

# Juvenile Offender Mediation Proceeding

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**ABSTRACT:** This paper examines the mediating procedure in children judgment, with emphasis on the restoration of mediation in the juvenile offender and the offense. Based on the current research findings, non-judicial methods, is regarded as a new method to reduce the negative impact of the criminal justice system on offenders and to guarantee the compensation of victim's restitution agreed upon by the parties. Furthermore, utilizing new systems based on restorative justice can be applied in the majority of children offences and the mediator can practically act to eradicate ruptures between the offended and the offenders and provide the motivation to make reparations for the restitution and normative offender which leads to forgiveness, mutual compassion and closes the case.

**Keywords:** juvenile offender, the offended, mediation in judgment, retributive justice, restorative justice.

## INTRODUCTION

Within the realm of retributive law, a child is humankind whose personality is inclined towards the formation and growth and therefore, is vulnerable in being the offender and the offended.

Crime in children and adolescents is away from violence and the behavior is resulted from the individual physiological and psychological transformations from one stage to another stage. Accordingly, "dealing with under 18 years old children and adolescents crime is conceivable with regard to his personal and social conditions and ultimately the selection of social and educational measures with particular retributive judgments (Jamshidi, 2003) This issue is influenced by the theories of research school that any corrective actions concerning a child has to be a precedent for medical and psychological examination of the child and the analysis of his family and ancestors background (Najafi abranti abadi, 2001).

The recognition of children and adolescents age condition and understanding them are to be considered as a principle by the legislator; Although Iranian law, by means of a general definition and without a reference to the attribution, has defined crime as an act or the lack of act that the law violation has determined its punishment " but if only the act of crime can be attributed to the person while committing crime, the person can be punished according to the law. In addition to the attribution, it has to be proven that the person had the ability to realize (recognition and diagnosis), the meaning and value of their actions and free decisions while committing crime (either intentional or unintentional). These items in their broad sense of meaning are accounted as ability and resistibility of the person to tolerate criminal consequences (Mir saeedi, 1988).

In most countries 18 years old is mainly considered as the criteria; religious age of maturity is accepted as the criminal age of maturity(1) in Iran's punishment law which can cause irreparable effects on juvenile offender rights. After committing crime, act or lack of act, is investigated by the administration of justice and, if necessary, the case is opened and referred to the court, upon proof of the crime, the case is delegated to the competent authorities and in order to have common investigations it is dealt with in a hierarchical process based on Islamic Punishment law. It has to be taken into consideration that sending off children and adolescents to a correctional and rehabilitation center and the specific timing depending on the legal form of the punishment is a kind of imprisonment and detention which has no major difference with the adult prisons in terms of its effects (Akbari kia and Gholami,

2007). So despite the approval of legislation to protect children rights and settle juvenile offender private court, the perspectives of restorative justice where compensation of victim's restitution and restoring the offenders to the society is triggered can't be fulfilled. Therefore mediation of the law and civil and social organizations may return trampled rights of offended and offenders to them with educational – correctional approach in the society.

### ***Terminology and legal meaning***

Mediation literally refers to mediate between two people to resolve their disputes and retributive mediation is a process in which crime offenders, the offended, retributive justice officials, parents, and .. are given the opportunity during which an active and volunteer role in an informal and impartial atmosphere with the assistance of the trained or honorary mediator, discuss about the criminal incident (Mir saeedi, 1998).

### ***The legal regime of juvenile offense investigation in Iran law***

Most countries that are not in a desirable condition in terms of economic, social and political status, have a tendency to retributive justice system (2). This system which is the basis for the investigations in Iran is a bipolar reaction; on the one hand educational measures and on the other hand punishment is imposed. In this separable system between the criminal groups, deviant, endangered cannot be observed and legal authorities have jurisdiction over offences and matters related to endangered children protection. However, minor legal organizations in Iran lacks jurisdiction of the juvenile court in the literal sense.

### ***The role of retributive mediation in Iran's law***

Iran's penal system due to the influence of common law and Islamic law benefits from many capacities for the implementation of restorative justice programs such as mediation between the offended and offender (Dana, 2005). The trend of social reaction towards children crime has softened the strict punitive measures and has led to new reformation. For instance, a child should be punished in such a way that it does not adversely affect his character and that the objective of child's improvement or rehabilitation has to be prior to the retributive objective in the concept of punishment and the punitive measure should prevent the juvenile offender from future offense while causing fear of committing a crime (Azmayesh, 1973).

