J. Humanities (2006) Vol. 13 (1): (93 - 106)

Community Involvement in Administration of Criminal Justice in Iran

Mohammad Farajiha[1]

Abstract

Since the last few years, criminal policy authorities of Iran started to withdraw their previous emphasis on repressive approaches and under the impact of criminological studies and translation of policy initiatives in western countries new concept and vocabulary were entered into official discourse and criminal justice policy of Iran. Consequently, a list of community-based approaches to criminal justice system such as community-based punishment, community-based settlement council, community policing and community crime prevention became integral parts of the third and fourth 5-year Development plan (2000-4 & 2005-9) and the Second Judicial Reform Plan (2004-8) very rapidly.

Regardless of how these ideas and policies are introduced to the Iranian criminal policy, the most important questions should be asked in this field are that to what extent thes policies will meet current needs of criminal policy of Iran? To what extent community-based approaches are adapted to socio-economic, cultural and political contexts in Iran?

It seems that, successful reforms in the area of public participation in criminal justice needs to some pre-conditions such as; structural changes, cultural capacity building and understanding the principles or rationales which are standing behind each of these reforms. Our effort in this article is to describe and criticize two important aspects of community-based approach to criminal justice in Iran; Community-based punishments and settlement councils.

Keywords: Community Justice, Informal Dispute Resolution, Community Punishment, Responsibilization Strategy, Judicial Reform.

1. Assistant Professor, Department of Law, Tarbiat Modares University

1- Introduction

In recent years, criminal justice systems in many parts of the world, have begun to recognize community power, and to discover the potential for working with communities and civil institutions. During last few decades, there has been whole series of reform initiatives that identify the community as the proper locale for crime control and criminal justice. In this period, the development of community program such as community policing, community corrections, community punishment, community crime prevention, community prosecution, community justice and other community-based programs came into consideration.

Community justice comprises working with offenders, crime prevention, community safety as well as working with victims and vulnerable groups. It is also about revisiting the concept of "justice" and exploring whether the current arrangement can or will deliver community justice for some or all sections of what we understand to be "community". (Peak, F. & Winstone, J., 2005). Clear and Karp (1999) argue that community justice is primarily about restoring the damage to victim and community rather than about punishing offenders. This vision is closely aligned to restorative justice. The ideal type represents a localized form of justice that support effective and communicative whose propensities for self-governance are harnessed.

Working in partnership is vital and so is the inclusion of civic and religious organizations in enhancing community cohesion and informal social control. Being both cohesive and inclusive, these communities are yearning to be empowered by the state to be involved with justice proper. Their sense of justice is one that centers on rehabilitation, in putting right the wrongs of the crime and the damage it inflicted on victim and community, and by bettering the offender in order to prevent re-offending.

By the same token the philosophy of community policing which envisions the community as a partner in problem solving and crime prevention has led not only to reinventing this core government function, but has also led the way for other criminal justice pillars or agencies to follow suit. Prosecution are assigning prosecutors to neighborhood-based offices and police precincts, to bring legal expertise closer to community residents. Public defenders are exploring the potential of offering more direct community access to legal representation. Court are opening up their processes, creating a new legal culture that sees crime as eroding the quality of life of the communities where it is committed. Correctional agencies are now studying the consequences of viewing communities as partner in the imposition of criminal sanctions (karp, 1998).

Therefore, the crime is no longer a problem to be solved by criminal justice agencies. Rather it becomes the responsibility of local communities as well as central government officials and politicians, and is mediated by criminal justice agencies[1]. Under the impact of these new policies

1. Despite the best efforts of criminal justice agencies, society remains concerned about crime, due to what critics emphasize as ineffective policing, slow wheels of justice, failure of rehabilitation, and high recidivism.

of criminal justice, new concepts and vocabulary were interred into official discourse of criminal policy of Iran (Farajiha, 2003). Consequently, Community punishment, informal dispute resolution, community policing and community-based victim protection became integral part of the 3rd and 4th Five-Year Development Plan (2000-4 & 2005-9) and the Second Judicial Reform Plan (2004-8) very rapidly. This article discusses two important aspects of community approach to the criminal justice in Iran; community-based punishment and settlement council.

