

EXPLORING THE VIABILITY OF THE OPTION OF RESTORATIVE JUSTICE AS A MEANS TO AMELIORATE PLIGHT OF THE VICTIMS OF CRIMES COMMITTED BY JUVENILES

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Abstract

Justice is the most cherished goal of any polity. While the term is relative in its understanding, it can surely be delivered only when one does not feel deprived of his liberty to seek it. In any crime like situation, victim lies at the core of it. And rendering a victim only as a witness for a prosecution, or merely as a piece of evidence/information, with no independent rights of his own surely deprives him of his rights to seek justice in the true sense. The focus of our criminal justice system has always dwindled between choices of different theories of criminology, from retributive, to preventive, to deterrent to reformative. All of these theories work only from the perspective of the accused/offender. From severely punishing the offender to creating deterrence in the like-minded potential criminals, to restoring or reclaiming the offender through rehabilitative ways, all of these choices have always focused on the offender alone, sadly ignoring the reformist agenda from the victim's point of view.

Victim Justice lay as the biggest aspiration of any progressive society today. This study is thus undertaken to fill the gaps in resolving the current controversies marring the present-day legal system by addressing the concerns of the victims to be able to reconcile the needs with the present-day legal system, along with suggesting changes to be made to meet the challenges of restorative justice for the victims of juvenile crimes. All aspects concerning victim's right, like participating in the criminal process, or act as an initiator of the criminal process, or being the

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one to be rehabilitated and compensated by the criminal process shall be comprehended in this research work. Other issues that the paper aims to address are, how well can the practices related to restorative justice worldwide can help in purging the effects of crime on the victim? And what role can the State play in effectively attaining this goal?

The entire premise of this paper is thus to capture the essence and the trajectory of our criminal justice administration in terms of restorative justice, the role of the victim throughout the criminal justice process, and the States' role in ensuring restitution to the victims of crime, especially with reference to the victims of juvenile crimes. The idea is to be able to showcase the main objective, usage and functionality of the existing model of the criminal process, and if need be, to invigorate a model of the criminal process based on restorative justice practices.

INTRODUCTION

We have, as is often said, a punishment system not a justice system for the irony today lies in the fact that all the resources of criminal justice have been used for punishment of offenders, with almost nothing being done by way of crime prevention or support or recompense to the victim of crime. Crime symbolizes a major form of conflict in the society. It deprives the victim from their fundamental human rights especially those pertaining to life, liberty and safety. In responding to a crime our primary concern should be to make offenders aware of the harm they have caused, to get them to understand and meet their liability to repair such harm, and to ensure that further offences are prevented; that the form and amount of reparation from the offender to the victim to be taken to prevent re-offending which should be decided collectively by offenders, victims and the Courts. Restorative Justice is the need of the hour.

Historically speaking, for an informal settlement India always had its roots in villages via panchayat system which made both the parties to a dispute, put up their case informally and then the case was decided based on the conventions and customs of the

community. But sadly enough, the restorative justice in the Indian criminal jurisprudence has always been more or less redundant especially on the issue of rehabilitation of juveniles, let alone victims of juvenile crimes. The reason is that the system of criminal justice in India is not a victim oriented one.¹ There never existed a separate law enabling the victims to have their say in the processes of criminal justice. The restitution, restoration and compensation are still not very common practices here. The main reason attributed to it could be, perhaps, that the procedural law in the country did not really provide for these practice until 2003.

It was the Committee on Reforms of Criminal Justice System, chaired by Justice Dr. V.S. Malimath, Ministry of Home Affairs, which for the very first time, in its Report submitted to the Government of India in March 2003, perceived that “*justice to victims*” is one of the fundamental imperatives of criminal law in India.² It suggested a *holistic justice system for the*

¹ G.S. Bajpai, *Victim in the Criminal Justice Process: Perspective on Police and Judiciary*, Uppal Publishing House, (1997).

² N.R. Madhava Menon, *Victim's Rights and Criminal Justice Reforms*, THE HINDU, Mar. 27, 2006, at 7, available at <http://www.hindu.com/2006/03/27/stories/2006032703131000.htm>.

victims by allowing, among other things, participation in criminal proceedings as also compensation for any loss or injury.³ In furtherance of this Report, an Amendment was brought about in 2005 in The Code of Criminal Procedure, which paved way for the subsequent reforms to be brought about in enabling justice to the victims of crime.⁴ This Amendment, however failed to define the term 'victim'. It was only in 2008 that The Criminal law (Amendment) Act defined 'Victim' for the first time as 'a person who has suffered any loss or injury caused by the reason of act or omission for which the accused is charged.'⁵ Until 2009, there was no comprehensive legislation or a well-designed statutory scheme in India that allowed a victim to seek compensation from either the perpetrator or the State. Quite late in 2009 the legislature realized that the crime causes a permanent loss to the victim and there must be reparation of it irrespective of the acquittal or conviction of the accused. it was then, that The Criminal Law Amendment Act, 2009, which addressed the issue of victim's right to compensation, by

introducing Section 357A in Cr.P.C. to provide for compensation in addition to the compensation under S. 357. While S. 357 reads, "Court may award compensation to victims of crime at the time of passing of the judgment, if it considers it appropriate in a particular case, in the interest of justice", S. 357A makes it mandatory for State government to frame a scheme in coordination with Central government for providing funds for compensation to victims or his/her dependents.⁶ **The concept of restorative justice to the victims of crime concerns itself with the compensation, rehabilitation and participation in the criminal process.** In the same spirit, Section 372 proviso was also added which provides for independent right to appeal to the victims. The concern of the Indian legislators for the restorative justice manifested with the introduction of the scheme for Plea Bargaining in Chapter XXIA of the Cr.P.C. The right of compensation to the victim was crystallized internationally by the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of

³ 1 Report of Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Government of India (2003) at 80-81, ¶ 6.8.

⁴ It inserted S. 164-A in The Code of Criminal Procedure 1973, pertaining to medical examination of a victim of rape by a registered medical practitioner.

⁵ Section 2(wa), Cr.P.C, 1973

⁶ The Criminal Law Amendment Act 2009 inserted S. 357A to the Cr.P.C. providing for a mandatory victim compensation scheme. S. 357(2) casts a duty on District Legal Service Authority or the State Legal Service Authority, as the case may be, to decide the quantum of compensation to be awarded to the victim under the scheme referred in sub section (1).

Power⁷ of 1985, which recognizes four types of rights and entitlements of victims of crime: (a) Access to justice and fair treatment, (b) Right to restitution, (c) Personal assistance and support services, and (d) Compensation.

