

The accused's silence realm in Iran's criminal procedure

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ABSTRACT

The accused has the right to remain silent on the investigation of the crime, charges and evidence presented in the police force and to the investigating and prosecuting judges. His silence does not preclude the presence of the sentence, but the accused silence against the question of his identity can't be justified, then executives obliged to recognize the identity of the accused. The mistake in identifying an accused person, due to his silence and condemnation, can be restored by hearing at the request of the head of the judiciary. The silence of the accused, in the presence of executives, because of his failure to introduce the attorney, is transgression of executives and is subject to the guarantee of execution, if due to a lack of understanding of the right to have an attorney, but the silence of introducing an attorney to a prosecutor's office, will discredit research. The silence of the accused in the presence of executives for the appointment of an attorney, does not in any crime, result in the appointment of a public defender, However, the silence of the accused in the presence of the judicial authorities, in the crimes punishable by deprivation of life or life imprisonment, leads to the appointment of a public defender and his absence prevents the formalization of the hearing.

Keywords: Accused, Ailence, Criminal procedure, Fair trial and judgment.

Introduction

In the principles of the constitution of Iran, adopted in 1358, the Law on the Respect of the Right to Freedom and the Protection of Citizenship Rights, adopted in 2004, and the Code of Criminal Procedure, approved in 1392, explicitly or implicitly emphasized the need for human dignity and respect for the rights of the accused, such as the prohibition of confession, the prohibition of torture And the persecution and the practice of inhuman punishment, prohibition of arbitrary arrest and detention, the right to immediately inform the reasons for arrest and detention, the right to investigate the charge within a reasonable period of time, the rule of the presumption of innocence and the right to remain silent.

Silence in the word means silence and not speaking ^[1], and the right to remain silent can be defined as the accused's liberty to not answering to charges questions by legal authority and constabulary. Freedom of expression is the right of the accused and is a fundamental principle of the fair trial process. Each of the persons in the criminal process, such as the accused, the plaintiff, the witness, or the informant of the case may remain silent in different stages of the proceedings, in such cases, the judicial and police authorities are not entitled to compel the accused to answer, but are obliged to keep silence in the record and act in accordance with the law to discover the truth.

The reason for the silence can be accused protest preliminary investigations and proceedings; thus, with the explanation that if the accused feels that the judiciary does not respect his rights, including the right to have an attorney or introducing leading question, he may resort to silence as a protest against this method. The reason for the accused's silence may also be the feeling of his shame after committing an important crime that can not or does not want to commit it, or whether his reason for silence is to have a false impression of the result of silence; that imaging In case of silence, the judiciary commends his favor. There are other reasons for the accused's silence, including anger, feelings of injustice, doubts created for the persons,

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misunderstanding of the content, in limited cases, consultation with an attorney, fear, illness, disability in the presentation of the subject, and such issues as their pathology is beyond the scope of this research. In the research, it has been shown that a small number of suspects take full silence. Some in their field research, they mentioned this rate up to 2 percent, Saunders 8.2 percent, Muston 8 percent, and some 2.5 percent, this is while others responded to some questions and did not respond to others, and some were at first silent, but later answered the questions (or vice versa). Some have said that the real silence rate is 4.5%.^[2] The right to silence has been accepted as a fundamental right for the accused in most criminal systems of the world. In Iranian law, the explicit right to silence in Article 197 of the Criminal Procedure Code has been clearly accepted, which apparently refers to the silence of the accused in relation to any question, whether the question is about the crime or the identity of the perpetrator or any other subject. But the discussion here is not about the right to remain silent, but is about the area of the silence of the accused and the right to know all of these cases and the examples which is doubtful. So there are some questions: 1) what effect the accused silence have on the proceedings? 2) What is the decision if the accused does not provide any authority to the police or the judicial authority? 3) If the accused has been silent in criminal proceedings, the sentence considered as contradictory judgment or judgment by default? In this paper, we try to, in terms of jurisprudential and legal standards, review and analyze, in the first speech, the theoretical foundations of the right to silence, in the second speech, the accused silence in expressing his specification, in the third, the accused silence in introducing an attorney, in the fourth speech, silence during the investigation of the accused charges, and in the fifth speech, silence after the final award.

