

บทคัดย่อ

กระบวนการยุติธรรมเชิงสมานฉันท์ (Restorative justice) คือกระบวนการที่ผู้เสียหาย ผู้ต้องหา ครอบครัว และชุมชน ร่วมกันแก้ไขความเสียหายที่เกิดจากอาชญากรรม โดยฝ่ายผู้เสียหาย ครอบครัว รวมถึงชุมชนจะประนีประนอมและเจรจาต่อรองกับฝ่ายผู้ต้องหา (mediation, conciliation and negotiation) ภายใต้ความช่วยเหลือของผู้ประสานงาน (a facilitator) เพื่อบรรลุถึงความตกลงร่วมกันในการเยียวยาผลร้ายจากอาชญากรรม กระบวนการยุติธรรมเชิงสมานฉันท์มีข้อดี 2 ประการ คือ (1) ทำให้ความต้องการของผู้เสียหายได้รับการตอบสนอง เมื่อผู้เสียหายสามารถเรียกร้องให้ผู้ต้องหาเยียวยาความเสียหายที่เกิดขึ้นได้ด้วยตนเอง ผู้เสียหายย่อมได้รับการเยียวยาตรงตามความประสงค์ของตนมากที่สุด และ (2) ผู้ต้องหาอาจจะสำนึกผิด ขอโทษ เยียวยาความเสียหายที่เกิดขึ้น และกลับตัวเป็นคนดีของสังคม

กระบวนการยุติธรรมเชิงสมานฉันท์ได้รับการวิจารณ์ ดังนี้ (1) การจัดทำกระบวนการยุติธรรมเชิงสมานฉันท์เป็นไปได้ยาก ในกรณีที่ฝ่ายผู้เสียหายและผู้ต้องหาไม่ประสงค์จะพบและเจรจาร่วมกันเพื่อหาทางเยียวยาแก้ไขความเสียหายจากอาชญากรรม กระบวนการยุติธรรมเชิงสมานฉันท์ย่อมไม่อาจเกิดขึ้นได้ (2) กระบวนการยุติธรรมเชิงสมานฉันท์ละเลยหลักความได้สัดส่วนระหว่างผลที่ผู้ต้องหาได้รับกับความร้ายแรงของการกระทำของผู้ต้องหา เพราะข้อตกลงในการเยียวยาความเสียหายย่อมเป็นไปตามความพอใจของผู้เสียหายและผู้ต้องหา ดังนั้น คดีในลักษณะเดียวกัน อาจมีระดับและวิธีการในการเยียวยาความเสียหายต่างกันและไม่เท่าเทียมกัน (3) ผลร้ายของอาชญากรรมและความรู้สึกของผู้เสียหายไม่อาจทำให้ผู้ต้องหาจะสำนึกผิดและกลับตัวเป็นคนดีได้จริง (4) กระบวนการยุติธรรมเชิงสมานฉันท์ไม่สามารถเยียวยาความเสียหายทางด้านจิตใจ เช่น ความโกรธ และความกลัวของผู้เสียหายได้จริง และ (5) กระบวนการยุติธรรมเชิงสมานฉันท์ขัดกับสิทธิในการมีทนายความของผู้ต้องหา เพราะไม่อนุญาตให้ทนายความเข้าร่วมในกระบวนการยุติธรรมเชิงสมานฉันท์

Restorative justice in a nutshell

Sakulyut Horpibulsuk*

The contemporary criminal justice is “a process which the state responds to behavior that it deems unacceptable”.¹ The unacceptable behavior refers to any act against the criminal law. When someone breaks the law, the police officials investigate and arrest the law breaker. Then, the public prosecutor prosecutes him to the court. Subsequently, the court tries and gives a sentence. Finally, the prison agency implements imprisonment sentence as well as rehabilitates the offender.

This justice system is criticised in 2 aspects. Firstly, the justice system excludes the victim from the system.² The victim is the most affected by the crime. In fact, there is not any space for him in the system. His needs and feelings are omitted. His role is limited to act as a witness when the state requires him. Secondly, the labeling theorists argue that the justice system is criminogenic.³ The law breaker after being arrested, prosecuted, tried and sentenced is stigmatized as a bad person. He cannot reintegrate into a law-abiding society. He may befriend other criminals, learn to be a professional criminal and commit further crimes at the end.

