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Bridging the Paradigm of Restorative Justice: Between Secular Philosophy and Islamic Principles

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Abstract
This study addresses how Secular and Islamic principles regulate and operationalize Restorative Justice (RJ) within their respective frameworks. Restorative justice has evolved significantly, influenced by diverse cultural and legal contexts, particularly in indigenous practices that prioritize healing and reconciliation. It evolved from traditional practices emphasizing dialogue and community involvement in resolving conflicts. The study used a comparative legal analysis of the two systems. While restorative justice principles have been formalized in modern legal systems as an alternative to punitive justice, their application varies across Western and Oriental legal frameworks. In Oriental cultures, including Arab and Islamic societies, restorative justice practices involve *Shari'ah* principles such as *Qiṣāṣ, Diyya*, and *Ṣulḥ* that promote dialogue, compensation, and community involvement, and offer rehabilitation rather than punitive action. The study, which used a systematic mapping, revealed that while the secular model relies on state-centric and legal-positivist structures, the Islamic model relies on victim-centric solutions that operate under the administrative patronage of provincial bodies. The study identified that while both systems achieve functional equivalence in conflict resolution, they remain fundamentally distinct in their regulatory infrastructure and their core jurisprudential conceptualization of whether the state or the individual 'owns' the legal conflict.

Keywords: Islamic Restitution, Compensation, Restorative Justice, Wrongful Act.

I. Introduction

Any justice system should resolve the conflict between the offender and the victim. Hence, the system must address victims' needs and convince the offender of his responsibility for the crime, the harm it caused, and his liability to compensate the victims. Here, the emphasis is on reconciling the offender with the victim and the community, and on voluntarily compensating for the harm. Hence, a paradigm shift from punitive justice to restorative justice (abbreviated as RJ), restitution, or reparation is

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required. Such a shift would help reduce harm and injustice to the victims of the current system and prevail over the demand for punishment.[1] The plight of victims and the injustice of the current system have recently come to society's attention through alternative forms of conflict resolution, such as restorative justice. Alternative conflict resolution, which differs from traditional and adversarial approaches, is gaining a solid foothold across various contexts. Some contexts in which alternative conflict resolution is employed include general disputes and crimes,[2] domestic violence,[3] workplaces,[4] and even the courts.[5] Further, several terminologies are frequently used to describe the alternative conflict resolution system. Some of them include "restorative justice," "positive justice," "relational justice," and "communitarian justice"[6]. The current study intends to use the term "restorative justice."

Restorative justice, an alternative to traditional retributive justice interventions, is evolving, and there is no consensus on its definition. As a result, there are multiple interpretations of restorative justice.[7] The United Nations Office on Drugs and Crime (UNODC)[8] defined it as "any program that uses restorative processes and seeks to achieve restorative outcomes." They further present restorative justice as an approach that "addresses the harms and needs of victims." Restorative justice prioritizes the needs and rights of victims, whereas retributive justice seeks to punish the offender.[9] It is a deliberate process that prioritizes healing over punishment. This includes healing the victim and undoing the harm, healing the offender by helping them rebuild their moral and social selves, healing communities, and healing interpersonal relationships.[10] In addition, one of the underlying assumptions of restorative justice is that the victim can voice their needs and determine how the offender can make reparation/compensation.

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[1] Karmen, A. *Crime Victims—An Introduction to Victimology*, California: Pacific Grove. 1990.

[2] Al-Shaibani, Majed. "The Applications of Intention (Qaedat al- Umu:R Bi Maqasidaha) in Saudi Law: A Comparative Study." *Journal of Politics and Law* 13, no. 2 (2020): 1. https://doi.org/10.5539/jpl.v13n2p1.

[3] Jokinen, Heidi. "Solving Moral Conflicts. Case Restorative Justice in Domestic Violence Cases." *Contemporary Justice Review* 24, no. 2 (2020): 155 - 171. https://doi.org/10.1080/10282580.2020.1819803.

[4] Goodstein, Jerry, and Karl Aquino. "And Restorative Justice for All: Redemption, Forgiveness, and Reintegration in Organizations." *Journal of Organizational Behavior* 31, no. 4 (2009): 624 - 628. https://doi.org/10.1002/job.632.

[5] Adrian, Lin, and Solfrid Mykland. "Unwrapping Court-Connected Mediation Agreements." In *Nordic Mediation Research*. Springer International Publishing, 2018. https://doi.org/10.1007/978-3-319-73019-6_6.

[6] United Nations Office on Drugs and Crime. *Handbook on Restorative Justice Programmes*, Criminal Justice Handbook Series, Vienna. 2006.

[7] United Nations Office on Drugs and Crime. *Handbook on Restorative Justice Programmes*,

[8] UNODC. *Handbook on Restorative Justice Programmes*

[9] Chun, Jahyun. "Enforced Reconciliation without Justice: The Absence of Procedural, Retributive, and Restorative Justice in the 'Comfort Women' Agreement of 2015." Asian Journal of Social Science 49, no. 2 (2021): 84 - 92. https://doi.org/10.1016/j.ajss.2020.09.001.

[10] Braithwaite, J. "Setting Standards for Restorative Justice." British Journal of Criminology 42, no. 3 (2002): 563 - 577. https://doi.org/10.1093/bjc/42.3.563.

