

Iranian Criminal Justice System from the Perspective of Restorative Justice Models

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Abstract

Different systems of criminal policy including governmental and social have followed various restorative justice models such as "abolitionist or pure-minded", "separatist or autonomous" and "reformist or maximalist", based on their prevailing political, doctrinal, and ideological values and discourses, and in this regard have focused on various restorative programs such as arbitration councils, mediation, family sessions, as well as healing and sentencing circles. Iranian criminal justice system, unlike other systems, has adopted a different approach to restorative justice, due to its special legal and political structure. This paper analyzes the structure of this system from the perspective of restorative justice models and processes. It explains the prevailing and common model of restorative justice in this system and its limitations and challenges.

Keywords: Restorative justice models, restorative processes, Iranian criminal justice system.

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INTRODUCTION

Restorative justice, as a new paradigm in criminal justice of modern societies, entered the realm of criminal justice systems since the early 1980s formally and gradually due to the failure of the programs and policies related to classical criminal justice in controlling the crime, as well as correcting and treating the criminals (Barnet, 1977:279-301), and emergence of the criminological teachings of social reaction, especially interactionism, labeling, abolitionist criminology, and teachings of supportive victimology.

This new model, which is considered as a revived form of traditional methods in resolving litigation and disputes arising from crime in various societies, especially New Zealand, Australia and North America (Braithwaite, 1998:323-344), entered the field of criminal policy to fight against colonialism (Newburn, 2007:743), return the stolen property of disputes and criminal claims to their original owners such as victims, offenders, and other interested parties in criminal proceedings (Christie, 1977:1-15), compensate the damages to crime victims, make the offender embarrassed and inclined for returning to society (Braithwaite, 1989:108-123), revive human and emotional relationships disrupted by crime, as well as

settle the lawsuits and disputes arising from the crime amicably and jointly.

Restorative justice has different models such as "abolitionist or pure-minded", "separatist or autonomous", "reformist or maximalist", and "minimalist" based on the type of interaction and the degree of connection with the criminal justice system (Newburn, 2007:748). In addition, the restorative justice has different processes in terms of how its programs are implemented, the most important of which are peace and reconciliation, mediation, family sessions, and sentencing circles (Johnstone, 2002:16).

In this paper the models and processes of the restorative justice are evaluated and compared to Iranian criminal justice system. Then, the dominant restorative model of Iranian criminal justice system and its challenges and limitations are examined.

1. Restorative justice models and Iranian criminal justice system

1.1. Abolitionist or pure-minded model (single model)

Abolitionist or pure-minded model is among the models of restorative justice. Hulsman and Mathiesen, as the proponents of this model, strongly

criticized the criminal justice system and presented delinquency as a result of interacting with the criminal justice system like criminologists of social reaction, especially interactive criminologists and labeling. They claimed that restorative processes such as arbitration councils, mediation, and restorative solutions of civil law should be used instead of criminal law in order to avoid the shortcomings and flaws of the criminal justice system (Mathiesen, 2016:1-362; Gassin, 1988:20; Pradell, 1991:135).

According to Hulsman and Mathiesen, the restorative justice, as a substitute for classical criminal justice including retributive and rehabilitative, suffices for resolving criminal disputes, preventing crime, and even correcting the offender, resulting in addressing the needs of the victim, the offender, and the local community in addition to meeting the demands and objectives of classical criminal justice (Samavati, 1997:55). The capacities and facilities offered by the restorative justice go beyond a justice parallel to traditional criminal one (Wright, 2002:1-8).

Advocates of the abolitionist model consider the restorative justice as process-oriented rather than outcome-oriented and focus on cooperation and interaction between shareholders and beneficiaries in disputes and criminal cases. They believe that the objectives of restorative justice can be achieved through the accurate and correct implementation of restorative processes, which is a participatory and voluntary process (Habibi, 2016: 53).

The abolitionist model is regarded as important because it considers the restorative processes in the management of restorative justice as the principle and axis, and regards restorative results as a subset of the correct and real execution of these processes. In other words, the results of litigation and disputes arising from the crime are considered as restorative when they pass the filter of the restorative process. The victims are not compensated in the true sense, the offenders fail to realize the tangible effects of their crimes, and the process of integrating and making the offenders embarrassed and inclined to return to society fails when there is no comprehensive negotiation, and real and dynamic participation of all crime shareholders in resolving conflicts and disputes arising from the crime (Agayari, 2012: 17).

However, the proponents of abolitionist model seeking to abolish the criminal justice system and replace it with restorative one do not answer the fundamental question of what should be done if the sanctions of civil and administrative law, or restorative processes fail. Obviously, using the criminal justice system is regarded as inevitable when the shareholders or beneficiaries in the crime do not want to participate in the restorative processes, the offenders fail to fulfill

their restorative obligations, or some serious crimes occur.

