

ANALYSING INDIA'S
JUVENILE JUSTICE LAW
FROM THE LENSES OF
RESTORATIVE JUSTICE

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GUIDE – MR. NEERAJ GUPTA

Lovika
Hingorani
(20ML014)

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DECLARATION

I hereby declare that this dissertation was done solely by myself, that the work contained herein is my own research, and that this project has not been submitted, in part or whole, for any alternate degree or professional qualification. Wherever contributions of other people are taken, every attempt is made to indicate this clearly, with due reference to the literature.

The study was completed under the supervision of Mr. Neeraj Gupta Sir at the Nirma University, Ahmedabad.

I have read the University's current research guidelines and accept responsibility for the conduct of the procedures under the University's Rules.

Lovika Hingorani

Date: 07/2021

LIST OF CASES

1. Hiralal Mallick v. State of Bihar, 1977 AIR 2236.
2. Mukesh & Anr v. State for NCT of Delhi & Ors, (2017) 6 SCC 1.
3. Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India and Ors., AIR 2017 SC 2546.

LIST OF ABBREVIATIONS

Abbreviation

Explanation

CRC	Convention on the Rights of the Child
FGC	Family Group Conference
JJA	Juvenile Justice Act, 1986
JJ (C&P) Act, 2000	Juvenile Justice (Care and Protection of Children) Act, 2000
JJ (C&P) Act, 2015	Juvenile Justice (Care and Protection of Children) Act, 2015
JJS	Juvenile Justice System
RJ	Restorative Justice
RJS	Restorative Justice System
VOC	Victim Offender Conference

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CHAPTER 1

INTRODUCTION

1. INTRODUCTION

“An Eye for an eye and the whole world would be blind.” – Kahlil Gibran

The Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice express restorative justice (hereinafter as RJ) in the following words:

“While most approaches to juvenile justice concentrate on punishing or treating delinquent youths, the restorative justice process seeks to repair the harm by involving the entire community in rehabilitating offenders and holding them accountable for their behavior”.¹

RJ is a thought of criminal justice, keeping the hub on mending relations and reconciling the survivor. It can be put in through survivor-wrongdoer conciliation, community reparative boards, sentencing circles and family and society group conferencing, etc. It will repair the harm rather than just punishing the wrongdoer, making the process victim-friendly too, unlike the current criminal justice system.² These properties of RJ can well be applied to Juvenile Justice System as well specially to keep children out of institutional care.

The establishment of the first Reformatory institution for juveniles in India was in Bombay in 1843,³ and the passing of the earliest Act called the Apprentice Act was in 1850.⁴ Sections 82 and 83 of the Indian Penal Code gives certified and total exemption to a juvenile who has carried out a crime and has not completed the age of seven years; also, a child more than seven years but less than twelve years shall not be guilty who has not gained enough matureness during carrying out the offence. The burden is on the court to adapt means to find out the age of the offender.⁵ The Juvenile Justice Act, 1986⁶ specified that boys below 16 years of age and girls below 18 years of age will be immune from adult treatment and punishment under the criminal justice system for breaking any law.⁷ Later the age bar of immunity for boys was also extended to eighteen years under the Juvenile Justice (Care and Protection of Children) Act, 2000⁸ so that juvenile laws could conform with the Convention on Rights of Children.⁹ The Act was altered in 2006¹⁰ and 2010 to focus on the juvenile rather than the offence carried out by him/her ensuring she/he does not glide falling towards juvenility instead of walking on a rectifying pathway.¹¹ A three years' service in correctional homes was regarded sufficient in the majority of cases.¹² As a result of the brutality of the offences carried out by children and the current

¹ Juvenile Justice Initiative, <https://jjustice.org/resources/restorative-justice/> (last visited July 21, 2021).

² *Id.*

³ Naeesha Yusuf Halai, *Retributive or Restorative Justice for Juveniles in India*, 3 INT'L J. MGMT. & APPLIED SCI. 40, 41-45 (2017).

⁴ Apprentices Act, 1850, No. 19, Acts of Parliament, 1850 (India).

⁵ Hiralal Mallick v. State of Bihar, 1977 AIR 2236.

⁶ Juvenile Justice Act, 1986, No. 53, Acts of Parliament, 1986 (India).

⁷ *Id.* at S.2(h).

⁸ Juvenile Justice (Care and Protection of Children) Act, 2000, No. 56, Acts of Parliament, 2000 (India).

⁹ United Nation's Convention on the Rights of the Child, Art. 1, General Assembly Resolution, 1990.

¹⁰ Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, No. 33, Acts of Parliament, 2006 (India).

¹¹ Naeesha Yusuf Halai, *supra* note 3, at 41.

¹² *Id.*

increase in the crime rate, the JJS has been called into doubt.¹³ After the horrendous happening in 2012 in Delhi, the Nirbhaya gang rape, juvenile justice became a contentious matter.¹⁴ The imposition of 16 to 18 years old prosecution soared as the result of the ruling.¹⁵ Forgiveness to offenders under the age of 18 was never intended under juvenile regulations.¹⁶ Consequently, the administration perceived the requirement to close the legal holes, approach people's revulsion and quieten those commentators who blame the administration for being too lenient on the wrongdoers.¹⁷ On August 12, 2014, a bill relating to juvenile justice was tabled in Parliament by the Minister for Women and Child Development. Parliament approved it in December 2015, and it became effective on January 15, 2016.¹⁸ Although the Parliamentary Standing Committee provided a complete 294 pages report¹⁹ criticizing it, it was passed, and such a model was already not successful in the United States.²⁰ Because these reports are not obligatory, the government accepted the bill.²¹ Child activists think that the Act of juvenile justice, 2015 is tyrannical.²²

Since 1968 India adopted the juvenile code and continued to make amendments starting from 2000, 2006, 2010, and finally in 2015. Then why to be reluctant to bring a whole new alternative system because anyways, crime rates have increased after 2015 in India and in countries such as the USA already the detention system has been a failed model.

Tracing of Juvenile Justice Homes can be long back to the JJA with the purpose of protection, development, care, treatment and rehabilitation of juveniles.²³ According to the research so far, the so-called special homes are the new crime hubs for the juveniles, there is more recidivism than before, and the reformatory clause of the Act is not fulfilled, which brings us to the need for RJ.²⁴

RJ is an acceptable plan: The restorative justice system establishes a different approach to deal with juvenile delinquencies where it tries to resolve the issue by involving the victim, offender and community.²⁵ This system favours the victim and offender both as it is a voluntary process out of the court.²⁶ As a society, our task is to raise the descended, not to evaluate instead restore the fragmented and make better the harm. We cannot be obstacles in their growth rather be their butter and bread. There is a requirement of readiness to draw survivors to the leading position in proceedings, an alternative way of thinking, compassion, and understanding

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Mukesh & Anr v. State for NCT of Delhi & Ors, (2017) 6 SCC 1.

¹⁶ Naeesha Yusuf Halai, *supra* note 3, at 41.

¹⁷ *Id.*

¹⁸ Juvenile Justice (Care and Protection of Children) Act, 2015, No.2, Acts of Parliament, 2015 (India).

¹⁹ Department-related Parliamentary Standing Committee on Human Resource Development, *The Juvenile Justice (Care and Protection of Children) Bill, 2014*, RAJYA SABHA (Feb., 2015), <http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20HRD/264.pdf>.

²⁰ Naeesha Yusuf Halai, *supra* note 3, at 41.

²¹ *Id.*

²² *Id.* at 40.

²³ Juvenile Justice Act, 1986, *supra* note 6, at S.9,10,11.

²⁴ Suhas Chakma, *India's Hell Holes: Child Sexual Assault in Juvenile Justice Homes*, ASIAN CENTRE FOR HUMAN RIGHTS (Mar., 2013), <http://www.achrweb.org/reports/india/IndiasHellHoles2013.pdf>.

²⁵ David B. Wilson, Ajima Olaghere & Catherine S. Kimbrell, *Effectiveness of Restorative Justice Principles in Juvenile Justice: A Meta-Analysis*, NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE (May 12, 2017), <https://www.ojp.gov/pdffiles1/ojdp/grants/250872.pdf>.

²⁶ YVON DANDURAND, HANDBOOK ON RESTORATIVE JUSTICE PROGRAMMES 18 (United Nations 2006).

restoring and rising as essential tenets of proceedings, not the burdensome laws.²⁷ In service of congregative answers and repairing, the operation of RJ calls for veracity revealing by returning penal techniques to crime on every side. RJ queries, “Who was injured? What do they require? Whose duty is it to satisfy those requirements?” and not querying, “Who broke the law, in what manner they should be penalized and what law was broken?”²⁸ At its foremost, starting with the survivor, RJ, through direct discourse, give rise to concord-founded schemes that satisfy the requirements of everyone influenced. The heart of RJ is identifying injury, taking accountability for the same and restore to good working order.²⁹

The dissertation focuses on RJ and bringing it as an alternative to the JJS.

2. STATEMENT OF PROBLEM

Initially, to understand, the term “restorative” means something with restoring properties or serving to restore or to recompense meaning, thereby to make good the loss and return to a previous condition or position.³⁰ On the contrary, “justice” is the attribute or condition of being equitable or fair; correctness, conforming to reality or rules; the epitome of neutrality, and honesty, mainly about the retribution of crime; stern execution of moral duties; integrity; fair play, counting both kinds of rights, natural as well as legal.³¹

RJ has a problem-solving approach towards crime and considers crime as a wrong against the victim and community.³² The victim has a vital role to play in the system of RJ.³³ It considers that three parties are affected in any delinquent behaviour, i.e., victim, offender, and the community at large, and tries to settle or satisfy all the parties through peaceful settlement and harmony.³⁴ Hence, if all the parties are ready, they meet and talk over the injuries and also outline the actions to be taken to restore.³⁵

Judgement of children should be as children: There is a difference between error rectification and punishment.³⁶ A legitimate law is a just law, and serving of justice will not be by giving punishment; rather, it would be by rectifying the error.³⁷ This is very unfortunate that, first of all, children are committing crimes, there are various reasons for the same,³⁸ but the purpose of this research is to try a different approach towards lowering and preventing juvenile crimes because the current approach has highly repeat offenders, low survivor satisfaction and constant crime rate.

²⁷ Naeesha Yusuf Halai, *supra* note 3, at 44.

²⁸ CENTRE FOR JUSTICE & RECONCILIATION, <http://restorativejustice.org/rj-library/howard-zehrs-restorative-justice-threes/12428/#sthash.OajMnpEM.TuGwmIri.dpbs> (last visited July 25, 2021).

²⁹ Patrick Gerkin, John Walsh, Joseph Kuilema & Ian Borton, *Implementing Restorative Justice Under the Retributive Paradigm: A Pilot Program Case Study*, 7 SAGE OPEN 1, 2-10 (2017).

³⁰ *Restorative*, *Oxford Dictionary* (2020).

³¹ *Id.* at *Justice*.

³² YVON DANDURAND, *supra* note 26, at 6.

³³ National Criminal Justice Reference Service, https://www.ncjrs.gov/ovc_archives/nvaa99/chap4.htm (last visited July 25, 2021).

³⁴ CENTRE FOR JUSTICE & RECONCILIATION, *supra* note 28.

³⁵ *Id.*

³⁶ STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <https://plato.stanford.edu/entries/justice-retributive/> (last visited July 25, 2021).

³⁷ *Id.*

³⁸ Naeesha Yusuf Halai, *supra* note 3, at 40.

Indubitably children are considered the future of the nation, and, in all aspects, we want to put all good things in the futures' hands but to make it happen, the efforts are nil. The ground realities are different. India does not spend even ten per cent of its Gross Domestic Product on children.³⁹ It is seen that uneducated children are more into such crimes even after having the Right to Education Act;⁴⁰ children drop out of school quite fast who become more criminal-minded in correctional homes.⁴¹ There is a need to give importance to juvenile crimes, and for making that possible, RJ should be adopted for juvenile offenders.⁴² A perfect system for juvenile justice would be where survivors, the government, society, and the wrongdoers collectively work in a clear course of action to restore the child.

RJ makes sure that we do not tag children as delinquents, criminals, or victims; instead, we refer to them as survivors and responsible persons to show the light of growth.⁴³ There is a need to test this model. Moving children from their homes should be the last recourse and not the first one.

3. SIGNIFICANCE

It is significant to safeguard and aid the best concerns of the children whether she or he is a wrongdoer or survivor throughout the process. The present study will suggest better alternatives in the form of a restorative approach in the JJS and also the implementation of the same.

4. RESEARCH QUESTIONS

- A. What is RJ? How does it work?
- B. What is the relevance of RJ in the JJS?
- C. How we can study India's Juvenile Justice Act in the light of the Restorative Approach?
- D. What can be remedial measures that are survivor as well as wrongdoer friendly?

5. SCOPE

While there is a need for RJ in all aspects of law and every country, the impact of the approach on juvenile crimes is poorly understood. This study aims to suggest the need for RJ in juvenile delinquency. The scope of the study is limited to crimes committed by juveniles, i.e., population under the age of 18 years in India.

6. OBJECTIVES

- To study and analyze the concept, principles, values and working of RJ.
- To understand and analyze the relevance of RJ in the JJS.
- To prevent recidivism amongst children in conflict with the law.
- To prevent crime amongst children in need of care and protection.

³⁹ HAQ: CENTRE FOR CHILD RIGHTS, <https://www.haqcrc.org/wp-content/uploads/2020/02/haq-2020-21-budget-for-children-analysis.pdf> (last visited July 21, 2021).

⁴⁰ Right of Children to Free and Compulsory Education Act, 2009, No. 35, Acts of Parliament, 2009 (India). According to the Act, every child betwixt the ages of 6 to 14 years has the right to free and compulsory education. The public schools shall give free education to every child and the schools shall be managed by School Management Committees (SMC). Private schools shall accept at least 25% of the children in their schools for free. 86th Amendment Act (2002) through Article 21A (Part III) of the Constitution seeks to make free and compulsory education a Fundamental Right for every child in the age group 6-14 years.

⁴¹ Naeesha Yusuf Halai, *supra* note 3, at 44.

⁴² *Id.*

⁴³ Sujatha Baliga, *A different path for confronting sexual assault*, VOX (Feb.04, 2021, 01:47 PM), <https://www.vox.com/first-person/2018/10/10/17953016/what-is-restorative-justice-definition-questions-circle>.

- To critically examine the current provisions of the JJS in India in the light of RJS.
- To suggest changes in the juvenile law in consonance with the RJS and thereby create an atmosphere of approval and acceptance of the same in the Indian legal system.
- To suggest remedial measures which are survivor as well as wrongdoer-friendly.
- To suggest ways to meet challenges in the current JJS in India.

7. RESEARCH METHODOLOGY

The present study is explanatory, pure, comparative, empirical, and non-experimental. The primary source of information will be data collected from police officers from the city of Bhopal of the State of Madhya Pradesh, law and international treaties and other important documents. The secondary sources of information will be books, published and unpublished articles, newsletters, newspaper articles and data of various governmental and non-governmental organisations etc.

The collection of the data will be through the technique of questionnaire. The data analysis will be made; information will be explained and based on it, the suggestion will be given regarding the need and implementation of RJ in juvenile delinquency.

RESTORATIVE JUSTICE: MEANING, CONCEPTS, VALUES, PRINCIPLES AND WORKING

1. INTRODUCTION

At first, to apprehend, the word “restorative” implies something with reinstating effects or serving to reinstate or to indemnify meaning, therefore restoring to an earlier position or state and make good the loss.¹ On the opposite, “justice” is the attribute or condition of being equitable or fair-minded; the concept of fairness and equity, in particular regarding the correctness, serious implementation of ethical responsibilities; good behaviour, penalty of crime, obeying regulations or truth, honesty, adding up each of the two types of entitlements, legal in addition to natural.²

Zehr, who is considered pioneer in the field of RJ defines it as “a process to involve, to the extent possible, those who have a stake in the specific offence to collectively identify and address harms, needs and obligations in order to heal and put things as right as possible”.³ Marshall sees the restorative justice as “...a way to respond to crime that focuses primarily on repairing the damage caused by the criminal act and restoring, insofar as possible, the dignity and wellbeing of all those involved”.⁴ Mechem sees restorative justice as “justice administered by the judicial machinery which restores man to his proper rights”.⁵ Thus, it can be seen that the core of the restorative justice lies in the fact that the victim is reintegrated in the mainstream of the society with any mode, process or principles which helps in addressing the harm caused to them.

RJ’s attitude concerning offence is problem-solving and contemplates offence misdeed against the community and survivor. In RJS, the survivor has an essential part to perform. It recognises that three parties are impacted in any criminal conduct, i.e., perpetrator, survivor, and the community as a whole, and using consonance and tranquil agreement seeks to please or settle every party.⁶ Thus, if every party is prepared, they gather and discuss the wrongs and sketch the steps to be reinstated.

As the chapter’s name suggests, this chapter talks about RJ and covers the topic in detail. It is the response to the first research question of this dissertation, i.e. What is RJ? How does it work? The division of the present chapter is into ten parts. The first part covers the introduction of RJ, giving a brief overview of the chapter.

Further, the second part will compare the criminal justice system and RJS, covering different aspects of both systems. The Third part covers theoretical justifications to RJ and the fourth adds what all is not RJ. Further, the fifth part will take us through the meaning of RJ. The Sixth, Seventh and Eighth part covers the principles,

¹ *Restorative*, Oxford Dictionary (2020).

² *Id.* at *Justice*.

³ HOWARD ZEHR & ALI GOHAR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 40 (Good Books 2003).

⁴ CHRISTIAN B.N. GADE, “RESTORATIVE JUSTICE”: HISTORY OF THE TERM’S INTERNATIONAL AND DANISH USE 28 (Springer Cham 2018).

⁵ *Id.* at 29.

⁶ CENTRE FOR JUSTICE & RECONCILIATION, <http://restorativejustice.org/rj-library/howard-zehrs-restorative-justice-threes/12428/#sthash.OajMnpEM.TuGwmIri.dpbs> (last visited July 25, 2021).

values and working of RJ respectively. Further, the ninth part deals with the criticism of RJ and final part covers the summary of this chapter and the discussion done in the next chapter.

2. COMPARISON BETWEEN WESTERN CRIMINAL JUSTICE SYSTEM AND RESTORATIVE JUSTICE SYSTEM

Western Criminal Justice System directs the restoration of justice using a one-sided penalty, but RJS involves restoration of justice by reinforcing significance on common morals in a two-sided event.⁷ Matters of interest related to influence and a person's standing pertain primarily to the western criminal justice system, and matters of interest relating to common morals pertain to the RJS amidst the implicit representations of violations.⁸

Conventionally, the Western Criminal Justice System focuses on three issues at the time of the offence: Who broke the law, how they should be penalized, and breaking of which law occurred? The purpose is to obtain sanctions or revenge for a crime enacted, this sort of perspective is termed retributive. RJ activities highlight a series of distinct interrogatives: Who was injured? What do they require? Whose duty is it to satisfy those requirements?⁹

The primary way of interacting with the unfairness implicated in a violation is penalty or sanction in retributive justice.¹⁰ Courts castigate criminals; in enforcing a sentence, there is regard to fairness.¹¹ The feasible purpose of a sanction is not alone questing justice.¹² The alternatives to retributive justice proposed are now usually known as RJ.¹³ In many cases, estimation of violations as disputes that must be returned to appropriate possessors to settle: survivors, criminals and their particular communities.¹⁴ Although sanction can frequently be a component of RJ, it is not very important.¹⁵ Important is discourse event that stresses recovery and not sanctions: recovery of criminal *via* the re-establishment of her/his social and ethical selves, recovery of survivor and annulling the injury he/she has suffered; repairing social relations and healing communities.¹⁶

The current retributive justice contains robust characteristics of local coherence and justness whereby an unbiased group of judges or judge takes a legal proceeding on the grounds of valid proof and put the law having a basis on approved explanations, writing and general operation.¹⁷ Since the offence is regarded as polity demesne, the claimants have a finite part for criminals and survivors to depict their emotions, propose remission or regret, put forward and respond to interrogatives relevant to them or tell their aspect of the

⁷ Michael Wenzel, Tyler Okimoto & Michael Platow, *Retributive and Restorative Justice*, 32 LAW & HUM. BEHAV. 375, 376-389 (2007).

⁸ *Id.* at 375.

⁹ HOWARD ZEHR & ALI GOHAR, *supra* note 3, at 20.

