

Incorporating Restorative Justice into the Malaysian Criminal Justice System: A Comparative Analysis with New Zealand

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Abstract: *The aim of restorative justice of reforming offenders and empowering victims are considered to be effective in reducing crimes. It is for this aim that restorative justice has been incorporated into developed countries' criminal justice system such as New Zealand and, Australia. That said, it is high time for Malaysia to incorporate restorative justice into its criminal justice system. This article explores the possible incorporation of restorative justice into the Malaysian criminal justice system by analysing the practice and experience of New Zealand. It looks at the efficiency of the country's current criminal justice system and how restorative justice can enhance it. The paper is doctrinal research and utilising qualitative methods, it compares and critically analyses. This article found that the current criminal justice system offers limited opportunities for victim participation and focusing more on punishing the offenders. Thus, it fails to fulfil the goal of deterrence and reducing recidivism. To complement the limitations that exist, this article explores the successful implementation of the restorative justice system in New Zealand. In doing so, two suggestions will be proposed as a way forward. Firstly, the incorporation of pre-sentencing conferences by amending the Criminal Procedure Code. Secondly, the introduction of a Family Group Conference for juvenile offenders by amending the Child Act 2016. Through these suggestions, it is hoped that a more just and inclusive criminal justice system can be created. The shift towards restorative justice has the potential to benefit the victim, the offender and the community as a whole.*

Keywords: Criminal Justice System, Restorative justice, retributive justice, pre-sentencing conference, family group conference

1. Introduction

Within the criminal justice system, various approaches aim to achieve justice. While principles like procedural fairness and equitable distribution of outcomes are crucial, this paper focuses specifically on retributive and restorative justice (Wenzel et al. 2008). Retributive justice refers to the use of subjective punishment which is adequate to the offence committed by an individual or a group who violated the rules, regulations, and norms of a certain country. The role of punishments in a justice system is as an element of motivation to the public to abide by the law (Weiler, 1978).

Restorative justice, on the other hand, does not focus on imprisonment and other punishments. However, it emphasises making the offender understand the implications of his actions, attain repentance, and reduce recidivism. According to Clifford Dorn, restorative justice is a justice philosophy that accentuates the importance and relationship of an offender, victim, society, and

the government in a criminal suit. Additionally, restorative justice also deems a crime as an act that causes detriment rather than merely viewing it as a violation of law & order (Samanvitha Java gal, 2024).

Around the year 1970s and 1980s, restorative justice emerged in the West as a progressive alternative to retributive justice. Specifically, the use of restorative justice commenced in North America amid the 1970s involving a case of two youngsters vandalising properties in Elmira, Ontario, Canada (Ramizah Wan Muhammad, 2020). The said case involved different forms of restorative justice including compensation, reconciliation, and pardon. Pursuant to this, the American Bar Association urged courts throughout the United States to incorporate victim-offender mediation (VOM) as a form of restorative justice practice (Ramizah Wan Muhammad, 2020).

Looking into the Malaysian atmosphere, the criminal justice system utilises retributive justice. When a person commits an offence, he will be punished as per the Penal Code of Malaysia. Punishments such as imprisonment and caning will be imposed on the offender. In the Penal Code of Malaysia, a list of offences classified as crimes together with punishments is mentioned. The offences include serious crimes such as murder and terrorism and petty or less serious crimes such as theft and trespass to land. In sum, the Malaysian criminal justice system has a punitive nature rather than recovering and repairing the effect of the crime.

Furthermore, there are some developments based on restorative justice principles that have occurred in the landscape of the Malaysian criminal justice system. The efforts towards restorative justice that Malaysia has taken include the incorporation of community service in the Childs Act 2001 as one of the punishments for young offenders (Norjihhan Ab Aziz et al. 2022), the abolishment of the mandatory death penalty, and the establishment of the Narcotic Addiction Rehabilitation Centre (Mashayani & Azemi, 2014).

