



## RESTORATIVE JUSTICE

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### ❖ ABSTRACT

→ Braithwaite (2004) said “*Restorative Justice is about the idea that because crime hurts, Justice should heal.*” The aims of Restorative Justice are to better meet the needs of the people directly involved when a crime happens than is normally possible in traditional criminal justice systems. In the traditional system, legal professionals are the active decision makers and the people who have been harmed and those that have harmed are passive in their roles. Howard Zehr (2002) lists the three pillars of Restorative Justice as:

- Harms and Needs: Who was harmed, what was the harm? How can it be repaired?
- Obligations: Who is responsible and, accountable and how can he/she repair the harm?
- Engagement: Victims and Offenders have active roles in the Justice process

→ In this paper, the researcher aims to examine various aspects related to the concept of Restorative Justice and its effectiveness and utility, especially in the Indian context. The paper aims to analyze and explain the important developments in the area of restorative justice, the aim of restorative justice in the 21<sup>st</sup> century, the key principles of restorative justice, its cost effectiveness, values of restorative justice, the stakeholders of restorative justice, participants in the restorative justice program, restorative justice from international perspective and a comparison of restorative justice system with

the traditional justice system along with the advantages and disadvantages of the same.

→ The paper will specifically aim to examine the concept of restorative justice from the Indian perspective and the critical issues or challenges faced in the implementation of the same, which shall also include the main criticisms of the restorative justice system from the perspective of victims, offenders, community, culture, class, gender and some more perspectives. The researcher will substantiate certain points with the help of various case laws. The last part of the paper would also include summations and certain suggestions on how to overcome the various challenges.

### ❖ INTRODUCTION

→ It is very much documented that criminal justice framework worldwide had a total tilt for the accused; consequently pre and post preliminary rights have been perceived for them. India isn't a special case to this above expressed worldwide position. Nonetheless, particular to India have been the status-quo in its situation when contrasted with different countries of the world. This has additionally been bolstered by the antagonistic arrangement of criminal justice to which India has selected. Our nation has perceived the pre and post preliminary privileges of the wrongdoer both constitutionally and procedurally. The significant unit of the criminal justice for the most part the victim has no spot in Indian framework with the exception of that it has been consigned to the



witness that too when necessary.<sup>1</sup> However, certain decisions by the Apex Court in India have made it conceivable to make a domain of "take off" identifying with victim equity so much that most recent changes in Criminal Procedure Code<sup>2</sup> are pointers in that direction. That is clear by the current definition of "victim" in Section 2.

→ Restorative Justice is an alternate method to take a look at equity. It expects to:

- Put key choices in the hands of those generally influenced by wrongdoing
- Make equity all the more mending and transformative
- Decrease probability of future wrongdoing

→ Restorative Justice depends on three hidden premises:

- Wrongdoing is an infringement of individuals and connections
- Infringement makes commitments on the individuals who submitted the damage
- The focal commitment is however much as could reasonably be expected to make things right.<sup>3</sup>

#### ❖ KEY ELEMENTS IN RESTORATIVE JUSTICE SYSTEM

→ The following are the key elements in the Restorative Justice System-

##### (a) Supporting and Helping Victims:

The Restorative Justice model can bolster a procedure where the victims perspectives and interests are considered, where they can take an interest and be dealt with reasonably and deferentially and get restoration and redress.

By taking an interest in the process of decision making, victims have a voice and role in figuring out what might be an acceptable and adequate outcome for the procedure.

##### (b) Repairing of Relationship:

A key component of Restorative Justice is that the reaction to criminal conduct centers around something beyond the offender and the offense. Peacemaking, dispute resolution and remaking connections are seen as the essential strategies for accomplishing equity and supporting the victim, the guilty party and for advantages of the community.

##### (c) Denouncing Criminal Conduct:

Reprobation is accomplished in an increasingly adaptable way, taking into account the guidelines, yet in addition the individual conditions of the offense, the person in question and the wrongdoer. It is intended to be a positive reprobation inside a bigger procedure, as opposed to being the sole focal point of the intervention.

##### (d) Encouraging Duty:

The restorative procedure is intended to make it simpler for guilty parties to accept dynamic accountability for their conduct and its results. A restorative procedure moves from simply evaluating legitimate blame to endeavoring to decide responsibility regarding a contention and its outcomes. This has the impact of expanding out the procedure past the particular episode, victim and, guilty party. The way wherein this duty will prompt action, in specific conciliatory sentiments and rebuilding, is left to be

<sup>1</sup> Raina SC, *Victimology: Towards a New Millennium in the Study of Victims, Victimization and Compensatory Jurisprudence in India* (2000).

<sup>2</sup> See Amendments of Cr.P.C. (2008).

