



The concept and scope of restorative justice system: Explaining history and development of the system for the immediate need of society

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Abstract

Restorative justice system is somehow a new system on the so far to promote and ensure justice in several societies by utilizing certain mechanisms and techniques that avoids the normal court proceedings and the offenders and victims are all satisfied by means of different procedures. Restorative Justice System treats victims and offenders in different ways mostly but confines to the actual structure alongside of the Restorative Justice. Both have different aspects and rules for treatment of crime. This system has recently developed itself into a structured program or set of mechanism to be utilized by societies for sustainable peace and harmony and to erase crime and criminal thinking's of the members of societies.

Keywords: RJS, mechanisms, history, development, society, JJS

1. Introduction

The concept of restorative justice system does not bind itself to a limited definition. However the available definitions are result of limited number of required disciplines and techniques adopted by a group of people. To provide this system a precise definition some scholars like coben and Harley thought that restorative justice system shall be considered as an umbrella term for a bunch of techniques and practices linked with other justice systems but more precisely to be defined as a pioneer approach for resolution of disputes and settlements among victim and offender in remote settings such as schools, workplaces, courts, city centres etc. Another scholar of restorative justice system, kurki explains that restorative justice system is a composition of values that tends to promote peace and harmony, rebuild relations, repairs harm among victims, community and the offender. Its main goal is empowerment and participation of victim and offender simultaneously within a community. Restorative justice system sometimes functions as transitional justice system or transformational justice system to explain the performance of commissions for reconciliation and other such entities. As per the above explanation restorative justice system can be defined as combination of mechanisms, programs and techniques that functions to bring together the victim and offender of a society to repair harm heal and rebuild relations among them within a community.

Restorative justice system comprises of several movements that strives to make a system or mechanism to deal with intergroup and interpersonal conflicts. At the national level restorative justice system is a combination of several programs, techniques and practices that makes the basis of these institutions. According to cunnen reparations of human rights abuses and identifications of restorative justice systems are both practices and set of values that explains the performance of the institutions of criminal justice system and restorative justice system at individual and national

level. Other scholars like coben and Harley explains restorative justice system a phenomena that functions beyond specific rules and practices and it includes philosophical approaches to live and set of principles that governs the peaceful performance of individuals in a society.

Another scholar of restorative justice system, brownlie takes this mechanism to international level and explains that restorative justice system comprises of different measures that may be utilized by a defendant state in the form of apology, compensation, restitution, prosecution and guarantee of non-repetition against the offending state. Some scholars argue that Restorative justice system exhorts nations to certain basic conduct. These comprises of the balancing of victims, public and offenders interest, access to dispute resolution mechanisms equally to victim and offender, and support to victim and offender for the reintegration to the community.

For the purpose of this study the term restorative justice system is defined and explained from both individual and national perspective to demonstrate its development and importance at both levels. Views of scholars mentioned above are taken from different perspectives to highlight the multiple contexts and understanding of the supposed umbrella term of restorative justice system.

2. History of Restorative justice system

Restorative justice system as a term may be new to scholars of dispute resolutions and other such programs, however restorative practices or mechanism for resolutions of disputes are found in the study of ancient communities and civilization that makes it centuries old mechanism that was available in different countries, communities in different types and shapes for example it was available in the form of jarga or panchayat centuries ago in the communities of south east asia and was introduced in the form of tahkim in Islam almost 14 centuries earlier than it was coined as a new

mechanism and could be termed as restorative justice system by contemporary scholars in the late 20th centuries. Albert Eglash was the first to coin the term restorative justice to these historic programs. In its current available shape the first VORP, victim offender reconciliation program began for the first time in 1970's in Ontario Canada. This was supposed to be the first program of such nature for resolution and reconciliation among the members of a community. This program later took place in USA and New Zealand in the upcoming years. In New Zealand an act was passed known as 'children, young person and their families act' that initiated the first formal use of family group conferences. Canada and USA adopted the traditional method of circle conferencing in a formal way in 1992. It was for the first time in 1995 when a committee in Africa known as truth and reconciliation committee was created for the reconciliation and undertaking the responsibility of conflict resolution. In 2002 a milestone was achieved when the system of restorative justice was endorsed by the United Nations. Restorative justice system is now an established and well-structured system across the globe and almost every country, state and community.

