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Can Restorative Justice Empower Victims of Sexual Violence? A Critical Analysis from Global Perspectives

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Abstract

The discussion around the effectiveness and suitability of Restorative Justice (RJ) practices in cases of sexual violence is intricate and often controversial. Critics frequently raise concerns about the potential for revictimization, re-traumatization, and the power imbalances that may put victims and or survivors at a disadvantage during these processes. This article seeks to offer a critical review of existing literature and empirical studies on the use of RJ in sexual violence cases. It aims to advocate that when RJ is implemented with an emphasis on victim and or survivor leadership and accompanied by specialized training for practitioners, it can serve as a valuable alternative to traditional, mostly punitive measures of the Criminal Justice System. The analysis, primarily focusing on five jurisdictions, i.e., Australia, New Zealand, South Africa, Canada, and India, seeks to incorporate results from a small-scale survey of academics, policymakers, and practitioners. It aims to reveal a cautiously optimistic perspective on the applications of RJ in sexual violence crimes so as to empower victims from a victims' justice lens, highlighting the need for more informed public discussions and research about RJ. Additionally, this article aims to address the problematic attitudes towards rape within the Criminal Justice System, stressing the importance of a paradigm shift that views sexual violence as a crime against individuals rather than a societal issue. It calls for a new perspective that recognizes the gendered dimensions and power dynamics implicit in these crimes.

Keywords: *Restorative Justice, Victimology, Criminology, Victim Offender Mediation, Repairation, Reintegration, Rehabilitaion, Empowerment, Victims' Rights, Justice, Restitution*

1.0 Introduction

In general, a criminal wrong committed by an individual is considered a wrong against the whole society at large, and therefore, it becomes incumbent upon the State to protect the rights of every individual from any sort of harm (resulting from an act sanctioned by the State as a criminal offense due to the violation of the laws) caused or likely to be caused by a wrongdoer. It is, therefore, the State that is entrusted with the authority to prosecute the wrongdoer in the Court of Law, maintain peace, and enforce the laws for the purpose of safeguarding the safety and security of the public at large in an orderly society. In the traditional Criminal Justice Administration, a criminal proceeding is predominantly constrained between two parties, *i.e.*, the State and the accused or perpetrator of the crime. It cannot be gainsaid that the interests of the community involved in a criminal proceeding are undermined, and accordingly, there are legitimate State interests in prosecuting a wrongdoer on behalf of the community or public; however, while focusing on the public interests, the State, its agents, and the entire Criminal Justice System (hereinafter referred to as CJS) mostly ignore the rights of the victims and the obligations of the State to ensure justice for the victims of crime. Notably, in the aftermath of the enforcement of various international human

rights instruments such as the 'Universal Declaration of Human Rights' (Universal Declaration of Human Rights, 1948 hereinafter referred to as UDHR, 1948), the rights of the accused persons have received considerably more attention and recognition across most jurisdictions in the world compared to the rights of the victims of crime and thus, the CJS has mostly become offender centric. At this juncture, the studies of 'Victimology' emerged as a new discipline that advocates for the recognition of the rights of the victims, their increased participation in the Criminal Justice process, and the reparation of the harm caused to them. The concept of Restorative Justice (hereinafter referred to as RJ) in modern days is regarded as one of the key methods of alternative justice delivery with a primarily victim-oriented approach.

The studies of Victimology and advocates for victim rights achieved a significant milestone with the adoption of the 'United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (United Nations [UN] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985). Article 8 of the aforesaid Declaration sets out the principle of RJ in the following words—

"Offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families, or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services, and the restoration of rights" (UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, Art. 8).

Despite such efforts of the international community coming forward with their concerns for victims' justice and except a few inclusions of the principles of the aforesaid instrument in the national laws, victims' justice is yet to receive full attention from the States. Due to the apathy of the mainstream CJS to take care of the victims' rights; to make provisions for the victims' assistance and reparation of the harms caused to them; and its failure of the CJS to deter potential criminals from committing crimes; to ensure community participation in the legal proceedings; inculcate legal awareness as well as moral values in the minds of the common people to make them law-abiding and peace-loving citizens; to reform the offenders and reintegrate them into the mainstream society, there has been a quest for an alternative system for administering justice which takes care the interests of the offenders, victims as well as the community. In this context, the concept of RJ came to prominence as a suitable alternative to the mainstream CJS.

It is mostly believed that the RJ ideals may be fruitful in less serious crimes, crimes involving juvenile offenders and first-time offenders, by adopting comparatively lenient and reformative approaches. Even though the development of this concept is in a nascent stage and numerous challenges cripple its efficiency to a great extent, especially in serious crimes, *viz*., crimes against the human body, sexual violence, and domestic violence crimes. It has the potential to champion fulfilling the 'justice gap' created by the existing Justice Delivery mechanisms, even without totally replacing it (Keenan & Zinsstag, 2022). In this paper, the authors will elaborate on the scope of RJ practices in sexual violence cases, various RJ practices in different jurisdictions of the world, ascertain whether such practices alone can deliver justice, and lastly, ascertain whether such practices can empower the victims.

2.0 Restorative Justice — its Meaning, Objectives, Relevance, and Challenges

The concept of RJ has no precise meaning assigned to it and is used in multifarious ways. As defined in the United Nations Office on Drugs and Crimes 'Handbook on Restorative Justice Programmes' (United Nations Office on Drugs and Crime [UNODC], 2020), RJ is—*"any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator"* (UNODC, 2020, p. 5). The handbook aims to achieve six broad underlying objectives of the RJ programs, and those are as follows—

(i) Make provisions for victims' support, empowerment, and assistance,
(ii) Reparation of the relationships damaged by the harm caused as a result of the crime,
(iii) Reaffirming community values and prevention of criminal behavior
(iv) Encouraging the parties, especially the offender, to take responsibility for the crime,

(v) Identifying restorative and mutually agreed outcomes of the process and
(vi) Preventing recidivism by promoting reformation, rehabilitation, and reintegration into society. (UNODC, 2020, p. 6-7).

