

# The Effects of Violating the Accused's Right to Silence in the Iranian Criminal Justice Process

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## Abstract

The accused's right to silence, as one of the fundamental guarantees of a fair trial, plays a decisive role in preventing the acquisition of unlawful evidence and in preserving human dignity. Although Iran's Code of Criminal Procedure, in recent years, has explicitly recognized this right, its violation during the preliminary investigation stage remains a prevalent phenomenon. The central question of this study is what effects the violation of the accused's right to silence has on the evidentiary value of confessions and other criminal evidence, and what enforcement mechanisms the Iranian legal system has envisaged to address such violations. Using a descriptive-analytical method and a jurisprudential-legal approach, this article explains the concept of violating the right to silence and its manifestations, and examines the legal consequences arising from such violations. The findings indicate that breaching the right to silence seriously undermines the validity of the accused's confession and may also affect the legality of other evidence obtained. At the same time, the weakness of legislative and executive enforcement mechanisms has led, in many instances, to the reduction of the right to silence to a merely formal or symbolic right.

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## 1. Introduction

The realization of a fair trial in any criminal justice system requires the recognition and protection of a set of fundamental rights for the accused; rights whose ultimate purpose is to prevent the abuse of the State's punitive power and to safeguard human dignity. Among these rights, the accused's right to silence, as a clear manifestation of the privilege against self-incrimination, has acquired a prominent position in contemporary legal systems. This right protects the accused from being compelled to provide information against themselves and constitutes a fundamental barrier against the extraction of coerced, induced, or involuntary confessions (Ashouri, 2021).

The right to silence has not only been recognized in international human rights instruments, but has also become established as a core component of fair trial guarantees in the judicial practice of many countries. Instruments such as the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and the jurisprudence of the European Court of Human Rights explicitly emphasize the prohibition of compelling an accused person to provide explanations or confessions against themselves (Hosseini, 2004; Sebba, 1994). The underlying rationale for recognizing this right is to prevent an imbalance between the prosecutorial power of the State and the inherently vulnerable position of the accused within the criminal process.

In the Iranian legal system, although the accused's right to silence was not explicitly recognized as an independent right in all earlier statutes, the enactment of the Code of Criminal Procedure in 2014 marked steps toward its implicit recognition. The obligation to inform the accused of their rights at the outset of the investigation, the prohibition of coercion and compulsion, and the emphasis on the validity of lawful investigations all reflect the legislature's attention to the necessity of respecting the accused's defense rights.

Nevertheless, an examination of practical experience indicates a significant gap between the theoretical recognition of the right to silence and its effective realization. In many instances, the informing of the accused of their rights is conducted in a purely formal or ceremonial manner, and the accused, due to psychological pressure, lack of legal awareness, or fear of negative inferences drawn from silence, is effectively compelled to respond (Ashouri, 2021; Mousavi Ardabili, 1987). Such circumstances reduce the right to silence from a substantive guarantee to a symbolic entitlement.

The core of the problem lies in the fact that even where a violation of the accused's right to silence is evident, clear legal consequences are often not prescribed for such a breach. The fundamental question, therefore, is whether a confession obtained under conditions involving a violation of the right to silence, or information provided that leads to the acquisition of other evidence, can be regarded as valid. Should such evidence retain probative value, or must it be considered legally inadmissible?

A substantial portion of domestic legal scholarship has focused on explaining the concept of the right to silence, its jurisprudential foundations, and its recognition in international instruments. However, the examination of the consequences of violating this right—particularly within the Iranian criminal justice system—has received comparatively limited independent analytical attention. Without identifying the practical effects of such violations, the guarantee of the right to silence remains merely declaratory and lacks deterrent effectiveness.

From the perspective of Islamic jurisprudence, the principle of freedom of will in confessions and the prohibition of coercion occupy a deeply rooted position, such that a confession resulting from compulsion or pressure is deemed devoid of legal-religious validity (Sobhani, 2013). Accordingly, examining the consequences of violating the right to silence is significant not only from the standpoint of positive law, but also in terms of its compatibility with jurisprudential foundations.

