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Review Article

The Expansion of Restorative Justice and the Integration of Moral Norms and Social Reconstruction in Traditional Dispute Resolution Methods

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Abstract

Introduction: Restorative justice, grounded in moral values such as forgiveness, accountability, and empathy, as well as clearly defined legal norms, seeks to establish a balance among the interests of victims, offenders, and society. This approach not only helps reduce recidivism by strengthening offenders' sense of responsibility, but also enhances public trust in the judicial system by reinforcing social bonds and encouraging active community participation in dispute resolution processes. In this article, the researchers examine how indigenous and traditional approaches to dispute resolution - by emphasizing mediation, reconciliation, and social support - have led to the integration of moral norms with social reconstruction, thereby creating a form of restorative justice embodied within a specific cultural and social context.
Material and Method: The present study is a review study that examined the research objectives using published studies in the fields of restorative justice and the social structure of Iranian Arabs.
Conclusion: Practices such as the Fasl ritual, expulsion from the tribe, and mediation in thefts arising from poverty, with an emphasis on restitution, reconciliation, and the reconstruction of relationships, reflect the principles of restorative justice. While these practices help maintain social order and prevent crime, they function as an indigenous restorative justice system. The Fasl ritual and traditional dispute resolution methods among the Arab tribes of Khuzestan largely correspond to restorative justice and demonstrate how adherence to moral norms in traditional communities has led to social reconstruction and the expansion of restorative justice.
Keywords: *Restorative Justice, Arab Tribes of Khuzestan, Fasl Ritual, Traditional Dispute Resolution, Social Reconciliation, Tribal Support*

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INTRODUCTION

Among the Arab tribal communities of Khuzestan, traditional methods of resolving criminal and civil disputes - such as the Fasl ritual, social sanctions, and mediation in thefts caused by poverty - show a remarkable compatibility with the principles of restorative justice. Restorative justice is an approach that, rather than focusing on punishment as the primary means of addressing crime, emphasizes compensation, the reconstruction of relationships, and the repair of harm inflicted upon individuals and the community [1].

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This article examines the relationship between traditional dispute resolution practices among the Arab tribes of Khuzestan and the principles of restorative justice. We explore how these indigenous and traditional approaches, by focusing on mediation, reconciliation, and social support, have led to the integration of moral norms with social reconstruction and, in effect, represent a manifestation of restorative justice within their specific cultural and social context.

MATERIAL AND METHODS

The present study is a review study that examined the research objectives using studies published in the fields of restorative justice and the social structure of Iranian Arabs.

DISCUSSION

Restorative Justice and Its General Principles

a) Definition of Restorative Justice

Restorative justice is an alternative paradigm to traditional criminal justice that views crime not merely as a "violation of state law," but primarily as "harm to individuals, relationships, and the community." Its main objective is to repair these harms, rebuild damaged relationships, and restore social peace, rather than simply punish the offender. Howard Zehr, rightly known as the "father of restorative justice," introduced this approach in his well-known book Changing Lenses: A New Focus for Crime and Justice (1990/2005) as a "change of lens": instead of asking "Which law was broken?", the focus shifts to "Who was harmed?", "What are their needs?", and "Who is responsible for repairing the harm?"

b) Fundamental Principles of Restorative Justice

In contemporary literature, four key principles are widely accepted [2–4]:

1. Encounter: Creating opportunities for dialogue (direct or indirect) among victims, offenders, and affected community members in order to foster mutual understanding of harms and needs.
2. Reparation: The offender accepts responsibility in a practical manner (material, emotional, or symbolic) and compensates for the harm as much as possible.
3. Reintegration: Assisting the offender in responsibly returning to society while simultaneously supporting the recovery and empowerment of the victim.
4. Community participation and involvement: The community (family, neighbors, elders, civil institutions), rather than the state alone, plays an active role in the restorative process.

Some scholars have also added a fifth principle, termed "transformation," which refers to structural and cultural change aimed at preventing future crime [2].

c) Operational Models of Restorative Justice Worldwide

Victim–offender mediation: The oldest and most common form; facilitated dialogue between the parties [5].

Family and group conferencing: A New Zealand model that includes extended families and community members.

Peace circles and restorative circles: Inspired by Indigenous traditions of Canada and the United States; all participants speak on an equal footing.

Community-based restorative boards: Implemented in South Africa, Rwanda (Gacaca), and some U.S. states.

Restorative courts and diversion programs: Formally integrated into judicial systems in England, Australia, Belgium, and the Netherlands.

d) Evidence of Effectiveness

Meta-analyses [6–8] indicate that, compared with traditional criminal justice systems, restorative justice programs:

- Increase victim satisfaction by 30–40%.

- Reduce recidivism by an average of 10–25%.
- Significantly enhance perceptions of procedural justice.
- Incur lower costs than imprisonment and lengthy court proceedings.

