

Role of Custom in Contract Principles: Approaching towards Iranian Law

Mehdi Pirhaji¹ & Mohammad Reza Eskandari-Pudeh²

¹ Faculty of Law, Universiti Kebangsaan Malaysia, Bangi, Selangor, Malaysia

² Department of Law, University of Isfahan, Isfahan, Iran

Correspondence: Mehdi Pirhaji, Faculty of Law, Universiti Kebangsaan Malaysia, Bangi, Selangor, Malaysia.
Tel: 60-17-330-6568. E-mail: mahdi_pirhaji@yahoo.com

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Abstract

In 1928, Iranian legal system became closer to the Roman-Germanic legal system, though this closeness did not imply ignorance of Islamic Law. The codifiers of Iranian Civil Code adopted the section of 'Contracts and Obligations' from French Civil Code and Roman-Germanic Law and formulated it with regards to Islamic Law and jurisprudence. So the Contract Law became close, in form, to Roman-Germanic Law (French Law), while in terms of content, it was coordinated with the Islamic Law. In Iranian Civil Code, no separate section is devoted to the contracts law and most of the legal Articles which are related to the contracts are discussed under the category of 'Contracts and Obligations' from Article 183 onwards. This paper deals with the definition of custom and its different types, its status in Iranian rules, and interpreting contracts based on the custom. It will also illuminate the status of custom within the scope of contract in Iran. Additionally, this paper will find an answer to this question whether or not the judges can refer to different meanings of custom for interpreting the contracts. The data gathered for this research is of library type and the research method is analytical. The objective of the study is removing the ambiguities of contract law in order to fully understand the concept of contract law and custom in Iranian contract law.

Keywords: Iran, law, custom, contract, Roman-Germanic law, Islamic law

1. Introduction

The custom, despite the differences in legal systems is considered as one of the main legal resources and has a critical and effective role in all other disciplines in law area. Custom represents the society will and customary rules which are established by all people and are based on the people's demands (Shahidi, 2012). These rules have been spread among people through custom and habits, and are adaptive to reality, justice and fair. Hence, custom must be considered as an element which enables discovering an equitable solution. It is also the lifeblood of legal entities, preventing from obsolescence of law, keeping law active and variable in compliance with daily needs of people, so that it can evolve consistent with time and developments (Naseri, 1966).

The value and validity of custom, as a resource or legal principle, is different with regard to the written and non-written legal systems as well as the issues related to the law (Validi, 1996). In non-written law, the role of custom as an important and significant resource is very effective and sensitive. Custom is more important in non-written law than in written one; thus, legal sociologists consider it as 'live Law' (Saket, 1992). In common law, custom is not limited to private affairs and transactions among the people. Rather, following the development and improvement of societies, it has gradually deviated from private contracts and has organized the general rules of law. The basic and effective role of custom is manifested in all disciplines of non-written law.

In written law, since law cannot predict all people's needs, custom paves the way to completing, removing shortcomings, and interpreting the law. Sometimes legislators make some modifications in custom and introduce it as law. Law explicitly refers to custom. Though written law cannot create and establish legal rule via custom, as the non-written law does, and even sometimes some systems or legal disciplines do not consider custom as obligatory phenomenon and typically limit its domain where law has no judgment and is silent; nevertheless, it considers law in legislation and attempts to make rules compatible with it (Keynia, 1995).

Although Iranian legal system adheres to Roman-Germanic legal system (Shiravi, 2008) and it is known as a

