

Restorative Justice : The Search For A New Dimension In The Criminal Justice System

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Abstract

The wounds of a misfortune are psychological in nature. They become embedded in the memories of a human being and memories are more prominent than history. The concept of a traditional criminal justice tends to be mechanical and indifferent to the individuals involved in the system. The emerging concept of restorative justice tends to bridge the gap by creating an open and direct platform between the victim and the offender. The concept is gaining momentum because in the judicial system the warring parties are the offender and the state, the victim feels left out and insignificant. At the same time offender feels powerless when he is pitted against the mighty state. The restorative justice endeavours to make an amicable settlement and even gives the offender an opportunity to reintegrate himself in the society. This is an effective tool of alternate mode of punishment.

The paper explores the philosophical dimensions of the system and presents a comparative study of various societies that are working on this idea and its future in the Indian context. The paper also focuses on the role of United Nations in the promotion of restorative justice. It will be shown that the idea has been present in the Indian philosophy but lost its sheen with the advent of the adversarial system. It will be an interesting point of discussion as to how the idea fosters the concept of conflict resolution among citizens.

Section – I

The concept of Restorative Justice:

The traditional criminal justice system suffers from various anomalies. In the present scenario, it is marred by the problem of pending cases, corrupt judicial bureaucracy, unscrupulous middlemen, expenses litigation, lack of infrastructure and a plethora of other problems. If we look at the structure of the system, we can safely conclude that its primary objective is to levy fine, punishment to the offender on utilitarian grounds. Here, state plays out the role at a balances and bases its judgment on reason free from passion. Of course, it is the most scientific element of administration, but now it has been questioned by various section of the society. It seems that the true meaning at the World Justice has been forgotten. The word 'justice' is, derived from the Latin word 'jus' which means 'to fit'. Speaking in term of Pythagoras the concept of 'justice' can be compared to his formula, $H^2 = B^2 + P^2$. The Greek intellectuals, like Pythagoras, were obsessed with the idea of harmony and balance. The expressed this desire in geometry political thought logic and rhetoric. The traditional criminal justice system is state centric and the victim is merely a

pawn used by the administrative machineries victim does not play a personal role. At the same time, the offender is pitted against powerful state machinery. Another problem is that of the reintegration of the offender in the society. Although new steps have been taken, but they have not showed the desired result Community used to play a major role in harmonizing relations and delivering justice, but this role has been taken over by the state. Restorative justice tends to balance and harmonize the relationship between offender, victim, community and state. Through the techniques of restorative justice programme, and offender victim dialogue all the players get a fair share. Restorative justice does not hamper but supplements the traditional criminal justice.

Restorative Justice can also be seen as an alternative to imprisonment. The restorative justice movement relies on the tools of restitution remedies, victim participation to achieve a more community inclusive resolution to the problem arising from criminal Acts. The implementation of these principles in modern criminal justice systems in the Western world has expanded during the last several decades.

Daniel Van Ness and Karen Heatderks Strong, two leading proponents of restorative justice, assert that the restorative justice approach is modeled on an 'ancient' approach to crime. In doing, so they offer a chart contrasting key elements of restrictive justice and modern criminal justice.

	Ancient Pattern	Current Pattern
Crime	Injury to victims and their families in contract of the community.	violation at the law
Parties	Victims, offenders, community and government.	offenders and government
Goal	Repair damage and re establish right relationship	Reduce future law breaking through rehabilitation punishment, deterrence's, or incapacitation.

The experience in most of the countries has shown that the traditional court and criminal administration suffers from serious anomalies. Arrears in the court, delay in disposal of cases, corruption resulted in loss of public confidence. Victim's role is often marginalized. The system does not help the victim to restore and repair the damage caused to him/her by crime. The reintegration of offended is not seriously considered.

Restorative Justice emphasis the importance of role of crime victim and community members through active involvement in the justice process as an offence is considered a breach of trust of community. It is considered an offense against the community. It some reminds of Kant's idea of criminal justice where he considered a criminal a 'free rider' on the society.

