



Reimagining Justice through Restorative and Rehabilitative Approaches: A Supplement to the Adversarial Criminal Litigation in India

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Abstract

The concept of justice within the criminal justice system has evolved significantly from punitive and retributive models to more inclusive, restorative, and victim-centered approaches. The introductory part of the paper discusses "Justice" as a broader concept and a means of providing holistic and meaningful resolutions that satisfy the victim and offender and fulfil the larger goals of the community. This paper explores the multifaceted Dimensions of Justice under the Criminal Justice System, with a special focus on how modern criminology addresses the complex needs of both victims and offenders. The author has relied on the works of various scholars like Howard Zehr, Conrad Brunk, and John Braithwaite, among others, to understand how restorative Justice can supplement traditional retributive practices.

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Part II of the Paper adopts a doctrinal method for studying the efficacy of Restorative Justice programs across the globe and their impact on the more extensive system by looking at the victim support strategies developed within and beyond the criminal justice system.

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Part III of the Paper studies the current application of restorative principles in the Indian context. The author has explored areas wherein principles of Restorative Justice can be applied in dealing with specific interpersonal crimes in India. By emphasizing the experiences of victims and the potential for offender reform, restorative justice redefines the purpose of the criminal justice system—not as a mechanism of revenge but as a facilitator of social harmony and reconciliation. Victimology, trauma-informed practices, and community-based justice models are integral in this shift, offering more humane and empathetic responses to crime. This paper argues that a truly just system must balance legal procedures with emotional and social restoration. The evolution of criminology demonstrates an increasing awareness that justice must go beyond legal formalism to embrace dignity, respect, and the human condition. Through doctrinal and socio-legal analysis, the study highlights the urgent need for embedding humane justice as a core value within criminal jurisprudence.

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Lastly, the Paper concludes by putting across recommendations and future directions as to the necessary caution in applying restorative justice principles and focusing on developing a legal framework to address the myriad challenges posed by crimes.

Keywords: Restorative Justice, Victim-Centered Justice, Modern Criminology, Humane Justice, Criminal Justice System

PART I- The Rise of Restorative Justice: A Global Phenomenon

Crime has always been considered a law violation against the State, and only recently has victim participation gained prominence in the Criminology domain. Largely, criminal law reforms worldwide have been brought about by knee-jerk reactions from society, which rely on the conventional punitive ways of redressing harm in the criminal justice system.

A shift in the lens requires societies at large to reflect on the broader questions of –

1. Who has been hurt?
2. What are their needs?
3. Whose obligations are to repair the harm done?

"Restorative justice," a promising area in the criminal law context, refers to a concept dating back to the 1970s focused on mending the harm caused by criminal behaviour through inclusive processes involving victims, offenders, and the community. The term 'Restorative Justice' was coined by psychologist Albert Eglash in the 1950s in his article "Beyond Restitution: Creative Restitution." (Mirsky, n.d.).



Although the coining of this term is a relatively recent phenomenon, the underlying philosophy of conflict resolution through peaceful means has existed for a long time. There is no precise definition of 'Restorative Justice'; however, the Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 2002 (UN ECOSOC, 2002) defines related terms as

“Restorative justice programme” means any programme that uses restorative processes and seeks to achieve restorative outcomes.

"Restorative process" means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in resolving matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and Sentencing circles.

"Restorative outcome" means an agreement reached due to a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the parties' individual and collective needs and responsibilities and achieving the reintegration of the victim and the offender.

“Parties” means the victim, the offender, and any other individuals or community members affected by a crime who may be involved in a restorative process.

"Facilitator" means a person whose role is to facilitate, fairly and impartially, the parties' participation in a restorative process.

According to Zehr, the grandfather of restorative practices, "Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible." (Zehr, 2015). Restorative justice approaches promote enhanced victim satisfaction and healing and have the potential to provide victims with a greater sense of satisfaction and healing compared to traditional punitive measures. By allowing victims to participate in the resolution process, express their needs and concerns, and receive direct restitution or apologies from offenders, Restorative Justice can empower victims and help them find closure. This may result in higher victim satisfaction and

emotional healing, leading to a more holistic form of Justice.