Talking specifically about the juvenile laws in the country, the Juvenile Justice (Care & Protection) Act 2015 provides for a number of alternative sanctions,⁸ like community service, counselling and fine. The JJ Act may combine such restorative justice practices by keeping in mind a couple of parameters like: the circumstances of its commission, the nature of offence committed by the CCL, the impact it has had on the victim, lessons that need to be taught to the CCL and how can the programme repair the harm to the victim. If worked upon and applied appropriately, any offence is fit for restorative justice today. This practice of restorative justice is followed by many countries worldwide to

both rehabilitate children who have committed crimes and to repair relationships, as far as this can.

It is needless to mention, practices under Restorative justice can certainly prove to be very effective in serving as a positive disciplining tool amongst children housed in different Child Care Institutions. It can also be useful in cases where there is some peer harm involved or in cases of conflict resolution amongst children. But sadly enough, despite having made several changes in the criminal laws of the country, victim still lacks in several respects and does not have a right equivalent to that of the accused.⁹ In this backdrop, this work endeavors to analyze and explore the scope of reformation and orientation from the point of view of the victims of crime by way of a five part study. The *first part* defines Restorative Justice as a profound theory of justice. The *second part*, explores the Global regime on restorative justice for victims of crime and establish its rehabilitative ideals in purging the effects of crime and restoring the balance by resurrecting Victim's Rights in so far as offences committed by juveniles are concerned. The *third part*, encapsulates the

⁷ United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, U.N. Doc.A/RES/40/34 (Dec.11, 1985). Also refer Article 6-9, Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc.A/RES/217(III) (Dec. 10, 1948); Article 9(5), International Covenant on Civil and Political Rights, G.A. Res. 2200(XXI) A, U.N. Doc. A/RES/2200(XXI) (Dec. 16, 1966); Article 5(5), European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222.

⁸ Section 18(1) JJ Act, 2015

⁹ See S. 303, 304 of Cr.P.C provides right to be defended by the accused and legal aid for the same, no such provision exists for the victim of the crime.

national legislative discourse on restorative justice. The *fourth part*, interprets the judicial exposition in realizing and addressing ‘Victim’s Rights through restorative justice in India,’ especially in cases of juvenile crimes. And finally the *fifth part* concludes the study and suggests useful insights about repositioning of victims in the Indian criminal justice system, with special reference to juvenile justice system. The purpose of this study is thus, to closely understand the new vistas of the concept of restorative justice and set the precincts of the viable practices associated with the same in the context of victims’ rights in so far as the perpetrator is a juvenile.

Part I: Restorative Justice Model: Meaning, Silences & Inter-relationships

Traditional criminal justice system views the State as the primary victim of crime, and thereby emphasizes on treatment and rehabilitation models for the offender, who happen to violate the interest of the State. In a rehabilitative/treatment based approach (specifically in cases of juvenile crimes), the State endeavors to inculcate accountability towards the system in juvenile offenders, ignoring or devaluing the importance of accountability towards the victims of crime.

But justice demands that those who have been injured be restored,¹⁰ thus fostering the growth of restorative justice as an alternative philosophy for addressing crime.

Restorative philosophy thereby provides victims with an opportunity to participate in the justice process and urges offenders to understand the harm caused by their behavior, improving upon the accountability of the offender towards the victim of crime.¹¹ There are several books and articles written on the concept of restorative justice. Some notable works in the field of restorative justice and victimology are done by Gerry Johnstone;¹² G. Johnstone and D.W. Van Ness;¹³ Hirsh, Andrew Von;¹⁴ Howard Zehr;¹⁵ K.I. Vibhute,¹⁶ M. Liebmann;¹⁷

¹⁰ Tan Wen Jun, Zhang Jialin & Faizan Rafi Hashmi, *Tackling Juvenile Delinquency: Enhancing Restorative justice in Singapore*, available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://beyondresearch.sg/PAE%2520Final%2520Draft_Tan%2520Wen%2520Jun_%2520Faizan%2520Rafi%2520Hashmi_%2520Zhang%2520Jialin.pdf (Last visited on 05-10-2023)

¹¹ Kate E. Bloch, *Reconceptualizing Restorative Justice*, 7 *Hastings Race & Poverty Law Journal*, 201 (2010).

¹² Restorative justice : Ideas, Values, debates (Lawman, New Delhi, 2003)

¹³ Handbook of Restorative Justice, edited by Gerry Johnstone & Daniel W. Van Ness, (Willan Publishing, 2007)

¹⁴ Restorative Justice and Criminal Justice: Competing or reconcilable paradigms? (Oxford: Hart Publishing, 2003)

¹⁵ The Little Book of Restorative Justice(Good Books Publishers, Intercourse, Pennsylvania, USA, 2003); Changing Lenses (Herald Press, Ontario, 1990)

Malik and Krishan Pal,¹⁸ S. Mundrathi;¹⁹ T. Wachtel;²⁰ Haveripeth D.Prakash;²¹ K.D Gaur;²² P. McCold;²³ Subhash Chandra Singh;²⁴ Sukumar Bose;²⁵ Sunanda Dey and B.N Chattoraj;²⁶ Supinder Kaur²⁷ ; V.R

Krishna Iyer²⁸. Amongst these Zehr (2003) suggests that restorative justice may be best defined by a group of core values and principles. It lists five basic principles that guide restorative practices: (1) Focus on the harm and consequent needs of the victim, community and offender, (2) Involve those with a stake in the outcome, (3) Address the obligations that result from the harms, (4) Use inclusive, collaborative processes, and (5) Seek to put right the wrongs. Adjunct and central to these principles are the core values of restorative justice that focus on respect and humility. The primary interest of the criminal justice system is to enforce society's rights to sanction and to punish the offenders. The criminal justice system's primary goals are societal in nature, victims do not have the right to insist on arrest and prosecution of offenders. The real injury to the real victim of crime is ignored when it comes to punishment. The victims of crime are the most neglected persons in the entire criminal justice process (S.C Singh, 1998). It is argued that the criminal justice process should be democratized and the victims should have the same legal rights as the offenders enjoy under existing criminal justice system. The novel concept of

¹⁶ "Justice to Victims of Crime: Emerging Trends and Legislative Models in India", in *Criminal Justice: A Human Rights Perspective of the Criminal Justice Process in India* 370, 392-93 (2004)

¹⁷ *Restorative Justice: How it Works*, (Jessica Kingsley Publishers, London, 2007)

