

Restorative Justice Process in Contemporary Criminal Justice

Bobelya A

School of Excellence in Law, The Tamil Nadu Dr. Ambedkar Law University, Chennai

Abstract: *Restorative justice is an alternative approach to the traditional criminal justice system that focuses on repairing the harm caused by crime rather than merely punishing the offender. It emphasizes accountability, victim participation, offender responsibility, and community involvement in resolving conflicts. The restorative justice process typically involves dialogue-based practices such as victim-offender mediation, family group conferencing, and community circles, where all affected parties discuss the impact of the wrongdoing and work together to develop a plan for repairing the harm. This approach aims to promote healing, reconciliation, and reintegration of offenders into society while addressing the needs of victims. Restorative justice has been increasingly recognized for its effectiveness in reducing recidivism, enhancing victim satisfaction, and fostering stronger community relationships. This abstract examines the principles, procedures, benefits, and challenges of the restorative justice process and highlights its growing significance in contemporary legal systems as a means of achieving meaningful and sustainable justice. The criminal justice system is a framework of institutions, laws, and procedures established to maintain law and order, prevent crime, and ensure justice in society. In India, the criminal justice system is primarily governed by the Bharatiya Nyaya Sanhita, 2023 (BNS), which defines criminal offences and punishments; the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which regulates criminal procedure, investigation, arrest, trial, and appeals; and the Bharatiya Sakshya Adhinyam, 2023 (BSA), which governs the admissibility and evaluation of evidence. The system functions through various agencies, including the police, prosecution, judiciary, and correctional institutions, each playing a vital role in the administration of justice. The objectives of the criminal justice system include protecting individual rights, ensuring fair trials, punishing offenders, rehabilitating criminals, and maintaining public order. This abstract examines the structure, functions, and legal foundations of the criminal justice system, highlighting the significance of contemporary legislative reforms and their impact on effective justice delivery in India.*

Keywords: *Restorative justice.*

I. INTRODUCTION

The criminal justice system has traditionally focused on identifying offenders, determining guilt, and imposing punishment for criminal acts. While this approach plays an important role in maintaining law and order, it often gives limited attention to the needs of victims and the restoration of relationships damaged by crime. In response to these limitations, the concept of restorative justice has emerged as an alternative and complementary approach to the administration of justice.

Restorative justice is a process that seeks to repair the harm caused by criminal behavior by involving victims, offenders, and the community in resolving the consequences of the offence. Rather than emphasizing punishment alone, it promotes accountability, reconciliation, healing, and the restoration of social harmony. Through mechanisms such as victim-offender mediation, family group conferencing, and community circles, restorative justice encourages dialogue and mutual understanding among the affected parties.

The restorative justice process recognizes that crime is not merely a violation of law but also a violation of individuals and relationships. It aims to address the emotional, psychological, and social impacts of crime while encouraging



offenders to take responsibility for their actions and make amends. This approach has gained increasing recognition worldwide for its ability to enhance victim satisfaction, reduce recidivism, and strengthen community participation in the justice process.

In the modern criminal justice system, restorative justice serves as a valuable tool for achieving a more balanced and humane form of justice. By focusing on repairing harm and rebuilding relationships, it contributes to the broader goals of fairness, rehabilitation, and social peace.

