

EVIDENCE IN CRIMINAL PROCEEDINGS BETWEEN ISLAMIC JURISPRUDENCE AND THE ALGERIAN CODE OF CRIMINAL PROCEDURE - A COMPARATIVE ANALYTICAL STUDY-



Dr. MEZAACHE RIADH

University of Batna 1 (Algeria)

Corresponding Author: riadh.mezaache@univ-batna.dz

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Abstract :

The present research paper deals with the rules of criminal evidence in Islamic Jurisprudence (Fiqh) and in positive law. The paper presents the current legal provisions governing that issue in the Algerian Code of Criminal Procedure. Using the comparative-doctrinal-historical-analytical approach adopted for the research, the author attempts to determine the epistemological foundations and legal use of these provisions in Islamic Jurisprudence (Fiqh), and in present day scientific proof (DNA and digital proof). Therefore, this paper is concerned by the problem of how the Algerian legislator, cognizant of rapidly evolving scientific developments, has provided rules that comply with the absolute protection of human rights and individual liberties under Islamic Jurisprudence. By analyzing legal texts, jurisprudence and doctrine in the classical Islamic (fiqh) literature and contemporary Algerian legislation, it attempts to show how the personal conviction of the criminal judge governs the legality of new forms of evidence that may violate human dignity, such as narcoanalysis or polygraph examination. Conclusion: While the Algerian system would seem to conform to Islamic values regarding respect for human dignity and the presumption of innocence, the regime suffers from important deficiencies in the law regarding the standard of care relating to the treatment and the use of ICT and biometric evidence. These deficiencies can be remedied through legislative reforms to create a balanced, equitable, and scientifically grounded system that respects its Islamic roots and procedural modernity.

key words: Criminal evidence; Islamic Jurisprudence; Algerian Code of Criminal Procedure; Personal conviction; Digital evidence; Human dignity.

Introduction:

In every civilized society the search for truth and the administration of justice have been the highest goals of the mandates of God and the dictates of secular law. From the beginning of time men have sought to devise means of distinguishing the true from the false and the just from the unjust and of giving such distinction legal force and effect. In this universal process, the role of evidence is cardinal; it is the instrumentality by which the abstract concepts of guilt and innocence are rendered into concrete judicial results. Without it, there can be no justice; and with defective evidence, justice itself becomes a source of injustice (Surour, 1989, p. 428). It is universally accepted in the common law, Romano-Germanic and religious law tradition, that the accused's liberty, honour or life is ultimately in the hands of whether the quality and credibility of the evidence presented is acceptable. The subject of the law of evidence is therefore much more than a technical issue of procedural law; it is one of judicial epistemology. It is concerned with establishing the factual truth, and the mechanisms by which this can be demonstrated. And within what limits can we use it to justify the imposition of penal sanctions?

This epistemological problem is further complicated in hybrid legal orders such as Algeria's, in which different normative traditions coalesce, penetrate, and affect each other in multiple ways. This connection is reflected in Algerian law by the two complementary attachments of the Islamic tradition to the national, social, collective, and constitutional conscience of the Algerian people. On the other hand, the French legal tradition finds expression in the Code of Criminal Procedure of 1966 and its amendments. The law still retains the structure and philosophy that reflects the continental inquisitorial system. The law of evidence in Algeria has therefore to deal with a permanent creative tension between the "constant" and the "variable" (Bouskika, 2010, p. 45). The constant consists in the immutable objectives of the Islamic Sharia, namely: the dignity of the human being (karama), the presumption of innocence (bara'at al-dhimma), and the prohibition of any form of coercion. The variable consists in the accelerating advancement of scientific and technological methods of proofs which offer opportunities for the establishment of the truth never experienced before, but also raise fundamental ethical and legal questions (Filali, 2025, pp. 6–26).

In the frame of the mentioned reasons, the principal problematic of our work can be stated as follows: To what extent, in the formulation of their regulations, has the Algerian legislator succeeded in reconciling the evidence principles of the law with the requirements of modern sciences by adopting modern scientific evidence in Islamic Jurisprudence? What role does the judge's personal conviction play in this reconciliation? This becomes particularly important in the context of investigative methods that may hurt human dignity, where this is further articulated by specific sub-questions What are the epistemological bases of the systems of evidence in Islamic jurisprudence and Algerian law? How do they differ and what similarities do they have? How do the provisions of the Algerian Code of Criminal Procedure deal with modern biological evidence such as DNA fingerprinting and the laws of digital evidence whether or not they are adapted to technology development? What is the attitude of both systems regarding the use of narcoanalysis interrogation techniques or polygraph examination? Finally, how does the Algerian criminal judge form their personal conviction with respect to these new types of evidence?