Similarly, Article 12.1(d) of the 'European Union's (EU) Victims' Rights Directive. 2012' (Directive, 2012/29/EU of the European Parliament and of the Council of 25th October, 2012, 2012 O.J. [L 315] 57, art. 12.1[d],) defines RJ as— *"any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offense through the help of an impartial third party"*, the term RJ is perceived as a progressive alternate to the traditional ways of reacting towards the commission of offenses. However, it shall be important to bear in mind that not all progressive alternates to traditional reactions to offences shall be construed as RJ, unless there is an informal process involving perpetrators, victims, community and other members closely associated with them or to the offence by a fruitful discussion as to the nature of the offence, the injury caused and the possible reparations and restoration which can be done to that injury, or to circumscribe further wrong; an empowerment of common people who are affected by an offence or other wrongs; and some efforts made by decision-takers to facilitate promotion of a response focusing less on punishment of the wrongdoer, and more towards ensuring that the wrongdoer recognize and be responsible to restore the victim in the position prior to the injury, thereby directly benefitting the victims, which would be a first step towards their (the wrongdoer's) "reintegration;" together with a concern for decision-takers to ensure that the decision-making process and its outcome is guided by certain widely regarded principles or values desirable in any communication amongst people, such as respecting others, prohibition of violence and coercion if possible and minimization if not, with preference towards inclusion over exclusion.

In the RJ process, with the help of the trained facilitators in this field, the victim and offender, with their prior consents, can be given the opportunity to sit together to have a dialogue wherein the victim gets an opportunity to express his/her concerns, ask the offender about the reasons of the commission of the crime, various physical, psychological or other harms caused as a result of the commission of the offense and other impacts of the crime. He/she also gets the opportunity to avail himself/herself of victim liaison services, professional care, therapeutic treatments, and other necessary support from trained professionals in victim assistance services. Simultaneously, the offender also gets the opportunity to explain his reasons or motivations behind the commission of the crime, acknowledges his/her moral guilt, at least to some extent, if not fully (not necessarily the legal guilt), expresses pity for the sufferings of the victim due to the harms caused to him/her and offers an apology to the victim and may offer compensation or other means to repair the harms caused to the victim. The offender also gets the opportunity to avail of therapeutic treatments if required. In some cases, the relatives or support circles and other members of the community are also given the opportunity to participate in such a process. In this way, this process may help the victims heal, feel empowered, reduce their helplessness, restore societal relationships, and reclaim their voices. Further, the offender may get an opportunity to avoid harsher punishments and be reformed and reintegrated into mainstream society. As a result of this process, the victims and offenders arrive at an agreement and, thus, a fair resolution of the dispute.

The 'European Union [EU] Victims' Rights Directive, 2012' (Directive, 2012/29/EU of the European Parliament and of the Council of 25th October, 2012, 2012 O.J. [L 315] 57), hereinafter referred to as the EU Victims' Rights Directive, 2012, sets out the basic standards of rights, support, and protection of victims of crime. According to Article 46 of the EU Victims' Rights Directive, 2012' (Directive, 2012/29/EU of the European Parliament and of the Council of 25th October, 2012, 2012 O.J. [L 315] 57, art. 46), currently, the following types of RJ practices are prevalent in various jurisdictions of the world—

a. Victim-Offender Mediations
b. Family Group Conferences
c. Restorative Conferences
d. Healing Circles
e. Sentencing Circles

As per the recitals of the Directive (Directive, 2012/29/EU of the European Parliament and of the Council of 25th October, 2012, 2012 O.J. [L 315] 57), RJ services such as victim-offender mediation, sentencing circles, and family group conferencing can be greatly beneficial to the victims, provided that adequate safeguards are there to prevent secondary and repeat victimization, retaliation,

or intimidation. Article 1.1 of the Directive (Directive, 2012/29/EU of the European Parliament and of the Council of 25th October, 2012, 2012 O.J. [L 315] 57, art. 1.1) sets out—*"Member States shall ensure that victims are recognized and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings"* (Directive, 2012/29/EU of the European Parliament and of the Council of 25th October, 2012, 2012 O.J. [L 315] 57, art. 1.1).

Thus, it expressly recognizes RJ as a method for delivering justice to the victims of crimes, including sexual violence. Several Articles of this Directive make recommendations as to the provisions of the RJ services to make the services safe for victims. The key recommendations set out in various Articles of the Directive are as follows—

a. Article 4 (Directive, 2012/29/EU of the European Parliament and of the Council of 25th October, 2012, 2012 O.J. [L 315] 57, art. 4) states that the information relating to RJ must be made available to the victims of crime (including sexual violence).
b. Article 12.1[a] (Directive, 2012/29/EU of the European Parliament and of the Council of 25th October, 2012, 2012 O.J. [L 315] 57, art. 12.1[a]) emphasizes that only the interests of the victims should be prioritized and safeguarded in all circumstances.
c. Article 12.1[c] (Directive, 2012/29/EU of the European Parliament and of the Council of 25th October, 2012, 2012 O.J. [L 315] 57, art. 12.1[c]) sets out that the offenders must acknowledge the basic facts of their respective cases and accusations against them so as to initiate the process and prevent revictimization of the victims during the process.
d. Article 12.1[d] (Directive, 2012/29/EU of the European Parliament and of the Council of 25th October, 2012, 2012 O.J. [L 315] 57, art. 12.1[d]) sets out that the agreements arrived at by the parties voluntarily may be taken into account in any further Criminal proceedings. That is to say that the terms of the agreements arrived at during the RJ process must be valued by the mainstream CJS, and thereby, a link between the RJ and mainstream CJS can be maintained.
e. Article 25 (Directive, 2012/29/EU of the European Parliament and of the Council of 25th October, 2012, 2012 O.J. [L 315] 57, art. 25) specifically refers to the importance of professional training for the RJ facilitators working with the victims.

To constitute RJ, it is also quintessential for decision-takers to devote substantial focus to the victim injuries, the necessities resulting from those injuries, and to material processes whereby those may be addressed; besides, there also needs to be focus directed upon solidifying or mending relationships amongst communities, and utilizing this power of productive relationships to resolve problematic state of affairs (Johnstone & Van Ness, 2007).

