



THE SOCIAL CONTEXT OF RESTORATIVE JUSTICE AND ITS IMPLICATION TO THE CRIMINAL JUSTICE SYSTEM: A CASE STUDY OF IKEJA MAGISTERIAL DISTRICT OF LAGOS STATE

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Abstract

According to the Community Justice Network Vermont (2021), with Restorative Justice processes, success is measured not by how much punishment is given, but by how much harm has been repaired or prevented. Restorative Justice offers a multitude of benefits, from the empowerment of individuals to cost savings for communities. Benefits of Restorative Justice to the community include increased safety, reduced recidivism, and a stronger community. It also benefits the victim as they engage in meaningful dialogue with the offender, and a higher rate of recovery and satisfaction of the victim. The offenders are also beneficiaries of Restorative Justice, as they have the opportunity to make right their wrongs, and put the incident behind them, as the Restorative Justice process brings about timely resolution. The Restorative Justice approach is not free from criticism. It is this criticism that has hindered its reception in many areas. Some of the major criticism of Restorative Justice is that it trivializes crime, erodes legal rights and it lacks legitimacy. One of the strongest weaknesses of Restorative Justice is that it may give rise to further crime as the victim might seek to avenge the wrong, also, it brings about fear and anxiety as it causes the victim to relieve trauma and anger, thereby prolonging healing. More importantly, the Restorative Justice system is limited as it cannot be used to stop future crimes Gikunda (2021). While Restorative Justice had had extensive research efforts invested in it, its critical juvenile system component has largely suffered neglect.

Keywords: Justice, Juvenile Delinquents, Restorative Justice, Recidivism.

Introduction

Over the years, shades of justice have given various stands on which way to dispense justice, however, Restorative Justice largely has not taken its pride of place considering its importance, this is because scholars of the traditional Criminal Justice system around the globe support the fact that it is either the traditional Criminal Justice or nothing that can bring back the confidence of the Criminal Justice agencies globally. As indicated by Marshall (1999), Restorative Justice is centrally concerned with "Restoration". Rebuilding of the victim, restoration of the offender to a decent law-abiding life, and restoration of the damage caused by the crime in the affected community. Restoration isn't exclusively backward-looking, it is similar if perhaps not more, concerned with the development of a better society in the present and in the future. Restorative Justice is viewed as a

more useful and moderate option in contrast to the traditional approach to responding to crime and bad behavior.

This is in line with Gumz (2018), who posited that Restorative Justice is an elective point of view for managing the impacts of crime and bad behavior that seeks to heal the victims of crime, the offenders, and the affected community. Rehabilitation, re-coordination, and stigmatization are central parts preached by Restorative Justice that should be embraced in order to win offenders back to society totally restored.

As uncovered by the father of Restorative Justice, Howard Zehr (2002), the movement first began as a way to rethink the demands that crime creates, as well as the part imbued in wrongdoings. Its proponents were worried about needs that were



not been met in the traditional justice process. They in this way recognize that the existing consciousness of genuine stakeholders of the movement was unreasonably restrictive.

The Federal Provincial Territorial Ministers Responsible for Public Safety in Canada (2018), refers to Restorative Justice as *“an approach to justice that seeks to repair harm by providing an opportunity for those harmed and those who take responsibility for the harm to communicate about and address their needs in the aftermath of the crime”*

Drawing from the foregoing, I disagree with the narrative that Restorative Justice alone and all it represents is all we need to have a perfect Criminal Justice system. On the other hand, while I'd prefer the traditional Criminal Justice system basically because justice is local and anything you want to do about justice should be contextualized as local, the traditional Criminal Justice system in itself is not sufficient to address Criminal Justice in its entirety. That said, the rigidity of the traditional Criminal Justice system sometimes does not entirely serve its purpose and as such a hybrid of the two justice systems would materialize in a better justice system all around.

The administration of Criminal Justice only recognizes the suffering of the victim(s) viz-a—viz the penalty for the crime as stated in the penal code; it doesn't take into cognizance how the victim(s) may be affected by the crime: the individual(s) involved and the affected community. It approaches crime from the focal point of punishment and carries out the letter of the law.

The concept of Restorative Justice is not new to our jurisprudence, although not so-called. Before now, Restorative Justice was used in settling disputes between parties, to wit: the offenders, the victims, and the affected community. Suffice it to say that indigenous communities have before now settled crime-related issues in ways that are now referred to as Restorative Justice.