On this basis, the present article adopts a descriptive-analytical approach and, drawing upon jurisprudential sources, legal doctrine, and human rights instruments, seeks to answer the question of what effects the violation of the accused's right to silence has on the validity of confessions, other criminal evidence, and the overall legitimacy of the criminal justice process in Iran. The main hypothesis of the study is that, in the absence of effective enforcement mechanisms, violations of the right to silence not only fail to impede the evidentiary value of obtained evidence, but also contribute to the *استمرار* of practices that infringe upon the rights of the accused.

## **2. The Concept of Violating the Accused's Right to Silence and Its Manifestations**

The accused's right to silence, as a fundamental aspect of defense rights, is based on the principle that no one should be compelled to provide information or statements that may be used against themselves. Accordingly, violating the right to silence constitutes not merely a procedural irregularity, but a direct infringement of the foundations of a fair trial and the privilege against self-incrimination. To analyze the legal consequences of such a violation, it is first necessary to clarify the concept of "violation of the right to silence" and its manifestations.

## 2.1. The Concept of the Right to Silence and Its Distinction from Mere Refusal to Answer

The accused's right to silence does not simply consist of a physical refusal to respond; rather, it is a right that must be exercised knowingly, voluntarily, and without adverse consequences. In other words, a genuine exercise of the right to silence exists only where the accused is aware that they have the right to remain silent, that there is no legal obligation to answer, and that their silence will not be interpreted against them. Therefore, even if an accused remains silent in practice, where such silence results from fear, coercion, or ignorance of its legal implications, it cannot be regarded as a true exercise of the right to silence (Ashouri, 2021). This distinction plays a decisive role in identifying instances of violation.

In international human rights instruments, the right to silence is consistently defined in close connection with the privilege against self-incrimination. Jurisprudence emphasizes that any direct or indirect pressure that induces an accused person to make statements against themselves constitutes a violation of this fundamental principle (Greer, 1990).

## 2.2. Failure to Genuinely Inform the Accused of the Right to Silence

One of the most common manifestations of violating the right to silence in the Iranian criminal justice system is the formalistic and ceremonial informing of the accused of their rights. Although the Code of Criminal Procedure emphasizes the obligation to inform the accused of their rights, in practice this requirement is often reduced to a rapid and incomprehensible recitation of legal provisions (Khaleghi, 2023).

Under such circumstances, the accused not only lacks genuine awareness of the right to silence, but may also believe that remaining silent will be regarded as an indication of guilt. This situation, particularly during the preliminary investigation stage when the accused is in a psychologically vulnerable position, effectively pushes them toward responding (Hosseini, 2004).

From the perspective of Islamic jurisprudence, awareness of one's right is an essential condition for the validity of any legal act. A confession or statement made without knowledge and free will lacks legal-religious value and cannot serve as the basis for a judicial ruling (Mohaqqeq Helli, 2008). Accordingly, failure to genuinely inform the accused of the right to silence constitutes a violation of this right from both a statutory and jurisprudential standpoint.

## 2.3. Psychological, Technical, or Situational Pressure During Interrogation

Violations of the right to silence do not always take the form of physical coercion or explicit threats. In many cases, psychological and technical pressures play a more effective role in compelling the accused to speak. Suggestive questioning, implying that non-cooperation will worsen the accused's legal situation, or creating an insecure psychological environment are among such manifestations (Mousavi Ardabili, 1987).

Although such pressures may not overtly conflict with formal procedural rules, they undermine the accused's free will. The European Court of Human Rights has repeatedly emphasized that even indirect pressures may lead to violations of the right to silence and the privilege against self-incrimination (Sebba, 1994).

In Islamic jurisprudence, any conduct that deprives a person of their customary freedom of choice is considered coercion and nullifies the legal effects of actions performed under such conditions (Khomeini, 2010).

## 2.4. Treating the Accused's Silence as an Indication of Guilt

One of the most dangerous manifestations of violating the right to silence is interpreting the accused's silence as evidence of guilt. This approach completely nullifies the underlying philosophy of the right to silence, as it effectively forces the accused to speak in order to dispel suspicion.

