

---

## Restorative versus Retributive Justice: Looking Forward – A Tool for Informal Justice System

Dr. Bittoo Rani

Assistant Professor, Department of Political Science, Dinabandhu Mahavidyalaya, Bongaon, North (24) Parganas, West Bengal, India

---

**Abstract:** While drawing upon the cardinal principles of justice, this paper focusses on how retributive justice with emphasis on blame and punishment has in the contemporary period given way to the forward looking restorative justice with restoration and healing as its chief concern. The crude and strict retributive justice as practised by formal institutions of the state is widely hailed as unfit in modern times by both the law and legal experts as well as academics; instead the society has shown its affinity for restorative justice with restoration, healing, reform and deterrence as its pillars. Outscoring the retributive formal system in terms of participation and satisfaction, informal restorative practices have brought justice services to the doorsteps of the community and citizens. Informal restorative practices generally imply victim sensitive justice delivery mechanism; its increased proliferation with community initiatives and mediation techniques has attracted sustained attention.

**Keywords:** Justice, Restoration, Retribution, Informal, Offender, Victim, Mediation

### 1. INTRODUCTION

No other issue has been so much hotly debated or urgent cries witnessed as those of justice; the issue is akin to that proverbial elephant where each aspect is explained from a different angle. In line with the liberal tradition where individuals are bearers of moral values, the right thing to do is that which produces good negating all instances of injustice. Mill commonly finds six situations which he regards as unjust – depriving person of things over which they enjoy a legal right, depriving person of things over which they have a moral right, depriving a person of his due or what they deserve, breaking trust with people, engaging in partiality or nepotism where favours do not apply and unequal treatment of people. As such, principles of justice are certain moral rules concerning human well-being more closely than any other principle guiding human life. Since justice is non *sui-generis*, its existence is justified in the support it provides to individual rights and liberties in society, in turn incorporating the idea of equal treatment and just desert; equality is dictated by the demands of justice except where expediency provokes inequality. That is to say, social and economic inequalities can be justified on the ground only if the end-result accrues benefits for the most disadvantaged in society. Similarly, Rawls' difference principle, the core of his substantive theory of justice allows some inequalities in distribution, but only to protect or improve the position of the least advantaged in society. Therefore, as an outcome of rational choice and concerned with common good, justice as virtue is geared towards arranging the basic structure of society so as to benefit the most disadvantaged.

### 2. RELATION BETWEEN JUSTICE AND LAW

Though the concepts of justice and law are interwoven, the idea of justice has failed to achieve the clarity associated with the latter for the sole reason that in being propagated by both moral and political philosophers, the notion of *being just* is garnished with religious and ideological dogma. Without being the same, both law and justice interact in society for the sole reason of facilitating an-equilibrium in social organization though its effectiveness depends upon individual's legal behaviour or his capacity to adapt and change his behaviour in compliance with new rules. Ethnological and anthropological studies have ascertained that primitive law was not essentially and exclusively penal. Rather it was a guide to socially cohesive behaviour. Being essentially restorative throughout most of human history, its extreme retributive character developed only during a specific phase of history.<sup>[1]</sup>

---

<sup>1</sup> Restorative justice is a major development in human thought grounded in traditions of justice from the ancient Arab, Greek and Roman civilization ...; the restorative approach of the public assemblies (moots) of the Germanic

Since human beings by nature are essentially selfish (Hobbes, Social Contract Theory), law emerged to condemn those aspects of human behaviour that prevented the state and society from achieving their social goals. Since each individual is an end in itself (Kant), justice as a set of moral and legal principles condemns using others as tools or chattels without their consent. However, it is not limited to leaving the individual unmolested. It entails the equality of treatment in the distribution of burdens and benefits of society and this responsibility of distribution is essentially a function of the state. Acts of justice and benevolence usually go unrewarded since they are the expected and accepted norm of behaviour while those of injustices are visited by punishments generally defended as a means of both amelioration and intimidation, as his *just desert*; however, it is generally acknowledged that such sanctions and punishments must yield positive results. As such Bentham paradigm (or for that matter, the utilitarian theory of punishment) justifies punishment in its social outcome eg., deterrence, incapacitation and rehabilitation. The punishment of the guilty is valuable in terms of the effect it produces, that is, deterrence of others. Thus the punishment inflicted on the guilty is a means to some future good.

