

Chapter 4

Capacities of Restorative Practices Within Domestic Customs and Traditions: The Societal–Cultural and Legal Experiences of Iran

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ABSTRACT

Despite the recognition of the concept of ‘restorative justice’ in the Persian literature of criminal sciences during recent decades, Iran has a long history of traditional customs and heritages with restorative function that their origins could be found in both pre-Islamic and post-Islamic historical eras. However, the restorative practices have entailed contradictory outcomes of reception and censure. The sympathizers believe that they are a specific means for interaction and relations between tribes, clans, and ethnic groups, or mechanisms of social control. But the opponents criticize such practices due to their potential detrimental consequences particularly in some cases of forced marriage. Notwithstanding these considerations and concerns, one approach to this issue alongside the subject of the present book is to inquire the capacities of restorative practices within domestic customs and traditions of Iranian society. In addition, the legislative manifestations of restorative practices within the Iranian legal system and challenges of the related legislation deserve to be discussed.

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INTRODUCTION

There are at least two traditional rituals that have still been applied between ethnic groups in some areas of Iran (Khanmohammadi and Ehsani, 2019, p. 140; Nozarpoor, 1991, p. 44).¹ These traditional rituals that could be described as restorative practices are ‘cease-blood’ or ‘peace-blood’ (‘blood stop’ and ‘blood peace’ in other references, e.g., Osanloo, 2020, p. 11; *khoon-bass* or *khoon-solh* in Persian) and ‘resolution’ (*fasl* in Persian). Both traditional rituals have compensatory and remedial functions based on their cultural and religious bases, and thus, are recognized as restorative justice practices. Some authors argue that reconciliation rituals and practices frame some of particular characteristics of Islamic teachings like compassion and grace in suffering, and also demonstrate the specific features of ancient Persian culture including chivalry and conciliation or peacemaking. However, religious law in the form of *Shari’a* (Islamic law) or *fiqh* (Islamic jurisprudence) has played more significant role in development of these reconciliation and restorative rituals and practices particularly after Islamic government since the 1979 Revolution in Iran (Osanloo, 2020, pp. 11-12). Accordingly, when a crime is likely to cause a bloody or serious conflict or dispute between two tribes or ethnic groups, the elders or fathers of the tribe or group seek to find a way to resolve the conflict and to avert the danger of bloodshed (Yarahmadi, 2010, pp. 57-8).

In relation to criminal justice policies, the Iranian legal system seems to be influenced by these traditional rituals and customs at two levels:

At the first level, we witness a superficial coexistence or concurrence of the traditional rituals and criminal justice system according to which criminal justice agencies tolerate the existence and occurrence of such rituals and customs. In other words, they are allowed to remain in subsistence and continuation under the authority of legal-judicial system. Such a coexistence or concurrence can be understood in the light of a semi-participatory criminal policy as well as Islamic thoughts. According to a participatory criminal policy, formal and informal criminal justice agencies and organizations cooperate or participate together in response to crime in a definite society. But based upon the Islamic doctrine, which has specifically been promoted in the post-revolutionary Iran, practices such as forbearance, forgiveness and reconciliation are as values and virtues that demonstrate the religious beliefs of Iranian people as the ‘Islamic unified nation’ (*umma vaahedah*).

At the second level, we see a development in the domestic criminal justice policy based upon the restorative justice doctrine. This process is sometimes referred to as ‘translational criminology’ through which prevention, reduction and management of crime require that the scientific discoveries are translated into policy and practice by creating a dynamic interface between study/research and policy/practice (Laub and Frisch, 2016, p. 11). The notion of restorative justice arose and grew in the Persian

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