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A Comparative Study of the Right to Silence of the Accused in Islamic Jurisprudence, Iranian Law, and International Instruments

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ABSTRACT

The observance of a fair trial in criminal proceedings is today regarded as one of the fundamental and indispensable principles, without which achieving the ultimate objective of the judiciary—namely justice and equality—would be impossible. Fair trial has been emphasized in all international human rights instruments and treaties, and principles such as the presumption of innocence, the publicity of proceedings, the independence and impartiality of the judiciary, and the equality of arms are considered among its most essential criteria (see, e.g., International Covenant on Civil and Political Rights, 1966, art. 14). In the legal system of Iran, by accepting the foundations of Islamic jurisprudence and adhering to international human rights instruments, many of the principles of fair trial have been incorporated into legislation; however, in certain respects, notable shortcomings still remain. With the occurrence of a crime, judicial and law enforcement authorities mobilize their capacities to combat criminal conduct. The prosecutor's office and the public prosecutor, as the primary judicial institutions, are responsible not only for maintaining social order and security but also for safeguarding the rights of the accused throughout all stages of the criminal process and for collecting evidence in support of the accused's innocence. Consequently, a fair trial simultaneously requires a careful balance between combating crime and protecting the rights of the accused, so that the truth may be properly discovered and justice fully realized.

Keywords: Fair trial; Right to silence; Accused person; Iranian law; Islamic jurisprudence; International instruments

Introduction

Fair trial constitutes one of the most fundamental concepts in contemporary legal systems and is regarded as a core pillar for the realization of the rule of law, justice, and human rights (1, 2). Justice, as conduct in conformity with law and grounded in respect for individual rights, is not only the ultimate objective of the judicial system but also a criterion for assessing its legitimacy and effectiveness. Any deviation from justice leads to injustice, violation of civil rights, and infringement of the fundamental principles of human rights (3, 4). Within this framework, fair trial, as a lawful, impartial, and equitable process for adjudicating accusations, guarantees the preservation of human dignity and fosters public confidence in the judiciary (5, 6).



Courts, as the principal institutions for the realization of justice, are obliged during adjudication to observe principles that ensure the integrity of judicial proceedings and the fairness of judicial decisions (7, 8). Principles such as the presumption of innocence, judicial independence and impartiality, publicity of proceedings, observance of the accused's defense rights, and equality of arms are among the recognized criteria of fair trial emphasized in international human rights instruments and domestic legal systems. Compliance with these principles is particularly crucial in criminal proceedings, as the accused, prior to the establishment of guilt, is exposed to the most severe restrictions on liberty, security, and personal dignity (9).

In Islamic jurisprudential thought, fair trial occupies a prominent and deeply rooted position. The office of adjudication is regarded as one of the most sensitive and significant social positions, and the judge, in addition to possessing scientific and moral qualifications, is obligated to observe justice, fairness, and human dignity at all stages of proceedings and even in social conduct (10, 11). Islamic law, through principles such as the legality of crimes and punishments, the prohibition of punishment without prior legal notice, the relevance of intent and will in criminal responsibility, and the exemption of minors and the insane from criminal liability, presents a coherent and humane framework for criminal procedure (12, 13). Moreover, the detailed regulation of procedural formalities in Islamic jurisprudence, aimed at preventing arbitrariness and ensuring the realization of rights, holds a special place in achieving judicial justice.

In contemporary legal systems, including French law, fair trial has, under the influence of human rights developments, become a fundamental principle of criminal procedure (14). French law, by establishing numerous formal and substantive safeguards, particularly in the early stages of proceedings, seeks to protect the rights of the accused and prevent violations of liberties and defense rights (15). Nevertheless, practical experience demonstrates that despite legislative advancements, challenges remain in the full realization of fair trial, especially during the preliminary investigation and detention stages (16).

Numerous studies in legal literature have examined various dimensions of fair trial. Some have analyzed fair trial standards in the detention of the accused with a focus on criminal procedure laws, particularly the statute enacted in 2013, while others have explored principles ensuring fair trial in civil proceedings or the role of the prosecutor in safeguarding the rights of the accused. Although these studies have made significant contributions to the theoretical and legislative understanding of fair trial, they have largely been confined to a single legal system or a specific stage of proceedings and have rarely engaged in comparative analysis between Islamic jurisprudence and foreign legal systems.

Therefore, given the fundamental importance of fair trial for the accused and its role in preserving human dignity and guaranteeing fundamental rights, conducting a comparative study between Islamic jurisprudence and French law appears necessary. This research, adopting an analytical-comparative approach, seeks to clarify the concept and components of fair trial for the accused, examine the similarities and differences of this institution in Islamic jurisprudence and French law, and, by utilizing the capacities of both systems, propose an optimal model for more effective realization of fair trial. The innovation of this study lies in its focus on the critical stage of proceedings concerning the accused and the comparative analysis of two legal systems with distinct foundations, which may constitute an effective step toward enhancing judicial justice and reforming procedural practices.

