
Restorative justice: Global aspect

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ABSTRACT

Failure of criminal justice system around the world is an accepted truth now, and most of the countries are exploring and designing new aims, objectives and processes of criminal justice system. Quest for true meaning and purpose of justice has become need of hour. The present research paper aims at bringing popular restorative practices around the globe together. It attempts to clarify the concept of practices adopted to apply restorative justice

Keywords: *Restorative justice, Victim offender mediation, Family group conferencing, circle models, community mediation, pre-litigation mediation, victim offender reconciliation practices, Child welfare conferencing models.*

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INTRODUCTION:

Restorative justice cannot be said to be a new concept, but over past 30 years use of the philosophy of restorative justice in criminal justice reform has been dynamic. Evolution of concept of restitution in 1970 together with evolution of victims' rights in 1980 exposed all the lacking of criminal justice system, resulting into search for alternative ways; this led to exploration of restorative practices. At present over 80 countries practice restorative justice is one or other form[1]. Restorative justice does not have particular practice, over the period of time in different countries variety of practices have been designed: it varies according to need of time, culture, offender and victim concerned, policy of that country[2]. The present research paper endeavors to analyses, the different practices of restorative justice adopted across the globe.

a) RESEARCH METHODS AND METHODOLOGY:

The present research paper is purely doctrinal research, whereby after reviewing literature , attempt has been made to bring together various popular practices of restorative justice under one umbrella.

b) PRACTICES OF RESTORATIVE JUSTICE:

Two hallmark programs of restorative justice are

- 1). Conferences – which has been taken from Maori Practice from New Zeland.
- 2) Circles- From first Nation practice in North America.

Across the globe we can find different models of restorative justice. Following are the most popular models:

c) MEDIATION MODELS

Reconciling the needs of victims and offenders with the needs of the community is the underlying goal of restorative justice. Unlike retributive justice, in which is primary concern is to punish for the crime, restorative justice focuses on repairing the injury that crime inflicts. As a means to that end, restorative conferencing brings together victims, offenders, and other members of the community to hold offenders accountable not only for their crimes but for the harm they cause to victims. This Bulletin features four models of restorative conferencing:

- Victim-offender mediation.
- Community mediations
- Family group conferencing.
- Circle sentencing.

¹In 2001, the Centre for Justice and Reconciliation at Prison Fellowship International identified 80 countries in which some form of restorative justice intervention was being used. (Van Ness, 2001, at 13). The estimated increase by 20 nations is based on two factors: the growing number of countries in which restorative approaches are being tried and the growing literature on the subject which is bringing existing restorative practices to the attention of observers

²This is not to suggest that restorative justice programmes are inherently better at including victims. Considerable work needs to be done, particularly when particular programmes operate within the criminal justice system, to resist the strong offender-oriented current. For a thorough review of the issues, see Chapters 5-8 of Zehr, Howard AndToews, Barb. (2004). *Critical Issues in Restorative Justice*. Monsey, New York and Cullompton, Devon, UK: Criminal Justice Press and Willan Publishing

These models are compared and contrasted in administration, process, community involvement, and other dimensions, and several related issues and concerns are addressed. If restorative justice is to succeed in contributing to the systematic reform of our criminal justice system, it must embody new values that reflect the needs of victims, offenders, and communities. The models described embody these values and provide tools for communities engaged in implementing restorative justice [3].

The term “restorative” is an umbrella which covers a range of techniques such as restorative justice conferencing, victim offender mediation, neighbor and community mediation, family group conferencing, restorative circles, indirect and shuttle mediation. The terms mediation and restorative justice are not exclusive and can be interchangeable depending on the context. Perhaps it is clearer to describe mediation as a process and restorative justice as an overarching philosophy.

“Mediation is way of solving dispute which assists the people involved to reach an agreement with the help of an impartial mediator. The parties rather than mediator decide the terms of mediation.” The above definition makes it quite clear that the object of mediation is to resolve “*dispute*” or “*conflict*”. To understand the concept clearly we need to understand these two terminology.

d) What is meant by “conflict” or “dispute”?