But Kant even on to contribute towards a passionate retribution theory, so at this point the similarities end.

The aim is to restore the emotional and material losses of victim, reintegrating offender in the society, providing a range of opportunities for dialogue, negotiation and problem solving which can lead to a greater sense of community safety and social harmony and peace. That is exactly why Pythagoras was mentioned in the first place, as it represented harmony and 'justice' in its true sense. In a way restorative justice can be compared to alternate dispute resolution. The alternate dispute resolution as a technique helps the Restorative justice to achieve its objectives. It includes mediation, arbitration, early neutral evaluation and conciliation.

Some key definitions : Restorative Justice is a way of responding to criminal behaviour by balancing the needs of community victims and offender. It is an evolving concept and needs to be defined as a concept that is still not mature. Most of the terms that are used have been defined on the basis of United Nations economic and social council resolution containing a set of Basic Principles on the use of Restorative Justice Programme in criminal matters. These principles offer important guidance for policy maker, community organizations and criminal justice officials involved in restorative justice.

- a) *Restorative Justice Programme* : The "Basic Principles" defines restorative justice programme means "any programme that uses restorative and seeks to achieve restorative outcomes"²
- b) *Restorative Process*: It is defined as "any process in which the victim and the offender, and where appropriate any other individual or community member affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator."³
- c) *Restorative Outcomes*: According to "Basic Principles" a Restorative outcome is an agreement reached as a result of restorative process. The agreement may include referrals to programmes such as reparation, restitution and community services aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.⁴

Features of restorative Justice programmes according to United Nations (office on drugs and crime) handbook on restorative justice programmes the lectures of Restorative justice programmes :⁵

- a) A flexible response to the circumstances of the crime, the offender and the victim, one that allows each case to be considered individually.
- b) A response to crime that respects the dignity and equality of each person, builds understanding and promote social harmony through healing of victims, offenders and communities.
- c) A viable alternative in many cases to the formal criminal justice system and its stigmatizing effects on offenders
- d) An approach that can be used in conjunction with traditional criminal justice processes and sanction.
- e) An approach that incorporates problem solving and addressing the underlying causes of conflict.
- f) An approach that addresses the harms and needs of victims.
- g) An approach which encourages an offender to gain insight into the causes and effects of one's behaviours and take responsibility in a meaningful way.
- h) A flexible approach which can be adopted into different legal tradition.

- i) A response to crime which is particularly suitable for situations where juvenile offenders are involved and in which an important objection or the intervention is to teach the offender some new values and skills.
- j) Recognizes the role of the community.

Underlying Assumptions of Restorative Justice based on available literature some of the underlying assumption of Restorative justice and as follows :

- a) Response to crime should repair as much as possible.
- b) Offender action has caused pain to the victim and community.
- c) Offender should accept his responsibility.
- d) Victim should participate personally in determining reparation.
- e) Community has a responsibility to contribute to this process.

Ingredients for a fully restorative process to achieve its objectives ⁶.

- a) an identifiable victim.
- b) Voluntary participation by the victim.
- c) On offender who accepts responsibility for his/her criminal behaviours.
- d) Non coerced participation of the offender.

The goal is to create a non adversarial, non threatening environment in which all players are involved.

Objectives : The objectives of Restorative justice programmes essentially contain the following key elements.

- a) Supporting victims, giving them an opportunity to express their needs and be a part of resolution process : For years criminal justice systems have been called upon to focus more directly on needs and interests of victims. In 1985, the General Assembly adopted a "Declaration of Basic Principles on Justice for victims of crime and abuse of power" which stated that informal mechanism for the resolution or disputes, including mediation, arbitration and customary justice on indigenous practices should be utilized where appropriate to facilitate conciliation and redress for victims ⁷. There remain frequent complains that the formal criminal justice process, ignores, the victims' needs and wishes. The Restorative justice sees the victim as an individual and not as a tool in the

machinery. They can participate and be treated fairly and respectfully and receive redress and reparation.

- b) Denouncing criminal behaviour and strengthening community values. Denouncing certain behaviours is an objective of the Restorative justice process just as it has been a fundamental objective of criminal law for centuries.