The abolitionist model fails to be compatible with the governmental systems of criminal policy and Iranian criminal justice system, which has a structure similar to the liberal state-society model of criminal policy.

The abolitionist model is considered as specific to the social systems of criminal policy such as autonomous and anarchist societies, in which civil society replaces the government, or the government disappears and the civil society takes responsibility for the crime and deviation (Marty, 1992:294-295). According to Bottoms, the abolitionist model shifts from government systems of criminal policy to social models, leading to private justice (Bottoms, 2010:15).

1.2. Reformist or maximalist model

In maximalist or reformist model, the main and obvious system is regarded as restorative, and criminal justice is utilized as a support in cases where the restorative approach fails due to unwillingness of the shareholders of the crime to participate in restorative programs, failure to reach restorative agreements, or non-fulfillment of obligations arising from the restorative processes (McCold & Wachtel, 2002:110-142). Based on the maximalist model, some measures should be considered in the process of litigation and disputes arising from crime in the framework of traditional and classic criminal justice so that the answers of the criminal justice system are closer to the restorative ones.

The reformist model considers the classic criminal justice system as a complement to the restorative justice, and does not believe in the conflict of two systems. Brunk indicated that at the theoretical and philosophical levels, retributive and restorative justice are not regarded as opposite pillars as supposed (Brunk, 2012: 31-56).

The reformist model is considered as "outcome-oriented", focusing on obtaining restorative agreement. The restorative programs and mechanisms such as punishment of public services and compensation to the victim can be used within the framework of criminal proceedings when restorative agreements and results cannot be reached through restorative processes.

Regarding the appropriate model of criminal justice, Zehr argued that society should have a system which can respond to those breaking the law in the best way. In addition, a process should be applied for addressing the needs and obligations of the society, which go beyond the direct shareholders of crime. According to Zehr, those qualities offered in a proper context by the legal system should not be missed

including the rule of law, fair and just trial, deep respect for human rights, and the orderly development and evolution of law. Further, Zehr claimed that it is better to observe the real world of justice as a chain, in which the legal system (traditional criminal justice system) is at one end and a restorative alternative is at the other end (Howard, 2003: 60).

The maximalist or reformist model is not compatible with Iranian criminal justice system since using restorative processes in litigation and disputes arising from crime is not regarded as the principle in this system unlike the reformist model. Rather, the principle is based on using formal criminal proceedings since crimes are usually public (Article 104 of the Islamic Penal Code of 2013 and Article 8 of the Code of Criminal Procedure of 2013 and Amendment of 2015) and the judiciary should prosecute, try, and punish criminals on behalf of society. In this system, the victim does not play a major role in the fate of public litigation resulting from the crime, and the government and the sovereignty decide on the issues.

1.3. Separatist or autonomous model (dual model)

Advocates of separatist or autonomous model indicate that there is a fundamental and philosophical conflict between restorative justice and classical and formal criminal one. They observe the two systems as contradictory, claiming that they cannot coexist peacefully and compatibly.

However, this opposition does not mean rejecting both systems or abandoning one in favor of the other because the proponents of this model do not believe in the abolition of traditional criminal justice system (Newburn, 2007: 748) and consider an independent and separate territory for each of these systems, despite accepting this inconsistency so that none of them can interfere and supervise in the territorial jurisdiction of the other.

The advocates of separatist or autonomous model including Wright (1991), Marshall and Merry (1990), and Davis (1992) believe that the programs of restorative justice such as mediation, group and family sessions, as well as compensation and sentencing boards should be implemented independently and outside the scope of traditional criminal justice. In other words, they believe in supplementary competence for restorative justice, and do not mind in replacing the restorative justice system with traditional criminal one (Dignan, 2012: 157-158).

The separatist or autonomous model limits the jurisdiction of restorative processes to the cases referred although it gives autonomous originality and identity to these processes. The risk of "double punishment" for offenders is regarded as another problem of this model. In addition, applying the separatist or autonomous model marginalizes the programs of the restorative

justice. Further, the proposals of this model for reforming traditional criminal justice system fail to succeed (Dignan, 2000: 48). It is necessary to maintain some interaction and cooperation between restorative justice and traditional criminal justice system so that the restorative justice cannot lose its importance and become a sideline.

The prerequisite for accepting separatist or autonomous model is that the criminal justice system deviates from the right of criminal sovereignty and necessarily leaves the handling of some criminal cases to restorative justice system without having the right to interfere and supervise the restorative processes.

In the case of failure of programs, the separatist or autonomous model offers no other way to resolve litigation and disputes arising from the crime like the abolitionist model, and fails to guarantee the success of restorative processes.

Finally, the separatist or autonomous model transforms the trustees and executives of criminal justice system into absolute, authoritarian, and repressive rulers within their territorial jurisdiction.