However, in the contemporary period, the retributive idea (of idealists as Hegel, Bradley, Green and Bosanquet) that punishment imposed by the state on the offender annuls crime and restores the right of the victim has witnessed sweeping changes. Apart from these idealist thinkers', the utilitarianism of Mill also follows a similar line of thought though Bentham was more concerned with making the penal system fairer by avoiding injustice in the retributive sphere. The modern period is more concerned with restoration and reform of the offender rather than imposing extreme retributive punishments. It is with utmost reluctance that the present dominant discourse reconciles to the idea of imposition of harsh punishment but upon the conditional factor of *mensrea* or criminal intention of the offender. The punishment for the wrong-doer must not outweigh the proportion of the offence. The criminal justice system remains imperfect however carefully the laws are followed and proceedings conducted fairly; at times the outcomes may not be the most desired one as no one knows when punishment no longer remains the same but changes into something unjust. The retributive maxim of hurting the offender for the hurt caused to the victim stands unjustified because it gives play to the great evil of *lex-talionis* or *an eye for an eye* far suppressing the good interred in restoration and healing. It is generally argued that retribution is materially and emotionally inadequate as it fails to acknowledge that criminality is to a large extent a product of its environment. The utilitarian defence of retribution that punishment is justified just because the offender is guilty of doing something wrong is viewed as ambiguous in modern discourse which on the contrary emphasises upon compassion for the victim. No valid empirical evidence supports the assumption that the more stricter, harsher and more incapacitative the responses to crimes the less will be its occurrence. Retribution need not be more severe than is needed to communicate the evils of wrong-doings to the offender; rather sanctions and penalties should be such so as to mould the conscience of the offender; he must be given a message of the abhorrence that society extends towards his offensive acts. Retributive punishment is reproaching and the best punishment is one which is imposed most expressively but in the least expensive way so as not to rupture social integration, "to punish more cruelly than required to achieve the moral educative functions of punishment is more than a waste of state resources."<sup>2</sup>

### **3. RESTORATIVE JUSTICE AND INFORMAL JUSTICE SYSTEM – HOW IT WORKS**

It is a general belief that dealing judiciously with conflicts is critical to building a tolerant society. Since safeguarding basic human rights is a challenge to any society, it is sought to be preserved through articulation of the dictum that offenders or perpetrator of wrongs must be punished. Though retribution for the offender exemplifies the

---

peoples ...; Indian Hindus as ancient as the Vedic civilization (6000-2000 BC) for whom 'he atones is forgiven' ...; and ancient Buddhist, Taoist and Confucian traditions ... With the emergence of a third set of interests, punitive measures took place of restoration. The legal system moved away from restorative principles due to the Norman conquests of much of Europe at the end of the Dark Ages. Transforming crime into a crime against the king instead of crime against a victim was a central part of the monarch's programme of domination of his people ... Kings took justice from victims and established their control over it ... This retributive legacy of tyrannical monarchs is accepted as more natural than the indigenous system it replaced. Ferdous Jahan, *When Women Protect Women: Restorative Justice and Domestic Violence in South Asia*, New Delhi: South Asia Publishers, p. 21, 2008.

<sup>2</sup>John Braithwaite, *Crime, Shame and Reintegration*, Cambridge: Cambridge University Press, p. 178, 1989.

appropriate response to his wrong doings but alternative processes do exist as opposed to apathy or vengeance. Strict compliance with the retributive process of the formal legal structures would be wilful ignorance of a much sombre process of conflict-resolution. This is because we often equate doing justice with punishment and not 'dialogue and acknowledgment of wrong-doings.' This alternative process of resolving conflicts through dialogue and acknowledgement is based on the process of restoration and healing. The concept of restorative justice stands in direct contrast to the idea of justice based on retributive punishments.

The advocates of restorative justice base their argument on the dictum that wrong-doings leads to disruption of societal equilibrium and that social fabric must be maintained through social action. Restorative justice seeks to promote social equilibrium by involving all stake-holders – victims, offenders and other societal actors into dialogue and healing the wound of the victim. The task of social actors -be it community elders or religious leaders or NGOs – is to fix the responsibility of the harm done by the offender and establish equality between the victim and perpetrator of the crime. The process of restorative justice ameliorates the victim, the offender and society at large in the resolution process. The process of undoing the harm is based on socially useful approach of integration facilitating rebuilding of social bond between the victim and the offender.

Before proceeding into any discussion about how restorative justice works in the informal justice system, we must define the concepts. The informal justice system has been defined variously across the spectrum ranging from institutions and mechanisms both within and outside the legal framework but enjoying state recognition either in overt or tacit form. Hosts of definitions have been provided by various theorists and thinkers as Richard Abel (1982), Helmke and Levitsky (2004), Charles & Beckford (2012) and so on. The most workable definition of informal justice system is that of Ewa Wojkowska (2006). Drawing a distinction between states administered formal justice system and non-state administered informal justice sector, Wojkowska(2006) refers to the informal system as any dispute resolution mechanisms lying outside the periphery of formal-legal structures and institutions including police, prosecution, courts and custodial measures. Though the informal dispute resolution mechanisms exist outside the formal legal structure they are marked by a certain degree of stability, institutionalisation, and legitimacy. However, these institutions are not limited to relying on normative frameworks but have incorporated elements of their respective national legal structure and international human rights standards. The informal justice system is an alternative system of dispensing justice by which disputes are settled between individuals, families, communities and intra or inter tribes. These institutions have existed, although not without change since ancient and pre-colonial times and are generally found in rural areas. Associated with greater latitude of emotional expressions that are not part of formal hierarchical structures, the informal organizations are "actually existing patterns of human interaction."<sup>3</sup> Within its extensive paradigm the informal systems embrace (i) traditional, indigenous and religious structures as religious courts, (ii) semi-formal institutions as community courts and (iii) alternative dispute resolutions procedures as negotiation and mediation. The domain of informal justice system basically is constitutive of non-state actors as traditional-community leaders, religious heads, immediate neighborhood, family, friends, churches, peer-groups, schools and recently non-governmental organizations. The nature of justice dispensed by the NGO's shares, with the traditional-indigenous institutions, the characteristics of informal justice. Restorative justice as employed by informal dispute resolution mechanisms has been experimenting with increased victim-offender mediation, family group conference, healing circles, face to face