Even though the restorative effort in Malaysia's criminal justice system is a handful, restorative justice has evolved well in Commonwealth countries such as New Zealand, Australia, Canada, and the United Kingdom. The restorative justice implemented in these countries is through practices of victim-offender mediation, family group conferences, and healing circles. These practices are basically out-of-court practices. Through these practices, the victim and offender together with family members and the community get to discuss and determine the action that the offender can take without the involvement of the court and prosecution in the decision-making process (Azlinda Azman & Mohd Taufik Mohammad, 2012). The decisions are valid and can be enforced as the court's order if it is consensually made between the victim and offender.

Presently, restorative justice is a developing branch of law in the world and this type of justice is being supported by the United Nations. The support can be seen through the declaration of the Eleventh UN Congress on the Prevention of Crime and the Treatment of Offenders in 2005 that impelled Member States to recognize the importance of further development of restorative justice policies, procedures, and programmes that include alternatives to prosecution (Sia, 2013). Additionally, the United Nations Office on Drugs and Crime (UNODC) also developed a handbook known as Handbook on Restorative Justice Programmes. This handbook discusses the application and utilisation of restorative justice programmes in the legal system, repairs the relationship, and supports the rehabilitation and reintegration of offenders (Dandurand, 2020).

Through these encouragements and supports, the landscape of the criminal justice system will evolve along with the integration of restorative justice. To keep up with the evolving nature of restorative justice, Malaysia should be prepared to incorporate and evolve the restorative practice in the criminal legal system for effective law and problem-solving.

2. The Malaysian Criminal Justice System

The court system in Malaysia emerged through the colonisation of the British Empire. The first-ever court was established in Penang after the land was acquired by Captain Francis Light. It started in the year 1801 when John Dickens was elected as the first local magistrate to resolve disputes and adjudicate the law. A Supreme Court is established in Penang through the application of Royal Charters. Consequently, more courts were opened in other parts of the Straits Settlements namely Malacca and Singapore. The formation of a court structure by the British Empire and affiliates can be seen in Federated Malay States, Unfederated Malay States, Sabah, and Sarawak. Soon after the declaration of independence of the Federation of Malaya on 31 August 1957, the court system in Malaya was divided into two namely the Superior Courts and the Subordinate Courts which exist till today where the Federal Court is the highest in Malaysia (Foong, 2008).

As Malaysia follows the doctrine of separation of powers, the judiciary stands independently from the legislative and executive branches. The Malaysian judiciary is modelled upon the common law tradition and adversarial system (Noraini & Radha, 2011). Malaysia adopted the adversarial system as an effect of British colonisation. In the adversarial system, two parties will be competing against each other in a criminal trial to submit their case and present their arguments as per the law. The parties that initiate a criminal case are the Public Prosecutor and, in the defence, it would be the accused person. The Criminal Procedure Code (CPC) provides the legal procedures applicable in criminal proceedings. As the party who initiates the proceeding, the Public Prosecutor must prove their case before the court, by presenting evidence derived from witnesses and documents. This aims to prove the accused person's guilt beyond reasonable doubt. On the flip side, the accused is allowed to defend himself from the allegation put forth by the prosecution. To succeed in the defence, the defence just has to raise a reasonable doubt on the case presented by the prosecution.

Looking into the philosophy behind the Malaysian criminal justice system, the prominently visible principle is retributive justice. A retributive justice system is a form of punitive justice that focuses on punishing offenders based on the offences committed. This classic form of justice applies in most of the countries in the world. In Malaysia, the retributive justice system operates through the application of statutes such as the Penal Code, and the Security Offences (Special Measures) Act 2012. The retribution system focuses more on an eye-to-eye approach. This approach emerged as early as the 18th Century B.C. through the Code of Hammurabi which states that if a man has destroyed the eye of another man, they shall destroy his eye (Ridoan Karim et al. 2017). This approach can be observed in section 302 of the Malaysian Penal Code where a person who committed murder would be sentenced to the death penalty. The use of this approach ensures the offender suffers the pain he inflicted upon the victim.

Even though retributive justice may have its advantages, some criticisms highlight the existence of shortcomings in this system. Firstly, retributive theory makes it mandatory for the offender to be punished (Wheeler, 1972). There is no clemency given to the wrongdoer such as repentance or pardoning. Moreover, the retributive theory also does not bring balance between the offender, victim, and the community (Ramizah Wan Muhammad, 2020). The

punishment inflicted on the offender will not repair or revive the victim from the injuries or losses sustained. Lastly, the retribution philosophy is not the approach in dealing with cases such as drug overdoses and suicidal cases (Ridoan Karim et al. 2017). There is a much bigger issue underlying the offence committed and punishing the offender does not solve the core problem.

