

The Presumption of Innocence between Theory and Practice

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Abstract

The presumption of innocence remains adjacent to the accused at all stages of the criminal case, and through these stages are not seen as a convicted or the offense is committed ascribed to really and truly, it is treated on the grounds that the offense did not commit to that issue a court ruling definitively against him, and given the importance of this presumption has the text in the ads and international agreements, charters and international and regional covenants, and constitutions and laws. The Islamic Sharia her head starts in the report and confirm this presumption, including the presumption of innocence moved to such legislation. It follows the presumption of innocence be preserved personal liberty of the accused, and that explains the doubt in his favor, and that is exempt from proving patents of, and that takes care of the origin of his innocence in the trial proceedings, and this presumption flawed cases of arrested or caught red-handed or a verdict is definitive right, or even his confession of committing the offense ascribed to it.

Keywords: Presumption, Innocence, Theory, Practice.

Introduction

The subject of the study: This study deals with research and analysis and rooting and compare the subject of the presumption of innocence between theory and practice in the penal legislation and conventions and international declarations and covenants, through the presentation of its concept and the source and the basis and its implications, so the presumptions of innocence is a human right, and a right of litigation, and devoted this right in law Islamic glue and then moved to the Universal Declaration of Human Rights and the International Covenant and the Constitutions and Penal laws. And such legislation and charters had taken pains to text explicitly on this presumption, as a result in the maintenance of the personal freedom of the accused, and the doubt in his favor, and his removal to prove his innocence, with due regard this presumption in court proceedings, although he did not gain from cases of arrest or seizure red-handed or the issuance of non-definitive judgment or even the existence of recognition of the accused.

Importance of the study : To study this subject of great importance for many segments of society and in particular judges, lawyers, professors and students of law faculties and institutes of the judiciary and the accused and other members of society and civil and human rights institutions, in view of the implications and consequences of the seriousness of when signed prejudice in this context, and in addition to the above that the accused is first and foremost a human being and a sense of dignity and personal entity and regardless of the type of crime attributed to him, apart from his political, civil or political material or is entitled to the is presumption adjacent to remain pending a final judgment against him.

And because this presumption is not of recent origin or the result of today or yesterday, but an old upbringing and Covenant due to the basis of Islamic law, which of them moved to modern penal legislation and constitutions and charters and international and global and regional advertising.

Finally, the defendant's right to enjoy in this context and adjacent to its survival over the research and debate in the halls and rooms trials lawyers and universities, seminars and conferences.

Objectives of the study : This study aims to find a reference for judges to know the origin and the basis and essence of this presumption being one of the guarantees of the accused legally, and for the purposes surround this context the fencing of the intervention and prejudice, and to remove what beset the subject of wear and ambiguity, especially in some of the cases in which they are arrested and thumb the accused, or caught in flagrante delicto, or a verdict is definitive right or confession of committing the offense. To illustrate the shortcomings and deficiencies in the organization of these circumstances the legislator to provide context and legal texts proposed works to fill the gap or flaw or shortcoming, and finally take advantage of the penal legislator comparative experience in the organization of the subject. The right is said that there is a clear disparity between the comparison penal legislation in organizing these circumstances context.

Study problem: What is the truth about the presumption of innocence and the sources and the basis and its implications, and are ensured the legislation governing it raised and its implications seriously and effectively.

Study the problem of questions:

- What is the truth about the presumption of innocence in criminal legislation?
- What are the effects and raised the presumption of innocence?
- What is the legal basis for the presumption of innocence?
- Where shortcomings and deficiencies in the organization of the legislator to the presumption of innocence?

- What are the legal rules and principles similar to the presumption of innocence?
- What is the role of the base for the benefit of the doubt explains the accused and the base exemption of the accused to prove his innocence in mind the presumption of innocence?
- How the presumption of innocence is working to preserve the personal liberty of the accused, and how this is being taking into account the context in criminal trial proceedings?

Research Methodology used:

It will be the use of the analytical method and comparative approach. It is through the analytical method being legal texts and jurisprudence analysis - if any - of jurisprudence and studies that have been the subject of research , and through the comparative method will be conducted comparison between Jordanian law and other Arab laws and charters and declarations of international and global, regional and covenants for the purpose of highlighting the aspects of the agreement and differences and deficiencies in the Jordanian law and try to take advantage of other legislation .

The research plan:

This research will be divided into three sections and a conclusion, the first section deals with the definition of the presumption of innocence, in terms of meaning and idiomatic language and the legal and judicial system, and from this point of this section is divided into four demands allocates a separate demand for each of these circumstances issues.

The second section deals with the basis of the presumption of innocence in Islamic law and treaties, covenants and global, international and regional treaties and constitutions and laws From this point of this section is divided into four demands allocates a separate demand for each of these issues.

The third section deals with the effects of the presumption of innocence in terms of ensuring personal liberty of the accused, and the exemption of the accused to prove his innocence, and the doubt in his favor, and taking into account the origin of innocence in the trial. As Conclusion procedures will include the most important findings and recommendations.

The first topic

The definition of the presumption of innocence

There is a presumption of innocence linguistic meaning, and the meaning of idiomatic, legal and meaning, and finally on a court order. For the purposes of the statement of the meanings these circumstances, and the extent there is a difference or similarity between them and display them see addressed in turn, through the division of this section to four demands, being allocated and individualize independent meaning and demand for each in the follow the first requirement.

Linguistic meaning

Context in the actual language, the sense of actors taken from the comparison (1). The wife of the man his wife to compare him (2), which is evidence of the thing is not to use it, which is refers to the meaning, and the near is the comparative and the accompanying spouse, and the context feminine consort, one of the door hit and victory, and was named the presumption that name because the phone including inferred by him (3).

