

Journal of Law & Social Studies (JLSS)

Volume 5, Issue 4, pp 625-636

[www.advancelrf.org](http://www.advancelrf.org)

## Exploring Restorative Justice: An Alternate Dispute Resolution Mechanism in Islamic Law and Customary Law

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### Abstract

*Restorative justice is a conflict resolution technique that strives to give satisfactory victim resolutions, encourage offender accountability, and address the social impact, thereby overcoming the deficiencies of the traditional criminal justice system by bringing together all the parties involved. This paper explores the concept and alignment of restorative principles as a dispute resolution approach within both Islamic and customary law, with an emphasis on traditional dispute resolution methods such as mediation, arbitration, and conciliation. The paper emphasizes the significance of community involvement in conflict resolution and the compatibility of informal community processes with broader legal systems. This study also emphasizes the potential for cultural sensitivity and preservation of indigenous practices through the integration of restorative justice approaches in customary law systems. It specifically highlights the incorporation of restorative justice principles and ADR mechanism in Pakistan's legal system and also focuses on the traditional dispute resolution practices such as jirga and panchayat in tribal areas of Pakistan. Through a thorough analysis of these ideas and procedures, this investigation aims to clarify the similarities, differences, and implementation of restorative justice strategies in these two unique legal frameworks. This study stresses the importance of restorative justice as a tool for promoting community healing and justice within Islamic and customary law followed by analysis and possible recommendations.*

**Keywords:** Restorative Justice, Islamic Law, Customary Law, Alternate Dispute Resolution, Pakistan.

### 1. Introduction

The disputes among the people started ever since the life came into being on this planet. One of the first disputes was between the two sons of Prophet Adam, Habil and Kabil. Since then the chain of disputes started which must be resolved through proper procedures. Before the advent of Islam, pagan Arabs used to settle their disputes through arbitrators. Primitive examples are when Hazrat Muhammad (P.B.U.H) served as an arbitrator to solve the dispute of insertion of 'Black Stone', the first treaty signed between Madina's citizens and Muslims reserved arbitration to solve disputes. The Holy Quran also approves of the method of arbitration.

In contemporary times, the term Alternate Dispute Resolution (ADR), alternatively referred to as external dispute resolution is used for solving disputes. As the name shows it intends to be an 'alternative' form of the traditional court proceedings and mainly concerns out-of-court settlements.

It is a method and approach for resolving disputes, providing a way for conflicting parties to reach an agreement without resorting to litigation. ADR's growing acceptance is due to the increasing caseloads and delays in traditional court proceedings. Mediation and arbitration prioritize efficiency, flexibility, and relationship maintenance, addressing the shortcomings of adversarial litigation. This trend is being driven by the idea that alternative dispute resolution (ADR) incurs lesser costs and time commitments than litigation. Furthermore, parties increasingly favor ADR as it allows them to have a say in selecting individuals to collaborate and cultivate mutually agreeable solutions, improving overall justice administration.

Restorative justice, often associated with alternative dispute resolution, is increasingly being used in the criminal court system. The traditional criminal justice system is criticized for being ineffective in preventing crimes and deterring criminals. It is offender-centric and susceptible to exploitation due to delays, procedural uncertainties, and ineffective punishments. Manipulative practices in legal processes, bail, and parole for hardcore criminals cause physical, mental, and financial suffering for victims. Since the 1970s, countries like the USA, England, New Zealand, and Canada have embraced restorative justice, involving offenders, victims, and the community in a collaborative process. Restorative Justice is a justice philosophy that focuses on the restoration of individuals and communities by addressing the harm caused by crime and conflict and the needs of all the parties involved. In contrast to the traditional criminal or juvenile justice system, which involves the state and the accused individual, restorative justice engages the victim, the offender, and the community in addressing and healing the consequences of the wrongdoing.