While the presumption of innocence requires that the accused's silence carry no evidentiary weight against them, certain practices demonstrate that silence is implicitly transformed into a negative inference in the mind of the investigating authority or judge (Kermani-Nejad, 2007). This constitutes a clear violation of the balance between the parties in criminal proceedings.

From a human rights perspective, the accused's silence is an integral part of their defense tools, and any adverse inference drawn from it is incompatible with fair trial standards (Mehrpour, 2019).

## 2.5. *The Link Between Violating the Right to Silence and Confession-Centered Criminal Procedure*

Widespread violations of the right to silence cannot be analyzed independently of the confession-centered structure of certain criminal justice systems. In systems where confession continues to play a central role in proving criminal responsibility, the tendency to compel the accused to speak increases. This approach facilitates the practical disregard of the right to silence and reduces it to a purely formal right (Baheri, 2019).

Within such a structure, even if the law ostensibly recognizes the right to silence, without changes in procedural attitudes and effective enforcement guarantees, violations of this right remain inevitable.

## 3. **The Effects of Violating the Right to Silence on the Validity of the Accused's Confession**

In most legal systems, confession is regarded as one of the most important yet most sensitive means of proving criminal responsibility. Its significance derives, on the one hand, from its role in discovering the truth and expediting criminal proceedings, and on the other hand, from its inherent risk of imposing criminal liability without sufficient guarantees. Within this framework, respect for the accused's right to silence constitutes a fundamental condition for the validity of a confession, and any violation of this right seriously undermines the evidentiary value of such proof.

### 3.1. *The Link Between Free Will and the Validity of Confession*

A confession can have probative value only when it is the product of the accused's free and informed will. This principle is emphasized both in Islamic jurisprudence and in Iranian positive law. In jurisprudential doctrine, confession is defined as "the declaration of a legally competent, rational, and free person against themselves," and the element of free choice constitutes its essential pillar (Sobhani, 2013).

Accordingly, whenever the accused is placed in circumstances that deprive them of the real possibility of exercising the right to silence, the statement issued cannot be regarded as voluntary. Even if the lack of free choice does not take the form of explicit coercion and instead appears as psychological or situational pressure, the voluntary nature of the confession is negated (Khomeini, 2010). For this reason, violating the right to silence directly conflicts with the requirement of free will in confessions.

### 3.2. *Violation of the Right to Silence and the Invalidity of Confession from the Perspective of Islamic Jurisprudence*

Islamic jurisprudence adopts a strict approach toward the validity of confessions. Jurists explicitly emphasize that a confession resulting from coercion, necessity, or fear lacks legal-religious probative force, because under such conditions the act cannot be genuinely attributed to the individual (Mohaqqeq Helli, 2008).

Where an accused is compelled to respond due to lack of awareness of the right to silence or under psychological pressure, their situation, from a jurisprudential standpoint, does not differ from that of a coerced person. Therefore, a confession obtained as a result of violating the right to silence is not only devoid of religious validity, but judicial reliance upon it also conflicts with established jurisprudential principles (Mousavi Ardabili, 1987). From this perspective, the right to silence is not merely a modern privilege, but rather a manifestation of the long-standing jurisprudential principle prohibiting coercion and safeguarding individual free will.

### 3.3. *The Status of Confession in the Iranian Legal System and the Impact of Violating the Right to Silence*

In Iranian law, although the Code of Criminal Procedure adopted in 2014 does not explicitly refer to the "right to silence," it implicitly recognizes this right through the obligation to inform the accused of their rights and the prohibition of compulsion (Ashouri, 2021).

Nevertheless, a major legislative shortcoming lies in the absence of a clear and independent sanction for violations of the right to silence. As a result, in practice, a confession obtained under conditions involving a breach of this right may be relied upon without serious scrutiny (Khaleghi, 2023).

This gap has weakened the practical application of the criterion of voluntariness in confessions, leading courts to focus on the content of the confession rather than the circumstances under which it was obtained—an approach incompatible with the philosophy of a fair trial (Ashouri, 2021).

