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# The Attitude of Iran's Criminal Policy Towards the Observance of the Culprit's Right to Silence in the Trials

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## Abstract

The primary concern of justice department law enforcement as the arms of the criminal justice system is the rapid discovery of the crime. This article seeks to investigate the attitude of Iran's criminal policy or, more specifically, Iran's criminal policy towards the observance of the right to remain silent in trials. In line with this, the problem of the study translates into the question: what are the results of the observance of the right to silence of the accused in the different stages of the criminal process? Utilizing the documentary investigation method, issues related to the right of the accused to remain silent in Iran's criminal proceedings at the stage of discovery of the crime, the initial investigation stage, and the trial stage in Iran's laws on criminal procedures were investigated seminally. Among the main conclusions is that Iran's trial system, which was in line with the inquisitorial trial system, changed its procedures with the passage of the law on criminal trial procedures in 2013 and was influenced by the effect of international human rights regulations.

**Keywords:** judicial proceedings; criminal policy in Iran; the right to silence; political attitude towards the accused; human rights.

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## La actitud de la política criminal de Irán hacia la observancia del derecho de los culpables al silencio en los juicios

### Resumen

La principal preocupación de los agentes del orden del departamento de justicia como brazos del sistema de justicia penal es el rápido descubrimiento del delito. El presente artículo busca investigar la actitud de la política criminal de Irán o, más específicamente, la política penal de Irán hacia la observancia del derecho a guardar silencio en los juicios. En línea con esto, el problema del estudio se traduce en la pregunta: ¿cuáles son los resultados de la observancia del derecho al silencio de los imputados en las distintas etapas del proceso penal? Utilizando el método de investigación documental, los temas relacionados con el derecho del imputado a guardar silencio en el proceso penal de Irán en la etapa de descubrimiento del delito, la etapa de investigación inicial y la etapa de juicio en las leyes sobre los procedimientos penales de Irán fueron investigados seminalmente. Entre las principales conclusiones se destaca que el sistema de juicios de Irán, que estaba en la misma línea con el sistema de juicios inquisitivos, cambió sus procedimientos con la aprobación de la ley sobre los procedimientos de juicio penal en 2013 y fue influenciado por el efecto de las regulaciones internacionales en materia de derechos humanos.

**Palabras clave:** procedimiento judicial; política penal en Irán; derecho al silencio; actitud política ante los imputados; derechos humanos.

### Introduction

Right to silence is the culprit's right of defense, i.e., his or her ability of refraining from providing answers to the questions posed by the formal authorities in case of their being later usable against him or her in the course of the penal lawsuits. Considering the meaning, the right to silence has been described as one of the examples of human rights (Hocking and Manville, 2001) in such a way that the judges from the European court of human rights introduced it in Murray case with the England's government being a party thereof in 1999 as an international criterion which is in the heart of such a concept as fair trial which is per se the subject of article 6 of the European convention on human rights (Gordon and Ward, 2000).

The researchers know the foresaid right which, as said by some, dates back in England to medieval centuries (Rao, 2002) as being a sort of privilege against self-incrimination under the presumption of innocence (Hocking and Manville, 2001) meaning that since the principle is the

culprit's innocence and it is the suing authority that should prove his or her criminality, the culprit is not required to offer answers to the questions that may attribute accusations to him or her (Haji Deh Abadi and Akrami Sarab, 2010).

In the laws of Iran and according to article 197 of the law on the criminal trial procedures, passed in 2013, it has been stipulated that "the culprit can keep silent in which case his or her refrainment from providing answers or signing assertions should be inserted in the minute" so the culprit's right to silence during the investigation has been implicitly accepted by the legislator and the judicial authority and the justice department's law enforcement officers are obliged to observe this right so the culprit should not be forced to answer the questions raised by the police or the investigators for they are solely directed at justification of his or her criminality because this helps the judicial authority fulfill his or her duty, to with the very justification of a crime's occurrence and its attribution to a person. This right should be announced to the culprit in the first place. Many of the rights in the penal trial procedures such as the temporary arrest, being subjected to passage of rime, writ of mortgage and the existence of specialized authorities have proponents and opponents and each of them has a reasoning of a type behind it (Akhundi, 2002).