The Right to Silence of the Accused

The right to silence and immunity from compelled confession constitute fundamental principles of criminal procedure and represent an expression of the presumption of innocence. The accused must not be forced to confess against himself, and his silence must not be regarded as an indication of guilt. This right is not confined to the investigation stage but extends throughout all stages of criminal proceedings (6, 15). Any physical or psychological pressure exerted to obtain a confession violates human dignity and contradicts the principles of fair trial. The presumption of innocence requires that the burden of proof rest with the prosecution, and the absence of sufficient evidence must result in an acquittal (7, 9).

The right to silence of the accused is among the most fundamental institutions guaranteeing criminal justice and fair trial and is defined as the legal entitlement of the accused to refuse to answer questions posed by investigative authorities and courts, without such silence being interpreted to his detriment (10, 11). The accused is permitted at all stages of proceedings, from preliminary investigation to trial and confrontation with witnesses, to refrain from making statements that may harm his interests (8).

In Iran, although the term “right to silence” was not explicitly used in pre-revolutionary legislation, principles such as the prohibition of compelled confession effectively indicated implicit recognition of this right. Article 38 of the Constitution provides that any form of torture for obtaining confession or information is prohibited, and coercion of individuals to testify, confess, or swear is impermissible; such testimony and confession lack validity. Although this provision does not expressly employ the term “right to silence,” it affirms the implied concept of the accused’s freedom to refuse to answer (16). The Criminal Procedure Code of 2013 also indirectly supports the right to silence in Article 197, stipulating that the accused’s refusal to answer questions, if recorded in the minutes, may not be considered evidence of guilt. Nevertheless, in practice and in the conduct of law enforcement authorities, an admission-centered culture persists, and silent defendants often encounter coercive behavior or negative assumptions.

From an international perspective, the right to silence constitutes a cornerstone of fair trial in human rights law. Article 14(3) of the International Covenant on Civil and Political Rights of 1966 affirms that the accused has the right to be protected against compelled self-incrimination (3, 17). In common law systems such as England and the United States, the right to silence is explicitly recognized, and enforcement mechanisms such as the Miranda warning have been established to protect it (18, 19).

In Islamic jurisprudence, confession must be voluntary and free from coercion. Shi'a jurists have emphasized that a confession extracted under compulsion lacks legal effect, and the silence of the accused creates no religious obligation to respond (6, 13). From the philosophy of law perspective, the right to silence is grounded in the principles of non-self-incrimination and respect for human free will. Compelling the accused to confess, even if it facilitates the discovery of truth, is legally and morally unacceptable (1, 20).

The Right to Silence of the Accused in Islam and Imami Jurisprudence

One of the fundamental rights of the accused is the right to silence, meaning that the accused has the right not to respond to the questions of judicial authorities and to remain silent. In linguistic usage, silence signifies refraining from speech and remaining quiet (21), and in juristic terminology it refers to the accused’s abstention from answering the judge’s questions (22). In Islamic law, the basis of the accused’s right to silence derives from procedural rules

and the chapter concerning the “response of the defendant,” whereby the accused may respond to the claimant’s allegation, deny it, or choose to remain silent (23).

Jurists have enumerated various reasons for the accused’s silence. These include physical inability such as deafness or muteness, in which case the judge must obtain the accused’s response through gestures or an interpreter (24). Another reason is fear or a sense of insecurity, whereby the authority of the judge or the weakness of the accused’s social position may compel him to remain silent; in such circumstances, the judge must act with leniency and create a calm environment for the accused (25). Regarding voluntary silence, jurists have expressed differing views. Some jurists, including Hilli, have argued that compelling the accused to respond in cases of obstinacy may be permissible; however, this view primarily concerns debt-related matters rather than voluntary silence in criminal cases. Shaykh Tusi and other jurists have maintained that the judge should admonish the accused three times, and upon continued refusal, issue a ruling of non-compliance and transfer the right of oath to the claimant. This approach is more rational, as the accused’s silence does not signify guilt but rather constitutes part of his natural rights (10). The principle of original innocence and the Prophetic tradition stating that liability is lifted where knowledge is lacking indicate that until guilt is established, the accused remains within the sphere of innocence and the burden of proof lies with the claimant and the judge. Accordingly, the accused’s silence is not an indication of wrongdoing but an exercise of his inherent right.

