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## Restorative Justice: Concept and Practices

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**Abstract:** This research paper explores the concept of restorative justice or an alternative form of justice its varied forms and practices across the globe. It focuses on the restorative justice system as an alternative to solve the problems of existing criminal justice system. Restorative practices gives an angle where offender help to repair the harm of victim, at the same time priority to victim, and community is given opportunity to participate in taking decision against offender. This practices aims to restore the harm, by restoring offender, victim as well as community at large. Research also focuses on various restorative justices practices followed across the globe, its merit over existing justice system, how inclusion of the process in criminal justice system as an alternative to punishment can be beneficial to solve various problems like overcrowding in prison, long delay in criminal trials, victims dissatisfaction.

**Keywords:** Restorative, Real justice, Victim participation, Truth finding, Conflict resolution, Making Amends.

### INTRODUCTION

The ultimate goal of rule of law is to give justice to all. Criminal justice administration is one of the major issues of rule of law. The cardinal principle of justice is “justice should not only be done, it should be seen to be done.” In the light of this principle we find various lacunas in the present administration of criminal justice system.

The present form of criminal justice hardly serves the purposes for which it was set up: towards securing life and property. It does not deter criminals because of the inordinate delay and uncertainties embedded into the delivery processes and ridiculously ineffective punishments it imposes on those few who get convicted. It provides wide discretion to the police and the prosecution, rendering the system vulnerable to corruption, manipulation and endangering the basic rights of innocent citizens. It ignores the real victim, often compelling him/her to find extralegal methods of getting justice. Above all, it puts heavy economic costs on the state for its maintenance without commensurate benefits in return. Today the whole criminal justice system is facing plethora of problems- overcrowding of prison, false witnesses, long trials, manipulative facts, power influence, unsatisfied victim, lack of deterrence, increase of crime etc..... the list is long. In the process of justice delivery system, no one is benefitted, neither victim nor offender. The problem related to it is now and then discussed with regard to criminal justice administration. So searching an alternative method to carry criminal justice becomes need of time, and restorative justice is answer to same. With nearly 30 million criminal cases pending in the system (the annual capacity of which is only half that number), and with another 10 million or more cases being added every year, whatever is left of the system is bound to collapse completely unless some radical alternatives are adopted urgently [1].

Faced with a similar situation, the U.S. adopted plea bargaining and diversion to administrative and quasi-judicial institutions in a big way several years ago with the result that less than a third of criminal cases are allowed to go for trial. Diversion is followed in the U.K. as well. Recently, it reformed its criminal justice system giving a central role to the victims to direct their cases in the system. In Russia, Australia and several other countries, the victim is brought centre stage through what is called “restorative justice” to replace unproductive aspects of conventional criminal processes.

On the recommendation of the Committee on Reforms of Criminal Justice System 2003, India also adopted “plea bargaining” under Chapter XXI-A of the the Code of Criminal Procedure to take out from the system cases punishable up to seven years of imprisonment for negotiated settlement without trial. However, the Bar and the Bench seem to be allergic to plea-bargained settlement, with the result that even after a decade of its introduction, it remains a dead letter not invoked by those caught in the system.

Several countries across the world are now replacing the adversarial model of criminal justice partly or wholly with different models of restorative justice, yielding promising results in crime control. The process is more collaborative, consensual and inclusive, that is characteristic of indigenous systems of justice. The role of the state is reduced and the participation of communities encouraged. This is not to be confused with the khap panchayat model of

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<sup>1</sup>Mennon, M. N. R. (2016). Towards restorative criminal justice. The Hindu ; April 5, 2016.

arbitrary decision-making by a few elders of the locality. Due process requirements are followed in restorative justice while participation is enlarged and made transparent, inclusive and accountable. While doing so, the system respects diversity as a social fact, interrelatedness as a virtue and correcting/healing the harm as a major objective.

### **The research question is whether**

The present criminal justice system is efficient to deal with all types of administrative problem, whether there is requirement of creating some alternative form of justice delivery system. Present research paper is a doctrinal study to understand, meaning and concept of restorative justice.

### **Restorative Justice**

The end of the twentieth century witnessed a resurgence of restorative and victim-centered theories of criminal justice. In earlier times, victims played a major role in criminal justice. In tenth century, many offenders had to pay financial compensation in the form of a bot to the victim and a wite to the victim's lord. In the twelfth and thirteenth centuries, the king began to assert control over criminal justice, and took over payments by the offender, subsequently replacing with other forms of sentences. While victims continued to play a primary role in the prosecution of suspected offenders until the nineteenth century, the victim's involvement in what came to be 'sentencing' faded away. Recent years have seen the re-emergence of concern for victims, among political policy makers criminal justice practitioner and criminal- justice theorists [2].

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Different terms are involved to understand restorative justice concept and practices- real justice, community justice, victim offender mediation, victim offender family group conferencing, prison circles etc.

A great deal of research has been conducted into the nature and effects of restorative justice policies and programs. Kurki, 2003 'evaluating restorative Justice Practices" in von Hirsch *et al.*, eds, Restorative and criminal justice: Competing or Reconcilable Paradgims (Oxford Hart Publishing) provides an overview of the concept.

N Cristie, 1972 in "conflict as Property" 1977 British Journal of Criminology says Full participation in conflict presupposes elements of civil law. The key element in a criminal proceeding is that the proceeding is converted from something between concrete parties to conflicts between one party and state, author discusses how better solutions can be devised if the tussle is resolved by involvement of two parties.

Ra Duff in article "Restoration and Retribution" talks of how damage caused by crime can be more satisfactorily solved by restorative justice. Author adapts this concept from Von Hirsch, "Restorative justice and criminal justice" John Braithwaite in article "in search of Restorative jurisprudence" [3].