2- Community-Based Punishment

The extensive evaluative research on incarceration especially short-term imprisonment and its inefficiency in rehabilitating the offenders revealed that the existing prisons are not effective measures to treat the offenders. Being separated from the community, the offenders will be accustomed to prison culture with all its anti-social, coercive, and despotic and deviant characteristics, instead.

Due to high cost of treating the inmates, shortage of efficient and trained officers responsible for enforcing rehabilitative programs, as well as other problems such as overcrowding in prisons, shortage of hygienic facilities, food, medicine, increasing use of drugs, and spread of infectious diseases such as AIDS, violence, and bribery, the authorities in countries like Iran, can hardly plan to take the most advantage of the time the offenders spend in prison to prepare them to reintegrate with the community (Ardabili, 1993).

The penal policy authorities have adopted several strategies to deal with the crisis, among which community-based punishments are the most important ones (Brownless, 1998). In line with policies and revisions on the de-penalisation and de-institutionalisation legislative criminal policy that is in reaction to unreasonable resort to incarceration during the first two decades of the Islamic Revolution in Iran, the Center for Judicial Reforms Studies (CJRS) of the Legal Deputy of the Judiciary drafted community-based punishment bill as a judicial bill. After finalizing the drafted bill in the Judiciary and approval of the Cabinet, this bill has been delivered to the parliament and it is now at the agenda of the Legal and Judicial Commission of the Parliament[1].

Though, this bill has not been approved by the parliament, but examining the core issues of the bill and different aspects of community support, can clearly show the Iranian criminal policy approach to mobilizing and harnessing community-based punishment.

2-1 Core Issues of the Bill

The main issues of the community-based punishment bill are as follows:

1. defining the community-based punishment with reliance on the community's role in enforcing the punishment, limiting the offenders' freedom of actions, taking into consideration the proportionality between the offender and the punishment, and paying attention to the victim's situation and the impacts of crime on victims;

2. introducing the community-based punishment, namely, care period, community services, day

1. By the time of writing this paper, only generalities of the bill has been adopted by the parliament.

fines, and temporary deprivation of some social rights;

3. suggesting reparation and restitution for the damages to the victim and developing the culture of reconciliation and mediation between the offender and the victim;

4. establishing an administrative body with social workers and appointing a judge responsible for enforcing the community-based punishments with the power of controlling the offenders to undertake their obligations and imposing of aggravation, mitigation, or substitution on the punishment.

Although one of the objectives of the present bill is to suggest alternatives to imprisonment, the term "community-based punishments" is more in line with the content of the bill due to some reasons. First, the issue of alternative punishments is likely to be the judiciary's negligence of its responsibilities setting itself free form the issue of overcrowding prisons without any considerations for public security or deterrent effects of incarceration. Whereas, this bill aims to introduce a new method of rehabilitation of offenders who commit minor crimes and are not so dangerous to be kept in prison. Second, the term "alternative punishments" conveys that incarceration will be substituted by the punishment suggested in the bill, while according to the bill, incarceration is like an inactive volcano that will erupt if the conditions predicted during administration of community punishment are violated. Third, the failure of prisons in rehabilitating the offenders can justify the decrease in the use of such punishment. However, it can not serve as an independent basis for this new approach. Community punishments should have their own justifications independent of prison disregarding the relevant efficiency. Fourth, the independent term "community-based punishments" would pave the way for the legislator to make use of any of these community-based reactions for new crimes, whereas, the dependent term "alternative punishments" is not able to meet this requirement.

2-2 Role of the Community Supports

Community in this content means merely non-custodial measures or punishments which will be implemented outside of prisons or reformatories. Many of these punishments consisted of state employees, carrying out state policies, under the auspices of state organization. They might be less costly than institutionalisation, less stigmatising and less liable to deprive the offender of the supporters of family and work. They are also state sanction with community involvement in their administration.