### 3.4. *The Relationship Between the Right to Silence and the Privilege Against Self-Incrimination*

Violations of the right to silence must be analyzed in direct connection with violations of the privilege against self-incrimination. This principle, which constitutes a core foundation of fair trial standards in human rights instruments, explicitly prohibits compelling the accused to cooperate in proving their own guilt (Hosseini, 2004).

The European Court of Human Rights has repeatedly held that even indirect pressures aimed at obtaining a confession violate the privilege against self-incrimination and may invalidate the confession (Sebba, 1994). From this perspective, a confession obtained through disregard for the right to silence fails to meet minimum standards of evidentiary validity.

### 3.5. *The Effects of Invalidating Confession in the Criminal Process*

Declaring a confession obtained in violation of the right to silence invalid is not merely a formal reaction; it has significant consequences for the entire criminal process. First, it prevents courts from relying on the simplest yet most hazardous form of evidence. Second, it strengthens the role of other forms of proof and moves the system away from confession-centered adjudication.

Moreover, such an approach plays an important deterrent role against practices that infringe upon the rights of the accused, because when confessions obtained under conditions violating the right to silence are deprived of legal effect, incentives for exerting pressure are diminished (Baheri, 2019).

Jurisprudential, statutory, and human rights analyses demonstrate that respect for the right to silence is a fundamental condition for the validity of the accused's confession. Violating this right directly undermines the element of free will and renders the resulting confession devoid of probative value. However, the lack of explicit legal provisions and the weakness of judicial practice in Iran have prevented the serious application of these consequences, thereby intensifying the need for legislative and judicial reconsideration of the standards governing the validity of confessions.

## 4. The Effects of Violating the Right to Silence on Other Criminal Evidence and the Proof of Crime

An assessment of the consequences of violating the right to silence should not be confined to the accused's confession. In criminal procedure, the proof of crime relies on a set of evidentiary elements that typically operate interactively. In many cases, a breach of the right to silence during the preliminary investigation stage leads not only to the extraction of a confession but also to the discovery and formation of other forms of evidence. For this reason, examining the impact of such violations on other evidence—and on the proof process as a whole—is indispensable.

### 4.1. *The Impact of Violating the Right to Silence on Derivative and “Fruit” Evidence*

In practice, statements made by the accused during the investigation often function as the starting point for uncovering other evidence, such as locating the instrumentalities of the crime, identifying accomplices, or discovering the crime scene. Where such statements have been obtained through a violation of the right to silence, the central question is whether the evidence derived from those statements is likewise tainted.

In comparative criminal procedure, this issue is addressed under the broader concept of evidence obtained through violations of defense rights, and it is commonly emphasized that evidence whose source lies in a breach of the right to silence is subject to serious doubts concerning admissibility and reliability (Jackson & Summers, 2012).

Although Iranian criminal procedure law does not address this question explicitly, the statutory and jurisprudential requirement to respect defense rights supports the argument that evidence obtained directly on the basis of violating the right to silence lacks procedural legitimacy (Ashouri, 2021).

#### *4.2. Impairment of the Probative Value of Testimony and Official Reports*

Violating the right to silence may also indirectly weaken the probative value of witness testimony or official reports. For example, when witnesses are identified or guided on the basis of information extracted from the accused's non-voluntary statements, a causal link is created between the violation of the right to silence and the formation of such evidence.

In such circumstances, although the testimony may appear independent on its face, its origin is rooted in the infringement of the accused's rights, thereby diminishing its trustworthiness (Khaleghi, 2023). This concern is especially acute in reports prepared by law enforcement officers and judicial police, where the boundary between "independent discovery of evidence" and "evidence derived from the accused's statements" can easily become blurred.

From a jurisprudential perspective, evidence formed through an unlawful act or improper conduct is problematic, because an illegitimate premise cannot serve as a legitimate basis for legal effect (Makarem Shirazi, 2022).

#### *4.3. The Impact of Violating the Right to Silence on Judicial Evaluation of Evidence*

Another significant consequence of violating the right to silence is its effect on the judge's cognitive framework when assessing evidence. When an accused is compelled to respond under pressure during the investigation stage, this may steer the judge's perception in a particular direction and lead other evidence to be interpreted through the lens of those initial statements.