The separatist or autonomous model is not compatible with Iranian criminal justice system, since peace and reconciliation is often considered as an intra-system process, which is applied within the framework of criminal justice system by the judicial authorities. In addition, criminal mediation is accompanied by the judicial authority's supervision although it has an independent process.

1.4. Minimalist model

"Minimalist model" is regarded as the only restorative model, in which the Iranian criminal justice system can be assessed. In minimalist model, the principle is based on using formal and classic criminal justice, and restorative processes are used only as a complement, especially in cases where the crime occurs in relationships between people with a private aspect. The minimalist model is more "outcome-oriented" rather than "process-oriented" like the reformist model. Reaching a restorative agreement is considered as highly important, and the restorative processes are a way for achieving another objective. Thus, reaching peace, compromise, and agreement suffices. The minimalist model, as the dominant model in Iranian criminal justice system, has some limitations and challenges which are discussed in the next section.

2. Restorative processes and Iranian criminal justice system

2.1. Peace and reconciliation

"Peace and Reconciliation", as a program of restorative justice, is defined as the amicable settlement of litigation and criminal disputes between the offender and the victim. Unlike other programs of restorative

justice, peace and reconciliation do not always require the management and assistance of a mediator, and the parties to a criminal case may make peace and compromise on their own without others' intervention. In addition, peace and reconciliation aims to resolve the hostilities and tensions between the parties fairly. However, in other programs of restorative justice, various objectives such as making the offender embarrassed and inclined to return to society are considered in addition to resolving hostilities and tensions between the litigants.

Peace and reconciliation which is rooted in religious teachings plays a significant role in Iranian criminal justice system. The "Holy Quran" has emphasized peace and reconciliation in the framework of the concept of "reconciliation of two parties" in responding to disputes and criminal events, as well as hostile relationships in various verses such as verse 1 of Surah Anfal, and verses 8, 9, and 10 of Surah Al-Hujurat (Nadjafi, Tavajjohi, & Shadmanfar, 2007:193). The difference between a peace and reconciliation strategy and other programs of restorative justice, especially criminal mediation in Iranian criminal justice system, is that peace and reconciliation can be achieved through mediation or in other ways. In addition, peace and reconciliation can be enforced at any stage of the prosecution, trial, issuance, and execution of the sentence, while mediation is limited to the prosecution stage. Further, mediation is regarded as an independent process outside the criminal justice system, which is supervised by a judicial authority, while peace and reconciliation can be inside or outside a system. Furthermore, mediation is limited to 6, 7, and 8th degree punitive crimes such as petty offenses and minor misdemeanors, while peace and reconciliation can be applied to offenses punishable by retaliation and atonement such as offenses against the physical integrity of individuals, as well.

Peace and reconciliation strategy entered Iranian criminal law with the formation of "peace courts" according to the Law on the Principles of the Judiciary (July 17, 1911) and Articles 262 and 292 of the Law on the Principles of Criminal Trials (1912) (Nadjafi, 2016: 801-823). Based on these articles, the peace courts (in cases of petty offenses and minor misdemeanors) and the appellate courts were obliged to make a concerted effort in the stage of appellate proceedings in misdemeanor cases to reconcile the two parties, end the case with peace and compromise, and judge in case of failure.

During the 1960s, the Iranian legislator again emphasized the concept of peace and reconciliation in dealing with offenses and misdemeanors in villages and cities by enacting the "Law on House of Equity" (1965) and Arbitration Councils Act (1977). The peace and reconciliation strategy was considered by the legislator in the laws and regulations after the Islamic Revolution

(1978). In addition, the aforementioned strategy was emphasized in various laws and regulations such as Law on the Establishment of Public and Revolutionary Courts (1994), Law on the Procedure of General and Revolutionary Courts in Criminal Matters (1999), Criminal Procedure Code approved in 2013 and amended in 2015, Islamic Penal Code (2013), and Law on Dispute Resolution Councils (2015).

The peace and reconciliation strategy is applied within the scope of forgivable crimes with the nature of human rights, in which the prosecution, trial, and punishment are suspended after the private plaintiff's forgiveness or the private aspect of unforgivable crimes. In addition, the peace and reconciliation strategy is often executed within the framework of criminal justice organizations and with the direct management and intervention of judicial authorities. Further, the peace and reconciliation strategy pursued solely for resolving hostilities and tensions between the parties to a dispute is applied at all stages of criminal proceedings. Furthermore, prosecution, trial, and punishment are suspended in the above-mentioned strategy upon reaching an agreement between the offender and the victim. In addition, there is no clear mechanism for implementing peace and reconciliation strategy in Iranian criminal justice system, and according to the relevant laws and regulations, some of which were indicated, the judicial authorities should make the necessary efforts for peace and compromise. Finally, there is no sanction in Iranian criminal law and regulations for not performing this task.

