

# Is It Appropriate to Use Restorative Justice in Cases of Domestic Violence?<sup>1</sup>

Laura SCHMIDT<sup>2</sup>

*Domestic violence (DV) is sometimes called a hidden crime because in many cases victims do not report the offence to the police. DV includes child abuse, intimate partner violence and elder abuse and comes in many forms, such as physical, sexual, emotional or financial abuse.<sup>3</sup>*

*Using restorative justice (RJ) methods in cases of DV is a highly controversial topic.<sup>4</sup> However, in many countries around the world restorative practices are used in these cases with appropriate safeguarding in place.<sup>5</sup>*

*The aim of this article is to explore the different types of RJ methods and the different types of DV cases where these methods might be used with the potential benefits and challenges being discussed.*

*Relevant articles and case studies were analysed to present previously conducted research on the topic of DV and RJ.*

*The available literature shows that certain RJ practices are appropriate in certain types of DV cases but they need to be evaluated on an individual basis as these types of cases are very complex and need to be screened thoroughly before any kind of intervention. However, in addressing the concerns surrounding the use of RJ in DV cases, it is vital to listen to the victims themselves, by first giving them a voice.*

*In conclusion, professionals working with victims and offenders of DV cases need to work more closely with others who work in RJ in order to make the process safer and to utilise the potential benefits of the process.*

**Keywords:** *restorative justice, alternative conflict resolution, domestic violence*

## Introduction

Whilst domestic violence (DV) is a global phenomenon, the definition of DV and therefore the legislation can vary from country to country. When we hear about cases of DV, they are most commonly cases of intimate partner violence and specifically

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<sup>2</sup> PhD student, University of Public Service, Doctoral School of Police Sciences and Law Enforcement; Associate Researcher at UPS Eötvös József Research Centre, Europe Strategy Research Institute, e-mail: [Schmidt.laura@uni-nke.hu](mailto:Schmidt.laura@uni-nke.hu)

<sup>3</sup> STOVER 2005: 448–454.

<sup>4</sup> EDWARDS–SHARPE 2004.

<sup>5</sup> DISSEL–NGUBENI 2003; GOEL 2000.

violence against women by male perpetrators. However, nowadays the legislation recognises that there is violence against men, as well as between family members and so on. This is not only important in terms of reporting the offense but also in terms of possible treatment options as well because traditionally only women currently being in an abusive relationship had the opportunity to seek any treatment for their trauma and shelter.<sup>6</sup> Throughout this article, when we refer to DV, we will mostly be referring to intimate partner violence, unless stated otherwise.

Michael Paymar defines DV as “the use of physical violence in an intimate relationship. The term also includes emotional, psychological, and sexual abuse, as well as any other behaviour one person in a relationship uses to control the other”.<sup>7</sup> According to Ellen Pence and Michael Paymar, the other behaviour referred to in the definition can be, among many other things, using coercion and threats, using intimidation, using emotional abuse, using isolation, minimising/denying/blaming, using children, using male privilege or using economic abuse.<sup>8</sup>

Going through the traditional criminal justice system might not be the answer to some victims of domestic abuse. For them, restorative justice (RJ) might provide a better alternative.

There are many different definitions of RJ but one of the most widely accepted is attributed to Tony Marshall and throughout this article this is what is meant by RJ: “Restorative justice is a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.”<sup>9</sup>

The article will discuss the specificities of DV cases before investigating the potential benefits and concerns of using RJ in DV cases. Then, it will also be explored how DV cases are typically dealt with and how they might be dealt with using RJ practices.

## **Why are DV cases so complex?**

In this section, it will be explored why it might be difficult for DV victims to seek help and what verbal and behavioural indicators we need to look out for when we are dealing with a domestic abuse situation.

There are many factors that could explain why it is difficult to acquire accurate statistics on DV. When we gather data about reoffending rates from the police, we need to be aware that many people do not report these cases to the authorities and the precise number of DV cases is most likely higher than what we are aware of. It might be more meaningful to interview victims directly about their reasons for not

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<sup>6</sup> MILLS et al. 2019: 1284–1294.

<sup>7</sup> PAYMAR 2000.

<sup>8</sup> PENCE–PAYMAR 1993: 3.

