

## A Comparative Study of the Function of Custom in Criminal Courts From the Passage of the Jury Study, With a Look at the Constitution of Some Countries

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DOI: <https://doi.org/10.22096/law.2025.2046079.2250>

Received Date: 18/11/2024 - Accepted Date: 17/06/2025

### Abstract

Custom is a source of legislation in the criminal justice system that forces society to react in the punishment stage and sometimes in the decriminalization or insistence on changing existing values; and as an expression of the public conscience of society, it intervenes in the selection of punishment (court stage) and punishment (execution of criminal conviction). In many criminal regulations, the legislator has accepted the function and role of custom by expressing words such as “typically”, “customarily”, “habitually”, and phrases such as “public opinion”, “public decency”, and “public mind”; although there is no specific solution and criterion for determining instances of custom in criminal law. The main question of the present article is how and why customary participation is effective in criminal law. The article aims to answer the above question in the field of terms that do not have a Sharia or legal definition and limitation, by examining the accepted theoretical foundations and comparative study of the jury, considering the Jury Law in Iran (2003) and the relevant regulations, and to propose the necessity of forming a jury in determining criminal instances as a practical solution for customary intervention as a powerful method in the criminal justice system, so that members of civil society can be used in trials in line with the teachings of participatory criminal policy. In this regard, through a comparative study of the position of the jury in the constitution of some legal systems, their approach to this category has also been briefly examined, and it has been concluded that the presence of a jury is considered necessary in the constitutions of many countries, and even in countries where this institution is not proposed in their constitutions, the presence of a jury is observed in their judicial systems.

Keywords: cooperative criminal policy; criminal law; custom; jury.

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