African researchers have additionally confirmed

that Restorative Justice is practically the same as the customary African way to deal with conveying Justice (Mangena 2015; Tshehla 2004; Tutu 1999). Skelton (2007) highlighted several common grounds that both traditional African Justice and Restorative Justice offer, both approaches share the conviction that wrongdoing is harm done to the individual and the affected community. Both approaches are simple and very informal and as a result aims to restore peace in the affected community, thereby promoting dignity and respect.

They further stated that the results are exempt from the rule of precedent. Community involvement is actively encouraged in both procedures, and both Restorative Justice and traditional African justice place great importance on restitution and recompense.

Scholars in Nigeria who made the argument include Stephanie (2022) who stated thus: "Restorative Justice is a positive way of dealing with crime. It can lead to the transformation of people's lives." She went on to suggest that the existing retributive system in Nigeria be supplemented with Restorative Justice, rather than replaced by it. Both judicial systems must be utilized as necessary for there to be a good justice system in existence.

According to James (2019), adopting and implementing Restorative Justice will not be a complete deviation from the law and issues of justice, but rather a workable strategy for achieving justice while addressing issues like funding, prison overcrowding, abuse of the legal system, protracted litigation, and non-compliance with court orders and judgments. Amos (2021) states compactly: Restorative Justice is a system of justice where the offender is expected to pay and fix the harm and damage, he/she incurred. Restorative Justice allows the parties to identify and communicate the damage caused and map out a way forward. It is a framework that is based on understanding the effect of crime and the relationship between the parties involved.

Despite the above-stated advantage and



importance of Restorative Justice, its reception has been aloof. While lots of research had gone into other forms of Justice Systems, extant literature affirms that little attention had been given to the application of the Restorative Justice System, it is for this reason that a study such as this is important, to explore what Restorative Justice is and what is to be gained by its subscription.

Theoretical Framework

Theories are developed to explain, forecast, and comprehend phenomena as well as, frequently, to challenge and advance current knowledge while staying within the bounds of crucial limiting assumptions. The structure that can hold or support a research study's theory is known as the theoretical framework Gabriel Abend (2008). The theory in use here is the Labelling theory by Frank Tannenbaum.

Labelling Theory by Frank Tannenbaum

Due to the work of a sociologist by name of Howard Becker, labeling theory started to flourish in the US around 1960. Nevertheless, Emile Durkheim and Frank Tannenbaum were the theory's primary founders.

Labeling theory is credited with having its roots in Frank Tannenbaum. His essay *Crime and Community* (1938), which discussed the interpersonal dynamics of crime, is regarded as a key source for contemporary criminology. While the initial motivation to commit a crime differs little to nothing between criminals and non-criminals, social interaction explains repeated crimes that result in a pattern of interest to sociologists.

The labeling theory is connected to Tannenbaum's idea of "the dramatization of evil" in criminal literature. With this theory, Tannenbaum believed that classifying someone as wicked based on them executing an immoral deed would ultimately result in their labeling and segregation. This was especially true for children. This contributed to the person finally exclusively hanging out with people who behaved criminally and whom he perceived to be similar to himself.

"Tagging" was initially proposed by Tannenbaum. 2011 (William) He discovered throughout his research with juvenile offenders that a bad reputation or label frequently encouraged further involvement in antisocial behavior. The person may come to accept this initial branding as a part of their identity. Tannenbaum's main contention is that a person is more likely to identify with a label as they are when that label is given more attention.

However, the labeling theory isn't without its critics. The theory's first critics took issue with the blatant disregard for the deviant's actual behavior as well as its portrayal of the deviant as being forced into a deviant identity role (Akers & Seller, 2009). The label does not create the behavior, the label is established by the behavior "People commit acts that violate the law or social norms for reasons that have nothing to do with labels that others apply to them" This is because "the labeling process is not arbitrary and unrelated to the behavior of those detected and labeled".

Because people feel pressure to live up to their labels when they are assigned, it follows that the labeling theory can define who a person is regardless of his or her actions. According to Caroline (2021), labeling theory suggests that the labels society gives to people or particular groups can have an impact on their behavior. This theory of sociology, criminology, and psychology has demonstrated that being classified as a criminal can result in undesirable behavior. According to the theory, when someone is classified as a criminal by society because of deviant behavior (an activity that is thought to go against accepted norms), other people may treat them unfairly. In other words, people may experience stigma, and discrimination against them because of the criminal label. As a result, they can start committing crimes. The labeling theory, therefore, aims to demonstrate how society's view and treatment of others can lead to them engaging in criminal activities. As a result, the individual might go on to commit a crime since, once a label is attached, the likelihood that the individual will break the law increases (act in a deviant manner). It becomes a self-fulfilling prophecy.



