

The central aspects of restorative justice essay sample

[Law](#), [Justice](#)



Restorative justice has been in existence from quite some time. It was experimented with by several sociologists and community workers, three to four decades ago, in order to provide an alternative method of dealing with crime and to restore peace in the community. Various models of restorative justice have been established in different countries. Subsequently, several changes took place in the form and approach to restorative justice, which brought about genuine reform that helped to reform the criminal justice and social order systems around the world (Johnstone & Daniel, 2006. Pp. 5 - 8, 650).

The system of restorative justice has spread to several countries. However, this movement is beset with stark internal differences. Its highly commendable objective is to modify the manner in which crime is dealt with. One of its principal goals is to supplant the extant, well entrenched, punitive justice system with a system that seeks to implement reparative justice. The advocates of this system, contend that in addition to a better curtailment of crime, victims of crime would be provided with reparatory justice and succor for the trauma that they would have undergone; moreover, offenders would be made genuinely accountable for their transgressions and there would be a serious and concerted effort to reintegrate the offender into mainstream society (Johnstone & Daniel, 2006. Pp. 5 - 8, 650).

Nevertheless, there is a distinct lack of consensus on the change to be engendered by the system of restorative justice. One particular school of thought subscribes to the view that this system is nothing more than a novel social technique that could be integrated into the existing systems of

criminal justice. Another group of authorities are seized with the objective of replacing most of the existing punitive system with a system that employs community based responses to educate, succor and reinstate victims of crime, offenders and the community in which they live. However, these various have some common aims; for instance, all of them desire to enforce a system that would be much better than the existing systems. Restorative justice has gained popularity only recently, and it has been recognized that it not merely a new classification technique, but a system that performs a more thorough evaluation, than the existing criminal justice systems. As such, restorative justice is an evaluative, complicated and open system. Its development is ongoing and dependent on experience. Due to these properties of this system, restorative justice is subject to considerable dispute (Johnstone & Daniel, 2006. Pp. 5 - 8, 650).

Restorative justice has the important goal of reforming the offender and including the offender back into the community. While it carries out this duty, it requires the offender to accept the responsibility for the wrongdoing and to make good the injury caused by his crime to another person. Hence, offenders cannot just escape from their liability of making good the damage and accepting the crime committed by them. No offender can claim that his acts were not wrong or refuse to repair the injury caused by his crime, because such behavior would be construed as non - fulfillment of the fundamental requirement of restorative justice (Levin, 2005).

Restorative justice is becoming very popular at present. It is considered to be the new philosophy of the criminal justice system and many countries are

adopting it. Several states in the United States are making use of the concept of restorative justice in the juvenile and adult criminal justice systems. For instance, the state of Illinois integrated the principles of restorative justice into its revised Juvenile Court Act (Restorative Justice Resource Center).

Restorative justice is a means of dealing with convicted criminals. In this method the criminals will be asked to bear the responsibility for their wrongdoings. Moreover, meetings will be arranged between the criminals and their victims. The objective of restorative justice is to make good the damage sustained by the victims or the community (restorative justice, 2006).

The philosophy of restorative justice considers criminal activities to be violations of the duties and relationships between people. Thus, it requires the offenders to correct their behavior and make good the damage caused by their activities. When the offenders make good the damages caused by them, it can be said that restorative justice has transpired. For instance, if an offender causes damage to property and subsequently, makes suitable and adequate compensation for such damage, then justice is served. Restorative justice involves the participation of the perpetrators, the injured parties and representatives from the community, to find a cure for the criminal activity of the offender. This process of decision making would achieve reparation, reconciliation or reassurance (Restorative Justice, 2002).

Many countries incorporate the principles and philosophy of restorative justice in their cultural histories. The Western nations had started to adopt it in their criminal justice systems from the 1970's. In Canada, two sociologists namely Mark Yantzi and Dave Worth had requested a trial court in Kitchener, Ontario to permit them to employ a restorative approach in a case, in which two juveniles had been arrested on charges of vandalism. Under this approach, the researchers allowed the injured parties and the perpetrators to actively participate in the process of finding an appropriate means of responding to the harm done by the offenders. The results of this experiment encouraged many nations in the west, to adopt the principles of restorative justice in their criminal justice systems (Restorative Justice, 2002).