Beside the procedural elements of legal redress, restorative justice emphasizes the rehabilitation of the underlying harm occasioned by the infraction.[11] It aims to mend what is broken, compensate victims for harms, and heal relationships so people can coexist peacefully in the future. Thus, the victim and the offender discuss the conflicts as part of the restorative justice model's standard practice. Through communication, agreements, self-reflection, and forgiveness, victims and offenders exchange viewpoints, enabling victims to regain their due rights and honor and to achieve justice. Victims' rights include compensation for the crime committed against them. It also promotes more constructive and meaningful alternative obligations to assist the victim(s) and provide services to the community.[12] The restorative justice process involves a "dialogical process" that holds offenders accountable for the harm and focuses on its repair by requiring remorse and an apology, overcoming resentment, and offering forgiveness.[13]

This study examines the formal framework to address the objectives. In this regard, the secular model is grounded in utilitarian legal positivism, as demonstrated by the UK Crime and Courts Act 2013. Other Western nations employ varying degrees of institutionalization, such as the Criminal Code and the Sentencing Act 2002 of Canada and New Zealand, respectively. These pieces of legislation identify crime as a breach of the social contract, with the state serving as the primary aggrieved party and the supervisor of restorative diversion. Alternatively, the Islamic model is derived from the *Shari'ah* and is based on a theocratic-restitutionary framework. They are mostly based on the principles of *Qiṣāṣ, Diyya*, and *Ṣulḥ*, in which the locus of agency shifts from the state to the victim, and the crime is primarily identified as a private wrong.[14] Hence, the enforcement of RJ varies from a state-centric, utilitarian approach in secular countries that follows a procedural rehabilitation to a facilitatory approach in Islamic nations – mainly Saudi Arabia and a few other societies like Malaysia - that operate under the patronage of Reconciliation Committees. This mapping reveals that, though both systems achieve functional equivalence in resolving conflicts, they are fundamentally distinct. This distinction is prevalent primarily in regulatory infrastructure and in jurisprudential conceptualization, which are discussed in detail in the following sections.

Restorative justice is served as the main object of analysis due to its mounting recognition as a theoretically robust and relevant paradigm in contemporary jurisprudence. It provides a typical framework that moves away from retribution to a

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[11] Braithwaite, J. "Setting Standards for Restorative Justice

[12] Bazemore, Gordon. "Restorative Justice and Earned Redemption." American Behavioral Scientist 41, no. 6 (1998): 768 - 813. https://doi.org/10.1177/0002764298041006003.

[13] Wenzel, Michael, Tyler G. Okimoto, Norman T. Feather, and Michael J. Platow. "Retributive and Restorative Justice." *Law and Human Behavior* 32, no. 5 (2008): 375 - 389. https://doi.org/10.1007/s10979-007-9116-6.

[14] Kamali, M. H. (2008). Shari'ah Law: An Introduction. Oneworld Publications.

process that focuses on healing and stakeholder engagement. Comparing RJ across two contexts facilitates understanding of how reconciliation, victim participation, and societal involvement are included in both contexts. This comparison is scientifically justified, as it can provide insights into the effective adaptation of RJ practices.

This paper is organized into the following sections. Section II reviews the restorative justice literature and develops the theoretical framing, including the history, evolution, and differences between Western, Oriental, and Islamic systems. Section III presents a comparison between the two systems, analyzing how RJ functions and how private rights and divine law coexist in the Islamic system. Section IV concludes by summarizing the study, presenting its contributions, and identifying future research avenues.

II. Restorative Justice Principles

Empirical evidence shows that victims are more satisfied with restorative justice practices than regular court procedures.[15] This condition occurs because victims' participation is more significant than mere reparation.[16] Evidence also suggests that this is due to victims placing higher salience on emotional restoration. Though restorative justice was initially considered in the criminal justice arena of the Western judicial system, it has found appeal and applicability across a broad range.[17] This includes the broader areas of the corporate arena, international relations, and many other non-traditional fields. In their pioneering work, Wenzel et al. found that all transgressions can be addressed restoratively.[18] However, the type and meaning of a transgression may be more relevant. They conceptualized restorative justice as "a psychological or lay-philosophical understanding of justice" and focused on motivations for rule-breaking rather than retribution.[19]

Vidmar and Miller argued that a response to rule-breaking can involve behavior control, securing future compliance, or restoration.[20] Both these can be achieved constructively.[21] While behavior control involves deterrence and incapacitation, in

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[15] Sherman, L. W., Strang, H., Angel, C., Woods, D., Barnes, G. C., Bennett, S., & Inkpen, N. (2005). Effects of face-to-face restorative justice on victims of crime in four randomized, controlled trials. *Journal of Experimental Criminology*, *1*(3), 367–395. https://doi.org/10.1007/s11292-005-8126-y

[16] Bazemore, Gordon. "Restorative Justice and Earned Redemption." *American Behavioral Scientist* 41, no. 6 (1998): 768 - 813. https://doi.org/10.1177/0002764298041006003.

[17] Roche, D. "Retribution and restorative justice." In *Handbook of Restorative Justice*. Routledge. Retrieved March 14, 2026, from https://doi.org/10.4324/9781843926191.ch5

[18] Wenzel, Michael, Tyler G. Okimoto, Norman T. Feather, and Michael J. Platow. "Retributive and Restorative Justice."

[19] Wenzel, Michael, Tyler G. Okimoto, Norman T. Feather, and Michael J. Platow. "Retributive and Restorative Justice."

[20] Vidmar, N., & Miller, D. T. (1980). Socialpsychological processes underlying attitudes toward legal punishment. *Law & Society Review*, *14*(3), 565–602. https://doi.org/10.2307/3053193

[21] Wenzel, Michael, Tyler G. Okimoto, Norman T. Feather, and Michael J. Platow. "Retributive and Restorative Justice."

restoration, offenders have to adjust better and be encouraged to change their attitudes. Thus, restoration is a constructive means of behavior control, with both sides working together. Hence, another benign purpose of restoration is to re-establish a moral order through constructive action. Restorative justice can also promote healing and compensation through emotional validation and narrative reconstruction. It also resolves issues through structured accountability, reciprocal recognition, and community engagement. This is attained through participatory decision-making processes that redistribute ownership of conflict resolution. In collectivist Arab cultures, where social identity is deeply embedded in societal networks, RJ serves not only as a dispute-resolution tool but also as a mechanism that restores social equilibrium. This cultural orientation emphasizes the acceptability and effectiveness of RJ approaches in Arab contexts, where conflict resolution involves community elders mediating discussions between parties, hearing grievances, negotiating damages, and restoring cohesion.[22]

