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## ***Restorative Justice As Opposed To Traditional Justice In Case Of Children In Bangladesh***

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### **Abstract**

In Bangladesh it is seen that hundreds of children are involved in judicial proceedings every year as a victim of crime or defenseless and in need of legal protection. We need to develop a justice system for children that will be child friendly. Children are facing new problems in accessing and participating in the justice system due to lockdowns in the traditional justice system and suspension of courts in judicial processes. Confinement measures and rising levels of economic hardship may leave children more vulnerable to exploitation and abuse. There should develop a system or process through which children rights can be protected, interests of children can be ensured, at the same time protections of children which will reduce the stress of children and they will grow smoothly in nature. But it is believed that restorative justice may reduce ferocity against children, re-oppress helpless, and threaten security of the affected child. Then again, restorative justice also may arrange to listen to the victim's story more carefully, through which the opportunity to make blame to victims is less created. This paper aims to test whether restorative justice can be used in the case of child victim or not? If yes, how to do it?

***Keywords: Restorative justice, children, traditional justice.***

### **I. Introduction**

Millions of children around the world are being deprived of their right to live independently and vulnerable children are facing brutal and harmful treatment through the criminal justice measure. In view of this progressing circumstance, it is important to plan techniques that give options in contrast to detainment and authority sentences for children. This article analyzes the chance of a

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rehabilitation program to work with compromise and give suitable security to children. Restorative justice is a new and unfamiliar method for many states, and it is a very familiar method for many states. Bangladesh is no exception, its journey has started in Bangladesh but it has not been a complete success yet.

Suppose, someone asked you what do you know why he has committed the crime? I think your answer is always being wrong, because nobody has the answers except the person who did it. But if the case is like that you could ask the offender why he has committed the rape against you? Do you not think that why you? I think most of you would have the same thinking that I wanted to know from him, why me? It is the time of pondering wrongdoing and the criminal justice framework in a new way. Criminality is assumed as a demonstration in contradiction of the national. As the general public is secured with cultural components, for making a crimeless society it generally attracts its kindness to the victim- offender relations, political framework, the justice structure, and other significant issues. It is believed that restorative justice may reduce ferocity against children, re-oppress helpless, and threaten security of the affected person. Then again, restorative justice also may arrange to listen to the victim's story more carefully, through which the opportunity to make blame to victims is less created.

COVID 19 has had many negative effects on pandemic society. Not only is it dangerous for humans but it also affects human performance which has hampered law enforcement. In this case, it would be appropriate to use evolutionary system without abandoning the objective of accomplishing natural justice. Restorative justice systems can be an advanced and unparalleled means of ensuring child justice in the face of this global epidemic, so children and their parents can be kept free from the risk of being attacked by COVID 19. The procedure used in this assessment is doctrinally organized with the consistent thought approach, case, and institution for basic reasoning. The sort of the investigation assurance is as a quick perspective framework around the updates referred to from past subject matter experts. The investigation data drew in with this article are fundamental legal material as the delayed consequences of past research, composing, related records, and legal opinions which are then followed by discretionary authentic material as huge assessment data of some definite rules and tertiary legitimate materials as an assistance in this investigation. In my paper, I have tried to set a model on how to

make the process effective in restorative justice for children so that child victims and child offenders do not exist in a developing country like Bangladesh. Today's children are the future of tomorrow, so if a person is a victim/offender at a young age, the rest of his life will be very miserable for him and he will remain in the dark.

## II. Definition of Restorative Justice (RJ)

Restorative justice is well-known as informal justice system resolving crimes outside the courtroom and ensures the rights of all involved, including victims, offenders and the community by promoting the rehabilitation process. Alternative dispute resolution process has long been practiced in civil law but its use in criminal law is not very noticeable. The problem is that there is a misconception in the minds of justice seekers that justice is an issue that should be resolved through court proceedings.<sup>1</sup> Restorative justice is something that is responsible for minimizing the damage caused by the offender against the victim as well as the society, offering compensations for victims, solve the problem by creating a joint stage to build up an immediate and unmistakable connection among errors and social responses exclusively in the child's wellbeing that law implementation authorities embrace law authorization through restorative approach.

Faturrohman pointed out that, restorative method is a revolution in the justice system which provides a consequence to the problem of child criminalization.<sup>2</sup> According to him traditional approach cannot accomplish always the elements of substantive fairness, besides, the reasons for child misconduct should be distinguished during the trial.<sup>3</sup> This is because it requires all parties to recover from the injuries and traumas caused by juvenile delinquency and to restore the child's moral progress in a way that is in the process of seeking support to sit together for consideration, and the actions are repeated and detention, as opposed to a child may affect physical, mental, and emotional development. Remedial value is refined through versatility and

