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Arbitration and Its Social Effects in Iranian Criminal Law from the Perspective of Positive Law

1. Babak. Bozorgmehr[1] : Department of Fiqh and Fundamentals of Islamic Law, Ha.C., Islamic Azad University, Hamedan, Iran
2. Mahnaz. Salimi[2*]: Department of Theology, Ha.C., Islamic Azad University, Hamedan, Iran
3. Hamed. Fathaliani[3]: Department of Islamic Studies, Mal.C., Islamic Azad University, Malayer, Iran

*corresponding author's email: mahnaz.salimi@iauh.ac.ir

ABSTRACT

In criminal law, it is widely held that the criminal justice system is closely connected to public order and state sovereignty and that its destiny cannot be entrusted entirely to civil society. Nevertheless, due to the increasing volume of criminal cases, the efficiency of the judiciary and the effectiveness of the penal system in combating crime and rehabilitating offenders have gradually declined. For this reason, the criminal justice system, in pursuit of restorative justice, has progressively adopted a participatory criminal policy and moved toward mediation, so that the victim and the offender, with the assistance of a mediator and outside the conventional formalities of criminal proceedings, may negotiate, express their respective claims, repair the material and moral damages suffered by the victim, clarify the duties and obligations of the offender toward both the victim and society, and thereby prevent undue delays in judicial proceedings. The purpose of this study is to examine arbitration and its social effects in Iranian criminal law from the standpoint of positive law. The research method is analytical–descriptive and is based on library resources, including books, academic articles, and internet sources. Data collection was conducted through documentary research, using note-taking as the primary research tool. The method of data analysis is qualitative analysis. In the Code of Criminal Procedure enacted in 2013, the Arbitration Council Act (enacted in 1969), the Code of Procedure of Public and Revolutionary Courts in Criminal Matters enacted in 1999, the single-article Act concerning judicial and administrative affairs of Lorestan Province, the Act on the Establishment of Houses of Equity, the Arbitration Council Act, as well as the Act and Regulations of the Dispute Resolution Councils, several legal provisions have referred to arbitration and conciliation. Although arbitration has been properly articulated within Iran's positive law, it has not been adequately developed, and it is necessary for it to be further expanded by drawing upon the capacities of international law.

Keywords: *Arbitration; Social Effects; Iranian Criminal Law; Positive Law.*

Introduction

Clarifying the concept and philosophy of the scope of criminal law, its governing criteria, and the necessity of accepting this concept within the Iranian legal system constitute important subjects of scholarly examination. The European Court of Human Rights was the first to introduce the notion of the "criminal sphere"; under this legal construction, all violations accompanied by sanctions of a punitive criminal nature are entitled to the guarantees of a fair trial (1). Where the committed offense corresponds with any of the four criteria of classification—namely, statutory characterization of the offense in criminal law, the intrinsic nature of the violation, the purpose of the sanction, and the nature and severity of the sanction—the violation falls within the criminal sphere (2). The creation

of conditions for reconciliation through recourse to arbitration and adjudication has long been recognized as a conventional mechanism in civil procedure. In criminal law, however, it is commonly maintained that the penal system is closely linked to public order and state sovereignty and that its fate cannot be entrusted to civil society (3).