And the presumption single evidence, taken from the accompanying comparative sense, and consort sidekick, is said to compare thing compared to our villages and accompanied by the owner, and coupled with other thing, compared to our villages and accompanied him to the wedding of the planets (4).

Has been mentioned in the context Koran in several Walls dignified and it says: "*A speaker of them faith: Lo! I had a comrade* " (5).

The Almighty said: "*And he whose sight is dim to the remembrance of the Beneficent, We assign unto him a devil who becomes his comrade;* " (6) .

And says Allah: "*And we assigned them comrades (in the world), who made their present and their past fair seeming unto them. And the word concerning nations of the jinn and humankind who passed away before them hath effect for them. Lo! They were ever losers* " (7) .

And the presumption language means: accompanying and wife, is said to compare any accompanied, and called the wife's wife, said to the presumption of so and so, in the sense of his wife, a well because they socialize with her husband and accompanied throughout her life, and their meanings combination, said a century Haj between Hajj and Umrah, any collection of them (8).

And innocence in Language: make innocent: Alaba and ra and Hamza two origins refers to castor door, safety and healing from sickness, and it acquitted saying to you your religion, and acquitted of the debt security (9).

Zaid was acquitted and discharged from the innocence of his religion: it dropped the request is acquitted (10), it means a patent in the language of projection and safety, and the meaning of the context associated.

Meaning idiomatic

The issue of the definition of the presumption of innocence interest scholars and commentators penal law, and in this area was the development and formulation of many of its conventional definitions of jurisprudence, and most prominent of these definitions mention the following:

1. Not to reward a person for an act that was assigned to him unless the sentencing judgment issued against him

on the one hand with a legal mandate (11).

2. Treat each individual accused of a crime, whatever the degree of seriousness, the treatment of a person innocent until proven guilty by a court baht (12).

3. View of the judge and other state authorities to the accused that he did not commit the offense as long as the indictment replace himself booked for this offense has not been established by a court judgment is subject to appeal by standard methods (13).

4. Presumption of innocence really of fundamental human rights and the requirements of a fair trial, which is - in the words of the British House of Lords - (golden thread in the fabric of the Penal Code) (14).

5. Presumption of innocence, "the starting point in the criminal justice " (15) .

6. Basic guarantee of assessments for the accused guarantees (16) .

7. Presumption of innocence that each person be held against him the criminal case , as the perpetrator of the crime , or a partner is a vision until proven guilty by a Pat , issued in accordance with legal fair trial , in which all the defense guarantees available , this principle is not affected by the magnitude of the offense , or the volume of evidence against the list, or recognition of it, or even caught red-handed n , all of that does not compromise out of innocence and only the referee overruled the decisive conviction (17) .

Procedural rule is to protect the freedoms of individuals in the face of authority, that he is innocent human being at all stages of the criminal proceedings starting from inference stage until proven guilty unequivocally and emphatically by judicial order baht (18).

Notes on the previous definitions it confirms a number of facts, including the presumption of innocence judicial guarantee for the accused, and that the working out of an actual hand provides a protective shield of compromising the dignity and protection remain adjacent to him until a court ruling incised, and that this judgment be issued by a judicial body composed in accordance with the provisions of the law, and to be a competent law to try the accused, and this presumption shall not be violated or compromised and scoring, as long as there was no right of the accused categorically rule and regardless of whether he got up right from legal directories and on top of his confession. Despite the confirmation that the definitions of a number of facts such as those we have mentioned above, some of the other hand is not at full precision and discipline. For example, the first definition is required sentencing, did not clarify what is meant by rule here, is it is the first instance court ruling or the second, whether it is the definitive ruling or non-hyperbolic, The right is said that the presumption of innocence must be kept adjacent to the accused pending a final judgment against him, and here We believe that this outlet is responding to this definition. Notes on the definition of the Fourth be characterized by concise and laconic, and he put it on the simulated image more pronounced than the legal picture. The definition of the fifth and sixth definition also did not express any of them about the fact and the substance and essence of the presumption of innocence.

After reviewing the previous definitions, we know the presumption of innocence, including the following: that had to be considered and dealt with the suspect or defendant or suspect or the accused in the stages of investigation and inference and investigate primary and the trial as a human being with the dignity and rights and that he did not commit a criminal act attributed to him actually or real , apart from his role in the crime perpetrator or a partner or accomplice or instigator, apart from any legal evidence available against him and that remains the deal and consider him as such to be issued with a definitive court judgment of a competent court of law, and that is being dealt with and be seen that image by members of the judicial police, prosecutors and members of the judiciary is essential, and the rest of the state authorities, the media and society.

Through this proposed definition deem it necessary following statement:

(A) is consistent with the content of the presumption of innocence , and that is being considered and dealt with the accused to be innocent since the start of the initial phase of research (investigation and reasoning) and to issue a final judgment against the accused .

(B) In addition to included all phases of the criminal case; it includes all the accused legal centers in the lawsuit.

(C) As long as there was no definitive judgment it does not lend evidence to suit any value or interest does not change them or notching this presumption.

(D) Persons and entities to be it determine the treatment of the accused that he is innocent until a definitive court judgment against him.

E - She pointed out humanity and dignity of the accused and the right to defense and the guarantees to be provided to him to be a fair trial.

J - This definition campus recognition accused of compromising the presumption of innocence, because the recognition is no longer the master of evidence and remains subject to the satisfaction of the trial, and the case itself to the rest of the evidence in the case.

For - it came to be characterized and consistent with the vision and the goal of the legislator, human rights, and the rights of the defense, and international declarations and covenants and international covenants as we will see later in the second section.