First Speech: Theoretical Foundations of the Right to Silence

The silence of the accused as a right or his discretion is one of the controversial issues in the criminal procedure. The fact that the accused can remain silent in the course of investigations or proceedings or answer no questions or at least some of the questions has been defenders and opponents. For years, in the auditing system, which was initially based on the human responsibility towards the community, not only the accused did not have the right to remain silent on the question of the representative of the community, but also his torture was commonplace to obtain confession from him, and sometimes it was ordered by the court^[3]. While the defendant's freedom to make statements to prosecuting and prosecuting authorities and prohibition of confessions through torture is of the basic principles of the fair trial, because the right to silence is the result of the assumption of innocence or the presumption of innocence, and is essentially based on the rationale of not having any obligation to others, which makes the prosecutor obliged to prove the elements constituting the crime. Accordingly, this right can be for any question on any subject. The right to silence is rooted in freedom, human dignity^[4] and his independence in relation to his physical and spiritual integrity. They are based on

the assumption that human being is a wise creature that is capable of detecting good and bad, and understanding the nature of things, and that his ethical component requires that his statements be free and informed, or be silent. His right to silence has two aspects: firstly, the suspects and accused persons have the right to say nothing (positive aspect) in response to the questions of the police and the judicial authority, which is an expression of the immunity of individuals against self-incrimination. The second aspect of the silence is that the judicial authorities can not use the silence of the accused as a reason against him in the criminal proceedings (negative aspect). As stated in Articles 55 and 67 of the Statute of the International Criminal Court, the accused does not have to express or confess and can remain silent without this silence denoting his guilt or innocence.

In German law, the accused has no obligation to cooperate and assist in condemnation. He has the right to remain silent; the matter to be reminded by the police, prosecutor or court prior to the commencement of his trial (paragraph 1 of article 136 and paragraph 4 of article 243 of the German criminal procedure law)). In Islamic law, based on the principle of the prohibition of the requirement for expression, it can be said that the accused's right to silence has been recognized, because in Islam it is advised not to disclose a crime by the perpetrator. According to this view, the accused's silence is not only a right, but also an accused's duty, which is related to the accused's knowledge and awareness of this right, therefore the declaration of this right can be considered as a kind of Islamic criminal proceedings in the investigation of crimes, But the hiding of the crime and the desire to quit pursuing it, if lead to the harm or losing of another right, is cruelty to the victim^[5], which should not be overlooked.

In this regard, the moral and philosophical foundations of the accused's right to silence are raised: Does the ethical standards allow an accused person under interrogation to remain silent in response to questions from officials who seek to discover the truth? Is not the accused morally committed to expressing the truth? In the writings of the Christian scholars and theologians, which church ideas are also based on it, the answer is yes. The classical school owner believed that the accused was obliged to state the truth, although at the expense of his/her life. He sees the accused's responsibility to respond from the point of view of providing public interest, especially the usefulness of punishment. But modern moralists, while accepting the accused, can refuse to answer the questions to escape of justice, or respond in a way that does not hurt him, none of them consider lie allowable, and consider it inherently bad^[6]. If human words are divided into two types of truth and lies, it is clear that silence is better than lying.

In 1936, the United Nations Center for Human Rights Studies, regarding the accused's right to silence, stated: "The accused's right to silence is in accordance with the principles of human rights, which the police must respect and must be informed before the interrogator"^[7]. In accordance with Article 14, paragraph 3, of the International Covenant on Civil and Political Rights of the United Nations, adopted in 1966: "Everyone

charged with a criminal offense has the right to enjoy the minimum guaranteed rights below, with a perfect equality: he or she does not have to confess against himself or confess to being guilty". In this regard, the Convention on the Rights of the Child (1989), in article 40, paragraph 2, has called on Member States to pay attention to this in guaranteeing the right of children's defense to judicial authorities. The Statute of the International Criminal Court, adopted in 1998, contains another document in which referring to the accused's silence. According to Articles 55 and 67 of this statute the accused is not compelled to confess guilt and can remain silent, without this silence signifying his guilt or innocence¹⁸. Even in some countries like France, Article 114 of the Code of Criminal Procedure provides that the judge is required to convey the right to silence to the accused. One should wait for the prohibition of coercion of the accused to confess and, above all, Judge's request from the accused to confess in the criminal procedure and not paying attention to confessions that are not based on reality to the constabulary and judicial authorities of all countries and also to international law, becomes a customary rule, because it is based on respect for humanity and human dignity.

Second Speech: The accused silence in expressing her/his profile
In accordance with Article 44 of the Criminal Procedure Code, after the executives has been informed of the crime, in non-flagrant offences, the issue must be announced to prosecuting attorney, to get the necessary orders, and prosecuting attorney, after review, order to continue the investigation, or adopt the appropriate judicial decision. However, in flagrant offences, they shall take all necessary measures to preserve the equipment, devices, trace, signs and evidences of crime and prevent the escape or concealment of the accused or collusion, only if they can arrest the accused that there are strong evidence about doing the crime.

According to Article 49 of the Criminal Procedure Code "...Within a maximum of one hour, ID profile, occupation, address, and the reason for his observation, the reason to be under surveillance, in any possible way, are announced to the local public prosecutors office" Although this is an unambiguous statement, but with the term "under surveillance", the agent is the constabulary. The legislator's investigation, using the "every possible way" clause, wants oblige the constabulary to declare mentioned items to judicial authorities, and in no way aims to achieve the characteristics of the accused through unusual ways, such as coercion or torture.

