

Identification and Status of Customary Punishments in Iranian Law with Reference to French Law

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Customary punishments have always existed at the intersection between formal legislation and socially accepted behaviors. In criminal law, the principle of legality of crimes and punishments has restricted the role of custom; however, in some legal systems, custom continues to be invoked as a supplementary or interpretative source. The authors of this article, using a descriptive-analytical method and library-based tools to explain a comparative analysis of Iranian and French law regarding customary punishments, reached the following conclusions: First, in Iran, instances of customary punishments include governmental ta'zir (discretionary punishments) and supplementary punishments, which are applied by judges with consideration of custom and social conditions. In France, instances of customary punishments consist of the limited use of custom in the interpretation of laws and the determination of certain mitigating or aggravating circumstances in specific cases. Second, the common aspects of Iranian and French law in the field of customary punishments include efforts to limit the role of custom in the determination of punishments and emphasis on the principle of legality of crimes and punishments. Third, the differences between Iranian and French law include the influence of jurisprudential foundations in Iran and secular foundations in France, the more significant role of custom in ta'zir and governmental regulations in Iran, and the greater flexibility of the Iranian system in response to social conditions in contrast to the greater predictability and judicial security of the French system.

Keywords: Customary punishments; principle of legality of crimes and punishments; Iranian criminal law; French criminal law; comparative legal study.

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1. Introduction

Customary punishments, as unwritten rules based on social norms, have always interacted with formal legal systems. In criminal law, the principle of legality of crimes and punishments, as one of the fundamental principles, has restricted the role of custom. Nevertheless, in some legal systems, custom is still invoked as a supplementary or interpretative source

(Benoît, 2017; Eslami Panah, 2017). In Iranian law, despite the emphasis on religious and statutory sources, custom has played an informal but effective role in determining the type and severity of punishments, especially in the area of governmental ta'zir (discretionary punishments). This situation may lead to inconsistencies between written laws and judicial practice (Azizi, 2020; Shafiei, 2019). A comparative study of the place of customary punishments in the



Iranian and French legal systems can provide a better understanding of the interaction between custom and law in criminal justice and suggest solutions for improvement (J. Dupont, 2018; Mahmoudi, 2019).

In French criminal law as well, despite the emphasis on the principle of legality of crimes and punishments, custom has been indirectly considered in certain cases, such as determining mitigating or aggravating circumstances (Gay, 2024; Kim, 2021). A comparative examination of the role of custom in the two legal systems makes it possible to clarify their similarities and differences, and to analyze the effects of recognizing or rejecting custom on judicial security and criminal justice (Ancel, 1973; Merle & Vitu, 1984).

The main research question of this study is: *What is the status of customary punishments in Iranian and French criminal law, and what differences and similarities exist between these two systems in accepting or rejecting custom?* To answer this question, the present research employs a descriptive-analytical method with a comparative approach. In this method, the theoretical and conceptual foundations of customary punishments are first examined; then, the position of custom in Iranian and French criminal law is analyzed separately, and finally, a comparison between these two systems is made. The sources used include statutory instruments, jurisprudential texts, judicial practices, and authoritative scholarly works in the field of Iranian and French criminal law (Ansari, 2018; Garapon, 2005).

This article is structured into several main sections. The first part examines the theoretical and conceptual foundations of customary punishments, their definition, characteristics, and bases of legitimacy. The second part analyzes the status of custom in Iranian criminal law, with emphasis on the post-Islamic Revolution period and governmental *ta'zir*. The third part considers the situation of custom in French criminal law with respect to the principle of legality. The fourth part offers a comparative study between the two systems, highlighting similarities and differences. Finally, the fifth part presents the conclusions of the comparative study and provides recommendations for clarifying the role of custom in Iranian criminal law while drawing on French experiences in creating a balance between legal certainty and social dynamism. This structure allows for a coherent analysis and the development of practical solutions for better coordination between custom and

law in Iranian criminal justice (Pourjavady, 2012; Shafiei, 2016).

2. Materials and Methods

This study applies a descriptive-analytical method and uses library sources for the preparation of the article.