Restorative justice tries to find out the most appropriate methods for compensating the harm caused to personal relationships, due to crime in the community. The philosophy of restorative justice considers crime as conflict between members of the community, such as the victims and offenders. The fundamental objective of the criminal justice system is to restore peace in the community. It reconciles the involved parties and brings about reparation for the injuries that had resulted from the criminal activity (Restorative justice, 2002).

It achieves this goal by allowing the victims, community members and the perpetrators to participate in the process of finding a suitable solution to the damage caused to the victims. Reconciliation is the process by which the offenders, victims and their families find a solution. Restorative justice addresses the conflicts between the offenders and victims and repairs the

damages caused to the victims. Eventually the victim will be provided with compensation for the harm done to him (Restorative Justice, 2002).

Reconciliation is attained through negotiation. During such negotiations between the offenders and the victims, their personal backgrounds will be discussed, as also the nature of the crime perpetrated and its consequences. Finally, all the parties to the negotiations will arrive at a decision, in order to restore peace. The process of finding a resolution is mainly based on the parties of the tort. At this stage, there will not be any application of statutory legislation. Restorative justice does not allow the intervention of the state for the reparation of conflict. Sanctioning concerns will be addressed by the victims and perpetrators. However, it is considered that this type of approach will promote disbelief and subsequent repentance by the parties to the conflict (Restorative Justice, 2002).

Restorative justice is entirely different from the adult or juvenile criminal justice systems. As such, the former attempts to restore peace and tranquility between the parties to a conflict, whereas the latter inflicts punishment on offenders. The criminal justice system concentrates on the crime perpetrated against the state, and award punishments to the perpetrators of the crime. However, the restorative justice system concentrates on rendering justice to the victims of the crime. Hence, there is a shift of focus in restorative justice. This allows the victims who are directly affected by the criminal activity to take an active part in deciding upon the ways to restore peace in the community. On the other hand, restoration of peace by correcting the emotional and material damages caused by the

criminal activities will be substantive reform rather than the imposing of penalties, incarceration and other punishments under the criminal code (Restorative Justice, 2002).

The philosophy of restorative justice considers crime and criminal activities as violation of relationships between the people. It does not view such crime as violation against the state. The offenders will be required to make good the damage caused by them. Restorative justice is concerned with the harm caused by the criminal activity and does not focus on the violation of the laws of the state. It provides for remedial action by the offender to the victim and the community in accordance with the results of the perpetrated crime. As such, it provides for mediation between the offender and the victim (Restorative justice, 2002).

There are certain principles in restorative justice. First, the proceedings of restorative justice must personally involve the offender, victim, their families and the community. Second, it views the perpetrated criminal activity, its consequences and the personal backgrounds of the parties to the crime, such as the offender and the victim. Third, it adopts a number of measures to avert future recurrence of such criminal activity. Fourth, it uses a flexible approach in its proceedings. Therefore, restorative justice can be said to be a holistic approach in dealing with crime by combining the criminal justice system and the social consequences of the crime (Marshall, 1999).

Restorative justice uses a methodology in which it combines the victim, the offender, their families, the community and the statutory agencies. This

concerted effort would serve to reduce recidivism. The fundamental objectives of restorative justice are addressing the material, financial, emotional and social requirements of the victim. It will ensure the prevention of future recurrence of criminal activities by the offender and reintegrates the offender back into the mainstream of society. It also compels offenders to shoulder the responsibility for their wrongdoings. It attempts to rehabilitate offenders in order to prevent future crimes by them. It aims to apply a methodology in which the costs of criminal justice system would be reduced and also circumvents the severe punishments imposed by the courts on offenders (Marshall, 1999).

Restorative justice adopts several programmes and frameworks such as mediation between the victim and the offender, arranging meetings between the parties, involving members of the community, providing assistance to the victim in obtaining compensation, assisting the offender to reintegrate into community, restitution or rehabilitation, and community service.

Preserving public order is the fundamental duty of the government. Building and preserving peace is the task of any community. The primary objective of the Justice system is to provide a remedy to the injured party. All these objectives can be achieved through the process of restorative justice (Introduction, 2007).

The procedures followed in restorative justice can be divided into four important areas. First, encountering the criminal activity and its consequent effects on the society, in this area it brings all the parties to the criminal activity together and initiates discussions about the crime. Second,

correcting offenders, in this area it attempts to change the behavior of offenders and provides them with an opportunity to mend their ways. Third, reintegrating the offenders into the mainstream of society and lastly, inclusion, in which it provides adequate opportunities to the parties to find a meaningful solution to the injury caused by crime (Introduction, 2007).