<sup>3</sup> "What Is Restorative Justice?" (CSJ) <<https://csjindia.org/restorative-justice/>> accessed April 14, 2020.



resolved through the process itself and not through the programmed utilization of some broad lawful principles.

(e) Focused Reclamation:

Instead of underlining the principles that have been broken and the punishment that ought to be forced, restorative approaches will in general focus basically on the people who have been hurt. A Restorative Justice process doesn't really preclude all types of sanctions (for example fine, imprisonment, probation), yet its attention remains solidly on remedial, forward looking results. The helpful result that is being sought after is the fixation, to the extent it is possible, of the damage brought about by the wrongdoing by giving the guilty party with a chance to make significant reparation. Restorative Justice is relationship based and makes efforts towards results that satisfy a wide range of stakeholders.

(f) Reducing Recidivism:

The past conduct of people and its results are clearly a focal point of the restorative procedure, yet so is the wrongdoer's future behavior.<sup>4</sup> A guilty party's endeavor as it identifies with their future conduct is typically a fundamental element of agreements arrived at through intercession or other restorative processes.<sup>5</sup>

Changing or transforming the guilty party through the restorative process is a real goal

of the procedure as is the avoidance of recidivism.<sup>6</sup> The request that guilty parties comprehend and acknowledge duty regarding the results of their activities is unmistakably intended to influence the guilty parties' future conduct. It is comprehended that the community furthermore, statutory organizations have a task to carry out in the process.<sup>7</sup>

❖ VALUES OF RESTORATIVE JUSTICE SYSTEM

→ The values associated with the Restorative Justice System can be broadly divided into two types-

- (1) Normative Values &
- (2) Operational Values

→ Howard Zehr proposes that there are four **normative values**.<sup>8</sup>

- ACTIVE RESPONSIBILITY which means stepping up and help save and elevate restorative values and to present appropriate reparations in light of conduct that hurts others. From the victim's point of view, to attend completely to victims' needs — material, monetary, emotional and social. (Counting those actually close to the victim who might be likewise affected).<sup>9</sup> From the offender's point of view, to empower guilty parties to accept dynamic accountability for their activities that will bring about lesser exploitation of victims.<sup>10</sup>

<sup>4</sup> “Restitution Reduces Recidivism” (*Restorative Justice*) <<http://restorativejustice.org/rj-library/restitution-reduces-recidivism/5337/>> accessed April 16, 2020.

<sup>5</sup> *Id.*

<sup>6</sup> Schneider A, “Deterrence and Juvenile Crime - Results from a National Policy Experiment: Anne Schneider” (*Springer*) <<https://www.springer.com/gp/book/9781461389279>> accessed April 16, 2020.

<sup>7</sup> “The Evidence Restorative Justice” <<http://restorativejustice.org/10fulltext/restorative-justice-the-evidence>> accessed April 16, 2020.

<sup>8</sup> Zehr H and Toews B, *Critical Issues in Restorative Justice* (Lynne Rienner Publishers 2010).

<sup>9</sup> *Id.*

<sup>10</sup> Crawford A and Newburn T, *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice* (Routledge 2011).



- PEACEFUL SOCIAL LIFE which means reacting to wrongdoing in manners that assemble congruity, satisfaction, security, and community prosperity. The object is to forestall recidivism by putting forth attempts to reintegrate wrongdoers into the community.<sup>11</sup>
- RESPECT which means regarding and treating all parties to a wrongdoing as people with poise and worth. The reason here is to make the procedures related to Restorative Justice - non-criticizing, monetarily feasible and socially practicable process.<sup>12</sup>
- SOLIDARITY which implies the experience of help and connectedness, even in the midst of critical difference or dissimilarities.

→ Likewise, Howard Zehr and Van Ness<sup>13</sup> proposed 10 **operational values** to control how restorative procedures are overseen:-

1. Amends: Those liable for the mischief coming about because of the offense are likewise liable for fixing it to the degree conceivable.
2. Assistance: Affected parties are helped in turning out to be contributing individuals from their communities in the outcome of the offense.
3. Collaboration: Affected parties are welcome to discover solutions through common, consensual decision-making in the repercussions of the offense.
4. Empowerment: Affected parties have a genuine chance to take an interest in and

successfully impact the response to the offense.

5. Encounter: Affected parties are allowed the chance to meet the other parties in a protected situation to examine the offense, hurts, and the proper reactions.
6. Inclusion: Affected parties are welcome to legitimately shape and participate in restorative procedures.
7. Moral Education: Community guidelines are strengthened as values and standards are considered in deciding how to react to specific offenses.
8. Protection: The parties' physical and emotional wellbeing is essential.
9. Reintegration: The parties are given the method and chance to rejoin their networks as entire contributing individuals.
10. Resolution: The issues encompassing the offense and its outcome are tended to, and the individuals influenced are upheld, as totally as conceivable.

