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В настоящий том включены материалы исследований, посвященные применению уголовно-процессуального права, криминалистическому и судебно-медицинскому сопровождению уголовного процесса.

Адресован практическим работникам, преподавателям, студентам юридических специальностей, а также всем, кто интересуется проблемами уголовного процесса, криминалистики и судебно-медицинской экспертизы по уголовным делам.

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**HOLDING DELINQUENT JUVENILES ACCOUNTABLE THROUGH
PERI-JUDICIAL¹ PRACTICES, MEDIATION,
AND FAMILY GROUP CONFERENCES**

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An important objective of the criminal justice system with respect to delinquent juveniles, in addition to correction and re-socialization, is making them accountable. Juvenile accountability as reflected in this study through specific principles rooting in theories of criminology and philosophical and penological bases, depends on development and application of alternative practices that are different from those traditionally used by the criminal justice system in responding to a criminal phenomenon. Therefore, to hold delinquent juveniles accountable one needs to turn to responses that can desirably make an offender aware of unfavorable consequences of his criminal acts and motivate him to redress damages that have resulted from those acts. The present paper is an attempt to discuss two effective ways of treating delinquent juveniles, namely mediation in criminal processes and family group conferences, to help them take responsibility for their criminal acts and try to make up for the consequences of those acts. The goal is to identify methods of holding delinquent juveniles accountable in the Iranian criminal justice system that have emerged as a result of ineffectiveness of punishments in correction and re-socialization of delinquent children and in the light of new ways proposed by restorative justice for treating this group of offenders. These practices have been influenced by criminological approaches including reintegration shaming, the principle of criminal law as the last and least resort, right to not to be punished, etc.

Drawing on descriptive-analytical findings and desk research, the present study has found that delinquent juveniles can be hold accountable by shifting away from traditional responses of the criminal justice system and towards practices recommended by restorative justice, including family group conference and mediation as means of informing delinquent juveniles of the consequences of their behaviors. On the other hand, these practices place offenders in a process where they become accountable for the offenses they committed by realizing how they failed to act humanely and by learning how to behave properly.

Keywords: *accountability, responsibility, restitution, mediation, family group conferences.*

Introduction. It is pointless to speak of delinquent juveniles in criminal justice system without reviewing the relevant methods. In addition, it seems reasonable to

¹ The concept refers to out-of-court tasks, processes, and practices which are indirectly connected to but do not exactly fall within the strict scope of the criminal justice system; the practices cover, among other things, restorative justice, mediation, social work, community justice, family group conferences, and legal assistance.

have an efficient knowledge base to develop a program which can be helpful in proposing a number of solutions in this regard. Thus, the present study attempts to review two efficient methods in this area, namely mediation and family group conferences. Despite the existence of numerous foundations on which the requirement for juvenile accountability can be based, the question of accountability has been mostly emphasized by criminological theories including social relationship and reintegration shaming, as well as philosophical and penological views like the principle of criminal law as last and least resort and right to not to be punished. From this basis emerges different and various methods of responding to juvenile offending and since these responses are intended to treat and correct an offender, it seems necessary to make juveniles accountable to the offenses they have committed. Although all practices of responding to juvenile offenses include an element of correction and treatment, only certain practices hold these offenders accountable.

As offenders within a criminal justice system become accountable, stakeholders in a crime also realized what they have done wrong in leading an offender to commit a crime. A society that ignores its own shortcomings and its own role in setting the stage for an act of crime will realize these shortcomings through making juveniles accountable and will try to remedy these shortcomings. In addition, other stakeholders like parents and victims of crimes will realize how they fail in educating or treating offenders. Therefore, the criminal justice system, in pursuing these goals, can hopefully achieve a level of growth and maturity that can make it possible to hold offenders accountable in any response to juvenile offenses, paving the way for correctional practices that are intended to rehabilitate offenders. This paper addresses the questions of what this accountability is and how it can be achieved. We examine the role of mediation in juvenile justice system while also investigating the role of family group conferences and involvement of stakeholders in holding juvenile offenders accountable for their offenses.

Mediation in Juvenile Cases.

