The Possibilities of Using Restorative Justice to Confront Sexual Violence

By: Amanda Blackhurst

The aftermath of the #MeToo movement sparked a consequential dialogue within wider society, where discussions around accountability, consequences for perpetrators, the lack of societal and social support services available to victim-supporters, and the continual pervasiveness of rape culture have again made a resurgence in mainstream conversations. Restorative Justice (RJ) can be usefully defined as "a process whereby all 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."¹ In the context of sexual violence, this framework invokes questions such as: In cases of sexual violence, how does one define and identify justice and accountability? What does a process and system of justice that prioritizes the needs and wishes of victim-survivors look like? How can victim-survivors be granted a process and space where they feel like their voice has been heard?

Though the ethos of RJ has strong roots among Indigenous cultures, the practice has continued to see growth in the public consciousness in recent times.² It's worth considering the application of RJ practices in the context of sexual violence, which is an endeavor that still retains knowledge gaps. This is partly due to the fact that there is a lack of published literature of empirically based evaluations regarding RJ and sexual violence in the UK and internationally.³

What the international conversations in the aftermath of #MeToo highlighted was the continual failure of the criminal justice system (CJS) for victim-survivors, where many continue to feel betrayed by the punitive process. One recent study showed that in English speaking countries, “14 percent of sexual violence victims report the offense to the police. Of these, 30 percent proceed to prosecution, 20 percent are adjudicated in court, 12.5 percent are convicted of any sexual offense, and 6.5 percent are convicted of the original offense charged.”⁴

Former lawyer, RJ facilitator, and survivor of sexual abuse, sujatha baliga⁵, asserts the idea that traditional CJS spaces do not allow for those impacted by sexual violence to express themselves openly. Spaces such as “expulsion hearings, tribunals, or courts of law are not designed to do this; rather these forums disincentivizes truth-telling because those who harmed us know they’ll be punished if they admit what really happened. The risks are also high for survivors, who face social stigma for coming forward about their experiences.”

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³ McGlynn et al.,’I Just Wanted Him to Hear Me,’ 4.
⁵ Original stylization of name
experiences and are often forced to undergo painful questioning." Furthermore, victim-survivors have said themselves that pursuing the criminal justice route has often led to disappointing and harmful experiences. Marlee Liss, a sexual violence victim-survivor and founder of Re-Humanize, a Canadian-based organization that educates the public about the benefits of RJ, has recently expressed similar sentiments. She describes her trial as “‘a really awful experience [where she] just found that the punitive process was the least consensual process…such a disempowering experience, to sit on the stand to be drilled with questions that are so invasive and personal to [her], and to be met with disbelief.’” In a 2010 Stern Review of how rape complaints are handled in England and Wales, the report findings show that victim-survivors often express that their feelings of justice were not satisfied by just a formal conviction in court. The issue of conviction within the CJS also remind us that on average, only 14% of sexual violence victims-survivors in English speaking countries report the offense to public authorities. The majority of victim-survivors do not report their assault, and therefore do not have avenues of seeking formalized and conventional understandings of justice within the CJS. What does justice look like for these victim-survivors? The report found that most victim-survivor participants wanted a process that was ‘honoring the experience,’ which “does not necessarily equate to securing a conviction, but encompasses being believed, dignified treatment, safety, support services, feeling in control and the ability to make informed choices.”

The frameworks of RJ seek to provide a more holistic approach to justice that considers the care and experience of victim-survivors, in addition to focusing on repairing the harm that was committed by the offender. RJ can also be used in conjunction with the CJS at various stages, “including pre-sentence, as part of a sentence and post-conviction”. For victim-survivors who did not file a report to public authorities, RJ can also be used as a separate method of justice if the circumstances are appropriate.

The benefits of using RJ in the aftermath of sexual violence is often seen in the structure and agreements to the conditions of what restorative dialogue between the victim-survivor and offender can look like. This process can take many forms, such as peacemaking circles and conferencing models. A common option is restorative conferencing, whereby “the offender and victim meet face to face, together with community and/or family supporters, with dialogue managed by a trained RJ facilitator.

