



How to cite this article:

Valehi, H., ELahimanesh, M. R., & Goldoust Jouybari, R. (2026). Comparative Analysis of Iranian and English Criminal Policies on Pretrial Security Measures with Emphasis on Non-Custodial Measures. *Journal of Historical Research, Law and Policy*, 4(6), 1-13. <https://doi.org/10.61838/jhrp.292>



Article history:
Original Research

Dates:
Submission Date: 10 December 2025
Revision Date: 07 March 2026
Acceptance Date: 14 March 2026
First Publication Date: 14 May 2026
Final Publication Date: 01 November 2026

Comparative Analysis of Iranian and English Criminal Policies on Pretrial Security Measures with Emphasis on Non-Custodial Measures

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ABSTRACT

The present study aims to conduct a comparative analysis of the criminal policies of Iran and England in the domain of pretrial security measures, examining the theoretical foundations, judicial structures, policy models, implementation strategies, and the social, cultural, economic, and international impacts of these two legal systems. This research employs a descriptive–analytical method and is based on library sources, legal documents, and case studies. In the research procedure, data related to legislation, judicial practices, and criminal policies of both systems were first collected and subsequently analyzed from philosophical, legal, social, cultural, economic, operational, and international perspectives. The findings indicate that the Iranian system, characterized by a security-oriented approach rooted in Islamic jurisprudence and traditional values, operates effectively in serious crimes; however, in minor offenses it faces inefficiency, economic inequality, and violations of the presumption of innocence due to the extensive use of pretrial detention and the imposition of excessive bail. In contrast, the English system, adopting a liberty-oriented approach grounded in liberal philosophies and human rights standards, employs modern supervisory instruments such as electronic monitoring and restorative justice programs, which have contributed to reducing unnecessary detention and improving rehabilitation, although economic inequalities remain a significant challenge. The results demonstrate that structural differences in orientation (security-oriented versus liberty-oriented), policy focus (deterrence versus rehabilitation), and strategic instruments (traditional tools versus modern mechanisms) between the two systems exert a profound impact on the effectiveness and fairness of pretrial security measures. Case studies, including a minor theft case in Iran (2018) and the application of electronic monitoring in England (2018), illustrate the inefficiency of pretrial detention in Iran and the success of modern instruments in England. Proposed statistical data further suggest that 60% of defendants accused of minor offenses in Iran remain in detention due to inability to post bail, whereas electronic monitoring in England has reduced pretrial detention rates by up to 30%. The study's recommendations include strengthening judicial oversight, expanding modern supervisory tools, reforming legislation to reduce inequalities, promoting restorative justice, adopting a liberty-oriented model, and enhancing international cooperation. These recommendations, formulated with due regard to Iran's local conditions and informed by the experience of England, contribute to improving efficiency, justice, and alignment with international standards within the Iranian judicial system.

Keywords: *Criminal policy; pretrial security measures in Iran and England; security-oriented approach; liberty-oriented approach; pretrial detention*



Introduction

Criminal policy is one of the most fundamental concepts in the field of criminal law and social sciences, reflecting the set of measures, principles, and strategies employed by governments to prevent crime, respond to offenders, and reform antisocial behavior. These policies directly affect the preservation of public security, the administration of justice, and the regulation of social relations (1, 2). Pretrial security measures, as one of the principal instruments within the criminal justice process, play a central role in ensuring the defendant's presence during various stages of proceedings, preventing flight or concealment, and safeguarding the rights of victims. A comparative examination of this instrument in distinct legal systems, such as Iran and England, can illuminate the strengths and weaknesses of each system and provide avenues for improvement (1).

In the Iranian legal system, pretrial security measures are structured on the foundations of Islamic jurisprudence and criminal procedural law, and their primary objective is the protection of social security and the guarantee of justice. Nevertheless, challenges such as the extensive use of pretrial detention and the imposition of excessive bail, particularly in minor offenses, have caused these instruments to occasionally conflict with the presumption of innocence and the individual rights of defendants (3, 4). In contrast, the English legal system, with its strong emphasis on individual liberty and human rights standards, adopts a different approach and employs modern instruments such as electronic monitoring and restorative justice programs in order to reduce unnecessary detention (1, 5).

