



How to cite this article:

Rohani, A. J., Esmaeili, M., & Tadayyon, A. (2026). A Comparative Reappraisal of the Impact of Cultural and Jurisprudential Structures on the Criminal Policy of Iran and Afghanistan: From Punitive Authoritarianism to Restorative Justice. *Journal of Historical Research, Law and Policy*, 4(1), 1-15. <https://doi.org/10.61838/jhrp.158>



Article history:
Original Research

Dates:

Submission Date: 26 September 2025
Revision Date: 20 December 2025
Acceptance Date: 27 December 2025
First Publication Date: 22 February 2026
Final Publication Date: 01 March 2026

A Comparative Reappraisal of the Impact of Cultural and Jurisprudential Structures on the Criminal Policy of Iran and Afghanistan: From Punitive Authoritarianism to Restorative Justice

1. Abdul Jalil. Rohani ¹: Department of Criminal Law and Criminology, CT.C., Islamic Azad University, Tehran, Iran
2. Mahdi. Esmaeili ²: Department of Criminal Law and Criminology, CT.C., Islamic Azad University, Tehran, Iran
3. Abbas. Tadayyon ³: Department of Criminal Law and Criminology, CT.C., Islamic Azad University, Tehran, Iran

*corresponding author's email: Mahdi.esmaeili@iaustb.ac.ir

ABSTRACT

The present study aims to conduct a comparative reappraisal of the impact of cultural and jurisprudential structures on the criminal policy of Iran and Afghanistan by analyzing the mechanisms through which culture and Islamic jurisprudence shape the penal policies of the two countries and by elucidating the conditions enabling a transition from authority-centered approaches to justice-oriented and restorative models. The research method is descriptive–analytical and comparative, based on the examination of legal documents, jurisprudential texts, criminological theoretical foundations, and secondary historical and legal sources. The findings indicate that in both countries Islam plays a central role in legitimizing criminal policy; however, the manifestation of this role differs. In Iran, the establishment of Imami (Ja'fari) jurisprudence and related institutional structures has fostered a more centralized and relatively authoritarian model, whereas in Afghanistan, the combination of Hanafi jurisprudence, tribal custom, and political instability has resulted in a hybrid and fragmented pattern. At the same time, the study demonstrates that Islamic jurisprudence itself contains capacities for a justice-oriented reinterpretation—such as reconciliation, forgiveness, diyah (blood money), and an emphasis on the rehabilitation of offenders—which can be utilized through legislative reform, the strengthening of civil institutions, and the promotion of restorative mechanisms. The overall conclusion is that the realization of restorative justice requires jurisprudential reinterpretation, cultural change, and legal institution-building, so that criminal policy may shift from a purely punitive system toward a hybrid and more humane model.

Keywords: *criminal policy; Islamic jurisprudence; culture; punitive authoritarianism; restorative justice; Iran; Afghanistan.*

Introduction

Criminal policy constitutes one of the most explicit manifestations of how power is exercised, justified, and normalized within a society. Far from being a purely technical or legal domain, criminal policy reflects deep-seated cultural values, religious interpretations, and political rationalities that define how a community understands crime, responsibility, punishment, and social order. Decisions regarding what behaviors are criminalized, how offenders are punished, and whose interests are prioritized in the criminal process are inseparable from broader structures of authority and meaning. In this sense, criminal policy operates as a mirror of dominant cultural narratives and power



relations, translating abstract values into concrete mechanisms of social control. Contemporary scholarship increasingly emphasizes that punitive severity or leniency in criminal justice systems cannot be adequately explained without reference to the cultural and ideological contexts in which legal norms are produced and enforced, particularly in societies where religion plays a central normative role (1, 2).

In Muslim-majority societies, the interrelationship between culture, religion, and criminal policy assumes a distinctive configuration due to the normative authority of Islamic jurisprudence. Islamic law is not merely a historical or symbolic reference but often functions as an active source of legitimacy for criminal legislation and penal practices. Cultural perceptions of morality, social order, honor, and deviance are frequently articulated through religious concepts, which in turn shape public expectations of punishment and justice. Studies on criminal policymaking in Iran demonstrate that processes of criminalization are deeply embedded in cultural policymaking frameworks that combine religious doctrine with state priorities, thereby reinforcing particular moral hierarchies within the legal system (3). Similarly, analyses of Islamic criminal policy highlight that jurisprudential interpretations significantly influence whether criminal responses emphasize deterrence, retribution, or reconciliation (4). These dynamics underscore that Islamic jurisprudence should be understood not as a monolithic set of rules but as a flexible normative field whose practical implications depend on cultural mediation and institutional context.

Despite the ethical and restorative dimensions embedded within Islamic legal thought, many contemporary criminal justice systems in Muslim-majority countries exhibit a pronounced tendency toward punitive and authoritarian orientations. This tendency is evident in expansive criminalization, reliance on harsh penalties, and the prioritization of state authority over social participation in the administration of justice. Authoritarian criminal policies often frame crime as a direct threat to political or moral order, thereby legitimizing severe punitive responses in the name of security and stability. In Iran, for example, criminal policy has been characterized by strong state intervention and a security-oriented approach, particularly in areas such as economic crime and recidivism, where punishment is frequently presented as a tool for safeguarding systemic order rather than addressing underlying social causes (5, 6). Comparable patterns can be observed in Afghanistan, where criminal policy has at times been shaped by coercive enforcement mechanisms tied to political instability and competing sources of authority (7).