Restorative justice practices can foster greater community involvement and empowerment in addressing crime and conflict in India. By bringing together community members, including local leaders, organizations, and support networks, restorative justice processes promote collective responsibility for addressing harm and restoring relationships within neighbourhoods and communities. This can strengthen social cohesion, trust, and solidarity, leading to safer and more resilient communities.

The study addresses the jurisprudential question of *what Justice is and what it entails*. How do we see access to Justice? Is it just the notion measured on ease of availability and facilitation of appropriate resources or forums, or should it encompass a broader objective of outcome-based or experiential Justice focusing both on the journey and the outcome? The present study aims to give impetus to the discourse on the latter.

In India, where the criminal justice process often faces challenges of backlog, resource constraints, and adversarial dynamics, mediation presents an opportunity to introduce restorative justice principles. It has emerged as a viable alternative to traditional adversarial methods within the criminal justice system.

The binary approach of Justice relies upon a narrow idea of seeking it by inflicting punishment on the wrongdoer and lately extending it to the compensatory jurisprudence in the form of Sec-357 and 357 A, lately recognized via amendment (now Section 395,396 of the BNSS,2023). recognizing the duty of the State and promoting restorative Justice. In this light, the law has attained its primary goal, but the question remains whether it has fulfilled its obligations in the real sense.

The three questions that the current criminal justice system focuses on are-

1. Who broke the law?
2. What law has been broken?
3. How can the offender be punished?

Can the victim's needs be understood as satisfied in light of the monetary compensation received, or does the law need to expand the Justice beyond this seemingly obvious recourse? Does the State, being a "welfare state," have to go beyond and extend its aims to promote "social justice" encompassing "restorative justice" principles to



bring meaningful change in the life of the victim and the offender? Does it need to answer the underlying questions to develop an evolved understanding of the root cause of crime and look for solutions for reduced recidivism in the future? What role will the community's involvement play in this field that currently emphasizes the accused, the State, law, and victim to a certain extent?

The three questions that restorative Justice focuses on are-

1. Who has been harmed?
2. How can the harm be repaired?
3. Whose obligation is it to repair the harm?

When harm is directed towards the community or society at large, community members must have a say in the means involved in addressing the crimes. The role taken over by the State is a recent phenomenon, and before this, the Traditional ways of dispute resolution were prevalent across societies. The criminal justice system had brought in the 'State' player, and the entire task of settling, punishing, and redressing crimes fell within the exclusive domain of the State. This may or may not lead to a more considerable satisfaction for the victim of a crime. The 'State', which has the primary task of inflicting punishment, takes care of the victims' needs.

The current Criminal Justice system globally focuses on fact-finding; there is little or no quest for finding the truth. Findings of fact are prone to systemic fallacies such as Wrongful sentencing. Examples include cases in the judiciary, wrongful convictions, and undue imprisonment of undertrials, procedural lapses, and other miscellaneous foibles, making law and Justice seem poles apart from each other. Restorative practices, in effect, aim at holistic principles of healing. Vital opposition met with involving ADR mechanisms in Criminal disputes are the ethical issues and potential for misuse by the powerful. It has to be examined whether delayed disposals are equally, if not more, detrimental.

Broadly, the theories of such punishments have been said to be deterrence, incapacitation, reformation and rehabilitation. The 1980s witnessed discussion by International community on the position of crime victims and the need for community involvement in crime prevention. (Council of Europe, 1985). In its resolutions, the Economic and Social Council of the United Nations recommended that Member States consider amicable means of settlement to deal with petty offences and the acceptance of civil reparation, compensation, and non-custodial