¹⁰ Michael Wenzel, Tyler Okimoto & Michael Platow, *supra* note 7.

¹¹ *Id.*

¹² *Id.*

¹³ Gordon Braithwaite, *Restorative Justice and Earned Redemption: Communities, Victims, and Offender Reintegration*, 41 AM. BEHAV. SCIENTIST 768, 769-813 (1998).

¹⁴ Nils Christy, *Conflicts as Property*, 17 BRIT. J. CRIMINOLOGY 1, 2-15 (1977).

¹⁵ Michael Wenzel, Tyler Okimoto & Michael Platow, *supra* note 7, at 376.

¹⁶ John Braithwaite, *Restorative Justice and Response Regulation*, N.Y. OXFORD U. PRESS, (2002).

¹⁷ Michael Wenzel, Tyler Okimoto & Michael Platow, *supra* note 7.

narrative.¹⁸ Because of the after-fact characteristics, RJ colligates different notions, and its consensual definition does not exist.¹⁹ Christie believes that observation of crimes must be as disputes that owe to criminals and survivors and that these stakeholders should engage in resolving them, one premature cognitive underpinning for RJ. Legal Experts and Criminal Law Organizations rob the stakeholders of their obligation and entitlement, those disputes, their chance to acquire knowledge and develop utilizing their disputes.²⁰

It is crucial to recognize that the pain or the punishment itself and its embarrassment implicates the perpetrator reinstating justice for the western criminal legal system.²¹ The perpetrator is entitled to be penalized, disorganizing the ethical equilibrium and transgressing established laws.²² RJ, in comparison, is a better way to reinstate justice.²³ RJ, as explained earlier, perceives crime as a settlement of dispute betwixt criminal, survivor, and community through their interconnection.²⁴ In the western criminal legal system, justice means reinstatement of apprehension of justice by applying sanction in vengeance or judgement;²⁵ in RJ, justice is the reinstatement of apprehension of justice by shared understanding on restored morals.²⁶

The RJS and the western criminal legal system imply reprehension, but their comprehensions are entirely distinct.²⁷ Reprehension is one-sided, penalizing the criminal in terms of the western criminal legal system.²⁸ On the other hand, RJ requires self-reprehension of the criminal, who accepts accountability, admits the injury caused and conveys regret.²⁹ In particular, when reprehension is unilateral, it is the western criminal legal system, and when reprehension is a joint endeavour undertaken betwixt criminal, survivor and the community, it is the RJS.³⁰ Reinstatement of Ethical Denotation by averting against the criminal in the western criminal legal system; Reinstatement by general agreement in the RJS.

Thus, the construction of violation as a danger to potency and position should give precedence to the idea of the western criminal legal system and should give precedence to the idea of the RJS as a danger to the common morals.

3. ARGUMENTS IN FAVOUR OF RESTORATIVE JUSTICE SYSTEM

It is all known that as a society's method for reacting to offence, the adversarial justice system, is distant from being flawless. The RJ model is totally distinct and a novel model of justice that has evolved in response to this fact. But queries yet linger concerning whether these methods contradict with the prevailing propositions of retribution and whether using such model in the criminal law can be justified. Therefore, before analyzing

¹⁸ *Id.* at 377.

¹⁹ *Id.*

²⁰ Nils Christy, *supra* note 14, at 8.

²¹ Michael Wenzel, Tyler Okimoto & Michael Platow, *supra* note 7, at 378.

²² *Id.*

²³ *Id.*

²⁴ Lode Walgrave, *Restorative Justice for Juveniles: Just a Technique or a Fully Fledged Alternative?*, 34 HOW. J. 228, 229-249 (1995).

²⁵ Michael Wenzel, Tyler Okimoto & Michael Platow, *supra* note 7, at 379.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

the RJ, an attempt has been made to find the theoretical foundations of the same so that its concepts are understood in proper perspectives.

Cost Effective

Although the adversarial retributive structure is efficacious beyond doubt in lowering the degree of the offence committed, it usually attains this objective at a substantial budgetary cost and inefficaciously.³¹ Further, the adversarial retributive structure leaves a lot to be desired in terms of justice in the real sense. Darren Bush expressed this inadequacy accurately:

“Given the decline in the value of additional years of imprisonment, it is questionable whether lengthy sentences will resolve the issue. The benefits of long-term incarceration will be outweighed by the costs under any analysis, given that it serves no deterrence purpose, increases societal costs, and leaves offenders who might otherwise be productive members of society without that ability.”³²

The first reasons supporting the logic of RJ are based primarily on the broader argument that RJ approaches are comparatively cost-efficient than punitive justice approaches.³³ According to Braithwaite, RJ “averts maximally expensive options,” for example, maintenance of the criminal court system and imprisonment, and can thus offer a more cost-effective solution to the traditional retributive paradigm.³⁴

Two factors that intensify these deliberations in the circumstances of mass brutalities are first the quality of the offences perpetrated – those of the most severe kind, for example, rape and murder and second, the extent or scope of the brutality – the astounding number of injured parties and offenders to be possibly tried. As a result, the sheer length and expense of the concomitant legal proceedings required by the retributive justice paradigm would make punitive justice a definitively impractical or unfeasible solution to brutality, incredibly fastidious in the context of post-conflict where a long-drawn-out procedure of justice can stop national conciliation and danger aggravating the same societal outrages that stimulated the injustice.³⁵

Majorly visible in the beginning post-genocide Rwanda, where the pervasive civilian complicity, and in addition the concentration and a sheer number of deaths in the genocide, completely ruined Rwanda’s so far decimalized criminal court structure. Between April and July 1994, five lakhs and 1 million civilians were viciously murdered; additionally, the atrocity was a “populist genocide” of unparalleled proportions, with the bulk of massacres carried out directly by regular Rwandan residents. Rwanda’s overcrowding jails were striving to house 125,000 genocidaires waiting for trial, a process that must have taken about two decades to

³¹ Zvi D. Gabbay, *Justifying Restorative Justice: A Theoretical Justification for the Use of Restorative Justice Practices*, 2005 J. DISP. RESOL. 349, 350-397 (2005).

³² Darren Bush, *Law and Economics of Restorative Justice: Why Restorative Justice Cannot and Should Not be Solely about Restoration*, 2003 UTAH L. REV. 439, 440-469 (2003).

³³ Grace Yeo, *Restorative Justice as a Response to Atrocity: Profound or Merely Pragmatic?* 35 J. INT’L LAW & PoL. 1, 2-3 (2020).

³⁴ John Braithwaite, *Restorative Justice: Assessing Optimistic and Pessimistic Accounts*, 25 CRIME & JUST. 1, 2-127 (1999).

³⁵ Grace Yeo, *supra* note 33, at 1.

complete. To ‘clear the prisons’, to fasten the justice procedure and speed conciliation betwixt Tutsi and Hutu, the post-crash government moved to the indigenous restorative practice called Gacaca (Kinyarwanda for grass), which is a community founded form of clash solution.

As per Human Rights Watch, 2011, since 2005, the new community courts of Gacaca have tried beyond 1.2 million genocide-related lawsuits.³⁶ According to Mamdani, “justice delayed is justice denied”: justice systems should be practically workable to be significant. In toto, retributive justice procedures are not practical to the extent required by such nightmare brutalities themselves.³⁷

On the other hand, the assertion that RJ procedures are fewer expensive than punitive justice procedures calls into question. Braithwaite contends that the idea of restorative justice is more than just fixing the criminal court system; it is a long redesign effort that envelops the “radical transformation” of lawful institutions, politics, social interactions and welfare institutions in the direction of a broader decline of injustice.³⁸

Context Specific

The second important aspect which should be focussed is that RJ demands investment in exhaustive social assistance, repair of systemic control imbalances, and broader community revitalization. If Braithwaite’s explanation of the necessity for broad social reform strives to give more lasting and more profound social equivalence regards seriously, RJ is neither easy to attain nor ‘cheap’.³⁹ Furthermore, because RJ is by and large involved with specific context of rehabilitating perpetrators, survivors, and communities, the usage of the RJ process has no general resettling pattern for an optimal process that can fit every case. The procedure of thrashing out, localized model of RJ that best matches the events of the particular justice can violate early pragmatic appeal.⁴⁰

Community Centric

Clark observes that restorative and punitive justice offer very different ways of reactions and frameworks to violence.⁴¹ Since punitive justice considers wrongdoing to be a breach of the law, it is specifically concerned with the prosecution of criminals. On the other hand, a crime is described as “a violation of people and relationships” utilizing a restorative lens; thus, restorative justice stresses the social balance or the restoration of the associations betwixt criminals, survivors, and their communities do not inevitably imply incarceration.⁴² In three aspects, it aims to accomplish a further deeply ingrained sense, a broad range of justice than the retributive paradigm.⁴³

³⁶ Human Rights Watch, <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts> (last visited May 24, 2021).

³⁷ Grace Yeo, *supra* note 33, at 2.

³⁸ JULIAN V. ROBERTS, *RESTORATIVE JUSTICE AND CRIMINAL JUSTICE: COMPETING OR RECONCILABLE PARADIGMS?* 1 (Hart Publishing 2003).

³⁹ Grace Yeo, *supra* note 33, at 4.

⁴⁰ *Id.*

⁴¹ Janine Natalya Clark, *The three Rs: retributive justice, restorative justice and reconciliation*, 11 *CONTEMP. JUST. REV.* 331, 332-350 (2008).

⁴² *Id.* at 340.

⁴³ Grace Yeo, *supra* note 33, at 3.

Firstly, the focus on congregated solutions in RJ can promote national conciliation more effectively than punitive justice. As the Rwandan illustration shows, the requirements of legalism and retributive justice, for example, an overly long-drawn-out justice procedure, only serve to perpetuate and intensify the social tensions that led to and aroused from the brutality and hinder national conciliation. RJ, on the other hand, is an inclusive, participatory mechanism through which every individual with a lawful interest in the crime; perpetrators, witnesses, survivors, kin, and society are included in the justice procedure, “[replacing] the divisive experience of the genocide with the cohesive experience of securing justice”.⁴⁴ According to Drumbl, this is important considering the “embedded nature of the Rwandan violence”, in which a noticeable portion of the civilian inhabitants were indirectly or directly engaged in the genocide; the procedure of RJ by Gacaca undoubtedly helped to reconstruct an everyday national awareness and promote community conciliation in a far more successful manner than the traditional retributive representation.⁴⁵

When supporters of RJ imply that sentencing circles and perpetrator-survivor mediation will fortify communities, opponents contend whether members of the community freely participate in these practices. In particular, they accept that community connection or union is not as powerful as they formerly were to make these practices successful.⁴⁶ These questions appear particularly important as rates of marriage dissolution, self-killing and a usual kin failure occur.⁴⁷ However, as our communities seem essentially fragmented, shall we hope to recover some apprehension of accountability? Nevertheless, RJ supports and acknowledges those ties, showing that the present community is sufficiently capable of doing so.⁴⁸ Hence, supporters recognize the value of creating community involvement for RJ. People in position advocate the encouragement of an accessible environment and implement an exhaustive training method in which communication of RJ happens.⁴⁹

Nevertheless, research indicates that the present community is capable of promoting these aspects. Although opponents opine, we have shed the community’s perception, but we may notice that society is to a greater degree considering the community to be of central importance ever before after more research. The power and development of a geographic community to attain negotiation betwixt an accused and a survivor are not what RJ is contingent on. Instead, it may utilize both the perpetrator and survivor’s communities to carry out its task, to create an obligatory and recovering ethos within the adversarial structure.⁵⁰

Australian Criminologist John Braithwaite suggests that although the current kin is not big enough, it is comparatively extra community-based than its former industrialized correspondents. He says, “The contemporary city-dweller may have a set of colleagues at work, in her trade union, among members of his golf club, among drinking associates he meets at the same pub, among members of a professional association,

⁴⁴ Grace Yeo, *supra* note 33, at 3.

⁴⁵ Mark A. Drumbl, *Sclerosis: Retributive justice and the Rwandan genocide*, 2 PUNISHMENT & SOC’Y 287, 288-307 (2000).

⁴⁶ 2 GERRY JOHNSTONE, RESTORATIVE JUSTICE: IDEAS, VALUES, DEBATES 41 (Routledge 2011).

⁴⁷ Christo Fosse, *Restorative Justice: The Politics and Philosophy of an Alternative Approach to Criminal Justice*, 9 XAVIER J. PoL. 1, 2-12 (2020).

⁴⁸ *Id.* at 7.

⁴⁹ *Id.*

⁵⁰ GERRY JOHNSTONE, *supra* note 46, at 41.

the parents' and citizens' committee for her daughter's school...There are more interdependencies in the nineteenth-and twentieth century city; it's just that they are not geographically segregated within a community."⁵¹ However, in our present era, the vast interconnection of an average citizen renders restorative aspects pragmatic and workable.⁵²

Countryside and Urban towns, having no resemblance to aboriginal communities, have identical bonding with communal relations, and critical views indicate that restorative aspects are difficult to implement. This theory does not mean that society, in terms of its hard work and objectives, has become fully more interested in individual people than in society as a whole. However, compared to our ancestors' power and intensity, our present communal relations appear feeble. A portion of the causes for this change is the increase of urbanization and industrialization, which is from the 18th century, as opponents of RJ accept.⁵³

Tries to find Unique Solutions

RJ allows for additional room to acknowledge the range of behaviours betwixt offender and survivor of atrocities, offering a more nuanced approach than retributive justice for addressing past damages. Drumbl contends that, by characteristics, retributive justice creates and maintains the spurious division of 'perpetrator' versus 'victim' in its understanding of brutality: 'guilty' versus 'innocent', 'evil' versus 'good'.⁵⁴ As a result, this division denies the truths of involvement: "there is, in fact, a middle ground and it is densely populated." By neglecting broad social truth in brutality, for example, throughout the Rwandan genocide, single peril protecting and ignoring the essential socio-structural dynamics that allowed such destruction initially. RJ, on the other hand, moves away from uniform or a unique solution to brutality in consideration of the fact that "there is no blueprint for how an ideal RJS should work." Its laws for every participant, regardless of their place on the offender/survivor range, to be active in the justice procedure as well as express in their manner their particular narratives in the violations, in consequence offer a further comprehensive, localized model of justice in which brutality is handled best.⁵⁵

RJ reintroduces the survivor's voice within the justice procedure. As per Johnstone, one of the most severe flaws of the modern retributive paradigm is that "it is almost total neglect and disempowerment of the victim... which amount to secondary victimization".⁵⁶ Offenders have likely to take the lion's share of apparency in the adversarial court system – as a result of the Nuremberg heritage – usually treated as an afterthought, survivors with their narratives are ignored or not heard at all.⁵⁷ To this end, RJ represents a critical pattern change in that it prioritizes survivor empowerment and involvement in the justice procedure, giving them a more significant reaction to and influence over the story of injustice.⁵⁸ He also observes that this emphasizes the healing

⁵¹ John Braithwaite, *Shame and Modernity*, 33 BRIT. J. CRIMINOLOGY 1, 2-18 (1993).

⁵² Christo Fosse, *supra* note 47, at 7.

⁵³ *Id.* at 8.

⁵⁴ Mark A. Drumbl, *supra* note 45, at 295.

⁵⁵ Grace Yeo, *supra* note 33, at 3.

⁵⁶ GERRY JOHNSTONE, *supra* note 46, at 13.

⁵⁷ *Id.*

⁵⁸ *Id.*

possibilities of RJ for survivors. Localization of justice through restorative procedures of communal settlement guarantees that “justice is visible to those who suffered”, splintering all patterns of refusal.⁵⁹

There are examples of the efficiency of RJ activities in generating elevated value of settled understanding for restoration and elevated levels of agreement value with this understanding; lessening recidivism; attaining perpetrator and victim requirements, and promoting (their) reasonable interpretations of equitability in procedure and results, and lessening phobia of the offence of the survivor. RJ comes as admirable because of its interest in the community and its concentration on the survivor’s viewpoint. Findlay explains how the authority established the rule of criminality upon aboriginal people in Australia whose growth disallowed true power at all.⁶⁰

Statistical Analysis shows that RJ, which enables criminals, survivors of offences and communities to acquire dynamic character in raising people confidence in the judiciary, defines people’s reaction to offence and decreases the recidivism rate.⁶¹

4. MYTHS AROUND RESTORATIVE JUSTICE SYSTEM

The area of RJ has developed in numerous directions and very quickly that it sometimes gets confused with other similar concepts. There are many misconceptions of RJ related to its concept, origin, principles, goals, practices and use. It is impossible to navigate an ambiguous route without having a clear picture of the myths around it that can guide us. Under this heading, an attempt has been made to discuss and clear the myths and misconceptions around RJS. Therefore, to understand what is RJ more clearly, we need to understand what it is not:⁶²

Restorative Justice is not Mediation

Unlike mediation, a meeting betwixt perpetrators, survivors and community members is not at all times suitable or necessarily selected. In addition, restorative techniques are necessary even if a person cannot or are reluctant to attend or if the perpetrator is not seized.⁶³ Thus, restorative ways are not finite to just a meeting. The word “mediation” is still a problematic representation, even though a meeting takes place. Participants are on an equal moral level in a mediated altercation or clash and with obligations that all participants could bear.⁶⁴ Although in a certain number of criminal proceedings, this apprehension of “shared blame” can be honest, and in a certain number, it cannot. A burglary or rape survivor may not deserve to be called a “disputant”. Indeed, they shall strife to surmount their propensity to guilt.⁶⁵ The perpetrator of the crime must confess to a certain degree of guilt, and recognizing and mentioning misconduct is a significant part of these activities.

⁵⁹ *Id.* at 32.

⁶⁰ Jeff Latimer, Craig Dowden & Danielle Muise, *The Effectiveness of Restorative Justice Practices: A Meta-Analysis*, 85 PRISON J. 127, 128-144 (2005).

⁶¹ Zvi D. Gabbay, *supra* note 31, at 5.

⁶² HOWARD ZEHR & ALI GOHAR, *supra* note 3, at 6.

⁶³ *Id.* at 7.

⁶⁴ *Id.*

⁶⁵ *Id.*

Further, the indifferent terminology of mediation can be deceptive. In mediation, the concentration is on resolving the conflict that supports the participating persons, using an unbiased mediator; to attain an understanding.⁶⁶ The parties choose the binding conditions or promises of the arrangement instead of the mediator; also, it takes a smaller duration for readiness as there can be on certain occasions only one pre-meet and then the mediation meetings.⁶⁷ The mediator generally starts with the question of who wants to talk first. That is because who talks first does not concern. Because they are viewed as moral equals, there is no reason or specific benefit that one individual can talk before the other. It is wholly a subject of selection whilst, on the contrary, resolving the conflict is not the concentration of RJ.⁶⁸

First and foremost, the injury must be approached; it does not happen until and unless the individual who has caused the injury has wholly and frankly own up to their activities and is ready to take accountability for them.⁶⁹ A restorative procedure may require months of readiness, and the last meeting can be proportionally brief;⁷⁰ also, who talks first is quite important. The individual who caused the injury must take accountability from the beginning and establish the conference's tone.⁷¹ The facilitator should thus first request the individual accountable to begin the discourse by stating what happened and why. A facilitator that merely has mediation skills might be oblivious of the ethical and logical causes for this process distinction;⁷² and vice versa.

Restorative Justice is not a Specific Plan or Activity

There is no "pure" template to be applied or used in any community as optimal.⁷³ In addition, all templates are conventionally obliged to some degree. In the conversation betwixt communities to determine their sources, requirements and tenets to their circumstances, construction of RJ should be from the "bottom-up".⁷⁴

Restorative Justice is not Build in North America, neither it is a Recent Concept

In the 1970s, numerous Mennonite communities conducted case experiments on RJ from which it grew its modern discipline. Searching to put in their tranquillity and belief outlook to the "real world" of criminal justice, more practitioners from Canada, Ontario, and slowly from U.S., Indiana with Mennonites tested VOC that developed in to practices and became frameworks for practices across the globe. RJS grew earliest from these programmes.⁷⁵ Modern forms of governance have stripped away the authority to solve violations and altercations from the communities. However, traditionary formations continue to function efficiently in a large number of areas. Such as kin disputes are efficiently solved by kin men, elders, women and significant offences handled by community elders in certain places.⁷⁶ Restorative justice system is not a recently developed practice but it is a traditional dispute resolving mechanism.

