
Restorative Justice And Restorative Paradigm

Retributive Justice is defined as the response to criminal behaviour that focuses on the punishment of lawbreakers and the compensation of victims (Meyer, 2014). It is believed in retributive justice, that the severity of the punishment should be proportionate to the seriousness of the crime committed. Whereas, Restorative Justice is a theory of justice that emphasizes repairing the harm caused by criminal behaviour (Van Ness, 2019). This is achieved through cooperative processes allowing both victim and offender to meet and all willing stakeholders, although other means are available when that is impossible (Van Ness, 2019). This process is believed to cause transformation of parties, their relationships and their communities. Retributive justice can be defined by three major principles which are (1) it focuses on punishment, one that is suitable and proportionate to the crime committed (Dawson, 2015). (2) that it is intrinsically morally good, if some legitimate punisher gives them the punishment they deserve (Walen, 2014); and (3) focuses on punishing the offender for the crime and maintains that justice is served when the offender has been punished appropriately (Dawson, 2015). In contrast to this, Restorative Justice focuses on (1) the crime or harm and that justice should focus on repairing that harm ; (2) The people most affected by the crime should be able to participate in its resolution and (3) The responsibility of the government is to maintain order and of the community to build peace (Van Ness, 2019). In this case, to restore the conditions previous to when the incident occurred.

Compared to a Restorative paradigm in case study 6, the young man would be dealt with in a Retributive paradigm, by the laws of Trinidad and Tobago by the Sexual Assault Act but because both parties being considered a child, persons under the age of 18 years (ACT 46:10, 2015), Decriminalizing of sexual activity between children would be applied under this law. The circumstances do not reveal any element of exploitation, coercion, threat, deception, grooming or manipulation in the relationship, a court may order a child offender between the ages of 10 and under the age of 18 years to be placed in a Rehabilitation Center until the offender attains the age of 18 or can be extended to the age of 21 (ACT 46:10, 2015). For example, as the young man is 16 years of age, in the laws of Trinidad and Tobago, he is still considered a minor so he cannot be charged with the full extent of the law and so would be reprimanded at the Youth Training Facility (YTC) until the age of 18 years or until 21 if the court feels fit to do so. He can also be placed in a “Home” or a home for boys by the court, where he would be counseled and evaluated for mental issues and behaviours by a mental health professional and a clinical psychologist and be reprimanded and/or treated until his release.

Compared to a Restorative Paradigm, the young man would first be evaluated for mental issues or abnormalities by a forensic mental health professional and a clinical psychologist and if negative would be sent for therapeutic counseling, once he acknowledges his offense. He would also be suggested by the social worker specialist in sexual offenses, who is issued by the court, to assist the offender in the preparation to confront the victim and apologize by a formal letter first, once he voluntarily agrees to it. That would then proceed with a verbal apology to the victim and her family for the trauma caused personally and preparation for the confrontation with the victim, the family as well as the community. When a date is set for the conference, the offender and the victim and their families will be counseled and prepared for what is to happen on the conference day.

In preparation of the pre-conference, in context to restorative justice in sexual offenses, involves three constituencies which are: (1) survivor/victims and secondarily victimized family and friends who suffer distress along with their loved one (Koss & Achilles, 2008). This will include the victim and her family; (2) community members who experience less safety and social connection when they perceive high levels of crime and low deterrence, yet who simultaneously may be contributing to an environment supportive of sexual violence (Koss & Achilles, 2008). This will include the community representative from a sexual offending support agency; and (3) offenders as well as their families and friends, who experience guilt and shame that is associated with being accused of a sexual crime or belonging to the interpersonal relationship context from which the offense arose (Koss & Achilles, 2008). This pertains to the offender, his family and the close friend with whom the victim and the offender had a mutual friendship with. These meetings would also be accompanied by the referring police officers, counselors for both victim and offender and persons who call the meetings of a committee also known as conveners.

Within the Restorative justice options for the offender, the victim, their families and their community, it would provide (1) sharing circles. This is where all participants would share their stories about how they felt and how the incident has affected them both directly and indirectly. (2) Victim-offender dialogue. This is when the victim and the offender communicate with each other either through written or verbal communication or through a representative. (3) Victim impact panels. Here is where the victim expresses her feelings through her counselor. (4) Community reparation boards. This is used by the counselors, police officers, families of victims and offenders and the community representatives to discuss the larger impact of the incident in the community and to discuss what can be done to prevent other similar incidents from reoccurring. (5) Circles of support. This is where all participants will be counseled and supported throughout the process. (6) Sentencing circles. This is the main potential of the restorative justice system as it provides the opportunity for apology and reparations towards the victim. (7) Conferencing with juveniles and adults. This process ensures that all participants of the offender and victim are on the same page when developing a plan for rectifying and managing the effects and results of the incident and restorative discipline in educational settings (Koss & Achilles, 2008). For example, within this process, the offender on the day of the official conference would have taken full responsibility for his actions and apologized personally to the victim, her family, the community at large and his own family as well. On agreement through the development of the conference, the offender would also agree to make a commitment to refrain from the vicinity of the victim's neighborhood and not to infringe on her feelings of safety in her environment and take further therapeutic counseling sessions. He would also agree to amend differences with their mutual friend prior to the incident as it was important to her for the restoration of that communication and friendship with that particular friend.

In relation to the victim in case study 6, restorative justice is responsive to the victim needs for validation, empowerment, and repair of harm and preventative of future sexual assault (Koss & Achilles, 2008). It was a voluntary process for all participants where all parties were respected and valued and no further harm occurred to the victim or the family. It also acknowledges that the victim and the offender may have indirect communication with each other as they are members of the same community of friends. It may be difficult to avoid each other but through the Restorative Justice process, his integration back into society would be an easier process and does not compromise his legal rights. This also gives the victim a provided opportunity to gain control over the process of being a victim of an unfortunate incident and move forward in her life.

References

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