2.1 Restorative Justice — A Victimological Perspective

The eminent Norwegian sociologist and criminologist Nils Christie, in his critically acclaimed work- 'Conflicts as Property' (Christie, 1977) in the field of Victimology, lamented that—

"He or she (the victim) is a sort of double loser: first, vis-à-vis the offender, but secondly and often in a more crippling manner, vis-à-vis the State. The victim has lost the case to the State" (Christie, 1977).

It is unfortunate that the mere servient role vested with the victims of crime in the traditional CJS. Christie rightly described that the Crime Justice delivery system steals the conflicts between the victim and offender and takes away the victim's opportunity to participate in the resolution of their own case, making the victim powerless and alienated from the entire process. Thus, the role of the victims of crime has been limited to that of a prosecution witness across most jurisdictions in the world, and their rights are not properly recognized (or not rendered much importance, even if recognized) across all stages of the criminal proceedings. That's why the victim of crimes mostly remains to be a forgotten story of the CJS (Baladhikari, S.K, 2020). In this context, a long-standing need was felt for some alternative (innovative) justice mechanisms that can supplement (not necessarily replace) the traditional CJS with the goal of ensuring justice for the victims of the crime by acknowledgment and reparation of the harms caused to him/her so that he/she feels a sense of being supported, understood and empowered, simultaneously ensure the rehabilitation and reintegration of the offender to the mainstream society, sometimes ensure engagement of members of the family and community and lastly to restore familial and societal

relationships. Making the offender-centric CJS victim-friendly is one of the prime goals of the RJ practices, and thus, imbibing victimological concerns in the conflict resolution process is considered a significant milestone achieved by the RJ initiatives.

2.2 Restorative Justice — A Criminological Perspective

The RJ approaches can be substantiated with the help of the following theories of Criminology—

i. **Reintegrative Shaming Theory (Braithwaite, 1989)**

This approach reinforces the need to shame criminal behavior and reintegrate offenders within society. For example, in New Zealand, RJ practices like Family Group Conferences (FGCs) provide an example in line with the theory, focusing on making amends for the harm caused by the offense, supporting the offender's accountability and reintegration in the community by discussing the way forward collectively. By prioritizing respect, communication, and voluntary participation, New Zealand's RJ practices resemble reintegrative shaming very closely, as their focus is on healing rather than stigmatization.

ii. **Social Disorganization Theory (Shaw, C. R. & McKay, H. D., 1942)**

The social disorganization theory states that crime is a consequence of a breakdown in a community's social structure and social relationships. It emphasizes a need to repair relationships in the community, which is one of the tenets of RJ in South Africa. It speaks about the interconnectedness of people and their dependence on each other, as well as how Ubuntu is taking the lead in the majority of countries in Africa, moving the focus on addressing the neighborhood concerns and the prime causes of criminal behavior (Sampson, R. J. & Groves, W. B., 1989).

iii. **Procedural Justice Theory (Tyler, T. R, 1990)**

RJ also has its foundations in procedural justice, which emphasizes the fairness and transparency of processes behind decision-making. RJ processes also highlight inclusion, respect, and participation. By contrast, the elements of structured yet participatory dialogue in New Zealand's "Project Restore" and Family Group Conferences ensure that the voices of victims and offenders are acknowledged and respected. This fits with the theory's claim that fair processes lead to more satisfaction with outcomes (Tyler, T. R., & Huo, Y. J., 2002).

iv. **Restorative Justice Theory (Zehr, H., 1990)**

RJ is not, in itself, a criminological theory but contains elements of reintegration, accountability, and reparative justice. Those are principles that really come through, emphasizing victim-focused approaches in addition to community participation and offender reintegration (Johnstone & Van Ness, 2007). Practices like mediation and victim-offender dialogues in RJ are practical expressions of such theory in South Africa.

v. **Rational Choice Theory (Cornish, D. B., & Clarke, R. V., 1986)**

Indirectly, rational choice theory, which posits that individuals calculate costs *vs.* benefits before partaking in criminal behavior, is relevant. RJ promotes accountability and natural dialogue that helps reduce recidivism, incentivizing offenders to engage in behavior that is pro-social and changing their cost-benefit analysis. This is evidenced through the document's reference to reduced recidivism rates, as well as greater satisfaction with RJ outcomes.

vi. **Labelling Theory (Becker, H. S., 1963)**

Labelling theory indicates that labelling people as offenders further facilitates criminal behavior by them. It is this combination of stigmatization and isolation that RJ practices, particularly those that deal with juveniles in New Zealand and South Africa, seek to prevent further reoffending through open communication, mutual understanding, and reintegration into society. This is consistent with the theory's demand for a reduction in labels that maintain deviant identities (Lemert, E. M., 1951).

vii. **Control Theory (Hirschi, 1969)**

Control theory holds that strong attachments to others decrease the risk of offending. RJ's emphasis on repairing relationships and engaging the community, as demonstrated in both the programs of New Zealand and South Africa, reinforces these connections and aligns with the theory's understanding of the functions of social connections in preventing crime (Sampson, R. J. & Laub, J. H, 1993).

In jurisdictions such as New Zealand and South Africa, RJ makes sense at the intersection of a number

of criminological theories. Though different, these theories frame RJ's multi-dimensional approach to harm, accountability, and community healing. RJ aligns itself with theories of reintegrative shaming, social disorganization, and procedural justice, making it a paradigm for transforming justice.