In the penal laws of Iran and as a guarantee for the culprit's defense right, the constitutional principles, especially the act 38, granted a formal and legal aspect to the right to silence. After the glorious victory of Islamic Revolution of Iran, this trend caused part of the human right topics to be mentioned firstly in the constitution of the Islamic Republic of Iran and then, in the other regulations in respect to the members of nations and the necessity of their observance was underlined. Amongst these rights is the culprits' defense right as mentioned in acts 30, 37 and 38 of the Islamic Republic of Iran's constitution so that the culprits can take measures in line with the repelling of the accusation directed at them. It is worth mentioning that many of the experts of the penal law have offered reasonable and sophisticated notions to justify the right of silence. In the end, although the right to silence has been neglected in the laws on the penal trial procedures due to the absence of an explicit legal text, there are numerous works by experts and scholars of penal sciences and criminology that significantly document this claim (Rahmdel, 2006).

The present article seeks investigating the attitude of Iran's criminal policy or put differently, Iran's penal policy regarding the observance of right to silence in the trials. In line with this, the study's problem is that what are the outcomes of observing culprit's right to silence in various stages of the criminal trial?

## 1. Research Literature

In research termed: “Comparative study of the culprit’s right to silence in the laws of Iran and Iraq” (Ardabili, 2006: 13) concluded that the right to silence is one of the best rights and it means that a culprit can keep silent and refrain from the questions s/he is asked and that this privilege is of a lot of benefits to the culprits. It has also been stated that this right has been accepted in all the trial systems, including the accusatory, inquisitive, and mixed as well as in the two legal systems of Iran and Iraq. The most important criticism that can be directed at the Iranian legislator in this regard, as stated in the foresaid article, is that the culprits may be personally judged by the legal authorities in case of keeping silent; non-necessity of making the culprit understand this right, absence of legal mandate in this regard, non-clearness of the judicial system’s duty in regard of the culprit’s rights are some of the disadvantages. On the contrary, in the laws of Iraq, the right to silence is a more appropriately adopted mechanism but the Iraqi legislator can be criticized in this regard that he has excluded the enforcement of this right in various cases for which there are not proper justifications.

In an article named “culprit’s silence in the penal trials”, (Mo’zzenzadegan, 1998) expresses that the culprits enjoy the right to silence in the legal systems of England and the US and that this right is especially enforced by the police in its preliminary investigations and treatments of the culprits; the police clearly announces this right to the culprit and s/he is given this right and perfect freedom to provide an answer or not in all the trial stages; it is generally held that the culprit’s silence should not end with his or her sustaining of a loss of any type.

In research called “investigating right to silence from the perspective of the penal laws of Iran and England” (Sandevs and Richard, 2000: 115) concluded that the right to silence should be considered as one distinct example of the culprit’s defense right. Resorting to such an instrument, the culprit can keep silent against the accusation and the judicial authorities, as well, cannot take the culprits’ silence as a piece of evidence indicating their criminality. The culprits’ defense rights that are proposed and supported as integral part of the fair trial in the regional and international documents of the human right as well as in the domestic regulations include a set of privileges that “the culprits should enjoy in a fair trial so as to be able to defend themselves against the claims posited contradictory to the presumption of their innocence under free and human conditions”. Investigators should ask questions about the allegations and these questions should be relevant, clear, useful, and away from any sort of induction and enticement. Resort to deceit, conspiracy, encouragement, and subornation of the culprits is by all means prohibited and considered as abuse to the culprits’ rights and violation of their human veneration.

In an article titled "silence", (Ashuri, 2017) has dealt with such a subject as silence in the laws on the penal trial procedures and civil trial procedures and concluded that the result of the silence is different in the laws on the penal trial procedures from that in the laws on the civil trial procedures and that the silence occasionally causes the abortion of an individual's rights in the civil trial procedures' laws and it inter alia ends with the non-objection to the issued sentence and non-requesting for the appeal hence the loss of the convict within the specified legal respite; it has also been stated that the convicts lose these rights due to their keeping of silent.

In a book entitled "the right to silence in the transnational criminal trials from the perspective of comparative laws" (Dehghani, 2018: 29), emphasizes on the just effectiveness and use of international cooperation for obtaining confession or evidence in the case of the suspect or culprit's silence. In this book, the police's supervision, the option of the investigations' administrative assessment, hidden surveillance and use of silence as a testimony to the guiltiness have been analyzed and the researcher deals with the methods existent in the domestic regulations about the culprit's silence in the trials therein.