measures as alternatives to imprisonment. (UN ECOSOC, 2000, 2002, 2016). Further resolution on *the Development and implementation of mediation and restorative justice measures in criminal Justice* has stressed that the means of settlement of disputes by using mediation and restorative justice measures in appropriate cases can lead to victim satisfaction and prevention of future illicit behaviour, making it as a viable alternative to imprisonment and fine (United Nations, 1999). It also called upon "Member States to consider, within their legal systems, the development of procedures to serve as alternatives to formal criminal justice proceedings and to formulate mediation and restorative justice policies, to promote a culture favourable to mediation and restorative justice among law enforcement, judicial and social authorities, as well as local communities, and to consider the provision of appropriate training for those involved in the implementation of such processes". The UN resolution on the *Basic principles of the use of restorative justice programmes in criminal matters*, while highlighting the growth of restorative initiatives worldwide, emphasized that restorative Justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and communities. (UN ECOSOC, 2000, 2002, 2016).

Commenting on restorative justice programmes, it was clarified that they can be used at any stage of the criminal justice system, subject to national law. These programs offer adaptable measures that complement existing criminal justice systems while considering legal considerations and social and cultural circumstances. It was also pointed out that failing to reach an agreement using these means shall not affect the sentence in subsequent criminal justice proceedings. Further resolutions on similar lines have also encouraged the application of these basic principles by the Member States and the exchange of information on developments and innovative approaches in restorative Justice. (UN ECOSOC 2016).

As opposed to the traditional punitive methods, RJ processes tend to achieve more considerable victim satisfaction by putting them in charge of their problem, thereby giving them more control over the process and outcomes.

Zehr, bases them on the three Rs- *Respect*, taking *Responsibility* for repairing *Relationships* and ensuring Justice for offenders and victims by changing the lens and questions to be asked. He



also points out that it can be used at any stage, that is, before, during, or after the trial. (Zehr, 2015) It may involve various stakeholders using restorative practices, ranging from police to courts, prosecutors, prison officers, parole officers, and probation officers. (Ness, 2005) The UN Handbook on Restorative Justice Programmes, 2006 points out that Restorative Justice is not a "one size fits all" approach to crime. As a result, it continues to evolve and take on new forms as governments and communities implement restorative justice principles to best meet the needs of crime victims, offenders, and community members. (Dandurand et al., 2006)

The need of the hour is to convert these principles into practice. The next Part of the Paper delves further into the prevailing practices amongst various communities.

Part II- Restorative Justice Programmes: Policies and Practices Across The Globe

Restorative Justice originated from indigenous practices in North America and New Zealand. In New Zealand, the Maori community used Community and Family Group Conferencing to promote healing and community harmony rather than punishing offenders. Over the last few decades, the framework has gained international traction, becoming institutionalized in numerous countries. Restorative Justice's flexibility has enabled it to be integrated into various cultural and legal systems. Restorative Justice is now practised in a variety of settings around the world, providing a more inclusive, participatory framework that prioritizes the needs of victims, offenders, and communities. This Paper further investigates the rise of restorative Justice and its implementation in various countries, highlighting the differences and similarities in its practices, particularly in Asia.

This Part looks at community-based alternative dispute resolution systems, attempting to identify the similarities and differences between ADRs (Alternative Dispute Resolution Systems) and restorative justice procedures. It investigates whether these community-based ADRs follow restorative justice principles such as victim empowerment, deliberate efforts by decision-makers to reduce the stigma and punishment of the offender, and emphasis on strengthening or repairing interpersonal relationships. It also investigates whether formal restorative justice processes could adopt some of the positive aspects of these community-based ADRs.

Restorative Justice practices across Asia are found in myriad ways and are rooted in the basic principles of Restorative Justice, including mediation and other conflict resolution mechanisms. Some of them are-

- Victim-Offender Mediation
- Restorative Conferencing
- Victim Impact Panels
- Community Service and Restitution
- Restorative Justice and Juvenile Offenders
- Community Justice Committee
- Community policing

The Community Policing in the Barangay Community in the Philippines comprises local captains and peace-making community hearing conflicts among residents. In Bangladesh, Salish is a traditional dispute resolution mechanism practised by employing modes of arbitration by village headmen and mediation, leading to participation and a mutually agreed decision by both parties.

