

# Victim-Centric Approaches in Indian Criminal Law: Can Restorative Justice Bridge the Gap Left by Retributive Practices?

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**Abstract:** *This research paper critically examines the contrasting paradigms of retributive justice and restorative justice within the Indian criminal justice system, with a special emphasis on the role and rights of victims. Traditional Indian criminal law, influenced by colonial frameworks and codified in the newly enacted Bharatiya Nyaya Sanhita (BNS) and BharatiyaNagarik Suraksha Sanhita (BNSS), has historically prioritized punishment and state sovereignty, often sidelining the voices and interests of victims. This paper explores the limitations of this retributive model and evaluates the transformative potential of restorative justice, which emphasizes healing, victim participation, offender accountability, and community integration. Drawing upon judicial trends, comparative international models, and existing statutory provisions, the paper argues that restorative justice, if institutionalized and carefully implemented, can bridge the victim-centric gaps of India's retributive system. The study concludes with actionable recommendations for embedding restorative principles within Indian criminal jurisprudence to create a more equitable and empathetic justice system..*

**Keywords:** Restorative Justice, Retributive Justice, Victim-Centric Law, Indian Criminal Law, Bharatiya Nyaya Sanhita (BNS), BharatiyaNagarik Suraksha Sanhita (BNSS), Victim Compensation, Legal Reform, Victim Rights, Judicial Trends

## I. INTRODUCTION

In any civilized society, the fundamental purpose of criminal law is to preserve public order and administer justice in a fair, balanced, and humane manner. However, in the Indian context, criminal law has traditionally followed a retributive model, focused on punishing the offender and upholding state sovereignty, often at the cost of ignoring the plight and participation of the victim. Historically, the victim's role has been relegated to that of a passive informant or witness, with little agency in the prosecution process, sentencing outcomes, or post-trial restitution. The evolution from a colonial to a sovereign legal framework has not substantially altered this structural imbalance.

India's transition to a new set of criminal laws—namely the Bharatiya Nyaya Sanhita, 2023 (BNS), which replaces the Indian Penal Code, 1860; the BharatiyaNagarik Suraksha Sanhita, 2023 (BNSS), replacing the Code of Criminal Procedure, 1973; and the BharatiyaSakshyaAdhiniyam, 2023 (BSA), in place of the Indian Evidence Act, 1872—marks a significant opportunity to reimagine the criminal justice system.<sup>1</sup> A pivotal question arises: can this legal transformation pave the way for a more victim-centric justice model, one that addresses the emotional, psychological, and financial needs of the victim, and promotes healing alongside accountability?

Restorative justice offers an alternative that challenges the punitive assumptions of retributive justice. It emphasizes victim participation, offender accountability, community engagement, and forward-looking resolutions. In contrast to retribution, which views crime as a violation of law and focuses on proportionate punishment, restorative justice sees

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<sup>1</sup>The Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India); The BharatiyaNagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India); The BharatiyaSakshyaAdhiniyam, 2023, No. 47, Acts of Parliament, 2023 (India).



crime as a breakdown in human relationships and seeks to repair that damage through inclusive dialogue and negotiated restitution.<sup>2</sup>

In this paper, we analyze the limitations of retributive justice in Indian criminal law and assess whether restorative justice can bridge the victim-centric gaps. We explore how India's existing and emerging legal framework, alongside comparative international practices, can support the integration of restorative justice mechanisms. This study ultimately argues that adopting restorative principles within India's formal criminal justice process can ensure a more balanced and humane approach to justice—one that respects both the dignity of victims and the rehabilitative needs of offenders.

## **II. RETRIBUTIVE JUSTICE IN INDIA: THE VICTIM'S MISSING VOICE**

Retributive justice, as traditionally understood, is based on the principle of moral culpability—punishment is deemed appropriate when it is proportionate to the severity of the crime committed. It seeks to assert societal condemnation and deterrence through penal consequences, with the state assuming the role of the injured party. In India, the influence of colonial jurisprudence entrenched a rigid retributive model, wherein the crime is treated primarily as a wrong against the sovereign, sidelining the victim's interests in the process.<sup>3</sup>

