

RESTORATIVE JUSTICE AND THE WEAKER SECTION

Arun Gupta

Department of Law

Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India

ABSTRACT: *In India, the role of victims is negligible and is clearly limited to being a witness in a court. It was claimed in the famous case of Jennison Vs. Baker that "Law should not sit limply, while those who challenge it go free and those who seek its safeguards lose hope." The quotation aptly defines the current Criminal Justice System in India where there are numerous diseases such as government corruption, shortage of system coordination, delay in case dismissal, complicated and expensive procedures. This paper briefly discusses the same and puts this blindspot issue into focus by highlighting various relevant facts and cases along with concluding the current status of the financially weaker section in regard to the availing the restorative justice.*

KEYWORDS: *Freedom, Government, Justice, Law, Poor, System;*

INTRODUCTION

Restorative Justice is a new idea as well as an old one. The principle of restorative justice has been embraced as a global overhaul of criminal justice for a period of twenty-five years. Restorative Justice Projects play a pivotal role in the national response to violence in about 100 countries globally, further stimulating, educating and enriching the Restorative Justice idea. There is ample proof of the world's Restorative Justice practice in the application of numerous services and processes, such as survivor and perpetrator therapy, neighborhood and family association workshops, peacekeeping circles, victim support and engagement programs, loop sentencing and reparative.[1]

1. **Victim-Offender Mediation:** It is often referred to as the Victim-Offender Reconciliation Scheme, which was introduced in the 1970s in Kitchener, Ontario as an experiment. A consultation between the victim and the perpetrator is arranged in this manner, mediated by a professional mediator, with the intention of settling the issue and constructing their own approach to obtaining justice in the light of their individual crime. The conference ends with the effort to find an understanding on the action the perpetrators will take to fix the victim's injury. This initiative has been widely implemented in the United States, Canada, Australia, New Zealand, the United Kingdom, Austria, Norway and several other countries around the world.[2]
2. **Conference of the Community and Family Group:** This Restorative Justice model emerged when it was implemented into national law and extended to the juvenile justice process in New Zealand in 1989. The families and relatives of both the victim and the perpetrator, as well as other community members, engage in this meeting in order to confront the offender

with the after-effects of his offending, create a reparative strategy and assess the need for more stringent surveillance and/or detention in more severe situations. This approach also acts as an alternate measure program to which an inmate from the criminal justice system can be redirected. The model is carried out extensively in countries such as South Australia, South Africa, Ireland, Lesotho, etc.[3]

3. Circle Sentencing: This Restorative Justice strategy is intended to build a consensus among stakeholders, including victims, advocates, members of the community, suspects, supporters, correctional officers/judges, lawyers, defense attorneys, police and court personnel, for an acceptable result that meets the needs of all stakeholders. The primary motto of this method is to cure the injured group by giving the perpetrator the chance to make amends. In several aboriginal cultures in Canada, this phase is undertaken.[4]
4. Indigenous and Customary Justice Forums: In the old days, cases of the technique of restorative justice were often found in the context of customary approaches. These indigenous and customary traditions have served as the basis for contemporary restorative justice methods. In fact, variations (but not replications) of the above conventional approaches are two of the most significant types of family community conferences and peacemaking circles for restorative justice. Countries such as Australia, Canada, Nigeria, Uganda, Philippines, New Zealand, etc. have their own traditions of Traditional and Traditional Justice that in one way or another support the idea of restorative justice with the primary objective of re-establishing the principle of restorative justice[5]

At the point when an adolescent carries out a wrongdoing, they are dealt with independently. They are kept in perception homes during the pendency of a request under this Act. There is care and order done remembering the age, physical and mental status and level of offense submitted by the Juvenile. Separated, from the adolescent wrongdoings, the Restorative Justice rehearses are additionally found in the instances of kid misuse.[6]

Youngsters are frequently been exposed to different kinds of torment and wounds by guardians, overseers, managers and so forth The Legislature in any case, has mulled over the need to fortify the situation of the youngster casualties and has identified different rules and projects, for example, National Commission for the Protection of Child Rights, Juvenile Justice (Care and Protection of Children) Act, 2015, the Child Marriage Restraint Act, Child Protection conspire, Immoral Trafficking Prevention Act and so on, The Indian punitive Code, 1860, The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994etc.