- Of these 10, four appear to be of specific significance: *encounter, amends, reintegration and inclusion*. On the off chance that Restorative Justice were a structure, we would hope to discover them as key highlights or basic components in its architecture.

❖ **COST EFFECTIVENESS OF RESTORATIVE JUSTICE SYSTEM**

→ As far as cost effectiveness is concerned, proof from research recommends the capability of Restorative Justice to fundamentally decrease the expenses

<sup>11</sup> Messmer H and Otto H-U, *Restorative Justice on Trial: Pitfalls and Potentials of Victim-Offender Mediation International Research Perspectives* (Springer 1120).

<sup>12</sup> Shapland J, Robinson G and Sorsby A, *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders* (Routledge 2011).

<sup>13</sup> Zehr H, *The Little Book of Restorative Justice* (Langara College 2016).



identifying with criminal equity.<sup>14</sup> In view of an investigation directed by Shapland et al. (2008), it was inferred that there is an 8 to 1 cost benefit ratio, i.e., for each £1 spent on Restorative Justice conferencing, the criminal equity framework will spare £8 from decreased expenses of reconviction.<sup>15</sup> Research by Sherman and Strang (2007) found that if just one out of each 50 helpful restorative meetings forestalled somebody serving one year in custody, then that by itself would take care of the expenses of every one of the 50 conferences. In light of surveys of excellent worldwide and New Zealand research, the New Zealand Ministry of Justice (2016a) reasoned that Restorative Justice can be financially effective, especially when substituting traditional court forms.

→ Another method for estimating cost viability could be to take a look at expenses to the wellbeing and social government assistance frameworks. On the off chance that victim recuperation is helped or sped up by Restorative Justice, there will be lesser requests on general practitioners, social workers, advocates, psychological wellness administrations and government assistance frameworks. It might be practically difficult to quantify this measurably, however the drawn out monetary reserve funds that would

accumulate from a systematic, widespread and tailored utilization of restorative practices would certainly be significant (Angel et al., 2014; Sherman and Strang, 2007). As the House of Commons Justice Committee (United Kingdom) expressed in a report in 2016, "there is clear proof that Restorative Justice can offer some value for money by both lessening reoffending rates and giving substantial advantages to victims".<sup>16</sup>

### ❖ STAKEHOLDERS IN THE RESTORATIVE JUSTICE SYSTEM

→ McCold and Wachtel<sup>17</sup> have given the structure of stakeholders which is material during the procedure of Restorative Justice. This structure recognizes the interests of the immediate stakeholders, those most influenced by a particular offence, from those in an indirect way affected.

→ Victims are harmed by the loss of control they experience because of the offense. Victims need to recover a sense of individual power.<sup>18</sup> This strengthening is the thing that changes victims into survivors. Offenders harm their relationships with their own community of care by breaking their trust. To recover that trust, they should be engaged to

<sup>14</sup> Sherman LW and Strang H, *Restorative Justice: the Evidence* (Smith Institute 2007).

<sup>15</sup> "Does Restorative Justice Affect Reconviction? The Fourth ..." (2008) <[https://restorativejustice.org.uk/sites/default/files/resources/files/Does\\_restorative\\_justice\\_affect\\_reconviction\\_-\\_The\\_fourth\\_report\\_from\\_the\\_evaluation.pdf](https://restorativejustice.org.uk/sites/default/files/resources/files/Does_restorative_justice_affect_reconviction_-_The_fourth_report_from_the_evaluation.pdf)> accessed April 17, 2020.

<sup>16</sup> Katharina.kiener-Manu, "Crime Prevention & Criminal Justice Module 8 Key Issues: 3. How Cost Effective Is Restorative Justice?" (*Crime Prevention & Criminal Justice Module 8 Key Issues: 3. How Cost*

*Effective is Restorative Justice?*) <<https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-8/key-issues/3--how-cost-effective-is-restorative-justice.html>> accessed April 16, 2020.

<sup>17</sup> "Summary" (*McCold, Paul and Wachtel, Ted. Restorative Justice Theory Validation.* -) <<http://www.justiciarestaurativa.org/www.restorativejustice.org/articlesdb/articles/2700>> accessed April 16, 2020.

