

Restorative Justice in Bangladesh: Experiencing as a career Judge



In Bangladesh we are dispensing justice in a judicial system which is predominantly an adversarial model. Our litigants are more interested in taking revenge for what they had to pay or suffer being subjected to offence or wrongdoing. In such an adjudicative environment we cannot limit our role as a formal adjudicator rather assuming the role of a mediator. We try to reconcile the legal vengeance at the litigating parties in tactful manner where the problems are addressed more humanely and cause of

justice is ensured. District Legal Aid Officers(who are also deputed from judges) provide legal advice, mediate between litigating parties and influence litigating people for compromise and through this way we get the number of cases reduced and peace and harmony in the society restored.

In the judicial system of Bangladesh, we provide the restorative justice in the following aspects-

- Restoration of the People in their normal course of life and in the community
 - Restoration of the victim of offences
 - Restoration of the offenders
- Restoration of Property from illegal possession
- Restoration of Rights where the same has been infringed
- Restoration of Peace and Harmony in the community by injunctive orders

As a Judge I have been personally involved in using Restorative Justice in three different capacities viz.-

- **As a Civil Judge**
 - Through enforcing rights
 - Through Alternative Dispute Resolution
- **As a Criminal Judge**
 - Compounding of offences and inspiring for compromise out of the courts
 - Bailing out the offenders of petty accusations
 - Bailing out on condition of compromise
 - Inflicting minimal punishment and fine in trivial cases
 - By Judicial Enquiry of the cases
 - By recording statements of the victims of offences and confessions of the accused persons
 - Committing Child victims and Juvenile offenders to the correctional homes
 - By giving protection order for the victim in the cases involving Domestic Violence
- **As a Judge of the Family Court**
 - By actively facilitating the pre-trial amicable settlement of the family disputes between the husband and the wife

- Restitution of Conjugal Rights
- By judicial disposal of claim of dower and maintenance of the woman and children from the accused person
- Assisting the decree holder of the family case to realize her legal claim through the Court where the judgment debtor remains unwilling to satisfy that claim voluntarily even after the order of the Court.

To give an example in this context I want to describe one of my professional experiences i.e. when a woman files a complaint in my court against her husband for dowry demanding I, primarily try to sort out disputed issues between them. Secondly, I give them few hours of time to think and negotiate on amicable settlement and thereafter I hear their arguments for compromise. Then I interfere for the amicable settlement of the matter and cause a prompt justice to them resulting in a reuniting matrimony towards permanent familial peace. In this process 20% of the cases become amicably settled at the very inception of the legal rivalry. In case of other serious disputes involving domestic violence I give the couple 7 to 15 days' time and then most of the time they become mingled and as the family sustains the women get restorative justice which can be considered as phenomenal step in the protection of human rights. Since 2010 making a team integrating my staff and concerned lawyers I have been resolving family disputes amicably in which women are the victims. From 2010 to August 2013 I have settled 14 family disputes applying alternative dispute resolution mechanism in which concerned couples continued their conjugal life. From September 2013 to October 2015 the statement of facts from 108 women and female children victims were recorded at my Court. The recorded statements formed significant part of evidence for assuring justice. Within the above time span approximately 100 petitions filed by the women against their respective husband for demanding money have been taken into consideration to ensure their rights to justice and 30% of those were disposed of amicably.



Question comes in mind whether the adoption and execution of the Restorative Justice interventions are legitimately practicable for the judges without any formal legislative authority or not. There are answers in the same mind. Let's understand in this way-

Judges' law making matters. It is irrefutably a process of sculpting 'goodness' by the GAVEL of the judge holding it. It is destined in eradicating the inherent vices of any given legislation. I reckon that it is too often imperative for invoking judicial legislation in those jurisdictions the legal superstructure of which clearly is dearth of providing sustainable and time-compatible solutions of people's extraordinary crises. Some jurisdictions manifestly lack the incorporation of law that can ensure Restorative Justice. But the universal commitment of all the states and their judiciaries of the civilized nations towards promotion, protection and more specifically conservation of human rights' normative regime demands the most accommodative and supportive justice sector innovations. To me Restorative Justice programs are the product of most human-centric thinking of our time in the realm of dispensation of legal justice. Restorative Justice is more humanistic and