3.0 Challenges in the Restorative Justice Practises

The RJ process in all jurisdictions faces certain significant challenges that obstruct its development and institutionalization. Notably, most of the concerns are expressed in the Council of Europe's 'Istanbul Convention on Preventing and Combatting Violence against Women and Domestic Violence'. The key challenges are—

a. There are concerns that the RJ process may revictimize the victims of crimes and, therefore, may have negative impacts on the victims. Due to the inherent power imbalances in such crimes, the victims will not be able to exercise their free will and can be forced to arrive at an agreement as per the terms suitable to the offenders.

b. Many advocates of victims' rights, especially the feminists believing in 'carceral feminism' (an idea of feminism that holds that the violence against women can only be eliminated with the intervention of the State and its law enforcement agencies), are apprehensive that the RJ process will take away the role of mainstream CJS and reprivatize the justice delivery mechanisms on sexual and gender-based violence whereby, such crimes will be treated as private matters, the powerful persons will commercialize the process for their own benefits, no institutional control will be there to maintain the basic standards of the process and the perpetrators of such offenses will easily evade punishments, or get punishments reduced or less stringent by participating in such process. There is also a lack of agreement on whether the RJ methods are to be available as a process totally independent of the Criminal Justice process or as a process alternative or supplemental to the Criminal Justice process. The critics of the RJ strongly argue that the participation of the offenders in the RJ process cannot influence the criminal proceedings initiated against them by the traditional Criminal Justice process.

c. There is a lack of political will in the development and institutionalization of RJ by legislation as a method for resolution of conflicts across most jurisdictions, except a very few (such as Australia, New Zealand, etc.). Many stakeholders of the traditional CJS, including the Judges, Prosecutors, and Police, are apprehensive that the RJ process if institutionalized, will take away their jobs. There is a paucity of funding from the governments to carry out the RJ programs by the various governmental and non-governmental organizations. For example, the 'AIM project' in the United Kingdom (UK) ended in 2012 due to the lack of stable funding. Further, due to the non-institutionalization, there is no supervisory body to uphold a code of standards for the organizations facilitating the RJ practices.

d. There are also difficulties associated with the lack of cooperation between the agents of the traditional CJS, such as the prosecutors, police officials, judges, lawyers, various support services available to the victims and offenders, and the facilitators of the RJ services. Moreover, many stakeholders of the CJS perceive RJ as a replacement for CJS, which is not a correct perception because RJ practices may co-exist with the CJS by gradual incorporation of the practices at the various stages of the latter. In addition to that, the lack of training of the facilitators or practitioners of the RJ poses a significant challenge in the development of its practices.

e. In several jurisdictions, in very serious crimes, including sexual violence against children, the Criminal Codes prescribe a mandatory duty of everyone to report such a crime to law enforcement agencies if he has knowledge of the commission of such crime, even if the victims themselves don't report the crime. For example, in India, Section 21 of the Protection of Children from Sexual Offenses Act (Protection of Children from Sexual Offenses Act, 2012, § 21) mandates that every offense under the law must be reported to the police if anyone has knowledge about the commission thereof, and failure to do so will be an offense under the said Section. Such provisions for mandatory reporting of crimes are very likely to pose a barrier in the RJ practices because maintaining the confidentiality of each and everything said or taking place during the RJ process is one of the core principles of the concept. If the acknowledgment of guilt made by the offender or other disclosures made during the process by either

of the parties solely for the purpose of participating in the process is not secured from the disclosure to the agents of the CJS (such as Courts, police, etc.), this can be used as evidence against them. Now, if the RJ facilitators don't report such crimes to the agents of the CJS despite having knowledge thereof for the purpose of maintaining the confidentiality of the disclosures made during the RJ process, they may be at risk of criminal prosecution by the CJS.

4.0 Restorative Justice Practices in Sexual Violence Cases and Empowerment of Victims

As sexual violence (and also domestic violence) crimes are interpersonal and sometimes intrafamilial in nature, such crimes leave serious adverse impacts on the victims (as well as their families, friends, relatives, and other persons associated with them) making them most vulnerable due to the power imbalances between the victims and offenders, immense psychological trauma and social stigma associated with the abuse. It has been seen that most of the sexual violence crimes are perpetrated by a person known to the victim. As an ordinary response to such crimes, the CJS comes into the picture with the prime purpose of finding out and prosecuting the offender and almost negligible concerns to give the victims adequate opportunities to express their emotional and mental trauma resulting from the sexual abuse, their needs, and preferences, to participate in the criminal proceedings, to engage support persons and to make arrangements for and provide information of therapies and care services available to them so as to repair their harms. At most, compensations (interim or final) are provided to the victims of sexual violence, and the role of the victims is limited to as a prosecution witness. Except for the 'victim impact assessment' recorded by the Courts before pronouncing the sentence to the offender, the victims are completely forgotten in the system. Rather, victims are subject to secondary or structural victimizations during the criminal proceedings either by the character assassinating questions of defense counsel at the time of aggressive cross-examinations or by the stereotypical views, bias, and gender prejudice of the stakeholders of the system, such as police officials, prosecutors, Court officials and often the judges about the victims (Keenan & Zinsstag, 2022). Even the members of society, family members, relatives, and friend circles also engage in victim blaming. Due to these reasons and fears of further victimization, many victims don't get enough support to report crimes of sexual abuse to the Criminal Justice authorities. A lot of times, many sexual abuse crimes never come within the purview of the traditional CJS due to the lapse of limitation period for reporting such crimes.

Even though several legislative and policy measures have been adopted in various jurisdictions to address the concerns of the victims, these have been seen to be utterly inadequate in resolving the issues associated with the CJS and the participation of the victims in the system. Further, due to the very nature of such crimes, collecting adequate evidence, establishing the guilt of the offender, and prosecuting him in the Court of Law are extremely challenging jobs for law enforcement and judicial authorities. For this reason, high attrition rates can be noticed in sexual violence crimes (Keenan & Zinsstag, 2022). At this juncture, the RJ practices appear to be an alternative and innovative method to fill in the aforesaid lacune as it may supplement the traditional CJS.

In the findings of various empirical research conducted in various jurisdictions, it is observed that most of the victims of sexual violence don't want revenge against the offenders for the harm caused to them; however, they have different desires over reconciliation with or forgiveness to the offenders. A small proportion of victims expressed their desires to reconcile with the offenders, but most of them expressed the need to free themselves of indignation or anger by forgiving the offenders. The victims of sexual violence, in general, desire voice, validation, vindication, participation, and accountability of the offender and prevention of further victimizations of adults or children. Unlike the traditional adversarial CJS, the victims, in this process of RJ only, will get the opportunity to be directly involved in the process by directly facing the offenders, receiving answers to the unanswered questions, directly speaking to the offender about their victimizations, the strength, and resilience to endure the pains caused as a result of the crime perpetrated by the offenders, to have a say as to the outcome of the process by incorporating suitable terms in the agreements arrived at between the parties at the end of the process and also sometimes resolve the relationship with offenders, if possible. Further, the participation of the victims in the RJ process

is likely to transform the victims' perception of 'justice,' improve their psychological well-being, and prevent post-traumatic stress disorders.