The dominance of punitive orientations has generated significant scholarly and practical concerns, especially regarding their effectiveness in reducing crime and their compatibility with principles of justice and human dignity. Excessive reliance on punishment often exacerbates social exclusion, undermines trust in legal institutions, and fails to address the structural conditions that give rise to criminal behavior. In response to these challenges, restorative justice has gained increasing attention at both global and regional levels as an alternative or corrective paradigm. Restorative justice emphasizes repairing harm, restoring social relationships, and involving victims, offenders, and communities in the resolution of criminal conflicts. Although frequently associated with modern criminological theories, restorative justice resonates strongly with longstanding Islamic concepts such as reconciliation, forgiveness, compensation, and social harmony. Research on non-penal and alternative responses within Islamic criminal policy illustrates that these restorative elements are not external imports but integral components of Islamic normative traditions (4, 8).

The relevance of restorative justice is particularly salient in societies experiencing social fragmentation, political transition, or legitimacy crises within their criminal justice systems. Afghanistan provides a compelling example in this regard, as community-based mechanisms such as jirgas continue to play a central role in resolving disputes and maintaining social order. While these mechanisms are often criticized for inconsistencies and human rights

concerns, they nonetheless reflect a strong cultural preference for restorative and reconciliatory solutions over formal punitive processes (9). At the same time, empirical studies on Afghan society indicate that patterns of order and security are deeply influenced by social and cultural contexts that cannot be effectively managed through purely punitive state-centered policies (10). These observations reinforce the need to reconsider the balance between punishment and restoration in criminal policy frameworks grounded in Islamic and cultural traditions.

Against this backdrop, Iran and Afghanistan emerge as particularly instructive cases for comparative analysis. Both societies share Islamic foundations and historical reliance on religious jurisprudence as a source of legal legitimacy, yet they have developed markedly different political structures, cultural configurations, and modes of governance. Iran represents a centralized state system in which Islamic jurisprudence has been institutionally codified and integrated into formal criminal law, producing a relatively coherent but highly state-driven criminal policy. Afghanistan, by contrast, exhibits a pluralistic and fragmented legal landscape where Islamic jurisprudence, customary norms, and political contingencies intersect, often resulting in decentralized and informal modes of criminal regulation (11, 12). These divergent trajectories provide a valuable opportunity to examine how similar religious foundations can yield distinct manifestations of punitive authoritarianism.

The central problem addressed in this article arises from this apparent paradox. If Islamic jurisprudence contains both punitive and restorative principles, how do societies grounded in similar religious traditions arrive at different forms of authoritarian criminal policy? In Iran, punitive authoritarianism tends to be institutionalized, legalistic, and justified through formal interpretations of Islamic law aligned with state power. In Afghanistan, authoritarianism in criminal justice often appears in informal and coercive forms, shaped by tribal authority, political instability, and competing sources of legitimacy (12, 13). Understanding these differences requires moving beyond simplistic explanations that attribute punitive severity solely to religion and instead examining the cultural and structural contexts in which jurisprudential norms are interpreted and applied.

Existing literature on criminal policy in Islamic contexts has made significant contributions by analyzing specific national systems or particular categories of crime, such as economic offenses or family-related crimes (7, 14). Other studies have explored the cultural dimensions of criminalization and prevention, emphasizing the role of social values and collective norms (2). However, there remains a notable gap in comparative research that systematically examines how similar Islamic foundations interact with different cultural and political structures to produce divergent forms of punitive authoritarianism. Comparative analyses that integrate jurisprudential interpretation, cultural context, and power structures remain relatively scarce, particularly with respect to Iran and Afghanistan as paired cases.

This article seeks to address this gap by offering a comparative and analytical reappraisal of the impact of cultural and jurisprudential structures on the criminal policies of Iran and Afghanistan. Rather than treating punitive authoritarianism as an inevitable outcome of Islamic criminal law, the analysis conceptualizes it as a contingent product of interpretive choices, institutional arrangements, and cultural narratives. By situating both cases within a shared Islamic framework while highlighting their divergent trajectories, the study aims to demonstrate that authoritarian criminal policies are neither uniform nor unavoidable in Muslim-majority societies. The comparative approach adopted here allows for a more nuanced understanding of how restorative justice principles might be reactivated or strengthened within existing legal and cultural contexts.

The analytical objectives of this study are threefold. First, it seeks to elucidate the ways in which culture and Islamic jurisprudence jointly shape criminal policy in Iran and Afghanistan, with particular attention to their role in

legitimizing punitive practices. Second, it aims to identify and compare the specific forms of punitive authoritarianism that emerge in each context, emphasizing the interaction between state power, social authority, and legal interpretation. Third, the article explores the potential of restorative justice as a normative and practical alternative within these systems, drawing on both Islamic legal traditions and contemporary criminological insights. By pursuing these objectives, the article contributes to broader debates on criminal policy reform, Islamic legal studies, and the cultural foundations of justice, while offering a framework for rethinking punishment and restoration in societies grappling with the limits of authoritarian penal models.

Conceptual and Analytical Framework: Criminal Policy, Culture, and Islamic Jurisprudence

Criminal policy is commonly reduced in legal discourse to the body of statutory criminal law and procedural rules enacted by the state. Such a reductionist understanding, however, obscures the broader social, cultural, and normative dimensions through which societies define crime and respond to deviance. In a more comprehensive sense, criminal policy encompasses the full range of legislative, judicial, administrative, and informal practices through which social order is maintained and violations are addressed. This broader conception includes not only penal codes and sentencing frameworks but also strategies of prevention, social control, rehabilitation, and symbolic communication of values. Cultural criminology has emphasized that criminal policy functions as a cultural project through which dominant meanings about morality, danger, and authority are produced and reproduced, rather than as a neutral technical response to crime (1). From this perspective, criminal policy must be analyzed as an arena in which law, power, and culture intersect.