Third requirement

The legal meaning

We mean the legal sense, meaning that the report by the legislator penal to the presumption of innocence, and in this area, we find that all legislation, whether international or global, or constitutional, or criminal, have been emptied of revenue any clear and explicit and specific definition of the principle of presumption of innocence, all those texts contained in these regulations I did not know the presumption of innocence, but it has been emphasizing the need to deal with the accused as a person is innocent until a court ruling against him.

We believe that these circumstances legislation free of the definition of that context for the following reasons:

1. The content of this presumption is clear and unequivocal in or obscurity.
2. That the essence of this presumption, including the spokesman.
3. To make room for jurisprudence and the judiciary to deal with this issue.
4. Clarity does not make it a cause for controversy or justification of contention.

Finally, we see that the legislation did well to leave this presumption without defining especially since clarify obviously in a lot of things is inconspicuous.

Fourth requirement

Judicial sense

References Many of the judicial provisions of the principle of presumption of innocence, and confirmed in a lot of sentences that the accused is innocent until proven guilty, and despite the large number of these provisions that they are free of income specified and explicit definition of the presumption of innocence, but in return I explained and interpreted this principle and emphasized the importance Among these circumstances provisions include:

- Must be treated the accused that he was innocent in all sessions of the proceedings. (19)
- The presumption of innocence guaranteed judicial sure of the accused. (20)
- The presumption of innocence is not confined to its existence and its application in front of the regular courts only, but includes all penal trial. (21)
- There is a clear recognition of the accused and the interpreter does not affect the presumption of innocence in any way. (22)
- The presumption of innocence guaranteed basic rapporteur of the accused in the criminal case. (23)
- The presumption of innocence of the accused remain adjacent to the right to issue a definitive ruling (24) .

Accordingly, and after the completion of the definition of addressing the issue of whether the language of the presumption of innocence or idiomatically, or look in terms of legislation and the elimination of this principle - the question that arises in this field is: Do you really and truly seen that the accused is innocent until proven guilty?

Meeting this proposal there is no doubt that members of the public prosecutor or members of the judiciary and the legislature look to them that the accused is innocent until proven guilty. Proof of this is that the legislature did not put dedicated and states this principle in vain or Goa or impress them, not because he does not lie but faith and the embodiment of it to this principle, and until this text is correct with the overall what the subsequent texts, especially those that regulate them rights of the defense, or that shape and determine cases of innocence. If the text of the legislator that the accused is guilty until proven innocent, it means that the probability of the accused for the patent are almost non-existent. Not only that, but that the accused then feel that the legislator opponent to him, also the legislator ensures the most careful not to treat an accused inhuman treatment, or treatment degrade the dignity and undermine the will, or any transaction notching considered and honor and make it over the focus of some of the society, in order to entrench and application of it These things are clearly stated on the grounds the accused is innocent until proven guilty, so as not to be taken into judiciary and public prosecution and the community a criminal or precedence unconscious respect, especially since the general public is generated to have a sense that all accused of an offense is a person who lost the moral and human values, and it is a source of fear , Thus For the purpose of warding off the legislator to the text of these beliefs on the grounds the accused is innocent until proven guilty , that any of the accused or a convicted felon , but did not consider it brought down the guise of innocence until proven to the contrary by a court judgment incised .

For prosecutors it is certainly assertive and definitely that you look to the accused until proven innocent look conviction by a court judgment incised. For prosecutors it is certainly assertive and definitely that you look to the accused until proven innocent look conviction by a court judgment incised. The evidence on this for many it, including the fact that the public prosecutor is implemented laws, one of overseeing the application of the sentence on the defendant, and in this area have never one day that the General Prosecutor's Office to implement the rule of the accused before the acquisition of judgment of the degree peremptory, and the public prosecution work days to deposit the accused to prison or executed any death before forwarding it to the judiciary and to decide on his order by the judiciary, public prosecutors are also community represented no interest or purpose in

that it is a defendant convicted by a court ruling against him, Not a goal or interest have only to look at the accused to be innocent until proven guilty , they are not an adversary of the accused , even if also told that the public prosecutor discount Sharif - though it is representative of the population and no discount to the accused not imagine that violates look legislator to look at the accused that he was innocent until proven guilty , especially since they are bound and expensive and the application of laws and texts issued by the legislature and , inter alia, the text of the presumption of innocence enforcement . In addition to the above that prosecutors originally judge, a body of the judiciary, they are a great deal of skill and know-how and experience, and have a long history and proven track record in the judicial and legal work. They are more people keen on human rights and the rights of the accused and the rights of the defense and the proper application of the law and have the proper form and has all those noble qualities cannot imagine him to be seen to look the defendant violates the presumption of innocence.