While RJ programs have the potential to address the needs of the victims, Keenan correctly argued that such a process cannot be permitted to become an easy avenue for the offenders to escape punishments after committing such serious crimes or get punishments reduced or less stringent and thereby enticing prospective offenders to commit further crimes; however, there can be a reduction in punishment to the offender that may motivate them to participate in the RJ process (Keenan & Zinsstag, 2022). From offenders' perspectives, the RJ process may also benefit them for various reasons, such as developing empathy for the victims, deepening their sense of responsibility for the harm caused, contributing to their personal growth, repairing family relations, getting rid of recidivism or reoffending mentalities, receive therapies in appropriate cases and foremostly, their reintegration to the society. In addition to that, many times, the offenders, upon participation in the RJ process, felt that they had repaid a moral debt and done something honorable in the face of the harm and dishonor inflicted upon the victims.

From the above discussions and empirical research findings, it is imperative that the RJ practices in sexual violence cases as well as have the potential to empower the victims and safeguard their rights despite several concerns as to their revictimization during the process and other challenges (Keenan & Zinsstag, 2022, p. 106-132). Nevertheless, there are certain dangers significantly posing challenges in the RJ initiatives, as noted above, that cannot be lost sight of. There should be utmost endeavors to minimize such dangers and ensure that all the parties get fair opportunities to participate in the process and get their concerns addressed and interests safeguarded without causing any inconvenience to others. Lastly, it can be summarized that the RJ process may empower the victims of sexual violence if the following prerequisites, along with the key recommendations contained in the Victims' Rights Directive (Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, 2012 O.J. [L 315] 57) noted earlier, are fulfilled—

a. The entire process must be flexible to accommodate the victims with appropriate time duration and other requirements on a case-to-case basis. The RJ process must not be done in a time-bound manner, whereby the efficiency of the process may be compromised.

b. The process must be initiated only upon obtaining the free consent of the parties, most necessarily of the victims, considering the power imbalances between the victims and offenders always present in sexual violence cases. If the offender is willing to participate in the process, but the victim isn't, she can't be forced to participate in the process in any manner; however, she can be notified of the invitations of the offender to participate in the process sporadically whereby her earlier perspectives as to the RJ process may change in due course of time (upon receiving complete information regarding the process from the facilitators of RJ and other victims' service providers) and she may be willing to participate later on.

c. The RJ process must be victim-led, where the interests or preferences of the victims will override the interests or preferences of the offenders. In the entire process, while the choices of the offenders or other participants cannot be outrightly ignored, the choices of the victims must prevail over the other considerations. Due to the power imbalances between the victims and offenders implicit in sexual violence, the process of RJ cannot be completely impartial, and the interests of the victims must override the interests of the offenders or other parties. Therefore, the process must not be initiated if it appears that the process will have adverse impacts on the victims (even if the offender is willing to participate in the process).

d. The RJ facilitators must be well trained to ensure that the victims are not re-traumatized or revictimized by the offenders or due to any reason during the process, and they must perform their duties in a trauma-informed manner. Most importantly, they must have due regard for power dynamics involved in sexual and other gender-based violence.

e. While there shouldn't be any pre-fixed criteria as to the eligibility of the offenders for participation in the RJ process, it is necessary to assess the suitability of the offenders by a robust mechanism before admitting them to the process to protect the interest of the victims. Therefore, the offenders with a high probability of reoffending cannot be permitted to participate in the process; otherwise, it will lead to revictimization of the victims, which will vitiate the sole purpose of the entire process. The facilitators of the RJ practices must conduct risk assessments so as to inform the participants about the probable risks involved in the process.

f. The facilitators of the RJ process must ensure the parties (both the victims and offenders) are thoroughly prepared before the initiation of the process. The facilitators should discuss in advance the most anticipated questions that the participants are very likely to face during the process from their opponents so that the participants can be ready for the process and reduce the possibility of revictimization of the victims. The facilitators should also inform the participants of the probable consequences of the process so that they can make informed decisions about whether to participate in the process or not. It is noteworthy that the refusal of the offenders to participate in the RJ process despite the willingness of the victims may revictimize the victims; however, with the rigorous preparations by the facilitators, the victims may feel empowered because they may see the offenders' lack of interests as a weakness and not as a strength and thus power relations may be rebalanced even though, neither of the participants have ever met each other. (Keenan & Zinsstag, 2022, p. 221).

g. If the victims want any support person, any member of their family, friend circle, or community in whom they have trust to accompany them in the RJ process, that should be permitted by the facilitators.

h. The facilitators must be vigilant of any activity or behavior of the offender during the process that is likely to cause revictimization to the offenders, and in any such cases, they have to intervene, pause the process for a while, or take other steps necessary to ensure that the process must be safe and healing for both the parties, especially for the victims. At the same time, it must be ensured that the facilitators don't take over the control of the process from the victims in the name of protecting their safety, and the victims themselves should have control over the process, including backing out from the process.

i. If there is any need, the parties (both the victims and offenders) may receive therapy before participating in the process.

j. As a prerequisite for participation in the process, the offenders must acknowledge their moral guilt, at least to some extent, if not fully. This will reduce the possible re-traumatization of the victims at the first instance.

k. The confidentiality of the process must be maintained, and any disclosure to any person outside the process, including the agents of the Criminal Justice process, cannot be done unless the participants consent for the same or as required by national law due to an overriding public interest according to Article 12.1(e) of the EU Victims' Rights Directive (Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, 2012 O.J. [L 315] 57, art. 12.1[e]). However, any threats made or any forms of violence committed during the RJ process must be regarded as factors involving public interest and may be disclosed.

l. Even though face-to-face meetings between the victims and offenders should be the rule; however, if the victim is not comfortable meeting the offender face to face, other alternatives, such as making provisions for virtual meetings, presenting surrogate offenders before the victims, and other measures that will prioritize the will, safety, and well-being of the victims, must be looked for. The same provisions can be made for the offenders as well in appropriate cases.

m. Various factors such as power imbalances implicit in sexual offenses, the ensuing degree of trauma, the nature and severity of the crime, age, maturity, or intellectual capacity of the victim, the repeat violation of a victim's physical, sexual, or psychological integrity, and any other factors which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into account while considering a case for referral to the RJ services according to EU Victims' Rights Directive, 2012. (Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, 2012 O.J. [L 315] 57).

