



Redefining Justice through Restorative Criminal Justice: An analysis

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Abstract

Restorative conferencing is an innovative approach to criminal justice intervention that is gaining traction in Britain, particularly in administering police cautions to juvenile offenders. The topic is now under vigorous discussion, centring on its efficacy as a crime reduction strategy, its advantages for victims, its practicality in contemporary society, its impact on the procedural rights of arrestees, and the risk of it devolving into a degrading ceremony. The article aims to broaden the discourse to include less apparent but equally significant matters. This research ponders on three main issues: the rationality of the concept of ‘restorative justice’, the task of integrating this concept into society and the ‘criminal justice system’ and lastly, the criticism against the delivery of ‘restorative justice’.

Keywords: ‘restorative justice’- community- victim- offender-court

Introduction

‘Restorative justice’ involves all parties engaged in a crime to find a solution and give punishment. Historically, victims played a significant role in justice delivery. Offenders were required to compensate the victim and pay a fine to their lord. The king actively engaged in the ‘criminal justice system’ and started claiming compensation directly from the offender. This practice continued for a long time, and slowly, the state neglected the victim and undermined their role in the adjudication¹. Even after the advent of the constitution, it favoured the accused-oriented system, and the interpretation of the constitution also favoured the accused. The adversarial system of criminal justice that India has chosen to implement has also contributed to the strengthening of this situation. The victim, who is a key component of the ‘criminal justice

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¹ Luzon, Golan. (2016). ‘restorative justice’ and ‘normative responsibility. *restorative justice*, 4(1), 27-40’.



system’, does not have a place in the Indian framework except that it has been assigned to the witness, and that is only when it is absolutely essential or necessary². On the other hand, a number of judgments issued by the highest court in India have made it possible to establish a domain of "take off" identifying with victim equity. When a crime happens, it is deemed to be against the state, and justice is served in line with official objectives. Consequently, the victim has a double sense of victimisation as their role in the legal system is diminished. Since the victim was the target of the crime, it is imperative in this situation to put the state's interests ahead of the victim³.-

In order to overcome the drawbacks of conventional criminal justice practices, ‘restorative justice’ was created. Restorative approaches allow offenders to prioritise the victim and include the community in decision-making⁴. The concept of ‘restorative justice’ is based on three basic premises: *firstly, wrongdoing infringes on persons and relationships. Secondly, the infringement creates obligations on the individuals who committed the harm. Thirdly, the main objective is to create things as much as is practically possible. Numerous countries have "retributive" 'criminal justice systems, meaning that the emphasis is on punishing the offender and exacting revenge rather than on the individuals who committed the offence.* However, ‘this is often not in the best interests of the victim, the criminal, or society at large’. ‘A far superior system is that of restorative justice: *restoring damaged relationships (between victim, offender and community) to how they were before a crime was committed to making things right as much as possible.*⁵ This approach has received widespread acceptance from the international community via several accords and regulations. It offers alternatives to heal the ‘damage, reconcile the parties involved, restore community cohesion, and reassure those affected’.

The rationale of ‘restorative justice’

The purpose of the ‘restorative justice’ model is multidimensional. The restorative model is akin to the preventative theory, which aims to protect the accused from being labelled criminals. It

²Dancig-Rosenberg, Hadar, & Gal, Tali. (2013). Restorative criminal justice. *Cardozo Law Review*, 34(6), 2313-2346’.

³Gabbay. (2005). Justifying restorative justice: A theoretical justification for the use of restorative justice’ practices. https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/jdisres2005§ion=21

⁴C Menkel-Meadow. (2007). restorative justice: What is it and does it work? Available in <https://www.annualreviews.org/content/journals/10.1146/annurev.lawsocsci.2.081805.110005>’

⁵ Nathanson, D, “*From empathy to community*. Paper presented to the First North American Conference on Conferencing, Minneapolis, (1998), Available on http://www.iirp.org/library/nacc/nacc_nat.html”



aims to reduce damage for both victims and offenders via sessions. It reduces jail overcrowding, which may lead to the progression of minor offenders into more serious crimes. 'A crucial feature of restorative justice is that the response to criminal behaviour is centred on something other than the offender and the crime'. Peace-making, conflict settlement, and rebuilding ties are critical tactics for achieving equality while supporting the victim, the guilty person, and the community's interests⁶.