DESCRIPTION OF THE RESTORATIVE JUSTICE PROCESS

In many countries, dissatisfaction and frustration with the formal justice system or a resurging interest in preserving and strengthening customary law and traditional justice practices have led to calls for alternative responses to crime and social disorder. Many of these alternatives provide the parties involved, and often also the surrounding community, an opportunity to participate in resolving conflict and addressing its consequences. Restorative justice programmes are based on the belief that parties to a conflict ought to be actively involved in resolving it and mitigating its negative consequences. They are also based, in some instances, on a will to return to local decision-making and community building. These approaches are also seen as means to encourage the peaceful expression of conflict, to promote tolerance and inclusiveness, build respect for diversity and promote responsible community practices. New and established forms of restorative justice offer communities some welcome means of resolving conflicts. They involve individuals who are not detached from the incident, but are directly involved in or affected by it. The participation of the community in the process is no longer abstract, but rather very direct and concrete. These processes are particularly adapted to situations where the parties participate voluntarily and each one has a capacity to engage fully and safely in a process of dialogue and negotiation. This handbook focuses on restorative justice programmes in criminal matters, but it should be noted that restorative processes are being used to address and resolve conflict in a variety of other contexts and settings, including schools and the workplace. In many countries, the idea of community involvement enjoys a large consensus.⁴ In many developing countries, restorative justice practices are applied through traditional practices and customary law. In doing so, these approaches may serve to strengthen the capacity of the existing justice system. A fundamental challenge for participatory justice is, however, to find ways to effectively mobilize the involvement of civil society, while at the same time protecting the rights and interests of victims and offenders. Restorative justice is an approach to problem solving that, in its various forms, involves the victim, the offender, their social networks, justice agencies and the community. Restorative justice programmes are based on the fundamental principle that criminal behaviour not only violates the law, but also injures victims and the community. Any efforts to address the consequences of criminal behaviour should, where possible, involve the offender as well as these injured parties, while also providing help and support that the victim and offender require. Restorative justice refers to a process for resolving crime by focusing on redressing the harm done to the victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of that conflict.

Participation of the parties is an essential part of the process that emphasizes relationship building, reconciliation and the development of agreements around a desired outcome between victims and offender. Restorative justice processes can be adapted to various cultural contexts and the needs of different communities. Through them, the victim, the offender and the community regain some control over the process. Furthermore, the process itself can often transform the relationships between the community and the justice system as a whole.

FEATURES OF THIS PROCESS

The following are features of restorative justice programmes:

1. A flexible response to the circumstances of the crime, the offender and the victim, one that allows each case to be considered individually
2. A response to crime that respects the dignity and equality of each person, builds understanding and promotes social harmony through the healing of victims, offenders and communities



3. A viable alternative in many cases to the formal criminal justice system and its stigmatizing effects on offenders; An approach that can be used in conjunction with traditional criminal justice processes and sanctions
4. An approach that incorporates problem solving and addressing the underlying causes of conflict
5. An approach that addresses the harms and needs of victims; An approach which encourages an offender to gain insight into the causes and effects of his or her behaviour and take responsibility in a meaningful way
6. A flexible and variable approach which can be adapted to the circumstances, legal tradition, principles and underlying philosophies of established national criminal justice systems
7. An approach that is suitable for dealing with many different kinds of offences and offenders, including many very serious offences
8. A response to crime which is particularly suitable for situations where juvenile offenders are involved and in which an important objective of the intervention is to teach the offenders some new values and skills; A response that recognizes the role of the community as a prime site of preventing and responding to crime and social disorder.

Victim-offender mediation

Victim-offender mediation programmes (also known as victim-offender reconciliation programmes) were among the earliest restorative justice initiatives. These programmes are designed to address the needs of crime victims while insuring that offenders are held accountable for their offending. The programmes can be operated by both governmental agencies and not-for-profit organizations and are generally restricted to cases involving less serious offences. Referrals may come from the police, the prosecutors, the courts and probation offices. The programmes can operate at the precharge, the post-charge/pre-trial and post-charge stages, and involve the willing participation of the victim and the offender. The programmes can also offer a pre-sentencing process leading to sentencing recommendations. When the process takes place before sentencing, the outcome of the mediation usually is brought back to the attention of the prosecution or the judge for consideration. The victim-offender mediation process can also be used successfully during the offender's incarceration and can become part of his or her rehabilitation process even in the case of offenders serving long sentences. The mediation process is more likely to fully meet its objectives if the victims and offenders meet face-to-face, can express their feelings directly to each other, and develop a new understanding of the situation. With the help of a trained facilitator, they can reach an agreement that will help them both bring closure to the incident. In fact, the facilitator usually meets with both parties in advance of a face-to-face meeting and can help them prepare for that occasion. This is done to ensure, among other things, that the victim is not re-victimized by the encounter with the offender and that the offender acknowledges responsibility for the incident and is sincere in wanting to meet the victim. When a direct contact between the victim and offender is possible, it is not uncommon for one or both of them to be accompanied by a friend or supporter. The latter, however, do not always participate in the discussion. Finally, notwithstanding the merits of a facilitated face-to-face meeting, direct contact between the victim and offender is not always possible or desired by the victim. Indirect mediation processes where the facilitator meets with the parties successively and separately are therefore also widely used. There are three basic requirements that must be met before victim offender mediation can be used: The offender must accept or not deny responsibility for the crime; Both the victim and the offender must be willing to participate; Both the victim and the offender must consider it safe to be involved in the process. In victim-offender mediation, the crime victims are often referred, as needed, for help and assistance and are given maximum input into the sanction or the shaping of a resolution or a restorative agreement. They are also allowed to tell the offender how the crime has affected them and to request information about the crime. The mediation process, to the greatest extent possible, leads to reparation and some form of compensation for the victims' losses. The mediation process does not always involve direct contact between the offender and the victim. When there is a direct contact, the victim is often invited to speak first during the mediation as a form of empowerment. The mediator assists the two parties in arriving at an agreement that addresses the needs of both parties and provides a resolution to the conflict. When the process occurs prior to sentencing, a conciliation agreement mediated between the



