

## **Restorative Justice for A Better Criminal Justice System in Bangladesh**

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### **Introduction**

The way traditional criminal justice system is designed and administered today hardly serves any of the purpose for which it is set up: towards securing life and property. It does not deter criminals because of the delay and uncertainties involved in its processes and ridiculously ineffective punishments it imposes on those few who get convicted. A few years ago, as per Law Commission report, the total number of pending cases in different courts in Bangladesh was 19,13,633 in January,2010 and in 2009 a number of 7,19,770 cases were settled following normal procedure<sup>1</sup>. Such a huge backlog of cases shattered the access to justice for common people substantially. In this situation the justice system is bound to collapse completely unless some radical alternatives are adopted urgently. Here, comes the role of restorative justice. It has come to the fore globally at a time when many are realizing the systemic failures of the dominant model of crime control. By calling on those who are harmed, wrongdoers and their affected communities to share the responsibility of responding to violence, restorative justice promotes repair, reconciliation and the rebuilding relationships<sup>2</sup>.

### **Concept of Restorative Justice**

The concept of Restorative Justice is simple. It operates in four stages, namely inclusion, encountering, making amends and reintegration<sup>3</sup>. With inclusion, interested parties are invited to participate and encouraged to accept new approaches. The encountering stage allows victims or their family members to discuss the crime with the offender about the aftermath of the crime and how it can be fixed. The entire process can help an offender to re-enter his/her community. The Restorative Justice system has not been implemented in Bangladesh yet but if the government ensure restorative justice in root level justice system such as village court or the dispute conciliation board, the backlog of cases in formal court system will be decreased and justice will be easily accessible in respect of all class of people. Most contemporary criminal justice systems focus on law violation, the need to hold offenders accountable and punish them and other state interests. Actual crime victims are quite subsidiary to the process and generally have no legal standing in the proceedings. Crime is viewed as having been committed against the state, which therefore, essentially owns the conflict and determines how to respond on it. The relatively new and emerging practice theory of restorative justice emphasizes the need to provide opportunities for those most directly affected by crime (victims, communities and offenders) to be directly involved

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<sup>1</sup> Md. Abdul Karim Miah, Mahmuda Akter, Md. Kamrizzaman, 'The Effectiveness of Restorative Justice Practice in Bangladesh: An Analysis of Humanities and Social Sciences'. Vol.5, No.5, 2017, pp. 176-183.

<sup>2</sup> Marliyn Armour, 'Restorative Justice: Some Facts and History', <<https://charterforcompassion.org>> Last accessed on 27 August,2018

<sup>3</sup> Aiman R. Khan, 'Prospects of Restorative Justice in Bangladesh Legal System', <<https://legllybangali-wordpress-com.cdn.ampproject.org>> last accessed on 27 August 2018

in responding to the impact of crime and restoring the losses incurred by victims. It is basically victim-offender mediation, a process which allows crime victims to meet face-to-face with the offender to talk about the impact of the crime and to develop a restitution plan. In the mid – to late – 1970, restorative justice principles and its precursor, victim-offender reconciliation, were advocated by a small and scattered group of community activists, justice system personnel and a few scholars in both North America and Europe. The mid- 1970 was marked the birthing phase of what would become known as the restorative justice movement. The “child” of this birthing process was the first Victim Offender Reconciliation program (“VORP”) in Kitchener, Ontario, in 1974<sup>4</sup>. Innovation in criminal justice has mainly been in response to frustrations that have been felt with the limitations on account of the traditional approaches. Practice developed through experience of what worked in terms of impact of on offenders, satisfaction of victims and public acceptability. In particular, it was realized that the needs of victims, offenders and the community generally were not independent and that justice agencies had to engage actively with all three in order to make any impact<sup>5</sup>. So, the term ‘Restorative Justice’ is a theory of justice which by acknowledging that crime causes injury to people and communities, insists that justice should repair those injuries and the parties must be permitted to participate in that process. According to Howard Zehr, a leading visionary and architect of the restorative justice movement, “Restorative Justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs and obligations in order to heal and put things as tight as possible”.<sup>6</sup> The benefits of restorative justice are not restricted to offenders alone. In an analysis of what victims need from restorative justice, Mc Cold, found that victims in the traditional criminal justice system commonly experience: a lack of attention to ‘non-material dimensions of victimization’, for example, anger, fear, and mistrust; no focus on repairing the injury caused by crime; failure of the criminal justice system to clearly communicate with victims regarding the status of the case; failure to provide victims with a legitimate and active role when dealing with the offences committed against them; and perceptions of a lack of procedural fairness and dissatisfaction with outcomes due largely to having been excluded from the decision-making process<sup>7</sup>.

