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Mediation, Participatory Justice System, Third Generation Criminal Justice System and the Rights of Parties the Lawsuit

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Abstract

After the system based on correction and treatment and the failure of the prison project, the second generation of punishment came into being, which was introduced as the system of restorative justice but in recent years, the third generation of punishment called participatory justice has been discussed and accepted in legal meetings and doctrine, but with the clarification of the policy of restorative and participatory justice, the speed of desire towards it has become greater and more successful and in the Code of Criminal Procedure adopted in 2013, in several articles the discussion of mediation and resolving the chapter of lawsuits has been mentioned. And this point of view is even mentioned in the Islamic Penal Code approved in 2013 under different headings, which can be referred to as alternative punishment of imprisonment and semi-liberty system. Because the involvement of victims and offenders in criminal matters will be a kind of participation in punishment and participation of the rehabilitation of the offender and return of the third side of the criminal justice system to society. In general expression when the legislator uses the title and the word "Can" it means that it wants to expand the participation, which has become more detailed in the law on reducing prison sentences.

Keywords: Criminal Procedure, Victims, Offenders, Criticisms, Challenges.

چکیده

بعد از نظام مبتنی بر اصلاح و درمان و شکست پروژه زندان، نسل دوم از مجازات یا به عرصه وجود گذاشت که به نظام عدالت ترمیمی معروف شد، اما در سال‌های نه چندان دور نسل سوم مجازات به نام عدالت مشارکتی در محافل حقوقی و دکترین بحث و مورد پذیرش قرار گرفت. ولی با روشن شدن سیاست عدالت ترمیمی و مشارکتی سرعت تمایل به سمت آن هم بیشتر و مورد اقبال قرار گرفته است و در قانون آیین دادرسی کیفری مصوب ۱۳۹۲ در چند ماده بحث میانجیگری و حل فصل دعاوی آمده است و این نگاه حتی در قانون مجازات اسلامی مصوب ۱۳۹۲ نیز تحت عناوین مختلفی آمده است که می‌توان به مجازات جایگزین حبس و نظام نیمه آزادی اشاره نمود. چرا که دخالت دادن بزه‌دیدگان و بزه‌کاران در امر جزایی نوعی مشارکت در مجازات و مشارکت در بازپروری فرد بزه‌کار و بازگرداندن ضلع سوم نظام عدالت کیفری به جامعه خواهد بود. در یک بیان کلی وقتی قانون‌گذار از عنوان و لفظ «می‌تواند» استفاده می‌کند یعنی مشارکت را در حال گسترش دادن می‌خواهد که این امر در قانون کاهش مجازات حبس به نوعی پرنگ‌تر شده است.

واژگان کلیدی: آیین دادرسی کیفری، قربانیان، مجرمان، انتقادات، چالش‌ها.

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Introduction

Punishment of individuals who violate the norms of society has a long history in human societies. Because it is necessary for the life and able social system on one side, obedience to laws and regulations and the other hand ,punishment of law breakers. These rules and regulations have taken different forms over time in different societies and changed over time. Of course in this direction, it has always faced challenges. One of the main challenges in the legal debate is the overreliance of bailiffs that has limited individual freedoms, imposed heavy costs on governments and the functioning of the indicia. Meanwhile, impunity as a basic strategy in the criminal policy of countries, more than other policies of retreat of the penal system, has been considered by criminologists. Because criminal retention has fewer restrictions on the other policies for behavior that only removes the criminal response.

