



Rajwanti

Ph.D. Research Scholar

Rajiv Gandhi National University of Law, Patiala, Punjab

Email ID rajwantiverma7@gmail.com

Dr. Renuka Salathia

Professor, Dept. of Law, Rajiv Gandhi National University of Law, Punjab

In today's time, the victim is not getting justice and the guilty are not getting the punishment of the crime. Overall criminal justice is also facing many problems like false allegations, arguments, lack of solid evidence, delay in trial, false witnesses, increase in crime rate and decrease in justice rate, victim dissatisfaction and increase in overcrowding of prisons. In this criminal justice system, neither the victim nor the perpetrator benefits. An alternative method or method of bringing about change in the criminal justice system becomes very important and restorative justice may be a better alternative way to provide it. Restorative justice is a method of resolving a dispute through the participation of two parties to achieve a better solution.

A crimeless society is a myth. And that stricter punishment reduces incidence of crimes has also been proved to be a myth. If it were true, After the Nirbhaya rape case in 2013, even after the rape laws were further tightened, the innocent girl of Kathua would not have gone through that unbearable pain. Or those hundreds of girls would not have suffered after the criminal law (Amendment) act, 2018 was passed. Believe it or not, punishments have failed to deter the potential criminals from violating the law. There can be multiple reasons for this and they have already been discussed by criminologists, legal experts and jurists. Indian legal system is enriched with one of the best laws in the world. But when it comes to implementation, intentional or unintentional gaps in the system holds them back. The Indian criminal justice system are focuses on restorative justice for dealing with

aftermath of crime and its should be adopted too gradual and full-fledged.

Meaning, Definitions and Concept of Restorative Justice

Restorative justice is a new movement in the fields of victimology and criminology. Restorative justice is a sound approach to justice that focuses on the needs of the victims and perpetrators as well as the community involved. Restorative justice gives victims a chance to meet or communicate with their perpetrators to explain the true impact of the crime, thereby empowering victims by giving them a voice. Restorative justice often involves a meeting called a convention, where a victim meets their offender face-to-face. When either of the parties is not able to or does not wish to attend such meeting, other methods may be adopted to obtain restorative results of repair of the damages. Sometimes, when victims and perpetrators of sex crimes do not consider a face-to-face meeting as the best way forward. At that time victims and perpetrators can communicate their point of view through letters, recorded interviews, videos or facilitators. Restorative justice system maintains the dignity of the victim in the society and they can live their life with self-worth in the society. Restorative justice systems can potentially be used for any type of crime. It can help victims of low-level crime and those with experience in the most serious crimes. Restorative justice systems that enable victims, perpetrators and affected members of the community to respond to crime. Along with government and legal professionals, restorative justice becomes a central point of the criminal

justice process. These approaches may include compensation, community service and other punitive sentences to address the offender's accountability. This is in contrast to more punitive approaches. The term restorative justice was coined by Albert Eglash in 1958. A definition of restorative justice that emphasizes the importance of both restorative processes and outcomes is the following:

Restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behaviour. It is best accomplished when the parties themselves meet cooperatively to decide how to do this. This can lead to transformation of people, relationships and communities.

During the 1970s alternative dispute resolution, as an alternative approach to the court process, became a national trend. It emerged with the victims' rights movement, which argued for greater participation of crime victims in the criminal justice process, as well as the use of compensation as a form of compensation. Although many of the values, principles and practices of restorative justice are heard. Back in indigenous cultures, a 1974 case in Kitchener, Ontario is considered the starting point of today's restorative justice movement. This Kitchner Experiment required two teenagers to meet and pay compensation to each of the twenty-two people whose property they destroyed.

Similarly, **Greif and Liebmann** wrote Restorative Justice has unique features in its approach:

- *Balancing among all*
- *Balancing retributive and therapeutic model*
- *Balance between victim and offenders rights.*
- *Balance in rehabilitation.*

Restorative justice can be viewed as criminal justice, which is embedded in its social context, with an emphasis on its relationship to other constituents rather than a closed system. A commonly used internationally accepted definition, restorative justice is the process whereby parties deal with specific offenses following a crime and its implications for the future. To clearly understand what restorative

justice really is, we need to examine how restorative justice is defined and explained around the world. Restorative justice initiatives are based on three key principles: (1) the criminal justice process must seek compensation for harm and damage caused to victims, communities and perpetrators; (2.) Victims, communities, offenders and the government must participate in the criminal justice process; and (3.) the government is responsible for maintaining order and the community is responsible for establishing peace with it. Restorative justice practices currently used within Aboriginal communities include victim-offender mediation, family group conferences, sentencing circles, community compensation boards, victim impact statements and reinstatement programs.

