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RESTORATIVE JUSTICE



How Appropriate is the Use of Restorative Justice in Cases of Sexual Violence?

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RESTORATIVE JUSTICE and restorative practices have been developing around the world over the last two or three decades, whether in the North or the South, whether in civil or common law countries, in states with a strong social system and in those without, whether through bottom-up or top-down initiatives. Restorative justice has been developing more rapidly for juvenile offenders and for less serious crimes, but that is mostly due to the fact that it was 'easier to sell' and to the reluctance of politicians and some practitioners to try something new. However, most experts agree that it can be used for adults and for the most severe of crimes. Some even argue that it should be used particularly for the latter, as the need for explanation, reparation and re-humanisation is even more important for those particular crimes.

The fact is that restorative justice is used more and more in cases of serious crimes, with examples of families of murder victims meeting with the murderer (see for example the short video of Ray and Vi Donovan's experience at <https://vimeo.com/153778403>), or restorative endeavours being initiated in cases of mass violence. There are also increasingly examples internationally of restorative justice being used in cases of sexual violence or domestic violence, crimes known for their very specific characteristics and consequences. Those crimes have however mostly been dealt with 'under the radar' so far by restorative justice practitioners. This is mostly due to the fact that the use of restorative practices in cases of sexual violence

is not without debates, challenges and controversies, and it certainly is not adequate for everyone.

Theoretically there have been many objections and fears regarding such an idea and/or practice. The criticisms come from various sides such as the medical sector, feminist or victim support organisations. The criticisms range from, for example, the fears of possible re-victimisation and re-traumatisation of the victims if they face their offenders; the fact that it re-privatises a crime which is finally discussed and dealt in the public arena in many countries; the fact that it may be a diversion from the criminal justice system; or the fear that offenders might get off 'lightly'. These are all valid concerns but a number of these concerns are identical or similar to when and if crimes of sexual violence are dealt with through the courts. I say 'if' because it is a fact that a great majority of sexual violence never reaches courts. Polls show that in most countries, including Scotland, no more than 10% of all sexual violence is reported to the police, let alone reaches courts. Attrition is high in most countries, which means there is a very serious justice gap encountered by many sexual violence victim/survivors.

The conventional criminal justice system consistently fails victim/survivors of sexual violence. From the over-demanding evidentiary threshold to aggressive cross-examinations, the prosecution of sexual violence is rarely adequate; the role and voice of victim/survivor is marginal. It does not mean that we

should not seek to improve this system and make sure it deals with as many cases as possible: but alternatives, complementary or integrated justice mechanisms, must be found which address some of the problems of the conventional justice system and more importantly the needs of the main 'stakeholders' for this type of crime, not already covered by other mechanisms.

Therapeutic interventions, for example, are crucial for many people affected but they may not of themselves, fulfil the requirements of justice. That said, such interventions may be part of a justice response. These would include the fact that the victim/survivor is given a voice, the right to take ownership of their recovery, the acknowledgement of the harm committed against them by the offender, having been let down by the community and for their needs to be addressed as they see fit. They would also include the encouragement for offenders to recognise the wrongfulness of their acts, to take active steps towards desistance, to offer explanations and reparation while being treated humanely and within their rights. It also allows the community, whether the community of care or the community more generally, to take their part of responsibility to ensure that it cannot occur again.

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Such an alternative, as part of a possible integrated justice response can and already does exist in many places around the world and is embodied by a range of different forms of restorative justice. A restorative encounter, whether through a victim-offender dialogue, victim-offender mediation, a conference or any other types of programme restorative justice offers, can happen pre-trial, pre-sentence, post-sentence, can be in parallel to the court case or can take place completely outside of courts. That is one of the interesting points about this possibility: it gives an opportunity to victim/survivors of sexual violence, who do not report publicly at the time of their victimisation (as we know, the majority of them), to be able to seek justice after their victimisation, even years after, when they are ready and feel the need, even if for example a crime has gone over the statute of limitations.

The fact of the matter is that some victim/survivors feel the need to meet their offenders. Not all, but some. They are more often than not the instigators of such an initiative. The request may come soon after the abuse but more often many years after the attack, because whether the victim has reported it or not, many will still have many unanswered questions which only the offender is able to reply to. The questions may range from 'Why?' 'Why them?' 'Why there?' 'Why then?' to many different questions concerning 'What is the offender doing now?' 'Has he/she stopped offending?' to other questions which have been on their mind since their attack.

As a survivor explains in a short video called 'The meeting' (see the short video at <https://vimeo.com/27590008>) some victims may need to re-discuss the details and chronology of

what happened to them. It may also be about the victim having the offender recognise that they have harmed them, that what they did was wrong. It may be part of the healing process, of the reconstruction of their lives, of the regaining of the power that was lost while the violence happened; it may help them to find closure.

As said previously, restorative meetings between a victim/survivor of sexual violence and a perpetrator are actually rare, because few victims/survivor or offender are interested in meeting and that if they do want to, many different conditions need to be met for it to happen safely and successfully. A few important points for a safe and successful restorative encounter in the case of sexual violence include that it should always be *voluntary* for all parties; no one should ever be coerced in any way in entering such a process. The mediators or facilitators need to be *adequately and comprehensively trained* on all the specificities of such a crime and its consequences. The *preparation* must be done seriously, thoroughly and with as much time as is needed to make sure that the meeting is safe, that all eventualities have been discussed and that the objectives of the meeting are clear to everyone, so as to avoid any possible unwanted surprises or even re-victimisation. However, it is also important that the possibility of such meetings, of such dialogues are discussed first and foremost early on with victim/survivors but also with offenders and communities, so that the option is available for those who might need it.

An important question to be considered at this point is, do we as professionals, people working, interacting with victims/survivors of sexual violence, be it social workers, therapists, medical staff, lawyers, judges, police officers or rape crisis volunteers, have the right to deny the victim/survivors this opportunity if they ask for it? The fact is that some victim/survivors despite all the hurdles feel the need to meet their offender and we, as professionals, should make sure it is possible to do so in a safe and supportive environment.

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Some references for further reading include:

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