¹⁸ *Penology, Victimology and Correctional Administration in India* (Allahabad law Agency, Faridabad, 2011)

¹⁹ *Laws on Compensation to Victims of Crime and Abuse of Power*, (Deep & Deep Publications, New Delhi, 2002)

²⁰ *Real Justice: How to Revolutionize our Response to Wrongdoing* (Pipersville, PA: Piper's Press, 1997)

²¹ "Restorative Justice and Victims: Right to Compensation", *International Research Journal of Social Sciences* Vol. 2(2), pp. 43-47, February, 2013

²² "Poor Victim of Uses and Abuses of Criminal Law and process in India", *Journal of Indian law Institute*, 35, pp.183-232, 1993

²³ "Primary restorative justice practices" in G. Maxwell & A. Morris (Eds.), *Restorative justice for Juveniles*, (Oxford: Hart Publishing, 2001) pp. 41-58; "Restorative justice theory validation" in E. Weitekamp and H-J. Kerner (Eds.), *Restorative Justice: Theoretical Foundations* (Willan Publishing, Devon, UK) pp. 110-142, 2002; "The recent history of Restorative Justice: Mediation, Circles and Conferencing" in *Handbook of Restorative Justice*, D. Sullivan and L. Tift. (eds.) (Routledge, 2006)

²⁴ "Participation of Victim in Criminal Justice Process", *Criminal law Journal*, 104, (May), pp.74-79, 1998

²⁵ "Victimology :As a form of consciousness", *Indian Journal of Criminology & Criminalistics*, 16, (July-Dec), pp.25-40, 1995. "Victimology and allied issues", *Indian Journal of Criminology & Criminalistics*, 21 (1-3), (Jan-Dec), pp.51-61, 2000

²⁶ "Restorative Justice in India: Prospects and Constraints", *The Indian Journal of Criminology and Criminalistics*, Vol. XXIX Issue No. 1, pp. 21-32, Jan-April, 2008

²⁷ "Need of Restorative Justice in Criminal Justice System", *Maharshi Dayanand University Law Journal*, Vol. XIV Part-1, pp. 275-290, 2009

²⁸ "Victimology : Victims of Criminological neglect", *Indian Journal of Criminology & Criminalistics*, 15, (July-Dec.), pp. 1-5, 1994

victimology is a step towards fulfilling the avowed promise made by our Constitution makers (Malik, Krishan Pal, 2011). To make the criminal justice system more effective and rational, the laws need to be reformed which have also been invigorated time and again by various Criminal Law amendment acts.

For a holistic application of Restorative Justice Principles, it must find its way from the moment crime is committed and thereafter practiced at every stage of the criminal process until the victim is sufficiently compensated and rehabilitated. It may also provide victims with an enhanced role in the disposition of their cases which in turn imposes new obligations upon them (McCold P., 2001). In the pre-independence period the criminal justice system remained largely preoccupied with the *crime-control oriented* policy that viewed criminal justice in terms of a state monopoly with a narrow focus of justice, confined to the State and the accused.²⁹ However, in the post-independence period it expanded beyond the reformation and rehabilitation of the offender to acknowledge the plight and concerns of the victims.

²⁹*Supra* note 11.

There is ample literature available as to how to make restorative justice applicable to the offenders, convicts and prisoners. Yet, the corpus of literature is insufficient regarding restorative justice to the victims. Nevertheless, victimology has concerned many and it has now gained pre-eminence for the researchers, lawyers, scholars and professionals. The lack of literature concerning implementation of these principles and practices for the victim generates a keen interest to research on the said topic from the point of view of the victim. Since, the scope of present research is confined to the study of restorative justice for the victims, we seek to explore certain questions along with evaluating the implementation of restorative justice from victim's side.

Part II: Global regime on Restorative Justice

Restorative justice processes are deeply resonant with the principles and philosophy of juvenile justice in The United Nations Convention on the Rights of the Child, 1989.³⁰ The Committee on the Rights of the Child states: "*The protection of the*

³⁰ Restorative Circles within the Juvenile Justice System, available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://enfoldindia.org/wpcontent/uploads/2018/05/Restorative-Circles-Within-the-Juvenile-Justice-System.docx.pdf> (Last Visited on 06-09-2023)

best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders."³¹

Restorative justice model thus assumes that justice can and should promote healing both at the individual level and at the societal level; which it does by infusing a sense of responsibility by pinning an honest accountability on the perpetrator. Speaking categorically about rehabilitation of CCL, this format aims at making them aware of the negative implications of their actions which impacts the victim, society and community at large, and helps them to make amends. Justice demands that those who have been injured be restored.³² Restorative model thus provide victims with an opportunity to participate in the justice process and urges offenders to understand the harm caused by

their behavior,³³ thereby improving their accountability towards the victim, and make amends accordingly.³⁴

2.1. International framework on Restorative justice

In the International regime, the need to create a level playing field for both the parties to a crime like situation (the offender and the victim), have been acknowledged by the global community as one of the basic minimum essentials for 'Justice for Victims of Crime.' It was The United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, which while defining the term 'Victims' spelled out various other harms suffered by the victims, including physical, mental, emotional, economic harm as well as the substantial abridgement of their fundamental rights.³⁵ These Principles further underline and state the value of informal dispute resolution processes for enhancing

³¹ Committee on the Rights of the Child, General Comment No.10 (2007) Children's Rights in Juvenile Justice, CRC/C/GC/10, 25 April 2007, at para 10.

³² Tan Wen Jun, Zhand Jialin & Faizan Rafi Hashmi, *Tackling Juvenile Delinquency : Enhancing Restorative Justice in Singapore*, April 25, 2013, available at: chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://beyondresearch.sg/PAE%2520Final%2520Draft_Tan%2520Wen%2520Jun_%2520Faizan%2520Rafi%2520Hashmi_%2520Zhang%2520Jialin.pdf (Last Visited on 10-06-2023)

³³ Tracy M. Godwin, *The Role of Restorative Justice in Teen Courts: A Preliminary Look*, 1, available at: <chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.ojp.gov/pdffiles1/ojdp/188356.pdf> (Last Visited on 10-06-2023).

³⁴ M. S. Umbreit, *Holding Juvenile Offenders accountable: A Restorative Justice Perspective*, 46 *Juvenile & Family Court Journal* 32 (1995).