Under the current statutory regime—now reformed through the Bharatiya Nyaya Sanhita, 2023 (BNS) and the BharatiyaNagarik Suraksha Sanhita, 2023 (BNSS)—the procedural and substantive focus remains largely state-centric. The victim is often treated as a mere complainant or witness, with little involvement in key stages of the proceedings such as charge-framing, plea bargaining, sentencing, or appeal. While victims initiate criminal proceedings by filing a First Information Report (FIR) under Section 173 of the BNSS, the subsequent procedural control rests entirely with the state and prosecuting agencies.<sup>4</sup>

Despite constitutional guarantees under Article 21 of the Constitution of India—ensuring dignity and fairness to every person—victims are not granted equal procedural or participatory rights. The legal framework, though incorporating certain victim-welfare provisions such as compensation and legal aid, falls short of empowering victims to actively engage in or influence the adjudicative process.

**Limitations of Retributive Justice in the Indian Context**

**Lack of Victim Participation in Trial:** Victims have limited or no procedural standing during critical stages of the trial. While Section 377 of the BNSS permits victims to engage counsel, they remain excluded from prosecutorial discretion, sentencing negotiations, or plea-bargaining proceedings.<sup>5</sup>

**Limited Access to Compensation:** Though the BNSS and Section 357A of the BNSS mandate victim compensation schemes, they are poorly implemented. Several states lack proper Victim Compensation Boards, and disbursements are rare or delayed.<sup>6</sup>

**No Right to Appeal Acquittals:** Victims do not have an independent statutory right to challenge acquittals. Appeals generally lie with the state, with victims occasionally approaching the Supreme Court via special leave petitions under Article 136 of the Constitution, which are discretionary and rare.<sup>7</sup>

**Psychological and Social Impact Neglected:** Retributive justice seldom accounts for the trauma, dignity, or emotional reparation of the victim. The system focuses on punishing the offender, not restoring the victim's place in society or aiding in their healing.

<sup>2</sup> Howard Zehr, *The Little Book of Restorative Justice* 18–22 (Good Books 2002)

<sup>3</sup> See S.P. Sathe, *Criminal Law and Human Rights*, 36 J. Indian L. Inst. 231, 234 (1994); *Ratanlal&Dhirajlal's Law of Crimes* 10–12 (Justice K.T. Thomas ed., 28th ed. 2019).

<sup>4</sup> BharatiyaNagarik Suraksha Sanhita, 2023, § 173 (India).

<sup>5</sup> BNSS § 377; See also *RekhaMurarka v. The State of West Bengal*, (2020) 2 SCC 474.

<sup>6</sup> National Legal Services Authority, *Victim Compensation Scheme Guidelines*, 2018; See also NCRB Crime in India Report, 2021, ch. 14.

<sup>7</sup> See *Satya Pal Singh v. State of Madhya Pradesh*, (2015) 15 SCC 613; Art. 136, Const. of India.



The cumulative impact is that victims remain voiceless in a system meant to deliver justice not just to the state but also to those directly harmed by crime. This reveals an urgent need for legal mechanisms that empower victims as stakeholders and not passive bystanders.

### III. THE EMERGENCE OF RESTORATIVE JUSTICE

Restorative justice represents a profound shift in the philosophy and practice of criminal justice. Unlike the retributive model, which focuses on punishment as a response to wrongdoing, restorative justice prioritizes healing, accountability, and reparation. It treats crime not merely as a violation of law, but as a harm done to people and relationships. This approach is increasingly seen as a more humane and effective response, especially in cases where victims seek closure and offenders show willingness to engage in constructive dialogue.

At its core, restorative justice involves a triadic process where victims, offenders, and community members collectively participate in resolving the aftermath of a crime. This may include victim-offender mediation, family group conferences, community restitution circles, and reparative agreements.<sup>8</sup> The goal is not only to repair harm but also to reintegrate both parties into the community with dignity and understanding.

Globally, restorative justice has evolved through legislative support, grassroots activism, and community-led justice models. Countries such as New Zealand, Canada, Norway, and South Africa have integrated restorative processes within their formal criminal justice systems, particularly for juvenile offenders and non-violent crimes.<sup>9</sup> These jurisdictions have institutionalized practices like Family Group Conferences and Youth Justice Panels, ensuring legal recognition, procedural safeguards, and support infrastructure.

