Restorative Justice in Cases of Sex Offenses

Restorative Justice (RJ) is in its basic structure a method – or a variety of methods – for helping victims and offenders in criminal cases to meet and talk together after the crime has taken place. The idea is to cater for the needs of victims, offenders and the wider community so that victims and offenders are put at the center of the handling of a criminal case. Sometimes RJ is an alternative to conventional justice (CJ); other times it’s just a supplement. When being a supplement it could take place at any stage of the process; at the start, in the middle of, at the end of and after the case is finished.

RJ could be seen as an ethical model for handling the relational matters between the 3 parties in a criminal case: The offender, the victim and the community. Criminal acts are a violation of the relation between offender and victim, and they have the potential for breaking down the trust between the members of the society. The concept of RJ is to personalize the consequences of crime by emphasizing offenders’ responsibility and repairing the harm being done.

In conventional justice it’s the state that has the ownership to a criminal case; the victims are just means of evidence, and the punishing of offenders happens without any involvement of victims or members of the community. In RJ the offender has to meet the victim, show his remorse, take on responsibility for what he has done and ask the victim as well as the community for forgiveness. The idea is that a face to face meeting will help offenders understand the suffering he has brought upon the victim. When experiencing they are in safe surroundings offenders might be willing to give up their self-defense and victim-blaming. At this point RJ has similarities with therapy and rehabilitational work.

In the following we’re going to discuss the use of RJ in cases of sex offences. First I’ll present the RJ Model together with a short overview of some Restorative Programs and possible outcomes. Then in the main part I’ll go into the use and controversies of RJ in sex offender
cases, discussing how RJ could function as a preparation for therapy and rehabilitation of sex offenders.

**What is Restorative Justice?**

Tony Ward, a professor of psychology in New Zealand and an international expert on Restorative Justice, says that “*RJ is originally a grassroots movement that is practice rather than theory driven. Its primary focus is on transforming the way justice is implemented in communities rather than on formulating a coherent theory and set of norms to guide a response to crime*”. He supports the following definition of RJ: “*RJ is an option for doing justice after the occurrence of an offence that is primarily oriented towards repairing the individual, relational and social harm caused by the offence*”.

The purpose of RJ is to facilitate community healing by repairing the harm that results from crime, more specifically the fractures within relationship between victims, offenders and the community. Crime results in both obligations and liabilities for offenders. **First** the offender is obliged to take responsibility for the crime; **secondly** the community is obliged to support both the victim and the offender. Therefore the reintegration of offenders into the community requires the willingness of offenders to respect and uphold the legal regulations and the ethical norms of society.

Some RJ-practitioners are primarily focusing on the process of rolling out RJ initiatives, while others are more preoccupied with outcomes and results. The aim of RJ however isn’t the reduction of crime per se but to restore broken relationships. This influences on the question whether RJ could be a mean for rehabilitation. While in RJ the aim of the process is to **change the relation** between offender and victim – and to help the offender take on accountability for the crime – the methods of Rehabilitation is determined by the aim to **change the offender**. In rehabilitation the tool is an intervention- and action plan targeting the offenders’ behavior and attitudes so that he will desist from reoffending. On the other hand the changing of relations is mostly a moral and ethical challenge. Though partly overlapping each other it could be suggested that the role of RJ in rehabilitation primarily is to build a bridge from the victim-offender meeting to therapy, and by this form the basement for the processes of rehabilitation.
Restorative Justice Programs and possible outcomes

Different types of programs are dominant in the context of RJ; among the most prominent are the following 5 types:

- **Victim-offender mediation (VOM):** The use of trained mediators to bring victims and their offender together.

- **Circles** are similar to victim-offender mediation, but differ in that they involve not only the offender and the victim, but also their family members, community members, and government’s representative.

- **Conferencing programs** are also similar to victim-offender mediation, but have tended to be more closely linked to the criminal justice system than either VOM or circles.

- **Victim-offender panels** bring together groups of unrelated victims and offenders, linked by a common kind of crime but not by the particular crimes that have involved the others.

- **Victim assistance programs** provide services to crime victims as they recover from the crime and proceed through the criminal justice process.