³⁵ These principles have been ratified by India.

conciliation and redressal for victims.³⁶ For promoting restorative justice at the global level, utmost importance is attributed to *The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, 2002, provides for safeguards and standards on the use of restorative justice initiatives. As per the Preamble to the Basic Principles, “Restorative Justice is an evolving response to crime that respects both the dignity and equality of each person, promotes social harmony and builds understanding through the healing of victims, offenders and communities.”³⁷

There are however, other UN Documents as well which reflect restorative justice values, like, the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice - the 'Beijing Rules' 1985*³⁸,

³⁶ Module 11: Access to Justice for victims, available at: <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-11/key-issues/intro.html> (Last Visited on 06-09-2023).

³⁷ Economic and Social Council Resolution, 2002/12, *Basic Principles on the use of restorative justice programmes in criminal matters*, available at: <chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf> (Last visited on 06-09-2023).

³⁸ The Beijing Rules, 1985, available at: chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Admin_of_Juvenile_Justice_Beijing_Rules.pdf (Last Visited on 06-09-2023)

Convention on the Rights of the Child 1989,³⁹ the *United Nations Guidelines for the Prevention of Juvenile Delinquency - 'Riyadh Guidelines' 1990*⁴⁰, the *United Nations Standard Minimum Rules for Non-custodial Measures - the 'Tokyo Rules' 1990*,⁴¹ and the *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders - the 'Bangkok Rules' (2010)*.⁴² These documents encourage Member States to enhance diversion and alternatives to imprisonment and promote greater community involvement when responding to offending. Another in line is the latest *Doha Declaration 2015*,⁴³

³⁹ UN Convention on the Rights of Child, available at: chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.unodc.org/pdf/criminal_justice/UN_Convention_on_the_Rights_of_the_Child.pdf (Last visited on 06-09-2023)

⁴⁰ The Riyadh Rules, available at: chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.unodc.org/pdf/criminal_justice/UN_Guidelines_for_the_Prevention_of_Juvenile_Delinquency_Riyadh_Guidelines.pdf (Last Visited on 06-09-2023)

⁴¹ The Tokyo Rules, available at: chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_Non-custodial_Measures_Tokyo_Rules.pdf (Last Visited on 06-09-2023)

⁴² The Bangkok Rules, available at: chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.unodc.org/pdf/criminal_justice/UN_Rules_for_the_Treatment_of_Women_Prisoners_and_non-custodial_Measures_for_Women_Offenders_Bangkok_Rules.pdf (Last Visited on 06-09-2023)

⁴³ Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and

which emphasizes on the importance of restorative justice in resolving social conflict through dialogue and by community participation, as well as in the area of prisoner reintegration.⁴⁴ Latest in line is the UN Kyoto Declaration, 2021 for development of ‘restorative justice processes’ at relevant stages in criminal proceedings in order to assist the recovery of victims and the reintegration of offenders.⁴⁵

In Europe, guiding documents adopted by the European Union and the Council of Europe (CoE) promote the use of restorative justice. Of primary importance is the CoE recommendation of 2018 which aims to promote the development and use of restorative justice in the criminal justice context, and elaborates on standards for its use, encouraging safe, effective and

International Levels, and Public Participation, *available at:* chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.unodc.org/documents/congress/Declaration/V1504151_English.pdf (Last Visited on 06-09-2023)

⁴⁴ Doha Declaration 2015, Article 5(j) and 10(d).

⁴⁵ Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the achievement of the 2030 Agenda for Sustainable Development, 14th UN Congress on Crime prevention and Criminal Justice, Kyoto, Japan 7-12 March, 2021, *available at:* chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.unodc.org/documents/commissions/Congress/21-02815_Kyoto_Declaration_ebook_rev_cover.pdf (Last assessed on 13-10-2023).

evidence-based practice.⁴⁶ Moreover, the document aims to integrate a broader understanding of restorative justice and its principles to use restorative justice by prison and probation services also.⁴⁷ The recommendation emphasizes a broader shift in criminal justice across Europe towards a more restorative approach.

Particularly for children in conflict with the law, Council of Europe makes two recommendations⁴⁸ suggesting new ways of dealing with juvenile offenders and the role of juvenile justice to use restorative justice and reparation practices. As per Article 8 of Recommendation No. R (2003) 20, emphasis is on the use of more innovative practices

⁴⁶ The Council of Europe Recommendation (2018) 8 concerning restorative justice in criminal matters

⁴⁷ Commentary to Recommendation CM/Rec (2018) XX of the Committee of Ministers to member States concerning restorative justice in criminal matters, available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://rm.coe.int/pc-cp-2017-12-e-rev-5-commentary-to-recommendation-cm-rec-2018-xx-conc/16807bcfb2> (Last Visited on 06-09-2023).

⁴⁸ Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules, available at: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.refworld.org/pdfid/4a7058c02.pdf](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://rm.coe.int/09000016809ee581#:~:text=Basic%20principles%20,or%20remanding%20them%20in%20custody. Also see, Recommendation (2008) 11 on European Rules for Juvenile Offenders Subject to Sanctions or Measures (ERJOSSM), available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.refworld.org/pdfid/4a7058c02.pdf) (Last visited on 06-09-2023)

and effective responses in dealing with serious and violent offending, and the use of mediation, restoration and reparation to the victim. As per the 'European Rules for Juvenile Offenders Subject to Sanctions or Measures' it recommends that mediation and other restorative measures should be made available at all stages of the criminal procedure, including at sentencing.⁴⁹ The promotion of alternatives to judicial proceedings, particularly diversion, mediation and alternative dispute resolution measures, are further emphasized by the Council of Europe Guidelines on Child Friendly Justice.⁵⁰ On the other hand, in Latin America, *The Lima Declaration on Restorative Juvenile Justice, 2009* also aims at strengthening the implementation of restorative approaches.⁵¹

In addition to the different strategies, and policy guidelines both at the international and regional levels, traditional practices within communities have often relied on restorative justice practices. It is in this light that various scholars have identified that

effective restorative practices require both a combination of important grassroots principles about community justice, and broader mechanisms of conventional or restorative justice.⁵²

2.2. Global good practices on Restorative Justice

There exist various kinds of interventions utilizing restorative justice processes which encourage maximum participation from the juveniles, the victims and the community. Some of the popular forms are discussed henceforth.

▪ The Good Lives Model

The Good Lives Model was first published by Tony Ward in 2002, a renowned professor in clinical psychology at Victoria University of Wellington, New Zealand.⁵³ Many scholars later made significant contributions towards the further evolution and application of this Model. This model assumes a very soft and a humanistic approach towards the offenders with a

⁴⁹ Supra note 30.