This phenomenon—often discussed as judicial cognitive bias—can cause even weak evidence to be perceived as reinforced, while indicators favorable to the accused may be disregarded (Greer, 1990). Consequently, the violation of the right to silence not only affects the production of evidence, but also compromises the adjudicative process of evaluating evidence.

#### *4.4. Incompatibility with Procedural Neutrality and the Balance of the Criminal Process*

The proof of crime must be grounded in a balance between the authority of prosecution and the accused's defense rights. Violating the right to silence disrupts this balance and effectively shifts the burden of proving guilt from the prosecutor to the accused. In such circumstances, the accused becomes a source of evidence against themselves, which is incompatible with procedural neutrality and the presumption of innocence (Hosseini, 2004).

From a human rights perspective, the European Court of Human Rights has emphasized that the right to silence is among the principal tools for preserving the "equality of arms" in criminal proceedings, and that its violation renders the proof process structurally unfair (Sebba, 1994).

#### *4.5. The Relationship Between Violating the Right to Silence and the Legitimacy of the Criminal Process*

Beyond procedural effects, violating the right to silence also undermines the overall legitimacy of the criminal justice system. A system in which truth-finding depends on pressuring the accused is flawed in terms of procedural justice, even if it ultimately reaches a substantively correct result. In other words, a lawful end cannot justify unlawful means.

A comparable emphasis exists in Islamic jurisprudence, where judicial justice is understood not only in terms of issuing a correct judgment, but also in terms of the fairness of the method by which the judgment is reached (Mousavi Ardabili, 1987).

Violating the right to silence thus has consequences far beyond the invalidation of a confession. It can contaminate the entire evidentiary chain and distort the proof process itself. Derivative evidence, testimony, and even the judicial assessment of evidence may all be affected. Accordingly, effective protection of the right to silence is not merely a safeguard for the accused, but a fundamental condition for the credibility and legitimacy of criminal adjudication.

### **5. Sanctions for Violating the Accused's Right to Silence in Iranian Criminal Procedure**

The right to silence can play an effective protective role for the accused only when its violation is accompanied by real, clear, and efficient sanctions. Mere recognition of this right in legal texts, without prescribing specific consequences for breaches, results in the right to silence becoming a formal and low-impact institution. Therefore, examining sanctions for violations of the right to silence in Iran—legislatively, judicially, and administratively—is of central importance.

### 5.1. *The Status of Statutory Sanctions in Iranian Law*

Although the Code of Criminal Procedure adopted in 2014 represents progress relative to earlier laws in recognizing defense rights, it suffers from a structural deficiency regarding violations of the right to silence. The legislature has not expressly specified what effect follows where statements are taken from the accused without respecting this right, or what consequences attach to the evidentiary validity of the obtained material (Khaleghi, 2023).

As a result, the sanctions for violating the right to silence in Iranian law are largely indirect and dispersed, such as emphasizing voluntariness in confession or permitting the invalidation of unlawful evidence. However, the lack of an explicit provision produces uncertainty in judicial practice and encourages inconsistent discretionary approaches (Ashouri, 2021).

### 5.2. *Exclusionary Rules: The Most Important Potential Sanction*

The most effective sanction for violating the right to silence is the exclusion (invalidation) of evidence obtained as a result of that violation. If confessions and other evidence obtained through pressure, failure to genuinely inform the accused of rights, or negative inferences from silence are inadmissible, there remains little incentive to breach this right.

Iranian law does not expressly codify this result, but the general principles governing fair trial guarantees support the conclusion that evidence obtained through infringements of defense rights lacks procedural legitimacy (Baheri, 2019). Nonetheless, translating this principle into practice requires active judicial acceptance and consistent application.

### 5.3. *The Role of Judges in Remedyng Legislative Gaps*

In the absence of clear statutory provisions, the judge's role in protecting the right to silence becomes even more critical. A judge may, through a purposive interpretation of the voluntariness requirement for confessions and the presumption of innocence, refuse to rely on evidence obtained through violations of the right to silence.