---

<sup>3</sup>The earliest, and the most prevalent, meaning for the term informal issues from the writings of human relations theorists, for whom properties of the informal organization were counterpoised to the formal organization ... Informal, however, is used rather loosely and in a number of senses by different authors, the various uses of the term informal can, in fact, be broken down into two basic senses. One sense refers to ways of performing work that are not outlined in official, formal descriptions. For instance, work-related communication or contact that is not prescribed or scheduled is often described using phrases such as informal contact or informal communication. Alternatively, the term informal is used to denote friendship relations, that is, human relations characterized by interpersonal familiarity and social cohesion. David A. Morand (1995) "The Role of Behavioural Formality and Informality in the Enactment of Bureaucratic versus Organic Organizations," *The Academy of Management Review*, vol. 20, no. 4, p. 833, 1995.

---

contact between the victim and offender, reparation boards, anti-bullying programmes and so on. Restitution as a technique of informal dispute resolution is symbolic. Along with community based institutions and NGO's, the state as a small partner plays its role through government sponsored special educative programmes.

While John Braithwaite views restorative justice as 'alternative to' (alternative to the formal retributive system), for Zehr (1990) it is a 'new lens.' Tony Marshall defines restorative justice as, "a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future." <sup>4</sup> Paul McCold (2000) views restorative justice as a collaborative effort involving those most directly affected by the crime, called the 'primary stake-holders' in determining how best to repair the harm caused by the offences.' By primary stake-holders, the author means the victim, the offender and the community at large. For Zehr (1990) restorative justice is all about repairing the harm inflicted upon the victim by the offender. Zehr (1990) contends that the aim of restorative justice is three fold – healing the victim, making the offender take responsibility for his wrong-doing and empowering the community to resolve the conflict. For Ron Claassen (1995) while presenting his eleven points on restorative justice states that restorative justice programmes are teaching moment as the emphasis is on safety, values, ethics, responsibility, accountability and civility'. The offender is cognized of the impact of his offence on the victim and provided opportunity to learn empathy and be a good community member. However Ron Claassen admits that exceptions exist where offenders may be reluctant to face the victim and "prison might need to be used in situations where the offender is a risk to him/herself and/or others until the time comes where s/he is willing to voluntarily meet with the victim(s)"<sup>5</sup>.

Retributive justice, or for that matter retributivism has been defined and defended from different perspectives; the most common being that it is a logical doctrine to suffer punishment if one has committed a crime. The basic premise of retributive justice is that punishment must fit the crime. Anthony Quinton says, "For the necessity of not punishing the innocent is not moral but logical. It is not, as some retributivists think, that we may not punish the innocent and ought only to punish the guilty, but that we cannot punish the innocent and must only punish the guilty . . . The infliction of suffering on a person is only properly described as punishment if that person is guilty. The retributivist thesis, therefore, is not a moral doctrine, but an account of the meaning of the word 'punishment'." <sup>6</sup> Opposed to the notion of deterrence and reform, retributive justice views punishment as righteous infliction which alone can prevent future crimes. Though social sanctions are often identified with 'punishment' but they are not retribution in the strict sense since it is closely identified with criminal acts associated with breaking of law.

Modern scholars opine that imposing retributive punishments upon perpetrators of crime is not the only way of responding to wrong-doing; rather they propose restorative justice as an alternate viable means to respond to criminal acts. The informal institutions of dispute resolution refuses to acknowledge the notion of punitiveness on the ground that retributive process of handling out punishments to offenders lack the intellectual clarity of fostering a more humane and tolerant society. Restorative justice empowers the community members and traditional leaders not only to safeguard the rights of the victim but in doing so the process must be constitutive of accountability and fairness. This entire exercise on the part of community leaders and citizens is based on the moral assumption that as community members it is their duty to protect collective community life from the unruly behaviour of mischief-makers. In seeking redressal of grievances through dialogue and restitutive process, the informal process aims to strike a closure to cycles of vengeance among community members.

---

<sup>4</sup>Jennifer J. Llewellyn and Robert Howse, *Institutions for Restorative Justice: The South African Truth and Reconciliation Commission*, *The University of Toronto Law Journal*, vol. 49, no. 3, pp. 372-73, 1999.