2.2. Criminal mediation

Criminal mediation, as one of the most basic restorative mechanisms, was first established in in Kitchener, Ontario, Canada in 1974, and entered other countries such as the United States (Newburn, 2007: 752). Criminal mediation aims to meet the needs of victims and create a sense of responsibility in criminals. Criminal mediation can be used in all stages of criminal proceedings by government officials or non-profit organizations and institutions (United Nation Office on Drugs and Crime, 2006: 17-18).

Criminal mediation recognized in Iranian criminal justice (Articles 1, 82, 83, and 84 of Criminal Procedure Code approved in 2013 and Regulations on Mediation in Criminal Matters enacted in 2016) by inspiring religious teachings, traditional rituals, and under the influence of comparative criminology studies is regarded as a process, in which the victim and the accused and, if necessary, other persons influential in reaching a compromise such as family members, friends, or colleagues, and as the case may be, members of the local community and relevant official, public, or non-governmental organizations come together at the mediator's invitation. During this process, all of the above-mentioned persons discuss the causes, effects,

and consequences of the attributed crime and the ways of compensating the resulting damages to the victim and the accused under mediator's management in an appropriate atmosphere, and prepare and send a parliamentary form on the rights and duties of the parties for relevant judicial authority in case of compromise (Article 1 of Mediation Regulations).

Unlike the peace and reconciliation program, during criminal mediation, the mediator is a person other than the judiciary, and mediation has an informal structure. The mediator can be a "Dispute Resolution Council", a "Qualified Person", or an "Institution" which are established for mediating in accordance with the laws and regulations governing non-commercial organizations, or have the necessary qualifications for mediating within the framework of laws or statute.

Based on Articles 7 and 10 of mediation regulation, mediators are selected from local trustees or graduates of various disciplines with priority given to social work, educational sciences, psychology, sociology, law and jurisprudence, as well as the basics of law. Mediators should be at least 25 years old with reliability and no criminal record. In addition, they should have received the necessary training.

Mediators are trained by the Judiciary's Deputy for Human Resources in cooperation with scientific and academic groups, or by governmental or non-governmental educational institutions under the supervision of the Judiciary. During the training, mediation techniques and their required skills are taught in addition to a series of general concepts such as crime, delinquent, victim, civil liability, criminal liability, fair trial, fair treatment and access to justice, and traditional dispute resolution rituals. In addition, the general principles governing the implementation of the restorative justice programs are taught for the mediators with emphasis on Declaration of the basic principles on the use of restorative justice programs in criminal matters, adopted by the United Nations in 2002.

During the first stage of criminal mediation, the judicial authority such as prosecutor, investigator, or judge of the court refers the case to the mediator if the victim and accused agree. Then, the mediator, communicates with the accused and then the victim to know whether they participate in the mediation process. The mediator plans and announces the time and place of the session for implementing the program if the victim and accused agree to participate in the mediation session (Atashneh & Irani, 2016: 555-583). In the next step, the mediation session is held based on a mutual conversation between the victim and accused about the causes, effects, and consequences of the attributed crime, as well as the ways to compensate the resulting damage to the aforementioned persons. According to Articles 1 and 18 of the regulations, during this stage, the mediator can invite the family members, friends,

colleagues, neighbors, and other persons including members of the local community, whose attendance in mediation session is considered as effective in achieving compromise at his/her discretion or at the request of either party to attend the session if necessary. The mediator should prepare an agreement with all the details, obligations, and rights of the parties in the minutes, and send it to the relevant judicial authority for review and further actions after signing it if the session leads to an agreement and a restorative outcome. Otherwise, the mediator should notify the parties to dispute of the referral of the case to the formal criminal process. Judicial decision based on the minutes is regarded as the last step of the criminal mediation process, in which the judicial authority referring the case issues a suspension order for the prosecution of the accused for 6 months to 2 years in unforgivable crimes after his/her consent according to Articles 82 and 83 of the Criminal Procedure Code. The existential philosophy of this suspension order is giving the defendant an appropriate deadline to fulfill his/her restorative obligations. The pursuit of the accused is permanently annulled if he/she fulfills his/her restorative obligations during the period of suspension. Otherwise, the suspension order is annulled and the criminal prosecution continues.

2.3. Family group conferencing

Family group conferencing were formally established in New Zealand based on the Law on Children and Adolescents and their Families (1989). The New Zealand legislator inspired from the ethnic and tribal traditions of New Zealand, especially the Maori tribe for resolving disputes and litigations arising from crimes of children and adolescents. Family session method was later transferred to other countries including the United Kingdom, Australia, and the United States. During family sessions, the victim and the offender, along with their family and any person or other member of the community affected by the crime are brought together through the assistance and management of a person called facilitator in a conference, and discuss how to resolve disputes and issues arising from the crimes of children and adolescents (United Nation Office on Drugs and Crime, 2006: 21; Newburn, 2007:753).