Article 1 of the bill of the community-based punishments enjoy few sanctions with the participation of the public and the civil institutions in the community and employ existing capacities to reintegrate the offenders with the community. Regarding the Community Services, for example, the NGOs and the public institutions such as the municipality and other social services organizations can contribute to the enforcement of the punishments by reception of the offender and providing them with community service opportunities. Similarly, in the Care Period, as an another form of the community-based

punishments, a dependable relative or NGOs may accept to supervise the offender in order to prevent him/her from recidivism or violation of court orders.

The civil society and NGOs can also provide the context required for the implementation of non-custodial methods through offering different consultation services and educational programs such as improving personal skills under the topics of drugs, alcohol, AIDS, sexual behavior, self-esteem, problem solving, job finding, and the like, with the purpose of improving the physical and mental health and the social relationships of the convicts.

Thus, successful implementation of this type of punishments requires active public participation. First and foremost, this participation can be realised through public familiarity with alternative punishments or community punishments. By the same token, countries which have taken measures to implement these punishments have focused their attention to public awareness as well as training competent authorities. Second, with regard to the community-based nature of this type of punishments, the direct interventions of social institutions seem inevitable.

2-3 Scope of the Community Punishment

The Bill of Community-based Punishment includes four category of crimes. First, intentional crimes with the maximum of six months incarceration punishment. In these cases imposition of community punishment is compulsory, except for offenders with pre-conviction record. Second, intentional crimes with the maximum of more than six months to two years incarceration punishment in which imposition of community punishment is, under some conditions, optional. Third, unintentional crimes with the maximum of three years imprisonment. Fourth, community punishments sometimes substitute for other non-incarceration punishment such as fines and *non-hudud* whipping.

According to Penal Code of Iran there are more than 700 crimes for which incarceration has been determined as punishment. 15.6 percent of the crimes have up to six months and 30 percent have six to twenty four months of imprisonment. Thus, the Community-based punishment bill accounts for more than 45 percent of the existing incarceration in the Penal Code.

Studies show that more than 92 percent of the crimes with less than 6 months of imprisonment are technical and minor offenses for which, incarceration is not logically and penologically justified. They include crimes such as: issuing false certificates (2-6 months imprisonment); denial of matrimony by the husband (8 days to 2 months imprisonment); destroying or cutting down the palm trees (3-6 months imprisonment); disregarding the environmental principles and standards in building factories (2-6 months imprisonment); unauthorised hunting of wild animals (1-6 months imprisonment); not mentioning the trade number in dealings (3-6 months imprisonment). It seems that such offenses would hardly hurt public conscience, and therefore, the community is not likely to react emotionally and retaliatory to this type of crimes.

Minor offenders that commit such a minor

crimes are capable of being treated and their freedom do not endanger public security. Criminal justice system can be justly responsive to the public's inquiries and expectations criticisms provided that it has at its disposal a variety of punishments and reactions for different types of offenses and offenders (Ashori, 2003).

The most efficient criminal reaction against such offenses is to set some limits on the offenders proportional to the offences or assigning some compulsory training course to them. In this way, while being trained and treated, the offenders will adopt a positive view of law, will learn necessary social skills, will bridge ethical and educational gaps and develop culture for capacity building to eliminate the obstacles in the way of social re-integration (Mair, 1997).

Thus, with the approval of the community-based punishments bill by the parliament, a new regime of punishment is introduced to the Iranian criminal policy. These punishments emphasize the community's capacities for treating and rehabilitating the offenders. By maintaining the relationship between the offenders and the community and with the potentials of the civil society, the citizens could possibly facilitate the process of the offenders' social integration while they are being trained. Therefore, part of the duties of the relevant legal institutions responsible for the enforcement of community punishments is transferred to the volunteers, NGOs and religious associations.