It is certainly concerned with restoration: restoration of the victim, restoration of the offender to a law abiding life, restoration of the damage caused by crime to the community.

### **Restorative Justice and Traditional Criminal Justice**

Restorative justice views criminal acts more comprehensively- rather than defining crime as simply law-breaking, it recognizes that offenders harm victims, communities and even themselves.

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<sup>4</sup> Umbreit MS, Coates RB and Vos B, “Restorative Justice versus Community Justice: Clarifying a Muddle or Generating Confusion?” (2004) 7 Contemporary Justice Review 81

<sup>5</sup> Marshall, Tony F. *Restorative justice: An overview*. London: Home Office, 1999. Available at [http://www.antonioacasella.eu/restorative/Marshall\\_1999-b.pdf](http://www.antonioacasella.eu/restorative/Marshall_1999-b.pdf), (last accessed on September 4, 2018)

<sup>6</sup> Howard Zehr, *The Little Book of Restorative Justice*, (2002) Vancouver, B.C. : Langara College, 2016.

<sup>7</sup> Md. Abdul Kader Miah, Mahmuda Akter, Md. Kamruzzaman. *The Effectiveness of Restorative Justice Practice in Bangladesh: An Analysis*, Humanities and Social Science. Vol.5, No.5, 2017, pp.176-183.

Secondly, it involves more parties in responding to crime- rather than giving key roles only to government and the offender, it includes victims and communities as well. Finally, it measures success differently – rather than measuring how much punishment is inflicted, it measures how much harm is repaired or prevented<sup>8</sup>.

“Looking at the huge amount of pending cases on court it is necessary to think of new approaches. Restorative justice, where possible and applicable, might be a good option to restore peace and justice in due course of time. Furthermore, it gives offenders and victims alike the possibility to actively take part in the restoration process”. Said Dr. Ferdinand von Weyhe, Charge d’affaires, Embassy of the Federal Republic of Germany in International Conference on Restorative Justice: From Crime Prevention to Conflict Transformation which was collaborated by The Government of the People’s Republic of Bangladesh, German Development Corporation (GIZ) and the United Kingdom for International Development (DFID).

Each lower court judge, on average, is overburdened with around 2,000 cases for their hearing and disposal. A total of 1,397 judges have been dealing with more than 27, 5 lakh cases across the country<sup>9</sup>. The backlog of cases is growing every day, causing immense suffering to justice seekers. Despite of this fact, the total number of prisoners in January 2008 was about 78,000 against a capacity of 26,000 only. The prison statistics say that Bangladesh by 2004 had 60 prisoners for every 100,000 of its population. The present capacity of accommodation in prisoners is 77,000 which is almost three times larger than its capacity in countries’ 67 prisons.<sup>10</sup> The baneful effect of overcrowding is that it doesn’t segregate among convicts i.e. those punished for serious offenders and those for minor offences. So apparently, the traditional jail system instead of repairing the offender makes him more violent and increases the chances of recidivism which means going back to the criminal behavior after punishment or release from prison. The situation gets worst, due to lack of resources, delay, bribery, corruption, unfairness, dishonesty, abuse of power. At present crime situation in Bangladesh is highly alarming. Many problems like child abuse, women oppression, sexual harassment, eve teasing, physical and mental torture and illegal possession etc. are some common issues which need a bit of attention with care.

### **Prospect of Restorative Justice in Bangladesh**

In Bangladesh, like many other countries, the criminal justice system focuses in law procedures and not on people. Existing legal institution appears to have less impact at the lower levels of the society, especially at the rural level. To deal with these real life situations alternative restorative justice could play a vital role. The restorative justice method allows victims and offenders to negotiate an agreement in a win-win situation with the help of a

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<sup>8</sup> Centre for Justice & Reconciliation at Prison Fellowship International, Restorative Justice Briefing Paper, May 2005. <<http://www.d.umn.edu/~jmaahs/Correctional%20Assessment/rj%20brief.pdf>> accessed on 25 August, 2018

<sup>9</sup> Ashutosh Sarker, ‘One judge, 2000 cases’ Daily Star (Dhaka, 09 September, 2017) <<https://www-thedailystar-net.cdn.ampproject.org>,> accessed on 25 August, 2018