written legal system (Erfani, 2011), it should be noted that custom has a significant role in legal rules. This means that some cases such as Articles 132 and 220 of Iranian Civil Code have explicitly been alluded to custom and in some other cases it has implicitly been accepted as a legal criteria (Kheiri, 2012). There are only a few contracts in which all required conditions have been stipulated. For example, in many contracts, just elements of contract are mentioned and no words have been said about other conditions and requirements. One's support in such cases is nothing but the customary methods in transactions. Therefore, it is necessary to identify a custom which inspired the content of contract and on which both parties by relying to that prevent from fully expressing the conditions. On the other hand, the requirement for identification of custom which has legal capacity for supporting and determining its type is to examine the custom itself, its types and the conditions under which it can be referred (Saljooghi, 1968). Since early 19th century, due to social developments in Europe and the weakness of Iranian government, a public movement was started against the governing autocratic political system and resulted in the establishment of Constitutional system in 1906 (Zarinkoub, 2011). In 1928, the Iranian legal system became closer to the Western and Roman-Germanic legal system, though this closeness did not imply ignorance of Islamic Law. The writers of Iranian Civil Code adopted the section of 'Contracts and Obligations' from French Civil Code and Roman-Germanic Law and regulated it with regard to Islamic jurisprudence. Therefore, the contract law, in form, became close to Roman-Germanic Law (French), while in terms of content it was coordinated with the Islamic Law (Roodijani, 2011). In Iranian Civil Code, no separate section is devoted to the contracts. Instead, most of the legal Articles which are related to the issue of contracts are discussed under the section of 'Contracts and Obligations' from Article 183 onwards. Data gathered for this research is of library type and the research method is analytical (Yaqin, 2007). The study aims to remove the ambiguities of contract law in order to fully understand the concept of contract law and custom in Iranian contract law.

2. Definition of Custom

Custom means an action done by the most people in a given community repeatedly and willingly. In jurisprudence, it is called 'rationalized structure' or 'practical conduct'. Custom, in this sense, is related to the speech and conduct and it is separated from natural affairs such as puberty (Full age). For jurisprudence, custom is valid only where Quran and Sunnah have no commandments. In domains of law, extracted rules from social events which become legal rules without direct interference of legislators are called custom. Accordingly, custom includes any other sources than legal ones (Kheiri, 2012). In legal terminology, custom is defined as 'popularity, fame, goodness, munificence, habit and what is popular among people'. In Latin, sometimes it has been interpreted as 'custom in another law'. This means that custom has been considered as Law (Langroudi, 2008). For defining custom, Katouzian (1996) states that it has two general and specific meanings. In general terms, it means all rules derived from social events as 'legal rule without the interference of legislator'. He added that this definition is by no means a help with illuminating the nature of common law against other resources since it includes legal resources. Referring to the specific meaning, he states that it is a rule which has gradually and automatically become common as a binding rule among all or some groups of people. Shahidi (2000) also argued that in legal terms, custom means the familiarity of society or a specific group of people with something related to the legal relationships. Janati (1991) considered custom as a method penetrated into population which is accepted by the sound temperaments. Furthermore, Mozafar (1966) defines the custom as continuity of people's practical ground on fulfillment of an action or its omission.

3. Types of Custom

Custom can be classified in different ways; in one aspect, in terms of inclusion scope, it can be divided into general and specific. In another aspect, regarding the parties' will, it can be grouped into supplementary and interpretational (Ghashghayi, 1999). Every custom includes a given social and geographical domain which is divided into general and specific, in terms of its inclusion scope. When an event is observed naturally by all people, it causes a custom or habit. So it is called general custom though its prevalence is observed in a special area. If the custom is manifested by needs of a specific group, it can be linked by a cohesive series of shared benefits and purposes, which is called specific custom. Naturally, specific custom is common among some specific individuals. For example, the owners of a given trade or the people who live in a region use repeatedly a measurement criterion in their trades so that it is known among them as a given custom which is compensation where the parties have no ideas. This notion has been emphasized in Articles 342, 344 and 632 of Iranian Civil Code and Articles 367 and 369 of Trade Act as well as Article 10 of Labor Act (Mortazavi, 2008). Moreover, custom whether considering its dominance on parties' will or ignoring such a will, is divided into interpretational and complimentary. If a matter is stipulated in contract, which can be attributed to the parties' intention, it is called interpretational custom. In fact, custom is the implied or assumed will of the parties and it interprets the

text from its own view regarding the evidences and situations.

