

## **RESTORATIVE JUSTICE SYSTEM**

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### ***Abstract***

*The main aim of this paper is to observe the applicability of the restorative justice system in the country so as to check whether in the prevailing time this system would have an effective role. This paper would basically deal with the pros and cons of this system from the viewpoint of the accused. Usually an accused is subjected to conviction which cannot undo what has been done to the victim and the accused also is subjected to harassment by the society when he is released so this system provides a win-win situation for both as the victim gets reparation for his injury and the accused feels guilt for this act and is not subject to unnecessary harassment. Since this system provides a settlement outside the court so how far is it convenient to the accused. This system has been observed worldwide so this paper would have a comparative study between other countries and India. In India, the restorative justice system particularly focused on juvenile justice and peacemaking.*

*The restorative justice systems aim at resolving the disputes between the parties and try to maintain harmonious relation between them. This system gives opportunity to the parties involved in the crime to discuss the crime and its consequences to repair the injury caused to the victim. Restorative justice system is an alternative dispute resolution theory that attempts to provide justice through mutual settlement between the parties to repair the harm caused.*

*So, this paper would be a complete study of restorative system and its usage in the country. This paper covers all the sections related to the topic and clarifies the readers the object of using the system within this country.*

**Keyword:** *accused, alternative dispute resolution, juvenile justice system*

## **Introduction**

Albert Eglash is known to coin the term “restorative justice” in his article “Beyond Restitution: Creative Restitution”. Thus restorative justice is not a new concept it has been into knowledge and use from a very long time. Restorative justice system involves the term “restorative” meaning thereby “to restore”, that is, to restore the original position of both the parties. This system thrives to maintain the status and position of the victim and offenders to their original place as it was before the crime took place. Since earlier, alternate dispute resolution was applied only in civil matters and criminal matters were excluded from its scope, this system of restorative thrives to bring resolution between the parties involved within the crime.

According to C. Russ Immarigeon, “Restorative justice is a process that brings victims and offenders together to face each other, to inform each other about their crimes and victimization, to learn about each others’ backgrounds, and to collectively reach an agreement on a penalty or sanction.” Thus, through this process there can be two ways for providing justice to the victims and this can be a way through which the rates of crime can be reduced and the offenders can be made a more responsible citizen and who could be accountable for their own deeds.

Restorative justice system is a system in which the offender accounts for his own act as he experiences the personal impact of his crime. This system provides a way for both the parties to interact and communicate the circumstances and impacts of the crimes and make the offender understand the intensity of his crime and make him repair for the same. Since communication is the prime solution to almost all the disputes, this system can be a very useful tool to reduce repetition of offence(s) by the same person. Through this system the parties gets a platform to share their experience of what exactly where the circumstances and what would have been happened, to whom and to what extent the injury has been caused, and to come to a conclusion of what the offender may do to repair the injury caused by him. Repairing the harm would mean making efforts to make things right or to make changes for their violation by following obligation in a way of reparation, restitution or doing community work. The goal of the system is not to take revenge but to restore healthy relation between the parties and the communities that have been mostly affected by the crime.

Through this crime, it is examined that what was the root cause of the offence in order to break the cycle. This system is based on the principle that crime originates from certain social condition and offenders must have gone through lots of such suffering. Since social conditions can be a factor for developing offenders therefore it should be a responsibility upon the communities for providing remedies and also to work in promoting healings. Healing is important not only for victims but also for

offenders. The restorative system has to important aspects, that is, rehabilitation of offenders and their re-socialize with the community. Under this process, offenders are given respect and their needs are adequately fulfilled.

**The main objectives of the restorative justice system:**

- 1) Its main objective is to resolve problem through mediation between the parties
- 2) It is an easy and expedient process out from the court
- 3) It is time saving( fast track system)
- 4) It focuses mainly on:
  - a) Who are the victims suffering from the injury?
  - b) Who did the offence?
  - c) Causes of crime
  - d) How the victim's original status can be restored?
  - e) What accused should do to repair for injury caused by him?
- 5) Satisfaction of both the parties which they resolve through negotiation.
- 6) It avoids punishment given under the other criminal justice systems.
- 7) It promotes responsive law.