⁵⁰ Child Friendly Justice, Available at: <https://www.coe.int/en/web/children/child-friendly-justice> (Last visited on 06-09-2023)

⁵¹ Lima Declaration on Restorative Juvenile Justice, available at: <https://archive.crin.org/en/library/legal-database/lima-declaration-restorative-juvenile-justice.html> (Last visited on 06-09-2023).

⁵² R. W. Robins, & J.L. Tracy, "Appraisal Antecedents of Shame and Guilt: Support for a Theoretical Model" *Personality and Social Psychology Bulletin*, 32(10), 1339–1351 (2006).

⁵³ T. Ward, & T. A. Gannon, *Rehabilitation, etiology, and self-regulation: The comprehensive good lives model of treatment for Sexual offenders, Aggression and Violent Behavior*, 11,77-94. doi:10.1016/j.avb.2005.06.001, (2006).

massive scope of rehabilitation. The ethical core of this model is thus, premised on the assumption that while offenders have duty/obligations to respect other entitlements of well-being and freedom of other people, they too have the entitlement of the same considerations.⁵⁴ This is particularly in cases where the question of punishment or reintegration arises. This model believes in two fold theory of intervention, one which aims at the well-being of the offenders, and second being reducing the risk of further offending for the well-being of the society. Both the goals, it believes are very intricately woven, and the best way in which the society can be made more safer is to first assist the offenders by adopting more socially integrated and fulfilling lifestyles.

▪ **Victim Offender Mediation Model**

This model enjoys a great recognition in USA, Europe and Canada,⁵⁵ and is also called as “*victim-offender reconciliation program*” or “*victim-offender dialog program*.” In this model, the offender is made to meet the victim in a safe and a structured setting to discuss the incident, and

mediation is encouraged between both the parties. These mediations are guided and supervised by trained mediators, in front of whom the victim divulges all the details about his trauma and the incident. In return, the offender also explains his actions, and answers the questions posed to him by the victim. Sometimes, parents of the offenders are also made party to these mediation sessions. In this process, both the parties clear the doubts about their past and future plans, leaving no dispute regarding anything. This method further helps in paving the way for a repatriation plan also.

This method has mostly been used for the serious and heinous offences in other countries. This is precisely why, it casts a cloud of doubt to be adopted in the Indian scenario, since most juvenile offenders in India are convicted for petty offences like theft. Children in India are mostly victims of circumstances, and come from poor socio-economic backgrounds. This method thus have its own limitations here since children are rarely in a position to make financial debt repayment even if they accept their guilt, and nor does the provision of ‘trained mediation staff’ appears to be possible because of a poor implementation challenge already in place. Impact of this method of victim

⁵⁴ T. Ward, T. & C. A. Stewart, *Criminogenic needs and human needs: a theoretical model*, Psychology, Crime & Law, 9, 125-143. (2003a).

⁵⁵ M. Umbreit, *Humanistic mediation: A transformation journey of peacemaking*, at pgs. 201–213, *Mediation Quarterly*, 14(3), (1997).

offender mediation has been variable across countries. While in France and Germany this model is integrated in the regular criminal justice system, and even enjoys a patchy legislative status, in North America this approach works on stand-alone basis, not even remotely integrated into the mainstream criminal justice system.

▪ Circle Sentencing

Circle Sentencing as a practice finds its roots in Canada, and were established by the Community Justice Committees and the judiciary way back in 1991.⁵⁶ It made its way in the United States in the year 1996. Under this model different stakeholders work in a circle in identifying the nature of offence committed by the juvenile, the reasons to do so, its consequences and the corrective measures that can be employed to redress it. The participants of this all-inclusive reintegrative approach are not just the offender and the victim, but also their families, community, and various authorities of juvenile justice, who work in cohesion in identifying the reformatory needs of both juveniles and adult offenders alike. Circle Sentencing works as a healing circle both for the victim and the offender, with the active participation of both the parties in coming to

a consensus over sentencing proposal and efforts towards monitoring its progress. This practice is often commended for its flexible nature, as also for its child welfare initiatives.⁵⁷ It goes into the How's and Why's of a crime, and tries to address the same, by reassuring healing for those affected.

However, this method has its own limitations. It cannot be used randomly on every possible situation. The CCL's who have been identified for this method, need to be looked at holistically before deciding to go ahead with this process. Their social environment, their personal behavior patterns, their sincerity and trust in the process, have all to be gauged before moving towards their reform and healing. Like any other model of rehabilitation, the success of this model too depends upon the healthy association between the different stakeholders of the JJ system and the community. This can best be done by making flexible and customized implementation protocols. There is one study in Canada to vouch on the success of this method, which claims that circle sentencing amongst youth has reduced the chances of recidivism in them, and made these youth

⁵⁶ (Last Visited on 12-06-2023)

⁵⁷ A. Melton, *Indigenous justice systems and tribal society*, at pgs. 126-133, *Judicature* 70(3) (1995).

more respectful and responsible, which has garnered a long term solution for the system.⁵⁸

▪ Family Group Conferencing

This model has its roots in New Zealand, and is commonly practiced in Maori community for Dispute Resolution. National legislation of New Zealand, in its contemporary usage also adopted this practice as a recidivism model in 1989. In the Australian continent, this practice of Family Conferencing is called as WaggaWagga Model, based on the Wagga Wagga Police department, who employ its police personnel to facilitate family conferencing meetings.⁵⁹ At present this model is thoroughly used in many states of US, like Vermont, Pennsylvania, Montana, etc. This model has a good deal of success stories not only in resolving issues like theft, drug/substance abuse, but also in extreme violent cases of juvenile delinquency.⁶⁰

Family Group Conferences acknowledge that apart from the victim and his immediate family, a larger group of people could be affected by the crime committed by the juvenile.⁶¹ Therefore, participants of these conferences usually include not just the victim and the offender, but also their families, peers, members of the community, including their schools, religious institutions and other affected individuals which offer a support system to both the victim and the offender. These collective conferences are facilitated by trained facilitators, who arrange it in a structured manner where both harm and the possible mitigation techniques to benefit both sides are discussed.

The methodology adopted under this model is very transparent, since it facilitates an interaction between the offender and the victim. For the offender it provides an opportunity to clearly understand the impact of his/her actions on the victim, and for the victim it gives an opportunity to identify the

⁵⁸ Judge B. Stuart, "Circle Sentencing: Turning Sword into Ploughshares," in ed. Galaway & Hudson, *Restorative Justice: International Perspectives*, Criminal Justice Press (1996).