Various criminal theories have enumerated that many benefits and harms of this punishment. But now the razors of those who boast of the punishment of deprivation of liberty were no longer responsible, and their Turkish horse was old and worn-out, and the prison project was broken. Moving towards restorative and participatory justice as well as deprivation of liberty is a new method that human societies have tended to pursue after the correction and treatment project, if one day schools such as the “Lombroso”¹, “Enrico Ferri”² and other research school

1- Cesare Lombroso (born Ezechia Marco Lombroso; 6 November 1835–19 October 1909) was an Italian criminologist, phrenologist, physician, and founder of the Italian School of Positivist Criminology. Lombroso rejected the established classical school, which held that crime was a characteristic trait of human nature. Instead, using concepts drawn from physiognomy, degeneration theory, psychiatry, and Social Darwinism, Lombroso's theory of

will not commit a crime. The criminals knew and blamed the society for educating the offender. Criminologists now came to the understanding that the punishment of deprivation of liberty for a thousand and one reasons does not ensure the protection of society from crime and delinquency and its order and society. Perhaps these are the reasons why modern criminal institutions try to reduce the harm of imprisonment for the individual, her family and society by applying new institutions and to reform and return criminals to society without any negative effects or at least with minimal losses.

Utilitarian's believe that it is a criminal conviction that justifies the institution of punishment. According to the instrumentalist approach, one of its send disciplines punishment is a means and a tool to achieve the desired goal and achieve the goals that are legally intended. According to this view, if the means of punishment can make it possible to achieve the desired goals, it's acceptable and punishment like a crime is an example of an immoral act. In this goal-oriented the red line of all decisions is the goals set alone, and other concerns are conceivable and this kind of view is based on a forward-looking approach, the future with what is to be achieved in the foreseeable future (Ashuri & Khodadadi,2013).

A crime committed in the past and completed while the future is infinite and timeless. Although it has happened in the past and has directly affected the victim, future crimes can effect anyone. So you have to think of a solution for it. Reducing crime in the future is the ultimate good and justifying factors for them, in fact, social protection and crime control need to be dealt with. Why do human societies seek to open ways and means that give a scientific and participatory aspect to punishment that from ancient times the system of conditional freedom, suspension and postponement of punishment and other reductions and softness against the perpetrator and the position of the victim and society? Where the punishment is are we looking for society to forget about punishing someone who violates its rules and norms? It is not the case that society's satisfaction with punishment is an abstract matter, and the victim, who must be somehow involved in the execution of some punishment will be satisfied with it and there will be some kind of compensation. It

anthropological criminology essentially stated that criminality was inherited, and that someone born criminal could be identified by physical (congenital) defects, which confirmed a criminal as savage or atavistic.

2- Enrico Ferri (25 February 1856–12 April 1929) was an Italian criminologist, socialist and student of Cesare Lombroso, the founder of the Italian school of criminology. While Lombroso researched the purported physiological factors that motivated criminals, Ferri investigated social and economic aspects. He served as editor of the socialist daily *Avanti!* and, in 1884, saw his book *Criminal Sociology* published. Later, his work served as the basis for Argentina's penal code of 1921. Although at first he rejected the Italian dictator Benito Mussolini, Ferri later became one of Mussolini and his National Fascist Party's main external supporters.

may be forgotten here that the person is criminal who is regardless of the cause, and factors of the crime is expelled from the society in some way, and his expulsion from the society causes him to take a voluminous stance.

Towards it and any event of failure in life. To suffer from it, to blame the society, and to seek revenge and turn against it. Releasing the offender in the society is a condemnable thing and a double danger. Provide necessary treatment and the goal is to keep the victim away from punishment and to get the victim's opinion and consent in a way to socialize the offender and prevent reinfection and recurrence of the crime in the science of clinical criminology releasing the offender is inevitable and acceptable because he may suffer from dangerous diseases in prison due to some health mental and psy ecological problems and in fact he turned a him bomb and sent into the society so with this criminal who is somehow blamed by society and governments for leading her to crime governments cannot shirk their responsibility by resorting to some support and non-governmental organizations. Why a normal person has become a criminal. Where is the role of the authorities in committing a crime? From the critical point of view, structural inequality is the cause of crime and victimization, and there are no restrictions in determining the instances and cases of this inequality. From a political point of view, critical criminology defines crime in the form aggression. Economic and social classes, poverty, etc. , are vulnerable in social relations, growing inequalities between rich and poor, as well as, increasing numbers of poor, create a crisis of legitimacy for all systems that drive these conditions.