3. The Fundamentals of Restorative Justice

Restorative justice emanated as an alternative to retributive justice. As per Clifford Dorn, restorative justice is a philosophy of justice that highlights the significance and interconnectedness of offender, victim, community, and government in a criminal case (Clifford, 2008). It is substantially different from retributive justice as it focuses on redressing victims, offenders, and communities to restore the balance rather than merely punishing the offender. Moreover, in the restorative justice approach, the role and voice of the victim and community are given much importance to ensure the best steps are taken to redress the effect of a crime (Azlinda Azman & Mohd Taufik Mohammad, 2012).

The restorative justice movement commenced in North America during the mid-1970s where compensation, conciliation, and pardon were used alternatively for punishments in a vandalism case of two youngsters (Ramizah Wan Muhammad, 2020). Henceforth, the restorative justice principle has been highly encouraged to be adopted into the court system.

The restorative justice system has certain fundamental principles. One of the principles is the interconnectivity of the offender and victim as they belong to the same community. Therefore, the inclusion of all those affected by the crime is emphasised in the restorative process. In a conventional justice system, only the offender will be punished. The community and victims do not have much say on what the offender does following the commission of the crime. In the restorative process, all three stakeholders have a role to play. The offender is liable to repair the effect of his crime in the way specified by the victim and community. Meanwhile, the community assists the offender to avoid recidivism and the commission of other crimes to ensure the re-acceptance of the offender into the community (Ramizah Wan Muhammad, 2020).

As restorative justice evolved, many programmes emerged to facilitate the restorative process. One of the widely recognised practices is victim-offender mediation (VOM). In VOM, a mediator will be elected to facilitate the discussion between the offenders and the victims (Ramizah Wan Muhammad, 2020). Here, the victims will share with the offenders the impact of their crime on them and their families. Subsequently, the offender will be asked to share his story on why he committed the crime. Through this discussion, both victims and offenders can understand each other, and the victim might consider forgiving the offender. As for the offender, the effect of having to face the victim is hoped to serve as a turning point that could reform him. Currently, around 300 such restorative justice programs exist throughout the United States (Ramizah Wan Muhammad, 2020).

Besides VOM, many other programmes are designed for an efficient restorative process. Another program is the Healing Circle (HC) which focuses on bringing the offender, victim, family members, community, and government representatives to resolve harm arising from the offender's act. There are also victim assistance programmes (VAP) designed to provide service to crime victims and the ex-offender assistance programme (OAP) curated to provide services to offenders who are imprisoned or have been released (Ramizah Wan Muhammad, 2020).

4. Restorative Justice In New Zealand

New Zealand is one of the most reputable countries in restorative justice for incorporating restorative practices into the criminal justice system and legislation. New Zealand holds the role of the pioneer in streamlining restorative justice into its criminal justice and making restorative practices mandatory for the courts to follow (Sarah Mikva Pfander, 2020). Delving into the history of restorative justice in New Zealand, it is a movement brought by local activists for a better justice system. Henceforth, Parliamentary action commenced in the 1980s to incorporate restorative principles into its youth justice reform. Subsequently, the Parliament passed the Children, Youth Persons, and Their Families Act 1989 (currently known as the Oranga Tamariki Act) (Sarah Mikva Pfander, 2020). Through this Act, a child or young person's welfare and youth justice are protected from going through rigorous criminal proceedings upon committing a crime when there is an alternative mechanism to deal with these issues (Norjihhan Ab Aziz et al., 2022).