Moreover, its flexibility allows application at various criminal process stages, employing mechanisms like victim support and mediation. Similar principles are found in Islamic criminal justice, especially in qisas punishment, where victims influence punishment options. Islamic law promotes repentance, aligning with modern rehabilitation in restorative justice, aiming to reform offenders through moral standards and community reintegration. "The basic principles of restorative justice require a fundamental shift in the power related to who controls and owns crime in society — a shift from the state to the individual citizen and local communities". Based on decades of experience in common law countries and origins of development in customary law, the goals of restorative justice include helping victims, restoring relationships, denouncing criminal behavior, fostering offender accountability, achieving restorative results, minimizing recidivism, and identifying crime factors. Restorative justice is seen as a more humanitarian, cost-effective, and efficient approach to justice, with potential rewards in terms of both money and deterrence.

This paper aims to explore the concept and alignment of restorative justice principles as dispute resolution with both Islamic law and customary law, focusing on traditional dispute resolution methods like mediation, arbitration, and conciliation. It highlights community involvement and the compatibility of informal community processes, including Islamic conflict resolution, with broader legal systems, as well as the potential integration of restorative justice within Islamic and customary legal frameworks. The first part of the paper will put light on the scenario under Islamic Law and the second part will focus on customary law then the third part of the paper deals with the status of informal dispute resolution processes in Pakistan followed by analysis and possible recommendations. The goal is to enhance dispute resolution mechanisms within Islamic and customary legal contexts.

## **2. Islamic Law – Key Concepts and Principles**

### **I. Overview of Islamic Law**

Islam, being one of the three Abrahamic monotheistic religions, is the religion of truth. It is the most widely followed religion in the world and embodies a complete code of life. Defining Islamic law is quite a difficult task and it is mainly because of the dynamic nature of the legal system. The term Islam means 'submission', 'surrender' to the will of God. The Arabic word for Islamic law is "fiqh".

The term “Shariah” is often used to refer to Islamic law that encompasses spiritual beliefs and actions as revealed by God in the Quran and Sunnah. Islamic Law governs the social, legal, and ethical principles of Muslims by offering complete guidance and conduct of life. On the other side, “fiqh” refers to the unique interpretation and derivation of this law by legal experts while “Shariah” serves as the foundation for essential theological beliefs in Islam as mandated by God. The Quran and Sunnah are the main sources of Islamic law. In simple terms, the Quran is the written scripture revealed by the Holy Prophet (P.B.U.H) and Sunnah encompasses the actions, statements, and deeds of the Holy Prophet (P.B.U.H). While, the secondary sources of Islamic law include Ijma, Qiyas, and Istihsan, etc.

Islamic law is of the utmost significance in the lives of Muslims. It provides a complete framework for daily rituals, prayer, and fasting, as well as a foundation for personal piety and spirituality. It governs issues like family and marriage, assuring correct behavior and justice in these partnerships. It also applies to commercial and financial dealings, emphasizing honesty, openness, and fairness in business. Islamic law is also heavily influenced by historical and cultural factors. Over centuries, it has grown and adapted to meet the changing demands of Muslim cultures while retaining its essential values. As a result, it remains relevant across a wide range of Muslim-majority and minority communities worldwide.

## II. Principles of Islamic Law in Resolving Disputes

Islam, a practical religion, claims that faith is more than just a set of beliefs; it is the very essence of life. Belief in Allah must be followed by righteous behavior. Religion is something not only to be talked about but also practiced. The Quran provides the principles of justice. The Arabic term used for justice is “Al-Adl” which means to be equal which ultimately leads towards the administration of law according to the prescribed way and in a righteous manner. It is often said that an unjust law is no law which also means that the chief goal of law is to bring justice to the concerned parties. It is one of Allah’s attributes. Therefore, one needs to stand firm for justice even if it is detrimental to one’s interests. There are Quranic verses that explain the same purpose; “Allah both commands you to render back your trusts to those to whom they are due; and when ye judge between people, that ye judge with justice.” (Surah Al-Nisa, 4: 58)

"O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness." (Surah Al-Hujrat, 49:9)

These verses underscore the idea that justice should be done even if it means going against one’s interests. As discussed earlier the concept of justice extends to all aspects of life. It is an essential requirement that both parties in a dispute should be treated accordingly irrespective of their social status. Islam emphasizes that rulings should be based on accurate and reliable information.

The word “Mizan” (balance) also signifies a similar connotation which reflects the belief that God maintains harmony and completeness in the universe, ensuring there is no injustice or imbalance. This concept of balance serves as a reminder to us to treat all things with fairness and justice, whether in nature or humanity. And He said, “And the sky, He raised and He set up the balance. That you may not transgress in the balance” (Surah Al-Rahman, 55:7).