## **2. Methodology**

The study method is descriptive-analytical considering the nature of the study's subject, goals and information gathering; use has been made herein of the library resources.

Right to Silence as One of the Culprits' Rights in the Penal Process of Iran.

Right to silence is one of the defense rights of the culprit. This right has been authenticated in the regulations of the most of the countries. The culprit's silence in various stages of indictment, investigation, trial, and sentence issuance is amongst the distinct examples of his or her defense rights. The right to silence is amongst the guarantees of the culprits' defense rights and it is of a great importance in the early stages of investigation and trial. In the light of this right, the culprits can keep silent and refrain from answering the questions asked by the investigatory and trial authorities and the indicting authority and the judicial police are obliged from the very beginning to declare this right to the culprits as mentioned in many of the penal systems. Right to silence is one of the most controversial defense rights always accompanied by some ambiguities. Due to the same reason, some questions can be asked in this regard:

1. Does the culprit have the right to avoid answering to the questions raised by the qualified authorities in the course of investigation,

prosecution or trial? Can this right be concluded as a sort of culprit's denial of the accusation?

2. What method has been adopted by our country's legislator regarding the observance of this right? In the judicial system of our country, silence is the culprit's right and the resort to methods like threatening or deceit and conspiracy or coercion and compelling for forcing him or her to answer has been prohibited (Ardabili, 2006) (article 197 of the law on the penal trial procedures, passed in 2013).

In line with this, the third paragraph of article 169 of the international treaty on the civil-political rights, as well, explicitly expresses that: "The culprit cannot be forced to confess to his or her own criminality or bring testimony against him or her own self".

Forcing an individual to confess to his or her own criminality comes about when the culprit is subjected to enticement, threat and encouraging promises or torture or annoyance and confirms the attributed accusation and introduces him or her own self as the doer of the claimed crime. Coercing an individual to bring testimony against him or her own self also happens when the culprit is compelled subject to the effect of the aforementioned factors to present proofs and offer assertions agreeing with the courts or the private plaintiff's claim (Yekrangi, 2018).

Although the right to silence has been indirectly predicted in Iran, the investigating judges are not obliged to announce the right to silence to the culprits. However, it is necessary for the culprit's right to silence to be respected by the justice department's law enforcement officers as the vanguards of the prosecution. Before initializing the prosecution, the police should make the culprit, or the suspect understand this right (Hashemi, 2004). As for the culprit's right to silence in the early investigation stages, Iran's constitution is not so much explicit. The culprit should know that he can refrain from answering to the questions and that his or her silence cannot be followed by penal consequences for him or her. This right is the defense tool of the culprit under the conditions of a lawyer's absence (for the culprit is not familiar with the regulations and s/he may be enticed or be inflicted with delusion and speaks paradoxically). It is only the presence of the lawyer that can justify speaking for the culprit.

The third chapter of Islamic Republic of Iran's constitution includes acts guaranteeing the rights of the country's citizens, including the culprits and others. In this chapter, acts like 32, 35, 36, 37, 38 and 39 have been predicted and they are related to the culprits' defense rights. The significations of these acts have also been stated in articles 26 and 129 of the law on the trial procedures of the general and Inqilab courts regarding the penal affairs. Corresponding to the act 32 of the constitution, "nobody can be arrested unless as specified in the law. In case of the apprehension,

the accusation subject should be mentioned, and the proofs should be immediately declared to the culprit in a written format and the initial file should be referred within twenty four hours to the judicial authorities and the trial should be held in the fastest possible time. The violator of this act is punished in accordance with the law. Thus, according to act 32 of the constitution:

1. The culprit's investigation and prosecution should be within the framework of the accusation's subject.
2. The declaration of accusation and prosecution should be done along with the providing of written proofs. For example, if an individual is summoned to the court for an alleged accusation, s/he is not obliged to provide answer to any questions and s/he has to seminally ask what am I accused of; then, s/he should deny all the questions not related to the accusation subject and s/he can do so by saying that this question is irrelevant to the accusation and I prefer not to answer it.
3. The mere proposition of the accusation does not suffice rather it is necessary for the accusation to be written in the prosecution paper and the culprit should also provide written answer thereto. Thus, the culprit can avoid providing answers to the oral questions.
4. The mere mentioning of the accusation in a piece of paper is not enough and the law has explicitly mentioned that the accusation should be done along with the providing of proofs. Despite the results obtained from the investigation of the constitutional acts, it appears that there is no evidence signifying the implicit assertion of the right to silence in the act 32 of the constitution. Thus, the constitution has not authenticated any right regarding the culprit's ability of keeping silent in the stage of the preliminary investigations.

