




Surveying the Rule of the Exclusion of Evidence in the Legal Systems of Iran and China

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Article Info	Abstract
<p>Article type: Research Article</p> <p>Article history: Received 2025-10-22</p> <p>Revised 2026-04-18</p> <p>Accepted 2026-04-26</p> <p>Published online 2026-06-22</p>  <p>https://ijicl.qom.ac.ir/article_4009.html</p> <p>Keywords: Exclusion of Evidence, Invalidity of Evidence, Criminal Justice, Iran, China.</p>	<p>A fair trial that guarantees defendants' defense rights requires that the reasons cited in the criminal trial process be legal and in accordance with the standards of the trial. The necessity of the principle of obtaining evidence through legitimate and legal means in Chinese law, as a rule, and in Iranian law, in certain cases, to guarantee the principle of legality of obtaining evidence, in addition to other law enforcement guarantees, the invalidity of investigations and extracting the evidence in case of non-compliance with the regulations is mentioned. The principle, titled "the Principle of Invalidity of Evidence," holds that evidence obtained illegally by law enforcement or judicial authorities is invalid and excluded from evidence against the accused. Due to the nature of the subject, the present study is applied in terms of purpose and in terms of data collection by documentary method and by studying valid laws and sources, and the obtained information is analyzed descriptively-analytically. The comparison of the two penal systems confirms that the laws of both systems are ambiguous and inconsistent, and that the strategies they present are inadequate and, in some cases, have been criticized by lawyers, leading to conflicts of opinion and procedures and a lack of due process. For example, the lack of definition and determination of the system of evidence refutation in the Iranian Criminal Procedure Code, and the lack of necessary seriousness in implementing the rule of evidence rejection in China.</p>

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Introduction

The issue of evidence arises in the earliest stages of the criminal process, namely the preliminary investigation stage, where one of the most important tasks of the investigating authority is to collect evidence to prove the accused's guilt or innocence. In practice, the main evidence is presented during the preliminary investigation, and the case is finally evaluated in court to determine the fate of the accused and issue a verdict. The principle of the legitimacy of obtaining evidence means respecting the law when resorting to all methods aimed at obtaining evidence to discover and announce the truth. Law enforcement officers obtaining evidence against the accused must adhere to the principles and regulations, because the most important evidence in proving a criminal fact will be invalid if the legal rules and conditions are ignored in the evidence-gathering process.¹

“Invalidation case” due to non-compliance of obtained evidence with rules and regulations is a case in which the legislator and the judicial procedure seek to establish a balance between the interests of the interested parties and the interests of society. In fact, on the one hand, it is necessary to ensure the observance of the rules of proceedings to protect the interests of litigants, as a result, they should be allowed to apply for the annulment of proceeding actions during which the rules and principles of proceedings have not been observed, and on the other hand, through referring to the “Theory of Nullity”, we can prevent non-compliance with the norms and rules of procedure and force the justice enforcers to comply with the rules and regulations, as the violation of them may expose their performance to invalidity.

The nullity of evidence is used in the common sense in Iranian legal literature; However, according to the authors of this article, there is confusion between the concepts of “invalidity”, “exclusionary”, “unreliability”, and concepts like this, or at least there is no specific difference between them. For example, some have mentioned unacceptable confessions caused by torture under the title of the exclusion of evidence² and some have rejected this opinion, calling it unreliable evidence.³ Therefore, our opinion is that there is a difference between exclusion and invalidity, but in this article, we have used them interchangeably.

Both Iranian and Chinese legal systems have defined certain rules and regulations regarding the actions of the judicial officers in protecting and safeguarding the defendants' defense rights. In Iranian law, Article 38 of the Iranian Constitution stipulates:

“All forms of torture for the purpose of extracting confession or acquiring information are forbidden. The compulsion of individuals to testify, confess, or take an oath is not permissible; and any testimony, confession, or oath obtained under duress is devoid of value and credence. Violation of this article is liable to punishment in accordance with the law.”

For the first time in Iranian law, Article 38 of the Constitution stipulates that evidence

1 M Ashuri, *Criminal Procedure Law* (13th edn, Samat 2019) 45–47.

2 Goldouzian, ‘Invalid Reason and Its Effects in Different Legal Systems’ (1991) 26 *Journal of Law and Political Science* (University of Tehran) 63 <<https://ensani.ir/fa/article/15721>>.

3 M Sabouripour, ‘The Exclusionary Rule (The Principle of Rejecting Evidence) in Law of the United States and Comparing with the Similar Sanctions in the Law of Iran’ (2015) 12 *Journal of Criminal Law Doctrines* 129 <https://cld.razavi.ac.ir/article_677.html>

obtained through illegal means is inadmissible. The principle stipulates: “Any torture to obtain a confession or obtain information is prohibited, forcing a person to testify, confession, or oath is not allowed, and such testimony, confession, and oath lack validity and credibility. Violators of this principle will be punished according to the law”. Also, in the Code of Criminal Procedure, the invalidity of the obtained evidence is mentioned in various Articles on a case-by-case basis; In this regard, Article 30 of the same Code stipulates:

“Obtaining the title of bailiff, in addition to being trustworthy, depends on learning the necessary skills by passing training courses under the supervision of the relevant judicial authority and obtaining a special card for bailiffs. The investigations and actions taken by people who do not have this card are prohibited and legally invalid.”