Recent growth in practices of “diversion” – particularly in the form of mediation¹ and reconciliation – in most European and North American countries has brought significantly successful results. Over years, western countries have experienced a great movement towards limiting the scope of criminal law and judicial in-

¹ Mediation is a three-side process, without the traditional criminal justice proceeding, that involves a prior agreement between a plaintiff (victim), defendant (offender), and a third party known as mediator, intended to resolve disputes and problems arising out of an act of crime. Mediator, often a member of the civil society, engages in the “process of mediation” in an attempt to connect victim and offender, and to set the stage for a meeting, negotiations, statement of claims, and reciprocal demands by clarifying their views and problems formulated in new words, in order to help them express their inner feelings, achieve emotional comfort, restore emotional, psychological, and property damages, determine the offender’s obligations and duties to the victim, the society, and himself, and specify the extent to which each party is responsible for occurrence of a crime (source: P. A Samavati, Restorative Justice, 1st Ed., Tehran: Negah Bayena 2006: pp. 126-127.

stitutions, leading to growth and progress in practices and mechanisms such as decriminalization, depenalization, and diversion. Relying on the expanding scope of these measures, and particularly mediation and reconciliation, many countries have developed and implemented pilot plans and given the good outcomes of these plans – especially in children and adolescent delinquency – certain countries incorporated these measures into their legal system. Following the general acceptance of reconciliation and mediation programs, international institutions including the United Nations follow the lead to adopt similar measures like United Nations Standard Minimum Rules for the Administration of Juvenile Justice passed in 1995. In addition, the European Council adopted a set of rules in this regard in September 19781. Another example is Article 40(3)(b), the Convention on the Rights of the Child (CRC) which calls the states to establish “whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected”. It can be clearly understood from this provision that those who adopted the convention also had in mind mediation and other restorative programs. In other words, the state parties to the CRC were called on to use such programs.

Within the scope of the Iranian penal policy, traditional forms of mediation in criminal cases took shape for the first time through the work of justice chambers and arbitration boards. However, the passage of Article 189 of the IRR Third Plan for Economic, Social, and Cultural Development in 2000 established dispute resolution councils “to reduce referrals to courtrooms, promote public engagement, resolve local disputes, and address those issues which are of non-judicial or less complex nature...”² But given their structure and the way they address these issues, dispute resolution councils may not be thought of as restorative justice institutions³, and therefore fall beyond the scope of the present discussion.

Legislators of the newly amended Iranian Criminal Procedure (ICP) particularly focused on mediation institution as an important instance of implementing restorative justice programs. Articles 82 through 82 define the process for mediation. According to Article 82, ICP, “in offenses of the sixth, seventh, and eight degrees where sentences can be suspended” mediation can only be applied to minor offenses committed by juveniles. Thus, other juvenile offenses may not be submitted to mediation⁴. This questionable practice of course since the special physical, mental, and emotional characteristics of juveniles as well as the unintended and impulsive nature of their non-specific-intent offenses set them apart from adult offenders and therefore it would have been better if certain mechanisms were developed to address all juve-

¹ M. Ashuri, *Imprisonment Alternatives or Intermediate Punishments*, supra, p. 249.

² A.H. Niazpour, *Juvenile Criminal Law (the Process for Responding to Juvenile Delinquency)*, 2nd Ed., Tehran: Mizan 2017, p. 122.

³ See Z. Howard, *the Little Book of Restorative Justice*, supra, pp. 15-16.

⁴ A.H. Niazpour, *Juvenile Criminal Law (the Process for Responding to Juvenile Delinquency)*, 2nd Ed., Tehran: Mizan 2017, p. 122.

nile offenses through mediation. Furthermore, unlike more serious crimes that accompany great damages, minor offenses do not result in significant damages, and a delinquent juvenile is at a greater level of risk. Thus, this type of offenses often needs measures for correction and restitution. In addition, Article 82 provides that "...the judicial authority may submit a case upon mutual consent of the parties involved to a mediation institution to reach reconciliation...". Evidently, a mutual agreement is necessary for submitting a criminal case to mediation. This also shows the restorative nature of this approach.

Accountability through Mediation.

The official criminal justice system cannot restore order and safety without active and effective engagement of communities because communities have capacities that are inaccessible to the official criminal justice system. Therefore, the criminal justice system needs to base its operations on public engagement¹. Thus, establishment of a participatory process for resolving the disputes arising out of a crime requires active participation of communities as major actors in participatory justice. A crime-affected community needs to respond to victim's needs and offender's problems and this gives any community a significant role in this process².