According to Oxford English dictionary dispute is “an argument” an “disagreement” .To dispute something is statement of fact, it is something to argue upon. It is to “question the truth or validity of a statement”. Conflict is same as dispute in Oxford English Dictionary it is defined as “serious disagreement or argument” it can involve incompatibility between opinion or principle [4]. There are several mediation practices adopted to achieve restorative goals across the globe. This chapter explores various practices adopted across the globe. However it will be wrong to say that restorative practices are only mediation, they involve many more techniques to solve a dispute.

e) Mediation and restorative work both follow a process, but how do they differ?

Both involve preparatory meetings, but there are often fewer preparatory meetings in mediation and in mediation the body of the work – discussing, negotiating, decision-making – is done in the ensuing meetings where both parties are brought together. This is the crux of the difference. It is important to make it clear here that this is a difference in the process, not that one or other method is preferable. In mediation it is often necessary for this problem solving to be achieved mutually and together, within the meeting space. Because in restorative justice we are focusing on the harm and that, how the parties have been impacted by the harm, much of the work is done before the meeting that brings the parties together because our outcome is to “do no harm” ourselves.

Because we are focusing on the harm:

- We cannot afford to create more harm & therefore ground rules may need to be implemented so that we don’t get stuck in differences relating to congruence of stories.
- Much of the potentially more explosive emotion has been managed before the parties are brought together.
- Outcomes and expectations have been discussed before the meeting so that expectations can be managed and the parties need to have been explicit in their expectations and needs from the meeting in order for them to be appropriately managed.
- And on the impact of the harm, we cannot afford for people to become re-victimized, so our work is not about creating space where the nuts and bolts of negotiation can take place ... That, is a space for mediation.

And, almost always, in Restorative Justice we only have one meeting.

Becky Beard defines the differences in the following way:

- Less preparation time. A restorative process may take months of preparation and the final conference can be relatively short. Whereas in mediation there can sometimes be just one pre-meet and then the mediation sessions.
- There needs to be an acknowledgement of the harm caused for a restorative intervention to take place. This is not always the case in mediation.
- The ‘negotiation’ of outcomes can take place during the mediation session. With a restorative intervention, the possible outcomes and expectations are managed as part of the preparation stage.
- The language and structure used is different. The mediators paraphrase during the session, sticking to facts. In a restorative intervention/ conversation, the focus is on thoughts and feelings and the consequential effect. But again this can differ with different organizational practice.

In both spaces the mediator is impartial and neutral and non-directive and the participants work to create their own outcomes, but in restorative practices these outcomes have been managed beforehand. But Nancy also recognizes that the

³ Wilson. J.John; Juvenile justice bulliten February 2001;u.s Department of justice

⁴https://moj.gov.im/sites/default/files/rj/Mediation_versus_Restorative_Practice.pdf on date 3 May 2020

facilitator in mediation has more of a role in ‘summarizing’ and ‘re-framing’ and using different techniques to those used by facilitators in restorative work.

In restorative work there is a clear focus on managing expectations and outcomes whether or not there is a clear harmer and harmed person. The parties are experiencing harm irrespective of who initiated it or whether one or both are culpable and our role is to make sure that we, during this piece of work, ‘do no harm.’ Ultimately, the whole premise for entering the room in RJ is different, because it is underpinned by the overriding need not to re-victimise. We will have done all we can in the preparation to minimize the risk of that happening and if the meeting was not going to have fruitful outcomes we would not bring them together. We are not in the business of negotiation. It is important to state that some mediation processes include longer preparation time and the length of the preparation time does not imply a more or less successful process. When negotiation takes place during the sessions in mediation it is because that is an important tenet of that process.

In restorative work there needs to be acceptance of responsibility for actions or harm caused by the parties. When a party does not accept that they have caused harm by their actions it is very difficult to work restoratively; then mediation might be a better option.

So, where do we place our noisy neighbor who was upsetting his fellow neighbors after all of this discussion? Because our parties entered the room willing to accept responsibility and hear the harm caused, willing to agree to changes – and with a clear understanding that there would be an outcome agreement and what the agreement would look like – it fell within the restorative field. As restorative practitioners are less about resolving conflict (often resolution isn’t possible) and more about moving forward from the harm caused having had an opportunity to discuss it and then look at appropriate reparation and changes. Or, a clear harmer and harmed, but an understanding of why the restorative process is being employed and for what end.