Family session program is not recognized in Iranian criminal justice system. Articles 1, 18, and 27 of Regulations on Mediation in Criminal Matters indicated the presence of other persons involved in the settlement such as family members, friends, or colleagues, members of the local community, relevant official, public, or non-governmental organizations, schools, or other relevant institutions in the mediation process. However, this never means accepting family session program or sentencing circles in Iranian criminal justice system because inviting the aforementioned people to participate in the family session by the mediator is completely voluntary and there is no legal obligation in

this regard. In addition, this invitation is limited to the necessary cases recognized by the mediator.

Some ethnic and local traditions and rituals are considered as similar to the family group conferencing such as "Fasl ritual" among the nomads of Khuzestan, "Khon-Bas(blood enough) ritual" among the Bakhtiari people in southern Iran, "Patar ritual (asylum)" among the Baluch tribes in southeastern Iran, "Oath ritual" among the Bakhtiari people, despite the official non-acceptance of family sessions in Iranian criminal justice system (Heshmati & Ghodozian, 2012: 113-148) since a large number of lawsuits and disputes within or outside the ethnicity resulting from crimes such as murder, assault, insult, theft, and even rape (about 95%) (Atashneh & Irani, 2016: 555) are resolved within the framework of these rituals with the participation of criminals and victims, along with their family members, as well as the direct intervention and guidance of tribal elders as mediators and facilitators.

The above-mentioned quasi-judicial rituals and cultures performed with special ceremonies aim to moderate revenge and interpersonal, inter-family, and inter-tribal violence, and restore calm to the local community by providing compensation for the victims, making peace and reconciliation between the victim, avengers of blood, and his family or tribe with the perpetrator, and his family and tribe (Nadjafi, 2016: 801-823), and creating a sense of responsibility and embarrassment in the offender.

2.4. Healing and sentencing circles

Circles are rooted in traditional Canadian indigenous methods of resolving disputes. The circles seek to create the necessary conditions for maximum participation of community members in the process of justice and healing, restore the people affected by crime such as victims and their families, criminals and their families, or other people, create appropriate positions and opportunities to present the views and concerns of offenders and victims, and other members of the local community about the causes and factors of the crime and its material, psychological, and emotional effects, and use the proposed solutions to resolve the disputes caused by the crime.

Healing and sentencing circles are regarded as the main forms of circles. Healing circles aim to resolve specific problems such as sexual crimes and domestic violence with the participation of indigenous and local communities, and compensate the damage and the cause of the problem and its social and cultural context. In addition, the healing circles seek to create a sense of responsibility in offenders, and encourage them to support victims and commit communities to prevent similar events. However, sentencing circles are considered as a part of the formal criminal justice system, which replaces other methods of sentencing. Circles may lead to convictions and criminal records.

Sentencing circles have no legal basis and rely on the discretion of judicial authorities. These circles consider social expediency and discernment to reach an agreement on punishment schemes for the existing problem although they operate with the participation of the criminal justice system. Sentencing circles focus on the offender because he/she is only one party in determining the punishment although the judge imposes the agreed punishment (Newburn, 2007:756).

The healing and sentencing circles are not recognized in Iranian criminal justice system in the true sense of the word. Perhaps the only external aspect of sentencing circles can be observed in dealing with political and media crimes, which are proceeded in criminal courts in the presence of judicial officials and members of the jury, and with the participation of civil society and criminal justice authorities.

3. Challenges and limitations of restorative justice in Iran

Restorative justice in Iran faces a large number of substantive and procedural challenges and limitations, the most important of which are as follows.

3.1. Substantive challenges and limitations

Only "peace and reconciliation" and "criminal mediation" have been accepted among various restorative justice programs, and as indicated, "family group conferencing" and "healing and sentencing circles" have no place in Iranian criminal justice system.

Another substantive challenge and limitation is related to the scope of applying restorative justice programs. In Iranian criminal justice system, restorative justice programs are limited to petty offenses, minor misdemeanors, forgivable offenses, or the private aspect of unforgivable offenses. According to Article 82 of Criminal Procedure Code (2013) and paragraph "C" of Article 1 of the Criminal Mediation Regulations (2016), the criminal mediation applies only in the realm of "discretionary offenses" of grades 6, 7, and 8 (minor misdemeanors), the punishment of which can be suspended, and other offenses such as those subject to "prescribed punishment"(Hodud), "retaliation"(Ghesas), and "blood money"(Diyat) which are against the physical integrity of persons including intentional and unintentional are outside its scope.

Crimes subject to retaliation and blood money can be resolved in the form of "peace and reconciliation" due to their private nature because based on Article 347 of Islamic Penal Code (2013), the holder of the right to retaliation (avenger of blood or victim) can forgive the offender freely or with compromise on property at any stage of the prosecution, trial, or execution of the sentence. In addition, according to Article 450 of this law, "in quasi-intentional killing and wounding, and intentional crimes, in which retaliation

is not permissible or possible, the blood money is paid at the request of the victim or avenger of blood, unless otherwise compromised".

