

Crime Victims Support System and Restorative Justice: Possible Implementation in Malaysia

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ABSTRACT

Victims' position is increasingly acknowledged in the criminal justice system across the world. Because of that, criminal justice systems in various countries slowly transform from focusing too much on the relationship between offenders and the legal system and to between the offenders and their victims. Several programs are highlighted such as victim-offender mediation, family group conferences, reparative orders and referral orders in this article. Findings from several studies support the effectiveness of the programs on both the victims and the offenders in terms of several measurements such as satisfaction and recidivism. Looking at this revolution, Malaysian academicians and professionals are beginning to recognize restorative justice as a possible revolution to its criminal justice system, but Malaysian criminal justice system first needs to strengthen or build components that support victims of crime, as this is one of the main principles of restorative justice. Currently, Malaysia still focuses on offenders and their relationship with legal system, but not much with their own victims (physical, emotional, and psychological consequences of the crime). Several possible issues before formal implementation of restorative justice are discussed. The issues (culture, training, and attitude of Malaysian people, including the victims, offenders, and those who work with them) can influence the efficiency of restorative justice programs if not identified systematically. These issues can also be the possible research areas to be ventured in the future as these researches can help in implementation.

Keywords: Restorative justice, Malaysia, criminal justice system, victims, offenders

1. Crime Victims Support System and Restorative Justice: Possible Implementation in Malaysia

The welfare of victims of crimes is relatively a new issue in criminal justice, as the movements of victims' rights started to form themselves in the United States in the early 1970's (Shapland, Willmore, & Duff, 1985; Austin/Travis County Victims' Services Task Force, 2005; Karmen, 2007), as well as the Great Britain around the similar years. Since the formation of the movements, a heightened awareness was introduced to the people, especially on the emphasis on the victims' well being to be compensated, and the offenders' chance to make things right in the community and the victims themselves.

There were various reasons that led to the formation of the movements. Both sides of victims and offenders were preoccupied with issues of distrusting, blaming, self-defending, and guilt-riding that made the whole process of criminal justice, at least, complicated (Karmen, 2007). It was added with

the circumstances related to the attitude of the legal practitioners in handling the rights of the victims, such as making a fuss when it came to minor offence, the hesitant pace the polices took to handle small cases, and also the condition where the victims' had to wait for their compensation to arrive (Bartol & Bartol, 2004).

Benefits of restorative justice was first noticed in a practice called dispute resolution, where two parties of conflict would meet and have a face-to-face resolution with mediation, without the involvement of court, which later inspired the formation of Victim-Offender Mediation (Doerner & Lab, 2012). Various parties such as the public, because of the satisfaction the practice could bring, and also the government or the legal system – mostly because this way, one case resolved through dispute resolution, there would be one less case to be contended by the court.

Currently in the United States, victims' position in the criminal justice system is increasingly acknowledged and in almost every state there is an association or organization that protects victims' rights, such as The Austin/Travis County Victim Services Task Force (VSTF) in Texas, The New York State Office of Victim Services (OVS). Internationally, there is Victim Support Australasia in Australia, and Victim Support UK in United Kingdom. Although these movements have been advancing in every other country, they seem to still baby-crawl in Malaysia.

One remarkable feat that is witnessed by all these movements of victim rights is the recognition that one way to resolve and mitigate the effects of crime is to bring the victim to the interaction and dialogue with the offender, along with the community (Wenzel, Okimoto, Feather, & Platow, 2008; Wolhuter, Olley, & Denham, 2009). In the interactions, all parties should discuss the best ways to rectify the effects of the offences, and the victim has an opportunity to express their emotion and feeling regarding the crime. The key components of this dialogue are restoration where it is desired to remedy the circumstances back to the condition where the offence has not been conducted.

Although the movements of victim rights already started to advocate the restitution of victims' conditions, the constitution and the whole process of restitution was still decided by the court (Bartol & Bartol, 2004), the victims often expressed discontent on the time taken by the process, making them feel even more frustrated (Karmen, 2007). The victims complained that there were always difficulties in the decision process of restitution, or the police should work more on their sensitivity when dealing with the victims, or in property crime, if their property was obtained from the offender, it seemed to be really difficult for the property to be returned to them in timely manner. All these led to the awareness that victims should play a role in the process of rectifying the offences.