Steve at Remedi a US based Restorative Practitioners, who uses both mediators and restorative practitioners in his service, feels that the practices have become blended and he hopes that both services can learn from each other because, as he says, in the end “all roads lead to Rome” [5].

COMMUNITY MEDIATION:

Community mediation offers constructive processes for resolving differences and conflicts between individuals, groups and organizations. Participants control the process and create their own alternatives to avoidance, destructive confrontation, prolonged litigation or violence. Community mediation offers participants an opportunity to discuss their concerns and needs. It also strengthens relationships, builds connections between people and groups, and creates processes that make communities work for everyone. Community mediators support participants through difficult conversations, providing a safe environment to discuss the participants’ needs while participants retain decision-making authority. Community mediation centers offer a variety of conflict intervention processes – depending on the needs of the participants and the capacity of the center – that support participants in addressing their own and their community’s unique conflict needs.

Community mediation in the United States began in the 1960s during the civil rights movement as efforts to achieve racial, ethnic, class and gender equality gained momentum. The federal government nurtured the development of community mediation by embedding the Community Relations Service (CRS) within the Department of Justice in the 1964 Civil Rights Act. This required the creation of a non-violent and constructive model for dealing with community conflict that continues to be used today.

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”[6]. In India *panchayats* system can be taken as an example of 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 Alternative Dispute Resolution-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.

⁵<https://why-me.org/2016/restorative-justice-and-mediation-when-to-deploy/> Blog written by **Charlotte**

Calkin restorative practionere Restorative Engagement Forum: Sept 20 ;2016

⁶http://en.wikipedia.org/wiki/Mediation#Community_mediation on date 29.04.2012

In 1965, a Presidential Commission on Law Enforcement and the Administration of Justice focused national attention in United States overburdened judiciary. These findings helped build consensus around the need for reform and experimentation in and around the court system, with particular focus on minor criminal cases involving neighbors, relatives and other acquaintances. Early programs included the Philadelphia Municipal Court Arbitration Tribunal (1969); the Columbus Night Prosecutors Program (1971), which used law students to mediate cases in 30-minute time slots; the Institute for Mediation and Conflict Resolution in Manhattan (1975); and the Miami Citizen Dispute Settlement Program (1975).

In 1976, the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, known as the “Pound Conference,” resulted in the creation of “Neighborhood Justice Centers” in Los Angeles, Kansas City and Atlanta. At these centers, people could access dispute resolution services and actively participate in crafting faster, cheaper and (often) more appropriate resolutions than the crowded and overburdened courts could provide.

The early goals of these court reform programs are still present today:

- divert cases from court caseloads;
- provide more appropriate processes for selected types of cases;
- provide more efficient and accessible services to citizens;
- reduce case processing costs to the justice system; and
- Improve citizen satisfaction with the justice system.

a) COMMUNITY MEDIATION IN INDIA:

In India community mediation largely can be seen in “punchayat” system, in which elected member of a village community, in presence of members of village make decision on various civil and criminal issues. They adopt practice other than that of court. However capital of India Delhi has some institutionalized, community medication process, functioned of society of Delhi government, popularly known as “jhargraSuljhao” ,which is recent and effective example of community mediation of India.

The Society has been constituted under Department of Law, Justice & Legislative Affairs with an aim towards self-empowerment of the Society and for bringing greater Social Harmony. The vision of the Society is:

- To empower public to resolve disputes amicably.
- To make people build relationships and make stronger and safer society.
- To reduce backlog of cases from courts.
- To save cost of litigation to parties and State.
- To promote greater public satisfaction in legal system and dispute resolution mechanism.

b) What is the Mission of the Society?

Delhi Government with its commitment to people of Delhi to ensure timely and responsive justice and also to provide them easy access to the justice, has entered into a first joint venture of its kind with Delhi High Court to set up community mediation centres in all the Districts to take up all kinds of civil and petty criminal cases, whether or not pending in the courts. The objective of society is to provide a forum to the parties to settle their disputes with the help of Neutral Mediators rather than to suffer silently or run to police, courts or any other forum.