In India, the concept of restorative justice has not yet found codified expression in the Bharatiya Nyaya Sanhita, 2023 (BNS) or the BharatiyaNagarik Suraksha Sanhita, 2023 (BNSS). However, certain provisions and judicial interpretations suggest an openness to restorative principles:

Compounding of Offences (BNSS, § 360): Permits settlement of specific criminal cases with the consent of the victim and the accused, reflecting a restorative element of mutual resolution.<sup>10</sup>

Victim Compensation and Rehabilitation (BNSS, §§ 357, 357A): While primarily compensatory, these provisions can form a base for restitution-oriented justice when implemented in a participatory manner.<sup>11</sup>

Juvenile Justice (Care and Protection of Children) Act, 2015: Emphasizes reform and rehabilitation, incorporating restorative practices like victim-offender interaction and community service.<sup>12</sup>

Plea Bargaining (BNSS, §§ 289–294): Although focused on procedural efficiency, plea bargaining can evolve into a restorative process when combined with victim participation and reparative agreements.

### IV. VICTIM-CENTRIC PROVISIONS IN INDIAN LAW: GAPS AND POTENTIAL

While Indian criminal law has begun to acknowledge the importance of victim rights, its efforts remain fragmented and largely under-enforced. The introduction of victim compensation schemes under Sections 357 and 357A of the BharatiyaNagarik Suraksha Sanhita, 2023 (BNSS) represents an attempt to provide financial redress to victims of crime. Section 357 enables courts to order compensation from fines imposed on offenders, whereas Section 357A mandates state governments to formulate comprehensive victim compensation schemes in coordination with the Legal Services Authorities. However, despite this statutory mandate, implementation has been inconsistent across states, with

<sup>8</sup> See Howard Zehr, *The Little Book of Restorative Justice* 25–28 (Good Books 2002); John Braithwaite, *Restorative Justice and Responsive Regulation* 11–14 (Oxford Univ. Press 2002).

<sup>9</sup> See New Zealand Ministry of Justice, *Restorative Justice Best Practice Report* (2018); Criminal Justice Act 2003 (U.K.), Part 3; Correctional Service Canada, *Restorative Opportunities Program*, 2020.

<sup>10</sup> BharatiyaNagarik Suraksha Sanhita, 2023, § 360 (India).

<sup>11</sup> BNSS §§ 357, 357A; See also *AnkushShivajiGaikwad v. State of Maharashtra*, (2013) 6 SCC 770.

<sup>12</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, §§ 15–18, 19, No. 2, Acts of Parliament, 2016 (India).



many victims unable to access compensation due to bureaucratic delays, lack of awareness, or insufficient state funds.<sup>13</sup> The Supreme Court, in *AnkushShivajiGaikwad v. State of Maharashtra*, emphasized that courts are obligated to consider compensation even in the absence of a specific plea, thereby affirming the centrality of victim reparation in sentencing.<sup>14</sup>

Further, victims have limited procedural participation in the criminal trial. Though Section 377 of the BNSS allows the victim to engage an advocate independently of the public prosecutor, their role remains mostly passive and consultative, with no substantive say in decisions regarding charge-framing, plea bargains, or sentencing. This restricts their agency in influencing outcomes that directly affect their rights and dignity.<sup>15</sup> In terms of appellate rights, victims lack a direct right to appeal an acquittal or lenient sentence. Their recourse is often limited to filing a Special Leave Petition under Article 136 of the Constitution—a discretionary remedy that is neither practical nor guaranteed.<sup>16</sup>

Additionally, the Juvenile Justice (Care and Protection of Children) Act, 2015 includes a few restorative provisions such as victim-offender interactions and rehabilitative orders, especially in cases involving children in conflict with the law. However, these remain specific to juvenile proceedings and have not been extended to adult criminal jurisprudence.<sup>17</sup>

Another significant gap is the absence of formal mechanisms like victim impact statements, participatory sentencing hearings, or community restitution conferences, all of which are integral to restorative justice processes in many comparative jurisdictions. As it stands, Indian law offers compensation as a reactive measure rather than proactively involving the victim in justice delivery. This disconnect reveals a critical need for a systemic transformation that moves beyond symbolic inclusion to ensure genuine participatory justice. By codifying procedural rights for victims and creating avenues for meaningful engagement, India can transition from a punitive model toward a more balanced, restorative, and victim-centered justice system.