These differences are rooted in the philosophical and cultural foundations of each country. Iran, adopting a security-oriented approach, emphasizes control and deterrence, whereas England, following a liberty-oriented approach, prioritizes the protection of defendants' rights and their rehabilitation. This contrast reflects classical political and legal philosophies, in which the security-centered view resonates with Hobbesian thought (6), while the liberty-centered perspective aligns with the liberal tradition articulated by Locke and Mill (7, 8). A comparison of these two systems can assist Iran in reforming its legal framework by drawing upon the successful experiences of England and achieving a more balanced relationship between public security and individual rights (4).

Pretrial security measures are not merely judicial tools but constitute an integral component of each country's overarching criminal policy. In Iran, such measures are frequently issued under a stringent approach, with pretrial detention commonly applied. Although this approach may be effective in serious crimes, in minor offenses it has produced social and economic consequences such as prison overcrowding and inequality in access to justice (3). In England, by contrast, the prevailing principle is the temporary liberty of the accused, and detention is imposed only when strictly necessary, contributing to cost reduction and improved rehabilitation outcomes (1, 5).

The comparative analysis of these two systems is particularly significant at a time when Iran seeks greater alignment with international human rights standards. This study endeavors, through a detailed examination of legislation, judicial practices, and case studies, to clarify the similarities and differences and to formulate practical recommendations for improving the Iranian system. The ultimate objective is the establishment of a more equitable system that preserves public security while simultaneously respecting the rights of defendants.

In the contemporary world, where global challenges such as economic inequality and increasing pressure on judicial systems are intensifying, the comparison of different legal systems can offer innovative solutions. Iran may benefit from the modern instruments utilized in England, while England may draw lessons from Iran's experience in

managing serious crimes. By focusing on pretrial security measures, this research seeks to construct a bridge between the two systems in order to promote a more efficient and humane model of criminal justice (1, 2).

Given that pretrial security measures are directly connected to the personal liberty of defendants, their examination from a human rights perspective is indispensable. In Iran, although the presumption of innocence is constitutionally emphasized, in practice pretrial detention sometimes undermines this principle (3). In England, the presumption of innocence is upheld as a fundamental right, and alternatives to detention are prioritized (1, 5). These differences underscore the necessity of legal reforms in Iran to achieve closer conformity with global standards (4).

The Concept of Pretrial Security Measures in Iran

Pretrial security measures in Iran refer to the temporary release of a defendant under specific conditions after formal charges have been registered before a court. This release is typically conditioned upon the payment of a specified amount of money or the provision of non-financial guarantees, such as an undertaking to appear at court hearings or to comply with particular legal restrictions. The principal purpose of these measures is to prevent unnecessary incarceration and to safeguard the individual rights of defendants without seriously endangering social security (3). In Iran, this concept is articulated with explicit reference to the presumption of innocence, while in England it is expressed primarily through the protection of individual rights (1, 4).

The main characteristics of pretrial security measures include the recognition of the right to liberty, according to which every person is presumed innocent until a final judgment is rendered, the obligation of the accused to appear before the court on the specified date, and the possibility of imposing specific conditions, such as travel restrictions or prohibitions on contacting witnesses, in order to maintain public security (3, 4).

The Concept of Pretrial Security Measures in England

In the English judicial system, pretrial security measures are recognized as a legal right that allows defendants to remain at liberty prior to the final adjudication of their alleged offense. This liberty is ordinarily subject to compliance with specific conditions determined by the court, including attendance at trial, non-interference with witnesses, or restrictions on movement. The concept is grounded in human rights principles and the fundamental values of criminal justice, aiming to strike a balance between individual rights and the need for public security (1, 5).

The legal structure of pretrial security measures in England consists of three principal elements: temporary liberty, conditionality, and the possibility of refusal where the court determines that the defendant's release would endanger public security or interfere with the administration of justice (5).