There are certain principles, which govern the concept of restorative justice. It adopts a methodology that addresses conflicts, disputes or crimes. Its approach and response to torts is totally different from the conventional systems of justice. As such, it rectifies the offense committed in such a way that justice is rendered to the parties involved in the offense. Responding to conflicts or crimes is a fundamental feature of restorative justice. The ways and means by which it approaches crimes has the potential to provide a safe and sound community. However, it is neither lenient nor permissive, while dealing with crimes or conflicts (Restorative Justice, 2001).

Restorative justice operates in a cooperative and constructive manner. It responds to crimes or conflicts at the earliest possible stage. This approach mitigates further deterioration of the situation. The philosophy of restorative justice claims that breaches and violations of state legislation lead to a breach in community relationships, which could develop into transgressions. Such transgressions could be tantamount to crime against the fellow inhabitants of the community. The trivial violations of laws and rules could adversely affect social harmony (Restorative Justice, 2001).

The effectiveness of restorative justice can be assessed by the outcomes. The indicators for positive outcomes are many. However, some of these are very important, for instance, victims of the crime should be satisfied with the solution arrived at in the process of restorative justice and they should feel respected and safe. Second, the participants in restorative justice meetings should be properly motivated, so that they engage in a more constructive civil life. Third, offenders should be reintegrated into society in a dignified manner, with freedom and responsibility. Fourth, the responses provided by the authorities of restorative justice to the community and participating individuals should be innovative and reasonable, but they should not be humiliating in nature. Community organizations, such as the educational organizations and religious communities would provide the necessary moral standards and ethical constraints to offenders. These organizations play a key role in building a healthy community. Hence, restorative justice encourages these organizations (Restorative Justice, 2001).

Restorative justice recognizes the fact that crime breaks the relationship between victims, offenders and the community. This is the primary principle of restorative justice. Crime and criminal activities are considered to be wrongdoings against another individual, in addition to be a wrong against the nation (Ness & Nolan, 1998. p 53).

The proponents of restorative justice claim that any crime is a clear violation of the state's criminal law and challenges the state authority. Further, crime breaches relationships between victim, offender and the community. Crimes and criminal activities harm the existing harmony of the community, in

addition to causing injury to the victim. The immediate reaction to a crime is to restore the harm or injury sustained by the victim, due to the crime of the offender. This harm must be repaired to both the victim and the community (Kurki, 2000. p. 235).

Another important issue is that there is a need to rebuild the severed relationship between the victim, the offender and the community. All the parties to the crime such as the victim, the offender and the community should sit together and find out a solution for the harm done. At this critical juncture, the government has to forego its prerogative in imposing punishments on offenders and empower the process of restorative justice. The entire process of restorative justice should be conducted, keeping in mind the injured party, the victim and the community. There is no need to consider the version of the offender and the dangers he presents to society. It is also not necessary to give much importance to the personal criminal history of the offender (Kurki, 2000. P. 235).

The primary objective of restorative justice is to provide compensation to the injury caused by the crime. The victim, the family of the victim and the community should be compensated by the offender. Restorative justice not only focuses on this issue of compensation but is also concerned with arriving at reconciliation between the victim and the offender (Grunewald & Nath, 2003. p. 326).

If the victims, their families and the community members are convinced that the offender had realized his crime and was repentant in respect of the

perpetration of the crime, then it can be stated said that restorative justice had rendered justice to that issue and that adequate healing had occurred. The offender has to compensate for the injury caused by his crime. Healing can also be said to exist, if the offender regrets his criminal activities or crime, and embarks upon a new life that is productive and meaningful, in the context of the community. The offender must obey the rules set out by the community and the state. In addition, offenders have to fulfill the obligations placed on them by the injured party and the community. Restorative justice also strives hard to curb recidivism. In order to achieve this goal it forces the offender to face the consequences of his criminal attitude. It then reintegrates the offender back into the mainstream of society (Levin, 2005).

Restorative justice adopts certain programmes and policies to achieve this goal such as interaction with the victim. With these interactions, the offender will be instilled with the guilt of his activities and the damage caused by such activities to the victim. In the case of drug and substance abuse by offenders, restorative justice provides de-addiction treatments to offenders before being made to participate in the meetings with victims and the community. This would enable the offender to regain his capacity to rationally understand his own conduct (Levin, 2005).

