

Restorative justice essay sample

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



Restorative Justice relates statutory agencies, the community and the parties involved in a crime. It comprises of several principles that aim to modify the practices of agencies or groups with respect to crime. These principles are, first, personally involving the offender, the victim, their families and the community. Second, viewing the crime problems and their societal background conjointly. Third, adopting a methodology that aims to prevent future recurrence of the crime. Fourth, using a flexible approach. Restorative Justice is therefore, a holistic system that combines criminal justice and its social context. It attaches importance to all the relevant factors involved and does not constitute a closed system .

Restorative Justice involves the victim, the offender, their families, the community and statutory authorities in order to deal with the results of offences and implement such future strategies as will bring about a reduction in these offenses. Its main goals are first, to address the victims' material, financial, emotional and social requirements. Second, to ensure that the offenders do not repeat their crimes by making them rejoin the community. Third, to make offenders assume responsibility for their deeds. Four, to establish a system that not only rehabilitates offenders but also prevents crime. Fifth, to institute a methodology that circumvents the intensification of legal justice and its related expenses and setbacks .

The situation obtaining is far removed from these objectives and despite the importance attached to the deterrence of offending in juveniles, in the Crime and Disorder Act; these goals have not been achieved to any appreciable extent. There is not much concern for victims and the steps taken to bring about the reintegration of offenders is inadequate. The system encourages

submissive compliance of offenders and the expectation is that these offenders should just undergo punishment without taking any steps to make restitution for their crimes to their victims or their families. The system has made itself remote from the community and makes small effort to involve the community in thwarting crime .

There are several programs that aim to reroute the dealing of offences to specialized organizations, but these processes do not address the requirements of the victims and the prevention of their recurrence, resulting in the criticism that juvenile crime is not accorded the gravity that is due to it. The Crime and Disorder Act aims to set right this lacuna “ by eliminating the use of multiple cautions and instituting opportunities for victim consultation and preventive measures, an approach which is in accord with Restorative Justice .”

The practices of Restorative Justice are mainly dependant upon voluntary cooperation and if one of the parties portrays reluctance to participate in the practice, then there is reduction in the number of options available. When all the parties display unwillingness to participate, then the only recourse left is to permit the machinery of formal justice to come into operation. Accordingly, justice cannot be completely restorative and there cannot be a complete substitution of formal justice. Thus, the conventional types of justice will be available and they will contend with cases to which Restorative Justice is unsuitable due to the circumstances, or proves to be unsuccessful due to lack of cooperation or due to the impossibility of arriving at a mutually acceptable decision .

Although, this looks like a hindrance to the process of Restorative Justice, the fact remains that most persons who are permitted to participate would gladly do so, moreover, the number of instances in which there is agreement is quite high. In addition, subsequent failure to honour agreements is much lower than the non – payment of court decreed fines or restitution.

Individuals deem restorative practices to be more accessible and attractive as they are more flexible and easier to comprehend than legal procedures. Moreover, these practices bestow benefits that are more numerous than what the formal system offers .

The scarcity of resources and skills poses a further constraint to any attempt to involve communities. In addition, there is not much integration in communities as was the case hither to fore and the order of the day is that privacy and privacy and independence are accorded greater importance. Moreover, there are wide disparities between the various cultures and age groups. In order to enhance education, training and resources community involvement has to be at a greater level . Restorative Justice is further limited by inter communal social injustice and inequality. Further, the extent to which communities care, control and support is limited and voluntary involvement is rendered less effective due to divisions in society . The application of Restorative Justice to serious crime is very beneficial, particularly with regard to victim benefits and prevention of recurrence. This would in general, accompany the usual procedures of criminal justice and would not substitute them .

The UK Government's consultation paper on restorative justice, wherein it declared its intention to step up the use of restorative justice in areas where it had met with success, namely in addressing the needs of victims, reduction in reoffending and in extending " support to communities in their search for positive solutions to crime and anti-social behaviour ." The strategy being adopted is to integrate restorative justice into the adult criminal justice system and will form an essential ingredient of police cautioning, community sentences, prison service and probation work with both the victims and their offenders. An endeavor is afoot, at the same time, to preserve and enhance the quality of restorative justice in order to integrate " restorative justice more fully into the adult CJS ."

A document titled Restorative justice: the Government's Strategy was published in July 2003 by the Government. A number of responses were received from criminal justice agencies, voluntary organizations and individuals. These responses indicated that a proper balance had to be struck between the growth of superior restorative justice and additional research. To achieve this objective it was felt to be imperative to engender a meticulous implementation of restorative justice. Moreover, a group of experts were assembled in order to counsel the Government in matters pertaining to training and endorsement. This group of experts published a document titled Best practice guidance for restorative practitioners. Subsequently, the National Criminal Justice Board brought out guidelines for executing restorative justice by the Local Criminal Justice Boards and agencies .