Also notes a lot of public prosecution decisions they include a ban on the trial of the defendant, if they consider the public prosecutor to look the defendant violates the presumption of innocence look what we found days decided to ban the trial of the defendant. For eliminate it as a whole looks to the accused to be innocent until proven guilty by a court judgment incised, and just his look is not an obligation to the provisions ordered by the legislature only, and is not a commitment to the principles and values of neutrality and impartiality, justice and objectivity only, not taking into account and safeguard the dignity of the accused only humanitarian and rights and defense, but that the judge in terms of process and application cannot rule in the case before the question of the accused and hear the witnesses and the statement and guides the accused defense testified and his arguments and objections, and submit it to information presented, and to provide arguments and closing statements by the prosecution and the accused and then file a lawsuit to check the full dossier leaves and then issue decision interval, it is this sense judge cannot rule in advance on the accused. Also the judiciary is a safe haven either the victim or the accused , a custodian at the lives and symptoms and people's wealth , which in this area is not working to honor and recognize the victim and degrade and undermine the dignity of the accused but also works on the respect and admiration of both parties on an equal footing is not the accused feels that a criminal or that it human being abnormal or that his conviction issued inevitably him but is seen as an innocent has not proven guilty by a court judgment definitive yet, if this is the look legislator and prosecutors and judges to the accused , but there are other parties that do not participate legislator , public prosecutors and judges In this view , but consider the accused to look different , look convicted the accused , that the accused guilty until proven innocent . In this regard , we find that some of the media of television , newspapers, paper and sites , electronic codes consider and treat the accused that he is innocent until proven innocent , as you look at it as a criminal and convicted , and despite the lack of validity of this approach and progress of material and moral damage to the accused , but those means and media throughout the trial of the accused for a period of ever-changing outlook to the accused nor considered innocent until proven guilty . The reason for that view may be back to try to attract a large number of viewers , or for the purposes of marketing and media , or what is called in the customs of the press (scoop) , or for the purposes of defamation and harm to the accused , or the mistaken belief that a free press and the ceiling is the sky , and the pen free, loose tongue , without taking into account that there are rules and regulations and the values and morals and traditions of the press , and that there is a conscience , or that there is a violation of God.

Finally it may be due and explain the reason for the erroneous and incorrect perception to ignorance of the law and lack of consultation or opinion of the specialists' enlightenment of the people of the law.

Based on the above, should the media of all kinds to respect the principle of presumption of innocence and not to consider the defendant through news reports and dispute this view and not to do any media work would breach or violation of the presumption of innocence. Perhaps it goes without saying in this area that we refer to as confirmed by the French legislator for the purposes of protection of the presumption of innocence, as confirmed by the text of Article 9 of the French Civil Code that make the protection of the presumption of innocence really self-giving each individual violated his innocence to go to court to demand an end to the violation of the presumption of innocence . The second paragraph of the same article also stipulates the right of a judge to request immediately enter a correction of the news published in the right person or the facts are still replace a judicial inquiry in order to stop the violation of the presumption of innocence (25).

The second topic

The basis of the presumption of innocence

The presumption of innocence is not new, but rather a long-standing and growing up has ever known and enshrined in Islamic law, and moved them to the covenants and conventions global and international advertising, constitutions and penal laws , as is all of the above as a basis for the presumption of innocence . For the purpose of briefing and inclusive basis presumption of innocence see eating whatever it is basically as follows:

The first requirement

Islamic Sharia

The Islamic Sharia accused vision until proven guilty by a definitive, depending on the original is that the man is

innocent of all rights and obligations, leaving a discharged vision, the basic principle is clearance, and the origin of innocence is the purpose of the Islamic legislation, it is necessary interests that must be adhered to, and maintain attitude. It can be said clearly that the Islamic Sharia is the basis of the principle of presumption of innocence and this is illustrated by what came in the Koran all revealed, and through escorting and mind, and by eating these sources, we find the basis of continued presumption of innocence confirmed in the Koran(26). There are many, many of the Hadith which inferred with her and them as a basis for the source of the presumption of innocence among these conversations pure saying peace be upon him: "*Avoid legal punishments upon the Muslims as much as you are able. If you find a way out for a Muslim, then leave it to him. Verily, for the judge to make a mistake pardoning the Muslims is better than to make a mistake punishing them.*" (27).

And inferred from these conversations that the original patent rights held by the edema no limit until proven otherwise certainty that his punishment and fall based on the origin of discharged (28) .

In the area of escorting we find that there are those who function on the origin of human innocence, the escorting evidence is: " the sustainability prove what is fixed , or deny what is in exile , any survival hard verdict denied until the guide to change course, and this sustainability does not prove positive evidence , but to prove the absence of a guide changer " (29) .

The types of escorting accompanying the original patent which is: " accompanying the original nothingness is well known, and it patented disclosure of costs until the evidence of the commissioning order of things, if not guide: left what was on what was and is : that everything is permissible for a person , because the basic principle in permissibility things " (30).

Also : "Del mind on the clearance of the duties embarrassment and fall of creationism in movements and barracks , before the mission of the apostles peace be upon them , and supporting in miracles , and the absence of known provisions evidenced mind before receiving the hearing , and we are accompanying this only to respond hearing " (31) .

From this point the accused is innocent was considered because it is the origin and condemnation bad emergency is not judged guilty but certified the conclusive evidence , but it is hard that man is born innocent , and this is the original , and continues to this origin accompanied him throughout his life , do not go away , but with certainty (32) . This original and actually really consistent with common sense , as it is consistent with the public interest represented on the need to preserve the freedoms and rights of individuals , not blaming people do not go suspicions victim superficial conviction based on the evidence into thinking without evidence and without certainty (33) .

Thus we see clearly from all the foregoing that the basis of the presumption of innocence originally due mainly and starting to Islamic Sharia , and that this constitutes a basis for showing us clear through the Holy Quran and the Sunnah pure , and escorting and reason and common sense . Not only that , but if there are rules doctrinal elicited by scholars confirm that the presumption of innocence due to the basis of Islamic law , confirms that the presumption of innocence due to the basis of Islamic law , because these rules are the rules of legitimacy stems from Islamic law and these rules are:

First: The certainty base would not go away with skepticism:

And meet this rule: " If it is proven beyond things firmly or preponderant, and the presence or naught, and then after that there was doubt or illusion in the demise of the firm that it is proved to him: " (34) .

