

Analysis of Restorative Justice in Handling School Bullying

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Abstract: The phenomenon of school bullying is widely present in schools in China and traditional criminal justice is too tough on the governance of school bullying. By now, a few cases of school bullying in China are in the form of guilty verdicts, and a large number of cases that do not constitute crimes are solved through school criticism and education. Little consideration is given to repairing the relationship between bullies and their victims whose legitimate interests are supposed to be protected. In this context, the author introduces restorative justice in this paper and studies the implementation of restorative justice in handling school bullying in Japan, so as to summarize successful experiences that can be used for references based on the basic national conditions of China. Conclusions can be drawn that restorative justice aims at restoring community order and reaffirming community values by fixing damaged relationships. In terms of the implementation of restorative justice in school bullying, Japan has a clear classification of juvenile institutions, where great efforts are made to balance the offender's rights and responsibilities. Meanwhile, the rights and interests of victims are considered first when implementing restorative measures. China can learn from these aspects and improve accordingly in the future so that the problem of school bullying can be better solved through the implementation of restorative justice.

Keywords: restorative justice, school bullying, relationship repair, Sino-Japanese comparison

1. Introduction

“Restorative justice” is a term first adopted by Albert Eglash, an American psychologist, in his article in 1959 [1]. It refers to a voluntary process that aims at solving the issues arising from crimes. Based on the idea that crime hurts and therefore justice should heal [2], victims, offenders, and communities were put together to figure out the truth and clarify the responsibility by treating each other with respect, so as to reach an agreement that can best promote repair and bring about positive changes [3]. According to the United Nations, restorative justice is an evolving response to crime that respects the dignity and equality of each person. It also works as an alternative judicial activity for criminal offenses to eliminate conflicts between offenders and victims by establishing a dialogue at a deeper level and repairing damaged social relations through the participation of the community and other relevant parties [4]. Expressed broadly, restorative justice is a way of responding to criminal behaviour by balancing the needs of the community, the victims, and the offenders.

School bullying occurs in schools as well as their surrounding areas. Traditional governance only pays attention to the visible and physical harm to victims while ignoring the psychological problems caused by the bullying behavior, which may pose a great danger to the life of those being bullied. Therefore, restorative justice, with mitigating and reparative functions, can be used to handle school bullying to better protect the physical and mental health of the victims.

In this paper, the author introduces the development and objective of restorative justice, compares the implementation of restorative justice in school bullying in Japan and China, and summarizes the opportunities and challenges of restorative justice in handling school bullying. Through the analysis, this paper sheds some light on the issues facing restorative justice in school bullying.

2. The Development and Objective of Restorative Justice

In the past 120 years, a new movement for the reform of criminal justice has been launched in Western countries, which is a movement to restore judicial affairs. The restoration movement has already had a considerable impact in North America, Europe, Australia, and other places. In 1999, the United Nations adopted a resolution encouraging Member States to use restorative justice in appropriate cases.

In the judicial practice of some countries, restorative justice has developed the following models: the first one is the Victim-Offender Mediation Model, which provides a safe, organized environment for victims to meet with their offenders and discuss crime issues; the second one is the Family/Community Group Meeting Model, which referred to as a group meeting attended by the victims to discuss how to deal with the offenders; the third one is the Sentencing Team Model. A sentencing team, also known as a sentencing circle or mediation team, is a group of community residents who work with the criminal justice system to reflect the wishes of all parties and develop appropriate sentencing plans. Although restorative justice has not been officially implemented in China, there has been no lack of exploration over the years. China's exploration and practice of restorative justice mainly include the resolution of public prosecution cases, social service orders, community corrections, suspended prosecution, and criminal settlement. For example, the Zhejiang Provincial Higher People's Court, the Provincial People's Procuratorate, and the Provincial Public Security Department jointly issued the "Opinions on Several Issues Concerning the Application of Law in the Current Handling of Minor Injury Crime Cases", where the public security may withdraw the case and the procuratorial organ may make a decision not to prosecute if the following conditions are met during the review and prosecution process: the parties voluntarily reach a written agreement on the issue of civil compensation; the victims request or agree in writing not to investigate the criminal responsibility of criminal suspects; the criminal suspects have shown genuine remorse and their social danger has been eliminated.

The goal of restorative justice is to restore community order and reaffirm community values by repairing damaged relationships. In terms of victims, restorative justice supports them by giving them a voice to speak their true feelings and making sure they can participate in the whole process to address their needs. In terms of offenders, restorative justice encourages them to take responsibility and make new changes, thereby facilitating their reintegration into the community.

