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*Correspondence

Dr. Ashigar Abubakar

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An Overview of The Importance of Iqar Under Islamic Law of Evidence

Dr. Ashigar Abubakar & Usman Nuhu Lukman

Abstract

From the basic perspective of the Shariah, Iqar is a kind of declaration purposely formulated as a means or declaration on the existence of a right in respect of another person presented by the acknowledger which is an obligation drop from his shoulders by the declarant as an admission as well as a confession. The paper tries by providing how Iqar usually take place and what its stand to exemplifies and promote. The paper further provides the legal basis to the procedure and what the concept tries to satisfy as provided by the shariah through the stipulated conditions provided by the law. Finally, the paper concluded by providing some major findings as well as some recommendations on the importance of this concept and its effect towards the administration of the rule of admission and confession under the shariah.

Keywords

Iqar, Admission, confession, acknowledger al-muqarr bihi and sigha

Introduction

The term Iqar simply means acknowledging a claim or proving the existence of an existing right of another person upon the declarer,¹ technically speaking, Iqar also means confessing a claim. Under the Shariah legal system Iqar is considered as the strongest means of proof presented against a defendant.

This concept is perfectly considered under the Shariah to be a double sword of both confession as well as admission, it signifies an acknowledgement by a competent person not under any compulsion/duress, voluntarily binding himself as against another person by providing a leading evidential proof or self-provided evidence.² Under this situation where a person admitted by way of confession of his guilt is what Iqar stands for. Therefore, it is a trite law in Shariah that where a free admission is made by a mature, sane, not under any form of compulsion against himself and in favour of another regarding and issue or a case before a court of law such confession or acknowledgement of guilt is binding and enforceable against the maker. And the Shariah considered such an admission devoid of any sort of ambiguity and the claim is made known to the defendant, the court is at liberty to declared such an Iqar and passed judgement based on that.

¹ Muhammad bin Ahmad bin Hamzah Al-Ramli, Nihayat al-muhtaj ila sharh al muhtaj, (Mustapha Al-Babi Al-Halabi, Eygpt, 1352H/1952 H).3.525.

² Sulaiman .I. N and Samaila A.m. Islamic personal Law (Makurdi; oracle. publishing company limited (1999)122

This notion is based on the rule of jurisprudence as recognized by the principles of Shariah (qa Idah Usiliyyah) that Ma la Yatimin al Wajiba Illibihi fa huwa wajibun (the means to attaining the obligatory is also obligatory).³

This principle of Al-Iqar is said to have emanated from the Holy Quran which said "O ye who believe, be maintainers of justice bearers of witness for Allah even though it be against your own selves".⁴

The Law clearly stated that the mere admission of liability by the person making the confession/admission does not automatically qualify the plaintiff for an immediate judgement.

This provides that the Mugrir that is the person (defendant who make the admission by admitting liability as he is referred to under the Shariah must as a matter of procedure needs to satisfy all the certified conditions as provided by the law to make his admission or acknowledgement to the liability admitted to be valid in the eyes of the law. These conditions are, he must be an adult (Mukalaf) who is equally as a sane person, not under an undue influence or duress, or he is not under age (a minor) or a person who lack certain ability to do things on his own volition as required by the Shariah, where one of the stated conditions are attached to the person making the admission or under any of the stated conditions, judgement cannot be entered in favour of the complainant. This situation, the court may declare the Iqar invalid before the law.⁵

The Legal Basis to Iqar

The legal basis to Iqar can equally be found in the Quran and the Hadith as well as the consensus of Islamic jurist. The Quran says, "Let him who incurs the liability dictate" Also in another verse of the Holy Quran Allah has said, "O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives".⁶

As that above verse says, testimony against yourselves is a reference to admission of obligation against oneself. The verse further command mankind that a Muslim is expected to be witness for Allah's sake even if it is against himself an interest in order to provide the required justice between parties in a dispute as in the case of Hada V Malumfashi⁷, also in a similar disposition in one of the related Hadith of the Prophet narrated to have stoned Ma'iz and the woman from the Ghamidi tribe⁸, based on their admission to have committed the act of adultery.