Reprobation is carried out in an increasingly adaptive manner, considering not only the rules but also the specific circumstances of the act, the person in issue, and the perpetrator⁷. The concept of 'restorative justice' is designed to provide positive reinforcement within a larger treatment rather than the primary focus of the intervention. The restorative method aims to help guilty parties take responsibility for their actions and consequences. A restorative method progresses beyond assessing real blame to determining accountability for a conflict and its consequences. 'This broadens the method beyond the specific occurrence, victim, and guilty party. The manner in which this obligation will drive action, particularly conciliatory attitudes and rebuilding, is permitted to be determined by the process itself rather than via the scheduled application of broad legal concepts⁸.

The restorative approach considers both the wrongdoer's past and future behaviour, and also it aims to address his future behaviour and prevent recidivism. 'Parties understand and admit responsibility for the consequences of their actions, which is clearly meant to influence the guilty parties future behaviour'. Further, rather than emphasising the values that have been violated and the penalty that should be imposed, restorative methods will often concentrate on the persons who have been harmed. A 'restorative justice' procedure does not prevent all sorts of punishments (for example, fines, incarceration, and probation), but focuses on restorative, forward-looking outcomes. The desired goal is the fixing, to the degree feasible, of the harm caused by the wrongdoing by providing the guilty person with an opportunity to make considerable restitution⁹.

⁶Jaimie, Guy, Irene, Brian, & Dorothy. (2005). Restoration or renovation? Evaluating restorative justice outcomes. <https://www.tandfonline.com/doi/abs/10.1375/pplt.2005.12.1.194>

⁷Bloch, K.E. (2010). Reconceptualising restorative justice. *Hastings Race and Poverty Law Journal*, 7(1), 201'

⁸Ashworth, Andrew. (2002). Responsibilities, rights and restorative justice. *British Journal of Criminology*, 42(3), 578-595'.

⁹Supra at 5



‘Basic principles on the use of restorative justice programmes in criminal matters’

1. *‘The right to consult with legal counsel’*: Both the victim and the offender shall possess the right to engage legal counsel about the restorative process and, where required, to get translation and/or interpretation services.
2. *‘The right of minors to the assistance of a parent or guardian’*: It is mandatory that every minor be provided with parental or guardian assistance during the proceedings.
3. *‘The right to be fully informed’*: Prior to consenting to engage in restorative procedures, the involved parties must be well apprised of their rights, the characteristics of the process, and the potential ramifications of their choice.
4. *‘Participation is not evidence of guilt’*: The involvement of an offender in a ‘restorative justice’ process must not be construed as an admission of guilt in future legal actions.
5. *‘Agreements should be voluntary and be reasonable’*: Agreements resulting from a restorative process must be reached willingly and should include only fair and balanced commitments.
6. *‘Confidentiality of proceedings’*: “Discussions in restorative processes that are not conducted in public should be confidential, and should not be disclosed subsequently, except with the agreement of the parties or as required by national law” (para. 14). Additional human rights treaties also seek to safeguard children's privacy and the secrecy of processes concerning minors. They are pertinent in this context.
7. *‘Judicial supervision’*: “The results of agreements arising out of ‘restorative justice’ programmes should, where appropriate, be judicially supervised or incorporated into judicial decisions or judgements” (para. 15) . When that happens, the result should possess the same authority as any other court ruling. This indicates that in most systems, the result may be contested by either the offender or the prosecution. These results should prevent prosecution in the same circumstances.
8. *‘Failure to reach an agreement’*: The inability to achieve a consensus should not be held against the offender in future criminal justice procedures.
9. *‘No increased punishment for failure to implement an agreement’*: The non-implementation of an agreement reached during a ‘restorative justice’ process (except



court decisions or judgments) must not serve as a basis for imposing a harsher penalty in future criminal proceedings.

Participants in the RJ process

Different degrees of engagement are made possible in the restorative justice process depending upon the requirement, and this fact has to be considered while designing new programs or conventional practices that already exist and whose restorative components might be improved and expanded.

