

The Role of Mediation in Enhancing Iran's Legal System

Corresponding Author:

Sabereh Akbarzadeh

Master's student in Criminal Law and Criminology, Payam Noor University of Mashhad

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ABSTRACT:

Mediation, also known as intercession or arbitration, is a dispute resolution method in which a neutral third party, called the mediator, assists conflicting parties in reaching a mutual agreement. Mediation may not always result in a successful resolution and can sometimes end without an agreement. When an agreement is reached, its terms are typically decided by the parties themselves. The disputing parties may include countries, organizations, groups, individuals, or any other entities that benefit from mediation. It is essential that they regard the mediator as an impartial figure. According to Article 29 of the regulations, if individuals or institutions neglect their mediation responsibilities or delay responding within specified deadlines without valid reasons, the judiciary may refuse to assign mediation tasks to them. Article 32 states that the judicial authority overseeing the case is responsible for supervising the mediation process. Moreover, Article 33 allows the disputing parties, as key participants, to report the mediator's incompetence or delays in advancing the process to the relevant judicial authority. The judiciary, which is responsible for supervising mediation sessions under Article 28, may cancel the mediation process under Article 34 if the parties fail to attend sessions and the mediator submits a report indicating that sessions could not be held. In such cases, the case is returned to its prior state for formal judicial proceedings.

Keywords: *Mediation, intercession, arbitration, enhancement of Iran's legal system.*

INTRODUCTION:

Mediation can occur either through the voluntary initiative of the mediator, who intervenes conciliatorily to bring the parties closer, oversee interactions, and foster reconciliation and peace, or it can be conducted by appointing a third party through the court with the mutual consent of the disputing parties. This process may involve one or more mediators working to resolve the conflict and reach a settlement (Hosseinvand, 2015). The law recognizes three types of mediation:

1. Community criminal mediation
2. Community criminal mediation with judicial supervision
3. Judicial-police criminal mediation alongside internal organizational mediation (Najafi Abrand Abadi & Hashem Beigi, 2002, p.141).

In Islamic jurisprudence, the strong sense of community cohesion, known as "faith-based brotherhood," provides a suitable foundation for resolving disputes through non-judicial means rather than formal courts. In civil law, where disputes are settled by mutual agreement and consent leading to peace, third-party mediation aimed at resolving conflicts without resorting to criminal or judicial laws is highly encouraged and emphasized by Islamic Sharia.

The main challenge in adopting mediation within Iran's legal framework lies in the legislator's attempt to address the shortcomings of the criminal justice

system by introducing a mediation process. This legislative initiative represents a significant reform in Iran's legal system, with the potential to reduce court caseloads, lower government expenses, and achieve other beneficial outcomes. However, if this process is implemented in the same way as previous mechanisms intended to support the criminal justice system such as the Dispute Resolution Council and merely adds an additional burden, it may increase the system's strain. This would not only fail to benefit society but also create numerous practical difficulties for both the community and the legal system.

Restorative justice programs, including mediation, allow certain cases to be diverted to alternative, non-judicial systems. This not only reduces the workload of the judiciary and criminal justice system but also improves access to justice, lowers associated costs, and enhances the effectiveness and efficiency of criminal justice outcomes. In Iran's current criminal justice system, particular emphasis is placed on the innovations introduced in the 2013 Code of Criminal Procedure regarding dispute resolution through reconciliation and settlement, in contrast to earlier laws such as the 1999 Code of Criminal Procedure. Another important aspect concerns the establishment and organization of mediation institutions as outlined in the 2013 Code of Criminal Procedure, along with the procedures for conducting mediation within these institutions.