Iran's constitution realizes the full-scale supply of the individuals, men and women, with their specified rights and creation of fair judicial security for everyone as one of the general duties of the government and it has also stipulated guarantees for the revitalization and continuation of them. One of the most important branches of these rights is the culprits' right of defending themselves in rejecting the claims and incorrect accusations in the judicial authorities. In other words, the right to defense is the right by which an individual can reject and deny the criminal behavior, or the legal claims attributed to him or her based on the complaints by other individuals or the qualified disciplinary and judicial authorities by all possible means (Mo'zzenzadegan, 1998).

To actualize fair trial, there is a need for the enforcement of several acts and regulations in the five stages of the trial procedures, i.e., crime discovery, suing, preliminary investigations, trial, and sentence enforcement.



### **Culprits' Right to Silence in the Crime Discovery Stage as Stated in the Law on Iran's Penal Trial Procedures**

Crime discovery includes interventions made after being informed about the crime occurrence for the protection of the extant effects and proofs, culprit's apprehension, and prevention of his or her escape as well as collecting the information related to the perpetrated transgression. This is done under the supervision of the judicial authority by the justice department's law enforcement officers. In this stage, the culprit has the following rights and privileges safeguarding him or her against the police's abuse:

- Summoning or apprehending the culprit by means of a writ of summoning or subpoena; the summoning or arresting of a culprit is essentially feasible by sending a writ of apprehension or summon following its being ordered by the judicial authority. The duties and options of the police in the crime discovery stage differ considering the dividing of the crimes into tangibles and intangibles. Based on the contents and insertions of the penal trial procedures' law, the police officers have the right to engage in tangible crimes and take measures in line with the protection of the crime's traces as well as parallel to the prevention of the culprit's flee hence his or her apprehension; they are obliged to bring the culprit to the judicial authority within 24 hours (Hashemi, 2004).
- Prohibition of arbitrary pursuit and apprehension: corresponding to act 32 of the constitution, "nobody can be arrested unless as specified and ruled in the law". The individuals apprehended in contradiction to the related regulations that are the legal mandates of the penal laws by the justice department's law enforcement officers can complain; s/he can also sue the individuals who have prevented him or her from bringing his or her complaint to a qualified judicial authority.
- The principle of the crimes-punishments proportionality: individuals can be sued for the perpetrations for which corrective measures and punishments and legal mandates have been stipulated in the laws. In line with safeguarding the individuals' life and properties and fame, justice makes it necessary not to consider any action as a crime unless it has been previously introduced as a crime for which a punishment is found specified. According to act 169 of Islamic Republic of Iran's constitution, no doing or not doing of an action is considered as a crime based on a law enacted afterwards; the act 38 of the constitution, as well, stipulates that "issuing a sentence for punishing a convict and its enforcement should be done only through a qualified court and by the force of law".

- Veneration of the individuals' inherent honor: the culprits have the right to be treated in respect to their inherent honor. In act 39, the constitution stipulates that defamation and blemishing of the prestige and honor of the individuals who have been arrested, detained, imprisoned or banished by the rule of law is prohibited, disregarding its type, and entails punishment (Hashemi, 2004).
- Declaration of the accusation: every culprit should be informed about the penal nature of his or her crime before the initiation of the investigations so that s/he can prepare his or her means of proper defense. This right is termed briefing about the alleged accusation and it has to be mentioned in the subpoena and, as soon as attending a police station, the culprit is informed about his or her accusation. The act 32 has the following stipulation in this regard: "the subject of the accusation should be immediately declared along with the proofs to the culprit in written form".

### **Culprits' Right to Silence in the Stage of the Preliminary Investigations as Mentioned in Iran's Law on Penal Trial Procedures**

Interrogation of a culprit in the investigation stage is of a particular importance but it is not a proof for ignoring the culprit's right to silence and the judicial authority and/or the police cannot coerce the culprit to provide answers to their questions. As stipulated in article 197 of the law on penal trial procedures, "culprits can keep silent"; as it is seen, use has been made therein of the term "can" and this article clearly expresses that the culprits have the right to keep silent when asked questions.