3- Community-Based Settlement Council

There is now a growing trend in many countries to build attachments between communities and courts. Realistically, of course, a truly community-focused court will need many years and more expansive effort including a mind-shift in those involved, requiring ongoing collaboration, between the court and the community. The underlying premise for such, is that urban social problems manifest themselves as problems, which only the community can provide for, requiring therefore, the involvement of community, with the courts.

Presently different models exist in different societies for such kinds of institutions and courts. These disparate models however, have communalities, such as:

1. A community focused court practices restorative justice, which acknowledges that crime caused injury to people and communities, and insist that justice should repair these injuries, deal with the aftermath of the offence and its implications for the future, and that the parties with a stake in a specific offences, be permitted to participate in the process. Restorative justice measures success not in how much punishment its inflicted, but on how many harms are repaired or prevented.

2. A community court treats parties to a dispute as real individuals rather than abstract legal entities. Meetings between victims, offenders and members of the affected community are encouraged, as important ways of addressing the relational dimension of crime and justice.

3. Community resources are used in the adjudication of disputes. More significantly, restorative justice recognizes and encourages the role of community institutions including

communities as resource in teaching, and establishing the moral and ethical standards which build up community.

Although future courts of this nature will assume various forms depending on the composition of the community and the nature of the problems brought before the courts.[1] Ultimately, the challenges of creating community-focused courts and councils will lie with community themselves, who need to view the courts as a resource and a vehicle for change. To have community-focused courts, there must be court-focused community.

Historically, religious, neighborhood and rural councils and associations have played important roles in dispute resolution in Iran (Hosseini, 2003).In second part of the article we will try to describe and evaluate the performance of settlement councils in Iran as an important aspect of public participation in criminal justice and responsibilisation strategy which is designed to change the manner of dealing with of minor criminal cases.

3-1 Characteristics of the Settlement Council

The incompetence of the formal justice system in confronting the rapid social evolutions, and the profound changes in our perceptions of some social issues traditionally defined within the area of criminal justice has highlighted the urgent requirement of new social strategies. Some mechanisms or new measures aim to prevent the formal investigation of cases through criminal procedures. Penal mediations is an instance of such mechanisms, which includes three types as follows:

a) the societal penal mediation performed innovatively by a given community without any intervention or supervision on the part of a judicial body;

b) the societal penal mediation under the supervision of a judicial body. The judicial supervision is performed in two phases, namely, the selection and appointing of the mediators, and at the end of the mediation process for evaluation purposes, the results of which is recorded in the form of an agreement between the offender and the victim approved by the mediator.

c) mdiation by a government body performed with the purpose of reconciling the offender and the victim to prevent from the tedious procedures in the criminal justice system. The Reconciliation Units in some Justice Departments as well as the Social Work and Consultation Units at some police stations are among the mediation institutions that try to make reconciliations between the offenders and the victims in the cases of minor offences before the case is submitted to Court.

With the provisions set out for settlement council in article 189 of the third 5-Year Development Plan Act (2000-2004), public participation has found a new position in penal mediation and settlement of minor criminal and civil cases near to second model of above mentioned penal mediation. According to article 189 of this Act:

"To reduce public recourse to the courts and in

1. It will also depend to a large extent on the legal profession, which may resist the challenge posed by the people, against professionalisation of the courts and its domination by lawyers.

line with the increasing public participation, the settlement of local and non-judicial conflicts as well as the conflicts, which are less judicial or less complex in nature should be referred to the Settlement Councils."

The executive regulations of this article was approved by the Head of the Judiciary after being passed by the Cabinet in August 2002. These regulations specifies the rules of the establishment and the qualifications to be member of the settlement councils, the scope of their competence in dealing with criminal and civil cases, and the judicial supervision over the responsibilities and practices of these councils.

The necessity of establishing the Settlement Councils at any area including villages, districts, cities, towns, and the suburbs and the scope of their responsibility is determined by the Head of the Justice Department and the Government with the advice of the Islamic Council of the area (Article 1).