<sup>5</sup> RJ recognizes that not all offenders are willing to cooperate; therefore, there is a need for outside authority to decide for the offender in a coercive manner. RJ considers that, while prison should not be used as a result of the process, prison might need to be used in situations where the offender is a risk to him/herself and/or others until the time comes where s/he is willing to voluntarily meet with the victim(s). Ron Claassen, "Restorative Justice - Fundamental Principles," 1995, <http://www.justiciarestaurativa.org/www.restorativejustice.org/articlesdb/articles/58>

<sup>6</sup> R.M. Hare, "Punishment and Retributive Justice," *Philosophical Topics*, vol. 14, no. 2, Papers on Ethics, pp.212, 1986

The foundation of informal restorative process is based on techniques of mediation, negotiation, conciliation and reparation. Restorative practices operate on the maxim that moral reasoning by community members as how best to deal with conflicts facilitates justice better than punishment by the formal-legal system. When a conflict occurs, the first course of action for community mediators is that they try to understand the circumstance under which the mischief has occurred. Before embarking upon any course of action the mediators or 'informal judges' engage themselves with certain basic premises. They try to identify the victim, the cause of the conflict, the circumstance or events leading to the conflict, why the offender had offended, what should be done to heal the wound of the victim, what is the victim's needs, when and how to negotiate the healing process, how to deal with the offender so as to avoid any further mischief and so on.

Usually the victim is given a patient hearing and then further actions are taken to undertake the healing process. When the victim is provided the opportunity to narrate his/her part of the story, the healing process automatically sets in as the latter is made to realize one's importance in the entire process. The victim is encouraged to confront his/her offender and seek amend. The community members involve families and friends of both the victim and offender or those who care to attend and discuss the consequences of the harm inflicted upon the latter. The community-conference drawing upon the feeling of the victim negotiates how the harm should be repaired and prevents further re-offending. Such healing trials reduce the chance of passive suffering and random revenge. The subtle apprehending and indicting of the offender in front of the victim helps the latter regain his/her moral confidence and self-respect. Though sometimes, engagement with the victim may be limited in real terms, but what remains meaningful is the fact that they had been heard and understood. The opportunity of expressing their emotive dimension of being victimised acts as catharsis upon the victim. In addressing the needs of the victim, the informal system emphasises upon restoring their respectfulness. The propelling force of restorative justice is the notion of victim-empowerment. What makes restorative justice or 'healing justice' appealing is that it is a 'zeo-sum' process of healing and integration where victims benefit from restoration and restitution and the offender acknowledging his wrong-doing escape the possibility of exclusion or victimization.

However, engaging with the victim does not imply the negation of the offender. In re-establishing the ruptured relationship between the victim and offender, the restorative practices of the informal justice system do not seek to make the offender invisible by social ostracization or imprisonment. What the system invokes is re-integration of the offender with the realization that his mischief is an offence and that he must make amends through socially fruitful activities. The offender is sought to be reinstated within the community through the process of re-integrative shaming. Braithwaite in his *Crime, Integration and Shaming* (1989) opines that re-integrative shaming with disapprobation of offence but within a continuum of respect for the offender reduces crime, while outright shaming or stigmatization of the latter will make the situation worse. Direct shaming of an offender can generate negative emotions which might provoke the offender to attack others, avoid the community or withdraw within oneself.

According to Sherman and Strang (1997 RJ2, p.40) the experience of letting down one's family members, friends and acquaintances in the shaming conferences invoke remorse within the offender and yield positive results. Braithwaite (1989) feels that 'guilt about specific behaviours, "uncomplicated by feelings of shame about the self," is healthy'.

Braithwaite's (1999) work reveals restorative practices of resolving disputes informally is multi-pronged because it is all about 'restoring victims, restoring offenders, and restoring communities participation of a plurality of stakeholders.' As such the philosophy of restorative justice rests on the solid foundation of moral values of restoring victim's dignity and security with social support and tolerance. Forming the crux of restorative justice processes, the conflict is sought to be resolved by rituals of apology and forgiveness the offender's apology is reciprocated by forgiveness on the part of the victim.

#### **4. RESTORATION VERSUS RETRIBUTION – THE DEBATE**

The dominant language in the discourse of criminal or formal justice system today is that of retribution versus restoration. In contrast to retribution, restorative justice seeks resolution of disputes keeping in mind the greatest

interest or interests which weighs more in the community as a whole by relying on experience and developing reasons giving maximum effect to the whole scheme of interest with the least friction and waste. The idea is to restore and heal, guiding parties towards a choice by striking balance between competing claims with a general consensus in line with the society's moral values. Treating human interests as the cardinal element, the restorative approach to dispute resolution acknowledges that just solutions to issues vary with time, place and persons affected. The idea of restoration and healing of the victim is central to restorative justice, unlike retributive justice with blame and pain as its major component. Being more amenable to incorporating procedural fairness, it assists in reducing recidivism. As such, the informal restorative approach scores high over the prevailing formal justice system with its greater reliance on retributive punishments.

While retributive justice views wrong-doings as crimes not only against the victim but the state as well, the state reserves the sole right to punish the offender; it does so by fixing the legal guilt (whether the offender is liable under the law) and providing the just desert by imposing sanctions and fines so as to create the maximum deterrence. With its adversarial process, retributive justice, in fact, promotes conflict of interest, in turn providing a fertile ground for germination of feelings of vengeance. It strongly believes in the adage 'what is done cannot be undone'. In sharp contrast, restorative justice defines crime as 'violation of peoples and relationships.' Since crime is first and foremost an offence against the people, it involves the idea of conflict, after all, crimes create inter-personal conflicts or sometimes personal conflicts are the source of crimes.