Understanding criminal policy in this expanded sense is particularly crucial in societies where formal legal norms coexist with strong religious and cultural value systems. Criminalization decisions often reflect collective anxieties, moral judgments, and political priorities rather than purely empirical assessments of harm. Research on the process of criminalization in Iran demonstrates that legislative choices are deeply embedded in broader cultural policymaking processes, where law serves as an instrument for reinforcing specific moral and ideological narratives (3). Similarly, analyses of criminal policy in Islamic contexts underline that prevention, punishment, and correction are not merely legal categories but also ethical and social practices shaped by communal expectations (4). Accordingly, any analytical framework that seeks to explain punitive severity or reform-oriented tendencies must move beyond statutory texts and consider the cultural logics that underlie them.

Culture plays a decisive role in shaping what may be described as penal rationality, that is, the underlying logic through which societies justify punishment and evaluate its necessity. Cultural values related to obedience, honor, security, and social cohesion inform whether punishment is perceived primarily as retribution, deterrence, moral correction, or social defense. In societies where obedience to authority is highly valued, punitive responses tend to be framed as legitimate tools for enforcing conformity and preserving order. Conversely, cultures that emphasize communal harmony and reconciliation may be more receptive to non-punitive or restorative approaches. Studies on the role of culture in crime prevention highlight that collective attitudes toward deviance significantly influence both formal criminal policies and informal responses to wrongdoing (2). In this sense, penal rationality is culturally constructed, reflecting shared assumptions about human behavior and social stability.

The cultural determinants of penal rationality are closely intertwined with notions of security and threat. When crime is culturally framed as an existential danger to moral or political order, criminal policy is more likely to adopt authoritarian and exclusionary forms. Research on social and cultural contexts of order and security demonstrates

that perceptions of insecurity often lead to demands for harsher punishment and expanded state control, even in the absence of clear evidence of effectiveness (10). Such dynamics are not unique to any single society but are particularly pronounced in contexts marked by political instability, ideological polarization, or rapid social change. Culture thus mediates how fear, risk, and authority are translated into criminal policy choices.

Within Muslim-majority societies, Islamic jurisprudence constitutes a central normative reference point in shaping penal rationality. However, treating Islamic law as a fixed penal template misrepresents its historical and doctrinal complexity. Islamic jurisprudence is better understood as a dynamic normative system characterized by interpretive plurality, contextual reasoning, and ethical objectives. Classical juristic traditions developed a range of responses to crime that extended beyond punishment, including reconciliation, compensation, and moral exhortation. Scholarship on Islamic criminal policy emphasizes that the objectives of Sharia include the preservation of social harmony, justice, and human dignity, rather than the mechanical application of penalties (4). This dynamic character allows Islamic jurisprudence to accommodate diverse social contexts, but it also opens space for selective and politicized interpretations.

The flexibility of Islamic jurisprudence has, in practice, enabled divergent criminal policy trajectories. On one hand, jurisprudential concepts can be mobilized to legitimize severe punishment and expansive criminalization when aligned with state power or dominant cultural narratives. On the other hand, the same jurisprudential tradition contains principles that support restraint, mercy, and restoration. Analyses of alternative punishments within Islamic legal systems demonstrate that non-custodial and restorative measures have longstanding doctrinal foundations, even if they are underutilized in modern legal frameworks (8). The tension between these interpretive possibilities underscores that punitive outcomes are not inherent to Islamic law itself but emerge from the interaction between jurisprudence, culture, and institutional authority.

The concept of punitive authoritarianism provides a useful analytical lens for examining how criminal policy becomes an instrument of domination rather than justice. Punitive authoritarianism refers to a pattern in which criminal policy prioritizes control, deterrence, and symbolic displays of power over proportionality, participation, and rehabilitation. In such systems, punishment serves not only to address wrongdoing but also to reinforce political or moral hierarchies. Research on contemporary criminal policies in Iran highlights how authoritarian tendencies manifest through expansive penal intervention, particularly in response to economic and social offenses perceived as threats to systemic stability (5, 14). Similar dynamics can be observed in other contexts where punishment is deployed to assert authority rather than resolve social harm.

Punitive authoritarianism is not limited to formal state systems; it can also emerge in informal or hybrid legal orders. In societies where state institutions are weak or fragmented, authoritarian punishment may be exercised through customary or communal mechanisms that rely on coercion and social pressure. Studies on tribal norms such as Pashtunwali illustrate how non-state legal orders can enforce severe sanctions to preserve honor and authority, often with limited regard for individual rights (13). These forms of authoritarianism differ in structure but share a common logic of exclusion and domination. Recognizing these variations is essential for comparative analysis, as it prevents the conflation of state-centered authoritarianism with its informal counterparts.

In contrast to punitive authoritarianism, restorative justice offers a fundamentally different conception of criminal policy. Restorative justice shifts the focus from punishment to the repair of harm, emphasizing accountability, dialogue, and social reintegration. Its core principles include recognition of victims' needs, offender responsibility beyond suffering, and active participation of the community in resolving conflict. Although often associated with

contemporary criminological movements, restorative justice resonates with many pre-modern and religious traditions. Research on non-penal prevention in Islamic criminal policy demonstrates that mechanisms such as reconciliation, forgiveness, and compensation are deeply embedded within Islamic ethical frameworks (4). This convergence challenges the assumption that restorative justice is a foreign or incompatible model in Islamic contexts.