Focuses on jurisprudential roots and aspect of restorative justice. Declan Roche in article " semi-formal justice combining informal and formal justice" suggest restorative justice and retributive justice can best function when combined. Combination of both in legal system can give the true justice [4].

Andrew Ashworth in an article "Techniques for Reducing Sentence Disparity" refers adoption of restorative justice as one of the techniques [5].

Howard Zehr Professor 1990 of restorative justice and also considered grandfather of restorative justice in one of his books on Changing Lenses: A new Focus for Crime and Justice. This article analyze common parts about justice and crime, which it terms "retributive" lens, considers ancient alternative. "Restorative" model is dependent on the needs of victims, offenders, their past behavior, recent experiments and principles.

Review of literature reveals that restorative justice practically cannot be cribbed, cabined and confined in particular definition; it varies from place to place, time to time, and varies with cultures also. Globally restorative justice

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<sup>2</sup> Andrew, A., & Julian, R. (2009). Principled sentencing readings on theory and policy, 164.

<sup>3</sup> Walgrave, L. (ed). (2002). Restorative Justice and Law, Cullompton, Devon: Willan Publishing, 150-67.

<sup>4</sup> Roche, D. (2003). Accountability in Restorative Justice, Oxford University Press, 226-39.

<sup>5</sup> Ibid 1 pg-243

is being adopted by different practices, among which victim offender mediation (VOM), prison circles, family group conferencing in New Zealand, Waga Waga model of police involvement in prison are very successful. The restorative justice is need of time, the challenge lies in devising successful restorative practices, which can do real justice.

### **DEFINATION, MEANING, AND CONCEPT OF RESTORATIVE JUSTICE**

Restorative justice is a problem solving approach to crime which involves parties themselves and community generally, in active relationship with statutory agencies.

It is not any particular practice, but set of principles which may orient the general practice of any agency or group in relation to crime.

The principles are:

- Making room for personal involvement of those mainly concerned (particularly the offender and victim, but also their families and communities)
- Seeing crime problems in their social context.
- Forward looking (or preventive) problem solving orientation.
- Flexibility of practice (creativity).

Restorative justice may be seen as criminal justice embedded in social context, with stress on its relationship to other component, rather than a closed system in isolation.

A commonly accepted definition used internationally is: Restorative justice is a process whereby parties with a stake in specific offence collectively resolve how to deal with aftermath of the offence and its implication for the future [6].

Justice is what is fair, reasonable, morally right, ethically good in common parlance when people get result of what they have done justice is considered to be achieved.

Justice is broken into three major categories social, personal, supernatural. Social justice involves a government's legal system, personal justice involves persons own ethics, supernatural justice refers to karma, benevolent god and the like [7].

Human civilization has shown conflict is part of human nature, as wrong follows remedy, so the conflict follows conflict resolution. Restorative justice is way to resolve conflict by active involvement of victim, offender, and community. It mainly is based on philosophy that restitution to victim for harm suffered, making offender realize guilt, thereby directing to compensate victim, involving community in decision making, encouraging reintegration of offender in society. Growing concept of restorative justice is response to the failures of criminal justice administration system in most of the countries of world.

Mounting arrears of court, delay in disposal of cases, human rights violations of accused, unsatisfied victims, has forced public to loose confidence in present justice system, resultantly paving way to adopt restorative form of justice [8].

Restorative justice has been defined in a number of ways. "Restorative justice is fundamentally concerned with restoring relationships, with establishing or re-establishing social equality in relationships [9]."

According to J. J. Llewellyn and R. Howse restitution of relationship is primary object of restorative justice. Conflict should be resolved in the manner so that it repairs bitter relation, and brings harmony between accused and victim. Howard Zehr, a leading restorative justice advocate, draws following assumptions behind restorative justice are:

1. Crime violates people and relationships;
2. Justice aims to identify needs and obligations so that things can be made right;
3. Justice encourages dialogue and mutual agreement,
4. It gives victims and offenders central roles,
5. And it is judged by the extent to which responsibilities are assumed, needs met, and healing (of individuals and relationships) is encouraged" [10].

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<sup>6</sup> Tony, F. M. A report by home office research development and statistic Directorate, 5.

<sup>7</sup> www.thealmightyguru.com

<sup>8</sup> Bajpai, G. S. (2012). Towards restorative justice, 1.

<sup>9</sup> Llewellyn, J. J., & Howse, R. (1990). *Restorative Justice - A Conceptual Framework*.

<sup>10</sup> Zehr, H. (1990). *Changing Lenses: A New Focus for Crime and Justice* (Waterloo, ON: Herald Press, 181.

Although Zehr speaks in terms of criminal law, restorative justice blurs the line between criminal and civil wrongs by focusing on the harm done and the solutions required for healing, rather than the action itself or the need for punishment. Therefore, the principles of restorative justice are applicable to both criminal and civil conflicts where a wrongdoing is at issue. Center for restorative justice, Suffolk University defines restorative justice:

...a broad term which encompasses a growing social movement to institutionalize peaceful approaches to harm, problem-solving and violations of legal and human rights. These range from international peacemaking tribunals such as the South Africa Truth and Reconciliation Commission to innovations within the criminal and juvenile justice systems, schools, social services and communities. Rather than privileging the law, professionals and the state, restorative resolutions engage those who are harmed, wrongdoers and their affected communities in search of solutions that promote repair, reconciliation and the rebuilding of relationships. Restorative justice seeks to build partnerships to reestablish mutual responsibility for constructive responses to wrongdoing within our communities. Restorative approaches seek a balanced approach to the needs of the victim, wrongdoer and community through processes that preserve the safety and dignity of all [11].”