Subsequently, one of the innovative restorative justice programs implemented by New Zealand is the institutionalisation of the restorative Family Group Conference (FGC) in the child justice system. This conference which was developed in New Zealand and derives from the Maori tradition (Lanni, 2021) focuses on harm repair, victim participation, and community involvement and it became a success as advocated by top legal personalities in New Zealand to extend the conference to adult offenders (Mansill, 2013). Additionally, FGCs are usually facilitated by professional social workers and will be participated by the victims, offenders, and their families (Lanni, 2021). The concept of this conference is similar to victim-offender mediation; however, it is different in the sense that victim-offender mediation primarily focuses on the victim and the offender, meanwhile, FGC attempts to include the family members in the restorative process (Lee, 2011). Most of the FGC programmes disallow the participation of lawyers in the conference. Some have suggested legal representation during the conference is necessary to prevent the offenders' rights from being violated. However, legal representation seems less important as restorative processes like FGC are not designed to find facts or adjudicate guilt but to focus on reparation and rehabilitation (Lanni, 2021).

Additionally, one of the prominent initiatives taken by New Zealand is the Sentencing Act of 2002 which requires the court to adjourn a criminal case before proceeding with sentencing. The purpose of the adjournment is to enable the offender and victim to go through a restorative process. In this process, the victim gets to open up about the impact of the crimes felt by the victim and the family. On the flip side, the offender gets the chance to remorse for the harm caused. Nevertheless, before proceeding with the adult pre-sentencing conference, the offender should plead guilty, and both the offender and victims have consented to partake in the process. Upon the completion of the restorative process, a report of the conference will be submitted to the court by the facilitators. Under the Sentencing Act of 2002, the sentencing judge is required to consider the offender's participation in the conference and agreement made with the victim to determine what kind of sentencing best suits the offender and encourages his rehabilitation and reformation. One of the benefits the offender receives through participation is the reduction of imprisonment duration (Lanni, 2021).

5. Restorative Justice in Malaysia

Restorative justice in Malaysia can be seen through the prioritisation of the victims' and young offenders' rights in dealing with juvenile delinquency (Azlinda Azman & Mohammad Taufik, 2021). The restorative effort is evident when an amendment is made to the Child Act 2016 to

include community service as one of the alternatives to punishments. The efforts to abolish the mandatory death penalty in Malaysia are also seen as a step toward restorative justice even though the abolishment may be indirectly related to it, as the Parliament of Malaysia understood that punishment is not suitable for certain offences (Hood & Hoyle, 2015).

Moreover, one of the initiatives taken in Malaysia which has a restorative nature is the establishment of the Cure and Care Servis Centre (CCSC) by the National Anti-Drug Agency (AADK). CCSC has an objective of operating as a temporary placement or halfway house to provide treatment packages including supportive medication to prevent relapse among the trainees which enhances the effectiveness of the rehabilitation process. Besides, this centre offers treatments such as detoxification, counselling, group and peer support, job placement and reintegration into society. Additionally, CCSC renders advisory and referral services to the parents, spouses or children of drug addicts to ensure that drug addicts closed circle can understand and assist the drug addicts more effectively (Mashayani & Azemi, 2014). Measures such as this show that merely punishing a drug addict cannot ensure him to repent and change. The role of CCSC as a rehabilitation centre is crucial to ensure the drug dependant is cured and released from the clutches of drug addiction. This motive highlights a restorative nature where the agency actively helps the drug dependent rather than merely punishing.

Furthermore, as per the Drug Dependents (Treatment and Rehabilitation) Act 1983, the drug dependents who have been detained by police officers and presented in front of the magistrate, will not be punished for the act of abuse of drugs. According to Section 6 (1) of the Act, the Magistrate shall order the person to go through treatment and rehabilitation for a period of 2 years or undergo supervision by an officer for a period of two to three years (Drug Dependents (Treatment and Rehabilitation) Act, 1983). Besides, a drug dependent who voluntarily presents himself to the Rehabilitation Officer will not be brought in front of the magistrate. Upon necessary test, the Rehabilitation Officer will decide on the appropriate measure either treatment and rehabilitation or supervision by the Rehabilitation Officer (Drug Dependents (Treatment and Rehabilitation) Act, 1983, Sec. 8). From here, it is visible that the law in handling drug dependents appears more restorative and retributive in Malaysia emphasising the element of treatment and rehabilitation.