⁵⁹ D. B. Moore & T. O'Connell, "Family conferencing in Wagga-Wagga: A communitarian model of justice," in *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?*, edn., C. Adler and J. Wundersitz. Canberra, Australia: Australian Institute of Criminology (1994).

⁶⁰ G. Maxwell, and A. Morris, *Family Participation, Cultural Diversity and Victim Involvement in Youth Justice: A New Zealand Experiment*, Wellington, New

Zealand: Victoria University (1993). Also in, F.W.M. McElrea, *A new model of jus-tice. In The Youth Court in New Zealand: A New Model of Justice*, edited by B.J.Brown. Auckland, New Zealand: Legal Research Foundation (1993).

⁶¹ Gauri Pillai & Shrikrishna Upadhyay, "Juvenile Maturity & Heinous Crimes: A Re-look at Juvenile Justice Policy in India," available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://docs.manupatra.in/newslines/articles/Upload/B2ED7DC9-B6A8-4780-8A9C-C015A5C48C71.pdf> (Last Visited on 12-06-2023).

desired outcomes of this discussion/investigation. This way it helps them both in identifying the problem solving process and the manner in which the offender can repair the damage caused by his/her acts.⁶² This methodology is a clear diversion from the routine process of addressing juvenile offending, redressing their issues, and resurrecting their rehabilitation measures. Here, multiple agencies work together in cohesion under one umbrella, like schools, mediation centers, police departments, probation officers, social workers, etc. with the common aim of rehabilitation and child welfare. US and New Zealand have great deal of positive records of this methodology, which is commended not only for being faster, flexible and more acceptable, but also for creating a sense of satisfaction among the victims.

This approach even though initially pioneered and introduced in New Zealand, remains quite unique in its adoption in other countries. It is used in other countries as a pure version of restorative justice. It however differs in one aspect from the New Zealand Model, that other countries have modified to use police as facilitators instead of social

⁶² H. Zehr, *Changing Lenses: A New Focus for Crime and Justice*, Scotts Dale, PA: Herald Press (1990).

workers in family group conferencing. The countries using this practice (even though with some variations) are, Australia, South Africa, U.S., England & Whales.

▪ **Community Reparative Boards⁶³**

This model is more in the nature of ‘community sanctioning’ response to youth crimes. This model is called by various names, like *Neighborhood Boards*, *Youth Panels* or *Community Diversion Boards*. This model finds its roots in the US way back in 1920’s and it’s counterparts are still in use majorly in Vermont. Using this model for juvenile offenders is however a new addition, since it was always used for adult offenders convicted for petty or non-violent offences.

Under this model, a Reparative Board is constituted which is typically composed of a small group of citizens, who are prepared to function after intensive training. Their task is to conduct a face-off between public and the offender (who is ordered to participate by a court’s order). During Reparative Board meetings, the Board members engage in a

⁶³ John J. Wilson, *A Comparison of Four Restorative Conferencing Models*, February 2001, available at: <https://acrobat.adobe.com/link/file/?theme=light&uri=urn%3Aaaid%3Asc%3Aus%3Aefa70007-f4c5-4e52-ab87-a8b787650cde&filetype=application%2Fpdf&size=265768> (Last Visited on 12-02-2023).

dialogue with the offender as regards the nature of offence, and the negative impact it has casted. After which, the Board prepares a set of proposed sanctions to be imposed on the offender after making an agreement with him who then needs to make necessary amends/reparation in the stipulated time. Subsequent to this, the offender also needs to document his progress in order to fulfill the terms of the agreement. The Board is required to monitor the compliance of the agreement and after the lapse of the stipulated time period, has to submit a compliance report to the Court.

The aim of the Community Reparative Boards is thus,

- To promote ownership of the criminal by the citizens' and to involve juvenile justice systems directly in the justice process.
- To provide an opportunity to both victim and community members to confront the offenders constructively.
- To provide offenders with opportunities to take personal responsibility and be directly accountable for the harm they have caused to the victims and the communities.

- To generate meaningful community driven consequences for the criminal for his/her delinquent actions.

This system too has its limitations. First being, that these Boards are very localized and information on them is very sketchy in other jurisdictions. Second being, that these Boards function with one track mind to kill the instinct of re-offending in the offenders thus reducing the rate of recidivism. But there are larger considerations to be kept in mind while doing so. Victim and community needs and satisfaction are to be given primacy, thus promoting healthy relationships among citizens. However, this model is commended in this part of the world as being able to aptly deal with the non-violent crime situations.

Part III: National Legislative Regime on Restorative Justice

India does not have a “restorative justice system” per say, but there are multiple pockets created within the laws like the “Panchayat system”,⁶⁴ “Lok Adalats”⁶⁵ and

⁶⁴ The Gram Nyayalayas Act, 2008 had formalized the informal practices inside the communities by way of ‘Panchayats.’

⁶⁵ The National Legal Services Authorities Act, 1987 had formalized ‘Lok Adalats’ as ‘People’s Court.’

“Arbitration & Mediation”⁶⁶ etc. which have accommodated this principle in ameliorating the plight of both the victims and the offenders of crime. The Code of Criminal Procedure, 1973 too has some rules based on restorative justice practices, like the Plea Bargaining,⁶⁷ provision on Compoundable Offences,⁶⁸ provision on Compensation⁶⁹ and provision on Probation.⁷⁰

One of the important attributes in making a criminal process more oriented towards restoration is by giving a voice to the voiceless, i.e. the victims, who primarily bear the brunt of a criminal act. For victim participation, a right of decision making has to be ensured to them⁷¹ instead of making them mere mute spectators in the whole process (as in a traditional adversarial system). In the Indian criminal justice system, Victim found the first mention only in 2008,⁷² by way of which Section 2 (wa) of the Cr.P.C. defines a victim as *any person who has suffered any loss or injury caused*

by reason of the act or omission for which the accused person has been charged for, and also includes his or her legal heir or guardians.

Restorative justice processes are deeply resonant with the principles and philosophy of juvenile justice in The Juvenile Justice (Care and Protection of Children) Act, 2015.⁷³ The JJ Act provides for a number of alternative sanctions,⁷⁴ like community service, counselling and fine. Probationary release on account of good behavior also forms part of the Act, so does the placement in Special Home or Fit Facility for reformatory services. In addition to these provisions, the Board under the 2015 Act is also empowered to issue additional orders⁷⁵ like sending a child to attend school, or a therapeutic center, or a vocational center, or prohibit the child from visiting at a specified place, or undergo a de-addiction programme, which are consistent with the international instruments stressing diversion techniques for offenders in order to reintegrate them amicably back into the

⁶⁶ The Arbitration & Reconciliation Act, 1996 had formalized the mechanism for dispute resolution through arbitration, mediation and conciliation.