The hypotheses guiding this research are: the Algerian Code of Criminal Procedure was modeled mainly on the French criminal procedure This Code is based on principles relating to the rules of evidence that are in common with the Maqasid or greater goals of Islamic jurisprudence such as the protection of human dignity and the presumption of innocence The second hypothesis: the major problems raised by the adoption of evidentiary rules in contemporary Algeria stem mainly from the absence of a specific legislative framework governing digital and advanced biological evidence, thus creating a zone of legal uncertainty that the judge must fill with their own personal conviction, with the attendant risks of inconsistency These two hypotheses will be tested against a systematic analysis of the respective legal traditions, and their application to contemporary evidentiary challenges

In light of the above hypotheses, this study has two central objectives On the scientific level, it seeks to achieve a detailed analysis of the theoretical foundations of criminal evidence in both legal systems; to determine and identify the main similarities and differences between them On the practical level, it seeks to achieve a critical analysis of the position of the Algerian legislator on modern scientific evidence and the extent of

conformity of the criminal procedure with modern developments It seeks to propose practical recommendations for amending the provisions of the Code of Criminal Procedure related to the reception of scientific evidence while preserving the litigants' rights This research is of theoretical importance as it seeks to find a solution to the divide between classical Islamic jurisprudential theory and modern-day Algerian judicial practice, particularly in the domain of transnational crime, cybercrime, and complicated cases which require an evidence framework that is both strong and flexible The resulting study provides a guideline to assist judges, practitioners and legislatures in articulating and understanding the principles that should govern the admissibility and assessment of modern evidence in a bi-heritaged context

This paper will follow a comparative-doctrinal-historical-analytical approach, by using methodological triangulation Methodological triangulation is the use of more than one method to analyze a single problem; The inductive approach will be followed in extracting the evidences from the basic sources of Islam, such as the Holy Quran, the Sunnah and the foundations of the major Sunni schools of Islamic jurisprudence The inductive approach to Maliki jurisprudence (fiqh) is based on both classical and modern works The Maliki school has always been the most influential in Algeria The primary sources on which Algerian Maliki scholars are based include Sahih al-Bukhari, Sahih Muslim, as well as al-Mudawwana and Mukhtasar Khalil and the basic works on Islamic judicial evidence, such as Ibn Qayyim al-Jawziyya's Al-Turuq al-Hukmiyya The deductive method consists of analyzing the global provisions of the Code of Criminal Procedure in Algeria and analyzing them into their details so that they could be applied to some specific cases and new evidence The Algerian 2020 constitution, articles 212 and following of the Code of Criminal Procedure, and several special laws, in particular Law 16-03 on DNA fingerprinting, have been analyzed We also undertook a review of the case law of the Algerian Supreme Court to identify trends in the exercise of judges' discretion Of course, this is not statistically exhaustive, but seeks to identify principles in court practice However, this research limits itself to discussing the Maliki doctrine due to its predominance in Algeria and only discusses the Code of Criminal Procedure until the year 2025 It does not claim to discuss the whole of special criminal law in its entirety, but rather studies the general provisions

of evidence Finally, we should note that, although this study refers to scientific evidence as a technical matter, it is a work of law

Introduction to the topic, the problematic and the method of analysis adopted, the hypotheses adopted, clarify the objectives of the article.

THE FIRST TOPIC: EVIDENCE IN ISLAMIC JURISPRUDENCE:

First requirement: Theoretical Foundations of the Evidentiary System in Islamic Jurisprudence

Islamic law's concept of evidence is a thorough system based on the sources of Islamic law This thorough concept of Islamic justice is based on the balance of the right of the community and the right of the individual protected from malicious and arbitrary accusations This notion relies on sound theoretical principles of all laws of evidence and of their applications