The mediation centres are being managed and supervised by trained mediators and officials who are dedicated to act as healers of pain.

It is expected that in due course of time Community Mediation Centres would become the most effective forum for resolution of all disputes.

c) Why mediation is necessary?

In the recent past, a large number of disputes are being reported to the police and also are being filed in the courts. As a result of this, not only there is increase in the litigation in the courts, but the relations between the parties are also getting spoiled. Most of these matters could be easily settled without going to the police or the courts. Hence, mediation is the only forum to help the disputant parties to resolve such cases.

d) What is Mediation ?

Mediation is a voluntary process in which an impartial and neutral mediator tries to bring together the disputant parties to arrive at a mutually agreeable solution. The parties to the dispute have an opportunity to ventilate their grievances and feelings and thereafter work out the solutions to meet their interests. The mediator neither decides nor imposes any solution on the parties, but creates a favourable environment to enable them to reach an amicable settlement.

e) What are the benefits of Community Mediation?

- Allows parties to personally express their views directly, informally, confidentially and without fear of any adverse action.
- Parties themselves work out solution which meets their interests and thus, gives more satisfaction.
- Focuses on the future, rather than the rights and wrongs of the parties.
- Eliminates the risks of litigation.
- Helps to save time, energy, money and relationship.
- Brings harmony by creating Win-Win situation for the disputing parties.

f) What type of cases can be referred for mediation?

- **Neighbourhood** -Parking, noise, nuisance, destruction / repair / maintenance of property, fencing, pets, interpersonal etc.
Family - Parent / child, parenting (child custody / visitation / support), child welfare etc. adult guardianship, restitution, divorce, domestic violence, maintenance etc.
School - Special education, peer (student -student), minor complaints, corrections.
Commercial – Consumer / merchant, small claims, workplace, bad cheques, accident compensation.
- **Miscellaneous** - Police / citizen, minor criminal, victim / offender, disabilities, cross-cultural, religious / charitable, multi party etc.

g) How to approach Mediation Centre?

Delhi Dispute Resolution Society (Regd.) is setting up Mediation Centres in each district. Any or both the parties to a dispute, whether pending in court or not, are at liberty to approach any of the centres for resolution of their disputes. The petty criminal compoundable cases can also be referred by the police to the nearest centre before registration of FIR / or proceeding further in the matter / complaint.

The cases before Consumer Forums and such other Tribunals can also be referred by the Presiding Officers for mediation. The consumers can also approach any Centre with their complaints against vendors / service providers.

h) What happens in Mediation?

Mediation process, though is informal, has a definite structure. Mediator first talks to the parties and introduces himself. He establishes neutrality, creates trust of parties in the process and ultimately creates atmosphere for open discussions. Mediator thereafter listens and encourages both the parties to give information and facts and helps them to identify their interests. He establishes communication between the parties.

He also listens to both the parties separately to enable them to further explain their grievances, demands, expectations. He also helps parties to generate options for amicable settlement. Once the matter is settled, mediator clarifies and confirms the terms and records the settlement.

i) Scheme for Citizens participation:

Who can be a Mediator?

Mediators are:

- Lawyers who have undergone training as prescribed by Mediation and Conciliation Project Committee (MCPC) of Supreme Court of India and have got the certificate of Trained Mediator
- Respectable citizens of the locality who have to undertake prescribed training by Delhi Dispute Resolution Society;
- Retired officers, Judges, bureaucrats, public spirited persons, lawyers, Social Workers & respectable citizens etc.

What is the duration of Mediation process?

Most cases are settled within 30 minutes to 60 minutes. However, if the dispute involves complex issues, it may require some more time[7].

CONCEPT OF PRE-LITIGATION MEDIATION IN COURTS:

In recent times high courts have developed concept of pre-litigation mediation. In which the parties send letter to opposite party to be present in court on certain date and time, to be present. There the issue is discussed, and all possibilities are tried by mediators to reach to resolution of dispute prior to any case lodged. In case of failure of pre-litigation mediation, parties either both or one can continue with the case. Any talks during pre-litigation mediation are not recorded for the court purposes.