Nevertheless, the relationship between restorative justice and Islamic legal concepts is marked by both compatibility and tension. On the one hand, concepts such as reconciliation and forgiveness align closely with restorative objectives and are explicitly encouraged in Islamic moral teachings. On the other hand, modern legal systems often institutionalize Islamic law in rigid forms that prioritize codified punishment over discretionary and relational solutions. Studies of criminal policy inconsistencies, particularly in family-related crimes, reveal how formal legal frameworks may marginalize restorative options despite their cultural legitimacy (7). This tension reflects broader struggles over authority, interpretation, and the role of community in administering justice.

Understanding these dynamics requires clear analytical criteria that can be applied comparatively across different contexts. Legitimacy constitutes a central criterion, referring to the sources through which criminal policy is justified and accepted. Legitimacy may derive from state authority, religious doctrine, cultural tradition, or a combination thereof. Institutionalization is another key criterion, capturing the extent to which criminal policy is embedded in formal legal structures as opposed to informal practices. The role of the state must also be considered, particularly in terms of its capacity to enforce law and monopolize punishment. Finally, the role of society, including community participation and informal norms, shapes how criminal policy is experienced and contested. Research on constitutional and legal foundations in fragile states underscores how variations in these criteria produce divergent criminal policy outcomes (11, 15).

These analytical criteria provide a framework for examining how similar normative foundations can generate different criminal policy models. Comparative studies of development and diversity highlight that institutional capacity and social structure significantly affect how legal norms are translated into practice (16). By integrating legitimacy, institutionalization, and the respective roles of state and society, the framework developed here enables a nuanced comparison that avoids cultural essentialism and legal determinism. It recognizes criminal policy as a contingent and contested field shaped by multiple forces rather than as a direct reflection of religious doctrine.

In sum, this conceptual and analytical framework situates criminal policy at the intersection of culture, jurisprudence, and power. It conceptualizes Islamic law as a dynamic normative resource, punitive authoritarianism as a contextual outcome, and restorative justice as a viable alternative grounded in both ethical tradition and contemporary criminology. By clarifying these concepts and criteria, the framework lays the foundation for the subsequent comparative analysis of Iran and Afghanistan, enabling a systematic examination of how cultural and jurisprudential structures shape divergent paths within ostensibly shared Islamic foundations.

Cultural and Jurisprudential Foundations of Criminal Policy in Iran

The criminal policy of the Islamic Republic of Iran is deeply shaped by the post-revolutionary institutionalization of Imami (Ja'fari) jurisprudence within the formal legal order. Following the 1979 Revolution, Islamic jurisprudence was elevated from a moral-religious reference into a binding normative source for legislation, adjudication, and criminal enforcement. This transformation marked a decisive shift from a hybrid modern-secular penal system toward a jurisprudence-centered legal structure in which criminal norms derive their legitimacy from religious

doctrine as interpreted by state-sanctioned authorities. The codification of Islamic criminal law in the Islamic Penal Code reflects this orientation, embedding categories such as *ḥudūd*, *qisās*, *diyāt*, and *taʿzīrāt* into statutory law and thereby translating jurisprudential concepts into enforceable state norms. Critical analyses of Iran's criminal policy emphasize that this process did not merely Islamize existing laws but reconfigured the logic of punishment by aligning it with an officially endorsed interpretation of Imami jurisprudence (17). As a result, criminal policy became a key site for asserting religious legitimacy and consolidating ideological coherence within the legal system.

This jurisprudential institutionalization operates in close conjunction with a highly centralized state structure, which significantly influences the orientation and implementation of criminal policy. The Iranian state exercises extensive control over criminal legislation, prosecution, and adjudication, leaving limited space for local discretion or community-based alternatives. Centralization has facilitated uniformity and predictability in legal enforcement, but it has also reinforced a top-down model of governance in which criminal law functions as an instrument of state authority. Research on legislative criminal policymaking in Iran indicates that the concentration of decision-making power within central institutions has encouraged expansive criminalization as a means of regulating social, economic, and moral behavior (1). In this context, punishment is not merely reactive but preventive and symbolic, signaling the boundaries of acceptable conduct as defined by the state.

Cultural patterns play a crucial role in sustaining this centralized and punitive orientation. Iranian political and legal culture has long emphasized obedience to authority and respect for hierarchical order, values that have been reinforced by religious discourse after the Revolution. Moral absolutism, particularly in relation to issues of public morality, social norms, and political loyalty, has contributed to a binary understanding of legality in which behaviors are sharply divided into permissible and impermissible categories. Studies on cultural policymaking in Iran's criminalization system highlight how moral values are translated into legal prohibitions through a process that frames deviation as a threat to collective identity and social order (3). This cultural framing legitimizes strict penal responses and limits tolerance for alternative or restorative approaches.

Security-oriented governance further intensifies the punitive character of Iran's criminal policy. Crime is frequently conceptualized not only as an individual wrongdoing but as a potential risk to national security, public morality, or economic stability. This securitization of crime expands the scope of criminal law and justifies harsher penalties, particularly in areas such as economic offenses, political crimes, and recidivism. Empirical analyses of Iran's approach to economic crimes demonstrate that punitive severity is often rationalized as necessary for protecting systemic integrity, even when such measures have limited deterrent effect (5). Similarly, evaluations of policies targeting professional recidivists reveal a strategic emphasis on incapacitation and control rather than rehabilitation (6). These patterns illustrate how security narratives intersect with jurisprudential legitimacy to reinforce authoritarian tendencies in criminal policy.