It indicates that decisions in conflict resolution should take into account the rights and obligations of all parties concerned. It avoids excesses or injustices and promotes a peaceful society in which everyone's interests are protected. Thus, the concept of Justice and Mizan leads to balance, not only in nature and our souls but also in interactions with one another. Therefore, two fundamental concepts are emphasized in this notion. First and foremost, it is critical to ensure that people's rights are fairly and evenly distributed. Second, everyone should be given what they are entitled to and be held accountable for their actions. Allah has prescribed the significance of preserving equality and justice

in rights. Al-Adl (justice) requires that every person's rights, including moral, social, economic, legal, political, and civil rights, be respected. In Muslim society, al-Adl is a fundamental virtue, and both individuals and the community should practice justice in all parts of life.

Another concept in the Quran that is extremely important is "Rahmah". The word Rahmah, which means compassion and mercy, represents Allah's essence as Rahman (Compassionate) and Rahim (Merciful). Muslims begin every task by invoking Allah's name as the Compassionate the Merciful. The inclusion of Al-Rahman and Al-Rahim in the first chapter of the Quran emphasizes the importance of it in Islamic teachings. In the context of dispute resolution, the principle of mercy highlights the importance of forgiveness, reconciliation, and compassion. Islamic law encourages individuals to show kindness and empathy, even when they have been wronged. Therefore, mercy is a practical guideline for Muslims to follow in their everyday lives, not merely an abstract idea. These principles of Islamic Law are very crucial in resolving disputes, especially from an Islamic perspective.

### 3. Islamic Law in Promoting Restorative Justice

The Quranic commands and teachings primarily emphasize the promotion of collective goodness and virtuous qualities in individuals while also proposing proactive measures to minimize the occurrence of crimes. When crimes do occur, Islamic law prioritizes fair and impartial justice, drawing guidance from the Holy Quran, Sunnah, and other Islamic sources. Notably, Islamic law incorporates elements of what is now referred to as a restorative system, a paradigm that has been promoted globally since the 1970s as an alternative approach to addressing the rising crime rates and the limited effectiveness of conventional punitive justice and preventive punishment theories. The law of Qisas, conciliation or Suluh, restitution or compensation (Diyya, which means blood money), forgiveness, community service, warning, fining, and reintegration are all Islamic law components that are extremely similar to the concept of restorative justice. The victim's perspective is prominent and vital in all of these examples, which is a necessary need for modern restorative practices. However, Islamic law is often misconstrued due to the mistaken belief that it primarily employs principles of retributive justice, i.e. 'an eye for an eye' approach, which is especially emphasized by human rights organizations in cases involving Hudood, Hirabah, and Qisas crimes, often involving the death penalty. In contrast to popular belief, the essential ideas of restorative justice, which emerged in the 1970s, are strongly based on Islamic jurisprudential writings. These principles have been practiced for more than 14 centuries through mechanisms like Diyya (blood money), as well as provisions for forgiveness and reconciliation.

Islamic law is deeply ingrained with the ideas of empathy, forgiveness, reconciliation, and the value of communal involvement. These are also considered the basic principles and teachings of the Quran and reflect the contemporary system of restorative justice, a system that seeks not only to address the harm caused by wrongdoing but also to restore harmony and build stronger, more compassionate communities. Empathy is one of the major concepts of the Quran and Sunnah that emphasizes understanding and sharing others' feelings. Therefore, restorative justice focuses on empathy to promote community building through building strong relationships. Islamic Law also gives the notion of forgiveness and reconciliation and Muslims believe that conflicts should be resolved using forgiveness and reconciliation. The concept of forgiveness is deeply rooted in the teachings of Islam. Hazrat Muhammad (P.B.U.H) also taught Muslims a lesson of forgiveness which is to forgive even those who have wronged you and offended you. "...but if a person forgives and makes reconciliation - his reward is due from Allah..." (Surah Ash-Shura, 42:40). This verse reminds believers of Allah's forgiveness and encourages them to overlook and forgive others' shortcomings. Within the context of restorative justice, forgiveness plays a crucial role in the healing process. Relationships can be repaired and trust restored when victims are able to forgive. By asking for and accepting forgiveness, criminals may also find a path to atonement and recovery. Reconciliation results from the structured environment that restorative justice establishes for both parties to express and receive forgiveness.

