

Analysis of the Position of the Jury in Press Crimes with Emphasis on Its Consultative Nature in the Iranian Legal System

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Abstract

Adjudication of press-related crimes is of great significance due to their direct connection with freedom of expression and the fundamental rights of citizens. One of the most important mechanisms envisaged in the Iranian Constitution to guarantee fair trial in this domain is the institution of the jury. Nevertheless, in practice, the role and authority of the jury in the Iranian judicial system have always been a matter of debate and controversy. This study, adopting a descriptive-analytical approach and relying on library sources, examines the historical evolution and current position of the press jury and analyzes the consultative nature of its opinions. Findings indicate that the verdicts of the jury in Iran are not binding and merely have a consultative character. Although this feature reinforces the independence of the judge, it has, in practice, weakened the actual function of the jury as the representative of public opinion. Therefore, in order to enhance the position of this institution and improve its efficiency, it seems necessary to revise ordinary laws and reform the structure governing the selection and powers of jury members.

Keywords: Iranian law, press crimes, jury, fundamental rights, consultative opinion

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1. Introduction

The participation of citizens in political and social processes through elected institutions has always been regarded as one of the significant achievements of legal and political thought. In modern systems, this participation is not only reflected in the executive and legislative branches but has also been extended to the judiciary. One of the institutions created to realize such participation in judicial proceedings is the jury, which can be referred to as a “people’s judicial institution” (Danesh, 2002; Feyz, 1991).

The jury is an institution established in many legal systems with the aim of enabling the direct participation of public opinion in judicial proceedings, especially in political and press crimes (Hashemi, 2012; Sheikh-al-Islami, 2001). In Iran, Article 168

of the Constitution stipulates that the adjudication of political and press crimes must be held publicly and in the presence of a jury. This article, inspired by democratic institutions in comparative law, has acquired a distinct nature shaped by the country's specific legal and political context (Elham, 1991; Mortazavi, 2007).

The main issue is that, despite the constitutional and statutory recognition of juries, they have not achieved their actual standing in practice. The most important reason can be found in the "consultative nature of their opinion." Under current laws, the judge is not obliged to follow the opinion of the jury and must only hear it before issuing a ruling based on their own reasoning. This situation has caused the jury to become more ceremonial than effective (Hashemi, 2012; Sheikh Al-Islam, 2008).

Press crimes are particularly important because of their direct connection with freedom of expression and the role of the press in supervising power. The Constitution of the Islamic Republic of Iran also emphasizes in Article 24 (freedom of the press) and Article 168 (necessity of jury presence in press adjudication) the effort to strike a balance between media freedom and the preservation of religious values and public security (Elham, 1991; Rahmani, 2012). However, in practice, numerous challenges remain, such as ambiguity in the definition of press crimes, differences in the legal status of press defendants compared to ordinary defendants, and ultimately the marginal role of the jury in the adjudication process.

Therefore, the central question of this study is: What is the nature of jury opinions in press crimes in Iran, and what are the implications of their consultative nature for the judicial system? Addressing this question requires examining the theoretical foundations, historical background, legal position, and comparative perspective on this institution (Aliabadi, 1994; Sheikh-al-Islami, 2001).

2. Theoretical Foundations and Key Concepts

2.1. The Concept of Crime in Criminal Law and Criminology

Crime, in its simplest definition, is behavior that the legislator has prohibited and for which punishment or security measures have been prescribed. In Iranian criminal law, according to Article 2 of the Islamic Penal Code (2013), "Any act or omission for which punishment is prescribed by law is considered a crime." Press crimes, due to their particular characteristics, are regarded not merely as individual violations but as social acts affecting public order and the fundamental rights of individuals. Therefore, addressing such crimes requires mechanisms different from those used for ordinary crimes (Feyz, 1991; Noorbaha, 1997).

2.2. The Concept of Press Crime

In Iranian law, the Press Law (1985) and its subsequent amendments explicitly address press crimes. Article 1 of this law defines the press as publications issued regularly. Any misuse of press freedom that disrupts the foundations of Islam or public rights can be considered a press crime. Examples include insulting sacred matters, promoting obscenity, or publishing falsehoods. Given the nature of such crimes, the legislator has deemed the presence of a jury necessary to ensure fairness in adjudication (Elham, 1991; Hoseini Razlafi, 2005).

