

## Is Restorative Justice, which Aims for the Support of Victims and Rehabilitation of Victimizer, Possible? Based on Initiatives in Japan

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**Abstract** : Restorative justice has been studied in multifaceted ways in Japan. Restorative dialogue by NGOs forms the core of such practices; however, this approach remains underdeveloped. Many advocates have long asserted that legislation is essential to the systematic implementation of restorative justice. In this paper, we adopt two approaches from the field of criminal justice for victimizers in correctional institutions and during probation that incorporate the viewpoints and feelings of crime victims. Further, we consider the possibility of developing these approaches as forms of restorative justice.

**Key words** : Crime victim, Restorative justice, Victim support, Education programs incorporating the viewpoint of the crime victims, Rehabilitation program, Victims' feelings conveyance system

### **Current support for crime victims in Japan**

Many advocates charge that supportive measures for crime victims in Japan lag behind those in Europe and the United States by as much as twenty years, as no formal support systems for victims and their families existed until the 1980s.

The emergence and rise of movements led by victim advocacy organizations in the early 2000s led to legislation by House members, and a turning point in victim support came with the enactment of the Basic Act on Crime Victims in 2004, which was the first comprehensive act in Japan to address victims' rights and needs in the criminal justice system and communities.

Based on this Act, the Basic Plans for Crime Victims, which advanced laws and institutions for victims, were formulated in 2005. Since then, they have been revised twice in 2011 and 2016, respectively. The currently active third plan has promoted victim support measures in local governments and directed the training of support professionals. Since the enactment of the Basic Act on Crime Victims, measures to support victims in public and in private sectors have been rapidly improving.

Restorative justice (RJ) has been studied in multifaceted ways with efforts led by law academics. Restorative practices are being implemented by NGOs, and related dialogues in juvenile cases have been progressing. Nonetheless, the numbers of groups implementing RJ remain limited and practices are still underdeveloped. It has long been asserted that legislation is essential to achieving more systematic implementation of RJ in Japan.

## **The Education Programs in correctional institutions**

Correctional institutions currently have education programs "incorporating the viewpoint of the crime victims," which target inmates convicted of serious crimes such as homicide, injury-causing death, and dangerous driving causing death. Implementation of the programs began around 2009 and they aim at building awareness among inmates of the seriousness of their crimes and assisting them in avoiding offending again by helping them to understand the actual conditions of victims and their bereaved families.

The program consists of six units: ① recognizing the dignity of human life; ② understanding the situations of crime victims and their families by listening to victims; ③ understanding the seriousness of their crimes; ④ achieving apologies and compensation; ⑤ considering ways of apologizing to victims; and ⑥ determining never to offend again. Each unit covers approximately two hours and is offered over three to six months.

During unit ②, "understanding the situations of victims and their families by listening to victims," victims are invited as guest speakers to speak of the impact of crimes on their lives. These speakers are not the direct victims of the inmates. The institutions' staff is very careful to avoid the secondary victimization of victims by recruiting supporters for the speakers from victim support organizations and preparing the inmates well for the programs.

The programs are now implemented nationwide. Victims feel that they can both speak out about the seriousness of the impact of crimes on their lives and they see first-hand how the inmates live in correctional institutions. Thus, the programs offer ① a function for the outlet of victims' emotions, and ② the opportunity for victims to observe the daily lives of inmates.

Although program results have been consistently positive over the past decade, some limitations can be identified: ① the structure is one-way as inmates are not provided the opportunity to give some feedback; ② there are few guest speakers and the majority are bereaved family members of victims of dangerous driving causing death; ③ the burden of organizing the programs is mainly borne by institutional staff; and ④ it is not clear that the program is fully aligned with the victims' needs.

## **The Victims' Feelings Conveyance System within society**

Another approach to RJ is the Victims' Feelings Conveyance System in probation, which was initiated in 2007 and allows victims to communicate their feelings to victimizers through the latter's probation officers. A probation officer recounts the victim's statements about the crime and their needs to the victimizer, and then notifies the victim of the results of telling the victimizer. This system is positioned as the final point of contact for victims and victimizers within the criminal justice process.

In March and April of 2014, we conducted a nationwide questionnaire survey with 177 probation center officers who were supervisors of the Victims' Feelings Conveyance System. The survey subjects were 177 personnel. These personnel worked only with victims. Participation was voluntary, and the

survey was conducted based on Sophia University's guidelines for "Research on Human Subjects" and confidentiality policies.

One hundred-eleven questionnaires were returned, which amounts to a response rate of 63.8%. We analyzed the results to examine how the system functioned from the viewpoints of probation officers. In light of the role played by these officers in the field, it became clear that they operated with detailed consideration of the specific situations of individual victims, and they particularly exerted great effort to avoid secondary victimization.