Legal Principles Governing Pretrial Security Measures

First Principle: The Right to Personal Liberty

The right to personal liberty constitutes one of the foundational principles of human rights. Within the framework of pretrial security measures, this principle signifies that defendants should, as a general rule, remain free unless the court presents compelling reasons for their detention (1, 8).

Second Principle: The Presumption of Innocence

The presumption of innocence represents another fundamental principle of the English judicial system. According to this principle, every individual is deemed innocent until proven guilty. Consequently, courts are required to grant liberty to defendants unless there exist convincing grounds for their detention (1, 5).

Third Principle: Justice and Fairness

Courts, when determining pretrial security measures, must observe the principles of justice and fairness. This includes ensuring procedural justice, by guaranteeing that the judicial process is conducted fairly, and outcome-oriented justice, by ensuring that judicial decisions are proportionate and equitable (1, 2).

Theoretical Framework

The theoretical framework of this research is based on three principal models of criminal policy derived from the fundamental values of liberty, equality, and power. These models, which in the criminal policy literature are recognized as general paradigms of state response to crime, determine how governments treat suspects and offenders and directly influence instruments such as pretrial security measures (4).

The first model is the liberty-oriented or liberal-democratic criminal policy, which prioritizes individual freedom and the rights of the accused. In this model, the presumption of innocence constitutes the central principle, and deprivation of liberty is permitted only in exceptional circumstances and on the basis of compelling justification. The philosophies of John Locke and John Stuart Mill, which emphasize limiting state power and preserving individual liberties, form the intellectual foundation of this model (7, 8). In practice, this approach favors non-custodial instruments such as electronic monitoring, obligations to appear, and restorative justice programs in order to maintain a balance between public security and individual rights.

The second model is the equality-oriented or anti-statist criminal policy, which combines liberty with absolute equality and often leads to the denial of the necessity of a strong state. This model is less prevalent in practice and is mainly reflected in anarchist or community-based theories, although elements of it appear in restorative justice approaches that emphasize complete equality between offender and victim (9).

The third model is the power-oriented or authoritarian criminal policy, which prioritizes state authority for the preservation of social order and security. In this model, control and deterrence prevail over individual rights, and coercive instruments such as pretrial detention and heavy bail are more commonly applied. The thought of Thomas Hobbes, who considered a strong state essential to prevent chaos, provides the philosophical inspiration for this model (6).

In the field of pretrial security measures, these models generate fundamental differences. Under the liberty-oriented model, exemplified by the English system, pretrial measures are structured so that temporary liberty of the accused constitutes the general rule and detention is imposed only when strictly necessary. By contrast, under the power-oriented model, to which the Iranian system is closer, the protection of public security takes precedence and pretrial measures are often issued under a stringent approach, reflecting traditional and jurisprudential values that prioritize public order over individual liberty (3, 4).

This theoretical framework also emphasizes the two key concepts of restorative justice and fair trial. Restorative justice, which has been developed extensively in England, focuses on repairing harmed relationships rather than

imposing severe punishment and can serve as a suitable alternative to detention (2). Fair trial, as articulated in international standards, requires strict observance of the presumption of innocence and proportionality in restricting liberty, reinforcing the necessity of limiting coercive measures to exceptional circumstances.

Ultimately, the theoretical framework demonstrates that pretrial security measures are not merely judicial instruments but reflections of each country's overarching criminal policy. Iran, being closer to the power-oriented model, is effective in controlling serious crimes but less efficient in minor offenses, whereas England, following the liberty-oriented model, achieves a more balanced outcome. This framework constitutes the foundation for the study's comparative analysis and reform-oriented recommendations.

The Importance of Pretrial Security Measures in Maintaining the Balance between Liberties and Public Security

The importance of pretrial security measures lies in their function of identifying an equilibrium between two essential values: individual liberties and public security. On the one hand, these measures protect the personal rights of defendants and prevent unnecessary detention. On the other hand, they may incorporate specific conditions designed to safeguard public security. Even in liberty-oriented systems, restrictions may be imposed where there is a substantial risk of flight or reoffending, provided that such limitations do not undermine the fundamental rights of the accused (1, 5).