Unlike the contemporary criminal justice, restorative justice does not focus on punishment and rehabilitation of the law breaker, but concerns with how to solve the aftermath of the crime; how to respond to the needs of the victim; how to make the offender responsible for his action and how to reintegrate the offender into a law-abiding society. This article aims to discover some aspects of restorative justice in brief. It divides into 3 parts. Firstly, it investigates the concept of restorative justice in principle.

* Provincial Public Prosecutor attached to the Office of Legal Counseling, the Office of the Attorney General of the Kingdom of Thailand.

¹ E McLaughlin and J Muncie, *The SAGE Dictionary of Criminology* (2nd SAGE Publication, London 2007) 93

² R Young and C Hoyle, ‘Restorative Justice and Punishment’ in S McConville (ed), *The Use of Punishment* (Willan Publishing, Devon 2003) 202

³ J R Lily and others, *Criminological Theory: Context and Consequences* (3rd, SAGE Publications, London 2002) 110

Secondly, it explores the implementation of restorative justice. Thirdly, it criticises restorative justice.

1. Concept of restorative justice

This topic focuses on (1) definition of restorative justice, (2) fundamental concepts of restorative justice (3) objectives of restorative justice and (4) elements of restorative justice.

1.1 Definition

Modern restorative justice principles have emerged over the last 20 years. It is defined as “any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator”.⁴ Restorative justice is inspired by indigenous community justice still used in New Zealand, Australia and North America.⁵ Under the community justice, when a crime has been committed, native people in these countries will solve their aftermath of crimes within the context of their kin and community.⁶ The offender and his family will meet and talk to the victim and his family on how to solve their conflict. The general sanction to the conflict is restitution or compensation.⁷ The offender is obliged to compensate the victim for his losses. Conclusively, restorative justice is a dialogue process, for example, mediation, conciliation and negotiation⁸ whereby the stakeholders of a crime voluntarily solve their aftermath of crime by themselves.

1.2 Fundamental concepts

Restorative justice is based on three fundamental concepts.⁹ Firstly, a crime is a violation against people and interpersonal relationships. The primary victims of the

⁴ Basic principles on the use of restorative justice programmes in criminal matters s 2

⁵ T Newburn, *Criminology* (Willan Publishing, London 2007) 744

⁶ H Zehr, *Changing Lenses: A New Focus for Crime and Justice* (3rd Herald Press, Ontario 2005) 100

⁷ D Van Ness and K H Strong, *Restoring Justice* (Anderson Publishing Co. OH 1997) 8

⁸ Basic principles on the use of restorative justice programmes in criminal matters s 2

⁹ H Zehr and H Mika, ‘Fundamental Concept of Restorative Justice’ (1997) <<http://hopehealing.org/PDF%20files/Fundamental%20Concepts%20of%20RJ.pdf>> accessed 16 November 2007

crime are those who are the most directly affected by a crime, for example an injured person, his family and community members.¹⁰ These victims have moral justification to deal with the aftermath of the crime by themselves. Secondly, the violation creates an obligation to the offender. His main obligation is to understand the consequence of his action and to take responsibility for damage he has caused to these victims.¹¹ Thirdly, restorative justice seeks to heal and put right the wrong insofar as possible. The needs of the victims are the starting points of justice. The offender must repair the harm to these victims in accordance with their needs.

From these concepts, restorative justice is different from the contemporary criminal justice system as following. Firstly, the justice system claims that a crime is an act against the criminal law and the state is a sole victim of the crime who can deal with the crime as it thinks fit. Restorative justice argues that a crime is an infringement of personal relationship. Furthermore, an injured person, his family and community members are the victims of the crime who have moral justification to handle their case by themselves. Secondly, the justice system is a legal process to establish guilt and to deliver punishment and rehabilitation whereas restorative justice is a dialogue process to repair harm caused by the crime.