In Indonesia, the Customary unwritten criminal law of the Baduy Community follows the Pancasila philosophy. Pancasila, Indonesia's founding philosophy, emphasizes faith in God, humanity, unity, democracy, and social Justice. These principles underpin Indonesia's approach to Justice, which promotes harmony, human rights, and the common good, all of which are compatible with restorative Justice. Pancasila supports societal approaches emphasizing rehabilitation, forgiveness, and reintegration rather than retribution. The concept influences policies and attitudes, intending to create an inclusive, humane, and rehabilitative justice system. (Rochaeti et al., 2023)

Indonesia's approach to juvenile Justice emphasizes restorative practices, such as victim-offender mediation, community service, and education, as alternatives to detention. In Baduy culture, maintaining peace and harmony within the community takes precedence over punishment. Community-based practices in Indonesia. They are used for disputes, typically resolved through apologies, symbolic reparations, or social rituals, emphasizing restoring relationships rather than imposing harsh punishments. (Sukendar et al., 2023).

Restorative Justice is still developing in Sri Lanka, but it has strong roots in community-based practices similar to those in Indonesia. Village-based mediation boards, sanctioned by the government, resolve minor criminal offences and civil disputes through consensus-building and



reconciliation. These boards are based on ancient practices, prioritizing communal harmony over punishment. The Initiatives of Change movement in Sri Lanka relies on the motto. "Hurt, not transformed, are always transferred." The aim is to build trust together by addressing unresolved pain and conflict among communities. (Initiatives of Change, 2020).

Further, Singapore's correctional officers are regarded as "Captains of Lives," responsible for guiding inmates toward positive transformation. They work closely with inmates to help them change their perspectives, rehabilitate, and restart their lives. This compassionate and respectful approach to correctional work reframes prisons as transformative institutions rather than punitive ones. The Yellow Ribbon Project (YRP) is a community initiative that supports the rehabilitation and reintegration of ex-offenders in Singapore. (Singapore Prison Service, 2021).

Part III- Restorative Justice Practices in India

Restorative Justice is an emerging paradigm that has received significant attention in India during the last decade. Its successful implementation in many situations globally, including child justice, schools, and criminal trials, illustrates its versatility and effectiveness. In India, legal and non-legal practices help support victims and ensure their voices are heard in the criminal justice machinery. Restorative Justice found in India can be studied as practices spread within and beyond the core legal domain. (Zehr, 2015; UNODC, 2006).

Using compromise or mediation as a mode of conflict resolution in criminal law is no longer a vague concept. Such practices can be applied at any stage of the criminal justice machinery. Indian criminal law jurisprudence talks of Restorative Justice in light of the concepts of Compounding, plea bargaining, and victim compensation schemes. The newly introduced Mediation Act of 2023 reserves in its Section 6 the power of Courts to arrive at a settlement in case of compoundable offences. (The Mediation Act, 2023).

Victims in India have mainly been seen as outsiders. However, their voice has been heard lately while Sentencing in the Victim Impact Report at the time of Sentencing prepared by Legal Service authorities. The victim impact statement at the Sentencing stage can be explored and made mandatory in the Indian criminal justice system. Listening to the victim can further Restorative Justice goals and prevent further victimization and potential crime causation.

Victim participation in the investigation, prosecution, trial, and sentencing by way of legislative and judicial activism gives more and more opportunities for the participation of victims before, after, and during the trial.

The mechanisms of Compounding and plea bargaining, while not entirely synonymous with restorative Justice, are steps toward incorporating restorative principles into India's criminal justice system. The Indian Criminal laws provide for the Compounding of offences, and they are categorized as compoundable without the court's permission as well as with the permission of the Courts as per Section 359(2) of the BNSS,2023. Minor offences can be compounded by the persons named in the table by mutual settlement. Plea Bargaining is another practice that aims to clear the backlog of cases, excluding socio-economic offences, offences against women and children, and offences punishable for more than seven years by mutually satisfactory disposition between prosecution and defence.(Khan, 2017) The success of plea bargaining in India has been met with mixed results. (Gautam, n.d.; Jain, 2016). These practices, which promote reconciliation and victim satisfaction and reduce punitive focus in appropriate cases, provide alternative resolutions that can align with restorative goals of healing and societal harmony.