Restorative justice has demonstrated its inestimable value and several experiments in this regard have obtained encouraging results. One such experiment was the Indianapolis Restorative Justice Experiment. This experiment was conducted in respect of juvenile delinquents who were first time offenders. The procedure involved a number of group conferences, in

which family members participated. This study disclosed that such juvenile offenders were less prone to relapse into crime, if they participated in family group conferences. Moreover, the crime rate was drastically lowered amongst juveniles who took part in such family group conferences. This is a major discovery in the context of the very young juvenile delinquents, because such offenders exhibit a very high rate of reoffending (McGarrell & Hipple, Jun2007).

Furthermore, the various parties involved, like the victims, offenders and their family members were unstinting in their praise for this family group conference system of dealing with offences. Specifically, the participants in the Indianapolis Restorative Justice Experiment were much satisfied with family group conferences; and this was especially true of the victims. The general opinion of the participants was that this system was superior to the other extant court systems (McGarrell & Hipple, Jun2007).

In addition, this study revealed that over a period of time, the effectiveness of the conference had diminished. This was established by the increase in reoffending with the passage of time. The reason for this short term effect of the family group conference system in the Indianapolis Restorative Justice Experiment was attributed to the very short duration of the conference. In effect, these conferences were approximately of an hour's duration. Several experts in the field of restorative justice opined that such conferences would prove to be effective only in the short term (McGarrell & Hipple, Jun2007).

It was contended that there were long term effects in this experiment; however, the general opinion was that such short term interventions could not be expected to have any significant effect in the long run. One of the authorities in this area, Braithwaite, had suggested that the effectiveness of the family group conference system could be improved enormously, by repeating these conferences, which would help in reinforcing positive behavior among the juvenile delinquents who are prone to reoffending. His principal argument was that the short term effect of conferences was very successful, in comparison to the other programs ordered by the court; hence, a sufficient number of repeat conferences would serve to strengthen the positive effects of the initial conference (McGarrell & Hipple, Jun2007).

Some authorities have opined that abstention from crime is greatly encouraged if the general response is a practice that pertains to the restorative justice system. However, such responses have to make it very clear that failure to comply with the directions of the restorative justice system would result in the application of deterrence methods and eventually incarceration. In most of the US juvenile courts, a second time offender is not subjected to deterrence, with the exception of crimes that are predominantly violent. Hence, the use of repeated conferencing could prove to be quite helpful in the case of juvenile delinquents (McGarrell & Hipple, June 2007).

The popularity enjoyed by a restorative justice system was revealed by the almost total participation in the process by supporters, offenders and victims. Moreover, the participating group was unanimous in its acceptance

of the decisions taken regarding reparation. This was the specific conclusion arrived at in the Indianapolis Experiment (McGarrell & Hipple, June 2007).

Furthermore, in respect of juvenile offenders, those who were part of a control group stated that only fifty - eight percent of their numbers had been treated with respect, twenty percent had been allowed to participate in the process of dealing with the crime and its effects, and a mere twenty - four percent had been permitted to articulate their position. In contrast, those juvenile delinquents who had participated in a conference reported that ninety - seven percent had been accorded respect, seventy - six percent had been allowed to take part in the system and sixty - six percent had been granted the freedom to convey their viewpoint (McGarrell & Hipple, June 2007).

Scholars like Hayes and Daly conducted several studies in restorative justice. They have concluded that a system of conferences, whose outcome is repentance amongst the offenders and which involve decisions by consensus, drastically reduce repetition of crimes. The Indianapolis Experiment also established similar results, and it also noted that conferences, generally took recourse to the consensual system of arriving at a decision regarding the reparation to be made by an offender. Further, a great benefit of this system was that it generated remorse in the offender, which proved to be instrumental in reducing recidivism among them (McGarrell & Hipple, June 2007).

In this manner the Indianapolis Experiment demonstrated that the family group conference system was much more successful, in comparison to the other systems that dealt with juvenile delinquents. As such, the restorative justice system of dealing with juvenile crime has proved to be much more successful in preventing re - offending than any other extant system. In respect of first time juvenile offenders, the results are spectacular. However, there is a need to reinforce the effects of these conferences, in the absence of which, the beneficial effects seem to be limited to the short term. The single most important factor in this system is that of the family group conferences or FGC's (McGarrell & Hipple, June 2007).