accommodative. It goes hand in hand with the right to life and liberty of the persons who come in contact/conflict with the laws. It provides opportunity to lead the normal course of life even when someone is facing a trial or become subjected to judicial proceedings. This can be a mechanism which enables the people to take part in the financial activities rather being captivated in the darkness of the jail custody. In this process of dispensing justice an offender or victim can get chance to be rehabilitated in their respective families and in the sphere of their society. It also reduces the tendency of retaliation amongst the litigant people and the peace and harmony in the community becomes restored sustainably. The rate of case disposal can be increased in this system and the prison can be freed from over burden of offenders. This system is amply prone to protection of human rights. In the jurisdictions of no apparent Restorative Justice legal bases and legislative branch has no vivid intention to infuse the doctrine of Restorative Justice in incumbent legislating the judges cannot stand still and witness the orthodox adjudication on the courts as the inert spectator. In the name of judicial activism many judiciaries as the sanctuary of justice are creatively enforcing the rights of the citizenry which are not otherwise enforceable in the traditional course of justice. In the same fashion the judges of those jurisdictions are shouldering the gap-filing role of judicial rulemaking in any pro bono cause. And Restorative Justice mechanisms are not out-of-the-periphery of these awesome judicial activisms. The adoption and execution of the Restorative Justice interventions are largely legitimately practicable for the judges without any formal legislative authority. But while initiating and functioning the Restorative Justice program the judges must adhere to the basic adjective scheme of the law of the land so that the said program can in no way create 'judicial idiosyncrasy' and the superior courts can interfere the program as being 'ultra vires'. Highest caution must be maintained through the judicial competence of that initiating judge so that in the name of Restorative Justice no litigant person become deprived of Justice and the natural justice dispensation can be viewed as the 'judicial anarchy'.



For the dispensation of justice through our adversarial court environment we the judges strive for judicial activism to restore the victims and the accused too and obviously young people get their legal redress in a different atmosphere. For an example, we have an enactment that is *The Children Act 2013* comprising of numerous children-friendly provisions and definitely makes room for time frames. So, within our legislative premises, we, the judges conduct separate trial procedure for young people, offer the young victims compensation and sometimes call upon both for settling

issues amicably.

The said Act makes provisions regarding time-frame for the trial of young people and in accordance with the provision the trial has to be completed within 360 days from the date of appearance and if trial cannot be completed due to some inevitable causes 60 more days are provided for accomplishment. Besides the above enactment we here in Bangladesh jurisdiction possess an enactment called *The Domestic Violence (Prevention and Protection Act 2010* in which provisions are envisaged for the child and women victims. The time frame prescribed in this Act for trial of the offences involving domestic violence is 60 working days and the proceeding, if not disposed of within prescribed time frame another 15 working days are provided.

Being within some specific time frame while judging young people becomes possible the trial of adult offenders cannot be done within some specific time frame in our jurisdiction. Though we are not being able to contrive sufficient mechanisms and provisions for speedy disposal of cases we are struggling for that with full-fledged enthusiasm and adopting sustainable case management mechanisms. Hence, the trial procedure of young people is comparatively swifter than the mature offenders in incumbent Bangladesh Legal System. We encountered that scope is there for the adoption of Restorative Justice Mechanisms in case of the abovementioned statutes.



Restorative Justice programs can be adopted and initiated by the court of any stratum but not all the courts preserve the extraordinary power of rule-making which is the unique power of the superior judges of any given judicial branch to fulfil the gap left in the legislative enactments of that country. Law of persuasive precedence connotes that the dicta and verdicts of the apex court of any jurisdiction have power of law and is binding on all the subjects of law of that land. Since judicial rulemaking power can provide a 'flawless' and 'complete' corpus of law for any given legislation, the inclusion of restorative justice provisions is obviously

possible by the competent courts. Moreover, for the judiciaries of the developing countries the benign and pro bono judicial service to provide 'complete justice' requires innovative scheme in the justice dispensation. Restorative Justice, even if not contemplated by the legislative branch of any given state, the judicial branch there has judicial competence to introduce that in the advent of judicial activism thereof invoking the power of 'judicial review' or 'structured interpretation of statutes'.

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[Note: As a Restorative Justice enthusiast Naurin Aktar Kankon was selected as the expert panelist from the Women Judges in Bangladesh to speak on the Restorative Justice Mechanisms in the Justice sector of Bangladesh in the 13th Biennial Conference of the International Association of Women Judges(IAWJ), held in May 26-29th, 2016 at Washington D. C., USA titled "Women Judges and the Rule of Law: Assessing the Past, Anticipating the Future" being awarded a partial scholarship to attend the conference.]