3. Implementation of Restorative Justice in School Bullying

Generally, school bullying consists of three types: verbal violence, cold violence, and physical violence. Verbal violence includes verbal insults, verbal teasing, etc. Cold violence refers to deliberate alienation among classmates, isolated behavior, etc. Physical violence is the most obvious form of all. It includes any kind of physical aggression, such as kicking and snatching, and

the criminal usually leaves visible scars on the victims. School violence occurs not only between students but also between teachers and students, as well as students and people outside the school. It is worth noting that, with the diversification of information means, the incidence of cyberbullying with the help of mobile phones, the Internet, social media, etc. is gradually increasing.

3.1. Current Situation in Japan

In Japan, criminal punishment for juvenile crime is imposed on juvenile offenders aged 14 to 20. A juvenile offender who is tried by the Family Court can be sent to a juvenile institution or a correctional institution. If the juvenile offender commits minor crimes, he or she should be "protected" and observed after admonition; if the juvenile offender is over the age of 6 and commits serious crimes, he or she will be prosecuted by the procuratorate and sent to the juvenile penal office to serve a sentence. Many restorative measures are implemented in juvenile institutions, where juvenile offenders who violate the law and commit crimes receive supervision, punishment, reform, and education [5]. According to the age of the offenders, the degree of crime they commit, their physical and mental status, etc., juvenile institutions can be divided into four types: primary junior institutions (for offenders aged 14-16), intermediate junior institutions (for offenders aged 16-20), especially juvenile institutions (for offenders aged 16-20 who commit serious crimes), and medical junior institutions (for offenders with obvious physical and mental diseases).

Besides, in Japan, restorative procedures in which both offenders and victims are placed in dialogue must be premised on the complete willingness of both parties, especially the victims, since they are direct bearers of the harmful behaviors as well as the first concern when implementing restorative measures. This is the same in school bullying, where the interests of the bullied should first be paid attention to. For one thing, the bullied have the right to confirm and complain about the truth of bullying, and admitting the fact of bullying is the premise for both parties to continue the conversation. For another, the bullied have the right to make a statement of the negative consequences of bullying and assert their own rights and interests. When negotiating with the offenders, they have the right to reject the settlement plan proposed by the other party.

However, under the consideration of the special subject of minors, bullies cannot be simply classified as offenders, since bullying occurs in close relation to complex factors such as family, school, and society. Therefore, bullies also need protection and can be considered special victims. Both offenders and victims are the subjects most directly related to bullying, and although their positions appear to be opposed, they belong to minors in need of protection and are core participants in restorative measures [5]. What is worth noting is that the protection here is not limited to paying attention to the interests and needs of juvenile subjects. It also means striving to achieve a balance between rights and responsibilities according to their own circumstances, especially for bullies. It is important for them to avoid premature labeling of criminalization and there is a need to respect and protect their due personal rights. Additionally, it is necessary to urge them to recognize the wrongness of their own behavior, sincerely apologize to the bullied, take the initiative to compensate, and reshape their bodies and minds through education and correction, so as to help them reintegrate into society.

3.2. Current Situation in China

In China, a large number of school bullying cases that do not constitute crimes are solved through criticism and education at schools. When a case of school bullying constitutes a crime, it is usually mediated through criminal settlement. China has established a three-level institutional model on the basis of juvenile judicial regulations: education assistance projects, work-study schools, and correctional facilities for minors.

In Tianjin, China, a “Student Bullying Governance Committee” is established and a bullying prevention plan is developed. The comprehensive management of the surrounding area is strengthened and special surveys on the prevention and treatment of student bullying are regularly carried out. Moreover, necessary critical education is implemented for incidents of minor bullying and the dormitory management system is established and improved. Bullies receive criticism, education, and disciplinary sanctions; in Shandong, China, special education is carried out on bullying prevention and punishments are given accordingly in different circumstances; in Guangdong, China, different hierarchical and categorical management measures are taken and corresponding punishments are given according to different degrees of bullying; in Liaoning, China, the bullied are given psychological counseling; in Sichuan, China, full-time psychological teachers are assigned; in Zhejiang, China, students with obvious psychological problems are paid attention to and thoroughly investigated, and a community-campus linkage early warning system is established. The Ministry of Education of the People’s Republic of China not only actively collaborates with other government departments but also extensively mobilizes social forces to participate in governance work [6].

In 2008, in order to solve the psychological problems of children and prevent them from committing or suffering bullying in schools, the Ministry of Education organized the "School Social Worker" campaign. Funded by the government, primary and secondary schools nationwide were equipped with social workers who are familiar with the field of education and have professional knowledge and skills such as social welfare. At the same time, families and friends of the children who encounter bullying and other problems in schools were mobilized to improve the school environment. Moreover, the Ministry of Education also joined hands with relevant social institutions to adopt diversified support methods to deal with and solve the psychological problems of children who are bullied.

