

UNDERSTANDING THE RESTORATIVE JUSTICE

Ajay Kumar Upadhyay
Department of Law

Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India

ABSTRACT: *There have been offences and sentences from the beginning of human civilization. It should certainly be argued that the principles and procedures embraced by the modern Criminal Justice System have done justice to some degree or another, from the punitive philosophy to the reformatory theory of punishment. One question is likely to increase in contemporary times, i.e. whether the existing Criminal Justice System is adequate to deliver full justice? Three parties are interested in a criminal case: the perpetrator, the witness, and the society at large. Throughout the world, not only are victims of crime covered, but also restored, supported and paid with the help of Apt. Legislation.*

KEYWORDS: *Crime, Criminal, Justice, Punishment, System.*

INTRODUCTION

In India, by the Indian Constitution, the Code of Criminal Practice, 1973, and the Probation of Prisoners Act, 1958, the ideals of Restorative Justice were embodied in which victims' interests were recognised and compensatory mechanisms were implemented. It is notable lately that many High Courts have passed decisions in favor of the plaintiffs by giving them justice, recovery, etc. This suggests that the courts and the government are marginally likely to accept the application of the Restorative Justice principles as a complement to the existing Criminal Justice System.

Evolution of Crime and Punishment

Evolution of punishment theory In general, crime is defined as a "violation of law, considered in reference to the evil tendency of such violation with respect to the community as a whole"

Eminent sociologist Emile Durkheim once said, "It's a myth to think of a crime-free society," and the reality of her argument is very clear that the evolving definition of crime is taken into account. Therefore, any crime has its respective penalty in order to fight crime and defend society from the law-breakers, which entails suffering of such severity that outweighs the gratification gained from the perpetrator by his unlawful act.[1]

In early days, it was shown that criminals were punished according to Dharma teachings founded on the Preventive and Retributive philosophies of retribution that not only concentrated on punishing the criminal, but also set a precedent to discourage it from being committed by any other individual in society. Over time, crime and retribution have grown. In 1860, Lord Macaulay

introduced a codified document, the Indian Penal Code, 1860, which categorized the offences and prescribed appropriate penalties for them. This law acted as an obstacle and was based on the Preventive Theory of Punishment.[2]

The genesis of the Reformatory Philosophy of Retribution finally took place, moving the emphasis from 'Crime' to 'Criminal'. This approach stressed the reformation of prisoners through a psychiatric approach that was known as the cardinal idea of contemporary penology and penal policy. By allowing them to adapt to healthy lifestyles and improve their inter-personal relationships, the Reformatory Theory promotes the rehabilitation of offenders in society.[3]

Analyzing the above theories of punishment, it is clear that punishment has been used until the present time as a measure to reduce criminal incidents either by deterring the plausible offender or by disabling and preventing them from repeating crime or transforming it into a citizen-consistent law. Which makes the modern structure of criminal justice more or less criminal-centric.[4]

DISCUSSION

The main goal of the Criminal Justice System is therefore seen to deviate from its course in India because of the current Criminal Justice System, which is crippled due to numerous diseases and faults. Of the Indian population, one third is below the poverty line. For two factors, poor victims in India suffer, firstly because of ignorance and secondly because of a shortage of means to meet the required authority. In addition, the lack of coordination between the courts, the prosecutors and, in addition to these technological and procedural shortcomings of the Criminal Justice System, the greatest weakness is the dismissive mindset towards the 'plight of the accused' solution.[5]

There was inevitably a lack of coordination between the judiciary, the prosecutors and the genesis of the Reformatory Philosophy of Justice, moving the subject from 'Crime' to 'Criminal'.

This technique emphasized the reformation of inmates through a psychiatric solution known as the cardinal principle of modern penology and correctional policy. Reformatory Theory promotes the improvement of offenders in society by encouraging them to transition to healthy habits and improve their inter-personal relationships.[6]

Application and Implementation of Restorative Justice around the World.

It is obvious from the study of the above-mentioned theories of deterrence that retaliation has been utilized to date as a measure to minimize violent incidents either through deterring the plausible perpetrator or by crippling and preventing them from committing or transforming violence into a citizen-consistent law.[7]

That renders it more or less crime-centric to the current criminal justice structure. The Criminal Justice System is a governmental enterprise empowered to create and execute laws and aided by the jurisdiction and coercive control of the State. Lacuna in the current Criminal Justice System.