⁶⁶ THE CROWN PROSECUTION SERVICE, <https://www.cps.gov.uk/legal-guidance/restorative-justice> (last visited July 25, 2021).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ HOWARD ZEHR & ALI GOHAR, *supra* note 3, at 7.

⁷⁰ YVON DANDURAND, HANDBOOK ON RESTORATIVE JUSTICE PROGRAMMES 59 (United Nations 2006).

⁷¹ *Id.* at 86.

⁷² *Id.* at 19.

⁷³ HOWARD ZEHR & ALI GOHAR, *supra* note 3, at 8.

⁷⁴ *Id.* at 9.

⁷⁵ *Id.* at 10.

⁷⁶ *Id.* at 10.

Restorative Justice is not mainly about Conciliation and Remission

A certain number of survivor advocates and survivors respond adversely to RJ because they believe that the purpose of RJ practices is to compel or even motivate them to conciliate with or pardon perpetrators. This is not a fundamental premise or goal of RJ. It just offers an environment in which this may occur. Indeed, a certain amount of conciliation or remission happens much more often than in the criminal court system but it is not something compulsory or mandatory for the victims to do. This is a decision for the participants to make entirely. There shall be no coercion to select this alternative.

The Main Purpose of Restorative Justice is not to Prevent Recidivism

RJ activities are being implemented but not because of lessened recidivism. Lessened recidivism is an anticipated by-product, yet first and foremost, RJ is served because it is correct to do so:

- ❖ Perpetrators should be motivated to accept accountability.
- ❖ The needs of the survivor should be met.
- ❖ There shall be involvement of influenced people, irrespective of whether perpetrators “get it” and lessen their criminal activities.

As per O’Brien and Bazemore, it is improper to bring RJ as by and large focused on the lessening of recidivism, not for the reason that it is perceived as a utopian aim by itself; on the contrary for the reason that it reduces the perceptual prominence or significance of additional aims, especially survivor-centred ones. In addition, attention to survivor’s requirements is ‘essential to [RJ’s] survival’.⁷⁷

Restorative Justice is not Meant Exclusively for First-time Criminals or “Minor” Crimes

Restorative Methods have proven that in more challenging situations, they can have the most significant influence. In very tough cases, the “guiding questions” of RJ can aid to adapt the justice answers.⁷⁸ The most troublesome field of implementation is potentially domestic abuse, and care must be taken here. Researchers assessed an event that used a RJ strategy to lawsuits of grave offences, where criminals dealt with incarceration for the offence they had perpetrated before conviction. The research comprised a sum of 288 assessment members; 112 survivors, 65 criminals in the event group and 71 survivors, 40 matched criminals in the control group. In comparison with the retributive justice system, the assessment observed event activities augmented the value of the RJ manner, member features and the event effects. The outcomes showed that the method of RJ could be used successfully in situations of grave offence at the pre-sentence phase. Over 20% of admissible cases were property offences, 70% covered offences against the individual and 9% covered driving crimes. While offences against the individual can differ in the degree of injury caused, it can be implied that they are all grave. Cases varied from almost grave, e.g., individual-based crimes without bodily harm or property

⁷⁷ Gwen Robinson & Joanna Shapland, *Reducing Recidivism: A Task for Restorative Justice?*, 48 BRIT. J. CRIMINOLOGY 337, 338-358 (2002).

⁷⁸ HOWARD ZEHR & ALI GOHAR, *supra* note 3, at 9.

offences, to highly grave, in other words, a death outcome. Ultimate outcomes of the assessment point out that persons influenced by grave offence were inspired to accomplish gratifying justice in a restorative manner.⁷⁹

Restorative Justice is neither a Substitute nor a Catholicon for the Law Structure

Many people think any mode of the Western legal framework (optimally, restorative-determined) is required to defend fundamental human rights and reserve regardless of the broad application of RJ.⁸⁰ Most proponents of RJ believe that offence has a general aspect and a “private” aspect, which refers to as a social aspect rather than a further individualistic and geographical one.⁸¹ The law framework concentrates on the general aspect, i.e., the responsibilities and concerns of society as portrayed by the government. Nevertheless, the interpersonal and individualistic aspects of offence are neglected or trivialized in this way.⁸² RJ aims to give a good equilibrium in how we undergo justice by raising and concentrating on those above “private” aspects of the offence.

5. MEANING OF RESTORATIVE JUSTICE SYSTEM

The concept of RJ transforms the conventional perspective of offence from a breach of the law into injury to the majorly influenced individuals.⁸³ RJ is a ‘movement’ as well as an ‘idea’.⁸⁴ It induces members into one place who store broadly distinct goals as a movement, and as an idea, it conveys a large number of distinct comprehensions.⁸⁵ RJ is a humane way that takes healing, restoration, remission and restitution into the spotlight.⁸⁶ The perception that past development of the polity and criminal law influenced previous judicial institutions can have a basis on restorative justice as a movement.⁸⁷ In educational institutions and other institutions, RJ resolve conflicts.⁸⁸ RJ activities concentrate on precedents in reaction to offence and the damage resulted from the incident.⁸⁹ The perpetrator is supported to replace the injury, repair, or redress and expiate. In addition, communities require to help the survivor in coping with the violence against them and regain from its outcomes.⁹⁰ Communities are further supported to help criminals in order that they cope with the elements that managed to the offence and in order that they are capable of attaining these objectives (maybe through counsellors).⁹¹

RJ ‘programs’ consequently draw into one place and engross the survivor, friends, perpetrator, corresponding kin, and community delegates in a cycle of conciliation and restitution.⁹² The goal is to grant survivors and perpetrators interaction to reach a reciprocally consenting solution and speak their comprehensions and

⁷⁹ Tanya Rugge, James Bonta & Suzanne Wallace-Capretta, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/cllbrtv-jstc-prjct/index-en.aspx> (last visited June 17, 2021).

⁸⁰ HOWARD ZEHR & ALI GOHAR, *supra* note 3, at 10.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Zvi D. Gabbay, *supra* note 31, at 9.

⁸⁴ Greg Mantle, Darrell Fox & Mandeep K. Dhama, *Restorative Justice and Three Individual Theories of Crime*, INTERNET J. CRIMINOLOGY (2005).

⁸⁵ *Id.* at 2.

⁸⁶ HOWARD ZEHR, CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE (Herald Press 1990).

⁸⁷ Greg Mantle, Darrell Fox & Mandeep K. Dhama, *supra* note 84, at 8.

⁸⁸ *Id.* at 15.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ David Karp & Beau Breslin, *Restorative Justice in School Communities*, 33 YOUTH & SOC’Y 249, 250-272 (2001).

⁹² Greg Mantle, Darrell Fox & Mandeep K. Dhama, *supra* note 84, at 3.

experiences (through indirect communication is also used).⁹³ The RJ's objective is to restore obligation to the community for exploitation and reaction to an offence. The main focus in restorative activities is the unitedness of the survivor's aspect in the people's reaction to an offence.⁹⁴

6. **PRINCIPLES**⁹⁵

A Principle is a fundamental assumption or a guiding belief. A base on which a concept stands. Awareness of central principles of a concept is among the most essential thing to understand that concept. If we plan the schemes keeping in view the principles, if we are clear with regard to the principles, if we are willing to being assessed by these principles, then there are very less chances of going off-track in understanding a particular idea. Hence, to more comprehensively and clearly understand RJS, we need to know the principles or philosophy on which it stands and this topic has attempted to do so.

The Offence is essentially an infringement of interpersonal relations and human beings

The offence gives an injury to the community and the survivors, and they require restoration. The first survivors are those majorly impacted by the crime; for example, witnesses, kin of delinquents and survivors and community members are survivors as well.⁹⁶ It is necessary to approach the relations that are impacted by the offence. Restoration is a continuous series of solutions to various criminals, survivors and the community's damages and requirements.⁹⁷ The major stakeholders in the judicial system are the impacted communities, the perpetrators and the survivors. RJ increases their involvement and infusion seeking revival, precaution, restoration and accountability, though specially delinquents and the first survivors.⁹⁸ These stakeholders' duties change corresponding to the stakeholders' options and abilities and, in addition, the characteristics of the crime. The government has limited functions, for example, making procedures easy, fact-finding and guaranteeing security; however, the government is not a principal sufferer.⁹⁹ RJ helps in recognizing and respecting it by involving only the major stakeholders in its process that are survivors, offenders and community, keeping it, out of court settlement.

Infringements generate Obligations and Duties

The duties of criminals are to render things correct as much as feasible because the principal duty towards survivors is to enable survivors to be involved efficiently in determining duties through a RJ procedure. Support and chances are given to perpetrators to advance strategies for taking proper accountability and comprehend the injury they have given to survivors. Exclusion and threatened force are reduced; maximizing discretionary involvement by delinquents. Nevertheless, if they do not perform freely, delinquents may be made to admit their duties. Duties arising from the injury caused by offence should connect with the correction of things. Duties may be distressing, so much as burdensome, though they are not designed to constitute revenge, distress or retaliation. Duties to survivors, for example, restoration, take precedence from additional

⁹³ *Id.*

⁹⁴ Zvi D. Gabbay, *supra* note 31, at 5.

⁹⁵ HOWARD ZEHR & ALI GOHAR, *supra* note 3, at 33.

⁹⁶ *Id.* at 82.

⁹⁷ *Id.* at 82.

⁹⁸ *Id.* at 83.

⁹⁹ *Id.*

duties and punishments to the government, like, fines. In entertaining their self-requirements, criminals are required to be working members. The duties of the community are to the perpetrators, survivors and the well-being of its members. The community must aid and encourage survivors of offence in addressing their requirements. The community has accountability for the well-being of its members and associations and the social situations which urge community harmony and offence. The community is accountable to be a working participant in the definitions of perpetrator duties, promoting endeavours to restore perpetrators into the community and ensuring the chance of reparation to perpetrators.

Restorative Justice corrects the mistakes and tries to revive them

The requirements of survivors are the first steps of justice: authentication, restoration, security, information, justification, evidence and aid.¹⁰⁰ The security of survivors is of instant importance. The justice procedure gives a structure that encourages revival and recovery, the final area of the sole survivor. By increasing their involvement and infusion in ascertaining results and requirements, survivors are inspired.¹⁰¹ Criminals, as much as viable, participate in the restoration of the injury. The judicial procedure increases chances for exchange of involvement, standard agreement, information and conversation betwixt criminal and survivor.¹⁰² Meetings in one another's presence are suitable in a certain number of cases, although other kinds of exchange are additionally suitable in other cases.¹⁰³

In guiding and determining the specifications of the exchange, the survivors have a significant role to play. Common accord prevails over the results enforced. Chances are given for remission, contrition and conciliation. The skills and requirements of criminals are dealt with. Acknowledging that criminals themselves are often injured, the process of fitting and revival of criminals into the community is stressed upon.¹⁰⁴ In the judicial procedure, criminals are aided and handled with regard. Intense regulation and relocation of criminals from the community is restricted to the lowest required. The procedure of justice belongs to the community. It develops on community assets and, in return, helps to fortify and construct the community.¹⁰⁵

The judicial procedure seeks to encourage community alterations to provide premature interference to direct criminal's responsibility and survivor's requirements and stop similar injuries from happening to others.¹⁰⁶ Justice recognizes the results of its reactions to adversities and offences, unintentional and intentional.¹⁰⁷ Justice promotes and watches-over continuance since the maintenance of understanding increase recovery, transformation, responsibility and revival.¹⁰⁸ Equitability is ensured, not by consistent results but by the annulment of discernment on rank, race and gender and giving every member chance and appropriate assistance. Use of results that are mainly incapable or discouraging should be the least desirable option, which includes the slightest confining involvement in the quest for the restoration of members. Unintentional results

¹⁰⁰ *Id.* at 85.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 86.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 87.

¹⁰⁸ *Id.*

for punishing or repressing purposes, such as excessive criminal orientation, co-option of restorative procedures, or increased social control are withstood.

7. VALUES

Values are the qualities that renders something desirable or valuable. Hence, values of a concept should be clearly understood to apply its principles in consonance with its aim and essence. It is important to know the values of RJ or else restorative methods might be used to reach at non-restorative results. The values of RJ must form a rim on principles to work properly. To grow the concept of RJ, it is significant that it is fixed on values.

Interconnectedness

RJ acknowledges the collective understanding that brings together delinquents and survivors whilst highlighting the responsibility and liberty of the human being. Each of them is an esteemed member of society, a society in which a set of interconnections connects every human being.¹⁰⁹ Society is accountable for the presence of offence and its members and mutual duty to help restore delinquents and recover victims. By connecting, everyone is involved in the more expansive universe and to one another.¹¹⁰ Everyone gets influenced when this network is interrupted. This sight gives rise to the principal aspects of necessity, accountability, restoration, injury, duty, and involvement for RJ. Moreover, delinquents and survivors are in a unique manner connected concurrently by their mutual involvement in the criminal event and can help along in one another's revival in some regards.¹¹¹ The social nature of the offence creates an excellent environment for a community procedure to confront the causes and results of the crime and map out a restorative route ahead.

Particularity

Interconnection must be balanced by valuation for "particularity": we are related but not identical.¹¹² The emphasis is on the valuation of variety. It concerns considering the value and identity of every human. Taking particular scenarios and circumstances significantly concerns it. Justice must recognize our identity and our interconnections. The importance of particularity is an indication of the significance of culture, circumstances and identity.¹¹³

Respect

Whatever be the colour, sex, age, position, custom, sexuality, faiths, actions, evil or good, in society, every individual have identical and intrinsic value. RJ sets into action because they involve everyone suffering from the danger of injury or an injury and because they surmise that every person is worthy and have the

¹⁰⁹ John Offer, *Herbert Spencer, Sociological Theory, and the Professions*, 4 FRONT. SOCIOL. 1, 2-11 (2019).

¹¹⁰ HOWARD ZEHR & ALI GOHAR, *supra* note 3, at 38.

¹¹¹ Rolf Loeber, David P. Farrington & David Petechuk, *Child Delinquency: Early Intervention and Prevention*, OFFICE OF JUSTICE PROGRAMS (May, 2003), <https://www.ojp.gov/pdffiles1/ojdp/186162.pdf>.

¹¹² HOWARD ZEHR & ALI GOHAR, *supra* note 3, at 38.

¹¹³ *Id.*

understanding, wit and skills to handle problems of their interests.¹¹⁴ Respect everyone, even those people who appear to be foes, even those people who are distinct. It reminds our interconnectedness, yet in addition, we have distinctions. Respect reminds us that the interests of everyone must be proportionately weighted¹¹⁵. We shall perform justice restoratively if we are respectful of justice. Entitlements can be respected when we know our and others entitlements. We increase respect; we obtain respect. Irrespective of how sincerely we accept the tenets, we will not do justice restoratively if we do not respect people, their requirements and entitlements.¹¹⁶ Respect serves as a basis of tenets of RJ, which can mould and direct its implementation. Everyone should thus be spoken to and handled in a RJ environment with respect. Reciprocal respect begets honest intentions and faith betwixt the members. To make the restorative procedure efficient, it should provide respect and security so that individuals can talk covertly.

Participation

The criminals, survivors and their communities majorly impacted by the violation should be the primary decision-makers and talkers in the procedure and not qualified experts who act on behalf of government concerns.¹¹⁷ Everyone appearing in an RJ meeting has a worthwhile contribution to the meeting's objectives.

Honesty

RJ empowers all human beings to provide an accurate explanation of the danger of injury or injury as they undergo it.¹¹⁸ It acknowledges that the explanation of all human beings holds honesty, though it may not be total honesty. From discourse and inquiry, somewhat nearer to the total honesty comes into view. Every member must comprehend the significance of stating the truth and being genuine in promises and goals due to the practical procedure.¹¹⁹ For doing justice, genuine communication is vital. In RJ, factual statements imply more than proving responsibility and explanation of the facts; it needs individuals to talk truthfully and covertly about their emotions, their experience of committing the offence and their consensual duties.¹²⁰

Humility

RJ admits every individual's mutual susceptibility and fallibility. The humility to acknowledge this common individual state allows perpetrators and survivors to find that they have extra in mutual fragile and imperfect individuals than what splits them as perpetrators and survivors.¹²¹ Humility, in addition, allows human beings who suggest restorative procedures to permit for the contingency that actions lead to unexpected outcomes. The manifestations of humility include mutual concern and empathy.¹²²

¹¹⁴ Jennifer J. Llewellyn & Robert Howse, *Restorative Justice – A Conceptual Framework*, DALHOUSIE UNIVERSITY, https://dalspace.library.dal.ca/bitstream/handle/10222/10287/Howse_Llewellyn%20Research%20Restorative%20Justice%20Framework%20EN.pdf?sequence=1.

¹¹⁵ HOWARD ZEHR & ALI GOHAR, *supra* note 3, at 39.

¹¹⁶ *Id.*

¹¹⁷ RESTORATIVE JUSTICE, <http://restorativejustice.org/10fulltext/restorativejusticenetwork.pdf> (last visited July 25, 2021).

¹¹⁸ 2 YVON DANDURAND, HANDBOOK ON RESTORATIVE JUSTICE PROGRAMMES 4 (United Nations 2020).

¹¹⁹ *Id.* at 6.

¹²⁰ RESTORATIVE JUSTICE, *supra* note 117.

¹²¹ *Id.*

¹²² *Id.*

Accountability

When an individual intentionally imposes injury on another individual, the offender has an ethical duty to alleviate the results and admit accountability. Perpetrators show that they admit this accountability by mending injuries imposed, conveying regret for their conduct, and maybe by asking for remission from people they have handled disrespectfully. This reaction by the perpetrator might open the door for conciliation.¹²³

Empowerment

Every person needs an amount of independence and freedom to act independently. Offence steals survivors of this control because another individual has applied authority over them, lacking their permission. RJ tries to give that control back to survivors by providing them with an active character in ascertaining their requirements and how they are to have complied.¹²⁴ It further inspires criminals to do their best to redress the injury caused, accept their particular accountability and initiate a procedure of fitting into a community and restore.¹²⁵

Hope

Irrespective of how extreme violation is, it is feasible for the community to react in ways that encourage modification and revival and empower those experiencing pain. The RJS tries to punish foretime criminal acts and approach current requirements and provide for future existence; it brings hope – the hope of alteration for delinquents, the hope of revival for survivors together with the hope that society will become more courteous.¹²⁶

Justice

RJ concentrates on immoral or unfair injuries. Creation of a certain number of restorative activities to reverse a violation resulting from people mending the injury, lessening the probability of additional injury, working to ameliorate suffering and making themselves responsible, whilst a certain number precede violations by engrossing individuals in equitable associations. The restorative process should be just for this to be efficient, and no party should control it to the extent feasible.¹²⁷

8. WORKING¹²⁸

Different models can practice RJ; even these models can be used in a mix depending on different situations.¹²⁹ Every model includes a meeting betwixt core stakeholders, criminal and survivor and maybe even justice persons and other community members.¹³⁰ Supposing that meeting is not suitable or challenging betwixt criminal and “matched” survivor, substitutes or delegates can be employed. Instead of or in preparation for a straight encounter, videos and letters are also employed.¹³¹ Shuttle Diplomacy can be instead of a straight

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ YVON DANDURAND, *supra* note 70, at 15.

¹²⁸ HOWARD ZEHR & ALI GOHAR, *supra* note 3, at 38.

¹²⁹ *Id.* at 47.

¹³⁰ *Id.*

¹³¹ *Id.*

encounter under certain situations. Nevertheless, every model includes a certain kind of meeting, preferably in person.

In these meetings, facilitators conduct, direct and monitor the procedure and harmonize the interests of those associated. Circle facilitators or conference coordinators does not need resolution contrary to arbitrators. Every model provides parties with a chance to seek emotions, reality and solutions. Invitation to interrogate, to operate in the direction of reciprocally acceptable results, share their narratives, and communicate their emotions.¹³²

The inclusion of survivors should be entirely free will in all models.¹³³ In every case, the criminal must recognize her/his duty at a minimum to some extent; if the criminal denies accountability or culpability, conferences are usually not carried. They endeavour to expand the criminal's free will as conferences should not occur if they are reluctant. It is just accurate, though, that the perpetrator is frequently distressed, such as to pick betwixt "lesser evils". Meetings with the perpetrators show that facing the human they have injured is scary and hard.

Family Group Conferences

These conferences broaden the main parties circle to involve additional persons or members of kin. As the model concentrates on assisting criminals in altering their nature and taking accountability, further essential community members and kin of the criminal are particularly beneficial.¹³⁴ Nevertheless, it also welcomes the kin of the survivor. In such cases – particularly where the FGC is allowed to influence the legal result of the case – the presence of an individual, for example, a police officer, can be there.