2.3. The Concept of the Jury

Linguistically, a jury refers to a group of individuals who appear in court to express opinions on the guilt or innocence of the accused. In Iran, the jury occupies an intermediate position between the judge and public opinion. They represent society and express opinions based on their understanding of public sentiment without being bound by legal reasoning (Mortazavi, 2007; Sheikh-al-Islami, 2001).

2.4. *The Rationale Behind the Jury*

The primary rationale behind the jury in legal systems is to guarantee the participation of public opinion in judicial proceedings and to prevent political or judicial power from exerting undue influence. In fact, this institution acts as a bridge between society and the court, giving criminal justice a more public character. In Iran, Article 168 of the Constitution was intended to serve this purpose, although its executive structure differs fundamentally from Western models (Danesh, 2002; Hashemi, 2012).

2.5. *Comparative Status*

In England, the jury plays a fundamental role in the criminal justice system, and their verdict on guilt is binding. In France, despite structural differences, the presence of a jury in serious crimes—especially political and press crimes—is mandatory. A comparison of these systems with Iran shows that the consultative nature of the jury's opinion is the main point of divergence that has weakened its function (Rahmani, 2012; Sheikh al-Eslami, 2001).

3. **Historical Background and Evolution of the Jury**

3.1. *The Jury in the World*

The jury institution has a long history in Western legal systems, especially in England. In the Middle Ages, it emerged from local communities to allow ordinary individuals to participate in judicial decision-making. In the 13th century, with the adoption of the Magna Carta, principles such as fair trial and the right to be tried by one's peers were established. Gradually, the jury attained a foundational role in England and later spread to its colonies and the United States. In these systems, jury verdicts are binding, and the judge's role is mainly limited to guiding proceedings and interpreting the law (Aliabadi, 1994; Danesh, 2002).

In France, following the French Revolution (1789) and its emphasis on liberty and equality, the jury gained an essential role in adjudicating serious crimes. Although its jurisdiction later narrowed due to political changes and legal reforms, it continues to operate in certain political and press crimes (Hashemi, 2012; Sheikh Al-Islam, 2008).

3.2. *The Jury in Iran before the Iranian Revolution*

The introduction of the jury into Iranian law dates back to the Persian Constitutional Revolution. The Supplement to the Constitutional Law of Iran (1907) explicitly provided for the presence of a jury in political and press crimes. It was designed to prevent political power from abusing its authority and to secure public participation in press trials. With the enactment of ordinary laws such as the Press Law (1931), the jury formally entered the judicial structure of Iran. However, throughout history—especially under authoritarian regimes—this institution was either completely suspended or became merely symbolic (Elham, 1991; Mortazavi, 2007).

3.3. *The Jury after the Iranian Revolution*

With the adoption of the Constitution of the Islamic Republic of Iran (1979), Article 168 stipulated that the adjudication of political and press crimes must be public and in the presence of a jury. This provision was, in a way, a continuation of the constitutionalist idea of guaranteeing freedom of expression and the press. However, its implementation faced serious challenges. For example, the absence of a clear definition of "political crime" until 2016 meant that juries were active only in press crimes (Hoseini Razlifi, 2005; Rahmani, 2012).

Several ordinary laws were enacted in this regard. The Press Law (1985) and its subsequent amendments introduced the jury as an essential element in press courts. Later, the Jury Law (2003) was adopted, specifying the composition, selection procedures, and duties of jury members. However, the appointment-based selection process and their dependence on executive bodies have undermined the independence of this institution (Aliabadi, 1994; Sheikh-al-Islami, 2001).

3.4. *Comparative Analysis of the Jury in Iran and Other Countries*

Comparative analysis shows that in Western legal systems, the jury plays a decisive and binding role in determining guilt or innocence. In contrast, in Iran, its role is merely consultative, and the judge may rule contrary to its opinion. This difference has rendered the jury's presence in press courts more symbolic than effective.