<sup>18</sup> Zehr H, *Changing Lenses a New Focus for Crime and Justice* (Herald Pr), p-54.



take obligation regarding their wrongdoing.<sup>19</sup> The community of care, the individuals who have an passionate association with a victim or offender,<sup>20</sup> for example, guardians, companions, other relatives, educators, employers and others, meet their individual needs by guaranteeing that something be done about the wrongdoing, that the illegitimacy be recognized, that valuable advances are being taken to forestall further offending, and that victims and wrongdoers be reintegrated into their communities.<sup>21</sup>

→ The circuitous stakeholders, the individuals who are not emotionally associated with the principals yet who live close by or are individuals or authorities of government, religious, social or business associations whose zone of duty incorporates the spot or individuals influenced by the occurrence, must not take the contention by usurping the duties of those straightforwardly affected.<sup>22</sup> These indirect stakeholders have a duty to help and encourage procedures in which the direct stakeholders decide for themselves the result of the case. Such procedures will reintegrate both victims and offenders, construct critical thinking communities and fortify the civil society.<sup>23</sup>

### ❖ PARTICIPANTS IN THE RESTORATIVE JUSTICE PROGRAM

→ The following are the participants involved in the Restorative Justice Program-

1. **VICTIM(S)** - Adequate amount of consideration must be given to help victims, both during and after the procedure. Victims must be permitted to recount to their story. This may require that victims talk first in any discussion so as to maintain a strategic distance from an imbalanced focus on the guilty party's issues. Where it is possible, victims ought to be accompanied by, and have progressing support from, relatives and companions, and, where accessible, victim support organizations.
2. **OFFENDER(S)** - In numerous frameworks, a guilty party can be handled through the entire equity framework, from arrest, detainment, trial, condemning, and maybe incarceration, without talking in excess of a couple sentences.<sup>24</sup> The Basic Standards of Restorative Justice listed by the United Nations<sup>25</sup> suggests that remedial procedures should just be utilized where there is adequate proof to accuse the guilty party and with the free and deliberate assent of the guilty party, who ought to have the option to pull back such assent at any time during the procedure. Guilty parties likewise expect access to legal advice/ information.
3. **POLICE** - Suitable alternatives for police association in restorative programs include:<sup>26</sup> Filling in as a referral source to restorative projects; Explaining the restorative equity

<sup>19</sup> Fati A, *Punishment and Restorative Crime-Handling: a Social Theory of Trust* (Avebury 1995).

<sup>20</sup> Wachtel T, *Restorative Justice in Everyday Life: beyond the Formal Ritual* (Pipers Press 1999).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Strang H and Braithwaite J, *Restorative Justice and Civil Society* (Cambridge University Press 2001).

<sup>24</sup> "Handbook on Restorative Justice Programmes" <<https://www.un.org/ruleoflaw/files/Handbook> on

Restorative Justice Programmes.pdf> accessed April 18, 2020.

<sup>25</sup> "Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters - United Nations and the Rule of Law" (*United Nations*) <<https://www.un.org/ruleoflaw/blog/document/basic-principles-on-the-use-of-restorative-justice-programmes-in-criminal-matters/>> accessed April 18, 2020.

<sup>26</sup> *Supra Note 24.*



procedure to victims, guilty parties and different members; Participating among numerous others in a community based procedure; Facilitating restorative equity forms; Conducting Restorative Justice meetings and sessions; Using remedial methodologies for settling debates and strife at street level; Playing a job in observing the execution of restorative agreements and reporting breaches, if any.

4. **PROSECUTORS** - In both civil law and common law nations, prosecutors can allude cases to restorative procedures, the latter role having all the more as of late developed with the order of enactment in various jurisdictions.<sup>27</sup> In setting up restorative procedures in a jurisdiction, it is basic that prosecutors be associated with conversations from the start and that training and data be given to prosecutors so the two of them can comprehend the standards of Restorative Justice and welcome the potential benefit of the utilization of this alternative for juveniles and adults.<sup>28</sup>
5. **DEFENCE LAWYERS** - Defense legal counselors can play a significant job in disclosing to guilty parties the potential advantages of taking an interest in a Restorative Justice process.<sup>29</sup> They can help guarantee that the rights of the guilty party are secured and that opportunities of appeal stay accessible. They can additionally assume a critical job in cases including

juvenile offenders by guaranteeing that their consent to take part in a Restorative Justice process is well-informed and uninhibitedly given.<sup>30</sup>

6. **JUDICIARY** - In both civil law and common law countries, individuals from the judiciary can play a key job in alluding cases to a restorative process, taking an interest themselves in the restorative procedure, as well as checking the understandings that are reached.<sup>31</sup> Even in circumstances where a wrongdoer has entered a guilty plea or has been seen as liable of an offense, the appointed authority may suspend the imposition of a sentence pending the result of a restorative process.<sup>32</sup>
7. **CORRECTIONAL DEPARTMENT** - As of late there has been expanding utilization of restorative procedures in redresses and all through the different phases of the execution of the guilty parties' sentence.<sup>33</sup> Restorative procedures can likewise be utilized inside correctional establishments to alleviate the more negative traits of life inside correctional organizations, including giving forums to detainees to determine their disparities calmly and to create an elective method for dispute resolution.
8. **COMMUNITY MEMBERS** - Numerous remedial equity approaches accommodate an extended job for network individuals in the goals of contention and in developing understandings to be clung to by guilty parties and once in a while additionally by different gatherings. It has been noticed that

<sup>27</sup> "Mapping Restorative Justice: Developments in 25 European ..." <<http://restorativejustice.org/rj-library/mapping-restorative-justice-developments-in-25-european-countries/5888/>> accessed April 18, 2020.