The FGC Coordinator must harmonize the two parties' claims and sentiments. She/he is nevertheless responsible for ensuring a strategy owning perpetrator responsible accurately, managing reasons and restorations.¹³⁵ The perpetrator's kin members perform ilk essential functions, albeit model of family power. Survivors can bring counsellors or members of kin. There can be a young or unique prosecutor and additional carers.

Victim Offender Conferences

These conferences mainly include perpetrators and survivors. Separately perpetrators and survivors are prepared. They then can be taken into one place in a conference or an encounter after they are consistent to go forward. A professional facilitator who leads the procedure in a harmonized way organizes the conference. As the coordinator in an FGC, the facilitator of VOC must be neutral. These conferences are less inclusive than FGCs.¹³⁶

¹³² *Id.*

¹³³ *Id.* at 48.

¹³⁴ *Id.* at 50.

¹³⁵ *Id.* at 51.

¹³⁶ *Id.*

Circles

Circle attempt originally came from Canada's First Nation Communities (Red Indian).¹³⁷ Judge Barry Stuart picked the word Peace-making Circles whose court had a circle; the earliest circle recognized in a legal decision. Circles have become usual for a large number of objectives in the current time. Besides sentencing circles for felony offences, there are "healing circles" (in certain circumstances used as preparation for sentencing circles), where mainly administration of community conversation and job disputes happens.¹³⁸

Circle procedures organize members and sequential of their places a "talking piece" is given to ensure that participants communicate individually. Qualities focusing on respect, honesty, the worth of every person, the significance of communicating "from the heart" are expressed by way of an ideology or compilation of morals. As facilitators, one or two "circle keepers" attend the circle. Geriatrics play a significant part in giving general understanding and opinion or guiding the circle in native communities. Circles deliberately extend the members. Perpetrators, on certain occasions, judges, survivors, and members of the kin are involved though community members are vital members. In certain circumstances, on account of their concern or association to the perpetrator and survivor or a particular crime, community members are asked to attend; and in certain situations, they are a continuing circle of volunteers from the community.

Participation of the community leads to extended conversations in the circle as compared to the other two models. They can manage criminals' and survivors' requirements for assistance, community rules, circumstances in the community that lead to crime, community responsibilities or other community-connected matters.

9. CRITICISM

As per Wilson, RJ has been approved in many provisional justice cases due to the political requirement or as the "next best thing" – when the earlier government blocked the desired method of punitive justice.¹³⁹

Think about the after-effects of the 'Dirty War' of Argentina after the military junta's reign ended in 1983.¹⁴⁰ According to Moon, under "importunate [threat] from the military", two successive civilian governments of Raúl Alfonsín (1983-1989) and Carlos Menem (1989-1999), brought restorative procedures, for example, pardons, amnesty laws and reparations, which ultimately constrained the proceedings of the junta's foretime brutalities. The Alfonsín government sought to inquire and start criminal proceedings against the Dirty War abuses at first, invalidating the military's former self-amnesty law and beginning criminal charges against the junta leaders in 1985.¹⁴¹ As per Human Rights Watch, 2005, nevertheless, following facing a brutal adverse reactions from the armed forces, Alfonsín succumbed to political suitability and enacted a pair of pacifying 'amnesty laws', the 'Full Stop' (1986) and 'Due Obedience' (1987) laws, effectively ending the

¹³⁷ *Id.* at 52.

¹³⁸ *Id.*

¹³⁹ Stuart Wilson, *The Myth of Restorative Justice: Truth, Reconciliation and the Ethics of Amnesty*, 17 S. AFR. J. HUM. RTS. 531, 532-561 (2017).

¹⁴⁰ Grace Yeo, *supra* note 33, at 2.

¹⁴¹ Claire Moon, *Who'll Pay Reparations on My Soul?: Compensation, Social Control and Social Suffering*, 21 SOC. & LEGAL STUD. 187, 188-199 (2012).

proceedings.¹⁴² The subsequent Menem government would emanate absolutions to the junta members charged under Alfonsín in the ‘national conciliation’ garb.¹⁴³

The above example demonstrates that the introduction of RJ measures is “not just purely moral endeavours but thoroughly political practices”. RJ procedures incorporated into political procedures frequently mobilized for political goals, controlled by the practical requirement of combining transitional political benefits.

The more significant issue here is that the goals of RJ that the assertion above addresses are different from the utterly defective application of these goals and the politics that unavoidably emerge together with the actualization and mobilization of restorative tenets into the political procedure. The consideration mentioned above attempts to approach the space between aspirations and the abstract goals of RJ and how they manifest in practice. As previously demonstrated, RJ procedures carried out frequently mobilized political procedures for political purposes. This exercise does not imply that we should sacrifice one for the other, but preferably we must be alert to RJ’s intricacy to get a more nuanced and tender comprehension of the imminent issues.

10. CONCLUSION

RJ’s attitude concerning offence is problem-solving and contemplates offence misdeed against the community and survivor. Western Criminal Justice System directs to the restoration of justice using a one-sided penalty, but RJS involves restoration of justice by reinforcing significance on common morals in a two-sided event. The RJS and the western criminal legal system imply reprehension, but their comprehensions are entirely distinct. In our present era, the vast interconnection of an average citizen renders restorative aspects pragmatic and workable. RJ allows for additional room to acknowledge the range of behaviours between offender and survivor of atrocities, offering a more nuanced approach than retributive justice for addressing past damages. It reintroduces the survivor’s voice within the justice procedure.

The following chapter deals with the relation between JJS and RJS in general. It will look into the significance of RJS, especially in JJS. Also, the countries which have adopted RJ principles in their JJ

¹⁴² Human Rights Watch, <https://www.hrw.org/news/2005/06/14/argentina-amnesty-laws-struck-down> (last visited May 17, 2021).

¹⁴³ Grace Yeo, *supra* note 33.

RESTORATIVE JUSTICE PRINCIPLES IN THE JUVENILE JUSTICE SYSTEM INTRODUCTION: INTERNATIONAL OVERVIEW

The problem of crime can no longer be simplified to the problem of the criminal.

Leslie Wilkins

1. INTRODUCTION

The conceptual foundation of RJ regards offence as an infringement of connections and persons. In succession, these infringements generate a responsibility to rectify matters. RJ seeks to restore the equilibrium that gets counterbalanced as a consequence of an offence by taking prominent persons holding the stakes that is a criminal, survivor and the community influenced in the process of resolution to reinstate this equilibrium. Alleviating rather than penalizing is the focal point. Esteem for every member, the criminal's responsibility for misconduct, and the dominance of the survivor in every part of the procedure are further essential postulates of RJ.

A certain number of plans of action of RJ increase the involvement of community members and kin, while a crucial part of RJ plans of action is some form of interplay and conversation betwixt the survivor or a survivor substitute and the criminal. Illustrations of plans of action involve FGC, VOC, and Circles. In addition, a certain number of regular activities of the JJS, like restoration, comply with the postulates of RJ, and few plans of action include the notable feature of the foundation, for example, adolescent courts. Various action plans for adult and juvenile criminals are designed and executed in numerous injustice and justice areas. Over the last few decades, these plans of action have been tried out as well, generating substantial proof.¹

As the chapter's name suggests, this chapter discusses the relationship between juvenile justice and RJ. It answers the second research question of this dissertation, i.e. What is the relevance of RJ in the JJS? The division of the present chapter is into four parts. The first part covers the relevance of RJ in the JJS. Further, the second part is about the overlapping of the RJS and JJS.

The Third part takes a glance at the countries which have adopted RJ principles for juvenile justice. It covers six countries: New Zealand, the USA, the UK, Canada, Norway and China. These countries are chosen as they have shown more progress in bringing RJ in their specific JJS as compared to other countries except the USA shown as an exception and comparison. The fourth part covers the conclusion of this chapter and discussion done in the next chapter.

2. RELEVANCE OF RESTORATIVE JUSTICE IN THE JUVENILE JUSTICE SYSTEM

Citizens' expectations of administrative institutions are of fundamental significance in an elected society. Sadly, in the extended over ten years-long discussions about the fate of the juvenile court and the comparative

¹ David B. Wilson, Ajima Olaghere & Catherine S. Kimbrell, *Effectiveness of Restorative Justice Principles in Juvenile Justice: A Meta-Analysis*, NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE (May 12, 2017), <https://www.ojp.gov/pdffiles1/ojdp/grants/250872.pdf>.

effectiveness of therapy as opposed to penalty, the community requirements in our JJS have been off-track. Many policymakers and legislators contend that our JJS should be banned by severe adult punishments for juvenile criminals.² A few surprisingly support getting rid of the JJS and its substructure, the autonomous juvenile court.³

Even though the retributive attitude may satisfy peoples' desire for punishment, it does minimal to reintegrate and restore child offenders. Misuse of retribution is common following harmful repercussions.⁴ Ironically, the punitive approach may motivate criminals to concentrate not on their survivors but instead on themselves. Surprisingly growing its seriousness may have little effect if we have misjudged the amount to which punishments such as imprisonment are experienced as a sanction.⁵

The retributive approach directs minimal notice on the requirements of affected communities and survivors; it does not involve them in the justice procedure, neither as co-members nor as clientele. The criminal is the sole and submissive beneficiary of facility and intervention when a sanction is stressed.⁶ Juvenile justice systems are growingly dependant on therapy activities, services, and professional specialists, keeping out members of the community and survivors from significant roles in restoration, punishment, and citizens security.⁷

Juvenile justice systems across the globe are undergoing distress as the equilibrium betwixt retribution and therapy in response to juvenile offence continues to be discussed. The debate is stalemate and monotonous.⁸ Luckily, the punitive paradigm is not the only choice for juvenile justice. The alternative, RJS, will unlock novel contingencies. It includes survivor's requirements for authentication, restitution and healing. It would stress the requirement of establishing connections and would clear significant additional responsibilities in restoring criminals and enhancing community security for civil groups, folks, hirers, devout communities, and other residents.⁹

RJ seems to have the considerable capability in general, but especially with respect to juvenile justice. It is additionally compliant than vindictive methods to juvenile justice in absorbing proportionality and equitability of the process. As a matter of fact, RJ moves its aims from restoration of the offender in conventional juvenile justice to broader rehabilitation in RJ.¹⁰

A certain number of plans of action of RJ increase the involvement of community members and kin, while a crucial part of RJ plans of action is some form of interplay and conversation betwixt the survivor or a survivor substitute and the criminal. A survivor and a young criminal consenting to involve in such a conversation may result in numerous yields. These incorporate the survivor feeling that their opinion was perceived, community

² Gordon Bazemore & Susan E. Day, *Restoring the Balance: Juvenile and Community Justice*, 3 JUV. JUST. 3, 4-14 (1996).

³ *Id.* at 3.

⁴ *Id.* at 4.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Lode Walgrave, *Restoration in Youth Justice*, 31 CRIME & JUST. 543, 544-597 (2004).

⁹ Gordon Bazemore & Susan E. Day, *supra* note 2, at 5.

¹⁰ Lode Walgrave, *supra* note 8, at 553.

service or restoration, regret expressed from the criminal (written or oral form), and the adolescent responsible for her or his activities.¹¹ These yields are anticipated to provide short-lived advantages of considerable contentment with the JJS for criminals and survivors, a considerable feeling of justice for the survivors, and remission by the community and survivors.¹² The anticipated long-lived advantages of this procedure involve decreasing JJS costs and future crimes.

Factual proof indicates that the impacts of restorative activities on juvenile criminals are more favourable than the conventional therapy practices for juvenile justice. The findings of the assessment of activities and plans of action of RJ have manifested an average decline in later criminal conduct compared with the additionally typical juvenile court process.¹³ In FGCs, VOCs, and Circles, good results concerning juvenile crimes have been found. The most significant decrease in crime in the diversion and cautioning programs indicate that this method is beneficial even for first time and low-risk juvenile criminals.¹⁴

There are promising results for numerous non-criminal consequences for the children; however, the diversity over and the compact number of researches still leave us with a certain amount of unpredictability regarding these consequences. Children involved in RJ activities nonetheless showed an increased sense of justness. The outcomes too show that children in RJ are extra happy with the RJ activities and have a rare encouraging point of view about crime. Likewise, survivors are additionally inclined to pardon the perpetrator and are additionally probable to perceive that the result was fair. They also have substantial happiness, a better impression of equity and a better perspective about juvenile criminals.¹⁵

3. RESTORATIVE JUSTICE AND JUVENILE JUSTICE AS OVERLAPPING CONCEPTS

JJS was evolved when it was realized that children should be treated differently concerning their maturity and understanding the consequences of the acts. It was basically done keeping in mind the best interests of a child. Years after years JJS is amended to make the system more child friendly and all efforts are taken to give the child best possible treatment. RJS in this perspective overlaps JJS. RJS also developed due to its concerns for community at large and repairing the harm rather than just punishing the offender bringing no use to anyone. Keeping in view, the above explained principles and values of RJ, if RJS is brought under JJS, there are possibilities that as a juvenile he/she understands the consequences of his/her acts, tries to repair the harm done, be under the care and protection of his/her family and community instead of any institutional care and as a survivor he/she can play a significant part in his/her treatment and decide the best way for himself/herself, being more satisfied with the process and regaining the control lost in injury. The UNCRC and the Beijing Rules provides that moving child from their homes should be the measure of last resort and is also against the incarceration of the child in any circumstances, similar to the ideologies of RJS where incarceration is not the goal, rather mending the harm is more important.

¹¹ David B. Wilson, Ajima Olaghère & Catherine S. Kimbrell, *supra* note 1, at 14.

¹² *Id.*

¹³ *Id.* at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

RJ activities for children can be conducted in several different ways inside the scope of surroundings and across the JJS. RJ discourse, for instance, can be utilized in community and proximity-based surroundings or in schools as a dispute resolving technique or as an inhibitory procedure.¹⁶ In addition, juvenile courts and police can employ RJ activities as a different or diversion technique. Eventually, RJ practices can further be employed in a residential treatment environment and even in probation.¹⁷

Schemes and plans for RJ continue to enlarge throughout the U.S. By 2010, 19 states approved or instituted a “restorative and balanced juvenile justice system” law.¹⁸ Further, 30 states brought up the postulates of RJ in their plans or declarations in some volume.¹⁹ Umbreit, Bazemore, and O’Brien record that almost all states of the nation, using plans or schemes at the zonal, state or district level, have applied RJ postulates in some volume.²⁰ School-based RJ activities throughout the nation have been regarded and quickly enlarged as a viable solution to control disciplinary matters in an attempt to fight the assumed pipeline of school to prison.²¹ Moreover, the U.S. Department of Education issued a set of guiding principles to improve the discipline and climate of schools in 2014. They promoted schools to change their dispiriting no tolerance, discipline and other punishment-based approaches and advocated different disciplinary policies like RJ.²²

4. INTERNATIONAL OVERVIEW OF RESTORATIVE JUSTICE PRINCIPLES IN THE JUVENILE JUSTICE SYSTEM

United Nation’s Convention on the Rights of the Child advises how juveniles are to be handled and gives an age scope for the JJS.²³ Dissimilar to criminal procedures, the key concern in JJS is the “best interest of the child”.²⁴ Correspondingly, the CRC states “restoration is comparatively significant than intimidation or punishment”. According to Article 40, member countries need to think about several arrangements, like assistance, foster care, perusing, probation, education, and further options to institutional care to “ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence”.²⁵ Consequently, a child should only be put under custody as a last option, corresponding to the CRC.²⁶ Furthermore, corresponding to Article 37, juveniles are exempt from life imprisonment and the death penalty without the chance of release.²⁷

¹⁶ *Id.* at 15.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ DR. MARK UMBREIT & DR. MARILYN PETERSON ARMOUR, *RESTORATIVE JUSTICE DIALOGUE: AN ESSENTIAL GUIDE FOR RESEARCH AND PRACTICE 2* (Springer Publishing 2010).

²⁰ GORDON BAZEMORE, MARK UMBREIT & SANDRA PAVELKA O’BRIEN, *RESTORATIVE JUVENILE JUSTICE IN THE STATES: A NATIONAL ASSESSMENT OF POLICY DEVELOPMENT AND IMPLEMENTATION 33* (National Criminal Justice Reference Service 2000).

²¹ Thalia González, *Keeping kids in schools: Restorative justice, punitive discipline, and the school to prison pipeline*, 41 J.L. & EDUC. 281, 282-335 (2012).

²² Arne Duncan, *Guiding Principles A Resource Guide for Improving School Climate and Discipline*, U.S. DEPARTMENT OF EDUCATION (Jan.2014) <https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

²³ United Nation’s Convention on the Rights of the Child, Art. 1, General Assembly Resolution, 1990.

²⁴ *Id.* at Article 3.

²⁵ *Id.* at Article 40(3)(b).

²⁶ *Id.* at Article 37(b).

²⁷ *Id.* at Article 37(a).

The criminal justice area and the academic community worldwide are usually accepting RJ, which gives a distinct viewpoint on comprehending and reacting to offence. RJ's source was obtained from the native source of New Zealand, where the relation of adolescents with his community and kin were mended following an offence.²⁸ When RJ came into view, it was a pattern shift that focused on the injury done to survivors, the community and the perpetrators' integration into society, driven by restorative activities and postulates.²⁹ RJ focuses on mending relations between victims and offenders following an offence, and the role of society is to re-examine its part in coping with offences. Following the adoption of a perpetrator-survivor reconciliation project in Ontario, Canada, in 1974 and the application of FGC in New Zealand's JJS in 1989, RJ extended to United Kingdom, Ireland, Australia, United States and South Africa.³⁰ In the eastern hemisphere, South Korea, Thailand, China and Japan too acquired RJ.³¹

New Zealand

New Zealand has over forty lakhs' people, with twenty-five percent of those under 17 years of age.³² The New Zealand criminal court composition, incorporates the High Court, the Court of Appeal, the District Court and the Supreme Court (New Zealand's highest appellant Court).³³ All District Court Judges have a general warrant that provides them common jurisdiction in criminal as well as civil cases. Adding to that warrant, a District Court Magistrate may further carry a Youth Court warrant, a Jury Trial warrant as well as a Family Court warrant.³⁴ The Family Court along with the Youth Court constitute parts of the District Courts and are recognized as specialized Courts.³⁵

Youth Justice System in New Zealand acknowledges that the children's intellectual capabilities and maturity indicate that their crimes should be handled differently from that of adults.³⁶ A conventional western criminal justice attitude to deal with young persons and children's crimes will majorly be devastating. The New Zealand Youth Justice system realizes and underpins the entitlements of young persons and children under a different category and gives an individual response to juvenility.³⁷

In New Zealand, the principal law administering juvenile justice in the District Court is the Children, Young Persons, and Their Families Act 1989³⁸ (CYPF Act), which provides the processes that administer government interference in young persons and children's lives and their families.³⁹ The Act may be considered in response to the postulates stipulated in international documents concerning juvenile justice. The Act has a pair of

²⁸ Dennis S.W. Wong & Katherine Y. Kwan, *Restorative justice for juvenile offenders in China: Current practices and challenges*, 13 CHINA J. SOC. WORK 121, 122-137 (2020).

²⁹ Daniel W. Van Ness, *New wine and old wineskins: Four challenges of restorative justice*, 4 CRIM. L. REV. 251, 252-276 (1993).

³⁰ John Braithwaite, *supra* note 59, at 2.

³¹ Dennis S. W. Wong & Katie H. H. Tu, *Restorative justice for delinquents in Hong Kong: current practices and challenges*, 28 ASIA PAC. J. SOC. WORK & DEV. 178, 179-191 (2018).

³² Stephen J. O' Driscoll, *Youth Justice in New Zealand: A Restorative Justice approach to reduce youth offending*, UNITED NATIONS ASIA AND FAR EAST INSTITUTE FOR THE PREVENTION OF CRIME AND TREATMENT OF OFFENDERS (Aug, 2008), https://unafei.or.jp/publications/pdf/RS_No75/No75_10VE_O'Driscoll.pdf.

³³ *Id.* at 55.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Children, Young Persons, and Their Families Act 1989, No. 24, New Zealand Legislation, 1989 (New Zealand).