It requiring judicial officers to have a special identity cards to fulfill their duties as officers, and Article 60 stipulates: “During interrogations, coercion or reluctance of the accused, the use of derogatory words, suggestive or deceptive questions, and questions outside the subject of the accusation are prohibited, and the statements made by the defendant in response to such questions, as well as statements made by coercion or reluctance, are not valid. The date, time, and duration of the interrogation must be stated in the minutes of the parliament and signed or fingerprinted by the accused.” It refers to the prohibition of coercion and reluctance in interrogations in the Criminal Procedure Law, as well as Article 115 that stipulates: “It is forbidden to write between the lines, to write and to carve out words in interrogation and interrogation papers.” In case of non-compliance of obtained evidence with the provisions governing the writing of interrogations and investigations, it will be considered invalid. And according to the aforementioned Articles, it is understood that the invalidity of evidence is not recognized as a “rule” in Iranian law; rather, it is considered only a guarantee for the enforcement of the law and for avoiding non-compliance with regulations in certain cases. In contrast, the Chinese legal system has recognized “The Rule of Nullity of Evidence” and included examples of it in the Criminal Procedure Law of 2012, as amended in 2018. Iran’s legal system, by specifying the invalidity of investigations and actions resulting from non-compliance with laws and regulations, has implicitly taken effective steps toward establishing the rule of nullity of evidence. Still, it is silent on explaining the nullity procedure and the exceptions to the rule. Comparative studies in this field can help us develop a fair model for recognizing the invalidity and illegality of evidence, which is the most important safeguard for obtaining evidence legally. In this article, we will first discuss the legislative policies of Iran and China regarding the application of the rule, and then examine related concepts and the most important challenges to its proper implementation.

1. Legislative Policy and Practice

The collection of evidence is one of the most fundamental elements in proving the truth and discovering reality; therefore, evidence is especially important and has distinctive features in criminal cases. In many countries, a special chapter of the criminal procedure law is not dedicated to issues related to obtaining evidence. Iran is also one of these countries, the

examples of obtaining evidence in the Islamic Penal Code under Article 160 that stipulates: “The evidence to prove the crime consists of confession, testimony, oath, and the knowledge of the judge in the cases prescribed by law.”, and the subsequent Articles have explained the subjectivity and procedure of obtaining evidence. At the same time, Articles 318 to 334 of the Code of Criminal Procedure deal with the procedures for examining evidence. On the other hand, the Chinese legal system has also paid attention to this issue; one of the chapters of the Chinese Criminal Procedure Law dedicates several articles, such as Articles 50 to 65, to independently discuss the issue of obtaining evidence and explicitly defines evidence that lacks evidentiary value or validity. Article 50 stipulates:

“All materials that prove the facts of a case shall be evidence. Evidence shall include: (1) physical evidence; (2) documentary evidence; (3) testimony of witnesses; (4) statements of victims; (5) statements and exculpations of criminal suspects or defendants; (6) expert opinions; (7) records of crime scene investigation, examination, identification and investigative experiments; and (8) audio-visual materials, and electronic data. The authenticity of evidence shall be confirmed before it can be admitted as the basis for deciding on a verdict.”

Among the guarantees of legal performance that are considered to comply with the law in obtaining evidence in some legal systems is that evidence collected through the illegal actions of judicial officers cannot be presented or cited in court as valid evidence. It is known as “The Rule of Exclusion of Evidence” in some legal systems. In accordance with Article 52 of the Chinese Criminal Procedure Law, which stipulates:

“Judges, procuratorial personnel, and investigators shall adhere to statutory procedures when gathering and obtaining evidence that may prove whether criminal suspects or defendants are guilty or innocent, or whether cases involve serious criminal offenses or not. They are strictly prohibited from extorting confessions by torture, collecting evidence through threats, enticement, deception, or other unlawful means, or forcing anyone to provide evidence proving their own guilt. They shall ensure that all citizens who are involved in a case or who have information about the circumstances of a case can furnish all available evidence in an objective manner and, except under special circumstances, may ask such citizens to aid in the investigation.”

So, the right to remain silent as the defense rights of the accused, and to provide it in writing, with a receipt attached to the file, are mentioned as the duty of the judicial officers. Now, if the judicial officer does not observe any of the mentioned rights of the accused, is the evidence obtained from this illegal act accepted or cited by the court? Is evidence obtained without respect for the defendant’s defense rights worth and does it hold validity? To answer these questions, it is necessary to discuss the concepts relevant to this subject and warrant more detailed investigation.

2. The Main Concepts

2.1. The Concept of Evidence

According to Article 194 of the Iranian Civil Procedure Code: “The evidence is what the parties of the lawsuit invoke for proof or litigation”. The definition is more relevant to legal disputes than to criminal disputes; in legal cases, the judge essentially plays the role of the ruler, and, aside from exceptional cases, his duty is to express his opinion based on the arguments presented by the parties to the dispute. Also, judges in legal cases decide based on “formal truth”; therefore, it is natural that the evidence in the above article is defined as what the claimants present to prove their claim. However, in criminal cases, since committing a crime is to disrupt public order and public security, and the purpose of a criminal case is to discover the truth and to obtain the real criminal to impose a legal punishment, in addition to the prosecutor or plaintiff, the criminal judge himself, if necessary, must complete and even obtain new evidence that can affect the fate of the trial.¹