1- The principle of the right to information and awareness rights in the Code of Criminal Procedure

The move towards justice in human societies throughout the ages depends on enforceable guarantees that justice can be done in a timely manner, and if we give anyone a right. But in practice, it cannot be used, something has been done in vain. Legal issues such as the validity of the principle of innocence for the defendants before the final conviction of the case, the right to a fair trial, the existence of a rule of fairness in trial, the impartiality of judges in all stages from trial and investigation to sentencing and execution. Referral of the case to the mediator and referral of some cases to the officers and experts of the judiciary who are the executive arms of the judiciary until the case is heard and the accused has the right to remain silent.

A right is not relatively respected in some law enforcement agencies and the right to choose a lawyer in law suits up to parole and semi liberty and all the rights provided for the individuals in the law, if there is no executive guarantee. We have not exercised any rights and we have certainly lost some rights. The right to know the law is one the hallmarks of legal of development of civil society, which takes place in a variety of ways, including what rights they have around litigation, the

right to fair trial, and other rights. Provided in the rules. It is the duty of everyone in a society to make people aware of their rights in various ways, especially by those who are involved in legal matters. However it is safe to say that the third generation of justice is participatory criminal justice. Which is more prominent in the new Code of Criminal Procedure than in the previous ones. Because this kind of view will involve the litigants in criminal matters, leaving them around the litigation may cause some problems in the future or attract these people to these types of systems participatory or restorative to make the community safer will have. Because the establishment of such semi-liberty systems would not be possible without participation in litigation the right to information and awareness of such participatory and restorative systems is the duty of the government so that society is aware of these rights to participate and this is a justice-oriented system.

In many countries such as France, all judicial actions are carried out by lawyers and people are less likely to enter the judiciary, so one of the characteristics and tools of lawyers armed with weapons in the knowledge of the latest laws. Therefore, even if the public is not aware of the latest changes, no particular problem will be found, but in our country and similar countries, due to the lack of judicial system, cases are mostly pursued by the people and lack of the knowledge of the law causes many problems creates that eventually leads to delay in the trial. Therefore, knowing the laws and privileges surrounding the dispute will lead to the expansion of justice, reduce costs, improve relations in society, reduce civil strife, and increase the level of tolerance and social acceptance. By summing up the situation, one of the best ways to attract people to settle a dispute is to involve them through the participation of criminals, which has violated the norms of society, because involving these people in the proceedings will be both their right-imposing part of the social costs of them, because usually the criminals do not have a role in repairing and modifying it by imposing some costs on the society and will only be punished, which is a normal thing for some criminals, of course this is does not deny the damages that the offender and his family already suffer but bringing the perpetrators to punishment and imposing part of these costs on them and then on their families will somehow increase her responsibility, which will strengthen the criminal justice system, which is the end of the judiciary. However, one of the gateways to entering the system of participatory justice is mediation, as well as the execution of some punishments accepted by the offender, such as alternatives to imprisonment, parole and semi-liberty without whose consent it will not be possible to execute.

2- Participatory criminal policy

Participatory criminal policy means, participation of civil society and non-governmental organizations in the criminal investigation process public

participation can help the investigation process, both in terms of speed of the investigation and the fact that creating culture in this area can help in reporting and cooperating with the authorities, as well as preventing the occurrence of crime. Participatory criminal policy is to ensure the security of society by combining intelligence to prevent and respond to punishment and social-admission of offenders. Therefore since prevention and safety are inseparable, all criminal policy makers have understood them. It can be said that participatory criminal policy is aims to provide these two steps by appealing to the people themselves. Some countries prepare local security agreement that are signed between government and local institutions.

In fact in these countries local agreement are an example of achieving the goals of participatory criminal policy. The components of participatory prevention in the broad dimensions of criminal mediation are the protection victims and the expansion of social security at various levels. In this way, the important goal of participatory criminal policy, i. e. , providing security can find its replace with the temporal and spatial proximity of formal and comprehensive government policies, i. e. through the prevention and criminal and social reacceptance of offenders (Jamshidi,2010,26).

