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Restorative Justice

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ABSTRACT

"Restorative Justice" in contrast with "Retributive Criminal Justice" represented as a new paradigm of Retributive Justice in recent decades. Concepts and approaches in Restorative Justice model is different from Retributive Justice's concepts, and in that offender, victim, and the local community members are decision determinative about aftermath of offence.

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INTRODUCTION

From the historical perspective, Criminal Justice includes retribution, prevention, inhibition, and solace aspects, it encounters with the overcome of retribution and repressiveness gradually. As a result, some thoughts streams appeared that tends to omission of intensity of punishment in criminal justice and they followed Informal Dispute Resolution Management Samples. Restorative Justice Paradigm is the consequence of this thought streams that in fact; it is the track of return to range the criminal disputes between people privately.

The significant issue in Restorative Justice is that dispute due to crime depends to the involved members in that, and the government has the inferior or secondary role in solving the problem. In the present paper, we will make clear the concepts and samples of Restorative Justice.

Methodology:

Theoretical Foundations of "Restorative Justice":

In this section, we will investigate the theoretical framework of Restorative Justice Paradigm; in addition, we will recognize the concepts and various approaches toward that.

Concepts:

Restorative Justice, as a new paradigm in justice, intends to put apart the Retributive Criminal Justice punishments, and emphasize on "reparation" concept, and its programs constitute of the offender partnership, the victim, and the local community members and actually, it is the connivance of adding one disease to another one. In other words: the suffering from the imposition of punishment to the offender that adds because of the tolerance of the crime on the victim (Wrigh,2005).

Concept of Crime in Restorative Justice:

In Retributive Criminal Justice, the crime is a behavior against the government, and the offender must be punished because s/he violated the public order; while in Restorative Justice, crime means the dispute between crime sides, namely the offender, and the victim. Therefore, instead of "crime", terms such as "unlawful act", "guilt", and "charge" can be used. In this aspect, it is not necessary to put "punishment" in response to crime. Therefore, neutral terms such as "sanction" may be used. In means that, the misdeed act of the offender knows as an unlawful act that should be responded, however this response is not necessarily a penalty and the problem should be solved by the victim, who hurt, and the offender that created the damage. Nevertheless, the offence is not an invasion of sovereignty and assault upon the law; rather, it is defined as the reversal of people relevance (offender- victim). Thus, the offender with perpetrate a crime, expropriate the victim's property, this property can be a person, a property, or even the victim's feelings. Therefore, the damaged thing is the victim, not the government, or the sovereignty.

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Restorative Justice Concept:

Restorative Justice attends "reparation". It means that intends to put the victim in the pre- offence situation, to obviate the detriment of offence, as the offence was not occurred at all. " Reparation" has the main role for the victim, even though, there is not possibility of "complete Reparation ", and Restorative Justice attends the "approximate reparation".

In the international document of United Nations Ecosoc of "Basic Principles on the Use of Restorative Justice Program in Criminal Matters", Restorative Justice concepts are defined (Ecosoc Res2002, Adopted 24th July).

"Restorative Program" is a program that in which used the restorative process and attends restorative goals.

"Restorative process" is a process that in which the offender, the victim, and the local community members participate for solving the problems due to the offence. "Restorative outcome" also means an agreement that achieves because of the restorative process, and includes some reactions such as restoration, restitution, and social services.

*Approaches:**Approaches to Restorative Justice:*

Two approaches in Restorative Justice can distinguish from each other: 1. Process- oriented approach, 2. Product- oriented approach

What is significant in process- oriented approach is the association process of the crime parties/sides in solving the problems due to the crime. The gathering process of the crime sides and their dialogue have subject, and this process starts with the crime occurrence, continues with dialogue and debate, and finished with decision about how to answer the crime (Paradel, 138, p.6)

What is important in the Product- oriented approach is the outcome of the restorative programs that includes restitution, reparation the damages, and provision of sake relief for the victim and for the offender, it includes re-adjustment of him to the society. It seems that in the restorative programs both the process and the product are significant, and cannot supremacy one over another.

Restorative Justice with regard to Retributive Criminal Justice:

In Retributive Criminal Justice, the emphasis is on punishment , the penalty of the offender is important, and the victim's needs are concerned in the next levels. According to this approach, the offender must be punished and in fact, Criminal Justice are seeking retribution, nemesis, and retaliation, while the Restorative Justice attends the reparation and the restitution and the crime issue should be solved on the local community where the crime occurred. In this approach, the offender must retrieve the damages to the victims and indeed, the main players of the justice are the offender, the victim, and the local community members. According to Tony Marshall's opinion "Restorative Justice is a response and a reaction to the crime that emphasize on reparation and restoration" (Marshall, 1991, p1)

In Retributive Criminal Justice, usually the offender's punishment does not entail his adjustment and it does not have any benefit for the victim, however, the Restorative Justice seeks to solve the dispute and to corroborate the social security sense. In Restorative Justice programs, there are not any complicated and extra protocols similar to Retributive Justice, and in comparison with the long procedure of the Criminal Justice, it has flexible and simple protocols.

In Retributive criminal Justice, the imposition of the punishment is significant; therefore, it is called "Imposed Justice", too. Whereas the important part in Restorative Justice, reparation of damages on the victim is important. In Retributive Criminal Justice, decision upon the crime topics will be made in the curt- a completely formal place- while in restorative programs the decision will be made in informal places.