In addition, the restorative and reparative theories underscore the need to compensate crime victims. Such theories, grounded in behavioral premises, propose that sentences should seriously consider restitution and reparation to restore the harm done to the victim.[23] Further, they envisage community-based sanctions that require offenders to compensate victims and counsel them on reintegrating into the community. It strongly emphasizes reintegrating offenders into society rather than using punitive or exclusionary measures to regulate them. In secular societies, RJ is often referred to as "mediation," a term that distinguishes it from traditional legal adjudication.[24]

1. History of the restorative justice movement

The restorative justice movement emerged at the grassroots level among practitioners dissatisfied with the prevailing justice system. This was later taken up by academics who challenged the assumption of the existing justice system and sought to restore justice. They identified restorative justice as the alternative.[25] In restorative justice, the affected parties are also involved in the justice process. They acquire a voice to express their emotions and their side of the story, which can facilitate restoration and a sense of fairness. Here, transgressions are considered conflicts that should be returned to their

[22] Sherman, L.W., Strang, H., Mayo-Wilson, E., Woods, D. J. & Ariel, B. "Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review." *Journal of Quantitative Criminology,* 31, (2015): 1–24. https://doi.org/10.1007/s10940-014-9222-9

[23] Srivastava, S. S. *Criminology Criminal Administration*, New Delhi: Central Law Agency. 2007.

[24] Council of Europe. *Recommendation No. RR (99) 19 of the Committee of Ministers to Member States Concerning Mediation in Penal Matters*. 1999.

[25] Bazemore, Gordon. "Restorative Justice and Earned Redemption."

rightful owners.[26] This can involve compensating victims or the wider community, imposing effective punishments on the perpetrator, benefiting victims and the community, and helping the offender undergo moral change.[27] Hence, restorative justice outcomes could include apologies, promises about future behavior, community service, and restitution. The following section presents more about restitution.

2. Restitution

Restitution refers to a payment made by an offender to compensate the victim for financial losses. Though "restitution" and "compensation" are different, both are often used interchangeably. Restitution is the payment by the perpetrator to compensate the victim for financial losses resulting from the crime.[28] Restitution, unlike compensation, involves restoring the victim's position and rights after they have been injured or deprived by criminal activity. It denotes the perpetrator's accountability, which demands restitution from the offender. In addition, it is punitive and symbolizes a corrective objective in a criminal case.

As early as 1960, Schafer examined compensations globally and presented a few suggestions. The prime among them is that the compensation could be treated as a fundamental duty of the same court that handles the offense. Compensation could be based on the offender's economic and social situation. If the offender is unable to compensate, the state may assume this responsibility. In any criminal-victim relationship, compensation refers to making good for the victim's losses due to criminal activity. It relates to making amends with the victim and accurately paying for the harm caused, which is societal accountability. It is a societal action taken to compensate for the harm and is civil, representing a noncriminal end in a criminal case.[29] Compensation is making amends for the harm or injury to a victim, and it is society's responsibility and represents a noncriminal goal in crime settings. In contrast, restitution involves reparation for the victim's loss or the restoration of position and damaged rights. Most laws currently mandate compensation based on a distinction between criminal and civil wrongs. Restorative justice opposes the unitary conception of wrong, which holds that breaking the law is always bad, regardless of the law broken.[30] Therefore, even if the compensation claims are preferred due to criminal activity, they are considered civil matters. Further, it is not connected to the disposition of the criminal case or the correctional action against

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[26] Christie, R. M. Maintenance requirements of offshore platform/installation systems. Offshore Europe. 1977, September 14. https://doi.org/10.2118/6681-ms

[27] Bazemore, Gordon. "Restorative Justice and Earned Redemption."

[28] Haveripeth, P. D. "Restorative Justice and Victims: Right to Compensation." International Research Journal of Social Sciences, 2, no. 2 2013: 43-47.

[29] Schafer, S. *Restitution to victims of crime*, London: Stevens & Sons, Ltd. 1960

[30] Schafer, S. *Restitution to victims of crime*

the criminal. Hence, there is a global consensus in favor of compensation, regardless of the cause of the loss or injury.

3. Evolution of restorative justice

The dominance of the "*just deserts*" framework and paradigm has posed a significant challenge to the development of restorative justice.. According to the *just deserts* framework, punishments for rule-breaking should restore moral proportionality and a sense of fairness.[31] As such, punishments are not merely about deterrence.[32] In addition, empirical evidence suggests that fear of recidivism does not induce a desire for retribution,[33] [34] nor does it function as a deterrent,[35] but rather serves the desire for retribution. As such, offenders, or perpetrators deserve punishment that can restore a subjective sense of justice.[36] Hence, an alternative restorative justice philosophy emerged due to dissatisfaction with the legal system, which shows less concern for victims' needs.[37] This ideology promotes the restoration of justice through beneficial dialogue among affected parties, including victims, offenders, and the directly affected society.[38] The core of a restorative justice theory emphasizes healing the victim and their suffering, healing the offender and their moral character, and repairing the group and its relationships.[39]

This implies that the affected parties actively participate in the justice administration. As a result, they are given a chance to express their emotions, tell their side of the story, and ideally come to an understanding of the harm the transgression has caused, the offender's accountability, and what can be done to restore a sense of justice in deliberative dialogue.[40] In addition to meaningful punishments for the offender that benefit the victim and the community, and possibly the offender through the facilitation of moral transformation, such measures can include direct compensation to the victim or the larger

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[31] Darley, John M., Kevin M. Carlsmith, and Paul H. Robinson. "Incapacitation and Just Deserts as Motives for Punishment." *Law and Human Behavior* 24, no. 6 (2000): 659 - 683. https://doi.org/10.1023/a:1005552203727.

[32] von Hirsch. Culpability and mistake of law, in S. Shute, J. Gardner and J. Horder (eds) *Action and value in the criminal law*, 157-174. Oxford. 1993.