All jurist has equally agreed that if Hadd offences can be proved through admission, and the evidence so provided stands against the person making such Iqar alone, it means that other pecuniary or matters of less consequence than the said Hadd offence can also be subjected to such prove through Iqar. And in all matters affecting Iqar it is the common norm that the presiding judge should ordered for the plaintiff to provide witnesses to prove his case before the judge. In a matter that involve two or more persons the mere confession of one of the party to the crime cannot be visited on the remaining parties unless they so confessed to the commission of the offence by themselves. In one of the narrated Hadith the Prophet PBUH did not convict a woman upon the claim of adultery by an acknowledged, the woman was called and she denied committing adultery, so the Prophet ordered for the flogging of the man based on his Iqar while the woman was ordered to go free, and exonerated from the offence.⁹

This shows that the acknowledgement has no any authority over the co-accused as he alone shall be held liable for the offence he so confesses to have committed.

Therefore, the premise of the Iqar Qasirah is not applicable in testimonies and other forms of evidence such as documentary and Qara'in. This is because the actual prove of rights through the above stated means is generally applicable to all those that are involved in such cases that are related to documentary evidential related issues. What

³ Al=mausu Al fiqhiyya (ministry of Endowment and Islamic Affairs Kuwait,1406/1986).6.47

⁴ Al Nisa,a 4.235

⁵ Ambali ,M .M

⁶ Quran 4:135

⁷ (1997)7 SCNJ,512

⁸ Muslim,Hadith No 1695

⁹ Abu Dawud,Sunnah Hadith No 3849

the law so acknowledged upon is that of the proof of the existence of a right in the past and not otherwise or an initiation of either a right or an obligation as it stands to represent. Therefore, in this situation a judge is expected as per procedure to order the person making the confession to indemnify himself from the claim against him.¹⁰

Essential Elements of Admission (Arkan of Iqar)

There exist four Arkan of Iqar that are fully recognized under the Shariah, all the jurist has given emphasis to these four essential elements in providing the needed proof relating to Iqar. These elements are;

- a. Al-Muqqir (acknowledger)
- b. Al-Muqqar lahu (the person in whose favour the admission is made)
- c. Al-Muqqar bihi (the subject matter acknowledged)
- d. Sigha which refers to the formula for the acknowledgement). These can be treated in detail hereunder.

a. The formula al-Sighah, this simply means the mode of pronouncement or something of its equivalent that disclose the mode of admission or that which reveal the intention of the acknowledger. This can be either direct or indirect orally or it can be reduced into writing. Sigha can equally be in a form of a gesture, speech or a representation through writing. But the most important thing to note is that the admission must reveal the intention of the acknowledger. In the modern days sigha is encouraged to be in writing or where it was made orally can be reduced to writing which is more secured and reliable to deal with and it can also be easily tendered in the court of law as a means of evidence for proving a case before the court.

This advancement is supported by a Quranic injunction which direct all Muslim Ummah to document all sort of dealings (transactions) in writing.¹¹ The verse clearly encourages Muslim to put their transaction which involve future performance to be in a written form by way of documenting it.

Gesture (Ishara) also constitute Sigha if done rightly is encouraged as admission. But in the case of silence (sukut) does not constitute admission if that person can speak, but there are certain circumstances where silence can be accepted as an admission i.e the admission of a virgin girl when consulted for marriage her mere silence is enough to constitute admission, it can be accepted to be part of sigha.

b.) Acknowledger (Al-muqqir). This area signifies where a free person who is not under any influence freely made an admission devoid of any kind of ambiguity against the makers (acknowledgers) interest is equally considered to be binding as well enforceable against the maker. As rightly stated the validity of such an Iqar always depends on some acknowledged conditions as provided by the shariah, such as the acknowledger must be a matured person (adult), must be sane, the thing admitted must be of value, he must not be under any kind of intoxicant influence, is not drunk, he should be in a state of soberness, the admission must have been voluntarily by the acknowledger and finally the admission must not be made under any kind of suspicious (al-tuhumah) circumstance to warrant lack of *confidence in the acknowledgement.

c.) Al-Muqarr bihi-Here the subject matter of the Iqar is expected to be something lawful and valuable

d.) Al-Muqqar –Lahu (the person in whose interest or favour the admission is made) and for such Iqar to carry the acceptance of the law it must fulfil the following conditions;

1. The beneficiary must have the required legal as well as the natural capacity

2. the beneficiary must be a specific person who has the capacity by law to receive whatever rights that is surrendered to him.