³⁹ *Id.* at S.13(b)(ii).

different operational tools, providing for a jurisdictional separation of tasks betwixt the Youth Court and the Family Court.⁴⁰ There is a clear distinction that the Youth Court handles youth offending cases while the Family Court will look after the care and protection cases.⁴¹

The CYPF Act provides a new JJS, where survivors, the community, children, their kin and the State are involved in taking accountability for crimes and its results, initiating a welfare or hybrid justice system. Morris and Maxwell⁴² perceive the inclusion of the following new techniques in the New Zealand's JJS:

- families shall be crucial to every procedure for reaching a decision concerning their young persons and children;
- the role of survivors must be there in talks over feasible punishments;
- the requirements and entitlements of the native population should be considered;
- The opinion of the young persons must be considered in how their offending is to be responded to;
- The framework of decision-making recommended must be collective agreement.⁴³

These techniques are attained by making alterations to court and police activity and processes and by the initiation of FGC. In most matters, Youth Court Judges, who are absent at FGCs, embrace as well as admit the suggestions reached at by the members of the FGC.⁴⁴

There is a prominence on responsibility in the CYPF Act together with division of justice and welfare issues. Young persons are to be held responsible yet should be handled in a manner that recognizes their requirements and provides them chances to grow in advantageous, accountable and socially acceptable ways.⁴⁵

Diversion is prominent in New Zealand, with a special focus on ensuring that juvenile perpetrators are held responsible for their crimes. To put things right for the survivor, RJ is given intense prominence through FGC. According to New Zealand's belief, where the perpetrator accepts their crime, takes part in FGC, communicates contrition, and provides a sign that they will not re-offend, then there are higher chances that they will not re-offend. At this moment, the statistics on this point are not convincing. Nevertheless, there is more to life and averting the danger of recidivism than unembellished data.

United Kingdom

Politicians in the United Kingdom are looking for more RJ activities to legislate in the adversarial justice system.⁴⁶ Similar to numerous nations, in the United Kingdom also, there are differences in the models of RJ, their utilizations and where they take place in the judicial process.⁴⁷ It is either appointed police force, trained volunteers, a police officer or social service professional from the community where the offence occurred that

⁴⁰ Stephen J. O' Driscoll, *supra* note 32, at 56.

⁴¹ *Id.*

⁴² Gabrielle Maxwell & Allison Morris, *Youth Justice in New Zealand: Restorative Justice in Practice?*, 62 J. SOC. ISSUES 239, 240-258 (2006).

⁴³ Stephen J. O' Driscoll, *supra* note 32, at 56.

⁴⁴ *Id.*

⁴⁵ Children, Young Persons, and Their Families Act 1989, *supra* note 38, S.4(f)(ii).

⁴⁶ Darrell Fox, *Restorative Justice: The Current use of Family Group Conferencing in the British Youth Justice System*, 12 CRIMINOLOGY & SOC. REINTEGRATION 127, 128-136 (2004).

⁴⁷ *Id.* at 128.

facilitates the procedure in the Wagga Wagga model used in Wales and England.⁴⁸ The part of facilitator or coordinator is seen as supreme in numerous conference programs worldwide and should be as autonomous as feasible.⁴⁹

A pair of essential laws affect adolescents and children in Wales and England, the Crime and Disorder Act (1998)⁵⁰ and the Children Act (1989).⁵¹ The latter Act incorporates a switch in ideology, highlighting the entitlements of the child operating in the direction of coordination and the sharing of parental duties, the “child should be raised with his/her kin, and the government should be giving assistance to that.”⁵² In the former Act, ‘Referral Orders’ is found on a few of the restorative justice postulates like conferencing and can have legal consequences if they are not adhered to and thus are legally binding⁵³, whereas FGC is not legally binding and has no legal consequences connected to its results in Wales, England and numerous other European states.⁵⁴

In the United Kingdom, youth offending teams have adopted the exercise of FGC even though there is no express mandate for it in the 1998 Act.⁵⁵ In check with the fundamental tenet of the Crime and Disorder Act (1998) and the Home Office publication, ‘Restorative Justice: The Government’s Strategy (2003)’, RJ attitudes, activities, and procedures are all supported by the concept of taking accountability for one’s activities and the repercussions of those activities. Numerous sentencing disposals concerning juveniles within the Act have components of RJ, and there is a possibility for conferencing at numerous distinct phases of the judicial procedure.⁵⁶

The University of Portsmouth and Bath, through a survey in 2001, reported that 38% of local authorities in Wales and England were utilizing FGC.⁵⁷ It seems from the literature that FGC is a usual activity for juvenile delinquencies in several counties such as Essex, Kent, and Hampshire.⁵⁸

In Wales and England, RJ activities are well known yet highly irregular. There are numerous restorative interventions used (involving diverse forms of conferencing) by distinct organizations and for extremely distinct purposes.⁵⁹ When the British Government publishes its plan for RJ, it is envisaged it will enclose the constructive components of restorative interventions rather than following the contemporary plan of rigid, limited regulations that foist RJ on particular categories of the perpetrator for particular crimes. This contemporary plan is not the conventionally understood meaning of RJ. It is a pliable, flowing and lively procedure that permits individuals to interact with one another over an event that has given them all injury. In

⁴⁸ *Id.* at 129.

⁴⁹ Laura Mirsky, *Family Group Conferencing Worldwide: Part One in a Series*, IIRP GRADUATE SCHOOL (May 31, 2016), <https://www.iirp.edu/news/family-group-conferencing-worldwide-part-one-in-a-series>.

⁵⁰ Crime and Disorder Act, 1998, No. 37, legislation.gov.uk, 1998 (UK).

⁵¹ Children Act, 1989, No. 41, legislation.gov.uk, 1989 (UK).

⁵² *Id.*

⁵³ Sentencing Act, 2020, No. 17, legislation.gov.uk, S.83(1), 2020 (UK).

⁵⁴ Darrell Fox, *supra* note 46, at 129.

⁵⁵ Laura Mirsky, *supra* note 49.

⁵⁶ European Commission for The Efficiency of Justice, <https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-working-group-1680747c63> (last visited July 24, 2021).

⁵⁷ Family Rights Group, <https://frg.org.uk/> (last visited July 24, 2021).

⁵⁸ Darrell Fox, *supra* note 46, at 132.

⁵⁹ Laura Mirsky, *supra* note 49.

developing a ‘one size fits all’ plan, the critical value of this process will be weakened, and this will solely attack the standard of the intervention. Its actual capability will stay untapped if the conventional flowy procedure is elected and made professional into a plan that is spoiled by legislation and a fundamental domineering or retributive aim. It would be good to discern more voluntary and non-governmental organizations undertaking the execution of FGC without plan or regulation by a statute.

People’s Republic of China

In the mid-2000s, in response to growing social disharmony and the pervasive idea of the social accord, the Chinese administration started to use RJ activities to resolve conflicts of every kind.⁶⁰ Based on Article 17 of China’s Criminal law, the lowest age of criminal accountability is 18 years. Those delinquents who have attained the age of 14 are not all responsible for different sorts of crimes. Offenders betwixt 14 and under 18 years of age are responsible only when they have carried out eight forms of serious offences, counting rape, poisoning, detonation or possession of an explosive device, homicide, drug trafficking, serious injury, robbery and arson.⁶¹ Those older than 14 years have total criminal accountability yet be spared from capital punishment if she or he is younger than 18 years.⁶² In terms of criminal law, when an individual turns 18, she or he becomes totally legally responsible as an adult.

Juvenile entitlements in China have been chiefly safeguarded from the time of the proclamation in 1991 of the Law of the People’s Republic of China on the Protection of Minors (LPM) (National People’s Congress Standing Committee, PRC 1991). Controlling juvenile misconduct is by the Law of the People’s Republic of China on the Prevention of Juvenile Delinquency (LPJD) (National People’s Congress Standing Committee, PRC 1999).⁶³ In addition, the LPJD specifies the custodial education step, which is a correctional work-study school for juveniles in need of stern supervision.⁶⁴

The 16th China’s Communist Party (CPC) Central Committee espoused the expression *kuanyan xiangji* (‘combining rigidity with leniency’) in general by many managerial divisions, such as the People’s Court, the Judicial Department, the Public Security organs, and the People’s Procuratorate during its meeting of the Fourth Plenary Session in 2004. *Kuanyan xiangji* is usually observed as an all-embracing strategy for handling juveniles, directed at attaining three goals:

- ✓ Minimizing the application of imprisonment;
- ✓ Speeding and disentangling criminal court processes; and
- ✓ Striking a balance between rigidity and leniency.⁶⁵

⁶⁰ Jieren Hu, *Grand Mediation in China*, 51 ASIAN SURV. 1065, 1066-1089 (2011).

⁶¹ Criminal Law of the People’s Republic of China, Permanent Mission of the People’s Republic of China to the United Nations and other International Organizations in Vienna, Art. 17, 1997 (China).

⁶² *Id.* at Art. 49.

⁶³ Law of the People’s Republic of China on Prevention of Juvenile Delinquency, The State Council of the People’s Republic of China, Art. 2, 1999 (China).

⁶⁴ *Id.* at Art. 35.

⁶⁵ Dennis S.W. Wong & Katherine Y. Kwan, *supra* note 28, at 4.

Kuanyan xiangji is a restatement of a similar expression, Shuang Chong Babou (“double protection”), espoused in the area of juvenile justice for a long time. From the time of the institution of the LPJD and LPM, the idea of double protection has led the way for handling juveniles in China.⁶⁶ The three words “reform”, “education”, and “rehabilitation” (or “rescue”) are consistently marked in the double protection frame. Acknowledgement of Education generally is done as the primary way of averting crime; in contrast, rehabilitation and reform are considered complementary to education in the form of sanction.⁶⁷

In 2001, in the town of Shijiazhuang, Hebei town took place the first case to espouse RJ for a child under suspicion. As an alternative to the official institution of legal proceedings, Changan District’s People’s Procuratorate issued community supervision ordain and directed the case to *Bang Jiao* (“assisted education”), which is performed in the native community for restoration and assistance (SWUFE’s Research Group 2016). RJ activities for juveniles continued to be developed betwixt 2004 and 2007 under any suspended prosecution (rebaptized to “conditional non-prosecution” in the CPL 2012) or suspended sentence procedure.⁶⁸

Declaration of the Supreme People’s Procuratorate, PRC 2006 Notice on Issuing the Rules for the People’s Procuratorate’s Handling of Criminal Cases Involving Minors resulted in the execution of RJ activities in several regions of China. As the first formal document to operationalize the notion of double protection, the 2006 Notice established that suspended prosecution might be beneficial for safeguarding the litigation entitlements of juvenile delinquents. Consequently, before 2012, more than ten towns and regions, counting Shanghai, Beijing and Shandong, espoused RJ practices. For example, VOC for children under suspended prosecution.⁶⁹

RJ was extensively adopted for conflict resolution in the discretionary power of the People’s Procuratorate, the Public Security organs, and the People’s Court between 2006 and 2012. RJ is in addition utilized as additional disposal concerning a suspended sentence operated in the procedure of the People’s Court. An efficient way to avoid official punishment of juveniles is to impose a suspended sentence, depending on the crimes carried out and the amends made to the survivor by the juveniles.⁷⁰

In precis, the Chinese RJ practices common to the Western FGC and VOC models were either utilized as supplementary actions concerning suspended prosecution for separating juveniles away from an official criminal proceeding or as additional requirements for restoring juveniles concerning the use of suspended sentence for 10-15 years.

⁶⁶ Dennis S.W. Wong, *Changes in Juvenile Justice in China*, 32 YOUTH & SOC’Y 492, 493-509 (2001).

⁶⁷ Dennis S.W. Wong & Katherine Y. Kwan, *supra* note 28.

⁶⁸ Dennis S.W. Wong, *Restorative justice at different levels of the criminal justice system in China: challenges and paths forward*, 4 RESTORATIVE JUST. 10, 11-26 (2016).

⁶⁹ Dennis S.W. Wong & Katherine Y. Kwan, *supra* note 28, at 5.

⁷⁰ *Id.*

Canada

In Canada, the federal Parliament has accountability for enforcing criminal law, whilst the territories and provinces are accountable for the justice management. It signifies that provincial, federal, and territorial administrations act in coordination and simultaneously on issues concerning criminal justice, counting RJ.⁷¹

In December 2018, FPT Ministers accountable for Public Security and Justice accepted the most diminutive objective of a 5% expansion in restorative justice procedures and referrals for perpetrators and survivors, also accepting a pair of crucial policy documents: Restorative Justice – Key Elements of Success and the revised Guidelines and Principles for Restorative Justice Practice in Criminal Matters.⁷²

The Youth Criminal Justice Act⁷³ and the Criminal Code⁷⁴ authorize RJ activities in Canada. A different course of action may be employed if an offender takes accountability for the crime under the Criminal Code.⁷⁵ Furthermore, the judicature may depend on sentencing goals that are compatible with a restorative perspective, among which, a sentence foist gives amends for injury caused to the community or to survivor, or encourages a feeling of accountability in perpetrators and recognition of the injury caused to the community or to the survivor.⁷⁶ Also, sentences may be made that are compatible with RJ tenets. Conditional sentences are occasionally foisted in consonance with RJ goals.⁷⁷

The Youth Criminal Justice Act incorporates various provisions and a perspective that are compatible with a restorative perspective, such as Objectives and Principles of extrajudicial sanctions and measures,⁷⁸ Youth Sentences,⁷⁹ Conferences,⁸⁰ and Declaration of Principle.⁸¹

The entitlement to ask and obtain details of RJ is given to the victim in the Canadian Victims Bill of Rights Act (Section 6(b)) and the Corrections and Conditional Release Act (Section 26.1(1)). Manitoba became the earliest town to institute legislation, the Restorative Justice Act, in 2015, which targets to grow the application of RJ and encourage public security by providing a solution that offers amends, healing, and re-integration.⁸²

The Justice Department underpins schemes connected to RJ via the undermentioned:

- 1 Justice Partnership and Innovation Program;
- 2 Victims Fund;
- 3 Youth Justice Services Funding Program;

⁷¹ Government of Canada, <https://www.justice.gc.ca/eng/cj-jp/rj-jr/index.html> (last visited July 25, 2021).

⁷² *Id.*

⁷³ Youth Criminal Justice Act, No. 1, Canadian Legal Information Institute, 2002 (Canada).

⁷⁴ Criminal Code, No. 46, Justice Laws Website, 1985 (Canada).

⁷⁵ *Id.* at S. 717.

⁷⁶ *Id.* at S. 718.

⁷⁷ *Id.* at S. 742.

⁷⁸ Youth Criminal Justice Act, *supra* note 73, at S.4, 5.

⁷⁹ *Id.* at S.42.

⁸⁰ *Id.* at S.19, 41.

⁸¹ *Id.* at S.3.

⁸² News Release – Manitoba, <https://news.gov.mb.ca/news/index.html?item=36784&posted=2015-11-18> (last visited July 25, 2021).

Indigenous Justice Program

Speculations give program finance to underpin education and awareness activities; research incorporating tutoring to construct capability to underpin the efficient utilization of RJ; and pilot programs.⁸³

Internationally, the Justice Department, with the underpinning of Global Affairs Canada, has harmonized the espousal of crucial resolutions on RJ at the United Nations (UN) Commission on Crime Prevention and Criminal Justice (CCPCJ) in 1999, 2002, 2016 and 2018. A few key elements incorporate:⁸⁴

A In 2002, Canada's infusion was significant in the growth of the UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, an instrument which has been a model for global RJ practice, and upon which the contemporary document, Principles and Guidelines for Restorative Justice Practice in Criminal cases (2018), is found.

B The 2016 resolution to the CCPCJ on Restorative Justice in Criminal Matters is essential because it paid attention to the United Nations Declaration on the Rights of Indigenous People and underpinned the calling of an international conference of professionals on RJ that Canada arranged in Ottawa in November 2017.

C The United Nations Experts Group conference on RJ points out the importance of RJ concerning ameliorating approach to justice, incorporating for marginalized and endangered societies and inhabitants in transition. The set of professionals observed that RJ was pivotal to the attainment of United Nations Sustainable Development Goal 16, providing access to justice for everyone, encouraging inclusive and harmonious societies, and constructing responsible, inclusive, and efficient institutions.

In May 2020, Canada was acknowledged globally and introduced at the inauguration of the lately modernized United Nations Office on Drugs and Crime (UNODC) Handbook on Restorative Justice Programmes (Second Edition).⁸⁵

Norway

Norway takes the RJ approach in punishing juveniles. The CRC, which encourages a child-friendly structure that stresses restorative potential in juveniles, has been espoused by Norway and 195 other countries.⁸⁶ Norway uses an RJS that is compatible with the CRC. Instead of retributing the juvenile delinquent, the nation focuses on mending the injury caused by the offence. Thus, Norway does not foist life imprisonment. As a matter of fact, only "juveniles of last resort" are sentenced to jail in Norway, and they are children who are recidivists, who have significant behavioural issues and carry out serious offences. Regardless of whether a juvenile is considered a "juvenile of last resort", she/he may only be incarcerated no more than four weeks having the chance of resumption till one year.⁸⁷

⁸³ Government of Canada, *supra* note 71.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ United Nations Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4 (last visited July 25, 2021).

⁸⁷ Brandon Johns, *Juvenile Justice in the United States: Juvenile life without parole*, MEDIUM (Sep. 11, 2018), <https://bjohns81.medium.com/juvenile-justice-the-american-justice-system-vs-other-countries-3dc6860c77ad>.

Norway's JJS has a comparatively high minimum age of criminal accountability besides its restorative character. Norway opted to execute lowest age of criminal accountability as 15 years, though the CRC permits a reduced minimum age of criminal accountability. This intends that hardly any child comes under the scope of Norway's JJS and makes sure that the juvenile can acknowledge the juvenility of her or his conduct.⁸⁸

United States of America

The United States take the "tough on crime" approach in retributing juveniles.⁸⁹ It is one of only two nations in the globe that has not espoused the CRC.⁹⁰ Thus, it is no startle that the United States adopts a retributive perspective to youth justice. Due to the retributive perspective of the United States, a few juveniles, even those capable of restoration, will spend the rest of their lives in jail.⁹¹

The United States' "tough on crime" perspective is highly incompatible with the CRC. The U.S. is the only nation globally where children are still punished with a life sentence, notwithstanding the current Supreme Court decision restricting who can be punished to life imprisonment.⁹² Whilst the CRC sees the imprisonment of a juvenile for even the slightest amount of time as "the last resort",⁹³ the U.S. has juveniles who will not at all view the exterior of a detention cell.

There is no lowest age of criminal responsibility in 33 states in the U.S.; thus, a juvenile of any age might conceivably face criminal punishment. Of the states that indicate minimum ages, North Carolina has the lowest at 7 years, while Wisconsin has the highest at 10 years.⁹⁴ As a result, all states are beyond the realm of CRC's prerequisites (12-17 years).⁹⁵ This can lead to severe penalties since juveniles may be very immature to understand the wretchedness of their conduct.

In toto, in the U.S., children are incarcerated without the chance to restore due to unspecified lowest age of criminal accountability together with retributive perspective. The U.S. must acknowledge a child's potential for rehabilitation and ratify the CRC. It may provide juveniles with another opportunity by substituting its retributive approach with the RJ approach compatible with the CRC.

5. CONCLUSION

Different countries have distinct methods in which they try to handle their juveniles, yet a certain number of regular activities of the JJS of every country except the U.S. comply with the postulates of RJ, like restoration, and few plans of action include the notable feature of the foundation, for example, adolescent courts. It is observed that most countries are employing the model of FGC in some way or the other compared to other models and more focusing on the principle of accountability of the offender and his rehabilitation neglecting the victim. There is still a much need by the countries to emphasize on the victim too by adopting more of RJ.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Chesa Boudin, *Children of Incarcerated Parents: The Child's Constitutional Right to the Family Relationship*, 101 J. CRIM. L. & CRIMINOLOGY 77, 78-118 (2011).

⁹¹ Brandon Johns, *supra* note 87.

⁹² *Id.*

⁹³ United Nation's Convention on the Rights of the Child, *supra* note 23, at Art. 37.

⁹⁴ Child Rights International Framework, <https://archive.crin.org/en/home/ages/Americas.html> (last visited July 25, 2021).

⁹⁵ United Nation's Convention on the Rights of the Child, General Comment No.10, 32, 2007.

I think RJ is highly relevant for JJS especially, because children are capable of being moulded and are at their learning stages. At that stage, if we will make them understand the consequences of their acts and communicate with them, there are more chances that they will comprehend it well, respect the survivor and not become recidivists instead of making them go through a punitive approach. The next chapter will analyze the JJS of India in the light of RJ.