Several scholars and academicians have conducted research into this specific area in the past decade, and they have established an innovative and holistic theory and approach to restorative justice. Several volumes have been produced by academicians on the various dimensions of restorative justice. Despite the availability of several scholarly works on this subject, there exists a gap between the practitioners of restorative justice, who work at the grass root level; and the scholars who analyze their work theoretically (Johnstone & Daniel, 2006. pp. 5 - 8, 650).

The scholars have critically stated as to how and in which manner restorative justice is to be utilized. It is not possible in practice, because of the numerous hindrances in practically implementing restorative justice. This gap is gradually widening and grass root level practitioners were unable to participate, meaningfully, in the discourses given by scholars. However, the empirical statistics provided by the scholars are very important for

practitioners, because it permits them to effectively use restorative justice. The use of restorative justice is desirable as it is a novel and innovative alternative to the traditional criminal justice system (Johnstone & Daniel, 2006. pp. 5 - 8, 650).

Restorative justice can be a systematic healing response to the injuries caused to the victims, and criminal activities. It is also a distinct approach for offenders, victims and the community in order to contain crime and the deviant behavior of criminals. According to the Prison Fellowship International, parties come together to discuss and resolve offenses collectively and find a way to deal with the aftereffects of the offenses and their consequences. Restorative justice can also be applied in schools. This system entails peer mediation and the formation of classroom circles to solve problems. It also involves family group conferencing, and these characteristics, make it eminently suitable for addressing the problems and offending behavior of pupils in schools. The victim of such offending behavior would play a key role in finding a solution to the offense that he had faced or had been affected by (Chmelynski, Sep 2005. p 17-20).

Howard Zehr was the driving force behind the emergence of restorative justice in the United States. He provided the necessary impetus for popularizing restorative justice through his numerous scholarly works, and established it as a viable alternate approach to the existing criminal justice system. The widespread efforts of Mark Umbreit and the University of Minnesota, served to provide considerable momentum to the movement for restorative justice. Umbreit significantly contributed to the movement by

publishing several articles with regard to the application and usage of restorative justice in the field of criminal justice (Ryals Jr, 2004).

The continuous efforts of Umbreit and his colleagues made it possible to practice restorative justice at the grassroots level. Subsequently, it was institutionalized by establishing separate entities for grass root applications and policy making bodies. For instance, in Louisiana, several individuals and social groups had jointly practiced restorative justice. They conducted monthly meetings on the philosophy behind restorative justice. In a very short period, restorative justice had gained importance and expanded to the state level. At present it is employed in the area of juvenile justice programs. The grassroots organization of Louisiana attracted the attention of several states in the US, and currently twenty –seven states have adopted the philosophy of restorative justice in their juvenile criminal justice systems (Ryals Jr, 2004).

According to Umbreit and Coates, six principles constitute the philosophy of restorative justice. These are; first, the nature of the crime, under this concept crime is recognized as a breach of personal and social relationship, and a violation against the state. This is because crime and criminal activities cause injuries to the community and its members. Second, the goal of justice, this concept aims to repair the harm caused to the victim by the offender. As such, this principle attempts to repair the strained relationships in the community and restore peace in the community. Third, the role of victims, this concept maintains that victims should take an active part in arriving at a solution for the damage caused by the offender. Injuries caused,

such as social exclusion, anger, fear, insecurity and anxiety would be rectified by the participation of the victims and offenders in repairing the damage, and ultimately this will ensure the reinstatement of security in the community (Ryals Jr, 2004).

Fourth, offenders' role, offenders have to be made accountable for their criminal activities and they have to take the responsibility of repairing the harm done by them. Offenders will be given the opportunity to make reparation for the injuries caused by their action. Restorative justice provides an opportunity for offenders to learn a lesson from their wrongdoing, instead of suffering from the consequences of their activities. Fifth, community's role, community plays a key role in maintaining a balance in the community by providing opportunities to offenders and victims. This active role of the community would prevent future crimes and offending behavior of the offender. Sixth, juvenile justice system's role, restorative justice states that the juvenile justice system must hold offenders liable for having violated the state's laws. Restorative justice contends that juvenile justice system must promote the peace in the community by rectifying the severed relationships in the community instead of imposing sentences of imprisonment on offenders. This can be achieved by using community resources (Ryals Jr, 2004).