All participants must be apprised of their respective roles in the process and the roles of all other participants. The following are the participants of the RJ process:

- a) **Crime Victims:** Unlike the traditional ‘criminal justice system’, the victim is the centric point of the ‘restorative justice’ process¹⁰. He decides whether to conduct the restorative process or not. In paragraph 8 of the Basic Principles¹¹, it is stated that ‘restorative justice’ procedures should only be used with the free and voluntary permission of the victim. Furthermore, it is stated that the victim should have the ability to withdraw their participation at any point throughout the process. A suitable amount of assistance should be provided to victims both during and after the procedure. Allowing victims to tell their story is something that must be done¹². To avoid placing excessive attention on the problems faced by the perpetrator, victims may need to speak first in any discussion. This is done in order to maintain a strategic distance. It is important for victims to have family and companions by their side and to get continual assistance from them¹³. Additionally, victim support groups should be accessible to victims when they are available. Alternatively, a victim or a relative may speak on behalf of the victim. Whenever feasible, victims should be accompanied by family members, acquaintances, and, if available, victim support agencies and receive ongoing support¹⁴.

¹⁰ Johnstone, G. (2017). ‘restorative justice’ for victims: inherent limits? *restorative justice*, 5(3), 382–395. <https://doi.org/10.1080/20504721.2017.1390999>

¹¹ United Nations “Handbook on ‘restorative justice’ programmes” (2006),

¹² Van, & Jo-Anne. (2013). Victim satisfaction with ‘restorative justice’: More than simply procedural justice. Available in <https://journals.sagepub.com/doi/abs/10.1177/0269758012472764>

¹³ Armstrong. (2012), ‘Factors Contributing To Victims’ satisfaction With ‘restorative justice’ Practice: A Qualitative Examination’.

¹⁴ Marshall. (2013). (I Can’t Get No) Satisfaction: Using ‘restorative justice’ to Satisfy Victims’ Rights. Available in https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/cardcore15§ion=26”



Particular attention must be given to safeguarding juvenile victims, and guaranteeing their assent is voluntary. During a restorative process that involves child victims or other vulnerable groups (e.g., illegal immigrants or mentally challenged individuals), legal counsel is provided to the victim with the explicit purpose of ensuring that they fully comprehend the process in which they are invited to participate, that their consent is freely given and informed, and that they are aware that they are free to withdraw from the process at any time¹⁵.

- b) **Offenders:** Along with the victim, the perpetrator plays an equally important role. ‘restorative justice’ procedures should only be used when there is sufficient evidence to accuse the guilty party and with the free and deliberate assent of the guilty party¹⁶. The guilty party should be able to withdraw their assent at any point during the procedure. The United Nations lists the Basic Standards of ‘restorative justice’¹⁷. ‘Similarly, those who are guilty anticipate having access to legal assistance and information. For the offender, the process is far from complete upon reaching an agreement with other parties. Honouring the commitment established in the agreement is perhaps of more significance. This second part must directly involve the perpetrators. Here, people must exhibit their acceptance of responsibility for their actions and their readiness to be responsible in a tangible and pragmatic manner¹⁸.
- c) **The Police:** The police role will vary from state to state according to the mode they adopt. They play a key as facilitators, convincing the participants and the court. Maintaining a balanced role for the police is crucial to ensuring their legal commitments do not hamper the restorative process. Remembering that various jurisdictions provide law enforcement with differing degrees of discretionary power¹⁹ is also crucial. The use of restorative techniques by law enforcement agents may signify a rational progression in

¹⁵“Lucrezia, Gian, Maria, &Patrizia. (2021). Use of ‘restorative justice’ and restorative practices at school: A systematic literature review”.

¹⁶ Supra 4, Para 7

¹⁷ United Nations “Handbook on ‘restorative justice’ programmes” “(2006),”

¹⁸ Lawrence, Evan, Daniel, & Barak. (2013). “restorative justice conferencing (RJC) using face-to-face meetings of offenders and victims: Effects on offender recidivism and victim satisfaction. A systematic review. <https://onlinelibrary.wiley.com/doi/abs/10.4073/csr.2013.12>”

¹⁹ Curt, &orative. (2003). “Police reform, ‘restorative justice’ and restorative policing. Available in <https://www.tandfonline.com/doi/pdf/10.1080/15614260310001631244>”



community policing and broader police reform initiatives. It may, under certain conditions, enhance police-community ties. This is especially significant when the police engage in ‘restorative justice’ programs, establishing new relationships with minority groups that they are obligated to connect with and safeguard. New participatory programs may promote a direct responsibility of the police to the community they claim to serve. Law enforcement agencies may use ‘restorative justice’ concepts to cultivate enduring collaborative relationships with the community, thus enhancing the efficacy and efficiency of their initiatives to prevent and address crime and social disorder.

