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**TÍTULO:** Introducción a los desafíos y estrategias de justicia restaurativa en el sistema de enjuiciamiento penal de Irán.

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**RESUMEN:** El propósito de este artículo es revisar los desafíos y las soluciones de justicia restaurativa en tres áreas: sistema de justicia infantil y juvenil, capital social y medio ambiente en el sistema legal de Irán. A partir de la definición y la valoración de los propósitos de la justicia restaurativa se analizan los impactos de la misma en el progreso del sistema de justicia.

**PALABRAS CLAVES:** justicia restaurativa, víctima, delincuente.

**TITLE:** Introduction to challenges and strategies restorative justice in Iran's criminal prosecution system.

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**ABSTRACT:** The purpose of this article is to review the challenges and solutions of restorative justice in three areas: the juvenile and juvenile justice system, social capital and the environment in the legal system of Iran. From the definition and evaluation of the purposes of restorative justice, the impacts of this on the progress of the justice system are analyzed.

**KEY WORDS:** restorative justice, victim, delinquent.

## **INTRODUCTION.**

Any hurting in terms of conscience of society will offend individuals, so the restorative justice which is a modern movement in the field of criminology will be defined. The organization of justice which is allowed to participate in the process, required to repair the damage as well. Therefore, restorative justice programs, victim, offender and others whom are in some way affected by the crime, will have direct involvement in crime. The mentioned people are at the center of the process of criminal justice. Government and lawyers also become system facilitators whose purpose is responsiveness, delinquent, reconstruction of the damage to the victim as well as remarkable help in victim, delinquent and community. In fact, to achieve the goal of relaxation, the interference by all parties is vital.

### **Definition of restorative justice and its interpretation.**

In what follows, the restorative justice will be defined. Restorative Justice is a process to engage those who share a particular crime. It is to take action as far as possible to work collectively to determine and pay attention to injuries, losses and commitments, to heal, and to improve and correct the affairs as much as possible.

Tony Marshall, an English criminologist defined restorative justice in 1995 by which all those who share a particular crime are collectively grouped together about the consequences of crime and the issues posed decide on it and find a solution. According to this definition, restorative justice is an invitation to full participation and consensus. Consensus in the sense that the victim and the local

community involved in the administration of justice and their efforts to restore unity and solidarity to the community. Victims, offenders and community gather meetings between victims and offenders, and members of the affected community are a remarkable way of illustrating the link between crime and justice. The triple methods are considered as fundamental basic criterion for restorative justice. Each of them can be limited to any party volunteering.

Mediation: this method of victimization provides the opportunity for the offender to meet in a healthy environment, and with the help of a trained mediator, discuss the crime.

The mediation method includes the following objectives:

- A. Victim allows a criminal offender to be volunteer.
- B. The offender is encouraged to take responsibility for the crime and the damage.
- C. Provides an opportunity for victim and delinquent to plan for compensation.

There are more than 300 mediation programs in North America and around 500 programs in Europe.

Research has shown that such programs create the highest degree of satisfaction between the victim and the offender.

Volunteering these programs causes less fear in the victim and delinquent tendency to complete compensation damages, also these criminals, less than those who have been prosecuted for ordinary crimes, committing new crimes. In Community or Family Group Meeting, the victim, the delinquent, the family and friends come together to decide on the consequences of the crime. The objectives of the gatherings are:

- A. Provide an opportunity for the victim to intervene directly in the process of dealing with crime.
- B. Increase the perpetrator's awareness of the impact of his criminal behavior and the sense of responsibility towards it.
- C. Commitment to a victim support system in order to correct behavior.

D. Allowing the victim and delinquent to have community support.

The method of gathering is derived from the traditional relations of the Maori tribe in New Zealand, which was formed outside official social services and previously used by Australian police, and is now common in North America, Europe and South Africa. Compromise the issue verdicts: this method is to enhance the agreement and general satisfaction among members of the community, the victim criminals supporters of the parties, Judges, Prosecutor A group of lawyers and police are designed and based on the issuance of a proper ruling, which addresses all the concerns and demands of the parties concerned.

