



Beyond retribution: The emerging role of restorative justice in Indian Jurisprudence

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Abstract

Restorative Justice (RJ) represents a progressive shift in criminal jurisprudence, offering an alternative to the retributive justice system that dominates modern legal frameworks. Unlike punitive approaches that focus on state-imposed sanctions, RJ emphasizes rehabilitation, reconciliation, and victim participation, recognizing crime as harm caused to individuals and communities rather than just a violation of legal norms. By fostering dialogue between victims, offenders, and society, RJ seeks to repair harm, restore relationships, and promote offender accountability, ultimately contributing to a more humane and participatory justice system that prioritizes healing over punishment. This paper explores the jurisprudential foundations of RJ, analysing its philosophical underpinnings in retributive, utilitarian, and social contract theories, while highlighting its historical evolution from community-based indigenous justice systems to its contemporary relevance. The study examines the legal framework of RJ in India, with reference to plea bargaining, victim compensation schemes, and juvenile justice laws, showcasing its gradual integration into the existing criminal justice system. Through a comparative analysis of global RJ models, the paper advocates for the wider adoption of RJ principles in India's legal framework. It argues that RJ not only promotes healing and social harmony but also aligns with the broader objectives of justice by balancing accountability with offender rehabilitation.

Keywords: Restorative justice, Indian jurisprudence, victim-offender mediation, criminal justice reform

Introduction

The concept of justice has traditionally revolved around retribution and deterrence, where punishment is viewed as the primary means of maintaining law and order ^[1]. Retributive justice, the dominant model in many legal systems, considers crime as an offense against the state and seeks to impose proportional punishment on offenders. However, this punitive approach often overlooks the needs of victims and fails to address the underlying causes of criminal behaviour. In contrast, Restorative Justice (RJ) offers an alternative framework that prioritizes healing, rehabilitation, and reconciliation over punishment. Rooted in the idea that crime causes harm not just to the state but to individuals and communities, RJ aims to repair this harm by engaging all stakeholders starting from victims, offenders, and society ^[2]. This model emphasizes accountability, reparation, and reintegration rather than retribution, fostering a justice system that is both humane and effective. RJ processes are grounded in voluntary participation, open dialogue, and mutual agreement, making them inherently more inclusive and flexible than adversarial legal proceedings. Restorative Justice is not a new phenomenon. It draws upon longstanding indigenous and community-based traditions of dispute resolution that prioritize restitution over punishment. By encouraging offenders to take responsibility, express remorse, and contribute actively to repairing harm, RJ seeks to restore relationships rather than simply impose sanctions. It addresses victims' emotional, financial, and social needs while enabling offenders to be reintegrated into society. Additionally, it offers a constructive space for community involvement in justice delivery, which is often absent in conventional systems.

The global recognition of RJ as a legal and moral approach to justice has grown significantly in recent decades. Countries like New Zealand, Canada, South Africa, and the

United Kingdom have implemented RJ mechanisms within their legal frameworks, demonstrating its effectiveness in reducing recidivism and enhancing victim satisfaction ^[3]. International bodies, including the United Nations, have also endorsed RJ as a crucial component of modern criminal justice ^[4]. In India, while the legal system remains predominantly retributive, traces of RJ can be found in traditional dispute resolution mechanisms such as Panchayats, Lok Adalats, and Alternative Dispute Resolution (ADR) systems, which emphasize mediation and reconciliation over punishment. Additionally, certain legislative provisions reflect RJ principles, such as plea bargaining, victim compensation, and juvenile justice reforms aimed at rehabilitation rather than mere penalization. However, these measures remain fragmented, and their practical application within the larger criminal justice system is inconsistent. The absence of a codified framework, coupled with limited institutional awareness and inconsistent judicial application, continues to limit RJ's transformative potential. As the country faces challenges like judicial backlog, overcrowded prisons, and limited victim participation, an approach that balances offender accountability with victim empowerment and community well-being becomes essential. Restorative Justice provides a timely opportunity to reimagine Indian criminal jurisprudence as more participatory, victim-sensitive, and socially constructive.

