Chapter 6

Looking at Community-Based ADRS in India Through a Restorative Justice Perspective

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ABSTRACT

Restorative justice is a type of alternative dispute resolution, but not all ADR (Alternative Dispute Resolution) procedures constitute restorative justice. This chapter examines community-based alternative dispute resolution systems, attempting to distinguish the similarities and differences between ADRS (Alternative Dispute Resolution Systems) and restorative justice procedures. It examines whether these community-based ADRs adhere to restorative justice principles such as victim empowerment, deliberate effort by those involved in decision-making to reduce stigmatization and punishment of the offender, emphasis on strengthening or repairing interpersonal relationships, and so on. It also looks into whether formal restorative justice processes could imbibe some of the good features of these community-based ADRs.

INTRODUCTION

There are a number of variations or types of justice like retributive justice, restorative justice, natural justice, distributive justice, etc. In criminal justice the two types of justice are retributive justice and restorative justice. After the offender's guilt has been confirmed, retributive justice is concerned with a reasonable response to the offence by imposing a just and proportionate penalty on the culprit. The criminal

is thought to have fully merited the sentence. The doctrine of retributive justice, or lex talionis (eye for an eye, tooth for a tooth), holds that the penalty should be commensurate to the crime; "life for life, wound for wound, stripe for stripe" (Tripp, 2001; p 197). Only fair and just punishment is the focus of retributive justice. The severity of the crime and the offender's purpose are used to determine the fairness of the sentence, but other variables such as caste, race, and age are not considered. Unjust punishments include chopping off an offender's hand for stealing a rupee or condemning someone to death for an accident or irresponsible behavior.

Restorative justice, on the other hand, is not focused on the philosophy of vengeance and punishment, but rather on healing the victim's harm and reintegrating the perpetrator into society. Restorative justice frequently brings the offender and victim together in order for them to gain a better understanding of how crime affects the victims.

In Part 3, this chapter offers the indigenous practices of Nyaya Panchayats (Justice Assembly) and the more recent Mahila Panchayats (Women's Assembly), as well as the Nari Samaj (Women's Society) as practices that provide an understanding of community necessary for reintegration of the offender into society, while at the same time revealing the distinction between those traditional practices and the imposed idea of restorative justice.

RESTORATIVE JUSTICE

Instead of focusing on the state, Restorative Justice views crime as an act against the individual or community. Restorative justice systems allow the offender to accept responsibility and accountability for their acts, and the victim has the chance to play an important role in the process. In the majority of cases, the wrongdoer/offender apologizes or compensates the victim.

Restorative justice is a broad word that refers to a growing social movement that seeks to codify peaceful measures to repair harm, resolve conflicts, and protect the rule of law and human rights (Cremini, 2007). In contrast to the Criminal Justice System, a restorative justice approach eliminates or reduces the involvement of the law, experts, and the government. In order to repair the harm and restore relationships, restorative justice actively involves victims, wrongdoers, and their communities. Restorative justice aims to create collaborative enterprises in order to restore reciprocal accountability for good responses to wrongdoing in our society. Restorative justice seeks to balance the needs of the victim, the perpetrator, and the community through processes that preserve each stakeholder's well-being and self-respect (Bazemore and Walgrave, 1999; Umbreit, 1995). Restorative justice also includes compensatory justice. Compensatory justice is a type of justice in

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