesh, India and Pakistan. *South East Asia Journal of Contemporary Business, Economics and Law*, 7(4), 54-62.

<sup>9</sup> Abbasi, H. A. H., & Iqbal, A. I. A. (2021). Authentication of Oral Evidence in Islamic Law of Shahadah: A Critical Analysis of Qanun-e-Shahadat Order in the Light of Shariah Teachings. *Al-Meezan Research Journal*, 3(2), 1-24.

<sup>10</sup> Cheema, S. A. (2015). Corroborating Evidence in Pakistan: A Mechanism to Fill Reliability Void. Available at SSRN 2667365.



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dignity, and the ban on torture and barbaric treatment. The trends of custodial abuse and illegal detention in Pakistan are continuously reported by researchers who claim that the given practices essentially undermine the voluntariness of confessions. In this sense, this is not just an issue of evidentiary admissibility, but an issue of systematic rights infractions. Research indicates that testimonies collected under such circumstances cannot be aligned with the constitutional provisions of a fair trial and due process no matter how formal the recording procedures were.<sup>11</sup>

The Pakistani discourse is also informed by the comparative legal studies which focused on how other jurisdictions have reacted to the dangers of using confessional evidence. Numerous researchers point to the tendencies to limit the validity of the evidentiary nature of confessions, reinforce exclusionary regulations, and emphasize forensic and circumstantial facts. Such comparative studies are frequently applied to criticize the persistence of confession-based prosecution which, according to these comparative studies, requires a transition to evidence-based investigation as the only way to achieve any real reform of Pakistan. Simultaneously, according to commentators, the transplantation of foreign models without focusing on the local institutional reality might not be effective.

All in all, the literature shows that there is a general agreement that confessional evidence under Qanun-e-Shahadat Order is regulated by a formally cautious legal framework, which is compromised by systemic failures in its implementation. Researchers constantly note that only the safety of dogma is not enough to stop abuse without institutional change. A more holistic approach that incorporates the evidentiary reform with the policing, prosecution, judicial training, and accountability mechanisms is increasingly called in the academic world. The article contributes to the current body of knowledge by integrating the examination of the doctrine and the institutional critique as an approach to understanding the role of the confession as a legal and structural issue in the criminal justice system in Pakistan.

### Methodology

This paper uses a qualitative approach of doctrinal research approach with institutional and systemic analysis as an addition to critically review the law that applies to the confession of evidence as per the Qanun-e-Shahadat Order, 1984. The doctrinal method is especially appropriate since confirmation, inquiry, and admissibility of the confessional evidence in Pakistan are usually ascertained by using the statutory provisions and judicial interpretation but not by using an empirical or experimental investigation. The study aims at examination of the legal framework, principles of interpretation that have been adopted by the courts and assumptions made in the handling of confessions in the criminal justice system of Pakistan.

The text of Qanun-e-Shahadat Order, correspondence to the provisions of the Criminal Procedure Code, and judicial rulings of the Supreme Court and High Courts dealing with confessional evidence are all the primary sources to this research. The rationale of the judiciary is analyzed to determine the ways in which the concept of voluntariness, reliability and corroboration are conceptualized by the judiciary and their practical use. A special focus is made on the decisions that are related to judicial confessions, extra-judicial confessions, and statements in police custody, because all these groups demonstrate the different levels of judicial examination and institutional trust. Using the patterns of judicial reasoning, the research aims to determine as to whether the courts

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<sup>11</sup> Zia, M. H., & Ali, A. (2021). Legal Aspects of Evidence Collected by Modern Devices: A Case Study. *Journal of Development and Social Sciences*, 2(4), 286-297.



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have formed a consistent system of doctrinal approach or is the use of confessions still a matter of ad hoc analysis.

Besides the analysis of doctrine, the approach also includes the institutional dimension which places the evidence of confessions in the greater context of the functional realities of the criminal justice system in Pakistan. Confessions are not viewed as isolated legal objects, but as the results of investigative procedures influenced by the policing culture, resource endowment and balance of power between the state and the charged individuals. The secondary sources, such as scholarly literature, reports by human rights organizations, and analysis of criminal justice reforms, are utilized as the contextualization of legal norms and also to reveal systemic factors affecting the obtaining and assessment of confessions. This combined strategy enables the paper to go beyond the formal legality and look at the circumstances in which the confessional evidence is created and utilized.