The expansion of criminalization and the severity of punishment are thus central features of Iran's penal landscape. Over time, the criminal law has extended into domains that were previously regulated through social norms or administrative mechanisms, reflecting a broader trend toward penal governance. Scholars have noted that this expansion often occurs through the use of broadly defined offenses and discretionary penalties, which enhance state flexibility but reduce legal certainty (14). Severity is particularly pronounced in areas involving moral conduct, economic regulation, and threats to public order, where punishment serves a didactic and symbolic function. Cultural narratives that associate leniency with moral decay further entrench punitive severity, limiting public and institutional support for alternative responses.

Formal law and judicial institutions play a decisive role in enforcing this punitive model. Courts are positioned as guardians of both legal order and religious morality, tasked with applying codified Islamic norms within a centralized framework. Judicial discretion exists primarily within the boundaries set by statutory law and jurisprudential interpretation, leaving limited room for context-sensitive or participatory solutions. Critical perspectives on Iran's criminal justice system argue that the formalization of jurisprudence within state institutions has transformed flexible ethical principles into rigid legal commands, thereby constraining the adaptive potential of Islamic law (17). The judiciary's institutional alignment with state authority further reinforces a compliance-oriented approach to criminal adjudication.

Within this framework, restorative and participatory mechanisms have been largely marginalized. Although Iranian legal tradition contains rich resources for reconciliation, forgiveness, and community-based resolution, these mechanisms occupy a peripheral position in the contemporary criminal justice system. Cultural criminological studies suggest that the dominance of state-centered punishment diminishes opportunities for social participation in addressing harm, reducing justice to a matter of legal compliance rather than social repair (1). The emphasis on uniform enforcement and deterrence leaves little institutional space for dialogue between offenders, victims, and communities, even in cases where such engagement could promote reintegration and reduce recidivism.

Nevertheless, restorative elements are not entirely absent from Iran's criminal policy. Certain legal provisions allow for alternative punishments, conditional suspensions, and mechanisms of compensation, reflecting enduring jurisprudential principles within Islamic law. Research on alternative punishments highlights that non-custodial measures have been recognized within the Islamic Penal Code, albeit in a limited and carefully circumscribed manner (8). These measures often function as exceptions rather than as integral components of criminal policy, applied selectively and without a coherent restorative framework. Similarly, concepts such as *diyah* and reconciliation retain legal significance but are primarily confined to specific categories of offenses, limiting their transformative potential.

The limited scope of restorative justice in Iran can be attributed to the interaction between culture and jurisprudence within a centralized state structure. Cultural expectations of moral certainty and authoritative enforcement discourage experimentation with participatory models that might appear lenient or ambiguous. At the same time, the institutionalization of jurisprudence within formal law prioritizes codification and control over interpretive flexibility. Studies on non-penal prevention in Islamic criminal policy demonstrate that while Islamic teachings support restorative practices, their realization depends on cultural acceptance and institutional design (4). In Iran, these conditions have not been fully met, resulting in a criminal policy that selectively incorporates restorative elements without challenging its punitive core.

The role of state authority is thus pivotal in shaping Iran's criminal policy. Centralization enables the state to present punitive measures as expressions of collective moral will, thereby reinforcing their legitimacy. Constitutional and legal analyses indicate that the Iranian legal order explicitly prioritizes Islamic norms as interpreted by state institutions, consolidating the fusion of religious authority and political power (11). This fusion strengthens the state's capacity to enforce compliance but also narrows the interpretive space for alternative visions of justice. As a result, restorative justice remains conceptually acknowledged but practically constrained.

Cultural perceptions of justice further sustain this model. Public discourse often equates justice with punishment, reflecting deeply ingrained beliefs about deterrence and moral correction. The role of culture in crime prevention research underscores that societal attitudes toward punishment significantly influence policy outcomes, shaping

both legislative priorities and judicial practices (2). In Iran, cultural support for strong enforcement reinforces political incentives to maintain punitive policies, even in the face of critiques regarding effectiveness or human rights concerns.

In sum, the cultural and jurisprudential foundations of Iran's criminal policy converge to produce a centralized, punitive model characterized by institutionalized Imami jurisprudence, strong state authority, moral absolutism, and security-oriented governance. The expansion of criminalization and severity of punishment reflects both cultural expectations and political rationalities, while formal legal institutions serve as vehicles for enforcing this orientation. Although restorative elements exist within the legal framework, they remain marginal and underdeveloped, constrained by cultural resistance and institutional priorities. This configuration illustrates how culture and jurisprudence, when mediated through centralized state power, can reinforce punitive authoritarianism even within a legal tradition that contains significant restorative potential.

Cultural and Jurisprudential Foundations of Criminal Policy in Afghanistan: A Comparative Perspective

The criminal policy of Afghanistan is shaped by a complex interaction between Hanafi jurisprudence, customary and tribal norms, and fluctuating political authority. Unlike systems in which Islamic jurisprudence is centrally codified and uniformly enforced, Afghanistan's legal landscape has long been characterized by pluralism and fragmentation. Hanafi jurisprudence constitutes the dominant doctrinal reference for Islamic law, providing principles for criminal responsibility, punishment, and reconciliation, yet its application is rarely confined to formal state institutions. Instead, Hanafi norms coexist with deeply entrenched customary practices that regulate social behavior at the community level. Studies on Afghanistan's criminal policy demonstrate that this coexistence has produced a hybrid normative order in which religious doctrine, tribal codes, and pragmatic considerations jointly inform responses to crime (11). This plural configuration distinguishes Afghanistan from more centralized Islamic legal systems and sets the stage for distinctive patterns of authority and enforcement.

