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# DEATH PENALTY'S POSITION IN CRIMINAL JUDICIAL SYSTEMS EMPHASIZING IRANIAN AND IRAQI CRIMINAL LAW

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## Abstract

The most severe form of punishment—execution—has been investigated for years, and criminal justice systems have undergone modifications. Punitive, restorative, and evaluation justice are the three types of criminal justice systems. Each has changed or been re-selected as a result of flaws and weaknesses. Executions are prohibited in restorative justice, so they are also eliminated. In assessing justice, crime risk management and recidivism control are followed by providing the offender with a second opportunity. Punitive justice focuses on assigning and enforcing rigorous punishment. While Iraqi criminal law adheres to evaluation justice, Iranian criminal law trends toward corrective justice. This study uses a descriptive and comparative analytical approach to determine where the death penalty stands in various criminal justice systems. Pay particular attention to the rights of the people in Iran and Iraq. Based on this, it appears that capital punishment cannot be abolished entirely but can be restricted. In this regard, evaluative justice is more appropriate than punitive and restorative justice.

**Keywords:** execution, punitive justice, restorative justice, assessment justice, Iranian law, Iraqi law

## Introduction

Justice, especially in retaliation. It has been characterized as a collective (before the 18th century A.D.), and occasionally, punishment by the state (punitive justice - State's response to crime) has been the epitome of righteousness. Pradel and Mr Jannet Makan, 1389: 19 and 1391: 32, respectively. Systems of justice for crimes After the 18th century, they were divided into three groups: the first group is the penal justice system, which believes that justice is served when the criminal is punished and when the punishment is swiftly and severely carried out. In this group, the use of harsh penalties like the death penalty and life in prison is taken into consideration.

:This view is derived from the classical school of thought and absolute justice. ( Lazarge 1390  
The second category is the restorative justice syste, which negotiates with the offender and (70

the victim to find a better way to compensate for the harm caused by the crime; in charge of crimes with a unique aspect. Some of the crimes are non-compatible. (Rahmadal, 2016: 86) The third category is justice which emphasizes the valuable function of punishment in its rejection and neutralization aspect. In the justice system, people who are classified as dangerous criminals or in dangerous groups face criminal charges somehow. It is possible that their delinquency rate will decrease and the repetition of crime will be minimized. In other words, measuring the situation and circumstances of the criminal and its effect on the punishment causes judicial control (Ahadi and others, 2014).

Regarding the criminal laws of Iran and Iraq, the place of the death penalty in the categories above of the criminal justice system will be explored. The response to this issue will underline the death penalty's importance in the criminal justice system. What about Iran's and Iraq's rights? The approach taken in this study is to describe the criminal justice systems and illegal policies of Iran and Iraq. As a result of this description, an analysis is obtained in place of the death penalty, and the comparative comparison of the laws of Iran and Iraq has caused that in addition to the description and analysis, it is also a comparative method of this research. In the following, the topic will be discussed in the form of three issues.

### **1. The position of the death penalty in penal justice**

The criminal policy ought to be in place for a very long time. Immanuel Kant's school of absolute justice holds that retribution is justice and that the offender has twisted justice by committing a crime. By using criminal sanctions, skewed justice is made right. Since punishment in the sense of justice is a form of reciprocity, there must be a direct proportion between the amount of injustice committed and the quantity needed to make it right.

It offers a method of social control regarding known crime prevention and proactive punishment. (Wyt et al., 1394: 141; Williams et al., 1391: 1339–147) Punitive justice as a concept, according to "Cesar Bekaria", has been designed, and the criminal strategy has included essential, legal, confident, and decisive punishment in terms of its implementation and usefulness. (Abrandabad, Najaf, 1382) What may be inferred from the penal justice system is that punishing the offender is the primary objective and that other concerns, such as crime prevention and society's restoration, are secondary.

In other words, a significant crime is punished with harsh punishment, and punishment in criminal justice must be proportional to the crime. On the other hand, a criminal must be assured that the penalty will be carried out to avoid committing the crime. This is because the certainty of the punishment's execution has the same effect as the choice of discipline. (Mehra, 1388).

The death penalty is one of the most effective forms of punishment in criminal justice since it is the worst punishment. When applied, it punishes the offender and instils fear and apprehension in other criminals. However, it appears that its execution is more crucial than the nature of the death penalty, as the conditions of society will shift from the approach of punishment to the process of escape if someone is sentenced to death but not put to death.

However, this punishment has always been criticized due to its non-reciprocal nature and the possibility of injustice in it. The unjust implementation of the death penalty has harms such as security and the development of intimidation. The new order of societies is disrupted as a result, and Ali Mohammad 22-19 :1392, Taher result. (Ansel, 1374: 30 and Javanmard, 1388: 93 and there are punitive and prospective approaches, Such as the execution of murderers or rapists, In the death penalty (44 :1397).

Murderers and rapists are subject to the death penalty, and other offenders contemplating committing such crimes decide against it after hearing about what would happen to them. 2014 (Rezae Rad). However, despite the allocation of this punishment, violent crimes like murder and rape continue to rise daily. As a result, some schools of criminal law, such as the "realistic school," believe punishment should be more severe. Treat the offender like a patient and administer appropriate and special punishment. (Habibzadeh and others 2012; Burhan, 2016).

Apart from all the ideas of cities and schools of criminal law, execution is an essential tool in penal justice. The examples of the death penalty due to religious views or extremist views increased in criminal policy. As far as currently, regarding the crimes and limits: 1- Adultery with incest, 2- Adultery with a woman's father, 3- Adultery between a non-Muslim man and a Muslim woman, 4- Adultery with violence and unwillingness, 5- Committing a heinous crime for the fourth time. 6- Hadd of Lawat, 7- Hadd of Sab Nabi, 8- Hadd of Muharibeh, 9- Hadd of corruption in the earth, 10- Hadd of Baghi, in Iran, the death penalty is punishable, and in the case of murder, it is self-retribution, which is done in the same way Execution is used. Some other crimes in the field of economy and drugs are punishable by death (Refer to Kurdi, 2014).

Only offences founded on Imami doctrine are subject to the death penalty under Iranian law as it stands now. (2012) (Habibzadeh and others) Given that execution is one of the primary penalties in the Islamic criminal justice system and that the Islamic criminal justice system's characteristics are compatible with the approach of the penal justice system, it appears that this theory is valid. To put it another way, the Islamic penal system has only employed execution as a form of punishment in certain circumstances since it is regarded as a deserving penalty by the penal justice system (Shams Nater, 1387: 90-93).

Of course, it is necessary to explain Iran's criminal system. Before the approval of Article 286 of the Islamic Penal Law of 2012 and the clarification of the meaning of the limit of corruption in the world. In the narcotics issue, there was a death sentence, which was also resolved with the approval of the said law. (Burahan, 2014) Punitive justice does not only raise issues related to the nature of punishment and follows the execution of a sentence with the characteristic of certainty.

Iran's penal system currently has challenges in the certainty of punishment execution and this issue makes us consider the approach in the last ten years incompatible with corrective justice. The non-execution of some of those sentenced to death or the non-execution of heavy prison terms shows that punitive justice in Iran is changing its path to restorative justice. When the convict " Babak Zanjani" is told that his execution will be cancelled if he returns the acquired funds and property, punitive justice has changed to restorative justice, or when sentenced to

years in prison or life imprisonment in the case of the Mashhad phenomenon, they are 25 released after a short period and are working on the same project again and are responsible for compensating for the previous situation ( Mina, 2019, p. 204).

In regards to eradicating historical evidence of harm to the nation's independence and territorial integrity, Iraq's criminal code is comparable to Iran's. Armed forces, allowing the adversary to enter the country and do harm when it is convenient YSSC The death penalty has not yet been decided upon due to the economy, Iraq's rights against a foreign country, armed combat with government troops, the President's murder, Zionist and Masonic propaganda, etc.

the penalty is one of the<sup>1</sup> Its number is many times more than the rights of Iran. The death What ." Moreover, it is defined as a " convict of circumcision<sup>2</sup> main punishments in Iraqi law is discussed in Iraqi criminal law regarding the death penalty is that, firstly, the death penalty is the primary punishment for the crimes mentioned above, and the judge does not have the right to choose another discipline; Although he has the right to reduce the penalty in some For these cases, the strict approach is the driving force, but in (Ahmed, 2013, p. 113) cases addition, in such instances as harming public interests that are important in the national from the (<sup>3</sup> economy of Iraq, (the subject of Article 197 of the Iraqi Penal Code of 1969 ".phrase

" Execution or imprisonment" has been used, and the judge has been given the authority to choose one of these two punishments. This issue does not correspond to punitive justice and ,Hasani- Al ) is more related to assessment justice, the explanation of which is presented below In addition, although the allocation of the death penalty in Iraqi criminal .(and 308 77 :2008 law has been made many times, its implementation is subject to the issuance of sanctions by the President of the Republic of Iraq.

Who has the authority to commute or replace the sentence? To request This implies that the President of Iraq has the power to carry out the death sentence imposed by the nation's courts and pardon the convict. Death Sentence There is a desire to put this into practice given that the President of Iraq has the final say on whether to overturn the death penalty and that Iraq is under pressure from international organizations. Does anyone own an oven?

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<sup>1</sup> Article 89 of the Iraqi Penal Code 1969: " The death penalty is the hanging of the convict « .until death

<sup>2</sup> Article 85 of the Iraqi Penal Code of 1969: " The principal penalties are: «.. . execution -1

<sup>3</sup> Article 197 of the Iraqi Penal Code of 1969: "1- punish by death or the prison life all from ruined or Demolition or destroy or hurt Deliberately causing severe damage to public buildings or property, or designated for government departments, interests, or institutions Or public utilities or associations that are legally considered to be of public interest, oil installations, or others From the state's industrial facilities, electric and water power stations, or means of transportation Or bridges or dams or public waterways or places prepared for public meetings or To frequent bridges or any public money of great importance in the national economy, with «.. .the intent of overturning The system of government stipulated in the constitution

To the extent that even ISIS, which is growing in Iraq, is not condemned for this crime and this hypothesis is also correct that Iraq after the 100th century is considered to be the Iraq that is closer to the movement to abolish the death penalty. Is. (Al-Juran , 2009: 299-303) Thus the Iraqi criminal law regarding the execution of the death penalty is not compatible with punitive justice, and the idea that the Iraqi penal system is based on the use of this punishment is not correct. Because the certainty of the execution of the sentence and the future-oriented nature and form of this punishment is not respected in Iraqi law, execution in Iraq is used only in private crimes. Although assigning punishment to crimes without the right to choose a judge brings to mind the same punitive justice, its non-implementation makes corrective justice incomplete, and that is why it has been suggested that assessment justice is followed in an It is also essential to (Hamed Hadi, 2009, pp. 127-129 ) unwanted way in Iraqi criminal law address the question whether Iraq's current approach is considered appropriate or not. Iraqi jurists are divided into two groups. Some are satisfied with the current approach because they Some others .(Janzouri, 2006 ) are against the death penalty and believe it should be eliminated are dissatisfied with the current approach, not because of the death penalty but because of the weakness of the judicial system. These people believe that the crimes subject to the death ,penalty are increasing day by day due to non-execution of the punishment and other reasons and even in the case of murder, the victim's family tries to get the case out of the court and the path of the criminal justice system by expressing their consent. He took back his right in the way of private revenge.

( Al-Bayati , 2002: 99-101) ( Al-Bayati, 2002: 99-101) This is comparable to the reality that Iraq has either no laws at all or laws that are not being followed. In other words, the second group of Iraqi jurists believes that the absence of punitive justice in the allocation of punishment, the use of the death penalty, and the experience of critical elements of punitive justice systems like certainty and certainty of execution is the cause of the country's penal system. Kiefer should not be struggling now ( Ahmed, 2013: 360-362).

As a result, execution is a crucial component of all punitive justice measures, but carrying them out is more crucial than tying them to specific offences. Iranian law has profited from punitive justice in awarding the death penalty, and it is based on the exact mechanism for carrying out the punishment. However, in recent years, it has tended to favour the restorative justice approach in some cases.

Iraqi law is strict in assigning the death penalty and many crimes, but in cases where the judge has the power to choose between the two punishments of death and life imprisonment or regarding the implementation of which all executions are subject to approval, the President and for about two decades in Iraq, the execution of the death sentence has been reduced to a minimum, it can be considered that the death penalty in Iraq (except for private matters) is far from punitive justice and is closer to quantitative justice has it.

In private concerns, as as the August 10, 2021, assassination of the mayor of Karbala, "Abeer Selim Nasser Al-Khafaj," who was killed without provocation within three months of addressing construction code breaches. The investigation was conducted, and the death

sentence was given and carried out. The judge has no discretion in certain situations, and it is thought to be in keeping with punitive and harsh justice.

## **2.Place of the death penalty in restorative justice**

Restorative justice is victorious if it serves to pay for previous losses and repair harm done to society in addition to punishing the offender. It is possible to make up for both the physical and spiritual damages brought by the crime through restorative justice. The general public alters society. Additionally, restorative justice can potentially lessen the psychological stress and anxiety that society experiences, and in a sense, it maintains peace and order in society.

This issue may not arise with punishments such as imprisonment in a desirable way that takes place in restorative justice, which shows that the importance of restorative justice is equal to : punitive justice. In some cases, it is more useful than punitive justice. ( Rahiminejad , 1398 \_ ( and Najaf Abrandabad , 1382 96

The death penalty has no place in restorative justice because the opportunity for compensation and restoration is lost by eliminating the criminal. ( Shiri, 1385 ) If we intend to implement the approach of restorative justice in all crimes, we must remove the death penalty If we want the death penalty to remain, but restorative justice will also be established practically crimes To They are divided into two groups based on the punitive approach of harshness ( punishment and the restorative approach (.

One form of restorative justice that has a more extended history than the concept of restorative justice is the forgiveness of a private plaintiff in a murder case. Only in crimes resulting in death, the same approach to private murder can be deemed relevant to restorative justice. This problem arises in the laws of Iran and Iraq. (Hajy Hosseini, 1395; Dervisi and others, 1394; Abbas, 1382)

### **There are two views on justice reform**

There is a model that explains the viewpoints of justice reform: 1- the idealistic model 2 The non - preferred model. ( Samavat YPI Rooz , 1385 : 54 and 151 and Shirey , 1396 : 97 and Of course, some researchers have a separatist model Or independence too. In addition to ( 164 the mentioned two models, they have mentioned that it means independence for the justice system and is a collection of Combining restorative justice with punitive justice. Class K Ya does not consider tradition as possible. However, the abolition of the causal punishment justice system, despite the inconsistency, is not the goal of this model ( Hossein Nound, 1394: 133- ( 139.

The separatist model The independentist has yet to be considered in various works ( such as Shiri, 2016 and Rahiminejad, 2018: 91 ), but there is a consensus for the idealistic and forward-thinking model. The pure theory and model of restorative justice is introduced as an alternative to punitive justice and a path-breaker for the criminal justice system. The issues of decriminalization, decriminalization, and decriminalization are discussed in it. ( Samavat YP Rooz, 1385: 73) In the background model, Restorative justice is a complement to punitive

justice, and in addition to the execution of punishment, it also creates peace and reconciliation prevents the repetition of crimes and prevents the feeling of revenge. It is considered the goal of restorative justice and is supposed to create mental crime prevention by involving the local \_ and civil society ( Najaf, Abrandabad, 1382 ).

The actors of restorative justice are 1- the criminal who must compensate for all the damages ,caused favourably, 2- the victim who will be restored to mental peace and a sense of security and 3- the local community that helps the criminal and the victim. Slow down so that both of them return to crime and the security of society is stable. ( Samavat Y. P. Rooz , 1385 : 116 ) Restorative justice tools include mediation ( with the aim of peace and reconciliation ), family .group meetings A \_ Meetings, circles, circles, and reform committees of the local community (Shiri, 2016: 29) With execution, one of the most important actors of restorative justice (the criminal) is eliminated.

Restorative justice has unquestionably positive and enduring impacts, but the death sentence cannot be seen as the root of the problem. What was brought up against the "convict of Babak Zanjani" or the Mashhad phenomenon case were actions that the court process had done against the law. Iranian law has not referenced the tools and procedures of restorative justice in cases where the death penalty has been awarded (Mina, 1399: 173).

In other words, there is no sign of restorative justice in Iran's legal criminal policy for crimes leading to the death penalty, but in Iran's judicial criminal policy, for some specific issues and cases. There is restorative justice ( like a mirage). (Because there is no reason or legal document that Babak Zanjani's death sentence will not be carried out after the return of the funds, or the imprisonment of the convicts of the Mashhad phenomenon project will not be (.carried out after some time

The Iraqi penal system is also unrelated to restorative justice, its actors and tools in crimes ,leading to the death penalty. Among the tools of restorative justice, in the Iraqi criminal courts the only issue used is peace, which is discussed in articles 194 to 198 of the fifth chapter of the Iraqi Criminal Courts Law of 1971, that crimes that can be reconciled have no relation to crimes with the death penalty. The criterion for using peace in the Iraqi criminal justice system is the type of punishment and crime.

It seems that what is close to restorative justice in Iraqi criminal law is attention to the issue of peace. Peace is recognized as one of the essential goals of restorative justice, but peace and reconciliation are not tools of restorative justice. Instead, mediation with the aim of peace and reconciliation leads to peace. ( Fateh Hossein, 2021: 86) Realization of peace inside or outside the court, although restorative justice is desirable and goes hand in hand with decriminalization, in some issues, peace is not desirable for all activists and, for example, victims .

Additionally, the created peace does not sufficiently benefit the neighbourhood. Thus, one of the objectives of restorative justice in Iraqi criminal law is peace, which, if it comes about through mediation, is a result of restorative justice and can lessen both the offender's and

society's suffering as well as the conditions of the offender. It is local and might only have the desired effect if it is created with considering the restorative justice process (Abdul Qadir, 2020, pp. 43-49).

The Iraqi legislator limited the issue of accepting or not accepting restorative justice only through the court. However, the role of some important institutions, such as "tribal reconciliation", which plays a role in solving many disputes, has not been considered by the legislator. "National Reconciliation Commission" to solve differences and bring closer views between sects and races and in issuing amnesty in 2008 and 2016, has been able to free the accused of many crimes, such as crimes leading to the death penalty due to the forgiveness of the plaintiff, but still in The law has no place for this commission; Although the Iraqi parliament approved the positive performance of this commission, the law did not mention it In the 1971 Law of the Principles of Criminal Courts of Iraq, in the implementation of the death penalty there is no mention of the approach of restorative justice to the crimes leading to the death penalty (Qaid, 2011: 141 and Belqasem, 2019: 20-24).

As a result, if restorative justice is desired, the death sentence should be abolished. The death penalty has no place in restorative justice. Only in the crime of murder and the passing of a private plaintiff in Iran and Iraq is a little link between the laws of Iran and Iraq relating to crimes carrying the death penalty and restorative justice. He reinstated justice and the state of affairs.

### **3-The place of the death penalty in determining whether justice has been done**

The puzzle of reaching justice, in addition to punishing the criminal and restoring society requires part of assessment and management to compensate for the past and ineffective problems of criminal policy. In quantitative justice, through the examination of statistics and figures, as well as the evaluation of the character and circumstances of committing a crime, an effort is made to select a specific and appropriate punishment that will also respond to the temptation of repeating the crime.

Although it is no longer the primary option for punishment, the death penalty is now the last resort in evaluating justice. Put another way; the offender is offered the chance to turn his life around rather than receiving an emotional punishment for his emotional crime. Instead, a suitable punishment is selected based on evaluating the circumstances of the offence. The return to punishment is discussed in the assessment of justice in such a way that, notwithstanding the effectiveness of the corrective and educational approaches, the criminals should still receive the proper punishment (Iyargar, 2016, p. 78).

In the assessment justice, the risk factor and committing the crime are treated, but this does not mean that the crime remains unpunished if there is only a point of view of reforming the criminal; In re-evaluation justice, it comes back to punishment, with the difference that the ,first to the third time, the criminal is given a chance, and finally, if the criminal is not reformed The point of view related to the evaluation of justice was .the severe punishment is chosen



born after the ineffectiveness of the punishment of imprisonment and the repetition of .delinquency and its increase

In other words, when the punishment was considered ineffective and reforming the criminal The .became more important than punishing him, the attitude of measurement in justice arose reason for the reformist measures' disappointment is that the criminal's reformation was not done in such a way that he would be unwilling to commit the crime. Also, this reformation is not diverse for different criminals; there must be different conditions between criminals with a dangerous and habitual state compared to sudden and accidental criminals.

The meaning of the return to punishment is a different and appropriate use of prison punishment. It is supposed to be followed by new methods, such as those proposed in the ( Pakenhad, 1389 ) .criminology of convicts, to disable the criminal

Similar to the measure of justice in Iranian law, the death penalty for repeating the fourth court ( Pakenhad, 1394: 177 ) is a borderline crime. "We compare the "three strikes and expulsion<sup>1</sup> If law, which has become the foundation of justice in the American judicial system, with the ) .Border crimes in Iran, similarities can be seen. Found<sup>2</sup> execution for the fourth time of In regards to the relationship between the assessment of justice and the (Rizvan, 1391: 63-69 death penalty, it thinks that the approach of Iran's legislative criminal policy towards the execution of narcotic drugs, according to the approval of the supplementary article of 2016, is "Expulsion. According to paragraph "P<sup>3</sup> .entirely in line with the law of three strikes and then

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<sup>1</sup> ,Article 136 of the Islamic Penal Code 1392: " If a person commits a type of crime three times and each time the punishment for that crime applies to him, the penalty is death in the fourth « "instance.

<sup>2</sup> Under this law, people who have been convicted three or more separate times for severe in baseball, a batter can criminal offences are sentenced to long periods of imprisonment; Like make up to two fouls and is out the third time.

<sup>3</sup> Article 45- The perpetrators of the crimes that are punishable by death or life imprisonment in this law, if one of the following conditions are met, are sentenced to the death penalty and confiscation of property caused by narcotics or psychotropic substances, and otherwise according to The case of "those sentenced to death" shall be sentenced to imprisonment of the first degree to thirty years and a monetary penalty of the first degree to twice the minimum amount, and "those subject to life imprisonment" to imprisonment and a monetary penalty of the second degree, and in both cases, confiscation of property resulting from the crimes of narcotics and Psychopaths are convicted: a- In cases where the master of the crime or at least one of the partners drew a weapon during the commission of the crime or carried firearms or hunting weapons to confront the officers. Weapons in this paragraph mean cold weapons and weapons and ammunition subject to the Law on Punishment of Weapons and Ammunition .Trafficking and Possessors of Unauthorized Weapons and Ammunition approved on 6/7/90 B- If the perpetrator has the role of the mastermind ( the subject of Article ( 130) of the Islamic Penal Code approved on 1/2/92 ) or has financial support or investment, or children and adolescents under eighteen years of age or insane to commit a crimehas used P- Cases where the perpetrator has been sentenced to death or life imprisonment or imprisonment for more than fifteen years due to committing the crimes under this law. T- All the crimes under article of this law provided that it is more than fifty kilograms, and the substances under article 4

of this single article, one of the conditions for establishing corruption in the land and issuing Also, according to the articles<sup>1</sup> .a death sentence in cases where there is a record of conviction related to the repetition of the crime, this severity of punishment with tolerance is close to the theories of justice. However, it should be noted that the assessment of justice is not the only .approach to increasing the punishment

Instead, it addresses critiques of earlier strategies and considers other factors, including proper punishment and proactive prevention. (Rahiminejad, 1398) Such a progression toward a more severe punishment can be found in Iran's criminal code, the repetition of extreme crimes, or the drug problem, but this problem can be seen in the majority of cases. There are no offences that carry a death sentence.

Unlike Iran, Iraq's criminal justice system is based on procedural justice. In most cases it benefits, but its method differs from Iran. Assessment, or step-by-step, is not explicitly stated in the Iraqi system. However, when the law gives the judge the authority to choose between execution and life imprisonment, the same assessment is established (Mohammed, 2016: 230-237).

In other words, evaluation justice has been achieved by granting judicial authority. Due to the President's lack of enforcement, the death penalty has not been implemented in the Iraqi penal system. On the other hand, the system has grown detached from judicial justice by granting the judge the discretion to select between the two punishments of death and life in prison. Restorative justice is exclusively used in cases of private murder (Shahad, 2016) and other crimes carrying the death penalty (Sameh, 2019). which has not been decided by the judge, there is the same perception of severity and punishment.

### **Jumping net**

It is not feasible to choose between punitive, restorative, or evaluation justice; all three must coexist in the criminal judicial system. Ensure safety and justice. These theories cannot be excluded from one another, and none stand alone. To put it another way, to carry out justice and create security in all three categories of justice.

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eight of this law provided that it is more than two kilograms and regarding other crimes under article eight if it exceeds three kilograms beware The implementation of this clause against the perpetrators, defendants and criminals before the entry into force of this article depends on having one of the conditions of clauses A, B or C. Note- In the case of the crimes subject to this law, which are punishable by imprisonment for more than five years if the sentence is issued to the minimum legal punishment, except for the cases of the article 38 note, the perpetrator is exempted from the amnesty of the supreme leader mentioned in the eleventh paragraph of the one hundred and tenth article of the constitution. If the sentence is more than the minimum legal punishment, the court can suspend part of the prison sentence for five to .ten years after serving the minimum legal punishment

<sup>1</sup> The perpetrator, due to committing crimes subject to this law, has a history of being" ".sentenced to death or life imprisonment for more than fifteen years

We are both in need; Because crime and the criminal are created in different situations and conditions. Execution has a place in punitive and assessment justice. However, in restorative justice, there is no place for execution and its use, and only the passing of a private plaintiff in ,a murder has the face of restorative justice. Iranian law is based on the penal justice system although the results and tools of restorative justice are also used. However, in the crimes leading to execution, it follows the strictness of the punishment, certainty and certainty in the execution of the punishment ( except in recent exceptional cases).

The approach of evaluating justice has been used in the two cases of execution in the case of a repeat of a severe crime and execution in the case of narcotics. It is challenging to consider Iraqi criminal law as punishing or evaluating justice. However, the Iraqi criminal justice system only applies restorative justice to private murders that result in death. In all other cases, it uses one of two methods: if the crime results in death, the judge has the authority to decide on the sentence and can use either method. The judge's discretion is used while deciding whether to sentence someone to life in prison.

Punitive justice is harsh if the only sanction for the offence is the death penalty. In any case, the execution of the death sentence is inclined toward justice since the premise of the certainty of the execution of the death penalty in the Iraqi judicial system is fundamentally defective and because the President must be executed and given authority.

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