By means of this procedure, they endeavor to comprehend one another's viewpoints and identify a shared ground for settlement. In addition to addressing the harm done, the objective is to promote community cohesion and trust-building.

Community Involvement is also a core component of restorative justice. It is also deeply rooted in the Islamic concepts of collective responsibility and mutual support and emphasizes the importance of collective responsibility and mutual aid within the Muslim community. The community's involvement aids in the reintegration of the offender and the healing of the victim. Furthermore, it supports the notion that conflict resolution is a collaborative endeavor in which the entire community is invested in seeing that justice is served and relationships are refurbished.

## **I. Restorative Justice Within Islamic Law**

The harmony between restorative justice principles and Islamic law is evident in their shared commitment to justice, mercy, and the restoration of relationships. Islamic law, profoundly mentioned in the Quran, emphasizes 'Adl (justice) as a fundamental principle, echoing the fair resolutions sought by restorative justice. The Quranic principles of Rahma (mercy) and forgiveness align seamlessly with restorative justice values, encouraging individuals to move beyond retribution toward rehabilitation. Furthermore, restorative justice's emphasis on healing relationships via dialogue and comprehension resonates with the Quranic notion of Sulha (reconciliation). Both systems place a premium on collaborative responsibility, engaging the community in dispute resolution and rehabilitation initiatives. This compatibility emphasizes the universal quest for justice and reconciliation, emphasizing the potential for collaboration between many legal and ethical frameworks to promote a just and equitable society.

## **II. Traditional Islamic Dispute Resolution Methods**

### **A- Mediation (Sulh)**

Mediation, or Sulh, stands as a cornerstone in Islamic dispute resolution. Sulh is a voluntary and consensual approach to dispute resolution that is rooted in Quranic injunctions advocating reconciliation. It is a compromise-based settlement reached by the disputants themselves or with the assistance of a third party. The Prophet Muhammad himself is said to have engaged in conflict resolution, demonstrating the importance of the practice. To show the legality and efficacy of mediation, contemporary Islamic academics and jurists frequently appeal to historical Islamic legal literature.

Under Islamic law, Sulh is governed only by the indisputable principle that there can be no compromise in the area of Huquq Allah, or the Rights of Allah, which encompass Hudud punishment, zakat, kaffarah, and other related matters. Any attempt to go around the rules laid forth for this by mutual settlement is wrong and should be avoided. However, in terms of huquq il "abad" (human rights), conciliation and compromise are not only feasible but also preferred, provided that they are fair and just and do not contravene any shariah-mandated laws.

This process is flexible, allowing for innovative solutions that adhere to Islamic teachings. In his classic work "Al-Mughni", Islamic scholar Ibn Qudamah examines the permissibility of Sulh, emphasizing the need of reconciling hearts and resolving disputes amicably. In contemporary Islamic legal practice, mediation has witnessed a resurgence. Organizations such as the International Islamic Center for Reconciliation and Arbitration (IICRA) advocate Sulh as an efficient method of resolving disputes among Muslims. Case studies show that Sulh has been used successfully in familial, commercial, and communal disputes, emphasizing its adaptability to different contexts.

### **B- Arbitration (Tahkim)**

Arbitration, or Tahkim, is another traditional Islamic dispute resolution mechanism deeply entrenched in Islamic legal history. In Sharia, arbitration is defined as 'two parties choosing a judge

to resolve their dispute and their claim. Traditionally, the differences between arbitration and formal dispute resolution through the judiciary is the parties themselves select the arbitrator and the parties themselves must voluntarily accept and obey the decision of the arbitrator. The Quran explicitly references arbitration in the given Quranic verse: “And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people.”(Surah An-Nisa, 4:35)

Islamic intellectuals and jurists have recognized the legality of arbitration in resolving conflicts, including Imam Al-Ghazali and Ibn-Taymiyyah. The arbitration procedure is guided by the ideals of fairness, impartiality, and conformity to Islamic law. Classical Islamic legal texts, such as Al-Muwatta by Imam Malik, contain provisions related to Tahkim. Contemporary Islamic arbitration bodies like the establishment of the Islamic Fiqh Academy and the International Islamic Center for Reconciliation and Arbitration (IICRA), aim to advance and oversee the practice of Islamic arbitration. These bodies often collaborate and interact with international organizations to ensure that arbitration proceedings with both Islamic legal principles and international standards.