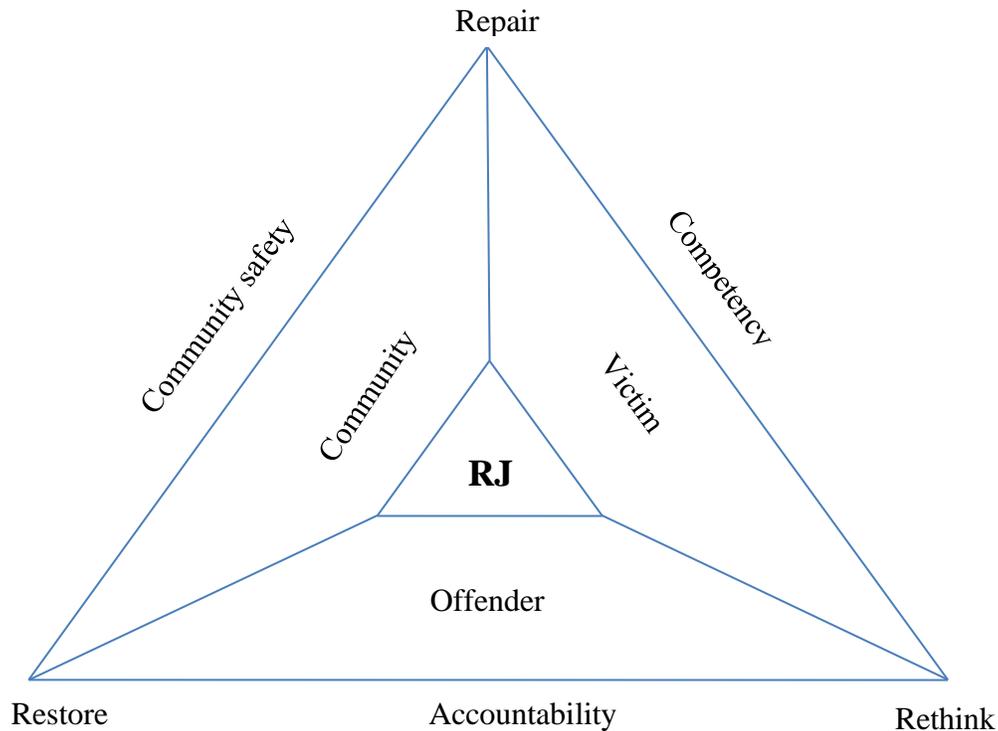
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<sup>1</sup> J. F. Kharismunandar, Appludnopsanji, & S. Kurniawan, (2020). Child Protection in the Criminal Justice System Towards Restorative Justice in the Middle of the COVID-19 Pandemic, *Journal of Komunikasi Hukum (JKH) Universitas Pendidikan Ganesha*, 6(2), 481-496.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

change, which is settled by moving the case from the customary criminal justice approach to the easygoing cycle for objective through consideration.



**Figure 1: RJ approach**

### III. Global Legal Instruments for Children

The far and wide freedoms of children are chosen in different worldwide legitimately binding instruments. In order to ensure the rights of the children international conventions play a very vital role. Since 1989 the CRC has been confirmed by 195 nations. After sanction by Somalia in 2015, just two nations presently can't seem to approve this arrangement: South Sudan and the United States. The CRC calls for States to develop an alternate adolescent equity structure. The CRC is a common liberties arrangement intended to ensure the rights and interests of kids all throughout the planet. It is the fastest and most widely accepted agreement in the world. Any

kids who is attested as, censured for or saw as having executed a criminal offense should be treated such that advances the youngster sensation of respectability.<sup>4</sup>

Generally like other instruments the term children has been defined in the CRC, as all persons who has not attained the age of 18 shall be treated as a child. The CRC has outlined four principles for the protection of children's rights i.e. there can be no discrimination in protecting the rights of children,<sup>5</sup> the interests of children should be considered with utmost importance,<sup>6</sup> right to life, survival and development of children should be ensured<sup>7</sup> and children's opinions should be given priority and opinions from all fields should be taken into consideration.<sup>8</sup>

It is similarly essential to guarantee regard for the overall standards of the CRC. The basic standard of the wellbeing of the child ought to be an essential thought in all activities concerning child, remembering for the organization of equity by open specialists, in justice system.<sup>9</sup> Children of all populations must be considered on the same criteria otherwise child rights cannot be protected. Every state should make people aware of the age of the child, the right way of development and the limits of child development. The state needs to develop a guideline that sets out the manner in which juvenile justice will be administered in the event of a juvenile delinquency.

As per Article 54 of the CRC, child ought to have four kinds of rights for example i) endurance rights meld the youngster's qualification to life and the necessities that are all things considered major for presence; ii) development rights consolidate the advantage to guidance, play, unwinding, social activities, opportunity of thought, inner voice and religion; iii) protection rights ensure that youngsters' are protected against a wide range of abuse, dismissal and abuse, remembering shield for the criminal equity situation; and iv) participation rights encompass

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<sup>4</sup> The UN Convention on the Rights of the Child.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

child's chance to impart notions, to require a chance in issue affecting their individual breathes, to link affiliations and to collect calmly.<sup>10</sup>

In all criminal cases like major offender children have similar procedural rights and assurances, however the CRC and other global guidelines likewise perceive the extra insurance of youngsters, e.g., to acquire quick admittance to equity framework and other fitting help; promptly advise them regarding the charges brought against them; each child denied of their freedom has the privilege to challenge the authenticity of this hardship under the steady gaze of a court or other proper, autonomous and unbiased position. The privilege of the child to be heard in any legal or managerial procedures influencing the youngster ought to be completely regarded and upheld at each phase of the adolescent equity measure.<sup>11</sup>