Jurisprudential Foundations of Restorative Justice

The concept of justice has undergone significant transformation over centuries, evolving from primitive and indigenous dispute resolution mechanisms to state-imposed punitive systems and, more recently, to restorative approaches that emphasize healing and reconciliation. In early societies, justice was predominantly community-driven, focusing on reconciliation and restitution rather than

punishment. Original justice systems across nations, including the Maori in New Zealand, African tribal justice, and India's Panchayat system, prioritized mediation and consensus-building over punitive measures^[5]. With the advent of classical legal thought, justice became state-centric, wherein the power to punish was transferred from the community to sovereign authorities. Thinkers like Hobbes and Bentham reinforced this retributive model, arguing that punishment serves to maintain order and deter crime. However, the modern restorative justice movement emerged as a response to the failures of retributive justice, particularly its inability to address victims' needs, rehabilitate offenders, and prevent recidivism. Restorative justice challenges traditional retributive models by emphasizing reconciliation, rehabilitation, and social harmony. Rooted in evolving jurisprudence, it integrates victim-offender mediation and community-driven justice within legal systems^[6].

Restorative justice challenges adversarial legal frameworks by promoting participation, dialogue, and reconciliation over strict punishment. Unlike traditional justice systems, which treat crime as a violation against the state, RJ views it as harm against individuals and communities. This perspective aligns with the concept of legal pluralism, which argues for integrating alternative dispute resolution (ADR) and community-based justice mechanisms into mainstream legal frameworks^[7]. From a philosophical standpoint, theories of justice have long debated whether punishment should focus on retribution or restoration. Aristotle and Kant argued for retributive justice, where punishment is morally necessary to maintain social order. In contrast, Hegelian dialectics suggests that justice should resolve contradictions within society, making RJ a synthesis of retribution and rehabilitation. Eastern philosophies, particularly Buddhism, Confucianism, and Gandhian thought, emphasize restoration, forgiveness, and social harmony, making RJ deeply compatible with these traditions^[8]. Utilitarian thinkers like Bentham and Mill also favour rehabilitation over punitive measures, arguing that justice should focus on crime prevention and social stability rather than mere punishment. RJ also aligns with social contract theory, where justice is seen as a mechanism for maintaining societal equilibrium. Thinkers like Rousseau emphasized collective will, suggesting that crime represents a breach of social trust that must be restored rather than merely avenged. Contemporary jurisprudence has further expanded RJ's theoretical grounding by incorporating insights from feminist legal theory and critical race theory. These schools argue that retributive systems often marginalize vulnerable communities and perpetuate structural inequalities, while RJ creates space for empowerment, inclusion, and narrative justice^[9]. Critical legal studies further support RJ as a means of challenging systemic inequalities, particularly in marginalized communities disproportionately affected by incarceration and state violence. As an alternative to punitive justice, RJ finds support in abolitionist theories, which argue for reducing reliance on incarceration and investing in community-based conflict resolution. It has also played a crucial role in transitional justice, particularly in post-conflict societies, where RJ mechanisms, such as South Africa's Truth and Reconciliation Commission, have helped nations address historical injustices through dialogue rather than retribution. Similar efforts in Rwanda, Colombia, and Sierra Leone have used restorative practices in truth

commissions and war tribunals to encourage healing and reintegration after mass violence. In addition, emerging disciplines such as neuroscience and trauma psychology validate RJ's rehabilitative capacity. Studies show that trauma-informed justice models foster emotional recovery, reduce aggression, and lower the risk of reoffending—goals rarely achieved through incarceration.