ANALYZING THE INDIA'S JUVENILE JUSTICE LAW FROM RESTORATIVE JUSTICE LENSES

1. INTRODUCTION

Mankind owes to the child the best it has to give.

UN Declaration of the Rights of the Child

The notion of juvenile justice stems from the credence that resolution of adolescent and juvenile crime issues cannot be through normal penal processes in peculiar circumstances.¹ In contrasting situations, the word 'juvenile justice' has varied connotations. It contains clauses for the well-being and prosperity of the children in need of care and protection from a comprehensive perspective, although the actual justice system administers only those in conflict with the law or are probably so for numerous causes.²

Juvenile justice following the start of crimes alluded to justice in usual legal perception, and that juvenile justice alluded to social justice before the start of crimes. Consequently, the notion of social justice was essential to the growth of adolescents and children in general and imperilled children mostly, while the use of the idea of juvenile justice was for settled or charged juveniles. Both were intimately connected, although detachment was feasible for teaching and discourse.³

As the chapter's name suggests, this chapter talks about India's Juvenile Justice Act and covers the topic in the light of the restorative justice approach. It answers the third research question of this dissertation, i.e., how can we study India's juvenile justice law in the light of the restorative approach? The division of the present chapter is into six parts. The first part covers the introduction of juvenile justice, giving a brief overview of the chapter. In the second part, interpretation of the word 'child' is the main focus of critical analysis. The third part of the chapter, with close discernment, observes classification of children included in the scope of India's juvenile justice system (hereafter JJS).

The Fourth part looks at the regulatory design of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereafter JJ (C&P) Act, 2015), where we give an outline of the specific provisions relevant to children and the legal standards governing the JJS in India at present. The Fifth part takes us through specific sections of the JJ (C&P) Act, 2015, in the light of the restorative justice approach to critically analyze the shortcomings and powers of juvenile justice management in the nation to attain its stated goals of protection, rehabilitation, care, and development of children, and following the numerous entitlements and levels set by the United Nations. The final part covers the conclusion of this chapter.

¹ VED KUMARI, THE JUVENILE JUSTICE SYSTEM IN INDIA: FROM WELFARE TO RIGHTS 1 (Oxford University Press 2004).

² *Id.* at 4.

³ Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice: Before and After the Onset of Delinquency*, NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE (June 4, 1980), <https://www.ojp.gov/pdffiles1/Digitization/73449NCJRS.pdf>.

2. DEFINING CHILD AND 'JUVENILE'

The United Nation's Convention on the Rights of the Child (UNCRC) interprets a child as any individual less than the age of eighteen years.⁴ In India, the problem is complex, with different legislations that acknowledges distinct ages. The definition of child in India is not objective as different legislations adopt diverse cut-off ages. Further, sexual identity also impacts the definition of a child. Table 1 tries to cover as many legislations as possible that define the word child. Somewhere it is below 14 yrs., somewhere it is below 15 yrs., and somewhere it is below 18 yrs. It is submitted that the selection of the age limit hinges on the strategy, required synchronicity of intellectual and bodily maturity, the scope of the legislation and organizational factors.

For instance, the individual's intellectual competence to comprehend the impacts and essence of his or her conduct is crucial for criminal law purposes. The determining factor of labour exercises should be physical development concerning toleration and physical power for a specific task. In the Child Marriage Restraint Act 1929⁵ the age limit for marriage for males and females was 16 and 14 years, respectively. In 1949⁶ and later in 1978,⁷ it was raised because of alteration in the approach to 18 and 15 years and then to 21 and 18 years respectively. Currently, the Act is replaced by the Prohibition of Child Marriage Act, 2006,⁸ although the cut-off age remains the same.

3. TABLE 1: - AGE OF CHILD UNDER NUMEROUS LAWS

S.NO.	LAW	AGE (IN YEARS)
1	Arms Act 1959	21
2	Child Labour	
A	Employment of Children Act 1938	15
B	Factories Act 1948	14
C	Plantation Labour Act 1951	13
3	Child Marriage	
A	Option of Puberty under Muslim Law	15-18
B	Prohibition of Child Marriage Act 2006	21 for boys, 18 for girls
4	Constitution of India	
A	Articles 15, 39(e) and (f), 350A	Not specified
B	Article 24	14
5	Guardianship	
A	Hindu Adoption and Maintenance Act 1956	18
B	Hindu Minority and Guardianship Act 1956	18

⁴ United Nation's Convention on the Rights of the Child, Art. 1, General Assembly Resolution, 1990.

⁵ Child Marriage Restraint Act, 1929, No. 19, Acts of Parliament, 1929 (India).

⁶ Child Marriage Restraint (Amendment) Act, 1949, No. 41, Acts of Parliament, 1949 (India).

⁷ Child Marriage Restraint (Amendment) Act, 1978, No. 2, Acts of Parliament, 1978 (India).

⁸ Prohibition of Child Marriage Act, 2006, No. 6, Acts of Parliament, 2006 (India).

C	Section 125, Code of Criminal Procedure 1973	18
6	Indian Contract Act 1872	18
7	Indian Majority Act 1875	18
8	Indian Penal Code 1860	
A	Section 82	6
B	Section 83	8-11
C	Section 361, 363-A	18 for girls, 16 for boys
D	Sections 372, 373	18
E	Section 375 - consent	Under 18 girls
F	Exception to Section 375 – Rape of Wife	Under 15
9	Immoral Traffic Prevention Act 1956	16
10	Juvenile Justice (Care and Protection of Children) Act, 2015	18
11	Primary Education Acts	6-11
12	Protection of Children from Sexual Offences Act 2012	18

The query of regulating the meaning of a child was debated in 1974 by a working group assigned by the department of social welfare, Government of India. It deduced that this could not be done for every purpose, while age constancy might be achievable in specific sectors for some particular purposes.⁹

Table 1 demonstrates that communal habitat, social status or class conditions are not considered for cut-off ages. Absorbingly enough, they do take into consideration of gender aspect. In the Indian juvenile justice system, the Children Act 1960¹⁰ initiated the gender-based interpretation of children.¹¹ The minister bringing the Children Act 1960 provided explanation for the age of 18 years for girls stating that ‘by our experience in Bombay and other places we have found that though they attain puberty and maturity earlier, due to our social conditions they require protection for a longer period.’ Given what had been done in other nations, sixteen years is observed as the right cut-off age for juvenile justice.¹² There was no study or facts for introducing an intelligible criterion for discriminating 16- to 18-year-old girls from 16- to 18-year-old boys.¹³ It gave no reasoning for the setting sixteen years as the suitable cut-off age for boys.¹⁴ A similar gender-based interpretation of the juvenile with no more justification was espoused by the Juvenile Justice Act, 1986¹⁵ (hereafter referred to as JJA).

⁹ S.N. Jain, *Law and the Child in India*, 25 INDIAN J. PUB. ADMIN. 613, 614-624 (1979).

¹⁰ Children Act, 1960, No. 60, Acts of Parliament, 1960 (India).

¹¹ *Id.* at S.2(e).

¹² Rajya Sabha Debates, https://rsdebate.nic.in/browse?type=debatedate&sort_by=2&order=DESC&rpp=20&etal=-1&null=&offset=667819 (last visited June 27, 2021).

¹³ VED KUMARI, *supra* note 1, at 16.

¹⁴ *Id.*

¹⁵ Juvenile Justice Act, 1986, No. 53, Acts of Parliament, 1986 (India).

JJ(C&P) Act, 2000¹⁶ altered the age to eighteen, not due to the discerned unconstitutionality in the definition but to bring it following the definition of child in the UNCRC.¹⁷ The definition of a child does not alter in JJ (C&P) Act, 2015 as well, which denotes an individual who has not attained 18 years.

The JJA replaced the term ‘juvenile’ with the term ‘child’ used in the Children Act, 1960, offering to ask if the two words are distinct in their impact or meaning. The juxtaposition of further clauses and the definition and the interpretation of the dictionary of juvenile/child under the JJA and the Children Act, 1960 indicated the swap of two words, mainly since the legal position of both laws was similar. The modification appears to have been inspired by its application in the United Nations Standard Minimum Rules for Juvenile Justice Administration (the Beijing Rules), which lead up to the JJA.¹⁸ The word has been used for law-abiding and law-breaking children in the Beijing Rules as well. Except if the text of the legislation needed the utilization of the word ‘juvenile’, this dissertation has chosen to use the word children.

JJ (C&P) Act, 2000 defined a juvenile in conflict with the law as a person who is supposed to commit an offence and has not attained the age of eighteen years on the day of carrying out such offence.¹⁹

The JJ (C&P) Act, 2015 has defined the term juvenile as “a child below the age of eighteen years”.²⁰ This definition is substantially similar to the definition of the child, which is defined to mean “a person who has not completed eighteen years of age”.²¹ It is amusing to note that the legislature has used two terms for conveying similar meanings. This observation also becomes very interesting by the fact that the entire legislation uses the term ‘juvenile’ thirty times. Out of these thirty times, the same occurs in the context of the special juvenile police unit, thirteen times, in the context of juvenile justice board, five times, in the context of principles, previous legislation and juvenile fund, two times each. It appears four times cumulatively in the title and the preamble of the legislation five times, and the definition itself. Therefore, it is difficult to comprehend as to what was the need to define the term in the definition clause as it does not appear to serve any purpose.

The JJ (C&P) Act, 2015 has declined the distinctive use of the terms child and juvenile. The phrase ‘juvenile in conflict with law’ has been substituted by ‘child in conflict with law’. This replacement is an essential acknowledgement of the entitlements of every child. JJ (C&P) Act, 2015 not only indicates ‘alleged’, but has further added ‘or found’ to have carried out a crime in the definition of child in conflict with the law to establish a rights-based and child-centered attitude to every practice and procedure for children, even though they were held culpable for carrying out a crime. So, a ‘child in conflict with law’ is a child found or supposed to have carried out an offence and has not attained 18 years of age on the day on which the crime was carried out.²²

¹⁶ Juvenile Justice (Care and Protection of Children) Act, 2000, No. 56, Acts of Parliament, 2000 (India).

¹⁷ VED KUMARI, *supra* note 1, at 18.

¹⁸ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), General Assembly Resolution, 1985.

¹⁹ Juvenile Justice (Care and Protection of Children) Act, 2000, *supra* note 16, at S. 2(k), (l).

²⁰ Juvenile Justice (Care and Protection of Children) Act, 2015, S.2(35), No.2, Acts of Parliament, 2015 (India).

²¹ *Id.* at S.2(12).

²² *Id.* at S.2(13).

4. CATEGORIES OF CHILDREN UNDER THE JUVENILE JUSTICE SYSTEM IN INDIA

As per the present JJ (C&P) Act, 2015, there are broadly two categories of children, the child in need of care and protection and child in conflict with the law. During the discussion on the Children Bill 1959, some members of Parliament objected to the inclusion of both neglected and delinquent children within the purview of the same Act. They felt that interaction with delinquent children would impart a social stigma to neglected children. The inclusion of neglected children in a statute dealing with children committing offences found rationale in the observations of K.L. Shrimali, the then minister of education who had moved the Children Bill 1959. He said:²³

“Most of the difficulties and maladjustment of children arise because of the sense of insecurity, which the children have to face at an early period. It is during that period that preventive measures have to be taken. If you study the life history of the criminals, you will find that most of them are neglected in early childhood and face all kinds of insecurities and maladjustment. Therefore, some provision was needed to take care of these neglected children.”

Similar questions dominated the discussions and consultations preceding the JJ (C&P) Act, 2000. The tension between the two positions resulted in both categories within its purview, but their complete segregation within the same legislation.

Despite this debate, neglected and delinquent children remained part of the JJS as conceived by the statutes, but they have differed in the range of offences by children or the circumstances constituting neglect in which the children could be subjected to their protective regime.

The categories of children and nomenclature under the JJ (C&P) Act, 2015 to the child in need of care and protection and child in conflict with the law included many more categories within its purview.

Child in conflict with the law

A child found and supposed to have carried out a crime who has not attained eighteen years of age on the day on which the crime was carried out. Thus, the requirement to categorise a child as a child in conflict with the law are (a) He/she is found or supposed to have committed a crime and (b) He/she was below eighteen years of age on the date of such crime.

Child in need of care and protection

A child –

- living on the road, or scrounging or employed in breach of labour laws; or
- having nobody to take care or hold up of or having protectors or folks who are unable to look after, or who has physical or inward issues or experiencing an untreatable or fatal illness or having a psychological disorder; or

²³ Lok Sabha Debates, <http://164.100.47.194/Loksabha/Debates/debatelok.aspx> (last visited June 28, 2021).

- whose folks have relinquished or deserted him, or who has nobody or no folks to look after of; or
- tormented, mistreated or exploited for unlawful deeds or sexual abuse in the past, present or future; or
- mistreated for unethical profits in present or future; or
- who is at immediate imperil of the wedding before completing the age of wedding and whose kin, folks, protectors and any other individuals are accountable for performing such wedding; or
- not having apparent wherewithal of livelihood and found not having any settled place of abode or accommodation; or
- who lives with an individual who has intimidated to harm, mistreat, murder or exploit the child and there is an appropriate probability of commission of the intimidation; or has breached any other law intended for preservation of child or has exploited, abandoned, harmed or mistreated the child; or has mistreated, exploited, murdered or abandoned some other child or children and is an appropriate probability to have the child at issue mistreated, abandoned, murdered or exploited by that individual; or
- whose protector or folk is found disabled or unsuitable by the Board or the Committee to preserve the welfare and security and take care of the child; or
- whose folks cannot be found following appropriate investigation, or who is flee or missing child; or
- who is at risk and expected to be brought into smuggling or substance abuse; or
- who is impacted by or survivor of any civil disruption, armed conflict or natural disaster;

According to the Supreme Court of India, these twelve categories mentioned above are indicative, i.e., even beyond these categories, there can be conditions that can bring a child in need of care and protection. If a child does not fall under any of the above categories, it can still be brought under ‘child in need of care and protection’ by the Committee if it feels that there is some problem or the child comes in a different category not mentioned in the Act.²⁴

This all-inclusive definition brings almost all Indian children within the scope of the JJS. Such a definition vest absolute power in the state to subject any child to state action and intervention. This power may be exercised arbitrarily by the state unless counter-balanced by recognizing children’s rights falling within these categories to seek an effective redressal system of their grievances and care and protection.

The protection from stigma is needed to the neglected as well as delinquent children. The poor street children who is culprit of a minor crime is similar to another street child, in relation to their behaviour and adverse impact of each other. Merely by reference to the nature of the offence committed, a child cannot be said to be of unruly or depraved character per se. The circumstances of the children’s living and their characteristics should be the criteria for segregating children rather than committing an offence. Categorizing children by reference to an offence’s commission, instead of their characteristics, focuses primary attention on the offence

²⁴ Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India and Ors., AIR 2017 SC 2546.

and relegates the child to a secondary place. The criterion is contrary to the proclaimed objectives of the JJS, which are not penalization for the crime committed and prevention of crime, but care and protection of the children. As all children processed under the JJS get stigmatized, finding ways to destigmatize them all is essential.

It is neither easy nor desirable to exclude one or the other category of children from the purview of the JJS as all of them do need care and protection. Inclusion of all of them requires measures to check the arbitrary exercise of the power of intervention given to the police. The requirements of each category and sub-category of children included differ. The state, therefore, will have to conceive of a scheme that can provide individualized care and protection to all these children leading to their treatment, development, and rehabilitation in society. Juvenile justice will need to lose its crime prevention and juridical model and adopt a welfare and child's rights model.

5. NORMATIVE CONSTRUCTION OF THE JUVENILE JUSTICE SYSTEM IN INDIA

JJ (C&P) Act, 2015, was passed by Parliament and enforced on January 15, 2016, in India except for Jammu and Kashmir.²⁵ On coming into force, the JJ (C&P) Act, 2015, has repealed and replaced the JJ (C&P) Act, 2000.

The objectives of this legislation can be inferred from the long title. It described it as an Act for children in conflict with the law and children in need of care and protection by providing them growth, social reintegration, protection and treatment by employing a child-friendly attitude in discarding and judging the issues in the best interest of children and for their rehabilitation.²⁶ The objective of the JJ (C&P) Act, 2015 demonstrates that it has not deviated from the preservative attitude of juvenile justice regarding children in need of care and protection together with the child in conflict with the law.

The JJ (C&P) Act, 2000 does not elaborate the terms 'care', 'protection', 'treatment', 'development', and 'rehabilitation'. The JJ (C&P) Act, 2015, does not clarify this issue. These phrases, although, may be considered in relation to the facts in the National Policy and other programmes.²⁷ So, care must involve the most important necessity of children, that is, sufficient food, clothing, and shelter. Protection from neglect, cruelty, and exploitation and making provisions for good measures for improving the conduct of the delinquent children is a must.²⁸ Such measures must aim to inculcate in children the principles of honesty and a busy life which will make them physically fit, morally healthy, robust citizens, mentally alert, and endowed with the expertise. The juvenile justice schemes should include the necessary programmes for the evolution of individual and whole development of the children. The rehabilitation is understood in a sense where reformatory services of home, medical facilities, prevocational and vocational training, cultural development,

²⁵ Juvenile Justice (Care and Protection of Children) Act, 2015, *supra* note 20, at S.1.

²⁶ An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto.

²⁷ VED KUMARI, *supra* note 128, at 135.

²⁸ The National Policy for Children, 2013, 4, 2013 (India).

food, clothing and providing education services and making children job worthy when they become adult in the scheme of children well-being who needs care and protection.²⁹

Scheme, Authorities, Institutions and Features of the Act

The JJ (C&P) Act, 2015 consists of 112 sections contained in ten chapters. Chapter one deals with preliminary matters of title, extent, commencement, definitions, and application. Chapter two lays down general principles of care and protection of children to obey in the management of the Act. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules) guide these principles. All provisions of the Act, its interpretation, approach all will be taken, keeping in view these principles. The State Governments, the Central Government, the Board, and other agencies, while applying or implementing any provision of the Act, should be guided by the fundamental principles provided in the section. Chapter three provides for Juvenile Justice Board (JJB). Chapter four makes provision for children in conflict with the law. Chapter five deals with Child Welfare Committee (powers, procedure, functions, and responsibilities). Chapter six makes provision for children in need of care and protection. Chapter seven talks about rehabilitation and social reintegration, while Chapter eight provides for adoption. Chapter nine deals with other offences against children. Chapter ten contains all other miscellaneous matters.

The application of the JJ (C&P) Act, 2015 is to individuals who have not attained the age of eighteen years and comes under the category of the child in conflict with law or child in need of care and protection. The most crucial inclusion among children in need of care and protection is child labour in this definition.³⁰ All the boys and girls who are below eighteen years of age come in the purview of the JJ (C&P) Act, 2015. For the purposes of clarifications, note that the JJ (C&P) Act, 2015 has not lower the age of considering a child to sixteen years, but children betwixt the age of 16-18 years who have presumed to be conducted a serious harm to the victim may be shifted to an usual criminal court with adult, known as the court of children³¹ where trial will be conducted as adult courts³² in particular circumstances and is the most pivotal change guided by the JJ (C&P) Act, 2015 if compared to the previous legislation.

The competent authority to deal with 'child in need of care and protection' is the Child Welfare Committee, and 'child in conflict with law' is the Juvenile Justice Board.³³ The Board shall comprise a magistrate and two social workers, one of whom shall be a woman. The magistrate should have three years of experience.³⁴ Social workers should be actively involved in health, education, or welfare activities of children for at least seven years or a practising professional with a degree in child psychology, psychiatry, sociology or law.³⁵

The Committee would consist five members, a woman is one of the members and there would be expert of child related matters.³⁶ It will work as a bench of magistrates, and the code of criminal procedure empowers

²⁹ VED KUMARI, *supra* note 141.

³⁰ Juvenile Justice (Care and Protection of Children) Act, 2015, *supra* note 6, S.2(14)(ii).

³¹ *Id.* at S.2(20).

³² *Id.* at S.15, 18(3).

³³ *Id.* at S.4(1), 27(1).

³⁴ *Id.* at S.4(2).

³⁵ *Id.* at S.4(3).

³⁶ *Id.* at S.27(2).

the members as judicial and metropolitan magistrate.³⁷ The role and potential of the Juvenile Justice Board and Child Welfare Commission take clarity from the act instead of the JJ (C&P) Act, 2000.