Other than the abovementioned, there is additionally an established help given to the kid misuse casualties cherished through the Articles 14, 15, 15(3), 21, 21(A), 23, 24, 39(e), 39(f) of the Indian Constitution. Further, whenever investigated the violations perpetrated against ladies, the Criminal Justice System appears to have executed the remedial methodologies if not to the greatest but rather atleast somewhat.

DISCUSSION

Since the beginning of Indian Independence and even before that, ladies have consistently been exposed to different kinds of wrongdoing. These incorporate assault, endowment demise, lady of the hour consuming, aggressive behavior at home, corrosive assaults and so on Notwithstanding, the lawmaking body and the legal executive have assumed a functioning job through the Protection of Women from Domestic Violence Act, 2005 in the instances of abusive behavior at home which tackles the issues in the remedial equity approach by stressing on the necessities of the ladies casualty. Further, in instances of assault there is between time and last financial pay and help that is given. Likewise, segment 327 of the Cr.P.C. additionally accommodates alleviation to the survivors of wrongdoing by conducting the preliminary in camera.[7]

Likewise, putting dependence working on this issue Delhi Domestic Women's Forum v. Association of India, there has been sacred help under Article 21 to the survivors of assault as it was expressed that privilege to daily routine included option to experience with poise. Further through the instance of S/o Maharashtra v. Chandra Prakash Mewalchand Jain and Shri Bodhisattwa Gautam v. Miss Subhra Chakroborthy the courts have given the advantage to the ladies casualties to keep their name in namelessness. The parts of Restorative equity could be additionally found in the Indian overall set of laws by the reception of Plea dealing and Lok Adalats.[8]

The idea of 'Request Bargaining' was received by the 177th law commission report with help of the Malimath Committee Report in 2003. Essentially to this Chapter XXII of the Cr. P.C. has been added with segment 265A and 265L which explicitly talk about Plea Bargaining. Plea-haggling is a pre-trial exchange that is done between the safeguard and the indictment, where the protection confesses and demands the arraignment to help some concession. The safeguard for this situation goes about as an arbiter to determine the quantum of remuneration. Similar to Plea-haggling, Lok Adalats are unique courts that manage certain issues in a remedial way. These courts focus on purpose the contest by direct talk with the prosecutors and desire the soul of training of "therapeutic equity." Cases, for example, the Landlord inhabitant question, compoundable offenses, wedding cases remembering property for the type of obligation, protections, guardianship, Custody of kids are managed by the Lok Adalats. The other viewpoint which shows the remedial equity standards are the Open Prison framework.

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

baselessly captured and Section 359 which manages the order to pay costs on account of noncognizable offenses.[9]

Crimes

A. Juvenile Crimes: The primary objective of the Juvenile (Care and Safety of Children) Act, 2015, is to recover by preparation, recovery and education the juvenile criminal. Similarly, taking the juvenile directly to the victim so the victim shares with the juvenile the loss he suffered as a result of the crime would help the juvenile offenders to realize the pain incurred by their actions and make necessary improvements to their victims and neighborhoods. This is not only in line with the needs of the juvenile offender, but also with those of the survivor.

B. Crimes relating to women and children: In modern years, there have been several policies and rulings in favor of women and children. Nonetheless, the latter presents the victims with restitution and reimbursement, but what has been sidelined is the victim's rehabilitation following abuse. This reflects the state's inefficiency in fully overcoming the victim's distress. Therefore, by implementing the Restorative Justice principles, which somewhat rely on understanding client, as well as on reforming them in order to return to life, the victim will achieve better results in the long run.

Adoption of beneficial aspects of the Inquisitorial System: To a considerable degree, our Criminal Justice System is primarily inclined towards the convicted and is seen to be oblivious to the victim's interests and situation. This has triggered a great lack of people's confidence in the justice system. Therefore, a system that converges the constructive attribute of adversarial and inquisitorial legal systems is an ardent necessity to come with it. In addition to the above, the incorporation in the laws of the following offences in the Restorative Justice Principles would automatically enhance the position of the victim.