The main objective pursued by mediation on delinquency is to create a sense of sympathy, compassion, apology, repentance, and accountability in an offender and this can be particularly much more effective for juveniles than for adults if attention is paid to their emotional sensitivities. In mediation, efforts are equally focused on justice for offender and for victim. Thus, mediation programs are intended to provide rehabilitation services to offenders and certain treatment benefits for victims. Furthermore, these programs are thought to be cost-effective and on the other hand, emphasis on an offender's accountability while revitalizing a victim or provision of social services feels desirable to the public.

From a restorative viewpoint, if we are to ignore the harms, damages, and causes of crime, we should also ignore losses and harms suffered by offenders. Studies have shown that many offenders have experienced victimization in significant aspects while many others perceive themselves as victims³. Of course, a perception of victimization should not relieve an offender from being accountable for what he or she has done because he might have inflicted harms and damages on others and therefore should try to make right the wrongs he did. For this reason, an offender in this process expresses his opinions on how he was placed at the brink of committing a crime. An offender should be given a chance to improve as someone who is in a sense a victim of the society and personal problems. Through this restorative process, negotiations, talks with the victim, and statements of the causes of the offense

¹ See A. Sharifzadeh, A Study of the Concept and Status of Community in Mediation and Dispute Resolution, *Journal of Crime Prevention* 2007, pp. 101-122, p. 105.

² M. Farahmand, *Instances of Restorative Justice in Iranian Criminal Law*, 1st Ed., Tehran: Mizan 2017, p. 133.

³ Z. Howard, *the Little Book of Restorative Justice*, supra, pp. 66.

he committed, the offender expresses the pain suffered as a result of the crime committed and acknowledges failure to observe basics of human relations. In this way, the offender feels accountable and remorseful by realizing what he has done wrong in terms of violating ethical principles and inflicting harms on others¹.

In Mediation both victim and offender should volunteer for the process, with no use of fear, threat, or force. Such an engagement should not be a formal or an artificial one as sometimes seen in the official criminal justice system where an offender does not volunteer to appear before the court but is forced into a trial. The same applies to victim who sometimes is reduced to a witness or should just passively sit and watch a play featuring prosecutor, defendant, lawyers, and judges as actors². In this process (the formal process in the criminal justice system), offender will not realize the harm he has done and cannot be expected to feel accountable or seek correction as the process ignores the needs and demands of victim without actively engaging him. Therefore, voluntary participation in restorative justice means an actual and active engagement in the process. Consistent with this objective, Iranian legislators in Article 82 of the ICP have called for a prior agreement between the offender and the victim as a requirement for submitting a case to mediation. Particularly, Article 16 of the Criminal Justice Mediation Code emphasizes that neither party should be forced or threatened into such an agreement.

An important principle in mediation is to secure victim's safety. Victimization is an extremely undesirable terrifying experience that exposes the victim to feeling of continuous danger and insecurity and brings about irreversible psychological harms and therefore mediators should be in face-to-face or phone contact with the victim and use any means available to prevent re-victimization or double victimization³. Mediator creates an atmosphere where offender and victim feel free to express their inner feelings. The offender should feel accountable for what he has done without fearing the consequences of responsibility or punishment and declare his readiness for restitution. On the other hand, rather than having a passive role, the victim should take on an active, central role facing the offender and talk about the offense and the resulting harms⁴. The victim expresses the harms and pains arising out of victimization. By acting out the problems and issues he felt, the victim in fact describes the devastating and damaging harms he suffered as a result of victimization.

The offender realizes harmful consequences of what he has done and voluntarily takes responsibility for his action, trying to redress the damages he inflicted on the victim. Consequently, not only is the offender held accountable for his behavior, but he is also given a chance for correction and re-socialization. As noted earlier, to feel accountable, the offender must face what he has done.

¹ A. Samavati Pirouz, *Restorative Justice*, supra, p. 111.

² M. Farahmand, *Instances of Restorative Justice in Iranian Criminal Law*, supra, p. 148.

³ Z. Howard, *the Little Book of Restorative Justice*, supra, p. 120.

⁴ A. Shiri, *Restorative Justice*, supra, p. 342.

The victim effectively motivates the offender and the society into making a constructive contribution to restorative justice process, confronting the effects and consequences of the criminal act, reaching a desirable agreement between the juvenile, his family, and the defendant on restitution, mitigating the conflicts, redressing the psychological or physical injuries suffered by the juvenile, trying to resolve the victim-offender dispute, and addressing the harms inflicted on the juvenile. The process should be used to teach the delinquent juvenile about socialization and proper social behavior by creating a sense of shame, remorse, and duty in an attempt to reinforce mutual understanding, voluntary accountability, and informed sense of responsibility in the offender to help him return to the social life while mending the broken social ties¹.