In 2009, with the Ministry of Education's increasing emphasis on the school counseling system, the "Promotion of School Counseling" emerged. The purpose of this agreement is to popularize and assist schools to establish and improve campus psychological counseling, train professional counselors, and promote the cultivation and exchange of relevant professional talents, so as to jointly help children grow up healthy and happy. In addition, many social industry associations and public welfare groups, such as the Bar Association and the Parent-Teacher Association (PTA), have also used their own advantages and characteristics to produce distinctive guidelines for the prevention and treatment of bullying in schools, which are released free of charge to the whole society. As a result, an environment of mass prevention and mass management with the participation of the whole society has been formed, as well as the awareness against bullying in schools.

Juvenile correctional facilities in China, also known as juvenile detention centers, are places to reform juvenile prisoners. It is mainly responsible for the education and rehabilitation of juvenile offenders who have reached the age of 14 but are under the age of 18 and have been sentenced to fixed-term imprisonment or life imprisonment. The history of juvenile correctional facilities in China can be traced back to the 50s of the 20th century. They are special institutions for enforcing sentences in response to the physical and psychological aspects of juvenile offenders. The main purpose of juvenile correctional facilities is education and rehabilitation. Each person develops an education plan in juvenile institutions and there are several stages according to the time of admission.

It is stipulated that, at the beginning stage, qualitative guidance, such as individual talks, personal introspection, reading therapy, and diary writing, should be mainly focused on. At the same time, juvenile correctional facilities also provide guidance on establishing a correct attitude toward life, interpersonal relations, and moral sentiments in view of drug abuse, car accidents,

gender problems, violence, and other types of crimes. In the next stage, juvenile offenders are supposed to receive intermediate education for 6 months (divided into two phases of three months each). In view of the actual situation of each young offender, emphasis will be placed on vocational training, including education in labor dynamics, Chinese, arithmetic, etc. They will participate in physical labor such as farming and pottery, as well as activities such as meeting relatives and congratulating birthdays. In addition, other forms of education will also be arranged to cultivate their ability to observe discipline and increase their sense of responsibility to society. In the final stage, 3 months of preparation before discharge, each offender must write down his or her plans after returning to society.

4. Opportunities and Challenges of Restorative Justice in School Bullying

School violence is a serious problem in both China and Japan, and the implementation of restorative justice can better solve the problem of school bullying, reduce its occurrence, and enable minors who are troubled by school bullying to get out of the trauma. To better solve bullying in schools, China has established juvenile detention centers to discipline juvenile offenders, and Japan has established juvenile homes and juvenile penal institutions to carry out labor reform for minors.

In terms of victims, restorative justice regards them as important participants in the case, while traditional criminal justice rarely includes victims in the process. Restorative justice takes targeted measures and provides psychological counseling for victims, thus rebuilding their sense of self-esteem and trust, healing their psychological trauma, and improving their sense of security and protection.

In terms of offenders, restorative justice gives them a second chance to identify and take measures to compensate for the damage caused by illegal and criminal acts, and effectively curb the possibility of juvenile offenders committing crimes after they become adults. According to the New Zealand Ministry of Justice, the reoffending rate (2008-2013) for juvenile offenders who participated in restorative justice and have become adults was 15% lower than that of comparable offenders over a year, and 7.5% over three years [7].

Meanwhile, restorative justice also faces challenges in handling school bullying. First, difficulties exist in the communication between offenders and the victims. Also, there is a possibility of re-offending for offenders. Significantly, this approach lacks legal binding, and if the offender does not fulfill the agreement, the victim has no legal way to defend his or her rights. Therefore, psychological counseling institutions need to provide better psychological counseling services to victims. Besides, education for offenders should be strengthened, a tracking system should be established to prevent re-offending, and feedback channels for victims who have been harmed should be increased.

5. Conclusion

By examining the development and purpose of restorative justice, this paper concludes that the goal of restorative justice is to restore community order and reaffirm community values by repairing damaged relationships. Through a comparison between China and Japan in solving school bullying, it is found that Japan has a clear classification of juvenile institutions, victims of school bullying are always treated as the first concern when implementing restorative measures, and efforts are made in order to achieve a balance between the rights and responsibilities of the offenders. These are aspects that China can learn from and thus make further improvements in. In the future, the implementation of restorative justice can better solve the problem of school bullying, reduce its occurrence, and allow minors who are bullied in schools to better get out of the trauma of school bullying. This paper attempts to discuss a controversial issue, and limitations are inevitable due to insufficient

theoretical learning and practical experience. In the future, the problem of school bullying will show new characteristics and new difficulties with social development, and it is still necessary to explore solutions with the support and cooperation of law, education, sociology, and psychology in the long term

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