The council consists of three members: 1- the head of the council which is selected by the head of provincial justice department, 2- a member selected by the Islamic Council of the city, district, or village, and 3- a reliable citizen who is appointed by a committee comprising the head of the justice department, the governor, head of the police department, and the Imam of the Friday Prayers. Council members are appointed as the honorary member of the council, for a period of three years. The members of the council should be well known, at least 25 years old, educated, and familiar with legal issues, and must not have any criminal record or addiction to drugs.

In Article 7 of the executive regulations the scope of the Settlement Councils' jurisdiction has been prescribed as follows:

The Settlement council will hear the following cases:

1. all criminal cases that depend on victim's complaint and shall not be prosecuted if the complainant withdraw from prosecution *(Haqu-o-nass)*;[1]

2. criminal cases with the following considerations:

2-1 settling the crimes that the punishment for which does not exceed Rls. 5,000,000 (nearly US$ 530) fine, or the punishments that consist of imprisonment and fines, which together, when imprisonment is substituted by corresponding fine, do not exceed Rls. 5,000,000.

2-2 settling the crimes which its punishment of less than 91 days of imprisonment, or *ta'zir* .

Considering these criteria, settling certain types of criminal conduct is clearly defined in the jurisdiction of the settlement councils. These consist of:

1. Crimes related to national inheritance such as (a) destruction of the registered monuments, (b) activities that would damage historical properties, (c) illegal trafficking of cultural and historical properties to other country, (d) illegal excavation of cultural and historical properties, and (e) unauthorized repair or transformation of the registered national inheritance;

2. crimes related to identification papers like

1. Under the Islamic criminal laws, law violating behaviour is categorized by behaviours that violate God's rights (*haqu-o-lah)* which are unpardonable and behaviours that violate the general populace's rights (*haqu-o-nass)* which are pardonable.

(a) duplicating the ID while having the original one, (b) using invalid ID, (c) forgoing the ID fraudulantly, and (d) trading the ID and other forged documents;

3. crimes such as (a) destruction of movable and immovable properties, (b) taking animals to graze, (c) destruction of agricultural products, (d) trespassing dwellings by force, (e) begging and swindling, (f) driving without driving license[1], and (g) drawing invalid cheque, are also included in the jurisdiction of the settlement councils (Article 7).

The main priority of the settlement councils is settling the dispute among the parties to the case rather than imposing laws and regulations. As mentioned in Article 14 of the executive regulations: "The [settlement] Council must settle the cases and reaching reconciliation between the parties."

The councils are not subject to procedural laws and can deal with cases in whatever way possible to hear the parties to the case and make judgments thereafter. The council's final judgment should be approved by at least two members of the council. The judgments is then referred to a judicial consultant appointed by the Judiciary for approval and will be sent to the council's office to be enforced.

3-2 Results of the Preliminary Examinations

The settlement councils should have some years of experience before being evaluated. However, preliminary examinations have revealed some deficiencies with regard to the way of public participation and the fulfillment of the objectives already defined.

The revival of the traditional and local mechanisms for conflict settlement is an example of the councils' achievements. There exist cultural, racial, linguistic, ethnic and geographical varieties in Iran, which, in case of forcing the centrally established criminal laws that overlook ethnic considerations, may lead to conflicts or weaken the position of traditional and local ways of conflicts settlement. The Settlement Council as a public institution appropriately paves the way for the identification and revival of the local potentialities for the settlement of conflicts. Family conflicts such as discontinuation of the maintenance payment, absence of the spouse form home, or deception in marriage are among cases, which can be deal with in terms of the traditions and customs of the local community.

On the other hand, since the council members are appointed from among the people native to that given area and are well-known for their good record, their residence in the place where crime has been occurred and also their familiarity with parties to the case make it possible for the members to examine the possible ways of settling the conflicts with reference to correct information beyond what is usually wrongly registered in the legal documents of formal justice system.