[33] Carlsmith, Kevin M., John M. Darley, and Paul H. Robinson. "Why Do We Punish?: Deterrence and Just Deserts as Motives for Punishment." *Journal of Personality and Social Psychology* 83, no. 2 (2002): 284 - 299. https://doi.org/10.1037//0022-3514.83.2.284.

[34] Darley, John M., Kevin M. Carlsmith, and Paul H. Robinson. "Incapacitation and Just Deserts as Motives for Punishment."

[35] Tyler, T. R. *Why people obey the law: Procedural justice, legitimacy, and Compliance* (2nd ed.). Princeton, NJ: Princeton University Press. 2006.

[36] Duff, A. *Punishment, communication, and community*. New York: Oxford University Press. 2003.

[37] Bazemore, Gordon. "Restorative Justice and Earned Redemption."

[38] Christie, R. M. Maintenance requirements of offshore platform/installation systems.

[39] Braithwaite, J. "Setting Standards for Restorative Justice."

[40] Wenzel, Michael, Tyler G. Okimoto, Norman T. Feather, and Michael J. Platow. "Retributive and Restorative Justice." *Law and Human Behavior* 32, no. 5 (2008): 375 - 389. https://doi.org/10.1007/s10979-007-9116-6.

community.[41] Hence, punishment is not the primary component of restorative justice. Hence, a deliberate process stressing healing rather than punishment is vital for genuine restorative justice. According to Braithwaite,[42] restorative justice also heals the perpetrator by rebuilding their moral and social selves, restoring social relationships, helping the victim, and undoing the harm.

Since punitive approaches are less used in present justice systems, there has been a paradigm shift towards restoration, driven by a focus on restorative justice over the past three decades. Such a paradigm shift challenges traditional systems that deter the possibility of solutions grounded in new values and goals, refocusing on emerging systems, policies, and practices.[43]

4. Secular system of restorative justice

In response to perceived inefficiencies in the legal system, which is focused on retributive ideals, restorative justice emerged as an "alternative approach to justice" in the 1980s.[44] The retributive justice approach views an offense as a wrongdoing against the State and is examined in the context of broken laws and the perpetrator's guilt. These traditional legal structures are viewed as lacking in democratic accountability, legal validity, authority, and enforcement in the secular West. Moreover, they are recognized as antagonistic to social, civic, and justice ideals founded on secular legal principles. Restorative justice emerged as a new paradigm in the West in the 1980s, introducing an innovative way of justice administration. It emerged as Alternative Dispute Resolution (ADR) through victim-offender mediation, a widely available approach in the legal literature. Unfortunately, literature on similar institutions outside the Western cultural context is scarce and understudied.[45]

The secular justice system prefers that the perpetrators of crime be punished in proportion to the harm they cause.[46] Thus, it focused on punishment, or the suffering

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[41] Bazemore, Gordon. "Restorative Justice and Earned Redemption."

[42] Braithwaite, J. "Setting Standards for Restorative Justice."

[43] Pavelka, S. "Restorative Justice in the States: An Analysis of Statutory Legislation and Policy." *Justice Policy Journal*, 2, no 13 (2016): 1-23. Wenzel, Michael, Tyler G. Okimoto, Norman T. Feather, and Michael J. Platow. "Retributive and Restorative Justice."

[44] Zehr, Howard, and Harry Mika. "Fundamental Concepts of Restorative Justice." In *Restorative Justice*. Routledge, 2017. https://doi.org/10.4324/9781351150125-4.

[45] Górska, E. and Klakla, J. B. "Arab Customary Law and the Modern Western Idea of Restorative Justice." *The Polish Journal of the Arts and Culture: New Series* 5 (2017). https://doi.org/10.4467/24506249pj.17.002.6809. Walker, Lorenn. "Conferencing: Western Application of Indigenous Peoples' Conflict Resolution Practices." *SSRN Electronic Journal*, 2012. https://doi.org/10.2139/ssrn.2137919.

[46] Darley, John M., Kevin M. Carlsmith, and Paul H. Robinson. "Incapacitation and Just Deserts as Motives for Punishment." *Law and Human Behavior* 24, no. 6 (2000): 659 - 683. https://doi.org/10.1023/a:1005552203727.

and humiliation of the offender, which was expected to restore justice. This stems from the conviction that the offender violated established rules and order, thereby disturbing the moral balance and requiring punishment. This punishment is often imposed unilaterally,[47] with the offender having little say and no remorse expected of him. Alternatively, restorative justice is a constructive method of justice restoration.[48] It considers an offense a conflict requiring prolonged interaction between the affected parties. Here, the victim is encouraged to forgive the offender, helping him redeem himself, facilitating moral transformation, and considering compensation for the misdemeanor.[49] Thus, justice is considered restored through social consensus.[50]

The following section reviews restorative justice in the West and the Orient. Retributive justice has primarily focused on punishing the offender for a considerable period, reflecting the traditional use of third-party punishments in Western legal systems. Contrary to the retributive viewpoint, restorative justice contends that every crime against people and social relationships imposes a duty on the offender to make good on the breach. Restorative justice is now evolving across secular nations as an emerging paradigm that provides an alternative to the traditional forms of justice. Now, restorative practices are increasingly specified by various laws across different secular states. According to Zehr & Mika,[51] a pioneering champion of the paradigm, three pillars of restorative justice were identified. They include the injury and an obligation, a commitment to undoing the harm, and the involvement of all parties. Therefore, to facilitate reparation, the judiciary and the government should involve the victim, the perpetrators, and the community in their quest for remedies.[52]

In the West, restorative justice views crime as a violation of individual relationships. Accordingly, restorative justice aims to repair the harm caused while balancing the needs and roles of the victim, offender, and society. As a result, the victim and the community are heavily engaged in the administration of justice, and that engagement must go beyond cases of just personal injury. Accordingly, the harm done by the offender builds a commitment to make amends for the harm caused to the victim and the community. To make amends, the offender must make both material and symbolic repairs.[53]

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[47] Wenzel, Michael, Tyler G. Okimoto, Norman T. Feather, and Michael J. Platow. "Retributive and Restorative Justice."