## **Concept of Justice**

The question whether what is justice has been started from Greek and is still a topic of debate whether what could be the precise definition of justice as till yet no proper an universal definition of justice has been yet evolved. The term "justice" has various elements embodied within itself. Justice can be different from different aspects. One can have its own view about justice. It can be ones ideological construction, emotional reaction, intellectual preference or critical reflection.<sup>1</sup>

In *Jennison v. Baker*<sup>2</sup>, the Court stated that "Law should not sit limply, while those who defy it go free and those who seek its protection lose hope." This statement depicts the current situation of Indian Judicial system as the prisoners keep getting bail or the proceedings never get an end because of which the victim gets suffering instead of getting justice and ultimately losing its hope of getting relieved.

Justice in the present times has turned to mean giving punishments to the offenders thus having no role of victims or victims are not considered important to get redressed of their harms or injuries. This concept of justice has got no place for the victims while the irony here is that justice was evolved for the victims. Justice is a search for solution which promotes repairing of damages, imposing penalties through

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<sup>1</sup> Dr. Puranjoy Ghosh, Restorative Justice: The new Paradigm in the province of justice in India?, *Bharti law Review*, Manupatra

<sup>2</sup> *Jennison v. Baker* (1972) 1 All ER 997

reconciliation with the victim, offender and the community. There have been several theories of justice and which have been used since ages but there is a continuous need for evolving or changing such theories according to the need of the society. In a just society the liberties of equal citizen are taken as settled, the rights secured by justice are not subject to political bargaining or to the calculus of social interest.<sup>3</sup>

## **Principle of Restorative Justice**

- 1) To provide and fulfill the needs of the victim
- 2) To restore original situations and relations between the parties and community.
- 3) To ensure that the offender does not engage himself into again committing the crime.
- 4) To provide satisfaction and justice to the victim.
- 5) To make the offender a responsible person of his acts.
- 6) To create such community that supports rehabilitation and make an atmosphere where the victims and offenders can again develop and relive their life with dignity.
- 7) To sidestep the long procedures of the legal system and to avoid delay and cost of the court.

## **Implementation of The Restorative Justice System Between The Countries**

Restorative justice is a concept which has been used all around the world various programs and procedures are being used through of the world like mediation between victim and offender, conference including community and family group victim assistance etc which are evidences of application of restorative justice. Mediation or reconciliation was initiated as an experiment Kitchener, Ontario in 1970's. Mediation is a process in which victim and offender meet and keep their point in front of a trained mediator in order to resolve their conflict. This is practiced in USA, Canada, Australia, UK, Norway, etc.

Another procedure used in different countries is conferencing. In this process the families and friends of both the parties and few members of the community in order to discuss the effects of the crime and form a view to repair the harm or to provide strict supervision or in few cases even custody. This concept is used in countries like South Australia, South Africa, Ireland, and Lesotho and in many other countries.

Circle sentencing, is also a way to provide restorative justice. Its main aim is to make the offender responsible for his acts and to make such

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<sup>3</sup> John Rawls, A Theory of Justice, 6<sup>th</sup> Indian Reprint 2013, Universal Law publishing corporation, New Delhi, India

amendments so as to repair the harm caused to the victims by his crime. This is mainly used in Canada.

Since, restorative system is not a new concept, it has been used through customary practices. The recent approaches have been initiated through the “indigenous and customary practices”. The abovementioned forms have been grounded upon these practices. Each country has its own practices like Australia, Canada, Nigeria, Uganda, Philippines, New Zealand, etc. Its main motive is to provide reconciliation between all the parties, develop social responsibility and provide complete justice to the victim.

Restorative system prevails in other countries since long time back:

In Israel, the Pentateuch mentioned restitution for property crimes.

In Sumerians, restitution is used for offences of violence.

In Rome, convicted thieves have to pay double the value of stolen goods.

In Germany, King Clovis ordered restitution sanction for both violent and non violent offences.

In England, a law consists of restitution schedules.

In 1970's U.S.A and Western European countries adopted this process through the mediation

In India the parliament introduces juvenile justice amendment act 2006 whereby the term ‘juvenile’ means juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. Juvenile justice is also called child justice which is based on restorative justice.

