

Restorative Justice in India: Examining Alternative Approaches to Punishment and Sentencing in the Criminal Justice System

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Abstract: *Indian criminal justice remains organised around a retributive and custodial model in which the State prosecutes, the court punishes, and the victim appears chiefly as a witness. This article examines restorative justice as an alternative or complement to that model. It sets out the theory of restorative justice, identifies its roots in Indian tradition and constitutional values, and maps the existing legal mechanisms that already operate in a restorative register, including compounding of offences, victim compensation, probation, plea bargaining, Lok Adalats and juvenile justice dispositions. It then analyses the judicial response, with attention to the Supreme Court's decisions on quashing and compounding, and the risks that restorative processes pose in cases of gendered violence, unequal power and informal community adjudication. The article argues that India has the building blocks of a restorative system but not a framework: practices are scattered, discretionary and unregulated. It concludes by proposing a statutory framework with eligibility criteria, safeguards, trained facilitation and judicial oversight.*

Keywords: restorative justice; victim-offender mediation; compounding; compensation; community service; sentencing; Bharatiya Nyaya Sanhita

I. INTRODUCTION

Criminal law in India asks three questions: what law was broken, who broke it, and what punishment follows. It rarely asks a fourth: who was harmed, what do they need, and who is responsible for putting things right. The consequences of this omission are visible in the system. Victims often experience trials as long, opaque and alienating. Offenders, whether convicted or awaiting trial, spend time in overcrowded prisons, with few opportunities to acknowledge or repair the harm they caused. Prison statistics from the National Crime Records Bureau have consistently shown occupancy above capacity and undertrial prisoners forming roughly three-quarters of the population. Courts are burdened with pendency that runs into crores of cases.

Restorative justice offers a different starting point. It treats crime as a harm to people and relationships, not only a violation of the State's law, and it seeks to involve victims, offenders and the community in repairing that harm. It does not abolish punishment, and it is not a soft option, but it changes the question that sentencing is meant to answer.

This article examines how far Indian law accommodates restorative principles and how it should do so in the future. Part 2 sets out the conceptual framework. Part 3 considers Indian roots and constitutional foundations. Part 4 maps existing mechanisms. Part 5 reviews the judicial approach. Part 6 identifies the principal risks. Part 7 draws on comparative experience and the available evidence, and Part 8 proposes reform. The argument is that India's challenge is not to import an unfamiliar idea, but to organise and regulate practices that already exist.



II. CONCEPTUAL FOUNDATIONS

2.1 Origins and definitions

The modern restorative justice movement draws on several intellectual sources. Nils Christie, in his 1977 essay *Conflicts as Property*, argued that the State and its professionals had taken conflicts away from the people directly affected by them. Howard Zehr's *Changing Lenses* (1990) set out the contrast between a retributive lens, which asks what rules were broken and what the offender deserves, and a restorative lens, which asks who has been hurt and what is needed. John Braithwaite's theory of reintegrative shaming distinguished between shaming that stigmatises the offender and shaming that condemns the act while allowing the offender to return to the community.

The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, adopted by the Economic and Social Council in 2002, define a restorative process as one in which the victim, the offender and, where appropriate, other members of the community participate actively together in resolving matters arising from the crime, often with the help of a facilitator. Typical forms include victim-offender mediation, family group conferences and sentencing or peacemaking circles.

2.2 Core principles

Three principles recur. The first is repair: the central aim is to address the harm, material and emotional, caused by the offence. The second is participation: those most affected have a voice in the process, and participation by the offender is voluntary and rests on an acceptance of responsibility. The third is reintegration: the offender is to be returned to the community as a person capable of change, a principle that coincides with the reformatory theory long recognised in Indian law.

2.3 Relationship with retribution and deterrence

Restorative justice is often presented as the opposite of punishment, but this overstates the contrast. Restorative outcomes can be demanding: apology, restitution, community service, and sometimes custodial terms. The more useful distinction is between a model where punishment is the primary goal and one where accountability and repair are primary, and punishment is justified insofar as it serves them. In many systems, restorative processes operate alongside, not in place of, conventional prosecution.

III. INDIAN ROOTS AND CONSTITUTIONAL FOUNDATIONS

3.1 Traditions of community resolution

India has long traditions of community-based dispute resolution, from village panchayats to caste and community councils. These bodies often emphasised compromise, compensation and the restoration of social relationships. The Gram Nyayalayas Act, 2008 and the Lok Adalat system under the Legal Services Authorities Act, 1987 draw on that tradition in a statutory form. It is important, however, not to romanticise these precedents. Traditional bodies were frequently hierarchical, exclusionary and indifferent to the rights of women and of marginalised castes. A modern restorative framework must borrow their emphasis on community participation without inheriting their power structures.