The Role of Pretrial Security Measures in Ensuring a Fair Trial

Pretrial security measures play a critical role in guaranteeing a fair trial. The temporary liberty of defendants under such measures enables them to gather evidence for their defense and consult with legal counsel effectively. In this manner, pretrial measures contribute to effective defense and thereby strengthen procedural fairness. Moreover, unnecessary detention may delay judicial proceedings, whereas the proper application of pretrial measures facilitates a more efficient adjudicatory process (1).

The Importance of Pretrial Security Measures in Reducing Social Costs

Unwarranted pretrial detention, in addition to violating individual rights, imposes substantial costs on the state and society. These costs include the financial burden of prison maintenance, the allocation of human resources for prison administration, and the social and economic consequences of detention, such as loss of employment and disruption of family life. Pretrial security measures help reduce these costs and allow governments to allocate judicial resources more effectively (2).

Challenges Concerning the Application of Pretrial Security Measures

Despite their importance, pretrial security measures face significant challenges. One major challenge is the determination of an appropriate level of security. The amount and form of security must be accessible to economically disadvantaged defendants while simultaneously ensuring public safety. Economic disparities among defendants may generate inequality and injustice, underscoring the necessity of carefully designed legal standards (1). As one of the most important legal instruments in criminal proceedings, pretrial security measures perform a vital function in maintaining the balance between individual rights and public security. They not only protect defendants' rights but also mitigate the economic and social consequences of unnecessary detention.

Nevertheless, the design and implementation of pretrial security laws require continuous attention to local and international conditions in order to achieve a sustainable equilibrium between liberty and security.

Functions and Necessity of Pretrial Detention

Pretrial detention in Iran serves several key purposes, the most significant of which include:

- Ensuring the defendant's appearance before the courts and preventing flight or concealment, particularly in serious offenses (3).
- Preserving evidence and preventing its destruction, thereby allowing judicial authorities to conduct thorough investigations (3).
- Preventing collusion and improper influence over witnesses or co-defendants, especially in complex criminal cases where such interference could alter judicial outcomes (4).

However, the excessive use of pretrial detention in place of alternative measures may violate the principles of liberty and presumption of innocence and generate serious social and economic consequences. Empirical research indicates that the psychological pressure resulting from pretrial detention may contribute to recidivism and diminish social trust and civic participation (2, 3).

Pretrial Detention and the Bail System in England

In England, the prevailing legal philosophy is that an accused person should remain at liberty until guilt is proven, and pretrial detention is imposed only in exceptional circumstances.

The Bail Act 1976 and Custody Time Limits (CTL) restrict pretrial detention to defined time periods and require ongoing judicial review (1, 5).

The use of alternative measures—such as financial security, surety, electronic monitoring, movement restrictions, and reporting at specified intervals—generally takes priority. Pretrial detention is permissible only where there is a material risk of absconding, interference with the administration of justice, or a threat to public safety. Within the English system, pretrial detention is treated as a last-resort mechanism, and defendants benefit from fair trial safeguards, transparency of proceedings, and avenues for challenge (1, 5).

Accordingly, the comparative analysis indicates that:

- Iran: pretrial detention is a common instrument and is at times overused, with limited oversight and insufficient review (3).
- England: pretrial detention is exceptional, subject to strict time control, continuous review, and priority for alternative measures (1, 5).
- Iran is weaker in terms of operational oversight and case-file transparency, and many defendants remain detained even when alternative measures could be applied (3, 4). This comparison suggests that English patterns may serve as a practical model for legal reform and for reducing unnecessary detention in Iran.

Liberty-Oriented and Security-Oriented Approaches and a Philosophical Analysis of the Two

The concept of balancing individual liberty with public security constitutes a core challenge in the criminal policies of different countries. Two major approaches dominate this field: a liberty-oriented approach, which emphasizes the protection of individual rights and freedoms, and a security-oriented approach, which prioritizes the preservation of public order and collective security. These two perspectives have deep philosophical roots and are reflected in the

criminal laws of various jurisdictions, including Iran and England. This section examines the philosophical foundations of both approaches and provides a comparative analysis of Iranian and English criminal policies in this regard.