Customary and tribal norms exert a particularly strong influence over criminal regulation, often surpassing formal legal mechanisms in social legitimacy. Tribal codes such as Pashtunwali operate as comprehensive systems of social control, prescribing rules of conduct and sanctions that emphasize honor, retaliation, and collective responsibility. Research on Pashtunwali highlights how its normative authority derives from social embeddedness rather than state recognition, enabling it to function effectively in contexts where formal institutions are weak or inaccessible (13). While these customary norms frequently draw upon Islamic concepts, they also introduce practices that diverge from formal jurisprudence, especially in matters of punishment and dispute resolution. The resulting legal pluralism complicates the implementation of a unified criminal policy and reinforces reliance on local authority structures.

The weakness of state institutions constitutes a central feature of Afghanistan's criminal justice system and profoundly affects its penal orientation. Decades of conflict, political upheaval, and external intervention have undermined the capacity of the state to monopolize legitimate coercion and administer justice consistently across the territory. Empirical analyses of Afghanistan's state-building challenges demonstrate that institutional fragility has limited the reach of formal law, creating spaces in which non-state actors exercise coercive authority (12). In this context, criminal policy lacks the centralized coherence observed in stronger states, and enforcement varies significantly across regions. This fragmentation stands in contrast to centralized models where the state imposes a uniform penal framework, highlighting a fundamental divergence in how authority is constituted and exercised.

Community-based dispute resolution mechanisms, most notably the jirga, play a pivotal role in Afghanistan's criminal policy. Jirgas function as assemblies of elders or respected community members who deliberate on disputes and impose resolutions grounded in custom, social consensus, and moral reasoning. Research on the functions and challenges of jirga emphasizes its effectiveness in providing swift, culturally resonant solutions, particularly in rural areas where access to formal courts is limited (9). Jirgas often prioritize reconciliation and restoration of social harmony over punitive sanctioning, reflecting a communal orientation toward justice. However, their authority is informal and varies in procedural fairness, raising concerns about consistency and rights protection.

Political instability and regime change have further shaped penal practices in Afghanistan, intensifying reliance on informal mechanisms. Periods of conflict and shifts in governance have repeatedly disrupted formal legal institutions, leading communities to depend on local norms for maintaining order. Analyses of social and cultural contexts of security illustrate that in times of instability, punitive measures may be enforced through ad hoc and coercive means, often without procedural safeguards (10). Such practices reflect a form of informal authoritarianism in which power is exercised through social pressure, intimidation, or violence rather than codified law. Unlike centralized authoritarianism, this form of control is diffuse and contingent, shaped by local power dynamics.

Informal authoritarianism manifests in coercive enforcement outside formal law, particularly when tribal leaders, militias, or religious authorities impose sanctions to assert dominance. These practices may involve severe punishment, collective retaliation, or exclusion, justified by appeals to honor or moral order. Studies on Afghanistan's criminal policy toward family-related offenses reveal that such coercive mechanisms can marginalize vulnerable groups, especially women and children, whose rights are often subordinated to communal norms (7). The absence of strong state oversight enables these practices to persist, reinforcing patterns of domination that operate independently of formal jurisprudence.

Despite these authoritarian tendencies, Afghanistan's criminal policy also incorporates socially rooted restorative practices that reflect enduring cultural values. Mechanisms such as reconciliation, compensation, and mediated settlement are widely used to resolve disputes and restore social equilibrium. Research on jirga underscores that restorative outcomes are often favored because they prevent escalation of conflict and preserve communal cohesion (9). These practices resonate with Islamic jurisprudential principles emphasizing forgiveness and social harmony, illustrating that restorative justice is not alien to Afghan legal culture. However, the effectiveness of these mechanisms is uneven and contingent on local power relations.

The limitations of socially rooted restorative practices become evident when considering issues of accountability and equality. While reconciliation may restore surface harmony, it can also obscure power imbalances and suppress individual grievances. Empirical studies highlight that restorative settlements in Afghanistan sometimes prioritize collective stability over individual rights, leading to outcomes that disadvantage weaker parties (7). This tension reflects the broader challenge of integrating restorative justice within a context lacking formal guarantees and oversight. Restorative practices, in the absence of institutional support, risk reinforcing existing hierarchies rather than promoting equitable justice.

Structural obstacles further impede the institutionalization of restorative justice in Afghanistan. Legal pluralism complicates efforts to develop standardized frameworks that integrate community practices with formal law. Analyses of constitutional and legal foundations suggest that the coexistence of multiple normative orders undermines coherence and predictability in criminal policy (15). Moreover, the limited capacity of state institutions

to regulate or support restorative mechanisms constrains their scalability and consistency. These obstacles differ markedly from contexts where centralized authority can facilitate systematic reform.

The comparative implications of Afghanistan's criminal policy become clearer when juxtaposed implicitly with more centralized systems. In Afghanistan, social authority frequently outweighs state power, shaping criminal responses through communal norms rather than statutory mandates. Research on development and diversity indicates that regional variations in authority significantly affect governance outcomes, including criminal justice (16). Legal pluralism prevails over centralization, producing a patchwork of enforcement practices that contrast with uniform legal regimes. Punitive control operates largely through informal channels, relying on social coercion rather than formal adjudication.

This configuration produces a distinctive form of punitive authoritarianism that differs from state-centered models. Authoritarian control in Afghanistan is fragmented and situational, emerging through local power structures rather than centralized institutions. Yet its impact on individuals and communities can be equally profound, particularly in contexts where coercive practices are normalized. Analyses of Afghanistan's criminal policy toward economic and white-collar crimes reveal similar patterns of inconsistency and selective enforcement, reflecting broader institutional weaknesses (18). These dynamics underscore that authoritarian outcomes are not solely a function of strong states but can also arise from fragmented authority.