3. Restorative Justice and Restorative Justice System

As for most of the people these two terms sound and mean the same however they are not the same and they are two different phenomena. Restorative justice is the mechanism required by law or people for the providing of justice during the trial court proceedings however restorative justice system is a new technique established for the people after crime or the punishment is done and these techniques are adopted in order to restore those victims or offenders to the society so that they are adopted by the society and people to equalize justice. Restorative justice is mainly concerned with the rights of proceedings during and before trial however restorative justice system looks for far more than that and keeps a view on the outcome of the trial and its function resumes there to restore the harm, people and relations to community to prevent further consequences.

4. Restitutive Justice

Restitution means to compensate for injury, loss and damages. Restitutive justice means an offender must compensate for his violation, damages or injury towards the victims. In this system the purpose is not only to prevent the criminal from recommitting the crime but also to compensate the offender for the damages caused to him. It is generally known as rights based approach and it grounds itself on criminal sanctions which considers a crime to be an offense by an individual against rights of the victims and demands for compensating victims by the offender. It is a fact that on one hand offender deserves punishment but on the other hand victim is entitled to be compensated for the sufferings caused to him.

While explaining this theory it is vivid and can be found that this is a victim based theory and merely focuses on victims' rights and shows no mercy towards offender and this is the reason that this theory is claimed as bias and is an incomplete theory of justice in comparison to the restorative justice theory.

5. Retributive Justice

The theory of retributive justice is a reflection of common psychology of a man i.e; whenever a man is injured or faces

any damage he avenges or strives for a revenge. The fundamental principle of justice is to treat a criminal equally as per the committed crime along with moral guilt he feels after committing of that crime however this theory of justice is based on a maxim "an eye for an eye" and a 'tooth for a tooth' therefore it shows no mercy towards the offenders and is termed as biased theory of justice as it is almost impossible to award punishment in proportionality to the crime.

The idea of revenge may be criticized by several scholars but it's the most persuasive concept from the perspective of certain crimes and the maxim mentioned earlier and well describes it from the offender's aspect. Though the eye for an eye concept is rarely found in the west still it's one of the basis for the eastern laws and methodology for Islamic law. This theory is often criticized by scholars but a return to this theory can be seen very clearly in criminal law of most regions of the world. It's still advised that imprisonment shall be a better choice than revenge but this idea can't be opted as prisons are form of training camps that propagates crime and ways of crimes both psychologically and physically. Scholars are confused because of no proper system for restoration of criminals to the society and to make them constructive and law abiding persons. Restorative justice system provides remedy to all these problems, answers all the questions, solves all issues related to crime and justice, functions to bring peace and harmony to a society and outlines techniques to bring sustainable justice among members of a community in a very systematic way.

6. Restorative Justice Programs

Different types of restorative justice programs are designed from different perspectives depending on the nature of conflict and necessity measures to be opted to resolve those conflicts. These techniques are different in different regions and situations where sometimes they are evolved from an ancient technique or taken from different theories outlined by scholars of restorative justice system. Following are some of the techniques that are commonly used in restorative justice programs

1. Peacemaking circles
2. Community and family group conferencing
3. Circles sentencing
4. Victim offender mediation
5. Reparative probation and community boards and panels
6. Traditional jarga/panchayat

6.1 Peacemaking Circles

This program was launched in 1997 as a project in a community near Worcester in an attempt as a model building experiment that would focus on sharing knowledge and capacity that surrounds issues of community building and disputes resolution. These committees comprise of the local residence to take responsibility of both peace building and peace making. Peacemaking explains measures that could be taken to resolve certain conflicts and issues while peace building focuses on the common problems within a community that comprises of poverty and basic rights etc. Peacemaking activities also deal with certain legal issues of both civil and criminal nature.