Another important point to note is the presence of other stakeholders at mediation meetings. According to Article 26 of the Criminal Justice Mediation Code, “the guardian or a parent of a party to a dispute should be present [in the process] if that party is under 18”. Presence of a juvenile’s parents or guardian can be very helpful in making him accountable for the offense he has committed. An offender who feels the support of his family or relatives throughout the mediation process is encouraged to take accountability for what he has done. In addition, the offender can do better in fulfilling the obligations and actions he assumes for restitution if he has the support of his family.

Finally, it seems necessary to review the agreements reached and the guarantees and sanctions provided to secure them. By fulfilling his restorative obligations, the offender redresses the damages he has illegally inflicted on the victim on the one hand and demonstrates his accountability in the mediation process by expressing his inner feelings of sorrow and remorse to the victim on the other².

1. Accountability through Family Group Conferences.

Family group conference (FGC) program was developed to broaden the scope of restorative justice programs and to address the shortcomings in offender-victim mediation processes. Currently FGC is a major approach to implementation of restorative justice. The model, in its modern form, has been adopted in

¹ H. Hedayat, *Special Criminal Procedure Code for Victimized Children (A Comparative Study of International Instruments and Iranian Criminal Law)*, 1st Ed., Tehran: Mizan 2016, p. 112.

² In Iranian laws, according to Article 83, ICP and Article 25, Medication Codes and the notes to this Article, the obligations assumed and agreements made are signed by both parties. These agreements are valid with respect to the parties involved and to the criminal justice system. This validity implies that obligations arising from the mediated agreements can be enforced upon a request by either party and will remain in force unless they are canceled upon mutual consent or lawfully waived due to other causes. According to Article 82, ICP, if a defendant unreasonably fails to perform his obligations under a mediated agreement, the order for the suspension of prosecution will be revoked upon a request by the plaintiff or a litigator. The sanction against the offender can be used as a measure of his accountability. An offender who refuses to fulfill his obligations under a mediated agreement following a commitment he made only to escape prosecution will again become subject to prosecution when in breach of the mediated agreement. This risk of re-prosecution causes the offender to fulfill his obligations in a timely manner and blocks the option of escaping the commitments and responsibilities he has assumed.

1989 from juvenile justice process in New Zealand. It is used to address serious and violent offenses committed by juvenile New Zealanders¹. These programs are not intended to establish criminality and responsibility of offenders; rather, they serve as a means to hold offenders accountable and make them acknowledge what they have done wrong². As noted earlier, FGCs bring together stakeholders. Here, the victim, the offender, their relatives, social workers, and other people get involved to give the victim a chance to decide on the proper reaction to the offender. In addition, other stakeholders can encourage the offender to take responsibility while supporting and encouraging a proper decision as to how to redress the harms inflicted on the victim.

Participants in FGCs emphasize the unacceptability of a criminal act and clarify the limits, values, and anti-values involved³. By emphasizing the unacceptability and rejecting what the offender has done, FGCs can express the community's desire for reintegrating the offender back to the community. In this way, the process is aimed at reintegration shaming for the offender who, by understanding the devastating consequences of his action, will realize he has failed to act in a human way and this will set the stage for accountability through helping the offender remorsefully express his shame. Therefore, the process creates a sense of emancipating shame in the offender, encouraging him to restore the relations and right the wrongs he has done. Thereafter, the offender can be said to have been held accountable for his criminal action.

In this section a discussion is presented on the role of participants and the process of FGC in holding an offender accountable for his offense.

3-1 Victim: In FGC, victims play the most central role in advancing the plan and holding offenders accountable. The coordinator of an FGC should take to the victim about the time and place of the conference. The victim should realize that FGC is intended to protect and support him. Other information that should be provided to the victim includes successful record of FGCs⁴. Greater awareness of previous successful FGC results will enhance the victim's motivation to take part in the process.

In an FGC program, the victim speaks of the impact(s) an offense has had on him. The experience of victimization distorts his beliefs about living in a just

¹ A. Shiri, *Restorative Justice*, supra, p. 352.

