

The Role of The Right to Silence in Protecting Suspects' Procedural Rights

Lutfullaeva Madinabonu Jamshidjon kizi

Independent Researcher, Tashkent State University of Law, Uzbekistan

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Abstract

This article analyzes the critical function that the right to silence plays within the framework of criminal justice. It examines how this right serve as a safeguard for suspects against self-incrimination and ensures fair treatment during legal proceedings. The article discusses various legal precedents and frameworks across different jurisdictions, highlighting the implications of the right to silence on police interrogation practices and the overall integrity of the judicial process. Through a comprehensive analysis, the author argues that upholding the right to silence is essential for maintaining the balance between effective law enforcement and the protection of individual rights.

Keywords: Right to silence, procedural rights, suspects' rights, self-incrimination, criminal justice, legal frameworks, police interrogation, fair trial, judicial integrity, human rights.

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1. Introduction

The right to remain silent is one of those procedural guarantees that, while seemingly self-evident, proves to be among the most vulnerable in practice. While declaring a right is easy, ensuring the actual opportunity to exercise it is a fundamentally different matter. It is precisely this problem between the norm and its application that constitutes the key research issue of this article.

The relevance of this topic is determined by several factors. Criminal procedure reform in the Republic of Uzbekistan, which has gained momentum over the past decade, also affects the status of suspects as participants in criminal proceedings. The 2023 Constitution of the Republic of Uzbekistan for the first time enshrined the right to silence and the privilege against self-

incrimination at the highest normative level.

Theoretical development of this topic in Uzbek legal scholarship remains insufficient. The right to silence is traditionally viewed as a derivative element of the presumption of innocence, rather than as an independent institution deserving separate doctrinal consideration. In contrast, foreign procedural doctrine has explored this issue in detail: the nature of the privilege against self-incrimination, the limits of permissible inferences from silence, standards for clarifying rights, and mechanisms for excluding inadmissible evidence are explored [1]. Transferring this discourse to Uzbek legal material appears both scientifically significant and practically necessary.

The purpose of this article is to systematically analyze the legal regulation and practice of ensuring the right to

silence of a suspect in criminal proceedings in the Republic of Uzbekistan, identify legislative gaps and formulate specific proposals for their elimination.

The constitutional recognition of the right to silence in the Republic of Uzbekistan has undergone a significant development, and it is this development that is of greatest scholarly interest. Let us examine the essence of these changes.

The 1994 Criminal Procedure Code of the Republic of Uzbekistan contained an important provision: according to Part 3 of Article 23 of the Criminal Procedure Code of the Republic of Uzbekistan, "a suspect, accused, or defendant is not obliged to prove his or her innocence". This provision seemed clearly formulated. However, the problem lay in its procedural status, as this provision was enshrined in a specific law but was not directly or explicitly expressed in the country's Constitution. The 1992 Constitution of the Republic of Uzbekistan enshrined the presumption of innocence (Article 26), but did not explicitly identify the right to silence as an independent constitutional guarantee.

The situation changed fundamentally with the adoption of the new 2023 Constitution of the Republic of Uzbekistan. Article 28 of the updated Constitution, for the first time, enshrined at the highest legislative level a comprehensive set of guarantees for individuals facing criminal liability. Specifically, it explicitly states: "A suspect, accused, or defendant is not obligated to prove their innocence and may exercise the right to remain silent at any time." Furthermore, Article 28 contains a separate provision stating that "no one is obligated to testify against themselves or their close relatives," which, by its legal nature, constitutes a privilege against self-incrimination—a broader category that includes the right to silence as a specific case.

The 2023 constitutional reform deserves separate evaluation from the perspective of legal technique. The legislator has chosen to detail constitutional guarantees, transferring several provisions from the Criminal Procedure Code of the Republic of Uzbekistan to the constitutional level and simultaneously expanding their scope. While the right to silence previously applied only to suspects, accused, and defendants, the rule on the inadmissibility of incriminating oneself and one's close relatives is now universal and applies to any person, regardless of their procedural status. This is a significant expansion, as it also encompasses witnesses who, in certain situations, may effectively be at risk of self-

incrimination.

It should be noted that this approach is consistent with international standards. Article 14 of the International Covenant on Civil and Political Rights, ratified by Uzbekistan, enshrines the right "not to be compelled to testify against oneself or to confess guilt." The UN Human Rights Committee, in General Comment No. 32 (2007), clarified that this provision applies not only to accused persons but also to persons being questioned in other procedural statuses. In this regard, the 2023 Constitution of the Republic of Uzbekistan is approaching international standards, which should be assessed positively. At the same time, one fundamental issue that arises when comparing this constitutional norm with the current Criminal Procedure Code of the Republic of Uzbekistan cannot be ignored. Article 28 of the Constitution enshrines the right to silence without any reservations regarding the procedural consequences of its exercise. However, in practice, a suspect's silence is interpreted by investigators as indirect evidence of guilt. The Criminal Procedure Code of the Republic of Uzbekistan does not explicitly prohibit such an interpretation. This creates a situation where the right exists, but the mechanism for protecting against its violation is not clearly defined.