### **C- Conciliation (Muwada'a)**

Conciliation, or Muwada'a, is also a method of dispute resolution that emphasizes negotiation and compromise. Muwada'a based on the Quranic urge to settle disputes amicably, permits parties to establish common ground without resorting to formal legal proceedings. Classical Islamic jurists, including Al-Shafi, acknowledged the permissibility of Muwada'a. Umar Ibn al-Khatt'ab says: ‘And strive for conciliation so long as the rendering of judgment does not become evident to you.’

The Muwada'a procedure entails parties entering into voluntary conversations to obtain a mutually accepted result. This strategy frequently promotes openness and flexibility, producing a cooperative environment. Islamic legal books, such as Al-Muwatta and Al-Mughni, shed light on the principles that regulate conciliation. Contemporary Islamic legal practices continue to embrace conciliation as a viable alternative to formal litigation. The principles of Muwada'a align with current trends of alternative dispute resolution and have applications in a variety of fields such as family law, trade, and community disputes.

### **III. How to Align the Restorative Justice with Islamic Law?**

Islamic Law, or Sharia, seeks to secure societal well-being and justice. Using Restorative Justice in a way that aligns with Islamic beliefs provides a comprehensive approach. The ultimate outcomes of constructing laws, Maqashid Shariah, prioritize genuine goodness for humanity. One important Maqashid principle is the preservation and restoration of social peace. As a result, emphasizing Restorative Justice Values in the criminal justice system becomes critical to achieving these goals. As the restorative justice trainer and writer, Kay Pranis, says: “The concentration of power and influence in the hands of professionals, to identify and determine solutions to problems, has not served social justice because it undermines democracy and encourages dependency”.

Islam is a religion of peace and compassion by definition, and its principles of restorative justice—which are ingrained in Islamic law from the time of the Prophet Muhammad (PBUH) in the seventh century—should be used to distinguish it instead of the harshness of Hudud punishments. Examples of restorative justice can be found in Qisas and Tazir, the other two types of crimes under Islamic law.

#### **A- International Practices**

Many countries use the system of restorative justice in relation to Islamic law, and sharia, as an alternative to a conventional system. An article called “The Concept of Retributive and Restorative Justice in Islamic Criminal Law with reference to the Malaysian Syariah Court” written by Ramizah Wan Muhammad and Khairunnasriah Abdul Salam examines the use of restorative justice in the Syariah Court, with a focus on selected instances from 2010 to 2013. A lady was fined and lashed on

one occasion for drinking alcohol, with the judge emphasizing correction and societal deterrent. Another instance concerned penalties and reduced sentences for decency offenses. Notably, a case of unmarried sexual intercourse included counseling sessions, which aligned with restorative justice ideals. In a case involving a Hindu convert to Islam, the court rejected condemnation and ordered the individual to repent, learn Islam, and attend six months of counseling sessions. According to the article, restorative justice is present in the Islamic criminal justice system, particularly in qisas and Tazir punishments, with Syariah Court rules coinciding with restorative components, such as determining rehabilitation centers for offenders.

The Asian International Arbitration Centre has introduced i-Arbitration rules, which indicate compliance with Islamic law in international commercial arbitration. These rules facilitate parties desiring to resolve disputes using Islamic processes. Arbitrators under these rules, for instance, may remove interest (riba) in determining penalties. Importantly, the i-Arbitration rules are consistent with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules.

## **B- Case Studies of Qisas and Diyya**

Islamic law offers channels for dispute resolution that take the needs of the victim into account through the concepts of Qisas (equal retribution) and Diyat (blood money). Though seeking revenge is permitted under Qisas, and compensation through diyat is allowed, reconciliation and forgiveness are recommended as preferable courses of action.