In this stage, which is the most important trial stage, the foundation of a penal file is laid:

1. Collecting of proofs for and against the culprit
2. Taking necessary measures for preventing the culprits' escape and hiding through the issuance of the proportionate writs of freedom restriction
3. Assertion of ideas about the perpetrated crime with the format of one of such inductions as suing, temporary arrest, or criminality and, contrarily, ceasing of suing or cancellation of the criminality (Madani, 1990).

Of course, the principles related to the summoning or apprehension of the culprits and so forth that were mentioned before should be also observed in this stage:

1. The culprits' right of being accompanied by a lawyer; the culprits should have the right to appear before the investigating authority along with a lawyer. The investigations should be carried out in the presence of the lawyer, and they should not be assumed confidential. In completely exceptional cases that the investigator finds the acquisition of a part of explanations as being necessary in the absence of the lawyer, the permit for doing so should be acquired from a qualified court after the enactment by the prosecuting attorney. This is aborted in the first appropriate opportunity (Shirazi, 2013).
2. Providing enough chance for defense: defense is amongst the most natural individual rights; thus, during the preliminary investigation and trial and before the issuance of a sentence, the culprit should be given enough time for procuring his or her defense means. In case of the culprit's apprehension, s/he is provided with the possibility of preparing documents and proofs and conversation with the witness and s/he is given enough time in the court for rejecting the alleged accusations and his or her right of reinvestigation and appeal is guaranteed and there should be not so long time between the crime occurrence's date and performing of trial and issuing of a sentence rather there should be a reasonable and proper interval.
3. The regulations governing the proof collection: the immunity of the culprit's private life is amongst the important issues that should be carefully taken into consideration by the judicial authorities and justice department's law enforcement officers because the smallest compromise in collecting proofs and discovering crime causes the wastage of the culprits' essential rights and freedoms. Nowadays, sciences like dactyloscopy, identification of the weapons, genetic identification and use of computer for the identification of the culprits have become so evolved and advanced that they create a high coefficient of confidence in the area of the fast and exact discovery of the crime. It has to be noted that the necessity of observing the culprits' defense rights in the cross-section of crime discovery makes it required not to use the unprincipled and nonhuman technological and scientific advancements. In fact, the borderline of the application of crime discovery-aiding sciences and technologies is the observance of the culprits' rights and freedoms (Shirazi, 2013).

### **The Culprits' Right to Silence in the Trial Stage as Mentioned in Iran's Law on the Penal Trial Procedures**

The fourth stage is the trial and the process of investigating the crime in a court. As a source investigating the general public's petitions, the justice department should put on the mask of the angel of justice in the position

of trying the cases and issuing the sentences and use all its power to actualize the justice. It is evident that the accomplishment of this objective necessitates the observance of formalities without which it is not possible to actualize trials based on fair scales (Akhundi, 2002). The conditions of establishing fair trial are as explicated below:

**Reasonable trial:** the trial should be immediate and without delay. In this stage, the disruption stemming from the crime by a culprit and inflicting the society is tried. In the court and after inquiring the culprit's identity, a plea is declared against him or her at first so that s/he understands the intended accusation. In this stage, the accusations proposed in the early investigation stage will be only tried.

The trial conditions, as well, are the holding of an independent, legal and unbiased court, court's openness to general public, presence of the jury at least for the political and the press crimes, culprit's being accompanied by a lawyer and his or her enjoyment of a translator, if needed, and establishment of certain trial procedures specific to the children and adolescents due to their special conditions and keeping the trial in match with the criminological teachings. The followings are but some of these:

Based on the act 32 of the Islamic Republic of Iran's constitution, "the preliminary file should be sent to a qualified judicial authority within 24 hours and the ground should be afterwards set for the trial as soon as possible".

**Legal court:** the trial should be done in a court determined by the force of the constitution, or the other regulations of the country and it is held with the presence of public. The private courts are amongst the cases contradictory to the human rights. The court should be completely impartial, and it has to be not influenced by any factor even the governing atmosphere. The judge should be independent and immune of the administrative, financial, and political collusions and s/he should think about nothing but the enforcement of justice, fairness and law which is also demanded by the society.