In revolving around repairing the harm done and putting things right, restorative justice imparts the message that crime is primarily conflict between individuals causing injury not only to the victim but also to the community at large. Such injury is not always physical, but also mental, the scars of which though invisible may at times be more profound and deep. Repairing the harm done by the offender to the victim is its over-arching concern while law-breaking occur secondary in its agenda. In opposition to the all-lose situation of retributive justice, the win-all effect of restorative justice where the victim is compensated for the harm done produces more lasting effects over the parties as well as the society. Judging the individual in relation to other men without caring for his ambition, follies and idiosyncrasies, retributive justice views the guilty but from a dispassionate gaze while restorative justice regards the citizen as a separate entity entitled to be considered on his own account and not lumped into some general category. Since restorative justice is concerned with the individual it is the reason why it is also concerned with both the past and present of the offender keeping options open for the future.

Unlike retributive justice where the victim is relegated to the background with the sole focus on the offender, in restorative justice the victim holds a stake in the decision making or resolution process and while communicating the consequences of the injustice or injury inflicted suggests the kind of remedy sought. In order to restore back to the victim his lost rights and heal the injury inflicted, restorative justice emphasises upon the informal victim-offender mediation conferences and neighbourhood courts. While retributive justice has its origin in fear, restorative justice expects that the offender realizes the wrong done to the victim and mend himself through self-realization, in turn restricting its likely occurrence again.

Though the heart of retributivism lies in the belief that wrongness of the criminal act justifies the imposition of punishment, scholars hold that imposition of punishment on the offender is itself a parallel act against him. No doubt, the shameful crimes as rape and murder are unacceptable but there are always alternate ways of dealing with such crimes; since such acts have far reaching social effects, the treatment of such offenders' lies in psychological help rather than imprisonment. The dictum that all misdeeds be punished is difficult to accept in its full rigour; justice can still be achieved without being extremely retributive. The idea of retribution is regarded simply as vulgar and barbaric "since there is nothing intrinsically appealing about any kind of suffering" (Hart, 2008, p. xiv); punishment is something which does no one any good.

The formal system of justice with its retributive character is focussed on the offender assessing the criminal act and culpability and fixing the penalty without shedding attention to the victim. The victim is only used as a witness and then deserted to fend for the injury inflicted, consequently suffering secondary victimization at the hands of the justice system. Consequently the victim is a heavy loser not only because injury is inflicted on him (either physical or moral or both) and the state appropriates the fines and penalties but because he has lost participation in his own

case. The case no longer remains between the victim and the offender but subsequently transforms into one between the offender and the state.

It is in catering to the immediate needs of the victim and providing restitution that the restorative approach of the informal justice institutions has attracted wide attention. Deriving its strength from the fact that one is dealing with actual human beings and not any state of affairs, restorative justice by involving all stake-holders in a particular offence, attempts to reconcile issues collectively, in the aftermath of the offence, but also with an eye to its future implications; its deliberative process holds the highest potentials for achieving restoration and healing. Unlike retributive justice where the crime is defined as transgression of the law and legal order, restorative justice identifies crime less in legal terms and more in terms of the harm inflicted with an urgency to address the underlying causes of such offence. The informal mechanisms as victim-offender mediation conferences and face to face contacts offer the parties' powerful outlets for exchange of moral and social emotions as shame, guilt, apology, forgiveness and support; this encounter of the stakeholders leads to a better understanding of the injury and suffering caused with opportunities for the offender to make amends leading to satisfaction of the victim, reintegration of the offender and communal stability. This bottom-up approach of restorative justice holds more prospects in allowing the parties, particularly the victim, more space in the decision-making process and the kind of restoration sought.

A perusal of the existing literature showed that restorative justice is more offender-oriented than retributive justice process in the sense that restorative processes do not alienate the offender as someone alien; rather the wrong-doer is treated as 'one of us' and he cannot be expelled or ostracized from the main stream society by dint of his unwanted act. Instead the wrong-doer is helped in realizing and understanding the negative effects of his act and make amends for it. Instead of applying punitive measures to cut him off from society the offender is imparted basic moral values and reintegrated back into the community to save him moral and social indignation.

However, Braithwaite (1989) cautions that re integrative shaming if used judiciously can produce positive results but deviations might lead to repercussions. It is seen that benefits of victim restoration and offender reintegration motivate others to participate and make use more of restorative programmes. Since the community, neighbourhood courts and other informal societal organizations appear to have more information of societal misbehaviours than the state enforcement agencies (as police and law courts), their informal sanctions and fines deter potential offenders than legal punitive measures would do.