The indicator of restorative justice in the law on reducing the punishment of imprisonment approved in 2020 is the guarantees of principle of individualization of punishments are paying attention to the criminal record. In this regard, Article 11 of the law on Reduction in Status of forgive ale Crimes stipulates, Deterrent, Approved in 1996, provided that the value of the stolen property is not more than 2 billion Rials and the thief has no effective criminal record.

In fact, by enforcing this criminal policy, while expanding the scope of forgivable crimes, the legislator has differentiated between criminals with and without a record, and has shown a different reaction. This method of legislative policy is step towards criminal justice. Creating participation and exchange of opinions and ideas between people of society with different cultures, while aquatinting different starts with each other and preventing the formation and birth of feelings of indifference to what is happening in the community environment, causes a kind of harmony and solidarity. The constructive consequences of this include increasing security and reducing the criminal phenomenon facilitating the development of moral security and cultural social health, especially among young people, preventing passivity and increasing public oversight of executive bodies affected directly or otherwise and other areas of social life.

Our country has not been deprived of developments related to the field of Participatory Criminal Policy, and over time we have witnessed the growth of a kind of Participatory Criminal Policy in the form of popular institutions and other institutions in the country, which has shown a change in the legislator's approach

in the field of criminal policy. In this regard, in the five-years plan for judicial development, issues such as the need to reduce government tenure in the judiciary increase citizen participation, pay attention to individual rights and freedoms and unnecessary restrictions to match the response to crime with the type of crime committed using quasi-judicial institutions it has been noted that the results can be seen in a tangible way in the Criminal Procedure Code approved in 2013 (Jamshidi,2010).

The Code of Criminal Procedure of 2013 changed the approach of the former law in the governmental nature of the criminal proceeding and has accepted the participation of citizens and public institutions in criminal proceeding to some extent, in addition in some cases, paying attention to the tutorials, restorative justice and increasing the share of victims in criminal proceedings has provided the intervention of citizens and non-governmental organizations in criminal proceedings.

2-1- Participatory Criminal Policy and the role of the accused

The legislator has given a wide role to the offender in this criminal approved in 2013 in order to pay attention to the participatory criminal policy as well as the correction and readmission of the offender. According to Article 81 of the said law, the institution of suspension of prosecution is realized only with the participation of the accused, and if the accused doesn't agree with this decision, the suspension of persecution cannot be used. In Article 247 of the mentioned law, the role of the accused is very important regarding the issuance of a judicial supervision order, and also in Article 217 of the above mentioned law, in order to limit imprisonment before sentencing, it is necessary to develop an important role of proportionality with the status and personality of the accused. Therefore we see that even in a note in Article 217, in discussing criminal security contracts, the legislator has paid attention to the will and desire of the accused. The another example of participation in the criminal process is Article 442 of the said law, which gives the accused the right to request a mitigation of punishment by revoking his right of appeal before the dealing for appeal. In this case, granting a mitigation is the duty of judicial authority, although the amount of the transfer law is left to the opinion of the judge provided that it is not more than a quarter of the prescribed punishment (Farahmand,2016,14).

2-2- The right of the offender to use a mediator in resolving the dispute

Criminal mediation is a three-ways process that in addition to the usual formalities in the criminal process, is based on the prior agreement of the victim plaintiff and the delinquent defendant in the presence of a third party named mediator, in order to resolve disputes and issues. It starts with committing a crime. Paragraph A of the Article 1 of the criminal Mediation Regulations approved by the Head of the

judiciary on 09/08/2015 also states in the definition of mediation: Mediation is a process which the victim and the offender work with the mediator in a suitable environment the effects and consequences of the attributed crime, as well as the ways of compensating the resulting damages to the victim and the accused, are also discussed and if a compromise is reached, the obligations and rights of the parties will be determined.