Indian Laws and the Restorative Justice

It has been observed that the courts of a large section of the nations empower alternative strategies to resolve the issue. So that the trap of long running litigation can be avoided. The past of such strategies is replete with ancient opportunities for justice in India After independence, the provisions of the Constitution facilitated the establishment of Nyaya Panchayats, which were regarded as dispute resolution mechanisms by the community at the village level. These are called panchayats and legally called assertions. Since then, there has been a constant effort to create a community-centred justice model that seeks to integrate civil and less serious crimes into a community-centred justice model, thereby reducing the formal legal process associated with the courts. Thereby, Panchayati Adalats, Gram Nyayalayas, Khap Panchayats which are also known as Kangaroo Adalats. There are also Mahila Panchayats and Nari Adalats for reconciliation of cases at the community level, for example.

4.3.1. Panchayat System

The social and cultural fabric of Indian heritage includes internal mechanisms to bring conflicting peoples together and settle their disputes in a highly informal manner. In which only a group of social people in rural areas has been an effective source of providing justice. The decision given by

these bodies is acceptable to all as a whole. Mostly it is considered paramount to the interests of the victims. Judging by the cases, the perpetrators are directed to compensate or restore the damages caused to the victims. Justice and rule of law was a painful illusion for millions of victims living in rural areas of the country. There was also a forum for settlement of disputes with the participation of the rural people. Here democracy is built with the cooperation of every person in the justice village. And they get justice only at the village level. So that no one can stop it from making it a democracy. In rural areas, disputes can be resolved only by the main people of the village. Provision has been written in the Constitution (73rd Amendment) that certain groups, communities and social people shall have a village. Panchayats should be constituted in each state at the village, intermediate and district levels, so that there can be uniformity in the Panchayati Raj structure. In view of this amendment, the law of each state has increased its legal powers on the subject. The social institutions of the country have been of great help at the village, intermediate and district levels in the state. This practice has been extended to the people to encourage it in relation to the decentralization of the judiciary. The Law Commission of India in its 114th Report on the Gram Nyayalaya had first and foremost the objective in mind. Administration of justice as laid down in Article 39A constitutional goal. Whereas, Article 40 directs the State to take steps for the organization of Gram Panchayats. The institutions at the village level act as a forum to deal with petty cases of civil and criminal nature to resolve disputes and provide justice to the villagers. Simplification of process and elimination of technicalities is done through the Gram Nyayalaya Act, 2008 and the new Panchayat Bill, 2009. Disputes outside the formal judicial system can be resolved with the help of arbitration. Resolving and resolving village level land disputes, restorative justice through Panchayats can revive the age-old concept by the Government of India. Restorative justice also

considers the community as a level that can resolve criminal civil cases on its own.

Alternative dispute resolution (ADR)

Alternative dispute resolution (ADR), or external dispute resolution (EDR), generally refers to a wide range of dispute resolution procedures and techniques that parties can use to settle disputes with the help of third parties. Third party is used for disagreeing parties who cannot come to an agreement by litigation. However, ADRs are also increasingly being adopted as a tool for the court system as well as to help settle disputes. Since the 1990s, several US courts have also advocated the use of ADRs to settle disputes. and using ADR programs has potentially limited their effectiveness.

The growing popularity of ADRs is fueled by the increasing caseloads of traditional courts. The assumption is that litigation incurs lower costs than litigation and prioritizes confidentiality, and the desire of some parties to have more control over the person or persons selected.

The ADR (Alternative Dispute Resolution) instrument plays a vital role in getting rid of adjournments and hurdles in the courts. This may help in providing quick relief to the casualties. Assemblies are more concerned with the outcome and have authority over the outcome which creates a sense of fulfillment in the meetings. The latter interaction is additionally adaptable and not as formal as the inflexible technique in standard cases. Its purpose is to find an answer for both meetings and one that is sufficient for both meetings. Future connections are also saved through this interaction. In addition, the idea of solicitation barter which is so far inherent in our method and it allows to determine the cases without going to the initial stage.