[48] Walgrave, L. (1995). Restorative justice for juveniles: Just a technique or a fully fledged alternative? *The Howard Journal of Criminal Justice*, *34*(3), 228–249. https://doi.org/10.1111/j.1468-2311.1995.tb00841.x

[49] Govier, T. "Forgiveness and revenge." London: Routledge. 2002.

[50] Sherman, L.W., Strang, H., Mayo-Wilson, E., Woods, D. J. & Ariel, B. "Are Restorative Justice Conferences Effective in Reducing Repeat Offending?

[51] Zehr, Howard, and Harry Mika. "Fundamental Concepts of Restorative Justice." In *Restorative Justice*. Routledge, 2017. https://doi.org/10.4324/9781351150125-4.

[52] Górska, E. and Klakla, J. B. "Arab Customary Law and the Modern Western Idea of Restorative Justice."

[53] Zehr, Howard, and Harry Mika. "Fundamental Concepts of Restorative Justice."

Under restorative justice, everyone involved in the crime—including the offender, the victim, family members, and community members—must participate in discussions to resolve the issue. In the talks, the statutory law system dominates secular culture. Therefore, these parties must establish the prerequisites and opportunity for unrestricted information flow and multilateral discussion. Examples include mediation and conferences (family conferences and victim-offender conferences), also known as Victim–Offender Mediation (VOM).[54] This positive legal mediation institution originated in the Western world, specifically the United States, in the early 1970s. Immediately after that, Western Europe adopted the idea. Despite common characteristics and elements, the specifics of mediation differ across countries, legal systems, and unique societal conditions.[55] Depending on the laws in effect in a particular nation, various organizations, such as the judiciary, police, prosecutors, and probation officers, may recommend parties to mediation with a mediator, which is voluntary. When the victim prefers not to meet face-to-face with the perpetrator, indirect mediation is done. Here, the parties meet a mediator during the process, who serves as a conduit for information. A recommendation is made when the defendant has entered a guilty plea. Marshall[56] identified the following phases of the mediation process (Table 1):

Table 1 Mediation processes/phases

Phase	Details
1	The mediator initiates the session by defining the ground rules for each stage of the mediation.
2	The parties to mediation then express their views, feelings, and interests without interruption.
3	The parties interact with each other. This stage could involve exchanging information, answering questions, addressing the other party's claims, and identifying possibilities for an accord.
4	In the event of a successful mediation, an agreement is arrived at. For example, it might consist of an offender's obligation to make amends by paying compensation or performing specific tasks as agreed.
5	The mediator summarizes the details that the parties discussed during the mediation to bring the process to a close.

[54] Choi, Jung Jin, and Michael J. Gilbert. "'Joe Everyday, People off the Street': A Qualitative Study on Mediators' Roles and Skills in Victim–Offender Mediation." *Contemporary Justice Review* 13, no. 2 (2010): 207 - 227. https://doi.org/10.1080/10282581003748305. Górska, E. and Klakla, J. B. "Arab Customary Law and the Modern Western Idea of Restorative Justice."

[55] Marshall, Tony Francis. "Restorative Justice on Trial in Britain." *Mediation Quarterly* 12, no. 3 (1995): 217 - 231. https://doi.org/10.1002/crq.3900120304.

[56] Marshall, Tony Francis. "Restorative Justice on Trial in Britain."

Source: Author

The conference is another method of conflict resolution when the perpetrator accepts responsibility for the harm caused. Conferences could include victims, offenders, and community members. Decisions at conferences are reached by consensus and are overseen by an impartial, outside party whose role is similar to that of a mediator. Conferences could be family group, community, restorative, or natural justice, each differing from the others. In the conference, all concerned parties can discuss the damage or harm, focusing on its effect. They then agree on a solution to amend the situation in the best possible manner. Finally, all participants would write and sign the agreement.[57]

5. Restorative justice in the orient

Legal traditions from the pre-Islamic, Arab, and Bedouin cultures are the foundation of modern Arab customary law. The pre-Islamic legal system emerged from a patriarchal, tribal social structure. Every member of the tribal community enjoyed personal security, and the tribe assumed collective responsibility for his actions as long as he remained a member of the community.[58] One of the harshest penalties at those times was expulsion from the community. Conventional reconciliation processes at those times originated from the traditional, ritualized form of conflict resolution. This form of conflict resolution is practiced across many Arab countries, particularly in rural areas.

Ṣulḥ dates back to the first century.[59] According to Pely,[60] reconciliation processes called *ṣulḥ* existed in early Semitic and Christian writings and scriptures dating to the first century. In Arab society, all Abrahamic faith denominations have successfully maintained this norm. *Ṣulḥ* regulated petty crimes like theft, land and water disputes, and other social issues such as family or marital problems. In modern times, *ṣulḥ* addresses environmental disputes, garbage disposal, the use of private premises and structures for civic infrastructure, and the regulation of local administration investments. It is even in vogue to address severe crimes like homicide and bodily harm.[61] In addition, this custom is

[57] Górska, E. and Klakla, J. B. "Arab Customary Law and the Modern Western Idea of Restorative Justice." ; Marshall, Tony Francis. "Restorative Justice on Trial in Britain."

[58] Schacht, J. *An introduction to Islamic law*. Oxford University Press. 1964

[59] Pely, Doron. "When Honor Trumps Basic Needs: The Role of Honor in Deadly Disputes within Israel's Arab Community." *Negotiation Journal* 27, no. 2 (2011): 205 - 225. https://doi.org/10.1111/j.1571-9979.2011.00303.x. Schacht, J. *An introduction to Islamic law*.