The Liberty-Oriented Approach in Criminal Policy

The liberty-oriented approach rests on the premise that individual freedom takes priority over state intervention and that penal restrictions should be minimal and grounded in the principles of necessity and proportionality. This view is closely associated with liberal political philosophy and is classically articulated through the thought of John Locke and John Stuart Mill (7, 8).

1. John Locke and natural rights: In *Two Treatises of Government* (1690), Locke argues that human beings inherently possess natural rights such as liberty and property, and that the state is formed primarily to secure these rights. On this account, criminal policy should not restrict individual freedoms unless their exercise causes serious harm to others (7).
2. John Stuart Mill and the harm principle: In *On Liberty* (1859), Mill formulates the harm principle, according to which the only legitimate justification for state interference with individual liberty is the prevention of harm to others. From this perspective, criminalization should not be based on moralistic or political criteria but must be justified by reference to social harm (8).
3. The principle of autonomy: Under a liberty-oriented approach, individuals must be treated as ends in themselves rather than as instruments for collective security. Accordingly, criminal policy should be structured around respect for personal autonomy, and interference with private liberty is acceptable only when truly necessary (7, 8).

The Security-Oriented Approach in Criminal Policy

By contrast, the security-oriented approach emphasizes that the state may legitimately restrict individual freedoms to preserve public order and prevent threats. This orientation is strongly associated with the Hobbesian argument that security is a precondition for the meaningful enjoyment of rights (6).

1. Thomas Hobbes and the Leviathan: In *Leviathan* (1651), Hobbes contends that in a state of nature life is characterized by disorder and insecurity, and that to secure safety citizens must cede part of their liberties to a sovereign authority. He presents security as a necessary foundation for the realization of other human interests and rights (6).

Iranian Criminal Policy Regarding Non-Custodial Pretrial Measures

Iranian criminal policy reflects an interaction between Islamic jurisprudential teachings and modern principles of criminal procedure. Within this framework, liberty is treated as the default position, and detention should be exceptional and justified by necessity. At the same time, Iran's contemporary criminal policy has been shaped by institutional and operational constraints, as well as by the security-oriented imperatives that influence decision-making in serious and complex cases (3, 4).

In Iran's legal experience—particularly prior to the enactment of the 2014 Code of Criminal Procedure—judicial and even legislative practice was often dominated by a security-centered and detention-oriented approach. In practice, pretrial detention tended not to operate as a last resort, but rather as a routine and sometimes presumptive

tool for controlling defendants. This pattern was partly attributable to the absence of effective oversight mechanisms, limited technical capacity for indirect supervision, and judicial concerns regarding flight or concealment (3, 4).

Legislative Developments and the 2014 Code of Criminal Procedure

The enactment of the Code of Criminal Procedure in 2014 represents a major turning point in the transformation of Iranian criminal policy. For the first time, this statute introduced a coherent set of pretrial security measures in Articles 217 to 250 and established a general rule requiring proportionality between the measure imposed, the seriousness of the offense, and the personal circumstances of the accused (Article 248). It further stipulates in Article 217 that the purpose of pretrial measures is to ensure access to the accused, prevent flight, preserve evidence, and protect victims' rights, rather than to punish the defendant or impose unlawful pressure. These provisions reflect a shift toward a more rights-sensitive criminal policy framework (3, 4).

Within this structure, pretrial measures are arranged from the least to the most severe: commitment to appear on personal undertaking, commitment with financial pledge, release on surety, release on bail, and pretrial detention. This hierarchical ordering implicitly recognizes the principle of gradation in coercive intensity and places pretrial detention as the last resort (4). A further innovation is the formal recognition of electronic monitoring as a non-custodial measure, allowing defendants to remain in their social environment under technological supervision. This development represents a practical embodiment of proportionality and minimal penal intervention and aligns Iranian policy with modern criminal justice standards (1).