The Link between Moral and Legal Norms in the Mechanisms of Restorative Justice

Restorative justice is a concept that simultaneously draws inspiration from moral norms and legal principles and seeks to create a guiding bridge between these two domains. By focusing on the reconstruction of damaged relationships and the resolution of disputes through dialogue, reconciliation, and compensation, this approach represents a practical embodiment of harmony between law and morality. From a legal perspective, restorative justice is based on rules that contribute to maintaining public order, ensuring individual and social rights, and reducing the burden on the judicial system. In this context, moral dimensions play a key role by emphasizing human values such as respect, fairness, and accountability. This integration, on the one hand, allows the offender to accept responsibility for their behavior and, on the other hand, provides the victim with the opportunity to return to normal life [1, 9].

In the mechanisms of restorative justice, moral norms play a foundational role in the design and implementation of mediation and agreement processes. Mediation, as one of the tools of restorative justice, relies on values such as forgiveness, transparency, and human dignity, thereby providing a context in which individuals can engage in interaction rather than confrontation. Accordingly, morality and law in these mechanisms do not function as two separate domains in which one may be sacrificed for the other; rather, they operate as complementary dimensions pursuing a shared objective, namely the establishment of peace and social reconstruction. It can be argued that restorative justice, through the intelligent integration of moral and legal norms, has been able to strengthen its position within modern judicial systems and offer a successful model for dispute management and social reconstruction. This harmony between morality and law plays a prominent role not only in resolving disputes but also in creating lasting changes in social attitudes and behaviors [9–13].

The entrenched moral values embodied in restorative justice programs manifest in processes such as mediation and direct dialogue between victims and offenders, where both parties are given the opportunity to express their feelings and needs and to seek common solutions for compensation and the reconstruction of relationships. On the other hand, legal norms in restorative justice function as a framework to guarantee the rights and obligations of the parties. By defining specific structures and procedures, these norms ensure that the restorative process is carried out fairly and with due respect for the rights of all individuals involved. For example, laws related to criminal mediation establish conditions and regulations for the implementation of this process in order to prevent potential abuse. In fact, the emphasis on morality extends to the point of fostering constructive outcomes and positive individual and social feedback; wherever there is a risk of misuse or harm to trust, strict legal rules serve morality [12, 13].

Therefore, the link between moral and legal norms in restorative justice means that moral principles act as guides for determining the goals and purposes of the restorative process, while legal norms provide the tools necessary to achieve these goals. This interaction ensures that restorative justice not only addresses material compensation for harms but also contributes to the reconstruction of human relationships and

the strengthening of social cohesion [9]. Overall, by effectively integrating moral principles and legal rules, restorative justice offers a comprehensive and humane approach to responding to crime that can, in turn, improve the efficiency of modern criminal justice systems and promote justice and social development.

Dispute Resolution among the Arab Tribes of Khuzestan

Among Arab tribes, the resolution of claims and disputes and the establishment of peace and reconciliation through mediation, intercession, and compromise occupy a prominent and distinctive position. Although such practices have a long-standing history among Arab groups - and other ethnic groups and tribes have likewise employed similar methods for resolving disputes - the expansion of judicial adjudication and the development of formal judicial institutions over the past century have rendered local dispute resolution methods largely obsolete. Nevertheless, these practices have largely remained intact among the Arab tribes of Khuzestan. In fact, through the codification of certain regulations in written drafts (tribal regulatory bylaws), efforts have been made to adapt these traditional methods to contemporary conditions and changing circumstances [14, 15].

a) Social Structure among the Arab Tribes of Khuzestan

Traditional methods of dispute resolution among the Arab tribes of Khuzestan are directly linked to the social structure of these tribes. These methods are based on the high level of respect and importance accorded to elders and white-bearded figures within these communities. On the one hand, the foundation of this respect and status lies in the basic and central unit of Arab tribal society in Khuzestan, namely the family. Within the family, as the smallest and most fundamental social unit comprising the father, mother, and children, the father holds a prominent position as the central figure in resolving family disputes and as the leader and person responsible for family members. When the family structure is considered in its extended form—including the grandfather, children, grandchildren, and other consanguineous and affinal ties—the role of the responsible and leading figure within this structure becomes highly significant in resolving disputes and managing matters related to its members in relation to other members of the same structure and those of similar structures.

Given the central importance of understanding social structure in explaining and analyzing traditional dispute resolution methods among the Arab tribes of Khuzestan, examining and identifying this structure is essential for the present topic. It might be assumed that commonly used divisions such as tribe, clan, and lineage—long employed to describe the structure of Arab societies—would suffice for analyzing the social structure of the Arab tribes of Khuzestan. However, such classifications are very general and cannot be precisely applied to the structure of the Arab tribes of Khuzestan. In the current social structure, the situation is different. Since the present research focuses exclusively on Arab society in Khuzestan, it is therefore necessary to present the commonly known and prevalent classification within this community.