Community Service

Section 4(f) of the Bhartiya Nyaya Sanhita, 2023, has introduced a new form of punishment to the existing punishments under the Act. Community service as a form of punishment can be used with caution for first-time offenders in cases involving abusive relationships and violence, and fostering a sense of accountability beyond the individual relationship. In cultures where familial reputation is paramount, community involvement can ensure a balance between individual restoration and collective responsibility while at the same time ensuring the safety of the victim.

The Bhartiya Nyaya Sanhita, 2023, does not define what constitutes "Community service," and there are no separate criteria for offences wherein such a form of punishment can be given. The lack of appropriate guidelines and frameworks will pose severe challenges in implementing community service in a system that is accustomed to putting offenders behind bars.

The Pune Porsche case poses an example wherein the need is felt for introducing comprehensive guidelines to embrace the opportunity that this form of punishment can bring forth, avoiding



inconsistencies and the trivialization of the offence. (The Print, 2024). It is therefore recommended that rules/guidelines providing committees for monitoring the completion of services with the involvement of NGOs, community organizations, and local authorities be designed to keep an eye on the practical implementation of the form of punishment.

Section 18 of the Juvenile Justice (Care and Protection of Children) Act, 2015, provides for *community service* to children found to conflict with the law.

Compensatory Jurisprudence

UN Declaration of Basic Principles of Justice for Victims of Crime, 1985, was signed, reflecting the collective will of the international community to address the concerns of victims of crime. Monetary compensation was recognized by various nations as a vital victim support strategy. Countries like New Zealand, the UK, the Netherlands, Germany, France, and the Philippines have a developed Victim Compensation plan. In India, *Delhi Domestic Working Women's Forum vs. Union of India and others* 1995 SCC (1) 14. had directed the National Commission for Women to evolve a "scheme so as to wipe out the tears of unfortunate victims of rape" by providing Financial assistance, support services such as shelter, counselling, medical aid, legal assistance, education, and vocational training based on the victim's needs. The recommendation to establish a Criminal Injuries Compensation Board was made because, in addition to mental pain, rape victims frequently suffer significant financial loss and, in some cases, are too traumatised to continue working. Compensation as the rehabilitative method was suggested in India by the 154th Law Commission report, 1996, Malimath Committee in 2003, and now finds a place in Sections 395, 396, 397 of the *Bhartiya Nagrik Suraksha Sanhita 2023* which was previously provisioned as compensation to victims of crime under sections 357, 357(1), 357(2), 357(3), 357A, 358, 359 and 250 of the Code of Criminal Procedure, 1973.

Amendments in 2008 to the Code of Criminal Procedure in 1973 mandated that states make a Victim Compensation Scheme in coordination with the central government. Several states have drafted their compensation schemes, including the *Delhi Victim Compensation Scheme*, *Maharashtra Victim Compensation Scheme*, and *West Bengal Victim Compensation Scheme*.

Provision for interim compensation was made mandatory for trial courts. National Legal Services Authority (NALSA), State Legal Services Authority (SLSA), and District Legal Services Authority (DLSA) assess and recommend the compensation amount. A compensation mechanism is also suggested for victims of acid attacks as per *Laxmi vs Union of India* (2016) SCC 3 669 and *Parivartan Kendra vs Union of India* (2016) SCC 3 571. For the furtherance of restorative Justice for affected women, the Scheme does not prevent an affected woman from seeking relief from the Courts.

However, identifying the bottleneck in implementation, the Supreme Court in *Re Alarming Rise in Number of Reported Child Rape Incidents* (2020) 7 SCC 87 highlighted how the Scheme has more or less remained ornamental, and in only a handful of cases, interim compensation is awarded.