Offices pursue the following goals:

A. Heal those who have been affected in some way.

B. Creating the possibility of reforming the offender.

C. Sharing the victim Delinquent Families and community in finding a beneficial solution

D. Finding and identifying the underlying causes of criminal behavior; create a collective feeling around the values of the community.

The method of forming departments of Native American traditions are taken and used in North America.

### **Restoration damage caused offense.**

Each of the above processes with an agreement on how to compensate damage from the delinquent ends. Two execution warranties Traditional Criminal at contrast Restorative Used by mass: Compensation for losses and general services. Compensation for damages is a sum financial loss resulting from the crime for which the offender pays the victim. This act in a revitalizing perspective is seen as a way to hold the criminals accountable for their actions, and also as a way to repair injuries to the victim.

Compensation for losses can be in each one ways of Triple above Mediation gathering department. In other words, both legal and customary methods can be used. Compensation for losses can be implemented in any of the three methods above, mediation, gathering departments adopted or is carried by a vote of judge; in other words, both legal and customary methods can be used.

Studies have shown that this method increases the satisfaction of the victim from the justice system. According to some studies, the use of this method leads to a reduction in recurrence of the crime. Other studies also show that's when compensation in the mediation process is determined, the probability of full payment is greater than the time the decision is merely the result of a court order. Utility Services is an activity by delinquent it is in the interests of the community.

A perspective, Restorative is a method to compensate for damage which by mediation occurrence, emerged of crime and tolerated and experienced by the community, and can be replaced as much as possible by criminal measures or methods of Rehabilitation and Correction of offender. What is the application of this method? Restorative response distinguishes the attention and importance, it is that damage to the community is caused by a criminal act and also an attempt to ensure that damage with general services; for example, people who are sexually abusive, they are arrested in a neighborhood, It is possible to delete the entries and the walls should be restored first. Public service programs in Africa are based on customary methods to facilitate the process of socialization and delinquent rehabilitation.

### **Goals and aspirations for restorative justice.**

As briefly mentioned, Restorative justice several major goals are followed, which include:

- A. Victims' rehabilitation.
- B. Community rehabilitation.
- C: Reciprocity Delinquent.

D: Establishing a Support Working Group.

**The pillars of restorative justice.**

A. Restorative justice focuses on losses.

B. Committing a crime or causing injury.

C: Restorative justice promotes participation and intervention.

Restorative justice in relation to criminal justice differs from three directions: Restorative justice seeks to repair human and social damage, and it is based on people, but criminal justice is based on sovereignty and state, and it also has an unofficial, respectful and trusting atmosphere. While the criminal justice environment based on skill in the application of dry law techniques in police, judicial and security environment is associated with the distrust of human beings.

In the realm of criminal law, restorative justice is based on the three pillars of the "victim of labor offender", "compensation", "non-punishment, especially imprisonment," and "settlement of the parties to the dispute". While criminal justice is based on the three pillars of "combating crime, society and the victim". Also, the legal warfare of the parties to the criminal justice system, which consists of police, judiciary, lawyers and offenders, and "punishment, especially imprisonment".

**Restorative justice in the Children and juvenile justice system in Iran's legal system.**

Pay attention to the features of adolescence and the start of the scientific discussion around it is about 150 years old. The first achievement of such an approach, the establishment of juvenile courts criminal in the state of Illinois, the United States in 1899 arranged a special investigation into their crimes.

Restorative justice is one of the concepts of justice which is to repair the damage caused from criminal behavior through cooperative processes that include all stakeholders (victims, perpetrators, and youth) makes an effort, and seeks to compensate for losses resulting from crime, and restoration

relationships are disrupted. Also, it is a movement of social justice aimed at dealing with the consequences of crime through the repair and normalization of key stakeholder relations, including victims, perpetrators, and communities; that's why, the justice approach is restored, which has been considered in some countries of the world since the early 1970s. The need to adopt balanced measures to meet the needs the victim attention to responsibility, criminals and the participation of local community in the process of addressing and responding to works, the emphasizes results of committing crimes.

The popularity of this approach has led hundreds of countries around the world to reflect on restorative practices in their laws. One of the reasons for the popularity of restorative justice is that the enforcement of criminal law has already exacerbated social tensions and has raised widespread concerns. Therefore, many believe that the implementation of criminal law related to juvenile delinquency can have a negative effect on the future of children, while there are other ways to resolve such childlike crimes, one of which is restorative justice.