There are provisions in the CRC for the security and interest of rights that unequivocally support the recovery of child in contact with the law, either on the off chance that they are guilty parties, victims or observers to violations that are explicitly identify with child in struggle with the law and to the people in question, with solid help for therapeutic equity draws near. States obligation gathering to take every one of the suitable drives to *“advance the physical and mental recuperation and social reintegration of a youngster casualty, ensuring their wellbeing, sense of pride and nobility”* has been stated in Article 39 of CRC. *“The capture, confinement or detainment of a child ought to be in congruity with the law and will be used remarkably as an extent after any remaining choices have run out and for the most brief suitable timeframe”* has been mentioned in Article 37(c).<sup>12</sup>

Genuinely Article 39 and 40 are the rundown of adolescent equity and the privilege to a reasonable preliminary and the requirement for elective and therapeutic measures, where the reformatory methodology isn't as per the most noteworthy standards of adolescent equity. The rights and assurances of youngsters in the equity framework set up in the CRC are additionally fortified by the accompanying significant worldwide instruments.

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<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

#### IV. Bangladesh's Position In Regard To CRC

As of now Bangladesh has roughly 64000 thousand children beneath the age of 18 years.<sup>13</sup> It is in excess of 40% of country's whole populace.<sup>14</sup> On January 26, 1990, Bangladesh was one of the nations to sign the CRC and it finished its change to the CRC on August 3, 1990.<sup>15</sup> On September 02, 1991 was a memorable day for Bangladesh as the CRC was endorsed by the Bangladesh Parliament.<sup>16</sup> Bangladesh has agreed with the provisions stated in the Convention, however Article 21 deals with the adoption of children, in this point Bangladesh view is negative because people of all religions live in Bangladesh but the number of people of Muslim religion is high and Muslim religion does not support adoption. The law does not allow the international adoption of Bangladeshi children. Not long after the independence of 1971, some children were put adoption between the country choices. Nevertheless, as a result of wide maltreatment of the law after a short time, the public position disavowed it in 1982.

Bangladesh moreover referenced a target certainty on Article 14 (1) of the Convention which communicates that "*state gatherings will respect the advantage of children to chance of thought, soul and religion*". Notwithstanding the way that Bangladesh sees the advantage of the young person to chance of thought, moral quality and exacting practice, the overall population acknowledges that a child is energetic by definition, can't consider such complex issues clearly and accordingly can't make a free and stiff-necked choice. On the other hand, the child can work influenced by others, essentially under tension, none of which is useful for his customary, trademark and strong turn of events. The show has two optional shows, gotten by the generally speaking social gathering in May 2000 and appropriate to states that have stamped and authorized them. Bangladesh has stamped two optional shows "*child bid, prostitution and sexual diversion*" furthermore, "*child participation in conflict*" on January 18, 2002 and February 12, 2002 independently.

<sup>13</sup> <http://www.unicef.org/bangladesh/en/children-bangladesh>. accessed date 26.01.2021

<sup>14</sup> *Ibid.*

<sup>15</sup> <https://www.thedailystar.net/law/2007/09/02/index.htm#:~:text=Bangladesh%20was%20one%20of%20the,CRC%20on%20August%203%2C%201990.&text=Bangladesh%20has%20accepted%20all%20of,with%20the%20adoptio n%20of%20children>. accessed date 26.01.2021

<sup>16</sup> *Ibid.*

Bangladesh has submitted critical undertakings to fulfilling all rights for its children throughout late years, particularly in the space of health and education. It has acquired astounding progress in decreasing child mortality, inoculating more children, and extending the amounts of children evaluated school, thus showing a real enthusiasm to add *“furthest extent of the resources open,”* which is an extent of how well the CRC is being completed in this country alone isn’t adequate for children to continue to suffer and prosper. Possibly, these achievements have been enhanced actually by the improvement of a child fragile exhaustive advancement is the best approach to giving opportunities and benefits to all. This will be especially huge during and after Bangladesh’s framework, considering the CRC, under the Children Policy 2011 and the Children Act 2013, similarly as region unequivocal authorization in education, prosperity and confirmation.<sup>17</sup>

## V. National Legal Instruments for Children

Bangladesh has no specific law for the juvenile delinquency as like the Juvenile Justice Act, 2000 of India. But there are different sources of laws in Bangladesh. Such as follows:

### 5.1.The Constitution of Bangladesh

Crucial requirements of children and commitments of the state towards them are adored in the Constitution of Bangladesh. In the supreme legislation of Bangladesh Article 14 restricts a wide range of misuses<sup>18</sup> and Article 15 of the equivalent guarantees *“the rights to federal retirement aide that is to say to public assistance with occasions of unwarranted need rising up out of joblessness, disease or disablement, or endured by vagrants”*.<sup>19</sup> Article 17 embracing viable measures *“to build up a uniform mass-arranged and general arrangement of schooling and stretching out free and compulsory instruction to all child to such stage as may be constrained by law”*.<sup>20</sup> Article 18 gives that *“the state will respect the raising of the degree of nourishment and the improvement of general prosperity as among its fundamental commitments”*. Despite the fact the discrimination has been restricted.<sup>21</sup> Article 28 gives that

<sup>17</sup><https://resourcecentre.savethechildren.net/sites/default/files/documents/crc402520report2028bangladesh292020th20november202014.pdf>. accessed date 26.01.2021