The Arab tribal society of Khuzestan has a hierarchical structure based on kinship ties [16, 17]. This structure includes the following units:

Bayt (Household):

A bayt consists of several families who share a common ancestor at the second or third paternal generation. This unit typically includes brothers, paternal cousins, the father, grandfather, and paternal grandfather. Its size varies depending on family population and number of offspring, but on average it includes about 100 adult male members. Members of a bayt exhibit the highest levels of interaction and mutual support and are

known by the name of their common ancestor to whom all members of the bayt are attributed.

Hamula:

A hamula is composed of several bayts that share a more distant paternal ancestor. In other words, the most distant ancestor connecting the members constitutes the existential root of the hamula, which is named after that ancestor, who may be the tenth ancestor or even earlier. The approximate population of a hamula ranges from 300 to 400 individuals. It should be noted that when population is traditionally discussed among the Arab tribes of Khuzestan, it refers exclusively to adult male members. Members of the hamula and bayt provide the greatest financial and physical support to one another compared to other divisions.

Ashira (Tribe):

An ashira consists of several hamulas and is headed by a sheikh. It is an independent unit from other tribes and relies solely on its own members. Members of the ashira are responsible for paying all sums owed to other tribes under various titles, including fasl, blood money (diya), and fines. In all matters related to disputes, conflicts, collective clashes, reconciliation, and other tribal regulations, members of the ashira are subject to the authority of the sheikh. Within the ashira, it is not necessary for all members to know the specific ancestor through whom they are connected; it is sufficient for them to know that they share kinship ties and are attributed to the distant ancestor after whom the ashira is named.

Ta'ifa and Qabila (Clan and Tribe):

Among the Arab people of Khuzestan, the terms qabila (tribe) and ta'ifa (clan) are used interchangeably and consist of all ashiras attributed to that tribe. Although the ashiras of a tribe act independently, they may at times unite and support one another in matters such as violations of honor or the defense of proprietary lands. Members of a tribe are attributed to distant ancestors and are known by their names. Examples of such tribes include Bani Tamim, Bani Ka'b, Bani Asad, and Bani Taghlib. These ancestors lived centuries ago, prior to the emergence of Islam [16].

b) Tribal Dispute Resolution and Its Relationship with the Social Structure of the Arab Tribes of Khuzestan

Traditional dispute resolution is generally carried out through the leaders of clans and tribes. The head of a tribe is referred to as an amir, while the head of an ashira, as a subdivision of the tribe, is known as a sheikh. Whenever a dispute arose among members of an ashira or a tribe, or between members of different tribes and ashiras, the dispute was ultimately resolved through dialogue and negotiation among the amirs and sheikhs of the tribes and clans. However, the mechanisms for selecting sheikhs, their status, membership in an ashira or ta'ifa, and the procedures for dispute resolution—depending on the type and scope of the dispute—are complex. To properly understand and explain these mechanisms, it is first necessary to carefully examine the types of sheikhs, their position within the ashira, their privileges and duties, as well as the manner of membership in the ashira [18].

c) Types of Sheikhs, Methods of Selection, Responsibilities, and Rights

- Tribal Sheikh (Sheikh al-'Ashira)

The tribal sheikh presides over the members of his own tribe (ashira). The term sheikh literally means an elderly person; however, in its technical sense it refers to the head of the tribe and does not necessarily denote the oldest member of the tribe. This position is obtained either through inheritance or through selection. In the hereditary form, following the death of the sheikh, the position is transferred to one of his male offspring who possesses greater prudence, wisdom, social and tribal knowledge, rhetorical

ability, and stronger social relations, and who is appointed to this position with the approval of the heads of the hamulas and the elders (white-beards) of the tribe.

The second method is selection. In other words, when the sheikh has no male offspring, or when his male offspring lack the necessary qualifications for the position, the elders and the heads of the hamulas choose one individual from among the brothers or paternal cousins of the deceased sheikh and appoint him as sheikh. In exercising leadership, the sheikh has certain duties and obligations, as well as certain rights and privileges, the most important of which are outlined below [16].

- Customary Sheikhs or "Farīḍa"

Farīḍa or customary sheikhs (shuyūkh al-ʿurf) are individuals who, either through inheritance or based on particular non-hereditary characteristics, are accepted among the tribes as arbiters for resolving disputes. They are referred to as customary sheikhs because of their mastery of customs, traditions, and tribal dispute resolution practices.

The distinguishing characteristics of customary sheikhs or farīḍa include their awareness and insight into most dispute-resolution methods, comprehensive knowledge of customary and tribal rules, familiarity with various types of tribal disputes and claims, and a number of moral and personal traits such as intelligence, integrity, fairness, prudence, courage, and steadfastness in issuing judgments. Customary sheikhs do not have a formal method of selection; rather, through years of involvement in resolving tribal disputes, such individuals gradually become recognized and renowned. As tribes increasingly refer disputes to them, their reputation spreads among the Arab tribes of Khuzestan. Resorting to these sheikhs is subject to specific formalities, and they occupy a central and pivotal position at various stages of dispute resolution [16].