The critical normative approach is also employed in the methodology, which relies on constitutional principles of fair trial and due process. Even confession is not judged in accordance to the statutory compliance but also considering other more comprehensive constitutional principles such as human dignity, protection against self-incrimination, and the ban on coercion. Through applying evidentiary analysis to the constitutional standards, the research will evaluate whether the current law in place is sufficient in preventing miscarriage of justice and whether the law needs to change to ensure that practice is up to its constitutional pledges.

### Research Findings

The conclusions of this paper demonstrate that confession evidence in Qanun-e-Shahadat Order, 1984, is regulated by a formally cautionary legal system which is undermined systematically by both flaws in the investigatory and prosecution process, as well as by the deficiency in adjudicial system. Among the most important discoveries is that even though the law makes voluntariness the core of admissibility, there are mechanisms of determining voluntariness that tend to be superficial, and are not sufficient to identify coercion. The legal dependence on the factual adherence to the recording processes especially when it comes to judicial confessions often clouds the actuality of custodial pressure that leads to execution of formal confessions.<sup>12</sup>

One of the main conclusions is on how confessional evidence remains a dominant factor in prosecution of crimes despite the obvious judicial recognition of its risks. Courts have stressed on numerous occasions that confessions especially the extra-judicial confessions are weak evidence which must be reinforced. However, in reality, confessions tend to serve as the foundation of the case being prosecuted, particularly in instances where the investigation evidence cannot be obtained. Such dependency is indicative of structural weaknesses of the criminal justice system, such as insufficient forensic capacity, lack of investigative training, and insistence on law enforcement agencies to deliver precipitous outcomes.

The paper concludes that the rule of inadmissibility of police confessions as provided by the Qanun-e-Shahadat Order has not done away with coercive methods of inquiry and interrogation, but rather has substituted them. The things people say in the process of police custody often influence future confessions in court, despite the fact that this influence is often officially denied. Arrested individuals tend to be arrested in a judicial

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<sup>12</sup> Mirza, F. K., & Rizwan, S. The Interplay between Competency and the Number of Witnesses under the Qanun-e-Shahadat Order 1984: A Critical Analysis of Articles 3 and 17 in Ensuring Fair Trials. *EDITORIAL BOARD*, 94.



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custody after a long period of police imprisonment, which might have involved coercion, intimidation or inducement. The next documentation of a confession in the presence of a magistrate is then processed in a presumptively voluntary manner, even though it is hard to isolate it out of prior custodial abuse. This legal fiction takes away the protective purpose of the law and permits coerced confessions to go into the record of evidence indirectly.<sup>13</sup>

The other important discovery refers to the issue of extra-judicial confessions. Even though it has been a routine practice among courts to characterize extra-judicial confessions as unreliable, they are still admitted and used together with other circumstantial evidence. Corroboration threshold is consistently judged inconsistently and occasionally the trial courts tend to lend undue weight to such confessions without strictly examining the context under which it is claimed such confession was made. The practice exposes a possibility of false implication especially when it comes to interpersonal conflict, a family conflict, or community pressure.<sup>14</sup>

The results also suggest that trial courts do not have the institutional resources and motivation to closely examine confessions evidence. The workload, minimal training and the tendency to use police-supplied narratives also add to the culture of apparent deference as opposed to cynicism. Although trial courts are often criticized by the appellate courts that rely on weak confessional evidence, such interventions are only provided after a conviction, and they do not do much to avert a first miscarriage of justice. It exposes a structural disparity between ideals that are expressed in doctrines and practiced at the appellate level and daily adjudication at the trial level.

The consideration of human rights comes out in the results. The patterns of custodial abuse, illegal arrest and deprivation of access to a lawyer are direct violations to the voluntariness of confessions. The research concludes that the available safeguards (medical examination and judicial inquiry) are viewed as a formality that is mostly performed as formal instead of protective. Formal questioning of voluntariness offers some protection against coercion in any environment that has accused persons who fear retaliation or are ignorant of their rights. Consequently, the confessions might be due to duress and not actual guilt confessions.<sup>15</sup>

The results also indicate that the use of confession evidence is mostly unequal on the marginalized and vulnerable groups. People who do not have legal representation and access to social capital (i.e., people with lower socio-economic backgrounds) have fewer opportunities to be subjected to coercive interrogation and to challenge the admissibility of confessions. Such an unequal effect provokes significant issues about fairness and equality of criminal justice system and points at the intersection of the evidentiary practices and structural inequality.<sup>16</sup>

The other finding that is critical is that the legal framework which constitutes confessional evidence has not changed with the developments in the constitution which are associated with fair trial and due process. Although constitutional jurisprudence is more and more concerned with the fairness of procedures and the protection of accused individuals, the practice of evidence-based prosecuting still retains the pathways of

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<sup>13</sup> Akhtar, R., & Rizwan, S. Admissibility and Credibility Oral Evidence under Qanoon-e-Sahadat Order, 1984. *EDITORIAL BOARD*, 7.