3.1 Contractual Custom

Shared moral, religious, social and financial needs in humans are the origin of appearance of some practices for meeting such needs. Continuity of these needs have caused their repetition and this repetition to such an extent has led to the establishment of specific customs and traditions. From among the actions taken to meet these needs, it can be referred to transactions that have become common among people (Bagheri, 2003). Some customs and habits have been formed in these transactions which have gradually been transferred to the present day and led to the creation of transaction customs. It is as a road that can be formed because of people's crossing an off road for a long time and the posterities walking on it not thinking about its origin (Habibi, 1988). Contractual contracts can be characterized as follows:

3.2 Prevalence and Frequency

Frequency is the origin of a custom emergence in contracts to be a socially binding rule. It should be noted that the prevalence and frequency of an action do not occur immediately. Rather, it should have been initiated since long time ago and should pass long periods of time to achieve the desired universality. Therefore, being conventional and obligatory are the beginning and ending limits of the said frequency which constructs the contractual custom and are not by itself the independent requirements for custom. What is the criterion for transforming a frequent action into a socially binding rule? It seems that if involved people in that action consider some sanctions for it and reprimand the violators, then it will be realized that the action has legal support and it is the court which decides whether the behavior, especially in contracts, has typically such a sanction or not (Ghashghaei, 1999).

3.3 Voluntariness in Custom

This requirement means that firstly people should not do the action based on their nature and instinct rather they should follow a specific manner in their transactions (Langroudi, 2008). Secondly, they should not do the action negligently but carefully and with deep attention.

4. Status of Custom in Iranian Law

Custom as a main criterion and standard is found in the most Iranian rules. In Article 3 of principle of civil litigations, custom is considered as the evidence of judgment (Ziaee, 1962). In other laws relating to the Private Law, some terms like 'local trade custom', in Articles 336, 349 and 351, 'region trade custom' in Articles 366 and 367, 'local custom' in Article 369 and 'reasonable custom' in Article 382 have been stipulated in Iranian Trade Law (Alavi, 2003).

In some Articles of principles of civil procedure, custom has been mentioned explicitly or implicitly. For example, by referring to custom, contracts violating the public order and public morals, testimony against public order and public decency and public interests, as well as courts performance and that whether they are contrary to public order and moral, are determined in Articles 6, 211, and 293 respectively. This is the implied reference of law to custom. As a customary method for solving the problems, lottery is explicitly stipulated in Articles 258, 427 and 474 as a solution. In addition, the order of playing lottery is determined by custom. Furthermore, clauses A and D as well as some other clauses of Article 514 have referred to custom because identifying the one's dignity or the necessity of their needs and alike is the task of custom.

Article 524 of principles of civil procedure is about religious exceptions and realization of the stipulated items in its five clauses is the task of custom (Shahidi, 2009). That is custom that determines the typical specimen coinciding with religious exceptions. In criminal law, by considering the principle of legality of criminals and punishments, the custom has a guiding role and does not interfere with determining the punishments. Judges refer to custom in identifying and matching the subject and nature of criminal acts and cases where law has not defined it such as acts inconsistent with chastity, harrowing the public decency (Hammiati, 2009).

5. Role of Custom in Iranian Civil Code

In Iranian Civil Code, custom has a significant role in constructing legal rules so that legislators have paid special attention to this issue. Custom has some strong theoretical principles based on which the legislators make principles of custom to constructing legal rules in the following cases:

- 1) In cases where law has explicitly referred the case to custom.
- 2) In cases where legislators have implicitly accepted the custom.

3) Law – independent customary rules in cases when the decree is not clear and distinct in law or the law content is brief; and the judge cannot extract valid Islamic sources and he cannot find the right judgment; then, the legislator gives the right to the judge to apply definite custom to removing brevity and contrast. It should be noted that in some cases legislator is inevitable to identify custom as in business right (Saljooghi, 1968). Customary nature of contractual law in Iranian Statute can be one of the evidences and theoretical principles in law since customary contractual law means that major part of rules relating the contracts is based on custom and habit running at the time of statute enactment (Mirzanejad, 2010). That is, in enacting such rules, legislators have mostly emphasized the mechanisms with which people are familiar, find it suitable for meeting their needs or when there is no precedence in custom and are pleasant to their tastes. In doing so, the legislators aim at reducing the disturbance and facilitating the responsibility of parties and courts (Katouzian, 1996). Therefore, it can be concluded that law is based on custom though it has been inexplicitly stipulated.