Restorative justice is very different from either the adversarial legal process or that of civil litigation. J. Braithwaite writes,

"Court-annexed ADR (alternative dispute resolution) and restorative justice could not be philosophically further apart", because the former seeks to address only legally relevant issues and to protect both parties' rights, whereas restorative justice seeks "expanding the issues beyond those that are legally relevant, especially into underlying relationships [12]”.

Similarly, citing Greif, Liebmann wrote restorative justice as "a way of looking at restorative justice is to think of it:

- as a balance among a number of different tensions:
- A balance between the therapeutic and the retributive models of justice
- A balance between the rights of offenders and the needs of victims
- A balance between the need to rehabilitate offenders and the duty to protect the public [13].

Professor Martin Write [14] explains restorative justice as:

“It is like a growing child: as soon as its parents have provided some clothes, it has grown and more are needed. The idea of community involvement in the process is just one example. Its grandparents, so to speak, come from different backgrounds; and many of them were practitioners rather than theorists. This paper will consider how restorative justice started with programmers that brought the community *into* the criminal justice system or diverting cases *out of* it, ending with the use of restorative justice outside the system.”

## MEANING AND CONCEPT

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It’s not any particular practice, but a set of principles which may orientate the general practice of any agency or group in relation to crime.

### These principles are:

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- Seeing crime problem in social context.
- Forward looking or preventing problem solution orientation.
- Flexibility of practice.

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<sup>11</sup> Suffolk University, College of Arts & Sciences, Center for Restorative Justice, "What is Restorative Justice?"; 2011

<sup>12</sup> <sup>^</sup> Braithwaite, J. *Restorative Justice & Responsive Regulation* 2002, Oxford University Press, at 249. ISBN 0-19-515839-3

<sup>13</sup> Liebmann, M. *Restorative Justice: How it Works*, 2007, London: Jessica Kingsley Publishers, at 33

<sup>14</sup> Restorative justice outside the criminal justice system

Restorative justice may be seen as criminal justice embedded in its social context, with the stress on its relationship to the other components, rather than closed system.

Commonly accepted definition used in internationally, restorative justice is process whereby parties with a stake in specific offence collectively resolve how to deal with aftermath of the offence and its implications for future” [15].

To understand in crystal clear manner that what actually restorative justice is, we need to examine how people across globe have misunderstood the concept of restorative justice.

### **WHAT RESTORATIVE JUSTICE IS NOT**

Grand Father of restorative justice sir Howard Zehr, in his book “little book of restorative justice” discuss as to what restorative justice is not, and clears the misunderstanding on this issue.

Often people get confused that restorative justice aims to be lenient towards offender but the aim of restorative justice is not that, restorative justice certainly does not aim following things:

#### **Restorative justice is not primarily about forgiveness or reconciliation.**

Some victims and victim advocates react negatively to restorative justice because they have the impression that the goal of such programs is to encourage or even coerce them to forgive or reconcile with offenders. As we shall see, this is not a primary principle or focus of restorative justice. It is true that restorative justice does provide a context where this might happen. Indeed, some degree of forgiveness or even reconciliation does occur much more frequently than in the adversarial setting of the criminal justice system. However, this is a choice that is entirely up to the participants. There should be no pressure to choose this option. *In “high context” or communal settings, processes of forgiveness are more often central to resolve the wrong. The offender is forgiven with the help of community elders. Governments then usually respect these decisions of the victim and the community. In the western legal system, however, forgiveness processes are more [16]”.*

#### **Restorative justice is not mediation**

Like mediation programs, many restorative justice programs are designed around the possibility of a facilitated meeting or encounter between victims, offenders and perhaps community members. However, an encounter is not always chosen or appropriate. Moreover, restorative approaches are important even when an offender has not been apprehended or when a party is unwilling or unable to meet. So, restorative approaches are not limited to an encounter.

Even when an encounter occurs, the term “mediation” is a problematic description. In a mediated conflict or dispute, parties are assumed to be on a level moral playing field, often with responsibilities that may need to be shared on all sides. While this sense of “shared blame” may be true in some criminal cases, in many cases it is not. A victim in a rape or even a burglary does not want to be known as a “disputant.” In fact, they may well be struggling to overcome a tendency to blame themselves. At any rate, to participate in most restorative justice encounters, a wrongdoer must admit to some level of responsibility for the offense, and an important component of such programs is to name and acknowledge the wrongdoing. The neutral language of mediation may be misleading and even offensive in such cases.

“Although the term “mediation” was adopted early on in the field, for the above reasons it is increasingly being replaced by the terms such as “conferencing” or “dialogue.” An Over View [17]

*Sideline to justice and offenders are usually required to complete their punishment even if forgiven. Although there is a phrase “forgive and forget” in western culture, many teach that forgiving does not involve forgetting:*

*“Remember and forgive,” some say. In Eastern culture, forgiveness and reconciliation often do require one to forget.*

#### **Restorative justice is not primarily designed to reduce recidivism**

An effort to gain acceptance, restorative justice programs are often promoted or evaluated as ways to reduce repeat crimes.

There are good reasons to believe that in fact such programs will reduce offending. Indeed, the research thus far centering mainly on juvenile offenders is quite encouraging on this issue.

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<sup>15</sup> Tony F marshal; “restorative justice an overview” report home office research development statics P;5,1999

<sup>16</sup> Ibid 17 pg 6-7

<sup>17</sup> Ibid 7-8

Nevertheless, reduced recidivism is not the reason for operating restorative justice programs. Reduced recidivism is an expected by product, but restorative justice is done first of all because it is the right thing to do: victims' needs *should* be addressed, offenders *should* be encouraged to take responsibility, those affected by an offense *should* be involved in the process, regardless of whether offenders “get it” and reduce their offending.