- d) **Prosecutors:** In the absence of legislative restrictions or standards, prosecutors play a crucial role in the operation of ‘restorative justice’ programs. They have considerable discretion in determining whether a case is suitable for a particular restorative procedure. According to a recent analysis of restorative methods across common law and civil law countries, public prosecutors are often the main gatekeepers for restorative initiatives.. In both common law and civil law regimes, prosecutors may refer cases to restorative procedures, a function that has lately developed with the introduction of laws in certain regions. In common law nations, the use of restorative procedures in the post-charge stage is at the prosecutor's discretion, but in civil law countries, such referrals often fall under the jurisdiction of courts. Numerous jurisdictions now include²⁰.
- e) **Defence lawyers:** Defence attorneys may be a source for referring criminals to ‘restorative justice’ programs. Such referrals may facilitate the prompt resolution of conflicts and alleviate the backlog of cases awaiting court appearance. Defence attorneys may significantly elucidate to criminals the prospective advantages of engaging in a ‘restorative justice’ procedure. They may assist in safeguarding the rights of the offender and maintaining accessible channels for appeal. They may significantly contribute in instances involving young offenders by ensuring that their agreement to engage in a ‘restorative justice’ process is informed and voluntarily provided²¹.

²⁰Supra at 16

²¹ LWL Sherman, HH Strang, GG Barnes, SS Bennett (2007). ‘restorative justice’: The evidence. Available in <https://research.tees.ac.uk/en/publications/restorative-justice-the-evidence>



- f) **Judges:** Judges and magistrates significantly influence the potential efficacy of ‘restorative justice’ systems. Nonetheless, they might provide significant challenges regarding the acquisition of their interest, involvement in, and support for restorative initiatives. The legal education of judges and magistrates sometimes fails to include the ideas and practices of ‘restorative justice’. They will embrace more training and the chance to engage directly or indirectly in diverse ‘restorative justice’ methodologies. The participation of judges in ‘restorative justice’ procedures significantly varies according on the particular program in question. ‘In both common law and civil law regimes, judicial members may significantly contribute by sending cases to a restorative forum, engaging in the restorative process, and/or overseeing the agreements established’. In cases where an offender has pleaded guilty or been convicted, the court may defer the implementation of a punishment while awaiting the results of a restorative procedure. In common law countries, a pre-sentence report is one method to draw their attention to this matter. If the court deems an agreement satisfactory, no more measures may be pursued, or the agreement may be included into the sentence imposed on the offender.
- g) **Correctional officers:** Restorative justice’ processes have predominantly functioned at the pre-charge or post-charge, pre-sentence phases of the ‘criminal justice system’; however, there has been a growing application of these processes within corrections and across different stages of sentence execution in recent years²². The ‘restorative justice’ process, including victim-offender mediation, may be used for criminals on probation or those under other forms of community supervision. Restorative procedures may also be used for incarcerated criminals to provide them the chance, when appropriate, to engage with the victim of their crime and/or the victim's family²³. Parole boards may see an offender's involvement in a restorative process as a favorable element in determining parole decisions. Parole officials may conduct mediations as a condition of parole or direct offenders to a restorative program. In several nations, the Ministry of Justice implemented a strategy to include victims in the administration of prisons. In Belgium,

²² Van, & el. (n.d.). ‘Prisons and ‘restorative justice’’ *Hand Book on ‘restorative justice’* (2013).

²³“Vigh, Jozsef. (2002). Restorative Criminal Justice and Society. *Annales Universitatis ScientiarumBudapestinensis de Rolando Eotvos Nominatae: Sectioluridica*, 43, 71-100”.



this was achieved by designating a ‘restorative justice’ adviser in every jail²⁴. Restorative procedures may be used in correctional facilities to alleviate the adverse aspects of incarceration, facilitating platforms for prisoners to amicably settle disputes and establish alternative conflict resolution methods.