Application of Restorative Justice in India

To take a gander at it as it were, the idea of Restorative Justice was not new to India. In days of yore, the methodology of settling an issue through reclamation and compromise between the guilty party and the casualty supposedly was common in the Gram Panchayats by and large headed by the senior residents of the said Panchayat. This was later received by the Indian Constitution in the 1990's. Article 40 of the Indian Constitution guides the state to find a way to arrange town Panchayats and bless them with such force and authority as to empower them to work as units' of self-government.[8]

The debate goal instrument embraced by the Panchayati Raj principally centered around the interests of the casualties over different components included. This was only what we call presently to be the Restorative Justice System. In dominant part of the circumstances, the guilty parties were made to reestablish or remunerate the damage that was done to the people in question. In this way understanding the requirement for such execution, the Law Commission in its 114th Report on "Gram Nyayalaya" expressed the requirement for the Village Panchayat in settling the questions.

Further, the Gram Nyayalaya Act of 2008 and Nyaya Panchayat Bill of 2009 were acquainted with revive and bring back into picture, the Restorative Justice component effectively predominant in the Panchayati Raj System. Separated of the abovementioned, the brief looks at the idea of Restorative Justice can be seen through The Juvenile (Care and Protection of Children) Act, 2015. The Act intends to give appropriate consideration, insurance and treatment of the adolescents in clash of the law.

The safeguard for this situation goes about as an arbiter to determine the quantum of remuneration. Similar to Plea-haggling, Lok Adalats are unique courts that manage certain issues in a remedial way. These courts focus on purpose the contest by direct talk with the prosecutors and desire the soul of training of "therapeutic equity." Cases, for example, the Landlord inhabitant question, compoundable offenses, wedding cases remembering property for the type of obligation, protections, guardianship, Custody of kids are managed by the Lok Adalats. The other viewpoint which shows the remedial equity standards are the Open Prison framework.

The Open Prison framework has no outfitted watchmen, no kept dividers and other security. The detainees for this situation are made to move unreservedly and are instructed to keep up self-control and take a stab at their occupation through work. This methodology is only a reformative and rehabilitative way to deal with reestablish the life of the wrongdoer in the jail. It puts stock in giving remedial and other restorative medicines that can additionally remunerate the person in question. Further, seeing Restorative equity is likewise seen through Article 141 of the Indian Constitution, where the state is intended to make reasonable arrangement for making sure about rights towards schooling and public help with instance of jobless, mature age, wiped out and impaired casualties, Section 358 of Cr.P.C, 1973, which manages remuneration to people who are baselessly captured and Section 359 which manages the order to pay costs on account of non-cognizable offenses. Additionally, it is found in Section 5 of the Probation of Offenders Act, 1958

which manages the necessary guilty parties to pay remuneration and expenses. Standards of Restorative equity reflected under Section 357 of the Criminal technique Code, 1973.[9]

Additionally, it is found in Section 5 of the Probation of Offenders Act, 1958 which manages the necessary guilty parties to pay remuneration and expenses. Standards of Restorative equity reflected under Section 357 of the Criminal technique Code, 1973.

The purpose and essence of restorative justice attempts to recover the victim's interest. The victim's participation in the settlement proceedings in the restorative justice process is welcome. It is a method of voluntary negotiation and focus between the perpetrator and the victim, either directly or indirectly.

Suggestions and Implementation of Restorative Justice System as a Complement to the Prevailing Criminal Justcie System

With millions of lawsuits outstanding, cumbersome and costly legal hearings, hundreds of recommendations from the Law Commission and many other groups calling for overhaul of the Criminal Justice System, it can be plainly argued that the existing Criminal Justice System has failed to adequately execute justice. Nonetheless, to some degree or another, the existing Criminal Justice System has given justice, but this is just twenty percent of the number. Currently, because of the numerous disadvantages that are present in our Criminal Justice System, it has been estimated that more than 70% of the suspects are sidelined together for decades. Therefore, it becomes a mandate and not an option to follow an alternate system like the Restorative. In the Indian Criminal Justice System, once Restorative Justice Concepts are successfully enforced, high outcomes can be obtained. The following are recommendations for the successful application of the Restorative Justice System in India:

1. Increasing involvement of victims: As mentioned earlier, a survivor of a crime is a simple spectator and does not hold an influential role. As the most injured individual in a crime, an opportunity should be given to the victim to provide proof of his loss, pain and distress and to help the judge in deciding the amount of restitution.
2. In such cases, where the case could be dismissed by the defense, the claimant may have an ability to support the court and offer responsibility for continuing the trial. Programs such as Victim Abuser Therapy, Family and Community Group Conferencing, and Sentencing Circles, etc., which bring the victim face-to-face to the offender, need to be successfully implemented in India in order to further reinforce the position of the victim, and corrective steps should also be taken to monitor such implementation. The legislature can therefore extend its hand in the creation of relevant regulations for the introduction of such programmes. In addition to the above, the incorporation in the laws of the following offences in the Restorative Justice Principles would automatically enhance the position of the victim.

To guarantee that the perpetrator receives the said compensation, appropriate steps should be taken. In addition to the aforementioned recommendations, the following steps should also be taken to administer justice to the victims to the maximum:

1. Victims should be made aware that they have faced abuses of their rights and exploitation. Victim literacy camps must be built to enable them to recognize the situation and speak up for their own rights.
2. A Victim Helpline will also be given for the victim and their families to discuss their complaints over a telephone call, along with the separate assistance lines provided by the state for its residents, which can save a lot of money.
3. Even in the lower courts, the aforementioned recommendations should be properly applied, which will minimize legal technicalities and gaps in justice.
4. The society as a whole, apart from the state, should come forward and take steps to rehabilitate the victims, especially in cases of rape, acid assault, domestic abuse, etc.

CONCLUSION

The Restorative Justice System offers solutions to the shortcomings of the existing Criminal Justice System and innovative approaches to adapting to them. Not only does the State and the perpetrator have the Restorative Justice System, which also involves all the impacted people participating in a criminal case. It works on repairing victims and ensuring recovery and restitution, transforming people's experiences with the psychological and physical world, helping the attacker to realize the trauma created by him and stopping him from doing it in the future. In the Criminal Justice System, both of the above appear to be missing.

However, it is not possible to apply restorative justice concepts to any of them, taking into account the seriousness and existence of particular offences. What this paper recommends is to encourage the Criminal Justice Structure's adversarial system to remain a significant crime and to embrace alternative forms of constructive mediation alongside it, such as the Restorative Justice System.

REFERENCES

- [1] M. Wenzel, T. G. Okimoto, N. T. Feather, and M. J. Platow, "Retributive and restorative justice," *Law and Human Behavior*. 2008, doi: 10.1007/s10979-007-9116-6.
- [2] J. Latimer, C. Dowden, and D. Muise, "The effectiveness of restorative justice practices: A meta-analysis," *Prison J.*, 2005, doi: 10.1177/0032885505276969.
- [3] A. A. Payne and K. Welch, "Restorative Justice in Schools: The Influence of Race on Restorative Discipline," *Youth Soc.*, 2015, doi: 10.1177/0044118X12473125.
- [4] K. Daly, "Restorative justice: The real story," *Punishm. Soc.*, 2002, doi: 10.1177/14624740222228464.
- [5] G. McCluskey, G. Lloyd, J. Stead, J. Kane, S. Riddell, and E. Weedon, "'I was dead restorative today': From restorative justice to restorative approaches in school," *Cambridge Journal of Education*. 2008, doi: 10.1080/03057640802063262.
- [6] N. Smith, "Kantian Restorative Justice?," *Crim. Justice Ethics*, 2010, doi: 10.1080/07311291003654195.

-
- [7] T. González and T. Gonzales, "Keeping Kids in Schools : Restorative Justice , Punitive Discipline , and the School to Prison Pipeline," *J. Law Educ.*, 2012.
- [8] J. Braithwaite, "Restorative Justice: Assessing Optimistic and Pessimistic Accounts," *Crime and Justice*, 1999, doi: 10.1086/449287.
- [9] J. L. Herman, "Justice from the victim's perspective," *Violence Against Women*, 2005, doi: 10.1177/1077801205274450.