Community-based Alternative Conflict Resolution Forums

Community plays a vital role in the restorative programmes. Community-based ADR in India has been practised for ages in the form of dispute resolution through traditional panchayats. Restorative justice principles in the Indian context are primarily applied in the juvenile justice system. It can be applied in cases involving family disputes, including domestic violence, where there is a need to address underlying conflicts, repair relationships, and ensure the safety and well-being of all parties involved. Mediation, counselling, and support services can help families resolve conflicts amicably, develop practical communication skills, and access resources for healing and reconciliation. Since restorative Justice revolves around the idea of healing and closure for offenders and victims of crimes, offences of a private nature can be negotiated to devise party-centric solutions to the harm caused. Restorative justice processes can promote offender accountability and rehabilitation by addressing the underlying causes of criminal behavior and facilitating meaningful dialogue and reconciliation between offenders and victims. This, in turn, can contribute to breaking the cycle of crime and reducing repeat offences while reducing the chances of potential revengeful crimes by the victims. The Government of India had started Nari Adalats, a gender-sensitive, informal ADR platform under the "Mission Shakti" scheme, which is an integrated women's empowerment programme under an umbrella scheme for women's safety,



security, and empowerment. Currently, Nari Adalat is implemented on a pilot basis in the State of Assam and the UT of Jammu and Kashmir. It is aimed at resolving cases of harassment, atrocities at home, subversion, and curtailment of rights faced by women at the Gram Panchayat level by negotiation and mediation with mutual consent, thus providing Justice by women for women. The women members are called "Nyaya Sakhi", with "Mukhya Nyaya Sakhi" as their elected leader. The role of this group extends to creating awareness and serving as facilitators for any gender-based harm inflicted on them. (Ministry of Women and Child Development, 2023).

Mahila Panchayats

The Delhi Commission for Women has taken various initiatives to empower women. Amongst others, the voluntary women's courts called Mahila Panchayats offer crisis intervention and legal aid at the community level to tackle local-level legal disputes and assist in reducing and reconciling violence against women. (WUNRN, 2011). These institutional and grassroots efforts reflect India's gradual movement toward a justice model centered on restoration, reconciliation, and community participation.

Part IV: Challenges And Criticism

How far we have come and what the future looks like may vary, but Restorative Justice is definitely gaining ground globally. It is neither diagonally opposite nor an alternative to the punitive dispute resolution theory. However, it is a process aimed towards looking at Justice from a holistic point of view, taking into consideration human behaviour. The offender's deviant behaviour is a result of pressures ranging from the individual, family, and community at large. Restorative Justice stands for

a relational approach to problems, conflicts, and harms that focuses on needs and responsibilities, engagement, and dialogue with those who have a stake in the solution. Thus, restorative Justice operates on the harms, needs, obligations and role of the community in repairing the harms and adhering to the obligations imposed on each other.

The needs of the victim may be fulfilled and satisfied by the reformation or restoration of the offender. Thus, creative restitution and constructive conflict resolution mechanisms have to be looked at closely. (Wallis, 2014).

Critiques argue that Restorative practices may fail to achieve genuine or sincere apologies and are still very offender-oriented. The debate is not about which is better than the other. Instead, it is about finding a balanced way of looking at crimes and the notion of Justice, not a from revenge-driven but from an empathy and closure-driven lens. (Daly, 2015).

The UN Sustainable Development Goal 16 aims to promote peaceful and inclusive societies and provide all with access to Justice. The goal is to safeguard and preserve the community and culture, as well as to inspire and implement best practices from around the world. Integrated support systems can be used in Restorative Justice as part of a multifaceted approach to justice and healing.

Ultimately, the debate is not about whether restorative justice is better than punitive justice. Instead, it concerns how justice can be made more humane, empathetic, and effective. Combining the strengths of both systems through evidence-based practices, community engagement, and legal safeguards offers a pathway toward a more just society.

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