First section: The Concept of Evidence and Its Sources in Islamic Jurisprudence

In linguistic terms, *ithbat* means to firm and stabilize something In terms of Islamic jurisprudence, *ithbat* means to produce evidence of a contention before a judge in ways prescribed by Sharia (Al-Bustani, 1978, p. 456) According to Sheikh Wahba al-Zuhayli, evidence is "the establishment of proof concerning a right or fact before the judiciary so that its legal effect may follow" (Al-Zuhaili, 1982, p. 500) This definition is based on the purpose of evidence since the main purpose of evidence is to have its legal effect, whether it is to prove the crime and impose the punishment or to negate the accusation and declare the accused not guilty

As for the sources of evidence in Islamic law, the sources of legislation should be mentioned first The first and highest source of Islamic evidence is the Qur'an There are explicit verses regarding the fundamentals of evidence, such as: "O you who have believed, when you contract a debt for a specified term, write it down" (Surah Al-Baqarah: 282), and "And those who commit unlawful intercourse among your women - bring against them four witnesses from among you" (Surah Al-Nisa: 15) The second source is the Prophetic Sunnah, which detailed and clarified what was mentioned in the Quran in general terms, including the many hadiths on the subject of the judiciary and testimony, such as "The burden of proof is on the claimant, and the oath is on the one who denies" The third source is the consensus (*ijma*) of the Companions and scholars on evidentiary matters for which no definitive text exists Independent reasoning (*ijtihad*) and analogical reasoning (*qiyas*) are also used to develop the evidentiary system in order to address new developments unknown to the texts (Ibn Qayyim, 1989, p. 15)

second section: Distinctive Characteristics of the Islamic Evidentiary System

The evidentiary system that Islamic law has developed is fundamentally different from what exists in positive legal systems and is unique in the history of law

First: Divinity and Legislative Foundation: the evidentiary system in Islam is sanctified because it has its origins in divine commands and the evidentiary rules are not merely positive rules subject to radical change, rather they are derived from Sharia texts accepted by society and incorporated in its creed In this way, the social acceptance of court rulings and their implementation is based on religious belief rather than the fear of worldly punishment (Otaibi, 2006, p. 55)

Second: Community rights and an individual's rights are balanced On the one hand Islamic jurisprudence recognizes the community's right to uphold security and to deter criminals On the other hand, it recognizes the right of the accused person to his innocence or else to have his guilt proved by a legitimate means without violation of his dignity Hence, the Golden Rule: "Avert punishments by doubts" (al-dar' bi al-shubhat), ie suspension of punishments (hudud) if any doubt exists about whether the crime has been established (Aouji, 1989, p. 613) The rule thus protects the presumption of innocence and the accused from possible judicial error

Third: the moral self-restraint Evidence should be brought in accordance with the objectives of God And the witness must be trustworthy in moral terms, too The witness must not only have reached adulthood, be sane, and to be of high integrity (adl), but they must also be both religious and morally virtuous, and seek to testify only for the sake of God, and with impartiality, not vengeance This consciousness of moral obligation was a check on the quality of the evidence and an antidote to false testimony

Fourth: Flexibility and Development: The general rules of Islamic jurisprudence have a common basis but this is not a rigid system Treating the conditions of evidence with consideration to circumstances is the "judicial methods" (al-turuq al-hukmiyya) established by Ibn Qayyim, giving the judge to take account of the circumstantial evidence (qara'in) or the scientific means available that lead to preponderant probability or certainty in establishing the fact (Ibn Qayyim, 1989, p. 45) This flexibility is what allows the Islamic system to accommodate modern developments in science such as DNA fingerprinting, and other digital evidence

second requirement: Primary and Secondary Means of Evidence in Islamic Jurisprudence

In Islamic jurisprudence, evidence is classified into primary sources, which are recognized as appropriate means to prove a crime, and secondary sources, which can be used when the primary sources are not available or in special cases

First section: Confession and Testimony as Foundations of Evidence

Confession (Iqrar): According to Islamic jurisprudence, confession is the "master of evidence" or the "queen of evidence", because it emanates from the accused themselves, wherein they admit what is in their mind, and a person normally does not admit to their own detriment except rarely Confession is "a person's informing of a right owed to another" (Al-Zuhaili, 1982, p. 520) Several strict conditions must be met for a confession to be admissible and effective

1. Capacity Because the confessor must be a sane and adult person acting with free choice, the confession of a person that is insane, undeveloped, or coerced is invalid