Imam Ja’far al-Sadiq stated: “The burden of proof is upon the claimant, and the oath is upon the one who denies,” meaning that the accused is merely in a position of denial and his silence cannot be interpreted against him (6). Qur’anic verses likewise emphasize justice and fairness in adjudication, including the command: “O you who believe, stand firmly for justice, as witnesses to God, and let not the hatred of a people cause you to deviate from justice. Be just; that is nearer to piety,” and the verse: “Do not pursue that of which you have no knowledge; indeed, the hearing, the sight, and the heart—each of these shall be questioned.” Imami jurisprudence also conditions the validity of confession upon free will and knowledge, defining confession as a person’s voluntary and informed acknowledgment of an obligation upon himself. Compelling the accused to speak negates his free will and renders any confession obtained thereby invalid. Shaykh Tusi explicitly states that when the accused remains silent, such silence does not constitute a confession and imposes no obligation upon him.

In sum, the right to silence of the accused in Imami jurisprudence is not an imported institution from Western legal systems but is deeply rooted in Qur’anic reasoning and Islamic ijtihad. The accused, prior to the establishment of guilt, is a human being endowed with rights that even potential criminality cannot negate. The Imams, in their judicial conduct, emphasized caution and the protection of the accused’s rights. Imam ‘Ali, in his letter to Malik al-Ashtar, advised: “Do not hasten to punish offenders until proof has been fully established against them.” Consequently, the right to silence of the accused represents a manifestation of the general principles of Islamic law reflected in the Qur’an, human dignity, and the tradition of the Infallibles, and observance thereof signifies adherence to divine justice and avoidance of coercion in judicial proceedings. Moreover, one of the principal sources for deriving the right to silence in Imami jurisprudence is the tradition of the Infallibles, which is reflected both in normative teachings and in the practical conduct of the Prophet and the Imams. A careful study of narrations and historical events demonstrates that the policy of the Shari'a in dealing with the accused is based on caution, compassion, and the avoidance of compelled confession. The objective of adjudication in the perspective of the Ahl al-Bayt is the realization of rights and the moral reform of the individual, not revenge or the imposition of punishment. For this reason, they not only dissuaded the accused from uninformed confession but even in cases of voluntary

confession, through repeated questioning and opportunities for reconsideration, ensured the authenticity of the accused's free will and awareness. This practice constitutes the theoretical and practical foundation of the right to silence of the accused in Imami jurisprudence.

The Right to Silence in Light of Imami Jurisprudential Maxims

Imami jurisprudence considers the accused's right to silence to be the outcome and necessary implication of a set of overarching juristic maxims that emphasize the preservation of human free will, dignity, and personal security:

The maxim negating coercion (nafy al-ikrāh): Based on the Qur'anic verse "There is no compulsion in religion" (Qur'an 2:256), any act performed under coercion lacks legal effect. Shaykh Ansari states that coercion removes the effect of words and acts, and Imam Khomeini likewise maintains that an acknowledgment extracted from a coerced person is not legally cognizable (5). Accordingly, the accused has the right to refuse compelled answers, and such refusal constitutes compliance with a divine prohibition.

The maxim of no harm (lā ḥarār wa lā ḥirār): Based on the well-known tradition "no harm and no harming," no person may be compelled to undertake an act that causes bodily, psychological, or reputational injury. Forcing the accused to confess is a paradigmatic instance of harm; therefore, under this maxim, the accused's silence is treated as a form of legitimate self-protection (6).

The maxim of precaution regarding life and honor (iḥtiyāt fī al-dimā' wa al-a'rād): Under this maxim, the imposition of legal consequences where doubt, coercion, or pressure exists is impermissible. Consequently, the accused's silence under conditions of pressure is an instance of observing precaution (6).

The maxim of human dignity and the prohibition of violating a believer's sanctity: The verse "We have honored the children of Adam" (Qur'an 17:70) and narrations concerning the prohibition of humiliating a believer indicate that forcing the accused to speak is an instance of degrading human beings and constitutes a violation of dignity.

The Positions of Prominent Imami Jurists

Imami jurists, in their works, generally concur on the validity of voluntary confession and the invalidity of coerced confession. The proposition that confession is valid only if issued by a competent person acting freely is repeatedly affirmed across juristic discussions, and coercion is treated as a decisive ground for negating legal effect (26).

Contemporary jurists likewise emphasize that any factor that deprives a person of real volition—whether explicit threat, fear, or "moral coercion"—is lifted in law, and statements produced under such conditions cannot ground liability (11).

On this basis, compelling the accused to speak is invalid on three grounds: the maxim negating coercion, the maxim of no harm, and the maxim of precaution regarding life and honor. Therefore, the accused's silence is a religiously protected right and an ethical requirement, and the judge is obliged to respect such silence and refrain from interpreting it against the accused. This approach reflects an explicitly human-centered conception of justice and respect for human dignity within Imami jurisprudence, emphasized long before the emergence of modern human rights regimes.