offender and the victim can be forwarded to the court and may be included in the sentence or in the conditions of a probation order.

There are four stages to the circle process:

Stage 1: Determining whether the specific case is suitable for a circle process
Stage 2: Preparing the parties that will be involved in the circle

Stage 3: Seeking a consensual agreement in the circle

Stage 4: Providing follow-up and ensuring the offender adheres to the agreement

Advantages of Restorative Justice

The saying, "We brought the needle to sew the torn social fabric, not the knife to cut it" (Bantu Proverb), reflects the main aim of restorative justice: repairing harm and rebuilding relationships rather than focusing only on punishment.

Restorative justice offers several advantages over traditional court proceedings. It helps in the speedy resolution of disputes, reduces legal expenses, involves fewer formal procedures, and encourages greater compliance with outcomes. It also promotes understanding between the parties and increases the possibility of maintaining or restoring relationships.

Restorative justice is a victim-centered approach that seeks to repair the harm caused by crime by involving victims, offenders, and the community in the resolution process. It views crime not only as a violation of law but also as an act that harms individuals and relationships. Therefore, it aims to address the emotional, psychological, social, and material needs of those affected.

Many experts acknowledge that restorative justice may not be suitable for every case. However, it is considered an effective method in many situations because it encourages accountability, healing, and reconciliation. Both victims and offenders can benefit from the process. Victims are given an opportunity to express their feelings and receive answers, while offenders are encouraged to understand the consequences of their actions and take responsibility for repairing the harm caused.

Overall, restorative justice contributes to a more humane, participatory, and constructive justice system by focusing on healing rather than solely on punishment.

VALUES OF THIS JUSTICE PROCESS

In this research, we see restorative justice as both a philosophy that centers victims' needs, and as a set of established practices and knowledge about what victims of harm generally need and how to support them. To introduce restorative justice, we first discuss its differences with punitive justice. Punitive justice, as a widely applied justice model in the Western world, holds that harm is a violation of rules and offenders should suffer in proportion to their offense. Under this model, victims are often left out of the process. Victims suffer from a lack of agency in the process of addressing harm, and do not get sufficient resources to recover from the offense.

Restorative justice provides an alternative way to address harm. Restorative justice believes that harm is a violation of people and relationships instead of just a violation of rules. While punitive justice is concerned primarily with making sure offenders receive punishment proportionate to their offense, restorative justice begins with a concern for victims and their needs. Additionally, restorative justice ask for engagement from diverse stakeholders in addressing harm. Under a restorative justice model of addressing harm, people are all interconnected in a community, or society at large. Thus, harm creates obligations for relevant parties (e.g., offenders, members of community where harm has happened, victims and offenders' family members) to collectively address it. Our research focuses on the harmed party, the victims, and understand their needs for addressing harm from other relevant stakeholders. Restorative justice processes usually begin with communication. In a process called pre-conference, a restorative justice facilitator will communicate with the victim to help them reflect on their needs for addressing harm. The process that follows involves communication with the offenders and other relevant parties, sometimes collectively, to reach consensus on how to address those needs. Here, a widely used communication tool is circles. In a circle, victims, offenders and other



relevant stakeholders (e.g., friends and family, community members) sit together with a restorative justice facilitator to discuss three core questions :

- (1) what has happened?
- (2) who has been affected and how?
- (3) what is needed to repair the harm?