Globally, RJ has been successfully integrated into diverse legal traditions, including common law (UK, US), civil law (Germany, France), and indigenous justice systems (Canada, New Zealand). While RJ is most commonly associated with criminal justice, it is increasingly applied in civil disputes, corporate accountability, and regulatory frameworks, making it a versatile and evolving legal approach. The jurisprudential basis of RJ, therefore, is not confined to moral philosophy or restorative rituals but is now grounded in interdisciplinary legal, psychological, and sociological research. It highlights RJ's potential to redefine justice by prioritizing restoration over punishment, making legal systems more equitable, participatory, and effective.

Legal Framework for Restorative Justice in India

Restorative Justice (RJ) in India is embedded within multiple statutory provisions, judicial precedents, and policy frameworks, though it lacks a dedicated legal structure. RJ principles such as victim-offender mediation, compensation, and rehabilitation are reflected in the Code of Criminal Procedure (CrPC), now revised as the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the Juvenile Justice (Care and Protection of Children) Act, 2015, and various alternative dispute resolution (ADR) mechanisms. However, the Indian legal system remains predominantly punitive, limiting the full-fledged integration of RJ.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), contains provisions aligned with RJ. Section 359 of BNSS (earlier Section 320 CrPC) permits compounding of offenses, allowing victims and offenders to settle disputes with or without court intervention, thereby promoting reconciliation and reducing the case backlog^[10]. However, this is currently limited to compoundable offenses and does not apply to serious crimes, which restricts its broader restorative impact. Section 396 establishes a Victim Compensation Scheme, ensuring monetary relief for victims, particularly in cases where offenders are unknown or financially incapable. This mechanism acknowledges victim needs, a core principle of RJ. Furthermore, Section 289 of the BNSS (earlier Section 265A CrPC) introduces plea bargaining, enabling offenders to negotiate reduced sentences while assuming responsibility. Although primarily aimed at decongesting prisons and expediting trials, plea bargaining embodies RJ principles by encouraging accountability and resolution outside adversarial litigation.

The Juvenile Justice (Care and Protection of Children) Act, 2015, is one of the strongest examples of RJ in Indian law. It prioritizes rehabilitation over punitive measures, recognizing that juvenile offenders require reintegration rather than harsh sentencing. The Act mandates Juvenile Justice Boards (JJBs) to incorporate RJ principles, such as victim-offender mediation, counselling, and community service. Instead of incarceration, juveniles are given opportunities for skill development, education, and community engagement, aligning with RJ's objective of restoring social harmony. Section 15 of the Act specifically empowers the JJB to assess whether a child in conflict with

the law has the mental capacity to commit the offense and determine appropriate rehabilitative measures^[11].

In addition to statutory provisions, India has a well-developed Alternative Dispute Resolution (ADR) system, which complements RJ. The Legal Services Authorities Act, 1987, institutionalizes Lok Adalats (People's Courts), which provide cost-effective, time-efficient resolution of disputes, focusing on settlement rather than punishment. The Arbitration and Conciliation Act, 1996, further institutionalizes mediation and conciliation, reinforcing RJ's emphasis on resolution over retribution. Despite its success in civil and family disputes, the integration of ADR in criminal justice remains experimental and rare, often depending on judicial discretion rather than structured legal mandates.

Indian courts have played a crucial role in advancing RJ through landmark judgments. In *State of Gujarat v. Kishanbhai*^[12], the Supreme Court emphasized restorative approaches in minor offenses, advocating reconciliation over imprisonment. Similarly, in *State of Himachal Pradesh v. Umed Ram*^[13], the judiciary acknowledged RJ's potential even in serious offenses where victims support non-punitive resolutions. Courts have also reduced sentences in cases where offenders' express remorse and engage in reparative actions, reinforcing RJ principles within judicial reasoning. Despite these advancements, several challenges hinder RJ's institutionalization in India. The absence of a structured RJ framework results in inconsistent application, leaving RJ measures largely dependent on judicial discretion rather than codified policies. Moreover, victim participation remains limited, as the criminal justice system primarily views crime as an offense against the state rather than a harm requiring victim-offender mediation.