Iran's conciliation committee is presented as a social organization in the case of non-jurisdiction although it cannot be considered as a specialized organization; the cases of juvenile offenders after entering the committee are under quasi-judicial processes which do not seem to be helpful. The second organization is social work, which due to the lack of legal aspect and specific organization and particular juvenile court in Iran, especially in children, cannot be considered in judicial proceedings yet and its mere efficiency in arresting process of juvenile crime is in the big cities where has caused problems in the distribution of Iran's restorative system concerning juvenile crime.

### ***The objectives of mediation in juvenile crime***

In restorative justice in addition to the government, the offended, the offender and society as key shareholders of justice have experienced the loss in a crime (Zahar, 2003) therefore the first commitment of the offender is to provide compensation for the offended; in this regard one of the objectives of mediation is healing offended pain in which the impartial person provides the prerequisites for the conversation of the two parties so that the offender apologizes to the offended of the crime by accepting his mistake. Although the apology might be symbolic, it can be a relief to the offended and comfort him.

In the next process the compensation of restitution as the major element of justice in mediation process sets the condition for compromising discussions; considering that the majority of the juvenile offended and offender belong to the same environment, reconciliation between parties is of great importance. Hence the mediator invites both parties to reach a satisfactory compromise through clearing the way to talk and realize mutual reasons that led into committing crime.

Mediation is at least in the children issues for non- jurisdiction in the first place and secondly settling disputes and compensation of damages and loss in a social way and away from administrative guarantees of the common juridical system. If mediation is done appropriately, it can settle disputes and probable hostility.

After taking on the responsibility and symbolic apology from the offender, compensation is considered as a crucial element in the process of mediation and the mediator makes an attempt for the parties to achieve a common and partial solution to the problem and after a verbal agreement, reassurance measures are predicted such as mediator's guarantee and his support from legal organizations until the conditions for compensation of the restitution and confession of the damages by the offender are accepted based on the agreement.

## CONCLUSION

Juvenile offenders and even professional criminals in the society are caused by negligence of the individuals in the society including authorities, families or those who influence them in a way or another. Therefore mediator's role in creating the conditions for the offender returning to the community prevents crime and restores the social conflicts caused by the crime and by reinforcement of the sense of responsibility in the offender it would be highly probable for the offended to forgive the offender.

Despite the fact that no society is free of crime and criminal but it must be acknowledged that the rate of crime and criminals and offenders in different communities depend on factors such as preparations for crime, illiteracy, ignorance and judicial policies and uninformed administrations of the educational programs. The importance of this matter is to the extent that the international conventions and conferences relevant to children's rights have always placed great emphasis on this issue and Iran has also been severely criticized in the annual reports of organizations in support of children's rights.

Accordingly, with respect to the mentioned contents of the paper here are the following results:

1- Mediation reduces transmission of the negative effects of criminal penalties.

Children and adolescents due to the influence of the juridical system and courts, quick exemplification of delinquent peers and lack of criminal capacity of children are vulnerable because children's character is undergoing growth and formation and aggression, hostility and pre-planning in committing a crime in this group doesn't make sense.

2- Retributive mediation can be applied to criminal proceedings of all juvenile offenses.

Studies indicate more satisfaction of the offended people, the offender's appropriate response to his criminal acts, reducing the rate of crime recurrence, the local community and stakeholder participation in the process of retributive justice and a sense of justice and fair judgment throughout the process of restorative programs.

3- Mediation results in the relationship between the offended and the offender by a mediator with an emphasis on settling disputes and conflicts between the parties and eventually it closes case. Compensation strategy highly emphasizes on compensation of the loss of the offended. Governments are trying for the compensation of the loss of the offended to be offered by the offender himself through expanding mediation. Thus, before penalties compensation of the loss will emerge (Momen abadi, 2005).

### Notes:

1- According to Islamic punishment law, the criminal age of maturity and in fact the retributive responsibility adherence to the religious age of maturity is 15 years old for boys and 9 years old for girls.

2- Le Systeme Penalou Judiciaire.

3- Other types of legal regimes include: non-judicial and supportive regime and integration regime. For further studies refer to → Hojati, p 32.

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