<sup>10</sup> Mashfiq Tamim, ‘Prisoner’s Right in Bangladesh: Laws, Reality and Solutions’, [Vol.5, Jul-Dec, 2016] LJB, <[www.lawjournalbd.com](http://www.lawjournalbd.com)>....accessed on 25 August, 2018

trained facilitator to resolve wrong-doing, to prevent a reoccurrence in a safe and controlled environment. It makes victim feel safer because in ordinary justice system there is always a fear of revenge on the part of the offender or his family. The Restorative system with the help of a facilitator and responsible member of the community bring the victim and the offender together to resolve the dispute arisen between them so that no future harm is caused from either of the parties. The people of the North Bengal in Rangpur, where a pilot RJ project of GIZ that the government is undergoing, think that the RJ system gives them more insurance. They say that they have to suffer a lot of trouble and hassle in every step of dealing with the existing criminal justice system. Where in RJ system they all get relief almost in free, automatically, on the spot and as soon as the mediation conference is finished<sup>11</sup>. How Restorative Justice will work in Bangladesh? Restorative justice process brings together the victim, the offender, family friends and key supporters of both in deciding how to address the aftermath of the crime. The goals of conferencing includes giving the victim an opportunity to be directly involved in responding to the crime, increasing the offender's awareness of the impact of his or her behavior and providing an opportunity to take responsibility for it, engaging the offenders' support system for making amends and shaping the offenders' future behavior.

Restorative justice can be considered as an Alternative Dispute Resolution which may decrease piling up of pending cases. In the countryside, Restorative Justice is prevalent in the form of village courts. The country has a long history of informal dispute resolution through the shalish or the village court. Since 2010, more than 32,000 cases have been reported to village courts across Bangladesh. Almost 25,000 cases have been resolved<sup>12</sup>.

The Village Courts Act, 2006 (Act No.19 of 2006 ) and the Village Courts Rules,1976 regulate the formation, jurisdiction and functioning of an *ad hoc* forum for adjudicating minor disputes or conflicts in rural areas. Village courts have exclusive jurisdiction to try all disputes that are enumerated in a schedule to the Act (section 3(1)). Accordingly, taking cognizance or holding a trial of any of these offences by any criminal court is illegal and without jurisdiction. While village courts are formally constituted judicial forum, their functioning is only semi-formal since technical rules of procedure, as prescribed by the Code of Criminal Procedure and the Evidence Act are not applicable. The existing norms and procedures of justice mechanism within local government bodies in Bangladesh largely reflect this fundamental principle of restorative justice. But the list of offences currently subject to the jurisdiction of village court is unreasonably short. Moreover, the choice of offences reflects no rational basis. It contains several cognizable offences, some of which are of serious in nature, but fails to contain many non-cognizable petty offences<sup>13</sup>. Basically, to

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<sup>11</sup>Sabbir Hossain Rhytm, 'Restorative Justice: An Old Mechanism with a New Holistic Approach', August 27,2015 BLD<<http://bdlawdigest.org/restorative-justice-an-old-mechanism-with-a-new-holistic-approach.html>> last accessed 26 August 2018

<sup>12</sup> Aiman R. Khan, 'Prospects of Restorative Justice in Bangladesh Legal System',<<https://legallybangali-wordpress-com.cdn.ampproject.org>> last accessed on 26 August 2018

<sup>13</sup>Borhan Uddin Khan, Muhammad Mahbubur Rahman,'Local Government Level Restorative Adjudication: An Alternative Model of Justice for Children in Bangladesh',(Commonwealth Journal of Local Governance, Issue.4:November 2009) <<http://epress.lib.uts.edu.au/ojs/index.php/cjlg>> accessed on 25 August, 2018

input restorative justice mechanism, the bottom of justice system should be made strong enough with experienced facilitators.

A restorative justice works better for juveniles than it does in the case of adult offenders and provide an appropriate alternative to existing mechanisms found within the juvenile court system. Part V of the Children Act,1974 empowers the juvenile courts to take necessary measures in respect of destitute and neglected children under section 32-33. However, this jurisdiction of the juvenile courts is rarely exercised<sup>14</sup>.The juvenile court system can be changed with restorative justice system. The prevailing restorative model of justice at the local government level in Bangladesh which argues that this model, if adequately activated and reformed, can be a desirable alternative to the formal system of justice for children who come into conflict of law.

On the other hand, a huge backlog of criminal cases may be reduced if the government can amend the Code of Criminal Procedure to introduce the restorative justice for disposing of criminal cases through compromise outside the court.

### **Conclusion**

In Bangladesh, the formal justice system is under tremendous pressure for huge caseloads and vastly overstretched human resources mean that the backlog of cases at present stands at nearly half a million. Apart from that, just knowing that the offender is in the jail, sometimes, is not enough. It turns enough when the offenders get to know what impact has the offence done to the victim, Sometimes through the elements of restorative justice, the offenders walks out of an RJ session regretting his/her actions as he/she listen to the suffering of the victims. By honoring the healing power of story, teaching us to listen deeply to the wounded within others and ourselves and working with the energy of conflict and people's intense emotions, restorative justice practices can transform pain into hope. Hence, to create an impact and make justice readily available, the legal framework of Bangladesh must formally introduce Restorative Justice in the system.

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<sup>14</sup> *ibid*