In Iranian criminal justice system, crimes are generally divided into "crimes of private right" and "crimes of public right". In crimes of private right, which are committed in interpersonal relationships, private aspect prevails over public one. In these crimes, the victim or his/her legal representative plays the main role in the litigation process, and the focus is on compensating for the damage. Restorative processes are mostly used in the realm of these crimes, a clear example of which is the crime subject to retaliation and blood money. According to Article 16 of the Islamic Penal Code, retaliation (avenger) is considered as the main punishment for intentional crimes against the soul, limbs, and interests. Based on Article 17 of the Islamic Penal Code, blood money is regarded as the property which is determined in the holy Sharia for committing unintentional crimes against the soul, body parts and their interests, or intentional crimes, in which retaliation is not possible, and is prescribed by law. In crimes of public right which have a divine status, the public status prevails over the private one. As indicated in paragraph "a" of Article 8 of the Code of Criminal Procedure, crimes of public right are considered as a violation of divine limits and regulations or a violation of the rights of society and public order. In crimes of public right, the judicial authority who is considered as a representative of the society, prosecutes, trials, and punishes the offender. The role of the victim is ignored after the declaration of the crime since the case no longer belongs to him/her and is regarded as the right of society.

Crimes subject to prescribed and discretionary punishments are regarded as the crimes of public right. "Prescribed punishments" are those whose causes, type, amount, and quality of execution are indicated in the Sharia (Quran and Sunnah) (Article 16), and include fornication, sodomy, intercrural sex (*Tafkhiz*), lesbianism, panderism, false accusation of unlawful intercourse (*Qazf*), blasphemy (*Sab al-Nabi*), wine-bidding, theft, belligerence (*Moharebeh*), armed rebellion (*Baghy*), and corruption on earth (*Efsad fil Arz*) (Articles 221-288). According to Article 219 of Islamic Penal Code, "the court cannot change the quality, type, and amount of prescribed punishments, or reduce, convert, or abolish their penalty because they can be abolished, reduced, or converted only through repentance and forgiveness to the quality stipulated in the aforementioned law". Based on Article 18 of Islamic Penal Code, "discretionary punishments" are determined and applied by the state where the Sharia orders (other than prescribed punishments, retaliation, and blood money) or government regulations are violated.

Unlike prescribed punishments, discretionary punishments can be reduced, suspended, deferred, converted, or abolished. According to Article 19 of Islamic Penal Code, discretionary punishments are classified into grade 1 including imprisonment for more than 25 years or a fine of more than one billion rials, grade 2 including imprisonment of more than 15 to 25 years or a fine of more than five hundred and fifty million to one billion rials, grade 3 including imprisonment for more than 10 to 15 years or a fine of three hundred and sixty million, grade 4 including imprisonment for more than 5 to 10 years or a fine of more than one hundred and eighty million to three hundred and sixty million rials or permanent dismissal from government and public services, grade 5 including imprisonment for more than 2 to 5 years or a fine of more than eighty million to one hundred and eighty million rials, etc., grade 6 including imprisonment for more than 6 months to 2 years or a fine of more than twenty million to eighty million rials, etc., grade 7 including imprisonment for 91 days to 6 months or a fine of more than ten million to twenty million rials, and grade 8 including imprisonment for up to 3 months or a fine of ten million rials. There are various examples for these crimes, the most important of which are crimes against public safety and security, and crimes against property and ownership.

Therefore, prescribed and discretionary crimes, especially crimes against public security and comfort are considered as the most important challenge of restorative justice in Iranian criminal justice system, the main root of which lies in the traditional and formal readings of religious teachings, along with the security-oriented and hostile approach to the offender in crimes against public security and well-being.

The restorative processes can be used in the above-mentioned category of crimes according to a new reading of religious teachings and as Howard Zehr says (1999: 1-271) "changing lenses", which is based on a series of concepts and fundamental principles of Islamic law and other monotheistic religions, along with the findings and studies of contemporary critical criminology, especially peace-making and postmodern criminology.

One of the general and fundamental principles of the Sharia is that, "punishment is regarded as inappropriate and evil per se". God Almighty interprets punishment as evil and indicates in verse 40 of Surah Shura that "*the recompense for an evil act is an evil equal thereto [in degree]*". In addition, he expresses in verse 34 of Surah Fussilat that "*Nor can goodness and evil be equal. Repel [Evil] with what is better*". "Human dignity" is another principle, which has been emphasized in various verses of the Qur'an including verse 15 of Surah Isra with the phrase "*We have honored the sons of Adam*". The inherent dignity of human being has some supplies and requirements, the

most important of which is considered as the denial of inhuman and degrading punishments. "customary nature of sharia punishments such as prescribed punishments, retaliation, and blood money" is regarded as another principle. Based on the history of criminal law, most prescribed punishments and even retaliation and blood money are considered as common among different ethnic groups and nations, and have been approved by Islam with modifications due to their appropriateness for temporal and spatial requirements.