Peacemaking committees are directly linked with community and rarely receive referrals from the courts or police though there is a continuous interaction with the police

however there are no strict procedural rules instead step by step procedures are adopted for peacemaking by following certain guide lines. Each committee adopts their code of conduct and all techniques adopted for resolving issues must follow that code of conduct. These committees or peacemaking committees functions for the restoration of peace and harmony to the community and it looks upon larger issues that effects the sustainability of peace in communities and tries to resolve all such issues and problems by adapting certain techniques also keeping in view to avoid the reoccurrence of those issues in future.

6.2 Community and Family Group Conferencing

Family group conferencing is among the most effective and ancient technique adopted by centuries old communities like Maori's centuries ago for the resolution of disputes and sanctioning of crime. In 1989 it was adopted in to its national legislation in its modern form by New Zealand and was included in its youth justice process. Most of the cases are managed by police or court through 'restorative caution'. Due to this reason community conferencing is an alternative measure where an offender is diverted to restorative justice system managed by state agencies within a community from the criminal justice system managed by state agencies with no access of community or community groups.

Family group conferencing is mostly adopted by scholars of restorative justice programs and is mostly applied to juvenile offenders. And the groups in the communities' conferencing are limited to offenders and victims family. These groups makes an agreements which justifies the damage caused to the victims as well as satisfies the juvenile offenders. These groups also consists of the most concerned people in relation to both victim and the offender and who has interest in the process of making peace in the community. It can be a school teacher, a judge or an employer etc. These groups are responsible to monitor the activities of both victim and offenders whether they comply with the agreement or not and look upon their intentions under the direct surveillance of state agencies.

6.3 Circle Sentencing

Circle sentencing or sentencing circles are the most simple and small forums for restorative programs which consists of victim, offender, directly affected persons of the crime and they meet a mediator to decide a proper course of action to settle the offenders conviction. Each of these people explains the crime, possible sanctions for the crime and other related issues to that event to reach a specific point upon which all persons are satisfied. The mediator outlines certain rules and builds a plan of action based on the discussions of agreed parties.

Sentencing circles are primarily conducted in many communities in different regions of Canada. In these circles all participating persons include the counsels, police officers, judge, victim and offender along with their family and residence of their communities gets together and sits in a circle facing each other. These circles are mostly available to those offenders who regrets upon their crimes and pleads guilty that's the reason most discussions in these circles are about reaching a consensus to find the best way for resolution of issues or conflicts in disposing of those cases taking in to account the needs of the victims, the need to protect the community and to rehabilitate and punished the

offender. These circles are generally conducted along with justice professionals within the criminal justice system and support primarily the sentencing process.

Sentencing circles has many other objectives or purposes that includes addressing of the need of victim and offender and their respective families, the needs of communities through a process of reparation, restitution and reconciliation. The fundamental principles of sentencing circles is to reach a consensus about a decision as an outcome of the role actively played in the process by members of community and not the sentence. The community members involved i the sentencing circles monitors the activities of the offenders itself whether it comply with the decision or not and provides the offender with support after announcement of the sentence.

6.4 Victim Offender Mediation

This program is also known as victim offender reconciliation program VORP and was among the ancient restorative justice programs adopted in the earlier society. These programs address both the victims and offender keeping in view the satisfaction of the victims and ensuring the offenders to be held accountable for their crime. These programs can be monitored by both non-profit organizations and state agencies and mostly involves about cases of less serious nature. Referrals may b from the court, probation officers and the prosecution officers. This program can operate at any stage from the pre charge to the post charge stages and depends on the willing of the victims and offenders to participate in the program. This process can be useful during offender's incarceration and can become part of offenders rehabilitation process to the community even if he is serving long sentences.

The idea behind victim offender reconciliation programs is that victim and offender shares a common interest to right the wrong. This process includes the reconciliation of the offender and victim. This can happen through a face to face meeting between the victim and the offender. This meeting is facilitated by a mediator and both the agreed parties are given an opportunity to explain how their lives are affected by that crime. they are asked to make a plan for devise an agreement to support reconciliation. This can be in the form of financial restitution or rehabilitative services or anger Management classes.