In Restorative justice it is done within a larger process, peacemaking, dispute resolution and rebuilding relationship are viewed as the primary methods for achieving justice and supporting the victim, the offender and for interests of the community.

- c) Encourage responsibility, particularly by offender: The process encourages active acknowledgement and acceptance of personal responsibility for the crime and its consequences rather than a mere passive one imposed by others. At its best the process may lead the offender not only to assume responsibility, but also to experience an emotional transformation and improve his or her relationship with the community and, depending upon the particular circumstance, with the victim and victim's family.
- d) Reduction in recidivism and crime rate by reforming the offender and re-integrating him in the society. Restorative justice is relationship based and strives for outcomes that satisfied a wide group of stockholders⁸.

Reforming the offender is a legitimate objective of the process. The insistence that offender understand and accept responsibility for the consequences of their actions is clearly meant to meet the offender's future behaviours. The approach is towards looking.

According to the UNH and book on Restorative justice there are within a criminal justice system four main points at which a restorative justice process can be successfully initiated.⁹

- a) Police level (Pre charge).
- b) Prosecution level post charge but before a trial.
- c) At the court level (Pretrial or sentencing state)
- d) Correction

On the basis of the above mentioned stages there are following participants in Restrictive Justice Process.

- i) Crime Victims
- ii) Offenders
- iii) Police
- iv) Prosecution
- v) Judiciary
- vi) Community Member

i) **Crime Victims :** In all restrictive justice prosecutes, it is important to protect the interests of the victim and to ensure that re victimization does not occur. The "Basic Principles on the use of Restorative Justice Programmes in criminal matters" in its Para 8 states that restrictive justice process should be used only with the free and voluntary consent of the victim and further. That the victim should be also to withdraw such consent at any time during the process.

Victim must be allowed to tell his story. In one of the techniques involved i.e. circle sentencing for example, the telling of the victim's story is viewed as important, not only for the victim, the offender and their supports, but also for the community as a whole. Victims, especially child victims should participate only voluntarily.

ii) **Offenders :** In conventional criminal justice system offenders are not required to confront the full consequences of their decisions and action.

An offender can be processed through the entire justice system, without speaking more than a few sentences¹⁰. In Restorative justice the offender is engaged directly with the victim. There is a scope for offender and victim dialogue.

iii) **Police :** Police officers can act as a facilitator or conveners of the process and may even help participants reach decisions and resolution through community. A Police Officer can mediate conflicts between youths in school by bringing together the offending parties and their parent for an informed conference. Legislation can provide the framework within which the police

can become more extensively involve in Restorative Policing Practices. In Canada for example "Youth Criminal Justice" Act has increased the involvement of the police as front end referred agents to restorative programmes, and in police sponsored restrictive practices, marks a return to the original role of the police as Peace keepers. ¹¹

- iv) Prosecution and Defense Lawyers prosecution can be included in level referral prosecute for both juveniles and adults. Defense Lawyers can explain the benefits of restrictive justice programmes and make sure that the consent is given in a restrictive justice in a full manner.
- v) Judiciary : Judges are a bit difficult to handle. They serve to reinforce and require a high level of ritual and formality, and following proper procedure. In the words of William T. Preston and Grey D. Richardson, "Advocates of a restorative approach are often intimidated by judges" ¹² Hence advocates of restorative justice should appeal to the personal feelings at the judges. They should be told how programmes can be developed to serve crime victims, community, offenders, and government. They should be made aware that restorative justice is based on higher most principles.
- vi) Community Members: By engaging community old traditional feeling of harmony can be revived, Responsible members can mediate and reach a fruitful conclusion. It is an answer to a rather individualistic system of criminal justice.

Types of programmes in Restorative Justice Programmes some of the main categories of programmes are

- A) Victim of fender mediation
- B) Community and family group conferencing.
- C) Circle sintering

Below discussion the features of the above maintained programmes it is important to find out the common that victim and offender play in restrictive justice programmes.