<sup>18</sup> The Constitution of the People’s Republic of Bangladesh.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

*“the state will not be kept from making unique arrangement for youngsters”.*<sup>22</sup> Forced labour is also prohibited under Article 34 of the Constitution.<sup>23</sup>

### **5.2.The Penal Code, 1860**

As indicated by Section 82 of the Penal Code *“an offense which is done by a child under 9 years old will not be treated as an offense”*<sup>24</sup> and Section 83 gives that *“nothing is an offense which is done by a child over 9 years old and under 12 years old will not be treated as an offense who has not achieved adequate development of comprehension to decide of the nature and results of his direct on that event”.*<sup>25</sup> Section 89 states *“what is done in accordance with some basic honesty to assist an individual under 12 years old with the assent of the guardian or other individual having legitimate charge of that individual, isn’t an offense by reason of any damage which it might cause, or be expected by that individual”.*<sup>26</sup> However, this exception is not extended to causing death or serious hurt. According to Section 90, *“a consent given by a child under the age of 12 years is not consent”.*<sup>27</sup> *“Offence of kidnapping happens when a male of less than 14 years of age and a female under 16 years of age has been abducted from the lawful guardianship”* is stated under Section 361 of the Code<sup>28</sup> and *“Procuration of a minor girl is a crime”* under Section 366A of the Code.<sup>29</sup> The Sections 312-316 of the Penal Code deals with the abortion and section 317 speaks of abandonment of children by parents.<sup>30</sup> Prostitution though an old institution is a curse to women, particularly to minors girls. Offences connected with the curse have been described in sections 366B, 372 and 373 of the Penal Code.

### **5.3.The Children Act, 2013**

This Act directs the law identifying with the guardianship, security and treatment of children and preliminary and discipline of child guilty parties. The most important definition of child has been defined in this Act as where an individual has not achieved the age of 18 years is a child<sup>31</sup> or

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<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *The Penal Code, 1860.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *The Children Act, 2013.*

where who is shipped off an affirmed organization submitted by a court to him/her guardianship of a relative disregarding the way that he/she has achieved majority during the period of his/her confinement. This Act provides for establishment of Juvenile Courts under Section 16 of this Act.<sup>32</sup> Under Section 17 of this Act the Court of Sessions and Additional Sessions Judge are sometimes entrusted with the powers to act as a Juvenile Court.<sup>33</sup> The manner of trial of child offenders is specified in this Act. The Section 32 of the Children Act, 2013 prescribes a Juvenile Court will complete the trial within 360 days. If the Juvenile Court can't complete the trial of a case within 360 days that the Juvenile Court may extend 60 days with reasonable cause.<sup>34</sup>

There are many laws to punish juvenile delinquency in Bangladesh but these are all part of the formal court procedure. Now is the time for change so restorative justice is no exception. In Bangladesh have three reformation centers such as in Jessore and Gazipur districts. In reformation center they provide training, education and handicraft training for reformation under different plan to the juvenile delinquents. Generally the private and public social welfare institution takes some steps for the reformation of juvenile delinquents. But it is seen that all are the activities and projects did not cover whole area of juvenile delinquency. The sociologist, religious leader and physiologist should play vital role proper for reformation if we want to rehabilitate the juvenile and should work comparatively for gaining goal of a project. The reformatory project of Government is juvenile Court, safe custody and reformatory school. The juvenile delinquents are forward to the juvenile Court from the different area of country for ends of justice. After the trial, the juvenile delinquents are detained in reformation center for becoming a general person. The reformatory center provides general education, vocational training, religious education, game and they also arrange entertainment for reformation of juvenile delinquents and they also tries the juvenile delinquents to become a good citizen. I welcome these initiatives of the Bangladesh government but there is a sense of revenge in the whole process. It is necessary to create a situation that will create a win to win situation between the parties.

## VI. Effective Restorative Justice Models

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<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

Restorative justice systems emphasize conflict resolution, mutual respect, and strong relationships between conflicting parties. Alternatively, there are different types of restorative models in dispute resolution, the most popular of which are conferencing, mediation, conciliation and sentencing. Violence between parties can be eliminated by applying these effective restorative models at any time, from the moment a child is arrested in a criminal case to the time of sentencing. This means that there is always the opportunity to settle disputes in an alternative manner. This system of alternative dispute resolution brings benefits to all people living in the society and everyone enjoys the benefits. Following are some effective restorative models:

### **6.1. Family Group Conferencing (FGC)**

The family group conferencing is a mainstream remedial method practiced in the conventional dogmatic method of settling conflicts among the Maori in New Zealand. Australia, United States and many other countries in the world have also practiced this model. Focus Group Discussion Model was first experimentally applied to child offenders, victims and their families in New Zealand. The FGC approach not only resolves conflicts but also contributes to the suppression of crimes such as child abuse and neglect, emphasizes collective responsibility and justice, focuses on community strength, resources and experience, as well as community involvement.