- h) **Community Members:** ‘Numerous restorative justice methodologies facilitate an enhanced involvement of community members in dispute resolution and in formulating agreements to which offenders, and sometimes other parties, must comply’. It has been observed that ‘community involvement’ may refer to both very individualised forms of cooperation and influential national lobbying efforts²⁵. Significant heterogeneity exists in the form and scope of community engagement across different ‘restorative justice’ methodologies²⁶. ‘In victim-offender mediation (VOM), the community is excluded, and the process involves a mediator, the offender, and the victim. In circle sentencing, conversely, the procedure is accessible to all members of a local community, village, or indigenous group’.

Many community members may first see ‘restorative justice’ practices as less effective in preventing crime and more lenient than the traditional ‘criminal justice system’, which places a greater emphasis on punishment. Particularly in the case of a more serious violation, an inventive scheme can be seen as allowing the criminal to get a light punishment. Consequently, it is essential to provide materials and design projects that educate the community about the concepts and practices of ‘restorative justice’, as well as the possible contributions of community members.

Role of NGOs in RJ process

Non-governmental organisations (NGOs) have significantly contributed to the creation and execution of ‘restorative justice’ programs globally. Their efficacy in establishing restorative forums largely derives from their proximity to the communities, in contrast to the typical distance maintained by criminal justice officials. In some instances, NGOs may possess more

²⁴Rebecca, & Karen. (2013). Changing on the inside: ‘restorative justice’ in prisons: A literature review, *International Journal of Bahamian Studies*. Available on <https://journals.sfu.ca/cob/index.php/files/article/view/180>”

²⁵Rosenblatt. (2015). The role of community in ‘restorative justice’. *Taylor and Francis*. Available on <https://www.taylorfrancis.com/books/mono/10.4324/9781315717623/role-community-restorative-justice-fernanda-rosenblatt>”

²⁶Albert, & Susan. (2004). The Value of Community Participation in ‘restorative justice’, *journal of Social Philosophy*”.



credibility than law enforcement, public prosecutors, and courts and may be esteemed more highly²⁷. In several nations, NGOs are also unencumbered by the stigma of favouritism and corruption, enhancing their programmatic endeavors credibility. The legitimacy of restorative programs is crucial since many depend on the participation of community residents and, notably, the assurance to crime victims that their cases would be managed equitably with little risk of re-victimization. Non-governmental organisations may collaborate with the government, but they must ensure that such partnerships do not undermine the program's integrity or incorporate political or other agendas into the process²⁸.

Principle to practice- Implementing RJ

Several essential components facilitate the successful implementation and longevity of 'restorative justice' efforts. The components encompass legislation, leadership and organization, obtaining support from the 'criminal justice system', identifying and mobilizing community resources, meticulously designing the program to leverage the community's and justice system's existing strengths while considering current contingencies, and thorough planning and monitoring of the implementation process²⁹. The strategies include

1. A methodical strategy;
2. Robust leadership from top criminal justice administrators;
3. Efficient communication about and assistance for restorative procedures among judicial officials³⁰;
4. The incorporation of restorative procedures within the legal system, rather than seeing these processes as supplementary.
5. Proper communication stargeies with all the participants
6. The arrange the local volunteers;
7. Collaborative alliances between criminal justice professionals and the voluntary sector;

²⁷“Rina, Ramkanta, & Nibras. (2021). Community and 'restorative justice' practices in India, Nepal, and Bangladesh: A comparative overview. 'restorative justice', Springer, Available on https://link.springer.com/chapter/10.1007/978-3-030-74874-6_11”

²⁸Petrilla. (n.d.). NGO roles in promoting restorative juvenile justice programmes. Available in <https://www.euforumrj.org/en/ngo-roles-promoting-restorative-juvenile-justice-programmes>

²⁹“Reimer. (2011). An exploration of the implementation of 'restorative justice' in an Ontario public school, *Canadian Journal of Educational Administration and Policy*”.

³⁰“Mok, Louis W. Y., & Wong, Dennis S. W. (2013). 'restorative justice' and mediation: diverged or converged?. *Asian Journal of Criminology*, 8(4)”.