Another major barrier is the lack of procedural guidelines and infrastructure to facilitate restorative practices. There is no uniform protocol for victim-offender mediation, and cases that do settle restoratively often do so informally and without legal enforceability. Additionally, lack of awareness and institutional support restricts RJ's expansion. Judges, lawyers, and law enforcement officials receive minimal training in RJ principles, limiting its practical application. Resistance from traditional legal institutions further obstructs RJ's growth, as prosecutors and judges prioritize deterrence and punitive justice over reconciliation.

Further, concerns about RJ being used as a loophole to evade punishment—especially in serious crimes like sexual assault or domestic violence—have raised legitimate questions about its scope and safeguards. Hence, scholars argue that RJ should supplement, not replace, formal justice in such contexts^[14].

In conclusion, while India's legal system incorporates various elements of RJ, including victim compensation, plea bargaining, juvenile justice reforms, and ADR mechanisms, the absence of a comprehensive RJ policy, limited victim participation, and structural challenges hinder its full realization. Strengthening RJ in India requires dedicated legislation, increased judicial reliance on restorative practices, expanded victim participation, and capacity-building initiatives for legal professionals. By institutionalizing RJ within the BNSS and other key statutes and equipping stakeholders with practical training, India can create a justice system that is not only efficient but also empathetic, inclusive, and socially healing.

Restorative Justice in Global Jurisprudence: Comparative Insights

Restorative Justice (RJ) has been effectively adopted across various legal systems worldwide, reinforcing its potential to reduce recidivism, improve victim satisfaction, and promote social reintegration. These international models offer valuable lessons for shaping a restorative justice framework within India's legal system.

In the United Kingdom, RJ has been formally integrated into the criminal justice system through policies encouraging victim-offender mediation and restorative conferencing. The Restorative Justice Council (RJC) plays a vital role in developing national standards and accreditation systems for RJ practitioners. RJ is particularly applied in cases involving juvenile or first-time offenders, where it is embedded into sentencing options to ensure offenders accept responsibility while victims are given a platform to express their harm^[15]. The Ministry of Justice has funded RJ pilot projects, and the Youth Justice Board promotes RJ through community-based panels and victim engagement practices^[16].

In the United States, RJ models vary across states and communities, with notable examples including restorative circles, family group conferencing, and diversion programs. These programs are commonly used within juvenile justice systems, offering alternatives to formal prosecution and incarceration. For instance, the Oakland Unified School District in California successfully implemented RJ in schools to address student misconduct, reducing suspensions and fostering a positive school climate. Additionally, states like Vermont and Minnesota have formal community justice centers, and RJ is increasingly used in adult probation systems and reentry programs.

South Africa's Truth and Reconciliation Commission (TRC) is one of the most prominent examples of RJ in transitional justice. Formed post-apartheid, the TRC allowed both victims and perpetrators to publicly narrate their experiences, promoting healing, truth-telling, and community reconciliation over legal retribution. The model emphasized dialogue, forgiveness, and restoration, rather than punishment. It is often cited as a foundational example of how RJ can address systemic historical violence and promote national healing.

In New Zealand, RJ is deeply rooted in Maori indigenous practices. The Family Group Conference (FGC) system, introduced under the Children, Young Persons, and Their Families Act, 1989, involves the victim, offender, family, and community in resolving the conflict and agreeing on reparative steps. This participatory approach has become central to New Zealand's youth justice model, significantly reducing recidivism and court delays. The FGC model is legally mandated for most juvenile cases before prosecution is considered, illustrating a deep institutional commitment to RJ^[17].

Other countries like Norway, Belgium, and Germany have also adopted various forms of RJ, including victim-offender dialogues and community service models, with strong procedural safeguards and judicial oversight. The European Union has actively supported RJ through its Framework Decisions and funding of transnational RJ projects.