<sup>9</sup> MARSHALL 1998: 37.

reporting these offences, however, studies suggest that victims tend to drop out of these studies at a higher rate.<sup>10</sup> Victims might be afraid of retaliation; they might blame themselves or they might think that they will not be believed if they go to the police. This pattern of abuse can be observed for years without anyone in the victim's environment finding out about the situation as victims usually try to hide any evidence of abuse for many reasons such as feelings of shame or self-blame.

As mentioned already, DV is usually not just a one-off event but is an ongoing situation that victims could stay in for years. There are many components of DV like verbal abuse or isolation from friends and family that legally do not count as criminal offences but are all essential elements of understanding how domestic abuse affects all aspects of life. When people are isolated and distanced from their friends and family, they might feel that there is no one they can turn to for help especially when the offender is telling them that they will not be believed by anyone. Manipulating the victim is also an indicator of emotional and psychological abuse, making them believe that they are doing something wrong to deserve the abuse and maltreatment. It is also very common that the abuser is the only person with an income and that the only way the victim can have access to money is through the abuser. Abusers do this to gain power and control over their victims and to make it harder for them to leave the relationship.

Domestic abuse and specifically intimate partner violence has gained lots of media coverage in recent years. The Covid-19 pandemic and the consequent regulations to isolate caused a surge in the number of people seeking help from domestic abuse in many countries around the world.<sup>11</sup> In Hungary, the number of people who called a support line doubled in the first wave of the pandemic. As everyone was asked to stay at home and people feared getting sick and also losing their job, many women found themselves in a domestic abuse situation from which they could not escape.

In addition to physical violence, there are many other forms of abuse such as psychological and emotional abuse or financial dependency that make DV cases extremely complex offences where we need to pay special attention to victims' needs in order to protect them from being revictimised and retraumatised.

## **The potential benefits of using RJ in cases of DV**

This section will focus on the potential benefits of using RJ practices in cases of domestic abuse, specifically what the positive implications might be for victims to take part.

There have been many studies exploring the benefits of taking part in a restorative process as a victim. These, among other things can include receiving an apology

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<sup>10</sup> STOVER 2005: 448–454.

<sup>11</sup> PATTHY 2020; European Institute for Gender Equality 2021.

from the offender, learning more about the offender and thus becoming less angry and fearful of them, participating in the process and the outcome of it or feeling empowered. However, certain benefits might not apply for victims of DV as the offender is someone well-known to the victim and sometimes the two parties are still in a relationship at the time of the restorative process which complicates things further.<sup>12</sup> I would argue that facilitators making the decision whether a DV case is appropriate for RJ need to be aware that referring the case for therapy might be the most appropriate thing to do instead of having a victim–offender conference (a face-to-face meeting between a victim and an offender with a facilitator being present).

As mentioned above, some victims find peace when they receive an apology from the offender. However, in cases of DV, many victims report that the offender apologises for their behaviour but then after some time passes, the abuse starts again so facilitators need to pay attention not to put too much emphasis on the apology throughout the restorative process.<sup>13</sup> As Julie Stubbs describes it, “apology is a common strategy used by abusive men to attempt to buy back the favour of their abused partner”.<sup>14</sup>

In addition, reintegration can happen without the victim forgiving the offender as “pressure to forgive places the victim in an untenable position of once again subordinating her own needs to those of the abuser”.<sup>15</sup>

In South Africa, victim–offender conferences may be used in DV cases. It was found by a project in South Africa that victim–offender conferences were used mostly in cases where the victim and the offender knew each other (in 33% of the cases the victim and the offender were at the time or used to be intimate partners). The authors also interviewed 21 women victims who have taken part in mediation (1 female offender and 20 male offenders). Most respondents stated that they felt safe during mediation and were not concerned about their safety when returning home with the offender. However, there was one respondent who was concerned about her safety as the offender abused her physically multiple times, but she was reassured by the fact that the case would go back to court if they did not come to an agreement and also when the mediators did not tolerate the offender making threats throughout the mediation, she felt it allowed her to speak her mind about the terms of their separation.<sup>16</sup>

There were some pilot victim–offender mediation processes completed in Austria in the 1990s in cases of intimate partner violence. The pilot mediation sessions were considered to be successful and participants reported feelings of empowerment and a decrease in violent offences. The model is supported by decades of research

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<sup>12</sup> STUBBS 2007: 169–187.

<sup>13</sup> WALKER 1989.

<sup>14</sup> STUBBS 2007: 173.

<sup>15</sup> COKER 2002: 148.