In Iran's legal system and according to act 156 of the Islamic Republic of Iran's constitution, "the judicature is an independent faculty supporting the individual and social rights and responsible for the actualization of justice". Therefore, in performing their duty of trial and actualizing the citizens' rights, the judges should not be put under pressure and influence of the other governing faculties because the general organs, especially the executive branch, may resort to the public expediencies and resist the sentences issued by the judicial organ. The principle of the faculties' separation which has been mentioned in act 57 of the Islamic Republic of Iran's constitution safeguards this intention. Furthermore, the principle "job security of the judges", as well, is amongst the solutions with the possession of which the judges can try the cases and issue the documented and well-justified

sentences without any concern. The act 164 has the following stipulation in this regard<sup>4</sup>.

Besides, corresponding to act 116 of the Islamic Republic of Iran's constitution, "the courts' sentences should be well-documented and based on the legal articles and principles".

Holding of open trial sessions: this is one of the important guarantees in line with the actualization of the judicial security meaning that the people should be able to attend the trial sessions so that the performance of the judicial system can be directly supervised by the general public's thoughts and it can stay immune of inclination towards deviation. The historical experiences have also been expressive of the idea that the serial judgments in the courts lead to the divestment of the individual's rights (Naserzadeh, 2013).

### **The Effects of the Culprit's Silence in Various Stages of Trial from the Perspective of Iran's Criminal Laws**

The acceptance of innocence as an independent principle in the criminal laws of Iran and, also, as one of the basics of the culprits' right to silence, as was mentioned above, causes the load of justifying the proofs to be placed on the shoulder of the plaintiff or the prosecuting attorney and the culprits are accordingly exempted from offering proofs indicating their innocence because any response in this regard can be considered as a sort of confession hence be followed by the outcomes thereof. This is why the culprit has the right to keep silent against the questions asked by the judicial authority. The other effect of the culprit's silence is the creation of an obligation for the investigating authority in line with the declaration of this right to the culprit as it has also been pointed out in article 52 of the law on criminal trial procedures, approved in 2013; there is also predicted a legal mandate for it in article 63 of the same law.

#### **1. The Effects of Silence in the Stage of Being Under Surveillance:**

In the period of surveillance as one of the most important legal provisions, the person accused of a crime's perpetration is deprived of his or her freedom and s/he is placed before the society and its representatives. The necessity of creating balance between the society's power and the culprit is the allocation of privileges and rights to the culprit so that s/he

4 Act 164 of Islamic Republic of Iran's constitution: "a judge cannot be temporarily or permanently deposed from his or her position without first being tried and justifying his or her crime or violation that can cause his or deposition; his or her place of service or his or her rank cannot be changed unless it is ruled by the society's expediencies or the decision by the head of judicature following consultation with the head of the country's supreme court and the attorney general. The periodical translocation of the judges is carried out corresponding to the general criteria determined in the law".

can be fairly tried. Although the period of surveillance was not lawful as mentioned in the 1999's law on the penal trial procedures, evolutions were brought about in the 2013's law on the penal trial procedures as a result of which the culprits' rights, especially the right to silence, was taken into account (Haidari, 2015).

According to articles 47 and 49 of the law on the penal trial procedures, passed in 2013, the law enforcers are obliged to declare the specifications and the reasons of a person's being put under surveillance by any possible means to the local court within one hour after doing so. In the period that the culprit is under surveillance, the law enforcers should act in match with the rules and regulations even if s/he prefers to keep silent and silence cannot bar the police's performing of its duties. Based on article 47 of the law on penal trial procedures, the law enforcers are obliged to declare the whereabouts of a culprit who has been put under surveillance outside the workhours to the judge on duty at most within one hours. The preservation of the culprit's rights in the period of surveillance has been predicted in the law. For example, a culprit cannot be placed under surveillance for more than 24 hours. The enforcement of this right and the others is suspended on the idea that even if the surveillance happens beyond the workhours, the judicial authority should be informed thereof. The abovementioned necessities have led in England to the prediction of a detention officer's supervision. The supervision officer is an impartial supervisor in the police's investigations. His or her non-intervention in the gathering of a file guarantees his or her impartiality. The foresaid officer supervises on the proper behaviors of the police officers and the person under surveillance and the period of surveillance according to articles 36 and 37 of the law on police and the penal proofs, passed in 1984.