In French law, according to Article 63-1 of the Criminal Procedure Code, the person under surveillance may, after expressing his identity, express his views and opinions, answer the questions (which should not be outside the scope of the charge) and silence against it. "From the provisions of this article understood that the person under surveillance is required to introduce his identity. Under British law, in special circumstances, the police have the power to arrest offending driver who refuse to provide their name and address. The most common example is where the police officer, as usual, believed

in a vehicle in an accident or traffic offense, requests the driver to provide his / her identity card, and he refuses to provide a driver's license and express his name and date of birth, the he police have the power to arrest him. The offending driver does not have the right to remain silent in expressing his identity. In the Heaney case versus the Irish Government in 1994, the Irish Supreme Court ruled that the right to silence only covers issues that the police could bring to them as a reason, In other words, the answer to them is as self-incrimination. However, does not include answers to questions such as name, address, date of birth, or nationality, which can not usually be attributed to the charge to the speaker¹⁹. In other words, the accused is required to express his identity in front of the question of his identity. In Canadian law, while refusing to answer is the right of accused, hiding his identity and name from police officials is detrimental to their duties, which is punishable under the Penal Code (Article 118a). Therefore, the accused is required to respond to police inquiries at least in this regard. Accordingly, in the law of these countries, including Iran, it can be said that the accused has no option to refuse to answer the police's questions about his ID profiles; otherwise, must withstand the problems that result from it until it is identified. In this regard, according to paragraph 19 of Article 14 of the Law on the Establishment of a police force in 1369, the constabulary Force is responsible for identifying individuals. This law is not obsolete by the penal code of criminal code 1392 in Article 46, which states that "in any case, the executives can not, in witnessed crimes, surveillance the accused, over a legal day", because the attention and practice of this article is to investigate crime other than identification. If, in accordance with Article 61 of the Criminal Procedure Code of 1392, "all actions of the judicial authorities in conducting investigations must be in accordance with the arrangements for the preliminary investigation", as well as in the definition of the preliminary investigation referred to in Article 90 of the Law on "Identification" of the accused, the purpose of which (identify) is to establishing the relationship between the offense and the perpetrator with clear identitg Otherwise, if the term "identification of the accused" is the same as the "identification" of a person who has been silent in the preliminary investigation, firstly, the concept has been used in two words or phrases, because does not need it. It is unlikely for a legislator, and more importantly, the duty confounding arises between the duty of the police force to the "identification" of the accused, referred to in clause 19 of Article 14 of the Law on the Establishment of a Police Force, and the duty of the interrogator to "Identify the accused", referred to in Article 90 of the Criminal Procedure Law. Therefore, these two terms (Identify and identification of the accused) should be understood as two different meanings, and according to the legal texts, it was assumed that the identification of the accused, whose identity is unknown or doubtful, It is the police force responsibility, however, identifying a person as an accused person with a known identity, is interrogator or police force responsibility, which depending on the case, It depends on to which authority the case is introduced.

The legislator stipulates the police force authority in identification in the above-mentioned law, but does not refer to the deadlines and methods for obtaining the identity of the individuals, while In the laws of other countries, including the Police Act and the Criminal Code of England, the methods of identifying individuals are specifically and well-documented.

Article 46 of the Police Act and Criminal Reasons (1948) requires the UK ministry of the interior to regulate the identification of individuals. The rules for the identification of people (Act D), which were implemented by police officers since April 2003, deal with identifying individuals in three ways, including identification by using evidence, identification using fingerprints and identification using body samples without, in these regulations, a specific deadline for identifying the identity is taken into account.

The Iranian police use intelligent intelligence systems to diagnose each person's exact identity and physiological or behavioral characteristics, Common ways are: Identification by face, sound, facial thermal image, iris, retina, walking, footprints and hand geometry ^[10]. In addition, the police, using fingerprints, based on specific features of lines and types of fingertips, or fingerprinting cards that contain photographs, identity and criminal record information of accused person, will obtain their true identity, despite the silence or the trick in concealing his true identity ^[11]. If the identity of the accused is not available on police fingerprinting systems, if the identity of the defendants is not available on police fingerprinting systems, using other methods, including investigations at the place of crime or place of residence, witness statements, informed, or other accomplices, Individual profile can be obtained.

According to Article 49 of the Code of Criminal Procedure, the constabulary must declare to the authorities of magistrate's court the identity, the occupation and the address of the accused, the usual way to obtain this information is statements of the accused, But if the accused is silent on providing this information, what is the legal duty of the police force to obtain this information? It seems that according to Article 19 of the Law on the Establishment of a police force, identifying the person's identity is the duty of police force which can be part of the ID profile information for this person. This part of the profile that constitutes an identity of a human being must include information that distinguishes a person in society and from others, in the custom of the name, surname, father's name and age, are human identity information. The identification of another part of the ID profile, which provided in the documents such as the birth certificate, occupation and address of the accused, is out of range of police force responsibility, and it is announced by the police force to the magistrate's court authorities, provided that the accused submits them to the police force, otherwise, it is not the duty of police force to identify these specifications to declare to the *public prosecutor's office authorities*, unless, magistrate's court or court authorities, oblige the constabulary agency to identify this information.