How did the probation officers feel about this system in general? The main results were following: ① 62% of respondents felt that they could convey victims' feelings to victimizers; ② 94% of respondents reported that it was difficult to meet the victims' need for compensation; and ③ 56% of respondents neither agreed nor disagreed that the system was useful for victimizers' rehabilitation.

The survey results also clarified that in order for this system to function more effectively, it would be necessary to raise more public awareness of the system and have close cooperation with the departments dealing with the victimizers.

## Discussion

Victim support (VS) and rehabilitation of victimizers were previously completely separate endeavors, as VS workers focused solely on the victims' needs and excluded those of victimizers, and personnel in correction and probation areas were concerned only with victimizers' emotional settlement and rehabilitation. Thus, implementing education programs that incorporate the perspectives of crime victims in correctional institutions and the Victims' Feelings Conveyance System in probation represent significant progress in narrowing the distance between the two areas.

The victimizers' process of rehabilitation involves two major steps. First, they need orderly lives in correctional institutions or communities, and then they should recognize the consequence of their actions. They cannot rehabilitate in communities without understanding the victim's situation and taking responsibility for what they have done.

The victims' process of moving forward also comprises two major steps. First, they need to return to a safe daily life and to heal trauma. Then, if they have an opportunity to recognize the victimizer's perspective, they can obtain some closure and move toward their future.

Nearly twenty years have passed since the two approaches were implemented, and a great deal of empirical knowledge of supporting victims has been accumulated. There is something that only the offender-side institutions can contribute to help victims take the next steps to recovery.

We propose to conduct a pilot project of direct communication between the victims and victimizers in the probation process. Because probation is focused on rehabilitation in communities, it is more in accordance with the RJ philosophy compared to the program implemented in correctional institutions.

In the pilot project, we would first obtain support from the VS professionals and recruit a victim who wants to attempt the RJ process with them. Then, we would reach the victimizer through a probation officer to obtain their agreement to take part in the RJ process.

There are several ways to conduct the pilot project as a victim-sensitive practice: ① gaining an understanding of the RJ process from VS and victim advocate groups; ② investing time in the preparation of both sides for RJ dialogue; ③ collecting the data about the process and outcome; and ④ taking time to follow up. The victim should not feel as if they are being exploited by the process of achieving the offender's rehabilitation.

It is important to accumulate practice in the public sector to identify ways to meet victims' needs and hold offenders accountable, and these data should be made public.

The crime rate in Japan has been lower than in other developed countries. The possession of guns is strictly prohibited, and we have a smaller income gap, place value on group conformity, and a better attitude for abiding the law in general. These social, economic, and cultural factors may well contribute to the low crime rate.

We are cautious about initiating an entirely new element of RJ practice. Bureaucrats would be particularly concerned about failure of a new system. On the other hand, we Japanese people are skillful at copying and developing new projects. Therefore, once RJ principles and practices are fully recognized in society and gain understanding from crime victims and their families, we believe there is a way to develop RJ more systematically in criminal justice system.

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## 被害者支援と加害者の更生を目指す修復的司法は可能か： 日本での取り組みをもとに

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要旨：本稿は、2018年6月13日香港城市大学にて開催された The 16th International Symposium of the World Society of Victimology における個人発表をもとに修正・加筆したものである。

修復的司法について日本では多角的に研究されているが、その実践は NGO による修復的対話を中心であり、まだ十分に発展していない。修復的司法を組織的に実施するには法整備が必要と指摘されて久しい。本稿では刑事司法の施設内処遇と社会内処遇における、犯罪被害者の視点や心情を取り入れたアプローチを取り上げる。そして、こうしたアプローチが修復的司法として発展していく可能性について考察する。

施設内処遇としては、1997年から矯正施設で「被害者の視点を取り入れた教育」が行われるようになり、受刑者に被害者やその遺族の置かれる実情を理解して罪の重さを認識させ、再犯しない決意をさせることを目標にした指導が実施されている。この20年余りで一定の成果を上げているが、被害者のニーズとの関連については検証が必要である。

社会内処遇としては、2004年に犯罪被害者等基本法が成立したことを契機に、2007年から更生保護における心情等伝達制度が始まった。同制度は被害者が保護観察中の加害者に対して心情等を伝達でき、その伝達結果を通知される制度で、修復的司法への道筋という観点からも注目されている。保護観察所の被害者担当を対象にした全国調査を2014年に実施し、同制度が機能するには加害者処遇部門との密な連携態勢が必須であることを明らかにした。

刑事司法では被害者と加害者が直接対話することについては未だ慎重だが、被害者支援と加害者の更生の両分野の距離は縮まっており経験知も蓄積されている。被害者の実情を知ることによってこそ真の更生が成り立つという経験知を活用して、とくに更生保護における被害者の個別のニーズに配慮した修復的司法を模索していくべきである。

キーワード：犯罪被害者, 修復的司法, 被害者支援, 被害者の視点を取り入れた教育, 更生保護, 心情等伝達制度