Studies show that submitting the complaints to the courts hinders the informal methods of conflicts settlement. More specifically, formal complaints necessitate regular reference to the police department and other legal institutions

1. Determining the criteria of legal punishment for crimes which should be dealt with in settlement council will create some kind of ambiguity in victimless crimes, where there is no specific victim for reconciliation and mediation.

resulting in stigma even for the complaintant, which is a waste of time leading to hatred between the offender and the victim. In such cases, even if the offender attempts to apologize to the victim of crime and make restitutions for the damages, the victim would insist on retributive response. In fact, the results of formal complaintant's animosity toward the offender, while immediate settlement of the conflict and the direct confrontation of the offender and the victim of crime pave the way for their face-to-face negotiation and the offender's awareness of the impact of the crime on the victim. It seems that the members of the settlement councils can be more successful in settling the conflicts when they take into consideration the damages that the victim of crime suffers from victimization. Reports show that in the first year of their activities, some of the Settlement Councils in rural areas were able to settle serious long lasting disputes among tribes through negotiation and mediation.

Despite the above mentioned achievements, the Settlement Councils have to challenge many difficulties, which requires necessary revisions in the relevant rules and regulations. The main problem is that the establishment of these councils is not in line with the Constitution of Iran. Based on Article 36 of the Constitution, "punishment shall be imposed only by law and competent court." Thus, the establishment of the settlement councils and determination of their jurisdiction is beyond the responsibility of the Head of the Judiciary and need to be legislated.

In other word, no part of the criminal court jurisdiction can be transferred to another authority on the basis of the above mentioned regulations. Article 170 of the Constitution has prohibited the judges from forcing the approved administrative regulations, which are against the laws. It seem that by setting the rules regarding "right of access to court" (Article 34), and those whereby "the authority responsible for complaints is the courts" (Article 159), and the Article regarding "the intervention of the Judiciary via the courts" (Article 61) the legislator has attempted to free the Judiciary from the intervention of other powers in judicial affairs. However, the existing inferences in this respect suggest that the conflicts are not likely to be settled even if statute laws are enacted[1].

Another problem is related to the force behind referring the cases included in the regulation to the settlement councils. It seems that with the enactment of Article 189 of the Third 5-year Development Plan Act (2000-2004), the legislator has aimed to establish settlement councils with optional jurisdiction. This means that in case of mutual agreement, and with the consideration of the restorative justice principles, the parties to the case refer to these councils, which in turn, deal with the case taking into account the interest of the offender, the victim, and the community. However, the administrative regulations of Article 189 has prescribed compulsory jurisdiction for the councils, which means to overlook the citizens' right of access to the court. In this way, forcing the parties to the case, especially the victim, to refer to the settlement councils would result in discontent, which is paradoxically far from settlement and

1. Although, it seems that the constitution has been legislated in a way that all aspects of public participation in settling criminal cases are clearly in contradiction with it.

peace defined as the main objective of these councils.

Another problem to be discussed is related to the scope of the Settlement Councils' jurisdiction. According to some jurists, the terminologies used in Article 189 implies that the legislator was concerned with civil conflicts, not the criminal ones. Phrases which are mentioned in Article 189 such as "conflicts with non-judicial nature" and "conflicts that are less complex in nature" are more related to civil cases than criminal ones.

In addition, preliminary studies have revealed that the settlement councils are less successful in large cities in contrast to towns and villages with tribal and traditional composition. This is related to the complex nature of legal conflicts, lack of familiarity between the parties to the case, lack of commitment to undertake responsibilities, and lack of attention to customs and traditions in large cities.

Finally, the last issue is concerned the unreasonable haste to establish these councils. According to official statistics more that twenty thousand settlement councils have been established since the past three years without making any provisions for training and evaluation of the outcomes. Lack of the relevant capacities in the Judiciary and the community, ambiguity in the relationship between these councils on the one hand, and the Judiciary and the civil institutions on the other hand, have made some judges consider the settlement councils as nuisances to the Judiciary and thus not support the councils in decision making.

3-3 Future Challenges of Settlement Council

Being aware of the inefficiency of the formal criminal justice system in the fair settlement of all conflicts, and in line with offering adaptive responses to these gaps, the Legislator has attempted to enact Article 189 to employ the capacities of the public and the local associations in order to settle the civil disputes and minor criminal cases. In this way, the courts' burden would be reduced, and the limited capacity of such courts could be used for important cases.