The task of the FGC is to bring the parties together to eradicate crime and take joint responsibility for its solution. Each FGC is performed in the presence of an experienced facilitator and he plays a key role in it. His first task is to persuade everyone who is prejudiced by the crime to participate in alternative dispute resolution, but he cannot force it. The whole process will include affected children and juvenile delinquents, their families, any other vulnerable persons, helpers and those who can contribute to conflict resolution, including law enforcement agencies and social experts. The facilitator communicates with the parties to clarify their intention and formally welcome the parties to participate in the dispute resolution program. The organizer then requests the parties to nominate their representatives who will give them emotional support in the FGC. The individuals talk about the offense, permitting the youngsters the chance to depict their experience and the results of the offense. The gatherings normally start with the guilty party's record of the offense, followed by the people who have been affected by the offense. Nonetheless, assuming the aggrieved party wishes to start, the person in question can

do as such. Thusly, the offender can fabricate a comprehension of the damage caused. The victim has the chance to pose inquiries to the offender and to communicate their sentiments.

The meeting at that points endeavor to track down a solution to the contention through an aggregate understanding, distinguishing the commitments of the guilty party to fix the mischief brought about by the offense. Together, all members in a FGC build up a proposition for an appropriate diversionary program, which is introduced to the court and to which the guilty party should assent openly. The FGC can likewise recommend an authorization to be upheld by the authority. It finishes up by the consenting to an arrangement between the parties. The court will orchestrate oversight to guarantee that the entire interaction is lawfully viable and that it is proper considering the wrongdoing. The court likewise has a subsequent activity to decide consistence with the concurred deviation program. On the off chance that the court tracks down that the understanding has been effectively finished up, the case will be officially removed. If there should arise an occurrence of rebelliousness, the matter will be reconsidered by the court for formal underwriting. This model can be used to resolve offences of all types committed by children.<sup>35</sup>

## **6.2.Victim Offender Mediation (VOM)**

Canada, the United States and several European countries widely uses the victim offender mediation model as an effective restorative model. This applies not only to minor offenses committed by children but also to the use of the model for serious offenses. VOM is formally used as an alternative to trial, but this model is applied to victim and offender after the offender has been formally convicted, the court generally appoints VOM as an alternative referral. VOM aims to reconciliation between the parties and this process seeks to reconcile between the parties through compromise. The model relies upon the need that the guilty party and casualty at first see their jobs in the offense and consent to take an interest deliberately.

Separate pre-intervention social events, composed by a facilitator, are held with the individual being referred to and the liable party to evaluate the issues to be talked about during VOM.

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<sup>35</sup> Mc Cullagh, Angela, Family Group Conference Convener, Austrilia, Presentation at the International Expert Consultation on Restorative Justice for Children, Bali Indonesia, 26 June 2013.

Children in the conflict at that point meet in a protected, organized setting where they participate in a conversation, intervened by an experienced facilitator. This offers the victim the chance to depict what the offense has meant for him, just as how he has encountered the offense. The offender is additionally allowed the chance to give their record of the offense, just as set out their own conditions. This process takes into consideration the guilty party to find out about the effect of the offense. Together the parties build up a commonly adequate arrangement that tends to the mischief caused.