Law explicitly has obliged the judges to use custom in completing law and removing its faults and ambiguities and judge about it as a legal rule. In the cases where custom is against the spirit of law, the judge should issue his judgment in compliance with definite custom. In cases where domestic rules are not complete or explicit or where they are conflicting or where there is no rule regarding the presented case, the courts are obliged to settle the cases according to the certain custom and habit. The importance and role of custom is not limited to private law (contracts), rather it greatly contributes to public law. There are many evidences gained by investigating public law rules which support this claim (Keynia, 1996).

6. Contradiction of Custom and Law

The principle is that law is valid and enforceable unless it is explicitly or implicitly abolished, and refusing to enforce it whether negligently, ignorance of law or political expediencies will not lead to its cancellation. Some lawyers who repudiate the effects of custom on the establishment of legal rules state that in every country, the constitution has delegated the right of legislation to legislature, and only legislature can enact rules or modify them (Shaygan, 1997). However, most of the lawyers believe that custom is one of the resources of law and can establish legal rules if it meets the aforementioned requirements so that there is no difference between these rules and what enacted by the legislative power. In fact, the custom can remove the legislation defects. Is it possible to overstep and ask this question whether the custom can annul the law? At the first glance, it is possible, but from other aspects like public interest which demands law to be respected, most lawyers believe that custom cannot cancel the law (Ziaee, 1962).

In comparing custom and law, the following defects will be revealed:

- 1) The rules of custom are not explicit while law is explicit and no doubts can be found in it.
- 2) Custom and habit are common among individuals in a limited environment so that they are dispersed.
- 3) Lapse of time is a main requirement of custom establishment; therefore, formation of customary rule is slow while the enactment of law is fast.

In contrast, custom advocates state that, firstly, law is never needless of custom because all needs of society are not predictable. Secondly, the advantage of law over custom is relative and is related to moralities, thoughts and trainings of members of society. For example, in ownership transfer, if custom associates with goods delivery and bill, while law associates it with concluding contract, then which one is the criterion of judgment for judges?

In the case of priority of interpretational custom and law over each other, some lawyers state that if the subject of dispute is interpretational law, custom is prior because Article 255 of Iranian Civil Code considers the custom judgment as an implied term. Moreover, enforcing interpretational law is based on assumed will and implied will has priority over assumed will (Safaei, 2008). However, some law scholars believe in explanation so that if the law Article is based on custom, custom becomes prior issue; otherwise, law has priority. Some others give absolute right to the legislators to neutralize custom artificially. It seems that regarding the Article 382 of Iranian Civil Code which stipulates when custom is contrary to the order which is mentioned in contract related to the transaction costs or delivery place, or if the contractual terms and conditions are contrary to that, then it should be conducted based on the custom or stipulated terms in contract. The contractual parties can also change it by mutual consent. Finally, it can be stated that the first theory enjoys a stronger legal support in Iranian law because interpretational rules are attributed to the parties' will and this is why they have priority over complementary law. However, since no custom has the ability to opposing the imperative rules, they have priority over interpretational and complementary custom.

7. Reasons for Accepting Custom in Iranian Civil Code and Judicial Precedent

In Article 220 of Iranian Civil Code, contractual parties are not only obliged to fulfill the contents of contract,

but also they are binding to acceptance of all the resulted outcomes due to custom or law (Mirzaei, 2010). Article 225 of Iranian Civil Code stipulates that conventionality of a matter in custom in such a way that contract can be attributed to it even implicitly, is just as expressing it in the contract (Bahrami-Ahmadi, 2012). The last clause of aforementioned Article 'just as expressing it in the contract' reveals that in this case, custom has replaced will with expressing the parties' will. In many cases, the custom is equivalent of implied terms so that if parties have specified no terms in contract, then custom can be replaced with parties' will in contract; consequently, it can be considered as implied term. For example, Article 280 of Iranian Civil Code stipulates that obligation should be fulfilled in the place where specified in contract, unless there is a specific contract between parties or custom demands an order.