In preliminary investigations, after summoning the accused, the prosecutor is required, according to Article 193 of the Criminal Procedure Code of 1392, first view the accused's identity documents and then the accused specification include the name, surname, father's name, occupation, reputation, age, occupation, degree of education, marital status, number of children, nationality, religion, criminal record. In necessary and relevant cases, also ask about the address of the residence and the workplace, including the city, zone, rural district, village, street, alley, number and postal code of the home, national number, email, and fixed and mobile phone number, in such a way that submit the subpoena and other legal papers can be easily disclosed to the accused.

If the accused be silent against the judge's question of submitting his identity documents and refuses to give the above specifications, or referring to some specifications and refraining from giving full details, what is the effect of this silence on the processing of the case?

based on the constitution, the accused has the right to remain silent against the causes and charges that may be against him, not silence against express his identity, because in this case, in accordance with Article 19, Article 14 of the law of establishment of police force and Article 13, register amendment the accused is provided to police force to identify identity and nationality. Regarding the silence of the accused in relation to the other information mentioned in Article 193 of the legal procedure, the legislator has not provided any executive guarantee. Therefore, it is a matter of consideration. If, in order to identify this information, the accused is provided to the police force, since there is not included in the law, duty for the accused or authority for the judge, contracts with his rights, Of course, it may be said that since the identification of this information does not affect the process of prosecution or guilt or the presumption of innocence, then it is not necessary to mention them to magistrate's court authorities.

Although in court for determining the Ta'zir punishment of some of them, May be taken into consideration for the judge who owns the sentence, in order to reduce the punishment, but in any case, It is not possible to state accused's address to the magistrate's court or the court authorities, because submit and statement of the accused will be faced with serious difficulties due to lack of address. It may be said that the accused who does not express the address of his place of residence or work, is considered to be a stray man, and should be detention in public detention, however, this is contrary to Article 46 of the Criminal Procedure Code, consequently, the accused can not be monitored for more than a legal day, or arrest him. The silence of the accused to provide his address does not necessarily reflect the lack of a residence or work address. If, at the same meeting of the first investigation in front of judicial authorities, If, at the same meeting of the first investigation, the judicial authorities, with the description of the complainant or the circumstances mentioned in the complaint or the relevant report, the crime is not attributed to the accused or is not essentially a criminal

offense, the judge can make a decision, without paying attention to the need for the address of the silent accused. Because, basically, if the defendant's address is necessary to continue the investigation or trial, if the decision is challenged and his presence necessary to the judicial authorities, the defendant is summoned, in the previous manner, through the same address stated in the report or complaint, But if, in the same session of the investigation or trial, it is decided that the accused is not innocent, and the continuation of research be necessary, in the implementation of Article 217 of the legal procedure, a disciplinary *quia timet* is issued against him. With noncompliance, the defendant will eventually be arrested. If the accused be compliance with the implementation of the *quia timet*, two situations arise: either it declares his address so the purpose is achieved, or doesn't declare his address which in this case since, in accordance with Article 193 of the legal procedure of the criminal code, the accused declares his address to the judge, in the case of silence, the term "Article 194 of the Criminal Code can be used, state that the subpoena and other judicial documents are sent to the previously announced residence, which the previous announced residence is the place where the accused himself has already been told to the legal authorities or police force, otherwise, his address is the same address stated in the complaint or report.

Third speech: accused silence in introduce an attorney

Throughout the history of the Code of Criminal Procedure, the accused's use of his attorney's assistance during the hearing has been in doubt. Today, with regard to the tendency of prosecution systems in the investigation stage to the charge system, the principle of equality of arms and the adversarial process, the presence of an attorney and his companionship with the accused at all stages of criminal proceedings, even at the time of the investigation, is accepted as a defensive right for the accused^[12]. Accordingly, in the Code of Criminal Procedure 2013, the presence of an attorney and introduce him to the bailiff of magistrate's court for preliminary investigation and in the court in order to trial, is possible.

With the commencement of the prosecution of the accused by Bailiffs of Justice, in accordance with Article 48 of the Code of Criminal Procedure approved 2013, the accused can apply for an attorney. The accused may remain silent for some reason, and does not introduce an attorney. One of the reasons for silence may be the lack of knowledge of the right to have an attorney, then, in accordance with Article 52 of the Code of Criminal Procedure, whenever the accused is prosecuted, the Bailiffs of Justice are required to convey the lawful rights of the person under surveillance, including the right to have an attorney and inform him in writing and receipts be attached to the case, otherwise, Bailiffs of Justice will be sentenced to three months to one year from the discontinuance of the state service in accordance with Article 63 of the same law. In accordance with Article 48 of the Code of Criminal Procedure, the attorney must meet the person under surveillance with regard for the confidentiality of the investigations and negotiations, and at the

end of the meeting with the accused, which should not be more than an hour he will submit his written observations for inclusion in the case. However, if the accused discard this right or be silent, even in crimes punishable by death or imprisonment for life, the investigation process will be pursued by bailiffs of Justice without the presence of an attorney.