² The difference between criminal justice mediations and FGC programs lies in the engagement of stakeholders and those affected by a crime as well as the role played by them in these programs. In offender-victim mediation, community members and their families play a minor role, a weakness found in mediation programs. In particular, mediation process is often led against the offender in somehow a biased approach while FGCs emphasize the role of community members, offender-victim families, and probably civil society institutions. In addition to the victim and the offender, FGCs also engages members of families of the victim and the offender and those who support them, including social workers. As a result, FGCs are often preferred to mediation (A. Shiri, *Restorative Justice Processes*, journal of Crime Prevention Studies, winter 2006, issue 1, p. 12).

³ This can be used to create a sense of shame in the offender.

⁴ *Ibid*, p. 64

world. Other stakeholders and supporters at an FGC, and even the offender, may reproduce or institutionalize these beliefs into an offense¹.

The victim should tell the truth about the harms he suffered as well as his own role in his victimization. In some cases, the victim may play a role in his own victimization by, for example, provoking, insulting, or swearing at the offender, thereby facilitating occurrence of a crime. In these cases, justice demands recognition of a lower level of criminal responsibility for the offender. In addition, a victim who realizes his own role in an offense will show greater leniency towards the offender². This will establish the extent to which the offender is culpable and should be held accountable for the offense he committed.

As noted earlier, FGCs are based on active engagement of all stakeholders of a criminal phenomenon, all those unfavorably affected by a crime, and supporters of the victim and the offender. This broad participation takes place through dialog, discussions on the crime, devising a restitution plan, and creating a sense of mutual empathy and respect. More clearly, dialog is a key element in implementing restorative processes in general and FGCs in particular.

3-2 Coordinator/facilitator: Another important factor in an FGC is the role played by the families of the victim and the offender. The FGC coordinator should advise the family of the delinquent juvenile on what will follow and how the process will go. The decisions made by the offender's family are extremely important since FGC gives crucial and clear priority to the family of the offender, *i.e.* the person who should be held responsible and accountable while enjoying the support provided by his extended family. In addition, FGC program must enable them to make the best decision³.

There seems to be a widespread consensus among specialized scientists and the public on the key role played by the family in growth, development, and socialization of a child. Family can serve as an environment where members love, show affection, and mutually help each other through a process of healthy development. According to Patterson, early offenders are individuals who have been exposed to unfavorable family environment, forced behavior, and authoritarian parenting with such negative experiences as restlessness, anxiety, lack of achievements in education, and low levels of self-confidence. One goal of an FGC program is to engage families and strengthen the bonds in the offender's family. An offender's family should be actively engaged in the processes and outcomes of FGC. It is necessary for them to encourage their children make the right decisions and to provide the resources required for fulfilling the obligations⁴. In this way, the offender, seeing the support from his family members will be encouraged to take accountability for the offense he committed because he has also inflicted

¹ P. A. Samavati, *Restorative Justice*, supra, p. 89

² A. Shiri, *Restorative Justice*, supra, p. 122

³ A. Mc. Rae, Z. Howard, *Family Group Conferences*, supra, p. 69

⁴ A. Mc. Rae, Z. Howard, *Family Group Conferences*, supra, p. 48

harms on his own family and through the shaming process he will try to remedy his faults. This accountability and attempts for restitution will redress these issues to some extent.

In some cases, the delinquent juvenile does not feel accountable because he lacks the resources and support needed for restitution. For example, an offender who is unable to compensate for the damages he inflicted on a victim will refuse to take responsibility for the offense and for redressing the damages. The positive function family members attending FGCs and providing assistance gives the delinquent juvenile the support he needs for accountability and restitution.

3-2 Social workers: Social workers are also present in FGCs¹, although they are not required to attend. However, their expertise and knowledge can be useful in dealing with juvenile offenses.

Since juveniles often become offenders or victims due to lack of proper support and guardianship, the presence of non-judicial experts like social workers can play a significant role in their re-socialization, mitigating the pains resulting from crimes, and preventing re-victimization or re-offending in the criminal process.

As the holders of the most clinical positions in the criminal justice systems, social workers can assist the criminal justice system by using their knowledge on psychology, sociology, and other fields of science, by providing professional services, and by observing different relevant codes and principles including the principle of individuality. They have assumed a wide range of duties in juvenile support, rehabilitation, and prevention of reoffending. In this way, as the most effective and efficient experts of the “peri-judicial” system, social workers can carry out remarkable activities in connection to child victims and offenders in the criminal justice system².