Like the JJ (C&P) Act, 2000, the JJ (C&P) Act, 2015 does not specify anybody/authority that may deal with children in the absence of a Committee or a Board. Hence, it is assumed in the scheme that there will be a Committee and a Board covering India, except the State of Jammu & Kashmir. Perhaps it explains the provisions that provide for the establishing Committees and Boards for a district or a group of districts.

In case of a 16–18-year-old child is an accused of a serious crime, the JJB has to “conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence”³⁸ taking the help of psycho-social workers or experienced psychologists, or other experts. After this assessment, the JJB may choose to dispose of the case itself or transfer it to the children’s court.³⁹

On receipt of the preliminary assessment from the JJB, the children’s court has the discretion to decide whether to try the child as an adult or to deal with her/him as a child and pass appropriate orders accordingly.⁴⁰ Annual Review of progress of children sent for stay for terms beyond the age of 21 years is needed.⁴¹ On their completing the age of 21 years, doing another assessment to see if the child has improved and is ready to be released in society, the children’s court may direct their release under the supervision of the monitoring committee for the remainder of the period of stay initially ordered.⁴² Any aggrieved person may file an appeal against any orders by the JJB or the children’s court.⁴³

Each police station must have at least one police officer specially trained to deal with children in need of care and protection and those in conflict with the law. In every district, there will be a special juvenile unit constituted by such police officers.⁴⁴ The functioning of the JJ (C&P) Act, 2015 find its root in the implementation this provision.

The JJ (C&P) Act, 2015 gives a range of options for residential care for the different categories of children. The residential categories are divided broadly into two categories (Figure 1):

A Children home established or recognized for housing children in need of care and protection. An Observation home established or recognized for keeping children during the pendency of proceedings unless kept with guardians, parents, or at a place of safety, and a Special home for children in conflict with the law. The observation homes must be concerned with the short-term needs of the children, on the other hand two different categories of homes provide long term care and facilities for development.⁴⁵

³⁷ *Id.* at S.27(9).

³⁸ *Id.* at S.15(1).

³⁹ *Id.* at S.2(20).

⁴⁰ *Id.* at S.19(1)(i).

⁴¹ *Id.* at S.19(4).

⁴² *Id.* at S.20.

⁴³ *Id.* at S.15(2) proviso, 101.

⁴⁴ *Id.* at S.107.

⁴⁵ *Id.* at S.47, 50.

The second category is Open Shelter, Fit Facility, Fit persons who provide community-based residential care to children. These are different from adoption, foster care and sponsorship, which fall in non-institutional care. Under Section 46, the JJ (C&P) Act, 2015 addresses aftercare for children leaving institutions. It provides financial support for reintegration into mainstream society to any child who is going out of the child care institution after completing eighteen years of age.

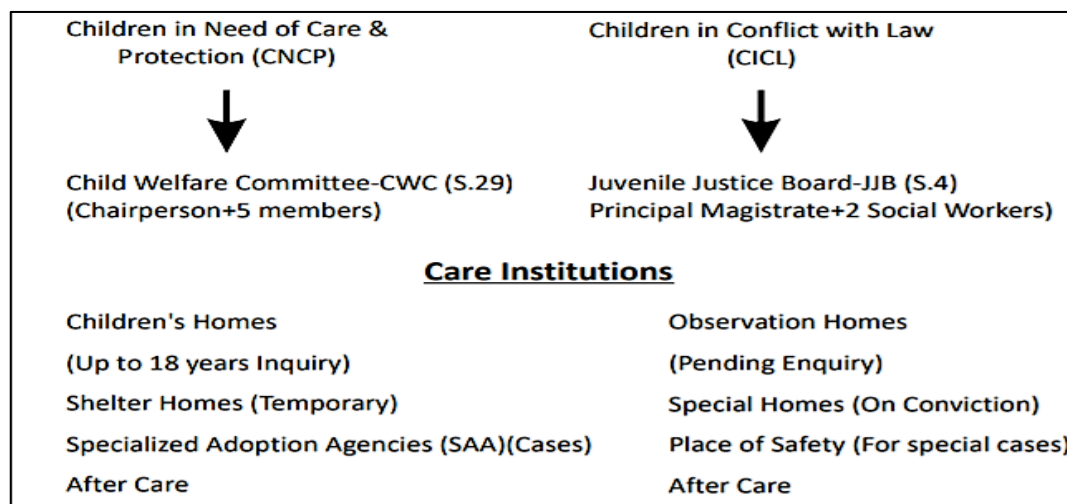


Figure 1

A significant change in adopting a globally accepted adoption law instead of the Hindu Adoptions and Maintenance Act 1956 and Guardians of the Ward Act 1890. The Act has tried to streamline the adoption issue and make the lives of orphan children better. Provisions relating to foster care for children is another effort under the JJ (C&P) Act, 2015, to keep children in a family environment. The provisions relating to sponsorship provide for additional support to institutions and families in children's capacity-building.

The Act interprets orphaned, surrendered and abandoned children.⁴⁶ It also provides for an efficient and organized system for the adoption of such children. Chapter seven of the JJ (C&P) Act, 2015 lays down some additional measures for reintegration and rehabilitation undertaken for both categories of children.

Important Features of the Act

Continuation of Inquiry⁴⁷

The JJ (C&P) Act, 2015 provides laws for ongoing proceeding related a person who becomes adult during the proceeding. As children do not have similar mental maturity as adults, they cannot be treated with the same degree of mens rea, and they need protection from the effects of their criminal acts, this is the reason for such kind of provision. The reason of such provision is strong merely because, over time, the person, becomes adult

⁴⁶ *Id.* at S.2(42), (60), (1).

⁴⁷ *Id.* at S.5.

at the time of the final decisions, who was a child at the beginning of the commission of the offence. Decisions of the concerned authority are not vitiated by subsequent proof that the person dealt with under its provisions was not a child. The age, as noted by the concerned authority after due proceeding, is deemed to be the actual age of the person for the JJ (C&P) Act, 2015.

Particular Principle Regarding Bail⁴⁸

The JJ (C&P) Act, 2015 has removed the difference between heinous and other offences (bailable and non-bailable offences) provided by the CrPC for purposes of releasing the individual.⁴⁹ The JJ (C&P) Act, 2015, differentiates between the treatment of adult offenders and juveniles while providing provisions for them to release of children on bail while it does not matter that they are charged with bailable or non-bailable offence. Also, the ground for not giving bail to the children cannot be the nature of offence committed. Bail may be not granted if such release will expose the child to the known criminals or bring them to the moral danger or if it will restrict the ends of justice. Such provisions are a way to keep children in the society unless their interest needs them to be in an institution, also when such a stay is not very long.

Constitution of the Competent Authority

By providing the Committee and the Board power to function as a bench of magistrates, the JJ (C&P) Act, 2015 has ensured and given the required additional care to children. Appointment of only those persons should be as magistrate/member of the Board or the Committee who have three years experience/special knowledge of child welfare and child psychology.

Prohibition Against Revealing Identity of Children⁵⁰

The Act provides protection to the children from public stigma. This helps to restrict and punish the release and publication of confidential report related to the information of children that will lead to the identification of children such as name, school or address, except with the written authorization of the competent authority. These provisions follow the principles available in the Beijing rules and protect the interest of the child.

Removal of Disqualification⁵¹

JJ (C&P) Act, 2015 provides removal of disqualification attaching to a conviction of an offence if children have been dealt with under its provisions.

6. RELATION OF PRINCIPLES AND VALUES OF RESTORATIVE JUSTICE WITH JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

Individual Care Plan

Definition of the terms 'rehabilitation' and 'social reintegration' is not present in the Act. However, in a general sense, rehabilitation means restoring someone to their former state, vindicate, and social reintegration means a process through which people are brought back into the community's social structure. Chapter seven of the Act is devoted to rehabilitation and social reintegration. Section 39 of the Act talks about the process of

⁴⁸ *Id.* at S.12.

⁴⁹ Code of Criminal Procedure, 1973, S.2(a), No.2, Acts of Parliament, 1973 (India).

⁵⁰ Juvenile Justice (Care and Protection of Children) Act, 2015, *supra* note 20, at S.74.

⁵¹ *Id.* at S.24.

the same. It says that the building of procedure for social integration and rehabilitation of children will be on the individual care plan, ideally by family care like rehabilitation to protector or folks having sponsorship, foster care, perusal or adoption, or not. It focuses on the process being individually planned for every child to restore the child in the society giving preference to his/her family or guardian.

Section 19 comprises the powers of the Children's Court. Section 19(2) says that the closing decree of the Children's Court should contain an individual child care plan for the rehabilitation of the child together with a revert by the District Child Protection Unit or the probation officer or a social worker concerning the child in conflict with the law. It talks explicitly about the Children' Court's duty, i.e., it has to ensure that whatever the final order be, it should include individual care plan of the child for his/her restoration purposes. Also, paying close attention or following up by the District Child Protection Unit, probation officer, or social worker is necessary.

Lastly, Section 30 describes the functions and responsibilities of the Child Welfare Committee. Specifically, clause (vi) of the same make sure protection, suitable restitution or rehabilitation and care, built on an individual child care plan and giving obligatory commands in this concern, to protectors or children's homes or folks or fit persons or fit facility concerning children in need of care and protection. It talks about the Committee's responsibility to ensure protection, restoration, care and rehabilitation of children based on an individual plan.

However, there is no provision for any penalty or punishment if the concerned authorities do not fulfil these duties and functions. These provisions support the Restorative Justice System (RJS) as they are based on the child's individual care plan, which shall repair social relations and heal communities through peace and harmony. As discussed in chapter two of this dissertation, restorative justice is primarily involved with specific contexts in rehabilitating perpetrators, survivors, and communities. The usage of the restorative justice process has no general resettling pattern for an optimal process that can fit every case.

Institutionalization and Diversion

Section 3 of Chapter two of the Act talks about general principles of care and protection of children. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules) guide these principles. All the provisions of the Act, its interpretation, and implementation must be taken, keeping in view of these principles. The State Governments, the Central Government, the Board, and other agencies, while interpreting or implementing any provision of the Act, should be guided by following fundamental principles provided.

Use of Institutionalization should be when it is the only remaining option, after following an appropriate investigation. The settlement of a child shall be in institutional supervision at the end-stage.⁵²

⁵² *Id.* at S.3(xii).

Diversion actions are to be encouraged to handle children in conflict with the law, i.e., no recourse to legal procedures, except it is in the child's best interest or society as a whole.⁵³

These two principles significantly overlap the principles of RJS. When there is no option left, i.e., the child cannot be sent to his/her biological parents or adoption or foster care, then only institutionalization shall be chosen. Moving children from their homes should be the last recourse and not the first one. The promised care was not provided to the juvenile offenders and other who prevent the occurrence of crime according to the studies of juvenile justice systems.⁵⁴ The casework services are not adequate in of diagnosis, counselling and on ground rehabilitation due to which major part of children are not happy. There are no programmes regarding advancing their skill for the children after they go out of the care institution to take care of themselves.⁵⁵ In various institution there are no facilities for providing vocational training to the children. The situation is not good as the available caretakers are have lowest income, not qualified as require and also not informed properly about the children who are institutionalized. There is no coordination as required for efficient functioning but it exists due to administrative necessity.⁵⁶ Major part of children do not get employment in which they are qualified during the institutionalization due to not proper training or they lack interest due to less salary.⁵⁷ Nevertheless, there is no provision for any penalty or punishment if the concerned authorities do not fulfil these principles. Instead of institutionalization, RJS gives priority to the community-based correction, complete with the privileges and programmatic opportunities of the juvenile institutions. It is toward freedom, a preference, a diversion to use the least restrictive alternative to incarceration, just like JJS. The usual practice is to ignore judicial proceedings and institutional care and push for reducing sentence, seeking community-based options, and maximise alternative sanctions.

Promotion of a child in conflict with the law should be towards not resorting to judicial proceedings until and unless it is in his/her best interest or society as a whole. For the mental well-being of the children, it is necessary to keep them away from legal institutions. Howard Zehr defines Restorative Justice as “a process to involve, to the extent possible, those who have a stake in the specific offence to collectively identify and address harms, needs and obligations in order to heal and put things as right as possible”.⁵⁸ Most commonly, the application of restorative justice is as a non-judicial measure, and, as such, restorative justice conferences traditionally do not include judicial professionals. If all the parties are ready, they can meet and talk over the injuries and outline the actions to be restored instead of going for judicial proceedings.

Child-Friendly Atmosphere

Section 7 comes under Chapter three of the Act, which talks about JJB. Section 7(1) says that whenever the Board will hold its meetings, it shall ensure that all the procedures followed should be child-friendly. The atmosphere provided to the child shall not cause fear or nervousness; it shall not resemble regular courts.

⁵³ *Id.* at S.3(xv).

⁵⁴ VED KUMARI, *supra* note 1, at 5.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ HOWARD ZEHR & ALI GOHAR, THE LITTLE BOOK OF RESTORATIVE JUSTICE 40 (Good Books 2003).

Section 14 talks about the inquiry done by the Board of the child in conflict with the law. Section 14(5) lays down steps to ensure fair and speedy trials of such children. Clause (b) of the same says that during the case, the proceedings conducted shall be as uncomplicated as possible, and the Board shall ensure to provide a child-friendly atmosphere to the child, and he/she shall not be deterred or threatened during the process.

There is no provision for any penalty or punishment if the Board does not fulfil these steps. In RJS also, the programme should be managed in a child-friendly atmosphere. The aim is to establish an atmosphere that is not posing a threat and is not adversarial, that approaches the needs and interests of the criminal, the society, the survivor and the community. Important is the discourse event that stresses recovery and not sanctions: recovery of criminal *via* the reestablishment of her/his social and ethical selves, recovery of survivor and annulling the injury he/she has suffered; repairing social relations and healing communities⁵⁹, keeping all procedures child-friendly and no venues or institutions intimidating. Conducting the process should be in a manner that is appropriate to the child's age, level of understanding and maturity and child-friendly, carrying out in the presence of a guardian, parent, social worker or any other responsible and appropriate person chosen by the child.

Restorative justice gives children the chance to communicate in an encouraging and secure atmosphere, beset by carers, folks or anyone recognized by the child. Specially instructed facilitators will arrange the meeting to ensure that every child complies with the procedure and is heard. The child is motivated to express in her or his own terms, in a way that makes her or him feel homely. Any expression challenges that the child may have, are considered when arranging the meeting.

Participation

Section 8 of the Act talks about the functions, powers and responsibilities of the JJB. Section 8(3)(a) puts the responsibility on the Board to ensure participation of the child and the concerned parents or guardians in every step of the proceedings against the child.

As discussed, Section 14 talks about the inquiry done by the Board of the child in conflict with the law. Section 14(5) lays down steps to ensure fair and speedy trials of such children. Clause (c) of the same says that the chance of being listened to and involved in the investigation should be given to all children put forward before the Board. It ensures every child narrates his/her story of the event and engages at every stage of the process.

There is no provision for any penalty or punishment if the Board does not fulfil these functions. These provisions support RJS; as mentioned earlier in Chapter two of the dissertation, one of the values of RJS is Participation; everyone appearing in a restorative justice meeting has a worthwhile contribution to the meeting's objectives. Christie believes that observation of crimes must be as disputes that owe to criminals and survivors and that these stakeholders should engage in resolving them, one premature cognitive underpinning for restorative justice. Legal Experts and Criminal Law Organizations rob the stakeholders of

⁵⁹ John Braithwaite, *Restorative Justice and Response Regulation*, N.Y. OXFORD U. PRESS, (2002).

their obligation and entitlement, those disputes, their chance to acquire knowledge and develop utilizing their disputes.⁶⁰

Victim satisfaction is many times in a direct manner connected with the amount of esteem and participation that juvenile and criminal justice systems provide them; amounts that are significantly enlarged via the use of restorative justice. The participation of survivors in the juvenile justice system or, for that matter, the whole criminal justice system is essentially a result of their roles as witnesses and not as accepted, working members. Comparatively, in RJS, the primary duty is to survivors; it strengthens survivors to productively involve in interpreting duties. The community also directly participates in the programmes. Even the criminal function in an active manner to reinstate survivor's losses and take part in practices that usually grow empathy with survivors. Every member can come up with solutions to the difficulties by identifying how the criminal might finely mend the injury. The outcome is an accord that summarises promises and expectations of every member, involving those of the criminal.

Restoration

Section 40 of the Act talks about the restoration of the child in need of care and protection. Restoration shall be the principal aim of any Specialized Adoption Agency, Children's Home or any Open Shelter. Such authority shall ensure that all the steps taken should protect and restore the child who is permanently or temporarily out of a family atmosphere. Also, the Committee has the power to send the child in need of care and protection back to his/her guardians or biological parents or foster care or adopting parents or fit person keeping in view their suitability and guiding them with appropriate directions. There is no provision for any penalty or punishment if the concerned authorities do not ensure the same.

Protection and restoration of a child mean restoration to adoptive parents, guardians, parents, foster parents or fit person, for the objects of this section.

Restorative justice stresses the social balance or the restoration of the associations betwixt criminals, survivors, and their communities do not inevitably imply incarceration. It aims to accomplish a further deeply ingrained sense, a broad range of justice than the retributive paradigm.⁶¹ There are examples of the efficiency of RJ activities in generating elevated value of settled understanding for restoration and elevated levels of agreement value with this understanding; lessening recidivism; attaining perpetrator and victim requirements, and promoting (their) reasonable interpretations of equitability in procedure and results, and lessening phobia of the offence of the survivor. RJ comes as admirable because of its interest in the community and its concentration on the survivor's viewpoint.

⁶⁰ Nils Christy, *Conflicts as Property*, 17 BRIT. J. CRIMINOLOGY 1, 2-15 (1977).

⁶¹ Grace Yeo, *Restorative Justice as a Response to Atrocity: Profound or Merely Pragmatic?* 35 J. INT'L LAW & PoL. 1, 2-3 (2020).

7. CRITICAL ANALYSIS OF JJ (C&P) ACT, 2015 FROM THE PERSPECTIVE OF RESTORATIVE JUSTICE

Acknowledgement of young adults and children is as crucial representatives for aggregate social change and a vital human resource for growth. Nevertheless, it is only feasible when they participate in important communication on matters that interest them the most.⁶² JJ (C&P) Act, 2015 concentrates on restorative justice activities that are distinct from traditional criminal justice activities, as we saw above but still, there is a need to critically analyze the Act from the perspective of restorative justice.

The steadily shifting outlook has led to the origination of different juvenile justice system. However, both the concerns of society and the child's concerns must be considered while sketching a different juvenile justice system. While children are secured from the harmful consequences of jails, the survivors of their crimes get no comfort from the system of juvenile justice. The survivors perceive that children are effortlessly released even after recidivism or carrying out serious crimes. Whilst on the one side, a different system for children, should support minimal institutionalization and minimal interference by law; on the other, restoration procedure should be sufficiently powerful to stop them from committing crimes again. Restorative justice considers crime wrong against the victim and community. The victim has a vital role to play in the system of Restorative justice. It reintroduces the survivor's voice within the justice procedure. Restorative justice represents a critical pattern change in that it prioritizes survivor empowerment and involvement in the justice procedure, giving them a more significant reaction to and influence over the story of injustice. Johnstone observes that this emphasizes the healing possibilities of restorative justice for survivors. Localization of justice through restorative procedures of communal settlement guarantees that "justice is visible to those who suffered", breaking any sequence of refusal.⁶³

It is necessary to concentrate on meeting the physical, mental, psychic, sentimental, friendly and inventive requirements of a child's being. We should change our approaches from a requirement-based attitude to a rights-based one while restoring children in conflict with the law. Any child in conflict with the law must have the right of separation from adult criminals if detained, the right against discrimination and constitutional rights. JJ (C&P) Act, 2015 snatches these rights from children under the age of 16-18 years. In JJA, there was no rationale for sex-based discrimination of age, and the present Act has no rationale for discrimination of 16–18-year-olds. The classification of children by referring to the information of carrying out a crime; instead of their features; gives the main emphasis on the crime and lowers the child to a subordinate position. The classification contradicts the goals stated in the JJ (C&P) Act, 2015, which are not punishment and prevention of offence, but care and protection of the children. Restorative justice has no bar or discrimination of any kind, not based on age, offence or anything. It protects all children from stigma irrespective of the crime committed and the age of the child.