In Article 356 of Iranian Civil Code, it has been mentioned that if the dependencies of the object of sale are not specified in the contract or parties are ignorant of the dependencies of the object of sale, it is the custom which determines what belongs to the object of sale. On the other hand, custom determines the framework of fulfillment of contract and it has a special status in contract because in this case, custom is considered just as a criterion and standard (Emami, 1994).

Furthermore, Article 375 of Iranian Civil Code states that object of sale should be submitted in a place where the sale contract has been concluded, unless in custom the submission requirement is somewhere else or a special place has been stipulated for submission in contract. The last clause of Article 362 of Iranian Civil Code also allows the interpretational custom to describe the contract, stating that "...or according to region custom, there should be innovation in decree".

By considering custom and judicial precedent as legal resources, Iranian lawyers believe that both should be supported by law. Some lawyers put legal resources into two major categories namely law and custom (Mohammadi, 1988). In this classification, custom is considered as non-legal resources and consequently, judicial precedent is also included in it. They state that as custom is created by people, so the judicial precedent is judges' custom. Although custom and judicial precedent are significantly different with each other, in their decisions, judges make use of law and custom, and apply interpretation details to make more accurate decisions. Such decisions are during judicial precedent which is the result of judging. Both custom and judicial precedents lay the ground for law (Alavi, 2010).

In identifying the nature of contract, judges should trace the shared desire of parties. Their instruments to do so are content of contract, what stipulated text of document, the applied words by parties during the contract, interpreting them in terms of custom, and finally, judgment of custom and the circumstances of the case. Therefore, 'judgment of custom' is a means used by court to find out shared desire. Since before that, one of these means have been 'words interpreting in terms of custom', it is obvious that for interpreting contract, interpretational custom can be exploited which is different from 'getting customary meaning of words' (Ghashghayi, 1999).

8. Custom and Interpretation of Contract

Words and phrases used by contractual parties should be interpreted in their customary terms and not in literal or literary terms (Article 224 of Iranian Civil Code). In unilateral legal acts like contracts, words should be interpreted in their customary terms. This Article proposes that custom has a significant role in determining and identifying the case by proof; that is, having two reasons: (i) the necessity of fulfilling the condition and (ii) the cooperation of reason and custom for avoiding loss. Therefore, it can be concluded that no one is satisfied by a significant difference in financial value between considerations of transaction. In other words, contractual parties, according to the custom used in contract words, stipulate as an implied condition that no significant differences should exist between consideration and the thing given in terms of financial value (Falahati, 2008).

The role of custom in proving the case is one of the theoretical principles of custom in contract principles and has been considered in Islamic jurisprudence. In a simple word, custom can either specify the subject of judgment or when doing so it can determine the characteristics and terms of judgment whether contract or performance.

A judge interprets according to the data achieved from the literal interpretation school and free scientific research school. One of these interpretational tools is referring to customary meanings; therefore, in assigning meaning to customary meanings, special attention has been paid. Since the parties are themselves part of the custom and if they want to assign to the word a meaning different from customary one, they should explicitly stipulate it in the contract (Alavi & Babazadeh, 2010).

9. Nature of Custom in Contract

Along with other reasons, custom as a major reason contributes in Islamic jurisprudence because custom appears as a customary implied condition in domain of contract and this is why Iranian Civil Code has taken it into consideration with this viewpoint (Katouzian, 1999). Customary implied condition is the one that is not stipulated in contract text, but general and special custom as well as habit consider it as existing factor in contracts, though contractual parties are ignorant of its realization. This condition rules over the contract and regardless of the assumption of parties' awareness of contracted custom, it will be dominant in the case of considering that as contract (Almasi, 2011).

Principles of customary implied condition in Islamic jurisprudence are as follows:

1) Rational evidence: By obligatory implication, contractual parties are also bound to customary accessories of contract after concluding contract in an obligatory manner needless to express some specific words. Articles 220, 221 and 356 of Iranian Civil Code have taken into account the validity of custom in determining the outcomes and conditions of contract in cases where contractual parties do not agree with the opposed case (Katouzian, 1996).