5.0 Restorative Justice Initiatives on Sexual Violence Cases in Various Jurisdictions

I. Restorative Justice in Australia

In Australia, the RJ practices have achieved significant momentum over the past few decades, although the applications of these practices vary from State to State. Generally, the cases are referred by the Courts or police officials for resolution to the RJ facilitators. Even though the RJ practices are not fully institutionalized, these practices are integrated into the various conflict

resolution mechanisms as an alternative or supplementary to the traditional CJS. Various governmental, non-governmental, community-based, and academic and research organizations are entrusted with the duties of facilitating RJ Practices as a tool of conflict resolution. The RJ practices are included in the various stages of the CJS, along with the workplace, schools, and indigenous communities.

Mostly, the RJ practices are institutionalized in the youth justice mechanism with the aims of avoiding traditional Court proceedings as well as reforming and rehabilitating the youth offenders instead of punishing them with harsher punishments. All the States have taken measures to promote RJ programs for youth offenders, and 'Youth Justice Conferencing' is a notable one. In this youth justice conferencing, the offender, victim, and community members, with their prior consents, sit together to have a dialogue over the harms caused to the victim and the subsequent victimization of the victim and arrive at an agreement whereby the offender takes the responsibility of the offense and undertakes the responsibility to repair the harms caused to the victim. Such practices are widely used in the States of South Australia, New South Wales, and Queensland. There are also notable policy and legislative measures adopted by the States, and among the laws, the Young Offenders Act (Young Offenders Act, 1997) in New South Wales, the Youth Justice Act (Youth Justice Act, 1992) in Queensland notably incorporate RJ practices and ideals. However, the RJ practises are not much institutionalized in the adult criminal justice mechanisms. Yet, such practices are gradually being incorporated in the pre as well as post-trial stages, mostly in comparatively less serious offenses and with the aim to make the traditional Criminal justice mechanism more inclusive, take care of the interests of all parties so as to take measures to provide restitution to the victim and also to reform and rehabilitate the offender. In the Australian Capital Territory, the offenders accused of very serious offenses can participate in the RJ process only after the charges are framed and he is pleaded or found guilty by the traditional Criminal justice process, as per the Crime Act (Crime [Restorative Justice] Act, 2004). However, in less serious offenses, the police may decide not to file a chargesheet if the offender participates in such an RJ process (Transforming Justice Australia, 2023). Victim-offender mediation is a widely practiced mode of RJ in adult criminal justice mechanisms. Further, the RJ practices are also prevalent amongst the Indigenous communities and institutionalized at the local level for the resolution of conflicts as per unique cultural practices. Various programs, such as community justice groups, sentencing circles, and healing circles, incorporate and reinforce traditional customs and cultural values to address the behavior of offenders, maintain peace and harmony, repair the harm caused to the victim, and restore communitarian bonds and relations.

In Australia, RJ practices have also become prominent in sexual violence cases in recent days. The Australian government, as well as the State governments, commissioned several reports highlighting the need for alternative innovative justice mechanisms alongside the mainstream CJS to ensure justice for the victims of sexual abuses, including child sexual abuse and also to promote the best practices available internationally (Transforming Justice Australia, 2023). The practises vary from State to State. Alongside the various governmental, non-governmental, and other organizations facilitating RJ practices in ordinary offenses, there are certain specialized organizations for facilitating RJ in sexual violence cases. 'Transforming Justice Australia' in New South Wales and 'Open Circle' and 'Centre for Innovative Justice' in Victoria are prominent organizations facilitating community-based and survivor-oriented RJ programs. In addition to that, RJ practices are also facilitated by the institutional (governmental) bodies or schemes such as 'Direct Personal Response', 'National Redress Scheme', and 'Defence Abuse Response Taskforce' at the national level. There are also bodies or schemes at the State level to facilitate RJ for sexual abuse victims. Moreover, The Australian government launched the 'National Plan to End Violence against Women and Children,' wherein several key recommendations were made aiming to endorse RJ practices as responses to sexual and domestic abuses and also to recognize the views of survivors of sexual and domestic violence (Transforming Justice Australia, 2023).

II. Restorative Justice in New Zealand

New Zealand is one of the jurisdictions that provide RJ in sexual assault and violence cases and does it routinely for youth sexual assault offenses (Daly & Curtis-Fawley, 2004). RJ in this country is intrinsically rooted in certain best practice principles revolving around recuperation, accountability, and community participation over penal approaches. In New Zealand, victims who are survivors of sexual assault and violence incidents are provided aid

through "Project Restore," which is a unique program for RJ and has been in force since 2005 and specializes in supporting the victims of these cases. Also, by virtue of the New Zealand Victims' Rights Act (Victims' Rights Act, 2002), New Zealand provides for RJ conferencing to victims, such as "Family Group Conferences (FGCs)" who are survivors of sexual offenses (Jülich et al., 2010) and through the Children, Young Persons, and their Families Act (Children, Young Persons, and their Families Act, 1989). This program, known as "Project Restore," is established by New Zealand's Ministry of Justice and functions according to the principles of 'best practice' by laying attention towards voluntary practice, leveraging participation, exchange of information through communication, accountability, flexibility, the safety of survivor-victims and effectiveness. The "FGC" structure involves sexual violence victims, perpetrators, and members of their community in organized and coherent dialogues seeking to take note and rectify the injury caused by the crime. RJ in New Zealand, though originally confined to youth offenders, has, with the ever-increasing need of contemporary times, expanded to cover adult incidents, including sexual violence, though cautious to prevent re-traumatization.