These are the fundamental principles of the philosophy of restorative justice. Based on these philosophical principles an array of practices and applications has been developed. Furthermore, restorative justice is based on this philosophy and its practical application. The application of the

concepts of restorative justice would lead to reinstatement of balance in the community. In addition, offending behavior and delinquent activities would be contained. Restorative justice requires offenders and victims to voluntarily participate in its practices. Some of the most common practices of restorative justice include circle sentencing, conferencing of victim and offender, reconciliation of family groups, mediation between offender and victim and boards of reparation (Ryals Jr, 2004).

The meetings arranged with victims and offenders; have to be attended by the victim, the offender and the mediators. These meetings encourage the victim and the offender to share their feelings about the crime and the injury caused. During this meeting the participants share their feelings about these incidents. Subsequent to these meetings, reparation would be negotiated. Conferencing of family group emerged due to the integration of the New Zealand juvenile justice system and Maori traditional values. The amalgamation of these two systems engendered a new form of juvenile justice, which requires the active participation of the affected families and communities. These efforts are aimed at controlling and containing juvenile delinquency incidents. Presently, family group meetings are part of restorative justice all over the world. In family group conferences, the victim, the offender and their families attend the meeting. They all debate and discuss the trauma they had suffered, both mentally and physically, due to the perpetration of the crime by the offender. In addition, there would be discussions pertaining to the fashion in which the effects of the crime could be resolved, the manner in which the suffering could be put to an end and

the amount of reparation to be made by the offender. Such conferences would enable the members of families of both offenders and victims to discuss and share their emotional feelings with regard to the crime. After completion of these meetings restitution would be arranged between the offender and the victim (Ryals Jr, 2004).

There are widespread debates concerning the notion of restorative justice, and there are a number of principles of restorative justice, which are widely accepted. However, there are several disagreements, regarding the employment and definition of restorative justice and its philosophy. Moreover, the nature and concept of restorative justice are surrounded by cynicism and suspicion. Although many people had accepted that restorative justice could prove to be a positive alternative to the traditional criminal justice system, and had complimented the rehabilitative structures it provides to offenders, there was disagreement and suspicion regarding the capability and effectiveness of restorative justice. Supporters of restorative justice praise it for its operability in countering offending behavior (Doolin, Oct 2007 pp. 427-440).

The controversy regarding statements and the disagreement, in the context of the fundamental principles of restorative justice could create confusion about its very concept. This is because the programs and structures used in restorative justice seem to be successful and competent in preventing reoffending. However, the statistics relating to restorative justice and the various processes employed in it clearly indicate that it does not have the capability to achieve positive goals, to the extent claimed by its proponents.

It can be stated that restorative justice had been used as a means to curb consequences that were less desirable, whether intended or unintended. Nevertheless, restorative justice is flexible and has the potential to be made applicable to a number of situations (Doolin, Oct 2007 pp. 427-440).

The victim and the injury caused to the victim are the subject matter of any restorative justice program. The latter provides an opportunity to the offender to pay compensation to the victim and alleviate the misery caused to the victim. It also provides certain corrective opportunities to the offender and decides upon the action to be initiated against the offender. The principal characteristic of restorative justice is to restore and empower victims. The reparation to the victim for the damage caused has a very high priority, in this system of justice. The wrong or crime is not given much cognizance, in the system of restorative justice. While it encourages offenders to accept the onus for their wrongdoing and pay compensation to the victims, it also reintegrates the offender back into the community and engenders a sense of belonging. There will not be unanimity among the stakeholders or representatives of the community in reintegrating the offender into society. Hence, measures have to be taken to address this lacuna. Similarly all the stakeholders must have similar views regarding the damage caused to the victim (Doolin, Oct 2007 pp. 427-440).

In the context of the positive results obtained in making reparation to the victim and in the reintegration of the offender into the community, the parameters or process values contained in restorative justice such as participation, discussion, encounter, and combined resolution have to be

complimented. In the case of informal restorative justice, the ideal and effective structures are voluntary participation and collaborative resolution finding. In order to extend the application of the principles of restorative justice to the criminal justice system, all that is needed is coercion. Another recommendation is that the state and its authorities should also be included in the process of restorative justice. However, such inclusion should not affect the voluntary participation of the victim, the offender and the representatives of the community. Their inclusion in the response processes should enforce legislative safeguards. It should also ensure the availability of adequate resources. Restorative justice is a continuous process, and it should ensure reparation and reintegration (Doolin, Oct 2007 pp. 427-440).