Compounding of offences

Victims and perpetrators can reach the disposal of the case as per Section 320 of the Code of Criminal Procedure, 1973. This procedural law allows parties to undergo 'compounding of cases' in certain offenses without the permission of the court and in some cases with the permission of the court. Compounding of offenses means what

is now popularly voiced as 'Restorative justice.' There are some crimes which affect the individuals and do not affect the society. Such offenses can be compounded without the leave of the court under sub-section (1) of 320 of the Code of Criminal Procedure, 1973. The offenses under this category are hurt, injury, imprisonment, mischief, hurting the religious sentiments of the offender. And the offenses of trespass, adultery, defamation etc. under sub-section (2) of 320 of the Act include those offenses which are of serious nature and likely to affect the public at large. These cannot be compounded without the permission of the court. The offenses under this category include grievous hurt, wrongful confinement, misappropriation of property, breach of trust involving huge sums of money, fraud and forgery, indecent behavior towards women, etc. Offenses that lead to successful compounding are always acquitted. Unlike the system in the US, the process is only a way of settling the matter. It does not enclose any condition for restoration/repair of victim damages. In the name of restoration, recently the High Courts in India have ruled in favor of the victims. In *Bhagya Das v. State of Uttarakhand and other*, the Supreme Court has observed that "a court has the discretion to dismiss a petition to compound an offense having social impact even if the offense is compoundable under section 320 of the Code of Criminal Procedure. Merely because an offense is compoundable under section 320 of CrPC, still discretion can be exercised by the court having regard to the nature of the offence." In criminal case, *State of Uttarakhand v. Amit Rod and other*, under sections 147, 148, 323, 307, 427, 504 and 506 of IPC, Police Station Kotwali Roorkee, District Haridwar, before Additional Chief Magistrate Roorkee, District Haridwar are taken into account. It has been observed that the powers under section 320 Cr.P.C in discussions and reasons, which can be safely concluded. Compounding of offenses within its purview to enforce the powers vested with superior courts under section 482 Cr.P.C. and writ courts under Articles 226 and 227 of the Constitution of India

and they cannot be limited and limited as they have a specific and exclusive power to exercise the powers vested in them to eliminate the abuse of the process of law. Has wide powers. Which includes offenses under sections 147, 148 and 307 I.P.C. and so on but with the framework of the guidelines laid down by the Hon'ble Supreme Court and in particular, examining each case on its own factual merits. It can also be concluded by saying that the concept of compounding also serves broader social objectives to bring peace among the people, enhance peace and save the litigants from facing lengthy judicial proceedings. In view of the proportion given by the Hon'ble Supreme Court in the judgments given herein and the judgment given by this Court in the case of Paan Singh Rana, the compounding application filed by the parties shall be allowed.

Plea bargaining

Plea bargaining provides an opportunity to settle a dispute between the victim of a crime and the perpetrator. Both sides negotiate whether a settlement is possible or not. If a settlement is reached, the offender may be asked to pay compensation to the victim and accept a lesser punishment for the crime. Plea bargaining is an American concept that originated during the 19th century. With the passage of time, plea bargaining became a prominent feature of the American judicial system. In essence, plea bargaining aims to end criminal cases without a trial between the prosecution and the defense, usually in exchange for a more lenient punishment. Inspired by the American concept of plea bargaining, the Law Commission in its 154th Report on the Code of Criminal Procedure recommended the addition of Section 265A to 265L in the CrPC. The recommendations of the Law Commission were also followed by Dr. Justice V.S. Malinath (former Chief Justice of Kerala High Court). The Criminal Law (Amendment) Act, 2005, which amended the Code of Criminal Procedure to introduce plea bargaining in India. A new Chapter XXI(A) was introduced in the Code with effect from July 5, 2006. Plea bargaining is allowed in cases where the maximum punishment is imprisonment for 7 years. The first

case for plea bargaining was in 2007, *Sakbaram Bandekar*, a government employee who misappropriated Rs 1.48 crore from RBI by issuing vouchers against a fake name, was sentenced to three years in prison. Bandekar's case was special, because he made an application for plea bargaining, a concept widely practiced in the West. Plea bargaining allows the accused to bargain with the court the time he will spend in prison in exchange for a full confession. But in that case the court rejected his plea and the plea of CBI and he was sentenced to 3 years imprisonment. Offenses committed in society, which cause harm to socio-economic status and does not apply to plea bargaining in cases of offenses committed against women or child below 14 years of age.

