

# Restorative Justice & Domestic Violence

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# What is restorative justice? (1)

RJ means the shift between retributive and restorative understanding of justice. In order to understand the restorative justice concept holistically the reader must 'change lenses' as Howard Zehr suggests in *Changing Lenses* (1990). He suggests looking at crime, punishment and crime prevention from a new - restorative justice perspective.

# What is restorative justice? (2)

Restorative justice (RJ) is *bringing together offender, victim, family, and (sometimes) the community to address what happened, how the parties were affected, and what positive steps the offender can take to make amends with the victim and the community* (Rossner, 2013)

# What is restorative justice? (3)

- Crime is defined as **wrongdoing** against victims and relationships in communities; **harm** that can be restored in relation to all three affected parties (Zehr, 1990)
- Crimes as '**conflicts**' taken away from the directly involved parties and then have become properties possessed by lawyers (Christie, 1977)
- Restorative justice provides '**justice without lawyers**' Wright (1996:66)
- Reintegration encounter that brings a '**feeling of closure**' and enable the parties involved to move on
- **Reintegrative shaming** of the wrongdoer - shaming generated through the offender acknowledging the consequences of the crime in the presence of those who were mostly affected, such as victims, friends, families, and neighbours (Braithwaite, 1989)
- **Apology** can be perceived as a social mechanism to restore victims, offenders and communities (Bottoms, 2003)
- **Reparation** decided upon during the restorative encounter
- (Micro) **Community involvement** - built upon the social networks to which people belong (McCold, 1996)
- **Restorative justice practices** should be seen as alternative punishments rather than alternatives to punishment (Duff, 2002; Daly, 2002)

# The paradox of restorative justice

- Most restorative justice practices function at the peripheries of the formal criminal justice systems.
- The multidimensional nature of restorative justice, variety of practices and the criminal justice location of these practices determines RJ success, but also contributes to restorative justice complexity.
- Restorative justice is actually about struggling within the rigidity of the criminal justice system, and against injustice in the most restorative manner (Braithwaite, 2003)
- **There is no RJ without CJS and there is no culture-free restorative justice.** Such inescapable relationships between restorative and retributive justice may lead, for instance, to defining restorative practices, for example, victim-offender mediation as ‘penal mediation’, as is the case in France.

# The promise of restorative justice

*Scholars who are fond of imagining a world built entirely on the principles of restorative justice should not expect too much from restorative justice (Roche, 2006)*

*Restorative justice is not an alternative paradigm of justice that can replace the processes of criminal justice. Well, perhaps in paradise, but we ain't there yet (Marshall, 1996)*

# The use of RJ in DV cases

## Critics

- 'Soft informal RJ processes and outcomes'
- Safety of victims
- Risk of re-victimisation
- Victim blaming
- Expectation to forgive
- Apologies as 'the cheap justice problem' (Stubbs, 2008:18)
- Perception that the violence is minimised

## Proponents

- Victim empowerment
- Breaking offenders' techniques of neutralisation
- Internal-responsibility taking
- Lower recidivism

- **Restoration v. retribution** – possibility to deploy positive and constructive elements of retribution in a restorative process’ (Daly & Stubbs, 2006)
- CJS/RJ (uneasy relationship) – women see legal interventions as a means to mobilise additional resources (Stubbs, 2008)
- **Wrongdoing**/conflict – feminist criticism for defining battering as ‘disputes’ (Daly & Stubbs, 2006)
- **RJ as an alternative to punishment** – ‘second class justice’
- **Harm ?**
- **‘Justice without lawyers’** – women’s capacity to exercise choice; pressure on victims to advocate on their own behalf (Daly & Stubbs, 2006)
- **‘Feeling of closure’** - ?
- **Victims’ empowerment v. silence** as a survival mechanism
- **Techniques of neutralisation** – manipulation of the process by offenders (Daly & Stubbs, 2006)
- **Reintegrative shaming** of the wrongdoer - little impact on offenders (Daly & Stubbs, 2006)
- **Apology** – apology as an act of compromise; manipulation of the process by offenders (Daly & Stubbs, 2006)
- **Reparation** – the risk of symbolic implications (Daly & Stubbs, 2006)
- (Micro) **Community involvement** - idealisation of communities, certain community norms may actually reinforce male dominance (Daly & Stubbs, 2006)

Rashmi Goel: *Sita's Trousseau:  
Restorative Justice, Domestic Violence,  
and South Asian Culture, Violence  
Against Women (2005)*

- RJ is seen as a ‘reprivatisation’ of domestic violence what means a dramatic backlash for feminist efforts since the 1960s to ‘make the private public’ (Daly & Stubbs, 2006: 17).
- RJ practitioners can learn from feminist critics about the consequences of victimization and the dangers of a ‘one size fits all’ RJ process. On the other hand, the feminists –who well understand the limits of a criminal procedure – can learn from RJ practitioners how to expand options for victims of IPV (Ptacek, 2010).

# Conditions of using RJ in cases of DV

- Voluntariness and safety
- Proper screening of the history of the relationship
- Training and education of mediators/RJ facilitators
- Expertise/knowledge in power-balancing techniques
- 'Cultural appropriateness' ?

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