[60] Pely, Doron. "When Honor Trumps Basic Needs: The Role of Honor in Deadly Disputes within Israel's Arab Community."

[61] Tarabeih, Hussein, Deborah Shmueli, and Rassem Khamaisi. "Towards the Implementation of Sulha as a Cultural Peacemaking Method for Managing and Resolving Environmental Conflicts among Arab Palestinians in Israel." *Journal of Peacebuilding & Development* 5, no. 1 (2009): 50 - 64. https://doi.org/10.1080/15423166.2009.111021519905.

found preserved in all religious denominations in the Arab Islamic community, including Muslims, and in Islamic law.

6. Islamic restitution

The Islamic legal system is based on *Shariah*, which strives to protect human dignity and promote a just society. A similar core underpins restorative justice, which likewise prioritizes these humanistic principles. Islam considers human dignity to be divine. Thus, both aim to create a just society that respects individual dignity and empowers victims, offenders, and the community.[62] Traditional reconciliation processes, such as *ṣulḥ* in Arab cultures and *qiṣāṣ* in Islamic law, prioritize resolving conflicts through dialogue, compensation, and community involvement.[63] From a Qur'anic perspective, the interrelated themes of forgiveness, non-retaliation (Quran: 4:92), empowerment, and compensation/restitution present important victim-centered principles of restitution (Quran: 2:178). These practices reflect the principles of restorative justice: healing, forgiveness, and social harmony. While modern legal systems in secular countries may have adopted punitive approaches influenced by Western models, indigenous restorative practices significantly resolve disputes and promote peace within communities.

Though Quranic commandments encourage righteousness and virtue in humans, they also provide preventive strategies to reduce misconduct. Misconduct is dealt with fairly and impartially, and justice is accorded the highest priority in Islamic countries such as Saudi Arabia, Brunei, and Malaysia. Further, Muslim scholars like Ibn Hazm have also extensively discussed forgiveness, stating that it is the height of virtue and magnanimity in Islam.[64] All these points indicate that Islamic law is based on a restorative system, which was advocated only in the 1970s in the Western world. In Islam, there are three general classifications of crime. They include *hudoud*, *qiṣāṣ*, and *tazeer*. The details are presented in the Table below:

No	Classification	Details
1	*Ḥudoud*	*Hudoud* are crimes that have a fixed penalty
2	*Qiṣāṣ*	This is a harm that primarily affects the individual. Here, the victims can decide whether to impose the *qiṣāṣ* penalty by insisting on payment or forgiving the offender.

[62] Al-Badayneh, D. M., Al-Tarawneh, M. E., Lamchichi, A. A., & Ellamey, Y. M. Restorative Justice: Does it Work in the Arab Countries? International Journal of Religion, 5, no 8, (2024): 125–139.
[63] Górska, E. and Klakla, J. B. "Arab Customary Law and the Modern Western Idea of Restorative Justice."
[64] Al-Badayneh, D. M., Al-Tarawneh, M. E., Lamchichi, A. A., & Ellamey, Y. M. Restorative Justice: Does it Work in the Arab Countries? International Journal of Religion, 5, no 8, (2024): 125–139.

5	*Tasīr*	These involve transgressions detailed in the Qur'an or Sunnah, for which no punishment is specified.

Source: By the author

Diyya is the practice of compensating a wronged person. The payment may be made in place of the *qiṣāṣ* penalty at the victim(s) request. *Diyya*, translated as "blood money," can also imply restitution. *Qiṣāṣ* is ideal for building a just society by empowering victims and offenders and helping the community.

The Islamic reconciliation process is called *ṣulḥ* (صلح), which means peace, treaty, reconciliation, or agreement.[65] The *Shari'a* states this as a contract that entails an offer and acceptance among believers. It is intended to resolve a disagreement and promote peace, and it is legally binding at both individual and group levels.[66] *Ṣulḥ* can result in peace. In Islamic law, *ṣulḥ* is a form of contract (*'aqd*), legally binding at the individual and community levels.[67] It is indeed a holistic approach that addresses each disputed case individually, helping end conflicts and hostilities among believers, facilitating peaceful relationships and amity.[68]

The RJ principles align with the traditions of conflict resolution in Islamic jurisprudence. It can be observed that Islamic traditions emphasize principles like reconciliation (*ṣulḥ*), forgiveness (*ʿafw*), and social reform (*iṣlāḥ*) as preferred mechanisms for resolving disputes and restoring social harmony. *Ṣulḥ* is used to address family disputes and community conflicts, with a focus on restoring relationships rather than imposing punitive sanctions. The Holy Qur'an encourages *ṣulḥ* between parties and identifies it as a moral outcome. In Islamic societies such as Saudi Arabia, Brunei, and Malaysia, mediation is conducted by community elders or *ulamas*, who facilitate dialogue between the parties and reach a mutually agreed-upon restitution. Such processes could involve reconciliation, compensation agreements, and authorization of the resolution. These aspects, in addition to reinforcing accountability, restore the dignity of the affected and restore social cohesion. All these present how RJ principles facilitate healing and reconciliation. These principles are enshrined in Islamic ethical and legal thoughts and are rooted in many societies.

[65] Lane, W. E. *An Arabic-English Lexicon*, Librarie du Liban Lane. 1980.
[66] Bearman, P. *A history of the encyclopaedia of islam*. Lockwood Press. 2018.
[67] Bosworth, C. E., Van Donzel, E., Heinrichs, W. P. & Lecomte, G. *The Encyclopaedia of Islam,* Leiden Brill. 1997.
[68] Al-Badayneh, D. M., Al-Tarawneh, M. E., Lamchichi, A. A., & Ellamey, Y. M. Restorative Justice: Does it Work in the Arab Countries? International Journal of Religion, 5, no 8, (2024): 125–139.