Additionally, the parole system is another practice with some elements of restorative elements that exist for the offenders. Through this system, the offenders get an early release temporarily or permanently before the expiration of their initial sentence with the promise of good behaviour. With good behaviour as a condition of parole, the offender will be supervised by the parole officer to avoid recidivism and ensure the offenders are reintegrated into the community (Norulhuda Sarnon et al., 2021). In Malaysia, the parole system was introduced in 2007 through the amendment of the Prison Act 1995. However, the parole system became enforceable on 30th June 2008 after the completion of the process of royal assent and was published in the gazette. The Malaysian parole system was enacted to lower operational costs and prison congestion, decrease recidivism, and rehabilitate prisoners to enable their effective reintegration into the community, workplace, and family (Parliamentary Hansard, Dec 19, 2007).

As per the Prison Act 1995, specifically section 2, a prisoner who serves a parole order is still considered a prisoner. As per section 46I, the prisoner who is serving parole is deemed to continue serving his imprisonment sentence during the period of parole. However, the sentencing will be served outside of the prison under the supervision of parole officers. The parole board led by a chairman is responsible for declaring parole orders to prisoners (Zaiton

Hamin & Rafizah Abu Hassan, 2012). As per section 46F of the Prison Act 1995, several matters should be considered by the Parole Board before making a Parole Order (Prison Act, 1995, Sec. 45F). As mentioned above, this system facilitates the reintegration of the offenders into the community which would give them a head start to work as a normal individual upon the completion of the sentencing period.

Delving into the restorative aspects, the parole system offers a sense of empowerment to the offenders who are usually shunned and avoided by the public due to their past crimes and misconduct. However, through the parole system, the offenders or prisoners are given a chance to display and practice good behaviours with the supervision and guidance of parole officers. This process enables the offender to understand and implement rights actions in a community setting and avoid recidivism. Rather than merely punishing the offender by placing him in prison for the entire period of sentencing which appears punitive, the approach of the parole system allows the offender to learn and apply the right behaviour in a community setting boosting the process of rehabilitation and reintegration into the community which appears more restorative.

Looking into restorative opportunities available for victims of crimes, one of the practices that exists in Malaysia is the Victim Impact Statement (VIS). This is a practice that can be traced back to the 13th Century English Common Law when a distinguishment between civil torts and criminal actions for the first time occurred. Later, this practice emerged in the American criminal law system. The function of the VIS is to enable the victim to express the harm or losses suffered due to the commission of the crime. In certain American States, VIS is also used as a medium for the victims to express their opinions on the sentence that can be imposed on the offender. Not only are the victims allowed to give a statement, but the family members of the victims are also permitted to put in writing the financial, emotional, psychological and physical harms and losses caused by the offender (Shahrul Mizan Ismail et al., 2017).

In Malaysia, VIS came into practice in the criminal justice system under s. 183A of the Criminal Procedure Code (CPC) as quoted below:

Section 183A: Victim's impact statement

- (1) Before the Court passes sentence according to law under section 183, the Court shall, upon the request of the victim of the offence or the victim's family, call upon the victim or a member of the victim's family to make a statement on the impact of the offence on the victim or his family.
- (2) Where the victim or a member of the victim's family is for any reason unable to attend the proceedings after being called by the Court under subsection (1), the Court may at its discretion admit a written statement of the victim or a member of the victim's family.

As per section 183A of the CPC, the victim impact statement shall be allowed by the court upon request from the victim or the victim's family. The statement can be given orally in the proceeding or as a written statement if the victims or their family members are unable to be physically present. Section 183A came into play in 2012 through the Criminal Procedure Code (Amendment) Act 2010. VIS was used for the first time in the case of PP v Shahrul Azuwan bin Adanan & Anor [2013] 8 MLJ 70. The offender pleaded guilty to 30 charges consisting of running a cattery business without providing care to the cats of the victim which were dead and suffered health issues due to undernourishment. Before the appeal by the prosecution, the sentence imposed on the offender is 1-month imprisonment and a RM200 fine. Upon appeal and considering the suffering and losses went through by the victims through victims and their

cats went through VIS, the High Court imposed an extra three months in jail simultaneously with the RM200 punishment for each offence (Shahrul Mizan Ismail et al., 2017).