According to Bartol and Bartol (2004), restitution is "an attempt to restore a victim's original financial, physical, and psychological position that existed prior to loss or injury" (p. 193). This kind of recovery is achieved by bringing together the parties that are directly and indirectly affected by the crime, whether they are the doers or the done parties such as the offenders, the victims, families and friends. Aside from its main aim, which is to bring victims forward, restorative justice aims at achieving it with the hope of less adjudicated intervention by the court (Roche, 2006; Roach, 2000).

Other than the victims as one of the major stakeholders in this issue, this policy also wants to make sure that the other parties such as the offenders and the communities to enjoy the contingencies too. Offenders treated by this policy will have a second chance to rectify the harm done and avoid far harsher punishment litigated by the court or the prison personnel (Roach, 2000). The offenders are also given a chance to take responsibility with what they have done and acknowledge the pain it has caused to the victims and the community in general. This is done in relation to one of the values carried out by restorative justice; unanimity in mutual decision by all affected parties (Wenzel et al., 2008; Wolhuter et al., 2009).

2. Objectives and Some of the Programs of Restorative Justice

Generally, restorative justice desires to attempt at resolving issues involving crime without much aid of adjudicating authority, whose main aim in the criminal justice system is mostly retribution or punishment of the offence (Roche, 2006). Other than that and more specifically, the objectives of restorative justice are:

1. To bring forward victims to play an important role in resolving the conflict, along with their family, community, and of course, offenders (Christie, 1977).
2. To focus more on restoration of justice and reparation rather than punishment (Boonin, 2008; Braithwaite, Restorative justice and responsive regulation, 2002).
3. To promote healthy dialogue between the victims, offenders, and the community to resolve resentment, offer apology or forgiveness, and to harness offender's sense of accountability and remorse (Zehr & Mika, 1998).

These objectives lead to the suggestions and formations of many programs and activities that operate under the notion of restorative justice. The essence of these programs that will be mentioned later in this section is that there is a healthy confrontation – or as it is called a dialogue – between the offender and the victim. The main difference between the regular justice system and restorative justice is that victims will play a vital role in determining the reparation and whether or not the agreement is satisfying to their condition.

Of course these programs should not only focus on the restitution of one aspect of the victims – physical, financial, or psychological aspect, – instead, it should cover all aspects well being. Most programs of restitution held by the adjudicating authorities are not comprehensive, or insufficient to bring the condition of the crime victims back to the prior state. Some of the programs that are conducted in the practicing countries according to Wolhuter et al. (2009) are:

1. Victim-offender mediation,
2. Family group conferences,
3. Reparation orders, and
4. Referral orders.

2.1 Victim-Offender Mediation

Victim-offender mediation program basically holds both the victim and the offender under one same conversation. In the session, there will be a mediator, who basically just helps to ensure the session goes on smoothly (Umbreit, Coates, & Vos, 2004; Wolhuter et al., 2009). However, the mediator is not there to impose any decision, major conversations will be done by the two main actors. The victims are given the opportunity to speak about the harm and to express their emotion and feeling throughout the crime conduct (King, 2004). While, the offender is given a chance to directly be accountable and help as much as possible what the victims have lost in the criminal conduct.

Of course all parties should be willing to participate in the programs (Umbreit, Coates, & Roberts, 2000). However, because of its comprehensive and more 'gentle' way of looking at crime, restorative justice has been on demand by victims and the offenders too, in countries that practice this policy. There are many researches that are conducted to see if victim-offender mediation yields positive results on the victims' satisfactions and offenders' recidivism. A meta-analysis by Umbreit et al. (2000), Umbreit et al. (2004), and Bradshaw, Roseborough, and Umbreit (2006) show that victims were very satisfied with the outcome of the program and the offenders actually experienced less tendency of recidivism in the later time. Because of its usefulness and effectiveness, victim-offender mediation has been practiced in many countries other than the United States, and the United Kingdom, including South Africa (Venter & Rankin, 2006), Germany (Hartmann, 2008), and New Zealand (Galaway, 1995). Malaysia, seeing the worldwide acceptance of this program, should consider

making it as part of the legislative system that focuses on the victims. However, firstly, there is a need on whether or not the concept of victims' priority in legality is well-understood among Malaysians. The finding of such research can be a basis to the implementation of restorative justice and victim-offender mediation program in this country.