The facilitator mediates this process to ensure that victims and offenders have equal footing and helps move the parties towards reaching consensus. After the meeting, the stakeholders carry out actions to repair the harm. While we believe that establishing full procedures of restorative justice online requires great adaptation, we argue that a first step is understanding victims' needs in addressing harm following restorative justice principles and procedures.

Restorative justice practitioners have found a range of needs that are commonly addressed in a restorative justice process. According to Zehr, there are four types of needs victims may achieve in restorative justice process, that are often ignored in punitive justice.

- (1) Information. Victims gain information about why harm happened and what has happened since.
- (2) Truth-telling. Victims get a chance to tell their stories and receive acknowledgement from parties such as the community and offenders.
- (3) Empowerment. Restorative justice provides agency in addressing the harm they experienced, which can return them power and control that is taken away by the harm.
- (4) Restitution or vindication. Relevant parties, such as the offender, will make amendment to repair the harm (e.g., apology, financial compensation). In our work, we use the four fundamental needs to guide our understanding of victims needs in addressing online harm.

Applying restorative justice to adolescents. Restorative justice has been successfully applied in a myriad of offline settings, such as criminal justice, family, and workplace settings. In particular, restorative justice has been applied to address harm in schools and the juvenile criminal justice systems all around the world. Practitioners argue that a restorative justice approach can be beneficial to both young offenders and victims compared to a punitive one. For young offenders, restorative justice acknowledge their needs and enhances their development instead of merely punishing them for their crime. For young victims and the communities where harm happens, restorative justice provide support for them to heal from harm and restore or strengthen social relationships. Restorative justice considers stakeholders beyond just the offenders, including the state and schools, providing a chance for family members and schools to collectively support the growth of young people. Katic et al. conducted a systematic evaluation of restorative justice practices in schools in the United States and found that the majority of studies reported positive outcomes, including improved social relationships and reductions in office discipline referrals. However, Latimer et al. noted that positive findings in restorative justice can be tempered by the self-selection bias – since it is a voluntary process, those who choose it may benefit more than others. We build on the research and practices from offline restorative justice to study how it may benefit adolescents' online lives.

METHODS OF THIS PROCESS

Our research aims to understand adolescents' needs for addressing online harm, including what those needs are, how to meet those needs, and when. While asking people what they need may seem like a straightforward task at first, prior work in the restorative justice literature and our own preliminary research showed that it is challenging for victims to know and express what needs they have. This is particularly the case when when those needs were not met when the harm happened, or when meeting those needs seems impossible given available resources from the online platforms or other relevant stakeholders.

Victims of harm need to go through a process of sensemaking to understand the harm, its effects on them, and to decide what they need to heal from the harm. In restorative justice practices, this is often done through a pre-conferencing session with a facilitator who support the victim and helps them figure out what they need. For this research, we hope to design a task to support the process of sense-making and enable participants to tell us the whole range of their needs



– even those that could not be immediately met given current constraints and resource limitations. In this section, we first described the process of designing the task. Next, we presented the task procedure. We then explained our recruiting and interview process, and finally ended with a description of our data analysis method.

Designing the task

Designing the need-finding questions to understand types of needs and actions. The goal of our research is understanding adolescents' needs when they are harmed online from three levels: (1) what their needs are, (2) the actions to meet those needs, and (3) the timing to meet those needs. It is challenging for people to know what their needs are and how to express them. Thus, our goal is to design need-finding questions to help support participants' sensemaking process.