With limited role for the state and *professional thieves (lawyers)* who transform conflict into *property*<sup>7</sup>restorative justice stands in sharp contrast to top-down system of retributive justice. The formal mechanisms of resolving dispute usurp it from its present form of social dissatisfaction to transform it into unrecognizable legal conflict. Recent studies have shown that retributive justice with its exclusive focus on winning and losing the case fails in invoking a sense of justice among the parties (particularly the litigant) because people today are not only interested in the outcome of their case but equally important for them is the process or how the case is decided or dealt with. A major transformation in getting justice dispensed is that justice need not be done but it has to be lived.

## 5. CONCLUSION

Restorative justice as a reform movement is crucial for a democratic society. What is unique about it is that it restores and transforms instead of punishing by recasting the more retributive and process-laden idea of meeting justice into more consensual, transparent and constructive through communicative intercourse. Restorative justice of not only mends the offender but holds the prospect of transforming the society at large. In its forward looking approach lie the seed of a different future. Almost all countries today have inserted restorative justice programmes in different degrees to respond to crimes. Though its enthusiasts seek its extension to all types of white collared

---

<sup>7</sup> Lawyers are particularly good at stealing conflicts. They are trained for it. They are trained to prevent and solve conflicts. They are socialised into a sub-culture with a surprisingly high agreement concerning interpretation of norms, and regarding what sort of information can be accepted as relevant in each case ... Conflicts become the property of lawyers. Neil Christie, "Conflicts as Property," *The British Journal of Criminology*, vol. 17, no. 1, Oxford, p. 4, 1977.

crimes as well as violent ones, however, this would mean an exaggeration. No doubt, the strongest opposition has cropped up from supporters of formal system as lawyers including judges.

## REFERENCES

- Abel Richard, *The Politics of Informal Justice*, New York: Academic Press Inc., 1982, vol. 1
- Baldwin R. W., *Social Justice*, London: Pergamon Press, 1966.
- Bird Otto A., *The Idea of Justice*, USA: Frederick A. Praeger Inc., 1967.
- Braithwaite John, *Inequality, Crime and Public Policy*, London: Routledge and Kegan Paul Books, 1979.
- Braithwaite John, *Crime, Shame and Reintegration*, Cambridge: Cambridge University Press, 1989.
- Braithwaite John, "Restorative Justice: Assessing Optimistic and Pessimistic Accounts", *Crime and Justice*, The University of Chicago Press, vol. 25, pp. 1-127, 1999.
- Braithwaite John, *Restorative Justice and Responsive Regulation*, New York: Oxford University Press, 2002.
- Charles Christopher A.D. and Beckford Orville, "The Informal Justice System in Garrison Constituencies," *Social and Economic Studies*, vol. 61, no. 2, Special Issue on Law & Justice in the commonwealth Caribbean, pp. 51-72, 2012
- Chrisite Neil, "Conflicts as Property", *The British Journal of Criminology*, vol. 17, no. 1, 1977  
<https://criminologiacabana.files.wordpress.com/2015/10/nils-christie-conflicts-as-property.pdf>
- Claassen Ron (1995), *Restorative Justice - Fundamental Principles*, 1995,  
<http://www.justiciarestaurativa.org/www.restorativejustice.org/articlesdb/articles/58>
- Cragg Wesley, *The Practice of Punishment: Towards a Theory of Restorative Justice*, New York: Routledge, 1992
- Dzur Albert W., "Restorative Justice and Civic Accountability for Punishment", *Polity*, vol. 36, no. 1, The University of Chicago Press on behalf of the North-eastern Political Science Association, pp. 3-22, 2003.
- Emmons D. C., "The Retributive Criterion for Justice," *Mind*, New Series, vol. 79, no. 313, pp. 133-134, 1970. Garvin Lucius, "Retributive and Distributive Justice," *The Journal of Philosophy*, Vol. 42, No. 10, pp. 270-277, 1945.
- Gavrielides Theo, Bringing Race Relations Into the Restorative Justice Debate: An Alternative and Personalized Vision of "the Other", *Journal of Black Studies*, Vol. 45, No. 3, pp. 216-246, 2014
- Ezorsky Gertrude, "Retributive Justice," *Canadian Journal of Philosophy*, Vol. 1, No. 3, pp. 365-368, 1972
- HargovanHema, "Restorative Justice and Domestic Violence: Some Exploratory Thoughts", *Agenda: Empowering Women for Gender Equity*, No. 66, Gender-Based Violence Trilogy Volume 1, 1: Domestic Violence, pp. 48-56, 2005.
- Hart H. L. A., *Punishment and Responsibility: Essays in the Philosophy of Law*, New York: Oxford University Press, 2<sup>nd</sup> ed., 2008
- Husak Douglas, "Holistic Retributivism," *California Law Review*, vol. 88, no. 3, The Morality of Criminal Law: A Symposium in Honor of Professor Sandy Kadish, pp. 991-1000, 2000.
- Hare R.M., "Punishment and Retributive Justice," *Philosophical Topics*, vol. 14, no. 2, Papers on Ethics, pp. 211-223, 1986
- Heller Agnes, "On Retributive Justice," *Dialectical Anthropology*, vol. 12, no. 2, pp. 205-215, 1987.
- Helmke Gretchen and Levitsky Steven (2004), *Informal Institutions and Comparative Politics: A Research Agenda*, Perspectives on Politics, Vol. 2, No. 4, American Political Science Association, pp. 725-740
- Jahan Ferdous, *When Women Protect Women: Restorative Justice and Domestic Violence in South Asia*, New Delhi: South Asia Publishers, 2008.



