

Function and Guarantee of Defendant's Waiver of Silence in the Iran and the United States' Criminal Law and Jurisprudence

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Abstract

The right to remain silent and the necessity for the police to declare this right to the accused in Iranian criminal law has a function and a guarantee of execution. However, the waiver of the right to remain silent, its function and the guarantee of its implementation are vacuum in the Iran's criminal law. This situation has the function and guarantee of execution in the United States' criminal law and jurisprudence of its courts. In this sense, it is important to consider the two legal systems in order to answer the question, what is the function and guarantee of the defendant's waiver of the right to remain silent? The findings of the study show that the silence of the accused during the police interrogation of him in any case means the exercise of the right to remain silent. However, the United States' criminal law and jurisprudence make a distinction in this regard. If the accused is silent during the police interrogation, his silence means waiving the right to remain silent. Given that the accused is not in custody, his silence in the face of police interrogation does not mean exercising his right to remain silent. Therefore, in order to avoid this situation, the accused must explicitly state that he wants to invoke his right to remain silent, even though the police did not warn him to remain

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silent before the start of the interrogation. Otherwise, the defendant's silence means his waiver of the right to remain silent and the result is to his detriment at the trial stage.

Keywords: Defendant's Right to Silence; Waive to Remain Silent, Criminal Law; Jurisprudence; United States.

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