Paragraph E of same article stipulates: Mediation process, is a set of actions during which with the management of the mediator and with the presence of the victim and the offender and if necessary other effective persons in achieving reconciliation such as family members, friends or colleagues and also as appropriate members of the local community, relevant official, the people of the seaman institution, to resolve criminal disputes with each other to negotiate and exchange views, if an agreement is reached, an agreement will be drafted and sent to the relevant judicial authority the mediator may be a natural or legal person or an institution established for this purpose in accordance with the laws and regulations governing noncommercial establishments, or other establishments at the discretion of the judiciary.

The mediator participates in the mediation process and mediates between the offender and the victim to reach compromise and agreement. In general, the participation of popular associations and non-governmental organizations is one of the newest phenomena in the criminal process. In fact, traditional methods of resolving disputes outside the penal system and by social authorities such as mediation, arbitration and peace and reconciliation, which have been customary and informal in many human societies with the emergence of the ideas of impunity and justice De-escalation and especially restorative justice has been reintroduced and modernized and is being implemented and expanded in various ways around the world. In fact the policy of resolving litigation in the traditional way is something like using traditional medicine in the treatment of some diseases, which tends to be more and more new, however in many of our country, especially in the southern regions and among the Arab and Lurs³ tribes in the religion called "Fasl" in the Arab people and Blood shed among the Lurs people, the issue of mediation has a long history, because this religion has ended many years of hard lawsuits and even murder, of course from the point of view of some critics of mediation do not consider mediation to be useful in cases involving young people, and see it as basis for the execution and preparation of subsequent crimes, and reminds the guarantors of the jury in Islamic Criminal Law (Mojtabi,2016,138).

3- Lurs are an Iranian people living in the mountains of western Iran. The four Luri branches are the Bakhtiari, Mamasani, Kohgiluyeh and Lur proper, who are principally linked by the Luri language.

In the second part of Article 82 of the new Code of Criminal Procedure, it is stated that: Mediation of Dispute Resolution Council, to refer a person or institution established for mediation to reach a compromise between the parties within three months, in addition according to part of the provisions Article 192 of the same law: the investigator is obliged, if possible, to try to make peace and compromise or to refer to mediation. The fact that the legislator first refers the investigation of the plaintiff and the accused individually and, if possible, tries to make peace and conciliation and prescribes the referral of the matter through a mediator, in a way creates an opportunity for the litigants to create crime for crime and its registration in the criminal record is a kind of approach in favor of the offender, because it will properly reduce the severity of the punishment and to compensate the damage it has done to the victim it will be another barrier to the right to mediate for the offender, and in another word will pardon him from punishment.

The provisions of Article 82 of the new Code of Criminal Procedure regarding the possibility of referring the case in order to reach compromise between the offender and the victim in the sixth, seventh and eighth degree criminal offences indicate the legislator's desire to criminalize the community under the supervision of a judicial official. Because, considering the participatory criminal policy, which is accompanied by the cooperation of citizens and civil society institutions to judicialize and avoid the use of repressive responses to crime; it is a manifestation of restorative justice that brings criminal justice closer to civil justice to some extent and blurs the traditional boundaries between criminal law and civil law. However, it should be noted the mediation process during criminal proceedings is always accompanied by the participation of those involved in criminal matters and other citizens and civil society organizations.

In fact without the participation and cooperation of these people it is not possible to reach a compromise through mediation and repair the damage and suffering caused to the victim because the mediation process according to the provisions of article 82 requires the consent of the victim and his participation in the mediation process, and on the hand, it is not possible to refer the matter to mediation without the request of the accused. Because victim participation in mediation is the main basis, otherwise neither mediation will take place nor will the politics of participatory justice emerge. This right is one of the rights created by the legislator like other rights that can be demanded by the offender from the criminal justice system, and it will be the same as the right to have a lawyer and other legal assistance. Because the notes of Article 192 of the Code Criminal Procedure explicitly state that the investigator is obliged to try to make peace and compromise or refer the matter mediation if possible they will be sentenced to the punishment prescribed by law.