9 McGlynn et al., ‘I Just Wanted Him to Hear Me,’ 15.
10 Ibid., 3
11 Ibid.
12 baliga, A different path for seeking justice for sexual assault
13 McGlynn et al., ‘I Just Wanted Him to Hear Me,’ 3.
Separate from processes of civil mediation, RJ is first established by the offender admitting that a criminal offense occurred, where the roles of the victim-survivor and offender are clearly drawn (ibid). In the conferencing model, the face to face meeting is meticulously planned, which is partly due to safeguarding issues. Risk assessments are also common precautions that counselors and facilitators employ to ensure that the process and its aftermath are not detrimental to the victim-survivor. Once all parties agree to move forward, including the offender, facilitators and counselors meet with the victim-survivor and offenders separately to prepare each party of the meeting’s content and structure. Sometimes, there is a pre-planned script that details what questions will be asked and at which times each party is designated to speak. The idea is that the preparation allows the parties to plan what they want to say in the meeting with no surprises and where they ultimately are able to express everything that they want to say. Various scenarios are often rehearsed with the victim-survivor and their counselor and/or facilitator and backup plans are made in the case that if the victim-survivor found herself/himself distressed, unable to speak, and/or convey their points, a member of their support network would have permission to speak on their behalf. A consideration of power dynamics is central to these preparations. This is seen even in the planning of the logistical arrangements of the meeting, such as the arrival and entrances of each party. Many victim-survivors have found this process and structure empowering, as it engages their ability to make choices, prepares them for what to expect, allows them to control the amount of information they’re comfortable revealing, and gives them the ability to say exactly what they originally planned and find out the answers to the questions that they’ve always wanted to ask their assailant.14

Restorative dialogue can also offer benefits to the person who committed the assault.15 In some cases, offenders can also be victims of abuse themselves. Restorative dialogue can help the offender in their healing process. Romola Thumbadoo, a Carleton University research associate and coordinator of Circle of All Nations, states that “offenders oftentimes are victims of abuse themselves, and they need to work through a process the traditional system doesn’t offer them...There needs to be a deeper reflecting within government structures for dealing with crimes to promote systemic change.”16 In addition to the facilitation of repairing harm, restorative dialogue can also provide offenders with opportunities to understand how their actions affected the victim-survivors and their lives. In doing this, a hope for a RJ framework in responding to sexual violence is the prevention of repeat offenses among offenders.

Though RJ can facilitate a more victim-survivor centered approach, it should be noted that RJ is not an appropriate option for every case of sexual violence. The use of RJ in response to sexual violence still remains highly contentious. Some object to the practice

14 McGlynn et al., ‘I Just Wanted Him to Hear Me,’ 11.
16 Neustaeter,’I do forgive him as a human’
in this context due to the possibilities of the victim-survivors being re-traumatized. Others say that if RJ is seen as an alternative to CJS, it can take attention and efforts away from the valuable work of reforming the CJS. Some also say that RJ in the context of sexual violence may also trivialize the experiences of victim-survivors. In other cases, RJ might not be possible because the offender refuses to accept responsibility and accountability for their harmful actions. Furthermore, the overall wellbeing of the victim-survivor is paramount, therefore any alternative motivations by the offender that threatens this priority, such as manipulation and unsafe conditions, hinders the RJ process from the beginning. It is also worth mentioning that RJ processes are often resource and support intensive, in addition to being time consuming and possibly costly due to the incurring expenses of working with counselors and facilitators. RJ should also not be seen as a complete substitute for treatments of care, such as post-traumatic stress treatment and therapy.

It is clear that the CJS continues to fail victim-survivors. RJ makes a case for a step towards committing more care and victim-survivor centered approaches, where victim-survivors are able walk away from a justice process feeling more empowered, supported, believed, and their experience honored. If the victim-survivor is interested in restorative dialogue, wishes to instigates a RJ process, believe that they are in a good place in their recovery journey to pursue this process, do not face immediate danger, and have a good support network, then they should be aware of RJ as a possible option to seek justice beyond traditional criminal systems.

*Note from author: Though I have tried to provide the context for the potential benefits of using RJ to address sexual violence, this piece is by no means a comprehensive summary nor guide. I have only touched on a few points. The literature on the link between RJ and sexual violence is growing and I highly encourage more in-depth reading.

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17 baliga, *A different path for seeking justice for sexual assault*
18 McGlynn *et al.*,'I Just Wanted Him to Hear Me,' 1.
19 Neustaeter,'I do forgive him as a human’
20 Griner, *The better way to support rape victims: put their needs first.*