1.3 Objectives

As its title implies, restorative justice aims to return things to the way they have been, as if the crime has not been committed.¹² There are three things to be restored, namely, restoration of the losses of the victim, restoration of the offender to a law-abiding community and restoration of the community.¹³ As for the victim, he experiences material, physical and psychological losses. He wants to restore these damages. Restorative justice empowers the victim to solve his losses by himself. He can demand and negotiate for compensation and other restitution with the offender. As for the

¹⁰ Ibid

¹¹ H Zehr, 'Retributive Justice, Restorative Justice' in G Johnstone (ed), *A Restorative Justice Reader Texts, Sources, Context* (Willan Publishing, London 2003) 70

¹² K S Williams, *Textbook on Criminology* (6th Oxford University Press, Oxford 2008) 114

¹³ T F Marshall, 'Restorative Justice: an Overview' in G Johnstone (ed), *A Restorative Justice Reader Texts, Sources, Context* (Willan Publishing, London 2003) 29

offender, restorative justice encourages him to take responsibility for his action. The offender's responsibility can restore personal relationship between the victim and him, which has been broken by the crime. Therefore, he can be easily reintegrated into his society. As for the community, when the relationship between the victim and the offender are restored, the community becomes peaceful.

1.4 Elements of restorative justice

Restorative justice is a process of dialogue – mediation, conciliation and negotiation. Van Ness explains that a full restorative justice process must consist of 9 elements; namely, meeting, communication, agreement, apology, restitution, change, respect, assistance and inclusion.¹⁴ *Meeting* means that the victim, the offender, their supporters and a member of community have a chance to meet each other face to face. This meeting must happen voluntarily since coercion cannot lead to restoration. *Communication* means that the victim and his supporters can communicate their story for example, what happens to them, how it affects them and what they feel, to the offender at the meeting? This communication may lead the offender to *understand* the negative impact of his action. Then, the victim, the offender, their supporters and the community member will conciliate and negotiate to reach an *agreement* on how to solve the aftermath of crime together. After listening to the aftermath of crime, the offender may experience shame, remorse and develop a sense of empathy.¹⁵ He may sincerely *apologise* and make *restitution* to the victim, his family and community. Then, he may *change* his attitude and behaviour. The basic requirements of restorative justice process are that the victims and the offender must be treated *respectively*. Furthermore, the victim must be *assisted* to meet his needs. The offender must be *assisted* to reintegrate into a law-abiding society. Moreover, the whole process must *include* every stakeholder of the crime. The degree to which these elements are found in any dialogue process will determine the full or partial restorative justice in that dialogue process.

¹⁴ D W Van Ness, 'The Shape of Things to Come: a Framework for Thinking about a Restorative Justice System' In E G M Weitekamp and H J Kerner (eds), *Restorative Justice Theoretical Foundations* (Willan Publishing, Devon 2002) 6

¹⁵ R Young and C Hoyle (n 2) 201

2. Implementation of restorative justice

This topic explores how restorative justice works, in particular, how it can restore the victim and the offender as mentioned in the objectives of restorative justice. This topic will divide into two parts: restoration of offender and restoration of the victim.

2.1 Restoration of the offender

This issue starts with Braithwaite's reintegrative shame theory. Braithwaite says that people comply with the law not because of fear of punishment but because the crime is unthinkable to them.¹⁶ What makes the crime unthinkable is conscience. Conscience is "a sense of right and wrong that governs a person's thoughts and action".¹⁷ It is an internal control of human behaviour which is developed by socialisation. Conscience can prevent a crime, since it produces anxiety to punish anyone who is involved in the crime without delay. However, conscience sometimes may fail to perform its function. People tend to commit crimes. In this situation, Braithwaite says that shaming by expressing any disappointment to the offender that he has done something wrong can bring conscience back to work.¹⁸ Shame is an emotional sanction delivered to the offender to make him ashamed. In particular, if it is done by those who the offender cares about, it will have a significant effect on the offender's conscience.¹⁹ When the conscience completely works, the offender will feel ashamed of what he has done. Shame will increase empathy for the victims.²⁰ Therefore, the offender may genuinely repent. Consequently, he will sincerely apologise and take responsibility for his action.²¹ Furthermore, he may change his behaviour since conscience may deter him from such behaviour. Moreover, if the victim forgives him, he can reintegrate into society.

