

Right of Silence of the Accused in Accordance with the Palestinian Criminal Procedure Law (A comparative study)

Prepared by: Motaz Ali Hasan Abu zneid

Supervisor: Dr. Abdullah Najjar

Abstract:

This study tackles one of the most important rights that represents a guarantee of the most important guarantees of the accused during the trial, and represents a right of defense, namely the right of the accused to remain silent in accordance with the wording formulated by the Palestinian legislator or in other legislations; The right of the accused not to testify or to declare, the right of the accused not to testify or to incriminate himself, or the right of the accused to remain silent, and that the silence is the right of the accused to use it at any time he wishes and to see that there is no reason to use it It is used. And the defendant has to choose the method and time he deems appropriate; The use of a right of defense granted to him without affecting his will from anyone in it. In this study, the researcher followed the analytical method and the comparative approach, which is one of the methods followed by legal research according to the scientific method. The researcher dealt with the right to silence in accordance with the Palestinian law in comparison with both the Egyptian and Jordanian laws and some other legislations. The extent to which one of them distinguished from other legislations in devoting the right to silence and clarifying any ambiguity in his study and the aspects and perspectives related thereto. During this study, the research was divided into three chapters, the introductory chapter, which dealt with the definition of the right to silence, including the linguistic meaning and the legal meaning of the right to silence, and the right to remain silent in the stages of the criminal case, and the right to remain silent in the old legal systems. The theory of pro-theory and opposition to the right to silence, then the right to remain silent in the old legal systems by researching the stages of historical development of the silence of the legal systems and the silence of the old procedural systems. The first chapter of this study included: The first topic, in which the basis of the right of the accused to remain silent through the legal basis that resulted from the entrenchment of the right of silence as the right of silence has been enshrined in international legislation through declarations and international conventions. In the second part of this chapter, the researcher addressed the justifications of the right to remain silent; since the right to remain silent is a right of defense that allows the accused to resort to secrecy and not to disclose what is inside him. The silence is a way for him. He has chosen to use one of the rights granted to him to defend himself, which is derived from the presumption of innocence, especially since he is not entitled to silence. This right is justified by the fact that the accused can resort to him at any stage whether it was at the stage of gathering evidence, preliminary

investigation or trial. In the second chapter of this study, the researcher discussed the effects of the right of silence. The first topic covered the effects of the right to silence, such as the right to use a lawyer and the consequent importance of reinforcing the right to remain silent and the cases in which the accused is interrogated without the presence of counsel. The postponement of the investigation as one of the other effects of the right to silence and the consequent postponement of the questioning; whether by postponing the interrogation in misdemeanors until the presence of counsel or postpone the interrogation in the crimes until the presence of counsel to the side of the accused in a felony. And at the end of Chapter II was To investigate the effects of violation of the right of the accused to silence through the manifestations of the violation of the right of silence, which is the means that are used as means of violation leading to physical or moral coercion and the penalty resulting from this breach whether the penalty for the act of any act of breach or punishment on the actor Whoever commits an act that would violate this right or the penalty is compensation. In conclusion, the researcher explained the most important findings of the study findings and recommendations.