<sup>14</sup> Abbasi, H. A. H., & Iqbal, A. I. A. (2021). Authentication of Oral Evidence in Islamic Law of Shahadah: A Critical Analysis of Qanoon-e-Shahadat Order in the Light of Shariah Teachings. *Al-Meezan Research Journal*, 3(2), 1-24.

<sup>15</sup> Mughal, J. R. (2011). Documentary evidence in a criminal trial. *Available at SSRN 1970704*.

<sup>16</sup> Hussain, A., & Khan, I. A. (2023). Scope and Admissibility of Circumstantial Evidence in Criminal Cases in Pakistan. *Law and Policy Review*, 2(2), 111-129.



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prosecution style that is confession-centered. This alienation weakens the constitutionalization of criminal procedure and continues the tradition of practices that cannot be reconciled with current norms of justice.

Lastly, the research concludes that confessional evidence still remains as an alternative to institutional reform. The criminal justice system does not invest in forensic infrastructure, training of investigators and prosecutors being independent but instead it trusts confessions as a cheap way to achieve convictions. This dependency continues to be a cycle of coercion, deficient investigation and wrong conviction, degrading the faith of the people in the justice system. The lack of interruption of this cycle is an indication that the crucial reform of the confessional evidence cannot be done on the basis of the doctrinal modification but needs to be transformed into a system.

### Discussion

Critical review of the confessional evidence by Qanun-e-Shahadat Order, 1984, demonstrates that the issue is not that there is no legislation to ensure its protection, but that the context within the structure and the institution has been in which the legislation has been put into effect. The law officially acknowledges the risks involved in confessions especially those that occur in the process of police custody and attempts to curtail these risks with exclusionary rules and procedural conditions. Nevertheless, the continuity of confession-based prosecution proves that law doctrine is not enough to change the unshiftable traditions that are influenced by the unequal distribution of power and limited resources as well as institutional motivations. Confessional evidence still enjoys a special status not due to its inherent reliability, but because it comports well with a criminal justice system that is more expediency-oriented than evidences-oriented.<sup>17</sup>

The above analysis has produced one of the most important problems of the fiction of law that is the issue of voluntariness. The voluntariness being a procedural issue, which is being resolved by formal adherence to the recording standards, instead of a substantive one, requiring the inquiry into the circumstances under which a given confession was obtained. This formality blurs the facts of custodial authority and mental intimidation. Under circumstances where the accused individuals might have already been exposed to a long period of detention, intimidation or physical bodily harm, the subsequent recording of a confession in the presence of a magistrate cannot be isolated with any meaningful sense of any kind of previous coercion. This assumption that judicial confessions are voluntary in nature is therefore subversion of the law as protective in its nature and makes it possible to accept coerced confessions into the record of the cases in the name of legality.

The unending use of confessional evidence is also indicative of a greater investigation breakdown in the criminal justice system. In the contemporary criminal adjudication, the role of forensic evidence, scientific evidence, and circumstantial evidence that are capable of proving guilt on their own has gained more prominence. In Pakistan, the lack of forensic infrastructure, underdeveloped training in investigations, and poor prosecutor preparation, however, encourages the use of confessions as an alternative to a rigorous investigation. This has not only enhanced the possibility of wrongful conviction, but it has also deterred institutional investment in evidence-based policing. There is no

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<sup>17</sup> Dharalah, A. A., Baig, K., Hussain, K. A., & Sattar, S. (2025). An Analysis of the Evidentiary Value and Implications of an Accomplice Witness in the Criminal Justice System of Pakistan. *The Critical Review of Social Sciences Studies*, 3(1), 342-356.



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systemic incentive to change the investigative practices as long as confessions are a viable and decisive short cut to the evidence.