Dynamic Jurisprudence in Supporting the Rights of the Accused

Dynamic jurisprudence, as explained by Imam Khomeini in his juristic works, refers to the continuous exercise of *ijtihād* to adapt legal rulings to newly emerging social needs (5). On this account, the accused's right to silence may be reread as an applied instance of the principles of justice and the negation of coercion (6). Within this framework, the right to silence is not merely abstention from speech; rather, it forms part of a broader protective system that shields human beings from the excesses of power, and dynamic jurisprudence focuses on the spirit and purposes of the *Sharia*—purposes aimed at safeguarding the human person (12).

The Qur'an portrays human beings as agents endowed with will, including the verse "We guided him to the two paths" (Qur'an 90:10), which signifies freedom of choice. 'Allāmah Tabataba'i, in *al-Mīzān*, stresses that this verse also indicates human decision-making freedom in social and legal domains (27). Compelling the accused to confess or to speak violates one of his most fundamental ontological rights. Drawing on these Qur'anic foundations, dynamic jurisprudence expands this right beyond discrete doctrinal rulings and redefines it as a human and social principle.

In classical jurisprudence, confession (*iqrār*) served as one of the evidentiary bases for establishing crime and enjoyed a high status, yet dynamic jurisprudence—by invoking the objectives of *Sharia*—distinguishes between a truthful, voluntary confession and a coerced confession. This differentiation is anchored in the approach reflected in the Prophetic directive to avert prescribed punishments in the presence of doubt (6).

Dynamic jurisprudence maintains that overreliance on confession can lead to injustice, because the accused may confess under pressure or threat to something untrue. The central standard in contemporary *ijtihād* is "procedural justice" in adjudication. In this vein, Ayatollah Javadi Amoli argues that dynamic jurisprudence is that which, in every era, manifests justice as the spirit of *Sharia* through rules proportionate to the needs of the time (28). Accordingly, the accused's right to silence not only accords with the spirit of *Sharia*, but its enforcement prevents injustice within criminal adjudication.

Dynamic jurisprudence also pays particular attention to the purposes of *Sharia*, such as protection of life, religion, reason, lineage, and property. Contemporary Imami jurists have further argued that the preservation of human dignity should likewise be treated as a core purpose. The accused's right to silence functions as an instrument for safeguarding both life and dignity. At the moment of accusation, the person is not yet convicted; compelling him to speak constitutes an assault on human dignity and conflicts with the purposes of *Sharia* (12). Dynamic jurisprudence not only interprets religious texts but also engages with modern legal systems. Iran's Citizens' Rights Charter (2016) states that no one may be compelled to confess or testify against himself. Within the dynamic-jurisprudence framework, the right to silence is not borrowed from Western law but represents an applied articulation of authentic Islamic principles, balancing fidelity to authoritative texts with responsiveness to contemporary needs.

In dynamic jurisprudence, the judge is viewed as a trustee of divine justice. The judge not only lacks authority to compel the accused to speak, but is obligated to create conditions in which the accused can defend himself freely. Accordingly, justice is prior to the establishment of guilt, and the accused's silence must be respected. A society that respects the accused's silence demonstrates commitment to divine justice and avoids precipitate punishment. The right to silence has acquired a clear place within Iran's criminal justice system and is reflected in constitutional principles, the criminal procedure framework, and the Citizens' Rights Charter (7, 29). This right is rooted in Imami jurisprudence, particularly in the maxims negating coercion, no harm, precaution regarding life and honor, and human dignity, the foundations of which have been echoed in Iran's contemporary legislation.

The Right to Silence in Iran's Criminal Laws and Criminal Policy

The historical trajectory of the right to silence in Iran indicates that this right was not explicitly recognized in the pre-revolutionary legal literature, although its foundations existed in dispersed legal, juristic, and judicial thought (7, 16). Prior to the adoption of modern legislation, the procedural system was influenced by juristic traditions and French law, confession was treated as the principal evidentiary basis for proving crime, and the accused's silence was commonly accompanied by suspicion (8, 9). After the Revolution and the adoption of the Constitution, Articles 32, 35, 38, and 39 guaranteed the protection of human dignity, the prohibition of torture, and respect for the defense rights of the accused. During the early decades after the Revolution, Iran's criminal policy still rested on confession-centered traditions; however, over time, and alongside Iran's engagement with the International Covenant on Civil and Political Rights (1966), a new intellectual and normative space emerged in support of the rights of the accused (3, 18). A major development appeared in the Criminal Procedure Code of 2013: Article 197 explicitly recognized the permissibility of refusing to answer, and Article 57 required law enforcement officers to inform the accused of his rights, including the right to counsel and the right to decline answering questions. Nevertheless, practical challenges remain in implementing this right; in some cases, silence continues to be interpreted as a sign of guilt or as an attempt to conceal the truth (15, 30). In jurisprudential discourse, Imami jurists have stressed voluntariness and the prohibition of coercion in confession, and the accused's silence lacks probative effect. Yet the absence of effective enforcement guarantees, inadequate training of law enforcement officers, and a confession-centered legal culture have contributed to the under-realization of this right in practice (9, 16).