Nevertheless, as a result of the growing volume of criminal cases, the efficiency of the judiciary and the effectiveness of the criminal system in combating delinquency and rehabilitating offenders have gradually declined (4). For this reason, the criminal justice system, in pursuit of the objectives of restorative justice, has adopted a participatory criminal policy and progressively shifted toward mediation, enabling the victim and the offender, with the assistance of a mediator and outside the conventional formalities of criminal proceedings, to negotiate their claims, repair the material and moral harm suffered by the victim, determine the duties and obligations of the offender toward both the victim and society, and prevent undue delays in adjudication (5, 6). In light of Islamic jurisprudential foundations and the legitimacy of reconciliation in Islam, the legislator, for the first time in the Code of Criminal Procedure enacted in 2013, recognized the rule of mediation and obligated the investigating judge to endeavor to refer matters to mediation (7). This approach has since been reaffirmed in Articles 82 and 192 of the new Code of Criminal Procedure and in the Criminal Mediation Regulation enacted in 2016, through which the legal system has effectively relied on civil society participation—within judicial supervision—to resolve criminal disputes and to mitigate the decline in judicial efficiency caused by increasing population growth and the consequent rise in criminal cases (8). The principal aim of this policy is to resolve minor offenses and disputes at the prosecutorial stage before referral to the courts, thereby preventing procedural delays and ensuring that less serious crimes are settled prior to full judicial intervention.

A close examination of these enactments reveals the influence of legal doctrine and criminological teachings on legislative policy. One of the most significant developments in modern criminal law is the theory of restorative justice, with which the Iranian legislator has aligned itself by adopting a new legislative criminal policy (9, 10). The Islamic Penal Code, inspired by the fundamental principles of restorative justice and the doctrine of minimal criminal intervention, and with the objective of decriminalization, seeks in certain legal institutions to eliminate punishment (such as repentance, pardon, and exemption from punishment), in others to mitigate or substitute punishment (such as judicial mitigation, alternative sanctions to imprisonment, and the semi-liberty regime), and in still others to postpone the execution of punishment (such as suspension of sentence, conditional release, and deferment of judgment) (11, 12).

The Code of Criminal Procedure likewise, by incorporating principles of fair trial consistent with restorative justice, has introduced restorative institutions as alternatives to prosecution and new manifestations of participatory criminal policy, including mediation and the participation of non-governmental organizations in the pursuit of public claims, thereby providing substantial capacity for the implementation of restorative justice programs (7). In other words, a careful study of the provisions of the Code of Criminal Procedure and the Islamic Penal Code demonstrates a profound and meaningful transformation in the legislator's approach toward enhancing criminal protection of the victim, increasing the role of both the victim and the offender in criminal proceedings, redefining criminal sanctions, and, in general, advancing the objectives of restorative justice—an evolution that ultimately underscores the growing necessity for the development of arbitration in criminal matters (5, 6).

The necessity of the present research arises from the Judiciary's overarching need to prevent crime and reform offenders, the high costs and inefficiency of the retributive judicial system (7), the demand for sustainable offender

rehabilitation, the delegation of certain functions to the public, the development of civil society, the enhancement of the positive role of victims and offenders in dejudicialization, and the utilization of international experiences (10, 13). Consequently, research of this nature is both essential and highly effective for the development of the institution of arbitration in criminal matters.

The relevant research background is as follows. Souri (2018), in a study entitled *Problems of the Criminal Mediation Regulation and Article 82 of the Code of Criminal Procedure Regarding Juvenile Crimes*, argued that the formation of human personality in childhood and the harmful consequences of labeling children and adolescents require a specialized criminal justice system that takes into account their emotional and psychological conditions when addressing juvenile delinquency (8). This descriptive–analytical study concluded that in Iran only minor offenses classified under grades 6, 7, and 8, whose punishments are suspendable and which are subject to private prosecution and mutual consent, may be referred to mediation, whereas juvenile crimes necessitate a broader mediation model covering a wider spectrum of offenses.

Taghipour (2013), in his study entitled *Arbitrator's Liability in Iranian Law and Some Countries*, maintained that the arbitrator is a private judge who assumes a judicial duty by virtue of contract. Accordingly, the contractual relationship between the arbitrator and the parties is recognized in all legal systems, and failure to perform arbitral duties may give rise to disciplinary, criminal, and civil liability. However, legal systems differ regarding the principle of the arbitrator's civil liability: in common law jurisdictions, arbitrators generally enjoy immunity akin to state judges unless acting in bad faith or abandoning arbitration without authorization, whereas in civil law systems the arbitrator is deemed contractually liable like any other obligor (14, 15).