In this way, the criminal justice of children with regard to the subject matter, namely, high-risk and criminal behavior of children and adolescents, as well as vulnerable and often damaged positions, there are different themes and policies. It has also experienced different types of responding to crime and delinquency. As a result, some procedures or restoration programs, including family group meetings, are suitable programs for dealing with child offenders; as well as the involvement of members of the victimized and delinquent family, representatives of public interest entities, representatives of educational, training and educational services representatives will participate.

In the present era, the most common paradigms of justice, justice punish and restorative justice, are the contrast between these two paradigms, the most serious challenge is the criminal justice systems in the world.

The United Nations, which is an effective and inspiring institution for international criminal law, in 2002, the "Basic Principles on the Use of Recovery Programs in Criminal Matters" were approved. The document emphasized the need to use restoration programs in criminal matters, especially for delinquent children. Today, the recovery pattern in some countries, including Germany, France, United Kingdom, Canada and South Africa, is part of the system for dealing with childcrime, and has been replaced by the traditional system of childcrime in New Zealand using the family grouping program. This approach is also used in some Australian states, but it should be noted that, despite the perception that the mainstream of the criminal justice system has consistently failed to meet the needs of the perpetrators, victims and their communities. However, until recently, little attention has been paid to how punishment and sense of justice are felt in children. Despite the adoption of the Convention on the Rights of the Child by the Islamic Republic of Iran in 1993 and efforts to establish a remedy for children and youth, the research and practical measures in Iran are still insignificant, and in this area, extensive research is being conducted in the form of treatises and plans research, a deeper vacuum is observed.

The low level of internal research in this field makes it necessary for researchers to make more research efforts in relation to the research problem. Thus, with regard to the adoption of the Convention Rights of the child by the Islamic Republic of Iran in 1993, which considers the police force as part of the global movement to improve as much as possible the treatment of children in contact with the law, and legislative support measures particularly in restorative justice, it can be put into practice in order to ensure their proper position in the proceedings.

This approach, on the one hand, emphasizes the need to take care of the victim and support him to recover and overcome the effects of crime. And again, he accepts the necessity of a criminal offense by supporting him to take responsibility for the crime and committing himself to the victim and the community. Today, the recovery model in some countries, including Germany, France, United

Kingdom, Canada and South Africa, is part of the system for dealing with child offenders and replaces the traditional system of childcrime in a country like New Zealand using the family group meeting program. This approach is also used in some Australian states.

The ultimate goal in restorative justice is to rebuild local and community-based crime and delinquents and the local community and to compensate for them, and in fact, they are a victim and the local community is against the delinquent. Mediation, group meetings, family and circles are among the issues of restorative justice.; for example, in mediation, the child accepts responsibility for his actions and will endeavor to compensate somehow for the victim's losses, and the mediator will try to reach agreement and results. One of the responses to restorative justice in juvenile delinquency is that at the child's hearing; at least measures should be taken, such as the use of alternatives to imprisonment, absenteeism, and compensation. The status of restorative justice for delinquent and victimized children of the Islamic Penal Code 2014, in the new law, children under the age of 9 are not punished by any means and is not liable to criminal liability article87 of the new law is also expressly included in relation to children who have committed punitive crimes of intent.

If at the time of committing the offense, they are 9 to 15 years old, the court decides on the case. When a special hearing for children and adolescents is raised, we find that the child has been subject to a certain period; correspondingly, specific criminal responses are applied to adolescent and the call about adolescents in course arises.

In Iran's legal system new Penal Code Punishment for the regarding amerce of delinquent children in the near future, the hearing will be in line with the new bill materials; of course, in the current criminal procedure. In materials 217 to 231 in this is the field of regulation has been raised.

**The use of such measures restorative justice prevents labeling and injury to children and from formal judicial domination.**

In Iran, due to its rich culture, we have witnessed the use of restorative measures. We have been in different forms since the past. Settlement from the distant past to now, mostly by the elders and clerics, there are some issues in this regard.

There are dispute resolution councils, units Peace and compromise In the judiciary and departments of assistance in police stations Everyone says that they are paying attention to the reconstruction attitude in our country.