In simple terms, the labeling theory holds that the terminology used to identify or categorize people may determine or have an impact on their conduct. The labeling theory was used for this study because, more than any other theory, labeling theory posits that criminality can be prevented by replacing “moral indignation with tolerance.” Therefore, it is crucial to rehabilitate the individual by changing their labels. As a result, it promotes alternatives like Restorative Justice practices.

The main objective of the Restorative Justice approach is to reduce recidivism. Labeling the offender might lead to unemployment, homelessness, and other unfavorable outcomes, which would defeat the goal and encourage recidivism.

The Social Process that Sustains Restorative Justice and Delinquency

In simple terms, a social process is a type of frequent social interaction. It refers to the interactions and social ties that take place between people and groups as social processes. To ensure a seamless process in the Restorative Justice system, all the parties involved must be willing to participate to ensure the success of the process.

An IDI from the Restorative Justice centre said.

“We call the parties separately. They don't come here at once, we meet with the victim(s) first, to know whether the victim is interested in this whole thing and whether he or she has consented to come. Once we establish that, we get the time for him to come, we get the other party, it might be the same day, because of our timing. We will say okay, you come at 8:00 am, when we are done, we schedule another time with the other person to come by noon. We also do what we call risk assessment. We assess them at the point when we meet the first person. During the risk assessment, we will see whether there is a high level of violence. Whether the offender is remorseful. When we see the need to bring them together, we can then schedule another time to meet. To achieve this, we must have worked to that level and be comfortable that both parties can sit and say sorry to one another and all that.”

The KII further stated that the social process is:

“...an opportunity for the parties to be involved, for the victims to be involved in their matter. In the past, the government does not involve the victim, they just call them as a witness in court. Irrespective of whether you are interested in pursuing your matter or not, it is to be an offense against the state. The victim is kind of silenced. It is believed that once it is a criminal matter, it becomes a matter against the state and not necessarily about the victim, so Restorative Justice gives the victim a sense of belonging. It deals with the victim directly; you can sit with the offender and the victim. The victim can express how he feels about the crime that was committed against him, and the victim is also able to give an idea of how the matter can be resolved.”

This social process is not to be taken for granted. Hence, for a criminal matter to be referred to the Restorative Justice Centre, such a person has to show remorse and a willingness to restore what was taken from the victim. A KII from the Restorative Justice court had this to say:

“Before an offender is referred to the Restorative Justice Centre, he must have pleaded guilty to the charge, if the offender pleads not guilty, the matter would not be referred to Restorative Justice centre”

This is so as a plea of guilty shows a willingness to corporate with the Restorative Justice process on the part of the offender.

Why Restorative Justice Is Under-Subscribed Within The Juvenile System

The juvenile system is not identical to the traditional justice system, in that its processes are different, therefore, the administration of criminal justice in the juvenile system is not at par with the traditional criminal justice system.

An IDI from the Restorative Justice centre said.

“We've not had any course to handle juvenile cases. Restorative Justice does not apply to every matter, especially in cases where the punishment is a capital offense. Restorative Justice does not apply to capital offenses”



However, a KII from the Ministry of Justice said. *"Restorative Justice would be introduced into the juvenile system. The Magistrate court is just a test run."*

What is the historical trajectory of restorative justice in the juvenile system?

Restorative Justice is yet to be applied in juvenile cases, hence there is no historical antecedence attributable to Restorative Justice in the Juvenile system in Lagos, Nigeria. However, for Restorative Justice and its application to adults an IDI had this to say:

"So far so good we launched this place in May 2022 and so far, we have had 21 referrals from the court and they have reached an agreement and filed and sent back to court up to 9 cases and others are still ongoing."

An IDI from the Ministry of Justice had this to say:

"So, for child offenders, that is for children below the ages of 0-18, who have committed some offenses they are not sent to prison, they are just sent to foster homes for reformation, so they don't go to prison they are just taken to homes to reform them and after a particular number of months, after they presume that they are fine, they are let go by the court. They don't get the punishment for the offenses they committed, because the law says children below the ages of 0-18 cannot be sentenced to prison, so basically, they are just in the foster home for reformation."