Ashrafi and Zaraat (2018), in their study *The Adversarial Principle of Criminal Trials in Iranian Law*, argued that adversariality is a fundamental principle of all judicial proceedings. Nevertheless, in criminal procedure—due to preliminary investigations and the possibility of decisions being taken without hearing the parties—the scope and limits of this principle remain ambiguous. Referring to instances such as denial of access to case files, prosecutorial authority during preliminary investigations, non-public examination of witnesses, and the absence of juvenile defendants from court sessions, they demonstrated how these practices undermine adversariality to the detriment of the accused (16).

The research method of the present study is analytical–descriptive and is based on library sources, including books, academic articles, and internet resources. Data collection is documentary in nature, utilizing systematic note-taking as the primary research instrument. Data analysis is conducted qualitatively.

Examination of Mediation (Criminal Arbitration/Conciliation)

Mediation is among the relatively new institutions in criminal matters and, following the expansion of the ideology of dejudicialization, it has acquired a distinctive position. The mediator, the victim, and the offender are among the principal actors involved in this institution. The entry of this institution into French law dates back to the late 1980s, and its formal introduction into Iranian law is traced to the adoption of the Code of Criminal Procedure in 2013 (though it became enforceable two years later, in 2015). The Iranian legislator has referred to this institution mainly through a single statutory provision, supplemented by the adoption of a related bylaw (8). In France, this institution has long received particular attention, and it is therefore necessary to analyze and assess it so that Iranian law, by drawing on that experience, can institutionalize the place of mediation more firmly within its own legal framework (9).

The first experience of introducing criminal mediation into the criminal justice system goes back to the late 1970s, i.e., the peak influence of the dejudicialization movement, the abolitionist critique of the criminal system, and the emergence of debates on the failure of the therapeutic or resocialization model for offenders. From that point onward, criminal mediation—due to the dissemination of dejudicialization ideology and its capacity to relieve congestion and reduce case inflation in the criminal justice system arising from increasing delinquency—gained a special status (4). France's experience with criminal mediation dates back to the late 1980s and to initiatives undertaken by prosecutors or presidents of courts in certain local jurisdictions. This entirely judicial initiative was gradually reinforced through circulars and bylaws and ultimately obtained formal legal recognition through the Criminal Procedure reform of 4 January 1993 (9, 17).

Pursuant to that approach, public prosecution may also be discontinued through reconciliation where the law expressly permits it, or through the implementation of a criminal settlement. Its principal manifestation appears in Article 41 of that framework, which addresses criminal mediation in a specific manner. From that period to the present, the core of this article has remained unchanged, with the principal modifications relating to its final paragraph following reforms in 1999 and the 9 March 2004 legislation (17).

In parallel with the development of criminal mediation practices and statutory reforms, the legal and criminological literature on criminal mediation—and more generally the literature on the new model of justice, namely restorative justice—expanded significantly, and numerous national and international conferences and symposia were held (9, 10).

In Iranian law, with the adoption of the Code of Criminal Procedure in 2013, the institution of mediation was expressly introduced through Article 82; however, despite the Code's enforceability in 2015 and the adoption of the mediation bylaw in 2016 by the Cabinet of Ministers (following the Ministry of Justice's proposal and the approval of the Head of the Judiciary), it has not yet been widely implemented in practice (7, 8). Nonetheless, given that several years have passed since the expansion of this approach internationally and the emergence of the new model, it is necessary to evaluate it. The recent establishment of this institution within Iran's criminal justice system, together with an assessment of the strengths and weaknesses of French criminal justice practice, clarifies both the necessity and the rationale for studying this subject in order to improve implementation in Iranian law (9, 17).