⁷<http://web.delhi.gov.in/wps/wcm/connect/doi/ddrs/DELHI+DISPUTES+RESOLUTION+SOCIETY/Home/Citizen+Charter>

g) VICTIM OFFENDER RECONCILIATION: (VORP)

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.

h) VICTIM OFFENDER MEDIATION :(VOM)

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"[8].

i) WHAT IS THE CONCEPT OF VICTIM OFFENDER MEDIATION[9]

An increasing number of crime victims are choosing to meet face-to-face with the persons who victimized them. They are able to let the offenders know how the crime affected their lives, to receive answers to many lingering questions, and to be directly involved in holding offenders accountable for the harm they caused. Victim-offender mediation is recognized as a viable alternative to more traditional retributive response for serving victims' needs by probation, prosecuting attorneys, courts, correctional facilities, and communities. As the field of victim-offender mediation has grown extensively over the past 25 years, it has become increasingly important to conduct the process in a highly victim-sensitive manner while considering the needs of offenders. Before addressing the underlying principles and guidelines of victim-offender mediation, a description of the mediation process follows.

j) What Is Victim offender Mediation?

Victim-offender mediation (VOM) is a process that provides interested victims (primarily those of property crimes and minor assaults) the opportunity to meet their offenders in a safe and structured setting. The goal is to hold offenders directly accountable while providing important support and assistance to victims. With the assistance of trained mediators, the victims are able to let the offenders know how the crime affected them, receive answers to their questions, and be directly involved in developing a restitution plan that holds the offenders financially accountable for the losses they caused. The offenders are directly responsible for their behavior and therefore must learn the full impact of what they did and develop a plan for making amends, to the degree possible, to the persons they violated. Offenders' failure to complete the restitution agreement results in further court-imposed consequences. Some VOM programs are called "victim-offender meetings," "victim offender reconciliation," or "victim offender conferences."

Victim-offender mediation is one of the clearest expressions of restorative justice, a movement that is receiving a great deal of attention throughout North America and Europe. Current juvenile and criminal justice systems are primarily offender-driven, with a retributive "trail 'em, nail 'em, and jail 'em" perspective that views crime as an offense against the State and offers little help to crime victims.

Restorative justice, however, provides a very different framework for understanding and responding to crime and victimization. Moving beyond the offender-driven focus, restorative justice identifies three clients: individual victims, victimized communities, and offenders. Crime is understood primarily as an offense against people within communities, as opposed to the more abstract legal definition of crime as a violation against the State. Those most directly affected by crime are allowed to play an active role in restoring peace between individuals and within communities. Restoration of the emotional and material losses resulting from crime is far

⁸<http://www.nij.gov/topics/courts/restorative-justice/promising-practices/victim-offender-mediation.htm> ON DATE 29.04.2012

⁹ Ibid8

more important than imposing ever-increasing levels of costly punishment on the offender. The debt owed by offenders is concrete. Rather than passively "taking their punishment," offenders are encouraged to actively restore losses, to the degree possible, to victims and communities. The use of dialogue and negotiation among victims, victimized communities, and offenders is emphasized. In truth, the essence of what is being called restorative justice is deeply rooted in the traditional practices of many indigenous people throughout the world, such as American Indians, Pacific Islanders, the Maori in New Zealand, and First Nation people in Canada.

k) When Are Cases Referred?

In some programs, cases are primarily referred to victim-offender mediation as a diversion from prosecution, assuming the mediation agreement is successfully completed. In other programs, cases are referred primarily after a formal admission of guilt has been accepted by the court, with the mediation being a condition of probation (if the victim is interested). Some programs receive case referrals at both the diversion and post-adjudication levels. Most cases are referred by officials involved in the juvenile justice system, although some programs also receive referrals from the adult criminal justice system. Judges, probation officers, victim advocates, prosecutors, defense attorneys, or police can make referrals to VOM programs.

l) How is it different from other kinds of mediation?