Overall, the historical trajectory of the jury in Iran has always been influenced by political and social conditions. Although the Constitution grants it a clear position, ordinary laws and judicial practices have prevented it from fully achieving its intended objectives (Hashemi, 2012; Sheikh Al-Islam, 2008).

4. **The Status and Role of the Jury in the Iranian Legal System with Emphasis on Its Consultative Nature**

4.1. *Status under the Constitution*

Article 168 of the Constitution of the Islamic Republic of Iran is the most important legal basis for the jury. According to this article: "The investigation of political and press crimes shall be open to the public and conducted in the presence of a jury in courts of justice." This article was drafted to ensure transparency in judicial proceedings and to promote public participation. However, the Constitution remains silent on the nature of the jury's verdict and leaves the determination of its details to ordinary legislation (Elham, 1991; Hashemi, 2012).

4.2. *Status under Ordinary Laws*

The Press Law (1985) and its subsequent amendments, along with the Jury Law (2003), are the most important pieces of ordinary legislation on this subject. These laws define the duties, powers, and composition of the jury. According to these laws, the jury is required to announce its opinion on the guilt or innocence of the defendant at the end of each session. However, the judge is not obliged to follow this opinion and may issue a verdict based on their personal assessment (Hoseini Razlafi, 2005; Mortazavi, 2007).

4.3. *Consultative Nature of Jury Opinions*

The consultative nature of jury opinions in Iran means that their opinion is not binding on the judge. In other words, the jury merely serves as a judicial advisor, while the final decision remains with the judge. Although this reinforces judicial independence, it largely undermines the jury's foundational purpose as a manifestation of the public will (Rahmani, 2012; Sheikh-al-Islami, 2001).

4.4. *Effects of the Consultative Nature of Jury Opinions*

1. **Preservation of judicial independence:** The judge can issue rulings solely based on evidence and legal reasoning without pressure from public or political opinion.
2. **Weakening of the public function of the jury:** The role of the jury has been reduced to a procedural formality, and its presence has become mostly symbolic.
3. **Conflict with the democratic philosophy of the jury:** In other legal systems, the jury's opinion represents the will of the people, and its binding nature is considered one of the principles of criminal justice. In Iran, the consultative nature of the jury's opinion has created a gap between public opinion and judicial outcomes (Elham, 1991; Hashemi, 2012).

4.5. *Judicial Practice in Iran*

An examination of press-related cases shows that in many instances, courts have issued rulings contrary to the opinion of the jury. For example, in cases where the jury has voted for acquittal, judges have nonetheless issued convictions based on statutory provisions. This practice has significantly weakened the standing of the jury (Mortazavi, 2007; Rahmani, 2012).

4.6. Comparison with Other Legal Systems

In common law systems such as England and the United States, the jury's verdict on guilt or innocence is binding, and the judge only intervenes in determining the sentence. In France, despite various changes, the jury's decision in serious crimes remains decisive. This comparison shows that the consultative nature of jury opinions in Iran has distanced it from the original philosophy of the institution and reduced its effectiveness (Sheikh al-Eslami, 2001; Sheikh Al-Islam, 2008).

Adjudication of press crimes is of great significance due to their direct connection with freedom of expression and the fundamental rights of citizens. One of the most important mechanisms envisaged in the Iranian Constitution to guarantee fair trial in this domain is the institution of the jury. Nevertheless, in practice, the role and powers of the jury in the Iranian judicial system have always been a matter of debate and controversy. This study, adopting a descriptive-analytical approach and using library sources, examines the historical trajectory and legal status of the press jury and analyzes the consultative nature of its opinions. The findings indicate that the jury's verdict in Iran is not binding and merely consultative. Although this reinforces the independence of the judge, it has, in practice, weakened the actual function of the jury as the representative of public opinion. Consequently, to enhance the position and effectiveness of this institution, it is necessary to revise ordinary laws and reform the structure governing the selection and powers of jury members (Elham, 1991; Hashemi, 2012).