The first criminal case reportedly resolved through a restorative approach and by means of mediation occurred in 1974 in Kitchener, Ontario, Canada, facilitated by a probation officer. Since then, the laws of many countries have moved toward restorative justice programs. Examples cited at the domestic level include provisions such as Section 153 of Germany's criminal procedure framework and Article 41-2 of France's criminal procedure framework; at the international level, international and regional organizations have also recognized the utility of such measures, including instruments such as the United Nations Economic and Social Council's 2002 adoption of principles and programs of restorative justice in criminal matters, as well as European initiatives on restorative justice development (13).

Mediation is a prominent manifestation of participatory criminal policy and the allocation of a role to other citizens in the criminal justice process (5). Public participation can substantially assist the adjudicative process, both in terms of speed and in terms of building a culture that promotes reporting and cooperation with officials. Among the limitations of the contemporary criminal justice apparatus are constraints on resources and capacities, which continually cast doubt on the efficiency and effectiveness of formal institutions. In any event, it appears that the provision of security and justice is not necessarily dependent exclusively on current official institutions; put

differently, part of the mechanisms that secure safety and justice must be sought beyond the boundaries of formal institutions and independently of the policies of judicial, police, and legislative authorities (4).

Recognizing and empowering citizens within the justice system can enhance their trust and facilitate the implementation of justice; for this reason, contemporary governments often see no alternative but to turn toward semi-formal or informal, non-governmental institutions and arrangements (4, 5).

Recourse to general participatory criminal policies and the consideration of reinforcing levers other than the police or the judiciary can provide greater legitimacy for criminal policy initiatives. Understanding the importance of this matter and giving it due attention, in practice, should culminate in including the public in criminal policy and in all measures related to its implementation—not because one is ideologically committed to a reduced role for the state, but due to a pragmatic realism that steers societies toward democratizing local life (4).

Creating participation and the exchange of views and ideas among members of a society with diverse cultures, while familiarizing different groups with one another, prevents the formation of indifference toward what occurs in the social environment and produces a form of solidarity and cohesion. The constructive consequences of such cohesion include increased security, facilitation of development, ethical security, socio-cultural well-being, prevention of passivity, and enhanced public oversight of executive institutions—effects that directly or indirectly influence other spheres of social life (4).

Mediation is a tripartite process that, outside the usual formalities of criminal procedure, begins on the basis of the prior agreement of the complainant and the accused, in the presence of a third party referred to as the mediator, for the purpose of resolving disputes and various issues arising from the commission of an offense (5). Mediation is an instance of diverting the criminal process to resolve crime-related disputes and may be applied at any stage—from the moment an offense occurs until before the accused appears before the court (6). Mediation is a method in which a third party facilitates dispute resolution through convening sessions, enabling dialogue between the parties, and discussing contested issues. In addition, without making or imposing a decision in the manner of a judge or arbitrator, the mediator encourages the parties to resolve their dispute and, by clarifying ambiguous aspects of the matter, identifying the parties' real interests, delimiting the points of disagreement, and exploring plausible options for agreement, assists them in establishing effective communication with one another (10).

The mediation process consists of a set of actions through which—under the management of the mediator and with the presence of the victim and the accused, and where necessary other persons effective in achieving reconciliation such as family members, friends, or colleagues, and, as appropriate, members of the local community, relevant official or public bodies, or non-governmental organizations—the parties engage in dialogue and exchange views to resolve the criminal dispute; if agreement is achieved, an agreement document is drafted and sent to the competent judicial authority (7). Accordingly, mediation as a dispute-resolution method refers to a process in which the opposing parties, through negotiation, seek to reach an agreement to settle the conflict. The central element of mediation is the voluntary participation of the parties in the mediation session and the making of free decisions without any pressure or threat (10).

Criminal mediation seeks lofty objectives aimed at realizing criminal justice in society and removing hostility through reconciliation. Among its most important goals is preventing reoffending. Because mediation typically entails acceptance of responsibility and a commitment by the offender to compensate harm and secure the victim's satisfaction, it can create conditions for repairing the offender's character, enhancing rehabilitative capacity, and preventing recurrence of crime—without the drawbacks associated with stigmatizing labels (5, 6).