This approach is not only compatible with human rights standards, but is also anchored in jurisprudential principles, as Imami jurisprudence requires judges to refrain from adjudicating on the basis of doubtful evidence or evidence obtained through coercion (Mousavi Ardabili, 1987). Thus, even without explicit statutory language, judges can play a meaningful protective role grounded in these principles.

### 5.4. *The Responsibility of Law Enforcement Officers and Investigative Authorities*

Law enforcement officers and investigative authorities constitute the first link in the chain of either violating or respecting the right to silence. Where no effective sanction is anticipated for their infringing conduct, the practical protection of defense rights is weakened.

In Iranian law, disciplinary or criminal responsibility for violations of the accused's rights is generally recognized, but its direct linkage to the right to silence has largely been neglected. This has led to situations in which failures to properly inform the accused of rights or the exertion of psychological pressure often remain without tangible consequences (Hosseini, 2004).

### 5.5. *The Need for Clear and Multi-Layered Sanctioning Frameworks*

Effective protection of the right to silence cannot rely on a single sanction alone. Experience in advanced legal systems suggests that a combination of sanctions provides the most effective model of protection. Such measures may include: excluding confessions and evidence obtained through violations of the right to silence; obligating judges to scrutinize the conditions under which evidence was obtained; imposing disciplinary accountability on officers who violate defense rights; and implementing specialized training on defense rights for investigative authorities.

Such an approach both prevents violations of the right to silence and strengthens public trust in criminal justice (Sebba, 1994).

### 5.6. *The Role of Jurisprudential Foundations in Strengthening Sanctions*

Imami jurisprudence has substantial capacity to reinforce sanctions related to the right to silence. Principles such as the prohibition of coercion, doctrines designed to prevent punishment under doubt, and the requirement to establish voluntary choice collectively support the position that courts should not issue judgments based on doubtful evidence or evidence obtained through unfair conditions (Makarem Shirazi, 2022).

Integrating these foundations into legislation and judicial practice can provide a powerful theoretical basis for recognizing and enforcing effective sanctions, and thereby strengthen the connection between modern legal protections and Islamic jurisprudential principles.

Sanctions for violating the right to silence in Iranian criminal procedure remain insufficient and non-transparent, notwithstanding the implicit recognition of this right. The key pathway lies in accepting the exclusionary effect for evidence obtained through violations, and in strengthening the roles of judges and law enforcement in ensuring practical compliance. Without effective sanctions, the right to silence becomes a ceremonial institution and loses its underlying rationale.

### 5.7. *The Principle of Precaution in Matters of Life, Honor, and Sexual Integrity*

Jurists agree that in crimes relating to life, property, and personal honor, the governing principle is precaution. Accordingly, until certainty regarding the commission of an offense is achieved, a criminal judgment should not be issued (Mousavi Ardabili, 1987). Violating the right to silence and obtaining doubtful or involuntary confessions undermines such certainty, and therefore the principle of precaution requires refraining from judgment.

This principle is closely related to doctrines that prevent punishment under doubt, but it places stronger emphasis on the judge's ethical and epistemic obligation to avoid doubtful convictions. In Islamic jurisprudence, adherence to precaution in situations of uncertainty is regarded as a sign of the judge's justice and rigor.

Analysis of these doctrines indicates that Imami jurisprudence, although it does not employ the term "right to silence" as a technical label, substantively recognizes this right at the foundational level. The combined operation of principles prohibiting coercion and those rejecting unlawful premises as a basis for lawful outcomes collectively require respect for voluntariness, dignity, and fairness in adjudication. On this basis, any confession or evidence obtained through violating the right to silence lacks religious and judicial effect and may even vitiate the legitimacy of the proceedings (Makarem Shirazi, 2022).

In this way, Imami jurisprudence not only supplies a theoretical foundation for protecting the right to silence, but—when compared to fair trial standards in international instruments—also offers a deeper, more person-centered grounding. This harmony between Islamic jurisprudence and modern human rights norms can provide strong support for reforming Iran's criminal procedure and ensuring the effective protection of the accused's right to silence (Mehrpor, 2019).