India can adopt these best practices by formally integrating victim-offender mediation, especially for juveniles and minor offences, into its legal structure. State-supported RJ initiatives modelled on global examples can ease the judicial

backlog, reduce prison overcrowding, and enhance victim satisfaction. Incorporating structured conferencing, victim support services, and offender rehabilitation plans would help build institutional trust and community engagement. Embedding RJ within statutes and judicial procedures would make justice more community-focused, rehabilitative, and participatory, aligning with both India's cultural traditions and constitutional values.

Challenges in Implementing Restorative Justice in India

Despite increasing recognition of Restorative Justice (RJ) as a viable alternative to punitive models, its integration into the Indian criminal justice system faces significant challenges—legal, structural, cultural, and institutional.

A primary obstacle is the absence of a comprehensive legislative framework. Although provisions such as plea bargaining (now under BNSS Sections 289–294, earlier CrPC Sections 265A–L) and victim compensation (BNSS Section 396, formerly CrPC Section 357A) reflect restorative elements, India lacks a codified policy or guidelines for implementing RJ systematically. This limits the legal enforceability and uniformity of RJ practices across jurisdictions^[18].

Furthermore, India's justice system remains predominantly retributive. Courts, police, and prosecutors are trained in adversarial procedures, with limited exposure to RJ principles. Lack of awareness and training among legal professionals hampers institutional capacity to adopt RJ mechanisms effectively^[19].

Social and cultural attitudes also hinder RJ's acceptance. Many victims perceive mediation as an insufficient response, particularly in cases involving serious or violent offences. The adversarial nature of Indian litigation reinforces the idea that justice equals punishment, making reconciliation seem weak or unjust in public perception. This perception is further complicated by societal stigma against offenders, which hinders their reintegration even after participation in restorative processes.

Institutional resistance from judiciary and law enforcement further limits RJ's application. Judges and prosecutors often prioritize deterrence, and there is uncertainty around the legal validity and enforceability of RJ settlements, especially when they occur outside formal court procedures. In the absence of standard operating procedures (SOPs), many RJ-based settlements are informal and lack recognition within criminal records or sentencing orders.

There are also practical barriers such as insufficient infrastructure for victim-offender mediation, lack of trained facilitators, and inconsistent implementation across states. Unlike in countries like New Zealand or Canada, India does not have a national RJ coordinating body or centralized policy to monitor or evaluate outcomes. To overcome these barriers, structured policy development, legal training, and public education on RJ's benefits are essential. Integrating RJ into judicial academies, law curricula, and community legal services would pave the way for a more rehabilitative and victim-centered justice system in India. Establishing pilot projects under district legal services authorities (DLSAs) and documenting case outcomes could help build data-driven models for future legislation.

Conclusion

Restorative Justice (RJ) offers not merely an alternative to retributive systems but a paradigm shift in the way justice

is understood and delivered. As this research has shown, RJ moves the focus from punishment to healing, community engagement, and moral accountability. Comparative insights from countries like New Zealand, South Africa, and the UK highlight that institutionalizing RJ requires legal clarity, administrative infrastructure, and cultural readiness all of which remain underdeveloped in India.

While India reflects restorative ideals in mechanisms like plea bargaining, victim compensation, and juvenile justice, these are fragmented and lack procedural coherence. Bridging modern legal frameworks with indigenous practices such as Panchayats and Lok Adalat's can provide a culturally rooted pathway for reform. However, this must be accompanied by statutory recognition of RJ, training for facilitators, victim safeguards, and national coordination through dedicated restorative justice cells under legal services authorities.

As India grapples with overcrowded prisons, delayed trials, and victim alienation, RJ provides an opportunity to humanize justice. The path forward lies in moving RJ from the margins to the mainstream, transforming it from a peripheral philosophy to a central principle of Indian criminal jurisprudence. This transformation demands political will, judicial openness, and community ownership.

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