In practice, mediation can create an appropriate setting in which the offender becomes aware of the problems and harms that the criminal act has imposed on the victim, the victim's close relations, and society, and can observe the grave consequences of that act. Mediation should awaken the offender's sense of responsibility toward the victim and, through awareness-raising, encourage compensation, problem-solving for the victim, and apology. Strengthening the offender's responsibility is therefore another aim of mediation, so that through face-to-face dialogue and expression, the offender's conscience is engaged and, by acknowledging the wrongdoing and its responsibilities, the offender attains empathy and solidarity with the victim—an outcome likely to affect future conduct in similar situations. In addition to benefiting the victim, the offender also benefits from these advantages. Thus, reducing tension between victim and offender, enabling emotional expression and empathy, resocializing and reintegrating the offender, and achieving reconciliation with the victim and society are among the objectives of mediation (5, 6).

Another important objective and function of mediation concerns the managerial dimension of governance and public administration. In societies characterized by authoritarianism, the populace has little share in governance, whereas in democratic societies the general will of the people prevails and the institution of mediation may play a major role. Even where mediation does not lead to an agreement on compensation, the process itself can be healing, and tripartite dialogue may produce positive effects and consequences for the offender and the offender's family (5).

Victims' rights constitute one of the most significant issues in modern criminal procedure. Whereas until relatively recently the victim, in the capacity of a private claimant, was accorded only a limited role in the criminal trial, today the victim occupies a privileged position in criminal law, to the extent that one speaks of a criminal policy grounded in victims' rights (4).

These developments in the victim's role in criminal proceedings have led legal scholars to attribute a special status to the victim in criminal adjudication. In mediation, one objective is to attend to victims' rights by recognizing the victim's position, acknowledging the victim's demands, enabling emotional and psychological discharge, and repairing the victim's harm within the criminal justice system (5, 6).

The victim, as a result of the offense, may suffer severe material and moral injury, and sometimes confronting and speaking with the accused is more important and valuable to the victim than the execution of punishment. Accordingly, the offender can play an essential role in restoring the victim's lost self-confidence and preventing secondary victimization.

The most important goal of mediation is compensation for the victim's losses. In such sessions, the effort is to determine accurately the extent of harm suffered by the victim—both material and moral—and to compensate it in the shortest time and in the best manner.

A study of different schools of criminal justice indicates that the local community historically had little effective role in the implementation of justice and was typically situated at the margins of the process. However, for nearly three decades, with the decline of the traditional criminal justice system and the emergence of restorative justice, a new chapter of local community involvement has opened, and members of the local community—who previously intervened at most as witnesses or as agents executing judgments—now, through methods such as mediation, have gained the opportunity to be present at the core of justice implementation (5, 6). Mediation should create a participatory space for local community involvement in conciliatory negotiations and justice implementation, cultivate a sense of participation, and adopt measures to repair social ruptures caused by crime. The process of

criminal mediation does not employ repressive tools that deepen social disruption; rather, by relying on non-penal methods of procedure and sanctioning, humanizing criminal adjudication, and increasing public confidence in the criminal justice system, it prevents such disruptions and their consequences. Ultimately, through confronting the offender with the local community and securing necessary guarantees from the offender to prevent further offending, this process should free the community from fear of renewed victimization and restore calm to the social body (5, 6).

Arbitration in Iranian Laws and Legal Doctrine and Its Social Effects

In the Code of Criminal Procedure enacted in 2013, mediation is treated as an official method, and Article 1 states that criminal procedure consists of the arrangements and rules established for the detection of crime, prosecution of the accused, preliminary investigations, mediation, reconciliation between the parties, the manner of adjudication, issuance of judgments, methods of اعتراض to decisions, enforcement of judgments, determination of the duties and powers of judicial authorities and judicial officers, and the observance of the rights of the accused and the victim (7, 8).