Common attributes of restorative justice programmes ¹³.

Victims are provided on opportunity to :	Offenders are presided with an opportunity to :
a) Be directly involved in the situation and addressing the consumers of the offence.	Acknowledges responsibility for the offence and understand the effects of the offence on the victim
b) Receive answers to their questions about the crime and the offender.	Express emotions even remorse about the offence.
c) Express themselves about the impact of the offence	Receive support to repair harm caused to the victim on oneself and family.
d) Receive restitution or reparation.	Make amends or give restitution/ reparation.
e) Receive on apology	Apologize to victim
f) Reach closure	Reach Closure

A) **Victim offender Mediation** : There programmes are the earliest among the methods of restorative justice. Referrals may come from the police, prosecutors, the courts and probation officers . The programme can operate at the pre charge, post charge/pre trial and the willing participation of victim and offender. The mediation process is the most direct devices as victims and offenders meet face to face and can express their feelings directly to each other with the help of a facilitator; they can reach an agreement that will help them both bring closure.

The mediation assists the two parties in arriving at an agreement that address the needs of both parties and provides a reduction to the conflict. Then the process to sentencing a condition agreement mediated between the offender and the victim can be forwarded to the count and may be included in the sentence or in the conditions of a probation order ¹⁴.

- B) **Community and family Group Conferencing** : It is based on centuries old sanctioning and dispute resolution traditions of Maori Aboriginal tribes at New Zealand. It has a convener bringing together the family and friend of victim and offender, to identify a desirable outcome for the parties, address the consequence of the crime and prevent the re occurring of crime.
- C) **Circles Sentencing** : It is available to there who plead guilty. All participants i.e. offender, victim, prosecution, defense lawyers, judges, community residents fit in a circle. The objective is reach a consensus and dispose of the case. It supports the sentencing process. The outcome is submitted to the judge and then it is up to his discretion whether he wants to incorporate it in his judgment or not.

Section – II

The philosophical base of Restorative justice: interplay of Western and Eastern thoughts.

Regret : "The residue in the cup of life"
Ambrose Bierce in the "Devils Dictionary."

Restrictive Justice is nothing but an understanding between the offender, victim, state and society. An understanding that indicants a substantial "Pay off" for all the players involved. If one is to construe it according to the maximin situation then players maximize their pay off by minimizing any loss. The only difference being is that in this situation all the players have already suffered on previous occasion and unlike the players in a traditional game theory, they are not rational but reasonable players.

The philosophical base of Restorative Justice can be understood if we take under consideration the points of view of Western and Eastern philosophers. For the purpose at this paper, we will consider the views of "Third Way" and of the concept has prevailed in Indian Philosophy since the Vedic period and further by Gandhian thoughts.

1. "Third Way" or the ideal role a community : "Third Way" is an enigmatic way to look at the role of society. The role of society, itself has undergone a vast change . A look back in the history of the society tells us that in ancient Greece and Indian civilization, society nurtured the mind and personality of the individual. There existed an amicable harmony between the concept of law and morality. The ethical notions fueled and further the cause of logic of law. Morality was injective into the veins of the citizen by the directives of the elders and kinsmen the citizens were ask to look within themselves and nurture their "Virtues". Virtue was the corner a stone of the ancient civilization as it created at division of labour and allowed the citizens to contribute their talent to the society. Artificial institutions like state were still in the then infant stages. But with the advent of European state system in the 17th century "especially the signing of treaty of Westphalia in 1648" created on all omnipotent system where the role of community was minimized. Johns or Austin's idea of legal positivism created a water tight compartment of law and morality. Earlier ancient communities exercised a strong control over individuals by participating in the criminal justice administration. Devices like externment, Gram Panchayat was very well in India, the Panchayat were the building blocks of gross root democracy but, the alien English rule super impose its sophisticated and arrogant legal culture which rule the importance of Panchayat.