Thus, the 2023 constitutional reform has created an important normative foundation for ensuring the right to silence in the Republic of Uzbekistan: for the first time, this guarantee is enshrined at the highest level of the legal hierarchy, the range of persons to whom it applies has been expanded, and its connection with the broader principle of the privilege against self-incrimination has been established.

An analysis of the current criminal procedure legislation of Uzbekistan allows us to identify three key aspects of the regulation of the right to silence: the moment of its emergence, the scope, and the procedure for clarification. We will consider these in turn. According to Part 3 of Article 23 of the 1994 Code of Criminal Procedure of the Republic of Uzbekistan, a suspect, accused, or defendant "may exercise the right to remain silent at any time." The phrase "at any time" theoretically means that this right arises from the moment a person is granted the procedural status of suspect and is valid throughout the entire proceedings. This is an important provision, since in comparative legal literature, the right to silence is considered only as a guarantee during the interrogation stage, whereas systemic protection encompasses the entire pre-trial and trial stages [2].

The moment the right to silence arises is determined by Article 360 of the Criminal Procedure Code of the Republic of Uzbekistan: the decision to bring a person in as a suspect is announced to the person before their first interrogation, and at the same time, they are explained the rights stipulated by Article 48 of the Criminal Procedure Code of the Republic of Uzbekistan. Thus, the legislator formally links the explanation of the right to silence with the presentation of procedural status – before the start of any interrogation. This is conceptually close to the logic of the American doctrine of *Miranda v. Arizona* (1966), according to which a warning of rights must precede any interrogation in custody [3]. The difference, however, is that the *Miranda* warning in the United States is a strictly formalized procedure with clear consequences for a violation – the automatic exclusion of the testimony obtained. The Criminal Procedure Code of the Republic of Uzbekistan clearly does not provide for such a mechanism.

The right to silence under the Criminal Procedure Code of the Republic of Uzbekistan encompasses the refusal to testify without any negative procedural consequences for the suspect. Article 23 of the Criminal Procedure Code of the Republic of Uzbekistan explicitly states that a person "is not obliged to prove their innocence." This is fundamental: the right to silence in this context is not simply a procedural privilege, but a consequence of the general principle of the presumption of innocence. In criminal procedure doctrine, this relationship is described as the "derivative nature" of the right to silence: it cannot exist independently without the presumption of innocence, since the latter relieves the accused of the burden of proof [4].

The 1994 Criminal Procedure Code of the Republic of Uzbekistan did not contain a specific provision on the inadmissibility of drawing adverse inferences from the fact of a suspect's silence. This omission is significant: in a number of countries—particularly in the UK after the adoption of the Criminal Justice and Public Order Act 1994—the court is expressly permitted to draw so-called "adverse inferences" from the accused's silence under certain conditions [5]. Uzbek legislation lacked such a framework. However, the absence of an explicit prohibition on such inferences creates legal uncertainty: the investigator or court is formally unrestricted in interpreting a suspect's silence.

A significant step toward eliminating this uncertainty was the Law of the Republic of Uzbekistan of June 9, 2025, amending several legislative acts. According to the

amendments, a suspect, accused, or defendant may freely exercise the right to silence at any stage of the proceedings, and a confession of guilt is no longer sufficient grounds for a conviction, even if supported by only one piece of evidence. This amendment effectively eliminates one of the key incentives for extracting confessions through pressure on a suspect their self-sufficiency as evidentiary evidence. Nevertheless, the question of the procedural consequences of violating the right to silence remains open. The discrepancy between the legally enshrined right to silence and the actual practice of enforcing it is a problem characteristic not only of Uzbekistan but also of most post-Soviet legal systems. At least three systemic problems can be identified in the Republic of Uzbekistan.

The conducted analysis of legislative regulation and law enforcement practice allows us to formulate a number of controversial provisions that have both theoretical and purely practical significance for criminal proceedings in the Republic of Uzbekistan.

