

International Network on



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Our seventh guest column has been written by George Pulikuthiyil, the Executive Director of the Jananeethi Institute in Kerala, India.

Justice as a Healing Force

The idea of justice as a therapeutic intervention can be located in the historical narratives of many indigenous communities like the Maoris, Aborigines and the First People. However, in the march of modernity, this ancient intuitive interpretation of justice was superseded by normative and rational ones. However, of late there has been a resurgence of academic and practical interest in justice as a healing force. The rest of the article narrates the experience of a pioneering human rights not for profit organization - Jananeethi- based in Kerala on therapeutic jurisprudence.

Jananeethi was founded in 1992 with a simple mandate of providing "defence for the defenceless". And over the last 16 years, the organization has grown from a "leap of faith" to a recognized institution providing legal, social and emotional support to over of 1500 persons in a year, vast majority of who are the poorest of the poor and the marginalized. The target population of our services has generally been victims of domestic & sexual violence, corruption, hate politics, communal riots, caste & ethnic bias and mal functioning of the law enforcement & judicial systems.

Over the last few years, from 2000 to be more specific, we have noticed that many of the aggrieved persons who sought the help of Jananeethi for legal reasons were in need of psychological help too. The need for a clinical psychologist in our office, therefore, was very much felt more than ever in the past. In many ways, we recognized that the petitioners/complainants were rather seeking a holistic remedy - not exclusively legal but psychological as well. Chronic depression, fear, anxiety, schizophrenia, bipolar disorders, hallucination, obsessive compulsory disorders were among the common symptomatic disorders found in our clientele. Jananeethi is committed for holistic healing in terms of its legal, social and psychological realms and hence

we introduced 'befriending' as an initial step in preparing the person for legal counselling followed by legal action, if required. However, befriending alone was not enough and so clinical support through counselling, capacity building and rehabilitation was offered. Thus, through a well-knit process of law and psychology, Jananeethi has arrived at what we call today 'therapeutic jurisprudence'. However, it should be noted, it is not an academic or intellectual exercise for Jananeethi; rather it is an act of human rights intervention at the grass root level, reaching out to the victim depending on specific contexts.

'Therapeutic Jurisprudence' is a psychological construct, possible only through a clinical process. In this case, however, law takes the role of a therapeutic agent. It is an interdisciplinary enterprise between law, human rights, psychology, psychiatry, criminology, criminal justice, mental health and philosophy. Therapeutic Jurisprudence utilizes psychological concept to determine ways in which existing domestic laws and international human rights standards can enhance the well-being of people afflicted by torture, cruel and inhuman treatment and organized violence. Further, it explores how, in consonance with the principles of justice, knowledge, theories and insights of mental health and related disciplines can help the development of law. What the wrong doers say and do after having committed a wrong, can influence the victim's forgiving process. Although the difference is not significant, victims are notably less forgiving when the wrong doers offered excuses.

The concept of 'therapeutic jurisprudence' according to Jananeethi is different from the 'reconciliation and peace' approach of the Catholic Church. Without justice, peace can never be restored; any restorative process has to be founded on the principles of equity and fairness. The modern restorative justice movement is a victim-centred approach to "doing justice" that focuses on healing the harms caused by crime rather than on punishing the offender. Victims, offenders, and the community are said to be equal "stakeholders" in the restorative process, because all are harmed by crime and all require healing after a crime has been committed. But, can we equate victim with the offender? An act of offence can not be over simplified, either. Therefore, the victim comes in focus and it is the victim who decides the course of restorative justice, of course with the support and guidance of civil society.

Jananeethi, being a right based organization, tries to impress the victim by acts and words at the very beginning that he/she is seeking what is due to him/her and not receiving a charity. The victim is received with profound respect and concern, is offered hospitality and friendship, shares meals or refreshments, is given ample time to relax and to confide in whom-so-ever he/she feels free to do so. After initial conversations he/she will be attended on the family, social,

economic and psychological backgrounds rather than jumping into the legal issues involved. This process will help Jananeethi (service provider) to discern the problems, both from psychological and legal angles. Until the victim is psychologically settled and comforted, legal issues will not be taken up, unless the nature of the offence demands immediate medical or circumstantial documentation. Taking up the legal issues means clinical legal education through which the victim is made aware of the different aspects of the offence - civil and criminal - the gravity of the offences committed, the rights violated, remedies available under domestic and international laws and steps to be taken towards adequate compensation and prosecution of the offender. The victim is assisted to draft petitions to be filed before the appropriate authorities, judicial and human rights institutions, giving thoughts to alternate procedures and remedies. Taken into account the nature of the offence committed, the victim is assisted to prepare urgent appeals and to disseminate to national and international human rights network for speedy and effective steps for justice .

By providing these services, Jananeethi ensures the victim that whatever possible has been done or legal process initiated. The party must not feel that he/she was deprived of a proper judicial process. We should also bear in mind, common people are not aware of what is available in law. Section 89 of Civil Procedure Code in India that provides scope for mediation and settlement outside the court. The State Legal Services Authority has vast provisions for negotiated settlement of disputes. Alternate Dispute Redressal has been legally acknowledged and approved in Indian judicial system. Merely an order of conviction for the offender and monetary compensation to the victim do not resolve the pain and shame that are necessary consequences of any offence committed. Hence, we initiate talks with all parties concerned, of course with a mandate given by persons involved. Individuals and groups will have to be addressed jointly and separately. Our aim is to ameliorate the pains and stains attached, to mend the relationships, to bring all involved around a table to explain and to explore various options available for healing the wounds caused and restoring the social tranquillity that was disturbed. In ordinary cases, this process will arrive at a certain consensus with regard to the compensation and reparation of the damage caused. But damages are not physical or material alone. What about the mental stigma and trauma, and those memories that bleed profusely? Feelings and memories are to be treated. Therefore, we introduced yoga and meditation as practical means for healing wounds in memory.

I mentioned social and emotional support to victims, earlier. This would perhaps involve in rehabilitating the victims providing short-stay homes,

arranging schooling to their children, part-time/full time employment of the victim to support himself/herself. Further, medical examination and treatment would also be required in certain cases. There are other dynamics of group therapy like music, painting, entertainment and such other engagements that would bring desired results.

Therefore, therapeutic jurisprudence is not something that pertains to lawyers and judges alone. It involves the entire society, necessitating the interventions/supports of many segments of society. One possible danger in the process, unless monitored closely and diligently, is that the victims will be forced to compromise on their legitimate rights and Constitutional guarantees leaving the offenders go unhurt and unaccountable. In such cases memory will remain un-healed. Jananeethi has been very cautious of the inherent threat. Often the offending party has an upper hand over the victim and to the extent that the offender might be influential or rich enough to manipulate systems and procedures. The weak and vulnerable who are subjected to all kinds of injustices and atrocities shall not be allowed further to suffer on account of therapeutic jurisprudence. This is, after all, the heavy responsibility of the service provider that mediates the process. This perhaps is the strength of Jananeethi for its achievements in bringing therapeutic jurisprudence as a boon for many thousands and for its public recognition as a credible organization.

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