The question that remains is that what the role of the community in globalized world is. In the 28th Century a new player has entered the realm of human nature and it is market. The modern scenario has to balance the forces of state market and society. It is in this contest were be mention the ideas of Martin Buber. He envisaged that a society is not only civil but is also good and compassionate. In a good society people treat one other ends in themselves and not as mains or instrument, a person is considered in whole and not in fragment. A good society maintains a symbiotic relationship with its members. This relationship should not we parasitic. In the words of Martin Buber a good society nourishes "I-Thou Relation". In the same time, it recognized the inevitable role of 'I, it' relations. But this does not he that in individual autonomy should be violated. The violation of an individual

autonomy is compatible with treating people as ends. It is the corner stone of one's liberty that is universal and cannot be violated. According to Amitai Etzioni the core values of a good society can be directly derived from Buber's 'I-thou relation. Chilled a view violent crime civil an international war offends the basic principle of treating people as ends. According to the author, when one bonds with community member, one lives up to the basic principle of goods society, in contrast when we 'Network' we succumb to a utilitarian purpose and to manipulate people. If people are treated with respect the rich their Zenith. The above approach fosters a rich 'minimum for all' Rawlsian criteria. The core communitarian idea is the individual have in inalienable rights and social responsibility. A good society is one that balances the three elements, the state market and the community. The Third Way or the communitarian thinking sees the Govt. as a solution and partner in the good society. But, the Third Way is still an aspiration. It is a role that leaves to good society. This thinking is not essential Western, its traces can be found in the teaching of ancient Asian, Muslim and Jewish conceptions of harmony and responsibility.

Third Way focuses on the role of the community which has been the neglected partner in module scenario. Community are the main societies that nourish and based I-Thou while the market is a realm of means that is I-it relationship according to Amitai Etzioni communities fosters to function : I it provides bonds of affection II) It transmits a shade moral culture ¹⁵.

In addition to the above mentioned problem society is a refuge from the perennial cause of alienation, a concept that is the byproduct of a capitalistic society and major cause of crime.

In the modern state system, the Govt. is burdened with the concept of welfare. The good society shares this burden by involving in some of the state activities. A since good society is based on the concept of mutuality it can be an important source of child care, grief support and restorative justice.

Community safety can be achieved by using of the work of Third Way method where society can assist in the reintegration of offender in the society. Criminals who have paid their dues to society, served their sentences should be reintegrated into the society. In this way a good society can foster repentance, leading to a full restoration of former criminals to membership to the community.

Restorative Justice, especially for non violent first time offender serves the same purpose. This practice requires the offender to meet with a victim in the presence of the Third Party from the community. In the process, offenders learn about the victim suffering, express their regret and made amends. The goal is to mix punishment we rehabilitation and to keep these offenders as integrated members of the community.

Indian philosophy and Restorative Justice : In the modern criminal jurisprudence the issue of wrong doing is tilted in the favour of the powerful. When the logic of political democracy gave to the victim us space for articulation of grievance, they ask for punishment of offender. That demand is for justice and not for peace from this prospective restorative justice is seen as absolving the offender of all guilt. The criminal justice system in India is infected with various problems and restorative justice is also seen as an alternative more of punishment.

Rina Kashyap, a distinguish scholar brings out the philosophical aliment of India by citing examples of Ramayana and Mahabharata and connect it with restorative justice. According to her the key component the restorative justice is the belief in transformation of individual who made be offender. Here she gives the example Valimiki who was the banded and became a much respective send and author of Ramayana. Further see cites the example of Mahabharata which demonstrates the futility of remain in punishment as tools of justice. It causes and un ending cycle of violence. The epic raises the question as to who is to blame for the situation : The individual or the structure. ¹⁶. What is important is the fact that the need of the victim or neglected by both the victim and well wishers. Howard Zehr makes an interesting observation about retributive and restorative justice. He observed, "Retributive Theory believes that pain will vindicate, but in practice that is offender counterproductive for both victim offenders". ¹⁷

Restorative Justice is not trying to seal the victim from the system but only points to the inappropriateness of the tools adopted to team with wrong doing. Howard Zehr has also suggested that we keep aside the misgiving and instead identify the immediate community of the offender.