RJ is primarily oriented towards repairing individual, relational and social harm caused by the offence. According to Tony Ward this implies that the capacity for rehabilitation of offenders within the framework of RJ is limited. On the other hand RJ practitioners like Sherman and Strang (2007) emphasize that RJ compares well with traditional criminal justice and that following outcomes of RJ should be noticed:

- RJ reduces repeat of offending for some offenders, although not all
- RJ reduces offending more than prison for adults, and at least as well as prison for youths
- RJ doubles the number of offences brought to justice compared with Conventional Justice
- When used as an alternative to CV, RJ helps reduce the costs of criminal justice
- RJ reduces victims’ post-traumatic stress symptoms
- RJ reduces victims’ desire for violent revenge against their offender
Though the suitability of RJ as a mean for rehabilitation is debated, it seems that RJ not only is a method for handling the moral and ethical aspects of the relations between the parties in a criminal case; it’s also a method producing some certain criminogenic results.

**Restorative Justice in cases of sexual violence: Controversies and possibilities**

Most incidents of sexual violence (SV) take place between persons who either know each other or have some sort of family or social relations to each other. Typically the sex offender is a father, a close relative, a friend or a person related to the victim in the one way or another. The question victims of SV frequently ask is: How could he do this to me? It’s hard to understand that someone you know or even love, could cause so much harm to you.

It seems to be a general view that victims of sexual violence are more vulnerable than victims of other types of crime; therefore it has been discussed whether RJ is a suitable method for handling the complex relations between victim and offender. Based on the assumption that RJ is an easy mean of getting away from a possible prosecution, it also has been discussed whether the use of RJ could be a signal of authorities’ unwillingness to take sexual crimes serious. More important is that many health professionals tend to fear that restorative meetings between victim and offender could cause retraumatization of the victims because of the power imbalance between victim and offender.

It has been argued that RJ is well fit for the minor crimes like petty theft, threatening of other persons and so on, but not in the cases of interpersonal violence and serious sex offences. Internationally the use of RJ in cases of sexual violence is growing, although the method still is excluded due to legislation in countries like for instance Brazil.

In addition to the power imbalance it has been pointed to age differences and immaturity of victims as risk factors, especially in incest families; but also more general in extrafamiliar child sexual abuse. RJ could involve so-called “restorative risk”, which is the potential for further harm for either party taking part in RJ. Associated to this is the criminogenic risk, which is the risk of reoffending during or after the RJ process.
The Norwegian criminologist Nils Christie argues that no crime is too serious to be handled in RJ: When damages are really serious the need of restauration and repair is even bigger. The problem of power imbalance between the parties can be solved by actions taken by an experienced mediator. In these cases the mediator decides that each party has a support person assisting them in the restorative meeting, and a special attention should be paid to the risks related to the imbalance.

The problem of incest families and cases with major age differences has already been dealt with by RJ practitioners. In incest families the children have “learnt” over a long time how to handle painful relations. Seen in the light of their history nothing worse could now happen than what already has happened. But these children have never had the opportunity to talk with their father about the abuses they have experienced. Restorative Justice could offer them a possibility to do that.

Researchers like Keenan and Joyce (2013) emphasize the right of victims to be helped. Due to problems in handling the large number of cases of sexual violence in the criminal justice system, evidence problems and so on many victims face the risk of not having their case handled. But these victims are entitled to seek some form of justice pursuant to the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. RJ could be helpful to reduce the high levels of under-reporting of SV.

A number of benefits of RJ in cases of sexual violence have been identified during the years of RJ. Such benefits could be:

- Repairing harm caused by the offence
- Increasing the offender’s sense of responsibility for the offence
- Providing an opportunity for victim to receive reparation and/or an apology
- Providing a means for victims to talk about how the incident impacted them
- Giving victims an opportunity to take back the power
- Maximizing the opportunity to provide victims, offenders and the community with a sense of justice

A growing number of research findings indicate that victim’s perception of justice and their psychological well-being are improved by participating in RJ programs. This is also the case
for victims of SV. Researchers Keenan (2014) and Daly (2006) state that in quite a number of places throughout the world RJ has been applied in cases of SV with high levels of satisfaction experienced by victims, offenders and community.

The COSA model

As already pointed to; RJ isn’t just one solid and unchangeable model. As a practice driven method RJ is also pragmatic in its approach to crime; an example of that is the COSA-method: Circles of Support and Accountability. Though not having its primary focus on the relations between offender and victim, these aspects are integrated in the COSA model.

COSA first emerged in Canada in 1994 and is later described as a “restorative justice initiative” or a hybrid form of RJ. COSA operates within a sociopolitical context where the concern for community protection is paramount. Since community protection not is contradictory to RJ the reparation and restoration of relationships have been included in the COSA model. The aim of COSA is to help sex offenders successfully re-enter the community, and increase public safety by providing offenders with social support and help when it comes to employment, housing, treatment, and other social needs.