RJ in New Zealand emphasizes taking the voices and requirements of victims into account, ensuring their safety and voluntary participation. In this regard, programs like "Project Restore" and "FGCs" focus on offender accountability while at the same time creating a helpful environment for victim-survivors. Also, it is to be noted that in New Zealand, Māori traditions influence RJ practices, encompassing collective healing and shared responsibility, which strongly reverberates in a nation with a significant indigenous population. However, scholars critical of it add a note of caution that RJ, in cases of sexual violence, may involve the danger of imbalances of power. There should be conducive safeguards comprising specialized training for facilitators and rigorous assessment of cases to ensure appropriateness for RJ processes.

Case studies concerning RJ in New Zealand, such as those involving Louise Nicholas, reveal inherent lacunas in addressing sexual violence. These incidents highlight police misdemeanors and biases of the courts, underlining the necessity for organizational reforms alongside RJ efforts. Also, credible research (Angel, 2006; Koss, 2013; McGlynn et al., 2012) points out that RJ lowers the rate of recidivism, facilitates in aiding the victim to go away with their traumatization, helps in the process of their recuperation, and increases satisfaction with justice mechanisms. For instance, it has been revealed that participants in RJ processes often report feeling a greater sense of closure and emotional relief compared to traditional CJS.

While RJ in New Zealand is really a ray of hope for addressing the concerns of sexual violence victims, its true efficacy revolves around continuity with the societal mores and culture, involving public awareness, education, and suitably countering societal misconceptions surrounding it to make sure that the process is really beneficial for victims.

III. **Restorative Justice in South Africa**

In South Africa (SA), the concept of RJ is broadly based upon three quintessential principles, whereby crimes are considered to cause injury not only to the victims but also to offenders and the larger human community. The South African CJS is based on the concept of Ubuntu, which is a philosophical premise emphasizing humanity and interconnectedness. Based on its spirit, the CJS seeks to heal injuries caused by crimes, restore and redress imbalances, and restore damaged relationships. Also, in SA, the four entities, starting from the government, the victims, perpetrators, and communities, shall be involved from the starting point to the maximum possible extent. Besides, the government, in the process of promotion of justice, is under obligation to preserve order, and the community is under obligation to establish peace. (Batley, 2005) RJ in South Africa is unique as it seeks to look beyond the need to punish the perpetrator by addressing the inherent root factors behind the crime and helps restore the lost relations of the perpetrator with society. The Truth and Reconciliation Commission established under the promotion of the National Unity and Reconciliation Act (Promotion of National Unity and Reconciliation Act, 1995) was based upon "restorative principles," which were successful in linking principles of truth as a restorative factor, reconciliation, and amnesty. In SA, the concept of FGCs has been experimented with through various pilot drives, and the one to be specially reckoned with is the Inter-ministerial Committee on Young People at Risk, set up in 1996. Herein, though FGCs were established as diversionary alternatives for juveniles, it raised curious issues wherein the perpetrator and

victim spoke different languages, and the interpreter's role weakened that of the facilitator. However, the experiences of the working of FGCs depicted how they were actually successful in healing the victims. The concept of FGCs, along with mediation, has been granted statutory recognition in South Africa with respect to offending children who are exposed to the CJS machinery, vide the Child Justice Act (Child Justice Act, 2008). However, though the FGCs, along with mediation, have not been expressly recognized by any separate statute, the National Prosecuting Authority in SA, based on various policy guidelines, mandates the prosecutors to assess whether or not a matter can be assessed through invoking RJ processes, which may include mediation, FGCs, and other suitable ways in an alternate process to the traditional reactions to offenses. If the prosecutors find a case fit for RJ, then they are under a duty to write a referral to the Probation Officer or to other organizations providing RJ services, the most prominent being the National Institute for Crime Prevention and The Reintegration of Offenders [NICRO], (Van Ness et al., 2022) where it offers programs for both children and adults to enter into and avail purposeful FCGs or victim-offender mediation services, besides providing for pre-release rehabilitative services to adult offenders to facilitate their smooth reintegration into the society.

IV. Restorative Justice in Canada

While Canada has been practicing RJ as an alternative innovative justice method and has achieved significant development in the field of institutionalizing RJ at the various stages of the mainstream CJS, the applications of the RJ services have also been extended to various minor to the serious types of crimes, including sexual violence crimes. In Canada, the RJ services are offered in all stages of the Criminal Justice proceedings beginning from the framing of charges to sentencing. The RJ practices have received legal sanctions from federal, provincial, and local laws, policies, and protocols in the country. Section 717 of the Criminal Code, 1893 (Criminal Code, 1893, § 717) recognizes diversion methods for adult offenders from the mainstream CJS and thereby adopts alternative methods of conflict resolutions, provided that the offender accepts the responsibility for the commission of the alleged offense and the referral made by any agent of the CJS is not inconsistent with the interests of the victims, offenders or community. Further, Section 718 of the Criminal Code, 1893 (Criminal Code, 1893, § 718) sets out the key objectives of sentencing tuned with the RJ objectives, such as to promote a sense of responsibility amongst the offenders and acknowledgment of the harm done to the victims or to the community and to provide reparations of the harms caused to the victims or to the community (Department of Justice Canada, n.d.). Besides the Code, numerous provisions of the Youth Criminal Justice Act (Youth Criminal Justice Act, 2003) also incorporate RJ approaches to deal with youth offenders instead of punishing the offenders with harsh punishments (Canadian Resource Centre for Victims of Crime, 2022). Moreover, references to RJ practices are made in Section 6(b) of the Victims Bill of Rights Act (Victims Bill of Rights Act, 2015, § 6[b]) and Sub-Section 26.1(1) of the Correction and Conditional Release Act (Correction and Conditional Release Act, 1992, § 26.1[1]). Under the Victims Bill of Rights Act, 2015 (Victims Bill of Rights Act, 2015), the victims of crimes have the right to receive information on the various services available to them, including the RJ services. There are certain guidelines made by the Canadian Intergovernmental Conference Secretariat (CICS) stipulating minimum standards for referrals and the proper functioning of the RJ programs (Canada Intergovernmental Conference Secretariat. (2018). Principles and guidelines for restorative justice practice in criminal matters. https://scics.ca/en/product-produit/principles-and-guidelines-for-restorative-justice-practice-in-criminal-matters-2018/). Alberta Courts' Restorative Justice Pilot Project is one of the pioneering projects in the field of RJ practices in sexual or other gender-based violence; however, its referral guidelines stipulate that only cases of sexual or other gender-based violence where the charges have been laid can be referred for the process (Alberta Courts, 2022). Amongst numerous other bodies or projects showing paths for facilitating RJ initiatives in sexual and other gender-based violence, the Canadian Resource Centre for Victims of Crime (CRCVC) in Ottawa, Victoria Restorative Justice Society (VRJS) in British Columbia, Community Justice Initiatives (CJI) in Waterloo region of Ontario, Native Counselling Services of Alberta (NCSA) are some leading projects or bodies working in the field of RJ for the victims of sexual or other gender-based violence in Canada.