In the preliminary investigations, in the preliminary investigations, the legislator stated in Article 190 of the Criminal Procedure Code that: "the accused can have one lawyer at the preliminary investigation stage, this right must be communicated to the accused before the investigator starts the investigation. The accused lawyer can declare what is necessary to discover the truth and defend the defendant or the constabulary, knowing the charges and the reasons for it. Attorney's remarks are recorded in process-verbal". The right to attend an attorney at the preliminary stage of the investigation provides the lawyer with the opportunity, if necessary, after completing the interrogation questions and the accused's responses or his silence, to express the points he has come up with from the case study or question and answer and requires them to defend their client and discover the truth and constabulary. Of course, it should be noted that the lawyer should be silent during the interrogation of the accused and express his statements after the accused's defense, during or at the end of the session.

The accused's silence in introducing an attorney may be due to reasons. These reasons can be divided into two categories: First, the accused may not be aware of the right to have a lawyer and he has not been informed that a lawyer can be involved at this stage, and secondly, he is aware of this right, but for some reason, such as non-financial ability, a sense of shame and ... refrain from introducing a lawyer. The effect of silence on the introduction of a lawyer in the first case is documented in Note 1 of Article 190, amendment of the Code of Criminal Procedure of 1392, The foreclosure of the right to attend the attorney and the failure to inform the defendant of this right will result in a sentence of disciplinary punishment of grade eight and three, However, the effect of the second case would be to continue the proceedings without the presence of a lawyer, Except in the cases which their punishment, In accordance with Note 2 of Article 190 of the Code of Criminal Procedure, will be life deprivation or **imprisonment for life**. In these cases, if the accused does not introduce a lawyer and remain silent, the Interrogator will choose a *public defender* for him. According to the accused's knowledge of having a lawyer, the failure to appoint a *public defender or his absence does not prevent preliminary investigations and does not invalidate it, but the failure to appoint a public defender or his absence is merely the violation of the investigator or related lawyer from performing his statutory duty which will face to legal sanctions in* Disciplinary Court.

In the presence of a lawyer in the preliminary investigation stage and with knowledge of the charges and the reasons for it, the conditions for the disclosure of the truth and defense of the

defendant or constabulary are provided, to be expressed and, if necessary, written in the proces-verbal.

The legislator's use of the term "can" in Article 190 the Code of Criminal Procedure shows the discretion of the lawyer to express the facts and, in the interest of his client, he can remain silent and refrain from saying anything. It seems, however, that the attorney has such an authority and can use it, when the statements are at the detriment of the accused, otherwise, must act in accordance with the law and express the truth and doesn't be silent. The point to be considered in this article is the term "discovery of truth" and "constabulary" that the accused may ask the lawyer to remain silent. Therefore, the legislator, with the condition "can", the legislator considers the lawyer free to express statements, to refrain from telling and be silent in the case of a client's recommendation. In this regard, there is no significant difference between the scope of authority of public defender, who is determined by the court by not being introduced or silenced by the accused, or conventional lawyer, who is presented by the accused himself.

In the process of introducing a lawyer to the court, according to the Code of Criminal Procedure, the parties to the case can introduce, in crimes within the jurisdiction of the criminal court, up to three attorneys (Article 385 of the Criminal Code), and in another crimes, maximum of two attorney, to the court (the Code of Criminal Procedure, note2, Article 346). In the event of multiple attorneys, the presence of one of them is sufficient for the formation of a court and a hearing.

Contrary to what has been said about the person under investigation by the Bailiffs of Justice and accused at the preliminary investigation stage at the magistrate's court, about introduce and have an attorney, the silence of the accused in not introducing an attorney at this stage has different effects and is more important. According to Article 348 of the Code of Criminal Procedure, the presence of attorney of the accused of crimes under sections (a), (b), (c) and (d) of Article 302 of this law is mandatory and the court session is not organized and the file is not processed without his presence. Hence, the lack of introducing an attorney and silence of the accused at this stage leads to the appointment of a public defender by the court. But in other crimes, considering the contraposition of Article 347 of the Code of Criminal Procedure, it can be said that if the accused does not introduce an attorney before the end of the first hearing, the court will not be required to appoint an attorney for the accused and the proceedings will be pursued without the presence of an attorney.