<sup>28</sup> *Id.*

<sup>29</sup> Wright KJ, *Lawyers as Peacemakers Practicing Holistic, Problem-Solving Law* (American Bar Association 2014).

<sup>30</sup> *Id.*

<sup>31</sup> Zehr H, *Changing Lenses a New Focus for Crime and Justice* (Herald Pr).

<sup>32</sup> *Id.*

<sup>33</sup> Edgar K and Cavadino P, *Restorative Justice in Prisons: a Guide to Making It Happen* (Waterside Press 2008).



'network association' can assign individualistic methods of cooperation or an incredible or national lobby.<sup>34</sup>

9. **SOCIAL WORKERS** – Restorative Justice and social work share various standards and objectives, as the two of them look to stem brutality and to address the agony related with harm.<sup>35</sup> During restorative practices, social workers analyze the routes through which they can contribute and explore more advantages of Restorative Justice in the areas of school settings, communities, domestic violence, homicide, prisons, child welfare and gerontology.<sup>36</sup>

10. **NGOs** - Non-Governmental Organizations (NGOs) have assumed a significant job in the improvement and execution of Restorative Justice programs around the world. Their viability in making restorative discussions stems, in enormous measure, from their being nearer to the communities than criminal justice work force generally are.<sup>37</sup> Similarly, NGOs may have more credibility now and again than the police, public prosecutors and judges and be held in higher regard.<sup>38</sup> NGOs may likewise collaborate with government, yet in doing as such, ought to guarantee themselves that doing so won't compromise the trustworthiness of the program or bring political or different agendas into the process.<sup>39</sup>

## ❖ COMPARISON OF RESTORATIVE JUSTICE SYSTEM WITH THE TRADITIONAL JUSTICE SYSTEM

### → **Retributive justice vs. Restorative Justice**

An extraordinary philosopher of law Conrad Brunk has contended that on the hypothetical or rational level, retribution and restoration are not the total opposites that we regularly assume.<sup>40</sup> Indeed, they share a lot of commonalities. An essential objective of both retributive hypothesis and remedial hypothesis is to vindicate through reciprocity, by "evening the score." Where they vary is in what successfully will right the balance. Both retributive and restorative approaches of equity recognize a fundamental moral instinct that a balance has been lost by the offense. Thus, the victim merits something and the guilty party owes something. They vary, nonetheless, on the currency that will satisfy the commitments and right the parity. Retributive hypothesis accepts that torment will vindicate, yet actually that is frequently counterproductive for both victim and wrongdoer. Restorative Justice approach, on the other side, contends that what really vindicates is affirmation of victims' damages and needs joined with an active exertion to urge wrongdoers to assume liability, make right the wrongs and address the reasons for their conduct.

### → **Criminal Justice vs. Restorative Justice**

<sup>34</sup> Faget and Jacques, "Mediation, Criminal Justice and Community Involvement. An European Perspective" (CORE) January 1, 1970 <<https://core.ac.uk/display/47775040>> accessed April 18, 2020.

<sup>35</sup> Beck E, Kropf NP and Leonard PB, *Social Work and Restorative Justice: Skills for Dialogue, Peacemaking, and Reconciliation* (Oxford University Press 2011).

<sup>36</sup> *Id.* at 63.

<sup>37</sup> Strang H, *Restorative Justice and Civil Society* (Cambridge Univ Press 2001).

<sup>38</sup> *Id.*

<sup>39</sup> Morrison B and Ahmed E, *Restorative Justice and Civil Society* (Blackwell 2006).

<sup>40</sup> "Summary" (Brunk, Conrad G. "Restorative justice and the philosophical theories of criminal punishment." -)

<<http://www.justiciarestaurativa.org/www.restorativejustice.org/editions/2001/July01/articlesdb/articles/1516>> accessed April 17, 2020.



