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# **REAL JUSTICE IS TO RESTORE THE BALANCE**

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## **ABSTRACT**

Real justice is to restore the balance that was in the beginning before the disturbance arose in the form of a conflict or crime. Actions of individuals are not be viewed in the binocular vision of good or evil, right or wrong, as by doing so we are inherently inducing conflict into the minds of people by dividing, conditioning and giving a false social identity to them. In this paper, we explore the need for an alternate system of justice and the philosophy behind such a notion. Restorative Justice as a highly suitable alternative, and it can be effectively applied to balance the needs of all the people involved at the individual level and integrating them back into society, while paving the way for peace and growth to continue as much as it was before the disturbance due to a conflict or crime.

## **INTRODUCTION**

Why is today's society in such a state of unrest and constant conflict despite lightning intellectual growth, financial abundance, cutting edge technological innovations and scientific breakthroughs? Is it because we have unleashed a lot more action which could have been integrated into the society in a peaceful and harmonious way? Should we not model justice in a predictive and preventive way instead of being post-operative? Should we model our laws to create fear in the society and shame the individuals with guilt or should it be to free them from the influence of ages of past social conditioning, while laying down new pathways to progress and freedom of action? Should not laws be modeled in such a way that they reduce the conflicts among people while restoring the balance that promotes peace and growth by self-initiative. Laws should promote partnership and harmony among the people in the society while bestowing honor on the individual. A society filled with individuals who are at peace is bound become peaceful at every level heralding a new era of unbounded growth for the society in an integrated and harmonious manner.

Is there a better way to look at justice and the application of law, to restore the balance that was in the beginning is the bold question this paper tries to address by re-orienting our thought process and the associations we have made within the limited sphere of cause and effect, right and wrong, good and evil that we take into consideration to approach justice and formulate laws.

## **THE ARROW OF TIME**

The Arrow of time is always pointing forward to the future and there is no way for us to be deterministic either as a society or at the individual level, the only difference being that social changes occur slowly over a period of time, which are themselves induced by and are an effect of all the changes that occur at the individual level. The laws we formulate should keep in view the cultural ethos, moral laws of a civilization. The arbitrariness induced by time should be balanced with the alignment of Individual freedom of action on the society and social changes that occur in different parts of the world on the individual, without losing the essential identity of the culture and civilization. It is this alignment that can make or break a Nation or a civilization, either by maintaining the balance or inducing further disturbances.

## **THE PHILOSOPHY BEHIND THE NOTION**

There are only two types of actions, those that lead to either balance or disturbance. Let there be no confusion in this that whether it is an individual or a group, only actions which lead to balance are to be considered legitimate and actions which lead to disturbance should be considered illegitimate. Due to sociological conditioning of past ages, man is inherently prone to conflicts. Along with this the passage of time also introduces arbitrariness and brings changes at all levels. Actions are not to be viewed either as good or evil, right or wrong, as by doing so we are inherently inducing conflict into the minds of people by dividing, conditioning and giving a false social identity to them. This identity that we have induced creates further unrest and continues to create disturbances in the society instead of restoring the balance that promotes peace and growth.

It should be the *raison d'etre* of judiciary to increase the overall balance in all possible ways in the individual and the society, while reducing the disturbances. Justice should not by itself induce conflicts by creating laws that are lopsided and inherently prone to increase conflicts in any form. A peace-loving society with individual peace as its objective will surely become an ocean of peace and set an example for the rest of the world.

The actions of individuals or groups with strong lopsided tendencies along with pre-meditated intentions leads to disturbance in the lives of all those involved. They have their motivations in

their lopsided tendencies even before the intentions take root. When they fully knowingly resort to actions with such intentions, they cause disturbances in the lives of all those involved and thereby increase conflicts among individuals and society at large.

When we look at only the immediate cause and effect, we are only looking at the disturbed state caused by such actions and when we apply law to give justice in such a disturbed state, it still retains the disturbance but only tries to avoid the further damages that might follow. It does not address the root cause that lead to this disturbance. Hence even after justice is pronounced, the disturbed state continues to remain and affect the persons involved for the rest of their lives adversely. System of justice should be modeled for restoration of balance while promoting peace and growth as much as it was before the disturbed state.