## **Applicability of Restorative Justice System in India**

The root of restitution justice has from the villages where there was a system of resolving conflicts informally and without visiting to the courts through panchayats which listens to both the parties in front of the whole village and give a decision in favors of the victim and the offender has to compensate for harm caused by him to the victim. Thus though not properly yet restorative justice has been prevailing since long time back in India as well. The criminal jurisprudence in India is not victim based therefore the punishments given under the criminal cases are mostly. In the prevailing justice system, state is considered to be the main victim whereas the victims, criminals and the society at large at minimal value. While in restorative justice system the main focus is given upon the individuals. It is based on the theory that the parties who have got mostly affected by the crime should have an opportunity to speak themselves and get their original status restored.

In **Code of Criminal Procedure**, there have been specified certain provisions so as to include restorative justice within its realm like “plea bargaining” and “compoundable offences” given under Chapter XXIA and section 320. These provisions provide a way to escape imprisonment

to the offenders. Under plea bargaining the offender accepts his crime and requests the court to provide him a lesser punishment or change his punishment of imprisonment to compensation. Under compounding of offences, the section prescribes a list of offences for which the offences could be compounded outside the court and for which the imprisonment not necessarily be given.

**Alternative dispute resolution** thrives to solve the disputes between the parties to maintain peaceful relations. ADR acts as a path where the parties in dispute must go through in order to reach at a satisfactory point.

**Juvenile Justice Act** uses a different way than punishment. There may be even a greater chance that the minor offender gets adversely affected when they will be barred inside the same jail. This Act provides rehabilitative measures by encouraging the child to engage himself into counseling and perform social services through which the child could readjust him into the society and becomes a better person who doesn't involve himself into any such offences in future.

## **Cases on Restorative Justice**

In DEEPA V. SRIVINAS RAO<sup>4</sup>, the court mandated mediation as first recourse in matrimonial cases and family disputes.

In SUNIL BATRA V. DELHI ADMINISTRATION<sup>5</sup>, Justice Krishna Iyer held that whenever a punitive response is awarded to an offender, it must be oriented to restorative measures and not just to deterrence.

In the case of STATE OF GUJARAT VS. RAGHAVBHAI VASHRAMBHAI AND ORS<sup>6</sup>.- The honorable justice J.N Bhatt had opined that, "in a realm of victimology the decision is one of the Aspect towards the fulfilling the design and desideratum and restorative justice to the victims of crime."

In the case of ANUPAM SHARMA VS NCT OF DELHI AND ANS.<sup>7</sup>, the honorable justice Pradeep Nandrajog has observed that, "restorative justice may be used as synonyms for mediation. The object and the nature of restorative justice aim at restoring the interest of the victim. Involvement of the victim in the settlement process is welcome in the process of restorative justice. It is a process of voluntary negotiation and concentration, directly or indirectly between the offender and the victim." In Dikoko v. Mokhatla<sup>8</sup>, Sachs J's concurrence notes that the elements of restorative justice are encounter, reparation, reintegration and

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<sup>4</sup> 2013 5SC 226

<sup>5</sup> 1980 AIR 579 980 SCR 2(557)

<sup>6</sup> (2003) 1 GLR 205

<sup>7</sup> 146 (2008) DLT 497

<sup>8</sup> [2006] ZACC 10; 2006 (6) SA 235 (CC); 2007 (1) BCLR 1 (CC) at paras 114-5

participation. The CJA defines restorative justice to mean—  
“an approach to justice that aims to involve the child offender, the victim, the families concerned and community members to collectively identify and address harms, needs and obligations through accepting responsibility, making restitution, taking measures to prevent a recurrence of the incident and promoting reconciliation.”

## **Merits of Restorative Justice System**

In India, the criminal justice system mainly provides for giving punishments to the offenders. It has no place to redress the injury caused to the victims by the crime. Thus, there is a need to provide new direction to the criminal justice system of India and to make the system victim-oriented. Through restorative justice system the main focus can be given to the victims and their grievance can be redressed by the offenders and also it can encourage the offenders to become responsible human being and prevent them from engaging themselves into repeating crimes.

The restorative justice programs are been used in different ways such as jail programs, women-oriented plans, juvenile programs etc. Each of them cover different areas and have different advantages.