¹⁶ J Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press, Cambridge 1994) 81

¹⁷ HarperCollins Publishers, *Collins English Dictionary and Thesaurus* (HarperCollins Publishers, Glasgow 2007) 241

¹⁸ J Braithwaite (n 16) 72

¹⁹ *Ibid*, 55

²⁰ J Braithwaite and V Braithwaite, 'Revising the Theory of Reintegrative Shame' in Eliza Ahmed and other (eds) *Shame Management Through Reintegration* (Cambridge University Press, Cambridge 2001) 52

²¹ *Ibid*, 52-53

According to Braithwaite's theory, the following measures must take place to make the offender ashamed.²² Firstly, the offender's shut mind must be shocked by the impact of his action. Zehr says that before the offender commits any crime, he often rationalises his action that what he does is neither wrong nor serious; or a victim deserves it; or everyone is doing it; or insurance company can be responsible for the losses.²³ He is not aware of his action. The victim must tell him about what has happened to him and his family; what they have lost and how they feel. In doing so, the offender will understand the really negative impact of his action. Secondly, the victim as well as the persons whom the offender cares about must express censure and disapproval to his action in order to shame him. In doing so, the offender will feel genuinely ashamed since his conscience comes back. He will realise that what he has done is wrong. Therefore, he will sincerely repent and apologise to the victim. He will take responsibility for the harm he has caused and change his behaviour. If he sincerely takes responsibility and changes his behaviour, he is showing that he remains a part of a law abiding community and recognises its norms.²⁴ He can easily reintegrate into society.

2.2 Restoration of the victim

Before examining how restorative justice restores the victim, this topic will start from what the victim needs when becoming the victim of crime. The victim's needs are as following. Firstly, he wants to participate in his case.²⁵ Although, he is the most affected by the crime, he is completely denied a right to deal with his offender by himself. His case belongs to the state and the state solely manages his case as it think fit. The interest of the state may differ from the interest of the victim. For example, while the victim may need severe punishment, the state agencies – police and public prosecutor- may think that pre-trial diversion such as fine and non-prosecution is appropriate. Furthermore, the court may apply suspension of sentence or impose little punishment rather than imprisonment. Therefore, Christle says that the state has stolen

²² G Johnstone, *Restorative Justice: Ideas, Values, Debates* (Willan Publishing, Devon 2002) 97-102

²³ H Zehr, (n 6) 40-41

²⁴ Ibid, 102

²⁵ H Strang, *Repair or Revenge: Victim and Restorative Justice* (Oxford University Press, Oxford, 2002) 8

the criminal case from the victim.²⁶ Secondly, the victim wants information about his case and its outcome.²⁷ After reporting a crime to the police, he rarely knows the outcome of his case. He wants to know, for example, whether or not the police can arrest the offender and whether or not the court will punish his offender. Thirdly, the victim wants material restoration.²⁸ A crime causes both material and physical losses. He needs reparation from the offender. Finally, the victim wants emotional restoration.²⁹ He wants to release emotional losses – anger, anxiety and fear and overcome the situation of being the victim of the crime.

Restorative justice can respond to all needs of the victim. Firstly, the victim can take part in and define the outcomes of his case. Two important elements of restorative justice are a meeting and an agreement. The victim, the offender and their supporters have a chance to meet each other. Then, they can talk, conciliate and negotiate with each other to reach an agreement on how to solve their aftermath of the crime by themselves. Therefore, the victim will be satisfied, since the offender's acceptance of responsibility almost completely meets his needs. Secondly, restorative justice must consist of inclusion and assistance. The whole process of restorative justice must include the victim and assist him to meet his needs. Therefore, the victim will not miss all information in relation to his case. Thirdly, the meeting and communication between the victim and the offender can lead the offender to understand the consequence of his action and take responsibility for damage he has caused to the victim. Therefore, the physical and material losses are restored. Finally, to restore emotional losses, Zehr says that the victim needs to experience forgiveness.³⁰ Restorative justice process expects that after the offender listens to the impact of his action from the victim, he will understand that his action is wrong. He will sincerely repent and apologise to the victim. Furthermore, restorative justice provides the victim a chance to ask why the offender has committed a crime against him. The victim can understand the cause of the crime. Both

²⁶ N Christle, 'Conflict as property' *the British Journal of Criminology* (1997) Vol. 17

²⁷ H Strang (n 25) 11

²⁸ H Strang (n 25) 15

²⁹ H Strang (n 25) 18

³⁰ H Zehr, (n 11) 69

sincerely apology and understanding can lead the victim to forgive the offender. If he can do, he will be easy to transcend his emotional losses.