- Duties and Obligations of the Sheikh

Resolving disputes among members of his own tribe and establishing peace and reconciliation between the parties, as well as resolving disputes between members of his tribe and other tribes and directly protecting the rights of his own tribe's members and indirectly those of other tribes, constitute the most important duties and obligations of the sheikh. In this regard, the tribal sheikh must, like a judge, hear the statements and evidence of both parties and then identify the rightful party and oblige the wrongdoer to undertake appropriate responses such as apology, compensation for damages, returning a wife to the marital home, removal of unlawful possession of land, demolition of unauthorized constructions, and other similar measures.

Sometimes, when a matter is complex, it becomes necessary to refer the parties to a customary sheikh, and at other times it may be necessary for the sheikh himself to relinquish certain legitimate rights of his tribe's members or to reconcile certain claims. Other duties of the sheikh include admitting individuals into the tribe and expelling others and informing the heads of the hamulas and neighboring tribes thereof; collecting diya (blood money) and fasl contributions from tribe members; managing fasl ceremonies and other tribal gatherings; eliminating undesirable customs such as celebratory gunfire at funerals, weddings, and other occasions; abolishing the practice of cooking food at mourning ceremonies due to poor economic conditions; and introducing or endorsing socially approved customs such as refusing any assistance to delinquent tribe members and providing financial support to impoverished members for marriage or medical treatment.

Participation in dispute resolution gatherings involving other tribes and leading the tribe in defending the lives, property, and honor of its members against external attacks—particularly by mobilizing other members, especially tribal

youth—are among the other duties and obligations of the tribal sheikh [16].

- Rights and Privileges of the Tribal Sheikh

Among the most important rights and privileges of the sheikh, commonly referred to as moral rights, are respect, obedience, and compliance with his commands and prohibitions. Generally, there is a belief that the sheikh, due to his close relations with other sheikhs, religious scholars, government officials, and judicial authorities, is more knowledgeable about affairs and interests than other tribe members. Accordingly, it is expected that tribe members adhere to his commands and prohibitions, which over time become tribal customs and traditions.

Moreover, when a problem arises within the tribe, the rule is that the matter should first be reported to the sheikh. In other words, after the disputing parties themselves, the first person to be informed of the dispute is the sheikh. The reason for this is, first, the sheikh's responsibility toward the tribe, and second, his ability—through wisdom, experience, and close relations with other sheikhs—to prevent the escalation of disputes more quickly than others and to resolve them in the shortest possible time and with minimal human and financial loss [16].

d) Types of Membership in the Tribe

Given the sheikh's responsibility for resolving disputes among tribe members, examining the forms of tribal membership and their conditions is essential. Tribal membership generally takes two forms: hereditary/kinship-based and consensual [16].

- Hereditary and Kinship-Based Membership

Individuals whose lineage traces back to a common ancestor are members of the same tribe. Shared descent from a relatively close common ancestor constitutes the foundational and existential core of a tribe. Their presence within a tribe—in other words, their brotherhood and solidarity—is not the result of a written or verbal contract; rather, shared lineage alone creates a sense of belonging and mutual responsibility [16].

- Membership Based on Agreement and Commitment

Non-blood members are individuals who do not have a close or clearly defined kinship relationship with the core members of the tribe; rather, the mere existence of a relationship traced back to the original ancestor after whom the tribe is named suffices for membership. Such pacts, whether concluded orally in ancient times or in written form in the present, create brotherhood and equality among all tribe members with respect to privileges such as protection of life, property, and honor, among others. Under this type of pact, each tribe member bears equal duties and obligations toward others and likewise benefits from tribal privileges [16].

- Partial Membership Arising from the Jarsh Pact

Referring to this form of relationship as "membership" is somewhat figurative; in reality, it should be considered a conditional financial partnership. Under the jarsh pact, an individual or individuals who already belong to one tribe enter into an agreement with another tribe—possibly unrelated by lineage or even belonging to a different tribe—solely for financial support. Under this pact, the parties commit that if one is obliged to pay fasl (diya), the other will pay a specified percentage, typically between 10% and 20% of the blood money. In other words, this arrangement is purely financial assistance, and both parties are equally obligated to contribute to the payment of fasl. With regard to other tribal responsibilities, the individuals remain under the protection of their own tribe, and the second jarsh-allied tribe bears no responsibility in this respect [16].

e) The Fasl Ritual: The Primary Method of Dispute Resolution among the Arab Tribes of Khuzestan

The fasl ritual should be regarded as the fundamental and most common method of resolving criminal disputes among the Arabs of Khuzestan Province. This method is applied to major disputes and various crimes, including violent crimes, financial crimes, and moral offenses such as murder, kidnapping, rape, and assault. The term fasl refers not only to the tribal gathering during which the dispute is resolved, but also customarily to the money paid to the victim as blood money (diya).