COSA has an “inner circle” of volunteers – these are recruited from the local community and are carefully selected, screened and trained by a “circle coordinator”. Then there is an “outer circle” of community-based professionals like psychologists and social workers, police officers, local welfare organizations or housing institutions, and forensic mental health care professionals. The inner circle is supervised by professionals from the outer circle. The offender is a so-called “core member” of the inner circle. Offenders’ participation in the inner circle is voluntarily, but it’s expected that he to some extent is willing to share information with the volunteers about his offence and his personal risk factors. Usually a circle lasts for one and a half year, but in some cases circles can last for an extended period, and some suggest even for the life time of the offender.

The effectiveness of COSA in addressing sexual violence has been explored in a number of studies. Some studies show reduction in sexual reoffending of up to 83% in COSA groups,
which gives reason to believe that COSA seems to have a positive impact on the rates of recidivism. Regarding reintegration, COSA has been proved to offer offenders an experience that could help them to face the obstacles they find after conviction, such as rejection, stigmatization and isolation. When it comes to families and other networks, a study shows that nearly 50% of the offenders in the study reported improved relationships to family and network. Studies also show that core members report increased self-esteem, self-confidence and improved social skills following their involvement in the circle. Though further research is needed it seems that the COSA model significantly contributes to the rehabilitation of sexual offenders.

**Rehabilitation of offenders or protection of society?**

An interesting aspect of the COSA model is the strong emphasis on the importance of reintegrating sexual offender in society after prison release. To some extent this is contradictory to influential trends in the field of child protection services, where a growing concern for the risk situation of children and other potential victims may be observed in many countries. In combination with strong public opinions the concerns of social services and health professionals have a potential for leading authorities to take actions to protect society on the cost of offenders’ rehabilitation.

In USA one can see widespread restrictions in where former sex offenders are allowed to rent houses or settle down, which results in the isolating of offenders and the forming of ghettos. Many offenders also experience that their access to labor and social goods is restricted. In Norway it might be a tendency that professionals deny offenders – not only incest fathers – access to their own children, even when no hands-on offences have happened and the visits are surveilled by professionals.

On this background it’s a question what the society really do think about offenders’ rehabilitation: Should offenders be rehabilitated and thus be allowed to come back to society, or should they be kept behind bars so that society can feel safe? The answer depends on how the basic moral values of an open and liberal society are understood. But it is also related to the possibilities for a solid evaluation of the risk factors involved, like the following:

- The effectiveness of sex offender therapy
• The effectiveness of rehabilitation programs
• The possible relations between the way society is meeting and treating offenders, and the risk of reoffending

**Restorative Justice as a preparation for therapy and rehabilitation**

When discussing the rehabilitation of sexual offenders we must have in mind that no rehabilitation can be done without taking into consideration the victims’ needs. The main purpose of sex-offender rehabilitation programs is to help offenders desist from offending and enhance the security of the victims.

In the health care system it’s fundamental that no treatment should take place without the existence of a diagnosed illness or an identified disease to treat. Except of pedophiles most sex offenders don’t fulfill the diagnostically criteria’s of the mental health services. The sexual deviancy which may be observed in some sex offenders is probably related to moral understandings and legal questions more than to a mental illness: The deviant behavior is illegal and immoral, but still there is no illness to treat. The question is then: Could we offer treatment to persons who don’t suffer from an illness?

This question leads to the idea of Restorative Justice, where the meeting between the victim and offender is crucial. In the restorative meetings offenders frequently experience that their responsibility is made clear: When looking into the eyes of the victim the offender realizes that there is no guilt to negotiate about. And though the power relation between victim and offender might have been highly asymmetric, victims often find themselves discovering that they are the powerful ones and that the offender is the powerless part.

In sex offender treatment the admittance of guilt and the willingness to let oneself be touched by the suffering of the victim, are seen as proofs of therapeutically success. In RJ these factors are defined as essential to the success of the mediation process. The admittance of guilt is related to moral values and legal regulations, and has basically just weak relations to the principles of traditional therapy. The willingness to be influenced by the victims suffering – which could be understood as victim empathy – is most of all a moral emotion: When seeing
the suffering of the victim the offender can identify himself as the source of this suffering, and take responsibility for what he has done.

If RJ is followed by therapy offenders can go on with the process that started in the meeting. Thus the therapist can facilitate and help changes to happen, with reduced recidivism as a possible result.

While RJ aims to repair broken relations, it has also a psychological goal: To help victims and offenders experience a better life. However a better life isn’t necessarily the same as a happy life. Offenders and victims experiencing depression, anxiety and sadness after the RJ may still report that they did the right thing. But when letting go burdening emotions like anger, hate and thoughts of revenge life might be easier to cope with, though not happier.