*In many high context cultures, crime is considered first of all to be” a violation of traditional law and of religious values. Community elders may establish the offender's obligations even if he himself does not accept them. The rules governing this may be written but may also be an unwritten code [18].*

### **Restorative justice is not a particular program or a blueprint**

Various programs embody restorative justice in part or in full. However, there is no “pure” model that can be seen as ideal or simply implemented in any community. We are still on a steep learning curve in this field; the most exciting practices that have emerged in the past years were not even on the “screen” of those of us who began the first programs, and many more new ideas will surely emerge through dialogue and experimentation. Also, all models are to some.

### **Restorative Justice is a compass not a map**

Extent culture-bound. So restorative justice should be build from the “bottom up,” by communities in dialogue and experimentation. Also, all models are to some extent culture bound. So restorative justice should be build from the “bottom up,” by communities in dialogue assessing their needs and resources and applying the principles to their own situations.

Restorative justice is *not a map* but the principles of restorative justice can be seen as a *compass* pointing a direction. At minimum, restorative justice is an invitation for dialogue and exploration.

*In traditional societies, however, restorative justice may be embedded in a complete verbal code of life [19].*

### **Restorative justice is not primarily intended for “Minor” offenses or first-time offenders**

It may be easier to get community support for programs that address such cases. However, experience has shown that restorative approaches may have the greatest impact in more severe cases. Moreover, if the principles of restorative justice are taken seriously, the need for restorative approaches is especially clear in severe cases. The “guiding questions” of restorative justice may help to tailor justice responses in very difficult situations. Domestic violence is probably the most problematic area of application and here great caution is advised.

### **Restorative justice is neither a panacea nor necessarily a replacement for the legal system**

By no means is restorative justice an answer to all situations. Nor is it clear that it should replace the legal system, even in a more-or-less ideal world. Many feel that even if restorative justice could be widely implemented, some form of the western legal system (ideally, a restoratively-oriented one) would be needed as a backup and as guardian of basic human rights. Indeed, this is the function that the youth courts play in the restorative juvenile justice system of New Zealand.

Most restorative justice advocates agree that crime has not only a public dimension but also a “private” dimension; more accurately, this might be termed a societal dimension as opposed to a more local and personal dimension. The legal system focuses on the public dimensions, i.e. on society's interests and obligations as represented by the state. However, this approach downplays or ignores the personal and interpersonal dimensions of crime. By focusing on and elevating the latter “private” dimensions of crime, restorative justice seeks to provide a better balance in how we experience justice.

### **Restorative justice is not necessarily the opposite of retribution**

For those who are acquainted with my earlier book, *Changing Lenses*, this may come as a surprise. The contrasting models that I outlined there retributive justice vs. restorative justice have been widely adopted in the field. Those charts remain a useful analytical or critical tool, but on the philosophic or theoretical level, I no longer see restoration as the polar opposite of retribution [20].

## **JURISPRUDENCE OF RESTORATIVE JUSTICE**

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<sup>18</sup> Supra note <sup>13</sup>,pg 9-10

<sup>19</sup> Ibid 17 pg10-11

<sup>20</sup> Ibid 17 pg 14-15

Why restorative justice today has become main concern of those researching on punishment model, is probably age old philosophy emphasized by different religions, evil could be won by peace, self realization is mode to remove crime from society. Concept of restorative justice draws its basis from *reformatory, preventive, therapeutic theories* of punishments. It largely focuses on jurisprudence of responsibility, involvement of victim and community in prosecution.

### **REFORMATIVE THEORY**

The reformatory theory emphasizes on reformation of offenders through the methods of individualization. It is based on humanistic approach that even if an offender commits crime, he does not cease to be a human being. Therefore, an effort should be made to reform him during the period of his incarceration. While deciding on the offence judicial system should try to devise methods alternative to imprisonment. Thus as opposed to deterrent theory, reformatory theory aims at socialization of the offender so that the factors which motivated him to commit crime are eliminated and he gets chance to correct his life [21].

Restorative justice theory also works on similar pretext that punishment should not be only mode of crime correction; method should be devised where dispute is resolved by using alternative modes like:

**VICTIM OFFENDER MEDIATION:** where the offender is made to realize how the crime has affected the victim's or community life,

**FORGIVENESS:** Where the victim or community openly forgives the offender

**MAKING AMENDS:** where the offender makes good the harm caused directly to the people or organizations.

**VICTIM AWARENESS:** Victim are given greater voice in criminal justice system.

**ACCOUNTABILITY:** Offenders have to take responsibility of their actions [22].

**COMMUNITY CONFIDENCE:** That offenders are making amends for their wrong doings.

### **PREVENTIVE THEORY AND RESTORATIVE JUSTICE**

Restorative justice also justifies on pretext of *preventive theory* where by adopting above mentioned methods, offender can be prevented from being tagged as criminal, mutual meeting of victim and offender could alleviate sufferings of victim and offender both. It can also help to prevent overcrowding of prison which many times becomes school of small criminals to turn into big criminals [23].

Restorative justice can remove crime prevention from its marginal status in the criminal justice system, mainstreaming it into the enforcement process. It can deliver the motivation and widespread community participation crime prevention needs to work and to protect itself from capture by organized interests (including the crime prevention industry itself). Motivation and participation also improve follow-through on conference agreements in comparison with follow-through on court orders. Sometimes, but all too rarely, motivation and participation engendered by restorative process can deliver the political clout to crime prevention that it needs to tackle systemic problems systemically. Plural participation in conferences fosters a capacity to see a crime as many things at once, caused in context by a variety of different true explanations, each of which suggests preventive options. Deliberation in conferences has the potential to increase the effectiveness of crime prevention by a contextual wisdom that better matches the right preventive options (therapeutic, situational or structural) to the right case.