Furthermore, it was also noted that the temporary relief to be given pursuant to section 357A (6) was low and not according to the severity of the offence. Therefore, the following recommendations should be applied in order to resolve those deficiencies:

- (i) The amount of liability determined by the court shall be determined exclusively on the basis of the facts and circumstances of case 488.
- (ii) In order to make section 357A more operational, courses for lawyers, judicial officers and public prosecutors have to be organized.
- (iii) In addition to the amount of compensation that needs to be received, it is therefore important to determine the period during which it has to be paid.

CONCLUSION

The primary aim of the Criminal Justice System is to protect the rights of citizens and society and personal freedom from abuse by criminals. Criminal law aims to shield the vulnerable from the

strong, the law from all the lawless, and harmony from aggression. It is always selfishness, greed for power and sick sensitivity which leads to the depravity of the constitutional protections of a person.

When researching the patterns and improvements in the Criminal Justice System and taking into account the issues mentioned above, the criminologists found that the new Criminal Justice System would not cope with the most significant aspect of violence, the victims and their post-crime lives. This gives rise to a modern 'Victimology' definition that explicitly involves empirical research of victims of violence and reconciliation between these victims and the police, judiciary, corrections officers, etc. Criminal Justice System.

Victims are remedied by catering, support and quick access to justice for them and their families. The Restorative Justice System is also known as 'The Restorative Justice System.' The Restorative Justice System relies mainly on four concepts, including, the victim's rehabilitation by helping and aiding them, keeping the defendant responsible by the community's Victim-Offender Mediation, monitoring and opportunities to help the victims recover them again.

The purpose of the Criminal Justice System is simply to punish an inmate for breaking the law, while Restorative Justice looks at that by taking into account the damage incurred, the causes for it, and the duty of the offender to remedy this wrong by supplying the victim with the appropriate assistance. In comparison, Restorative Justice provides the plaintiffs the ability to recognize the trauma inflicted on them, the abuse of their rights and what must be done to repair the damage inflicted on them, which is perceived to be sidelined by the new Criminal Justice System. The need for a restorative justice system in India is also apparent in all of the above.

As stated in the provisions, the transition from the Criminal Justice System to the Restorative or Victim Justice System is viewed as compatible and not conflicting with the current Criminal Justice System. In conclusion, the present paper holds the opinion that the existing Criminal Justice System complements the Restorative Justice System which not only offers improved justice administration, it also fills the numerous disparities in the current Criminal Justice System.

REFERENCES

- [1] J. L. Herman, "Justice from the victim's perspective," *Violence Against Women*, 2005, doi: 10.1177/1077801205274450.
- [2] J. Braithwaite, "Restorative Justice: Assessing Optimistic and Pessimistic Accounts," *Crime and Justice*, 1999, doi: 10.1086/449287.
- [3] T. González and T. Gonzales, "Keeping Kids in Schools : Restorative Justice , Punitive Discipline , and the School to Prison Pipeline," *J. Law Educ.*, 2012.
- [4] N. Smith, "Kantian Restorative Justice?," *Crim. Justice Ethics*, 2010, doi: 10.1080/07311291003654195.
- [5] G. McCluskey, G. Lloyd, J. Stead, J. Kane, S. Riddell, and E. Weedon, "'I was dead restorative today': From restorative justice to restorative approaches in school," *Cambridge Journal of Education*. 2008, doi: 10.1080/03057640802063262.
- [6] K. Daly, "Restorative justice: The real story," *Punishm. Soc.*, 2002, doi: 10.1177/14624740222228464.
- [7] A. A. Payne and K. Welch, "Restorative Justice in Schools: The Influence of Race on Restorative Discipline," *Youth*

Soc., 2015, doi: 10.1177/0044118X12473125.

- [8] J. Latimer, C. Dowden, and D. Muise, "The effectiveness of restorative justice practices: A meta-analysis," *Prison J.*, 2005, doi: 10.1177/0032885505276969.
- [9] M. Wenzel, T. G. Okimoto, N. T. Feather, and M. J. Platow, "Retributive and restorative justice," *Law and Human Behavior*. 2008, doi: 10.1007/s10979-007-9116-6.