Iran's Criminal Policy Concerning the Right to Silence of the Accused

The criminal policy of any state reflects the relationship between public power and individual liberty. The accused's right to silence is a sensitive focal point within this tension because it delineates the boundaries of governmental authority in crime detection and the freedoms of citizens (12, 18). In Iran, criminal policy can be examined in three dimensions: legislative, judicial, and executive. Analysis of these dimensions indicates that, although the legislator has taken positive steps, serious weaknesses and incoherence in the other two dimensions have impeded the practical realization of this right (15, 30). At the legislative level, the enactment of the Criminal Procedure Code of 2013 constituted a significant shift. Article 197 treats refusal to answer as permissible, and Article 57 requires that the accused be informed of rights including access to counsel and the right to silence (7, 8). Nonetheless, certain special-security and narcotics rules continue to treat confession as a "special proof," and no robust enforcement mechanism is prescribed for violations of the right to silence. Thus, Iran's legislative criminal policy may be described as "incomplete protection" (18).

At the judicial level, the practice of courts and the Supreme Court is not uniform. Some courts treat the accused's silence as a legitimate defensive right, while others view it as a sign of guilt. This divergence results from the absence of clear statutory differentiation and a confession-centered judicial outlook (30). Informing the accused of rights is often performed formally, and the accused may be pressured—psychologically or procedurally—into answering, whereas the right to silence must be respected as an independent defensive tool (29).

Executive Criminal Policy

The executive dimension concerns the conduct of law enforcement officers and investigative agents. Reports indicate weak awareness and compliance among officers regarding the right to silence, and interrogations are frequently conducted under psychological pressure. Interrogations are rarely recorded, and access to counsel is limited. Article 58 of the Criminal Procedure Code imposes obligations on officers, yet it lacks effective enforcement guarantees (15). The absence of training, oversight, and executive mechanisms has led to the violation of the right to silence in practice (30).

Critique and Analysis of Iran's Criminal Policy

Iran's criminal policy rests on two theoretically competing foundations: Islamic-juristic principles emphasizing dignity and the prohibition of coercion (6, 13), and confession-centered traditions that regard confession as the best proof for establishing crime. This duality has produced a system in which laws endorse the right to silence in theory, but enforcement guarantees and judicial practice remain insufficient (15, 30).

Structural Gaps

The absence of enforcement guarantees for violations of the right to silence has enabled situations in which accused persons, under psychological or physical pressure, are compelled to speak, and silence becomes a "high-risk behavior" (7, 16).

The Right to Silence of the Accused in International Instruments and French Law

The Right to Silence of the Accused in International Instruments

The study of the accused's rights in international instruments is possible through examining conventions and declarations. Iran has also acceded to some of these instruments, and pursuant to Article 9 of the Civil Code, they are regarded as ordinary statutes. In this section, certain rights of the accused that have been addressed in international instruments are reviewed thematically (7).

Every accused person has the right to be treated with respect for his or her inherent human dignity. For example, Article 10 of the International Covenant on Civil and Political Rights requires humane treatment of persons deprived of liberty (17). Moreover, the legal framework governing the treatment of detainees and the prohibition of unlawful interference with honor and dignity has been emphasized in international humanitarian instruments as well (14). The accused must be informed of the nature and reasons for the charge so that he or she can prepare a defense. Article 9(1) of the Covenant on Civil and Political Rights provides that any person who is arrested must be informed of the reasons for arrest and, promptly, of any charges brought against him (17). The accused also has the right to be assisted by counsel throughout the investigation and trial phases, and counsel must be able to meet the accused and receive necessary facilities for the preparation of the defense. Where the accused does not understand the language of the court, he or she has the right to interpretation and may replace the interpreter. The presumption of innocence is also recognized in major international human rights instruments, and it likewise appears as a foundational norm in Islamic legal thought (6, 13). The accused may not be subjected to torture or inhuman or degrading treatment (17). Under Article 9(3) of the Covenant, any person arrested or detained on a criminal charge must be brought promptly before a judicial authority, and the proceedings must be conducted within a reasonable

time (17). In addition, the separation of the investigative authority from the adjudicative authority has been adopted in several legal systems to secure impartiality and fairness. The right to a fair trial and equality before the law is affirmed in core international instruments, and the accused has the right to defend personally or through counsel, to examine witnesses against him, and to benefit from interpretation; further, he may not be compelled to testify against himself or to confess guilt (17).