Improving mediation-related matters is both important and necessary. The more such mechanisms and capacities are institutionalized to peacefully resolve disputes among individuals, the more promising the innovative reforms in criminal justice will be. However, unless independent, lawfully established institutions with clearly defined responsibilities, powers, and functions are created—staffed by educated, trained, and impartial personnel who are sensitive to societal capabilities and encourage community participation in managing formal criminal justice—and unless the needs and concerns of offenders are acknowledged, with attention to their future, abilities, and social reintegration, the minimum international standards for restorative justice tools, especially criminal mediation, will remain unattainable. Therefore, it is advisable first to draft and implement clear and effective legal provisions within the framework of the law. If problems arise during implementation, efforts should be made to address and correct them. In light of these considerations, this study employs a descriptive-analytical approach, utilizing library resources to examine the role of mediation in advancing Iran's legal system.

The Concept of Mediation:

Criminal mediation, as a modern approach within criminal justice, aims to find humane solutions to crime. Advocates of criminal mediation seek to promote conflict resolution policies as alternatives to punishment and imprisonment. Criminal mediation can be categorized according to various criteria. Based on the participants' mode of engagement, it can be direct or indirect. Depending on the number of participants, mediation can be individual or group-based. Considering the mediator's role, mediation can be classified as intermediary mediation, comprehensive mediation, judicial supervision mediation, or systemic mediation.

In direct mediation, the victim and offender meet face-to-face, expressing their feelings and experiences related to the crime. In this type of mediation, the mediator's role is minimal, allowing the parties to determine the manner of dialogue themselves, develop a better personal understanding of each other, communicate directly, and achieve greater psychological satisfaction. In indirect mediation, flexible, in-person negotiations occur through the mediator, who facilitates reaching a mutual agreement. This agreement usually involves compensating the victim and receiving an apology from the offender.

One of the primary goals of mediation is to provide emotional and psychological relief to the victim, accompanied by support and empathy from those present at the session. The offender can play a crucial role in restoring the victim's lost self-confidence and preventing re-victimization. However, the most important aim of mediation is to compensate the victim for their damages. These sessions focus on accurately determining the extent of the victim's material and moral damages and on compensating

these losses in the shortest time and most effective manner possible.

One objective related to the offender in this process is to counteract the neutralization theory proposed by Matza. According to this theory, before committing a crime, the offender constructs false and mistaken perceptions to deny wrongdoing and justify their actions as legitimate. For example, a thief may justify theft by claiming the victim's property was obtained illegitimately, or an employee may excuse embezzlement by arguing they are owed more than they receive. Mediation sessions and the resulting dialogues can help correct these false perceptions.

Mediation in Iran's Criminal Laws:

The stages of criminal proceedings include the pre-trial phase (establishing proof of the crime), the trial phase (court hearings), and the post-trial phase (execution of sentences). According to the international document on "Applying Restorative Programs in Criminal Matters," there is no strict requirement that mediation must occur at a specific stage; rather, its application depends on the legal framework of each country (Alipour, 2016, p. 83).

Stages of Applying Mediation in Proceedings:

The pre-trial stage refers to prosecution and investigation. Applying mediation at this stage is suitable for two main reasons. First, mediation is not limited to criminal proceedings and enforcement; it often takes place in connection with the criminal justice system and is subject to judicial supervision. This provides the parties with an opportunity to resolve the dispute arising from the crime, potentially eliminating the need to proceed to later trial stages, thereby saving time and costs for the justice system. Although mediation at this stage is preferable to mediation during the trial, it is not without risks. The primary concern is that the presumption of innocence may be compromised. In other words, mediation at this stage is a double-edged sword (Zeyd Sharifi, 2006, pp. 90–93). Under Iran's laws, given the acceptance of the principle of legality in prosecution, the possibility of mediation by the prosecuting authority has been limited, and the pre-trial phase has legally had a narrow scope for mediation. However, due to a shift in approach in the Code of Criminal Procedure regarding the appropriateness of prosecution, the use of criminal mediation at the pre-trial stage—during both prosecution and investigation phases—has become more evident (Rafiee Nayini, 2015, p. 167).

