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Challenging Perceptions: Why Victims Often want to Meet their Offender in the Aftermath of Sexual Crime

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Outline of Presentation

- Locate My Interest in RJ
- Understand why some victims and offenders of sexual crime want RJ
- Identify some of the key areas of international debate regarding RJ in cases of SV
Locating my Interest:

Justice for Victims
Accountability of Offenders
Healing for Both
Extent of Sexual Violence in Ireland

- 30.3% Irish Females, 23.6% Irish Males - sexual abuse in childhood

- 25.6% Irish Females, 12.4% of Irish Males - sexual assault in adulthood

- 42% females and 28% males sexual violence over life-time (SAVI, 2002: xxxii)
Recent Features of Criminal Justice

- Reporting on Increase [increase by over 50% 2008-2012]

- Attrition rates Increase [decline in sexual violence cases prosecuted e.g. in rape cases 73% in 1977; 19.5% 2007; 15% in 2012 (Lovett and Kelly, 2009; CSO, 2014)]

- Conviction rate low [100 cases of rape, 8 convicted] (Hanley et al, 2010) [Just over 2% rape cases 2007 resulted in conviction]
Evidential Threshold “Beyond Reasonable Doubt” problem in (a) cases proceeding to trial and (b) in securing convictions

Secondary Victimization by process itself

CJS cannot provide therapeutically-sensitive remedy for the trauma and disempowerment experienced by many victims of sexual violence.

Even when ‘Justice’ achieved in Criminal Proceedings there are unmet needs for Voice...
Victims: Civil Justice Mechanisms

- Civil Justice System [Costly, Lengthy and Adversarial]

- Evidential Threshold “On Balance of Probability”

- Adversarial Nature and Hard to follow up for settlements

- Many victim survivors cannot take this option
Justice Gaps for Victims……

Accountability Gaps for Offenders…..

Healing Gaps for Both……even where there have been Conventional Justice Responses
Victimization is a process – not a category or identity

Justice is a process – not an event or intervention

Diverse experiences of victimization

Diverse demands for justice

Multiple goals for justice which can change over time… requiring multiple responses (Daly, 2014)
Restorative Justice:

What is it and Why do Victims want it and Why are Offenders willing to Participate
An approach to crime that focuses on repairing the harm done to people and relationships.

- What harm has been done
- What needs have arisen
- Whose obligation is it to meet those needs? (Zehr 1990).
RJ as a Framework

- For thinking about ways of humanizing justice
- Of bringing victims and offenders together ... with Community involvement ....sometimes
- Using Various Methodologies... in SV cases...VOM/VOD; Conferencing; Circles
Principles of RJ

- A Victim-led approach to Justice
- Participation is voluntary (Koss 2014);
- Offender must take responsibility… for the harm done (Continuum of responsibility);
- Safety of all is paramount
- Preparation is key
- SV- Facilitators… RJ, Trauma and SV
Sexual Trauma and Abuse: Restorative and Transformative Possibilities (2014)

- Qualitative Study, Oct 2012 - May 2014,

- 149 People interviewed (30 victim – survivors; 23 offenders)

- Interviews on average 2-3 hours [some less]

- Analysis using Atlas ti
Why Victim Survivors want RJ

- Face the Offender …with Statements
- Face the Offender …with Questions
- Healing
- As a mechanism of Accountability
- Understanding but Not Excusing Sexual Violence
- Family Reconciliation
- ‘Getting out of Relationship’ with the Offender
- Apology and Forgiveness
Why Offenders would agree to Participate in RJ

- Debts owed, Moral Obligation
- Opportunity for Victim’s to Confront person who harmed them
- For Victim to ask questions and get ‘Honest’ answers
- Apology and Expression of Sorrow
- Healing for Victim, Offender and families of both
- Desire to see Victim Move on with their Lives
- Forgiveness....
- RJ would fill a gap in the CJS
RESTORATIVE JUSTICE IN CASES OF SEXUAL VIOLENCE

- Victims: RJ not as Alternative to CJS but Additional Justice Mechanism

- Exception: Intra-familial and Young Offenders

- Victims want RJ available for all who require it (even if not for themselves)

- Offenders would take part if requested to do so
Concerns – Victim Survivors

- Too much time had elapsed – moved on, trauma
- That RJ would be promoted as alternative to CJS
- Ownership and Control of Decision-Making
- State Support and Legitimacy – Bottom Up and Top Down
Concerns - Offenders

- Adversarial Culture of CJS and Relationship between RJ and CJ
- Court Orders prohibiting contact with Victims
- Institutional Inertia
Key Areas of International Debate Regarding RJ in Cases of Sexual Violence
Is RJ Dangerous for Victims?

- Re-victimization
- Re-traumatization
- Power-imbalances
- Safety

- Voluntary Participation
- Preparation (Risk Assessment of Offender? Victim?)
- Physical and Emotional Safeguards
- ‘Time out’
- Training of Facilitators
- Direct vs Indirect Meetings
Are Sex Offenders suitable for RJ

- Could they Manipulate the process?
- Could they further damage the Victim?
- Risk assessment
- Preparation, Preparation, Preparation
- Listen to Victims

Concerns

Practice Responses
Is RJ Suitable for Sex Offenders?

Due process rights:
- Presumption of innocence
- Right against self-incrimination
- Right to fair trial

- Participation is voluntary
- Right to withdraw from RJ process at any time
- Procedural safeguards such as confidentiality safeguards
- Lawyer with New Role

Concerns  Practice Responses

If we constrain ourselves to Therapeutic Jurisprudence – which centres on legal mechanisms and legal actors - are we serving Victims and Offenders well – or are we limiting the range of justice options for victims?

Timing of RJ

Ultimately…. Who decides?
Conclusions

- The Practice is happening ‘Under the Radar’

- Time to consider Innovations in Justice Responses to SV as well as continuing to improve Procedural Justice and Conventional Justice Mechanisms

- Work with Imagination as well as Evidence

- Proceed with Courage as well as Caution
Thank You

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