Mediation is being used in an increasing number of conflict situations, such as divorce and child custody cases, community disputes, commercial disputes, and other civil court-related conflicts. In such settings, the parties are called "disputants," and the assumption made is that both are contributing to the conflict and therefore both need to compromise to reach a settlement. Often, mediation in these cases focuses heavily upon reaching a settlement, with less emphasis upon discussing the full impact of the conflict on the disputants' lives. In victim-offender mediation, the involved parties are not "disputants." Generally, one party has clearly committed a criminal offense and has admitted doing so, whereas the other has clearly been victimized. Therefore, the issue of guilt or innocence is not mediated. Nor is there an expectation that crime victims compromise or request less than what they need to restore their losses. Although many other types of mediation are largely "settlement-driven," victim-offender mediation is primarily "dialogue-driven," with emphasis upon victim empowerment, offender accountability, and restoration of losses. Most VOM sessions (more than 95 percent) result in a signed restitution agreement. This agreement, however, is secondary to the importance of the initial dialogue between the parties. This dialogue addresses emotional and informational needs of victims that are central to both the empowerment of the victims and the development of victim empathy in the offenders, which can help to prevent criminal behavior in the future. Research has consistently found that the restitution agreement is less important to crime victims than the opportunity to express their feelings about the offense directly to the offenders (Schneider, 1986). Restorative impact is strongly related to the creation of a safe place for dialogue between the crime victim and the offender.

Table 1: [10] identifies key characteristics of victim-offender mediation that are likely to result in the least and the most restorative impact.

LEAST RESTORATIVE IMPACT Agreement-Driven: Offender Focus	MOST RESTORATIVE IMPACT Dialogue-Driven: Victim Sensitive
<ul style="list-style-type: none"> • Entire focus is upon determining the amount of financial restitution to be paid, with no opportunity to talk directly about the full impact of the crime upon the victims, the community, and the offenders. • No separate preparation meetings are conducted with the victims and offenders prior to bringing them together. • Victims are not given a choice of where they would feel the most comfortable and safe to meet or of whom they would like to have present. • Victims are given only written 	<ul style="list-style-type: none"> • Primary points of focus are to provide an opportunity for victims and offenders to talk directly to each other; to allow victims to express the full impact of the crime upon their lives and receive answers to important questions they have; and to allow offenders to understand the real human impact of their behavior and take direct responsibility for seeking to make things right. • Restitution is important but secondary to the dialogue about the impact of the crime. • Victims are continually given choices throughout the process:

¹⁰https://www.ncjrs.gov/ovc_archives/reports/96517-gdlines_victims-sens/guide4.html

<p>notice to appear for a mediation session at a preset time, with no preparation.</p> <ul style="list-style-type: none"> • The mediators or facilitators describe the offense and then the offenders speak, with the victims simply asking a few questions or responding to questions from the mediator. • A highly directive style of facilitation is conducted with mediators talking most of the time, continually asking both victims and offenders questions, with little if any direct dialogue between the involved parties. • The session is marked by low tolerance of moments of silence or expressions of feelings. • The mediation session is voluntary for victims but required of offenders whether or not they take responsibility. • The mediation is settlement-driven and very brief (10-15 minutes). 	<p>where to meet, who should be present, etc.</p> <ul style="list-style-type: none"> • Separate preparation meetings are conducted with victims and offenders prior to bringing them together, with emphasis upon listening to how the crime has affected them, identifying their needs, and preparing them for the mediation or conference session. • A nondirective style of facilitation is fostered with the parties talking most of the time. The mediation incorporates a high tolerance of silence and the use of a humanistic or transforming mediation model [11]. • The mediation is marked by high tolerance for expressions of feelings and of the full impact of crime. • Mediation is voluntary for both victims and offenders. • Trained community volunteers serve as mediators or comediators along with agency staff. • The mediation session is dialogue-driven and typically about an hour (or longer) in length.
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m) Are Crime Victims Interested?

Interest in victim-offender mediation spread in the late 1970s, and local funding began supporting the development of new programs across the country. A recent statewide public opinion poll in Minnesota found that 82 percent of a random sample of citizens throughout the State would consider participating in a VOM program if they were victims of property crimes. Interviews with 280 victims who participated in VOM programs in 4 States found that 91 percent felt their participation was totally voluntary. For those victims in the comparison group for this study—namely, those who did not participate in mediation—70 percent would have preferred to meet the offender had they been given the choice. Victim-offender mediation is not appropriate for all crimes. In all cases, it must be presented as a choice to the victim.