⁶⁷ S. 265A-265L, Code of Criminal Procedure, 1973

⁶⁸ S. 320, Code of Criminal Procedure, 1973

⁶⁹ S. 357A, Code of Criminal Procedure, 1973

⁷⁰ S. 360, Code of Criminal Procedure, 1973

⁷¹ Jo-Anne Wemmers & Katie Cyr, “Victims’ Perspectives on Restorative Justice: How much involvement are victims looking for?”, p. 259, 11 International Review of Victimology, (2004).

⁷² The Code of Criminal Procedure (Amendment) Act, 2008.

⁷³ Restorative Circles within the Juvenile Justice System, available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://enfoldindia.org/wpcontent/uploads/2018/05/Restorative-Circles-Within-the-Juvenile-Justice-System.docx.pdf (Last Visited on 06-09-2023)

⁷⁴ Section 18(1) JJ Act, 2015

⁷⁵ Section 18(2), JJ Act 2015

society. Another remarkable feature of the Act is the categorization of offences, like petty,⁷⁶ serious⁷⁷ and heinous.⁷⁸ In the first two categories of offences, the initiatives can be aimed at familiarizing these children about the plight of their victims, making them comprehend the consequences of their actions and the impact it can have on others. By making them realize the importance of amends in their actions, there can be reformation in the true sense amongst these children. For a successful rehabilitation and re-integration of children in conflict with law, there needs to be a successful restoration of the crime like situation. This can only be achieved by developing a multi-dimensional approach, including the restorative justice measures in the whole process. While this requires some basic training to be advanced to the staff, it is definitely not a very complex process. The facilitator only needs to create a safe place for everyone to participate, so that the wrong done can be corrected. By involving both parties (both the perpetrator and the victim) to agree to a conference where the victim can speak about the impact that particular act has had on him/her, and where the accused can also be given a chance to explain his/her

⁷⁶ Section 2(45), JJ Act, 2015

⁷⁷ Section 2(54), JJ Act, 2015

⁷⁸ Section 2(33), JJ Act, 2015.

behaviour, this forum can deal with both the wrongdoing and the conflict. This can in return help participants to find their own solutions.

Part IV: Judicial Exposition on Restorative Justice

More than testifying merely as a witness, playing a role in the prosecution, facilitates victims in gaining a sense of control, an ability to lessen their isolation and be reintegrated into their community with the possibility of finding meaning.⁷⁹ But sadly enough, victims of crime do not attract the necessary attention of law as much as they deserve. Even the Courts refer to the issue of victim reparation as virtually a ‘vanishing point of our criminal law.’⁸⁰ This observation of the Apex Court still holds ground, despite several key rights recognized and ensured to the victims in the criminal process.

The prime objective of the criminal courts have always often been to deal with the offender by finding his guilt and meting out

⁷⁹ Mahadev Mohan, “The Paradox of Victim-Centrism: Victim Participation at the Khmer Rouge Tribunal,” 9 *International Cr. L. Rev.* 4 (2009)

⁸⁰ G.S. Bajai & Shriya Gauba, *Victim Justice: A Paradigm shift in Criminal Justice System in India*, at pg. 74, edn. 1st, published by Thomson Reuters (2016).

punishment to him. The rights of the victims to restitution, to rehabilitation, to assistance and to compensation have always been treated as secondary concerns. However, it is the courts which are to be truly complemented for developing victim jurisprudence as it stands today. From securing Right of access to Justice,⁸¹ to Right to be Heard,⁸² from Right to Participation in trial proceedings,⁸³ to Right to Protection,⁸⁴ from Right to Appeal,⁸⁵ to Right to medical assistance,⁸⁶ to developing Compensatory Jurisprudence,⁸⁷ the courts have significantly cemented and strengthened 'Rights and Justice to victims of crime.'

The recent stress on the shift of criminal justice system towards "restorative justice" from the "deterrent norm justice" holds out a

⁸¹ Refer, *Lalita Kumari v. Govt. of U.P. and Ors.*, (2014) 2 SCC 1.

⁸² Refer, *Zahira Habibullah Sheikh (5) v. State of Gujarat*, (2006) 3 SCC 374.

⁸³ Refer, *Delhi Domestic Working Women's Forum v. U.O.I.*, (1995) 1 SCC 14.

⁸⁴ Refer, *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.

⁸⁵ In *Balasaheb Rangnath Khade v. State of Maharashtra*, MANU/MH/0551/2012, Bombay High Court had declared that a victim's right of appeal is integral to the catena of 'human rights' available to each individual absolutely.

⁸⁶ Refer, *Sakshi v. U.O.I.*, AIR 2004 SC 3566.

⁸⁷ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416 (438); *Nilabati Behera v. State of Orissa*, 1993 SCC (Cri) 527; *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528; *State v. Sanjeev Nanda*, (2012) 8 SCC 450; *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770; *Manohar Singh v. State of Rajasthan & Ors.*, AIR 2015 SC 1124.

promise towards a more holistic approach of the law to cater to the expectations of the victim of crime from just compensatory respite. If the restorative theory were to be allowed in its full glory, it might render the multiplicity of the proceedings redundant.

In a remarkable judgment by the Delhi High Court, the court in *Anupam Sharma v. NCT of Delhi & Anr.*,⁸⁸ held that restorative justice can be interchangeably used with mediation. Since the purpose of restorative justice is to restore the interests of the 'victims' of crime, participation of the victim in the settlement process can help in negotiating and collaborating with the offender himself/herself. This judgment was commended by the Gujarat High Court in *State of Gujarat v. Raghav Bhai Vashrambhai & Ors.*⁸⁹, calling it a decision taking first steps towards fulfilling the design of restorative justice for victims of crime.

Addressing the issue of restorative justice to the victims of juvenile crimes, there are many case laws over the years which have paved way for the development of juvenile law in India. Issues ranging from devising effective strategies to deal with CCL and CNCP, to addressing their needs and

⁸⁸ 146 (2008) DLT 497

⁸⁹ (2003) 1GLR 205.

interests, to their adoption etc. have all been dealt extensively by the courts. Since this study focusses on restorative measures to be adopted in ameliorating the plight of the victims of juvenile crimes, the researcher will try and cite judiciary's contribution towards the same.