Alternative methods of official settlements should be employed by taking advantage of comparative studies and by considering the relevant ethnic, racial, cultural, and anthropological characteristics. A more reasonable and scientific way is to pilot the different public participatory models in different areas, evaluate the results, and then, design suitable models for community involvement in criminal dispute resolution and reconciliation (Abbasi, 1994).

Although this method of hearing may not be in line with the Constitution, a question is raised as to whether, with the large volume of cases referred to the police and courts, is there still possibility for the scientific detection of crimes as well as identifying and arresting the criminals by the police if the objective of the Judiciary is to enforce justice? Can the judges respect the guarantees provided for in criminal procedural laws and put them to practice to enforce justice? The product of the hearing in courts in these situations is the settlement of the conflict, not enforcing criminal justice, regarding that these two are fundamentally different. It seems that there is no other choice left

except for referring to the settlement councils and similar authorities.

By the same token the structure of the Judiciary should change the same in line with the evoluation in order in establish community-based justice. The Articles of the Constitution should also be interpreted in line with providing legal supports for the development of the public participation. Otherwise, these Articles should be subject to modifications, in a way that promotes and enhances the capacity of all members to participate in their judicial system (Mohsseni & Jarollahim, 2003).

Criminal policy authorities should strive for a society that is not governed by fear and criminal law but by the values of participation and trust. Criminal justice agencies should develop responses strategies that are rooted in an understanding of the limits of a criminal law approach and recognize the benefit of alternative response techniques.

4- Conclusion

Criminal justice is now less autonomous than it was three decades ago, and more forcefully directed form the outside criminal justice. Actors and agencies are now less capable of directing their own fate and shaping their own policies and decision. This is partly a result of the need to work with other 'providers', and the concern to be more responsive to the public and to other 'customers'. What has happened is that criminal justice institutions have altered their emphasis and the field of crime control has expanded in new directions, as state agencies and civil society have adapted to the growth of crime and insecurity that accompanied the coming of new era. The result is that the criminal justice state is larger than before, but is occupies a relatively smaller place in the overall field because of the organized activities of communities and civil institutions.

Crime control and dispute resolution are 'beyond the state' as there are effective mechanisms operating outside the state's boundaries, and relatively independent of its policies. Mobilizing and harnessing non-state mechanisms has been of the effort to address these limits. There has been a whole series of reform initiatives that identify the community as the proper locale for crime control and criminal justice systems. This attempt to extent the reach of state agencies by linking them up with the practices of actors in the community might be described as a 'responsibilisation stragegy' (Garland, 2000). It involves a way of thinking and a variety of techniques designed to change the manner in which government act upon crime a dealing with criminal cases. Instead of addressing crime in a district fashion by means of the police, the court and the prison, this approach promotes a new kind of indirect action, in which state agencies activate penal mediation by non-state organizations and actors. The intended result is and enhanced network of more or less directed, more or less informal criminal justice, complementing and extending the formal criminal justice.

However, many questions have been raised about the using of wide range of community intervention strategies in developing countries like Iran. Is there a risk that informal community responses may widen the net of control? Are there

enough resources to implement these programs properly? What types of communities have the capacity to implement community-based responses? Will a large urban community have the same capacity to implement dispute resolutions and settlement that a rural society? In fact, the imitation of some of community-based strategies and techniques might become quite dangrous or futile if capacity building and infrastructural requirements are ignored.

5- References

[1] Abbasi, M. (1994) *Penal Mediation: New Horizons*, Tehran: Daneshvar.

[2] Ardabili, M. A. (1993) *Alternative to Short Period Imprisonment in Penal law of Iran*, Legal Studies Review, No.11 & 12.

[3] Ashouri, M. (2003) *Alternatives to Imprisonment or Intermediate sanctions*. United Nations Office on Drugs and crime. Tehran: Institute of criminal sciences and criminology.