The case studies intend to highlight the deeply rooted ideas of restorative justice within the Islamic criminal justice system, emphasizing their regular use. Notably, emphasis is placed on cases in which victims' families chose forgiveness over Qisas vengeance or Diyya compensation. In Saudi Arabia, Faisal al-Ameri was sentenced to death for murdering Abdullah al-Dousary. His father, Rabi'a al-Dousary, offered to pardon him if he memorized the entire Holy Quran. The Higher Committee of Correction persuaded the father to pardon without accepting blood money in exchange for Ameri memorizing the Quran before his release from prison. This situation was intended to teach the convicted felon a more profound lesson.

Moreover, in another case the Shariah Court ruled in favor of the heirs of three deceased Pakistanis killed in a road accident, awarding each family Diyya of Saudi Riyal 30,000. Notably, the accused, Nasir Jehan Al-Shahrani, a Saudi national responsible for the deaths, died in the same accident, and Diyya was compensated by his family members.

In Pakistan, a very famous case of Raymond Allen Davis who was charged under Section 302 PPC for the murders of Faizan Haider and Muhammad Faheem Shamshad. The deceased's heirs offered Diyya money, which was accepted as a voluntary and non-coercive arrangement after the court was satisfied with their statements.

## **4. A cursory Glance at Customary Law**

Customary law, also known as international customary law, refers to the set of legal norms and principles that have evolved or developed over time through the consistent practice of states, based on legal obligations. It is noteworthy that customary law can exist at both the domestic and international levels. At the domestic level, it refers to the legal customs and practices that are accepted and recognized within a particular jurisdiction. It derives from the traditions and practices of a specific society and is often unwritten. Also, it is usually concerned with local customs and traditions, and it may coexist with statutory law. When a state recognizes and accepts these customs as legally binding, it then becomes part of the civil law. It is specific to a particular jurisdiction and may vary between different countries. At an international level, international customary law refers to norms and practices that have emerged from the consistent practice of states in their relation with each other. It is universally applicable and binding upon all states, regardless of whether they have explicitly consented to it, and it forms part of the general international law.

It is significant to mention that customary law may coexist with and complement formal legal systems in certain jurisdictions. For example, formal legal systems may recognize and incorporate certain customary laws into their legal framework. It means that customary laws are given legal validity and can be enforced alongside formal laws. It facilitates the transition between customs and the contemporary legal system. Furthermore, the official court system may be supplemented or replaced by acknowledged customary law's well-established processes for settling conflicts inside the community, such as village councils or tribal elders. This gives people the freedom to select a dispute resolution process that is consistent with their cultural norms and beliefs.

### **I. Importance of Alternate Dispute Resolution in Customary Law**

Customary law has its origins in the customs and values of a specific group of people or culture. Alternative dispute resolution techniques, like negotiation or mediation, give people the chance to settle conflicts in a way that honors and represents their cultural traditions. ADR supports the upkeep and preservation of these traditions. ADR additionally fosters community involvement by enabling parties to actively engage in decision-making procedures, encouraging self-determination, and fortifying the society's social fabric. Customary law frequently responds to the demands of the community and is dynamic and ever-evolving. ADR procedures support this flexibility by offering flexible procedures that can be customized to meet the particular requirements and circumstances of the parties concerned. ADR methods embrace this flexibility by providing adaptable processes that can be tailored to the specific circumstances and needs of the parties involved. This allows for more creative and effective problem-solving, taking into account the unique cultural, social, and economic contexts of the community. It also provides access to justice and offers a localized and affordable alternative to traditional court proceedings, ensuring fair and timely resolutions of conflicts in communities where formal court systems may be distant or unfamiliar.

### **II. Role of Restorative Justice in Resolving Disputes in Customary Law**

In systems of customary law, restorative justice is an essential strategy that focuses on mending harm and mending relationships. It promotes communication amongst the parties involved, giving them a chance to voice their opinions and work towards amity. It entails the community as a whole, frequently represented by respected members or elders, taking part in resolving conflicts together. It guarantees that decisions are in line with acceptable social norms and customs. Additionally, by providing people a voice and acknowledging their agency in the dispute settlement process, restorative justice empowers people. It promotes accountability, responsibility, and active engagement from all involved, including the victim and the offender. Furthermore, in customary law, restorative justice aims to resolve not only current conflicts but also future ones, thereby promoting long-term community cohesion. The preservation of social cohesiveness, trust, and harmony within the society can be facilitated by placing a strong focus on understanding, forgiveness, and reconciliation. Furthermore, because restorative justice places an emphasis on addressing and repairing harm as well as the needs and obligations of all parties involved, it provides a more effective option to the traditional retributive justice model.