Rina Kashyap has further the cause by tracing the rule of a Restorative Justice in Gandhian Philosophy. According to her, Gandhi resolved the question of the appropriate relationship between individual, community and the nation state. He

could forward, his theory of an "Ever Expanding concentric oceanic circles" individual are in the centre and at the slotting point, so their concern or not neglect, but simultaneously they are reminded about the embedded context and responsibility towards the community. The concentric circle ensures local self government and prevents concentration of power.¹⁸

Jarem Sawatsay draws an interesting contrast between the Western concept of the justice and the communitarian version of justice. According to her Western Justice is about determining guilt and giving out proportionate pain on utilitarian principles. The communitarian justice is a different version of justice. For them it is more in the author words, "more about feeling than shaming, more about building than ripping apart."¹⁹.

Healing for traditional communities is not understood within the concept of the individual but within the frame work of the whole community, the land and sometimes even the spiritual words. This healing justice creates transformative spaces for change, for the victim, the offender, the local community of origin and the wider community in which the local community in situated.

Section III

The International Perspective of Restorative Justice: In many countries of the world like U.S.A., Europe, Australian and New Zealand the concept the Restorative justice is linked to diverse practices, like conferencing, sentencing a victim offender mediations schemes. They can be used at different sites in the justice system as a diversion from court, as a presenting option, and following release of a person from prison the Restorative justice system require the victim offender and the community to act together and repair is damage of crime under the authority of the state. In a way they are separate from the justice system and were as an alternative to influence the disposal of cases within the criminal justice system.

According to John Belgrave there are three stages at which a formal restorative justice programme are generally apply. They are :²⁰

- i) *Pre Conviction* – here the defendant does not deny guilt is not defending the case. Outcomes may include a recommendation are report to a court, or the

case may be finalized by agreement between the victim offender and prosecuting agency without proceeding to a court.

- ii) *Pre sentence* – once guilt has been admitted proven, court may refer the case for a victim of offender mediation .
- iii) *Post sentence* – These programmes operate with the convicted offenders who have been put to community base sentences or to imprisonment.

Restorative programmes for Juvenile offender : in most jurisdiction, restorative justice process are most extensively develop for use with youth in conflict with the law and are subsequently developed into programmes for added offenders. Many programme offer unique opportunity to create a community of care around youth in conflict with law. Public support for Restorative Justice Programme for youth is usually relatively easy to garner. Programmes like this can provide an opportunity for the community to provide and appropriate educational response to minor offenders and other conflict without formerly criminalizing the beahviour of the individual.

Examples of Restorative Programme for youth :

Brazil – Youth Justice System, Porto Alegre, and this system is experimenting with conferencing for young offenders. The Children and Adolescent Act of 1990 a loss the presiding youth court judge to suspend the legal proceeding for First Time Offenders in world in less serious use of sanctioned such as community service and reparation.

England : Youth Offender Panel – In England and Wales a widely use method is the "Referral order. Young offender, appearing in court for the first time are referred to youth offender panel consisting of two trained members of the community the panel decides on in action plan through which the young person can make reparation and address his or her problem. It needs again at the end of the order to assess progress. The victim may be invited to meet the offender to express his or her feeling about the offences and consider what form reparation should take ²¹,

Oxford Shire : Youth Offending Team (YOT- The Oxford Shire aims to consult each victim in every case offering in opportunity for contact with a young offender,

or the chance to decide the focus of where reparation . Victims who do not want to meet the young offender or receive reparation can chose from a booklet which local reparative project they want the offender to participate in. A positive element of the YOT Scheme is its emphasis on making reparation visible to the public. To engage the community, the YOT distributes a reparation news letter to interested professionals and holds public meeting to celebrate achievements.²²

The 'Vienna Declaration on crime and justice' : Meeting the challenges of the 21st Century (2000) encourage the development of restorative justice policies, procedures and programmes that are respectful of the rights needs and interest of victims offenders communities and all other party.²³, in 2002 , the United Nation Economic and Social Council adopted a resolution containing a set of "Basic principle on the use of Restorative Justice Programme in criminal matters". These principles of her important guidance for policy makers, community organization and criminal justice officers involve in the development of Restorative Justice response to crime in there society. In 2005 , the declaration of the Eleventh United Nation Congress the on the Prevention of Crime and Treatment offender (2005) Urged members state to recognized the importance of further developing Restorative Justice policies, procedures and programme.²⁴,