Any system works best and produces results for the benefit of all those involved, only when the forces that shape the system are in a harmonious alignment and are inherently oriented towards the desired result. In other words, our motivations and actions are predetermined by the alignment of forces and people playing a part in such a system are invariably mere victims of the faulty system. Often it is seen, when some external agency introduces an artificial change in the alignment, solely for its own selfish motive and personal benefit while going over and above natural and moral law of the culture and civilization, it disturbs the alignment and creates disharmony, which manifests as disturbance at many levels. This is the root cause of the disturbance and the agency that causes it should be held responsible for. Similarly, if an agency tries to restore the balance and re-align the system to create harmony and thereby continue the benefit for all, such an action should be considered lawful and the agency should be rewarded by the legal system as an unconventional new approach. This applies to individuals, groups and the system of justice.

In the present system, we are using the whole force of law to punish those who caused the disturbance, while we are leaving those who follow law to continue in the disturbed state that was caused by the actions of those who induced it. This indirectly and without intention punishes those who follow law, to carry the burden as an outcome of justice and adds further irreparable impact on the society by forcing a false perception of justice in the minds of people at large.

Let us look at causality now without going into the metaphysics of the same, which will lead us to only a philosophical problem instead of a legal one. Individuals or groups are inevitably involved

in actions of transactional nature. It is at the beginning of such a point of contact all the forces come into play. If the initial intentions by which they got involved are maintained throughout, it ensures balance to be maintained. It is when one or more individuals solely for self-interest try to change the course of the initial intention by which they came into contact without the willingness of the rest, there arises a state of disturbance. The effort of law should be to arrive at such a course changing intention to pinpoint the root cause.

There is a problem with causation that is mostly ignored and not investigated deeply into. It is that after undergoing many inversions due to subsequent actions, causes and effects might reverse their roles and may create an illusion of some subsequent cause to be the root cause and push the pans of justice and swing the laws. Hence unless we identify and retain the root cause in purview, while analyzing and debating about the subsequent causes and effects, the laws will not clearly come into force and justice will not restore the balance that was in the beginning. We also need to assess, if the root cause was intentional or un-intentional.

In such cases where we arrive at a root cause which is un-intentional, the next subsequent cause with pre-meditated intention should be validated and so on, until we arrive at the root cause that induced the disturbance.

It is only later the actions by all the people involved should also be analyzed, while keeping the root cause in view. Once the analysis of subsequent causes and effects along with root cause is completed, we can assign weightage to the actions of the people involved and apply laws that govern to bring justice, which in other words would be to restore the balance that promotes peace and growth.

Also once the root cause is identified and we know that it is intentional, it should also be considered whether there was any force of law that inadvertently induced the intention towards such an action, as this will also bring about the lopsided laws that cause disturbances in the society, which is making the people involved mere victims of a faulty system and can be useful to rectify such laws progressively. This will also ensure that the moral and social laws of the civilization continue to be upheld and creates a smooth path for the growth of a Nation.

In an ideal situation, when the root cause is identified and all the subsequent causes are analyzed, all the causes and their intentions will fall into a harmonious arrangement and justice will clearly

emerge out of it. Whenever such is not the case and due to the influence of causes and effects on all the people involved in the system, there will continue to be a disturbed state even after justice is delivered, in the individual or in the group or in the judiciary involved in the process to bring justice. When the harmony and state of peace emerges in all those involved, then those who caused the disturbance will be naturally induced into a state of repentance and only then can we consider justice to be delivered and balance to have been restored.

Laws we formulate should promote freedom of action and people should be encouraged to follow the same by self-initiative with the spirit of law in view instead of getting entangled in intellectual debates and abstract situations of life that are not line with the conditioning due to the ages of the past . The laws that we formulate should neither be merely a reflection of the current state of society nor as a reminder of the society of the past, but be progressive to show an illumined path to freedom of action for all, while promoting partnership, peace and harmony in the individual and society at large.