In FGCs, it is extremely important to prepare the victim and the offender for active participation in the program. How a child victim confronts FGC plays a critical role in shaping his views on this supportive program. When placed next to an experienced actor who respects him and tries to give him back the rights and the peace he has lost, the victim will show greater trust and cooperation in FGC in an attempt to redress the damages sustained. By facilitating the engagement of victims in FGC and doing research and interviews to shed light on the victim’s demands and different aspects and reasons of victimization, a social worker can play an effective role in FGC. A major social work skill is interviewing skill; interviews in social work serve as

¹ Social work is a professional service relying on special skills and expertise and aiming at assisting individuals, groups, or communities to gain personal and social independence as well as personal and social satisfaction. A social worker is someone who possesses the required knowledge, expertise, and skills and, while observing the relevant professional codes, can enable individuals, groups, and communities to solve their problems, meet their needs, and achieve relative independence and satisfaction by relying on their own abilities and the existing resources (Source: A. Ranjbarzadeh, *The Role of Social Work in the Process of Offending: an Emphasis on the Islamic Penal Code of 2013*, Dissertation, 2015, Payam-e-Nour University, p.10).

² H. Ghazizadeh, *The Role of Social Workers in Juvenile Justice System: A Study of the Bill on Dealing with Juvenile Offenses*, the 1st International Conference on Management, Economics, and Educational Science, Sari, Ayandehsaz Research and Academic Co, Payam-e-Nour Univerisyt, Taka, 2015, p. 2.

a means of understanding the victim and identifying his problems in the problem-solving process. When a good relationship is established, the victim can better express his inner feelings, thereby facilitating the process of problem statement, contemplation, reflection, and discovering solutions¹.

3-3 Community: The last actor in FGCs is the community.

The presence of community members is not directly related to making delinquent juveniles accountable. However, it is discussed here because they can facilitate the process of accountability and pave the way for re-socialization of the offender once he admits accountability and takes responsibility for the crime he has committed.

The occurrence of crime harms offender-community relationship. The offender feels lonely, isolated, and rejected. This rejection is dangerous for the community since on one hand the community becomes weaker by losing its members and on the other hand it can be exposed to re-victimization because this isolation pushes the offender towards other offenders and as he can see no hope for a better social life, he will find no option but re-offending.

Community can help in reintegration of offenders. Treatment, rehabilitation, recovery from addiction, employment, education, and respect are among the actions that can be taken by a community to prevent re-offending by helping the offender in reintegration and breaking the walls of isolation. Community can also assist the offender in restitution process. An obstacle in reintegration is the inability to remedy the damages sustained by the victim. In some cases, offenders lack this ability and need assistance from community. Therefore, not only can community assist the offender in restitution but it can also take effective steps toward reintegration of the offender². Consequently, community representatives can actively contribute to an FGC program through determining the damages sustained by the community, demanding the support required for restitution, and helping the offender realize the consequences of his offense for the community (and for the offender himself). In addition, an offender who realizes that the community regards him as a valuable member of the community will do better in taking responsibility for his action and mitigating the consequences of his behavior.

Attending FGCs is also helpful for the community itself. "FGCs provide information that can enable the community to focus on criminogenic factors that exist within the community. They can promote closer and more effective relationships between state and social institutions. Furthermore, these programs give the community a chance to participate (in reaction to an offense). Moreover, community members are allowed to be recognized as victims, and this gives them an appropriate sense of responsibility toward community members"³.

¹ A. Javan Jafari Bojnordi, S. Ghatluei Toroghi, The Role of Social Workers in the Juvenile Justice System: A Study on Juvenile Victims, the BAR Association Quarterly, issue 15, winter 2016, pp. 91-108, p. 96.

² A. Shiri, Restorative Justice, *supra*, p. 325-326.

³ A. Mc. Rae, Z. Howard, Family Group Conferences, *supra*, p.114-115.

Conclusion. The present study examined the methods used in responding to delinquent juveniles in an attempt to hold them accountable through mediation processes and family group conferences (FGC).