In cases where a public defender is set up to handle a case, there must be None of the challenge to judge causes, between him and the other party, abettors or their attorneys, otherwise, in accordance with Article 349 of the same law, it will prohibit the lawyer from acting in the case. In this case, the accused can, in order to prevent any corruption, notify public defender refusal prior to adjudicate. Of course, the accused can, in accordance with Clause 3 of Article 348 of the same law, request for change the public defender for a one-time, or in accordance with clause

2 of this Article, deny the presence of a lawyer by introducing an attorney. If the defendant remains silent and does not take action in term of public defender refusal and lack of demand for change, the proceedings will continue with the presence of a lawyer. Unless the lawyer, himself refuses to attend the hearing, due to disclaim reasons existence. If the court pass judgment, without appointment and presence of public defender in legal procedure meeting, in addition to the fact that authorities who pass the judgment will be prosecuted will face to legal sanctions, due to neglect of the law, and In case of revision, this ruling will be violated by the Supreme Court and the case will then be referred to the issuing court in order to hearing be conducted with the presence of the public defender and then a verdict is issued, but, if revision reference is provincial court of appeals of state, in the event of a revision, provincial court of appeals of state, with the presence of the public defender, after the hearing, pass the judgment, which may be confirmation of the same judgment rendered by the court of first instance.

Fourth speech: silence during the hearing

During the investigation of the charge of the person under surveillance, bailiffs of Justice are obliged to immediately inform the accused about the charge and the reasons for it, and inform the prosecutors about the extent for make a legal decision. The silence of the accused in the investigation may include no comment on assigned action, attributed charge, and other issues of the investigation, For example, they will remain silent about introduction of other accomplices, mention of their identities and their characteristics, and not willing to express their hideout and or residence. According to Article 61 of the Code of Criminal Procedure 1392, all actions of the bailiffs of justice in conducting investigations should be in accordance with the procedures and rules that are prescribed for preliminary investigations. Hence, the Bailiffs of Justice are required to, in accordance with the regulation, numbering interrogation papers and other file documents and submitting them to the judicial authority in the form of a proces-verbal (Article 59 the Code of Criminal Procedure) And stipulate the silence in this proces-verbal and submit to the judicial authority, if signed or fingerprinted.

In preliminary investigations, despite the start of investigation and the summoning of the accused, the Interrogator is obligated to start the investigation immediately (Article 189 of the Criminal Code). The preliminary investigation of all crimes is the responsibility of the Interrogator, in this way, the interrogator must personally investigate and take the necessary steps to collect evidence or, in some cases, refer it to Bailiffs of Justice after giving the necessary training (Article 98). In this case, the accused may, for some reason, refuse to give answer the interrogator or be silent.

Article 195 of the Code of Criminal Procedure provides: "The interrogator, prior to the commencement of investigation, shall notify the accused to be careful about his statements, then explain the charges and its reasons, explicitly ... Questions should be explicit, relevant to the charge and within its scope. Indicative questions, or with delusion, reluctance and compulsion of the

accused are prohibited.” Then, Article 197 of the same law state: if the accused refuses to respond or to sign his statements, the items are recorded in proces-verbal. Regardless of the exceptional circumstances in which the accused refer to the judicial and constabulary authorities personally, and by confessing to the crime and giving the necessary explanations, assist the magistrate’s court and police in performing their legal duties, it is possible that the accused may remain silent in some cases and may even try to mislead judicial authorities by false statements. In these and similar cases, the silence of the accused can’t be considered as reason for the accuracy or falsehood of the event or the approval of the complaint and report. So, silence does not mean anything intrinsically, except with the help of other evidence, which in this case may form the judicial presumption and be useful. However, incorrect presumptions from accused silence, has no direct or bad effect on his right to silence.

The most important effect of the accused's silence is that the judiciary or the police must, without relying on accused's defense, think about how they can prove the charge. A judicial or police should not, to prove the charge, oblige the accused to respond because investigating and interrogating the accused is an opportunity for him to defend himself against the reasons of the prosecutor. Otherwise, the obligation of the accused to answering questions and ignoring his right to silence may also have the effect of making the accused to express false and untrue material to distort the mind of the police or the judiciary. Of course, the accused should not suppose that the right to silence closes the path to escape from prosecution and punishment, instead, it is possible to block such an obstacle only by carrying out thorough research and accurate collection of reasons.

When a person is charged, the task of judges and investigators is to collect the reason, impartially and in terms of all conditions and the assurance of the accused's silence. This means that, basically, the accused has no obligation to prove the crime to the investigator, and these are the investigative authorities that must obtain the positive reasons for accused or suspect guilt, by the administrative ways and channels.

Under Article 262 of the code of criminal procedure, interrogator is obliged upon termination of the investigation and, if there are sufficient grounds for the crime, to declare to the accused that for the presumption of innocence or the discovery of the truth, express any statement as the last defense. In this case, the accused will be summoned and, in the case of presence, the prosecutor is obliged to investigate, if he makes a statement or expresses an affirmation that is effective in discovering the truth or inferiority. However, if the accused is silent or does not attend, according to Article 263 of the code of criminal procedure, Without making the last defense, it will be decided, Without the accused's lawyer being invited to the magistrate’s court prosecutor for the last defense.