A national survey of the field found 289 VOM programs throughout the United States as of 1998. Today, a more accurate estimation would be in excess of 300. Telephone interviews with 116 of the programs revealed that 42 percent of the programs were run by community-based agencies, 23 percent were church-based programs, 17 percent were sponsored by probation and correctional departments, 3 percent were based in victim services agencies, 4 percent were operated by prosecuting attorney's offices, and 11 percent were managed by other types of agencies. Programs most frequently identified their primary source of funding as local, State, or Federal Government. Foundations were the fourth most frequent source of funding. Of those programs answering the question, 46 programs (45 percent) work only with juvenile offenders and their victims, 9 programs (9 percent) work only with adult offenders and their victims, and 48 programs (46 percent) work with both. The vast majority of cases handled by the programs are property offenses and minor assaults. A number of the more experienced programs, however, periodically work with more violent cases.

After 20 years of development and many thousands of cases (primarily property crimes and minor assaults) in more than 1,000 communities throughout North America (more than 300) and Europe (more than 700), victim-offender mediation is finally beginning to move toward the center of criminal and juvenile justice systems (table 2). Some programs are still small, with a very limited number of case referrals. Many other programs are receiving several hundred referrals per year. A few programs have recently been asked to divert

¹¹Mark S. Umbreit;Center for Restorative Justice & Peacemaking;"Creating a Safe, if not Sacred, Place for Dialogue" found in https://www.ncjrs.gov/ovc_archives/reports/96517-gdlines_victims-sens/guide9.html

1,000 or more cases each year from the court system, and county governments have provided hundreds of thousands of dollars to fund these VOM programs.

It is clear that the field of VOM has grown extensively since the first Victim-Offender Reconciliation Project was initiated in Kitchener, Ontario, Canada, in 1974, and replicated in the United States in Elkart, Indiana, in 1978. Perhaps the clearest expression of how the field has continued to develop is the recognition it received in 1994 when the American Bar Association (ABA) endorsed the practice of victim-offender mediation. After many years of supporting civil court mediation, with limited interest in criminal mediation, the American Bar Association now endorses the process and recommends the use of "victim-offender mediation and dialogue" in courts throughout the United States. Similarly, a recent statewide survey of victim service providers in Minnesota found that 91 percent believed that victim-offender mediation should be available in every judicial district since it represents an important service option for crime victims.

Table 2: International Development of Victim-Offender Mediation Programs

Country	Number
Australia	5
Austria	17
Belgium	31
Canada	26
Denmark	5
England	43
Finland	130
France	73
Germany	348
Italy	4
New Zealand	Available in all jurisdictions
Norway	44
Scotland	2
South Africa	1
Sweden	10
United States	289

While a continuing need for more research in this field remains, far more empirical data exist on this option than one might find on many other correctional justice interventions. During the past several years, a small but growing body of empirical data has emerged from multisite assessments in Canada, England, and the United States. Studies conducted over the past 12 years throughout Europe and North America report high levels of satisfaction with the mediation process and outcome on the part of victims and offenders. (Coates and Gehm, 1989; Collins, 1984; Dignan, 1990; Fischer and Jeune, 1987; Galaway, 1988; Galaway and Hudson, 1996; Gehm, 1990; Marshall and Merry, 1990; Perry, Lajeunesse, and Woods, 1987; Umbreit, 1989, 1991, 1993a, 1993b, 1994a, 1994b, 1995a, 1995b; Umbreit and Coates, 1993; and Wright and Galaway, 1989). Some studies found higher restitution completion rates (Umbreit, 1994a and 1994b), reduced fear among victims (Umbreit and Coates, 1993; and Umbreit, 1994a and 1994b), and reduced further criminal behavior (Nugent and Paddock, 1995; Schneider, 1986; and Umbreit, 1994a and 1994b). Multisite studies in England (Marshall and Merry, 1990; and Umbreit and Roberts, 1996), the United States (Coates and Gehm, 1989; and Umbreit, 1994a and 1994b), and Canada (Umbreit, 1995a and 1995b) have confirmed most of these findings. A large multisite study in the United States (Umbreit, 1994a and 1994b) found that victims of crime who meet with their offenders are far more likely to be satisfied with the criminal justice system response to their cases than victims of similar offenses who go through the conventional criminal court process.