## 6. **Jurisprudential Analysis of the Effects of Violating the Accused's Right to Silence from the Perspective of Imami Jurisprudential Rules**

Although the accused's right to silence is regarded as a modern concept in criminal law literature, its foundations are deeply rooted in Islamic jurisprudence. Imami jurists have long emphasized that issuing a criminal judgment is contingent upon the judge's knowledge and certainty, as well as the preservation of the accused's free will and voluntary consent. On this basis, any statement or confession resulting from pressure, fear, or threat lacks probative force. This foundation can be explained and analyzed by reference to several well-established jurisprudential rules.

### 6.1. *The Rule of Dar' and the Requirement to Avert Hudud Punishments in Cases of Doubt*

The rule of *al-hudūd tudra' bi'l-shubuhāt* (hudud punishments are averted by doubts) constitutes one of the most fundamental principles of Islamic criminal jurisprudence. The substance of this rule is that whenever doubt arises concerning the commission of an offense or its conditions, the execution of hudud must be suspended (Hurr Ameli, 1982). A violation of the right to silence itself generates doubt, because in such circumstances it cannot be ascertained that the accused's statements or confession were made voluntarily and with genuine consent. Accordingly, under the rule of *dar'*, where the accused's silence

has been broken through coercion or where they were not afforded an informed opportunity to exercise this right, the imposition of punishment lacks religious legitimacy ([Mousavi Ardabili, 1987](#)).

This rule not only prevents the execution of hudud, but also, from a jurisprudential perspective, repels any judgment that is harmful or contrary to justice. Therefore, violating the right to silence may lead to the invalidation of all outcomes based on an involuntary confession.

#### 6.2. *The Rule Prohibiting Coercion and the Invalidity of Involuntary Confessions*

One of the foundational rules of Islamic criminal jurisprudence is the prohibition of coercion. Based on numerous scriptural sources, an act or statement issued under coercion is devoid of legal effect. The Qur'an states: "Except for one who is compelled while his heart is at rest with faith" (Qur'an 16:106). Jurists have relied on this verse to establish the principle that statements made under coercion are invalid ([Makarem Shirazi, 2022](#)).

In many instances, violating the right to silence constitutes a form of moral or psychological coercion, as the accused is compelled to speak due to psychological pressure, fear of negative inferences from silence, or improper conduct by authorities. From a jurisprudential standpoint, such circumstances amount to *confession under coercion*, and any statement issued therein lacks probative value ([Sobhani, 2013](#)).

#### 6.3. *The Rule of Nafy al-Sabil and the Preservation of the Accused's Human Dignity*

The rule of *nafy al-sabil* is grounded in the principle that no one—including an Islamic government—may exercise illegitimate domination over individuals: "And Allah will never grant the disbelievers a way over the believers." Jurists have applied this rule broadly across legal and political domains ([Khomeini, 2010](#)).

On this basis, any action that results in undue domination over the accused and deprives them of freedom of will constitutes a violation of the rule of *nafy al-sabil*. Compelling the accused to speak or instilling fear of remaining silent exemplifies such illegitimate domination and is religiously impermissible. Accordingly, violating the right to silence represents not only a legal infringement but also a clear jurisprudential breach of the principle of human dignity emphasized in Islamic law.

#### 6.4. *The Rule Concerning the Corruption of an Unlawful Premise*

In Imami jurisprudence, an unlawful premise cannot give rise to a lawful effect. If evidence or a confession is obtained through illegitimate means—such as threat or compulsion—the premise is corrupt and its legal effects are nullified ([Makarem Shirazi, 2022](#)). This rule reflects the principle of the purity of evidentiary methods in adjudication: the path to truth must itself be legitimate.

Consequently, where truth-finding proceeds through the violation of the right to silence or through exerting pressure on the accused, such discovery lacks legitimacy, even if it ostensibly leads to establishing an actual offense. This rule is fully consistent with the foundations of judicial justice in Islamic jurisprudence and delineates the boundary between fair investigation and unjust investigation.