## **5. Restorative Justice as An Alternate Dispute Resolution in Customary Law**

### **I. Restorative Justice Practices under ADR at the Domestic Level**

The implementation of restorative justice as an alternate dispute resolution in Pakistan can be observed in various regions and communities across the country. Individuals who belong to rural areas use customary or conventional mechanisms and procedures called "Informal Courts" to settle disputes. Restorative justice practices in different countries vary based on cultural traditions, historical context, and community values. While the specific processes and rituals may differ, the overarching aim remains consistent: to address harm, restore relationships, and promote community healing.



Jirgas and Panchayats are traditional dispute-resolution mechanisms widely prevalent in rural and tribal areas of Pakistan. These community-based forums play a significant role in resolving conflicts, promoting reconciliation, and providing justice according to local customs. They focus on mediating disputes, reaching consensus, and repairing harm instead of following formal legal procedures. Jirgas are unofficial forums for dispute resolution where recognized community leaders and elders conduct discussions and bargaining. Although there have been complaints about discrimination and rights violations in some instances, these forums are still acknowledged and used in some regions, and efforts have been made to integrate restorative justice concepts like reconciliation and mediation into their processes. Jirga (tribal councils) are observed throughout Pakistan, albeit according to different religions. In Sindh, it is referred to as "Faislo," in Punjab as "Panchayat," and in KPK and Baluchistan as "Jirga."

Common strategies for advancing restorative justice include compensation and mediation. In order to resolve harm caused by an offense, agreements, financial compensation, or other measures are negotiated by community elders or other powerful individuals. Restoring peace in the community and making sure the offender accepts accountability for their conduct are the two main objectives. When there are criminal offenses in a community, efforts are made to promote relationship restoration and reconciliation. For example, the victim's family may be asked for forgiveness in murder or physical harm instances, and restitution in the form of blood money (diyyat) may be arranged. Rebuilding trust, mending wounds, and ending continuing disputes are the main goals of this approach. Furthermore, the Panchayati Raj System is a community-based institution in rural India that facilitates restorative justice processes. They are composed of elected village elders who have the authority to resolve disputes within the community. Panchayats encourage dialogue, mediation, and negotiated settlements to restore harmony and maintain social cohesion.

## II. Alternate Dispute Resolution in Pakistan's Legal System

In Pakistan, the mechanism of alternate dispute resolution has been incorporated into the laws in order to restore justice and avoid expensive court proceedings by resolving disputes through negotiations and other alternatives. Section 89-A of the Civil Procedure Code of 1908 (CPC) states that "The Court may, when it finds appropriate, having regard to the facts and circumstances of the case, follow with the agreement of parties an alternative conflict settlement process, including mediation and conciliation, to obtain an expeditious disposition of a case, in or to a suit."

Similarly, Order X Rule 1A of the CPC, 1908 provides that, "The court can initiate preliminary proceedings, issue speedy case processing orders, issue commissions for witness examination, admit documents, and adopt alternative dispute resolution methods with parties' consent."

Moreover, sections 9 and 10 of the Juvenile Justice System Act, 2018 state that the complaint against the juvenile can be referred to the Juvenile Justice Committee for disposal through diversion. The Committee will handle cases through diversion within a month of referral, with the complainant's consent, using various options like property restitution, damage repair, community service, fine payments, juvenile rehabilitation, and reprimand. If the offense is against a state, the Committee may divert the case with the public prosecutor's consent. Under these sections, diversion is used as an alternative in order to dispose of juvenile cases instead of implementing punitive punishments. Furthermore, the Punjab Alternate Dispute Resolution Act, 2019 is also a special legal framework that offers an alternative dispute resolution process.