One may wonder whether it is true that restorative justice can restore both the victim and the offender. The result of Shapland and other's survey on the view of the victims and the offenders on restorative justice in England and Wales can answer this question.³¹ The survey interviewed 216 victims and 152 offenders who participated in JRC (the Justice Research Consortium) programme between 2001 and 2004. This programme was funded by Home Office Crime Reduction Programme. It provided restorative justice conference, where the victim, the offender and their supporters could voluntarily meet face to face. This research found that fifty-one percent of offenders and thirty eight percent of victims thought that the process had solved problems caused by the offence. Eighty-three percent of the offenders and sixty percent of the victims considered that the conference made the offenders realise the harm they had caused very much or in some degree. Therefore, offenders were likely to take reparation to his action. Ninety percent of victims said that their offenders had apologised and they had accepted that apologies. Over half of victims said that the conference had provided them with a sense of closure. Most victims considered that the conference could reduce the negative impact of the offence. Seventy nine percent of offenders thought that the restorative justice conference could lessen their likelihood of reoffending. Furthermore, the agreement reached at the conference was seen as satisfactory. Almost all victims and offenders thought that the agreement was fair. This survey shows that restorative justice is effective in restoring the victim and the offender.

3. Criticism on restorative justice

Although restorative justice can respond to the needs of the victim as well as reintegrate the offender into society as mentioned above, it is criticised as following.

³¹ J Shapland and others, 'Restorative justice: the views of victims and offenders' (Ministry of Justice Research Series 3/07 June 2007) <<http://www.justice.gov.uk/docs/Restorative-Justice.pdf>> accessed 8 September 2008

3.1 Difficulty of holding restorative justice conference

It is not easy to hold restorative justice conference. The basic elements of restorative justice are voluntary meeting and communication. The restorative justice will be implemented when the victim and the offender agree to meet and talk to each other. If one of both parties does not want to solve their aftermath of crime in this way, no one can force them to do so. For example, if the victim prefers to put the aftermath of crime behind him rather than solving it with the offender, the restorative justice conference will not be held. Therefore, the whole process will fail. Wendy argues that the stakeholders of crime neither know exactly what restorative justice is, nor realise the effectiveness of restorative justice in restoring the aftermath of crime and restoring personal relationship. If they realise, she believes that restorative justice must be increasingly employed.³² The facilitator of restorative justice should give information in relation to restorative justice to the stakeholders of crime as much as possible. If they understand the benefits of restorative justice, they may change their mind and participate in restorative justice.

3.2 Proportionality

The agreement reached at the restorative justice conference may differ from case by case and not be proportionate to the seriousness of crime. As mentioned above, the needs of the victim are the starting points of restoration. The victim can demand for and negotiate with the offender on what is an appropriate solution to their conflict. The outcome of negotiation tends to depend on satisfaction of the parties. Therefore, the outcome of the same case may be different to the other similar cases and may not be proportionate to the seriousness of the crime. Ashworth says that under restorative justice, fairness is defined as satisfaction of the stakeholders in each case.³³ This is different from the contemporary justice system in which justice means that “similar offender and offence should result in similar sentence”.³⁴ As a result, restorative justice

³² Interview with Wendy Freshman, Chief Executive, The East Kent Mediation Service (Canterbury 5 August 2008)

³³ A Ashworth, ‘Is Restorative Justice the Way Forward for Criminal Justice?’ In E Mclaughlin and other (eds) *Restorative Justice Critical Issues* (SAGE Publications Ltd., London 2003) 164

³⁴ *Ibid*, 172

is criticised in that it omits the principle of equal treatment and proportion of punishment to the seriousness of crime.³⁵

3.3 No sincere apology and remorse

Restorative justice may not lead to truly apologise and repent. Theory of reintegrative shame claims that shame delivered by those whom the offender cares about can make the offender's conscience awaken. He, therefore, may repent, apologise and change. Gotterfredson and Hirschi say that the crime provides short term gratification, for example, money without work, thrill and excitement because of adrenaline rush during committing the crime. Those who engage in criminal acts tend to be self centre and be insensitive to others' suffering and feelings.³⁶ Daly found that the aftermath of crime as well as feeling of the victim might have no effect or only a little effect on the young offender.³⁷ The adult offender may not be affected by these as well. Consequently, restorative justice may not lead the offender to sincerely repent. He will not change his behaviour and continue committing crimes.