The first controversial issue concerns the very nature of the right to silence in the system of criminal procedural guarantees. Two main positions have developed in the theory of criminal procedure. According to the first, the right to silence is an independent subjective procedural right, possessing its own content and protective mechanism. According to the second, it is a derivative element of the presumption of innocence, since it is the latter that relieves the suspect of the burden of proof and thereby creates the very possibility of remaining silent without procedural consequences. Judging by the structure of Article 23 of the Criminal Procedure Code of the Republic of Uzbekistan and Article 28 of the 2023 Constitution of the Republic of Uzbekistan, the legislature of the Republic of Uzbekistan effectively adheres to the second position: the right to silence is enshrined in the same norm as the presumption of innocence and the prohibition on imposing on a suspect the burden of proving their innocence. This constructive solution has serious practical consequences. If the right to silence is merely a consequence of the presumption of innocence, then its violation is procedurally "dissolved" into a broader violation of the principle and does not entail clearly defined sanctions for specific improper actions by the investigator. We believe this approach requires correction: the right to silence should be independently enshrined in a dedicated article of the Criminal Procedure Code of the Republic of Uzbekistan, specifying the specific procedural consequences of its

violation.

The question of whether the mere fact of a suspect's silence can be taken into account when assessing evidence remains controversial. As demonstrated above, the Criminal Procedure Code of the Republic of Uzbekistan did not explicitly prohibit such an interpretation. Meanwhile, in the theory of criminal procedural law, it is customary to distinguish two approaches: the continental approach, which allows, under certain conditions, inferences from silence (adverse inferences), and the classical approach, which categorically excludes them on the grounds that the right to silence loses its meaning if its use in itself becomes indirect evidence of guilt [6]. The 2025 amendments, by enshrining the right to remain silent "at any stage", have to some extent resolved this problem. However, without an explicit legislative prohibition on the use of silence as evidence, law enforcement officials still have considerable discretion. In this regard, it is proposed to supplement Article 23 of the Criminal Procedure Code of the Republic of Uzbekistan with the following clause:

"The exercise by a suspect, accused, or defendant of the right to remain silent cannot be used as evidence of their guilt, nor can it serve as grounds for choosing or changing a preventive measure".

Adopting this provision would eliminate the last structural gap in the regulation of the right to silence and ensure consistency between the Criminal Procedure Code of the Republic of Uzbekistan and the provisions of the 2023 Constitution of the Republic of Uzbekistan and international human rights standards.

The conducted research allows us to formulate a number of conclusions, both theoretical and practical.

The right to silence of a suspect in the Republic of Uzbekistan has undergone a consistent process of normative development. It received constitutional recognition only with the adoption of the updated Constitution of 2023, Article 28 of which for the first time elevated this guarantee to the rank of a constitutional principle and expanded its scope by explicitly prohibiting self-incrimination and that of close relatives.

Based on the above, the following conclusions are drawn.

The right to silence in the current Criminal Procedure Code of the Republic of Uzbekistan is enshrined as a

derivative element of the presumption of innocence, rather than as an independent procedural guarantee. This weakens its practical protection: violation of the right to silence does not entail clearly defined procedural consequences and is dissolved into a general violation of the principle. A separate article is needed regulating the content of the right to silence, the conditions for its exercise, and the consequences of its violation. 2. The procedure for explaining the right to silence, as stipulated by Article 360 of the Criminal Procedure Code of the Republic of Uzbekistan, is primarily formal in nature. The law obliges the investigator to explain the right to silence before the first interrogation, but does not establish a standard for such explanation or a mechanism for verifying whether the suspect has truly understood it. It seems necessary to supplement the Criminal Procedure Code of the Republic of Uzbekistan with a provision requiring the investigator to record the explanation in a separate procedural document signed by the suspect and their defense attorney. If the suspect refuses to sign, the investigator must draw up a corresponding report with the participation of attesting witnesses.

The Criminal Procedure Code of the Republic of Uzbekistan does not contain a direct provision regarding the inadmissibility of testimony obtained before the right to silence has been properly explained. This omission deprives the guarantee itself of practical meaning. It is proposed to supplement Article 951 of the Criminal Procedure Code of the Republic of Uzbekistan with a provision stating that a suspect's testimony obtained before being informed of his or her rights under Article 48 of this Code is considered inadmissible evidence and cannot be used as the basis for charges.

The current Criminal Procedure Code of the Republic of Uzbekistan does not explicitly prohibit the use of a suspect's silence as indirect evidence of guilt. Based on this, it is proposed to supplement Article 23 of the Criminal Procedure Code of the Republic of Uzbekistan with the following part four:

"The exercise of the right to remain silent by a suspect, accused, or defendant cannot be used as evidence of their guilt, nor can it serve as grounds for choosing or changing a preventive measure."

The right to silence can be fully exercised only if the suspect has real, rather than formal, access to a defense attorney from the moment of arrest. It is necessary to establish by law that interrogating a suspect in the absence of a defense attorney in cases where his

participation is mandatory entails the absolute inadmissibility of the testimony obtained, regardless of other circumstances of the case.

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