2.2. The Concept of Invalidation of Evidence

Criminal jurists express differing opinions in this regard: some are concerned with safeguarding the rights of litigants and the community, and therefore consider evidence that does not comply with the rules of trial procedure invalid. And any evidence obtained by violating the defendant’s rights and by non-compliance with legal rules is condemned to invalidity. They believe that if judicial officers enter and search the accused’s house without the judicial authority’s permission and obtain positive evidence of the crime, such evidence is invalid. In contrast, others believe that invalidation of evidence means exclusion of the obtained evidence due to the effective influence of authorities and judicial officers in the process of obtaining the evidence². Some state that the real meaning of invalidation is more concerned with the effectiveness and nature of the evidence than with the method of obtaining it. The method used by the authorities may lack legal justification. Still, this issue cannot form the concept of invalidation of the evidence until it causes damage to the nature of the evidences³. Also, based on Article 56 of the Criminal Procedure Law of China, which stipulates:

“Confessions extorted from a criminal suspect or defendant by illegal means such as torture, testimony of witnesses, and statements of victims collected by violent means, threat, or other unlawful means shall be excluded. Physical evidence or documentary evidence that is not collected according to statutory procedures and is therefore likely to damage judicial justice materially shall be subject to correction or reasonable explanations and shall be excluded if correction or reasonable explanations are not made. Evidence that shall be excluded as found during investigation, examination before prosecution, and trial shall be excluded in accordance with the law and shall not serve as the

¹ Ashuri (n 1) 45–47.

² MS Soheil and H Moazenzadegan, ‘The Rule of Invalidation of Evidence in Criminal Procedure with an Emphasis on American Law’ (2016) 2 *Journal of Criminal Law and Criminology Studies* 243 <https://jqclcs.ut.ac.ir/article_62432.html>

³ MB Moghadasi and J Yazdani, ‘Credibility of Evidence Compiled by Justice Officers in Iran’s Penal System’ (2017) 23 *Journal of Security Protective Research* 132 <https://journals.ihu.ac.ir/article_201066.html>.

basis for making prosecution opinions, prosecution decisions, and judgments. The physical evidence or documentary evidence that is not collected according to statutory procedures and is likely to damage judicial justice materially shall be subject to correction or reasonable explanations and shall be excluded if correction or reasonable explanations are not made.”

2.3. The Concept of The Exclusionary Rule

According to the exclusionary rule, if the agents of the criminal justice system, including the police forces do not comply with the legal standards and violate the rights of the accused in obtaining evidences, the judge should remove the mentioned evidences from the number of obtained evidences, and if the responsible prosecution institutions do not present other evidences for proving the defendant’s guilt, the judge issues a verdict on the innocence of the accused¹. The argument for exclusion of evidence because of its illegitimate method of obtaining is like the court action in a case where the defendant confesses to a crime, but the court rejects the confession because the evidence is contrary to the confession provisions. Such evidence is correct based on the existence of its elements (reason, maturity, intention, and discretion), but it is rejected according to the court’s judgment.²

According to the Iranian judicial procedure and legal system, there are differing opinions among jurists on whether to comply with the “rule of exclusion of evidence”. Some believe that, under Iranian law, due to the tradition of legislation and judicial procedure, obtaining evidence, even through illegitimate methods, has never been directly prohibited or guaranteed by law.³ And before amending Paragraph 1, Article 190 of the Iranian Code of Criminal Procedure in 2014, which stipulated that: “Denying the right to have an attorney or not understanding this right to the defendant will discredit the investigation.” It is an example of accepting the rule in Iranian law, but it never had the opportunity to implement and before the amendment implementation, the legal system of Iran was practically void of the rule.⁴ In contrast, some believe that Article 38 of the Constitution is an example of the rule of exclusionary of evidence.⁵ Therefore, considering the defendant’s mental and psychological state in detention, especially in cases of accidental crimes or unprecedented criminals, the defendant’s lack of the right to silence can lead to the defendant’s reluctance to respond unintentionally, which can be detrimental to the defendant. Therefore, it is possible to use the unity of Article 60 of the Code of Criminal Procedure and the effect of the situation; a kind of reluctance of the situation is considerable, so the discredit of the investigation in this situation, without observing the right of the accused to remain silent, is not unlikely.⁶ Therefore, some believe that the legislator, although implicitly, has accepted the exclusionary

1 M Farajih and MB Moghadasi, ‘A Comparative Approach to the Valid Rule of Ignorance of Evidence in the Criminal Justice System of Common Law and Iran’ (2008) 3 *Modares Humanities Journal* 113 <<https://ensani.ir/fa/article/8397>>.

2 Moghadasi and Yazdani (n 7) 132.

3 HA Moazenzadegan and MH Kourehpaz, ‘Guarantees of Enforcement of Violation of Citizenship Rights in the Police Investigation Process’ (2016) 11 *Journal of Criminal Law Doctrines* 53 <https://cld.razavi.ac.ir/article_642.html>.