The advantages of restorative justice system can be listed as under:

- It provides for reparation to the victim- The offender repairs the injury caused by him to the victim. Through this system, the law becomes victim-oriented and focus is given upon the victims to get proper justice.
- It provides restoration of relations- This system provides restoring the relations between the victims and offenders so that no vengeful feelings exist between the parties and their relations get mended so that they can easily co-exist with each other.
- It reduces the crime rate- This system helps the offender to make him responsible for his deeds and make him realize what he has done and what are the consequences of the crime committed by him. Thus, it prevents the offender to repeat the offences through which the crime rates can be reduced.
- It provides for shorter conviction- This system mainly aims to provide reparation of harm to the victim and imprisonment is not a way through which justice can be given to the victim. Thus, it provides for shorter conviction to the offender.
- It provides the victim to express their injuries- In this system; the victim gets a platform to express the injuries caused to him by the crime. Through this the victim will not be left apart and they will be able to get complete justice after addressing their pain.

- It provides empowerment to the victim- When the victim will be given an opportunity to address its pain it will provide empowerment to them and they will not feel left aside.
- It provides satisfaction to the victim – Since the victim express all its pain and circumstances faced by the victim, the offender gets to know and feel the pain caused by him. Thus, the offender tries to repair the damages and provide the victim all such assistance so that the victim's harm can be repaired.
- It provides a chance to the offender to apologize- When an offender gets to know the intensity of harm caused by him, he gets to step into the shoes of the victim and understand their circumstances. Through this the offender gets to estimate his actions.
- It provides an opportunity to change- When the offender gets the idea of his actions he understands the situations that have been faced by others due to him so he changes his behavior so that the same situations shall not be faced by anyone else.
- It provides easy resolution of issues- The court procedures of proceedings and trial are long and cumbersome. Restorative justice system provides for speedy resolution of the conflicts.
- It provide problem solving opportunities- Through this system both the parties express their views and come to a decision in much shorter time in the presence of few community members.
- It increases safety in the community – when the offender gets to know how wrong he has committed then he avoids to again commit the same crime and thus the safety in the community is upheld.
- It builds stronger community- When the community is safe it is obvious that the community will become stronger and the members joining the conciliation proceeding helps the parties to understand the situations and encourage them to re live their life again peacefully.
- It is worthwhile- Since this system requires less time and there is no such long procedures to be followed, the money required is much less comparatively that of the penal criminal justice system.

## **Disadvantage of Restorative System**

Each coin has two faces. Likewise the restorative system also has some defects. Since the term justice has not been able to be attained completely, this system also have some loop holes due to which the justice to be delivered completely is still lacking. There may be few cases when the offender can understand the intensity of is crime and not repeat the crime but it is not always the case. Some offenders use it as an escape to prevent punishments and they have no concern for what the victims



have suffered due to him. Thus, here may be few disadvantages to be listed below:

- No proper implementation- Although it is not a new concept yet its applicability is still confined in very compact areas.
- Unable to prevent repetition of crime- It may be useful sometimes to reduce repetition of crime yet it is not always useful to reduce crime and prevent repetition of crimes.
- Risk of victim's safety- Restorative justice provides a platform for conducting a meeting between offender, victim and members of community. It may endanger the safety of the victims.
- Manipulate justice- Sometimes, punitive system cannot satisfy the victim and providing a way to escape punishment manipulates justice.
- Does not punish for crime against state- This system mainly focuses on victim, offender and community. It completely neglects the state.
- Cannot be implemented in heinous crimes- This system has only implementation on the petty cases and the serious crimes do not fall into the realm of this system.
- Unequal punishments- This system has no specific provisions of punishment. The punishments are different in each different case.

## **Conclusion**

The researcher hereby concludes that the restorative justice system is a better way of dealing with cases by fulfilling victim's need and restoring the statuses between them like before. This system focuses on victim and thrives to provide satisfaction to the victim. This system provides a win-win situation as the victim's need is also fulfilled and the offender doesn't has to suffer through the penal punishments. Restorative justice system is like an alternative measure through mediation and conciliation between the parties. It helps to develop a responsible community as the offender understands its deeds and he tries to make amendments to redress the injuries of the victim and make a safer world. It has been implemented from some provisions in Cr. P.C. and in ADR Acts. It also helps in reducing the burden of the court through the procedures of conciliation and mediation. It provides a speedy justice and also is cost effective. It can be used by the weaker sections of the society who used to suffer from the long procedures of the court.

In India, it is used in juvenile justice system, petty offences which can be compounded outside the court. Thus, since it is not completely possible to implement this system yet in few instances it is a better way of resolution of the cases and provides satisfaction to the victim. This system has been emphasized by many judges and thus it can be on the discretion of judges to adjudge where this system can be implemented.