Related declarations and conventions in this field also include:

- **Universal Declaration of Human Rights (1948):** prohibition of torture, presumption of innocence, right of defense, prohibition of arbitrary detention, and respect for human dignity.
- **International Covenant on Civil and Political Rights (1966):** particular emphasis on the accused's rights and liberties, prohibition of torture, the right to be informed of charges, access to counsel and interpretation, and the presumption of innocence (17).
- **Islamic Declaration of Human Rights (1990):** emphasis on the accused's rights in accordance with Islamic law, prohibition of torture, presumption of innocence, and right of defense.
- **European Convention on Human Rights (1950):** guarantees of fair trial and protection of the accused's procedural rights.
- **Convention against Torture (1984):** prohibition of torture and other cruel, inhuman, or degrading treatment, and the establishment of judicial and non-judicial obligations for states.

The Rights of the Accused in the French Criminal Justice System

France's procedural system took shape after the French Revolution and is known as the "French system of criminal procedure." By combining features of accusatorial and inquisitorial models, this system reduces the shortcomings of each and assembles their advantages into a mixed model (14). The characteristics of this system include:

- **Preliminary investigation stage:** At this stage, proceedings follow an inquisitorial logic; investigations are conducted in a confidential and non-adversarial manner, and the accused does not have the right to introduce counsel. Investigations and interrogations are predominantly conducted in written form.
- **Judicial trial stage:** At this stage, an accusatorial logic prevails and its features are observed, such as publicity, adversarial procedure, the accused's right to choose counsel, and orality. Inhuman methods of evidence-gathering associated with purely inquisitorial practice are rejected and replaced with lawful and humane methods.
- **The accused's right to challenge decisions:** The accused may object to judicial decisions. In the mixed system, once the accused appears before the prosecution service, the investigating judge, after notifying the charge, issues an appropriate precautionary measure, and the accused has the right to contest that measure (14). Under a strict inquisitorial model, the accused lacked the right to challenge security measures, and such decisions were final and enforceable.

In comparison with the Islamic procedural model, no major difference is observed at the preliminary investigation stage. Iran's first Criminal Procedure Act (1930) provided rules on summons, arrest, and the issuance of indictments. In principle, formal procedural matters do not derive directly from detailed juristic sources; rather, they are enacted based on public interest and social order. Even after the Revolution and the enactment of new legislation, the preliminary investigation stage and procedural methods in prosecutor's offices and courts have remained governed by criminal procedure rules (31).

The Right to Silence of the Accused in French Law

Today, the right to silence is formally recognized in French law as part of the accused's defense rights. Article 63-1 of the French Code of Criminal Procedure provides that a person in custody "may make statements, answer questions, or remain silent." Article 61-1, concerning field investigations and temporary detention, likewise emphasizes informing the person of the "right to make statements, answer, or remain silent." The right to silence is an expression of the presumption of innocence and a guarantee of fair trial, and the accused's silence must not be interpreted against him. This right has been consolidated through statutory rules, judicial practice, and European legal influence (30).

French jurisprudence has played a key role in consolidating the right to silence. The Cour de cassation and the Conseil constitutionnel have clarified the meaning and requirements of defense rights. For example, in the Constitutional Council decision No. 2009-593-DC of 19 November 2009, the status of the accused's silence was reinforced as a legal safeguard. Following the reforms of 2011, informing suspects of the right to silence during police custody (*garde à vue*) was recognized. Judicial developments of this kind contributed to strengthening guarantees relating to the right to silence, access to counsel, and the prohibition on construing silence against the accused.

Despite the statutory consolidation of the right to silence, its practical implementation faces challenges. First, comprehensive notification of the accused at every stage of proceedings remains insufficient. Second, the accused's silence is sometimes treated in practice as an indicator against him. Third, conflicts with "duties of cooperation" in certain categories of offenses (such as terrorism-related matters) may lead to restrictions on the right to silence. Accordingly, full realization of this right requires coherence among legislation, judicial practice, training of law enforcement officers, and judicial culture.

Consequently, the right to silence of the accused in France has evolved from an implicit notion into a safeguarded right and plays a fundamental role in ensuring fair trial, preserving the presumption of innocence, and strengthening defense rights.

After 2011, case law further highlighted the operational requirements of the right to silence. Decisions emphasized that the accused must be informed of the right to silence from the outset of police custody and that access to counsel must be made available. Nevertheless, practical reports indicate deficiencies in notification and the presence of implicit pressures. Thus, the effective consolidation of the right to silence requires not only rules but also training, judicial culture, and effective oversight.

An analysis of the history, legislation, and judicial practice in France shows that the right to silence is the product of a gradual evolution. Before 2000, the system was more confession-centered and the accused's silence was rarely treated as a right. The reforms of 2002, and especially the 2011 legislation, represent turning points in stabilizing this right, and European legal influence alongside judicial decisions facilitated its practical implementation. However, challenges remain in notification, judicial culture, and implicit pressures. Therefore, the right to silence of the accused in France is now a valid legal guarantee, but its full realization depends on careful attention to the practical and cultural dimensions of criminal adjudication (14, 31).