3.4 Difficulty to recover from emotional loss

The victim experiences material, physical, and emotional losses from the crime. Emotional losses, for example, anger, anxiety and fear, are the most difficult to restore. As for restoration of material losses, for example, property damage, compensation agreed at the restorative justice may make the victim content. As for restoration of physical injury, for example, a broken arm or leg from assault, it may be more difficult than material losses in seeking for an appropriate restitution to the harm. As for restoration of emotional losses, restorative justice hopes that after receiving an apology and knowing the cause of crime, the victim may forgive the offender. The forgiveness, consequently, can release the victim from anger, anxiety and fear. However, each victim suffers from emotional losses in different degree. On the one hand, a victim with

³⁵ Ibid, 164

³⁶ M R Gotterfredson and T Hirschi, 'The Nature of Criminality: Low Self-Control' in S Cote (ed), *Criminological Theories: Bridging the past to the future* (Sage Publications, London 2002) 210

³⁷ K Daly, 'Restorative Justice: the Real Story' in G Johnstone (ed), *A Restorative Justice Reader Texts, Sources, Context* (Willan Publishing, London 2003) 376

moderate anger, anxiety and fear may be easy to forgive and recover from these feelings after participating in restorative justice conference. On the other hand, a high distress victim may not be possible to let these feelings go. Daly found that restorative justice might less help the deeply traumatic victim in recovery from aftermath of the crime.³⁸ The victim, therefore, continues suffering for a long period time after restorative justice conference ends.

3.5 No defence lawyer

The participants of restorative justice generally are, for example, the victim, the offender, their supporters and the facilitator. The defence lawyer does not involve in restorative justice. Supporters of restorative justice do not need the lawyer in restorative justice. They are worried that the role of the lawyer in protection of the offender's rights may interrupt the delivery of the aftermath of crime as well as feeling of the victim to the offender.³⁹ Therefore, the offender may not sincerely repent, apologise and take responsibility. Consequently, the objective of restorative justice in restoration of the offender is to be failed.

Absence of the defence lawyer is contrary to a right of the offender to legal advice. The lawyer is necessary in restorative justice. However, the role of the lawyer must be changed. His role does not limit to protection of the offender's right. But, the lawyer should have a better understanding about the value of the restorative justice and realise the objective of restorative justice in restoration of aftermath of the crime. He, therefore, should play his role according to this value and help the stakeholders of crime reaching a restorative outcome.⁴⁰ If he can do, not only the right of the offender is protected but also the needs of other stakeholders of crime are met.

³⁸ K Daly, 'Limits of restorative justice' in D Sullivan and L Tift (eds), *Handbook of Restorative Justice*, (Routledge, Oxon 2008) 141-142

³⁹ R Young and C Hoyle (n 2) 214

⁴⁰ R Young and C Hoyle (n 2) 215

4 Conclusion

Restorative justice is a new concept to deal with the crime and the criminal. It is not a legal process to retributive punishment and rehabilitation of the offender. But, it is a dialogue process, for example mediation, conciliation and negotiation whereby the stakeholders of a crime voluntarily solve their aftermath of crime by themselves. In doing so, it hope that the needs of the victim may be fully responded. Furthermore, the offender after facing with the reality of his action may repent and put right to the wrong. He may change his misbehavior and be reintegrated into the law-abiding society at the end.

Restorative justice is criticised as following. Firstly, it is not easy to hold restorative justice conference where the stakeholders of the crime do not want to meet and solve the aftermath of the crime together. Secondly, “justice and fairness” tends to depend on bargaining and satisfaction of both parties. Therefore, the outcome of the same case may be different. Thirdly, restorative justice may not lead to truly repent, apologise and change since the offender tends to be self centre and insensitive to the victim’s suffering. Fourthly, it is not easy for the victim, particularly, the deeply trauma victim, to overcome his emotional losses - anger, anxiety and fear - after participating in restorative justice conference. Finally, the offender does not have any lawyer to represent when he is required to take part in restorative justice conference. This is contrary to a right to legal advice. Despite of the fact that restorative justice is criticised as pointed out above, in my opinion, empirical experience of restorative justice method should be initiated and tried with a view to putting it into real practice. If restorative justice concept is recognised and acceptable to the contemporary justice system, it may solve and redress the problem on exclusion of the victim and the offender under the traditional criminal justice system accordingly.