<sup>16</sup> DISSEL–NGUBENI 2003: 293.

conducted by Christa Pelikan in order to prevent victims from further trauma and harm.<sup>17</sup>

In addition to hearing the offender take responsibility and accountability for their actions, some victims want to meet the offender face-to-face to seek closure and to ask questions that only the offender can answer.

## **The concerns of using RJ in cases of DV**

After discussing the potential benefits, the concerns of using RJ in cases of DV will be explored in this section.

How can we ensure that victims are safe throughout the restorative process and what happens once the process is over? How do we make sure that victims are safe then?

If the person accused of the offence is acquitted then there is a possibility that the abuse will get worse or more severe as a consequence of the trial but if they are sentenced to prison, then their separation from the family might create serious financial issues. As a result of this dilemma, many victims might not wish any punishment on the offender, they just wish for the abuse to stop.

One of the biggest concerns of using RJ in cases of DV is about the safety of the victim, both physically and psychologically. Many people voice their concern that victims might be revictimised and retraumatised if they go through an RJ process where they have to relive the offence(s) and face the offender. Contrary to one of the main concerns about the victim being revictimised and retraumatised, RJ might give the victim the power to regain her agency as she can speak up and make decisions for herself.<sup>18</sup>

Another common concern critics usually mention is the fact that there is a power imbalance between the victim and the offender and that the facilitator cannot help the victim to act as an equal partner because they have to be neutral and impartial at all times. Critics will say that the offender–victim power imbalance prevents the victim from speaking freely about what they want because they are used to complying with the offender hoping that the abuse will stop then. However, in a study by Amanda Dissel and Kindiza Ngubeni, 21 women victims were interviewed, who reported that they felt they could talk to the offender as an equal partner throughout the mediation process. In addition, in all cases where the parties stayed together, the victims reported an improvement and no further abuse in their relationship a year after the victim–offender conference.<sup>19</sup> I would argue that facilitators need to be aware that there is a power imbalance between the victim and the offender, but it

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<sup>17</sup> DE CAMPOS – DE OLIVEIRA 2021: 146–157; PELIKAN 2002: 1–21; PELIKAN 2010: 49–67.

<sup>18</sup> JOKINEN 2020: 37–52.

<sup>19</sup> DISSEL–NGUBENI 2003.

does not mean that with the right facilitation, victims are oppressed or silenced if they take part in a victim–offender conference.

One of the main concerns of using RJ in DV cases is that it is too easy of a process for offenders to take part compared to going through the criminal justice system and that it is also a process that is easy to manipulate.<sup>20</sup> However, facing someone that you offended is not an easy thing to do, it takes a lot for someone on either side of the conflict to come face-to-face with the other party concerned. Offenders are also screened before any meeting to assess their suitability and motivations for taking part. Another way to prevent RJ being called an easy process is to use restorative practices as an alternative to the traditional criminal justice system and not as a substitute.

Facilitators need to be aware of any verbal or behavioural triggers that might result in the victim being retraumatised or revictimised. In cases of DV, it is especially important for the offender to take accountability and responsibility so that there is no blame put on the victim for the abuse.

## **How are DV cases usually dealt with?**

How difficult is it to arrest or convict someone of a DV offence? What programmes are available for domestic abuse offenders and can victims play any part in these programmes? This section will try to give an answer to these questions.

Duncan McPhee et al. analysed 400 reported incidents of DV and abuse in two police forces in England in 2014. The DV cases were all between intimate partners. When looking at the attrition rate (meaning looking at the case from reporting the offence to a conviction), the results show that only 7.25% of the observed cases actually resulted in some kind of conviction and even less cases, 0.5% of the reports resulted in the offender having to serve a custodial sentence. The data also shows that approximately 2/3 of the cases drop out before there is even an arrest made and that police are more likely to record criminal offenses and undertake arrests when the domestic abuse involves physical violence.<sup>21</sup>

In the United States of America (USA), when offenders are convicted of DV, batterer intervention programmes (BIPs) and cognitive behavioural therapy (CBT) are the most commonly used interventions.<sup>22</sup> CBT can be an element of BIP or used on its own. Typically, BIPs are designed for male offenders who committed offences against female victims, and they highlight the importance of taking responsibility and learning non-violent ways of dealing with conflict. The teachings of this method are built on the basis that there is a gender imbalance between men and women and

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<sup>20</sup> ACORN 2004.

<sup>21</sup> MCPHEE et al. 2022: 963–980.

