

Chapter 5

Restorative Justice and Therapeutic Jurisprudence: Two Sides of the Same Coin

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ABSTRACT

The research will conceive restorative justice and therapeutic jurisprudence as two sides of the same coin, and one is the result of the other as a major development in criminological thinking. Notwithstanding, roots in a variety of indigenous cultures, including spirituality and holistic healing traditions and strives to re-connect offenders with their surroundings and communities. The objective of this research is to explore the experiences of victims and offenders involved in restorative justice practices, concerning increase in their general well-being, self-esteem, and satisfaction of the process and decrease in their feeling of shame, guilt, stress, regret, and anger. Restorative justice mechanisms enhance therapeutic jurisprudence through restoration, resilience, reconciliation, reintegration, rehabilitation, reformation, and resocialization among victims and offenders. Another objective is to understand from practitioners whether restorative practices facilitate conflict resolution and discuss the alternate conflict resolution model for restorative justice and therapeutic jurisprudence.

DOI: 10.4018/978-1-6684-4112-1.ch005

INTRODUCTION

The authors conceive therapeutic jurisprudence emerging from the restorative justice practices, as a major development in criminological thinking, having roots in a variety of indigenous cultures, including spirituality and holistic healing traditions, that aims to re-connect offenders with their surroundings and communities. Restorative justice and therapeutic jurisprudence have been proposed as solutions to many of the issues confronting modern criminal justice. Despite citing indigenous legal systems as a source for current concepts of restorative justice and therapeutic jurisprudence, both the theory and practice of it have been developed substantially around the world in recent years. Therapeutic jurisprudence and restorative justice can be intimately tied to the formation of a disagreement or harmful behaviour, and competent emotion management is vital in the conflict resolution processes. Therapeutic jurisprudence investigates the impact of the law on the well-being including the emotional well-being of its people. It suggests legal reform based on behavioural science to reduce negative consequences and boost positive effects on wellbeing. Meanwhile, restorative justice addresses disrupting behaviour, whether related to legal action or not, which can cause not just physical but also emotional or psychological suffering that must be healed if the problem is to be fully remedied. The fundamental healing technique is a mediated contact between victim and offender in which each emotion can be addressed and comforted by addressing the events, their consequences, and what the offender can do to take responsibility for their wrongdoings or make apologies to the victims for their harms (King, 2008).

The development of restorative justice concept can be traced in the article written by Albert Eglash ‘Beyond Restitution: Creative Restitution.’ The idea of justice which he referred to is not new but was not practiced widely. Such provisions of justice have been noted in human history also. John Braithwaite has observed and mentioned in his studies that restorative justice has been the dominant model of criminal justice in most of the human histories across the world.

Restorative justice theory addressed the failures in the justice system and suggested adequate therapeutic jurisprudence in many cases. As mentioned by Bajpai (2002) in his article ‘towards restorative justice’ the theory of restorative justice is developing new ways of ‘doing justice.’

Van Ness and strong (1997) have identified a few movements for developing restorative justice. These movements are the following:

1. There is a movement on informal justice also called as the informal justice movement majorly addresses that there should be informal procedures with a view to increasing access to and participation in the legal process. The intention of this movement is de-legalization concerning with minimizing

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