4 Sabouripour (n 3) 129..

5 Goldouzian (n 2) 63.

6 AH Shakeri and GR Shirazi, ‘The Right to Silence and the Duty of Prosecution Authorities in the Criminal Procedure Code of 2014’ (2015) 7 *Journal of Police Knowledge* 101 <<https://civilica.com/doc/1850797>>.

rule to some extent under the Code of Criminal Procedure. It can result from the context of Articles 1, 2, 4, 7, 28, 36, 42, 61, and 63 of the Code of Criminal Procedure, which somehow accepts the principle of necessity of compliance of judicial officers in detecting crimes and identifying the accused. Even the lack of compliance with the law results in the guarantee of the legal implementation of Article 63.¹

However, it should be noted that the system of evidence in Iran is in accordance with Islamic teachings and is based on the judge's conscience. In other words, in the system of spiritual evidence, the judicial persuasion of the judge, which is called the knowledge of the judge, is independent evidence in criminal cases.² The importance of a judge's knowledge cannot be denied, and it can be acquired in various ways. Given that science is one of the mental states of the human being, and that it is obtained through measuring and evaluating the sum of evidence and the conditions governing an external phenomenon, it determines whether a phenomenon has occurred.³ As a result, if the judge reaches a decision based on the evidence obtained (even if the method of obtaining the evidence is illegal), he must issue a verdict against the defendant. It should be noted that there are certain regulations regarding the knowledge of the judge, and the judge cannot issue a verdict in any way that he acquired the knowledge. Because accepting such a claim would require crediting the judges' personal knowledge, which is not accepted in the Iranian legal system, citing the judges' personal knowledge has been considered invalid. This issue can also be extended to the evidence obtained by the illegal actions of bailiffs; in this regard, the legislature in Article 211 of the Islamic Penal Code stipulates:

“Knowledge of the judge is defined as a certainty resulting from manifest evidence in a matter brought before him. In cases where a judgment is based on the knowledge of the judge [as the proof of the offense], he is obliged to stipulate in the judgment the manifest circumstantial and hearsay evidence that has been the source of his knowledge.”

The knowledge of the judge is the certainty of the judge resulting from the documentation and his knowledge, so the judge is obliged to explicitly state that the evidence was obtained from the documentation or from his knowledge. According to the matters mentioned in the second paragraph of the above-mentioned Article as examples of cases that can be documented in the judge's knowledge, it shows that the judge cannot document all evidence to his knowledge, except that which complies with legal regulations. In addition, Article 36 of the above law provides that judicial officers' reports that are not prepared in accordance with applicable legal rules and regulations are invalid. Therefore, the judicial authorities cannot document their knowledge based on reports obtained as a result of legal violations.

However, according to Article 38 of the Constitution and the Law of Criminal Procedure in various articles, in a case-by-case manner, the invalidity of the obtained evidence is mentioned; For example, Article 30, which deals with the requirement of the judicial officers

1 Moghadasi and Yazdani (n 7) 132.

2 K Kalantari and A Salmanpour, 'The Status of Judge Science in Proof of Criminal Practice in Iranian Law' (2019) 2 *Journal of Criminal Law Research* 165 <<https://doi.org/10.22124/jol.2019.5424.1225>>.

3 E Heydari, 'The Validity of Judge Science in Issuing Criminal Verdicts in the Islamic Penal Code Approved in 2013' (2014) 2 *Journal of Criminal Law Scientific Studies* 89 <https://jol.guilan.ac.ir/article_50.html>.

to have the necessary skills and to pass training courses for obtaining the officer card, Article 60, on the prohibition of coercion and compulsion in interrogation, as well as the provisions of Article 115, which refers to incredibility of the obtained evidences due to lack of observing the rules governing the writing of interrogation and investigation. Therefore, under the Iranian legal system, invalidation of evidence is considered a legal safeguard against non-compliance with certain provisions, but the title “the Rule of Exclusionary of Evidence” has not been recognized in legal rules. And the evidence obtained through the actions that violate the law is not valid and cannot be documented in the process of issuing the verdict; however, it is necessary to define and explain the system of invalidation of evidence in the Iranian criminal procedure to ensure the proper implementation of the rules and principles of the proceedings.

In contrast, China’s legal system has recognized “the Rule of Exclusionary of Evidence” and included examples of it in its own procedural code. Although the use of torture and other illegal means of collecting evidence was banned in China in 1979, the legislator did not pass the rule of exclusionary rule until the beginning of the 21st century. The legislator’s promise was effectively fulfilled when several defendants sought the exclusion of illegally obtained evidence, and several judges granted their requests. The discovery of many criminal convictions resulting from forced confessions led to the formulation of the rule of exclusionary evidence in this regard. In recent years, China has significantly amended the exclusionary rule, increasing the requirements for exclusion and the rejection of illegal evidence. These provisions are mainly set out in the Criminal Procedure Code of 2012 and its 2018 amendment, the Evidence Rules of 2010, the interpretations of the Supreme People’s Court, the Public Security Institution Working Rules in criminal cases, and other relevant administrative and departmental regulations. In 2010, one of the evidence rules, namely, the Rules Concerning Questions about Excluding Illegally Obtained Evidence in Handling Criminal Cases, was stipulated by the Supreme People’s Court, the Supreme People’s Prosecutor, the Ministry of Public Security, the Ministry of State Security, and the Ministry of Public Justice. The first principle of these regulations stipulates that forced confessions should be excluded from use at criminal trials. In 2017, five high-ranking officials also drafted the Regulation on Some Issues of Strictly Excluding Illegally Obtained Evidence in Handling Criminal Cases. The Criminal Procedure Code of 2012 (Amendment 2018), as a part of the legal framework that oversees the exclusion of forced confessions, prohibits the use of torture by any means.¹

According to the principle of non-criminalization, anyone who, directly or indirectly, in a criminal trial compels a defendant to make statements against himself, or provides physical evidence, is considered to have committed an unlawful act, and the evidence obtained in this way shall be considered unlawful evidence under the law. Article 56 of the Criminal Procedure Law of China about the rule of exclusionary of evidence states:

“Confessions extorted from a criminal suspect or defendant by illegal means such as torture, testimony of witnesses, and statements of victims collected by violent means, threat, or other unlawful means shall be excluded. Physical

¹ Jiang Na, ‘Excluding Tortured Confessions in the People’s Republic of China: A Long March Towards the Eventual Abolition of Torture?’ (2018) 54 *International Journal of Crime and Justice* 1: 1–10.

evidence or documentary evidence that is not collected according to statutory procedures and is therefore likely to damage judicial justice shall be subject to correction or reasonable explanations and shall be excluded if correction or reasonable explanations are not made. Evidence that shall be excluded as found during investigation, examination before prosecution and trial shall be excluded in accordance with the law and shall not serve as the basis for making prosecution opinions, prosecution decisions and judgments.”

Therefore, in accordance with the law, if the People’s Prosecutor’s Office receives reports, charges, or misconduct based on the unlawful action of the interrogators in collecting evidence, or if it is found that the interrogators are involved in such actions, the People’s Prosecution Office shall investigate in this regard. Article 58 also states that during the court hearing, if the judge believes that the evidence was obtained by illegal means and does not comply with the provisions of Article 56 of this Act, the court shall investigate to determine the legality of the evidence. Each party to the case, their defender, and their criminal representative have the right to request that the People’s Court remove evidence collected by illegal means. Those who request the removal of evidence collected by illegal means must provide clues and relevant information. During the investigation, the court may ask the People’s Tribunal to establish the legality of the evidence-collection process. If it is unable to prove the legality of the evidence collection, the People’s Prosecutor may request that the People’s Court call the relevant investigators or other personnel to appear in court for explanations. Relevant investigators or other personnel may also request to appear in court to provide an explanation. Article 59 of the Criminal Procedure Law of China stipulates:

“ A people’s procuratorate shall bear the burden of proof as to the legality of the evidence gathering means during the court investigation thereof. Where there exists no evidentiary support for the legality of the evidence-gathering means, the people’s procuratorate may request the people’s court concerned to notify relevant investigators or other personnel to appear before the courtroom to make explanations. The people’s court may, at its own discretion, notify relevant investigators or other personnel to appear before the courtroom to give explanations. Relevant investigators or other personnel may also take the initiative to request an appearance before the courtroom for an explanation. Relevant personnel shall also appear before the courtroom if so notified by the people’s court.”

About the cases that have been dealt with in court, and the court investigation is unable to confirm or prove the cases where the evidence is collected by illegal means, as provided in Article 56 of this Act, shall be removed from the case.

2.4. Exclusionary Rule in Practice

In practice, cases in which evidence is collected without violating the principle of non-criminalization can be divided into four categories: obtaining confessions through direct coercion; obtaining physical evidence through direct coercion; obtaining confessions through indirect coercion; and obtaining physical evidence through indirect coercion. Of

these four categories, “Direct coercion” means that the prosecuting entity forces the accused, through physical compulsion, to actively contribute to the presentation of evidence; “Indirect coercion” means that the prosecuting entity exerts no physical compulsion, and the accused refuses to assist actively. If so, restricting the defendant’s freedom to decide whether to actively cooperate in providing evidence is indeed forcing the accused to forgo and lose the right to non-criminalization.¹ According to Article 60 of the Chinese Criminal Procedure Code, which stipulates:

“Confessions extorted from a criminal suspect or defendant by illegal means such as torture, testimony of witnesses, and statements of victims collected by violent means, threat, or other unlawful means shall be excluded. Physical evidence or documentary evidence that is not collected according to statutory procedures and is therefore likely to damage judicial justice shall be subject to correction or reasonable explanations and shall be excluded if correction or reasonable explanations are not made. Evidence that shall be excluded as found during investigation, examination before prosecution and trial shall be excluded in accordance with the law and shall not serve as the basis for making prosecution opinions, prosecution decisions and judgments.”

The criminal consequences of the four cases mentioned above regarding the removal of unlawful evidence can vary.

A confession obtained through direct coercion is a confession obtained from the accused or suspected by illegal means, such as acts of torture, as described in Article 56 of the Criminal Procedure Law. According to the interpretations of the Supreme People’s Court in 2013 regarding the establishment and improvement of mechanisms of actions to prevent making judicial mistakes in the elimination of criminal cases of forced confessions, including cases of torture, such as the lack of food and water, the provision of bedding and comfort. Therefore, the courts should not convict the defendant based on his confession, because confessions obtained through acts of torture, such as increasing the body temperature of the defendant, starving or thirsting, or conditions that expose him to extreme heat, or violent interrogation. Therefore, the confession obtained through the aforementioned illegal actions should be excluded from the proceedings. Also, according to another commentary by the People’s Court, “illegal methods such as obtaining confessions through torture” means “the use of physical and mental torture or other means that result in the defendant suffering severe physical or mental pain that compels him to make a voluntary confession”. In certain circumstances, direct coercion includes the actual implementation of “illegal methods such as obtaining confessions through torture” and threats to carry out “illegal methods such as obtaining confessions through torture” to obtain confessions.