This rule is related to the origin of innocence , because it is the pious innocence, there is no doubt that the conviction disappears pious innocence in this matter and is even suspicion emergency prove it removes all doubt . The basic principle is that the accused is innocent , which attributed to him from the act or crime even prove it with certainty , forfeit his recipe innocence and prove their right of conviction , there is no true rule of punishment only after failing to commit the perpetrator of the offense , and that the text offender is applicable to the crime , there was no doubt that the offender committed the crime , or the applicability of the text on the criminal act ascribed to it shall be acquitted , because the innocence of the offender in case of doubt, is the best of the group , and claimed to achieve justice punishment of the innocent with suspicion (35) .

Second: Base out of clearance:

The meaning of this rule is uncertain absence of responsibilities and obligations for disclosure. The matter is uncertain that man was created free of responsibility and obligations, or the rights of others, do not occupy discharged any right or obligation only certainty, any evidence and evidence (36) . Therefore, originally discharged from patent rights, and the innocence of his body and retribution border and reinforcements (37) . Consequently it may not impose any civil or partial commitment to human being only after the fixed guide and a full commitment to the cause of this right . In the area of application of this matter in the criminal area is not considered a person committed to the performance of the sentence, or deserved it , but after a certain, attested found guilty (38).

In addition to the above that connected this rule is the origin of the innocence of the accused is a telephone solid , so that the original clearance requires human patent , whether the vision or the accused, because the discharged birth than anything and this is the original , and that the accused remains a vision until human

proof of being innocent to being accused , so unlike the original which is the clearance and if the asset clearance , to say the words of the defendant (accused) for the approval of origin , and on the evidence of his claim that the prosecutor violated the origin (39) .

Based on the above, the origin of innocence of the accused is not required to prove his innocence, because it is the origin, as well as if it has taken a negative attitude of the case such as not right, do not be condemned for it, it is the vision of the survival of the asset which is the clearance (40) .

Third: Base wards off suspicions border.

This rule "means that the estimated penalties border or fall does not take place when there is a suspicion or confusion or already shop(41), but in compromised condition to be strong , and the rights of other people either do not fall out of the compromise " (42) .

This rule linked to the origin of innocence as the border of ward off suspicions base results , ward off punishment and acquitted the accused of the crime attributed to him (43) .

Can be seen from all of the above that the presumption of innocence find their basis in Islamic law, the Sharia and Islamic glue is old and not modern, and many of the principles I moved to position legislation Among those principles the principle of the presumption of innocence, as he moved to the conventions and international labor conventions.

The second requirement

Global treaties, covenants and declarations

Basically find the presumption of innocence in a number of agreements and covenants and conventions and codes global and international advertising. It is the most important and most notably the following:

First: The Universal Declaration of Human Rights.

According to the Universal Declaration of Human Rights: "Every person with a crime is presumed innocent until proven guilty in a public trial law provide it with the necessary guarantees for his defense " (44) .

This text can be seen from the great importance given by the Universal Declaration of Human Rights of the principle of presumption of innocence and the right of defense , since the accused is innocent until proven guilty by law to ensure a fair trial in public he has had all the necessary for his defense guarantees (45) .

And freedoms by saying that the Universal Declaration of Human Rights did not live up to the extent that the legal obligation of being a more of a legal nature a political nature , and despite this , but he created a significant impact in the world at the international and national levels, was a source of inspiration when setting up international documents on human rights, and many states adopted a number of texts and incorporated them into their constitutions and laws , as well as the existence of courts based their rulings to it (46) .

Thus we see clearly that the presumption of innocence provided for and enshrined in the Universal Declaration of Human Rights and the text forth in this Declaration, a great confirmation of the importance of this presumption in criminal trials , and to provide legal protection of the Declaration of everyone to the survival of the presumption of innocence adjacent to him for the duration of the trial.

Second: The International Covenant on Civil and Political Rights (47)

Article 14/2 of this Convention: "Everyone charged with a crime the right to be presumed innocent unless proven guilty according to law. "

Until he is proven guilty by law before a fair public trial.

It behooves and say that the provisions of this Agreement have legal value binding on states that have ratified it, and from this standpoint resorted international organizations concerned with human rights to the expansion of the agreement instead of the dye material of human rights declarations devoid of any compulsory value (48) .

We see once again that the presumption of innocence has attracted the attention of the International Covenant on Civil and Political Rights proof read it and its importance explicitly.

Third: The Universal Declaration of Human Rights in Islam (49) .

The statement stressed the principle of presumption of innocence explicitly , as saying : "I do not govern the criminalization of people will not be punished for an offense committed only after testing his evidence does not accept the audit before a full judicial nature of the Court " (50) .

We see clearly that this statement was keen to devote every care to the presumption of innocence until proven conviction and that the trials are justice

And dedicate this statement of this principle in our view came to emphasize the importance of this presumption, and objectives respect the right of the accused in the adjacent presumption of innocence to him until proven guilty by a definitive, so as not contrary to the statement that is stable to the confirmation of this presumption in many of the covenants and conventions and international declarations.

Fourth: The Cairo Declaration on Human Rights in Islam (51) .

Article 19 / e of this declaration: "The accused is innocent until proven guilty a fair trial in which he has had all the guarantees of defense."

We believe that this text is clear and speaking with the n was issued for the purposes of stress and should remain adjacent to the presumption of innocence of the accused, and even does not work on the violation or violation or

furrow this presumption by any party.

Fifth: The European Convention for the Protection of Human Rights and Fundamental Freedoms (52) .

Article 14 of this Agreement explicitly confirmed that the accused is innocent until proven guilty fair trial open independent and impartial and within a reasonable period of time in addition to providing other judicial guarantees his right access to encluse the charges against him, and her right to counsel and the right to defend himself and his right to an interpreter If not mastered the language of the court.