How can the restorative justice system be best applied in the juvenile system?

So far, it is clear from the participants interviewed in this study that restorative Justice is still in its formative stage and is yet to be applied to juveniles. An IDI from the Department of Public Prosecution (DPP) had this to say:

"Restorative Justice does not apply to Juveniles, they have a purely different system from what applies to adults, they don't even get sentenced. No, the Restorative Justice system does not apply to them."

An IDI from the Restorative Justice centre said. *"Because we have just started, the rules and the*

laws that we have put in place, have not been exhausted, so far so good I think we are still going towards that direction."

How can restorative justice and the juvenile system be improved upon?

As it has been established in the course of this work Restorative Justice is not (yet) applicable to juvenile delinquents, however, and IDI from the Restorative Justice Centre had this to say on its sustainability:

"Because Restorative Justice just started and we are getting a lot of referrals from the court, we are making sure we use a short frame of time to resolve the matter and file back in court. For example, if the process goes on for a very long time, in between, the parties might even lose interest, therefore, we ensure that within seventy-two hours, we have the matter, we schedule a meeting with the offender and the victim and within five working days, we resolve and they sign an agreement and we file back in court, which would become a consent judgment. So far, if we can continue with that pace, we would be able to sustain it. When they are seeing a result for a matter which has been in court for one or two or three years when they come to restorative justice and it was resolved within a short period. Maximum one month a matter is resolved, that way, we would be able to sustain it because people would have trust and confidence in the process."

Recommendation

Based on the findings of this study, the following recommendations are proffered:

1. The Restorative Justice process should be incorporated into the Juvenile system as soon as possible to enable delinquent juveniles to enjoy the benefits of Restorative Justice, particularly to enable them to be properly reintegrated into society to forestall recidivism and the instance of being labeled a criminal.
2. The application of Restorative Justice should not be limited to the Magistrate court alone. Its applicability should be extended to the High court to enable victims of a crime beyond the Magistrate court jurisdiction to reap the benefits of



Restorative Justice.

3. To ensure the seamless integration of one and two above, Restorative Justice has to be fully incorporated into our laws. The constitution as a whole, which is the grundnorm of our society, needs to be reviewed to legitimize the amalgamation of the traditional justice system with the Restorative Justice system. This would ensure that Magistrates and judicial officers would do the needful when matters are brought before them for adjudication as opposed to leaving the referral of criminal matters to the Restorative Justice centre at their discretion.
4. The Restorative Justice centre should do more to sensitize the community on the importance of Restorative justice and the benefits they stand to gain when they choose to solve criminal matters via Restorative means.

Conclusion

Restorative Justice is not new in its entirety, it can be traced back to bible times, as far as when JESUS died for humanity, in order to heal and restore mankind to GOD and the community of faith, as opposed to condemnation and judgment. However, in recent times it has been referred to as a new model of justice based on the goal of healing: healing for all parties involved (the victim, the offender, and the affected community), rather than sentencing, hence an effective goal-oriented Restorative Justice system is measured by its continuous search for a well-balanced solution for all parties involved. It is trite that Restorative Justice extends the centre stage of the administration of Criminal Justice to include the Victims and the affected community, unlike the traditional Criminal Justice system that focuses all its attention on the state and the offender.

The introduction of Restorative Justice is proof that the lawmakers have seen the need to tackle crime in a way that is reassuring for all parties involved to wit: the victim is restored as much as possibly can, and the offender is re-integrated into society and communities take responsibility for

remedying conditions that cause crime.

Restorative Justice has since its introduction a few months ago, particularly as it is cost-effective. This aligns with the view of Gikunda (2021) “*Unlike the judicial system, Restorative justice is a cost-effective and affordable process. The government (judicial system) is not involved in the solving of the problem.*” Thus, the offenders and victims do not spend much on the process of solving the case, which has allowed parties to resolve issues on their terms without the rigidity and complexity of the judicial process and all it entails. In the same vein, it has reduced the several unproductive adjournments litigants are subjected to and allows the victim to get back all he/she had lost and the offender gets back to reintegrating him/herself into the community timeously.

Finally, From the information gathered in the field, Restorative Justice is a welcome innovation, its applicability has been seamless, and gradually it would extend to the juvenile system, and its under-subscription would be a thing of the past.

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