## **2. The Effects of the Culprit's Silence in the Trial Stage:**

In the trial stage, the silence should not be considered as a proof or evidence indicating the culprit's criminality. The courts' judges are obliged to evaluate the proofs offered by the suing authority and, in case of their sufficiency and satisfaction of their conscience regarding the culprit's actual perpetration of the crimes being investigated, they should ignore their silence and announce their conviction otherwise they can declare innocence based on the principle "presumption of innocence".

In England, defense in trial stage due to the culprit's prior silence was a method for reaching an unfavorable reasoning; of course, this reasoning resulted in concluding that the culprit is neither guilty nor not guilty something between criminality and non-criminality. However, this silence guided the judge and the jury towards confirming the culprit's not being guilty. This became later on known as Weissentsteiner Act according to which the supreme court could find a better functional approach by which the attorneys could more logically prove the crimes.

If the culprits prefer to keep silent in the trial stage, the judge can guide the jury towards a deduction or another. Due to the same reason, it is better for the culprit to break the silence for defending his or her own innocence so that his or her silence cannot end in an opposite deduction. This happens only when the culprits cannot offer evidence and the proofs gathered by the prosecuting attorney cause the justification of the crime. Now, an unfavorable conclusion can be reached from the silence of the culprits in the trial stage. Of course, two legal thinkers have objected to this performance and asserted that silence cannot be denied and the right to silence in the trial stage has also been authenticated by them and the jury, as they say, cannot shut their eyes to the outcomes of the enforcement of the right to silence.

In the trial stage and according to the culprits' right to silence, it is not possible to require them to provide answers about the accusations. This silence cannot be considered as a proof indicating the culprits' criminality and, quite opposite to what some say (Ashuri, 2017), it cannot be even a piece of evidence along with the other proofs rather the doubts should be always interpreted in favor of the culprits.

### **3. Interpretation of the Doubts in Favor of the Culprits:**

Corresponding to article 11 of the global human right declaration, every person accused of criminality would be considered innocent until his or her criminality is legally verified during a general lawsuit wherein s/he has been provided with all the necessary guarantees for defending him or herself. Paragraph 2 of the article 14 in the international civil-political treaty, as well, has predicted similar phrases. The act 37 of the constitution stipulates that "the principle is innocence, and nobody is realized as a criminal from the perspective of law unless his or her crime is proved in a qualified court". In the article 4 of the law on the criminal trial procedures, passed in 2013, as well, the emphasis is on the presumption of innocence.

In all of the abovementioned cases, the doubts are interpreted in favor of the culprits because the conviction sentence should be issued based on sure proofs. It is here that the most important effect of the culprit's silence comes about.

### **4. Proof Evaluation:**

In the stage of trying the penal affairs, the judicial authority is not solely relying on the parties' proofs in the issuance of a sentence rather he acts in line with acquiring other proofs meaning that, in case of the culprit's silence, the court pays attention to other proofs and performs all the investigations or interventions necessary for the discovery of the truth (Aal-e-Kajbaf and Akhtari, 2014).

The important point latent in the right to silence is that the culprit who clearly seeks dodging and keeping silent may have a lot of reasons for not offering documents and evidence to the court. One of these reasons might be the culprit's communication problems such as when s/he stammers or is dumb or s/he might be not dominant in a given language. Of course, such problems can be existent in both of the stages (after the trial and in the preliminary stage and during the trial). This can cause prejudgments in the police's investigations and interrogations<sup>5</sup>.

### **5. Effects of Silence After a Decisive Sentence is Reached:**

Based on article 474 of the criminal trial procedures' law, passed in 2013, the courts' decisive sentences, including those that have been enforced or not enforced, can be extraordinarily objected in the country's supreme court through sending a retrial request. The convict can at any time demand the resumption of trial and object to the decisive penal sentence in cases that the legislator has specified in this same article. Considering the aforementioned conditions under which the retrial can be demanded, it is seen that the culprit's silence is not one of them and it is not to be at least used as a piece of well-documented evidence by the court. The culprits' silence should not be considered as being within the inclusion circle of the abovementioned article.