Article 82 of that Code provides that, in offenses of grades six, seven, and eight, and with the parties' agreement, the court may refer the case to mediation. From this, it may be inferred that the initial restorative and mediation-oriented conceptions in Iran's judicial system have been shaped by an indigenous and religious outlook. A restorative outlook is present in Islamic criminal law and also has roots in Iran's traditional social structure; therefore, the entry of mediation into statute has been grounded in these same foundations (12, 18). Accordingly, in view of the capacities of Iran's religious (Shar'i) and customary ('urfi) systems, a comparative study of restorative justice and international instruments can enable a form of localized restorative perspective to overcome many inefficiencies of the judicial system; in this direction, the legislator introduced, for the first time in the post-Revolution legal framework, a range of restorative mechanisms such as mediation, suspension of prosecution, deferment of prosecution, and related measures (10, 13). Restorative justice rests on a set of principles, concepts, and presuppositions that any restorative approach must incorporate in whole or in part, including the voluntariness of the process, the offender's acceptance of responsibility, and voluntary participation. Alongside these, principles such as neutrality, safeguarding the fundamental rights of victims, confidentiality, and the binding effect of agreements are also emphasized (9, 10).

Under the Arbitration Council Act enacted in 1969, certain criminal matters became capable of arbitration. Within a defined structure and under particular conditions, and with the presence of a judicial adviser, the Arbitration Council was tasked—pursuant to Article 12—with endeavoring to conclude disputes through reconciliation. Article 17 further provided that the Council is not bound by formal criminal procedure and may summon or invite the accused or either party as appropriate, hear their statements or defenses, and proceed by any method it deems suitable. Under Article 19, decisions of the Arbitration Council in misdemeanor matters are appealable within the statutory time limit where the punishment exceeds fifty thousand rials in monetary fine. Accordingly, the 1969 framework—given its legal competences and its non-formal, non-judicial procedure conducted in an adversarial environment—functioned as a restorative criminal mechanism that could contribute to restorative justice and the development of its social effects; moreover, the presence of a judicial adviser elevated and secured the legal standing of the Council's decisions (14, 15).

The Code of Procedure of Public and Revolutionary Courts in Criminal Matters enacted in 1999 referred, in Article 195, to the role of the court in resolving disputes and provided that in matters capable of being concluded through the parties' reconciliation, the court must exert sufficient effort to bring about conciliation; if reconciliation is not achieved, it proceeds to adjudication and issues the appropriate judgment. The legislator, through Article 195, limited referral for reconciliation to those offenses that are prosecutable upon a private complaint and are discontinued upon the complainant's waiver. In practice, this approach disregarded the principle of mediator neutrality and independence, as it designated the adjudicating judge as the mediator at the trial stage, which entails a violation of the neutrality requirement in mediation (9, 10).

Approximately four decades after the acceptance of mediation programs in a number of Western jurisdictions, the Iranian criminal legislator took a major step toward recognizing mediation by enacting the new Code of Criminal Procedure, and, drawing on French criminal procedure, moved toward a more consensual orientation in criminal proceedings (9, 17). Given that Article 82 is located within the chapter on the duties and powers of the prosecutor, referral to mediation is accordingly understood as a prosecutorial competence, while the investigating judge may only request such referral from the prosecutor (Note to Article 82). Article 2 of the Mediation Regulation further provides that mediation-related matters may be organized in any prosecutor's office or court under the supervision of the public and revolutionary prosecutor or the head of the relevant judicial district (7, 8).

Under the single-article Act concerning judicial and administrative affairs in Lorestan Province (enacted in 1933)—after the establishment of a formal criminal adjudication structure and less than a decade after the enactment of the General Penal Code in 1926—the Iranian legislator recognized the necessity of attending to local customs and enabling local communities to participate in the resolution of criminal disputes. The Act and its regulations provided for the establishment of courts of first instance and appeal for disputes in the Lorestan region, including the membership of one local individual, and permitted the handling of misdemeanor offenses through peaceful dispute-resolution methods (13).