Obtaining physical evidence through direct coercion refers to the condition in which a defendant is compelled to present physical, documentary, biological, or other evidence against his will. Whether this type of evidence will be excluded from the collected evidence

¹ SF Wang, *The Principle of Non-Self-Incrimination* (Master’s thesis, National Chengchi University 2007) <<http://thesis.lib.nccu.edu.tw/record/#G0896510281>>.

is not clearly stated in the law. There are different opinions in this regard. Some believe that the practices taken to obtain evidence are the same in terms of illegality, but it does not necessarily mean that the obtained evidence is the same in terms of removal; there may be differences in the types of specific considerations for the removal of evidence.¹ In contrast, some argue that the discovery of the truth should not be the theoretical basis for China's regulations on the elimination of unlawful evidence, meaning that physical evidence obtained through direct coercion, because of its illegality, should be treated the same as confessions obtained through illegal means such as torture. Article 56 refers to the absolute elimination of this type of evidence.²

Finally, confession and physical evidence obtained through indirect coercion means that defendants voluntarily confess or provide physical evidence that may have unintended or undesirable consequences for them. The problems caused by such a phenomenon are complex, and there is no direct relationship between them and the elimination of illegal evidence. Therefore, there will be no issue with the removal of evidence obtained through indirect coercion, and this action will lead to punishment and the legality of mandatory security measures. Only if the prosecution entity forces the accused to confess and give evidence will the issue of the removal of evidence be raised. Therefore, by law, assuming that there is a violation of non-criminalization, it must first be determined whether this evidence is "modifiable" or if there is a "reasonable explanation" for it, and then a decision will be made on its removal. In practice, confessions and evidence obtained through indirect coercion are subject to arbitrary elimination.³

However, numerous empirical studies conducted in recent years by Chinese researchers reveal a significant gap between the law and the practice of removing illegal evidence. The legislator has a preoccupation with eliminating illegal evidence in legislation, but judges are much slower to be affected, especially before criminal court reforms. The lawyers are very enthusiastic about using the Rule of Elimination of Evidence to defend their client. At the same time, the judges are reluctant to reject the prosecution's evidence to dismiss the charge. In general, although such conditions are clearly stated by the legislature, scientific assemblies, and legal advisors, examples of the removal of illegally obtained evidence are virtually nonexistent, and there are no signs of significant progress in this regard. In other words, the gap between the legislature's promises and judicial processing will remain in the long term, possibly longer than expected. Some believe that the rule of Elimination of evidence is strictly verbal and slow to apply; others even criticized that these laws in practice have become the law of the non-elimination of unlawful evidence. According to the feedback of the empirical review, the lack of practical and transparent instructions is the most important factor in the weak implementation of the rule of elimination of the evidence. Judges are reluctant to remove illegally obtained evidence for fear of affecting their relationship with the prosecution or the police. But in many of these cases, several factors contribute to the

1 Yu-Hsiung Lin, *Review of the Criminal Judgment of Supreme Court Division* (1st edn, Wuzhao 2013).

2 Yuan Sun, 'The Outline of Substantial Interpretation on the Privilege Against Self-Incrimination' (2016) 2 *Tribune of Political Science and Law* 59 <http://iolaw.cssn.cn/fxyjdt/201608/t20160811_4643470.shtml>.

3 Sun (n 20) 59.

phenomenon, including cultural factors and differing legal interpretations.¹ Some researchers have analyzed these reasons from the offending viewpoints, but the explanation and analysis of these cases are outside the scope of the present text.

3. A Challenge in Interrogations: Video and Audio Recording

Interrogation is considered one of the preliminary stages of investigation. It is one of the most important measures of the police force or the investigator, because all the evidence of the case and the efforts made to detect the crime are provided to the interrogator so that they can investigate and analyze them to ask the appropriate questions from the potential criminal or the accused to obtain a confession and discover the truth.² At the same time, maintaining the accused's right to remain silent and exercising control over how judicial officers and interrogators operate are the main motivations for documenting interrogations. One of the main reasons for the interrogator's resort to torture during interrogation is the impossibility of proving the crime by the victim of the torture, because torture and other inhumane treatment occur in detention centers and away from people's view and judgment, and in most cases, the victims face a lack of sufficient evidence to prove it. One of the most important ways to prevent the instances mentioned is to record audio and video of interrogations. Through recorded interrogations, the court can examine the psychological conditions of the accused while confessing to committing a crime and make a more successful decision in determining whether the confession is voluntary or not.³ Therefore, granting the judicial officers broad power and freedom to conduct interrogations of suspects and defendants behind closed doors, and the invisibility of many of their decisions and actions during interrogation, and at the same time exerting pressure to increase the conclusion of the case, puts the prosecution institution at risk of abuse of power and violation of the right to silence of the suspect and the accused.⁴ In this regard, recording the audio and video of the interrogation process and appending them to the case is considered one of the most important and effective mechanisms for preventing violations of the right to silence of the suspect and the accused, thus guaranteeing a fair trial.

However, there is no special provision in the Iranian legal system regarding recording audio and video interrogation procedures, only about recording the statements of the accused in Article 12 of the Act of Respecting Legitimate Freedoms and Protecting Citizens' Rights, which stipulates:

“Responses must be recorded as they are stated without any changes or amendments, and then must be read back to the accused. Those who are literate may write their own responses if they wish, so that no doubts about distortion or misrepresentation may be created.”

and Article 197 of the Code of Criminal Procedure that stipulates: “The defendant can

1 F Fallahnezhad, A Fair Trial in the Process of Criminal Procedure in the Penal System of the People's Republic of China with an Attitude to International Documents (PhD diss, Tehran Azad University 2020).