The dominance of Hanafi jurisprudence, while providing a common normative reference, does not resolve these challenges. Jurisprudential principles are filtered through cultural and political contexts, producing varied interpretations and applications. Studies on proportionality in Afghanistan's sentencing practices illustrate that doctrinal standards are often compromised by practical constraints and power dynamics (19). This variability reinforces the perception that justice is contingent and negotiated rather than rule-bound.

In comparative perspective, Afghanistan's criminal policy exemplifies a system where legal pluralism and social authority substitute for centralized governance. The reliance on community-based mechanisms reflects resilience and adaptability but also exposes vulnerabilities related to coercion and inequality. Formal punitive control is limited, while informal enforcement fills the void, creating a complex interplay between restoration and domination. This stands in implicit contrast to systems characterized by strong state authority and codified jurisprudence, highlighting divergent pathways through which similar Islamic foundations yield different penal outcomes.

Ultimately, the cultural and jurisprudential foundations of Afghanistan's criminal policy reveal a landscape shaped by plural norms, weak institutions, and enduring communal practices. Restorative justice is deeply rooted in social tradition but constrained by structural and political factors that hinder its institutionalization. Informal authoritarianism persists alongside reconciliation, reflecting the ambivalence of a system that prioritizes social order over legal uniformity. This configuration prepares the ground for comparative analysis by illustrating how variations in state strength, legal centralization, and social authority fundamentally shape the expression of criminal policy within shared Islamic frameworks.

Conclusion

This study set out to reappraise the impact of cultural and jurisprudential structures on the criminal policies of Iran and Afghanistan, with particular attention to the ways in which similar Islamic foundations have generated distinct forms of punitive authoritarianism and uneven prospects for restorative justice. By adopting a comparative and analytical approach, the article has demonstrated that criminal policy cannot be understood as a direct or

inevitable outcome of religious doctrine. Rather, it is a contingent product of how jurisprudence is interpreted, institutionalized, and embedded within broader cultural and political structures. The comparison between Iran and Afghanistan underscores that the relationship between Islam, punishment, and justice is mediated by state capacity, social authority, and prevailing cultural narratives.

In the Iranian case, the analysis revealed a criminal policy characterized by strong centralization, formal codification of Imami jurisprudence, and a security-oriented approach to social regulation. The post-revolutionary institutionalization of Islamic law within the state apparatus transformed jurisprudential principles into binding statutory norms, enabling the state to exercise extensive control over criminalization and punishment. Cultural patterns emphasizing obedience, moral certainty, and the protection of collective order have reinforced this model, legitimizing expansive criminal law and severe penalties. Within this configuration, punishment functions not only as a response to wrongdoing but also as a symbolic assertion of moral and political authority. Although Islamic jurisprudence contains significant restorative resources, their impact has remained limited due to the dominance of centralized enforcement and the marginalization of participatory mechanisms.

By contrast, Afghanistan presents a criminal policy landscape marked by legal pluralism, fragmented authority, and reliance on socially embedded forms of regulation. Hanafi jurisprudence operates alongside tribal norms and customary practices, producing a hybrid system in which formal law often lacks effective reach. Weak state institutions and recurrent political instability have prevented the consolidation of a uniform penal framework, shifting responsibility for criminal regulation to community-based mechanisms such as jirga. These mechanisms emphasize reconciliation and social harmony, reflecting deeply rooted restorative values, yet they also enable coercive practices and informal authoritarianism. In this context, punishment and restoration coexist in unstable tension, shaped less by codified law than by local power relations and social expectations.

The comparative findings of this study highlight that punitive authoritarianism manifests differently depending on the configuration of state strength and social authority. In Iran, authoritarianism in criminal policy is institutionalized and legalistic, embedded within formal law and enforced through centralized state institutions. In Afghanistan, authoritarian control is decentralized and informal, exercised through tribal leadership, social pressure, and ad hoc enforcement. Despite these differences, both systems ultimately limit the transformative potential of restorative justice. In Iran, the obstacle lies in the rigidity and centralization of legal authority, which constrains participatory and relational approaches to justice. In Afghanistan, the challenge arises from institutional fragility and legal pluralism, which undermine consistency, accountability, and rights protection.

A key contribution of this article lies in challenging deterministic narratives that attribute punitive severity in Muslim-majority societies solely to Islamic law. The analysis demonstrates that Islamic jurisprudence is not inherently punitive or authoritarian. On the contrary, it encompasses ethical principles centered on reconciliation, forgiveness, proportionality, and social repair. The divergence between Iran and Afghanistan illustrates that the same normative tradition can support markedly different criminal policies depending on how it is interpreted and operationalized. Punitive outcomes emerge not from jurisprudence itself but from its interaction with cultural values, political priorities, and institutional arrangements.

The study also underscores the importance of culture in shaping penal rationality. Cultural narratives about morality, security, and authority influence public expectations of punishment and condition the acceptability of alternative responses. In contexts where justice is equated with severity and deterrence, restorative approaches are often perceived as weakness or moral compromise. Conversely, where communal harmony and reconciliation

are valued, restorative practices may flourish even in the absence of formal support. Recognizing these cultural dynamics is essential for any meaningful reform of criminal policy, as legal change without cultural resonance is unlikely to produce sustainable outcomes.

From a normative perspective, the findings suggest that the transition from punitive authoritarianism to restorative justice requires context-sensitive strategies rather than uniform prescriptions. In Iran, reform efforts would need to focus on expanding interpretive flexibility within Islamic jurisprudence, decentralizing certain aspects of criminal enforcement, and institutionalizing participatory mechanisms that allow victims and communities to play a more active role in resolving harm. Such reforms would not necessitate abandoning religious legitimacy but rather reactivating underutilized jurisprudential principles aligned with restoration and social reintegration.