6.5 Reparative Probation and Community Boards and Panels

In these type of programs the offenders reaches instantly a community board after being convicted in a crime where the volunteers of the community based word outlines a plan for the offender which develops a constructive outcomes in his case. The victim is also asked to participates and attend the process. These types of community reparative boards have become part of sentencing procedures in many US jurisdictions.

6.6 Traditional Jarga/Panchaiyat

A traditional jarga/panchayat system is a gathering of leaders of different communities in a group make a decision by consensus regarding resolution of an issue or to settle a major dispute. This was a common technique used by different tribes since long in different regions of south East Asia specifically conducted to settle dispute among different tribes of pushtoons known as afghans. It has played a vital

role in prevention of tribal wars. These programs are mostly conducted in Afghanistan and in different pushtoons tribes of Pakistan especially inb KPK, FATA and PATA. Pakistani government is taking measures to integrate jarga system in to formal justice system.

Restorative justice system utilizes the same practices in almost the same way to restore victims and offenders to a community and to settle disputes among people and communities in a much better and formal way. And this makes the restorative justice system a new and ancient system of restoration simultaneously which is easily accessible, accurate and easily implemented program having the capacity to adjust within itself all sorts of disputes in all kind of communities.

Rights and Responsibilities

Disputes are part of day to day relationship among members of society and can happen in the course of domestic or business activities. Restorative justice system keeps and tends to keep the bond between individuals of community without framing illegal issues or restoring individuals from the consequences of legal issues. It focus on the issues of different nature and adopts different techniques to resolves those issues and bring together the aggrieved parties and interested members of society to solve those issues or to resolves those disputes in a corrective manner or correctively through different formal and informal processes. For example: it can be through vorp, sentencing circles or communities board etc.

Rights of the Victim

When a crime is done, victim is the most suffered person among the aggrieved parties that comprises of victim and offender in the theories of justice other than restorative justice theory, victim is the most neglected one and remains unheld and unsatisfied even if a decision is made so called a just decision as per the other theory of justice. Restorative justice system keeps in view that punishment of an offender does not held a victim and so keeps a victim on the front screen and makes several attempts from all aspects to make offender aware of the consequences the victim has suffered because of his intentional and unintentional offence. Keeping in view status of the victim summarize a explain below that are to protected by his community until justice is served upon him.

1. Victims are to be protected by legal and state agencies which provide him with legal assistance in all the stages of court procedure and o assure him of being protected and secure him from no such incidence of same nature in future.
2. A victim should be provided with such environment where he can utilize his physical and psychological skills and shall be welcome to the community without depriving him of any aspect of participation in community.
3. Certain techniques and programs shall be establish within the community with a proper environment for the victim to restore or reintegrate to the community easily.

Restorative justice system is mentioned above stresses on certain important aspects of a dispute and establishes certain techniques that helps in the easy restoration and reintegration the community. Among them the most important is figure out the effects of offence on the victim

and then to provide him with legal assistance from legal or state agencies and then adapts certain techniques that provides the victim a compatible environment for restoration and reintegration for the society.

Rights of the Offender

Offender also reserves some rights whether the offence committed is intentional or unintentional restorative justice system is unique in a way that it keeps a balance of rights between both the offender and the victim, as main goal of restorative justice system is to restore both the aggrieved parties of the crime to the community .Some rights of the offender are discuss below:

1. The first and primary right of offender is that he shall be provided with protection by the community from the victim's revenge or retaliation by his companions during and after trial.
2. If the crime has happened unintentionally or because of unawareness or was an accident, then the offender would need proper care both physically and psychologically in order to restore him to the society as this incident would have created an impact on his reputation and would have also affected him both psychologically and physically.