The culprit's silence in expressing his or her identity and his or her avoidance of answering the questions about the quality of the crime that might be also attributable to a person with another identity and the judicial authorities' and the law enforces' lack of access to his or her real identity can be amongst the reasons encouraging the head of judicature to recognize the decisive sentence issued by the judicial authorities in the silence of culprit in the course of trial as being against the canon and, prescribing the retrial, send the file for more investigation into one of the special divisions of the court. However, if the convict withdraws from this right and keeps silent, it seems to have no legal effect unless his or her silence is considered as being equal to his or her absence and, according to article 474, his or her spouse can be his or her legal heir and executor and the country's attorney general may realize that the sentence enforcer should have proposed retrial (Dehghani, 2018).

## **Conclusion**

The observance of the culprit's right to silence in all of the various stages of trial causes the protection of the human veneration and prestige. The individual who is still a suspect and his or her criminality is yet to be proved

5 Confessions have to be voluntarily made RV Aubrey (1990) 79A Gvim R 100



should be considered innocent in the light of the principle of innocence and his insolence, torture and punishment should be avoided. There is no doubt that if use can be made of the legal and fair methods for justifying the crimes, there would be no need for threatening, coercion and occasionally torture. Use can be made also of the scientific methods with advanced technologies meanwhile performing the legal actions and the culprit can be allowed to securely and comfortably take the course and the objective can be accomplished according to the predicted interventions and mechanisms.

The culprit's right to silence has been more taken into consideration in the domestic laws of Iran, particularly the law on the penal trial procedures, passed in 2013. However, it is not considered the way it is taken into account by the international documents and this is one of the challenging topics of the penal laws because the observance of the right to silence entails informing the suspects and culprits of their right which has to be declared to them before interrogation.

In order to preserve order and society's rights and protect the culprits' rights, the legislator should bring about balance and it is here that the support of culprit has been declared as one of the legislative policies in the introduction to the penal trial procedures' law. In this regard, positive evolutions have been considered in the authentication of the culprits' rights and a substantial part of this important issue has been placed in the preliminary investigation stage on the shoulder of the justice department's law enforcers. Since the justice department's law enforcing officers are the first actors in the penal process and they directly engage with the tangible crimes from the very beginning of the formation of a penal file, enhancement of their legal knowledge and their passing of specialized courses are undeniably necessary. One of the other mechanisms for the operationalization of the culprits' silence can be realized as the elevation of the prosecutors and law enforcing officers' levels of knowledge. On the other hand, the granting of unlimited authorities to the justice department's law enforcing officers can pave the way for the threatening of the right to silence. Thus, it is necessary to predict certain scales for the range of the law enforcing officers' authorities and this is one of the most important and most effective mechanisms for preventing any sort of contingent misuse hence guaranteeing the culprits' right to silence.

In line with this, the enactment of the penal trial procedures' law on 23<sup>rd</sup> of February, 2013, should be considered as the peak point of the legislator's attention to the principles of fair trial. In a definition of the penal trial procedures, the first article of the abovementioned law has emphasized on the observance of the culprits' defense rights as the primary foundation of fair trial. In article 5 of the law on the penal trial procedures, attentions have been paid to the informing of the culprit about the alleged accusation as well as the proofs thereof and also their right of access to the lawyer.

The culprits' right to silence has been underlined in article 197 as one of the other principles considered in this law. In fact, the prediction of the important points of the preservation of the culprits' rights in the first articles of the new law on the penal trial procedures and the emphasis on their enforcement are indicative of this reality that the legislator has placed the safeguarding of these principles and remaining adherence to them and their observance on top of his goals and programs with the hope that the principles of fair trial are used as models of work by the enforcers of the penal justice (judicial authorities and the law enforcing officers).

In other words, having adopted such an approach, the legislator has taken effective steps in line with the preservation and observance of the culprits' right of silence and he has dealt with clearly reducing the authorities of the justice department's law enforcers and increasing the culprits' rights, including requiring to the acceptance of a lawyer, as well as bringing about evolutions related to the culprits' right to silence in the stages of investigation by the law enforcing officers. In this way, Iran's trial system that was in the same direction with the inquisitive trial system enacted the law on the penal trial procedures in 2013 to make a shift in its processes following which it started being influenced by the international attitudes and regulations and the paying of attention to the culprits' rights and guaranteeing of the culprits' defense right were steps taken towards the corroboration of the adversarial aspect in the stage of the preliminary investigations and this is indicative of the idea that steps have been taken towards the accusatory system. It is known that the goal of the accusatory system is mostly observance of the individual freedoms and protection of citizenship rights and the paying of attention to this important goal is admirable.

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