"The prohibition of making hate in religion" is regarded as another principle, which indicates that implementing the social affairs including prescribed punishments is forbidden and prohibited if it leads to corruption such as hatred of religion (Nobahar, 2016: 39-70). "Revival of the human being" is considered as another fundamental principle, which is based on various verses of the Qur'an including verse 32 of Surah Ma'idah and the teachings of other monotheistic religions. God Almighty indicates in this verse that *"Whoever kills a person unfairly or for reasons other than corruption in the land, he kills all people and whoever revives him/her, he revives all the people"*. According to this verse, which is indicated in verse 20 of the Torah, as well, killing a human being unjustly or for reasons other than corruption on the earth means killing all human beings and reviving a human being including a delinquent and misguided one means reviving all of the people. This principle explicitly emphasizes the position and importance of approach based on reforming, reviving, and making the offender embarrassed and inclined to return to society.

Accordingly, the prescribed punishments in religion are considered as a way for achieving another objective. Thus, it is possible to replace these punishments with other ones and apply restorative programs in this area (Assadi, 2016:58-76).

Based on the findings and studies of contemporary critical criminology, especially peace-making and postmodern criminology, a large number of crimes stem from the unequal structure and distribution of power and wealth in society (DeKeseredy, 2010: 50). According to Durkheim (Fattah, 1997:235), the offender's role in society is not always negative and he/she plays a positive role in some crimes such as political or growth-based crimes and in some communities such as mechanical societies. Dealing with these crimes and criminals means preventing progress and civilization in society. Therefore, the restorative approaches can be used by changing lenses and approaches to crimes against sovereignty and public safety.

3.2. Procedural challenges and limitations of restorative justice

Restorative justice has some limitations in form, as well, one of which is "refraining from

compulsory accepting the referral of the case to the criminal mediation process". In Iranian criminal justice system, referring the case to the mediation process in accordance with Article 82 of Code of Criminal Procedure and Regulations on Mediation in Criminal Matters is among the authorities of the judicial authorities. The judicial authority has no legal obligation to refer the case to the mediation process, even if the parties agree and accept the charge from the offender. "Refraining from accepting the referral of the case to the criminal mediation process at all stages of the proceedings" is regarded as another limitation of criminal mediation in Iranian criminal justice system. Based on the Code of Criminal Procedure and Regulations on Mediation in Criminal Matters, the possibility of using mediation program is limited to the prosecution and proceeding stages, and not foreseen in the stages of crime detection and execution of a sentence. However, the social welfare departments based in the police stations mediate and hold police-type family sessions in various cases, especially crimes committed by children and adolescents. "Lack of anticipation of a clear mechanism for implementing the peace and reconciliation program" and "failure to provide legal sanctions for violation of implementing this program by judicial authorities" are considered as other limitations of restorative justice in Iranian criminal justice system.

CONCLUSION

Due to the existence of security-based approach, political authoritarianism, especially in the field of crimes against public safety and security, and traditionalism in interpreting religious teachings and criminal rulings, especially in the field of prescribed crimes, implementing restorative justice programs in Iranian criminal justice system has been faced with a large number of limitations and challenges, resulting in minimal use of restorative processes in the form of "minimalist model". A new reading of crime and punishment based on "dynamic ijthad" is regarded as the most important way to overcome the challenges and restrictions. This new reading is based on intrinsic inappropriateness of punishment, repulsion of evil with good, human dignity, revival of the human being, proscription of making hate in religion. This kind of reading can provide the basis for maximum use of restorative processes in the form of "maximalist or reformist model". In addition, changing the lenses and approaches based on the findings of contemporary critical criminology, especially peace-making and postmodern criminology, which define crime and delinquency as a result of unequal distribution of power and wealth in society, and emphasize the reform of political and economic structures and soft criminology, can help overcome the challenges. In fact, punishments are not subject to the Sharia, and reviving, guiding, and helping the criminals return to society plays a significant role, which is the reason why the punishments, especially prescribed ones are abolished

with perpetrator's repentance. Thus, it is necessary to provide the basis for repenting, making the offender embarrassed and inclined to return to society, and compensating for the damage to the victim and society by developing and using the restorative justice programs.