3.2 Constitutional values

Several constitutional provisions support a restorative orientation. The Preamble promises justice in social, economic and political terms. Article 21 protects life and personal liberty, and its expansion in cases such as *Hussainara Khatoon v. State of Bihar* (1979) established the right to speedy trial, which the present system struggles to honour. Article 39A directs the State to ensure that the legal system promotes justice on the basis of equal opportunity. The Supreme Court has also recognised, in *Mohd. Giasuddin v. State of Andhra Pradesh* (1977), that sentencing should aim at rehabilitation and that the criminal is to be treated as a person capable of reform, a view that fits comfortably with restorative principles.



IV. EXISTING RESTORATIVE MECHANISMS IN INDIAN CRIMINAL LAW

4.1 Compounding of offences

Section 320 of the Code of Criminal Procedure, 1973 (CrPC), carried into the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), allows the parties to compound specified offences, with or without the court's permission depending on the offence. Compounding results in acquittal, and it reflects the idea that where harm is private and has been resolved, the State's interest in continued prosecution diminishes. The list of compoundable offences is limited, and the statutory scheme provides little procedural structure for the settlement itself.

4.2 Compensation to victims

Section 357 of the CrPC empowered courts to order that fines, or compensation, be paid to victims. Section 357A, inserted in 2009, required State governments to establish victim compensation schemes. The BNSS preserves these provisions in renumbered form. The Supreme Court has emphasised that courts should consider compensation in every appropriate case: in *Ankush Shivaji Gaikwad v. State of Maharashtra* (2013) it held that the court is under a duty to apply its mind to the question, and in *Suresh v. State of Haryana* (2015) it directed that this duty be exercised in all cases. In practice, compensation orders remain inconsistent, and the schemes suffer from low awareness and delay.

4.3 Probation and community service

The Probation of Offenders Act, 1958 and the corresponding CrPC provision permit courts to release first-time or young offenders on probation of good conduct, or after admonition, instead of imposing imprisonment. The Act remains under-used. The Bharatiya Nyaya Sanhita, 2023 (BNS) takes a notable step by recognising community service as a punishment, applicable to a short list of minor offences, among them certain cases of petty theft, defamation, and misconduct in public by a person in a state of intoxication. This is a significant statutory acceptance of non-custodial, community-oriented sanctions. However, the Sanhita provides little operational detail about supervision, the number of hours, the agencies responsible, or the consequences of non-compliance, and these gaps threaten to leave the provision dormant.

4.4 Plea bargaining

Chapter XXI-A of the CrPC, introduced in 2005 and now reflected in the BNSS, permits plea bargaining in specified categories of cases. The accused applies voluntarily, and the court conducts a mutually satisfactory disposition that includes compensation to the victim. The scheme excludes offences punishable by death, life imprisonment or more than seven years, offences affecting the socio-economic condition of the country, and offences against women or children under fourteen. Plea bargaining is not restorative in the full sense, because the process is transactional and does not require victim participation beyond the compensation component. It nonetheless shows that the system can accommodate negotiated, victim-sensitive outcomes. The Law Commission of India's 142nd Report (1991) had recommended such a scheme to reduce delay and encourage concessional treatment for those who accept responsibility.

4.5 Lok Adalats and mediation

Lok Adalats, constituted under the Legal Services Authorities Act, 1987, resolve disputes through conciliation, and their awards are treated as final and binding. They may deal with compoundable criminal matters, and have helped to dispose of large numbers of cases. Their strengths are speed and informality. Their limits are that they operate as settlement forums with limited preparation and little attention to the position of the victim, and that the pressure to reach a settlement and clear case lists can undermine the voluntariness of the outcome. Mediation in criminal cases remains largely informal. Statutory mediation, including under the Mediation Act, 2023, is oriented towards civil and commercial disputes and does not provide a framework for criminal matters.

4.6 Juvenile justice

The Juvenile Justice (Care and Protection of Children) Act, 2015 is the most explicitly rehabilitative element of Indian criminal law. It provides for dispositions that include counselling, community service, participation in group activities and release after advice or admonition, and its institutional structure prioritises reintegration. The Act has been criticised for its provisions permitting the transfer of older juveniles accused of heinous offences to the adult system, but its basic orientation is consistent with restorative principles.