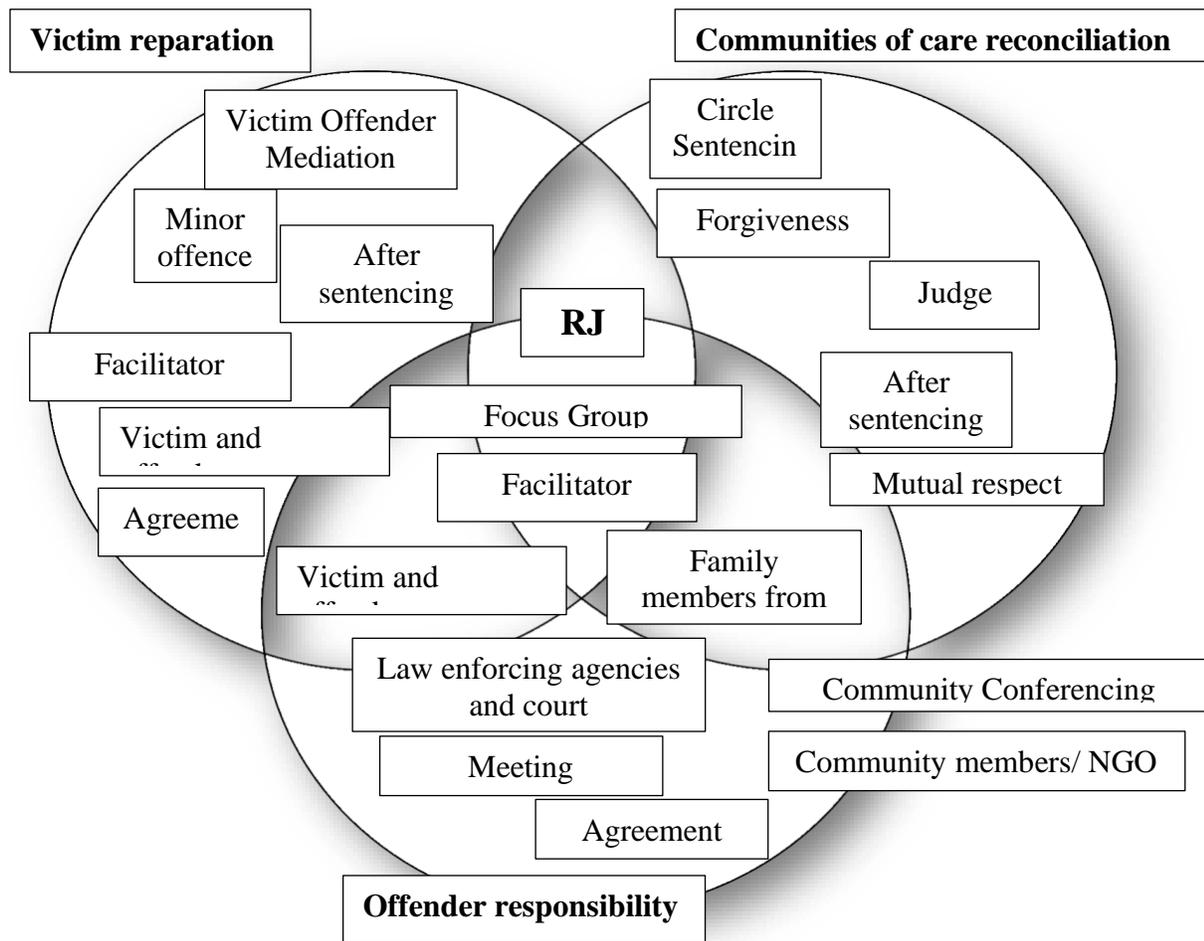


Figure 2: Effective Restorative Model

### 6.3.Circle Sentencing

Forgiveness is a sign of greatness. Circle sentencing is a model whose motto is forgiveness. Participating parties have a lot of responsibility in this model because it involves mutual respect and mutual forgiveness. People of Canada and the USA mostly practiced this dispute resolution process. Participants in this process usually consist of victims and offenders and their respective supporting communities, judges and court staff, prosecutors, defense lawyers, police and members of the community interested. A court judge appointed as the facilitator of the circling model and he presided over the process. As a judge he is considered an impartial person and he is considered a trustee of the parties. Together, the circle members devise a suitable condemning arrangement that addresses the issues, all things considered. This arrangement is then officially joined into an authoritative decision, and can incorporate jail condemning if this is considered suitable through this process. Circle conferencing is a continuous process through which the parties reach an agreement in most cases. The first step to participating in the circle system is for the offender to make an application to the court, where he will state that he will keep his promise. The parties to the circling must have knowledge of the offense and be able to understand the inconvenience caused by the offense, and the agreement reached as a result of the settlement will meet the needs of the parties concerned. Circles are intended to reinforce the aggregate idea of local area and empower victims, criminals and community members through constructive resolution of conflict.

#### **6.4. Community conferencing**

Community conferencing is likewise an alternative settlement program to which an offender can be redirected from the criminal justice framework. Such program will in general be overseen by local people, NGOs or law enforcing agencies, with or without monetary help from the public authority. The circle as a rule comprises of those generally worried about the guilty party and the victim and some other individual from the society with an interest in the process. The organization or community to which the offender is eluded is likewise liable for observing the offender's consistence with the provisions of the arrangement and might possibly work under the direct oversight of law enforcing agencies or judges.

### **VII. Steps to the Restorative Justice Approach**

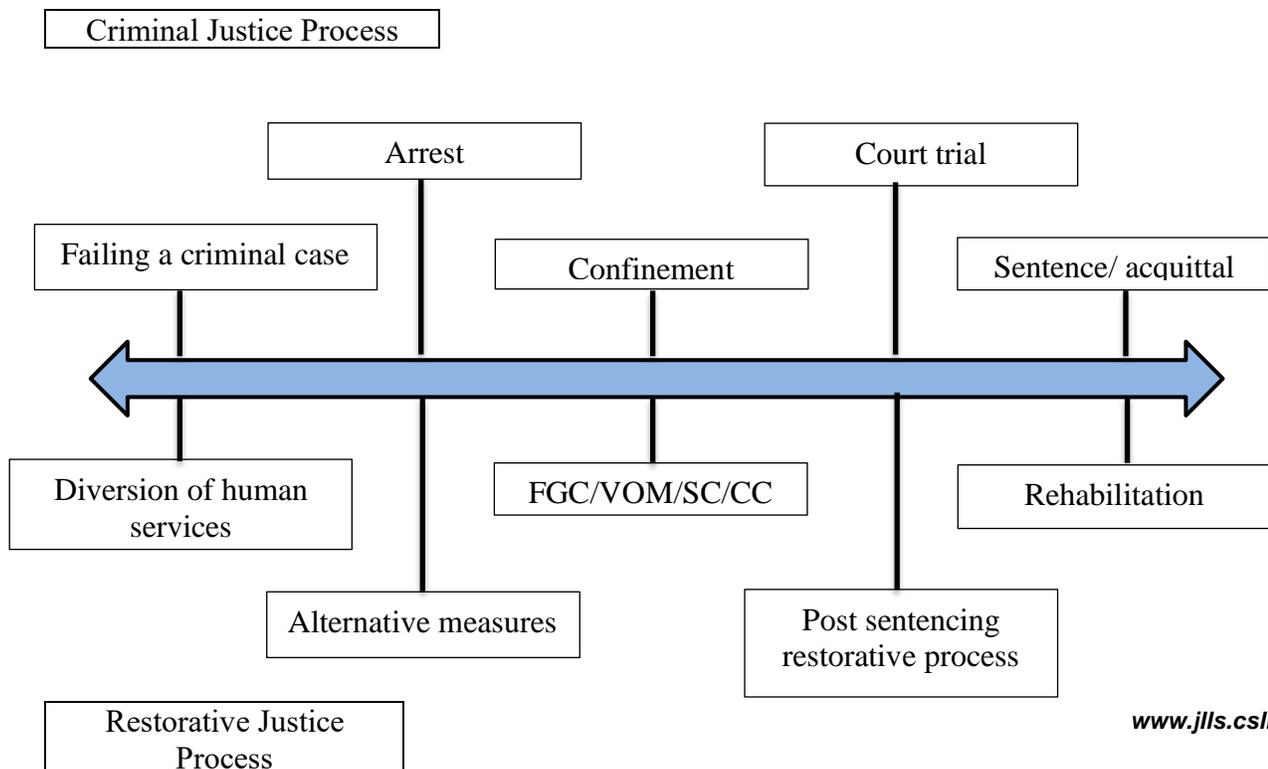
In the case of delinquency in juvenile, a number of strategic initiatives need to be taken to make the models of restorative justice effective. In the case of the developed state, it is seen that many feel that the application of restorative justice systems is still under investigation and more information is needed about their application and management. In this regard, Bangladesh is still far behind. The following steps need to be taken to make the models effective:

### 7.1.Strategic plan:

Every nation should have a national strategic plan. Each state will have its own systems and arrangements for the implementation of RJ system in light of which the development of justice will take place and this system will be adopted by the local people including law enforcement, judicial and social authorities. Strategic plan includes involving criminal justice agencies, social and non-governmental organizations, community associations; buildup leadership; communication; discussion with all stakeholders; training for facilitators and agreement criteria.

### 7.2.Method designing:

At the method designing stage, the legitimacy of the proposed new approach needs to be properly considered in the eyes of the victims, criminals and other important stakeholders, and a decision can be made on which restorative model can be implemented in consultation with all.



### Figure 3: Justice System Process

#### 7.3. Selecting cases

Since not all juvenile delinquents have access to a restorative approach because it is not mandatory for all cases, the first step is to select find them out those who are interested in taking advantage of restorative justice.<sup>36</sup> Cases will be of two types reported or unreported and it may be pending or sentenced. Our objective will be applying restorative justice in all cases.

#### 7.4. Appropriate time for restorative justice

In terms of time, two things can be considered, one is whether the parties involved in the conflict want to settle the dispute through the restorative approach and the other is because there is a difference between restorative justice and traditional justice in terms of procedural steps, as a result, when and how the process can be made successful. Interesting thing is before the trial begins there should be a step for restorative justice and final judgment cannot be made before the restorative justice method has failed. In which case the criminal is in jail, restorative justice will be done before the end of the sentence.

#### 7.5. Conferencing

The facilitator will sit separately with the victim and offender multiple times from time to time. The main purpose of the meeting is to bring the two sides face to face so that the victim can ask his questions to the offender. One of the major responsibilities of the offender here is that he will confess his crime in front of the victim and apologize to him. The main advantage of the process is that the victim can gain self-satisfaction by knowing why the crime was committed against him and the offender repents and forgives each other.

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<sup>36</sup> Md. Saleh Akram, (2020) 'Restorative Justice an Alternative Route of Dispute Settlement in Case of Rape', International Journal of Legal and Social studies, VI(1), 70- 84.

### **7.6. Willingness of the victim and offender**

The facilitator will make the offer to the victim first with regard to the restorative justice. While there may be disagreement in this point, many individuals think that restorative justice method relies upon a longing not to trouble victim with the enthusiastic work of picking whether to talk with the offender aside from if the offender is glad to grant and reasonably accept risk. But my argument is that victim will not be allowed to do restorative justice it will never be possible. If the victim gives consent then it will be a great opportunity for offender. It must be remembered that the facilitator has a special role to convince the parties. The facilitator's responsibility is to settle at the first meeting with the parties that whether a restorative method can be used in this crime or not? If an offender refuses to confess his guilt, then restorative method can never be done. Facilitators will take the consent of the parties in person.

### **7.7. Reaching victim-offender agreements**

In this method the fact is that victim wants compensation from the offender that the offender will provide him all support and compensate him for the loss. The facilitator will try to understand the attitude of both parties whether the victim and the offender are satisfied with them. The facilitator will make an agreement in the light of the terms of the agreement with the consent of both parties and the victim and the offender will sign it. It is mentionable that the purpose of the whole process will be to create a situation in which the victim will never again consider him a victim and simultaneously the accused won't ever again commit a crime. We know that if a community member is a victim of crime, the whole community will be victim.