The silence and lack of accountability of the accused at the process-verbal legal procedure is not an obstacle to the issuance of a ruling by a judge of the court. The legislator, in paragraph

(e) of Article 359 of the code of criminal procedure, passed in 1392, express the court judge's role, if the accused deny the charge or be silent, as following: “... In the event of denial or silence of the accused or the existence of doubts in the confidentiality of the confession, the court begins to investigate the accused, and hears statements of the witnesses, and expert who introduced by attorney general or plaintiff, private claimant, the accused, or their lawyer. This rule is respectful, on the one hand, based on rational logic and on the other hand, in order to preserve and protect individual security. So there is no distinction between legal and criminal matters in this regard.

According to the principle of the presumption of innocence, the accused is not required to prove his innocence and can remain silent against the claims of others. The principle of the presumption of innocence, from the point of view of the burden of proof of the cause, from privative point of view, free accused from proving innocence, and, from the point of view of exigency, obligated the judiciary system to prove guilty according to the law and sufficient evidence in a fair trial and with a hearing of the defense.

According to "condone ofsin" principle, the emphasis of religious standards is that regarding the limits, in the offenses that are right of God the silence of non-disclosure of the offense is not only the right but also the duty of the accused. But hiding the crimes and the desire to abandon their pursuit in right of people cause to determinant other, and the loss of the rights of others, is oppression to victim^[5]. Therefore, the failure to disclose the crimes of right of God and silence is a religious matter.

Basically, Islam recommends and encourages non-disclosure of guilt by the guilty person. Saheb javaher states: The camouflage of the crime by the guilty and his refuse to confession in the right of God is recommended (Mostahab), because hiding the guilt is more beneficial and closer to interest than punishment, And covering ugly is more appropriate than declaring it, this is where a person really committed a crime and is aware of that, in that case he should refrain from declaring a crime and confessing it.

The judge should not consider silence as a reason or a sign of crime, and it is necessary to issue a vote, by examine the reasons given by the prosecuting authority, providing sufficient reasons and reach to knowledge and persuasion of conscience that the crime committed by the accused, otherwise, take a vote in accordance with the principle of the presumption of innocence.

In some cases, the accused who is silent may ask his lawyer to remain silent in answering questions. In this regard, the discretion of the attorney's silence and its effect may be mentioned. Given that the prosecutor, after considering the defendant's identity papers, explicitly addresses him to the charge and the evidence (Article 195 of the code of criminal procedure), and his attorney will not be questioned directly about this, and on the other hand, the attorney can only submit his observations for inclusion in the case, if necessary. When accused asked him to stay silent, he must also remain silent according to a contract with his client; his silence effect is same as accused silence effect.

Fifth speech: silence after the verdict is finalized

In accordance with Article 375 of the code of criminal procedure, the judge must state being by default or contradictory and protestation ability of judgment, since issuance of the judgment by default gives the accused the right to protest, but issuance of contradictory judgment does not have such a right to the accused. Article 406 of the code of criminal procedure states that "... whenever an accused or his attorney does not attend any of the court hearings, he does not send statement of defence, the court will issue by default judgment, after investigation..." It is understood from the provisions of this article that if the accused is present at the court sessions, the court vote is contradictory, whether the accused will remain silent against the plaintiff's claim and/or the prosecutor's or the court's questions, or defend himself. Therefore, the accused can no longer protest from judgment, because this right is for by default judgments not the accused who was present at the trial and silenced against the statements of the litigant.

One of the judgments issued by the French court on July 9, 1836, has not considered The accused's refusal to answer unequivocal by refusing to attend the meeting. Accordingly, the Tribunal considered the conduct of the accused to be in breach of the orders of the court, and, in the constabulary of September 9, 1835, stated that the hearing is considered as contradictory judgment^[6].

One might say that one of the effects of silence in court sessions is the ability to protest it extraordinarily. According to Article 474 of the Code of Criminal Procedure as amended in 1392, the definitive judgments of the courts, whether or not the verdict is enforced or not, at the Supreme Court, can be highly objectionable, by legal procedure of request repetition. A convicted person at any time can request a legal procedure, in respect of definitive criminal judgment, in cases where the legislator has determined in this Article. Based on mentioned points which the legislator has placed for the restoration of proceedings and that the accused's silence is not one of these cases and, it is not a court order, at least, as a document, the accused's silence should not be considered as one of the cases covered by this article. The accused's silence in expressing his identity and not answering questions about how a crime committed by a person with another identity and the lack of access of judicial authorities and defendants to his true identity could be one of the reasons why the head of the Judiciary, considered the definitive judgment of judicial authorities, Which has been accompanied by the silence of the accused during the trial, unlawful, by prescribing the legal procedure, submit the case to one of the divisions of the Court in order to investigation. However, if the guilty abandon this right for some reason and keep silence, does not appear to have a particular legal effect, unless the silence of the accused was considered as absenteeism, and according to Article 474, spouse, legal heir, or Attorney General of the country or executor attorney general can debate for new trial.