During the process of investigation, prosecution and sentencing many offenders have been traumatized to such an extent that it could be hard for them to start the journey of rehabilitation, treatment and a successful return back to society. Often they don’t even believe that society wants them back. In RJ offenders aren’t seen as monsters but as persons needing help to cope with their problems. It’s a general knowledge that a successful therapeutically and rehabilitational work only can be done if the therapist have a sense of empathy with the offender. Regardless of what the offender has done the mutual respect is essential for the outcome of the work. In that sense the work of a good mediator in RJ is quite much the same as the work of a therapist.

**Restorative Justice, offender rehabilitation and desistance**

Tony Ward and colleagues describe the relation between RJ and rehabilitation as a controversial one, while others argue that RJ is likely to facilitate offender’s reintegration and lower recidivism rates. In the following we’ll look into to the reasoning of Ward et al, and then discuss the arguments in light of the philosophy of RJ.

Ward et al states that rehabilitation focuses on correcting or improving offender’s functional abilities to secure goals in a personally satisfying and a socially acceptable manner. The aim
of rehabilitation isn’t to help victims recover after the offence, nor is it to help offenders to express guilt or remorse. In rehabilitation the focus is on the offender’s journey back to society.

RJ aims to take care of all parties in a holistic perspective. This isn’t the ambition of rehabilitation. Ward understands rehabilitation in light of the Good Lives Model, holding that rehabilitation should focus on the two principles need and risk. The need-principle stipulates that changeable social and psychological variables associated with reductions in recidivism should be targeted in rehabilitational programs. These variables are what we call dynamic risk factors. The risk-principle – or the responsivity principle – asserts that correctional programs should be matched to the offenders’ characteristics such as learning style, level of motivation and so on. The need-risk- principle is used to select treatment intensity and targets, which also is done in most other correctional programs.

While victim empathy is an important factor in most sex offender treatment programs, the victim is defined through the offenders perception and understanding in the rehabilitation programs. Still victim empathy is important, but opposite to RJ the victim is not targeted by any specific means.

Ward et al doesn’t oppose to the possible rehabilitational effects of RJ, but propose to define a clear distinction between the two methods. Partly I do agree to that. If the main purpose of RJ should be rehabilitation, the meeting between offender and victim would be reduced to just a step on offender’s journey to rehabilitation and reintegration in society. Only if the offender changes attitudes and behavior – and shows that – forgiveness and reconciliation can take place. On the other hand it’s already an ambiguity associated to the victim-offender meeting: To many victims it’s a condition for taking part in the restorative meeting that the offender signalizes a willingness to accept the ethical and moral values of society.

Instead of rehabilitation Ward and colleagues propose to link RJ to desistance. Desistance from crime is factors associated with the cessation of offending and the adoption of a pro-social lifestyle. Desistance factors could be employment, social support, intimate relationships, education, narrative shifts in identity, being able to break with the past, positive social attitudes towards offenders by others, spirituality and agency.
It’s not easy to see how desistance is fundamentally different from rehabilitation. In my opinion rehabilitation and desistence are two sides of the same phenomena: They form the result of a long journey which could be understood as a follow up of the restorative meeting. As far as I can see RJ is the basis for a further process of change into desistance and a new, prosocial life.

Though not being a global problem we have to take into consideration that conventional justice sometimes traumatizes sexual offenders and makes it impossible for them to be involved in rehabilitational programs. At this point it’s likely to think that RJ is a more solid fundament for therapy and rehabilitation than conventional justice. Especially the values and norms of RJ seem to be important to the outcome of RJ. However one should also take into consideration that RJ is often combined with conventional justice; coming in the beginning, in the middle of or in the end of a criminal case – or it can be an alternative to CJ.

**Concluding remarks**

So what are the benefits of RJ seen in the light of rehabilitation? Following could be mentioned:

- Offenders are not seen as evil persons unwilling to change their attitudes and behavior
- RJ recognizes offenders’ capacity for taking responsibility for their acts
- The concept of forgiveness and restoration takes for granted that offenders can change
- RJ supports the self-esteem and self-respect of offenders

Though still not a widespread method in cases of sexual violence RJ is rapidly growing throughout the world. The values and norms of restorative justice seem to be perfectly equipped to the problems correctional officers, therapists and others face when meeting sexual offenders. The most common problem here is the denial of guilt and offenders’ tendency to victim blaming. RJ offers a model for dialogue and mutual respect which is fundamental to the outcomes of rehabilitational and therapeutically work.