- Lasker Daniel J., "Reflection: The Holocaust as Retributive Justice," *Shofar*, vol. 15, no. 3, Special Section: Teaching African American / Jewish American Relations in the United States, pp. 97-105, 1977
- Lebacqz Karen, *Six Theories of Justice: Perspectives from Philosophical and Theological Ethics*, Minneapolis: Augsburg Publishing House, 1986.
- Llewellyn Jennifer J. and Howse Robert, "Institutions for Restorative Justice: The South African Truth and Reconciliation Commission," *The University of Toronto Law Journal*, vol. 49, no. 3, pp. 355-388, 1999
- Lode Walgrave (2004), "Restoration in Youth Justice, Crime and Justice", vol. 31, *Youth Crime and Youth Justice: Comparative and Cross-National Perspectives*, The University of Chicago Press, pp. 543-597
- Lucas J.R., *On Justice*, Oxford: Clarendon Press, 1980
- Morand David A, "The Role of Behavioural Formality and Informality in the Enactment of Bureaucratic versus Organic Organizations," *The Academy of Management Review*, vol. 20, no. 4, pp. 778-783, 1995.
- McEvoy Kieran, Mika Harry and Hudson Barbara, "Practice, Performance and Prospects for Restorative Justice," *The British Journal of Criminology*, vol. 42, no. 3, pp. 469-475, 2002
- Morris Ruth, *Stories of Transformative Justice*. Toronto: Canadian Scholar Press Inc., 2000
- Murphy Jeffrie G, *Retribution, Justice and Therapy; Essays in Philosophy of Law*, London: D. Reider publishing company, 1970.
- Nocella II Anthony J. (2011), An Overview of the History and Theory of Transformative Justice, *Peace & Conflict Review*, volume 6, issue 1, 2011, <http://www.review.upeace.org/pdf.cfm?articulo=124&ejemplar=23>
- Paul McCold & Wachte Ted, *In Pursuit of Paradigm: A Theory of Restorative Justice*, 2003 <http://www.iirp.edu/pdf/paradigm.pdf>
- Rani Bittoo, "The Role of Informal Justice Institutions: An Overview of its Existence and Functioning in Justice Disbursement," *International journal of Humanities, Social Sciences and Education*, vol. 1, issue 10, version 2, pp.114-123, 2014
- Rani Bittoo, "Sharia Courts as Informal Justice Institutions in India," *International journal of Humanities, Social Sciences and Education*, vol. 1, issue 9, version 2, pp. 129-139, 2014
- Rawls John, *A Theory of Justice*, Cambridge: Harvard University Press, 1971
- Reed T. M., On Sterba's "Retributive Justice", *Political Theory*, vol. 6, no. 3, pp. 373-376, 1978
- Reiman Jeffrey, *Justice and the Modern Moral Philosophy*, UK: Yale University Press, 1990
- Sawatsky Jarem, Rethinking Restorative Justice: When the Geographies of Crime and of Healing Justice Matter, *Peace Research*, vol. 39, no. 1, pp. 75-93, 2007.
- Sherman Lawrence W and Strang Heather, *The right kind of shame for crime prevention*, Australian National University, Canberra, RISE Working Papers, No. 1, 1997. <https://openresearch-repository.anu.edu.au/bitstream/1885/41916/1/risepap1.html>
- Sterba James P., "Retributive Justice," *Political Theory*, vol. 5, no. 3, pp. 349-362, 1977.
- Winstone Tom, Watters Debbie, Drummond Billy and Auld Jim, "Exclusion/Inclusion: Restorative Justice," *Fortnight*, No. 380, pp. 17-20, 1999
- Wojkowska Ewa, *Doing Justice: How Informal Justice Systems can contribute*, Beijing: ADB, China National School of Administration, UNDP Oslo Governance Centre, the Democratic Governance Fellow Programmes, 2006
- Wormer Katherine van, "Restorative Justice as Social Justice for Victims of Gendered Violence: A Standpoint Feminist Perspective," *Social Work*, Vol. 54, No. 2, pp. 107-116, 2009

- 
- Young Jock & Matthews Roger, *Rethinking criminology*, London: Sage publications, 1992
- Zehr Howard, *Changing Lens: A New Focus for Crime and Justice*, 3<sup>rd</sup> ed., Scottsdale/Pennsylvania: Herald Press, 1990.
- Zehr Howard & Gohar Ali, *The Little Book of Restorative Justice*, Pennsylvania, USA: Good Books Publications, 2002.
- Zernova Margarita, "Aspirations of Restorative Justice Proponents and Experiences of Participants in Family Group Conferences," *The British Journal of Criminology*, vol. 47, no. 3, pp. 491-509, 2007