Conclusion

The principal common ground between Islamic law and customary (positive) law concerns the most important principles and rules relating to an accused person. Islamic law, as an independent criminal justice system grounded in sources such as the Qur'an, the Sunnah, consensus, and reason, guarantees a set of rulings and directives that constitute the foundation of the accused's rights (5, 12, 28). Accordingly, an effective judicial system consistent with Islamic norms, by observing the principle of justice, preserving social security, and respecting the rights of both complainant and accused, strives to realize and safeguard social justice. Islamic procedure is based on a single-stage model; for this reason, it differs in certain respects from modern procedures, including the right to be informed of the charge and the right to benefit from counsel at the preliminary investigation stage. Nonetheless, it is possible to establish the legitimacy of such differences within an Islamic worldview by reference to the recognized sources of legal derivation. With respect to some established rights of the accused, a relationship of absolute generality and specificity governs between Islamic law and customary law. For example, regarding appellate review, jurists have accepted it only in specific instances, due to the precision and caution that the Sacred Law has required in the appointment of judges—among whose most important conditions are justice and *ijtihād*—because, on that view, no doubt remains about the judge's ruling that would warrant reconsideration. By contrast, in customary law this right is granted to the accused without such conditions, allowing an appeal within the prescribed time limit. Legislators in every country may adopt specific rules and regulations so that, while ensuring the accused's defense rights and observing the presumption of innocence, the proper functioning of criminal justice is not impaired; this depends on factors such as lawyers' professional compliance, public perceptions of justice, and the institutional capacity of the judiciary and the bar (31).

Moreover, in today's world, developments have occurred in criminal procedure principles, including allowing accused persons to benefit from the presence of defense counsel even at the preliminary investigation stage. In many countries, even at the time of notification of the charge, the right to counsel is also explained to the accused, and he is advised that he may refuse to answer questions in the presence of counsel. Although the judicial system in Iran is juristic in character, it is nevertheless compelled to benefit from global experiences and to follow international standards. In particular, principles associated with the rule of law—whose central orientation in human legal systems is toward legality and the implementation of law—assign a special position to the judiciary, and it is not possible to speak of civil society and legality while ignoring the strengthening, effectiveness, and independence of the judiciary.

At all stages of criminal proceedings, the protection of human rights must be ensured. Throughout criminal adjudication, until the final judgment attains *res judicata* status, the accused must benefit from the presumption of innocence. Before trial and the issuance of judgment, and due to necessities arising from the presumption of innocence, the principle of proportionality must be observed in decisions that entail coercion or compulsion against the accused. The principle of proportionality is based on the existence of a logical relationship between, on the one hand, the importance of the matter to which the accused is compelled—despite its conflict with his rights and freedoms—and, on the other hand, the final objective pursued by imposing such a measure. Accordingly, the legislator must anticipate the consequences of pretrial detention, which in any case constitutes a wholly exceptional measure (12, 28). At the trial stage, due to requirements of the presumption of innocence, the judge must be impartial toward the litigating parties. In essence, adjudication and investigation are separated, and the trial judge should not

engage in preliminary investigations. Because of the importance of the presumption of innocence, pretrial detention must be decided by a judge with attention to specific factors. Keeping the accused in pretrial detention in the absence of sufficient indications is absolutely prohibited. Even if its duration exceeds the minimum statutory punishment for the alleged act, such detention is unlawful.

Any decision taken by a competent authority—even measures taken by police officers that implicate fundamental rights—must be approved by a judge and subject to judicial supervision. All evidence obtained through violation of individuals' fundamental rights is null and without effect and cannot be evaluated during adjudication. In evidence gathering, the use of methods that intrude into private relations, such as telephone interception, is acceptable only where the legislator has expressly authorized it and a judge has previously decided on its use. With respect to genetic sampling and remote electronic surveillance, the legislator must also determine precisely the conditions for admissibility. Granting privileges and priorities to witnesses or covert agents in criminal matters, as practiced by some states, is valuable only in certain cases involving organized crime; however, if their direction in the hearing is not transparent, their reports or statements have no value in adopting measures that impose coercion against the accused. The judiciary must guarantee, from the outset of case formation, the right of every accused person or defendant to legal counsel. Where the accused lacks financial capacity, the costs of counsel must be borne by the state.

The accused has the right to silence, meaning that from the earliest questioning by the police or judicial authority, he must be informed of the substance of the accusation, and he must be able to remain silent in response to questions such that his silence may not be treated as evidence against him. At all stages of criminal proceedings, the accused has the right to defense, and no one is required, directly or indirectly, to contribute to his own criminal conviction. In gathering evidence, professional secrecy must be fully respected. Publication or broadcast of hearing discussions by radio or television may be restricted or prohibited. An imprisoned accused has the right to private communication with defense counsel, and counsel must have the right to be present at any interrogation of the client. Defense counsel must be able to access the case file from the first moment of accusation, and prosecutors' offices should not invoke broad and ambiguous labels such as national security, corruption, or confidentiality—labels that invite divergent discretionary interpretations—to exclude counsel at the preliminary investigation stage.