In Afghanistan, the pathway toward restorative justice would involve strengthening state institutions while respecting the social legitimacy of community-based mechanisms. Integrating jirga and similar practices into a regulated legal framework could enhance accountability and rights protection without eroding cultural foundations. Addressing informal authoritarianism would require not only legal reform but also broader efforts to reduce political instability, empower marginalized groups, and build trust in formal justice institutions. The Afghan case illustrates that restorative justice, when left entirely to informal structures, risks reinforcing existing inequalities unless supported by institutional safeguards.

More broadly, this comparative analysis contributes to the literature on criminal policy by demonstrating the value of examining law through cultural and jurisprudential lenses. It shows that comparative criminal justice research benefits from moving beyond surface-level legal similarities and differences to explore the deeper structures that shape penal outcomes. By focusing on Iran and Afghanistan, the article highlights how shared religious foundations can yield divergent paths, challenging assumptions about uniformity within Islamic legal systems.

In conclusion, the study affirms that the future of criminal policy in Muslim-majority societies is not predetermined by religious tradition. Both Iran and Afghanistan possess normative resources capable of supporting more humane and restorative approaches to justice. Whether these resources are realized depends on the willingness of legal and political actors to engage critically with culture, reinterpret jurisprudence, and recalibrate the balance between state authority and social participation. As punitive authoritarian models increasingly reveal their limitations, the reappraisal undertaken in this article underscores the urgency and feasibility of reorienting criminal policy toward restoration, accountability, and social repair within Islamic frameworks.

Acknowledgments

We would like to express our appreciation and gratitude to all those who helped us carrying out this study.

Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

Funding

This research was carried out independently with personal funding and without the financial support of any governmental or private institution or organization.

References

1. Raejjian Asli M, Rahiminejad A, Esmail, Razmaavar B. Legislative Criminal Policymaking in the Mirror of Cultural Criminology. *Criminal Law and Criminology Research*. 2023;11(21):259-302.
2. Shah-Jahanpour S. The Role of Culture in Crime Prevention. 2018.
3. Dānesh N, Dānesh N. The Process of Cultural Policymaking in Iran's Criminalization System. *Majlis & Rahbord*. 2021;28(108):67-98.
4. Varvae A, Ali Akbari Sefidar A, Samiee Zenooz H. Non-Penal Prevention in the Criminal Policy of Islam. *Social Order*. 2013;5(2):165-89.
5. Roshandel S, Esmaili M, Hajitabar Firoozjahi H. Iran's Criminal Policy in Addressing Economic Crimes and Strategies for Overcoming the Related Crisis in Iran. *Legal Studies in Digital Age*. 2024;3(2):59-72. doi: 10.61838/kman.lsd.3.2.5.
6. Sotoudeh M, Aghababayi H. Strategic Evaluation of Iran's Criminal Policy in Managing Professional Recidivists. *Intelligence and Criminal Research Journal*. 2025;19(3):161-98.
7. Shafahi A, Gherayli MB. The Inconsistency of Afghanistan's Criminal Policy Regarding Crimes Against the Family. *Islamic Jurisprudence Studies and Foundations of Law*. 2023;17(47):191-215.
8. Alavi SH. A Study of Alternative Punishments to Imprisonment in the Islamic Penal System and the Criminal Code of Afghanistan. *Biannual Legal Critique Journal*. 2018;7(14).
9. Fazli FH, Maidin AJ, Omoola S. Jirga in Afghanistan: Its functions, contemporary challenges, and future prospects. *IUUM Law Journal*. 2024;32(2):101-19. doi: 10.31436/iiumlj.v32i2.977.
10. Firoozi SM, Yousofi F, Afzali NA, Rahmani MB. Social and cultural contexts of order and security in Afghanistan. *Motale'āt-e Bonyādī va Kārbordī-ye Jahān-e Eslām*. 2023;15:105-28.
11. Salimi, Abdul H. National Principles and Foundations in the Constitution of Afghanistan. *Ma'refat*. 2008;17(125):33-50.
12. Chang L, Pengtao G, Xiyao Z. Power hedging and faith fetters: The factors of tribe and religion in Afghanistan's state building. *Frontiers in Political Science*. 2022;4:976833. doi: 10.3389/fpos.2022.976833.
13. Benson BL, Siddiqui ZR. Pashtunwali-Law for the lawless, defense for the stateless. *International Review of Law and Economics*. 2014;37:108-20. doi: 10.1016/j.irle.2013.07.008.
14. Tolabi B, Habibitar M, Rostami Najafabadi H. Substantive Challenges of Iran's Criminal Policy in Economic Crimes. *Encyclopedia of Comparative Jurisprudence and Law*. 2025;3(1):1-20. doi: 10.61838/jecjl.3.1.1.
15. Moshtaqi R. Max Planck's Guidelines for the Constitutional Law of Afghanistan. Kabul 2009.
16. Qaiser I, Grigoriadis TN. Empire, diversity & development: Evidence from Afghan provinces. *Applied Economics*. 2024;56(60):9101-16. doi: 10.1080/00036846.2023.2298213.
17. Ghasemi N. Critique of the Book 'Criminal Policy in Islam and in the Islamic Republic of Iran'. *Critical Review of Humanities Texts & Programs*. 2018;18(5):255-70.
18. Nabizadeh A. Afghanistan's Criminal Policy Towards White-Collar Crimes. Qom: Al-Mustafa International University.
19. Haqyar MA. Evaluation of Observance of the Principle of Proportionality in Sentencing in the Criminal Code of Afghanistan with Emphasis on Administrative Corruption Crimes. *Islamic Law Studies*. 2025;10(2).