Therefore, VIS is a progress in the right of the victims who are generally used as witnesses to prove prosecution cases. The active role of the victim in criminal proceedings is one of the key aspects advocated by restorative justice activists. From the use of VIS in Malaysia, it is evident that the voices of victims and their family members on harm and losses suffered are heard which gives a sense of satisfaction to the victims and boosts their healing process.

In sum, the restorative practices that can be traced in the Malaysian criminal justice system exclusively for offenders are non-custodial sentencing such as community service for young offenders, mandatory rehabilitation programs for drug addicts under the Cure and Care Service Centre and the parole system. Additionally for victims, the restorative practice that exists is the victim impact statement (VIS) which enables the victims and their members to voice out the harms and losses.

6. Need for a Better Criminal Justice System in Malaysia

The criminal justice system in Malaysia has traditionally focused on retribution, aiming to punish offenders for their crimes. This approach serves the purpose of deterrence and upholding the law. Additionally, certain restorative practices have been incorporated gradually into the criminal justice system such as community service, compulsory rehabilitation order parole system and victim impact statements as addressed previously. The question that arises here is whether these practices are creating a balance between offender, victim and community in an effort to find solutions that promote recuperation, reconciliation, and reassurance. Looking into the efforts taken by Malaysia, there is progress made in the criminal justice system of Malaysia through the incorporation of certain restorative practices. However, current practice is not adequate to fulfil the goal of restorative justice and certain limitations do exist.

One of the limitations that can be traced in the current criminal justice is the role of the victim in the criminal justice process is quite insignificant. Victims' voices are only heard as witnesses and through victim impact statements. It can't be denied that a victim impact statement promotes fairness in the sentencing process. According to the statement given, adequate sentencing can be set. This can be beneficial for both the victims and offenders. On the side of victims who suffered excessive harm and losses, the court will not be erred by imposing a lesser punishment. Contrarily, if the victims do not face any trauma or loss, the offender can be protected from going through excessive punishments. This can be seen in the case of *PP v. Muhammad Shakir Azizan [2016] 3 CLJ 300*. The accused in this case committed an offence of statutory rape under s. 376(1) of the Penal Code. After considering the victim impact statement which showed that no sign of trauma on the part of the victim, the Sessions Court Judge sentenced the accused to just two years imprisonment. Due to the light sentence, the prosecution appealed but the High Court agreed with the verdict and sentencing imposed by the Sessions Court which was based on the victim impact statement and consequently dismissed the appeal (Shahrul Mizan Ismail et al. 2017). So, it can be said the victim impact statement benefits both the victim and offender in determining a fair punishment.

However, the goal of the victim impact statement is not in line with the principles of restorative justice. The victim impact statement used in Malaysia is focused on determining the right amount of punishment for the offender which is retributive. Punishments imposed on the offenders may bring satisfaction to victims. Nevertheless, victims' view on satisfaction varies

and a victim does not derive satisfaction solely by hearing the offender is getting punished and serving their sense of revenge. Some were satisfied by communicating with the offender. Some were satisfied when they saw the behaviour of the offender change for the better (Batchelor, 2023). Therefore, it is evident that merely imposing an adequate amount of punishment on the offender does not satisfy the victim and boost their healing process. The victims need more than just seeing and hearing the consequences the offenders go through punishments to repair their harm and losses.

Additionally, in the current justice system in Malaysia, there is little room for communication between victims and offenders (Norjihan Ab Aziz et al., 2017). The common belief is the interaction between victims and offenders would traumatise the victims even more and it would affect the healing process of the victim. However, it is not a definite fact for all victims. Some victims are ready to meet and communicate with the offenders (Azlinda Azman & Taufik Mohammad, 2021). Through this communication, the victims are able to give the offender a chance to explain himself and apologise. Therefore, it opens a room for the victim to forgive the offender which is not only beneficial for the offender but to the victims too in the process of recuperating and healing. Therefore, creating a medium of communication between offenders and victims who are ready to face the offenders is needed in the criminal justice system of Malaysia.