It is becoming increasingly clear that the victim-offender mediation process can serve to humanize the criminal justice experience for both the victim and the offender. It holds offenders directly accountable to the

people they have victimized, allows for more active involvement of crime victims and community members (as volunteer mediators and support persons) in the justice process, and reduces further criminal behavior of offenders. During the early 1980s, many questioned whether crime victims would want to meet face-to-face with their offender. Today it is clear, from empirical data and experience, that the majority of crime victims who are presented with the opportunity for mediation and dialogue choose to engage in the process, with victim participation rates in many programs ranging from 60 to 70 percent [12].

n) PRISON 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

o) 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 women 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. 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 *Rousseau*.

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.

¹² Ibid9

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” [13].

p) CHILD WELFARE CONFERENCING MODEL :(CWCM) of New Zealand

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.

q) 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 [14].

r) 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 [15] 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.

s) Family Group Decision Making (Fgdm)

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.

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 [16].

t) 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]

u) 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.

¹³<http://www.peacexpeace.org/2010/12/murderers-turned-peacemakers/>

¹⁴Paul McCold, Department of Sociology and Criminal Justice, Old Dominion University, Norfolk, Virginia

¹⁵[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)

¹⁶<http://www.childwelfare.gov/systemwide/assessment/approaches/family.cfm> on date 29.04.2012

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.

v) **Other Models**

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 behaviour. 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.

REFERAL 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 behaviour. 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.

PROCESS OF PRISON SENTENCING:

1. **Welcome:** Aboriginal elders welcome all participants.
2. The magistrate will welcome all participants to the circle and formally open proceedings.
3. **Introduction:** Participants introduce themselves, explain who they are, their relationship with the defendant or victim or their interest in the offence.
4. Magistrate explains the role of the circle, that it is a court and functions as a court.
5. Magistrate explains methods of proceeding in the circle, the guidelines and the rule of conduct within the circle.
6. **Defendant statement:** The defendant will make comment regarding the offence, themselves, their commitment to rehabilitation.
7. The victim or a representative of the victim may make a statement regarding the impact of the offence.
8. **Circle discussion:** The discussion should cover the offence, its impact on the victim and community, what needs to be done to right the wrong, what support may be available for the defendant and victim.
9. Magistrate provides summary of circle discussion/decisions reached.
10. **Sentencing:** Magistrate determines sentence.
11. **Support discussion:** Support for defendant established, formal support group that will support offender is established.
12. Support for victim established, support group for victim is established.
13. Date for review set.
14. Closing remarks, magistrate formally closes the circle.

w) **BENEFITS OF CIRCLE SENTENCING**

Some benefits of circle sentencing include:

1. **Local scope:** Circle sentencing helps people to address and correct criminal behaviour within their local communities.
2. **Break the cycle:** It reduces the likelihood to re-offend and enter a criminal career.
3. **Personal hearings:** There is no dominance of legal professionals or hierarchies of traditional court rooms, all participants are able to fully participate and to speak for themselves.
4. **Easy understanding:** Legal jargon is removed from the court, the language of the community becomes the language of the court.
5. **Holistic approach:** The court receives information about the whole community, the background to the offenders, the impact of the offence on the victim, the problems experienced by the local community.
6. **Racial bias reduced:** Community participation greatly removes racial bias in the court and in the sentence.

7. Offender participation: Circle courts actively encourage the participation of the offender and those who know him or her best.

8. Victim participation: Circle courts allow the offender to get a full perspective of the effects of their actions on the victim, the offender is directly confronted with the hurt experienced by the victim.

9. Away from court rooms: Court rooms can be intimidating for Aboriginal people. If circles are held away from courts people are more likely to open up to elders

Conclusion:

Restorative justice practices are designed in such manner that it encourages communication between victim, offender, and community at large. The practices, aims at resolving dispute and bringing justice to all, it aims to explore alternative methods of punishing the offender, taking whole circumstances into account, and then deciding punishment. Criminal justice administration in India and world at large has been failing, with long years it takes for decision to come, and with many under trials imprisoned without any justification, in such situation exploring alternatives becomes need of hour.