### **RESTORATIVE JUSTICE AS AN ALTERNATE SYSTEM**

Restorative justice is an approach to justice in which one of the responses to a crime is to organize a meeting between the victim and the offender, sometimes with representatives of the wider community. The goal is for them to share their experience of what happened, to discuss who was harmed by the crime and how, and to create a consensus for what the offender can do to repair the harm from the offense. This may include a payment of money given from the offender to the victim, apologies and other amends, and other actions to compensate those affected and to prevent the offender from causing future harm.

A restorative justice program aims to get offenders to take responsibility for their actions, to understand the harm they have caused, to give them an opportunity to redeem themselves and to discourage them from causing further harm. For victims, its goal is to give them an active role in the process and to reduce feelings of anxiety and powerlessness. Restorative justice is founded on an alternative theory to the traditional methods of justice, which often focus on retribution. However, restorative justice programs can complement traditional methods.

Academic assessment of restorative justice is positive. Most studies suggest it makes offenders less likely to reoffend. A 2007 study also found that it had the highest rate of victim satisfaction and offender accountability of any method of justice. Its use has seen worldwide growth since the 1990s. Restorative justice inspired and is part of the wider study of restorative practices.<sup>1</sup>

In its most idealized form, there are four active features of restorative justice, i.e., *to repair, restore, reconcile, and reintegrate* the offenders and victims to each other and their shared communities<sup>2</sup>

Restorative justice is based on the Gandhian premise that forgiveness is the attribute of the strong. The focus of the system is to heal. Towards this end, questions are asked, answers sought, problems solved, conflicts resolved, and the harm caused is repaired. The basic tenet of restorative justice is to adopt a restorative approach by attempting to find out what happened. Next is to find out what needs to be done, to undo the resultant damage and then get it done. In doing so, they repair the harm; restore the human worth and dignity; reconcile the accused and victim and reintegrate the offender with mainstream society. Restorative justice involves the families of the victims as well as offenders to create an atmosphere where the offender can be accepted back in society.<sup>3</sup>

There is good evidence from the UK pilot project June 2015, providing victim-led restorative justice, has been successful in many respects:

- a) The need for victim-led restorative justice is recognised by referrers and they were able to identify victims who were interested in participating and who thought the service had the potential to help them.
- b) Typically, victims referred to the project had experienced considerable harm from serious crimes and this in turn had resulted in a range of long-lasting psychological and emotional difficulties. Victims were often aware that they needed help, but it was a common complaint that the criminal justice system had failed to recognise or respond to their needs.
- c) Victims who participated in this restorative justice project reported that they were happy with the way the service was delivered, that their experiences were largely positive and

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<sup>1</sup> [https://en.wikipedia.org/wiki/Restorative\\_justice](https://en.wikipedia.org/wiki/Restorative_justice)

<sup>2</sup> Restorative Justice in India: Traditional Practice and Contemporary Applications  
edited by R. Thilagaraj, Jianhong Liu

<sup>3</sup> <https://timesofindia.indiatimes.com/blogs/legally-speaking/restorative-justice-incorporating-gandhian-ideals-for-a-cathartic-approach-towards-punishment/>

that, even part way through the process, this project was already helping to repair some of the harm caused by crime.

- d) Victims who were able to take part in a restorative justice conference were pleased with the outcome. Generally, they felt they had been well prepared for the conference and that appropriate and effective safeguards were in place. They were pleased with how their conference went and felt better in significant ways as a result.
- e) All victims who were interviewed for the research would recommend restorative justice to other people.<sup>4</sup>

## **CONCLUSION**

Absolute restoration of balance may not be possible, however restoration of balance to the proximity is practically possible and in turn would help people at large. Restorative Justice is a promising alternative and can be effectively applied to balance the needs of all the people involved at the individual level and integrating them back into society, while paving the way for peace and growth to continue as much as it was before the disturbance due a conflict or crime.

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<sup>4</sup><https://restorativejustice.org.uk/sites/default/files/news/files/Final%20Report%20Restoring%20the%20Balance%20June%202015.pdf>