V. JUDICIAL ENGAGEMENT AND ITS LIMITS

5.1 Quashing and compounding

The Supreme Court has been the principal driver of restorative practice in India. In *Gian Singh v. State of Punjab* (2012), a three-judge bench held that the High Courts may quash criminal proceedings in non-compoundable offences under their inherent powers where the dispute is essentially private or civil in nature and has been settled, while excluding heinous and serious offences such as murder and rape. *Narinder Singh v. State of Punjab* (2014) elaborated on the factors to be considered, including the seriousness of the offence, the conduct of the accused and the stage of the proceedings. *Parbatbhai Aahir v. State of Gujarat* (2017) further consolidated the principles. In *Ramgopal v. State of Madhya Pradesh* (2021), the Court used its power under Article 142 to permit compounding of an offence not otherwise compoundable, noting that the aim of restoring harmony justified the course.

This line of authority amounts to a judge-made restorative jurisdiction. Its virtue is flexibility. Its weakness is the absence of a procedural framework: the court is typically presented with a settlement deed, with limited inquiry into whether the settlement is voluntary, whether the victim understood the consequences, or whether the settlement was obtained by pressure.

5.2 The limits: serious and gendered offences

The Supreme Court has been firm that settlement is not appropriate for the gravest offences. In *State of Madhya Pradesh v. Madan Lal* (2015), the Court held that compromise in a case of rape is impermissible, warning against mediation of such cases, and the decision in *Shimbhu v. State of Haryana* (2014) is to similar effect. The reasoning is that sexual violence is an offence against the dignity of the victim and society, and that a compromise often reflects pressure on the victim, her family and community. These decisions reflect a legitimate concern about the interaction of restorative processes and unequal power, discussed further below.

5.3 Victim rights in the process

The 2009 amendment to the CrPC conferred on the victim a right to appeal against acquittal, conviction for a lesser offence or inadequate compensation, and the Supreme Court in *Mallikarjun Kodagali v. State of Karnataka* (2019) held that this right is not subject to the leave requirement applicable to the State. These developments indicate a gradual recognition of the victim as a participant in the system, which is a precondition of restorative practice.

VI. CRITICAL ISSUES AND RISKS

6.1 Voluntariness and coercion

The legitimacy of a restorative process depends on the free and informed participation of the parties. In India, a victim may be pressured by the offender's family, community leaders, police or even the court's own anxiety to dispose of the case. Offenders in custody may consent in order to secure release. Safeguards, including independent legal advice, a cooling-off period, and judicial scrutiny of the voluntariness of the agreement, are essential.

6.2 Gender, caste and unequal power

Feminist scholars have long cautioned that restorative processes can reproduce existing hierarchies, especially in domestic violence and sexual offence cases, where the offender may have continuing power over the victim. In the Indian context, the concern extends to caste and community. The Supreme Court has repeatedly condemned informal bodies that purport to adjudicate on matters of marriage and honour: in *Vishwa Lochan Madan v. Union of India* (2014) it held that extra-judicial pronouncements by community bodies have no legal sanction, and in *Shakti Vahini v. Union of India* (2018) it issued directions to prevent honour-based violence. These decisions underline a crucial distinction: restorative justice is a facilitated, voluntary and rights-respecting process under the supervision of the legal system, and is not a revival of unaccountable community adjudication.

6.3 The public interest in prosecution

Crime is not only a private wrong. The State has a legitimate interest in the prosecution of serious offences, in the protection of the public, and in maintaining equal treatment under law. If settlement is available to those with means or



influence, restorative practice may become a route to impunity. This is the principal reason for restricting the categories of offences eligible for restorative processes and for retaining judicial oversight of outcomes.

6.4 Informal practices without standards

Indian courts have, at times, imposed conditions in the course of quashing or bail, such as the planting of trees or donations to charity. Such orders may reflect restorative intentions, but they are often ad hoc and unconnected to the harm caused, and they raise concerns about arbitrary conditions and the commodification of justice. They underscore the need for a structured, principled framework.

VII. COMPARATIVE EXPERIENCE AND EVIDENCE

7.1 International models

New Zealand's Children, Young Persons and Their Families Act 1989 placed family group conferences at the centre of its youth justice system, so that most youth offending is resolved through conferences involving the young person, family, victim and professionals. