

## Restorative Justice: Does it Work in the Arab Countries?

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### **Abstract**

*This research explores the principles and methods of restorative justice (reconciliation, restoration), the informal system, and their applications in the criminal justice system in Arab countries. It attempts to describe applications and methods of restored justice processes in the criminal justice system in Arab countries. It highlights the importance of tolerance, cooperation, communication, and respectful decision-making in tackling severe criminal behavior. Restorative justice builds relationships, rapprochement, and agreements while adapting to cultural conditions and community demands. It opposes dehumanizing judgments and seeks to compensate for material and emotional losses through compromise and forgiveness.*

**Keywords:** Restorative Justice, Tribal Law, Arab Countries, Ja'ha, Atwa, Sulb, Tribes, Victims, Repair, Restore, Fairness, Forgiveness

### **INTRODUCTION**

In the 1970s and 1980s, restorative justice emerged as a new paradigm in Western legal culture, offering a fresh perspective on the administration of justice. Alternative dispute resolution is a new approach that has been extensively studied in legal literature. Examples of these institutions include victim-offender mediation and conferences. However, comparable assessments of institutions not part of the Western cultural circle are scarce and have only been briefly examined despite the possibility that they could serve as models for Western organizations. Restorative Justice, a relatively new practice, aims to repair the harm caused by a relationship, respect, responsibility, repair, and reintegration. The principles include relationship, respect, responsibility, repair, and reintegration. The relationship is the foundation, allowing the harmer to take responsibility and make amends. Respect ensures a safe experience for everyone involved in the process. Responsibility involves the harmer and the harmed taking responsibility for their part in the harm. Repair involves the harmer repairing as much harm as possible while acknowledging that not all can be repaired. Reintegration involves the community, allowing the harmer to accept their part in the harm and reintegrate back into the community with trust. (Restorative Solutions, 2024). Restorative justice emerged in the 1980s as an alternative to the retributive values-based legal system, which treats offenses as transgressions against the state. It aims to change societal reactions to crime and misconduct by treating crimes as offenses against people and social relationships and establishing a duty to make good whatever the offender violated. This approach involves the offender, victim, and community in finding reparations.

Restorative justice is an approach to justice that aims to repair harm by allowing victims, offenders, and communities affected by a crime to communicate about the cause and impact of the crime. It is based on respect, compassion, and inclusivity principles, encouraging meaningful engagement and accountability. Restorative justice is flexible, applicable at all stages of the criminal justice system, and is supported by legislation and government programs. (Department of Justice Canada, 2012). Restorative Justice (RJ) is a method of resolving conflicts and crimes by repairing damage and restoring relationships, unlike the traditional Canadian justice system that focuses on punishment. RJ is a flexible set of principles applicable to various situations. Restorative justice consists of three core elements: Encounter, Repair, and Transform, each representing a

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journey toward well-being and wholeness for victims, offenders, and community members (Restorative Justice Exchange, 2024)

Restorative justice prioritizes the needs of victims, offenders, and the community over the perpetrator's fault. It emphasizes reparation and strengthening social relations that the offender ruptured. Howard Zehr, creator of the restorative justice paradigm, distinguishes three pillars: harm combined with an obligation, a commitment to repair the harm, and the involvement of all stakeholders. In this approach, the victim and community become deeply involved in the administration of justice, seeking maximum compensation for the harm caused. The offender's responsibility is emphasized, with the offender committing to repair the harm caused in the fullest possible way. This approach is the first step towards the perpetrator's reintegration into society (Górska & Klakla, 2017).

## **RESTORATIVE JUSTICE: DOES IT WORK IN THE ARB COUNTRIES?**

### **Arab Society**

Arabic culture is deeply rooted in Islam, with values such as devotion to God, adherence to Islamic principles, and respect for religious rituals. Honor and respect are highly valued, especially for elders, authority figures, and guests. Family is a significant aspect of Arabic culture, with strong bonds between men and women. The traditional Arab family is characterized by extended, patriarchal, patrilineal, patrilocal, endogamous, and occasionally polygamous traits, making it central and supreme in social and individual life. The family is the foundation of production and social organization, serving as a hub of vital services like employment, insurance, childcare, counseling, and welfare. It is also the primary vehicle of socialization, teaching children customs and traditions and transmitting core values. The family may vary in form but provides the primary sense of identity, confers rights, and commands obligations. The centrality of the family in Arab societies has been a topic of critical debate among Arab and Western scholars. (Abudi, 2011).

Arabs are predominantly Sunni Muslims, but there are diverse religious, ethnic, and social groups in the Arab world. Some face challenges, while others live happily as Arabs. Some Arab countries are conservative, while others are Westernized. The Bedouin Arab stereotype has disappeared, and the Arab population is primarily young, with many Westernized. Arab societies value honor and shame, influencing interactions and everything from casual interactions to violent family feuds. Upholding one's reputation is a duty; shame arises when dishonorable actions are discovered. In contrast, in "guilt" cultures, no one feels shame if dishonorable actions are not publicly known. Arab societies value honor and shame, influencing interactions and everything from casual interactions to violent family feuds. Upholding one's reputation is a duty; shame arises when dishonorable actions are discovered. In contrast, in "guilt" cultures, no one feels shame if dishonorable actions are not publicly known—a blackened face. The need to avoid damage to your social status (a 'loss of face') is therefore essential. Arabs describe the face as being 'blackened' when honor is undermined and 'whitened' when it is restored. (Ministry of Defense, 2011)

A tribe is a society formed when related groups unite to control a territory and exploit its resources. Tribes are unique due to their political nature and social and political systems. (Rowland, 2009). Arab culture has unique values, such as respect for dignity, honor, reputation, loyalty to family, and friendly communication. Tribal communities prioritize individuals, relatives, tribe members, and those with the same religion and country. Despite rapid urbanization, there is still a degree of collectivism. The impact of modernization on local Arab communities is crucial for preserving traditional characteristics like generosity, gallantry, courage, patience, and endurance. Arab culture is characterized by close personal relationships, with body and food odors used to enhance these relationships. Arabs are generally warm and expressive, resisting being crowded in enclosed spaces or by boundaries. Cordiality is the core of Arab culture, with traditional greetings such as placing one's right hand on the chest near the heart and men kissing each other on both cheeks. Arab women have a unique social position and role, with the husband being the head and the woman being the authority on family matters. Islam does not advance the practice of female inherent inferiority but affirms potential equality between males and females. In some Arab states, female family members are equal to males; in others, they have limited roles and restricted positions. Western females visiting Arab countries must pay attention to what is acceptable or

unacceptable in the local Arab Islamic community, dress modestly, and adhere to local moral rules. (Sotirović, 2024).

### **Religion and Restorative Justice Principles**

Restorative justice is based on the interconnectedness between individuals and communities, emphasizing respect for all those affected by crime. The Qur'an refers to Muslims as "people united by faith," promoting community and unity. Muslims are encouraged to hold firmly to the rope of Allah and not become divided and to purify their hearts of animosity and hatred towards fellow believers. Human dignity is a pervasive value in Islamic jurisprudence, encompassing the inviolability of the human person, recognition of rights and obligations, and guaranteeing safe conduct by society and the state. Respect for persons is a natural and absolute right inherent in every human person from birth. Obeying God requires respecting the honor, reputation, and privacy of others and refraining from backbiting, lying slander, and gossip that will sow discord. Shariah, the Islamic legal system, protects human dignity and promotes a just society. Both restorative justice and Islamic criminal jurisprudence emphasize individual dignity and rehabilitation opportunities. Human dignity in Islam is divinely ordained, while Western philosophical writings influence restorative justice. Both aim to create a just society that respects individual dignity and empowers victims, offenders, and the community. Justice is a central theme in Islam, and Muslims are required to stand firm for it, even if it is detrimental to their interests. The Charter of Madinah established tolerance and principles such as legal equality, communal autonomy, and religious freedom. The Farewell sermon by Prophet Muhammad reinforced the principles of human dignity and equality in the Charter of Medina (Muhammad, 2020).

Shariah categorizes crimes into three broad categories: *Hudud* (violation of public order), *Qisas* (just retaliation), and *Ta'zir* (discretionary punishment). *Hudud* crimes violate God's boundaries and are punishable by the right of Allah. *Hudud's* crimes include adultery, theft, terrorism, false accusations of adultery, alcohol consumption, rebellion, and apostasy. Punishments are found in the Qur'an and range from applying lashes to amputation and execution. If doubts arise, no punishment is imposed. Instead, alternative alternatives like pardon, conciliation, compensation, fines, warning, and restorative processes can be considered. *Qisas* crimes, such as intentional and unintentional homicides and intentional and unintentional physical injury, are considered harm to individuals and society. Retaliation for murder is prescribed in the Qur'an, but victims or their next of kin can waive retaliation. *Ta'zir* crimes, such as embezzlement, perjury, sodomy, usury, breach of trust, abuse, and bribery, are recognized in the Qur'an and Sunnah but have no specific punishment in divine sources. Public authorities, rulers, or judges can punish such acts within the spirit of Shariah, allowing for restorative justice. The Qur'an prescribes options such as reconciliation, compensation, and pardon for dealing with offenders of *ta'zir* crimes. Conciliation is encouraged in Islam as it aims to restore peace and love. Judges are required to consider conciliation before entering into civil or criminal cases. Community notables may mediate to end conflict and reach a pacific settlement. Restorative justice has not been fully integrated into the criminal justice process in any Muslim-majority state. However, some states, such as Bangladesh, Pakistan, Afghanistan, Turkey, and Malaysia, have implemented restorative-style processes, such as the Malaysian Mediation Centre and the Syariah Court Civil Procedure Act. The victim-centered law of *Qisas*<sup>5</sup>, which allows for corporal punishment, is considered a form of restorative justice. The law of *Qisas* has similarities with small-scale societies, as victims retain a central role in prosecution and sentencing (Dorne, 2008). Crime prevention can be done both in a penal and non-familiar manner. Crime prevention can be done through criminal (criminal law) and non-criminal (outside criminal law) channels (Lasmadi et al., 2020). The principles of justice in Islam are fundamental to the forgiveness aspect of the law of *Qisas*, which serves as a basis for the restorative justice movement.

### **Forgiveness and Restorative Justice in the Arab Culture**

Several Muslim communities practice the theology of forgiveness, and it has been a tremendous resource in peace-building efforts in various Muslim societies. Forgiveness has been applied to resolving conflicts, preventing violence, restoring order and harmony, and creating cohesiveness and unity among rival

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<sup>5</sup> *Qisas* An Islamic term means equal punishment for the crime committed. Or *Diyat* (compensation payable to the victims or their legal heirs. It means retaliation in kind, life for life, eye for an eye or retributive justice

communities. Muslim scholars have extensively discussed forgiveness, with Ibn Hazm stating that forgiveness is the height of virtue and Magnanimity. Abu al-Hassan al-Mawardi argued that forgiveness is a virtue and that virtuous people grant forgiveness to root out animosity, envy, and strife. Contemporary Muslim scholars, such as Khaled Abou El Fadl, An-Na'im, and Fethullah Gulen, have discussed the role of forgiveness in facilitating peaceful coexistence between Muslims and non-Muslims. Gulen argues that forgiveness and tolerance are obligations, not just virtues and that salvation from the fire of suffering caused by our mistakes is possible only by drinking from the river of forgiveness. The Qur'an encourages replacing retribution with magnanimity, promoting forgiveness, kindness, and generosity. Islam aims to overcome violence and repair relationships, valuing forgiveness as a higher alternative to retributive justice. (Muhammad, 2020).

### **Arab Customary (Tribal) Law**

According to Bobesine (2019) and Al-Ramahi (2008), tribal law, also known as customary law, is a body of rules and traditions that are upheld by tribal leaders and elders and are derived from religious rulings or tribal precedents. Arbitration, mediation, and reconciliation are a few conflict resolution procedures available under tribal law. Since all of these strategies seek to settle disputes, improve group dynamics, and create communal harmony, they can be used singly or in concert, depending on the circumstances and requirements (Al-Ramahi, 2008). In times of state insecurity, individuals seek alternative identities to protect their basic needs and security. (Hasona, 2020; Hasona & Khatib, 2022).

Bedouin customary law is multifaceted and has numerous facets. The two main concerns of Bedouin law are women's rights and bloodbath occurrences. Bedouin customary law systems reflect long-standing traditions and laws before Islam was founded. Comprehending the Bedouin people's customary rules is crucial, as they regulate most issues among them in conjunction with the governmental legal system. The formal legal system in Jordan can impose prison sentences and even death penalties. In contrast, the tribal legal system allows for more flexibility in conflict resolution through *Ja'ba*, a tribal mediation system. In cases involving women, demonstrating cleanliness is crucial. Sharia courts handle divorce, custody, support, and inheritance, with Bedouin customs differing from Islamic rules. Bedouin women renounce inheritances in Sharia courts, while sons inherit more. While generally applicable to all Jordanians, the legal system defers tribal customs and laws in situations involving only Bedouin parties. The Bedouin custom allows for forty-year revenge, and the formal legal system may not resolve the side issue of revenge. The police and court system also defer to the tribal system, with some cooperation, such as moving females to safe locations to avoid honor killings. Jordanian law acknowledges two public and personal rights in criminal matters: public right (*Al-Haq al'am*) and personal right (*Al-Haq Al-sakhsya*). The state system fulfills public rights, while tribal law allows reduced sentences and capital cases, ensuring compatibility with Sharia law. (Furr & Al-Serhan, 2008).

The customary Arab *Al-Sulb* (reconciliation) process is one of the ancient methods of resolving disputes; it can be thought of as a hybrid of arbitration and mediation. Arab customary law is a holdover from the pre-Islamic legal system, primarily retained in everyday culture and customs and somewhat preserved in Islamic religious law. After hundreds of years, Arab customary law is still in effect despite the shifts in living standards and the growth of state legal systems that are generally stable and effective. In most Arab countries, traditional. Everyday conflicts, such as minor offenses, disagreements over property and water, issues within the family or marriage, and even cases involving accidents, murder, and physical harm, are nevertheless governed by the law (Górska & Klakla, 2017).

### **Crim in the Arab Customary Law**

The West's legal understanding differs significantly from Arab societies, prioritizing individual rights and obligations over state-state relations. Arab customary law emphasizes social solidarity and the collective responsibility to bear the burden of law violations committed by its members. Tribal affiliations and patriarchal family structures in Arab society lead to a collective approach in everyday life and legal proceedings. People are considered part of a broader family group, with clan strength often playing a significant role. In legal proceedings, guilt and penalty are often overlooked, and the importance of the accused's honor and reputation within the clan is often overlooked (Terris & Inoue-Terris, 2002).

In pre-Islamic times, Arab society had a tribal and patriarchal social structure, where individuals enjoyed personal security only as long as they were part of the tribe. Conflicts were resolved through negotiations, sometimes with the help of an arbitrator. Crimes were considered torts, meaning civil wrongful acts that led to legal disputes. Modern Arab customary law treats violations of legal norms, murder, and bodily harm as torts, not crimes. In Arab reconciliation proceedings, crimes are considered a violation against the community and another family rather than a transgression of rules.

In Arab customary law, a violation of law results in liability between the perpetrator and victim, with the victim or their family claiming damages. The *Al-Sulh* proceedings aim to examine the offender's culpability and liability, with the victim's family imposing conditions beyond financial compensation. The aim is to restore justice and repair relationships, with elders (*Jaba*) deciding the best way to compensate for the harm caused.

### **Tribal Law and Restorative Justice in the Arab World**

Restorative justice in Arab countries must consider local contexts, as tribes remain crucial in various aspects of life. In Iraq, tribes make up 75% of the community despite less effectiveness under Saddam Hussein's regime. In Yemen, tribes are integral to societal structure, especially in northern regions. In Libya, tribes have played essential roles since the independence of the Senussi monarchy (Hasona, 2020). In Jordan, tribes have a hereditary political power construction, with men superior to women. The tribal system emphasizes equality and protects members threatened by other tribes or external powers. The traditional tribal leader, or sheik, is a hereditary position held by a man with various levels of sheikhdom. Sheikhs, as tribal leaders, held great power, but the proliferation of money and education is now posing a threat to their authority. Sheikhdom is passed down from generation to generation, and sheiks are descended from noble families. Most of them receive a monthly income from the government, which recognizes them as representatives of their tribes. (Rowland, 2009).

Tribes are individuals with a combination of societal and personal interests, and they strive for stability and peace through traditional conflict resolution techniques and tribal law. Sulh "reconciliation" is a widely used technique to resolve conflicts and protect the interests of the victim, offender, and community in criminal and civil matters. It has three primary goals: preserving the tribe's honor and integrity, repairing the pain and harm caused to the victim, and restoring relationships between the victim, the perpetrator, and the community (Carroll, 2011; Al-Ramahi, 2008; Carroll, 2011).

Restorative justice in the Arab world is a complex issue that involves the community and tribes. Tribes, which make up at least 75% of the population in Iraq, have historically played a significant role in various aspects of life in Arab nations. The 2003 invasion of Iraq brought security issues and vulnerability to the tribes, which have since become a significant force in the military and politics of these nations (Bobesine, 2019; Asfura-Heim, 2014). During the 2011 Arab Spring, instability, centralized government weakness, and state fragility led to political, economic, and security difficulties in these nations. Corruption in the legal systems led to lengthy court proceedings and inadequate execution of court orders, leading to a loss of faith in the formal legal system. As a result, traditional dispute resolution methods, such as arbitration, mediation, and reconciliation, emerged as alternatives to the established legal system. People in these nations turned to tribal identities for security and safety, joining armed militias and fighting for their tribes. This is evident in Sudan and Yemen, where children and youth are willing to fight for their tribes due to the state's corruption and governmental weakness. (Al-Dawsari & Gastob, 2014; Shamsan, 2015; Crisis Group, 2011; Altair, 2016; Al-Sawani, 2012; Al-Ramahi, 2008; John, 2008; Hasona & Khatib, 2022) .

*Sulh* is typically used early in a dispute to halt escalation and stop additional damage between parties. It aims to keep lines of communication open, encourage discussion, and prevent further harm from retaliation. The sheik, a mediator, works to gather relevant information, evaluate evidence, and find a workable resolution to disputes that meets the needs of all parties. Even though Sulh is a custom, many Arab legislators have incorporated it into their criminal codes and legal systems to alleviate pressure on the official system. For instance, Articles 194–198 of the Iraqi Criminal Procedure Law No. 23 of 1971 state that the court may accept reconciliation at any point during the case upon the victim's request. If the court accepts and approves the reconciliation, it will have the same legal weight as a finding of innocence. Article 18 of the Egyptian Criminal Procedure Law No.

150 of 1950 states that the victim may be requested for reconciliation at any point throughout the case, and if accepted, the case is closed, and the sentence is stayed. The victim was granted the right to waive the case through conciliation under Article 36 of the Sudanese Criminal Procedure Law of 1991 (Hasona, 2020; Hasona & Khatib, 2022).

Traditional and tribal justice providers, focusing on *Makbateer*, *Masbeen*, and tribal judges. *Makbateers* are men of influence from clans and extended families who possess traditional authority in resolving disputes and enforcing collectively achieved decisions. They resolve various types of local disputes and deal with various offenses, such as murder, assaults, sexual harassment, rape, theft, and other forms of violence. (Qafisheh, & Wardak, 2019)

*Atwa*, a conciliation agreement reached between a joint delegation representing the offender and the victim's family or tribe, is a crucial mechanism for tribal/traditional dispute resolution. Although *Atwa's* decisions are mainly non-binding legally, governors have created tribal units to deal with disputes and related issues, recognizing their importance in restoring community harmony and preventing violence and revenge. (Qafisheh, & Wardak, 2019).

## **Honor Crimes and Restorative Justice**

Honor crimes are extreme forms of gender-based violence committed in culturally constructed societies where the female body is seen as a vessel for preserving family and tribal honor. In Arab societies, unmarried daughters' virginity and married women's chastity preserve a family's reputation. Perceived or real threats to female purity can disgrace a family's honor, leading to extrajudicial punishments such as beatings, disfigurement, and rape. The most extreme honor crime is death, commonly known as honor killing. Culturally constructed interpretations of shameful acts condemn women or girls who are victims of rape, incest, choose their husbands, reject forced marriages, initiate divorce, or commit other offenses that disgrace the family. The male member who "cleanses" the family honor through violence and murder earns praise and assumes the stature of a hero in the community. (Encyclopedia, 2024). Honor killings, a controversial topic in tradition, are deeply rooted in cultural and religious beliefs. Traditional beliefs suggest that honor is tied to female sexuality, and killing the guilty woman restores familial and tribal honor and reputation. Honor killing is the crime of killing women for familial honor, often targeting women but also men who are supposed to have an inappropriate relationship with the woman. Honor killing is an oxymoron term, as it includes honor and killing as mutually exclusive concepts and refers to any homicide committed in the name of honor (Tokdemir, 2013).

Legal concepts of victim, crime, evidence, and punishment are culturally grounded, making honor crimes complex and inconsistent. Modern defenses in Muslim countries and Arab countries follow various legal systems. The French penal code of 1810 supports honor killings and protects murderers, while shari'a in Saudi Arabia and Qatar prevents punishment. Sharia, or Islamic law, is a principle that prohibits the killing of innocent individuals for their beliefs or actions. However, in many Muslim societies, sharia is often used as a deterrent to inappropriate social relations. For example, in Jordan, Article 340 of the penal code was abolished to prevent the murder of an accused woman by her male family members. Muslim countries have laws prohibiting honor killings, but they face challenges in protecting women. Investigations are weak, sympathy for killers is deep, corruption is prevalent, and traditions allow victims to pardon the killer. In some cases, lenient punishments, such as in Jordan, can be granted. Female victims often face abuse, beatings, and rape. Law enforcement sympathizes with families but often places them in shelters or prisons for punishment or protection. Women often live in harsh conditions until a resolution is reached. Release options include the death of a father, remarriage, or returning to a family with a change of heart. (Encyclopedia, 2024).

## **Restorative Justice and Tribal Disputes**

Islamic criminal law, particularly *Qisas* crimes like intentional wounding and homicide, is relevant for restorative justice studies as it allows victims to play a central role in prosecution and sentencing. Victims can choose to forgive the defendant or demand payment "*Diyya*" as compensation. The law of *Qisas* shares some similarities with small-scale societies and fulfills restorative justice objectives, encouraging forgiveness and reconciliation. However, victims may demand retaliation in kind. The emphasis on forgiveness and community involvement in *Qisas* crimes warrants examination as a form of restorative justice. The *Qisas* penalty in Islamic law depends

on several factors, including the intent of the perpetrator, the degree of homicide, and the severity of the crime. Physical punishment will not be extracted if there is less than conclusive proof of guilt. *Diyya* or monetary payment to the victim's family will be required in case of doubt. Both categories of crimes require eyewitnesses, and penalties are rarely imposed due to strict prosecution procedures. Scholars agree that the penalty should be executed humanely, with exceptions for certain groups, such as pregnant women, children, and those with mental or physical capacity. The penalty should not be more extreme or painful than the original wounding. *Diyya* is a payment made to victims of violent crimes, either as a substitute for the *Qisas* penalty or if the *Qisas* penalty has failed (Lasmadi et al., 2020).

### **Restorative Justice Process in Homicide**

Whoever is killed inadvertently, as by flogging or beating with a stick or being hit by a stone, his blood price is a hundred camels. The *Qisas* penalty, often referred to as "blood money," is a punishment for a crime committed by a victim or their family. If standards are not met, the penalty may be resorted to, often involving a fixed amount of money. This payment is distinct from paying the guilty parties for the crime. In intentional homicide or wounding, victims can forgo both the *Qisas* penalty and *Diyya*. Qur'an verses encourage family members to show mercy and not require payment. Forgiveness is praised in the Qur'an and hadith and is recognized as reconciliation and restorative justice. (Hascall, 2012, p.20)

### **Atwa and Sulh**

Tribal dispute settlements in Jordan have been crucial for managing grievances since before the state's establishment. These processes are known as *Atwa* and *Sulh*. (reconciliation), prevent revenge and make amends. However, under state influence, the purpose of observing these settlements is evolving. The social composition of Jordanian communities has changed dramatically over the last half-century, with more than four-fifths of the population being urban dwellers and over 10% of inhabitants being recent refugees. Despite this, tribal settlements continue to govern the resolution of multiple types of disputes. The article is divided into five parts: reviewing how the modern state has historically managed tribal identity, the current legal and administrative status of tribal dispute resolution, whether these processes complement or challenge state authority, the waning influence of tribal shaykhs in the process of dispute resolution, and what observing tribal justice means to different sectors of the population in various contexts. The prominence of tribal settlements in Jordan cannot be explained simply as a "natural" organic process embedded in grassroots communities. Instead, the intersection of top-down policies with bottom-up practices across multiple spheres constantly reinscribes the significance of tribal dispute management in Jordan in various contexts. *Ashairiyya*, or extended patrilineal kinship links, is a prominent feature of Jordanian culture and politics. It can refer to tribes' role in Jordan's history, celebrate contemporary Jordanian citizens' commendable qualities, or point to society's backward nature. Regarding customary laws, it cuts across divisions between "East Bankers" and "West Bankers," Bedouin and non-Bedouin, *asil* and non-*asil*, and even urban and rural dwellers. This practice connects the nation in its reach but often divides it in its effects. Tribal law coexists or competes with civil law in many parts of the Middle East, but in Jordan, tribal law was officially abolished in 1976. Richard Antoun's anthropological studies in the agricultural north provide an outsider's perspective on how customary laws were practiced in a non-Bedouin, sedentary context. The Arabic term "*ashira*" is used obliquely in Jordan, often referring to smaller subsets like *fire*, *faked*, and *amla*. The term is associated with colonial rule in the Middle East, as mandatory and protectorate powers influenced ethnic and tribal categorizations. In Jordan, the Mandate's legal and administrative division of the population into sedentary and nomadic tribes was influenced by Ottoman rule. The status of tribal justice in dispute resolution in Jordan is based on the 1974 "Palace Convention," which amalgamated the range of customs used by different communities and tribes across the kingdom. The convention incorporated the law *ayid* into a new social system, making customary procedures subsidiary to civil law. It abolished regional customs, but tribal customs were approved for three types of cases: *call* (killing), *Sharaf* (honor cases), and *al-wajh* (violating the security promised by the guarantor of a truce). Although the Palace Convention has no official legal status within Jordanian civil law, it is commonly observed by members of many tribes and enforced by police officers and administrative governors. (Watkins, 2014).

In Jordan, the temporary truce (Atwa) and final reconciliation involve a settlement between two families involved in a dispute. This process is conducted by a shaykh or family elders who possess Atwa's language. It is prevalent due to the increasing number of universally recognized crimes, such as murder and assault, and traffic accidents causing death or severe injury. The police record the circumstances of traffic accidents. If a settlement is reached or the offense is forgiven, the deceased's family members drop their rights against the perpetrator. The state retains overall control of tribal practices, as demonstrated in the current Atwa protocol for blood crimes. The initial At. was signed between two families immediately after a blood crime was committed to prevent revenge killings and is now dubbed the Atwa amniyya (security atwa). The position of remaining tribal judges also indicates state supremacy, with their positions sanctioned by the king. (Watkins, 2014).

In a village, tribal social rituals such as J'lwa (evacuation), Atwa (truce or cease-fire), Ja'ha (peacemaking process), Me'da (blood money), and Sulha (peace agreement) are followed when a murder occurs. Under Bedouin law, male members of the victim's family can murder the perpetrator's family, often choosing the most respected member to shame the perpetrator. Police ensure the safety of evacuees during these rituals. The Khaimah corporate vengeance unit descended from a common ancestor five generations back. It is legally responsible for its members and referred to by Bedouin tribe members as qadabet an-nsab, qadabet al-jambiya, or qadabet al-casa. In Jordan, tribal leaders and the central government have modified a group of khamsa, including women, children, and the elderly, to three generations, with the Sheikh responsible for feeding and housing them. A tribal leader (Sheikh) asks the injured family for an additional period of truce, a tribal atawa, to prevent aggression between involved parties. This atawa is a cease-fire and cooling-off period until peace negotiations can be pursued. The sheik negotiates the return of women, children, and the elderly to the village. (Furr & Al-Serhan, 2008).

Another step in the resolution process is to assemble a Ja'ha, a mediation team composed of neutral, prestigious, knowledgeable tribal values and customs. The Ja'ha aims to achieve a Sulh (peace agreement) between the involved parties. The primary demand is Me'da (blood money). Specific rituals are associated with the process of the Sulha, such as the head of the Ja'ha sitting in the middle of the tent, offering coffee to the head, and explaining that all these tribal figures come for the honor of the injured party and to solve the problem. The primary demand is Me'da (blood money). The Ja'ha reduces the demanded amount of money using traditional techniques, such as asking the injured party to give up some money for God, Mohammed, the King of Jordan, or the members of the Ja'ha. If the money is not available immediately, Ja'ha assigns a Kafeel Wafa person to guarantee the performance of the obligation by the offending party. The final ritual of salah is a scene of peace, where the Ja'ha leader asks the injured party to allow the killer's family to return from exile. The Sulha ritual ends with signing an official peace agreement by tribal leaders, involved parties, and security forces. (Furr & Al-Serhan, 2008).

In 1998, a man attempted to rape a 35-year-old married woman from the Al-Sintay tribe, leaving scars on his face. The woman's brothers threatened to punish him for dishonoring their family. Nobles tried to bring about Sulha, but the woman's resistance proved her morality. The man's family assembled a Ja'ha and demanded compensation, including a white fabric covering their house and a white camel being killed in public. This punishment is called Tabied Al-Wajh, or redeeming honor. However, this does not apply to rape, where the woman's family will kill the man and her if she does not show resistance. The concept of Tishmees suggests that a man's family may tire of his actions and no longer demand compensation or revenge. (Furr & Al-Serhan, 2008).

The Jordanian tribal practice, jalwa, involves three generations of families fleeing their homes to take refuge in enemy tribes' land. Before returning to their old village, they must wait for an Atwa (peace agreement). However, jalwa is more than a frightening story; it has saved hundreds of lives annually, protected vulnerable relatives from revenge killing, and restored community peace. It also teaches moral lessons on respect, self-awareness, and life value. This research paper examines Jordanians' attitudes towards jalwa and its importance in the context of American intervention in the Middle East. Jalwa, a traditional practice in Jordan, has been influenced by societal transformation. In 2016, the Crime Prevention Law allowed three generations of families



to participate in *jalwa*, but in 2018, it was reduced to only the immediate family. This highlights the ongoing negotiation between modernity and tribalism in Jordanian society. The study examines the impact of modernization through the lens of traditional legal practices and generational and regional dimensions. It highlights the varied manifestation of modernization in Jordan and provides insight into how the country has managed this challenge while staying true to traditional practices. The data is valuable for Jordanians as it showcases a variety of local opinions. (Sutton, 2018)

### **Child Justice and Restorative Justice**

The study explores the application of restorative justice in the criminal justice system for children, examining its application in handling cases of law-involved children. Restorative justice is a popular intervention for children in conflict with the law, focusing on learning from mistakes and reintegration. The UN Convention on the Rights of the Child and other human rights instruments advocate for a child-friendly justice system, emphasizing learning, reintegration, and the minimum age of criminal responsibility. Restorative approaches should be part of pedagogical and child-friendly procedures, focusing on development, personal responsibility, and evolving capacities. Detention should be used as a last resort, and attention, protection, and care for victims are critical. (Wolthuis, 2024).

Around 4,640 children from over 80 countries traveled to Iraq or Syria to join the self-proclaimed Islamic State (ISIL) before and after the caliphate declaration in 2014. An average of 12,000 foreigners, including 4000 women and 8000 children, live in three camps in northeast Syria. These children have experienced extreme violence and indoctrination and are at a significant risk of lasting physical and mental harm. Children recruited or used by terrorist groups may also be trafficked and entitled to special protection under international law. Trafficking in persons involves recruitment, transportation, transfer, harboring, or receiving persons through force, coercion, abduction, fraud, deception, abuse of power, or control. The UN Security Council acknowledges trafficking by terrorist groups and recognizes victims as terrorism victims, eligible for support, recognition, redress, and national relief programs. (CJAG, 2019).

Child soldiers in the Arab world have faced atrocities during recruitment and have been rejected by society due to their affiliation with terrorist organizations. The Iraqi government has handled these children through the criminal justice system, but bringing them before criminal courts will not help in their rehabilitation or mending ties with their communities. Tribes have a significant opportunity to employ Restorative Justice (*Sulh*) to aid in the rehabilitation, reintegration, and reconciliation of former child soldiers with society (Subhan, 2020). *Sulh* aims to establish social harmony and stability and enhance interpersonal ties, mending rifts between young soldiers and reintegrating them into society. It calls for the involvement of the offender, victim, and community, allowing children to contribute positively to the process. *Sulh* also includes the notion of reparations, which can be moral, even in the form of money (Al-Ardawe, 2020; Subhan, 2020; Nagi, 2020).

Governments and tribes can work together to create unique programs for young soldiers based on *Sulh*, which can be successful. Child soldiers in Yemen and Sudan face challenges in accepting and pardoning due to recruitment processes and sectarianism. To address this issue, governments and communities must reconsider their approach and explore restorative justice practices like *Al-Sulh*, which can provide a supportive environment for child soldiers to participate in their rehabilitation and reintegration into their communities actively. In Iraq, after the 2003 invasion, many individuals, including children, joined tribal militias to protect themselves and their tribes. In Sudan, children are ready to fight for their tribes due to the state's weakness, while Yemeni children carry weapons early to defend their tribes (Hasona, 2020; Hasona & Khatib, 2022).

Restorative justice has significant potential in child justice, as it supports children's growth and improves their experiences. International instruments like the UN Principles of Restorative Practices and the EU Victims Directive promote reaction-based crime prevention. Studies show positive effects on recidivism, feelings of justice, and less trauma disorders. However, it must be implemented child-friendly by trained practitioners. (Wolthuis, 2024). The application of diversion with restorative justice is based on the belief that children are immature, avoid legal proceedings, and are more easily nurtured than adults. Prison and punishment are stigmas that can destroy a child's future, and children are future inheritors. Punishment is the last resort. (Setyorini & Utomo, 2020, p. 198).

## **Child Soldiers and Restorative Justice**

The Convention on the Rights of the Child defines a child as any human under 18 years old, with many Arab countries adopting the same standard. The Cape Town 1977 Principles introduced the concept of a child soldier, referring to anyone under 18 who is part of an armed force or group, including girls recruited for sexual purposes and forced marriage. However, this definition lacks legal binding. Many Arab Spring countries, like Iraq and Yemen, have a weakness in their view of child soldiers, dealing with them through penal codes and anti-terrorism laws. The first approach considers child soldiers as victims. In contrast, the second approach argues that children cannot be treated as criminals due to their lack of qualifications to participate in armed conflict.

## **Restorative Justice for Dealing with Child Soldiers**

### **Al-Sulh**

Sulh aims to repair crime damage through financial compensation determined by clan elders and mental compensation, such as an apology and public honor restoration.

Al-Sulh is a traditional conflict resolution method to prevent escalation and harm between parties, aiming to protect families and individuals from revenge. It involves maintaining open communication and promoting discussions about the crime and its solution. Al-Sulh goes beyond punishment and focuses on restoring relationships between parties, their families, and tribes. The shik (normally a delegation of VIP people from the area or nationwide, depending on the seriousness of crime and conflict). mediates between the perpetrator and victim, investigating the crime and finding a mutually agreeable solution. The parties sign the Al-Sulh agreement, containing compensation or other consequences for the perpetrator. The implementation of Al-Sulh is influenced by the tribal relationship, with the Shik's authority and position being crucial. The lack of respect for the shik's rule can lead to social consequences, such as loss of social status and allies.

Al-Sulh is also used in Arab legal systems and criminal codes to relieve pressure on the formal system. For example, Iraqi Criminal Procedure Law No. 23 of 1971 allows for reconciliation at any stage of a case, Egyptian Criminal Procedure Law No. 150 of 1950 provides for reconciliation, and Sudanese Criminal Procedure Law of 1991 grants victims the right to waive the case through conciliation (Hasona, 2020).

### **Al-Sulh Procedures and Restorative Justice**

Customary reconciliation processes are a traditional, ritualized form of conflict resolution in Arab countries, mainly in rural areas. These processes, known as Al-Sulh, are rooted in pre-Islamic, Arab, and Bedouin legal traditions. Al-Sulh is used in Islamic law as a form of contract binding on personal and community levels. Evidence of Sulha can be found in early Semitic writings and Christian scriptures dating back to the first century. Customary law has been critical in the Palestinian community, often seen as an expression of independence and cultural separateness under foreign rules and occupations. It is still used in cases related to modern environmental disputes, planning investments, and local government decisions, as well as severe cases like homicide and bodily harm.

The mediation committee, in cases of serious crimes, such as homicide or grievous bodily harm, aims to provide a temporary truce to prevent bloodshed and prepare the victim's family for reconciliation. Conciliators act as intermediaries, maintaining neutrality and confidence to avoid further escalation of conflict. In grave offenses, the offender may be evacuated to protect themselves and their relatives from revenge. The conciliation committee then negotiates the terms of settling the conflict and conditions of the first temporary agreement, called Atwa, before final reconciliation. Following the truce and funeral ceremonies, the reconciliation committee gathers to agree.

The reconciliation process involves negotiating the conditions of the first Atwa and payment of the sum, which is the basis for an offender's release from jail if they were arrested for a minor offense. The reconciliation committee meets annually to convince both parties to reconcile, and if not, the Atwa agreement is prolonged for another year. The jaha then prepares a final ruling, which is presented to both parties as a unanimous

decision based on the circumstances of the case. The offender and his family then organize a ceremony called Sulha, which is deeply ritualized and symbolizes forgiveness and restoration of honor.

The reconciliation ceremony in a conflict typically occurs outdoors, with a handshake between the parties. The perpetrator's relatives offer compensation, while the victim's family grants forgiveness. The ceremony ends with both families sharing a meal, usually organized by the perpetrator's family. Representatives, a committee, and notables sign the formal reconciliation agreement (*waraqat as-Al-Sulh*). In murder cases, the agreement contains information about the offense, compensation, and currency. Conciliatory agreements are often published in an official newspaper. State law and customary law are frequently used in tandem, with the outcome influencing the state judge's decision. (Górska & Klakla, 2017).

Conciliator and reconciliation committees in Arab customary law aim to find a mutually acceptable solution to conflicts, restoring peaceful relations within the community and restoring honor for both parties involved. This process is more efficient and quick in resolving legal disputes, as it addresses the critical problem of damaged personal relations. Resolving conflicts that hinder positive ties is more important than punishing the guilty party in Palestinian society. Reconciliation procedures aim to restore amity and strengthen community bonds, gaining social legitimacy under the Israeli occupation.

### **Al-Sulh as a form of Restorative Justice**

Arab customary Al-Sulh proceedings, particularly concerning grave offenses (murder, bodily harm, a serious accident), resemble the "conferences" category of conflict resolution. The process begins with the perpetrator admitting the offense, with mediation conducted by a neutral third participant. The final decision is made by consensus. The conference includes all parties involved, including the victim's families and the perpetrator's community. During the meeting, parties discuss the damage caused, find a solution, and celebrate the signing. In Arab laws, victims and offenders are represented by appointed notables and older males from their families (Górska & Klakla, 2017).

Sulha is a traditional Arab method of conflict resolution aimed at redressing injustices and correcting wrongs rather than avenging them or taking revenge. It is based on a 'Win-Win' equation, focusing on justice for all and involving mediation rather than arbitration. Reparation or compensation is a critical component of Sulha, aiming to create lasting relationships and prevent dehumanization. Sulha is a holistic approach that addresses each disputed case by case, involving lawyers, sociologists, psychologists, political leaders, religious leaders, and social workers. The nature of the problem determines cooperation and consultation with other fields. Sulha has successfully addressed thousands of cases. Sulha warns against displaced revenge and emphasizes the importance of justice and healing in breaking the cycle of violence. It recruits volunteers to solve conflicts and enriches their skills and techniques through workshops and opportunities. Collective responsibility is a crucial aspect of Sulha, helping people shift from blame and victimhood to a position of responsibility. Customary laws are binding in the court system, and violators face social boycotts and isolation. Shuttle diplomacy is the backbone skill of Sulha, with coffee cups serving as a symbol of compensation and reparation (Zoughbi, 2006).

### **CONCLUSION & DISCUSSION**

Arabic culture is deeply rooted in Islam. Family is a significant aspect of Arabic culture, with strong bonds between men and women. The traditional Arab family is part of the tribe and collaborates on issues of tribal reputation (like issues of murder or honor crimes). characterized by extended, patriarchal, patrilineal, patrilocal, endogamous, and occasionally polygamous traits, making it central and supreme in social and individual life. Honor and shame are highly valued in Arab societies, influencing interactions. Tribes are unique societies formed when related groups unite to control territories and exploit resources. Close personal relationships, cordiality, and a unique social position for women characterize Arab culture. (Sotirović, 2024; Abudi, 2011). In times of state insecurity, individuals seek alternative identities to protect their basic needs and security. (Hasona, 2020; Hasona & Khatib, 2022).

Restorative justice is deeply rooted in Middle Eastern cultures and the Islamic legal tradition. It emphasizes alternatives to original punishments, such as pardon and blood compensation, and emphasizes community service, warning, fining, probation, and reintegration of offenders. Islamic jurisprudence also includes mechanisms like repentance, giving 'benefit of the doubt,' preserving privacy, intercession, surety, and expiation. The victim has a central place in these processes, providing an effective remedy and restoring their relations with the offender and society. Restorative justice is the rule in Islamic jurisprudence, with retributive justice being the exception. It comes from the Quran and Prophet Mohammad's practices and local pre-Islamic indigenous traditions like Ramallah, which show the community's obligations to victims and offenders. Islamic jurisprudence can contribute to developing common global restorative justice standards. (Qafisheh, & Wardak, 2019) .

Restorative justice is a global approach to criminal justice that promotes respect, dialogue, and collaborative decision-making. It involves victim-offender mediation, conferencing, and circles, with outcomes like apologies and community amends. Rooted in Arabian culture, it emphasizes mutual obligations and forgiveness. However, it often lacks communication between offender, victim, and community, and the concept of forgiveness is often infrequently used. Forgiveness is a value strongly emphasized in religion and social culture, as it brings gratitude, heals broken relationships, purifies individuals from negative thoughts, and establishes peace. In restorative justice, communication between offender, victim, and community is not considered, and the concept of forgiveness is often infrequently used (Muhammed, 2020). Integrating restorative justice into the criminal justice system in Arab countries is crucial. Arab scholars and activists should emphasize forgiveness, reform offender reintegration, and include pardon rights in the Penal Code/Criminal Procedure Code. Encouraging communication between offender, victim, and community promotes peace and harmony.

Restorative justice is a settlement method that involves the diversion of cases outside the court involving children in conflict with the law and their families, victims, and their families. This approach aims to improve the victim's situation, forgive perpetrators, and return them to the community. However, it requires an agreement with the victim or their family, limiting its application. (Setyorini & Utomo, 2020). Informal non-state justice and dispute resolution mechanisms are prevalent in developing and developed countries, with most disputes resolved outside the state's justice system. This is particularly true in Arab countries, where informal justice institutions have been prevalent historically and contemporarily (Jam et al.,2013). Restorative justice views crime as a form of social harm that involves multiple stakeholders, including the victim, offender, community, and state institutions. It can be used as a referral alternative or alongside other alternatives to physical punishment. Restorative justice programs often complement retributive juvenile justice systems. The values of restorative justice involve voluntary restoration and collectively agreed obligations to reintegrate offenders and victims into society. These values are deeply rooted in Middle Eastern culture and society, including Islamic jurisprudence and religious civil society. (Qafisheh, & Wardak, 2019). However, Western thinkers may not view all restorative justice mechanisms in the Middle East as restorative due to cultural differences, such as excluding women and young people from active participation. (Qafisheh, & Wardak, 2019).

In a tribal culture, restorative justice is a perfect solution to certain crimes, such as the ones that may be extended to endless revenge or collective revenge. To prevent revenge and collective violence between tribes, the RJ process can cool down the anger and put conflicting parties on the conflict resolution track. One advantage of restorative justice over alternative sanctions like community service and electronic monitoring is that it strongly emphasizes assisting crime victims in moving forward. Numerous studies have demonstrated the benefits of restorative justice for victims' well-being and reduced recidivism and financial costs (Gade, 2023). The Sulha method emphasizes restorative justice and reconciliation, prioritizing personal redemption and community growth. A third-party mediator must listen to both sides, validate emotions, and construct a resolution. This community-oriented justice system, relying on compassionate mediators, reduces harm and increases egalitarianism, resulting in legally binding contracts. Community-based justice frameworks can reduce crime by addressing wrongful convictions and dysfunctional legal trials. This method, successful for thousands of years, provides restorative sentencing and reparations for harm suffered.

During the 2011 Arab Spring, instability, centralized government weakness, and state fragility led to political, economic, and security difficulties in these nations. Corruption in the legal systems led to lengthy court proceedings and inadequate execution of court orders, leading to a loss of faith in the formal legal system. As a result, traditional dispute resolution methods, such as arbitration, mediation, and reconciliation, emerged as alternatives to the established legal system. People in these nations turned to tribal identities for security and safety, joining armed militias and fighting for their tribes. This is evident in Sudan and Yemen, where children and youth are willing to fight for their tribes due to the state's corruption and governmental weakness. (Al-Dawsari & Gastob, 2014; Shamsan, 2015; Crisis Group, 2011; Altair, 2016; Al-Sawani, 2012; Al-Ramahi, 2008; John, 2008; Hasona & Khatib, 2022).

The informal justice system is an essential criminal justice system for certain crimes in most Arab countries. Through mediation, many revenge-type crimes can be solved and save a lot of formal justice efforts, costs, and prison crowding. Through mediation, victims' justice can be restored, and offenders can pay financial and intangible compensation. Victims' reputations and being stigmatized will be restored. An effective collective response to the crime in a tribal (community) conference will guarantee to the victims. A collective oral and written grantee under the supervision of a selective committee and read in front of the audience who attend the conference. Victims washed the shame of being victims by forcing the offender to apologize and pay the consequences. This can also be interpreted in the light of the Reintegrative Shaming Theory. They believe restorative justice procedures will be more successful in decreasing crime than criminal prosecutions because they prevent direct criticism from those you do not respect, such as judges or police, by focusing on the problem rather than the offender. Braithwaite's reintegrative shaming theory states that community-based temporary shaming is the most effective method of reducing crime. This theory only applies to less severe crimes and those with an apparent victim. Stigmatizing shaming is a temporary or often permanent punishment used to mark the offender in a way that will bring them negative attention. This form of shaming is thought to cause higher crime rates. (Ahmed & Braithwaite, 2005, 2004).

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*Restorative Justice: Does it Work in the Arab Countries?*

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