### **THERAPEUTIC JURISPRUDENCE AND RESTORATIVE JUSTICE**

This system of justice is also based on therapeutic jurisprudence, which lays its focus on impact of justice system on psychological and physical wellbeing of people, both restorative justice and therapeutic traditions share an interest in how to overcome the problem of criminal offenders, reducing pain in victims, preventing further victimization [24].

### **THE JURISPRUDENCE OF RESPONSIBILITY**

If a crime is committed, merely by imprisonment purpose of justice is not solved, in present date large number of under trial prisoners, over crowded prisons, unsatisfied victims are indicator of less effective prevailing system of

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<sup>21</sup> Dr N.V Paranjape: studies in jurisprudence and legal theory; p:159

<sup>22</sup> Ursula Smartt; Law of criminologist;p:134

<sup>23</sup> Supra Note 1

<sup>24</sup> David Wexler, therapeutic jurisprudence in comparative law context (behavioral science and law)pg 233,236;1997

justice. There has to be evolution of system where offender is made to realize what harm he did to victim by arranging meetings between them thereby making offender responsible in some way so that the victims get satisfied. Active responsibility is encouraged for repairing the harm done, the relationship that are rolyndamaged. Restorative justice is about creating spaces where not only offender, but also concerned citizen as well, will find it safe to take active responsibility [25].

John Braithwait and Declan Roche found that even individual can be held passively responsible if they take active responsibility for repairing the crime, they can acquit that responsibility [26]. Restorative theories, aims to bring back victim and community participation in criminal justice system.

The part of appeal for restorative approaches for resolving criminal dispute arises from dissatisfaction with the current justice system [27]. Concept of restorative justice becomes clear by doing a comparative study between existing criminal justice system and proposed RJ model.

### **CRIMINAL JUSTICE SYSTEM VS RESTORATIVE JUSTICE**

In India, US, England and many other countries we have system in which as crime occurs, the state enters in the shoes of victim. Then begins the trial, which is basically a fact finding enquiry, where by applying rules of evidences the court comes to the conclusion that how culpable the offence was, and thereby provides a legal remedy in form of, Death penalty or life imprisonment or simple imprisonment or rigorous imprisonment or fine.

So in existing criminal justice system legal remedy is either fine or imprisonment. Where the wrong is considered against state so punishing authority is state.

Focus in criminal justice system is crime, offender, trial, punishment and NOT the v Restorative justice views crime, first of all, as harm done to people and communities. Our legal system, with its focus on rules and laws, often loses sight of this reality; consequently, it makes victims, at best, a secondary concern of justice. A harm focus, however, implies a central concern for victims' needs and roles. Restorative justice begins with a concern for victims and how to meet their needs, for repairing the harm as much as possible, both concretely and symbolically. A focus on harm also implies an emphasis on offender accountability and responsibility -in concrete, not abstract, terms. Too often we have thought of accountability as punishment -- pain administered to offenders for the pain they have caused. Unfortunately, this often is irrelevant or even counterproductive to real accountability. Little in the justice process encourages offenders to understand the consequences of their actions or to empathize with victims. On the contrary, the adversarial game requires offenders to look out for themselves.

Offenders are discouraged from acknowledging their responsibility and are given little opportunity to act on this responsibility in concrete ways. The "neutralizing strategies" -- the stereotypes and rationalizations that offenders use to distance themselves from the people they hurt -- are never challenged. So the sense of alienation from society experienced by many 2offenders, the feeling that they themselves are victims, is only heightened by the legal process. And the prison experience. If crime is essentially about harm, accountability means being encouraged to understand that harm, to begin to comprehend the consequences of one's behavior. Moreover, it means taking responsibility to make things right insofar as possible, both concretely and symbolically. As our fore parents knew well, wrong creates obligations; taking responsibility for those obligations is the beginning of genuine accountability victim who has suffered the loss [28].

The person who becomes victim has various needs:

- Theurapatic
- Financial
- Emotional

Many a times losses are intangible, loss of dignity, loss of personal injuries. The present system is not able to serve victim satisfaction.

Victim oriented justice is not what present system is able to serve.

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<sup>25</sup> Carolyn Hoyle; critical concepts in Ciminology ,article by John Braithwaite,In search of restorative jurisprudence p8

<sup>26</sup> ibid

<sup>27</sup> id;p166

<sup>28</sup> Howard Zehr; National Institute of Corrections. 1996. Community Justice: Striving for Safe, Secure and Just Communities. LIS Inc. (March).pg1



**Restorative justice:** provides approaches where the enquiry involved are truth finding and not merely fact finding.

- It encourages voluntary discussion between victim and offender termed as victim offender mediation. Where will of victim is given paramount consideration to decide punishment for offender.
- It promotes offender accountability to repair loss to the victims.
- Apology by offender is encouraged.
- Aims to serve therapeutic, financial, emotional needs of victims.

**Retributive vs. Restorative Justice [29]**

This table illustrates the differences in the approach to justice between Retributive Justice and Restorative Justice. As you will see, Restorative Justice is much more community centric and focuses on making the victim whole.