## **V. JUDICIAL TRENDS SUPPORTING RESTORATIVE JUSTICE**

The Indian judiciary, though traditionally aligned with retributive principles, has in recent years exhibited a growing receptivity to restorative justice ideals, especially in relation to victim compensation and offender rehabilitation. In several landmark decisions, the Supreme Court of India and various High Courts have emphasized the necessity of considering the victim's suffering and the importance of restitution, even in the absence of express statutory direction. These judicial pronouncements mark a subtle but meaningful shift toward a more balanced and humane model of justice.

A pivotal case in this context is *AnkushShivajiGaikwad v. State of Maharashtra*, where the Supreme Court held that courts are obligated to apply their mind to the question of compensation under Section 357 of the Code of Criminal Procedure (now replaced by Section 357 of the BNSS), even if the victim does not specifically request it.<sup>18</sup> The Court underscored that compensation is not merely ancillary to punishment but serves an independent function of restorative reparation to the victim. Similarly, in *Mofil Khan v. State of Jharkhand*, the Supreme Court emphasized the importance of balancing the interests of justice by considering not only the punishment of the offender but also the impact on and rights of the victims' families.<sup>19</sup> The Court acknowledged that the justice system must offer emotional closure and tangible remedies to those directly harmed by crime, reinforcing the moral dimension of restorative outcomes.

<sup>13</sup> BNSS §§ 357, 357A; See also National Legal Services Authority, *Compendium of Victim Compensation Schemes* (2019), <https://nalsa.gov.in/victim-compensation>.

<sup>14</sup> *AnkushShivajiGaikwad v. State of Maharashtra*, (2013) 6 SCC 770.

<sup>15</sup> BNSS § 377 (India); See also *RekhaMurarka v. The State of West Bengal*, (2020) 2 SCC 474.

<sup>16</sup> See *Satya Pal Singh v. State of Madhya Pradesh*, (2015) 15 SCC 613; Const. India, art. 136

<sup>17</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, §§ 15–19.

<sup>18</sup> *AnkushShivajiGaikwad v. State of Maharashtra*, (2013) 6 SCC 770

<sup>19</sup> *Mofil Khan v. State of Jharkhand*, (2021) 2 SCC 480



Another noteworthy instance is *RekhaMurarka v. The State of West Bengal*, where the Court acknowledged the victim's right to be represented by counsel and stressed that victim participation cannot be reduced to a procedural formality.<sup>20</sup> This recognition of the victim's right to active engagement in trial proceedings points to a broader understanding of justice—one that goes beyond punishment and considers the lived experience of harm.

While these decisions do not yet establish a comprehensive restorative justice framework, they collectively reflect a judicial inclination toward integrating victim-centric values and alternative dispute resolution mechanisms within the criminal justice process. The judiciary has also encouraged LokAdalats, mediation cells, and plea bargaining, all of which contain seeds of restorative justice, especially when they involve victim consent and negotiated reparations.

However, it must be noted that these developments are largely piecemeal and discretionary. The lack of uniform guidelines, statutory backing, and trained facilitators has hindered the scalability of such practices. Nevertheless, these judgments serve as jurisprudential signposts, paving the way for a more victim-aware and restorative legal culture in India. They also indicate a readiness within the higher judiciary to reimagine justice as a holistic process that includes healing, accountability, and community integration.

## **VI. INTERNATIONAL MODELS AND LESSONS FOR INDIA**

Globally, several countries have pioneered restorative justice frameworks, offering valuable insights for India. New Zealand stands out as a leading example, where the Children, Young Persons, and Their Families Act 1989 institutionalized *Family Group Conferences* (FGCs) for young offenders. These conferences involve victims, offenders, and their families in mediated discussions to agree on a plan for restitution and rehabilitation. The process not only empowers victims but also holds offenders personally accountable through direct engagement.<sup>21</sup> Similarly, Canada has adopted restorative justice within its Youth Criminal Justice Act, 2003, encouraging victim-offender mediation and community healing circles, especially for Indigenous communities.<sup>22</sup> These practices are often supported by trained facilitators and embedded within the judicial system, ensuring both procedural fairness and emotional resolution.