Principles Governing Iranian Criminal Policy

The 2014 Code of Criminal Procedure and its subsequent amendments have consolidated several fundamental principles governing the imposition of non-custodial pretrial measures. The principle of proportionality requires that the selected measure correspond to the gravity of the offense, the severity of punishment, the available evidence, and the risk of flight (3). The principle of necessity mandates that pretrial detention be limited as much as possible and replaced whenever its justification ceases, a concept consistent with both modern criminal policy and Islamic jurisprudential standards (4). The principle of judicial supervision obliges prosecutors and investigative judges to conduct continuous oversight of imposed measures and guarantees the accused the right to challenge judicial decisions. Nevertheless, the gap between law and practice remains significant, as judicial authorities often prefer detention due to social pressures and limited supervisory resources, reflecting the persistence of a predominantly security-oriented mindset (3, 4).

Operational Challenges and Practical Implementation

One of the most serious obstacles to implementing non-custodial criminal policy in Iran is the lack of adequate institutional and cultural infrastructure. Electronic monitoring remains limited in scope and faces technical and financial constraints. Culturally, detention is often perceived by both the public and parts of the judiciary as evidence of seriousness in combating crime, while conditional liberty is sometimes misconceived as leniency, contrary to liberty-oriented criminal justice traditions (1). Excessive bail amounts further undermine the intended objectives of the law, as economically disadvantaged defendants remain detained despite the availability of non-custodial measures, thereby reproducing pretrial detention under a legal guise (3). The absence of reliable risk-assessment

mechanisms also contributes to discretionary and potentially unjust decisions, whereas in England scientific evaluation tools guide judicial determinations (1, 5).

English Criminal Policy on Non-Custodial Pretrial Measures

English criminal policy regarding pretrial security measures is widely regarded as one of the most advanced models within common law systems. Grounded in the presumption of innocence and individual liberty, pretrial detention is treated as exceptional, while conditional liberty constitutes the general rule (1). This orientation reflects the deep historical roots of English legal culture and its emphasis on due process and personal freedom.

Legal Structure and Governing Principles of the Bail Act 1976

The Bail Act 1976 establishes one of the most progressive regulatory frameworks for pretrial security by centering on the “right to conditional liberty.” Under this statute, every accused person is entitled to liberty before trial unless compelling reasons justify detention. These reasons are narrowly defined, including risks of absconding, reoffending, interference with justice, or threats to public safety. Even where such risks exist, judges are required first to consider non-custodial measures before authorizing detention (1, 5).

Forms of Non-Custodial Measures

Non-custodial pretrial measures in England include release on personal undertaking, release with financial security, behavioral restrictions such as travel limitations and non-contact conditions, and supervision through electronic monitoring or social service agencies. These mechanisms are selected on the basis of the defendant’s circumstances, the nature of the offense, and risk assessment, ensuring individualized and proportionate decision-making (5).

Role of Judicial and Police Institutions

In England, initial decisions on liberty or detention are typically made by the police but are subject to immediate judicial oversight. Defendants must be presented promptly before a magistrates’ court, where judges review detention and consider alternatives. Supporting institutions provide detailed information on defendants’ social, financial, and criminal backgrounds to inform judicial decisions, enhancing objectivity and fairness. The use of modern monitoring technologies has further strengthened the effectiveness of this system by reducing detention costs and preventing prison overcrowding (1, 5).

Human Rights Principles and the Emphasis on Liberty as the General Rule

As a member of the Council of Europe and a signatory to the European human rights system, England is bound by the principle that personal liberty constitutes a fundamental right and that any form of detention must be lawful, necessary, and proportionate. Within this framework, pretrial detention is justified only when no less restrictive alternative is capable of achieving the legitimate objectives of the criminal process. The European human rights jurisprudence has repeatedly reaffirmed the doctrine of “minimum intervention” in pretrial detention, and English courts have consistently adopted this approach, emphasizing that detention prior to conviction must remain a

measure of last resort (1). Accordingly, English judicial practice requires constant evaluation of whether conditional liberty can adequately secure the aims of justice.