2. Free Will and Voluntariness: The confession must be issued with complete free will Confession under coercion is therefore invalid, by agreement of jurists whether the coercion is physical (beating, torture) or moral (threats, intimidation) Scholars have established that "coercion negates consent and vitiates choice" (Aouji, 1989, p. 615)

3. Clarity: The confession must be clear, unequivocal, and attach to a specific and defined crime

4. Non-divisibility: Where the accused admits to having committed an offense and states surrounding circumstances that exculpate or reduce the offense, the confession is taken as a whole

Second: Testimony (Shahada): Testimony is informing concerning a right owed to another against another, using the word of testimony in the judicial council It is the primary means of establishing evidence in crimes of which confession is denied There are strict conditions placed on the witness:

- Integrity (Adalah): This is what leads the person to righteousness and virtuous conduct A just person is one who does not commit major sins, nor persist in minor ones, and who possesses virtuous character

- Number: The number of witnesses necessary varies by the crime For adultery, four male, just witnesses are needed as per Quran 4:15 For all other crimes (with the exception of retaliation and punishments which are fixed other than adultery) two just witnesses are needed or, according to some jurists, one witness and the oath of the claimant (Mezghani, 1987, p. 114)

- Masculinity and Freedom: All four schools agree that masculinity and freedom are conditions of the woman's testimony for adultery. On other occasions, the Hanafis do not accept a woman as a witness against men in hadd law and retaliation, while the Malikis and Shafi'is accept her testimony on par with that of men in the case of property and matters in which males generally do not assemble.

second section: Circumstantial Evidence (Qara'in) and Its Role in Evidence

Circumstantial evidence (qara'in) refers to circumstances, contexts or omnia surrounding an event that, taken together, imply the occurrence or non-occurrence of such an event. The status of circumstantial evidence has been the subject of wide-ranging debate in Islamic law. Circumstantial evidence was rejected by some and accepted by others. The Zahiris in particular were strict, holding that only confession and testimony could be evidence. The majority of jurists, especially the Malikis and Hanafis, accepted circumstantial evidence as a standard means of proof in civil transactions and discretionary (ta'zir) offenses (Abu Amir, 2011, p. 135).

One of the most prominent advocates of circumstantial evidence was Imam Ibn Qayyim al-Jawziyya (d 751 AH), who extensively discussed circumstantial evidence in his famous book "Al-Turuq al-Hukmiyya fi al-Siyasa al-Shar'iyya" (Judicial Methods in Sharia Policy). Furthermore, Ibn Qayyim observed that judgment by circumstantial proof is based on presumptive probability and must not be neglected especially if just witnesses are rare or are not present or when immorality is common. Thus, "If the purpose of judgment [with reason] is present or absent, then circumstantial evidence is the strongest means of knowing the truth" (Ibn Qayyim, 1989, p. 78).

Examples of the use of circumstantial evidence in Islamic history include the story of Prophet Solomon (peace be upon him) who used a psychological indicator (the real mother's inclination to sacrifice the child for his survival) to establish the identity of the real mother when judging between the two women claiming the child. According to the Maliki school of jurisprudence, strong circumstantial evidence (lawth) in the case of homicide means the right to initiate an investigation is justified and the accused should be considered to be the primary suspect due to being found in possession of evidence or strong enmity with the victim.

THE SECOND TOPIC: EVIDENCE IN THE ALGERIAN CODE OF CRIMINAL PROCEDURE

First requirement: General Foundations of Evidence in Algerian Legislation

The evidentiary law of the Algerian Code of Criminal Procedure takes French evidentiary law as a basis, modified by Algerian cultural and constitutional particularities

First section: The Principle of Free Evidence and Its Role in the Algerian Penal System

The free evidence principle (*l'intime conviction du juge*) provides the basis of the system of evidence in Algerian law Article 212 of the Algerian Code of Criminal Procedure specifies: "Crimes may be proven by any means of evidence, unless the law provides otherwise, and the judge decides according to his personal conviction" Consequently, in the Algerian criminal trial, the criminal judge enjoys a free and unrestricted power to assess and appreciate the evidence He is not fixed by the formal rules which determine the evidentiary weight of individual kinds of evidence (Frendi, 2022, pp. 113–132)