The unanimous approval of the United Nations Convention on the Rights of the Child by the United Nations General Assembly in 1989 reflects the will of the world to move towards a better future for children. The provisions of the treaty are the result of decades of thinking and gathering experiences from around the world and from various cultures and religions. Since then, we have witnessed a move towards the realization of children's rights in accordance with the provisions of the treaty, so that many countries have revised their national legislation in the framework of the Convention on the Rights of the Child Checked-out the sentence in the section Juvenile justice.

The Islamic Republic of Iran, in 1994, ratified the treaty conditionally, and since then, has committed itself to improving the situation of children with significant advances in health, education, freedom of speech.

The efforts of several years to prepare a draft law on the investigation of child crimes and its follow-up in the Islamic Consultative Assembly is another step by the Islamic Republic of Iran that has made new achievements, including the formation of children and youth police for the implementation of national standards and International will follow.

Focus on teaching more than 1,500 people, the heads of police stations and outposts across the country and restorative justice has been the subject of Iranian lawmakers in regard to children; in particular, because these components are considered in juvenile court law.

The training of national coaches for children and adolescents in the Islamic Republic of Iran's Police Force during a four-year period, as well as training judges, assistants, psychologists, and educators on juvenile justice are all promising developments, which implies Iran's determination to move towards a juvenile justice system. This juvenile justice system, which is separate from the adult justice system, "Child friendly justice", it is said to have three attributes:

First of all, there are special laws and regulations for children and teenagers, like that application of diversion programs and actions based on restorative justice, encouraging police and judges to use arrest and detention alternatives and discriminated behavior with children deportation.

Second, the prosecution of crimes with a restorative approach and in the context of appropriate organizational structures with the personality and spirit of children.

Third, those involved in the process, Police hearing, Judge, Lawyer and the social worker have the necessary knowledge of the rights of the child and the criteria adopted to address the children and the skills and experience to communicate with children.

An approach to restorative justice can be in the field of juvenile justice, the interests of all participants in the restorative process, including offenders and victim restorative justice, can enhance the interests of all participants in the recovery process far better than criminal justice. Many restorative justice programs, revolving around the context of the meeting and confrontation, victims and delinquents probably members of the local community are moving, but a restorative approach, even when the offender is not arrested or one of the parties does not want to meet another one, or is not able to do it, it is also important. Therefore, the restorative approach is not limited to confrontation between the parties.

The remedial procedure consists of rules that regulate the active participation of the victim, the delinquents and the local community in the interaction and under the supervision of the police and the judiciary, to resolve the criminal cases through restorative mechanisms and by negotiation and understanding, in order to repair damage to the victim and accused person's suffering and knowledge of the harmful effects acts of his / her committing, his liability and the prevention of crime.

In this perspective, justice is realized when all stakeholders in the phenomenon of crime, with ease, participate in the process of decision-making and decide on it. In such a case, such a decision will be fair to all shareholders.

In the criminal law of children and adolescents, the Islamic Penal Code of 2013, Iran, the effects of restorative justice are that during the 25 years of the Islamic Republic of Iran's legislation, the jurisprudential rulings and jurisprudence in this section have been enacted and enforced by the laws of the subject matter. In view of the social changes and the emergence of new perspectives and continuous jurisprudential, serious developments have been made in this regard.

The current pediatric justice system, based on the specific characteristics of this age group, rely on educational principles and educational goals, and the focus of the courts is often on making decisions that are most beneficial to juvenile offenders.

The turmoil in the criminal justice system, the gradual criticism of the classical criminal justice system, and the general perception of the inability of the system in the seventies and eighties, as well as the sudden increase in the rate of crime, gave rise to the idea of replacing a new approach, and the context of resorting to mediation and the third approach increased.

In early 2002, the United Nations, one of the most influential and inspiring institutions of international criminal law, passed the 2002 Resolution on the Fundamental Principles for the Use of Reconciliation Programs in Criminal Matters. In this document, the emphasis is on the necessity of using restorative programs in criminal matters, especially for delinquent children. According to the amendments made

to the Islamic Penal Code of 2014, especially in the area of juvenile justice, Iran, aspects of restorative justice recognition can include a mediation issue.