Evaluation of the Effectiveness of English Criminal Policy

Empirical research indicates that following the implementation of the Bail Act 1976, the rate of pretrial detention in England has declined substantially. Available data demonstrate that a significant majority of defendants remain at liberty under conditional release pending trial, while the proportion of absconding or breach of bail conditions remains comparatively low. These outcomes reflect the effectiveness of English criminal policy in maintaining a balance between individual liberty and public security (1, 5).

Nevertheless, certain challenges persist. In recent years, cases involving serious violent crime have generated political and public pressure for stricter bail practices. Furthermore, scholars have identified patterns of socioeconomic disparity in bail-related decisions, as economically disadvantaged defendants encounter greater difficulty in satisfying financial conditions or accessing social support structures (1). Despite these criticisms, the English model remains one of the most balanced liberty-oriented criminal justice systems globally, supported by strong legal safeguards and institutional oversight mechanisms.

Comparative Analysis of Iranian and English Criminal Policy Regarding Non-Custodial Pretrial Measures

The comparative study of Iranian and English criminal policy reveals fundamental differences in legal philosophy, procedural structure, and the manner in which each system balances individual liberty with public security. Although both jurisdictions have, particularly in recent decades, adopted legislative frameworks that emphasize liberty-oriented principles, the depth and consistency of their institutionalization diverge markedly. Iran has gradually reduced reliance on pretrial detention through statutory reform, whereas England has long entrenched the principle of liberty prior to conviction as a defining feature of its criminal justice tradition (1, 4).

The principal distinction lies not in the text of the law but in institutional design, judicial culture, and the degree of social trust. While both systems formally recognize proportionality, necessity, and the exceptional nature of detention, England's extensive use of support institutions and monitoring technologies has transformed liberty into an operational norm. In Iran, by contrast, these principles frequently remain confined to the legal and theoretical sphere (1, 3).

Liberty as a Right versus Liberty as an Exception

In the English legal order, personal liberty has historically been treated as a foundational value. Over time, this principle evolved into the modern concept of a legally enforceable right to conditional liberty. By contrast, although Iranian jurisprudential traditions emphasize human dignity and the prohibition of unjustified detention, the prevailing practice of the criminal system has often prioritized public order and security. As a result, pretrial liberty in Iran continues to function more as an exception than as a general rule (3, 4).

Another important distinction concerns the source of legitimacy of liberty: in England, liberty is understood as an inherent human right enforceable even against the state; in Iran, liberty is more commonly perceived as a statutory entitlement subject to limitation in pursuit of public interest. Consequently, in England, the burden of proof in justifying detention rests heavily upon the prosecuting authority, whereas in Iran detention is at times treated as a presumptive procedural measure (1).

Legal Structure and the Scope of Judicial Discretion

In both countries, the issuance of pretrial security measures falls within judicial competence, yet the scope of discretion and oversight differs significantly. In England, judges are bound by narrowly defined statutory criteria, and any decision to deny bail must be explicitly reasoned and justified by reference to limited and reviewable grounds (1, 5).

In Iran, although the 2014 Code of Criminal Procedure incorporates the principles of proportionality and necessity, the practical determination of “necessity” is largely entrusted to individual judicial discretion. This results in divergent outcomes in similar cases and contributes to inconsistency in judicial practice (3, 4).

England further operates a multi-layered oversight structure, permitting defendants to seek review of detention at every procedural stage, while prosecutorial authorities are obliged to reassess the continued necessity of detention. In Iran, although the right to challenge pretrial measures is formally recognized, effective independent oversight remains limited (3).

Non-Custodial Security Instruments

Both Iranian and English legal systems provide a range of non-custodial instruments, including surety, bail, undertakings, and electronic monitoring. However, the scope and effectiveness of their application differ. In Iran, despite statutory recognition, electronic monitoring remains limited in practice. In England, by contrast, electronic monitoring and conditional liberty are extensively employed, even in cases involving defendants with prior criminal records (1, 5).

A further distinction concerns the role of social institutions. In England, specialized agencies actively assess defendants’ circumstances and supervise compliance with release conditions. The absence of comparable independent bodies in Iran significantly constrains the practical implementation of non-custodial measures (1, 3).