Restorative Justice advocates may dream of a day when equity is completely restorative yet whether this is practical is disputable, atleast in the short term. Increasingly feasible, maybe, is when restorative justice is the standard while some type of the lawful or criminal justice framework gives the reinforcement or option. Attainable, maybe, is the point where all our ways to deal with equity are restoratively-oriented. Society must have a framework to sift through "reality" as well as can be expected when individuals are rejecting obligation. We should have a procedure that focuses on societal requirements and commitments that go past those of the immediate stakeholders. We additionally should not lose those characteristics that the legitimate framework at its best speaks to: the standard of law, fair treatment, a profound respect for human rights and a precise advancement of law.

#### ❖ RESTORATIVE PRACTICES IN CRIMINAL JUSTICE SYSTEM IN INDIA

→ The concept of restorative Justice is not alien to the criminal justice system in India. The following are some of the legislative provisions which reflect certain principles and practices of Restorative Justice-

1. Article 141 of the Indian Constitution
2. Section 357, 358 & 359 of the Criminal procedure Code, 1973
3. Section 5 of Probation of Offenders Act, 1958.

→ This can also be substantiated with the help of certain recent case laws adjudicated by various High Courts of India-

1. In the case of *State of Gujarat Vs. Raghavbhai Vashrambhai and Ors.* the Honorable Justice J.N. Bhatt of Gujarat High Court had opined :-

*"In a domain of victimology the choice is one of the view point towards satisfying the structure and objective and restorative justice to the survivors of wrongdoing."*<sup>41</sup>

2. In the case of *Bhagwan Kaur vs. State of Punjab*, the honorable Justice Viney Mittal of Punjab and Haryana High Court has observed :-

*"Compromise in present day social orders is the sine qua non of congruity and efficient conduct. It is the spirit of equity and if the intensity of the court is utilized to improve such a trade off, which thus, upgrade the social harmony and decreases erosion, at that point in really is "best hour of justice."*<sup>42</sup>

3. In the case of *Anupam Sharma Vs. NCT of Delhi and Another*, the honorable Justice Pradeep Nandrajog of Delhi High Court had observed :-

*"Restorative Justice might be utilized as an equivalent word for mediation. The objective and nature of restorative justice targets reestablishing the interest of the person in question. Contribution of the victim in the settlement procedure is welcome during the process of restorative justice. It is a procedure of deliberate arrangement and fixation, straightforwardly or in a roundabout way between the wrongdoer and the victim."*<sup>43</sup>

- Thus, various Judges of High Courts in India have realized the importance of Restorative Justice in the criminal justice system of India.

<sup>41</sup> *State of Gujarat Vs. Raghavbhai Vashrambhai and Ors.* (2003) 1 GLR 205.

<sup>42</sup> *Bhagwan Kaur Vs. State of Punjab and another.*, RSA, 2701-2001, [2006] RD-P&H 723.

<sup>43</sup> *Anupam Sharma Vs. NCT of Delhi and Another.*, 146 (2008) DLT 497.



### ❖ CRITICISMS OF THE RESTORATIVE JUSTICE SYSTEM

→ From a purely conceptual perspective, Restorative Justice System has the following criticisms:

1. There is ambiguity in the conceptual definition(s) of Restorative Justice emphasizing indirectly on privatizing crime.
2. Restorative Justice deals with the penalty, not fact finding phase of the criminal process.
3. The results in the Restorative Justice Process Outcomes are modest but patchy.

#### • **CONCEPTUAL DILEMMA**

→ The assorted variety of definitions and understandings adds to extravagance in the Restorative Justice field, yet it is likewise a source of disarray and even clash. Numerous scholars like Braithwaite emphatically alert against building up firm meanings of Restorative Justice or setting standards for its practice, because of a paranoid fear of cutting off development or responsiveness to local needs.<sup>44</sup> Simultaneously, many concur that we do need to characterize Restorative Justice clearly enough to recognize it from retribution and rehabilitation, from different sorts of alternative equity forms, and from strikingly awful practice.<sup>45</sup>

#### • **RESTORATIVE JUSTICE OR PRIVATIZING CRIMES?**

→ The restorationist vision is established in a center hypothetical postulate, to be specific, the privatization of the criminal scene. Here

Restorative Justice is appropriately radical. It moves from a state-center meaning of crime and mulls over a transfer of power from the state.<sup>46</sup> It re-conceptualizes the criminal scene as a private clash between people that has upset the relations of community within the influenced portion of the populace. The basic task of Restorative Justice is to patch those relations, without the interruption of the ultimately violent resources of the state which is by all accounts a troublesome one in a populated nation like India.

#### • **RESTORATIVE JUSTICE- A PUNITIVE ORIENTED CONCEPT**

→ At the point when we consider the typical types of Restorative Justice practices, for example, family group conferences (in New Zealand), family or community meetings (in Australia), police restorative cautioning schemes (in selected jurisdictions in England and North America), circles and condemning circles (North America), or enhanced types of victim offender intervention (North America and a few European nations), we see that all are worried about what an equity practice ought to be after an individual has admitted committing an offense. Restorative Justice doesn't address if a 'crime' happened or not, or whether a suspect is 'guilty' of a wrongdoing or not. Rather, it centers around 'what shall we do' after an individual concedes that s/he has committed an offense.