Weick argues that sensemaking is retrospective. People first come up with or perform actions, then provide explanations for their actions. Thus, we focus on actions in the need-finding questions, and then ask participants to explain their actions. Through the explanation, participants can identify their needs behind those actions. The process enables us to answer RQ1 and RQ2 together; by understanding what peoples' needs are, as well as the actions that can meet those needs.

We aim to design need-finding questions that cover all the categories of actions participants may identify. We started our research design process by looking at how victims talk about needs and actions for addressing harm in the restorative justice literature. In Zehr's foundational work on restorative justice, he proposes four categories of needs that victims commonly have: the need for information, the need for truth-telling, the need for empowerment, and the need for restitution or vindication. Zehr also describes example actions that can address those needs, for example, offenders' acknowledgement can meet victims' need for restitution, and understanding why the harm happened can meet victims' need for information. We rely heavily on this work in designing our research method.

First, the research team brainstormed potential actions based on the examples provided by Zehr. We then categorized the actions through pilot testing with 15 participants who we selected through convenience sampling. We asked pilot participants with experiences of online harm to select from those actions, and come up with additional needs they might have. For pilot participants who hadn't experienced online harm, we asked them to group the actions in a card sorting activity. We asked pilot participants to think out loud to understand their thought process.

This process led to five questions which cover most actions our pilot participants mentioned:

- (1) what information do you need from [the stakeholder]?
- (2) what do you want to share with [the stakeholder]?
- (3) what acknowledgement / understanding do you want from [the stakeholder]?
- (4) what actions is needed from [the stakeholder] to repair the harm?
- (5) what change do you want [the stakeholder] to do in the future?

Designing a timeline to envision the story. While the need-finding questions help us answer RQ1 and RQ2, we were also interested in the temporal aspects of addressing online harm and envisioned a story line of addressing harm for RQ3. The process of participants walking through their own storylines provides more chances for them to reflect on their different needs and actions, as well as their order when a harm occurs. Inspired by previous research in speculative design, we decided to design and facilitate a reflection process to achieve this goal.

Our design task borrows from the Timelines speculative design activity proposed by Wong and Nguyen. Timelines is designed to help participants reflect on their values and ethics around a technology. Participants complete the Timeline activity with sticky notes and a whiteboard. There are four steps in the timeline activity:

- (1) participants decide on an artifact (e.g., a technology) as the topic of discussion,
- (2) identify stakeholders around the artifact,
- (3) create potential news headlines and stories related to the artifact, and
- (4) organize the news headlines and stories on multiple timelines to create stories of events related to the artifact.



Overall, through a visual board, the Timelines activity helps “the creation of an imagined world that can lead participants to critical reflection”. In borrowing from the Timelines activity, our goal is to help participants picture a storyline for addressing harm, while reflecting on their values and desired outcomes in the process. While our work is not entirely speculative, we encourage participants to think beyond perceived constraints while building on their own experiences.

II. CONCLUSION

Restorative justice is an effective and humane approach to resolving conflicts and addressing the harm caused by crime. Unlike the traditional criminal justice system, which mainly focuses on punishment, restorative justice emphasizes healing, accountability, and reconciliation among victims, offenders, and the community. It provides a faster, less formal, and more cost-effective method of achieving justice while promoting mutual understanding and repairing damaged relationships. Although it may not be suitable for every case, its ability to address the needs of victims, encourage offender responsibility, and strengthen social harmony makes it a valuable component of the modern justice system. Therefore, greater integration of restorative justice practices can contribute to a more balanced and compassionate system of justice.

Primary Sources

1. India, The Bharatiya Nagarik Suraksha Sanhita, 2023 (provisions relating to mediation and victim participation).
2. United Nations Office on Drugs and Crime, Handbook on Restorative Justice Programmes (2020).

Secondary Sources

1. Howard Zehr, The Little Book of Restorative Justice (Good Books, 2002).
2. John Braithwaite, Crime, Shame and Reintegration (Cambridge University Press, 1989).
3. Centre for Justice and Reconciliation, Restorative Justice Principles and Practices.
4. United Nations Office on Drugs and Crime, Handbook on Restorative Justice Programmes (2nd ed., 2020).