This duty is reminiscent of Article 63 of the same law regarding judicial

officers who will be sentenced to the punishment prescribed by law in case of violation. The legislator's concern for this right to settle dispute is not in favor of the offender but the settlement of disputes will be more in favor of the offender because the offender has suffered a double loss in this regard. He is waiting and secondly: compensation for the damage done to the victim which may be less likely to be pardoned by the plaintiff or compromised. Thus, while the formal criminal justice system is unilateral and imposed in the application of punishment and other guarantees of execution, the offender has no role in determining his fate before and after conviction, and from the beginning to the end of entering cycle of the criminal justice system.

In the process of criminal mediation, the offender enters the mediation process consciously and knowingly and voluntarily, and at any stage he can withdraw from his participation in this process and refer to the formal judicial system. Then in such process, the offender changes from a passive actor in the formal criminal justice system to an active actor in criminal mediation, with the participation that he manifests in this process and based on the possibilities he has in the process. Restorative justice plays a decisive role voluntarily. In fact, the Iranian legislature has not ignored the undeniable role of civil society in the criminal mediation process in approving the provisions of Article 82 of the Criminal Procedure Code and has accepted the application of the achievements of restorative justice in conjunction with the application of a participatory criminal policy. Every corner we look at this issue the benefit is far greater than the lack of benefit, and the development arsenal is to move the criminal justice system from the correctional system to restorative justice and ultimately participatory justice.

2-3- Right of the victim to use mediation

Undoubtedly, one of the most important rights that the victim has during the trial to use non-judicial means of resolving the dispute, which have both low material costs and speed in achieving the desired goal of mediation in principle to ensure security, victims have been. Imposing crime is an unpleasant a horrific experience that exposes victims to constant feelings of threat and in security, causing irreparable psychological damage to them, and therefore mediators must face to face or by telephone communicative with the victim and use any means to prevent re-victimization. According to some mediation researches, at each stage of the mediation program, they should ask themselves whether this action does not lead to further threats and psychological destruction of the victim. If the victim feels insecure or threatened, the mediators are obliged to provide security in any way possible. In addition to the case the criminal procedure court has asked the authorities to request the security authorities to provide security for the victim of his family if there is a damage to his life. In principle, victims tend to see what is

said in mediation hearings as credible, and can be cited. In this case, the mediator must take note of the information exchanged in the meetings.

2-4- The right to choose a mediator and characteristics of the mediator

Respect for the right to choose a mediator to mediate for the victim is one of the important principles of mediation. Because as a result of the crime, the victims feel vulnerable, in competent and lack of power. For this reason at the beginning of tolerating the crime and for a while the victims lose control over their lives and affairs and are not able to manage their affairs as before. Rehabilitation of the victims means that they once again, they can return to the status quo and regain their role in society and the family with confidence. Therefore it is the duty of the mediators to provide the necessary information and support to the victim and help him/her to make useful and appropriate decisions. Another important point is the implementation of mediation programs, the use of language and literature in accordance with the goals and principles of restorative and participatory justice. Because getting involved in mediation is about participating in litigation around the case, which is done either through the secretary or sometimes through referrals from the judiciary or the judiciary. Therefore mediators should use the language and literature of the psychological atmosphere have enough mastery and accuracy, because some phrases and words may cause suspicion or vain expectations.

For example given the role the mediator's neutrality, he or she cannot say you should to the victim of offender, and the atmosphere can reinforce this judgment, and the other task of the mediator is to provide the necessary information to the parties, to encourage them to make decisions mediation should also refrain from using words such as forgiveness or reconciliation and agreement and not place the victim in a particular moral and emotional state that would force the offender to make a favorable decision. Also, mediation should not create extraordinary expectations in the victim with phrases such as everything will be fine you are absolutely right, etc.