<sup>22</sup> MILLS et al. 2019: 1284–1294.

the constant need for the offender to be in power and in control of the victim comes from this.

In the USA, these treatment programmes are offered to groups of offenders and sometimes there are female facilitators as well. The programme length depends on the state's regulations but on average, they are for around 24–26 weeks with the sessions being 1–2 hours long. Victim participation in DV treatment is illegal in some states and strongly discouraged in others. On the other hand, RJ could be the program that gives victims a chance to take part in the process and communicate their feelings and thoughts if they wish to do so.

Linda G. Mills et al. conducted a study in Utah, where circles of peace (CP) were used to treat DV offenders.<sup>23</sup> The authors call CP a restorative-informed approach instead of RJ partly because, as stated previously, victims are not allowed to take part in some states but also because offenders are required to participate. Still, 42% of victims chose to participate in the CP sessions. The parties in a CP session include the offender, support people for the victim and offender, a trained volunteer community member and trained circle keepers.

The offenders in this study were randomly assigned either to an 18-week long BIP treatment or a 12-week long BIP treatment and a 6-week long CP. The sessions lasted 90 minutes and male and female offenders were included as well. The results suggest that the BIP treatment with CP is more effective than the BIP treatment on its own, reducing the likelihood of reoffending (including DV offences) after 2 years of random assignment but even when offenders reoffended, the crimes were less severe than before.

There are many countries around the world where RJ can be used in DV cases in some way: Austria, Canada, Hungary, New Zealand, Norway, United States (e.g. Arizona, Utah) and South Africa, for example.

The outcome measured in this study was whether offenders reoffended. However, the success of a restorative method is not based solely on recidivism, for example victim satisfaction was not measured in cases where victims participated in the process.

In conclusion, the majority of DV offenders who are processed through the traditional criminal justice system are not charged and even when they are charged, the chances of them being convicted for their crimes is low.<sup>24</sup> However, when there is physical violence included, then the case is more likely to be a criminal case.<sup>25</sup>

In the USA, there are programmes specifically for DV offenders such as batterer intervention programmes, cognitive behavioural therapy or circles of peace. However, even though these programmes have been found to be effective, they are not necessarily accessible worldwide and there is seldom any focus on the victims.

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<sup>23</sup> MILLS et al. 2019: 1284–1294.

<sup>24</sup> HESTER 2006: 79–90; HARTMAN–BELKNAP 2003: 349–373.

<sup>25</sup> MCPHEE et al. 2022: 963–980.

## How can RJ work in cases of DV?

This section delves into the question of how RJ can and could work in cases of domestic abuse.

Every RJ process should begin with a thorough evaluation and assessment of the victim and the offender, their motivations for taking part and their attitudes about the offence. The preparation should also include explaining the whole process and what it entails, preparing the parties for the other party dropping out of the process or the possible obstacles or difficult questions they might face. By preparing the victims for these scenarios and situations, we can minimise the chances of them being revictimised or retraumatised. It is also important for the facilitator to know whether the parties are seeking closure or whether they wish to stay in a relationship with each other as this might influence the suitability of the case and might mean for example that the case should be referred to therapy instead of RJ.

RJ is a very flexible method and it can be tailored to the specific needs of victims. In a traditional criminal justice proceeding, the victim might not be called as a witness to testify against the offender, they might just ask for a victim impact statement. However, this limits the topics and the way victims can talk about what happened to them and how they feel about it. RJ allows the victim to express, in their own way, what they want to communicate to the offender.

Most RJ processes also require the offender to take some responsibility for the offence in order to take part in a process. This helps to screen out offenders who refuse to take accountability for what happened and want to put the blame on the victim. On the other hand, it is crucial for the facilitators to be aware that manipulation is a technique used by many DV offenders and to prevent this, many RJ centres have a policy that complex cases (such as DV cases) can only be facilitated by two facilitators, who have had special trainings on the subject of domestic abuse. Another safeguarding could be to have regular supervision meetings with the facilitators where they can discuss the case in detail with a senior facilitator who has great expertise in DV cases.

Canadian Aboriginal women experience DV at a higher rate than the general population.<sup>26</sup> Sentencing circles are used to rehabilitate Aboriginal offenders and bring harmony to the community. They are considered to be restorative in nature because they include the community (the victim's and offender's families as well) and the offender has either been found guilty or pleaded guilty to the offence. It is argued that the sentencing circles are offender-centred because the aim of them is to understand why the offender did what they did and to stop them from reoffending. Therefore, victims seem not to have a main role in these processes. It is suggested that the process should be more victim-focused in order to allow victims to have a true voice throughout the process.