2) Narrative evidence: This includes the evidence of the necessity of fulfilling the obligation and meeting the condition:

a) Evidences of the necessity of fulfilling the obligations: Since customary implied condition is included in contract content and the evidence of fulfilling obligation is continued contract, then this evidence can be adhered to in case of customary implied conditions because the customary implied condition is a bound and conditional contract (Bojnoordi, 1998).

b) The evidence of meeting the condition: Customary implied condition as an implied contract which is one of the examples of condition and the principles of fulfilling condition in an absolute manner and without any defect is true for it (Khui, 1992).

The principles of customary implied conditions in Iranian Civil Code are as below:

1) Criterion of indemnification of losses: In Article 221 of Iranian Civil Code, Iran has formally recognized the factor of liability with two types of clarifications; the first is literal one which is expressed and recorded at the time of concluding the contract and the other is customary clarification (being clarified by custom). Based on this criterion, it can be observed that legislator has formally recognized this condition (Katouzian, 1996).

2) Criterion of reasonable conditions: In Article 344 of Iranian Civil Code, the condition based on local custom or trade custom for trade transactions has been formally recognized, though not being mentioned in the contract.

3) Criterion of future contracts: In Article 454 of Iranian Civil Code, implied condition has been considered the same as explicit condition so that if the obligee influences the performed contract, then the second contract concluded by the obligee due to their dominance on the object of obligation will not be blemished, unless any dominance for the obligee would have been forbidden in the first contract whether explicitly or implicitly (Falahati, 2008). There are many other principles in Iranian Civil Code but the mentioned items are sufficient to prove the custom as a customary implied condition.

10. Conclusion

In Iranian Civil Code, no separate section is devoted to the contracts law and most of the legal Articles related to the contracts are discussed under the section of 'contracts and obligations' from Article 183 onwards. This paper investigated the role of custom in Iranian contracts law. Definition of custom and its different types, its status in Iranian rules, and interpreting contracts based on the custom are among the subjects that have been examined in this paper. Although Iranian legal system adheres to Roman-Germanic legal system and is known as a written legal system, it should be noted that custom has a significant role in legal rules. Articles 220 and 132 of Iranian Civil Code have explicitly been alluded to the custom and this issue has been accepted as a legal criteria. Therefore, it can be noted that custom has special status in Iranian Civil Code because many Articles have focused on custom and have considered it as a criterion for discretion. Due to the significant role the custom has in legal rules, in contradiction of custom and law, custom has been preferred. However, most of the Iranian lawyers refuse this idea due to the social and public interests. Furthermore, custom is limited to special affairs; that is, in determining the subject of contract, it is valid only in a special meaning and is never used as independent evidence among others to prove the subject of contract. Custom contributes to interpreting contract in such a way that judges can make use of custom as a valid criterion in interpretation, if necessary. This matter has also been accepted in Iranian Civil Code. The nature of custom in legal rules, especially in contracts is the

similar to the nature of condition. In Iranian law, custom has a significant role in constructing legal rules so that legislators have paid special attention to this issue.