2 T. A. E. Rajabi, Mechanisms of Observing the Right to Silence and Access to Lawyers During the Interrogation of Justice Officers (PhD diss., Tehran Tarbiat Modares University, 2016).

3 M Saber and M Naghdinejad, 'Investigating the Criteria for Interrogation of the Accused in Initial Preliminary Investigation' (2011) 4 *Journal of Police Knowledge* 143 <<https://www.sid.ir/paper/100527>>..

4 Rajabi (n 23).

remain silent. In this case, the refusal to give a reply or sign the statements will be stated in the minutes of the meeting.” According to Article 400 and Note 1 to Article 353 of the same law, under the legal conditions, audio and video recording is permitted during court hearings. The failure to predict the audio-visual recording during interrogation can leave open the way for any violation of the rights of the defendant and, as it has reported in many cases, the bailiffs interrogate at times when the accused is unable to stay awake, or sometimes even record the statements of the accused incompletely or report the date of the interrogation informally, or the interrogation papers are filled out by the bailiffs and pass to the accused to sign.¹ Therefore, to prevent the potential abuse in the mentioned cases and to be careful in the way of dealing with the accused and preventing possible torture, legislation and the prediction of audio and video recordings during interrogations is necessary.

In contrast, the People’s Republic of China prohibits the legal system of practice of torture by any means to meet the conditions set out by the Convention against Torture, which has been a member party for three decades; the issue of prohibition of the practice of torture is mainly mentioned in the Chinese Penal Code and Criminal Code of Procedure, which has been partially consistent with international standards. Therefore, audio and video recordings of interrogations, which are very effective in preventing the application of torture or ill-treatment, are mentioned in the law. The country launched a pilot project in mid-2000 to explore the use of such recordings during interrogation, and the proliferation of activities soon became the target of many reforms.² In 2007, new regulations were introduced that allowed interrogators to record interrogations in death penalty cases as needed.³ The importance of audio-visual recording in recognizing the legality of a confession was first recognized in 2010 with the “Law on Issues of the Excluding Illegally Obtained Evidence in Handling Criminal Cases”.

In addition, the Supreme People’s Prosecution, in its Declaration, has set out special procedures for issuing guiding principles for the examination of evidence in death-sentence cases. Article 7 strictly stipulates that a simultaneous system for recording the entire interrogation process of the criminal accused shall be applied. Also, according to the Provisions of the Supreme People’s Court 2012, para. 19, the recording of the interrogation process must be displayed as necessary addenda to the transcripts of the interrogation, the interrogator must have an audio or video recording of the interrogation, and the existence of this recording must be mentioned in the transcript of the interrogation. Without the interrogation recording, the transcripts cannot be considered the only evidence of the defendant’s conviction.⁴

Finally, in the amendments to the Criminal Procedure Law (amendment of 2018), Article 123 stipulates: “Investigators, when interrogating a criminal suspect, may record or videotape the interrogation process, and shall do so where the criminal suspect is involved

1 Seyed Alireza Mousavi and Masoud Ghasemi, ‘Investigating the Moral Challenges of the Right to Silence of the Accused in the Iranian Legal System’ (2020) 4(10) *Ethical Research* 235 <<https://doi.org/20.1001.1.23833279.1399.10.40.14.8>>.

2 Rajabi (n 23).

3 ‘Opinions on Strengthening Handling Cases in Strict Accordance with Law and Guaranteeing the Quality of Handling Death Penalty Cases’, art 11 <http://news.xinhuanet.com/legal/2007-03/12/content_5833204.htm> accessed 29 October 2015.

4 Jiang Na (n 17) 1.

in a crime punishable by life imprisonment or capital punishment or in an otherwise major criminal case. Recording or videotaping shall run throughout the interrogation process for the purpose of completeness.” It is noted that the investigators, when interrogating a criminal suspect, may record or videotape the interrogation process and shall do so where the criminal suspect is involved in a crime punishable by life imprisonment or capital punishment, or in an otherwise major criminal case. Recording or videotaping shall be conducted throughout the interrogation process for completeness. Also, in the Ministry of Public Security’s Public Security Regulation on Procedures for Handling of Criminal Cases 2020 Amendment that covers the implementation of criminal procedure, other important criminal cases are defined as: “Serious cases that endanger public security or violate the individual rights of citizens resulting in death or serious injury, as well as organized crime or drug-related crimes.”

In China’s reply to CAT’s List of Issues 2015, para 32, in response to a list published by the International Committee on Torture in 2015, China announced that all public security agencies in all areas that investigate cases must install electronic monitoring equipment that is connected to the monitoring center, so that law enforcement activity by police is directly monitored electronically. After the above-mentioned report, most of the areas that had completed the required renovations were to be in case management for the installation of electronic surveillance equipment. The law on Excluding Illegally Obtained Evidence 2017 stipulated for the first time that: “Another copy of confessions of suspects and accused that were extracted under the influence of previous acts of torture must be excluded”. Because, given the uncertainty over whether confessions were made voluntarily, it is better to remove them along with forced confessions and any confessions obtained through torture to reduce or prevent the acts of torture.