In the context of mediation during the investigation stage, the investigating magistrate—similar to the prosecutor during the prosecution phase—can refer crimes of degrees 6, 7, and 8 to mediation based on the proviso of Article 82 of the Criminal Procedure Code. Moreover, according to Article 192, the magistrate is obligated, after completing the investigation and before issuing the indictment, to refer the case to mediation or other alternative prosecution methods,

aiming to resolve and close the matter at that stage. Regarding the scope of mediation for crimes committed by children and adolescents, the law on the establishment of courts for children and adolescents allows mediation at all stages of the trial. Article 15 of this law permits referring cases to social work institutions or dispute resolution councils for mediation aimed at reconciliation between the parties during the prosecutor's office stage.

At the trial stage, the case is referred by the court judge to mediation services; thus, mediation at this stage is judicial mediation. This approach has been particularly supported by juvenile court judges in the United States, as the outcome reached is agreed upon by all parties involved. The key point to note is that mediation at this stage must be voluntary and based on mutual agreement.

1. Post-Trial and Sentencing Stage (Enforcement Stage):

This form of mediation first emerged in England in cases of violent offenses, where victims were initially unwilling to engage in restorative or conciliatory processes shortly after the crime due to the severity of their injuries. However, after formal criminal proceedings and sentencing, offenders became more willing to participate in restorative justice processes. This mediation model was piloted successfully in England across various crimes, including property offenses and homicide. The restorative justice system involves the victim, offender, and the community as a whole, aiming to establish a balanced approach that attends to the needs of both the offender and the victim. A key feature of restorative justice is compensating the victim for their losses, which can also be applied during the post-trial sentencing phase. In Iranian criminal law, Article 277 of the Criminal Procedure Code exemplifies mediation during the post-trial phase, with amendments reflected in Article 683 of the new law. The goal of post-trial mediation is to repair the damaged relationship between the victim and offender and facilitate the social reintegration of the offender.

Moreover, the note in Article 15 of the Judiciary Law establishing Children and Adolescent Courts, which permits reconciliation during the enforcement of sentences, also reflects the use of mediation during this stage.

Scope of Mediation in Various Crimes:

Mediation is most commonly applied in cases involving juvenile offenders. Initially, criminal mediation was designed for this group but, due to positive results, it has gradually extended to adult crimes. For instance, the Children, Youth, and Family Act of 1989 in New Zealand marked a fundamental change in the juvenile justice system by establishing restorative justice as the dominant model. Family group conferencing became the primary method for

resolving conflicts arising from juvenile offenses. This transformation effectively replaced the juvenile criminal justice system with restorative justice practices in this area.

In Iranian legal tradition, mediation plays a crucial role in crimes subject to Qisas (retributive justice), especially in cases of intentional murder. Whether initiated spontaneously or through judicial referral and supported by social groups, this restorative institution has provided significant benefits to Iranian society and is expected to continue doing so (Hoseinvand, 2017, p. 195).

Blood money (Diyah), defined under Islamic Penal Code as a private and pardoned punishment, follows a similar process to Qisas, as the authority to forgive rests with the victim. Therefore, the role of mediation in this area is extensive and clear. Examples of this approach can be found in tribal legal customs such as the Arab tribal laws, the Bakhtiari tribe's blood compensation practices, the Baloch tribes' asylum traditions (Pater), and other community mediation customs across the country. The principles of mediation in Qisas apply similarly to crimes subject to Diyah, making the scope of mediation in these cases equally broad and prevalent.

The Role of Mediation in Resolving Disputes and Responding to Norm Violations in Islamic Jurisprudence Texts:

1. Mediation Between Disputing Parties

In the realm of *Huquq al-Nas* (rights among people), where disputes are resolved through mutual agreement and consent of the parties, mediation by a third party aimed at resolving conflicts and settling disputes without resorting to legal or judicial procedures has been highly encouraged and recommended by Islamic law. This domain primarily includes most civil cases and those criminal cases that are predominantly private in nature (*Huquq al-Nas*), where prosecution and punishment of the offender depend on the victim's will and request (i.e., offenses that can be forgiven). Such mediation may occur either through the mediator's own initiative, acting as a peace-maker to bring the parties closer and facilitate reconciliation, or by appointing a third party by the court or through mutual consent of the parties to intervene for dispute resolution and reconciliation. The former form, known as *Islah al-Dhat al-Bayn* (reconciliation between parties), is recognized and approved in Islamic ethical and legal teachings. The latter can be seen in the form of *Hukmiyyah* (arbitration), as established in Islamic law (Refaei Naeini, 2015).

