

RESTORATIVE JUSTICE – AN INSTRUMENT FOR IMPROVED PROTECTION OF CRIME VICTIMS

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Restorative Justice seeks to reframe the way we conventionally think about wrongdoing and justice: away from our preoccupation with lawbreaking, guilt and punishment, toward a focus on harms, needs and obligations. This is a new paradigm of criminal justice. A justice process should seek to “put things right” by addressing harms and causes¹.

Restorative justice (RJ) is based on the old traditional practices of Maori, Native Indians of America, Africans and Aborigines. The new Western wave of RJ began with the first Victim-Offender Reconciliation Programme - an experiment in Kitchener, Ontario, Canada, in the early 1970s’ when a youth probation officer convinced a judge that two youths convicted of vandalism should meet the victims of their crimes. At the end of 1980s Family group conferences were developed in New Zealand. Since then there has been a proliferation of new and varied models of Restorative justice. Now Restorative justice is truly on the world map.

¹ Zehr, H.(2002) *Little book on restorative justice*, Intercourse, PA, Good Books

Crime has its origins in social conditions and relationships in the community. The criminal justice is not capable to assure peace in social life. According to Nils Christie² the state and the lawyers “have stolen” the conflicts from the parties involved and have deprived them of any possibility to reach resolution independently. Hence, the conflicts should be returned back to their proper owners.

International legal regulation of restorative justice is extensively presented. It has been taken seriously by the United Nations, the Council of Europe, and the European Union as well as by many non-governmental organizations. Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power -1985 is known as *Magna Carta on victims' rights*. According to her provisions «informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress to victims». The Declaration from 1985 of the United Nations was followed by many other instruments. One of the latest is the UN Handbook on Restorative Justice Programmes³ which provides a good guidance to restorative justice. Council of Europe also has a long lasting interest to Restorative justice. Recommendation No R (85) 11 on the position of the victim in the framework of criminal law and procedure recommends the governments to examine the possible advantages of mediation and conciliation schemes. Very innovative and complete document is the Recommendation No R (99)19 on mediation in penal matters which deals with the need for a good policy and legislative framework, the relation to the criminal justice system and legal safeguards, ensuring the quality of practice, etc. Guidelines for a Better Implementation of the Existing Recommendation Concerning Mediation in Penal Matters were adopted in 2007. The newest and most powerful European Union's document is a Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA⁴. It recognizes that Restorative justice services can be of great benefit to the victim. Victims' Directive requires safeguards to prevent secondary and repeat victimization, intimidation and retaliation. Restorative justice services should have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm.

² Christie, N. (1977) “Conflicts as Property”, *British Journal of Criminology*, vol.17, N 1

³ *Handbook on Restorative Justice Programmes* (2006), United Nations

⁴ L 315/57 Official Journal of the European Union, 14.11.2012

According to the widely accepted definition of Restorative justice⁵ it is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future. Core processes often include an encounter between victims, offenders, the families of each and community members to understand the harm and accompanying obligations, and together to find a response. The meetings are led by a facilitator. He/she is a neutral person with the skills: to prepare people for the restorative process; to ensure that it progresses in a safe and civilized manner; to guide parties through difficult phases. These meetings ensure the material well-being or satisfaction of the victim and attention to the victims emotional needs. Basic principles of Restorative justice are: voluntary participation, based on informed consent; neutrality and impartiality of RJ practitioners; confidentiality; respect for the rights and dignity of persons; promotion of community safety and social harmony. Operative principles of Restorative justice programs are: equal treatment; equal access to RJ services; individualization of the facilitator's style.

Restorative justice gives the offender a chance to absolve his/her own feelings of guilt through apology and reparation. For the future often is produced a plan for rehabilitation and agreement among the family and community members on a system of support for the offender to ensure that he/she is able to adhere to the plan. The key word is RESTORATION. Restorative justice provides an expanded role for victims and requires offenders to take responsibility for their actions and for the harm they have caused. A restorative process gives the victim a forum to ask questions, receive answers, gain understanding, explain the impact of the crime on them and contribute to the outcome of the process. The process may result in the victim receiving an apology, restitution, services or some other form of reparation. A restorative justice process encourages the offender to gain insight into the causes and effects of their behaviour on others, to change that behaviour and to be accepted back into the community. Restorative justice is a forward looking problem-solving and involve the community in prevention programs.⁶