⁶² SOP on Rehabilitation of Children in conflict with the law, https://wcd.nic.in/sites/default/files/SOP%20ON%20REHABILITATION%20OF%20CHILDREN%20IN%20CONFLICT%20WITH%20THE%20LAW_0.pdf (last visited July 16, 2021).

⁶³ 2 GERRY JOHNSTONE, RESTORATIVE JUSTICE: IDEAS, VALUES, DEBATES 32 (Routledge 2011).

Perpetrators should be motivated to accept accountability, needs of the survivor should be met with, there shall be involvement of influenced people, irrespective of whether perpetrators “get it” and lessen their criminal activities. JJ (C&P) Act, 2015 still considers crime against the state and the offender is held accountable by punishment. The focus of the system is still a blame game after so many amendments. In restorative justice, criminals are motivated to realize and take accountability for the injury they have caused. There is stimulation of indirect or face to face communication, and the community performs an essential role. Restorative justice presumes that justice must and can encourage societal as well as individual healing. It requires self-reprehension of the criminal, who accepts accountability, admits the injury caused and conveys regret. Even the community has accountability for the well-being of its members and associations and the social situations which urge community harmony and offence. The community is accountable to be a working participant in the definitions of perpetrator duties, promoting endeavours to restore perpetrators into the community and ensuring the chance of reparation to perpetrators. However, our communities seem essentially fragmented, shall we hope to recover some apprehension of accountability, but restorative justice supports and acknowledges those ties, and it shows that the present community is sufficiently capable of doing so. Also, Foster care is a relevant and essential system that provides non-institutional care of the child. The child stays with its extended family that is important for the child's development. This is an example of community involvement where the unrelated family takes the responsibility of a child. Foster care need to be analysed in the light of community involvement in the restorative justice system, which provides a perspective to understand the concept of social involvement in providing a better and stable system. JJ (C&P) Act, 2015 recognise the foster care in section 44. The foster care system needs to be implemented as it is a flexible system to help the child. There must be an institutional framework to deal with the issues related to foster care. One such framework could be establishing monitoring and inspection units for their better implementation.

The prevention of juveniles from carrying out crimes is a crucial element of preventing offence in society. Restorative justice understands that prevention accounts for community-based practices, therefore trying to solve the issue where it begins; in the community and the folks. Through restorative justice practices, we can discover the fundamental cause of juvenile offending to provide suitable interventions, unlike JJS. Through the present Act for juveniles, we will never be able to find the reasons behind offending by children, we will never be able to hit the bull's eye, and there can be no prevention. Even the National Crime Records Bureau (NCRB) data, the only data to show criminal data of our country, in no way gets us to know why or what is the pattern of offences carried out by children. I believe that without understanding or knowing the psychology or the mindset of the child committing offences, we will never be able to make good law for them and solve the issue of juvenile offending.

India is the second-largest country in terms of the child population. We understand youth is important still we do not care about the legislations which deal with them. Despite protestations by eminent persons, reports and committees, JJ (C&P) Act, 2015 was enacted with all its lacunas.

It is submitted that, since decades-long history, we have tried setting different committees, recommended reformatories, jails, schools, special institutions and whatnot, but nothing worked; children still commit

offences because nothing can replace the feel of a home and his/her parents for a child. The concept of *parens patriae*, where the government or state becomes the child's parent, can never solve the issue. Any authority cannot replace the parents for a child. Here comes the need for RJS, because until we use any kind of institutionalization in the name of observation homes, place of safety, special homes, children will always feel left out and different from others. We will not be able to achieve restoration and rehabilitation. Juvenile crimes are needed to be solved socially; there will be no need for different types of homes mentioned in the Act if communities and families will be strengthened.

Spending money on establishing different types of homes in every district, separate for boys and girls, their separate personnel, personnel's salaries, putting extra expenditure to create those homes "home-like attractive", appointing advisory committees and other authorities to check, follow up and give timely reports of those homes, salaries of those authorities and after all this also we are not sure if the children in those homes are getting parental love; instead, we can spend this money on training people to perform restorative justice and letting children stay at their homes, putting extra money to give these services of restorative justice affordable to every common man unlike court fees, advocate charges, paperwork etc.

8. CONCLUSION

The JJ (C&P) Act, 2015 is an important backstep in the progressive philosophy of juvenile justice began with the Apprentices Act, 1850. The provision of keeping children in prison takes us back to the age-old practice of using prison for children in certain conditions in India in the year 1920. It was a progressive decision in 1920 as it changed the policy of exceptional use of reformatories and borstal to exceptional use of prisons. The JJS is limited in its application to the children in need of care and protection and others committing offences and is equally replete with evidence of the state's apathetic attitude towards children. Despite its shortcomings, the JJ (C&P) Act, 2015, having been enforced, now regulates all operations relating to children under eighteen years and falling within its purview.

By going back to the position of law in 1920, the JJ (C&P) Act, 2015 has not considered the new pieces of knowledge came since then in areas like criminology, penology, victimology, psychology, psychiatry, neuroscience, rehabilitation, restorative justice, that have made us better to deal with persons committing crime. Many countries have adopted restorative justice practices, also for heinous crimes such as rape and murder, that is impacting the decrease in repeat offending by them. Indian political democracy buckled under the social, political and emotional pressures by one barbaric gang rape case occurred in the capital city of India in which one of the prime culprits was a juvenile who was about to attain his majority. It is well defined principle where one bad case does not become the cause of a good law. India has chosen to ignore the sound experience, and adopted the most regressive decision to introduce a retributive approach for juvenile as an unthoughtful reaction after seeing numerous experiences of other countries such as USA and UK, which have a history of not including children younger than sixteen years, incarcerating them for a long duration from last 25 years. All these countries have shown their results as failure of such direction where children were kept in prison with adult criminals and tried them as adults then they become hardcore criminal at the later stage of

their life than children who were there in the juvenile justice system.⁶⁴ For sure, this legislation signifies the win of emotions over reason and the rule of law.

The next chapter contains a pilot study on the awareness of police officers in relation to the JJS in India.

⁶⁴ CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm> (last visited July 2, 2021).

A PILOT STUDY ABOUT AWARENESS AMONGST THE POLICE PERSONNEL REGARDING JUVENILE JUSTICE LAW

1. INTRODUCTION

The Pilot Study is the short version of a full-scale study of an issue. The pilot study of the current dissertation is the stage where practical knowledge of police officers about the JJS in India is tested. This chapter covers a pilot study on the awareness of police officers about the laws of JJS in India. It was necessary for acknowledging the situation of juveniles on the ground. I will discuss the use of a pilot study in the current dissertation. The result of the pilot study will also be discussed because that has a direct effect on the dissertation itself.

2. DESIGN

The plan of conducting a pilot study in Bhopal, knowing the awareness of police officers, began in the second last week of July this year. The researcher self-executed this study with the guidance of the supervisor in preparing the questionnaire for the study. The researcher herself made funding to conduct this pilot study in four zones.

A non-experimental research structure was used for this study. Data was obtained with the help of a questionnaire given to the police officials from the department of Bhopal police. The qualitative data was generated through the questionnaire with police officials from ten police stations from the Bhopal police department of zone 1 and 2 from the south division and zone 3 and 4 from the north division.

3. PLANNING AND PREPARATION OF DATA COLLECTION

Ten police stations were selected to represent distinct police station settings in four zones in the north and south of Bhopal. The researcher visited the police stations and had no previous contact with these police officers. When the police officers were asked to fill the questionnaire, they agreed to participate in the pilot study and trusted that it would be beneficial for academic and research purposes. Police officers were given written information about the research, which contained the details of the researcher, purpose of the research, and notified that the use of the questionnaire would only be for research and academic purposes. All the data will remain confidential and anonymous.

The researcher was present at every police station for any query by the police officer with a common questionnaire to all the ten police officers.

4. LOCATION AND PARTICIPANTS

Based on the discussion with the supervisor, we concluded that it is accessible for the researcher to cover ten police stations representing the north and south of Bhopal. At each police station, the questionnaire was filled by one police officer of that station.

The pilot study was conducted in the South of Bhopal, covering police stations of Zone 1, which are Jahangirabad and Habibganj, and in Zone 2, Misrod, M.P. Nagar and Govindpura police stations were covered. On the other hand, in the North of Bhopal covering police stations of Zone 3, which are Kotwali, Shahjanabad and Hanumanganj and in Zone 4, Bairagarh and Nishatpura police stations were covered. These police stations were selected because of their accessibility, and these stations cover all the zones of the Bhopal police department.

A total of ten police officials from each police station participated in the survey and answered the questionnaire, which were designated in the range of Sub-Inspector, Assistant Sub-Inspector and Head Constable.

5. DATA COLLECTION

The pilot study was conducted for four days. The researcher acting as an observer remained silent throughout the filling of the questionnaire by the police officers. The collection of data was by creating a questionnaire containing 15 multiple choice questions given to police officials of all zones. The questionnaire for police officials included the following questions:

I Are you aware of the Juvenile Justice Act, 2015?

The rationale behind asking this question was how many police officers know the relevant law to deal with the juveniles. The options provided for this question were as follows (A). Yes, (B.) No (C). Heard about it but not aware of what is it and (D). Any other (kindly specify). The police officers opted for option (A) in their answer.

II Who is a juvenile as per your understanding?

The Juvenile Justice Act, 2015 defines juvenile under section 2(35), which provides that any child below eighteen years of age will be considered juvenile. Here it is essential for police administration to know the age of juveniles. The available options for the officers were as follows (A). Any person who has committed an offence (B). Any child below 18 years of age, (C). Any male child below the age of 18 years of age and (D). Any child below the age of 16 years of age. In this question, 8 police officers chose option (B), 1 officer chose option (C), and another 1 officer opted for option (D).

III How do you perceive a juvenile?

This question was asked to understand the attitude of police officers towards juveniles while dealing with them. The options provided for this question were as follows (A). Serious Criminal, (B). Child not capable of understanding consequences of its acts, (C). Mentally unstable, (D). Child in need of care and protection and (D). Any other (kindly specify). In this question, 6 participants chose option (D), 1 participant chose option (1) and the rest 3 participants opted for option (B).

IV Is there a different treatment used for juveniles than what is used for adult offenders?

In the JJ (C&P) Act, 2015, a specific provision was given to deal with the juveniles, such as sections 10, 11, 12. 99 and 13 etc. which signifies that there would be different treatment between adults and juveniles.

However, the implementation of the available laws will be there only after the awareness of police officers. The available options were (A). Yes, (B). No, (C). Don't know and (D). Somewhat (kindly specify). Where all the participants opted for option (A) in their answer.

V Have you heard of the special juvenile police unit?

As section 10 of JJ (C&P) Act, 2015 provides that there would be a special police unit to deal with juveniles. The police officers must know this unit. In this question two options were available (A). Yes, and (B). No. The participants gave the answers were as follows 6 chose option (b) and 4 opted for option (B).

VI Have you heard of Child Welfare Police Officer?

According to section 12 of the JJ act, 2015 there would be child welfare officers in every police station to deal with children in conflict with the law. The officers must have been heard about the child welfare police officer. Available options were (A). Yes, and (B). No. where 5 officers chose option (A) and 5 opted options (B).

VII Do you have Child Welfare Police Officer in your police station?

This was a specific question related to their police station which specifies the willingness to implement the law. In this question two options were available (A). Yes, and (B). No. (B). While filling the form 6 officers chose (B) option and 4 officers chose option (A).

VIII Who takes charge of an apprehended child?

Section 13 of the JJ act, 2015 provides that child welfare police officer will take the charge of an apprehended child. But is essential for police officers to acknowledge this law for its better implementation. The options provided for this question were as follows (A). Placed under the charge of Special Juvenile Police Unit, (B). Placed under the charge of Child Welfare Police Officer, (C). It doesn't matter, we all treat everyone equally, (D). Don't know and (E). Any other (kindly specify). In this question, 5 participants chose option (B) and 5 participants opted for option (D).

IX Once the child is apprehended, how do you deal with him/her?

This question was framed to understand that whether they treat the juvenile as adult criminals. The available options for the officers were as follows (A). Keep him in the lockup, (B). Inform the parents/ guardian, (C). We do not have child related cases in our Station, (D). Released on Bail, (E). Placed under the supervision of Probation Officer, (F). Placed under the supervision of a fit person, (G). Kept in an observation home and (H). Any other (kindly specify). Where 1 officer chose option (c), 2 officers chose (D), 3 officers chose option (B) and the other 4 officers opted for option (G).

X An apprehended child within twenty-four hours of their apprehension is/should be produced before whom?

The available options for the officers were as follows (A). Keep him in the lockup, (B). Inform the parents/ guardian, (C). We do not have child related cases in our Station, (D). Released on Bail, (E). Placed under the supervision of Probation Officer, (F). Placed under the supervision of a fit person, (G). Kept in an observation home and (H). Any other (kindly specify).

XI Have you heard about the social investigation report?

Section 13 (2) of the JJ act, 2015 provides that the probation officer or child welfare officer present a social investigation report to the board in a two-week period. This question has given the understanding of awareness about the knowledge of police officers. The available options were (A). Yes, (B). No, and (C). Don't know about it. Where 8 officers chose option (B) and 2 officers chose option (A).

XII Do you provide a social investigation report of the apprehended child to the Juvenile Justice Board?

This question again provides clarity to the researcher that to what extent awareness is there related to the procedure of juvenile laws. The options provided for this question were as follows (A). Yes, (B). No and (C). Any other (kindly specify). In this question, 8 participants opted for option (B) whereas 2 participants chose option (A).

XIII What is the first step you take when you receive information about an abandoned or lost child?

This knowledge is very essential and sensitive as it will decide the how abandoned child will be treated. The police officers must have such knowledge that will help the laymen or other people for guiding the procedures. The options provided for this question were as follows (A). Give information to Childline Services or any concerned authority (B). Keep them in your custody till you find his whereabouts (C). Don't know and (D). Any other (kindly specify). Where 7 officers chose (B) and 3 officers chose (A).

XIV Do you know about the provision of confidentiality of records of a child?

Section 99 of the JJ Act, 2015 provides that all reports related to child will be confidential. A police officer must have this awareness to have the documents confidential as they are accessible to them. In this question, two options were available (A). Yes and (B). No. Where all participants chose option (A).

XV Are there specially trained women police officers for girl children?

Section 95 of the JJ Act, 2015 provides that their girl child must be accompanied by the women police officer only. This question was framed to understand whether officers have an understanding of how to treat girl children. The options provided for this question were as follows (A). Yes, (B). No, and (C). Don't know. In this question, all the participants opted for option (A).

6. DATA ANALYSIS AND FINDINGS

The information collected through this study has been understood in tune with the paper and analyzed here. None of the police officers in the ten stations reported finding any question to be irrelevant or of less value but indicated that they were significant and exciting. The analysis of data is made from two perspectives. One from the view of area and zones and the other from the view of rank and designation of the police officers.

According to the first perspective, the South of Bhopal's responses were more favourable compared to the responses obtained from the North of Bhopal. It is analyzed that all ten police officers had a basic knowledge of the JJ (C&P) Act, 2015. They were aware of it, understood and perceived juveniles correctly and even had different treatment used for them than what is used for adult offenders. The main difference was seen in the technicalities, including the special juvenile police unit and the child welfare police officer. South of Bhopal, covering zones 1 and 2, had all the knowledge of JJS, but North of Bhopal, covering zones 3 and 4, did not

know anything about child welfare police officer, or special juvenile police unit and not even social investigation report.

As per the second perspective, it was seen that Head Constable had little knowledge of the JJ(C&P) Act, 2015, as compared to the Sub-Inspector and Assistant Sub-Inspector. It was seen that one head constable perceived a juvenile as a mentally unstable person. It was shocking to know from a police officer who is given the responsibility of such children who are not mentally unstable but need proper care and protection.

7. CONCLUSION

Police Officers have much authority in their hands, and with much authority comes a lot of responsibility. Whether he is a juvenile or in need of care and protection, any child is first encountered with a police officer. For a child to trust the process, it is essential that his/her first impression of the process must be good enough. Police officers need to be trained and aware more of juvenile justice to deal with children, the absence of knowledge of police officers in perceiving juveniles and in having appropriate authority for them can prove to be much risk.

If we go for RJS, there will be no such concerns. Children will be away from state intervention and strangers who perceive them according to their own mindset. In RJS, they will be surrounded by their family and community, who will understand their needs and requirements.

The next chapter deals with the final conclusions of the dissertation.

CHAPTER 6

CONCLUSION AND SUGGESTIONS

This dissertation aimed to analyze the JJ (C&P) Act, 2015 from the lenses of RJ. Based on a qualitative and quantitative analysis, it can be concluded that the JJ (C&P) Act, 2015 concentrates on RJ activities that are distinct from adversarial process through various sections. However, it does not consider the concerns of survivors of harms, and is therefore completely juvenile centric. A perfect equilibrium betwixt interest of public security and the welfare of the juvenile would be achieved by a restorative approach that includes restorative postulates. Consequently, whilst keeping the prominence on restoration, postulates of RJ must be incorporated as the compulsory second arm, for the articulation of the exhaustive JJS in India.

The problem of juvenile delinquency even after equipped JJS is indicator of the need for a much better system of RJ. In India, the government has accepted the responsibility of providing care and protection to children but the administration and implementation is malfunctioning.

RJ considers offence as more than merely breaking the rules – it gives injury to relations, persons, and the community as well. As a result, a fair response must direct those injuries in addition to the offence. If the parties are ready, the finest manner to do this is to aid them by arranging a meeting where they may talk over those injuries and how to solve them. If they are reluctant or not able to connect, there are other ways accessible. At times those meetings lead to metamorphosis in parties' lives.

Different models can practice RJ; even these models can be used in a mix depending on different situations. Every model includes a meeting betwixt core stakeholders, criminal and survivor and maybe even justice persons and other community members. In these meetings, facilitators conduct, direct and monitor the procedure and harmonize the interests of those associated. Circle facilitators or conference coordinators does not need resolution contrary to arbitrators. Every model provides parties with a chance to seek emotions, reality and solutions. Invitation to interrogate, to operate in the direction of reciprocally acceptable results, share their narratives, and communicate their emotions. Some of the models as discussed are FGC, VOC and Circles.

In the context of JJS, child-friendly RJ can be initiated at any step of the process, from the time of a child's apprehension or detention till revert and restoration stage. The juvenile, the survivor, her or his caretakers or folks, the community, and the justice and child protection actors are all brought into one place in an organized and secure setting. RJ targets the rehabilitation of juvenile and her or his reconnection with the community via a free-willed and non-adversarial procedure, founded on agreement, communication and resolution. This entails ensuring that the juvenile realizes the injury caused to the community and the survivor, and that he or she accepts responsibility for their actions and restitution of its outcomes.

In the process of RJ, there is no need for the victim to follow the decision of some other authority like courts and judges and be at their relenting of punishing the offender or not, she/he can choose his/her healing process. That is the effectiveness of the process through a balanced conversation.

It's time we understand that crime is not just a violation of laws and violence against the state, instead of getting into who committed the crime, who broke the laws, and what law was broken, we should be asking who faced the pain and what is his/her needs, what are the issues faced in the process. RJ cannot be the substitute for adversarial justice system rather can stand as a support to lessen its workload and grow the feeling of justice in the administration as a whole. In the end, it's all about achieving the balance.

1. SUGGESTIONS

1. Enhance the role of victim in justice system: Victims are the critical stakeholder in the criminal justice system. Their participation the most crucial part of fair and just system. There is immense need for Increasing the role of Victim in resolving disputes. It is not appropriate to treat them as witness only and not ensuring their active participation while providing justice to them. Victims are routinely excluded from the procedure established for them which is a problematic concern and needs to be resolved for more efficient criminal justice system.
2. Offender accountability: Accountability of offender needs to be established as assuming responsibility and taking action to repair harm. The offender must realise the responsibility towards the society. They must acknowledge their mistake and consequences of the harm caused by them on the victim and the wrongness of their conduct. The sensitivity of the offender must increase regarding the injury caused to the victims. Such accountability will ensure the positive recourse to the victim.
3. Community involvement: The community involvement is the necessary step towards eradicate the root cause of the problem. The active involvement of the community will create environment to influence the offender to realise their mistake. The efficient justice system needs cooperation from the community to educate the wrongfulness of any conduct. The community participation has potential influence the sensitivity of offender. One such example of this is involvement of people in village community while ensuring that the conduct of individual not against the morality and just behaviour.

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