The new Islamic Penal Code, in contrast to the previous law, specifically prohibits the Islamic Penal Code of 1991, provides more criminological and criminal offenders. This process also deals with the crime of children and adolescents in various crimes, as well as punishment and measures for the provision of children and adolescents for delinquency, which, as a result of the cause, committed crimes with various biological, psychological and social causes.

According to that, a large group of such perpetrators can be included in the category of offended children and adolescents. Therefore, the gradual acceptance of the age of criminal responsibility and how to deal with and determine the guarantee of appropriate performances in this law are considered as innovations, and the consequences of such implementation, prevention of delinquency and subsequent victimization will result in exclusion from the community.

Taking measures such as different restrictions and punishments of perpetrators, and the establishment of medical institutions and counseling after the commission of a crime, especially for sexual offenders, are requirements that ensure the victim's rights and all-round support. Ultimately, the results show that in today's world, punishment does not mean revenge for punishing and persecuting the perpetrator; it is a means to rebuild a criminal personality and to pay attention to his human dignity.

At the Department of Pediatrics in Iran, we have tried to provide a special hearing for children and adolescents, taking into account international regulations on this subject, the experience of other countries, as well as trends in the field of juvenile justice.

In the new law, children under the age of 9 are not penalized in any way and are not liable to criminal liability. Article 87 of the new law also explicitly states that, in the case of children who have

committed crimes of inferiority, if at the time of committing the crime, they have 9 to 15 years of age. Depending on the case, the court decides.

When a special hearing for children and adolescents is raised, we find that the child was subject to a certain period correspondingly, specific criminal responses are applied to adolescents, these responses are about adolescent's opponent. In the legal system of Iran, in the New Penal Code about Discipline for delinquent children, proceeding in accordance with the new material bill will be, of course, in the current criminal procedure law, Articles 217 to 231 have been regulated in this regard.

The current pediatric justice system, based on the specific characteristics of this age group, rely on educational principles and educational goals, and the focus of the courts is often on decisions that they have the most beneficial for children delinquent.

The most significant impact of the 2013 penal code on children and adolescents is that an adolescent who deserves to work is not deprived of his liberties. It does not exclude the affection of the family and the community, it does not feel injustice and it helps itself to reform itself. A child who, instead of a prison, is forced to learn a profession or art and teach others, will no longer be hostile to anyone, and this method, known as punishment, is far more effective than previous criminal procedures.

### **Social Capital and Restorative Justice.**

Capital is a general source used by the community of individuals, social groups and the whole society to realize their goals. In fact, the tools that a person, group, entity, or society uses to achieve his goals is called "capital." The social capital, or the spiritual structure of a community, is a sociological concept that, by building trust, solidarity (convergence, convergence), and encouraging individuals to collaborate in action and social responses, can solve a greater degree of challenges in society, leading to the development of cultural, social, and political development.

Social capital seems that the three key components of social capital (trust, coherence and citizen participation) are related to the social organization, participation and cooperation in urban activities have expanded the links and convergence of community members, increased social trust and can serve as a basis for social control. As a result, high social participation contributes to strengthening social organization and the ability of social capital to reduce crime and violence.

There is a socially disorganized social capital over social capital. This theory and view of Chicago's school has evolved in the United States. This theory emphasizes the crime and diversion of social and economic factors, especially the structure and organization of society. Based on this, for reasons such as urban development, rapid changes in industrialization and migration to cities, modern communities, especially metropolitan areas, are subject to changes that increase the amount of crime and diversion.

According to this view, new industrial cities faced with changes, like the uncertainty of interest and kinship relationships, increase Distrust, reducing the effectiveness of social institutions, reducing neighborhoods, and reduction of social solidarity, accompanied by a reduction or lack of social control, and provides a good environment for deviance and victimization. The non-organizational social assumption is that the lack of dependence on social institutions and organizations, such as family, school, law, etc., leads to deviant behavior.

The essence of a non-institutionalized social approach is that some societies are unable to self-regulate due to the disruption of formal and informal social control processes, considering the concept of social capital, which consists of three components of trust, solidarity and social cooperation.

By expressing the concepts of social capital and restorative justice, we find that there is a two-way relationship between social capital and restorative justice. Thus, with the reduction of social and non-institutional social capital, it will be possible to reduce the manners in order to deal with the restoration processes.