V. Restorative Justice in India

In India, RJ represents a paradigm change away from the traditional punitive justice system and toward a more

inclusive approach to healing and reconciliation. Through communication, accountability, and the involvement of victims, offenders, and the community, it aims to mend the harm caused by criminal activity. In India, RJ is emerging as a paradigm shift away from traditional punitive systems, particularly with regard to sexual and juvenile offenses. Instead of penalizing offenders, it focuses on mending the harm, mending relationships, and rehabilitating people. Restoring relationships, empowering victims, and rehabilitating criminals are the goals of RJ as opposed to traditional punitive systems. This promotes social harmony and discourages recidivism.

The historical foundations of RJ in India can be found in traditional customs such as panchayat systems, which placed a strong emphasis on community-based dispute settlement. Restorative ideas are being progressively incorporated into contemporary legal frameworks, particularly in the juvenile justice system. Reflecting restorative principles, the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015 in short) places a strong emphasis on rehabilitation and social reintegration (Pooja & Dixit, 2023). Additionally, in order to promote amicable settlements, mediation and conciliation are being used more and more in criminal and civil issues. Because sexual offenses are such delicate crimes, RJ is especially controversial. According to scholars, victim-centred restorative strategies should address the needs and consent of survivors (Verma & Kaur, 2023). Circles of Support and Accountability are two examples of implementations being studied to strike a balance between community safety and the rehabilitation of offenders (Asadullah et al., 2021). However, there is significant debate on whether RJ can adequately address power imbalances and trauma in sexual violence cases (Panickasseril, 2023).

Notwithstanding these developments, issues still exist, such as a dearth of thorough laws, social stigma, and a lack of knowledge among attorneys. In order to improve the efficacy of RJ in India, comparative studies emphasize the necessity of institutional changes and capacity-building programs (Jadon, 2024). A thoughtful incorporation of restorative methods into the current legal system may help create a more just and compassionate justice system as India moves through this transformative process.

Amongst other jurisdictions, programs such as 'Project Restore,' 'Brown University Transformative Justice Initiative,' and 'Healing Circles' by Green Bay Correctional Institute in the United States (US), 'AIM Project' in England (ended in 2012), and organizations such as 'Triptiek' in the Netherland, are a few projects and organizations that have made remarkable achievement in facilitating RJ practices in various parts of the world (Keenan & Zinsstag, 2022, p. 218-239).

6.0 Conclusion and Way Forward

It has been found that there have been gaps in the traditional Criminal Justice machinery across many jurisdictions for ensuring justice for the victims of sexual violence. RJ is indeed a noteworthy approach proposed as a means to address these gaps by offering victims validation, vindication, participation, and offender accountability. Though in certain jurisdictions, the practice of invoking RJ in cases of sexual violence is done, these are specific as regards the context in which they are applied. There needs to be uniform globally prescribed guidelines across nations to ensure the efficiency of RJ. The most suitable measures for ensuring RJ to the victims of sexual violence cases may be by adhering to the "Maximalist Consequentialist Theory" of RJ, which emphasizes the aspects of healing the harm, bearing in mind the victimization owing to unequal power dynamics and gender of the victim, the perpetrator's accountability, including through the perpetrator's purposive participation with the community of law-adhering people (Keenan & Zinsstag, 2022, p. 316-320). It puts forth that RJ should permeate the entire criminal justice machinery, echoing the Reintegrative Shaming Theory (Braithwaite, 1989), where besides the community's role of despising the conduct of the perpetrator, the perpetrator shall be facilitated in his reintegration into the society, the Procedural Justice Theory (Tyler, T. R, 1990) advocating for the importance of fairness, transparency, and victim's voice in justice processes, which takes into account the victim's trauma and emotional safety, reputation, also the Labelling Theory, by advancing for perpetrator accountability and community dialogue as an alternative to stigmatizing individuals as offenders by criminal penalties perpetuating criminal identities, the Control Theory (Hirschi, 1969), whereby RJ's efforts involving community participation, caring for the emotional needs of the victim and reinforcement of social bonds helps in facilitating perpetrator desistance and in reducing recidivism. Searching for peace, RJ can be best analyzed in the paradigm of social solidarity, which

emphasizes restoration over punishment, and rather than strict measures toward the perpetrator, focused on a moral upgradation of all that leads to social cohesion. For these reasons, RJ services should be available across all stages of criminal proceedings, and the RJ process should be perceived as an alternative or supplementary to the traditional adversarial CJS and not as an outright replacement of CJS (Keenan & Zinsstag, 2022). Therefore, the RJ process and the traditional CJS can co-exist, and their interdependence may create a safe, more inclusive, and victim-justice-oriented CJS that also ensures fair treatment, reformation, and rehabilitation of the offenders as well as the well-being of the community at the same time. Under this paradigm, the aim is to hold the offender accountable and assist the victim in recovery from the trauma experienced as a result of the crime. RJ, in particular sexual violence cases, is situated at the crossroads of several criminological theories. It offers a layered, ethically complex response to harm and responsibility. From the above discussions, it is imperative to conclude that the RJ process can empower victims of all offenses, including sexual violence, only if the victim's voluntariness, informed decision-making, safety, and support; adequate preparation of victims and offenders; and facilitation by experienced and well-trained facilitators who understand power dynamics/imbalances, are ensured in the process.

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