



RESTORATIVE JUSTICE AND SEXUAL VIOLENCE

Sexual violence is different from most other offending behaviours because it occurs in an intimate context, because of its dynamics and specific trauma, and because it often happens between people who are acquainted. In most cases there will be some form of past, perhaps present and even future relationship between the victim and the offender. The difficulty of reimagining a safer and positive future relationship is often one of the primary concerns of victims and others indirectly affected by the sexual harm. Very often the perceived 'safe' approach to 'manage' this tension is to separate the parties and remove the potential for ongoing contact. However, frequently this is not sustainable, or even desirable, especially for the victim. Additional programmes may be provided to support the victim to change the perception of oneself after the crime and to discourage the offender from committing further violence and harm.

What is specific about sexual violence?

Sexual assault and harm involve a sexual act directed at someone who does not consent. They include a range of non-consensual or coercive sexual behaviours, and broadly include: rape, sexual abuse, sexual acts with a child, molestation, exposure offences, and an attempt or threat to do any of the former. Sexual violence is a complex issue because of the intimate nature of the act, the fact it often occurs within a relational context and it strengthens socially constructed gendered discourses and dynamics. The criminal justice system fails to address victims' needs but also to take into consideration the overall experience of the parties involved (e.g. when the offender experienced victimisation in an earlier stage in life). Also, a very low percentage of cases of sexual violence reach the criminal justice system (e.g. in cases of intrafamilial violence victims prefer to keep private about the situation), showing a need to identify a different way to undo the injustice and repair the harm.

What is restorative justice?

Restorative justice is an approach of addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved.

Restorative justice is an approach oriented towards repairing, as far as possible, the harm caused by crime, conflict or other transgressions. A core element of restorative justice is the participation of the victim, the offender and possibly other parties, such as the community, to voluntarily come together with the help of a facilitator to address the harm and its consequences. The most common processes are victim-offender mediation or conferencing, which take place as direct face-to-face encounters (after a well developed preparation) or indirect encounters (e.g. via video calls or messages). What's unique about restorative justice is that it creates a safe space where the parties are empowered and responsible for the consequences of the act that brought them together.





Restorative justice and sexual violence

The benefits of restorative justice in sexual violence cases are in general not very different from restorative justice in other cases: participation, possibility to express one's experience and story and being heard, and plan a reparation for the harm caused or suffered.

Restorative justice offers victims the chance to reclaim their voice, not as a victim but as a survivor. Victims often speak of their need to re-narrate their life stories as 'survivors' of sexual violence rather than 'rape victims'. Victims can challenge the perception that their lives have been ruined: the change in the self-narrative is one of the primary benefits mentioned in the aftermath of a restorative justice encounter. Often victims wish to meet the perpetrator of the harm that they have suffered so that they can have their questions answered: "why did you do it?" "why did you choose me?" "will you do this again to me or someone else?" "how much remorse do you feel for the suffering that you caused me?" an encounter with the perpetrator can support recovery and enable victims to move on with their lives.

Restorative justice interventions can support the rehabilitation of sex offenders. They encourage a genuine acceptance of accountability, sincere expression of remorse, motivation to participate in therapeutic treatment and a personal journey or transformation. Restorative justice can support desistance from crime and is congruent with the focus of many intervention approaches with sex offenders.

Restorative justice in sexual violence cases has a profound transformative effect on the experience of shame for victims, offenders and their families, although these experiences are obviously different. Properly applied, it enables the articulation of the intense sense of shame in a rehabilitative and non-stigmatising manner which can be part of a process of personal transformation.

Evidence suggests that a safe restorative justice practice is contingent on particular conditions that apply to all participants, the framework/setting and the mediators/facilitators. These conditions are:

- Assessment of the participants (suitability versus eligibility);
- Risk assessment;
- Thorough preparation;
- Interagency cooperation between experts on sexual offending, victimization and treatment;
- Flexibility and sufficient allocated time;
- Mediators/ facilitators with knowledge of the power and control dynamics of sexual violence and of the effects of trauma, with a special training in facilitating a restorative justice encounter in these complex cases.

Think about

- *Victim safety* - There are concerns that the informal nature of restorative justice compared to the more formal criminal justice processes may place victims at risk of re-victimisation and that unchallenged power imbalances may be perpetuated and patterns of abuse may be reinforced.
- *Manipulation of the process by offenders* - It has been contended that offenders may use the restorative justice process to minimise or diminish their responsibility for the offence or indeed trivialise the abuse or shift the blame to the victim.





- *Pressure on victims* - Some victims may not be effective self-advocates, especially they have particular vulnerabilities or are minors, and their interests may be minimised or marginalised, putting victims under pressure to accept certain outcomes (e.g. an apology, even if it is felt to be insincere), to offer forgiveness, or even to accept an offender back into the home.
- *Conflicting loyalties* - In some forms of intra-familial sexual violence, parents, siblings and other family members and friends may have unclear and conflicting loyalties, resulting in victims being vulnerable to manipulation.
- *Public interest not served* – Restorative justice (especially if used as diversion) has been positioned as being incompatible with the long-standing goal of women's rights activists to move violence against women from the private to the public sphere and establish it as a public crime.
- *Power imbalances* - Power imbalance is often mentioned as one reason for not doing restorative justice in cases of sexual violence, as in such cases one person (the offender) has demonstrated absolute power over another (the victim-survivor).

Resource kit

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