South Africa, in the post-apartheid era, famously implemented restorative mechanisms through the Truth and Reconciliation Commission, which prioritized healing and acknowledgment of harm over retribution. In Norway, restorative justice programs have been integrated into both pre-trial and post-sentencing stages, focusing on reintegration and repair of social bonds.<sup>23</sup>

India can draw several lessons from these models. First, restorative justice must be formally integrated into legal statutes, supported by guidelines and funding. Second, facilitators and legal professionals must be trained to conduct restorative processes without coercion or imbalance. Third, victims must be given an active and voluntary role in shaping restorative outcomes. Importantly, such models must be adapted to India's socio-cultural diversity, leveraging local community institutions such as Panchayats, Mohalla Committees, and Alternative Dispute Resolution (ADR) forums.

## **VII. CHALLENGES TO IMPLEMENTATION IN INDIA**

Despite its potential, several structural and cultural barriers hinder the adoption of restorative justice in India. The first major challenge is lack of awareness. Most legal professionals, police officers, and even judges are unfamiliar with restorative principles, and the term itself lacks legislative recognition. Second, there is a shortage of trained facilitators

<sup>20</sup> *RekhaMurarka v. The State of West Bengal*, (2020) 2 SCC 474.

<sup>21</sup> Children, Young Persons, and Their Families Act 1989 (N.Z.); Ministry of Justice, New Zealand, *Restorative Justice Best Practice Report* (2018).

<sup>22</sup> Youth Criminal Justice Act, S.C. 2002, c. 1 (Can.); Correctional Service Canada, *Restorative Opportunities Program* (2020).

<sup>23</sup> Hugo van der Merwe et al., *Truth and Reconciliation in South Africa: Did the TRC Deliver?* (University of Pennsylvania Press 2008); Norwegian Mediation Service, *Annual Report* (2021)





and institutional support to conduct sensitive victim-offender interactions, which can risk re-traumatization or coercion if poorly managed.

Third, India's criminal justice system remains deeply overburdened—with a backlog of nearly 50 million cases—and often prioritizes procedural efficiency over participatory justice. Implementing restorative processes requires time, dialogue, and individualized engagement, which may seem incompatible with current systemic pressures.<sup>24</sup> Fourth, power imbalances in Indian society—based on caste, gender, and economic status—can distort restorative processes unless adequate safeguards are ensured. There's a danger of victims being pressured into "forgiving" offenders, especially in cases of domestic violence or sexual assault, if restorative justice is not applied with strict oversight.

Finally, the absence of a legal framework to govern restorative justice makes its adoption ad hoc and inconsistent. Without codified principles, any initiative remains at the discretion of individual judges or NGOs, with limited reach and little accountability.

### **VIII. CONCLUSION AND RECOMMENDATIONS**

India stands at a crossroads in its criminal justice reform journey. The shift from the colonial-era criminal statutes to the Bharatiya Nyaya Sanhita (BNS) and BharatiyaNagarik Suraksha Sanhita (BNSS) offers an unprecedented opportunity to reframe justice around victims' needs, healing, and societal harmony. Retributive justice alone cannot address the deep psychological, emotional, and social consequences that crimes leave on victims. While punishment remains essential in serious offenses, it should be complemented by restorative practices that offer dignity, closure, and meaningful participation to those harmed.

To move forward, the following **recommendations** are essential:

- Introduce a dedicated chapter in the BNSS or a standalone Restorative Justice Act to define its scope, safeguards, and procedures.
- Create institutional bodies at district levels to coordinate victim-offender dialogue, manage facilitators, and oversee compliance.
- Make these a part of sentencing hearings, giving victims a formal voice in shaping outcomes.
- Initiate restorative justice pilots in juvenile courts, family disputes, and non-violent cases to test feasibility and build capacity.
- Educate judges, lawyers, police, and community leaders on restorative values through judicial academies and law schools.
- Ensure trauma-informed spaces for dialogues and provide psychological support services to victims.
- By implementing these steps, India can bridge the gap between the punitive rigidity of retributive justice and the humane, inclusive promise of restorative justice. Such a transformation is not just a legal reform—it is a step toward a more empathetic, just, and resilient society.

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