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<sup>26</sup> GOEL 2000: 293.

There was a study that looked into the practices of one police force in the United Kingdom that used restorative methods for all offence types, including DV cases.<sup>27</sup> According to the national guidelines, there are 3 levels where RJ can be used. Level 1 refers to minor cases where RJ works as an alternative to the criminal justice system. Level 2 is where an on-street disposal would be inappropriate and a more formal response is needed. These cases can be used in addition or instead of the criminal justice system. Finally, level 3 cases take part in addition to the criminal justice system (mostly following sentencing) and they are used in more serious and complex cases. On all three levels, offenders need to take responsibility for their actions, victims or affected parties need to take part in the process, the process needs to cover what happened and how people have been affected and also what could be done in order to repair the harms caused by the offender and the offence.

In the police force where the study took place, all police officers were trained in RJ and encouraged by senior officials to use RJ practices in their day-to-day lives.

In Brazil, in the state of Rio Grande do Sul, restorative practices were introduced in 2002 for cases involving a youth offender.<sup>28</sup> Then, in 2015, there was an initiative to further train restorative practitioners and to introduce restorative practices in DV cases. There are three different practices designed specifically for DV cases: a peace-making circle for women victims, a program aimed at men offenders and a circle designed for couples who wish to stay together. However, Carmen Hein de Campos and Cristina Rego de Oliveira argue that the RJ practices used in DV cases in Brazil are problematic due to the lack of evidence and analyses.

Many professionals in the field have come to the conclusion that victims need to feel safe (both physically and psychologically) in order to take part in an intervention voluntarily and meaningfully.<sup>29</sup> It has been suggested that in order to achieve safety, the whole community and professionals who come into contact with the victim and the offender need to collaborate.

It is essential for the facilitators to make sure that victims know who they can reach out to following a restorative meeting, in case the abuse starts again. A follow-up meeting should also be considered, to reach out to the victim and the offender a couple of months after the meeting to check if the agreements are adhered to. If appropriate, the parties could be referred to further services after the RJ process, such as therapy.

## Conclusion

We can look at RJ conferences as a first step on the road to a more improved life. One restorative meeting with a victim might not be enough to change the offender's

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<sup>27</sup> WESTMARLAND et al. 2018: 339–358

<sup>28</sup> DE CAMPOS – DE OLIVEIRA 2021: 146–157.

<sup>29</sup> STOVER 2005: 448–454.

behaviour completely but it might be enough to start him on that journey. In addition, if family members, friends, members of the community also participate in the meeting, the effect of them on the offender cannot be questioned. They are a major part in shaping someone's life and helping the offender stay on the right path.

DV cases need to be prepared well with both the victim and the offender before a meeting and professionals need to make sure that the participation of the victim is completely voluntary and they understand the process and the consequences of taking part. Safety should be at the forefront of the process to make sure that the victim is not put in any more danger due to taking part in a RJ process.

It is also crucial for facilitators to be well-trained and trained specifically in the complexities of DV cases to understand the psychology behind the offence and how offenders can manipulate victims.

It can be difficult in these cases to stay impartial but for the integrity of the process, facilitators need to make sure they are not favouring one party over the other. However, victims in these cases might need a little more support than victims of other offences so facilitators should also be able to even out the power imbalance whilst staying impartial.

After the RJ process ends, it is crucial to do a follow-up after a couple of months have passed to make sure that the abuse did not start again and that the agreement is being complied with. It might be appropriate in some cases to further refer victims and offenders to different services like therapy or anger management courses.

Coker suggests that the word restoration implies that before the abuse there was a healthy state of the relationship that should be reinstated. However, she claims that this is not true in many cases and therefore the focus should be on transformative justice rather than RJ.<sup>30</sup>

Paul Gready and Simon Robins define transformative justice “as transformative change that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion at both the local and the global level”.<sup>31</sup>

Using RJ in cases of DV should never mean decriminalising DV. Victims should know that they can rely on the police when they are in danger. However, restorative and transformative justice can be used with formal justice processes to help victims and offenders with transformation of behaviour and communities.

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<sup>30</sup> COKER 2002: 129.

<sup>31</sup> GREADY-Robins 2014: 340.

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