There is no doubt that the consecration of this agreement to the principle of the presumption of innocence is the definitive guide and assertive on its consideration of the importance and seriousness of this principle, and the necessity of availability for each accused , and even this agreement upright with the rest of the international and global agreements .

Sixth: The American Convention on Human Rights (53) .

Article 8/2 of this Convention: " Every accused has a serious offense has the right to be considered as long as the vision has not proved guilty according to law ..."

This agreement goes on we become other previous agreements have such as the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights, the Universal Declaration of Human Rights, through its emphasis on the presumption of innocence, and that the accused remains innocent as long as the court ruling was not issued in accordance with the law requires convicted.

Seventh: The Agreement for the African Human and Peoples (54) .

Man is innocent until proven guilty by a competent court and in recognition of it of this right and the consecration of the role and importance of this presumption, and guiding on what goes by the international and global and regional conventions, being devoted to this presumption explicitly, and here we find that this Charter walked trained and on the approach and its doctrine in establishing and devote the presumption of innocence and the right of all accused in the enjoyment of it.

Eighth: The Arab Charter for Human Rights Project (55) .

Article 33 of the project on the grounds that the accused is innocent until proven guilty in a trial in which the legal framework of all the necessary guarantees available to the accused to defend him.

It should be noted that the presumption of innocence has been provided for in addition to the above, in the Rome Statute of the International Criminal Court Article 55 Civil and Political Covenant and Article 14/2 , and the Declaration of Banjul Article 17 (56) .

Thus we see clearly from all the foregoing that the presumption of innocence, we find the basis in international covenants, conventions and international and regional advertising, they made sure all the commode this principle or maintain it and devoted in its terms because of its importance and the right is said to be Islamic Sharia was a former dedicating this principle as We saw in the previous requirement.

Third requirement

Constitutions

It made sure the constitutions of many countries to devote the presumption of innocence within its constitutions and so keen on this presumption , inspired by all sides to the treatment of the accused in this way and the foundation , and even these constitutions be in accordance with international legislation . It constitutions which provided for the presumption of innocence:

1. Constitution of the Hashemite Kingdom of Jordan: where Article 101/4 on : " The accused is innocent until proven guilty by a definitive "
2. The Constitution of the United Arab Emirates: According to article 28 thereof that: "The punishment is personal and the accused is innocent until proven guilty in a fair legal trial ..."
3. Constitution of the State of Kuwait and Article 34 thereof stipulates: "The accused is innocent until proven guilty in a legal trial at which the necessary guarantees for the exercise of the right of defense and the accused is prohibited to harm physically or morally "
4. Constitution of the State of Bahrain and Article 20 / c of it on: "The accused is innocent until proven guilty in a legal trial at which the necessary guarantees for the exercise of the right of defense in all stages of investigation and trial according to the law."
5. Constitution of the State of Qatar and Article 39 stipulates that: "The accused is innocent until proven guilty by a court of law where it has the necessary guarantees for the exercise of the right of defense in accordance with the law and is prohibited to harm the accused physically or morally"
6. Constitution of the State of Oman and Article 22 thereof on: "The accused is innocent until proven guilty in a legal trial at which the necessary guarantees for the exercise of the right of defense in accordance with the law and is prohibited to harm the accused physically or morally"
7. Constitution of the State of Iraq and Article 19/5 to him: " The accused is innocent until proven guilty in a fair legal trial or the accused be tried for the same crime again after his release unless good evidence emerged"
8. Constitution of the State of Egypt and Article 67 of it on: The accused is innocent until proven guilty in a legal trial to ensure that he has had to defend himself. "

9. Constitution of the State of Algeria and Article 45 on him: "Every person is considered innocent until proven guilty by a regular jurisdiction with all the guarantees required by law."

10. Constitution of the State of Sudan and Article 69 on him: "Do not ask the defendant to provide evidence on the same patent and that he is innocent until proven guilty without reasonable doubt"

And the torture inflicted on to say that there are constitutions of many countries provides for the presumption of innocence and the constitutions of the few countries left out explicitly on this presumption, and we would like in this area said a large number or a few of the constitutions of the countries which provided for the presumption of innocence, but what we want to say in this regard is a set of facts are:

1. Find that the presumption of innocence constitutional basis in many, many of the constitutions of the countries of the world.
2. That the basis of the presumption of innocence stems from the constitutions guaranteed.
3. That the Constitution is the supreme law, and the top, and the primary in the state, which will decide the stresses of freedoms and rights and guarantees, and given the importance of the presumption of innocence constitutions generally has sought to consolidate within its provisions.
4. That the presumption of innocence of the most important principles that the majority of states have sought to adopt a constitutional close to its association with freedom and the rights and guarantees of persons .
5. Say Wonder devoid of the constitutions of the Constitution states the principle of the presumption of innocence.
6. Constitutions provided for the presumption of innocence goal cut any doubt or interpretation or controversial interpretation that the accused is innocent until proven guilty.
7. Constitutions provided for the presumption of innocence is an affirmation of them do not violate the Charter of the United Nations and the Universal Declaration of Human Rights and the Arab League Charter and recognized rules of international law, all of which emphasized the respect for the presumption of innocence and to look at the accused to be innocent until proven guilty by a court.