In the secular West, restorative justice concepts have only recently become well-known. But it has served as the foundation of Arab customary law for many centuries.[69] Moreover, some aspects of restorative justice were in vogue in the pre-Islamic periods, dating back over 1500 years. For example, the traditional Arab *ṣulḥ* process, a hybrid of mediation and arbitration, is one of the ancient methods for resolving disputes. Arab law is a remnant of the pre-Islamic legal system, preserved in culture, customs, and Islamic religious law. Despite changing living standards over the centuries and the creation of reliable and effective state legal systems, Arab customary law remains in vogue today.[70] Further, disputes over land and water, family issues, marriage troubles, and even life-and-death circumstances like accidents, murder, and bodily harm are still governed by Arab customary law.[71] In addition, ordinary conflicts like petty misconduct, disputes over land and water, marriage or family issues, and even life-and-death circumstances like accidents, murder, and bodily harm are still governed by Arab customary law. These Arab customary legal practices can be classified as a dimension of restorative justice. This scenario is not unique to Arabian culture, as the Balkans and the Caucasus still uphold similar legal traditions alongside the official law.[72] Examples include customs such as *kanun* or *adat*.

Given these aspects, it is plausible to conclude that ancient indigenous traditions form the edifice for the restorative justice concept. Cunneen[73] has favored the same line of reasoning. Maxwell[74] is of the view that, in such a situation, it is doubtful whether the Western secular restorative justice paradigm is "a new theory, a new set of values and a new practical alternative" (p. 81) created by the Western legal culture. So, it is essential to understand that the restorative justice paradigm is a "re-discovery" of a strategy that has historically existed in various legal cultures. Hence, scholars, practitioners, and the legal literature could benefit immensely from a broader perspective that includes the Western concept of restorative justice within its social, cultural, and historical milieu. However, there is a dearth of literature on Arab customary restorative justice practices.

The study presents a structured outline of the legal framework, which is likely to ensure contextual clarity. Modern restorative justice is based on constitutional principles,

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[69] Górska, E. and Klakla, J. B. "Arab Customary Law and the Modern Western Idea of Restorative Justice."

[70] Górska, E. and Klakla, J. B. "Arab Customary Law and the Modern Western Idea of Restorative Justice."

[71] Abu-Nimer, Mohammed, and Ilham Nasser. "Forgiveness in The Arab and Islamic Contexts." *Journal of Religious Ethics* 41, no. 3 (2013): 474 - 494. https://doi.org/10.1111/jore.12025.

[72] Abu-Nimer, Mohammed, and Ilham Nasser. "Forgiveness in The Arab and Islamic Contexts."

[73] Cunneen, Chris. "Reviving Restorative Justice Traditions?" In *Handbook of Restorative Justice*. Routledge, 2025. https://doi.org/10.4324/9781843926191.ch7.

[74] Maxwell, Gabrielle. "Crossing Cultural Boundaries: Implementing Restorative Justice in International and Indigenous Contexts." In *Sociology of Crime Law and Deviance*. Emerald (MCB UP), n.d. Accessed December 31, 2025. https://doi.org/10.1016/s1521-6136(08)00404-1.

which include the subject matter, regulatory provisions, enforcement mechanisms, and applicable judicial interpretations. This framework has provided a comparison by distinguishing among legal philosophy, legislative design, and practical implementation in Arab and Western RJ. This comparison has enabled moving beyond shallow comparisons to an analytically robust one, revealing substantive differences and the underlying legal philosophies and traditions that influence the outcomes.

Having discussed secular and Islamic restitution separately, it is now imperative to engage in a comparative discussion. This section synthesizes the frameworks of the two systems, highlighting their nuances.

III. Restorative Justice in Comparative Study

The available RJ literature has widely recognized the efficacy of restorative justice, yet it strongly tilts toward secular contexts that primarily emphasize diverting offenders, or perpetrators from state-led retribution. A comparative analysis of how RJ functions within a legal system where private rights and divine law coexist is lacking. Specifically, there is scarce literature about the Islamic framework on how the concept of *'Ṣulḥ'* (reconciliation) generates a distinct psychological and legal environment for victim satisfaction compared to secular models. This study addresses a critical gap in the literature about the cross-cultural portability of RJ. It specifically examines whether secular models of RJ are conceptually comparable with the *Ṣulḥ* traditions of reconciliation and compensation (*diya*). This study thus fills the gap in the literature by examining how traditional Islamic RJ aligns or diverges from secular models. Thus, the study's objectives are to understand the origins and laws governing restorative justice, as well as the compensation process for victims. A comparison will also be made of the Western, Arab, and Islamic restorative justice systems. The study draws on recent developments in restorative justice theory.[75] Based on this, the study investigated the theoretical claim that comprehending a victim's motivations for seeking justice and the demand for compensation requires a deeper understanding of the identity relationships between victims, offenders, and the social context.

This study took a comparative perspective on Western and Islamic legal traditions to examine how RJ principles function in these frameworks. This analysis will present a comparative law perspective, facilitating functional evaluation, contextual differentiation, and normative examination, revealing fundamental legal rationales and exposing structural constraints across the two contexts. This will facilitate a more nuanced and generalizable understanding. Further, this study did not focus on any specific jurisdictional framework, and the analysis examined overarching legal–cultural traditions

[75] Wenzel, Michael, Tyler G. Okimoto, Norman T. Feather, and Michael J. Platow. "Retributive and Restorative Justice."

that profoundly influenced contemporary interpretation of conflict resolution. In context, it is worth noting that Western secular RJ models were largely developed within modern criminal justice reform movements. The Western system emphasizes aspects such as victim participation, offender accountability, and societal reconciliation. In contrast, Arab and Islamic legal traditions have historically emphasized restorative procedures such as *ṣulḥ* (reconciliation), *ʿafw* (forgiveness), and *iṣlāḥ* (societal reforms), which prioritize restoring social harmony and congruity. This comparative approach is significant because it enables the identification of common principles and distinctive features across the two parallel traditions. By situating RJ within broader normative contexts, the examination demonstrates how distinct legal systems theorize aspects such as reconciliation, compassion, and societal engagement in the justice procedures. This perspective would facilitate a thorough understanding of RJ as a cross-cultural phenomenon rather than something practiced in a single legal system. Additionally, though the prime focus is on the Arab and Islamic RJ system, foregrounding the Western concept can broaden perspective, provide a comprehensive view, and foster a better understanding.