5. Critique and Evaluation

5.1. Formal Critique

From a formal perspective, the structure and composition of the jury in Iran face several challenges:

1. **Selection of members:** According to the Jury Law, members are chosen from among individuals nominated by executive authorities. This process has effectively undermined the independence of the institution and turned it into a tool in the hands of governmental bodies (Mortazavi, 2007; Sheikh-al-Islami, 2001).
2. **Composition and number of members:** The number of jury members in Iranian law is limited, which prevents it from reflecting the social and intellectual diversity of society (Danesh, 2002; Feyz, 1991).
3. **Scheduling and consistent presence:** Jury sessions are usually held irregularly, and many members, due to personal commitments or lack of serious legal obligation, do not actively or effectively participate in proceedings (Hashemi, 2012; Rahmani, 2012).

5.2. Substantive Critique

There are also serious substantive shortcomings in the performance of the jury:

1. **Consultative nature of the opinion:** The most important criticism of this institution is the non-binding nature of its opinion. This situation has rendered the jury's foundational purpose ineffective and turned it from a public body into a ceremonial one (Elham, 1991; Sheikh Al-Islam, 2008).
2. **Lack of institutional independence:** The financial and organizational dependence of the jury on the judiciary and executive bodies prevents it from playing a real role in safeguarding press freedom (Hoseini Razlafi, 2005; Noorbaha, 1997).
3. **Lack of specialized training:** Jury members often enter the decision-making process without adequate training in press law and fair trial principles, which undermines the quality of their decisions (Danesh, 2002; Hashemi, 2012).

5.3. Consequences of the Current Situation

The consequences of the consultative nature of jury opinions and its structural weaknesses can be summarized as follows:

- **Weakening of press freedom:** Journalists and media activists receive little effective protection from this institution.
- **Public distrust:** The media community and public opinion perceive the jury's presence as symbolic and have little trust in it.

- **Increased concentration of judicial power:** In the absence of an effective public body, the judge has absolute authority over the fate of press defendants (Rahmani, 2012; Sheikh-al-Islami, 2001).

A review of several press-related cases shows that courts have repeatedly ruled contrary to the jury's opinion. In cases where the jury voted for acquittal, judges issued convictions. This contradiction has rendered the jury practically ineffective and severely undermined its standing (Elham, 1991; Mortazavi, 2007).

6. Conclusion

The jury, as one of the important judicial institutions in adjudicating press crimes, holds a prominent position in the Constitution of the Islamic Republic of Iran. Article 168 of the Constitution, inspired by the ideas of the Persian Constitutional Revolution, has made the presence of this institution mandatory in press courts. However, existing ordinary laws and judicial practices have caused this institution to deviate from its foundational purpose in practice.

The analysis showed that the most significant weakness of the jury in Iran is the consultative nature of its opinion. This feature has greatly limited the role of the jury in judicial proceedings and has rendered its presence largely symbolic and ceremonial. Furthermore, the appointment-based selection of members, the limited composition, and the lack of specialized training are other factors that have undermined the effectiveness of this institution.

On the other hand, a comparative analysis with the legal systems of England, the United States, and France reveals that jury verdicts in these countries are binding, which strengthens judicial democracy and increases public trust in the criminal justice system. The existing gap between the Iranian model and those of other countries highlights the necessity of reforming the laws and reconsidering the status of this institution.

Based on the findings of this study, the following suggestions are proposed to improve the status of the jury in Iran:

1. **Making jury verdicts binding:** Amending ordinary laws so that the jury's opinion on the guilt or innocence of the accused becomes binding on the judge.
2. **Reforming the selection process:** Replacing the appointment-based method with a transparent and public process that ensures genuine societal participation.
3. **Increasing diversity in membership:** Including representatives of various social, cultural, and professional groups in the jury to better reflect public opinion.
4. **Providing specialized training:** Designing training programs on press law, fair trial principles, and the philosophy of the jury's existence.
5. **Strengthening institutional independence:** Reducing the jury's dependence on the judiciary and executive bodies and establishing an independent institution to manage and support it.
6. **Enhancing transparency:** Publicizing jury reports and enabling media oversight of its performance.

Implementing these recommendations could enhance the status of the jury, increase public trust in press courts, and ultimately strengthen press freedom and the fundamental rights of citizens.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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