<b>Retributive Justice</b>	<b>Restorative Justice</b>
Crime is an act against the state, a violation of a law, an abstract idea	Crime is an act against another person and the community
The criminal justice system controls crime	Crime control lies primarily in the community
Offender accountability defined as taking punishment	Accountability defined as assuming responsibility and taking action to repair harm
Crime is an individual act with individual responsibility	Crime has both individual and social dimensions of responsibility
Punishment is effective: <ul style="list-style-type: none"> <li>• Threats of punishment deter crime</li> <li>• Punishment changes behavior</li> </ul>	Punishment alone is not effective in changing behavior and is disruptive to community harmony and good relationships
Victims are peripheral to the process	Victims are central to the process of resolving a crime.
The offender is defined by deficits	The offender is defined by capacity to make reparation
Focus on establishing blame or guilt, on the past (did he/she do it?)	Focus on the problem solving, on liabilities/obligations, on the future (what should be done?)
Emphasis on adversarial relationship	Emphasis on dialogue and negotiation
Imposition of pain to punish and deter/prevent	Restitution as a means of restoring both parties; goal of reconciliation/restoration
Community on sideline, represented abstractly by state	Community as facilitator in restorative process
Response focused on offender’s past behavior	Response focused on harmful consequences of offender’s behavior; emphasis is on the future
Dependence upon proxy professionals	Direct involvement by participants [30]

**RESTORATIVE JUSTICES PRACTICES- GLOBAL ASPECT**

Restorative justice does not have particular practice; it varies according to need of time, culture, offender and victim concerned. Across the globe we can find different models of restorative justice. Following are the most popular models:

**MEDIATION MODELS**

**COMMUNITY MEDIATION**

“Disputes involving neighbors often have no official resolution mechanism. Community mediation centers generally focus on neighborhood conflict, with trained local volunteers serving as mediators. Such organizations often serve populations that cannot afford to utilize the courts or professional ADR-providers. Community programs typically provide mediation for disputes between landlords and tenants, members of homeowners associations and small businesses and consumers. Many community programs offer their services for free or at a nominal fee.

Experimental community mediation programs using volunteer mediators began in the early 1970s in several major U.S. cities. These proved to be so successful that hundreds of programs were founded throughout the country in the following two decades. In some jurisdictions, such as California, the parties have the option of making their agreement enforceable in court [31]”.

In India *panchayt* system can be taken as an example of community mediation.

<sup>29</sup> [http://www.cscsb.org/restorative\\_justice/retribution\\_vs\\_restoration.html](http://www.cscsb.org/restorative_justice/retribution_vs_restoration.html) on date 26 April 2012

<sup>30</sup> Ibid<sup>23</sup>

<sup>31</sup> [http://en.wikipedia.org/wiki/Mediation#Community\\_mediation](http://en.wikipedia.org/wiki/Mediation#Community_mediation) on date 29.04.2012

### **VICTIM OFFENDER RECONCILIATION**

These are based on the restorative justice model, and are community mediated victim-offender conflict resolutions designed to be fair to both the victim and the offender. VORPs are an alternative to the formal criminal justice system, designed to improve conflict resolution, provide material reparations to victims, prevent recidivism and offer a speedier and less costly alternative to formal processes.

Negotiation leaves both parties satisfied with the results; the result is a mutually satisfactory solution. The victim and offender work together to find a solution, leaving the victim, the offender and the community with the feeling that justice has been served and that life will return to normal.

### **VICTIM OFFENDER MEDIATION**

Victim offender mediation is a process that provides interested victims an opportunity to meet their offender, in a safe and structured setting, and engage in a mediated discussion of the crime. With the assistance of a trained mediator, the victim is able to tell the offender about the crime's physical, emotional, and financial impact; to receive answers to lingering questions about the crime and the offender; and to be directly involved in developing a restitution plan for the offender to pay back his or her financial debt.

This process is different from mediation as it is practiced in civil or commercial disputes, since the involved parties are not "disputants" nor of similar status - with one an admitted offender and the other the victim. Also, the process is not primarily focused upon reaching a settlement, although most sessions do, in fact, result in a signed restitution agreement. Because of these fundamental differences with standard mediation practices, some programs call the process a victim offender "dialogue," "meeting," or "conference [32]".

### **CHILD WELFARE CONFERENCING MODEL**

In modern time deviance of juvenile has become a rampant problem, New Zealand experience show that children can be reformed in family, rather than prison. New Zealand developed restorative justice practices for juvenile offenders.

### **SOCIAL WELFARE FAMILY GROUP CONFERENCE (WFGC)**

The New Zealand children young person and their families Act, 1989 required that young people who came to the attention of authorities- either for care and protection issues or for offending behavior- participate in family group conference (FGC) with their immediate and extended family members. FGC empowers the extended family group actions to determine plan of action where professional acts as facilitators [33].

### **FAMILY GROUP CONFERENCING**

Family Group Conferences (FGCs) originated in New Zealand. They were originally used to allow social work practice to work with and not against Maori values and culture. The Children, Young Persons, and Their Families Act 1989 made them a central part of practice and services where serious decisions about children are to be made.

The Family Group Conference (or FGC) is where the whole whānau (family & extended family members) can help make decisions about the best way to support the family and take care of their child<sup>34</sup>. It is a formal meeting in which the family and whanau of the child and professional practitioners closely work together to make a decision that best meet the needs of the child. The process has four main stages, which includes a meeting where professionals inform the family of the concerns they have, followed by private family time, where the family alone develop a plan that addresses the concerns that have been raised. The plan is then presented to the professionals who should support it if the concerns have been addressed and it does not put the child at risk. The meetings are facilitated and co-ordinated by people independent of casework decisions in the agency working with the family

FGCs are used in care and protection cases. They have also been described as the 'lynch-pin' of the New Zealand youth justice system.