Any person who believes that his fundamental rights have been harmed during proceedings must have the possibility of having those measures reviewed by a constitutional court, a higher court, or an international human rights court. Under the principle of justice, among the most important principles in criminal procedure are preserving social security and observing the rights of the complainant and the accused; it is an obligation upon the entire judicial system to take action toward realizing and safeguarding social justice. The increase in crimes, the expansion of criminal titles, and the proliferation of criminal regulations have led to infringements upon the accused's rights and personality; therefore, establishing a balance between the necessity of prosecuting offenders and the obligation to respect the rights and human dignity of the accused is among the duties of the judiciary.

Until, on the basis of investigating criminal complaints, sufficient evidence has been gathered to move beyond mere doubt toward suspicion of the occurrence of a crime, the accused's tranquility should not be disturbed through notification of the complaint and summons, and any measure that disrupts such tranquility is contrary to the self-evident rights of human beings. Individuals must not be allowed to exploit the coercive power of the criminal justice apparatus by applying a criminal label to civil disputes. To create balance between interrogators and the investigating judge, the accused must have the right, from the moment he becomes aware of the accusation, to

choose defense counsel and to delegate responses and defenses to counsel. Preventing defense counsel from intervening in investigations at any stage of proceedings before law enforcement officers, interrogators, or the prosecution service constitutes a violation of the right to defense—a right that is not only the most fundamental human right but is also indispensable for the protection and vindication of other human rights.

Accordingly, given that the legal system in the country has been formed on the basis of Islam, the accused's rights must be respected so that, in practice, the system can provide the strongest demonstration of rights grounded in religious conceptions. This is because, under religious teachings, the rights of the accused constitute rights of persons, and none of those rights should be violated such that the accused suffers additional pain or compound punishment.

Recommendations indicate that studying and evaluating the new criminal procedure law and its innovations and achievements shows that, although criticisms and shortcomings exist, efforts have been made to bring about a fundamental change in the previous legal and judicial approach toward recognizing, respecting, and guaranteeing fundamental rights and lawful freedoms, and toward realizing a fair trial system with respect to the complainant, the accused, the victim, the witness, the informant, the lawyer, society, and similar actors within the criminal process. In this law, many restrictions and obstacles concerning the right to defense and legal representation have been removed, and the default position has been established as the necessity of counsel, the right of counsel to defend the accused as client, and the obligation of judicial authorities and law enforcement officers to inform the accused of legal rights in all criminal matters, alongside the legal guarantees for failure to comply. The government and the Ministry of Justice may, by incorporating the views and experiences of jurists, judges, attorneys, academics, researchers, and legal and social activists in the fields of citizenship rights, human rights, international law, psychology, sociology, and social work—whether through consultative mechanisms or by holding intensive specialized conferences—undertake the identification and acquisition of expert perspectives for drafting appropriate, expert, and effective implementing regulations, so that foreseeable and observable deficiencies in the implementation process of the new law are minimized and adjusted. Specialized, continuous, and comprehensive training of judicial and administrative personnel in prosecutor's offices and courts, by utilizing the expertise of jurists and experienced attorneys, can be developed on topics such as citizenship rights and human rights, particularly regarding the accused's defense rights, the legal rights of defense counsel, and the preparation and drafting of a "comprehensive citizenship rights law," as well as the sustained promotion of a "culture of citizenship rights." Such measures can also support public culturalization through media and relevant educational and academic institutions, contribute to better implementation of the law, and provide the groundwork for the progressive completion of the law through subsequent legislative and executive processes.

The principal recommendations for strengthening the accused's rights in Iran's judicial system include ensuring the right to an interpreter for accused persons speaking different languages and dialects alongside allocating an independent budget for this purpose; strengthening the institution of the judicial police through legal and practical training to ensure accurate performance of investigative and protective duties; utilizing modern procedural methods such as expedited and summary adjudication and implementing prosecutorial discretion and individualized criminalization and punishment; and establishing full enforcement guarantees for violations of citizenship rights at all stages of criminal proceedings.

In sum, respect for the accused's rights, the presumption of innocence, the right to defense, and the independence and effectiveness of the judiciary are fundamental principles for realizing criminal justice in Iran and

in other legal systems. Integrating global experiences and international standards with the foundations of Islamic law can facilitate the development of fair trial, protect the accused's human dignity, and secure citizenship rights, thereby providing the basis for continuous improvement of the national judicial system.

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All authors equally contributed to this study.

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