Conclusion

The defendant may, in response to Bailiffs of Justice and public prosecutor's office or court authorities, who answer questions such as identity, address, lawyer's inquiries and research questions, including the acceptance or rejection of the charges, and the expression of the last defense, refuse to answer or be silent, Therefore, it is necessary to determine the scope of the accused's silence for the fair trial.

In international documents and in the laws of some countries, including Iran, a defendant based on the right to silence, after expressing his identity and address, can refuse to respond to police questions in detecting crime and remain silent. In accordance with bailiffs of Iran and the legal logic and the principle of the presumption of innocence, where the burden of proving the crime and the reasoning is the responsibility of the plaintiff or prosecutor, legal authority or Bailiffs of Justice must, without allegation and regardless of the accused's charges, disclose the reasons for the crime and prove it. Investigating and interrogating the accused is an opportunity for him to defend himself against reasons and to prove the charge, should not and, basically, don't need to force him to answer. In response to research questions, silence does not mean accepting the charge, and can't condemn him according to the silence.

The accused should not suppose that, by being silent against the charge, take receive for suspension of prosecution or acquittal from public prosecutor's office or court.

Of course, the defendant's silence in relation to the question of his identity and address is not justified, because, by referring to clause 19 of Article 14 of police force formation law, leads to the police force performs its duty to identify the identity of the accused. Although there is no specific mention of this deadline, this requires an explicit regulation, However, it may be said that the bailiffs of Justice, under Article 46 of the Code of Criminal Procedure, is allowed to observe the accused only for evident crimes for up to a legal day, it should be noted, however, that this article does not refer to identity, but only to investigate within the deadline. If it is said that the duty of the agents in conducting the investigation is the same as the investigator's duties in carrying out the preliminary investigations referred to in the clause 90 of the Code of Criminal Procedure, which, in its definition refers to the "identification of the accused, therefore the identification of the accused is within the concept of investigation that Bailiffs of Justice are obliged to deal with witnessed crimes within a legal day, but this is not correct, because this notion is due to mixing the concept of the identification of "accused's identity" mentioned in clause 19 of Article 14 police force formation law, with the concept of "Identifying the accused" mentioned in Article 90 of the Code of Criminal Procedure. While each has its own concept, the meaning of "identification" is to determine ID profile of the unknown accused which is the responsibility of the police force, but the meaning of "identification of the accused" is to find a relationship and assign a crime to a known person, which should be conducted in preliminary investigations by the judge or bailiffs of Justice.

The effect of the defendant's silence on the appointment of an attorney to the Bailiffs of Justice, in a situation in which he is not aware, while in accordance with Article 48 of the Code of Criminal Procedure has the right to have an attorney and in the implementation of Article 52 of this law, and should be conveyed to the accused by the bailiffs, in terms of not knowing this right, causes deprive the right to have an attorney, is an offense. According to Article 63 of the aforementioned law, legal sanctions is stipulated for violation of it, However, the accused silence about the appointment of an attorney in presence of the public prosecutor's office or court, in a situation that is not known to him, due to the lack of understanding of this right, according to note 1 of Article 190 the Code of Criminal Procedure invalidates the investigation. Otherwise, in the accused's knowledge of the right to have an attorney and his silence to appointment, legal procedure will continue without the presence of an attorney. In cases crimes punishable by life deprivation or imprisonment for life, if the accused does not appoint an attorney and remain silent, the judiciary will choose a public defender for him and the prosecution will continue with the presence of a lawyer. Otherwise, leads to invalidate of preliminary investigations in magistrate's court, and prevents the formal formation of a hearing in دادگاه, because the right which the law considered to the accused, has been deprived. Finally, it is possible that the presence of the accused, but his silence at the court hearing can't be considered as non-attendance, but, in accordance with Article 406 of the Code of Criminal Procedure, the should be considered as contradictory judgment.

Suggestions:

In order to prevent the submission of inaccurate ID profile information and the provision of ID profile of others and fake information to judicial authorities and other governmental agencies, it is imperative that written laws and regulations be developed with legal sanctions.

In legal authorities and constabulary authorities, the range of silence of the accused be identified, the right to silence does not constitute the right to impossibility to identify the identity and characteristic of the accused, Rather, it should be possible to obtain the identity of the accused through a possible scientific or customary law that is not against the law or shariah, including fingerprints.

Not only for convicted, the full identity of the accused and the definitive outcome of his charge investigation document in judicial and disciplinary information registration system.

According to clause 19, Article 14 of the police force formation law, identifying the identity and nationality of accused is police force responsibility.

The term is not specified in this law, so it is necessary to determine the duration of this duty, which seems to be done within twenty-four hours, otherwise, upon expiration, each time it should be extended by the general attorney's opinion, otherwise the maintenance of persons in order to identify is considered as illegal constraint.

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