Family group decision-making refers to a collection of family intervention approaches in which family members come together to make decisions about caring for their children and to develop a plan for services. This type of intervention also is referred to as family team conferencing, family team meetings, family group conferencing, family team decision-making, family unity meetings, and team decision-making.

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<sup>32</sup> <http://www.nij.gov/topics/courts/restorative-justice/promising-practices/victim-offender-mediation.htm> ON DATE 29.04.2012

<sup>33</sup> Paul McCold, *Department of Sociology and Criminal Justice, Old Dominion University, Norfolk, Virginia*

<sup>34</sup> [www.cyf.govt.nz/keeping-kids-always-safe/ways-we-work-with-family](http://www.cyf.govt.nz/keeping-kids-always-safe/ways-we-work-with-family).

While approaches differ in various aspects, they all feature family (broadly defined) participation in the assessment and a broad range of decisions that impact child safety, permanency, and well-being [35].

## **UNITED KINGDOM**

There are various types of Restorative Justice Processes in operation in the UK. These include:

### **DIRECT OR INDIRECT RESTORATIVE JUSTICE PROCESSES**

The victim and offender, guided by a facilitator, communicate with one another. Other people can also be involved in the process, such as supporters of the victims and perpetrator, and also members of the wider community. This can take place through a direct face-to-face meeting, or, when several other people are involved, a conference; or indirectly with the facilitator acting as 'go between' in 'shuttle mediation'. An agreement is usually reached to decide how best to repair the harm caused and a rehabilitative programme may be agreed.

### **COMMUNITY CONFERENCING**

This is a large-scale conference particularly useful at resolving anti-social behavior. These conferences can deal with a large number of participants including local community members, several victims and perpetrators. In this approach the community as a whole is often the victim. This process is similar to community problem solving meetings. However, it is restorative if the process focuses on the harm caused and its resolution.

### **REFERRAL ORDER PANELS**

Young people who receive a court Referral Order attend a panel meeting to discuss their offence and the factors that may have contributed to their offending behavior. The panel is made up of Youth Offending Team staff and community volunteers. The victim, or their representative, may also attend so that their views may be put forward.

### **MEDIATIONS**

Mediation is a process in which an impartial third party - the mediator - helps people in dispute work out an agreement. The people in dispute work out the agreement rather than the mediator, who runs the meeting with ground rules

### **PRISON CIRCLES**

Prison inmates are trained in such manner that they realize how healing peace can be training them for better environment. This also provides opportunity to serve their sentence in fruitful way. Restorative justice program can be voluntary programs, where by organized lectures and discussion prisoners can be brought to peace. This is a very successful technique; it aims to tell offender that humans some time commit crimes, but that does not mean they are bad, they can repair it by doing good.

Story of Laurel Kaufer, USA shows how a woman with dark past, murder, manslaughter could possibly become peacemaker.

“Their story is one of personal commitment to themselves and the community in which most are destined to live out their lives. “This is an environment filled with conflict and violence. There is a dire need and want for change,” says Susan Russo, one of the fifteen initial peacemakers, serving a life sentence without the possibility of parole at the largest prison for women in the world, Valley State Prison for Women in Chowchilla, CA. “Mediation interests all of us because we are lifers and long-termers hoping to make a difference in teaching our peers that there is a better way.”

Beginning her quest in 2007, Sue Russo wrote over 50 handwritten letters from prison to mediators all over California. Her letters went unanswered until August of 2009 when one of her letters made it to me, Laurel Kaufer, Esq., a Southern California mediator and peacemaker and founder of the post-Katrina Mississippi Mediation Project.

As soon as I read the letter, I was hooked, but also knew that I couldn't do it alone. Still standing at the mailbox, I called my friend and colleague, Doug Noll, the only person I would consider working with on a project like this. Doug is a superb trainer, mediator, and restorative justice expert. I read the letter to him. He was silent for about a nano-second before he said, “I'm in. What's our next step?”

We spent six months working our way up the chain of command to convince the prison authorities to let us run a pilot project. When we got the final approval, we selected our first fifteen women, all long term and life inmates, and the training began less than a month later.

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<sup>35</sup> <http://www.childwelfare.gov/systemwide/assessment/approaches/family.cfm> on date 29.04.2012

Ten weeks later, the first 15 women were fully trained mediators and within two weeks of completing their training had conducted over 25 mediations and dozens of peace circles within the prison

“I can already see the difference in the Prison community,” says participant Betty Mills, “as other inmates now strive to model their lives after the Peacemakers currently in Prison of Peace. I feel more empowered than I have felt in forty-four years.”

“The whole package has changed not only my way of thinking but also my feelings. I truly believe this will have a lasting effect on this whole institution,” says Russo.

Our secret is to build skills slowly with continued accountability throughout the process. The training, which takes ten consecutive weeks, consists of a two day intensive listening workshop, three weeks of follow-up, a day-long class in peace circles and restorative justice, three more weeks of follow-up, and a 3 day intensive mediation training workshop followed by two more weeks of follow-up. Every Wednesday for 10 weeks, I drove the 500 mile round-trip drive, between my home in Woodland Hills, California to the prison in Chowchilla. Doug, living somewhat closer to the prison in the foothills to the north of Clovis, California, provides our base of operations.

Over the course of the training, we saw amazing transformations in these women. They started out emotionally shut down and skeptical and ended up empowered and dedicated to making peace within the prison. It has been one of the most satisfying projects of our careers. This is the first time either of us have felt that a conflict resolution training might make a real, systemic difference within a community.