Furthermore, the belief that harsher punishments bring better adherence to the law is outdated. A study conducted on inmates shows that punishments do not completely deter the offender from reoffending (Van Ginneken, 2016). These statements are based on the inmates' opinions on how they feel about imprisonment and going through punishment. Besides, based on defiance theory, offenders who are sanctioned unfairly are more likely to react with shame and rage. Consequently, it increases the possibility of recidivism (Sherman, 1993). Therefore, the harsher the experience went through by inmates in prison, for some it may remind them prison is not a good place to be in. However, the harshness which fails to teach lessons and rehabilitate the inmates will not hinder the offenders from reoffending which does not fulfill the purpose of punishment, deterrence (Van Ginneken, 2016). Therefore, the punitive-centric justice system in Malaysia which emphasises the harshness of punishment should be changed.

To conclude, in the current criminal justice system of Malaysia, the victim's voice and satisfaction are neglected. Even though there is a use of victim impact statements, they function as a tool to determine fair and just punishments for offenders. The punishments experienced by offenders can superficially bring satisfaction to some victims but not to all. Moreover, the Malaysian criminal justice system does not promote communication of victims and offenders which would assist in the healing process of both parties. Besides, merely going through punishment does not hinder the offenders from reoffending. Therefore, the idea that harsher punishments bring deterrence is outdated. Taking into consideration the satisfaction and healing process of victims in the criminal justice system, and minimising recidivism in offenders, the criminal justice system in Malaysia needs a better system which incorporates restorative justice.

7. Suggestions

To emphasise the role of the victims in the criminal justice system and to minimise the recidivism of offenders, a few suggestions are proposed by the author with reference to the restorative justice framework developed by New Zealand. The suggestions are incorporating

adult pre-sentencing conferences and institutionalisation of victim-offender mediation in Malaysia.

7.1 Adult Pre-Sentencing Conference

An adult pre-sentencing conference is a restorative practice conducted before a sentencing judgment is given by the Court where the offender and victim or victim's representative are present in a session which will be overseen by a facilitator. In this session, the victim gets to open up about the impact and repercussions that went through by him out of the commission of crime by the offenders. Meanwhile, the offender gets a chance to remorse over the actions and seek forgiveness. In this conference, the victim and offender will be discussing and agreeing on the possible actions that can be taken by the offender to repair the harm caused. The decision should be made consensually between the victim and the offender. This is the mechanism used in New Zealand.

So, a question arises. How can this conference be implemented in Malaysia and how it can improve the criminal justice system? Similar to the mechanism implemented in New Zealand, adult pre-sentencing conferences can be implemented in Malaysia too before the judges determine the sentence for the offenders upon convicting them as guilty. Therefore, upon convicting the offender as guilty, the court should order the offender and victim to go through the conference. If the victim is not ready to face to offender, he or she may appoint a representative who can speak on their behalf, for example, family members or a trusted person to go through the conference. Through the conference, the victim or the representative could agree with the offender on the possible actions or remedies that will be taken by the offender to repair the harm and losses done. For a smooth flow of the conference, a facilitator should be appointed. At the end of the conference, a report will be prepared and sent to the court for the sentencing judge's perusal. Similar to how a victim impact statement influences the sentencing verdict, the report from the pre-sentencing conference would be taken into consideration at the discretion of the sentencing judge.

In determining the sentence, the judges will evaluate the agreement between the victim and offender on the possible actions and remedies. Upon evaluation, the sentencing judge may decide to impose a lighter punishment on the offender with a condition he fulfils his promises as per the agreement with the victim. Through this approach, the victim's healing process will be enhanced as the offender will be taking part in repairing the harm and losses done and improving the victim's satisfaction in the process. On the other hand, despite going through punishment, the offender feels remorse, takes responsibility for his actions and fixes the issue. However, how the sentencing judge will still have the discretion not to accept the agreement under two conditions. Firstly, the remedial action agreed cannot be practically executed. Secondly, the execution of the remedial action will pose a significant danger to the victim from the offender by looking into the nature and records of the offender.