3. Theoretical Foundations

In this section, the definition, nature, and origins of customary punishments are explained.

3.1. Concept, Nature, and History of Customary Punishments

Customary punishments are recognized as unwritten rules that originate from the norms, behaviors, and collective experiences of societies (Hassani, 2015; Jafari Langroudi, 2014). Unlike statutory punishments, which are explicitly defined by legislative bodies, or religious punishments, which are applied based on sacred texts and jurisprudential sources, customary punishments emerge naturally and gradually within society and reflect prevailing cultural values and beliefs (Ansari, 2010; Shahbazi, 2002).

Statutory punishments, as stated in criminal codes, define the amount of punishment, the conditions of enforcement, and procedural stages, thereby ensuring predictability and consistency in judicial decisions (Karimi, 2017; Kharazi, 2017). Religious punishments in Iranian law include *hudud*, *qisas*, and *diyah*, where both the type and degree are defined in religious texts and their legitimacy derives from religious authority (Khomeini, 1984; Shafiei, 2017). In contrast, customary punishments serve as a flexible tool that can complement or guide the law in cases where the statute is silent or requires interpretation (Pourjafar, 2020; Sadeghi, 2020). The historical origins of customary punishments date back to the pre-codification era. In early societies, social order was maintained through community-accepted norms, and punishments were imposed as collective reactions to undesirable behavior. The aim was to reform the individual, deter misconduct, and restore social balance (Rezvani, 2019; Shafiei, 2019). In Iran, historical evidence shows that even alongside *hudud* and *qisas*, custom played a significant role in determining and adjusting punishments, particularly in local or community-based contexts (Mahdavi, 2018;

Mohammadi, 2018). In France, prior to the French Revolution, many criminal rules were based on custom and local practices, with punishments varying according to the traditions and norms of each region (Benôit, 2017; F. Dupont, 2018).

From a social perspective, customary punishments reflect the values, expectations, and sensitivities of society, acting as a mediator between law and social culture (Garapon, 2005; Gay, 2024). These punishments can fill legal gaps, create flexibility in judicial decision-making, and provide responsiveness to social changes. However, the lack of a formal framework and transparency in determining the type and degree of punishment can lead to inequality and abuse. For this reason, the legitimacy of customary punishments depends on their alignment with the ethical, religious, and legal principles of society (Najafi, 2019; Pourjafar & Karimi, 2019).

In summary, customary punishments are a complementary form of sanction that differ from statutory and religious punishments in their origin, flexibility, and application. Their historical and social roots allow them to adapt to societal changes and address legal gaps. Accurate understanding of their definition and nature is essential for analyzing their status in Iranian and French criminal law and for conducting comparative legal studies (Ansari, 2018; Ebrahimi, 2020).

3.2. Foundations of Legitimacy of Customary Punishments in Iranian and French Law

Customary punishments, as unwritten rules shaped by socially accepted norms and behaviors, have always been a subject of debate in criminal law. One of the most important questions in this regard concerns the legitimacy of custom as a source of law and the extent to which it can play a role in determining punishments. Criminal law theories offer different perspectives on custom. Some theorists regard custom merely as an interpretative tool of statutory law, capable of filling legal gaps and guiding judges in cases where the law lacks clarity (Kharazi, 2017). According to this view, custom has no independent legitimacy and can only be applied when it does not conflict with written law.

In contrast, another theory considers custom as an independent or supplementary legal source that, in specific cases, may generate rules for social and criminal

behavior, provided that it does not contradict the fundamental principles of the legal system. This perspective is particularly observed in legal systems with strong historical traditions of recognizing custom, such as Iran and France (Jafari Langroudi, 2014). According to this theory, the legitimacy of custom stems from its widespread social acceptance and its reflection of societal norms. Its role is especially significant in determining punishments within the realm of governmental *ta'zir* (discretionary punishments).