However, based on objective evidence and Chinese judicial practice, implementing audio-visual recordings of interrogations appears challenging. One of the challenges in defining an illegal confession concerns confessions obtained in violation of procedural laws. Many jurists believe that it is not necessary to remove all confessions that violate the formal laws and regulations.¹ In contrast, confessions made in violation of the law and related to human rights should be removed. For example, the Supreme People’s Court’s view on preventing unlawful convictions should be excluded, except in emergency cases, where interrogation should take place at the place of detention, and confessions made outside the specified location without audio or video recording, or made by illegal means, should also be excluded.² The measure is to protect the accused against being subjected to illegal torture during interrogations without video recording.

Another challenge in this case is the lack of full interrogation recordings, especially those that capture the entire process. One of the reasons is the lack of necessary resources to make all interrogation recordings possible, including recordings of interrogations involving forced

1 MK Lewis, ‘Controlling Abuse to Maintain Control: The Exclusionary Rule in China’ (2011) 43 *International Journal of Politics* 632 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1674509>.

2 YG Zhi, ‘Torture and Exclusion of Evidence in China’ (2019) 1 *China Perspectives* 45 <<https://doi.org/10.4000/chinaperspectives.8742>>.

confessions. A 2014 survey found that 61% of the 96 prosecution agencies in a Chinese state have only part-time employees who record only parts of the interrogation process, meaning these employees are not always present to record the entire interrogation. Such conditions question the fairness of the interrogation process. And according to researchers, the government's investment in audio-visual recording equipment is inadequate.

Conclusion

A fair trial requires respect for the defendant's defense rights, such that any violation of these rights would prejudice the basis of a fair trial. Comparing the two penal systems of Iran and the People's Republic of China, as outlined in the text, reveals both convergence and divergence in the limits and consequences of their actions. With careful consideration of the right to silence in Iran and the prohibition of self-criminalization in China, it became clear that despite the different policies, justifications, and actions in the two countries, these rights are of great importance. However, the comparison of the two penal systems confirms that the laws of both systems are ambiguous and inconsistent, and the strategies they present are inadequate and, in some cases, have been criticized by lawyers, which can lead to conflicts of opinion and procedures and a lack of due process. Due to the newness of these rights in both countries, ambiguity still exists in some cases, so amendments to the laws and regulations are necessary. In this regard, some practical strategies are suggested:

1- Amendment of the laws on the exclusion of the illegal evidence (the rule of exclusion of the evidence): Discovering the truth requires that legislators determines valid and legitimate evidences on the one hand, or if necessary determines them through judicial procedure, and on the other hand, the correct methods of obtaining valid legal evidence and the rules governing them should be determined, so that the parties of the lawsuit refuse to obtain and provide evidence without judicial value. Therefore, compliance with the legal rules is required by both the detection and prosecution officers and the judicial authorities. The rule of exclusion of evidence is a complex legal principle and, in both substantive and formal law, is the most controversial among criminal law rules. Therefore, in the current Iranian regulations, it can be accepted to some extent that the evidence obtained from the actions that violate the laws is not valid and cannot be documented; however, to ensure the proper implementation of the rules and principles of justice, defining and determining the system of invalidation of evidence in the Iranian criminal procedure seems necessary. It is also not easy to stipulate laws, especially in countries like China, which have no history of the exclusionary rule of evidence. The enforcement of the rule of exclusion of evidence is even harder because of the resistance of traditional culture and thought, practical barriers, and inadequate laws. It seems that Iran's criminal system, unlike China's, has not clearly accepted the rule of exclusion of evidence, which has not yet been recognized and has even received little attention. Evidence obtained through illegal means clearly infringes on the right to silence, so the illegal evidence must be excluded and cannot be used as a basis for trial. In order to ensure the proper implementation of the rules and principles of litigation, it is necessary to define and determine the system of invalidation of evidence in the Iranian criminal procedure law. China has recognized the

exclusionary rule, incorporated its provisions into the Criminal Procedure Code, and made efforts to implement the law since 2010. Although it is necessary for the country to improve the rules governing exclusionary laws and regulations, the more important task is to strictly enforce the exclusionary rule. For example, the Prosecutor must use all relevant means to prove the legitimacy of the obtained evidence beyond “reasonable doubt”. Courts must also exclude illegally obtained evidence, even if it leads to an acquittal. Therefore, until all the aforementioned purposes are met, the rule of exclusion of evidence cannot play its part in preventing illegal convictions and protecting the defendant’s defense rights, including the right to silence and the right to non-self-incrimination.

2- Audio-visual recordings of interrogation procedures: Recording audio and video of interrogation can have a significant impact on the reduction of torture and other inhuman treatment by interrogating authorities, as well as providing permanent information on how the suspect or accused is treated during interrogation. Interrogators will no longer be subject to unwarranted allegations of mistreatment. Nowadays, due to advances in social production, any interrogation room has favorable conditions for being equipped with audiovisual equipment. A comprehensive audiovisual recording of the interrogation process can help ensure the enforceability of the right to silence. When the suspect or accused is not tortured by the interrogator, the court and the police may play audio or video recordings in court to prove the legality of the interrogation evidence. If necessary, these videos and tapes can be shown to the public, and this process can increase interrogation transparency and community confidence in police actions, which can effectively reduce and prevent the phenomenon of access to evidence through illegal means such as torture. According to Iran’s criminal justice system, there is no special regulation on audio-visual recordings of interrogation, while China already has recognized it in its legal system. The lack of rules and regulations cannot ignore the significant privileges of this mechanism in interrogation for the accused and criminal justice system, so the need for the legislature’s support to ensure the requirement of audio-visual recordings during interrogation will be met, and to anticipate the preparation of its mechanisms in Iran seems necessary.

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