The incorporation of the pre-sentencing conference in the criminal justice system in Malaysia will ensure the victims' voices are heard better and the voices can be directly communicated to the offender. As highlighted previously, in the retributive justice system as practised in Malaysia, the victim is only used as a witness and a consideration in determining the sentence. Their satisfaction and recuperation are not a big consideration. Therefore, the introduction of pre-sentencing conferences in Malaysia enables an increase in the participation of victims in the criminal justice system, their voices are being, create chances to communicate and forgive the offender and eventually, boost the victims' healing and recovery process. Moreover, the

offender will also have a responsibility to repair the situation caused by him and this will make sure he understands the consequences of his actions and minimises reoffending in the future. Analysing the mechanism and benefits the adult pre-sentencing conference brings, the author proposes an amendment to the Criminal Procedure Code to incorporate adult pre-sentencing conference as it was done previously for the victim impact statement as per s. 183A of the Criminal Procedure Code. This codification is important as it will ensure the use of pre-sentencing conferences can be formally applied in the criminal justice system in Malaysia ensuring the smoothness and effectiveness of the conferences.

7.2 Family Group Conferences

The subsequent suggestion is the introduction of the Family Group Conferences (FGC) in Malaysia. FGC is a restorative practice pioneered in New Zealand which was incorporated through the Oranga Tamariki Act focusing on tackling the root causes of criminal activity and assisting in the reintegration of youth into society. As discussed previously, it does not apply to adult offenders yet in New Zealand. However, efforts are being taken to do so.

The author proposes incorporating Family Group Conferences into the juvenile justice system in Malaysia, with the possibility of slowly expanding them to include adult offenders in the future. The FGC operates in a way that promotes reparation of harm caused by crime and reconciliation between victims, offenders and the community. As addressed earlier, this measure will primarily be applied to juveniles. In Malaysia, punishments applied to juveniles are aimed at rehabilitation, a focus of restorative justice. However, incorporating FGC will bring added benefits to the juveniles and also the victims.

There are two main ways to initiate a Family Group Conference (FGC). In court cases, a judge may order an FGC if the juvenile admits guilt. For less serious offences, the police or social workers can also initiate an FGC, but only with the consent of all parties involved, including the young person, the victim, and their families. In a process similar to a pre-sentencing conference, the victim will have the opportunity to describe the harm and loss caused by the offence. This allows the juvenile to understand the impact of their actions on the victim and their family, potentially fostering remorse and learning. Furthermore, this empowers the victim to have their voice heard in the process.

Building on the earlier points, FGCs offer significant benefits for young offenders. Because they are still developing, their behaviour can be positively influenced with the right methods and approaches. FGCs empower victims, facilitate rehabilitation for juveniles, promote family reconciliation, reduce recidivism rates, and emphasize community healing. This holistic approach promotes a positive environment for young offenders to become responsible members of society. Consequently, juveniles can avoid the harsh realities of the traditional court system. More importantly, FGCs effectively address the root causes of young offenders' misbehaviour. By fostering an understanding of the impact of their actions, FGCs create a path for correcting unhealthy behaviours and promoting positive change.

Analysing the limitations of the current juvenile justice system, such as high recidivism rates, the author proposes an amendment to the Child Act 2016 to incorporate Family Group Conferences (FGCs). Similar to the introduction of community service, FGCs offer a unique approach to rehabilitation. Unlike community service, FGCs go beyond punishment by fostering dialogue and restorative justice. By addressing the root causes of offending behaviour and promoting accountability through family and community involvement, FGCs have the potential to significantly improve outcomes for young offenders.

8. Conclusion

The current Malaysian criminal justice system focused on retribution and punishment offers limited opportunities for victim participation. Victims' voices are often unheard, and the emphasis on deterrence through punishment has proven ineffective in preventing repeat offences. As an alternative, restorative justice can complement the limitations of the current system. New Zealand's successful implementation of restorative justice practices demonstrates the potential benefits of focusing on rehabilitation and victim empowerment. To create a more just and compassionate criminal justice system, Malaysia can follow New Zealand's lead by incorporating restorative justice practices like pre-sentencing conferences and family group conferences. This can be achieved through amendments to existing legislation, such as the Criminal Procedure Code and the Child Act 2016. It is important to adapt restorative justice practices to fit Malaysia's unique cultural context. Therefore, well-designed pilot programs and thorough research are necessary to assess their effectiveness and ensure they address the needs of everyone involved. Ultimately, a shift towards restorative justice principles has the potential to benefit victims, offenders, and the community as a whole.

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