In Iranian law, the relationship between custom, the Constitution, and the principle of legality of crimes and punishments is of particular importance. The principle of legality, explicitly stipulated in the Constitution and criminal statutes of Iran, restricts the role of custom in creating punishments. Nevertheless, custom as an interpretative and supplementary factor is invoked in situations where the law is silent or requires flexibility (Mahmoudi, 2019). Within this framework, the legitimacy of custom is conditional upon its compatibility with legal, religious, and moral principles of society, and it can never substitute formal law. Judicial reliance on custom is legitimate only when it does not contradict the Constitution and official regulations.

In French law as well, although the principle of legality is one of the main pillars of the criminal justice system, the role of custom in interpreting statutes and in determining mitigating or aggravating circumstances is undeniable (J. Dupont, 2018). The legitimacy of custom in this system rests on its social acceptance and its compatibility with general legislative principles and judicial security. This indicates that even in codified legal systems, custom may play a supplementary role as long as it does not conflict with statutory law and foundational principles.

A comparative analysis of custom in the two legal systems shows that both Iran and France share the approach of limiting the role of custom in the creation of punishments, though their foundations of legitimacy differ. In Iran, legitimacy is assessed with reference to religious and constitutional sources, whereas in France, secular and legal principles guide the acceptance or rejection of custom. These differences shape the form and scope of customary punishments in each system and hold particular importance for comparative legislative drafting and judicial reforms.

In conclusion, the legitimacy of customary punishments rests on two key dimensions: first, the theoretical perspectives of criminal law on the role of custom as a source of law and an interpretative tool; and second, the relationship of custom with constitutional law and the principle of legality. Observing these two dimensions ensures both legitimacy and social acceptance of customary punishments, enabling the use of custom's flexibility without undermining legality and judicial security. Comparative study of these aspects in Iran and France contributes to clarifying the status of custom and provides insights for controlled application.

3.3. *The Status of Custom in the Sources of Iranian and French Law*

In both Iranian and French legal systems, custom is regarded as a legal source with distinct characteristics. The following examines its position in these two systems. In Iranian law, custom is recognized as a source of law. Imami jurisprudence, particularly in the principles of jurisprudence (*usul al-fiqh*), recognizes custom as a criterion in determining subjects and legal rulings. According to Article 167 of the Constitution of the Islamic Republic of Iran, judges are obligated, in the absence of explicit statutory provisions, to issue rulings based on authentic Islamic sources or authoritative fatwas. Previously, Article 3 of the Civil Procedure Code authorized judges to issue rulings based on established custom and usage of society, but this provision was removed in the 2000 revision. Nonetheless, custom still plays a role in interpreting and complementing statutory provisions. For instance, in the Civil Code, terms such as "customary" (*mota'aref*) and "ordinarily" (*'adatan*) are used, demonstrating the impact of custom in defining contractual concepts and conditions.

In criminal law, the principle of legality governs crimes and punishments, and custom is not recognized as an independent source. However, in civil law, custom is applied in determining the conditions and effects of contracts and civil liabilities. This reflects the interaction between Islamic jurisprudence and custom within the Iranian legal system (Eslami Panah, 2017).

In France, the Napoleonic Code (Civil Code of France) was enacted in 1804, laying the foundation of the country's codified legal system. Influenced by Roman law and Germanic customary law, this Code incorporated principles such as equality of citizens before the law,

freedom of private property, and contractual liberty. In this system, custom is not accepted as an independent legal source but serves a role in interpreting and complementing statutory law. Jurisprudence also holds significant importance in French law. Courts rely on past judicial precedents to interpret and apply statutes, with case law functioning as a means to interpret legislation and to promote consistency in judicial decisions. Nevertheless, unlike in common law systems, French jurisprudence is not considered an independent source of law but rather complements codified statutes (Kim, 2021).

Accordingly, in the Iranian legal system, custom plays a role in interpreting and supplementing statutory law and Islamic jurisprudence, whereas in the French system, custom is not recognized as an independent source but plays an important role in interpretation and judicial practice. These distinctions reveal the differing jurisprudential and legal approaches of the two countries regarding the role of custom.

4. Customary Punishments in Iranian Law

This section addresses customary punishments in Iranian law.