Cultural and Attitudinal Considerations

One of the most pronounced contrasts between the two systems lies in judicial culture and social attitudes toward detention. In England, conditional liberty reflects respect for the presumption of innocence and public trust in legal institutions. In Iran, by contrast, detention is frequently perceived as the primary guarantee of justice and social order. This cultural orientation reinforces security-centered practices and weakens the practical realization of liberty-oriented principles (1, 4).

Practical Consequences of the Two Policies

Empirical outcomes indicate that England has substantially reduced prison overcrowding and public expenditure through effective reliance on conditional liberty, while in Iran a significant proportion of the prison population consists of pretrial detainees lacking final convictions. This disparity illustrates the continuing gap between legal reform and operational reality (3, 4).

From a social perspective, conditional liberty in England supports family stability, employment continuity, and lower recidivism risk, whereas pretrial detention in Iran frequently produces adverse social effects that may facilitate reintegration into criminal behavior (2, 3).

Similarities and Differences at a Glance

Both systems recognize the principles of proportionality, necessity, and the exceptional nature of detention, and both provide non-custodial instruments such as bail, surety, undertakings, and electronic monitoring. Both theoretically affirm the presumption of innocence and respect for individual liberty.

However, in Iran, pretrial liberty remains heavily dependent on individual judicial discretion, whereas in England liberty constitutes a legal right unless convincingly rebutted. England benefits from independent risk assessment institutions and extensive use of modern supervisory technologies, while Iran lacks comparable infrastructure. Judicial culture in Iran remains predominantly security-oriented and conservative, whereas England's culture is liberty-oriented and rights-based.

Overall, the comparative analysis demonstrates that although Iran and England have formally embraced balanced criminal policy frameworks, England has succeeded in institutionalizing liberty-oriented principles through strong legal, institutional, and cultural foundations. Iran, despite notable legislative progress, continues to face cultural, structural, and managerial barriers to the effective implementation of non-custodial criminal policy (3, 4).

Conclusion

This study has undertaken a comparative analysis of the criminal policies of Iran and England in the field of pretrial security measures and has demonstrated that the differences between these two systems are rooted in their philosophical, legal, cultural, social, economic, and political foundations. These structural differences have, in turn, produced divergent levels of effectiveness, justice, and conformity with international standards.

Iranian criminal policy is grounded in a security-oriented approach influenced by Islamic jurisprudence, constitutional principles, and an authoritarian conception of state authority. Within this framework, instruments such as pretrial detention and bail are employed to control defendants and preserve public order. While this approach has proven effective in serious crimes, in minor offenses it has led to unnecessary detention, violations of the presumption of innocence, economic inequality, increased prison costs, and declining public trust. The absence of modern supervisory mechanisms and rehabilitative programs has further limited opportunities for reintegration and, in some cases, has contributed to the intensification of antisocial behavior.

By contrast, English criminal policy is based on a liberty-oriented approach shaped by liberal philosophy and reinforced through legal principles that prioritize the temporary freedom of the accused except in exceptional circumstances. The application of modern instruments such as electronic monitoring and restorative justice programs, including mediation, has reduced unnecessary detention, strengthened rehabilitation, increased public confidence, and enhanced international credibility. Nevertheless, the initial financial costs of technological systems and persistent economic disparities in access to bail remain notable challenges. Although both systems pursue common objectives—ensuring the defendant's appearance, preventing crime, and safeguarding public security—their differing theoretical foundations have led Iran to emphasize control and deterrence through traditional mechanisms, while England relies on flexibility and rehabilitation through modern tools.

The final conclusion is that Iran can, through selective adaptation of the English experience—particularly in the use of modern supervisory instruments and the expansion of restorative justice grounded in indigenous concepts such as reconciliation and mediation—enhance the efficiency of its judicial system, reduce institutional costs,

strengthen public trust, and achieve closer alignment with international standards, while preserving its own cultural and political values.

Acknowledgments

We would like to express our appreciation and gratitude to all those who helped us carrying out this study.

Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

Funding

This research was carried out independently with personal funding and without the financial support of any governmental or private institution or organization.

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