As peri-judicial responses including FGC and mediation in criminal justice cases are based on dialog and exchange of ideas, feelings, and experiences among stakeholders, they can provide the offender with an opportunity to realize that his beliefs are not all correct and some of them even root in misperceptions. Through peri-judicial processes, a juvenile offender learns about the devastating consequences of his offense, feels ashamed due to the realization of his failure to act according to normal human relations, and relies on the support provided by family members, community members, and other stakeholders in the process of restitution and making right the wrongs he has done. In addition, the victim also plays an active role in this process by expressing the harms and pain he suffered as a result of the offense, making the offender aware of the harmful consequences of his act and setting the stage for him to admit accountability for his offense. In fact, these methods provide opportunities to correct the offender's thoughts and beliefs and to prevent him from re-offending through reiterated justification of his wrongful actions. Through this process, the delinquent juvenile understands that the damage he tries to deny has actually been done, the victim whose existence he denies exists in reality, and eventually the responsibility he denies is in fact undeniable. These processes all fall within the scope of peri-judicial methods as these practices address the root causes of crimes and try to draw juvenile offenders' attention to the harmful consequences of their actions.

In this way, restorative justice and peri-judicial practices come into play in responding to crimes committed by these offenders and holding them accountable for those crimes. Through these practices, delinquent juveniles attain a true understanding of their harmful actions and identify and correct their unfavorably destructive behaviors which, in themselves, push the offender toward escaping responsibility and accountability for their actions. In a face to face encounter with stakeholders, juvenile offenders can realize the consequences of their actions by hearing what these stakeholders have to say about those offenses or in some cases by directly observing such consequences. The criminal justice system, in its traditional form and through its conventional measures, cannot achieve these goals and therefore alternative peri-judicial practices should be applied to hold these offenders accountable for their offenses.

References

1. Howard, Z. (2009). *The Little Book of Restorative Justice*, translated by Gholami, H. Tehran: Majd.
2. Ashuri, M. (2015). *Imprisonment Alternatives or Intermediate Punishments*, 3rd Ed., Tehran: Gerayesh.
3. Samavati, P. A. (2006). *Restorative Justice*, 1st Ed., Tehran: Negah Bayena.

4. Shiri, A. (2017). Restorative Justice, 1st Ed., Tehran: Mizan.
5. Niazpour, A. H. (2017), Juvenile Criminal Law (the Process for Responding to Juvenile Delinquency), 2nd Ed., Tehran: Mizan.
6. Sharifzadeh, A. (2007). A Study of the Concept and Status of Community in Mediation and Dispute Resolution, Journal of Crime Prevention, pp. 101-122.
7. Farahmand, M. (2017), Instances of Restorative Justice in Iranian Criminal Law, 1st Ed., Tehran: Mizan.
8. Hedayat, H. (2016). Special Criminal Procedure Code for Victimized Children (A Comparative Study of International Instruments and Iranian Criminal Law), 1st Ed., Tehran: Mizan.
9. Mc. Rae, A., Howard, Z. (2007), Family Group Conferences, translated by Gholami, H. 1st Ed., Tehran: Majd.
10. Shiri. A. (2006). Restorative Justice Processes, Crime Prevention Quarterly, winter 2006, Issue. 1.
11. Ranjbarzadeh, A. (2015). The Role of Social Work in the Process of Offending: an Emphasis on the Islamic Penal Code of 2013, dissertation, Payam-e-Nour University, Central Karaj Branch.
12. Ghazizadeh, H. (2015). The Role of Social Workers in Juvenile Justice System: A Study of the Bill on Dealing with Juvenile Offenses, the 1st International Conference on Management, Economics, and Educational Science, Sari, Ayandehsaz Research and Academic Co, Payam-e-Nour Univerisyt, Taka.
13. Javan Jafari Bojnordi, A., Ghatluei Toroghi, S. (2016), The Role of Social Workers in the Juvenile Justice System: A Study on Juvenile Victims, the BAR Association Quarterly, issue 15, winter 2016, pp. 91-108.

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INSTANCES OF FAIR TRIAL IN JUVENILE CRIMINAL LAW: A BRIEF REVIEW OF IRANIAN LAW

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The Sensitivity attached to periods of childhood and adolescence development together with harmful consequences of handling juvenile cases under adult criminal proceedings have called for a special criminal law system to be developed by criminal justice authorities in order to achieve such goals as preventing labeling and recidivism and rehabilitation of delinquent children. In Iranian laws, these juvenile-specific fair trial provisions can be found in the right to special courts, to expedited and in camera trials, to an attorney, to be accompanied by a guardian or parent, and to a wide range of criminal measures. Drawing on a desk research, the present paper discusses major principles of juvenile criminal justice in light of international instruments and clarifies a number of relevant innovations in the Iranian Criminal Procedure

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