4.1. *Historical Background of Customary Punishments in Iran*

In pre-Islamic Iran, customary punishments served as tools for maintaining social order and administering justice within various communities. These punishments were determined according to local customs and traditions and were usually enforced by tribal elders or community leaders. They might include monetary fines, exile, or corporal punishments (Shahbazi, 2002).

With the advent of Islam in Iran, a new legal system based on Islamic *shari'a* replaced previous systems. During this period, punishments were classified into four main categories: *hudud* (fixed punishments), *qisas* (retaliatory punishments), *diyat* (financial compensation), and customary *ta'zirat*. *Hudud* referred to punishments prescribed for specific crimes such as adultery, theft, and apostasy, which were obligatory to enforce. *Qisas* applied to intentional homicide or bodily injury as a form of retribution. *Diyat* referred to financial payments as alternatives to corporal punishments or with the consent of victims' heirs. Customary *ta'zirat*

represented punishments for other crimes not specified under *hudud*, *qisas*, or *diyat* and were generally determined by the ruler or judge (Ansari, 2010).

In this period, customary punishments operated as either complementary or substitute mechanisms for religious punishments in certain cases. In modern times, particularly following the Constitutional Revolution, efforts were made to modernize Iran's legal system, and new codified laws were enacted that significantly replaced customary punishments with statutory ones. Nevertheless, in certain local communities and exceptional cases, customary punishments continued to be applied (Pourjavady, 2012).

After the Islamic Revolution of 1979, Iran's legal system became fully grounded in Islamic *shari'a*, and many customary and statutory punishments were replaced by religious punishments. However, in some instances, customary punishments continue to coexist with religious and statutory sanctions (Khomeini, 1984).

4.2. Current Legal Framework

In the Iranian legal system, the principle of legality of crimes and punishments is one of the fundamental principles of criminal law. It is clearly expressed in Article 168 of the Constitution and in criminal statutes such as the Islamic Penal Code. This principle means that no person may be punished without reliance on law, and all criminal measures must be based on codified and explicit legal provisions (Hassani, 2015). Nevertheless, the acceptance of custom in Iran's criminal system, as a subsidiary or complementary source, is limited and must align with statutory law and religious principles.

Judicial practice in Iran reflects a mixed experience of flexibility and restriction in recognizing criminal custom. In certain judicial rulings, courts have considered the local custom of the crime's occurrence and social practices when determining the degree of *ta'zir* (discretionary punishment) or the method of enforcement. For example, in cases involving petty offenses or disputes related to contracts and transactions, judges may, based on local custom, issue proportionate decisions, provided that such decisions do not conflict with statutory law (Karimi, 2017). This approach creates a balance between legal certainty and social dynamism.

One of the most important customary elements in Iranian law is governmental *ta'zirat*. The Islamic Penal

Code, especially in its discretionary section, includes provisions where the legislature, due to the absence of fixed punishments for certain crimes, grants the authority to determine punishments to the ruler or judge (Rezvani, 2019). In this framework, judges may take local and societal customs into account when determining appropriate punishments. These discretionary sanctions represent a blend of custom and codified law within the Iranian legal system, highlighting the importance of custom as a tool for interpreting and supplementing the law.

Beyond *ta'zirat*, certain provisions of the Islamic Penal Code in the areas of economic, social, and cultural conduct also rely on custom. For instance, in determining the limits of criminal liability or the extent of damages, the custom of the locality where the crime occurred or prevailing commercial practices may serve as the basis of judicial decisions, provided they are not inconsistent with religious and statutory principles (Mahdavi, 2018). This indicates that while Iranian law is fully codified, custom plays an important role as a complementary source and as a guide for achieving justice and regulating social relations.

Overall, Iran's legal framework has consistently sought to strike a balance between statutory stability and flexibility in recognizing custom. The principle of legality imposes clear restrictions on the application of custom, but judicial practice and governmental *ta'zirat* provide opportunities for the use of custom within a legal framework. This situation demonstrates that although custom has a subsidiary position in Iranian law, its role in adapting statutes to social realities is undeniable.