Basic Principles on the use of Restorative Justice Programme in Criminal Matter: The basic principles on the use of Restorative Justice Programme in criminal matter were adopted in 2002 by "UN Economic and Social Council. The purpose is to inform and in courage member state to adopt and standardize restorative justice in the contents of the legal system, but there was no intension to make them mandatory or prescriptive. The basic principles referee to the following fundamental safe guards :

Para 13-

- a) The Right to Consult with legal Counsel : The victim in the offender should have the right to consult with legal counsel concentrating the restorative process and where necessary to translation and inter petition .
- b) Right of minors to the assistance of a parent or guardian

- c) Right to be fully informed: Before agreeing to participate in restorative process, the parties should be fully informed of their rights, the nature of the process and the possible consequences of the decision.
- d) Right not to participant : Neither the victim nor the offender should be coerced, are induced to participate in restorative process are to except restorative outcomes .

Para 8 – Participation is not an evidence of guilt: A participation of in offender in a restorative justice process should not be used as evidence of admission of guilt in subsequent legal proceeding.

Para 7- Agreements arising out of a restorative process should be arrive at volunteered and should contain only reasonable and proportionate obligation.

Para 14- Discussion in restorative process that are not conducted in public should be confidential and should not be disclosed subsequently except with a agreement of the party or as required by National Law.

Para 15- The results of agreement arising out of restorative justice programme should, where appropriate, be judicial supervise or incorporated in to judicial decision or judgments. This means that in most system the outcome could therefore the appeal by the offender or the prosecution.

The Basic Principles make it clear, that in some cases, it may be sufficient to adopt policy and clear guidelines to guide the new programme and establish the necessary normative . Such guidelines are covered under Para 12.

- a) The conditions for the referral of cases to restorative justice programme.
- b) The handling of cases following a restorative process.
- c) The qualification training and assessment of facilitator
- d) The administration of Restorative Justice Programme
- e) Standards of competence and rules of conduct governing the operation of restorative Justice programme

Institutions : Presently the idea has taken a mature ship. It is because of significant work done by institution whose contribution should be mentioned here.

- a) The centre for restorative justice and peace making at the University Of Minnesota School Of Social work on the University St. Paul Campus has been established to provide technical assistance, training and research on restorative justice. Balance is sought between the legitimate needs of the victim, the community and the offender that enhance community protection, competency development in the offender, and direct accountability of the offender to the victim and victimize community.
- b) The Conflict Transformation Programme at Institute for justice and peace building in another important initiative. It supports the personal and professional development of individual as peace builders and strengthens the peace building capacity of the institution they serve. It operates with the believe that conflict call for long term strategies that must
 - i) Address roof cast of conflict.
 - ii) A develop strategic approaches to conflict transformation.
 - iii) Promote the healing of relationship and restoration of fabric of humanity.
- c) The National Organization for victim assistance (NOVA) has contributed excellent efforts in the area of victim assistance in the United State. The Department of Corrections created in Feb. 1994 as Restorative justice planner for exploring the ways so that the principles of restorative justice should be applied in correction, court, law enforcement , education and communities.

Section – IV

The Indian Scene and Restorative Justice : As already been explain that the Indian Society had a rich culture of community justice, Its social cultural fabric content intrinsic mechanism to being the conflicting people together and settle their dispute in a highly informal manners. Panchayat and others Social group had been and effective source to dispense justice. The verdict delivered by this body was acceptable to everybody. The interest of the victim was supreme. any time the

offenders directed to compensate are restore the harm done to the victim. but with the winds of imperialism the community justice under being a process of considerable ship. This informal mechanism of settling the disputes got beakenet. The police and force have made the inroads in this.