In this way the principle illustrates a shift from the Roman law's legal evidence system (a system in which the law set the probative consideration the means of proof could obtain) and the classical evidence system in European law to the modern system, which is based on the judge's own conscience and good judgement In the Algerian system, the judge is not bound by the expert's opinion and can expressly discard it That being said, the exercise of this discretion is subject to the so-called obligation to state reasons: if the judge does not provide the reasons and the evidence that led him to prefer certain evidence to others in his judgment, the judgment is susceptible to cassation before the Supreme Court (Khediri, 2021, pp. 1260–1272)

It is similar, essentially, to the Islamic law principle of judicial *ijtihad*: a judge must take into account the situation and circumstances of a case (*qara'in*), and then decide in accordance with the principles of justice and fair dealing

second section: Guarantees of the Accused During Evidence Collection

The Algerian legislator has tried, in the field of justice, to reconcile the requirements of criminal investigation with the rights of the accused, so that many of the basic guarantees in this field have been consecrated by constitutional and legal texts

First: Protection of the Right to Physical and Psychological Integrity: Article 40 of the 2020 Algerian Constitution states that "Torture and other cruel, inhuman, or degrading treatment or punishment are crimes punishable by law" Evidence obtained through torture or coercion is inadmissible as evidence The Supreme Court has consistently deemed that a confession extracted by coercion is absolutely void (Ghay, 2005, p. 87)

Second: Guarantees regarding search and investigation: Searches of crime scenes and of the houses of the accused by the police shall only take place in the presence of the accused or their representative, during regular hours (from sunrise to sunset), and only by judicial police officers under the supervision of an investigating judge The accused has the right to consult a lawyer in the first interrogation and in all stages of investigation (Fouhal, 2019, pp. 409–423)

Third: Right to Silence and Right not to Be Compelled to Testify: Every accused is entitled to silence and non-coercion to answer investigators' questions This right is consistent with the Islamic prohibition against torture and confessions made under duress and with international human rights standards

second requirement: Contemporary Applications in Algerian Criminal Evidence

The contemporary scientific and technological revolution creates challenges to the customary system of evidence How does Algerian law respond to these challenges?

First section: Biological and Genetic Evidence (DNA) in Algerian law

During the last years, the use of biological evidence has evolved considerably, especially DNA fingerprinting (ADN), which allows to identify a person, with a probability of match that approaches 9999%, through the analysis of biological material: blood, saliva, hair, semen etc

The use of DNA fingerprinting in the Algerian judiciary and for individual identification is governed by Law No 16-03 of March 20, 2016 (Law No. 16-03, 2016) The law laid the basis for the legal use of the technique It set up a national DNA database and defined the circumstances under which the technique is acceptable, in the case of serious crimes such as rape, murder, and terrorist crimes

Nevertheless, the law does not prescribe that DNA fingerprinting is an incontrovertible piece of evidence, but it does carry a strong presumption The judge

is entitled to disregard the report if he or she is not satisfied that the procedure of gathering the samples was accurate, or if the report is not the overriding consideration over other, more compelling evidence in the case (Filali, 2025, p. 18) This fits with both the general Islamic reluctance to accept human evidence (even scientific) as absolute and the primacy of judicial ijtihad

second section: Digital Evidence and the Challenges of the Electronic Age

In view of the changing nature of cybercrime and computer-eased crime, digital evidence (ie, emails, call data logs, data on computer systems and mobile devices, cryptographic currencies, etc) is becoming more frequently at the center of investigations It differs from conventional evidence in that it is intangible, can be easily modified, and is not bound by national borders

However, the obstacles to the implementation of this regime by the Algerian judiciary, are mainly the absence of a set of legal rules that define, in detail, the mechanism for the ordering of collecting, preserving, recording and evaluating the electronic evidence; the Algerian legislator has not yet kept pace with this technological development and issued special provisions on this subject, which forced the judges to apply the general rules of evidence (as they would apply to paper documents) to the electronic medium (Mansour, 2006, p. 23)

Some of the biggest problems are: how to prove that an email really comes from a specified sender, how to prove that a hard drive has not been altered before displaying it in court We shall finally touch upon the issue of evidence found on servers located in other countries Without special rules, the judge has to base his or her judgment again on the technical expert reports, with all the technicalities that are hard for a non-specialist judge to assess correctly

Third section: Controversial Investigative Methods (Narcoanalysis, Polygraph)

Some of the scientific techniques used to investigate these crimes have been the source of considerable legal and ethical debate Some of the methods are:

- Narcoanalysis (truth serum): The suspect is injected with a chemical (usually sodium pentothal), which partially anesthetizes the nervous system and thereby reduces the ability to lie or control statements
- Polygraph (Lie Detector): Measures physiological responses such as heart rate and increased sweating during an interrogation, under the assumption that these signals indicate lying
- Hypnosis: Putting a person into a sleep-like state, to recover possible obscured memories

It is clear in Algerian law that Article 40 of the Constitution affirms that no one shall be subjected to torture and to cruel, inhuman or degrading treatment or punishment In Islamic jurisprudence, a suspect cannot be subjected to physical or moral pressure such as narcoanalysis to extract a confession, this violates a person's right to free will and mental integrity (Aouji, 1989, p. 620) Such a confession, obtained by police officers, will therefore be absolutely inadmissible in evidence As for the polygraph, it is after all a non-conclusive indicator It cannot be considered as independent circumstantial evidence of guilt because it is based on the measurement of various physiological parameters, which can also be influenced by psychological factors unrelated to falsehoods.

Discussion of Results

The results that have emerged from the comparative study of the Islamic and Algerian evidential regimes reflect a dialectical and complex relationship between their similarities and differences. The results of this study can be summarized as theoretical and practical implications for the Islamic evidential regime.

1. Fundamental Convergence on Ethical Principles:

Another major conclusion of this study is that the two systems are similar in that they both agree on the moral principles that determine the admissibility of evidence in court. The Islam-based system that strictly demands the free and voluntary confession (iqrar) of the accused and the moral integrity of witnesses (adalah) is compatible with the Algerian system's constitutional provisions that torture is prohibited and loyalty (moumouthah) is required from anyone who has to obtain any evidence. Human dignity (karama) is not a mere subordinate consideration that may be sacrificed in the name of repressive efficiency; it is, it forms part of, the very substratum of the process. (Khelfi, 2016, p. 25)

This is especially clear in the rejection of intrusive investigative methods such as narcoanalysis. Under Article 40 of the 2020 Constitution of Algeria, torture and cruel treatment are prohibited. Likewise, the code of Islamic fiqh states that a confession obtained through torture is radically null. In this way, the human person is put before the search for the truth at any cost. This is a great achievement, and must be preserved and strengthened.

2. The Judge's Central Role and Personal Conviction:

The study also finds the judicial office of the criminal judge central to both. However, whereas the Islamic judge (qadi) who is also a mujtahid is bound by divine rules and his own discretion is confined only to his assessment of the evidentiary evidence, in the non-Islamic system the opposite applies. In the Algerian system, the judge's conviction is the ultimate proof according to Article 212 of the Algerian Code of Criminal Procedure.

In this way the judge's position may be both a strength and a weakness, since it has the advantage of allowing justice to be individualized according to the specific circumstances of each case. The judge is not an automaton mechanically applying pre-established rules; they are a being of reason and conscience weighing the pros and cons before deciding (Freudi, 2022, p. 125). It can also be a weakness, in technical fields where the judge has no scientific competence (e.g., DNA or digital evidence), where personal conviction may turn into blind faith or excessive skepticism depending on the magistrate.

3. Legislative adaptation encountered difficulties.

The analysis illustrates a disparity between the speed of technological progress and the evolution of the legislative framework. While Law 16-03 on DNA fingerprinting is an important step forward, the digital evidence framework has lagged behind. In Algeria, judges deal daily with electronic evidence (emails, WhatsApp messages, geolocation data) with no rules for assessing the admissibility, probative force and the conditions of challenge (Mansour, 2006, p. 45).

The resulting vacuum creates a legal limbo and jurisprudential disarray, with two judges in the same chamber having diametrically diverging views as to the permissibility of the same piece of digital evidence. One considers it on an equal footing with written evidence, and the other refuses it, based on the absence of guarantees. This situation is unsatisfactory and requires urgent legislative measures.

4. The Hybrid Nature of the Algerian System: Asset or Obstacle?

The hybridization of the Algerian legal system, which inherits both the Islamic legal model and the European continental legal system is often a source of complexity but can also be an asset. The Islamic norms prevent the excessive judicial scientism that would reduce the human being to their biological or digital data. The adversarial principle of the French procedural tradition and the writing of reasoned judgments are guarantees of rigor and transparency.