4.3. Instances of Customary Punishments in Iranian Law

In the Iranian legal system, customary punishments are most clearly observed in governmental *ta'zirat* and certain supplementary punishments. Governmental *ta'zirat* are punishments prescribed for crimes not covered by *hudud*, *qisas*, and *diyat*, with their type and degree determined at the discretion of the judiciary, often with consideration of custom and social conditions (Shadlou, 2019). This category of punishments is a prominent example of custom's entrance into criminal law, since the statute provides only a general framework while its implementation depends on local custom and the offender's social context.

In addition to *ta'zirat*, certain supplementary punishments such as temporary bans from professional activity, confiscation of property derived from crime, or social restrictions may also be shaped by custom. In such cases, local custom and judicial experience play a decisive role in the degree of severity or leniency. For instance, in economic crimes or administrative offenses, a judge may, taking into account prevailing social norms and community standards, choose punishments proportional to the gravity of the offense and the circumstances of the offender. This flexibility allows criminal law to adapt to social realities and maintain relative justice (Azizi, 2020).

The role of custom in Iranian law has become more pronounced since the Islamic Revolution and the enactment of governmental *ta'zirat*. During this period, legislators attempted to establish broad frameworks that allowed judges to employ custom and judicial experience in determining punishments, without violating the principle of legality. As a result, in some cases punishments have moved beyond rigid statutory rules and have been adjusted according to the social and moral context of society.

Nevertheless, reliance on custom in determining punishments has created challenges. The absence of a precise definition of custom, differing interpretations among judges, and the potential for subjective decision-making may result in inconsistency in legal enforcement. For this reason, clarifying the role of custom in criminal statutes and providing clear procedural guidelines for judges are essential for strengthening justice and judicial security in Iran.

In summary, the main instances of customary punishments in Iranian law are governmental *ta'zirat* and supplementary sanctions, whose enforcement depends on custom, social conditions, and judicial discretion. This highlights the ongoing interaction between formal law and social norms in Iran's criminal justice system.

4.4. Challenges and Critiques

One of the most significant challenges concerning customary punishments in Iran is their conflict with the principle of transparency and certainty in law. The principle of legality, emphasized in the Constitution and criminal statutes, ensures that citizens know what behaviors constitute crimes and what punishments they

may face (Shafiei, 2016). Acceptance of criminal custom, particularly in the area of governmental *ta'zirat*, can lead to varying interpretations and legal uncertainty. When the degree or type of punishment depends on custom, the possibility arises for divergent interpretations of the same offense, contradicting the principles of transparency and predictability.

A second challenge concerns the potential for abuse and expansion of criminalization. Customary *ta'zirat* and punishments derived from custom, where the judge is granted discretionary authority, may result in excessive leniency or severity. This situation can cause behaviors not criminalized under codified statutes to fall within the scope of custom or judicial interpretation, thereby expanding the scope of criminalization (Mohammadi, 2018). Such an outcome not only threatens criminal justice but also makes citizens vulnerable to arbitrary judicial decisions.

A third challenge is the relationship of customary punishments with human rights and Iran's international obligations. As a party to several international treaties, Iran is committed to respecting human rights standards. Customary punishments, especially those lacking clear and predictable criteria, may conflict with principles such as the prohibition of torture, the right to a fair trial, and protection against arbitrary punishment (Najafi, 2019). Therefore, the use of custom in determining punishments requires careful balancing between social flexibility and compliance with international standards. Nevertheless, some legal scholars argue that custom can help the criminal justice system adapt statutes to social realities and enable responsiveness to societal changes, provided that legal frameworks and clear criteria are established. Otherwise, excessive reliance on custom and discretionary *ta'zirat* may result in judicial insecurity and violations of fundamental rights (Ebrahimi, 2020). In general, the challenges and critiques of customary punishments in Iran reveal that although custom can contribute to the flexibility of the criminal justice system, its unregulated acceptance without clear legal boundaries may lead to serious problems regarding transparency, justice, and human rights. This underscores the importance of legal reform and the development of precise guidelines for using custom alongside codified law.

5. Customary Punishments in French Law

This section addresses the French legal approach to customary punishments.