Moreover, several of these responses considered the restorative approach to connote a cultural change in the Criminal Justice System. It was felt by many of these respondents that restorative justice should be viewed as an innovative approach to justice. Such an approach requires “ a greater commitment to the needs of victims and communities and a willingness to support them to find solutions to the harm caused by crime.” These changes form the basis for the steps being taken to change the Criminal Justice System, including the formation of the National Offender Management Service or NOMS. It will be the specific function of the NOMS and the Youth Justice System to provide for the needs of the victims .

Another, important suggestion to emerge was that not only the statutory agencies but also the voluntary agencies have to ensure that restorative justice is dispensed properly. In order to ensure quality in the dispensation of restorative justice it was suggested that all practitioners should be required to possess training and accreditation of the same standard. The voluntary sector had been instrumental in the implementation and growth of restorative justice and it is anticipated that the National Criminal Justice Board’s guidelines will persuade criminal justice agencies to fully utilize the competence of not only the voluntary but also the statutory sector .

Furthermore, the comprehension and approval of the restorative justice system by the public is vital. This is due to the fact that its success is determined by the readiness of injured parties and community members to participate. The popularity of restorative justice will increase as the number of individual citizens who personally experience the restorative process

increases. The objectives that were brought to the fore due to this document are the employment of the restorative approach to deal with anti – social behaviour and domestic violence. In addition, the problem of incorporating the restorative approach into mainstream criminal justice has also to be addressed .

Since 1998, the central theme of youth justice reforms has been restorative justice. The practices of restorative justice as contained within the criminal justice system or CJS for adults finds its origin in the voluntary sector and its development has been aided by the novel practices and unfailing dedication of its supporters . The objective is to enhance the extant good practices and increase the application of restorative justice in a much more systematic fashion in the CJS. Moreover, a quantitative and qualitative increase in reparation by offenders towards the community is being sought .

The Government has reiterated its commitment to utilizing restorative justice throughout the various stages of the Criminal Justice System. It did so in the Justice for All White Paper, wherein the Government vowed to adopt a suitable strategy and consultation process to achieve this goal. It also declared its intention to explore such links as would permit it to address young people who were beyond the purview of the Criminal Justice System . The Referral Order is a crucial form of restorative justice in the Youth Justice System and has been preferred in as much as a third of all orders given by the Youth courts. This system refers the young offenders to appropriate youth offender panels, on which not only members of the community are present but also persons who are adept at dealing with such situations.

These panels permit victims, who are so inclined, to participate in the decision making process which arrives at the nature of the reparation that has to be made by the young offender .

Accordingly, in the year 2002 54. 2% of all the cases dealt with by the Youth Offending Team or YOT were either restorative or reparative in nature and 68. 8% of the victims, who had participated in deciding upon the nature of such restoration or reparation, expressed their satisfaction with the process. An analysis of the achievements of the restorative and reparative projects that had been financed by the Youth Justice Board or YJB has revealed that the rate of reconviction decreased from 33. 3% in 1997 to 31. 4% in 2000 .

The different methods of transmitting the Reparation Order are first by means of a restorative process, second, by the employment of a victim offender mediation that can be either face to face or indirect) and third, by the proves of a restorative conferencing or family group conferencing or FGC. The reparation order makes the offender to make restitution either, if the victim specifically wants it to be so, to the victim or else to the community to which harm had been done . Several YOTs have shown outstanding results in their endeavors concerning reparative schemes with young people. These reparative schemes have proved of immense benefit to young offenders who have been given an opportunity to not only acquire new skills but also to participate meaningfully in their communities. The data reveals that the Reparation Order has been instrumental in reducing the reconviction rate to 51. 2 % in respect of non – custodial court disposal involving male juveniles .

Further, in Final Warnings, the amplified utilization of restorative interventions has paid dividends and there has been an appreciable increase in the positive results produced by this strategy. As an instance the experience of the Oxfordshire YOT can be cited. This YOT makes all finally warned young people to take part in restorative activity that could vary from participation in community reparation to tendering an apology to the victim for the harm caused to the latter. The adoption of this strategy has brought about an 18.8% reduction in the reconviction rates in Oxfordshire .

The Restorative Justice White Paper constitutes a vital plan of the Government to bring about a change to the Criminal Justice System. It can be stated on the basis of the experience of the Police, Probation, Prosecution, Youth Justice and the Courts that Restorative Justice is in general quite effective. This methodology has benefited the victims to a greater extent than the other methods and very high levels of victim confidence, satisfaction and reassurance have come to the fore. In addition, Restorative Justice engages the offenders, their victims and the community in order to mitigate the damage caused and to provide greater public reassurance. The available data clearly indicates that Restorative Justice drastically reduces future offending .

Restorative justice has the potential to provide a solution to many problems that affect day to day life. It can also be of great help in creating communities whose members have greater safety and exhibit greater involvement and responsibility. It also has the potential to bring about collaboration with professionals so as to find a solution to the problems

caused by offenders. Restorative justice unlike the extant systems of justice, makes offenders directly accountable for their offenses. Moreover, it requires offenders to make reparation for the damage caused and is focused towards deterring the recurrence of such offenses .

