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Pathology of the Status of Mediation in the Criminal Policy of Iran and France

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ABSTRACT

Criminal mediation is a process that, with the aim of reforming and rehabilitating the offender and reducing the caseload of the judiciary, helps foster responsibility-taking and restore social trust through a constructive agreement between the accused and the victim or the community, rather than relying solely on judicial confrontation. Using descriptive, analytical, and comparative methods and drawing on library-based sources, this article examines the pathology of the status of mediation within the criminal policies of Iran and France. The objective is to compare the effectiveness, social acceptance, and rehabilitative impact of this process in both criminal justice systems in order to clarify shared strengths, common challenges, and structural differences. The findings indicate that in both Iran and France, the position and function of criminal mediation are characterized by overlap and are simultaneously confronted with rehabilitative and control-oriented objectives; however, mediation operates predominantly as a judicial instrument rather than as an independent institution. The rehabilitative approach emphasizes compensation for harm and rehabilitation, whereas the control-oriented approach focuses on reducing recidivism and ensuring security. Both countries lack a coherent framework and an independent standard model, and practical initiatives are often implemented in a fragmented manner through judicial authorities or law enforcement agencies, which leads to reduced effectiveness and diminished public trust. Consequently, in practice, mediation is more focused on reducing case backlogs and managing social crises than on developing an independent and effective institution grounded in scientific principles.

Keywords: *criminal mediation; criminal policy; mediation model; restorative justice; dispute resolution*

Introduction

"Criminal mediation," through waves of praise, criticism, and even strong opposition, has entered both the Iranian and French legal systems as an approach grounded in restorative justice and as a modern method for resolving criminal disputes. Proponents of criminal mediation maintain that this mechanism can play an effective role in reducing the burden on the judicial system, lowering the costs of administering justice, and providing compensatory and restorative opportunities for offenders. In this regard, the failure to achieve the ultimate objectives of criminal law within classical, social defense, and neoclassical schools of thought (1) led to the introduction of criminal mediation as an instrument aimed at enhancing the efficiency of the judicial system (2). This method has demonstrated appropriate effectiveness in cases involving minor offenses (3) and is also regarded as a tool for decriminalization (4). Most importantly, mediation is considered a mechanism that centers on the victim and the

compensation of incurred harms (5), and emphasizing the victim's status and the restitution of damages constitutes a fundamental and core objective of mediation within restorative systems (6). Mediation contributes to preventing the recurrence of criminal cases (7) and serves as a means of resocializing offenders, as resocialization is among the key operational goals of restorative justice in the field of criminal law (8). It is even regarded as an instrument of crime prevention (3), ultimately leading to reconciliation and settlement between the offender, the victim, and society (9). Moreover, it reduces the costs of the criminal justice system (10) and strengthens the sense of responsibility within society (11).

In contrast, opponents of criminal mediation, by raising issues such as the instrumentalization of victims for the benefit of offenders (5), the destabilization of criminal proceedings (12), the erosion of justice through fragmented mediation practices, and procedural delays, have sought to exclude this institution from the set of criminal policy measures (13). The overall outcome of these opposing perspectives in both Iran and France has favored supporters of criminal mediation, and today this method is formally accepted in both countries; however, its position within the criminal policy of each system faces significant challenges. Despite extensive discussion of criminal mediation in both France and Iran, it must be acknowledged that in both jurisdictions mediation remains at an early stage and has not yet secured its position as a genuine alternative method of criminal dispute resolution. In both Iran and France, criminal mediation is not widely practiced, and compared to the experiences of North American countries, it remains a relatively new phenomenon.

Mediation is not merely an "alternative to the criminal justice system." Rather, it is a deeper phenomenon that not only signifies a transformation in the relationship between the state and civil society in terms of conflict management, but also reflects a broader movement of societies toward greater complexity. Mediation represents a hybrid form, a new intermediate space between judicial and non-judicial methods of managing criminal disputes, and more broadly contributes to reshaping relationships between public and private sectors (14). Nevertheless, such a position for criminal mediation is not observed in Iran or France. Mediation is inherently a complex phenomenon, and due to the existence of different socio-legal systems, significant differences exist between Iran and France in conceptualizing the position of criminal mediation within criminal policy. On the one hand, France is a country with a strong tradition of codified law, while on the other hand, Iran has a long-standing history of legislation rooted in Islamic jurisprudence. In reality, the position and role of various mediation institutions cannot be understood without reference to the model of social regulation developed by each country. The French system is based on centralized regulatory instruments operating within a hierarchical model and relies on a highly supervisory conception of law, while the Iranian legal system, although sharing some of these characteristics, is also fundamentally grounded in key jurisprudential rules governing criminal procedure.

The pathology of mediation should not be viewed merely as a simple tool for dispute resolution and conflict management through which states achieve greater social control, nor can it be reduced solely to the emergence of a new actor—the mediator—within criminal case management. Rather, mediation is a multidimensional phenomenon with profound implications and meanings, playing a significant role in the transformation of criminal justice systems. This process is not only a mechanism for dispute resolution, but also an indicator of changes in the methods of enacting and enforcing justice and in the regulation of social relationships among members of society. Consequently, a proper understanding of mediation requires a broader and multidimensional pathology that examines its technical, social, and legal dimensions. Mediation also represents a new social movement and a new form of collective action involving the reconstruction of relationships between the state and civil society, reflecting

an evolution toward greater pluralism in systems of social regulation. This article therefore seeks to examine the pathology of criminal mediation from the perspective of its position within the criminal policy of the two countries, as well as the models and methods of its institutionalization. The research methodology is descriptive, analytical, and comparative, and the study is structured into three main parts.

Pathology of Criminal Mediation in the Criminal Policy of the Two Countries

Undoubtedly, criminal mediation approaches its objectives only when an appropriate position is defined for it within a "mediation-oriented criminal policy." A form of paradox regarding this position can be observed in both countries. France, with its strong logical and legal structure, has adopted a more formal and organized approach to the development and implementation of mediation; nevertheless, it continues to face challenges related to public acceptance and policy coherence. In contrast, the Iranian legal system, despite its more limited and experimental use of mediation, requires effective mechanisms to achieve fuller realization and better interaction between criminal policies and corrective instruments. A pathological examination of these two systems offers a comparative and critical perspective and can serve as a basis for reform, improvement, and appropriate policymaking in each country.

Failure to Conceptualize Criminal Mediation as a New Criminal Policy

Although expectations in both France and Iran suggest that criminal mediation should evolve into a new criminal policy, this has not materialized in practice. The lack of a clear and precise definition of criminal mediation has resulted in legal ambiguities, weaknesses in the administration of justice, and reduced effectiveness of this instrument in both countries.

France

In France, the phenomenon of criminal mediation provides a revealing picture of the challenges and limitations encountered in the implementation of criminal policy in recent years. An examination of the statements of supervisory experts shows that mediation constitutes a major challenge: judges, police officers, and social workers all refer to its use as a method of dispute resolution, yet in practice these very actors often become obstacles to mediation (13). Based on their statements, it might appear that France is experiencing a transformation in dispute management, moving from a repressive model toward a more consensual one. According to Pierre Truche, France has for several years entered "another path of justice—a different, non-violent justice" (15). However, when rhetorical labels are set aside and practical realities are examined, the situation proves far more complex. Mireille Delmas-Marty advances the concept of contemporary societies moving toward "legal pluralism" (16), and it can likewise be argued that modern societies are evolving toward "judicial pluralism" and, more broadly, toward diversification in modes of social regulation. Consequently, alongside traditional judicial methods, various forms of mediation and conciliation, including criminal mediation, coexist due to their interconnection and overlap. According to typologies discussed in restorative justice scholarship, different modes of dispute resolution—punitive, restorative, protective, and conciliatory—coexist, indicating a transition from purely punishment-oriented approaches to solutions emphasizing restoration, relational repair, and mutual understanding (9).

In France, the critical question remains whether this form of justice is accepted by all. The issue is whether, alongside "violent justice," mediation merely embodies a new ideology of social pacification or represents a genuinely new social project. Evidently, the answer is not entirely affirmative, and under current conditions criminal

mediation in France cannot be fully regarded as a comprehensive new criminal policy. Although France has achieved relative progress in the development and implementation of mediation, persistent challenges—such as the absence of clear legal provisions and coherent frameworks defining its status and functions—constitute serious shortcomings that limit effective implementation and necessitate further reforms and policymaking efforts.

Iran

A similar ambiguity in the status of criminal mediation can be observed in Iran. Some scholars argue that the mediation institution incorporated into the Iranian Code of Criminal Procedure is neither aligned with contemporary global developments nor fully compatible with the realities of Iranian society (4). In Iranian criminal law, mediation for the resolution of private disputes is employed only in a limited manner, and to a far more restricted extent than in comparable advanced legal systems. Specifically, divine punishments (ḥudūd) are entirely excluded from referral to mediation, and in general, the possibility of mediation in matters relating to governmental punishments (taʿzīrāt) exists only in a very limited form. Furthermore, private punishments such as retaliation (qiṣāṣ) and compensation (diyāt), although private in nature, implicitly possess public dimensions under Iranian legislative assumptions, which effectively preclude their referral to mediation.

Ambiguity in Defining the Objective: Compensation for Harm or Social Control

Mediation is intended as a mechanism for shifting the response to crime from punishment toward compensation for harm; however, the key question is whether this objective has been realized in France and Iran, and what forms of pathology exist in this regard.

France

Some scholars in France describe this shift using terms such as an “integrated social-penal model” or “participatory criminal policy” (17). The pathology lies in the fact that these policies are premised on principles of social integration, social prevention, and the individualization of repressive solutions, a combination that is, to a significant extent, impracticable. In essence, these approaches argue that judicial mechanisms should be designed in a way that increases the active participation of offenders and victims in dispute resolution. Within this framework, criminal mediation plays a significant role, as it actively involves both parties in resolving the dispute and thus moves conflict management toward a more “consensual” model. Moreover, criminal mediation can contribute to redefining the social functions of justice, particularly in cases where disputes do not reach the stage of formal litigation or where the judicial system lacks the capacity to address them. In practice, however, a substantial portion of these objectives is not achieved, and as a result, criminal mediation encounters failure.

At the same time, existing perspectives and discourses on criminal mediation in France remain unclear and fragmented, and, overall, are subject to critical scrutiny. A broad critical current maintains that “informal” methods of dispute resolution in fact represent an expansion of social control, often conceptualized in Western societies under notions such as the “widening of the net” (18). These differing approaches indicate that mediation and other alternative dispute resolution mechanisms function not only as tools for achieving justice, but also, to some extent, as instruments for expanding supervision and social control. Consequently, in France there remains an unresolved tension as to whether the primary objective is compensation for harm or whether social control occupies a more central position.

Iran

In Iran as well, serious doubts exist regarding the compensatory nature of criminal mediation. Within the Iranian legal system, one of the most significant challenges and conflicts concerning criminal mediation relates to its primary objective. This conflict arises between two distinct perspectives on the purpose of implementing mediation. Some scholars argue that the main aim of criminal mediation is the compensation for and repair of harm inflicted upon the individual, the family, and society (19). From this viewpoint, the focus on reforming the offender is consistent with the restorative and compensatory spirit of mediation, and the principal goal is to assist the offender in recognizing wrongdoing and repairing the harm caused. This approach primarily emphasizes individual reform and the cultivation of moral responsibility, limiting its role to the reconstruction of individual and familial relationships.

In contrast, another perspective emphasizes the importance and priority of social control and supervision (20). According to this view, the objective of mediation is not solely compensation for harm, but primarily the reduction of risks arising from criminal behavior and the ضمانment of public order and security. Within this framework, mediation is regarded as an instrument of social control with a preventive function, gaining significance in reducing caseloads, preventing recidivism, and maintaining public security.

The Misrepresentation of Criminal Mediation as a Substitute for the Criminal Justice System

Contrary to common assumptions, in both France and Iran mediation cannot function as a complete substitute for the criminal justice system, because contemporary modes of social regulation are increasingly intertwined and complex and cannot be meaningfully separated from one another. In practice, most mediations conducted in criminal matters constitute a form of judicial mediation, delegated by prosecutors or judicial authorities to victim support organizations, judicial supervision bodies, or mediators in both countries. A major pathology lies in the expectation that mediation can replace the criminal justice system in either jurisdiction.

France

In France, judges—whether acting through the prosecution service or within courts such as juvenile courts—have historically assumed mediation functions, as demonstrated by the experience of peace courts and judicial divisions in this country. The central question in France is why this “revival of mediation” and the formation of these “exit circuits from the criminal justice system” have occurred. Various explanations have been offered within functionalist theories, which interpret these extra-judicial institutions as a consequence of the increasing volume of criminal cases; however, such analysis is insufficient. In France, this phenomenon is not viewed solely as a dysfunction of the judicial institution, but rather as part of a broader and deeper crisis affecting mechanisms of social regulation more generally (21).

Urban unrest in France demonstrates that not only has the crisis of social regulation systems deepened, but the limitations of traditional policies and solutions have become increasingly apparent (21). These developments provide an opportunity to reflect on the shortcomings of traditional methods and to seek innovative solutions more compatible with contemporary conditions. The pathology lies in the perception of the French criminal justice system, which views mediation merely as a substitute for a portion of the criminal justice apparatus, whereas the function of mediation extends beyond such a limited role.

Iran

In Iran today, the judicial system is increasingly expected to intervene in the resolution of disputes. However, the Iranian judiciary is no longer capable of adjudicating this volume of criminal cases within a reasonable and standard timeframe. One of the consequences of penal inflation is the prolongation of criminal proceedings (22). Under such conditions, criminal mediation is often conceptualized as a substitute for, or at least a complement to, the criminal justice system, with the intention of transferring part of the judicial burden to mediation mechanisms. This perception constitutes a fundamental pathology for criminal mediation, as it distances mediation from its core and essential objectives.

Pathology of the Criminal Mediation Model

In both France and Iran, criminal mediation suffers from the absence of a clearly defined mediation model, and in both jurisdictions there is a noticeable gap in articulating what the criminal mediation model is and how it should operate.

Pathologies in the Transition from a "Adversarial and Punitive" Model to a "Consensual and Restorative" Model

In both Iran and France, institutions such as judicial supervision, victim compensation, mediation-related social services, and deferred sentencing have been introduced. These reforms indicate a shift away from traditional criminal policies rooted in a punishment-based model, through the adoption of different penal measures. Behind these reforms, one can observe the emergence of a modern approach and another model of justice—namely "restorative" justice (23). Particularly in Iran, there remains a considerable distance from the establishment of genuine restorative justice; nevertheless, the most recent texts addressing criminal mediation and compensation for harmed individuals reflect part of a broader move toward a more socially oriented model of criminal case management. This phenomenon—often described as the "privatization" of the criminal process—places the burden of compensation, rather than on the state, directly upon the parties. As a result, dialogue and agreement between the parties begin to replace formal judicial procedures, which not only enables a more accurate assessment of the suffering endured by victims, but also encompasses proposals for reparation advanced by the accused. Today, legal institutions and related policies are moving from purely punitive and repressive approaches toward restorative and participatory approaches that affirm a more active role for the parties in resolving disputes (3). The fear among judicial authorities of losing judicial prerogatives constitutes a major obstacle to this transition in both countries.

France

In France, criminal mediation—because it is widely implemented in many cases through the prosecution service—has often been reduced to a simple method for imposing public measures that occupies an intermediate position between dismissal and prosecution. Mediation is not merely an instrument for managing disputes; it is a contemporary model of conflict management that focuses on rebuilding and reintegrating the individual into society, emphasizing not only the violation of law and the punishment of the individual, but also the restoration of social bonds and the reduction of feelings of insecurity in social environments (24). In France, the transition from an adversarial and punitive approach to a consensual and restorative approach in criminal mediation faces a set of challenges and pathologies: the French justice system continues to emphasize punishment and penal sanctioning,

and society as well as judicial institutions generally demonstrate limited confidence in restorative and rehabilitative approaches. Changing this outlook requires time and education and may encounter resistance (14).

Moreover, the lack of comprehensive and clear legal provisions concerning mediation and consensual/restorative procedures has made successful implementation of this approach difficult. This deficiency produces uncertainty and reduces confidence among citizens and judges. Some actors, in pursuing opportunities for agreement and restoration, may fail to adequately safeguard the principles of justice and the rights of the accused and the victim, or the parties' rights may not be properly protected during consensual processes—circumstances that can lead to injustice or public dissatisfaction. Unfamiliarity with, and doubt regarding, the effectiveness and credibility of consensual methods has weakened the legitimacy and social acceptance of mediation in France and, consequently, has kept its role limited.

Iran

A major pathology in Iran is that the process of transitioning from a punitive and adversarial model to a restorative and compensatory model has not been adequately conceptualized. Under present conditions, victim compensation is treated merely as a legal sanction, whereas within mediation, compensation should not be regarded solely as an enforcement mechanism; rather, it should be understood as a means of restoring and reconstructing the individual within healthy social relationships (25). Without this perspective, mediation remains largely an administrative and formal process whose primary purpose is not the allocation of responsibility, but the creation of new opportunities to strengthen communication and repair relationships.

Another significant pathology is the tension between traditional approaches and modern mediation concepts, alongside fundamental differences in objectives and procedures. Traditional practices emphasize breaches of public order, legal rules, and punishment, paying less attention to the psychological and social dimensions of harm. Mediation, by contrast, as a genuine dialogical process grounded in emotions and direct interaction, offers a modern pathway for rebuilding and restoring human relationships, in which active participation by the parties and attention to the roots of conflict are considered key to success. In this context, while there is a stated focus on preventive practices, the state also moves toward mobilizing victim support associations, judicial supervision, and local initiatives—particularly through crime prevention councils—yet these dimensions are largely disregarded in Iran's transition from a punitive to a restorative model. This transition and its broad consequences have unfolded at a time when society faces deep crises and tensions in criminal adjudication, and in such conditions mediation is treated as a temporary and short-term response to crisis situations, whereas its principal role should be understood as reforming and rebuilding methods of social regulation through sustainable policies. For these reasons, the transition in Iran is also accompanied by specific challenges and harms: Iranian judicial culture remains more firmly anchored in punitive and strict approaches; transforming this culture and fostering acceptance of consensual and restorative approaches requires time-consuming education, public communication, and cultural work. In addition, the absence of institutions and structures necessary to support consensual and restorative processes limits implementation and expansion. Societal concerns in Iran about the possibility of abuse or the infringement of the complainant's or accused's rights in consensual processes generate doubts regarding legitimacy and effectiveness, thereby hindering public acceptance.

Conceptual Confusion in Articulating the Mediation Model

In both Iran and France, there is conceptual confusion between mediation institutions (structures, organizations, laws) and mediation activities (customs, practical processes, field-based mediation methods). Distinguishing their boundaries, analyzing the rationales governing each, and understanding their roles and functions is difficult and requires multidimensional approaches. This has caused criminal mediation in both countries to face serious pathologies. Consequently, these transformations and overlaps reflect a broader crisis in contemporary systems of social regulation. Mediation, as a new dispute resolution method, most fundamentally expresses societal efforts to identify diverse, flexible, and participatory solutions; at the same time, it creates substantial cognitive, theoretical, and practical challenges in definition, conceptualization, and effective use. This situation requires deep and multidimensional analysis in order to properly understand and manage its opportunities and limitations. What appears more advanced in North America is that mediation has been “institutionalized” (18), whereas in Iran and France mediation institutions, in the full sense of the term, have not yet taken shape.

France

The French legal system has not yet clearly determined whether to accept mediation based on an activity model or an institutional model. In France, with the enactment of the law of 4 January 1993, criminal mediation emerged from an “underground” status and acquired a formal legal standing. This represented an important development, amounting to formal acceptance and legitimation of this branch of dispute resolution through legal recognition. However, this transformation did not occur abruptly; rather, after approximately ten years following the emergence of initial experiments and practical examples of criminal mediation, the legislature ultimately enacted a specific law recognizing this institution and providing a defined legal framework. This delay reflects the gradual and phased response of the French legislative system to the development and acceptance of criminal mediation, shaped by practical experimentation, empirical evaluation, and theoretical-legal debate. This process reflects the challenges and adaptive needs involved in defining the concept, roles, and effectiveness of criminal mediation within the French judicial system, which eventually led to the consolidation of its status through formal legislation.

Nevertheless, mediation in France is a concept that is more commonly associated with mediation activities. Criminal mediation in France currently functions primarily as an active process in which the individuals and parties involved enter into negotiation and dialogue directly. However, its standing as an independent and formal institution—similar to robust, rule-bound institutions in some other countries, including systems influenced by international standards—remains distant (26). In France, criminal mediation is more often employed as a temporary and pragmatic instrument for resolving cases and reducing the burden on the judicial system, and, in principle, distinct and independent organizations and institutions for it have not yet been fully established. This process often relies on individual and voluntary activities and, in terms of structure and legal capacity, remains far from fully formalized and coherent institutions. Accordingly, from an institutional standpoint, mediation in France remains in a relative and intermediate condition and is more grounded in individual and operational practices than in a fully developed official institution.

Iran

In Iran, the trajectory of accepting and developing criminal mediation also shows similarities with the French system, although differences exist in timing and in certain details. In both countries, the institution initially began in an informal and experimental form, meaning that mediation in the settlement of criminal cases was practiced in reality without a specific legal framework. In France, this stage lasted for decades and, following practical experimentation, eventually became formalized through legislation. In Iran, the institution likewise received legal recognition with the enactment of the Code of Criminal Procedure in 2013.

It can be argued that in Iran, the development of criminal mediation has been shaped by practical experience, the evaluation of outcomes, and judicial needs. In Iran, after years of customary criminal mediation in the form of reconciliation and compromise, the Code of Criminal Procedure (enacted in 2013) legally recognized the role and status of mediation and placed it on a path toward consolidation (27). Although the French process was faster and based on a more comprehensive framework, the overall development path in Iran—similar to France—began from customary practice and evaluations and moved toward legal consolidation, indicating that the institutional development of mediation in Iran has, to a considerable extent, followed an experimental trajectory comparable to that of France. In Iran as in France, we observe a conflation of mediation activities with mediation institutions, and this constitutes a major and fundamental pathology for criminal mediation.

The Dominance of the Activity Model over the Institutional Model

In France, in criminal mediation—as in other mediation fields—due to the multiplicity of programs supported by various ministries such as Justice, Urban Affairs, Interior, Social Affairs, and others, one cannot realistically speak of a single state logic, but rather of multiple state logics. This confusion is further intensified by shifting trends, because mediation in France is still not an independent method of dispute resolution. It is often treated merely as a dispute-management technique, a secondary activity for many professionals, which produces a particular confusion between mediation activities and mediation institutions (28). Police officers, social workers, and even judges report engaging in mediation as part of their professional activities. While it is true that these professionals participate in mediation activities—that is, they use mediation techniques to resolve disputes—they are not, strictly speaking, mediation institutions or mediators. A comparable pathology exists in Iran, where the police, judicial authorities, dispute resolution councils, and even social workers also claim a role in criminal mediation. Mediation activities in Iran and France take diverse forms.

In both countries, police mediation activities occur through policing policies and emergency missions. Police officers are asked to play an active role in social mediation, particularly when intervening in disputes often classified as altercations or conflicts. In this latter category, which frequently involves family members or neighbors in conflict, police officers are expected to assume a mediating function (29). In this process, which typically occurs without the police relying on any law or directive supporting mediation, the principal justification is often the waivable nature and perceived minor seriousness of the offenses.

In Iranian law, police mediation is not explicitly provided for in statutory texts. Nevertheless, police forces, inspired by Clause 8 of Article 4 of the Law on the Law Enforcement Force of the Islamic Republic of Iran (enacted in 1990) relating to crime prevention duties, undertake preventive actions (30). In Iran, the police operate primarily in security, order-maintenance, and crime-control domains, and preventive roles are also pursued in a supra-professional

manner through specific programs. In some cases, the police participate in quasi-social-work activities and local initiatives, including social and cultural efforts, but these are generally not treated as an independent and formal part of core police duties. In certain areas—especially villages and neighborhoods—the police may function in ways resembling a “mediator,” such as facilitating social relations, resolving local disputes, or engaging in reporting and voluntary cooperation. However, these roles should not be confused with the direct role of a professional social worker or public advocate. In other words, the Iranian police may perform mediative functions, but these are not generally embedded within a formal, structured, and legally regulated framework; rather, they are carried out as ad hoc activities oriented toward safeguarding security and social interests. As noted with respect to France, the police role should not be conceptually confusing: preventive and policing objectives must be distinguished from mediative and social-work roles. A similar issue exists in Iran: at times the police appear to act beyond their formal duties, but this is primarily within informal and local practices and does not clearly fall within structural police mandates. Accordingly, while the Iranian police sometimes perform mediative and preventive roles, a key difference from France is that in Iran these roles are more episodic and localized and operate outside a formal and law-governed structure. As in France, the main challenge is to define and consolidate clear and distinct roles and duties for the police so that professional identity and public trust can be preserved.

On the other hand, in both Iran and France, the role of judicial institutions—particularly the Ministry of Justice and public prosecutors in France and investigating/prosecutorial judges in Iran—has been very significant in the development and promotion of criminal mediation initiatives. In France during the 1980s, initial experiments in criminal mediation were initiated by prosecutors. Subsequently, in the late 1980s, several initiatives flourished in the management of criminal proceedings, including “Houses of Justice and Law” and “judicial branches.” These activations included methods such as deferred decisions for victim compensation, conciliation, and compensation payments, which were often mistakenly treated as equivalent to mediation. In this context, judges—especially those in prosecutorial offices—played particular roles in mediation-related processes, yet they should not be conceived as mediators, because in some instances their role combined judicial authority with mediative activity, creating functional ambiguity and duality. For example, there were cases in which the same prosecutor participated in a mediation process and also handled other cases against the same person, raising ethical and operational concerns.

With the implementation of the 1993 legal framework and subsequent measures, consistent with the principles emphasized therein, the mediator must never lack professional independence and impartiality and must not occupy a judicial role within the proceedings. Ministerial circulars likewise stressed the necessity of separating the mediator’s role from the judge’s role, emphasizing that such activities should be conducted by professional persons, volunteers, or independent supervisory structures, rather than within direct judicial structures. In addition, limitations were introduced to guide and control mediation activities, and emphasis was placed on maintaining mediator independence and professionalism in order to prevent misuse or conflicts of interest (31). In Iran, the role of judicial authorities—particularly prosecutorial judges—in mediation is highly pronounced, and in many cases one observes direct mediation efforts by prosecutorial judges, resulting in the complainant’s waiver in exchange for informal compensation to the victim.

Inability to Articulate a Mediation Model

It may be argued that the most significant pathology in the two legal systems of Iran and France in the field of criminal mediation is the inability to articulate a coherent mediation model. The key issue here is understanding the

difference between “mediation activities” and “mediation institutions.” A comprehensive definition of mediation is that this process is generally conducted formally and with the presence of a neutral and independent third party, who seeks—by organizing exchanges between the parties—to persuade them regarding their perspectives and, with their cooperation, to identify an effective solution to resolve the dispute. The importance of this definition lies in its emphasis on the quality and nature of third-party intervention, which constitutes the distinguishing feature of mediation as compared with other dispute-resolution mechanisms. On this basis, mediation, both legally and practically, is understood as an act whose primary responsibility rests with a neutral, independent, and competent person whose role is limited to assisting the parties in finding a solution. Although the activities of many dispute-resolution professionals—such as judges, police officers, or social workers—are such that they cannot be regarded as formal mediators, these limitations do not imply an inability to perform mediative functions or any opposition to their cooperative and facilitative approach; rather, they reflect differences in role and in the nature of those actors’ activities.

Understanding the foundations and underlying logics of mediation structures—which are markedly diverse—remains difficult, particularly in light of insufficient foundational research in this domain. Although the vast majority of mediation programs have been designed and implemented through judicial initiatives, others have been launched by crime-prevention councils. In reality, practice is complex, and the logics of action in each project differ depending on specific conditions and objectives, such that attempts to classify or explain the multiple forms of these projects face considerable challenges. In this context, Christine Lazerges, in seeking to explain methodological diversity in mediation, introduced categories such as conciliatory mediation, conciliatory mediation under judicial supervision, and social conciliatory mediation without judicial supervision (32). Jacques Faget has also provided another typology, according to which four principal mediation models emerge: the autonomous community model, the autonomous profession model, the legal community model, and finally the legal profession model (17). These efforts indicate that a correct and comprehensive understanding of mediation structures and approaches requires careful analysis and a clear distinction between the nature and logic of each model and intervention. Applying these models to the existing situation of criminal mediation in Iran and France leads to the following conclusions.

In France, the improper and ambiguous conflation of mediation activities and mediation institutions arises from the current developmental status of this new dispute-resolution method (33). In Iran, a similar situation exists regarding the blending of criminal mediation activities with mediation institutions, although with its own specific points and challenges. Just as in France mediation activities are often conducted as “delegated mediation” under the direct supervision of judicial authorities and cases remain within prosecutorial offices, in Iran there likewise exist mediation-related structures for certain mediation processes, particularly in criminal matters, under the title of mediation institutions (34). In some instances, criminal files following mediation are returned to the judge or prosecutor’s office so that a final decision on prosecution or non-prosecution may be made based on the mediation outcome. This situation generates concerns regarding the independence of mediation institutions.

In both France and Iran, in numerous cases judicial authorities take full initiative over mediation and, in practice, do not allow mediation bodies to operate effectively. In Iran, one of the most fundamental and influential problems in criminal mediation is the direct and extensive intervention of judicial authorities—especially prosecutors—in mediation processes. In practice, prosecutors play a central role in directing and controlling these processes, and related cases remain substantially within their control, generating a set of serious pathologies. The first and most important is the restriction of the independence and impartiality of mediation institutions. When judicial authorities

directly enter the mediation process, mediation is more likely to be viewed as an instrument for controlling and managing the judicial system than as an independent and professional method aligned with restorative and rehabilitative objectives. Such interventions, contrary to principles of professional and institutional independence, limit—and sometimes render impracticable—the role of non-governmental or private institutions and organizations, thereby creating significant obstacles to the development of free and active mediation policies.

Pathology of the Institutionalization of Criminal Mediation

The institutionalization of criminal mediation—meaning that criminal mediation is carried out through an independent mechanism separate from judicial authorities, the police, and other components of the state—faces multiple challenges and pathologies in both countries.

Delay in the Institutionalization of Criminal Mediation

In both France and Iran, the institutionalization of criminal mediation has proceeded slowly and has been accompanied by substantial delay.

France

The first criminal mediation programs in France began in the 1980s; however, even as of 2025, it is difficult to speak with confidence about the existence of a fully institutionalized criminal mediation body in France. This trajectory largely began through individual and local initiatives. Most of these programs were implemented by prosecutors in cities such as Valence and Grenoble, who were seeking alternative mechanisms for settling minor cases. Moreover, leaders of victim-support movements in cities such as Strasbourg and Paris played a central role in developing and promoting this type of mediation (13). It appears that a period of approximately 32 years would have been sufficient for the institutionalization of criminal mediation in France—yet it has still not been fully realized.

Iran

Similarly, and in a manner comparable to the French legal system, the institutionalization of criminal mediation in Iran has also progressed slowly and has involved considerable delay. Although significantly less time has passed since the legalization of criminal mediation in Iran than in France (approximately 12 years), and despite the establishment of mediation institutions, one still cannot speak of the institutionalization of criminal mediation in Iran.

One major obstacle to the institutionalization of criminal mediation in Iran is the existence of parallel structures in this domain. Under Articles 13 to 15 of the Law on Dispute Resolution Councils (enacted on 13 September 2023), the scope of authority of dispute resolution councils and peace courts in reconciliation and mediation processes has been specified and limited. Dispute resolution councils, in matters such as all civil and legal affairs, the private aspect of non-waivable offenses, and all waivable offenses, may enter reconciliation processes and, depending on the case, may act upon the request of the plaintiff, private claimant, or complainant. These councils resolve disputes when requested by the parties and when either party expresses willingness. However, where one party requests proceedings before the council but the other declares unwillingness at the first session, the council archives the request and refers the parties to the competent authority (35).

Article 14 provides that after the law becomes enforceable, the lawsuits and offenses specified in the law are adjudicated by peace courts, and the councils' role is confined to reconciliation and compromise. In other words, at this stage, the council acts only as a facilitator and mediator in the reconciliation process, while the primary adjudicative authority is the peace courts. Moreover, in waivable offenses, family disputes, and other civil claims, prior to referral to court branches, the adjudicating authority may—based on the nature of the matter and the possibility of settlement through reconciliation—refer the case, but such referral is conditional upon the parties' consent and must ensure the absence of objection, while also informing the parties accordingly (35). Overall, the role of dispute resolution councils under this law is limited as a channel for mediation and reconciliation, functioning mainly at an early facilitation stage; when peace courts address the matter, they serve as the final authority for resolution. This structure suggests that reconciliation and mediation operate within the judicial system through limited and controlled cooperation and referral, with the primary role assigned to peace courts. Evidently, under such conditions, referral of cases to mediation institutions becomes highly unlikely, and institutional mediation in Iran may remain effectively underutilized, with few files being referred to these bodies.

It may therefore be argued that the existence of dispute resolution councils constitutes a major barrier to the institutionalization of criminal mediation in Iran, because these councils possess both reconciliation and mediation powers and operate as established structures that hinder the growth and development of mediation institutions. They may even redirect mediation toward mere reconciliation and compromise. The breadth of the councils' authorities, as compared with mediation institutions, illustrates this point. Dispute resolution councils have also sought to expand their powers and, in some cases, even intervened in preliminary investigations. In this context, an advisory opinion was issued by the General Department of Legal Affairs of the Judiciary, stating that in all cases where, under Iranian law, a file is referred to a dispute resolution council for conflict resolution and reconciliation, the council may undertake whatever actions it deems necessary as a "preliminary prerequisite"; however, because council members are not judicial officers, judicial authorities—including prosecutors—may not request that the council perform acts that are inherently part of preliminary investigations and that, under the relevant provisions, fall within the duties of judicial authorities and law enforcement officers. The opinion further notes that investigative acts performed by persons who are not judicial officers lack legal validity, while providing guidance by the judicial authority when sending the file to the council for reconciliation is unobjectionable. This expanding institutional posture within dispute resolution councils represents a significant barrier to establishing an independent institution of criminal mediation.

Concentration on Mediation Activities

Undoubtedly, so long as mediation activities exist within the country's judicial and legal system and are strongly reinforced, one cannot expect criminal mediation to develop as an independent, continuous, institutional, and structural mechanism. The reasons for this can be summarized in several key factors. First, scattered and often informal mediation activities prevent restorative processes, reform, and the settlement of criminal disputes from taking shape within coherent institutional frameworks. This condition obstructs the formation of independent bodies, professional standards, and clear legal rules for criminal mediation, leaving this corrective instrument confined to limited and temporary forms. In addition, the outlook of the judiciary and relevant authorities plays a decisive role. If mediation activities continue to be viewed primarily as tools for control, integration, and case management—rather than as an independent and specialized process—it is unsurprising that the growth of formal and independent

institutions in this field will be constrained. Put differently, the more these activities are conducted as temporary measures under direct judicial supervision or intervention, the fewer opportunities exist for building strong and independent institutional structures. Furthermore, the persistent presence of these activities alongside judicial processes encourages the perception of mediation not as an independent and professional substitute within the system of criminal reform and rehabilitation, but merely as an auxiliary and facilitative tool. This weakens incentives to establish independent and professional criminal mediation institutions, because emphasis on dispersed and controlled activities prevents the development of formal and independent structures.

Accordingly, until mediation activities become broad, coherent, and integrated as part of the overall policy of the judicial and legal system, criminal mediation cannot be expected to develop as a strong, professional, and institutional mechanism capable of playing an effective role in criminal restorative and rehabilitative processes. In both France and Iran, the persistence and expansion of mediation activities is regarded as a major barrier to the institutionalization of criminal mediation.

France

In France, the development of criminal mediation is closely connected to public action policies, as demonstrated by the adoption of the law of 4 January 1993, which made the public prosecutor the principal actor in mediation matters. Within this framework, it is impossible to analyze all criminal mediation initiatives; therefore, two forms of mediation can be highlighted: mediations “delegated to victim-support associations or judicial supervision bodies” and “independent” mediations conducted within Houses of Justice and Law. “Delegated” mediations are those carried out by organizations such as victim-support associations or judicial supervision services after cases are referred by the public prosecutor’s office as part of the prosecution process. Accordingly, “delegated” mediations form part of the public action policies of the public prosecutor’s office. After an experimental period of more than eight years, the integration of criminal mediation into public action policies was formalized through the ministerial circular of 8 October 1992, the law of 4 January 1993, and the decree of 10 April 1996.

Requests for oversight of these practices were raised by mediators as well as by judges and lawyers. Thus, the October 1992 text sought to ensure the dissemination of a unified mediation model—namely a form of mediation performed under judicial authority and judicial supervision. From the perspective of mediators, the demand primarily concerned recognition of the mediator’s status, enabling specific guarantees such as confidentiality and responsibility. From the perspective of lawyers, concerns were raised to ensure that parties in mediation could benefit from guarantees of the right of defense and the principle of a fair trial. In support of these positions, reference was made to Article 6 of the European Convention on Human Rights, which guarantees the right to a fair hearing (36).

During the drafting of mediation-related bills, the first attempt to remove legal obstacles to criminal mediation occurred in 1990, but this effort failed. In parliamentary negotiations, a debate emerged in which the rapporteur of the legal commission of the National Assembly argued that “as to the scope of the law, it would be better to explicitly state that criminal procedure is excluded,” whereas some representatives, including J. Bonmaison, sought the rapid regulation of criminal mediation. Ultimately, in the final vote, Amendment No. 9 was adopted, removing criminal procedure from the scope of the law; however, the bill never entered into force and did not progress beyond parliamentary review.

Until the issuance of the ministerial circular of 2 October 1992, and especially the adoption of the law of 4 January 1993 and the implementing decree of 10 April 1996, criminal mediation was not placed within a comprehensive regulatory framework. The guidance memorandum prepared alongside the 1992 circular emphasized the need to generalize this institution, such that its broad use was vital, first to respect the principle of equality between the parties and also because of its compatibility with the objectives of French criminal policy.

Throughout this period, criminal mediation consistently appeared in the crime-prevention programs of successive governments, and Ministers of Justice emphasized its importance; nevertheless, multiple political and legal barriers produced a difficult path toward adoption and implementation. In particular, during parliamentary voting in 1993, some representatives—especially senators—expressed opposition, reflecting significant challenges in the legislative process.

It should also be noted that opponents of adopting a comprehensive law on mediation were not necessarily opposed to a conciliatory approach. They argued that “the law is a sufficient instrument to provide the prosecutor with legal authority to take relevant decisions, and a specific legal basis is not necessary in mediation matters.” The Minister of Justice adopted a qualified position and stated that “all ongoing mediation processes, within judicial powers and based on the parties’ consent, are lawful in my view, even if not explicitly mentioned in law.” The Minister further added that the legal commission had shown that including provisions on criminal mediation in legislation would mainly constitute official confirmation and formalization, facilitating broader expansion while providing a clearer and more specific framework. In other words, adopting codified legislation in this field did not introduce something fundamentally new beyond what was already contemplated in the guidance memorandum accompanying the 1992 circular.

The guidance memorandum indicated that the legal basis for such mediation lay within the discretionary powers of the public prosecutor, who decides in which cases recourse to this process is appropriate. This decision must be made in accordance with relevant principles and criteria, including the wishes of the person concerned or the victim. In practice, the public prosecutor’s office has a central role in directing, supervising, and evaluating mediation outcomes. It can be said that this form of mediation has become “judicialized” and has emerged within a “prosecutorial” framework, because the prosecutorial institution plays the principal role in shaping and advancing criminal mediation policies.

This approach has, however, attracted criticism. Some argue that “delegated” mediation constitutes a form of privatization or a diminution of the judiciary’s role in adjudication and, in effect, operates as a type of “pre-trial judgment” that encroaches upon the powers and functions of trial judges.

The 1993 law, by assigning authority to order mediation measures exclusively to the public prosecutor’s office, effectively confined mediation to the pre-trial stage. This restriction was imposed even though earlier approaches—particularly amendments to the 1945 law on juvenile offenders—had adopted different allocations of authority. Under those reforms, both the public prosecutor’s office and the juvenile judge were empowered to adopt corrective measures concerning juvenile offenders. Accordingly, the question arises as to why, in the general framework, this restriction was confined solely to the pre-trial stage. This concentration of prosecutorial power in France constitutes a major obstacle to the development of institutionalized mediation in France.

Iran

In Iran, despite the recognition of criminal mediation in the 2013 Code of Criminal Procedure as an independent institution, all forms of mediation activities—judicial, police-based, and civil-society-based—have remained in place, and no legal prohibition has been imposed on them. This situation indicates that each of these forms of mediation activity can develop in different ways and can play an effective role in processes of criminal reform and restoration.

In the sphere of judicial mediation, excessive emphasis on control, the temporary referral of cases, and the direct involvement of prosecutors prevent the emergence of independent and professional mediation institutions. By concentrating on judicial assessments and limiting the mediator's role, the judiciary channels restorative and reform processes toward temporary activities that remain dependent on judicial authorities, thereby restricting the development of independent and specialized institutions.

Within the policing sector, mediation activities are mostly carried out in the form of temporary and limited measures that focus solely on the rapid and superficial settlement of minor offenses. These limitations in training, law, and policy prevent the police force from developing broadly and effectively as a professional and independent institution in the field of mediation. As a result, in practice the police assume a short-term, control-oriented role, and this trend does not contribute to building purposeful, professional, and specialized institutions in the mediation domain.

In the civil society sphere, although non-governmental institutions and local civil bodies play a role, legal barriers, lack of necessary support, weak specialized capacities, and the underdevelopment of a mediation culture all prevent these activities from operating within independent and dynamic institutional frameworks. Many of these mediation institutions face limitations in the referral of cases to them, which obstructs their growth and the consolidation of their status within mediation processes.

Conclusion

In both France and Iran, overlap and disorder are evident in the legal status and mission of criminal mediation within criminal policy. The multiplicity of objectives of criminal mediation—between a reform-oriented approach and a control-oriented approach—is observable in both countries. In reform-oriented mediation, the focus is on addressing the harm caused and rehabilitating the offender, whereas the control-oriented approach emphasizes the tool's role in reducing recidivism and maintaining security and public order. The persistence of this tension has led to a lack of alignment between the criminal policies of the two countries and modern models, as well as an ineffective use of mediation in their legal systems. Moreover, in Iran, priority and emphasis are placed on reducing the judicial caseload in criminal courts, and as a result both the reform-oriented and control-oriented approaches in criminal policy have been pushed to the margins.

In both France and Iran, criminal mediation has been accepted as a formal and legal tool within the legal system; however, in practice this institution remains largely ancillary and dependent on judicial processes. Referral to mediation generally must occur through a judicial authority, and other forms of mediation—such as non-governmental or voluntary activities—are not recognized in either country as legal and formal criminal mediation. For this reason, the legal capacity for independent or informal initiatives in the field of criminal mediation is very limited in both countries, and the role of mediation is predominantly that of an instrument serving the judicial process rather than an independent institution. In France and Iran, despite differences in legal structures, criminal mediation

activities and programs are in practice shaped more by pragmatic logics and customary, experimental mediation activities than by independent, coherent institutions grounded in standard models. In France, alongside formal and well-equipped programs, activities carried out by police, judges, and social workers as part of professional—and sometimes non-governmental—functions contribute to ambiguity and instability in the institutional status of mediation. Similarly, in Iran, many mediation activities are conducted by judicial authorities, the police, and dispute resolution councils in fragmented forms lacking clear standards, often aimed at reducing caseloads and managing immediate crises. One of the most significant problems of these practical approaches is the absence of a coherent framework, a standard model, and evaluative capacity that could operate sustainably and effectively in an institutional and professional form. This situation causes mediation activities to remain largely isolated and temporary measures, and the overlap and interference in the functions and objectives of different bodies reduces efficiency and public trust. From a criminal policy perspective, in both countries mediation is used more as a tool for reducing caseloads and managing social and judicial crises than as an independent institution of social regulation developed through coherent scientific principles, standard models, and robust structures.

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All authors equally contributed to this study.

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Transparency of Data

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