2.2 Family Group Conferences

Family group conferences are an expansion of victim-offender mediation, where in this program, the family of the offenders and the victims will join to participate in the program (Umbreit & Zehr, 1996). The concept is similar to victim-offender mediation. The victim will have an opportunity to speak out about his or her feelings and the offender will have a chance to talk about why the crime is conducted in the first place, apologize and repair the harm that has been done.

Although this program has been used in adult criminal cases, family group conferences are usually conducted to treat cases of juvenile delinquency or cases involving children, hence the need why family members should be involved altogether. The family members, then, help make the decisions along with the mediator's aid (Mutter, Shemmings, Dugmore, & Hyare, 2008). Other than the decision making purpose, the family members are there together with the main parties for another important reason, which is reintegrative shaming.

Braithwaite (2006) proposed reintegrative shaming in the basis that in some places or cultures, some crimes have lower rates because they are unthinkable to begin with. In other words, the people in that place or culture cannot even think or imagine doing the thing, mostly because of the shame. Applying this to restorative justice, Braithwaite asserts that reintegrative shaming has a purpose in reconciling families in the community. By doing that, the offender should begin to feel the shame they should have felt when conducting the crime. The reconciliation process requires the meeting (i.e. family group conferences) to be held two or three times to discuss about the effects of the crime and how to repair it. All the process of discussing, reparation, apologizing, and emotional expressing can bring about shame in the self of the offender.

2.3 Reparation Orders and Referral Orders

Reparation orders and referral orders might not be entirely victim-oriented. Reparation orders require the offenders to understand the harms caused by their crime by doing some community works hence it's more community-oriented (Wolhuter, Olley, & Denham, 2009). Similar to reparation orders, referral orders require the offenders to attend a meeting where the offenders take part with the agreement on the programs to treat their criminality. The one problem with these programs is that courts play a main role in deciding what happens to the offenders. Thus, this goes the opposing way from the main purpose of restorative justice, which is to bring the victims forwards in the discussion.

However, with the increasing acknowledgment of the importance of the victim-oriented justice system, the governments in the US or the UK try to include the victims in the process, either in the process before the community work, or in the meeting for the referral orders. For example, as usual, the government will provide a forum for the victims to express their emotions and the offenders to explain why they commit the crime in the first place.

Reparation orders and referral orders with restorative elements can be adopted in Malaysian setting. In its website, Jabatan Kebajikan Masyarakat Malaysia (Social Welfare Department of Malaysia) stated that Malaysia has already had a community service program for young offenders (2009). However, it is

entirely decided by the court and the victims have no say in the process. Perhaps by including victims in the decision making process, the programs will have a stronger restorative elements.

3. Possibility of Implementation in Malaysia

The practice of restorative justice has been widely known to be a better alternative, or the least to be a beneficial addition, to the traditional legal system that usually seeks to marginalize offenders (Rea, 2012). Various types of the practice, such as victim-offender mediation, and family group conferences, instead invite the offenders back to be reintegrated into the community. Offenders are given a chance to be directly accountable to their victims and this reduces chances of relapse (Bradshaw, Roseborough, & Umbreit, 2006).

Other than that, more importantly, restorative justice gives a new way for victims of crime to be able to step forward and voice their feelings and concerns (Rea, 2012). Victims have the chance to redeem the emotional turmoil resulting from the victimization – something that is lacking in current criminal justice system. Because of this alternative in treating offenders, legal systems or social work practice around the world employ restorative justice as part of their practice.

In Malaysia, there are a few programs that most resemble the victim support as available in abovementioned countries such as the child witness protection program and a program for victims of domestic violence (Jabatan Kebajikan Masyarakat Malaysia, 2009, 2008). Among the acts that seem to have restitution for the victims – with specific target population – are Criminal Procedure Code, the Child Act 2001, and the Domestic Violence Act 1994 (Zakaria, 2003). Victims of other demographic background will have to be carefully assessed beforehand. If it is found that a particular victim has a family member or relative that could help him or her, no assistance will be given. Aids for victims that are provided are mostly in physical forms such as financial assistance and shelter, while the only psychological service that is provided is counseling.