8. 'A definitive operational structure with norms that delineate areas of authority and duty';
9. 'The establishment of criteria to direct the referral of cases to restorative procedures, including the identification of which cases, offenders, or crime victims would gain the most advantage from such referrals'³¹;
10. Comprehensive and effective training for personnel in criminal justice and community-based programs;
11. 'Well-developed skill sets and areas of specialization among justice and community-based professionals';
12. The development of legitimate performance metrics or indicators.

Criticism

Morris identifies many prevalent critiques about the feasibility and reality of 'restorative justice'. He says 'restorative justice' undermines legal rights; it leads to net-widening; it diminishes the seriousness of crime, especially regarding male violence against women; it does not effectively restore victims or offenders; it fails to induce genuine change and prevent recidivism; it produces discriminatory outcomes³²; it expands police authority; it perpetuates power imbalances; it fosters vigilantism; it lacks legitimacy; and it does not deliver justice³³.

Experts are often left out of the conversation around 'restorative justice', which is another critique levelled at it. According to *Susan M. Olson and Albert W. Dzur*³⁴, this area of justice cannot succeed without experts. They contend that professionals can aid in preventing problems related to informal justice and support the idea of democratic professionalism, according to which professionals are facilitators who improve community engagement while preserving individual rights rather than just acting as state agents as traditional viewpoints suggest³⁵.

³¹Thi Cao O and Van Vu T, 'Proposing 'restorative justice' Models as Alternative Approaches to Addressing Criminal Matters: a Case Study of Judicial Systems in Civil and Common Law Countries'

³²Menkel-Meadow, Carrie. (1999). Do the haves come out ahead in alternative judicial systems: repeat players in adr. *Ohio State Journal on Dispute Resolution* 15(1), 19-62".

³³Carrie Menkel-Meadow .(2007). 'restorative justice': What is it and does it work? , *Annual Review of Law and Social Science*".

³⁴Olson, S. M., & Dzur, A. W. (2004). Revisiting informal justice: 'restorative justice' and democratic professionalism. *Law & Society Review*, 38(1), 139-176".

³⁵Johnstone. (2011). 'restorative justice': Ideas, values, debates (2nd ed.). Routledge".



Moreover, opponents such as *Gregory Shank and Paul Takagi* see ‘restorative justice’ as an inadequate framework since it does not address the underlying structural disparities that predispose some individuals to offend more than others³⁶. They and others scrutinize the societal structure and the equity of institutional systems at their fundamental level, advocating for the resolution of the underlying causes of many individual transgressions and establishing a socio-economic framework that fosters a harmonious and healthy life overall³⁷.

Several academics concur that further studies are necessary to substantiate the efficacy of ‘restorative justice’ in educational institutions, particularly regarding its implementation. ‘restorative justice’ approaches that are inconsistent, inadequate, or lack finance often possess the worst reputations for efficacy. Although several research studies indicate favourable outcomes in ‘restorative justice’, more investigations are necessary.

Conclusion

‘Restorative justice’ aims to enhance the existing ‘criminal justice system’ by incorporating its principles, facilitating a more holistic approach to attaining legitimate justice. The objective is to attain legitimate justice by including the society and the families of both the victim and the perpetrator to reach an acceptable conclusion. One of the most important task of ‘restorative justice’ is to find the real truth. There are multiple ways to track the genuine facts depending upon the subjectivity. Convincing the victim and providing complete security to the victim and family, from the start to the end, is more important than any other thing. It is vital to guarantee that the victim is permitted to engage fully in the criminal processes and get required help, including financial and emotional aid. This strategy will unintentionally reduce the crime rate by improving conviction rates and ensuring that the ‘criminal justice system’ acts as a strong deterrent to prospective offenders. Investing in the improvement of the ‘criminal justice system’, especially in securing justice for victims, must not be seen as a frivolous expenditure. Formulating a comprehensive strategy to provide equitable compensation for those impacted is imperative at this juncture and must not be postponed.

³⁶Johnstone, Gerry. (1999). ‘restorative justice’, shame and forgiveness. *Liverpool Law Review*, 21(2-3), 197-21”.

³⁷“Popa. (2012). ‘restorative justice’: A critical analysis. *Law Review, Central and Eastern European Online Library* Available on <https://www.ceeol.com/search/article-detail?id=1028938>”



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