Fourth requirement

Laws

First of all, and before going into the penal code , which stipulates the presumption of innocence , we feel it necessary to refer and credit the there are facts and things , namely: The presumption of innocence is the basis of the Code of Criminal Procedure (Criminal Procedure), which contains procedural provisions that determine the procedure to be followed when making any action regarding personal freedom of the accused , as there may be arrested or accused of self , home inspection , or compromising his freedom or his own life , but if the law stipulates that was necessary for the investigation and the security of society . (57) and the presumption of innocence is an essential cornerstone in procedural legitimacy , so that the base application is no crime and no punishment except legal text inevitably assumes another rule , a presumption of innocence in the accused until proven guilty according to law (58) . Since most of the constitutions devoted presumption of innocence in the texts, it is this sense sought penal laws, especially procedural ones to dedicate this presumption within the texts. It is these circumstances inter laws are:

1. The assets of Jordan's Criminal Procedure Law, article 147/1 on him: "The accused is innocent until proven guilty."
2. UAE Federal Penal Code and Article 2 of which on: "Do not take offense other human being, and the accused is innocent until proven guilty according to the law." Notes on this text that is derived from an objective law and not procedural law , as the first does not address because of the nature of the actions and assets but is shown for this text in the Federal Law of Criminal Procedure is that the latter law did not provide for the presumption of innocence explicitly but implicitly stipulated by saying: "Do not be signing the death penalty for anyone found guilty only after accordance with the law " and this was confirmed by the second article of this law .
3. Code of Criminal Procedure of Kuwait have stated in the first article of it on : "Do not be imposed penal sanction only after a trial conducted in accordance with the rules and procedures approved by this law," meaning that this law does not provide explicitly and directly on the presumption of innocence , but stipulated by implicitly .

And finally find noted that most of the procedural criminal laws have provided for the principle of presumption of innocence , and whether it is read directly and clear and explicit , or implicitly .

We believe that the text on this presumption is for the purposes of granting the accused more confidence and guarantees, and not even treated as disparaging the ability or will, or the judge makes a preview of the owner that he is not guilty and innocent.

The third topic

The effects of the presumption of innocence

Considered innocent until proven guilty is not just a phrase or idea or principle or purely abstract base and do not entail any effect or result. There are even the effects of the substantial and important result in a guarantee of personal liberty of the accused, and the exemption of the accused to prove his innocence and the doubt in favor

of the accused, and taking into account the origin of innocence in the trial proceedings.

Hence we see taking these circumstances effects in four demands of the four demands, which is divided to this section and in the following manner:

The first requirement

Ensuring personal liberty of the accused

Resulting in the presumption of innocence of the accused and should be treated as innocent at all stages of the criminal proceedings, even at the stage of inference must be treated as such, regardless of the gravity of the offense or how committed (59). In the inference phase (initial research) should be treated the accused at this stage humanely treated, and shall receive proper treatment, the treatment does not impair or degrade the dignity or honor or considered or position, and when if it was accused of employers precedents or owners of large and serious restrictions, so the presumption of innocence is absolute and general the public does not distinguish between one person and another accused, or another, they are required to treat the accused no matter how and no matter what his crime was the same treatment meted out to any other human being not rise or rise up against him any suspicion that he actually committed the offense.

Not only that, but that any action is not the freedom of the accused should be in the framework of the legitimate procedural, which is the origin of innocence essential pillar of the pillars which define the limits of any penal action through the freedom of the accused in the inference stage guarantees (60).

In short that the presumption of innocence resulting in really and truly ensure the personal liberty of the accused, as long as the accused was not exposed to any action only within the framework of procedural legitimacy.

The second requirement

Exemption of the accused to prove his innocence

Origin in human enjoyment of innocence, to the effect that an innocent accused until found guilty, and based on this the origin and basis of the accused does not cost prove his innocence, and in return should be on those who claim to reverse the origin of any of innocence, to prove such conviction, and this is the ABCs of the rules of evidence (61).

And we see the addition to the above that the accused may not be forced or hates or wants or for the purpose of terrorizing provide evidence against himself, such as recognition or provide written evidence or otherwise. As long as he enjoys as enshrined in the law of him that he is innocent until proven guilty, it exempted not ask him to prove a conviction against him.

As we know, the right of the accused to prove the offense and prove the availability of the pillars of the elements of this offense against him, and prove any other reality not entrusted with someone else, and even entrusted to some other costs which the public prosecutor represented the community.

In this area, one scholar says (62): "..... it is recognized that the first appropriate application of the presumption of innocence shed the burden of proof rests with the authority of the indictment, the accused is not required to provide exculpatory evidence.

Second: that the criminal judge in charge of the search for truth is not committed to a negative attitude, but prospecting for evidence consistent with the fact that both led to guilt or innocence."

And consistent with this opinion as he went to him, and Cullen see that no harm to provide the accused for evidence deny the evidence to prove his innocence and not guilty of the offense, it is the right and from the right of the defense to present any evidence deemed necessary and pour into a valid and would prove his innocence.

Third requirement

The doubt in favor of the accused

From the effects of the presumption of innocence that doubt explains the favor of the accused, it is recognized in the framework of criminal law that penal provisions are built and built and promote and build on the assertion and certainty, not on suspicion or conjecture or possibility, and it follows that the Court, if not reached from the evidence before them firmly and categorically that the accused is actually the perpetrator of the offense and really ascribed to it in case it must decide acquittal (63). This is because the accused is innocent until proven guilty with certainty any doubt explains in his favor (64).

Utilized from the above that the criminal judgments of conviction must be issued based on legal evidence to prove definitively and consistently that the accused who committed the crime attributed to him is, if the doubt came to the same judge and breed has through this doubt that the evidence does not link the accused guilt ascribed, it is moving towards innocence, so that explains the doubt in favor of the accused.

It is worth mentioning that the judge must be that he has available certain that the accused is the perpetrator of the offense ascribed to, and certainty here is not meant or intended to uncertainty Profile of the judge, it is a judicial certainty that up to him and others because it is based on reason and logic (65). And the torture inflicted on to say that the judge's ruling, issued conviction must be set based on the evidence and conviction, any references to evidence linking the accused guilt ascribed to, and how the judge concluded that

the accused is really and truly the perpetrator of the offense the focus of the criminal case . If the judgment of acquittal is sufficient that suspicion based on the evidence presented against the accused (66). Thus we see clearly from the foregoing that the effects of the presumption of innocence must be for the benefit of the doubt when the accused offer and then acquittal, not a conviction.