It is up to the Algerian legislator to reconcile, in the new Code of Criminal Procedure, the two inheritances, Islamic inspiration for the guarantees and modern procedure for the means of evidence (Filali, 2025, p. 22).

I. General Conclusion:

a) Synthesis of Results

This research will culminate in the presentation of the system of judicial proof in criminal matters, which occupies a meaningful place in the convergence between Islamic jurisprudence and the Algerian Code of Criminal Procedure.

- **First**, the presumption of innocence, the absolute inadmissibility of forced confession, and the dignity of the human person, which represent the supreme rule of the trial, are common denominators of both systems. The convergence between article 40 of the Constitution of Algeria and the rigorous rules of the confession 'iqrar' in fiqh (jurisprudence) is conspicuous and constitutes a basis for the construction of criminal law in Algeria.
- **Second**, the study has shown that the principle of the conviction of the judge (Article 212 of the Code of Criminal Procedure) provides an ideal point of intersection between Islamic tradition (through ijtiḥād and the use of circumstantial evidence) and modern practice, and for the progressive introduction of new types of scientific evidence while safeguarding the position of the judge's personal conviction at the crux of the process.
- **Third**, as the analysis has shown, there are problems with the legal framework. This is particularly true in relation to digital evidence. There are no specific legal provisions or rules concerning the receipt, storage and evaluation of electronic materials. This creates legal uncertainty and unequal treatment.
- **Fourth**. The report has confirmed that all forms of intrusive investigation violating the psychological integrity of the accused (narcoanalysis, polygraph) are rejected in principle under the Constitution and Islamic provisions. This achievement should henceforth be safeguarded.

b) Response to the Research Problematic

As for the response to the subjection of the main research problematic, the Algerian legislator has made real strides towards the inclusion of some modern scientific evidence, especially DNA evidence (Law 16-03), albeit in an incomplete manner. In the absence of a rule or text, the Algerian judge must resort to his personal conviction and general principles of law to solve the problem of digital evidence.

It is certainly possible to reconcile the principles of Islamic law with the requirements of modern scientific evidence but this must be done in the context of anticipatory legislation, not by sacrificing the Islamic ethic to the god of technical efficiency, but by taking the Islamic ethic as the standard to be observed by new procedures.

c) Recommendations:

In light of these challenges, as well as to strengthen the Algerian criminal justice system and ensure a balance between the two legacies, the following recommendations are made:

1. Legislative Proposal: Create a special chapter in Code of Criminal Procedure entitled "On Digital and Scientific Evidence" to include:
 - The conditions for digital data collection and preservation (chain of custody).
 - Rules of admissibility for various types of digital evidence (emails, messages, connection data) .
 - Procedural guarantees for scientific expertise (expert independence, adversarial proceedings) .
 - The relative probative force of such evidence compared with customary evidence.
2. Institutional Recommendation: The creation of an adequately equipped and internationally accredited National Institute of Forensic Science and Legal Medicine that will include all Forensic Science (DNA analysis, ballistic analysis, toxicology, digital forensics, etc.) and will be responsible for ensuring the reliability of the information presented in court [¹].
3. Education: Magistrates (investigating judges, trial judges) must take compulsory continuing education about the science of evidence, in order to give judges a "judicial scientific culture", which will enable them, without

¹ This recommendation draws inspiration from existing models in several European countries and the United States (FBI Laboratory), where the independence and certification of forensic science laboratories guarantee the reliability of evidence.

being entirely dependent on experts or distrustful of them, to read and analyze expert reports and ask the right questions.

4. It is recommended that the complete legal prohibition against the use of narcoanalysis, polygraph and any other technique for modifying the consciousness or will of the accused should be incorporated in the Code of Criminal Procedure strengthened by the overriding principle which states that any evidence obtained thereby is absolutely void and may not under any circumstances be used to support a conviction.
5. Comparative Recommendation: Further comparative studies should be conducted with other mixed legal tradition countries, such as Egypt, Tunisia, Morocco, and Saudi Arabia, to learn how to apply modern scientific evidence consistently in accordance with Sharia, from their experiences.

These recommendations would allow Algeria to respond to modern standards of criminal evidence, and to assemble the blocks of an original model of criminal justice, in which the moral requirement inherited from Islam and the procedural rigor of modern law would improve each other, in order to guarantee justice and humanity in trials.

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