The difference in RJ between the two systems stems from their classification of justice as a delegated statutory right or an interpersonal divine command.[76] In contrast to secular systems that view justice as a public good and operate on a "Positivist-Utilitarian" principle, the Islamic system operates on a Victim-centric jurisprudential facilitation or the "Theocratic-Restitutionary" principle. For instance, in secular nations like the UK or Australia, RJ is regulated as an extension of the social contract, as crime is considered an affront to the "State's Peace." This is because the respective governments here exercise stringent control over eligibility criteria for restorative diversion. In contrast to this, in Islamic nations like Saudi Arabia, Brunei, and Malaysia, the state maintains a secondary regulatory role, with the victim's inherent right of *QiṣāṣQiṣāṣ* or *Diyya* being primary. This is because the legal basis is derived from *Shari'a*, which holds that the state is a formal facilitator of *Ṣulḥ*.

There is also a considerable distinction in regulation and enforcement between the two. For instance, in secular countries, the state enforces RJ through strict legislative codification. A classic example is the *UK Crime and Courts Act 2013*. This act prescribes that restorative outcomes must align with all aspects of public policy and human rights standards. In Islamic countries, the state regulates the RJ process by institutionalizing

[76] Braithwaite, John. The state of criminology: Theoretical. *Australian & New Zealand Journal of Criminology*, 22(3), 129-135. (1989). Kamali, M. H. Shari'ah Law: An Introduction. Oneworld Publications, (2008).

mediation through administrative bodies such as *Lijan al-Islah,*[77] which acts as a bridge, validating private forgiveness to halt public execution. It also essentially converts individual moral acts of kindness into a legally enforceable judicial decree. Thus, secular laws emphasize procedural rehabilitation and the reduction of recidivism, while Islamic law prioritizes social harmony and the restoration of "interpersonal equilibrium" between societal members. A gist of this comparison is presented in Table 3.

Table 3 Comparison of RJ Frameworks

No	Particular	Secular	Islamic
1	Basis	Positivist with societal ramifications, where violations are against public order. Here, the state is a victim.	Divine disclosure or Fiqh, in which violations are considered against private rights.
2	Primary aim	Utilitarianism, through which behavioral transformation is attained.	Reforms in the society through Islah and the resultant Social Harmony
3	Authority	The respective legislative statutes, acts, and regulations.	Divine Shari'ah and the respective provincial Judicial Councils
4	State responsibility	Supervisory in nature, where the state legalizes and regulates the boundaries of mediation to ensure constitutional rights and procedural fairness.	Facilitatory in nature, where the state institutionalizes private mediation through administrative bodies such as Lijan al-Islah
5	Enforcement	Statutory rehabilitation based on sentencing alternatives directly by the state.	*Ṣulḥ*, focusing on conciliation, and Diyya, focusing on restitution.

Source: Author

IV. Conclusion

Restorative justice has undergone significant evolution and has been shaped by various cultural and legal contexts. Its principles have deep roots in indigenous practices, influencing its development and application in different parts of the world. The evolution

[77] Reconciliation Committees are formally institutionalized bodies available across Saudi Arabia. They operate under the direct administrative sponsorship of the Provincial Governorates.

of RJ can be traced back to indigenous practices that prioritized healing, reconciliation, and restoration of harm within communities. These practices emphasized dialogue, consensus-building, and community involvement in resolving conflicts and promoting social cohesion. This informal judicial system is valued in most Arab societies, as it helps resolve many revenge-type crimes, saving time, effort, and costs and reducing prison crowding. There has been a marked difference in the application of RJ in the secular and Islamic systems. In the secular legal systems, restorative justice has gained traction as a complementary approach to traditional punitive justice.[78] It offers victims a voice in justice and emphasizes repairing harm rather than punishing offenders. RJ practices, such as victim-offender mediation and conferencing, provide opportunities for dialogue, reconciliation, and restitution. These practices have been integrated into criminal justice systems in various Western countries and have been shown to improve victim satisfaction and offender accountability.

The critical difference between the Western, Arab, and Islamic legal frameworks lies in their respective perceptions of individual rights within the legal system. Arab and Islamic customary law places less emphasis on individual rights, obligations, and culpability, instead focusing on social cohesion and the collective responsibility of the clan to address transgressions committed by its members. Scholars have recognized practices such as compensation (*diya*), reconciliation (*ṣulḥ*), forgiveness (*afou*), restitution to the victim, probation, and reintegration. Additionally, they have identified unique mechanisms rooted in Islamic principles that serve as restorative measures, including repentance (*tawba*), preservation of privacy, intercession, and surety (*kafala*). Comparing the two contexts has helped generate theoretical and practical insights. Theoretically, it advances the literature by identifying context-based mechanisms wherein RJ facilitates healing through societal engagement, thereby expanding its scope beyond universalist principles. It also offers policy-relevant insights that are ideal for context-specific variations. This study has limitations that warrant discussion. The first is the conceptual and comparative focus that emphasizes the normative principles of RJ in secular and Islamic traditions. While this limitation does not impact the validity of the findings, future research may undertake jurisdiction-specific studies and stakeholder-based investigations. This could facilitate examining how RJ mechanisms are operationalized and experienced across diverse socio-legal settings. Continued research, dialogue, and collaboration are essential to further explore RJ's effectiveness and cultural relevance in diverse contexts.

[78] Wenzel, Michael, Tyler G. Okimoto, Norman T. Feather, and Michael J. Platow. "Retributive and Restorative Justice." *Law and Human Behavior* 32, no. 5 (2008): 375 - 389. https://doi.org/10.1007/s10979-007-9116-6.

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