Instead of running from conflict, I now run to conflict, with hopes of bringing resolution. Not only has this program taught me not to be scared of conflict, it has also taught me how to communicate at a higher standard and with more ease and grace,” says peacemaker, Anna Humiston “We are committed to making this project internally self-sustaining by training the life and long-term inmates to be trainers within the prison. At present, we have a waiting list of inmates seeking to participate in the program that will take us through 2010 and beyond. We expect to have 75 peacemakers fully trained by the end of the year. Our focus in 2011 will be to create trainers from our current peacemakers who will train the rest of the inmate population. This project is pro bono [36]”.

## **CIRCLE MODELS**

*Circle sentencing has been identified as an extremely important program by Aboriginal Community Justice Groups because it breaks down barriers between the justice system and Aboriginal communities.—John Hatzistergos, NSW Attorney-General (12)*

### **What is ‘circle sentencing’**

For a long time there has been no real improvement in the situation of Aboriginal people in jail, despite the Royal Commission into Aboriginal deaths in custody and its many recommendations.

Aboriginal People are overrepresented in Australian jails. In 2006 (and still in 2008) 80% of the Northern Territory prison population was Indigenous. In addition, Aboriginal people in custody are often dying from treatable diseases like diabetes and heart disease.

A scheme which is called “circle sentencing” in NSW tries to avoid goal time for Aboriginal offenders. The term ‘circle sentencing’ stems from a circle of representatives sitting together and trying to decide a sentence which does not include a jail term.

Representatives are mainly Aboriginal Elders, but also members of the prosecution or police and a magistrate. The circle will also talk about the background and effects of the offence and can involve meeting the victim. The sentence should, where possible, involve community work.

## **UNITED NATION ON RESTORATIVE JUSTICE**

The Economic and Social Council of the United Nations has already developed a blueprint of The Basic Principles of the Use of Restorative Justice Programmes in Criminal matters 2000. This instrument is likely to become a model guideline for launching the restorative justice system. This document says: "Restorative process" means any process in which the victim, the offender and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help of a fair and impartial

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<sup>36</sup> <http://www.peacepeace.org/2010/12/murderers-turned-peacemakers/>

third party. Examples of restorative process include mediation, conferencing and sentencing circles". The Declaration provides operational guidelines and procedure to effect the restorative process.

### **It Provides**

Fundamental procedural safeguards should be applied to restorative justice programmes and in particular to restorative processes:

- a) The parties should have the right to legal advice before and after the restorative process and, where necessary, to translation and/or interpretation. Minors should, in addition, have the right to parental assistance;
- b) Before agreeing to participate in restorative processes, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decision;
- c) Neither the victim nor the offender should be induced by unfair means to participate in restorative processes or outcomes.

The Document highlights some other important provisions in the Clauses- 13-23 of the Declaration. The salient ones are as under:

- Judicial discharges based on agreements arising out of restorative justice programmes should have the same status as judicial decisions or judgements and should preclude prosecution in respect of the same facts.
- Where no agreement can be made between the parties, the case should be referred back to the criminal justice authorities and a decision as to how to proceed should be taken without delay. Lack of agreement may not be used as justification for a more severe sentence in subsequent criminal justice proceedings.
- Failure to implement an agreement made in the course of a restorative process should be referred back to the restorative program or to the criminal justice authorities and a decision as to how to proceed should be taken without delay.
- Failure to implement the agreement may not be used as justification for more severe sentence in criminal justice proceedings.
- Facilitators should be recruited from all sections of society and should generally possess good understanding of local cultures and communities. They should be able to demonstrate sound judgment and interpersonal skills necessary to conducting restorative processes.
- Facilitators should be responsible for providing a safe and appropriate environment for the restorative process. They should be sensitive to any vulnerability of the parties.
- Facilitators should receive initial training before taking up facilitation duties and should also receive in-service training. The training should aim at providing skills in conflict resolution, taking into account the particular needs of victims and offenders, at providing basic knowledge of the criminal justice system and at providing a thorough knowledge of the operation of the restorative programme in which they will do their work.
- There should be regular consultation between criminal justice authorities and administrators of restorative justice programmes to develop a common understanding of restorative processes and outcomes, to increase the extent to which restorative programmes are used and to explore ways in which restorative approaches might be incorporated into criminal justice practices.
- Member States should promote research on and evaluation of restorative justice programmes to assess the extent to which they result in restorative outcomes, serve as an alternative to the criminal justice process and provide positive outcomes for all parties.
- Restorative justice processes may need to undergo change in concrete form over time. Member States should therefore encourage regular, rigorous evaluation and modification of such programmes in the light of the above definition.

### **CONCLUSION AND SUGESSTIONS**

Restorative justice does not aim to eradicate the existing criminal justice system rather; it aims to incorporate its practices in retributive system so that justice could be attained in true sense. It aims, to attain real justice, by involving community, victim, victim and offender families and coming out with satisfactory solution. Restorative justice focuses on "truth finding inquiry" rather than "fact finding enquiry". It does not have any particular way to execute, rather different paces at different times has evolved various way to implement it.

Effective formulation of practices of restorative justice can certainly solve many problems existing in criminal justice system today, like overcrowding of prison, long trials, under trial prisoners, unsatisfied victims, unsatisfied community etc.....

In Indian context the challenge lies in formulation of RJ practices suitable to our culture.

It's totally new field and needs a lot of social experiments, to see its effectiveness. NEW ZEALAND model of RJ for problems relating to juvenile is highly effective; to begin we can adopt that model because even our country

accepts culpability in case of juvenile shall be repaired through reformation. Prison circles, can be good practice for prison reform and restorative techniques can be innovatively brought in prison. There after family disputes and other can also be experimented. Result of other country shows the practice is highly effective. Bringing informal justice is need of time, so social scientist and lawyers shall apply their knowledge to come forward with practices suitable for our culture.