5.1. *Historical Background of Customary Punishments in France*

During the Middle Ages, French criminal law was largely based on local customs. These customs, available orally or in written form, constituted unwritten rules that defined criminal behaviors and determined corresponding punishments. For example, in the Paris region, the “Custom of Paris” served as a primary source of both civil and criminal law, prescribing penalties such as monetary fines or corporal punishments for various offenses (Gay, 2024).

At this time, the judiciary was largely controlled by the nobility and the Church, and courts generally operated according to local customs in the absence of a unified statutory framework. This situation led to significant disparities in how crimes and punishments were handled across different regions. The French Revolution in the late eighteenth century brought a fundamental transformation to the country’s legal system. One of its most significant achievements was the adoption of the 1791 Penal Code, which for the first time in French history codified criminal law in a comprehensive and written form. Influenced by Enlightenment thinkers such as Montesquieu and Beccaria, this Code introduced the principle of legality of crimes and punishments as a cornerstone of criminal law. According to this principle, no one could be punished unless the act had been explicitly defined as an offense by law. This reform ended the dominance of local customs and decentralized judicial systems, guiding French law toward unity and transparency.

With the enactment of the 1810 Penal Code under Napoleon, this process continued. The new code reaffirmed the principle of legality and replaced the 1791 Code, remaining the foundation of French criminal law until the late twentieth century (Gay, 2024).

5.2. *Contemporary Legal Framework*

The French legal system is firmly based on the principle of legality of crimes and punishments. This principle, enshrined in Article 16 of the Declaration of the Rights of Man and Citizen of 1789, states that no person can be punished without a law enacted prior to the offense

(Merle & Vitu, 1984). The 1810 Penal Code, drafted under Napoleon’s supervision, reinforced this principle and became the principal basis of French criminal law (Ancel, 1973). The Code set punishments in precise and explicit terms, thereby preventing the imposition of unlawful sanctions.

Although written law dominates, custom still holds a secondary place within the French legal system. Before the Revolution, local customs were the main sources of civil and criminal law (Merle & Vitu, 1984). These customs, often transmitted orally or through local texts, defined offenses and punishments. After the Revolution and the codification of the 1810 Penal Code, written statutes replaced most local customs.

Nevertheless, in some cases, custom continues to complement statutory law. For example, where statutes lack explicit provisions, judges may draw upon recognized customs to interpret and determine punishments (Merle & Vitu, 1984). In practice, French judges consider multiple factors in sentencing, such as the seriousness of the crime, the offender’s condition, and the motives behind the offense. Local customs may influence such decisions. For instance, if an offender committed a crime under conditions such as illness or psychological pressure, these may be recognized as mitigating circumstances. Conversely, customs may also shape aggravating circumstances, such as treating crimes committed at night or in the presence of children as more serious (Kim, 2021).

5.3. *Instances of Customary Punishments in French Law*

In French law, the role of custom in determining punishments is more limited than in some other systems because of the prominence of the legality principle. However, custom is still relevant in certain contexts, primarily as an interpretative tool or in shaping mitigating or aggravating circumstances. For example, in particular criminal cases, judges may rely on existing social or professional customs to adjust punishments (Benoît, 2017).

One of the most important examples is the use of customary standards to assess aggravating or mitigating factors. In financial or economic offenses, for instance, judges may take into account professional customs and prevailing business practices to calibrate punishment severity. Here, custom operates as a supplementary

mechanism to ensure proportional justice without violating statutory boundaries (J. Dupont, 2018).

Other examples include the role of custom in statutory interpretation and case law. While statutes provide general rules, their application often depends on details shaped by local or professional customs. This is particularly relevant in crimes defined broadly by law but committed under varied and complex circumstances. In such cases, judges may rely on custom to ensure that decisions are contextually appropriate and socially just. Unlike in Iran, however, the role of custom in France is strictly limited and indirect. It serves primarily to interpret and complement codified law rather than to establish punishments independently. This limitation enhances predictability and judicial security, although it reduces flexibility and the ability to adapt punishments to social conditions. Overall, instances of customary punishments in French law include reliance on custom in statutory interpretation, the definition of mitigating and aggravating circumstances, and the application of professional or social standards in specific cases. Such limited use illustrates a cautious interaction between statutory law and social realities in the French criminal justice system.