A call for restorative justice by Datuk Seri Shahrizat Abdul Jalil (The Star, 2011), and various academicians (Koshy, 2008) is the first step towards recognizing that Malaysia is in need to adopt a new system that can be beneficial to young offenders. One of the first programs launched by the government was Community Service Order. Community Service is considered as one of the programs of restorative justice because of its principle in reintegrating the offenders back to society.

However, the recognition is restricted to the scope of young offenders, while restorative justice was built over the years because the advocators of this idea wanted the victims' voice and rights to be recognized (Rea, 2012). Even with some of the components in Malaysian juvenile justice system that have parallel principles with restorative justice, UM law associate professor Norbani Mohd Nazeri, in an e-mail communication, emphasizes that restorative justice is not practiced at all (N. Mohd Nazeri, personal communication, 27th June 2012). This might be due to the fact that victims keep being put aside and they never have any active role in decision making in the criminal justice system.

As discussed, current legal system has special attention only for children and married adults and their main focus is to protect the physical well-being of victims (Zakaria, 2003). It is not exactly in parallel with the conception carried out by the victim rights movements, which are intended for victims of all sorts of crime and for the victims' voice to be heard. The benefits of restorative justice go beyond the victims being able to be restituted, there are also some psychological advantages for victims across ages, races, and genders. Thus, the definition of victims should cover a lot more various crimes such as burglary, highway robbery and even stalking, which are usually forgotten as parts of the affected people. It can become a valuable practice in Malaysia too, but various factors need to be looked into before implementation.

First, there would be cultural factor. Parties that are involved in conducting any one of the types of the practice would be required to understand the general context and culture where the offenders and victims and their respective family live. One of the involved parties is the facilitator, or the social worker. Facilitators do not just facilitate, they also communicate with the offenders and the victims, the community, the families, and other people involved. This would demand their capability to understand the cultural aspect of these people (United Nations, 2006).

The cultural aspects are also important in the general implementation in the first place. Before truly realizing the practice within Malaysian legal system and social work departments, one should ask if the implementation would be not be in conflict with the culture of the people of Malaysia. Can they participate fully? Can they see it as a positive thing and a way to treat offenders? How about their attitude?

Secondly, restorative justice is a practice that would require certain amount of training beforehand because the population that is dealt with belongs to sensitive one. Should there be independent training, or should restorative justice be a part of social work curriculum? Van Wormer (2006) suggested some steps before integrating knowledge and training of restorative in social work curriculum. However, Van Wormer's suggestions can be useful if a country has advanced development of social work practice. Malaysia is still baby-crawling when it comes to social work education, and to integrate restorative justice training in its curriculum would require an understanding from studies that can support its move.

Thirdly, it is also warranted to see the overall attitude of Malaysian people in the implementation of social work practice in Malaysia. According to Susan Russell (Russell, 2000), some things to consider before implementing the victim-offender mediation would be to see if the victims and the offenders have the clear knowledge on what the practice is all about. Education on what restorative justice is, what it offers, and what it can do to treat offenders need to be thoroughly done before implementation. In addition to their knowledge, even if they know about restorative justice, would they have a positive attitude towards this practice? Attitude can affect effectiveness as equally as the skills of the facilitators themselves. Hence, attitude research of various parties perhaps need to be conducted beforehand.

Restorative justice has been widely practiced in a lot of countries. However, it is still a new concept in Malaysia. With promising advantages, government in Malaysia should consider creating a policy that ensures the welfare of the victims is taken care of in the criminal justice, which is the main premise of restorative justice. In addition, by implementing restorative justice, Malaysia can narrow down the gap between offenders and community, which is one of the measures to help offenders recover.

Even with the benefits and advantages, there are still needs for studies to discover Malaysians' attitudes, feelings, and perception, especially the victims of crimes, on this concept. Do they feel scared? Do they feel wary? Do they trust the criminals enough to face them? The community might be asked if they are ready to face this revolution of criminal justice system, in which their participation to reduce criminal activities or recidivism among offenders is an important step. And the offenders can be asked regarding their active part to face the victims of their own crime: Are they ready most of all?

This calls for research and education on restorative justice in Malaysia. Social workers can be trained and the government can help in regulating the policy. Institutions can partake a role in providing the means of implementation. All in all, to begin restorative justice in this country, it needs a cooperative hand from various parties to ensure its effectiveness.

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