## 6. Restorative Justice- An Alternative Method of Resolving Disputes

An alternative method of resolving disputes, restorative justice aims to restore the harm done to victims, attend to the needs of all parties, and foster healing and reconciliation. This is in line with the tenets of Islamic and customary law, which place more emphasis on mending social harmony and peace than they do on punishing violators. Additionally, it gives community members the chance to

actively participate in the decision-making process. The community is essential to Islamic and customary law, and community members' involvement encourages a sense of dedication to the resolution and ownership of the law. Building consensus ensures that judgments are based on regional cultural norms and values and permits a wider view of justice.

Moreover, discussions and open communication between the victim, the offender, and other stakeholders are encouraged under restorative justice procedures. Better understanding and empathy are facilitated by this, and it frequently results in a more satisfying settlement for all parties. This kind of conversation is consistent with Islamic ethics, which encourage kindness, forgiveness, and compassion. It also acknowledges the uniqueness of every conflict and its underlying causes. It enables customized, unique solutions that consider the unique requirements and situations of both the perpetrator and the victim. This strategy is consistent with the tenets of Islamic law, which aim for proportionality and justice when dealing with crime. Furthermore, it has been demonstrated that restorative justice lowers recidivism rates. By focusing on addressing the root causes of crime and providing support to offenders, it offers opportunities for rehabilitation and reintegration back into the community. This can contribute to reducing the likelihood of future conflicts within the Islamic and customary law systems.

Contrary to this, the critiques of restorative justice as an alternate dispute resolution say that many people, including legal professionals, community members, and religious leaders, may have a limited understanding of restorative justice principles and processes. This lack of awareness can hinder the widespread acceptance and effective implementation of restorative justice within Islamic and customary law systems. Also, it may challenge traditional legal frameworks based on punitive justice in Islamic and customary law systems. Integrating restorative justice principles and practices may require changes to existing laws, regulations, and procedures. This can be met with resistance due to concerns over the potential dilution of legal authority and uncertainty surrounding the outcomes. Critics argue that restorative justice focuses more on healing and reconciliation, rather than punishment, which may be seen as inadequate or inappropriate in certain cases. This can raise concerns about maintaining social order, deterrence, and ensuring severe enough consequences for serious offenses.

In some traditional and patriarchal societies governed by Islamic and customary law, power imbalances between genders can pose significant challenges in restorative justice processes. Addressing the needs and concerns of marginalized groups, particularly women and vulnerable individuals, may require additional efforts to ensure equal participation and protection.

## **7. Recommendations for Enhancing Restorative Justice**

Following are some suggestions for promoting fairness in the informal justice system (ADR) through negotiation, conciliation, mediation, or other modes;

- In both Islamic and customary law, there is an urgent need to advance education and knowledge of the fundamentals of restorative justice. People may be better able to comprehend the advantages and workings of restorative justice as a result, increasing its acceptance and application.
- Incorporate traditional practices and cultural norms into restorative justice processes to make them more accessible and relevant to communities practicing Islamic and customary law. This can involve recognizing community leaders or religious figures as mediators or facilitators of the restorative justice process.
- It is essential to ensure that the restorative justice procedure conforms to the norms of Islamic and customary law while honoring cultural and religious beliefs. This can be accomplished by carefully consulting with religious experts, local authorities, and other pertinent parties to create policies that follow the law and cultural norms.

- Throughout the restorative justice process, efforts must be made to empower and support victims. In order to ensure that the victim's rights are upheld, this may involve providing counseling services, legal guidance, and assistance in their effective participation.
- Promote active community participation in the restorative justice process, highlighting the shared accountability for resolving disputes and fostering reconciliation in the frameworks of Islamic and customary law. Public forums, training programs, and community discussions can all help with this.

## 8. Conclusion

In a nutshell, Islamic and customary law use restorative justice as an alternative dispute resolution method that emphasizes healing, community involvement, mediation, customization, victim support, accountability, and evaluation in order to bring about reconciliation and bring peace back to the community. In both Islamic and customary law, restorative justice aims to shift the focus from punishment to healing, rehabilitation, and the reintegration of offenders into society. By encouraging dialogue, and empathy, and repairing the harm caused, restorative justice practices can contribute to maintaining social order, fostering community cohesion, and offering victims a voice in the justice process.

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