#### • **MODEST BUT PATCHY RESULTS IN THE RESTORATIVE JUSTICE PROCESS OUTCOMES**

<sup>44</sup> Braithwaite J, "Setting Standards for Restorative Justice" (*British Journal of Criminology*) <[https://www.academia.edu/18313183/Setting\\_Standards\\_for\\_Restorative\\_Justice](https://www.academia.edu/18313183/Setting_Standards_for_Restorative_Justice)> accessed April 19, 2020.

<sup>45</sup> Johnstone G, *Restorative Justice: Ideas, Values, Debates* (Routledge 2013).

<sup>46</sup> Levrant S and others, "Reconsidering Restorative Justice: The Corruption of Benevolence Revisited? - Sharon Levrant, Francis T. Cullen, Betsy Fulton, John F. Wozniak, 1999" (*SAGE Journals*) <<https://journals.sagepub.com/doi/10.1177/0011128799045001001>> accessed April 19, 2020.



→ Furthermore, it may not be conceivable to have value or proportionality across Restorative Justice results, when results should be designed from the specific sensibilities of those in Restorative Justice encounter. Therefore, we ought to anticipate modest and patchy outcomes' to be the standard, not the exception.<sup>47</sup>

- Restorative Justice has not yet changed the essential course of the criminal justice framework. It has demonstrated to be an increasingly powerful option in contrast to jail or different types of punishment; however it can create alleviated outcomes regarding victim cooperation and reparation for injury. Victims' issues are most certainly not settled for the last time by the arrangements made accessible to them. The objectives of reparation and mending set forward in these methodologies must not limit us to a shortsighted perspective on their necessities and the perplexing procedures related with their recuperation. Restorative Justice has incredible potential for the parties in question and for the community. In any case, it isn't the magic answer for all shades of malice. It stays a choice for certain violations in certain conditions and under certain conditions. It must not be viewed as a modest type of equity or imagine equity. Nor must it trivialize the legitimate requests of victims.

#### ❖ **CRITICAL ISSUES OR CHALLENGES FACED IN THE IMPLEMENTATION OF RESTORATIVE JUSTICE SYSTEM**

<sup>47</sup> Hirsch AV, *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Hart 2004).

<sup>48</sup> Katharina.kiener-Manu, "Crime Prevention & Criminal Justice Module 8 Key Issues: 4. Issues in Implementing Restorative Justice" (*Crime Prevention*

→ The four broad issues or challenges in the implementation of the system of restorative Justice are as follows-

#### 1. **THE MISCONCEPTION OF RESTORATIVE JUSTICE BEING SOFT ON CRIME**

There is a mainstream observation that Restorative Justice is "soft on crime" and that a harder reaction is expected to prevent criminal behavior. Some prefer to see the job of Restorative Justice being constrained to minor offenses and cases involving children and others figure Restorative Justice ought not be applied at all when reacting to wrongdoing. Some argue that victims could feel strained to partake in a Restorative Justice discourse and in this way be denied access to justice. As for the observation that Restorative Justice may be a "simple way" for guilty parties, proof proposes that wrongdoers think that it is all the more testing to meet the victim eye to eye and understand the effect of their bad behavior than going to

#### 2. **LEGISLATION**

It is vital to understand that an enactment that accommodates Restorative Justice approaches isn't, on its own, adequate to guarantee full execution. Elements identified with the particular legislative provisions, funding, public perspectives and mindfulness, cooperation between providers, and trust in the process would all be able to affect the quality and availability of Restorative Justice administrations.

& Criminal Justice Module 8 Key Issues: 4. Issues in Implementing Restorative Justice) <<https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-8/key-issues/4--issues-in-implementing-restorative-justice.html>> accessed April 19, 2020.