If disputing parties bring their case before a judge and the ruling is clear, the case must be adjudicated. However, it is recommended to encourage reconciliation, which is preferable and does not conflict with the urgency of judicial procedures, even

if the rightful party demands an immediate ruling. If either one or both parties refuse reconciliation and insist on a judicial verdict, the judge must issue a ruling (Qeyasi, 2001).

In conclusion, from the perspective of Islamic law, judges should encourage parties to reconcile and settle their disputes amicably before and even during the judicial process, without requiring the claimant or rightful party to request withdrawal or dismissal of their claim. This encouragement for reconciliation can be considered a form of mediation aimed at peacefully resolving conflicts between parties. It is worth noting that allowing and even urging judges to promote reconciliation is a unique feature of Islamic procedural law, reflecting its ideological and religious foundations—an approach not usually found in secular legal systems.

2. Arbitration (Hukmiyyah):

According to certain regulations, arbitration is a matter within the discretion of the disputing parties, who can decide voluntarily to refer their dispute to an arbitrator and bind themselves to the arbitrator's decision. Other regulations indicate that although referral to arbitration and withdrawal of the right to judicial recourse require the consent of both parties, once they agree, arbitration becomes binding and irrevocable.

If the key characteristic of judicial proceedings is to settle disputes based on law with final and binding rulings, and mediation aims to resolve conflicts by bringing the parties' viewpoints closer and fostering reconciliation outside strict legal frameworks, arbitration combines these features. It allows voluntary reconciliation efforts by the arbitrator and at the same time produces a binding, enforceable decision. Mandatory arbitration is also provided for in Islamic law in specific cases such as divorce, based on the Quranic verse (An-Nisa 4:35), where arbitrators appointed by the spouses must attempt reconciliation and report to the court. Otherwise, arbitration serves a judicial function, where the arbitrator cannot issue a ruling contrary to the law, and the judgment must be justified and binding, with enforceable penalties for non-compliance. Ultimately, arbitration represents a simpler form of judicial resolution compared to formal courts, resolving some disputes without strict procedural formalities. Given the prior consent of the parties, arbitration can be considered a form of friendly or amicable justice.

3. Mediation Before the Ruler in Favor of the Offender:

Mediation or intercession (*Shafa'ah*) in Islamic culture is used in two contexts: firstly, the spiritual intercession by the saints or divine figures on the Day of Judgment, and secondly, intercession before a ruler or judge in favor of an offender or wrongdoer.

Spiritual intercession is a well-established belief discussed extensively in Islamic theology and exegesis, which deserves separate study. From a

criminal justice perspective, however, *Shafa'ah* refers to a qualified person's mediation before the ruler or judge to advocate for clemency for the offender.

The Quran mostly refers to *Shafa'ah* in the context of the Hereafter, with some verses rejecting or limiting it, and others affirming it. Examples of verses rejecting intercession include:

- "Fear the Day when no soul will compensate for another, and no intercession will be accepted from it, nor will any ransom be taken from it, nor will they be aided." (Al-Baqarah 2:48)
- "A Day when there is no trade, friendship, or intercession." (Al-Baqarah 2:254)
- "The wrongdoers will have no protector or intercessor who is obeyed." (Ghafir 40:18)
- "We have no intercessors nor any close friends." (Ash-Shu'ara 26:100-101)

Many hadiths in Sunni and Shia sources discuss both spiritual intercession for sinners and worldly intercession for offenders before rulers. For example, Imam Sadiq (AS) narrated that the Prophet (PBUH) forbade intercession in cases involving legal punishments and warned that those who attempt to undermine divine limits will face punishment on the Day of Resurrection. Similarly, the Prophet advised against interceding to undermine the ruler's legal penalties (punishments).