5.4. Critical Analysis

Strengths – Flexibility and Adaptability to Social Realities: Despite its reliance on written law, the French legal system, particularly in criminal law, has preserved a degree of flexibility to adapt to social and cultural developments. This adaptability becomes evident in cases where statutes are silent or ambiguous, allowing judges to rely on precedent and recognized local customs. For example, in sentencing, judges may consider specific conditions of the offender and the motives for the crime to adjust punishments (Merle & Vitu, 1984). This flexibility is especially valuable in addressing emerging or complex crimes, such as cybercrime or financial misconduct, where courts can respond swiftly by drawing on general legal principles and modern interpretations.

Weaknesses – Threats to Judicial Security and Predictability of Punishments: While flexibility offers advantages, it also poses risks to judicial security and predictability. Reliance on case law and local customs, especially where statutes lack clarity, can result in significant disparities in how similar offenses are

adjudicated across different regions. This may foster perceptions of injustice and undermine equality before the law (Merle & Vitu, 1984). Moreover, reliance on case law and custom can erode transparency. Whereas codified statutes provide clarity by defining punishments and their conditions precisely, judicial interpretations and customs—subject to variation and continual change—may diminish predictability and cause confusion among both citizens and judges.

6. Conclusion

This article examined the status of customary punishments in Iranian and French law from a comparative perspective. The analysis showed that both legal systems share fundamental principles such as the legality of crimes and punishments and the restriction of custom in determining punishments. However, profound differences exist in their philosophical, historical, and structural foundations. In Iran, criminal law is rooted in Islamic jurisprudence, and custom plays a significant role in governmental *ta'zirat* and certain supplementary punishments. Examples include determining the degree of discretionary sanctions and applying supplementary punishments based on social conditions and local customs. This feature enhances flexibility and allows criminal justice to adapt to social realities, though it sometimes reduces the certainty and predictability of punishments.

In contrast, the French legal system is secular, and written statutes, especially the French Penal Code, occupy the central place in defining punishments. Custom in France plays a more supplementary and interpretive role, for example, in determining mitigating or aggravating circumstances in specific cases or in interpreting general statutory rules. This approach strengthens judicial security and predictability but limits flexibility in adapting punishments to social contexts.

A comparative synthesis reveals that Iran and France converge in their efforts to limit the role of custom and emphasize the principle of legality, while their divergences stem from the religious foundations of Iranian law versus the secular framework of French law, the stronger role of custom in Iranian *ta'zirat* and supplementary punishments, and the greater predictability of punishments in France.

Based on these findings, practical recommendations for the Iranian legal system include: first, clarifying the

position of custom in criminal law and defining precise boundaries for its application to prevent arbitrariness in punishments; second, establishing supervisory mechanisms and executive guidelines for the application of custom in governmental *ta'zirat* in order to achieve social and individual justice alongside judicial security; third, drawing on the French experience in balancing legal certainty with limited flexibility so that punishments may be adjusted in exceptional circumstances.

Looking ahead, convergence or divergence between Iran and France will depend on the extent of legal reforms, transparency, predictability, and the way custom is integrated with formal law. Reforming statutes and defining a clear framework for the use of custom can promote convergence in fundamental principles such as limiting the role of custom and observing legality, while deep cultural and philosophical differences—such as greater flexibility in Iran and stronger emphasis on predictability in France—are likely to persist.

Ultimately, the findings indicate that customary punishments can serve as an effective tool for achieving social justice and aligning criminal law with social realities, provided that precise statutes, judicial oversight, and clear articulation of their role are in place within the Iranian legal system. A comparative study with France not only highlights Iran's strengths and weaknesses but also provides the opportunity to benefit from the experience of secular systems in creating a balance between legal certainty and social flexibility, thereby enhancing efficiency, justice, and public trust in Iran's criminal justice system.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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Declaration of Interest

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Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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