⁵ Marshall, T. (1999) *Restorative Justice. An Overview*. Home Office

⁶ Wright, M. (1991) *Justice for Victims and Offenders*, Open University Press; Van Ness, D. and Strong, K. (2007) *Restoring Justice. An Introduction to Restorative Justice*, 3rd edn., Anderson Publishing; Johnstone, G. (2002) *Restorative Justice. Ideas, values, debates*, Willan Publishing; Dussich, J. & Schellenberg, J. (eds.) (2010) *The Promise of Restorative Justice. New Approaches for Criminal Justice and Beyond*. Boulder/London: Lynne Rienner Publishers; Chankova, D. (2011) *Restorative Justice. A comparative Analysis*, Avangard Prima, etc.

According to Howard Zehr, Criminal justice and Restorative justice represent two different paradigms⁷.

	Old Paradigm Retributive justice	New Paradigm Restorative justice
<i>1</i>	<i>Crime defined as violation of the state</i>	<i>Crime defined as violation of one person by another</i>
<i>2</i>	<i>Focus on establishing blame, on guilt, on past (did he/she do it ?)</i>	<i>Focus on problem-solving, on liabilities and obligations, on future (what should be done?)</i>
3	<i>Adversarial relationships and process normative</i>	<i>Dialog and negotiation normative</i>
4	<i>Imposition of pain to punish and deter / prevent</i>	<i>Restitution as a means of restoring both parties, reconciliation / restoration as goal</i>
5	<i>One social injury replaced by another</i>	<i>Focus on repair of social injury</i>
6	<i>Community on sideline, represented by state</i>	<i>Community as facilitator in restorative process</i>
7	<i>Encouragement of competitive, individualistic values</i>	<i>Encouragement of mutuality</i>
8	<i>Action directed from state to offender:</i> <i>-victim ignored</i> <i>-offender passive</i>	<i>Victim's and offender's roles recognized</i>

⁷ Zehr, H.(1985) Restorative Justice, Retributive Justice. *New Perspectives on Crime and Justice*, Akron, PA, N 4, p.18

9	<i>Offender accountability defined as taking punishment</i>	<i>Offender accountability defined as understanding impact of action and helping decide how to make things right</i>
10	<i>Offence defined in purely legal terms, devoid of moral, social, economic, political dimensions</i>	<i>Offence understood in whole complex: moral, social, economic, political</i>
11	<i>Stigma of crime irremovable</i>	<i>Stigma of crime removable through restorative action</i>
12	<i>No encouragement of repentance and forgiveness</i>	<i>Possibilities for repentance and forgiveness</i>
13	<i>Dependence upon proxy professionals</i>	<i>Direct involvement by participants</i>

Table 1

We see that restorative justice determines a central position for the victims' needs - material, financial, emotional and social, prevents re-victimization of victims and stigmatization of offenders. It allows offenders to assume active responsibility for their actions. Restorative justice recreate a working community that supports the rehabilitation of offenders and victims and is active in preventing crime. This is an opportunity for victims, offenders and community members who want to do so to meet to discuss the crime and its aftermath.

Restorative justice is a value-based model. Key values are reintegration and inclusion. Other restorative justice values are mutual respect; acknowledgment; openness; empowerment; connectedness; tolerance; integrity; encouragement; sharing ideas; importance of feelings, needs and rights. Basic skills needed in restorative meetings are remaining impartial and non-judgmental, active, empathic listening, respecting the perspective of all involved, empowering participants. Each show compassion, patience, sensitivity, acute observation of participant body-language, warmth.

Analyzing the legal concept, principles, objectives and key values of restorative justice, several distinguishing features of this relatively new approach to crime could be mentioned: Restorative justice invites full participation and consensus. This means that victims and offenders are involved, but it also “opens the door” to others who feel that their interests have been affected - relatives, neighbors, colleagues, etc. Restorative justice seeks to heal what is broken. The victim needs to recover, physically, emotionally, psychologically, financially, and to regain the sense of safety; often they may need to express anger, and want answers to questions. Offenders, too, may need healing. They need release from guilt, resolution of underlying conflicts or problems that led to the crime, opportunity to make things right and reintegration back into community. With regard to communities - they may need empowerment and reinvigoration of civil society and the self-repairing of social relationships. The next important characteristic that restorative justice seeks is full and direct accountability. Accountability does not simply mean that offenders must face the fact that they have broken the law- they also face the people they have harmed and see how their actions have damaged others. They are expected to take steps to repair that harm. Crime causes division between people and within communities. Restorative processes work toward reconciliation of the victim and the offender, and reintegration of both into the community. And finally, restorative justice seeks to strengthen the community in order to prevent further harms⁸.