The practice of fasl primarily involves mediation, arbitration, and ultimately reconciliation in a manner specific to the customs, traditions, and social and customary structure of the Arab tribes of Khuzestan. This ritual has received limited scholarly attention. Jalal Al-e Ahmad devoted part of his book Kārnāmeh-ye Seh Sāl to the fasl ritual [19]; however, his account is highly incomplete and addresses only certain punishments of that period for crimes such as murder and violations of honor—punishments that are now obsolete. Moreover, as Al-e Ahmad himself states, his information was obtained from only a few days spent in Khuzestan. Clearly, a ritual as ancient as fasl cannot be understood through such brief observation, particularly without knowledge of Arabic, and especially the Arabic dialect spoken in Khuzestan.

Yousef Azizi Bani-Torof also devoted a section of his book Arab Tribes and Clans of Khuzestan to the fasl ritual [16]. Although his explanation is more detailed, his definitions of farīḍa, customary sheikhs, and even the fasl ritual itself lack precision and are at times inaccurate, as he describes the customary sheikh merely as an arbitrator, whereas the role of the customary sheikh extends far beyond arbitration. Additionally, he does not address the issue of ʻatwa (truce) and other matters related to fasl.

In general, whenever a dispute arising from a crime occurs among individuals, families, tribes, or clans, the relevant tribal sheikhs—especially the sheikh of the offender's tribe and the sheikh of the victim's tribe—are promptly informed and intervene in accordance with their responsibilities. Their actions depend on the type and severity of the crime. As a rule, the sheikh of the offender's tribe contacts the sheikh of the victim's tribe; however, the manner of contact varies according to the gravity of the crime and the number of individuals involved. For minor offenses, direct telephone contact is common, whereas for major crimes, contact is made through intermediaries.

For example, in the case of murder, the sheikh of the offender's tribe, after investigating the matter and obtaining the killer's admission, sends a group of elders, sayyids, and regional sheikhs to the sheikh and tribe of the victim. By accepting responsibility for the killing and declaring readiness to resolve the dispute—primarily through payment of fasl or blood money—he requests a period of grace known as ʻatwa. During the ʻatwa, which typically lasts one month, a truce is established between the two tribes, and the victim's tribe refrains from retaliatory action. Any retaliatory act during this period is prohibited, and should such action occur, the victim's tribe would be responsible for all resulting damages.

During the ʻatwa period, the killer is handed over to judicial authorities. However, this does not signify acceptance of judicial dispute resolution by the Arab tribes of Khuzestan; rather, tribal resolution remains the primary and preferred method, and the tribal process continues alongside judicial proceedings until a court verdict is issued. After the killer is transferred to law enforcement authorities, the truce remains in effect indefinitely.

If the offender's and victim's tribes are related by kinship, efforts are made to hold the fasl ceremony and announce forgiveness before the conclusion of the judicial process and the issuance of a retaliation (qiṣāṣ) verdict.

Otherwise, and in cases where the accused denies the charges during proceedings, both tribes await the court's decision. Ultimately, if a qiṣāṣ verdict is issued and the victim's family opts for blood money, the fasl ceremony is conducted as follows. The sheikh of the offender's tribe dispatches several sheikhs, sayyids, and elders to negotiate and obtain consent for holding the fasl ritual and to determine the time and place of the gathering. These individuals are referred to as marasīl (envoys). After obtaining the consent of the victim's heirs, the sheikh of the victim's tribe responds to the envoys. On the appointed day, a large number of sheikhs, sayyids, and elders, invited by the sheikh of the offender's tribe, accompany the offender's relatives to the muḍīf (literally, a place for hosting guests) of the victim's tribal sheikh.

The sheikh and members of the victim's tribe receive them warmly and respectfully. After seating and the opening remarks, coffee and tea are served in accordance with Arab custom. Then, one of the dispatched sayyids or sheikhs - typically the most renowned and eloquent in the region - delivers a speech expressing the remorse and repentance of the killer, his family, and his tribe. It should be noted that during the fasl ritual, the offender does not attend any sessions prior to reconciliation. Instead, his close relatives - such as his father, brothers, and cousins - along with other tribe members and their sheikh, express remorse on his behalf and seek forgiveness from the victim's family and tribe.

After the speeches - often accompanied by Quranic verses, traditions of the Infallibles concerning forgiveness, and poems and proverbs extolling magnanimity - the sheikh of the victim's tribe and his elders respond. Their remarks typically include objection to the crime and criticism of customs, practices, and personal traits that led to its occurrence.