However, more fundamental are the philosophical contrasts that exist between a restorative approach to deal with accomplishing equity, and the overarching ethos of retribution. In any case, there are a few different ways to advance more extensive utilization of Restorative Justice out in the open and social life.<sup>49</sup>

**3. AWARENESS RAISING**

The advancement of Restorative Justice requires methodologies for bringing issues to light among justice officials, for example, police, prosecutors and judges, just as for cultivating expanded comprehension about Restorative Justice in the public arena for the most part. Criminal justice authorities should know about Restorative Justice projects and fundamental Restorative Justice standards to facilitate appropriate referral to administrations. Citizens should be increasingly educated about the choices accessible to them in settling their disputes or clashes. This doesn't block the regular alternatives of Court and sanctioning but the community should be made mindful of procedures and avenues of access to administrations, which might be more likely to address their need for affirmation, emotional and psychological repair, and the chance to offer some kind of changes.<sup>50</sup>

**4. RELATIONSHIP WITH INDIGENOUS COMMUNITIES & INTERCULTURAL ASPECTS**

In ongoing decades, the expansion in the utilization of Restorative Justice within the customary criminal justice framework has brought up issues about the degree to which indigenous people enjoy access to

Restorative Justice forms in manners that addresses their issues. This is additionally aggravated by the broad and profoundly ingrained issues of structural racism or systemic bias present in Western Criminal Justice Frameworks that have been generally reported. A few researchers have identified that indigenous individuals have less access to diversionary and Restorative Justice measures because of systemic inclinations within criminal justice processes. Additionally, people with an immigrant foundation or displaced people are reported as having more troubles in getting access to Restorative Justice services. Proof of this sort focuses to the basic need to dispose of any type of discrimination that compromises equal access to justice, including access to processes of Restorative Justice.<sup>51</sup>

→ Other challenges include problems of definition, problems of institutionalization, problems of displacement, problems of relevance, etc.

**SUMMATIONS AND SUGGESTIONS**

→ In this research, an endeavor has been made to discover the possibilities of Restorative Justice – satisfying victim without defaming the guilty party. The study concluded the following features of Restorative Justice:-

- Focuses On Victims' Needs
- Focuses On The Affected Community's Needs
- Offenders To Assume Active Responsibility
- Reintegrate Victims And Offenders Into The Community
- No Social Stigma
- Community Based
- Inexpensive

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*



→ According to Harry Mika and Howard Zehr,<sup>52</sup> we are working towards restorative justice when we:

- Focus on the damages of bad behavior more than the standards that have been broken;
- Show equivalent concern and promise to victims and wrongdoers, including both during the process of justice;
- Work towards the reclamation of victims, enabling them and reacting to their necessities as they see them;
- Support guilty parties while urging them to comprehend, acknowledge and carry out their commitments;
- Recognize that while commitments might be hard for guilty parties, they ought not be expected as damages and they should be attainable;
- Provide open doors for exchange, immediate or backhanded, among victims and guilty parties as fitting;
- Involve and enable the influenced community through the equity procedure, and increment its ability to perceive and react to community bases of wrongdoing;
- Encourage joint effort and reintegration, as opposed to compulsion and segregation;
- Give thoughtfulness regarding the unintended outcomes of our activities and programs; and
- Show regard to all parties (including victims, wrongdoers and equity associates).

❖ **CONCLUSION**

→ There are different originations of Restorative Justice. For certain, its substance lies in encounters, the remedial procedures wherein parties may find healing. For other

people, it is a perspective on equity that demands that the mischief brought about by wrongdoing be fixed to the degree conceivable. For still others, it is a method for living that changes associations with others and with the social and physical condition. We hold to the reparative origination with the understanding that repair is best achieved when the parties themselves cooperate in deciding how that ought to be done.

→ Restorative Justice reacts to specific crimes by accentuating recuperation of the victim through review, vindication, and mending, as well as recompense by the wrongdoer through reparation, fair treatment, and habilitation. It looks for forms through which parties can find reality with regards to what occurred and the damages that came about, to identify the injustices included, and to concede to future activities to fix those damages. It thinks about whether explicit wrongdoings propose the requirement for new or reconsidered systems to forestall wrongdoing. Restorative procedures and practices hold their remedial character as they mirror the qualities and standards of Restorative Justice. In the event that these qualities and standards are lost or damaged, at that point the result may not exclusively be less remedial, it might be ruinous. Four of these qualities are especially significant: *encounter, amends, reintegration, and inclusion.*

→ Restorative Justice looks to forestall wrongdoing by expanding on the qualities of community and the legislature. The community can construct harmony through solid, comprehensive, useful, and just connections. The government can bring order through reasonable, compelling, and miserly

<sup>52</sup> “A Restorative Framework for Community Justice Practice” (Restorative Justice) <<http://restorativejustice.org/rj-library/a-restorative->

[framework-for-community-justice-practice/4450/](http://restorativejustice.org/rj-library/a-restorative-framework-for-community-justice-practice/4450/)> accessed April 17, 2020.



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use of power. Restorative Justice stresses the need to fix past damages in order to get ready for what's to come. It tries to accommodate guilty parties with those they have hurt, and it approaches communities to reintegrate victims and offenders. Restorative Justice has huge contributions to make as a structure for understanding the work of peace building and as an establishment for the advancement of practices, procedures and organizations aimed at accomplishing it.

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