It is essential to realize that restorative justice should coexist along with the existing system of justice, because such a combination provides a more flexible and responsive approach. However, a lot more research is required to determine the exact benefits that restorative justice has to offer and the studies conducted under the aegis of the Home Office are a right step in this direction .

Prior to the commencement of an official restorative process or the issue of a Reprimand or Final Warning, the present day laws and procedures require the completion of the investigation and arrival at a clear decision. The admissibility of information that has been disclosed is not an issue save for cases relating to the civil court, this was the observation in *Hayter v. L And Another* . It is essential for the outcome of a Restorative Justice Conference to be made public, however the information regarding the procedure adopted and its details should be kept secret. In general, facts relating to crimes that are do not fall under the ambit of the Reprimand or Final Warning become common knowledge during the ensuing restorative justice processes. One of the reasons for this is that offenders might disclose details about other offenses committed by them . It would be of great usefulness if unambiguous procedures are formulated in order to deal with this. It is essential for the law to declare that disclosure of information during the

restorative process would be exempt from being included as evidence and the public has to be informed in this regard. If this information results in a separate investigation then a further interview would have to be conducted in order to utilize such evidence in legal proceedings .

Stakeholder groups have noted that restorative justice programmes are better at tackling and redressing the harm caused by criminal offenders and bestow upon the victims of crime a better way to voice their grievances. At the same time it permits criminal offenders to hold themselves accountable for their criminal behaviour and obtain help for overcoming their specific shortcomings. Finally, it provides communities with a far superior policy to handle crimes and it also improves and strengthens their ability to either circumvent or resolve conflicts . Restorative justice does not aim to provide a single universal solution to crimes. It constitutes a gradually changing process that keeps getting transformed as the Government and the communities implement it in such a way that the requirements of the victims of crime, offenders and other members of the community are addressed in the best possible manner. Several processes and programmes have been generated by the restorative approach and this depicts its achievements .

In respect of people who have undergone total injustice for very long periods of time a major moral query arises as to whether it is correct to hold such people responsible for “ individual acts of injustice they may themselves commit without taking substantial steps to address the underlying injustice. Those who work within the transformative conception would say that it is not, and that systemic injustices must be confronted as well as the individual

injustices .” Despite the numerous advantages provided by the development of restorative justice outside the criminal justice system, several drawbacks are inherent in such a procedure. The first of these major problems is the lack of protection against punitive outcomes. The possibility exists of victims taking punitive and vengeful action against offenders, particularly wherever this process occurs in a place over which the criminal justice system does not exercise control .

Second, if the restorative justice system functions outside the criminal justice system then there is every chance of the weak parties getting weaker. The possibility also exists that community members could accord a more lenient treatment to its members who have greater power. This could prove harmful to the unimportant and disempowered members of the community. Succinctly stated this means that the weak would end up becoming weaker . It is not essential for restorative justice to be mutually exclusive of the prevalent system of justice. The fact remains that even in the recent past restorative justice has been considered as a procedure to be employed against young offenders who had just embarked on criminal careers. Consequently, most restorative justice programs attempt to divert the processing of their offenses away from normal courts .

The findings of research in this field, have been that restorative justice reduces violent crime to a greater extent than it does property crime, leading one to conclude that its benefits improve with the increase in the gravity of the crime committed. The emotional exchanges between victims and their offenders are very high in serious crimes and therefore their

encounters develop strong empathy and consequent regret, leading to a reduced level of reoffending. These discoveries have created substantial interest in the effect of restorative justice on serious violent crime. The United Kingdom has initiated studies that aspire to evaluate the effects of incorporating restorative justice to the existing criminal justice system. In the pre – sentence cases, the outcome arrived at by the participants at the restorative justice conference is presented to the judge and could consist of financial repayment, apologies, community work, and any other pertinent conclusion arrived at by all the concerned parties. In post – sentence cases, the outcome has no effect on the sentence handed down to the offender.

The greatest danger posed by the restorative processes is that it could bring about an increase in repeat offending in the more serious offence types. The least of these risks is that offenders will weigh the pros and cons of leading a criminal life. The commingling of restorative and conventional justice brings about an increase in the total cost of crime to an offender instead of reducing it. Restorative justice should be considered by judges as a mitigating factor or even an alternative to imprisonment. Finally, the data does not bear out the conjecture that restorative justice increases crime .

The manner in which restorative justice interventions are structured provides much greater opportunity for victims to know about the progress of their cases than is available when cases are processed through the courts. The consequences of failure for restorative justice are far more serious than they are for court based justice. Victims, who had been queried as to whether they had received fair treatment, replied that were satisfied. There is no

evidence of any risks to the offenders' rights. Problem if any arise only when restorative justice is applied outside the purview of the extant criminal justice system. Therefore it is not true to say that the policy focus on responsibility and accountability undermines restorative justice initiatives in safeguarding children who offend.

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