Fourth requirement

Taking into account the origin of innocence in the trial proceedings

The presumption of innocence on the criminal court had to be based observing at all stages of the trial. Accordingly, when the accused appear in court and are asking for the crime attributed to him, it must take into account that the accused is innocent as long as there was no definitive court ruling against him.

When you hear the witnesses and whatever their testimony flowing without the favor of the accused it must take into account that this defendant still enjoys acquittal , even if the court decided to conduct expertise came expertise supports and confirms the commission of the accused of the offense ascribed to the courts should remain convinced that this the accused is still innocent , if also issued a clear recognition and interpreter and a reasoned and adequate from the accused of the offense should be ascribed to the court to remain committed to the presumption of innocence.

Thus we see from the above that take into account the origin of innocence in the court proceedings is one of the effects of the presumption of innocence and to be observed by judges and prosecutors, and police .

Finally, it must be said before the completion of the research and take the presumption of innocence , to point out that the presumption of innocence remains adjacent to the accused until the issuance of a sentence to his conviction , nor is it something from this , nor flawed this presumption is the availability of any of the following things :

1. Arrest: In many cases such as theft, fraud, murder, rape, defilement, incest, adultery, abuse, communication, kidnapping, or any crime from the country's internal or external security crimes, forgery and counterfeiting, or drugs, etc., decide Prosecutor or the arrest of the accused for a certain period and the decision to arrest here does not mean in any way that the accused is convicted, and that he committed the offense ascribed to it actually, but the presumption of innocence adjacent to the accused still remain and not blunted this arrest, and detention here does not mean condemnation, but rather is a legal action issued for the purposes of judicial and justification required by the investigation or the court proceedings, and stays with the arrest of the accused enjoy the presumption of innocence.
2. Arrested : In this area, if the arrest of the accused , whether in the case of flagrante delicto flagrante or any other case or permitted by law this does not mean that the accused is convicted , and that he actually committed the offense , but the presumption of innocence remains adjacent him here .
3. Recognition: If the accused admitted that he committed the crime attributed to him was his confession clear and adequate and reasoned and explained it does not mean this recognition that convicted, not because the recognition is no longer the master of evidence, but because the presumption of innocence remains adjacent to the accused pending a final judgment.
4. A verdict includes a conviction of the accused: the accused remain enjoy the presumption of innocence even if issued against him a judgment includes convicted as long as this provision did not acquire become final, in which case you could give or invalidate this provision and re- file suit to court exporter governance and begin trial proceedings again has been issued The last sentence requires acquittal.

It may also be the judgment of conviction in absentia and the accused to challenge it and therefore it is submitted to the objection and acceptance form is like the previous regime does not exist.

Covered by a general amnesty may also issue and therefore this provision disappear with all its effects.

Conclusion

The presumption of innocence is really a human right, and a right of litigation, and devoted this right in the Islamic Sharia , including legislation moved to the position of global advertising and international codes and constitutions and penal laws . Which had taken pains to make explicit this context, the fact that the consequent maintenance of personal liberty of the accused, and the doubt in his favor and relieved of proving innocence. These presumption result in raised and the effects of a serious and results, highlights this risk when it was prejudice in this presumption. Hence this study was to examine and analyze and rooting this presumption. It is during this study was reached as follows:

- The presumption of innocence is not of recent origin or the result of today or yesterday, but an old upbringing and Covenant, due to the basis of Islamic Sharia . And then moved to position all legislation.
- The presumption of innocence is the starting point in the criminal justice, an essential guarantee for the accused and the procedural rule protects the freedom of the individual in the face of power. It is of fundamental human rights and the requirements of a fair trial.
- The presumption of innocence content to be treated the accused to be innocent at all stages and the criminal case until a final judgment includes convicted.

- Do not compromise the presumption of innocence or blunt the arrest of the accused or the arrest or the issuance of a confession of committing the offense or verdict includes a conviction as long as not acquired become final.
- The effects of the presumption of innocence that explains the doubt in favor of the accused, and relieved of prove his innocence and to ensure his personal freedom.
- The Jordanian legislator explicitly on the text (of the accused is innocent until proven guilty). We believe that this text is a minor We suggest that adjusts as follows: (the accused is innocent until proven guilty by a segmental). Especially since the proposed text is the same text provided for in Article 101.4 of the Constitution of the Hashemite Kingdom of Jordan.
- Work to promote the concept of the presumption of innocence and the dissemination of this concept among workers in the field of research and the first acts of inference, and workers in detention centers, and the court staff and departments of public prosecution.
- Amendment of legal texts relating to guarantees of defendant or suspect, and so that the arrest warrant based realized arrested his legal rights, inter alia, that he is innocent until proven guilty.
- Jump to talk about the presumption of innocence of the secret to the public is critical to the objectivity and the narrow concept to the broad concept.
- Establish the concept of the presumption of innocence of judges and prosecutors, newly appointed.
- Explicitly on the necessity of obliging the prosecutor or the court elucidates defendant or suspect or the accused to be innocent until proven guilty in order to feel safe and trust and justice. Just as there are legal provisions oblige the prosecutor elucidates defendant his rights during interrogation, and other texts of the Court commits elucidate defendant or suspect or the accused the right to provide or make a statement of defense or evidence, that there is a text of the law necessary to understand that he is innocent until proven guilty by virtue of a peremptory.

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