The judicial language of confession evidence has shown that it is able to recognize these risks, but the judicial action is not able to be taken due to institutional restraint. It is repeatedly warned that confessions must not be blindly accepted by appellate courts and that corroboration and strict scrutiny needed to be used. These interventions, however, are usually implemented once a person is convicted and instead of working on systematic patterns; they appear to rectify individual cases. Trial courts, with heavy caseloads and small budgets, often fail to live up to the requirements of evidentiary deference by viewing the confessions as convenient anchors upon which they can rely to convict them. This gap between the principles of the appellate and practice on the trial level shows how only doctrinal reform may fall short unless the structure is changed.<sup>18</sup>

The issue is complicated by the human rights connotations of the adjudication by confession. Forced confessions are no longer defects of evidence, but extreme abuses of human dignity, physical integrity, right to human dignity. By allowing confessions procured as a result of coercion to be admissible in court, both the courts and the correction system create a possibility of legitimizing abusive methods and undermining constitutional rights to a fair trial and due process. It is this erosion that skews towards marginalized communities and whose risks of being exposed to custodial abuse are higher and whose ability to confront apparent irregularities of evidence is lower. Such practices that have not been eliminated continue to erode the trust that people have in the justice system and ends up in vicious circles of mistrust and alienation.

This discussion, therefore, highlights the point that confessional evidence is a symptom of a larger systemic malfunction. Its remaining relevancy is an institutional decision on resource distribution, responsibility, and the nature of state authority and rights. The solution of the issue through going beyond the rift of evidentiary arguments and dealing directly with the political and institutional realities that support confession-based prosecution

### **Recommendations**

Any reform of confessional evidence as provided under the Qanun-e-Shahadat Order must be provided in a multi-layered strategy that would deal with both institutional and doctrinal deficiencies. To start with, the voluntariness test should be conceptualized as a substantive question, and not as a procedural formalism. Any confession should not be admitted as evidence in a court without the court looking at the entire history of the arrest of the accused in terms of the number of years in custody, access to legal counsel, medical condition and prior interaction with the law enforcement personnel. It is not that judicial confessions are voluntary merely because they are recorded using formal procedures.

Second, confession evidence must be limited in practice to a large extent. Confessions are not to be regarded as being primary evidence that can be submitted in order to provide conviction by itself, but as secondary evidence that needs high levels of independent corroboration. Clearly set judicial standards must be enacted that will specify the nature and quality of corroborative evidence needed to minimize discretion and lack of uniformity at the trial level. This would put evidentiary practice in harmony with the current ideals of criminal adjudication and decrease the incentives to coercive interrogation.

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<sup>18</sup> Saeed, M. A., & Gillani, A. H. (2021). Evidential representation of using the modern devices and decisionmaking feasibility in Pakistan. *Journal of Law & Social Studies*, 3(2), 79-86.



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Third, it should invest in the capacity of investigations and forensic capacity to avoid depending on confessions. The law enforcement agencies should be armed with the current forensic equipment, trainings in collecting evidences, and professional investigative techniques. The independence and capacity of prosecutors should also be enhanced to make sure that cases are constructed with the help of true evidence and not confessions. In the absence of this kind of investment, reforms in the doctrines would be futile.

Fourth, mechanisms that ensure accountability need to be enhanced in order to deal with custodial abuse. To discourage coercive practices, there need to be independent oversight bodies, efficient complaint systems and open disciplinary procedures. They should not be allowed to make use of evidence collected as a result of torture or ill-treatment and those in charge of the practice should not go without consequences. The lack of accountability will still erode legal protection in the implementation phase.

Lastly, the judicial training and sensitization are essential. Trial-level judges need to have the ability to critically analyze confession evidence as well as be aware of signs of pressure and abuse. The gap between the appellate doctrine and the practice of a trial may be addressed with the help of constant judicial training aimed at human rights, evidentiary standards, and constitutional guarantees. Education on the law to the public can also enable the accused individuals to demand their rights and question the illegalities.

### Conclusion

The confessional evidence as per the Qanun-e-Shahadat Order, 1984, takes a contradictory stance in the criminal justice system of Pakistan. Although the law is meant to govern and limit the admissibility of the confessions formally, their sustained popularity in the criminal adjudication shows the structural and institutional failure. This paper shows that the issue on confessional evidence cannot be addressed using doctrinal protection. The longevity of forced confessions indicates the failure of investigations, ineffective accountability and institutional favor of expediency over justice.

The judicial interpretation has been significant in the formulation of the cautionary principles, but the role of judicial interpretation is minimal unless the system is reformed. The fair trial and due process constitutionalization requires a reconsideration of the evidentiary priorities and criminal justice practices. The confessions should no longer be used as an alternative to adequate investigation, but should be reviewed to the utmost level of scrutiny.

Finally, the changes in treatment of confession evidence should not be seen as an exercise of evidence reform, but rather a constitutional requirement. The legitimacy of the justice system is to protect people against being coerced, wrongly convicted, and to respect the dignity of the accused. Pakistan can only be propelled towards a criminal justice system that is guided by truth, fairness and human rights rather than convenience and control, by integrated reform of law, institutions and culture.

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