[4] Brownless, I. (1998) *Community punishment: A Critical introduction,* London: Longman.

[5] Center for Judicial Reform Studies (2004) *Comprehensive Programs of the Second 5-year Judicial Reform (2004-2008).*

[6] Clear, T.R. & Karp, D.R. (1999) *The Community Justice Ideal: Preventing Crime and Achieving Justice*. Boulder, Co: Westview Press.

[7] Farajiha, M. (2003) Some Aspects of the Impact of Criminological Data on Criminal Policy, *Modarres Review of Humanities*, Vol. 7, No, 1.

[8] Garland, D. (2001) *The Culture of Control*, Oxford: Oxford University Press.

[9] Hosseini, M. (2003) *House of Justice and Its Judicial Impact on Iran*, (M.A Dessertation). Faculty of Social Sciences, University of Tehran.

[10] Karp. D.R. (ed) (1998) *Community Justice: An Emerging Field,* New York: Rowman and Littlefield.

[11] Mair, G. (ed.) (1997) *Evaluating the Effectiveness of community penalties.* Aldershot: Avebuty.

[12] Mohsseni, M. & Jarollahi, A. (2003) *Social Participation in Iran,* Tehran: Aron

[13] Pakes, F. & Winstone. J. (2005) *Community Justice: The Smell of Fresh Bread*. In Winstone, j. & Pakes, F. (eds.) *Community Justice: Issues for Probation and Criminal Justice*. Devon: Willam Publishing, pp: 1-15.

مشارکت اجتماع در اجرای عدالت کیفری در ایران

محمد فرجیها[1]

در طول چند سال اخیر، مدیران و دست‌اندرکاران سیاست جنایی ایران از تأکید بر رویکردهای سزاگرایانه برای حل معضل بزهکاری عقب‌نشینی کرده‌اند، از این رو تحت تأثیر مطالعات جرم‌شناسانه و ترجمه نوآوری‌های سیاست جنایی کشورهای غربی، مفاهیم و واژگان جدیدی وارد گفتمان رسمی سیاست جنایی ایران شده است. به موازات این تحولات فهرستی از رویکردهای اجتماع محور نسبت به نظام عدالت کیفری، از جمله مجازاتهای اجتماع محور، شوراهای مردمی حل اختلاف، پلیس اجتماع‌محور و پیشگیری از جرم مبتنی بر مشارکت اجتماع، بتدریج در برنامه‌های پنج ساله توسعه و نیز برنامه دوم توسعه و اصلاحات قضایی گنجانده شد.

صرف‌نظر از اینکه این ایده‌ها و سیاستها از چه مجراهایی سیاست جنایی ایران را تحت تأثیر قرار داده است، مهمترین سؤالی که در این زمینه مطرح می‌شود این است که این برنامه‌ها تا چه اندازه نیازهای کنونی سیاست جنایی ایران را تأمین خواهد کرد؟ همچنین رویکردهای اجتماع محور تا چه اندازه با بسترهای اجتماعی-اقتصادی، فرهنگی و سیاسی جامعه ایران همخوانی و سازگاری دارند؟

به نظر می‌رسد دستیابی به هرگونه موفقیت در زمینه مشارکت اجتماع در قلمرو عدالت کیفری منوط به پیش شرطهایی از جمله تحولات ساختاری، فرهنگ‌سازی و فهم و درک صحیح از فلسفه و مبانی نظری‌ای است که در پس هر یک از این اصلاحات نهفته است.

این مقاله بر آن است که دو جلوه مهم از رویکردهای اجتماع محور، یعنی مجازاتهای اجتماعی و شوراهای حل اختلاف را در ایران مورد بحث و بررسی قرار دهد.

واژگان کلیدی: عدالت اجتماع محور، حل و فصل غیررسمی اختلافات، مجازات اجتماع محور، راهبرد مسؤول سازی، اصلاح قضایی.

۱. استادیار، گروه حقوق، دانشگاه تربیت مدرس