In mediation it is better for the victim to say his words completely and the mediating parties should be patient so that he can say all his words, and in the course of this conversation, confirm his words and do not enter into his words and in evacuating the pain caused by the crime to evacuate in the space of the mediation place and somehow listen to his heartache well to achieve healing, then enter into subject of mediation. Another important point is to meet the mediator with the offender before starting the mediation program. For this purpose, it is necessary for the mediator first meet the offender and then the victim. If the mediator starts the program with the victim and obtains his consent to meet the offender, but the offender does not want to mediate, a kind of victimization is created in the victim and the right created for him is lost. Therefore, in the

mediator's meeting with the offender, the mediator must explain that the offender has no obligation to participate in mediation. Forcing the offender to participate not only may not lead to agreement and reconciliation, but may even have other negative effects on the victim and deepen the differences between the parties. Mediation is a process that gives the victim the opportunity and the right to meet with the offender in difficult circumstances and to seek redress in a safe and peaceful environment with the aim of achieving peace and recovery and direct accountability of the offender. The offender should not speak in such a way to provoke the victim's feelings.

3- Participatory Criminal Policy and increasing the role of citizens

In the new approach in the law of criminal procedure, it is possible for citizens to participate in order to prevent the perpetrator from feeling and to preserve the crime scene any citizen can appear in the guise of an activist of the criminal justice system and take a necessary action instead of the police to prevent the accused from escaping from the crime scene (Note 1 of Article 45). In fact, the entry of ordinary citizens into the criminal justice system, even in crimes that are under the jurisdiction of the investigator and the criminal court is associated with a bit of immaturity, because firstly, it is impossible and difficult for ordinary people to determine the degree of crime. Secondly, it may be abused and cause personal accounts best settled. Finally, the possibility of harming citizens due to lack of skills in these matters is conceivable. Now, with all the conditions, as soon as the legislator has agreed with the entry of ordinary citizens into the criminal justice system. By revising this article, it can prevent damage to the principle of participatory justice (Rostami,2016,144).

Conclusion

Public participation can contribute to the investigation process both in terms of speed of investigation and the fact that creating culture in this area can help in reporting and cooperating with the authorities and preventing the occurrence of crime. Responding to the punishment and social acceptance of offenders. In fact security as a result of fighting the criminal phenomenon is a major goal of that is achieved with the participation of the people. Therefore, since prevention and security are two inseparable categories that all criminal policy makers have understood. We can say that participatory criminal policy is provide to these two steps by appealing to people themselves. The important goal of participatory criminal policy, i. e. providing security, can be achieved through government and public policy, that is, through the prevention and criminal suppression of crime as well as the readmission of criminals. On the other hand, it will impose criminal costs on the offender. The legal costs of the community are borne by the offender.

In crimes committed by the offender it is victim and the society that must bear the cost of prosecuting and keeping the perpetrators, and no cost is placed on the offender. Of course, this doesn't negate the material and moral harms of the crime. Impunity will be kind of creation of religion on his responsibility because by punishing the offender, we will put the offender in front of the society and he may seek revenge in the future. However moving from the system of correction and treatment to restorative justice and from restorative justice to participatory justice is a kind of leap in change. It is a punishment.

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References

- Ashuri, Mohammad & Khodadi, Abul Qasem, 2013, Fundamental rights of the victim in the process of criminal proceedings, Criminal Law Teachings Quarterly, No. 2.
- Farahmand, Mojtabi, 2016. Effects of Restorative Justice in Iran's Criminal Law, Tehran, Mizan Publications, first edition.
- Jamshidi, Alireza, 2010, Participatory Criminal Policy, Tehran Mezan Publishing House, first edition.
- Mojtabi, Mojtabi, 2016, Effects of Restorative Justice in Iran's Criminal Law, Tehran, Mizan Publications, first edition.
- Rostami, Vali, 2016, People's participation in the criminal process-a review of the criminal policy of Western countries, Legal Quarterly, Journal of the Faculty of Law and Political Science, No. 2.

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