Restorative justice is a concept, doctrine. It is functioning through a variety of practices. The terms Restorative practices, Restorative process, Restorative models etc. are usually used interchangeably. Restorative justice practices are most fully embody the ideals of communicativeness, sociability and reconciliation. Restorative justice models are Victim-offender mediation, Family group conferencing, Community conferencing, Sentencing circles (sometimes called “peacemaking circles”), Restorative cautioning, Restorative conferencing, Truth and reconciliation commissions, etc.

The main reasons, led to the emergence of RJ models, confirmed by numerous surveys, are summarized in the following diagram:

⁸ Zehr, H. and Mika, H. (1998) “Fundamental Concepts of Restorative Justice”, *Contemporary Justice Review*, N 1; Johnstone, G. & Van Ness, D. (eds.) (2007) *Handbook of Restorative Justice*, Willan Publishing; Aertsen, I., Mackay, R., Pelikan, C., Willemsens, J. and Wright, M. (2004) *Rebuilding community connections - mediation and restorative justice in Europe*. Strasbourg: Council of Europe Publishing, etc.



Diagram 1

These programmes are designed to address the needs of crime victims while ensuring that offenders are held accountable for their offending. Victim-offender mediation (VOM) is widely accepted as a basic and a universal model of restorative justice with broad application. Most restorative approaches strive to achieve a specific interactive dynamic among the parties involved. The goal is to create a non-adversarial, non-threatening environment in which the interests and needs of the victim, the offender, the community and society can be addressed. The focus of the conferencing process is somewhat broader than that of regular VOM programmes. It involves bringing together the family and friends of both the victim and the offender, and sometimes also other members of the community to participate in a professionally facilitated process to identify desirable outcomes for the parties, address the consequences of the crime and explore appropriate ways to prevent the offending behaviour from reoccurring. The models are concerned with eliciting a genuine commitment from the parties to live up to the agreement that they have articulated.

According to some views⁹ the newest European instrument in the field -Victims' Directive – does not promote Restorative justice in the best way. It is considered, *inter alia*, as something we should worry about. Victim support organizations long time are claiming that they consider restorative justice as primarily offender-oriented. Some representatives of judiciary still claim that the right to defense of the accused is not guaranteed enough /despite of the numerous safeguards and compensatory mechanisms/. Misuse of victims it is not a genuine manifestation of restorative justice. It is simply poor implementation, and is contrary to restorative principles. Such a position not only includes the risk of being dragged down into extreme right populist rhetoric. It is also not supported by the available evidence. Our understanding is that both movements - victims' and restorative, can unite for better serving victims' needs.

Restorative justice is not just an idea, not just a doctrine. Restorative justice is a new lifestyle. Restorative practices may have good application in schools, in community matters, in prison settings, at work places etc. However, the “boom” of using RJ practices is still forthcoming.

Restorative justice is not a panacea. Not all offences, problems and difficult situations could be successfully solved through it. If in a given environment a given model produces good results it should not be taken for granted that it will happen everywhere. Some risks always exist and the outcomes from the application of the same method in a similar situation in a different context could be controversial.

There are many different ways of introducing Restorative justice. There have been trials and errors. But definitely this approach could transform the way in which many societies are currently organized, promote the restorative climate and make them safer, happier places!

⁹ Hartmann, A. and Haas, M. (2014) “The Victim’s Directive and Restorative Justice in Germany”. In: Gavrielides, T. (ed.) *A victim-led criminal justice system: Addressing the paradox*, London; Chankova, D. (2013) „Who is Afraid of Restorative Justice?“ In: Aristotle University of Thessaloniki, Pitsela, A. and Symeonidou-Kastanidou, E. (Eds.) *Restorative Justice in Criminal Matters: Towards a New European Perspective*. International Conference, 16-17 May 2013, Thessaloniki, Greece, Sakkoulas Publications: Athens-Thessaloniki, pp. 277-280