The practices and structures used in restorative justice system are totally different from those used in the criminal justice systems by the courts. Involvement of the community is a primary feature of the restorative justice system. The community concentrates on the victims, and establishes a restorative structure, which contrasts with the adversarial court proceedings. In general, the courts concentrate, to a greater extent, on the offender and the offense, and accordingly impose punishment. These punishments do not necessarily address the crime (McGarrell & Hipple, Jun2007. pp. 221-246).

In family group conferences the offender is made to accept the responsibility for the offense. The victim and the offender, jointly, find out a way to repair the damage caused to the victim. They are assisted by trained mediators and facilitators to discuss the entire scene of the offense and the harm caused by the crime. The victim will have an opportunity to describe his

emotional suffering due to the crime. Similarly, the family members and the supporters of both the victim and the offender will have an opportunity to narrate the suffering caused by the crime. The conference concludes with a resolution regarding the reparation agreement. The manner in which the offender should compensate the victim will also be discussed. The resolution of reparation is decided by the community and not by any single person. Proponents of family group conferences claim that they will provide a wider range of benefits than the traditional court proceedings. They also argue that in traditional court proceedings there will be no face – to – face discussions between the victim and the offender. Such discussions and reparatory agreements bind the offender to his crime and the harm caused to the victim (McGarrell & Hipple, Jun2007. pp. 221-246).

The reintegration theory proposed by Braithwaite is applied in family conferences to assess the effectiveness of the program by comparing the court proceedings. Braithwaite postulates that various aspects used in family group conferences produce reintegrative shaming. However, the traditional court proceedings are unlikely to produce such reintegrative shaming. The conference helps the offender to understand the consequences of the crime he had perpetrated. With this knowledge the offender would not commit offenses in the future. The process has similarities with the social support systems, which enhances the chances of reintegration of the offender into society. This is not the situation in the traditional court proceedings where there will be domination of lawyers over the offender. The adversarial processes in the traditional courts and the bureaucratic justice system do not

attempt to communicate with the offender and there will be fewer chances for the offender to realize the harm caused by him and its consequences. Further, the court processes imposes social exclusion on the offender (McGarrell & Hipple, Jun2007. pp. 221-246).

Legal scholars argue that citizens perceive court sanctions against offenders to be legally fair, which makes offenders realize that they would attract legal sanctions. Such sanctions compel offenders to act in accordance with the legislation and this enables the state to enforce the law. In contrast to this, if the court sanctions are not perceived as fair then such sanctions would fail to ensure the enforcement of law, and the legitimacy of the law. In such cases there could be a departure from compliance with the law. On the other hand, family group conferences treat the participants with due respect and integrity (McGarrell & Hipple, Jun2007. pp. 221-246).

An eminent researcher, Sherman had established the Defiance Theory in the year 1993. According to this theory, imposition of stringent punishments on offenders causes an increase in crime. Excessive punishment is unfair and invokes defiant pride among offenders. This defiant pride will escalate chances for recurrence of criminal actions by offenders. There are four avenues for the defiance to emerge. First, perception of criminal sanction by courts as unfair by offenders; second, alienation of the offender from the community due to the actions of the sanctioning authority; third, the offender considers the sanction as stigmatizing, feels like a rejected person or as opposed to a lawbreaking act; and fourth, if the offender rejects or refuses to accept the shame then the punishment will ensure that he suffers.

These factors determine the effectiveness of the family group conferences (McGarrell & Hipple, Jun2007. pp. 221-246).

A research body reviewed and scrutinized family group conferences. Subsequently, it suggested that family group conferences were distinct from traditional justice systems in the areas of procedural dimensions as suggested by reintegrative shaming, procedural justice and defiance theories. Moreover, this research body had suggested that family group conferences produce divergent outcomes among the participants in those conferences in the context of the theories proposed by other researchers (McGarrell & Hipple, Jun2007. pp. 221-246).

The practice and application of restorative justice has been enhanced and extended in the last fifteen years. The new developments include family group conferences, mediation between victims and offenders, sentencing circles, and establishment of reparation boards. Countries such as New Zealand, Australia, the United Kingdom, Europe, Canada and the United States have adopted these new and innovative structures of restorative justice, and applied them in several cases. The other significant feature is that of reconciliation, which originated in South Africa. In its initial stages, restorative justice focused mainly on young offenders and juveniles who had committed less serious offenses. However, at present restorative justice principles are being applied to adults as well as juveniles. They are used in a wide range of offenses, such as trivial offenses relating to property issues or to more serious and violent crime (McGarrell & Hipple, Jun2007. pp. 221-246).

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