With respect to the Houses of Equity and the Arbitration Councils, it can be stated that among legislative efforts to facilitate non-formal criminal justice, the enactment and implementation of laws establishing such institutions—designed to involve rural and urban residents in resolving their disputes—represented a key step toward non-official mechanisms of criminal justice. In these frameworks, not only was the jurisdiction of the Houses of Equity and Arbitration Councils broadened for the resolution of criminal disputes, but it was also provided that officials with local-governmental standing and criminal justice professionals such as judges, lawyers, and notaries could not be selected as members or advisers. Therefore, before the Revolution, recourse to conciliatory and restorative institutions such as the Lorestan Act, local dispute-resolution initiatives, Houses of Equity, and Arbitration Councils was beneficial; and notwithstanding certain shortcomings, these institutions—given their membership composition, selection procedures, scope of jurisdiction, decision-making methods, and lack of strict adherence to the formalities of official adjudication—possessed substantial latent capacity for non-formal dispute resolution and the realization of restorative teachings (5, 6).

Among laws addressing the possibility of arbitration and adjudication, some focus on the involvement of official authorities, while others aim to enable participation by individuals and non-governmental bodies for non-formal dispute resolution. For example, Article 6 of the Law on the Establishment of Public and Revolutionary Courts (enacted in 1994) provided that the parties, by agreement, may refer to a "judge of arbitration" (qāżi-ye taḥkīm) for the vindication of rights and the settlement of disputes. Under this conception, a judge of arbitration is an elected

adjudicator whom the parties accept as arbiter and decision-maker. Plainly, by agreement, the parties may select any person as such a judge and undertake to comply with the resulting decisions (14, 15). Moreover, under the Law on the Organization, Duties, and Elections of Islamic Councils and the Election of Mayors (enacted in 1996), one function of councils was defined as attempting to resolve disputes among the people, including disputes between two or more villages. Since members of these councils are generally elected from among the people, assigning them the task of non-judicial dispute resolution reflects a shift away from the perceived necessity of resolving all disputes formally through the judiciary and its affiliated institutions (5).

The Act and Regulation on Dispute Resolution Councils, adopted in 2008 in order to reduce public referrals to the judiciary and to expand public participation, also rests on the longstanding prevalence of methods of resolving disputes through forgiveness, reconciliation, and compromise. Under Article 8 of that Act, with the parties' consent for reconciliation, the councils may act in all civil and legal matters, all privately prosecutable offenses, and the private aspect of non-waivable offenses. Despite this conciliatory function, the legislator—contrary to certain conventional legal principles—granted broad judicial competence to these councils (7, 8).

Within the restorative adjudication approach rooted in Iranian customary systems, concepts such as reconciliation, tolerance, pardon, and forgiveness—across different ethnic groups and cultures, particularly among tribal communities—are among the most deep-rooted religious and cultural beliefs and have long been intertwined with social traditions, thereby supplying the intellectual foundations for a popular and humane view of criminal justice. This approach encompasses practices such as local settlement rites, blood-compensation reconciliation mechanisms, itinerant courts, mediation in police centers, reconciliation units within the judiciary, arbitration, Islamic Councils, and the institution of the judge of arbitration (19, 20).