Mawardi, a well-known jurist, regarded intercession (*shafa'ah*) in the context of *hudud* punishments and considered both accepting it on behalf of the intercessor and the one being interceded for as prohibited. He explained that if the intercessor pleads with kindness, it would be a favorable intercession for him, and in return, he would guarantee a good intercession for the intercessor. He classified this as a *ta'zir* (discretionary) matter. The issue is that the righteous are often granted pardon and forgiveness.

Understanding the views of general Islamic jurisprudence on this topic, as narrated from the Prophet (peace be upon him and his family), is helpful. The Holy Quran divides intercession into two categories (Surah An-Nisa, verse 85) and encourages believers to engage in good intercession. Generally, intercession aimed at pardon is recommended (*mustahabb*).

Many texts discuss the principle of *istishab* (presumption of continuity), and it is mentioned in hadiths that since pardon is part of *qisas* (retributive justice) and is a right of the people, the Prophet's recommendation for forgiveness and intercession was not obligatory. Ibn Hajar, in *Fath Ibn Abd al-Barr*, stated that interceding for sinners is commendable and beautiful, as long as the ruler has not yet issued a verdict; once the ruler makes a decision, it is then determined whether the intercession will be considered.

Another reason supporting intercession is that it brings reward and merit to the intercessor, even if the intercession is ultimately not accepted. It also

positively influences the intercession itself and allows one to benefit from God's grace.

Despite the prominence of intercession in Islamic jurisprudence and its legitimacy, as explained above, and despite the fact that Islamic lawmakers have accepted and codified concepts such as '*aliq*' (conditional release) and parole—innovations in Western criminal policy—as compatible with Islamic criminal law, they have not addressed mediation by the ruler or judge in favor of the offender and have remained silent on this issue (Najafi, 1981).

CONCLUSION:

Mediation between the victim and the offender is an informal dispute resolution method recognized by the legislator under Article 82 of the Criminal Procedure Code. Put simply, mediation also referred to as arbitration or intercession involves a neutral third party, known as the mediator, who assists the conflicting parties in reaching a mutual agreement. However, mediation does not always result in a resolution and may sometimes fail. When an agreement is achieved, its terms are generally determined by the parties involved. The disputing parties can include countries, organizations, groups, individuals, or any other entities, and mediation provides benefits for all participants. It is essential that the mediator is perceived as impartial by the parties. Mediation is applied across a wide range of disputes, such as commercial, legal, diplomatic, labor, and family issues. Unlike arbitration or expert evaluation, parties in mediation are not required to accept the mediator's recommendations. Instead, the mediator's role is to facilitate communication, accurately identify the areas of disagreement, and guide the parties toward the best possible resolution. Mediation is particularly effective in resolving complex disputes that benefit from informal dialogue. Its faster process and lower costs are notable advantages compared to arbitration and formal court proceedings.

The mediation process encounters several challenges and limitations during its implementation, with various factors threatening its success. These include resistance and opposition from official actors within the justice system, the voluntary nature of mediation acceptance which may lead to potential drawbacks, the lack of experience and training among mediators, inconsistent procedures, differing views on mediation methods, and the possible exploitation of the victim to the advantage of the offender. For some stakeholders in the justice system—such as judges, lawyers, and the criminal justice system at large the implementation of mediation may be seen as a threat. This is because cases are referred to mediation from the beginning,

allowing offenders and victims to resolve their disputes in an informal setting outside the court system. Such a process can undermine the authority and sovereignty of the criminal justice system and restrict the power of its officials, including judges and prosecutors. Another challenge that may impair negotiations and represents a fundamental weakness is that mediators are often members of the local community who, although familiar and trusted by the disputing parties, frequently lack formal training in dialogue management and do not possess the necessary expertise or experience to effectively facilitate and conclude negotiations.

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