### **7.8. Agreement forwarded to criminal justice officials**

It is imperative to perceive that new restorative justice programs and changes to existing projects require a correspondence system. The point is to viably elevate remedial justice ways to deal with both criminal justice experts and the society. This correspondence methodology can be started from various sources, including the government and NGOs. The issues of discussion of various meetings and the conclusions reached by the parties are sent in writing to the parties and the criminal justice officials. The decision of the conferencing will not be considered as a judgment of any court but will be evaluated in the same way as the general meeting of minutes. We must not forget that we want the offender to be punished and at the same time this method

will provide for the rehabilitation of the victim and the offender. For taking advantage from the restorative method all the persons interested should have to take part in the process.<sup>37</sup>

### VIII. Criminal Justice vs. Restorative Justice: In Case of Children

Restorative justice is about working together to find a neutral solution and without any pressure to bring the victims, the perpetrators, their families and all other parties back to their original state and which is not revenge. It is then implemented through a system of alteration or redirection. Redirection has assumed a critical part in improving results and restoring guilty parties. The idea of children diversion depends on the hypothesis that handling certain child through the restorative method may accomplish more damage than anything else. Projects intended to divert delinquents reprobates are frequently in a general sense not quite the same as the projects implied for grown-ups. Ordinarily youth will give substance misuse and psychological wellness issues which might be the hidden reason for such misconduct.

Redirection considered as the exchange of the settlement of the youngster to the criminal equity measure outside the criminal equity measure. Logically, the idea of redirection dependent on the assessment that the court will give disparagement of children for their activities as a child is viewed as malevolent, so it is smarter to keep away from it out of the criminal equity framework. Redirection is allowed on the grounds that it fit with the way of thinking of child criminal equity framework to ensure and restore youngster crooks.<sup>38</sup> Moreover, the redirection is additionally preceded as an entertainer avoidance of youngster become grown-up hoodlums. The current youngster equity framework depends energetically upon exorbitant and perilous restriction and medicinal probation, treating faint and normal concealed kids with different, unfeeling and absurdly reformatory assents. This medicinal methodology has vulnerable results, high recidivism, and little difficulty fulfillment.

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<sup>37</sup> *Ibid.*

<sup>38</sup> Douglas Abrams, "A Primer on Juvenile Protective Legislation", *Juvenile and Family Court Journal*, Vol. 65, 3 September 2014, p. 25.

Different countries including Northern Ireland and South Africa have set positive models for modifying the injuries of viciousness and mass confinement. Unseemly upbraiding practices have been certainly changed in Canada and New Zealand, with a shift to alternative equity agreed with overall fundamental freedoms protections, including proportionality.<sup>39</sup> Child anticipation endeavors that brought cops to take optional authority are regularly alluded to as deinstitutionalization of the proper criminal equity framework. The more extensive idea of equity incorporates victim's entitlement to get remedy. World basic human rights law treats the subject of a fix as independent common freedoms. Major human rights instruments discussed about the remedial rights. Convincing solution for human rights infringement has been ensured by the UDHR and ICCPR under Article 8 and 2 (3) respectively.<sup>40 41</sup> The right to seek justice by the aggrieved persons is also guaranteed by the supreme law of Bangladesh. Article 27 says, "*all citizens are equal under the law and are qualified for equivalent security of law*".<sup>42</sup> According to ICCPR Article 14 that Bangladesh ratified in 2000, provides for the advancement of reasonable privileges as long as the defendant has the option to be acquitted and has the option to try immediately.

Since judging all crimes is a seemingly impossible task, the demand for a holistic approach to resolving the issue forms the basis of restorative justice. Discussions could be initiated to establish a truth-telling system to hold more suspects accountable. The question is to change attitudes, where there is no police report there is no scope for criminal justice. Rather than encouraging the offender to commit a crime, the key to success lies in the neighborhood. In any case, the way in which the offender is assessed the damages by the restorative forms is significant and may include rehabilitation rather than corrective justice. Punishment and atonement only continue the cycle of revenge and allow the ideas of justice to be ideologically abused.<sup>43</sup>

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<sup>39</sup> <https://jjustice.org/resources/restorative-justice/>. accessed date 26.01.2021

<sup>40</sup> The Universal Declaration of Human Rights.

<sup>41</sup> The International Covenant on Civil and Political Rights.

<sup>42</sup> The Constitution of the People's Republic of Bangladesh.

<sup>43</sup> *Ibid.* 47

## **IX. Conclusion**

This article seeks to highlight how the use of restorative justice for juvenile delinquency can be made effective in a developing country like Bangladesh and the benefits of the Restorative Justice System. The main concern is that the restorative justice system is not as familiar as the adversarial justice system in Bangladesh. Again, there is not much support for people to come out of the traditional justice system. Then the hope is that if you don't start something, it is foolish to hope for good results. The criminal justice system re-injures the offender which reduces the relationship between the victim and the offender and ensures that there is no face-to-face contact between the parties. RJ is just like the other side of the coin designed in such a way as to strengthen the relationship between the victim and the offender. Bangladesh has no far reaching child equity framework for managing children in struggle against the law. The government of Bangladesh has put forth attempts to put child justice issues on the plan however considerably more actually should be finished. One of the serious issues is the absence of information about child rights by those charges of the equity framework, like police, legal executive, and community and post-trial agents. This outcome is a result of gross infringement of essential child rights. Till now it is hard to ensure the fundamental privileges of the children yet, the human rights activists are attempting to speak loudly of children. As a rule, the most central standards of fair treatment are disregarded. Arrest, detainment and condemning are regularly discretionary and now and then even unlawful. Actual maltreatment, power and torment are applied during capture and interrogation. After all, wouldn't we embrace a good system like Restorative Justice? We don't have sufficient asset, however we have good dreams, assumptions, yearnings and expectations that all children understand their maximum capacity in the society. We are substantially sure about making our fantasy a reality by guaranteeing the privileges of children in Bangladesh.