Conclusion

Before the Revolution, the use of arbitration-based and restorative institutions—such as the single-article Act concerning judicial and administrative affairs in Lorestan, the bill on local dispute resolution, the Law on the Establishment of Houses of Equity, and the Arbitration Council Act—proved beneficial. Despite certain shortcomings in the performance of the Houses of Equity and the Arbitration Councils, there is no doubt that, considering the composition of their members, the manner of their selection, the extent and scope of their jurisdiction, their methods of decision-making, and their non-adherence to the formalities of proceedings before official authorities, these institutions possessed the greatest (potential) capacity for the non-formal settlement of disputes and for the emergence and realization of certain restorative teachings. After the Revolution, with respect to legislation concerning arbitration and adjudication, the principal criticism directed at the relevant body of laws and regulations is, first, that all such provisions reflect a form of official (state) intervention in the non-formal resolution of disputes, and second, that no clear mechanisms or procedures have been envisaged for the implementation of the requirements or recommendations set out in those laws. Evidently, as previously discussed, a restorative program is carried out in accordance with specific principles and standards, from which the existing regulations largely depart. In view of the principles and objectives of restorative justice and the methods of its implementation, it is generally not possible to regard the Dispute Resolution Councils as restorative in nature for several substantial reasons. Nevertheless, in light of certain capacities inherent in these councils, including the obligation set forth in Article 14 of the Regulation, they may be considered potentially restorative. Under the Arbitration Council Act enacted in 1969, and given the statutory competences conferred upon it, criminal disputes

are arbitrated outside the formalities of criminal procedure, in a non-judicial and adversarial setting, thereby contributing to restorative justice; moreover, the presence of a judicial adviser elevates and secures the legal standing of the Council's decisions, which in effect underscores the contractual nature of arbitration in Iranian law. The adoption of relevant statutes and regulations in Iranian law, emphasizing principles such as the parties' consent to enter the mediation process, confidentiality, and mediator neutrality, has enhanced the effectiveness of this institution. Nonetheless, traditional perceptions of the criminal justice system—premised on the necessity of imposing punishment—together with deficiencies and ambiguities in enacted texts and inconsistencies in the extent and manner of referring cases to mediation, constitute among the principal challenges confronting this institution. Arbitration in international criminal law, as recognized through accepted international customs and formal treaties, is feasible and not incompatible with national interests, and, as a mechanism that secures both national and international mutual interests, may prove effective; this reflects the customary and contractual character of arbitration. It is asserted that the objective of most traditional mechanisms is the implementation of justice, the achievement of reconciliation, and the settlement of disputes, such that they are often referred to as dispute-resolution mechanisms; under specific conditions, such traditional mechanisms can indeed promote reconciliation in transitional societies. The division of jurisdiction among the Gacaca courts in addressing committed crimes evokes, in certain respects, the categorization of criminal courts' jurisdiction according to the gravity of offenses. It is further maintained that the performance of legislative, judicial, and executive systems of states should be such as to ensure security in economic, commercial, and scientific spheres, minimizing the grounds for crimes against foreign investors and preventing their withdrawal due to insecurity. Moreover, complaint mechanisms, prosecution procedures, and litigation costs should be arranged so that the injured trader can tangibly perceive the support of the legislator and relevant institutions. Consequently, in situations of cultural conflict, internal solidarity with the host community becomes essential. Acquiring preliminary knowledge of the host society and informing group members of its norms, values, and potential reactions to their presence and activities can play a significant role in eliminating pre-criminal factors. The application of arbitration mechanisms to such offenses enhances the speed and accuracy of judicial proceedings and ultimately increases the cost of committing crimes against such actors to a degree that renders criminal conduct economically unattractive, thereby contributing to the expansion of the social effects of arbitration.

Recommendations

1. Since amendments to the Code of Criminal Procedure may be placed on the legislative agenda, it is appropriate that critical considerations concerning the existing deficiencies of the criminal mediation institution be duly addressed. Such reforms would, on the one hand, strengthen the foundations of the activities of mediation practitioners and, on the other hand, enable them to reach a balanced solution between aspirational goals and the unavoidable constraints of reality.
2. Expediting the issuance of licenses for mediation institutions and conducting careful evaluations of their performance in the process of institutionalization will significantly contribute to effective implementation. In this regard, particular attention should be devoted to the victim as the central party in the offense, and the principles of confidentiality, preservation of dignity, and the absence of coercion should consistently govern mediation operations in order to prevent secondary victimization.

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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.

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