The current see regarding the restorative justice in the country can be understood under the following head :

- 1) In adequate legal basis: According to legal theorists (G.S. Bajpai) the restorative justice in the Indian Criminal jurisprudence is almost non existing. This is mainly due to the fact that this system of criminal justice in this country is victim oriented. The progress made in the field of victimology is yet to reach to the criminal justice practices in other country. There is no separate law that can enable the victim to have a say in the process because of less scope and cumbersome criminal procedure law, compensation, restitution and restoration are not very common. As for us compensation is considered, sections 357 and section 358 of court of criminal procedure 1973 are present, but the procedure get the compensation is too cumbersome the amount of find impose on the offender, the main source of compensation has remain un change since 1860.
- 2) Compoundable Offences : The compounding of offensive u/s 320 of CRPC 1973 is the closes that Indian Criminal Law has come to the concept of restorative justice. The victim and offender can reach to a settlement with the help of section 320. This procedural law allows the parties to undergo compounding of basis in certain offences without the permission and in some case without the approval of the court. There are some offenses which affect individual and do not affect the society. These types of offenses can be compounded without the permission of the court u/s 320, sub Section 1. The offences under this category are :
 - a) Hearing religious feeling of a person
 - b) Hurt
 - c) Confinement
 - d) Mischief

- e) Criminal Trace fast
- f) Adultery
- g) Defamation

Offenses u/s 320 sub section (2) are of serious nature and cannot be compounded without the permission of the court. These are :

- a) Grievous Hurt
- b) Wrongful Confinement
- c) Misappropriation of Property
- d) Breach of Trust
- e) Fraud
- f) Indecent behavior towards women

If the offences are successfully compounded they result in acquittal. It is a procedure to dispose of the case. It does not attach any condition of restoration or reparation. The existing problem of compounding of cases suffers from various demerits in the following ways.

- i) In reality, it is not in the interest of the lawyer because that good entail a swift end to the case. Hence a part of legal community does not want to end the animosity between victim and the offender .
- ii) Since the Aspect of restorative justice is not deeply entrenched in the country, victim and offender do not take part in the process.
- iii) The compromise that is the finally arrive at is the hand work of unscrupulous middlemen and corrupt police officers and is usually against the interest of the victim. Victim are usually compels to undergo the compromise.
- iv) The huge pendency of cases and lack of infrastructure furthers the problem.

Section –V

Concluding and Suggestion : So far, it has been shown that the concept of restorative justice has progress in the Western World. United Nations has played a major role. It tends to break away with the individualistic notion of criminal justice and present a whole some approach towards reaching a consensus . it allows victims to share their personal experience and through devises like victim offender mediation can reach a closure. Even offender can redeem himself. Through the

devices circle conferencing community gets its say in the justice. Restorative Justice tends to compliment the traditional criminal justice by adding new participant in the system and assigning new functions to the old participant. It is an enabling process which is still struggling to find its way in our country. Following measures can be taken to integrate the concept :

- i) Community Service as a form of restitution represent as a sentencing alternative for the offender you are not dangerous and allows the offender to sensitivise himself towards the need of his society. First time offenders can be ask to serve in old age home, hospitals or clean public utilities.
- ii) Universities should start courses based on the tools of restorative justice.
- iii) Police can play a big role in the following base:
 - a) Serving as a referral source to restorative programme.
 - b) Explaining the restorative justice process to victims, offenders.
 - c) Participating in community base process.
 - d) Using restorative approaches for resolving, disputes and conflict street level.
 - e) Facilitating restorative justice process.
- iv) Bar counsel of India shall introduce restorative justice in syllabus of LLB. course.
- v) Students should get internship with U.N. Office on Drugs and Crime for a practical understanding of the system.
- vi) Judges should be sensitive about the process it can be done in the following base :
 - a) They should know how restorative justice will impact the court procedure and how well it change the way the sentence people and why.
 - b) They should be persuaded that it will actually provide more tools to the court and help them to do more from the bench by getting to know what is actually going on in the case.

- c) Explaining the judges how other agencies of helping in the buildup of restorative.

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