International perspective of restorative justice

In various countries of the world, there has been dissatisfaction as well as frustration in relation to the formal justice system. Restorative justice is both a new and an old concept. In just twenty-five years the restorative justice system became a worldwide criminal justice reform system. Restorative justice in some form or the other to address crime has been practiced by more than 80 countries. While in many of these countries, restoration programs have been experimental and localised, in a growing number of other countries, increasing reparation policies and programs against crime have been instrumental. Restorative justice is said to be an emerging concept and is important for the development of human society. Restorative justice is a process through which parties with a particular interest in an aggressive action come together to resolve a conflict and make a decision regarding its impact on the parties' relationship after the commission of the crime and in the future. The offense is said to violate the rights as well as relations of individuals and creates an obligation to make things right. The concept of justice covers victims, perpetrators and the community or society that has been affected by the crime and seeks a solution that will improve, re-arrange and reassure the victim's condition to its original state

Through restorative, the victim and the perpetrator come together and face each other and inform about the occurrence of the crime or crime and the victim being the victim which helps the judicial system to reach an agreement under which the offender is punished. Restorative justice is also defined as a response with respect to criminal behavior and seeks to compensate for the harm caused to the victim and will facilitate peace as well as peace between the parties. Therefore, restorative justice is said to be the method through which the judiciary sees the commission of an offense as a violation or violation of laws that causes injury or harm to others which includes the victim, relatives and the society at large. Some of the members and affiliates of Restorative Justice International represent the following countries like as United Kingdom, United States, Ireland, India, Rwanda, Australia, Canada, Spain, Netherlands, New Zealand, South Africa, Greece, Zimbabwe and others.

Conclusion

Restorative justice principles should be incorporated into the country's public policies, as each country's justice system is influenced by legislation written and supported by public officials. There are strong proponents of evidence-based research supporting the use of restorative justice so that victims and perpetrators view restorative justice with a sense of justice. Restorative Justice International is committed to justice driven by the support of victims and crimes. It seeks to restore the suffering of the crime victims. It also demands accountability for the harm caused to the criminals. The community supports correcting the wrong messages coming from crime. Restorative Justice International seeks to grow in partnership with its fellow country members and others who support society every effort. Restorative Justice wants to work in a strong way around the world. It has been observed that the courts in a large part of the countries have not been able to resolve the issue. While restorative justice enables alternative systems to choose long

fundamental principles and avoid the confusion of litigation.

Now-a-days restorative justice has again completed its historical cycle and as a result, it has been called back on the agenda of criminal justice. Only this time our understanding of crime is different. A contemporary justice system understands conflicts in a fundamentally different way from society's adoption. The main feature of his approach to antisocial behavior was the treatment of it as a violation of relations. Therefore, his focus was to restore the broken bonds between the members of the community affected by the crime. Restorative justice can be implemented largely by voluntary and community groups in the shadow of the law. And with the help of restorative justice, the struggle could become a powerful state.

References

1. G.S.Bajpai, "Incorporating the Idea of Restorative Justice in Indian Criminal Justice System: Pondering or Contemplating the Possibilities and Challenges <https://mail-attachment.googleusercontent.com/attachment/>", National Law University, Delhi, 2018-19.
2. Akanksha Marwah, "Restorative Justice and Reformation of Offenders File:///C:/Users/Rajvi/Downloads/Restorative%20justice-%20articles.Pdf", Ili Law Review, Winter Issue, 2020.
3. Ibid.
4. The complete article is available on, "<https://restorativejustice.org.uk/restorative-justice-and-sexual-harm>"(access on 26 February , 2022 at 2:30 PM).
5. Ibid.
6. Ibid.
7. M. Liebmann, "Restorative Justice: How it Works", Jessica Kingsley Publishers, London, 2007, p.no. 33.
8. The complete article is available on, "<http://sites.broadviewpress.com/Essay-Restorative-Justice-with-revision>"(access on 26 February , 2022 at 2:30 PM).
9. M. Akram, A. Nasar And R. Safdar, "Holy Cow In India: A Political Discourse And Social Media Analysis For Restorative Justice," A Journal Of The Humanities & Social Sciences 25, No. 2, 2021.
10. K. P. Singh, "Restorative Justice: A Concept for Complete Justice," Journal of the National Human Rights Commission India, Vol. 17, Silver Jubilee, Edition 2018, pp. 121.
11. CRR No. 465 of 2019.
12. Criminal case No. 865 of 2018.
13. Times of India < <https://timesofindia.indiatimes.com/Oct 16, 2007>> at visited on 24-03-2020 at 16:00 IST.
14. McCold, P., "Restorative justice practice: The state of the field 1999" (1999). Retrieved on March, 7, p.2002.
15. Whitehead, J.R.. "Restorative Justice in the South Pacific: Responding to Sexual Violence in Fiji (Doctoral dissertation, Monash University)" (2018).