Following negotiations, the victim's heir or representative determines the amount of blood money (fasl). This amount is usually higher than what is ultimately accepted, as intermediary sheikhs and sayyids request reductions. Out of respect for each of the attending sheikhs, sayyids, and tribal representatives, the sheikh of the victim's tribe deducts portions of the requested amount. Once a mutually acceptable figure is reached, the sheikh of the offender's tribe ties a cloth or keffiyeh—traditionally worn by Arab men - and hands it to the sheikh of the victim's tribe, who unties it to signify agreement.

This tying and untying of the knot is a symbolic ritual. The knotted cloth, known in Arab tribal culture of Khuzestan as Rāyat al-'Abbās (the Banner of Abbas), symbolizes the creation and acceptance of the wrongdoing by the offender, while untying it signifies the formal resolution of the dispute between the two tribes.

After determining the amount of fasl, the method of payment is specified. Upon full payment, the victim's heirs declare their consent. Payment is secured through guarantees—usually financial guarantees such as checks - provided by the offender's tribe to the sheikh of the victim's tribe. After the final installment is paid, the heirs formally declare unconditional forgiveness at an official notary office.

Following the completion of payment and the declaration of forgiveness, the parties typically meet face to face. The sheikh of the offender's tribe invites the sheikh of the victim's tribe, the heirs, intermediaries, the offender, and his family to a shared meal. Through gestures such as embracing and exchanging kisses, resentment and hostility are removed from hearts, and reconciliation is achieved. This has been the customary practice of the fasl ritual among the Arab tribes of Khuzestan for several decades to the present day [16].

f) The Role of the Sheikh of Custom ("Farīḍa") in Resolving Disputes among the Arab Tribes of Khuzestan

Whenever the severity of an offense or crime is such that its resolution by the two disputing tribes becomes impossible, or when both opposing tribes claim entitlement to a right, the mediation process is pursued through the Sheikh of Custom as a neutral individual who is well versed in tribal methods of dispute resolution. In the process of resolving disputes between two tribes, the Sheikh of Custom plays a central role in determining the rightful party and the manner of dispute resolution, including badwa (formal apology), payment of faṣl, payment of fines, and other aforementioned sanctions and restrictions.

- Method of Referral to and Selection of the Sheikh of Custom ("Farīḍa")

The selection of the Sheikh of Custom is directly dependent on the manner of agreement between the two disputing tribes and the nature of the dispute. If, in a dispute, one party is the claimant and the other is the defendant, the selection of the Sheikh of Custom is made by the claimant, and the opposing party has no right to object, unless the defendant tribe has hostility toward the chosen Sheikh of Custom or his tribe. In such a case, in order to remove any suspicion, another Sheikh of Custom is selected by the Sheikh of the claimant tribe.

Second, if both parties claim entitlement to a right, the selection of the Sheikh of Custom is made with the consent of both parties; in the absence of agreement, the Sheikh of Custom is determined by intermediary sheikhs and sayyids. The number of Sheikhs of Custom in Khuzestan Province is very limited, and they enjoy widespread recognition and renown [16].

- The Process of Dispute Resolution by the Sheikh of Custom

The process of tribal dispute resolution through the arbitration of the Sheikh of Custom includes the ritual of presenting the dispute, investigation by the Sheikh of Custom, and ultimately the issuance and execution of the ruling by the disputing parties. Whenever a dispute arises between two tribes and neither side initially accepts responsibility for the wrongdoing, and both parties present themselves as the rightful party, a session is convened through the mediation of regional sheikhs, sayyids, elders, and trusted local figures. This session is held in a neutral location (muḍīf), with the presence of the disputing parties and their respective sheikhs and elders.

Subsequently, each of the sheikhs of the disputing parties prepares a written statement addressed to the Sheikh of Custom, briefly outlining the claim and introducing the applicants, and requests him to arbitrate the dispute. Thereafter, the parties, together with witnesses, jointly refer to the Sheikh of Custom. Each party submits the letter prepared by its tribal sheikh, after which the Sheikh of Custom asks the claimant—or, in cases of equal claims, one of the parties—to present their claim in detail along with supporting evidence.

After hearing the accounts of both parties and witnesses and reviewing other evidence, the Sheikh of Custom asks them to return to their homes and announces that his ruling will subsequently be delivered in written form through one of the neutral elders who accompanied the parties, to be handed over to the sheikhs of the opposing tribes. The rulings of the Sheikhs of Custom are binding on the parties, and any party that refuses to implement the ruling is thereafter regarded by the tribes of the region as at fault and without right. Consequently, none of the regional sheikhs or elders will be willing to support or assist that party in the given dispute and, at times, even in other disputes involving that tribe.

The written ruling of the Sheikh of Custom is preserved by the tribal sheikh as a valid and enforceable document. In the past, such rulings were rolled and placed inside reeds, with both ends sealed with wool and clay, and then stored in the ceiling of a room to protect them from rodents and other animals; today, however, these

rulings are preserved by modern means by the tribal sheikh. It should be noted that, in addition to the disputing parties, a number of neutral elders accompany them as witnesses, in order to prevent conflict and confrontation.