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References

- Alavi, M. T. (2003). Reviewing the Status of Custom in Jurisprudence and Iranian Statute. *Journal of Language and Literature of Human Science Faculty, Tabriz University*, 183(1), 54-63.
- Alavi, M. T., & Babazadeh, B. (2010). Interpreting Contracts in Common Law System. *Allameh Journal*, 29(1), 166-174.
- Almasi, N. A. (2011). Customary Implied Term: A Case Study of Article 356 of Iranian Civil Code under "Rule or Exception". *Journal of Islamic Law*, 2(1), 196-205.
- Bagheri, A. (2003). *Discharge of Obligations, Articles 264 to 300* (1st ed.). Aan Publication, Tehran, Iran.
- Bahrani-Ahmadi, H. (2012). *Law of Contract and Obligations* (1st ed.). Emam Sadegh Publication, Tehran, Iran.
- Bojnoordi, S. H. (1998). *Jurisprudence Principles* (3rd ed.). Ismailian Publication, Qom, Iran.
- Erfani, M. (2011). *Comparative Law* (12th ed.). Jungle Publication, Tehran, Iran.
- Falahati-Shahab Al-Dini, A. (2008). Custom in the Realm of Contracts Law. *Journal of Human Sciences and Strategic Management Research*, 34(1), 204-212.
- Ghashghai, M. H. (1999). *Interpreting Private Contracts in Iran Law and Other Contemporary Legal Systems* (1st ed.). Qom Hozeh Publication, Qom, Iran.
- Habibi, H. (1988). *In the Mirror of Law* (1st ed.). Keyhan Publication, Tehran, Iran.
- Hammiati, V. (2009). *Principle of Contracts and Unilateral Obligations* (1st ed.). Daneshnegar Publication, Tehran, Iran.
- Janati, M. E. (1991). *Source of Ijtihad (Individual Legal Reasoning) from Islamic religions' view* (1st ed.). Keyhan Publication, Tehran, Iran.
- Katouzian, N. (1996). *General Principles of Law* (4th ed.). Bahman Borna Publication, Tehran, Iran.
- Keynia, M. (1995). *Introductory Overview of Law* (1st ed.). Tehran University Press, Tehran, Iran.
- Keynia, M. (1996). *An Introduction on International Law* (1st ed.). Tehran University Press, Iran.
- Kheiri, R. (2012). *Deliberation on the Status of Custom on Law*. Retrieved March 2, 2013, from <http://www.mrfi.ir/kol/maghalat/1-t/mabahas/18.htm>
- Khuei, A. (1992). *Jurisprudence Approach* (7th ed.). Madina – al – Elm Publication, Qom, Iran.
- Langroudi, M. J. (2008). *Encyclopaedia of Civil Code and Business Laws* (1st ed.). Ganj-e-Danesh Publication, Tehran, Iran.
- Mirzaei, A. (2010). *Iranian Civil Code in Persian and English* (1st ed.). Behnam Publication, Tehran, Iran.
- Mirzanejad, A. (2010). A Brief Reflection on the Customary Nature of Contracts Law in Iranian Statute. *Law Journal, Tehran University Press*, 39(1), 346-354.
- Mohammadi, A. H. (1988). *Deductive Principles of Islamic Law* (12th ed.). Tehran University Press, Iran.
- Mortazavi, A. (2008). *General Rules of Contracts* (1st ed.). Nikbakht Publication, Tehran, Iran.
- Mozafar, M. R. (1966). *Jurisprudence Principles* (2nd ed.). Najaf: Dar Al Na'man Publication, Tehran, Iran.
- Naseri, F. A. (1966). Circumstantial Evidences in Iranian Civil Code. *Journal of National Library of Iran*, 74.
- Roodijani, M. M. (2011). *Discharge of Obligation* (1st ed.). Ava Publication, Tehran, Iran.
- Safaei, H. (2008). *General Rules of Contracts* (6th ed.). Mizan Publication, Tehran, Iran.
- Saket, M. H. (1992). *An Introduction to Law*. Nokhost Publication, Mashhad, Iran.

- Saljooghi, M. (1968). *The Role of Custom in Iranian Civil Code*, Unpublished PhD dissertation, Human Science Research Center, Tehran University Press, Iran.
- Shahidi, M. (2000). *Contract Principles and Obligations* (2nd ed.). Asr-e-Hoghoogh Publication, Tehran, Iran.
- Shahidi, M. (2009). *The Formation of Contracts and Obligations* (5th ed.). Majd Publication, Tehran, Iran.
- Shahidi, M. (2012). *Discharge of Obligations* (10th ed.). Mizan Publication, Tehran, Iran.
- Shaygan, A. (1997). *Civil Code* (1st ed.). Taha Publication, Tehran, Iran.
- Shiravi, A. H. (2008). *Comparative Law* (6th ed.). Samt Publication, Tehran, Iran.
- Validi, S. (1996). *General Criminal Law* (1st ed.). Dad Publication, Tehran, Iran.
- Yaqin, A. (2007). *Legal Research and Writing* (1st ed.). Lexis Nexis Publication, Malaysia.
- Zarinkoub, A. H. (2011). *Islam Record* (14th ed.). Mizan Publication, Tehran, Iran.
- Ziaee, S. (1962). Effects of custom in Civil Code. *Bar Association Journal*, 75(1), 24-33.

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