Restoration of an Offender

In cases of the offender s criminal, his restoration is important to have a sustainable peace in a community as their will be a continuous thrept of violence and insecurity from the offender unless he is restore to the community for the purpose of restoration of a criminal. Their are two programs designed for his assistance during his time in prison and after he is out prison. These programs are as follow;

1. Alternatives to violence project, This program comprises of series of workshops that primarily focus on the building of a peaceful community and develop trust and developing communication and creates skills for resolution of conflict in prisoners. All these workshops and skills are very helpful in facilitating the offender to reintegrate to the society as all destructive and violent responses are replaced by constructive and conflict resolution skill.
2. Detroit transition of prisoners, this a combination of program that takes placein churches that function to provide accountability for the criminals when they are out of prison. These programs also strives to get help from social workers, social service agencies, philanthropists and business communities to provide help for the offender and his family. These stances creates an environment for offender and makes him accountable to the society and his family therefore this accountability makes him a constructive and responsible towards his family.

7. Juvenile Justice System

A juvenile offender is an offender under the age of 18 and the case for the juvenile offender is different than that of an adult offender .as the community and state agencies realizes the fact that decision against juvenile offender will affect future and life style therefore his case is handled with intense care whether it leads to his restoration to the community or his imprisonment the situation at all stages is look upon from all aspects.

Juvenile justice system focus on the offender at each stage whether it is his first offence or he is recommended by formal justice system and takes intense care during either situations .This program can be perform at any setting whether its within the justice system such as juvenile prison or outside the juvenile justice system . For example: school etc. Generally only the victim and offender are included in juvenile justice program however the community itself can be included as an individual harmed by the crime.

8. Conclusion

Restorative justice system cannot be define or explain from a single aspect as it is a combination of programs that is variable and can be adapted inn different situation and in different communities. It is different from restorative justice, Restitutive justice and retributive justice in sense that it is not the part of court procedure that is it functions after the decision is made, it do not lands itself merely to sanctions and compensation and donot believe in revenge or punishments respectively and tries to adopt certain techniques that restores all affected parties to the community which each party's satisfaction and is not biased or stresses upon rights of each party whether it is victim, offender for the community. There are certain rights claimed by this system for both the victim and offender hence it is explain and proved that restorative justice system comes up with absolute mechanism that restores victim and offender in a systematic way and promises a community with sustainable peace and harmony.

9. References

1. Zehr h. The little book of restorative justice, good books, 2002.
2. Joanna Shpaland, forgiveness and restorative justice? Is it helpful? Is it necessary, 2016.
3. Brownlie, Public International Law, 1998.
4. Phutcison, Wray, what is Restorative Justice? New World outlook, 1999.
5. Mika, Zehr, A restorative Justice Frmaework for community practice, 2003.
6. Cohen, Harley. International conversation about Restorative Justice, Mediation and Practice of law, 2004.
7. Zehr h. retributive justice, restorative justice, 1985.
8. Zehr h. changing lenses, 1990.
9. Cunnen C. 'reparations and restorative justice responding to gross violations of human rights, 2002.
10. Nyazee Imran, ahsan khan, Jurisprudence.
11. Nyazee, imran ahsan khan, general principles of criminal law
12. Clifford k Dorne. Restorative justice in the United States an introduction, 2008.
13. Andrew woolford, RS Ratner, informal reckonings: conflict resolution in mediation, restorative justice and reparations, routledge-cavendish, 2008.
14. <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-4-conceptual-issues/rights-and-responsibilities/#sthash.VNuy44BY.dpbs> assessed on May 18, 2019.
15. <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/ex-offender-assistance/#sthash.gDmDG7N7.dpbs> assessed on May 18, 2019.
16. <http://www.vorp.com/index.html> assessed on May 18, 2019.
17. <https://cjiwr.com/vorp/> assessed on May 18, 2019.
18. <https://centerforcommunityjustice.org/services/victim-offender-reconciliation-program/> assessed on May 18, 2019.
19. <https://www.ibarj.org/commpanels.asp> assessed on May 18, 2019.
20. <https://www.innovations.harvard.edu/reparative-probation> assessed on May 18, 2019.
21. <https://dailytimes.com.pk/341630/jirga-system-in-fata/> assessed on May 18, 2019.
22. <https://nation.com.pk/17-Jan-2018/jirgas-the-saviours-of-justice> assessed on May 18, 2019.