¹⁰ Muhammad Shattima, Evidence and Proof in Islamic Law. Published and printed by ABU Press ,(2023).p .22.

¹¹ Muhammad Bin Abil Qasim Al nawawaq, Al Tajwa Al Ikil bihamish nawahib Al –jalil,(No publisher libia,1399H),5;216;Al Dardir,Al Sharh Al-Saghir,Yahya bin Zakariyya AL Anari,Asna Al-Mutalib Sharhu Raudal – Talib(Dar al-kutub al ilmiyyah Bairut,1432H)2.287;Al Ramli AL- Muhtaj.

The Legal Effect of Iqrar

In all circumstance the act of giving evidence is fard-kifaya i.e succieently considered binding because admission always reveals the truth regarding all sort of claims, as it is the revelation of the truth regarding the subject of dispute between parties. In a nutshell admission does not require additional evidence to corroborate it, because it is a first-class information to proof a case before a court. Therefore, admission usually come to expose or reveal the existence of fact before a court, it provides a proof about the existence of happenings of events, or obligation in contract, as it is popularly stated that a man is held by his admission (al-mar'u mu'akhadhun bi iqrarhi) so a person's admission is his ability to exonerate himself from the liability of hereafter by surrendering a right to the person entitled to such right, here the effect is a complete repentance to the will of Allah from the sin of preventing another person from enjoying his right and the desire to be forgiven by Allah as well as the fear of the punishment promised in the hereafter.

It is a classical fact that an acknowledger will be held by his words just like when the Prophet PBUH, hold Ma'iz by his confession of committing adultery. Therefore, admission usually bring an end to a dispute in a simpler way without prolonging of issues, it simplifies the mode of ending events that need testimony before a court or an established penal of an inquiry.

Findings

- ❖ The paper finds out that despite the stringent conditions provided by the shariah principles on this concept, the paper finds out that; That the concept of Iqrar comes to expose or reveal the existence of fact before a court of law
- ❖ That through Iqrar a person tries to exonerate himself from the liability of the thereafter by surrendering a right to the person who is entitled to such right. This is accomplished through repentance to the will of Allah from the sin of preventing another person from the enjoyment of rights endowed to him by Allah and the desire to seek forgiveness from Allah.
- ❖ That Iqrar have proof to be the simple means of proving a case before the court, by way of voluntary admission or confession of an issue and the subsequent surrendering of rights to the rightful owner.

Recommendation

The paper recommends the following in order to foster an additional avenue of enhancing the use of the concept of Iqrar in addressing cases before our courts and other similar establishments.

- That parties should always be advice to adopt Iqrar in simplifying a case through the adoption of Iqrar as a simple means of proving a particular issue before our courts.
- That there should be an avenue purposely created by our judges'/courts system where parties are advice and council by experts on the importance of Iqrar concept in avoiding time wasting in our courts. This is possible if parties are aware of the importance of this concept of Iqrar in facilitating quick dispensation of justice in our courts or else-where.
- That a committee of experts should be established in our judicial system to create awareness among disputing parties on issues of Iqrar and encourage parties who wish to do so in order to confess secretly if doing so would encourage parties to open up in secret rather than in the court rooms as against the present practice.
- That a unit should be established in our courts to listen to issues that provide personal admission by willing parties to go to for such confessional admission in respect of a case before a court in question and such unit shall be headed by a judge and two or more assessors who are learned in Islamic law outside the court system or within the said jurisdiction purposely designed for such purposes.

Conclusion

Iqar is one of the most important and simple means of proving a case involving two or more parties before a court of law through personal admission/confession of an acknowledged al-Muqirr, this area provides an opportunity where a free person who is not under any kind of influence to freely made a confession by way of an admission devoid of any kind of ambiguity against the maker himself (acknowledger himself). This concept has proven to be a strategic system that made it much easier, quicker and devoid of time wasting in proving a cases, this method as provided by the Shariah gives a matured person (adult) who is sane, who voluntarily wish to admit the commission or whatever means to proof a particular happening voluntarily by the acknowledged (himself).

This has created a better mode of admission with no suspiciousness in whatever circumstances to proof a case before a court. This confessional statement can only be accepted after fulfilling all the required conditions provided by the Shariah legal system.