### **AUTHOR'S BIOGRAPHY**



I am Dr. Bittoo Rani, assistant professor (and head) in the department of Political Science at Dinabandhu Mahavidyalaya, Bongaon, North (24) Parganas, (West Bengal, India). I have completed my P. hd from the University of Calcutta. I have made a few publications which I have mentioned below;

### **PUBLICATIONS**

- (1) *SHARIA COURTS AS INFORMAL JUSTICE INSTITUTIONS IN INDIA* IN INTERNATIONAL JOURNAL OF HUMANITIES, SOCIAL SCIENCES AND EDUCATION (IJHSSE), VOL.1, ISSUE- 9, VERSION-2, SEPTEMBER 2014, ISSN- 2349-0373(Print), ISSN- 2340-0381 (on-line), Pp.129-139 (PEER REVIEWED JOURNAL)
- (2) *THE ROLE OF INFORMAL JUSTICE INSTITUTIONS: AN OVERVIEW OF ITS EXISTENCE AND FUNCTIONING IN JUSTICE DISBURSEMENT* IN INTERNATIONAL JOURNAL OF HUMANITIES, SOCIAL SCIENCES AND EDUCATION (IJHSSE), VOL.1, ISSUE- 10, VERSION-2, OCTOBER 2014, ISSN- 2349-0373(Print), ISSN- 2340-0381 (on-line), Pp.114-123 (PEER REVIEWED JOURNAL)
- (3) *LEGAL PLURALISM, CULTURAL DIVERSITY AND RIGHTS OF MINORITIES IN MULTICULTURAL SOCIETY: REVISITING THE RIGHTS OF INDIA MUSLIMS AS MINORITIES TO FOLLOW THEIR PERSONAL LAWS* IN INTERNATIONAL JOURNAL OF HUMANITIES, SOCIAL SCIENCES AND EDUCATION (IJHSSE), VOL.2, ISSUE 2, FEBRUARY 2015, ISSN- 2349-0373(Print) ISSN- 2340-0381 (on-line), Pp. 93-108 (PEER REVIEWED JOURNAL)
- (4) *JUSTICE AT CROSS ROADS – A CRITICAL ANALYSIS OF THE FUNCTIONING OF THE INDIAN JUDICIAL SYSTEM AND THE NEED FOR AN ALTERNATIVE* IN GLOBAL JOURNAL OF HUMAN SCIENCE: (A) ARTS & HUMANITIES- PSYCHOLOGY, VOL. 15, ISSUE 6, VERSION 1.0, MAY 2015, ISSN: 9755861, Pp. 1-13 (PEER REVIEWED JOURNAL)
- (5) *TRIPLE TALAQ AND JUDICIARY IN INDIA: REFORMS OF SHARIA LAW- CONTINUITY OR CHANGE?* IN INTERNATIONAL JOURNAL OF INNOVATIVE RESEARCH AND ADVANCED STUDIES (IJIRAS), VOL. 4, ISSUE 9, SEPTEMBER 2017, ISSN: 2349-4404, Pp. 68-73 (PEER REVIEWED)
- (6) *FORGIVENESS* IN INTERNATIONAL JOURNAL OF INNOVATIVE RESEARCH AND ADVANCED STUDIES. VOL. 5, ISSUE 3, MARCH 2018, ISSN: 2349-4404, Pp. 194-200 (PEER-REVIEWED)
- (7) *GRAM-SHALISHI – AN INFORMAL DISPUTE RESOLUTION MECHANISM* IN INTERNATIONAL JOURNAL OF CONTEMPORARY APPLIED SCIENCES (IJCAS) (IMPACT FACTOR 6.930), VOL. 5, NO. 11 (AVAILABLE ONLINE AT [www.ijcar.net](http://www.ijcar.net)) (IMPACT FACTOR 6.930)
- (8) *INFORMAL JUSTICE SYSTEM AND THE STATE: A CRITICAL APPRECIATION* IN INTERNATIONAL JOURNAL OF CURRENT ADVANCED RESEARCH ISSN: 0: 2319-6475, ISSN: P: 2319-6505, Available Online at [www.journalijcar.org](http://www.journalijcar.org) Volume 8; Issue 02(D); February 2019; Page No. 17357-17363

**CHAPTERS PUBLISHED IN BOOKS (ED.)**

- (1) *ISLAM AND FEMINISM: MUSLIM WOMEN AND THEIR RIGHTS –READING IN THE LIGHT OF TRADITIONL SCRIPTURES* IN LILACK BISWAS (Ed.) *STUDIES IN FEMINISM* (2015), ISBN: 978-1-4828-7188-3 (softcover) 978-1-4828-7187-6 (ebook), Pp. 129-146, PUBLISHER-PARTRIDGE
- (2) *MINORITIES AND THE POLITICS OF PLURALISM* IN LILACK BISWAS (Ed.) *CULTURALPERSPECTIVES* (2017), ISBN: 978-3-330-07914-4, Pp. 73-95, PUBLISHER LAP LAMBERT ACADEMIC PUBLISHING