#### 6.5. *The Principle of Precaution in Matters of Life, Property, and Honor*

Jurists agree that in crimes involving life, property, and personal honor, the governing principle is precaution. Accordingly, until definitive certainty regarding the commission of an offense is attained, a criminal judgment should not be issued ([Mousavi Ardabili, 1987](#)). Violating the right to silence and obtaining doubtful or involuntary confessions erodes such certainty, and thus the principle of precaution requires abstention from judgment.

This principle is closely related to the rule of *dar'*, but it places greater emphasis on the judge's ethical and epistemic obligation to refrain from issuing doubtful judgments. Therefore, in Islamic jurisprudence, adherence to precaution in situations of uncertainty is regarded as a hallmark of judicial justice and rigor.

Analysis of these rules demonstrates that Imami jurisprudence, although it does not employ the technical term "right to silence," fully recognizes this right at a foundational level. The combined operation of the rules of *dar'*, prohibition of coercion,

nafy al-sabil, and the corruption of unlawful premises collectively impose an obligation to respect free will, human dignity, and justice in adjudication. On this basis, any confession or evidence obtained through violating the right to silence lacks religious and judicial effect and may even invalidate the adjudicative process as a whole.

## 7. Conclusion

The accused's right to silence, as one of the most fundamental manifestations of a fair trial, plays a decisive role in guaranteeing free will, human dignity, and the credibility of the criminal proof process. By focusing on the effects of violating the accused's right to silence in the Iranian criminal justice process, this article has demonstrated that this right is not a merely formal or ceremonial privilege, but rather a substantive element in ensuring criminal justice. Its violation produces serious—and at times irreparable—consequences for the entire adjudicative process.

First, the conceptual and practical analysis of violations of the right to silence showed that merely providing a formal notification of this right, without creating genuine conditions for its effective exercise, cannot satisfy the requirements of a fair trial. Psychological pressure, treating silence as an indication of guilt, and the confession-centered nature of preliminary investigations are among the most significant factors that practically weaken the right to silence. This situation stands in clear contradiction to the protective philosophy of this right, whose purpose is to prevent the attribution of involuntary statements to the accused.

Next, the examination of the effects of violating the right to silence on the validity of the accused's confession revealed that whenever the accused's silence is broken directly or indirectly, the resulting confession becomes subject to serious legal and jurisprudential doubt. Such a confession lacks sufficient assurance of voluntariness and consent and therefore cannot be relied upon as an independent or reliable piece of evidence. This analysis is consistent both with the foundations of Imami jurisprudence and with the principles of modern criminal law, which regard free will as the essential condition for the validity of confessions.

It was further demonstrated that the consequences of violating the right to silence are not limited to the invalidity of the confession, but extend to other forms of criminal evidence and even to the judge's knowledge. When the path to discovering the truth is shaped through violations of the accused's defense rights, the entire chain of obtained evidence is weakened, and the knowledge formed by the judge lacks the necessary certainty and reliability. Accordingly, violating the right to silence may undermine the entire process of proving criminal responsibility in terms of both justice and legitimacy.

The analysis of enforcement mechanisms in Iranian criminal law showed that, despite legislative progress—particularly in the Code of Criminal Procedure adopted in 2014—the Iranian legal system still lacks explicit, effective, and deterrent sanctions for violations of the right to silence. This legislative and practical gap has facilitated the persistence of a formalistic approach to the right to silence and has diminished its practical effectiveness.

Finally, the jurisprudential analysis of the effects of violating the right to silence, based on principles such as the rule of averting punishment in cases of doubt, the prohibition of coercion, the rule of denying illegitimate domination, and the invalidity of unlawful premises, demonstrated that Imami jurisprudence not only poses no conflict with the recognition of this right, but also offers deeper foundations for its protection. On this basis, any evidence obtained through violating the right to silence lacks both religious and judicial legitimacy.

In sum, the findings indicate that the genuine protection of the accused's right to silence requires a shift from formal notification to effective protection, reform of judicial practice, strengthening of enforcement mechanisms, and greater reliance on jurisprudential and human rights foundations. Only under such conditions can the practical realization of a fair trial within the Iranian criminal justice system be meaningfully achieved.

## Ethical Considerations

All procedures performed in this study were under the ethical standards.

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## Conflict of Interest

The authors report no conflict of interest.

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