The Supreme Court Committee on Juvenile Justice addressed and acknowledged the urgent need to operationalize the principles of diversion, especially for children repeatedly involved in petty offences, and the principle of institutionalization as a measure of last resort for children in conflict with law.⁹⁰ This would entail in its ambit the intensification of efforts to deinstitutionalize children, as well as to develop and strengthen family and community based care programs. Precisely in this context, the Restorative Processes can be used to mend and rebuild relationships between the child

⁹⁰ Supreme Court Committee on Juvenile Justice, "Strengthening Rehabilitation & Restoration of Children under the Juvenile Justice System – Recommendation Regional Consultations", September 2016, pp.26, 36. Supreme Court Committee on Juvenile Justice, "Effective Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015: Focus on Rehabilitation Services and Linkages with the POCSO Act, 2012", August 2017, pp.13-15. Supreme Court Committee on Juvenile Justice, "Effective Implementation of the Juvenile Justice (Care and Protection of Children) Act: Focus on Integrated Child Protection Scheme – Consolidated Report 4th Round of Regional Round Table Consultations", 2018, pp.48, 55.

offender and the victim, as also with his family and community at large. Most often the families of children in conflict with the law refuse to accept these children back. There creeps in a feeling of rejection, isolation, blame and stigma in such children impeding their social reintegration. Restorative measures and processes can thus serve as a rebuilding tool as far as relationships are concerned in furtherance with the principles of repatriation and restoration.

In an express reference to restorative justice, the Supreme Court in *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India*, observed:⁹¹

"The importance of rehabilitation and social re-integration clearly stands out if we appreciate the objective of the JJ Act which is to foster restorative justice. There cannot be any meaningful rehabilitation, particularly of a child in conflict with the law, who is in need of care and protection unless the basic elements and principles of restorative justice are recognized and practiced." (para 45)

The biggest challenge in introducing restorative justice for children in conflict

⁹¹ AIR 2017 SC 2546.

with the law, was pointed out to be lack of Individual Care Plans as per the needs of every child, as postulated by Rule 19 of the Model Rules read with Form 7. It was stated that children in child care institution are treated just as a number and “no genuine efforts are being made to introduce individual child care plans.’ The key highlight of this judgment was thus the mandate of drafting the Individual Care Plan which should not be a one-time draft made by the respective governments; rather seen, prepared and regularly updated based on the changing needs of CCL. Yet another highlight of this judgment was the deliberation of the alternative choices of de-institutionalization of CNCP and CCL who need due care and attention. The court also acknowledged the presence of Juvenile Justice Committee established and operational under every High Court, which works towards implementation of the JJ Act and Rules, even though it highlighted the need to establish a small Secretariat also. It can thus be concluded that by making Restorative processes a part of ICP’s, a child’s self-esteem, dignity and self-worth can be restored which can further nurture him/her to become a responsible citizen.⁹²

⁹² Rule 2(1)(ix), JJ Model Rules, 2016.

In yet another landmark judgment, *Salil Bali v. U.O.I.*,⁹³ the Apex Court held that the provisions in JJ Act and JJ Rules have been drafted as per the established principles defined in the Constitution of India, in addition to accepted norms in the international laws. The court further opined that Constitution of India provides many rights and guarantees to children and also gives power to the States to make special provisions for children. Similarly, international regulations do identify that children are vulnerable and need special protection.⁹⁴ Article 1 of the CRC states that a juvenile is of 18 years of age. India being a party to CRC, states that a person under 18 years of age shall be called a juvenile. Internationally, the age limit of 18 years is based on the premise that, scientifically it has been proven that till that age brain will continue to adept to new ideas, and hence chances for a child to rehabilitate are very high, this also brings into line the principles of restorative justice.

Part IV: Conclusion & Suggestions

⁹³ (2013) 7 SCC 705

⁹⁴ Havana Rules, Beijing Rules and Riyadh Guidelines etc. all emphasize on the need to establish a separate JJ system for children which should focus more on their reintegration back into society.

After all the discussion on the issue of restorative justice, we understand that India does not have a “restorative justice system” per say, but only the multiple pockets created within the laws accommodate such a principle in ameliorating plight of both the victims and the offenders of crime. Even the Supreme Court has admitted in the past that a lot needs to be done in the area of ‘victim jurisprudence.’⁹⁵ Various International Treaties also demand that the ‘member states’ need to treat their victims respectfully and fairly by providing them with all the necessary information at appropriate phases of ‘criminal justice process’ as also ensuring their participation and safety.⁹⁶

A restorative process, accompanied by rehabilitative measures subsequently, has innumerable advantages over a purely rehabilitation centric system, both for the victim and the offender. Measures under restorative justice processes not only prompt increased accountability among juvenile offenders and assist in more effective societal reintegration, they also offer greater victim satisfaction. Needless to mention, that a well conducted restorative justice program is said to contribute in “conscience building”

⁹⁵ J. Krishna Iyer in *Rattan Singh v. State of Punjab*, AIR 1980 SC 84

⁹⁶ The UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985

and invokes social and more emotions in an offender like guilt, remorse, shame, empathy and compassion.⁹⁷ But sadly enough, ‘member states’ have only partially implemented these protocols.⁹⁸

The biggest problem faced by the researcher while writing this article from the point of view of a victim of juvenile crime is that, the immeasurable reliance placed on the procedures which are a combination of procedures under the Code of Criminal Procedure and the Juvenile Justice Act, which only adds up to the difficulty in realizing the core principles of restorative justice in juvenile justice. Even on the issue of procedures already laid out under the Juvenile Justice Act, JJB’s across the country differ majorly in their implementation. There is no problem in accessing judgments of the various courts in the country, but problem comes when orders and judgements of JJB’s are needed to be accessed, since privacy and confidentiality of children in conflict with law lay at the top most priority of these Boards. It is thus felt that, for a proper

⁹⁷ John Braitwaite & Stephen Mugford, *Conditions of Successful Reintegration Ceremonies: Dealing with Juvenile Offenders*, 34 British Journal of Criminology 139(1994).

⁹⁸ Jo Anne Wemmers and Katie Cyr, *Victims Perspectives on Restorative Justice: How much Involvement are Victims looking for?*, at pg. 259, 11 International Review of Victimology (2004).

understanding of the administration of juvenile justice system, there needs to be a way where information on valuable insights on the issues under JJ Act can be accessed, without disclosing the identity of the child.

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