In the legal system of Iran, one of the challenges in implementing restorative justice is the existence of a low social capital, because restorative justice will be obtained in some crimes when local communities engage in the process of responding to misconduct and maximize their unofficial capacities.

The spread of urbanization and passing society from traditional to modern, and also, the demographic changes in cities and massive immigration to major cities have caused cultural interference. That has led to the elimination of the social function of the "neighborhood", and has reduced the capacity and solidarity among people, especially the ethnic groups, and has led to a reduction in social capital.

### **Restorative justice and the environment.**

Today, having a healthy environment, no pollution for citizens, a part of human rights has been emphasized in international and domestic documents. According to the first principle of the Stockholm Declaration, man has the fundamental right to freedom and equality, and to the right conditions for living in an environment that allows him to live with dignity and happiness. Therefore, the right to clean air from pollution to citizens and to guarantee it in line with the "right to a healthy environment" is the basic right of every citizen. Under this right, every citizen has the right to breathe clean and healthy air, and governments are required to take measures to ensure it.

In Iranian law, criminal sanctions against air pollution include punishments such as cash penalties, imprisonment, vehicle traffic avoidance and shutting off polluting units.

### **The challenges of restorative approaches in the Legal System of Iran.**

In the legal system of Iran, Market system in control environmental degradation do not have effective measures to encourage institutions to better enforce environmental regulations. The legal system requires individuals to reduce pollution, but they do not provide the financial and technical support

they need to voluntarily control the pollution. That is one of the most important factors in increasing regulations criminal environmental problems caused by it.

Due to the inability of the law and the economy to control the protection of the environment through non-custodial instruments, they resort to severe criminal penalties. In practice, the legal system penalizes environmental pollution, pollution and degradation, and does not facilitate access to pollution control facilities and technologies. Consequently, a large number of economic activists are unwittingly exposed to crime. The prevailing pattern of the world's legal systems is the cash penalty and the closure of a polluting unit, as well as the requirement to repair the destroyed environment, such as tree-planting in areas where vegetation has been lost. In Iran's legal system, there has been a punishment for imprisonment and a fine, but the punishment for the restoration of destruction has not been institutionalized in Iran's criminal system.

The two types of punishment in the Iranian legal system also have challenges that, in the first place, criminal punishment is appropriate in cases where the imprisonment is not possible for legal persons, but the problem is that it is easy to pay for high income people. In order to solve this issue, the model of restorative justice makes it possible to observe the considerations of economic and environmental activists. This model is based on sustainable development and the method of restoration and adaptation, as well as providing technical, administrative, and institutional cooperation, and encourages compliance with regulations.

The remedies in Iran's legal system, like other legal systems in the world, are the use of green punishment. Green punishment is based on environmental restoration, as well as offsetting and returning to pre-crime status. There is also a punishment against social credit for any institution or institution to continue its economic life, depending on the satisfaction and social legitimacy.

Institutions need credibility and good reputation for growth. Reducing the social and economic credit to the reputation of the institutions forces them to change the procedures that are contrary to the environment, leading to the work of restorative processes. The prohibition or restriction of the corporate rights of a business also results in changes in the practices and modifications to environmental considerations.

## **CONCLUSIONS.**

In today's world, punishment does not mean revenge for punishing and persecuting the perpetrator; it is a means to reconstruct the criminal personality and pay attention to his human dignity. Therefore, the new Islamic Penal Code of 2014, in line with international conventions, in particular the 1989 Convention on the Rights of the Child, with new changes and modifications on the protection of the various forms of the victimization of this vulnerable group in some crimes, the age of criminal responsibility and the manner of punishment accompanied.

The positive part of restorative justice shows the increase in social capital; for the impact of social capital on restorative justice, the conditions for its implementation should be developed so that by increasing the trust, solidarity and motivation to cooperate, co-operate and participate in restoration programs, increase the amount of capital Social and widespread participation of people in restoring justice.

Inefficiency of traditional punishment for crimes against the environment tends to use punishments are more capable of preventing environmental crime. The use of green punishment while preventing environmental degradation will reduce the non-productive constraints in environmental economic activities.

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