During the same session, a specific date is determined for the aforementioned individuals to attend the muḍīf of the Sheikh of Custom. It is noteworthy that none of the disputing parties has the right to visit the Sheikh of Custom prior to the appointed date, and the Sheikh of Custom will under no circumstances receive only one side of the dispute. This practice is justified by the necessity of maintaining the Sheikh of Custom's neutrality and safeguarding it until the conclusion of the dispute resolution process [16].

g) Social Restrictions against Offenders in the Dispute Resolution Practices of the Arab Tribes of Khuzestan

Despite the support provided by the tribe to its members in disputes with others, the Arab tribes of Khuzestan sometimes exhibit other social reactions toward offending members of their own tribe or members of other tribes. These reactions may be regarded as a form of social punishment for the offender as well as a preventive measure aimed at deterring the repetition of crimes and violations.

- Restriction of Movement

One of the most important social responses among the Arab tribes of Khuzestan to crimes such as murder and violations of honor (including adultery and sodomy) is the imposition of movement restrictions on the murderer or offender. In other words, the movement of the murderer or offender in certain areas determined during the faṣl assembly is prohibited. This decision, in addition to constituting a form of restriction and punishment for the offender, aims to prevent the undesirable social consequences of such crimes, particularly disputes and violent confrontations between the families and tribes involved.

Experience shows that the young members of the victim's family often react impulsively in such cases, which may result in the loss of the offender's life. This, in turn, leads to an expansion of the dispute and an increase in the number of victims. Therefore, in order to prevent conflicts and clashes, the sheikhs and elders, during the faṣl assembly, impose restrictions on the movement of the murderer or offender within the residential areas of the victim's heirs. For example, if the parties live in the same village or neighborhood, the murderer or offender must relocate to areas where the heirs and their close relatives do not reside. In some cases, the offender is prohibited from entering an entire city, and it is explicitly stated during the faṣl assembly that if the murderer or offender enters the prohibited area and is killed, even then, his tribe will have no tribal right to demand faṣl or blood money.

The restriction of movement has certain exceptions. The most important exception is when the victim was harmed in the course of committing an illegal or non-religious act, such as theft or illicit relations. In such cases, the person who inflicted the harm is no longer subject to movement restrictions. For instance, if a person is killed while committing an illegal or immoral act such as theft or illicit relations, the killer will not be subject to movement restrictions, as the act was committed in defense of property, honor, or the life of oneself or one's family.

The duration of the restriction varies depending on the severity of the crime. The minimum duration is one year, and the maximum may extend to lifelong restriction for the murderer or offender. After the restriction period has elapsed and the full blood money (faṣl) has been paid, the murderer or offender is free to move wherever they wish, and no member of the victim's tribe or the assaulted man or woman has the right to harass them. Should the aforementioned individual, after paying the faṣl and serving the

restriction period, be assaulted or killed by a member of the opposing tribe due to the same incident, the blood money and faṣl imposed in such a case will be heavier than in ordinary and comparable cases. In other words, an additional amount is taken as blood money or faṣl as well as a fine. In such cases, since the offender has violated tribal customs and obligations and unjustifiably killed or assaulted the individual, they receive no financial assistance from their tribe and must pay the entire amount of blood money and faṣl personally [2, 12, 16).

- Expulsion from the Tribe

Social sanctions against an offender are not imposed solely by the victim's tribe; sometimes the offender's own tribe also reacts to their misconduct. The most significant of these reactions is the expulsion of the offender, as well as their supportive close relatives, from the tribe. Membership in a tribe and expulsion from it are effected through the registration or removal of names from the written list of tribal members. Accordingly, in order to prevent the expelled individual from joining other tribes of the same clan, the written record of expulsion explicitly notes their noncompliance with tribal customs and traditions and the lack of satisfaction of the sheikh and the tribe with their conduct, so that other tribes will also refrain from accepting the offender as a member.

In a society based on tribes and clans, this measure constitutes a very severe punishment. In a society where every individual belongs to a specific tribe or clan and enjoys tribal protection, the loss of tribal membership represents a significant vulnerability for the individual. Moreover, this may cause the individual, should they contemplate committing another crime, to exercise greater restraint, as tribal support - even in the form of mediation and dispute resolution with those harmed by their actions - will no longer be available [16].

- Chīla (Equality of the Amount of Blood Money)

Chīla is another form of social response to misconduct and crime among the Arab tribes of Khuzestan. Literally, chīla means a cartridge or bullet. Terminologically, in the past it referred to a practice whereby, during the resolution of disputes between two Arab tribes of Khuzestan, faṣl payments were recorded under the title of chīla between the two opposing tribes. In this practice, if a tribe received a certain amount as faṣl from another tribe during mediation over the killing of one of its members, it would be announced in the same tribal assembly that, should the victim's tribe in the future kill a member of the killer's tribe, the blood money for the deceased would be equal to the amount currently determined and paid to the victim's tribe. In other words, blood money was paid equally between the two tribes.