REFERENCES

- Agayari, M. (2012). *The theoretical foundations of restorative justice*, M.A. Thesis, university of Tabriz (Iran).
- Assadi, M. R. (2016). Restorative justice as a social justice in Islam and Christianity, in: *Ebcyclopedia of Restorative Justice: Collection of articles, International conference on: Restorative Justice & Crime prevention*, Tehran, May 2016, Tehran: Mizan publication.
- Atashneh. M., & Irani. A. (2016). Fasl and its preventive and restorative function of recidivism: A case study of ten major Arab tribes in Ahwaz, in: *Ebcyclopedia of Restorative Justice: Collection of articles, International conference on: Restorative Justice & Crime prevention*, Tehran. May 2016, Tehran: Mizan publication.
- Barnett, R. (1977). Restitution: A new paradigm of criminal justice, in: *Restorative Justice: Critical Concepts in Criminology* (2010), Edited by Carolyn Hoyle, vol.1, London and New York: Routledge publication.
- Bottoms, A. (2014). Some sociological reflections on restorative justice, in: *Restorative justice and Criminal justice: Competing or reconcilable paradigms?* London: Hart publishing, pp. 79-114.
- Braithwaite, J. (1998). Restorative Justice. In Tonry, M. (ed), *The handbook of crime and punishment*, Oxford: Oxford university press.
- Braithwaite, J. (1989). *Crime, Shame and Reintegration*.Cambridge: Cambridge University Press.
- Brunk, C. (2012). Restorative justice and the philosophical theories of criminal punishment, in: *The spiritual roots of restorative justice*, Michel, Hadly. Editor, Albany, Ny. State university of Newyork, pp. 31-36.
- Christie, N. (1977). Conflict as property, *British journal of criminology*, 17(1), 1-15.
- Dekeseredy S. W. (2010). *Contemporary critical criminology*, United Kingdom: Routledge publication.
- Dignan, J. (2012). Restorative justice and the law: The case for an integrated systemic approach, in: *Restorative justice and the law*, London: Willian publication, pp.150-168.
- Dignan, J., & Lowey, K. (2000). Restorative justice options for Nothern Ireland. Repoet commissioned for thr review of the criminal justice system in: *Nothern Ireland Reaserch Repoet, No.10. Belfast: Criminal justice review commission, Nothern Ireland Office.*
- Johnstone, G. (2002). *Restorative Justice: Ideas, Values, Debates*, USA and Canada: willian publishing,
- Fattah. A. E. (1997). *Criminology: past, present and future*, Great Britain: Macmillan press.LTD.
- Gassin, R. (1988). *Criminologie Applique*, Paris: Dalloz, tras. By. Keynia, S. M. Tehran: Allameh Tabataie publication.
- Habili, E. (2016). The modern paradigm of criminal justice: Restorative justice, *Global journal of politics and law research*, 4(1), 51-63.
- Heshmati, A. D., Gholdozian, I. (2012). Restorative Justice: from International Discourse to its practices in Iranian and Canadianian law, *Police International studies Journal*, 16, 113-148.
- MaCold, P., & Wachtel, T. (2002). Restorative justice theory validation, in *restorative justice: Theoretical foundations*, edited by E.weite Kamp and H. Kerner. Devon and portlad: Willian publishing, pp.110-142.
- Mathiesen, T. (2016). *The politics of abolition revisited*, United Kingdom: Routledge publication.
- Marty, M. D. (1992). *Less Grand systems politique criminelle*, France: Themis. Tras. By. Dr. Ali Hossain, Nadjafi. Abrandabadi (2013), Tehran: Mizan publication.
- Nadjafi. A. A. H., Tavajjohi. A. A., & Shadmanfar, A. (2007). Reconciliation Between the parties and Restorative justice theory, *Modarress social sciences journal, No.58. pp. 194-222.*
- Nadjafi. A. A. H. (2016). Social and legal contexts of restorative justice in Iran, in: *Ebcyclopedia of Restorative Justice: Collection of articles, International conference on: Restorative Justice & Crime prevention, Tehran. May 2016*, Tehran: Mizan publication.
- Newburn, T. (2007). *Criminology*, U.S.A: Willian publication.
- Rahim, N. (2016). Jurisprudential measuring of passing from bodily punishments, *Journal of new searching in jurisprudence*, 2, 39-70.
- Pradel, J. (1991). *Histoire des doctrines penales*, France: presses Universitaires de France, tras. By. Abrandabadi, A. H. (2016), Tehran: Samt publication.
- Samavati, P. (2007). *Restorative justice: Gradual adjustment of retributive justice or exchanging it?* Ied, Tehran: Negahe Bineh publication.
- United Nation Office on Drugs and Crime. (2006). *Hand Book of Restorative Justice Programmes*, New York.
- Wright, M. (2002). The paradigm of Restorative justice, *VOMA connections*, Summer, p. 1-8.
- Zehr. H. (1999). *Chnging Lenses: A new focus for crime and justice*, Herald Press.
- Zehr, H. (2003). *The little book of Restorative justice*, U.S.A: Good books Publication