B) Usages of Restorative Justice:

Successful experiences of Restorative Justice Programs achieved from various countries that had been based on Restorative Justice. Restorative Justice Programs have variety and many multiplicity, and selecting each one depends on the offender's opinions, the victim, and the dominate conditions on the crime.

Restorative Process samples:

The documents of United Nations "Principles of the Restorative programs in Criminal Matters" (ref. p2) defines the Restorative Process in this way:"each process which in that the offender, the victim, and any society members have affected by the crime, should participate actively for solving the matters due to the crime with the assistance of a neutral third person".

Restorative process samples includes following cases:

Pronouncement and Sentence Detriment Circles:

Circles, in fact, are sampling from the native societies of north of Canada, include the victim, the offender, the judges or the court staffs, police, and the circle keeper, that its aim is agreement on a unity decision. In this process, the participants are arranging as a circle and debate with each other.

Offender- Victim Conferences:

In this process, in addition, the offender and the victim, also their families present in this conference and they offer a solution for reparation. For the first time, this experience performed by the police of Australia in performing 1989 News land law.

Reconciliation Program between Offender and Victim:

This program is due to the agreement between both sides. In this method, probably even both sides (the offender and the victim) were not presented and the conciliator relates to them directly (Dignan, 2005, p153)

Victims Restitution Program:

Actually, this program is the complementary to the judicial system and usually, it uses in situation which the offender is not capable to pay the detriment. This program has been regarded the French lawmaker in 1977 and nowadays, it is used regularly, in reality, it is a national fund that its budget provides by the government, and pays the victim's damages. Actually, it is a kind of adoption of the "insurance" industry, which is entered the criminal domain.

Commissions of Offender- Victim:

This program provides the meeting basis for the offenders and the victims that do not know each other; however, they are common in one feature. That is both of them have been affected by a single offence and it relates them to each other, for instance, those inebriated drivers who have collided with, a mass of people who had been the victims of this crime by some others. This commission resembles to "Remedial Commission"

The Application of Restorative Justice In Different Crimes:

This question is discussed whether this restorative program can be applied in all of the crimes? In the other words, the application of the restorative program is pervasive and permanent or not?

Recommendation No. R(99)19 of the Committee of Ministers to Members states concerning mediation in penal matters, adopted September 15th, 1999, recommends the assistance to restorative programs in all levels of Criminal Justice hearing.

Furthermore, "Europe Council Recommendation about Family Mediation approved 1998" proceeds to positive effects of restorative programs in family disputes such as both criminal and non- criminal. All the restorative programs are using in situations that have enough reasons against the offender, and in fact, the offender accepts his responsibility for entering to the restorative programs.

Restorative programs is as a useful technique against anti- social behaviors, and it is feasible in some cases such as home and neighbor's disputes, local issues resolution, and domestic dossiers (Blunket, 2003, p13)

Juvenile Offences:

At first time, restorative programs applied for juvenile offences and it extended in adults offences with attention to positive results. Child, Juvenile, and Family Act approved 1989, News land, is a prominent instance that in it restorative programs applied due to juvenile offences and the "family conferences" method accepted as the dominant sample about 14-17 juveniles (United Nations Global Report on Crime and Justice, 1999)

The young offenders law approved 1994 in Canada, is the other instance of restorative programs application about juveniles, as well, it can point out to the "Crime and Disorder Act" in England, that based on suitable behavior with the victim and reparation can be a section of Justice application process.

Common and Low Crimes:

About common and low crimes or non- violent crimes there is an agreement, these crimes should be considered out of the judicial process. Usually, low crimes investigate via police warnings. Restorative process can be used for common crime, too, along with the retribution rights of the victim- oriented is considered.

Violent Crimes:

Violent Crime includes some sorts of crime such as murder, starting murder, rape, battery, etc. There are dissensions about whether in these kinds of crimes can apply restorative program. In Canada, Retributive Criminal Justice uses about violent crimes and restorative programs do not have any places.

However, some believe that restorative processes are effective about the violent crimes (Zahr, 1373, p65). In violent crime the intensity of damages and injuries to victim are such high that should act carefully. Acceptance of restorative programs in violent crimes behalf the public thoughts of the society is disputable. Usually the community members do not accept non-criminal incidence and in majority of the cases, violent and sexual offenders are excluded in participating in restorative programs.

In majority of situations, low and common crimes have the most statistics of referring to restorative programs, and less significant dossiers have more success in them.

Conclusion and Suggestions:

In Restorative Justice Programs, crime defines as dispute in the parties' relationship and its significant affect is the entered damage to the victim and all the restorative samples offer the "reparation" of these damages. It seems that, restorative samples beside the traditional ones, and sometimes as their replacements can be messenger of approaching to "Real Criminal Justice". Therefore, it is suggested that:

1. National law systems of countries with acquaintance to restorative programs make familiar the national criminal justice authorities with kind of Restorative Justice.
2. The available capacities for applying restorative programs should be recognized, with attention to dominated cultural and local conditions on various countries.
3. The experience of the pioneer countries in Restorative Justice domain, has approved its success, especially in child's and juvenile's offences. Therefore, it is recommended the usage of the restorative programs especially in juvenile offence offences.

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