It should be noted that this custom applied only to similar offenses and crimes; for example, faṣl arising from crop destruction could not be equated with faṣl for bodily injury. This custom can be regarded as an effort to prevent the repetition of wrongdoing and to establish and maintain social cohesion. When two tribes agreed to the application of chīla, they implicitly acknowledged their equality; at the same time, the obligation to pay equal faṣl functioned as a deterrent against the repetition of the same crime by the harmed tribe. However, today, due to rising inflation and the decline in the value of the national currency, chīla has become obsolete [16].

- Theft and Leniency toward the Thief Due to Financial Poverty

Another social response to crime and offenders among the Arab tribes of Khuzestan concerns the treatment of thieves and the exercise of leniency toward them when the theft was committed due to financial poverty. In such cases, the offender was treated gently and without violence. In the

past, thieves often resorted to theft because of severe financial hardship. Since their aim was merely to obtain property sufficient for subsistence, they tried to avoid any confrontation or conflict with the owner of the property, as they were well aware that a thief, at the moment of committing theft, would be deprived of tribal support.

However, if a thief was caught during the act by the property owner, the latter had no right whatsoever to harm or kill the thief. Rather, it was customary to restrain the thief's hands—or sometimes even without doing so, merely detaining the individual—and to send someone to inform the sheikh of the thief's tribe. The sheikh would then come to the location to secure the thief's release and to apologize to the property owner, after which the thief would be released. In such cases, the property owner, in view of having assisted a person compelled to steal due to poverty, would give the thief a gift consisting of clothing and a sum of money, in order to help them. In this manner, the dispute was resolved without recourse to police or judicial authorities.

Today, however, with the emergence of theft as a profession—where many individuals engage in theft professionally, often using weapons, and make it their occupation—and given that such thefts are accompanied by harassment, intimidation, and the creation of fear, this custom no longer exists. Nevertheless, if an armed thief is killed during a confrontation with the property owner, although the deceased is, in principle, excluded from the protection of their own tribe, in the customary practice of the Arab tribes of Khuzestan, even in such cases the dispute must still be resolved through mediation and a tribal assembly [2, 12, 16].

CONCLUSION

In light of the foregoing discussion, the expansion of restorative justice and the integration of moral norms with social reconstruction can be regarded as outcomes of traditional approaches to dispute resolution among Arab tribes. The faṣl ritual, as described in this article, constitutes a traditional method for resolving criminal disputes among the Arabs of Khuzestan Province and corresponds to a considerable extent with the principles of restorative justice. Through the payment of blood money (diyya), faṣl seeks to compensate victims and to repair relationships between tribes. This process contributes not only to material compensation but also to the restoration of trust and social peace.

Within the faṣl ritual, sheikhs, sayyids, and elders act as mediators who manage and resolve disputes in place of formal courts. This method emphasizes the participation of tribes in decision-making and negotiation for dispute resolution, clearly corresponding to the active involvement of the victim, the offender, and the community in the restorative process.

Moreover, the faṣl ritual is accompanied by speeches that emphasize the remorse and repentance of the offender. The use of Qur'anic verses and traditions (ḥadīths) further serves to encourage forgiveness and forbearance.

Although, within the faṣl process, the offender may be handed over to judicial authorities, the primary focus remains on resolving the dispute through reconciliation and the payment of blood money rather than solely on punishment; thus, the emphasis is on restoration and repair.

Ultimately, by establishing ceasefires and striving for reconciliation among different tribes, this ritual contributes to the maintenance of social order and the prevention of larger conflicts, thereby seeking to preserve and restore social order and peace.

In view of these considerations, the faṣl ritual may be regarded as a local and indigenous form of restorative justice, applied in accordance with the culture and social structure of the Arab tribes of Khuzestan.

In conclusion, the faṣl ritual and traditional methods of dispute resolution among the Arab tribes of Khuzestan largely conform to the principles of restorative justice and demonstrate how adherence to moral norms in traditional societies has led to social reconstruction and the expansion of restorative justice. Although some unethical aspects of traditional societies—such as the forced marriage of women for the purpose of faṣl, which violates human rights—have rendered certain traditional practices obsolete today, some of these methods, due to their deep historical roots and full compatibility with the local characteristics of Arab tribal society in Khuzestan, enjoy greater prevalence and acceptance than formal legal methods of dispute resolution. Given the growing compatibility of both systems, the application of these methods—especially in their current, transformed, and ethics-based form - can constitute an important step toward the realization of justice as the ultimate goal of any legal system.

ETHICAL CONSIDERATIONS

Ethical issues (such as plagiarism, conscious satisfaction, misleading, making and or forging data, publishing or sending to two places, redundancy and etc.) have been fully considered by the writers.

CONFLICT OF INTEREST

The authors declare that there is no conflict of interests.

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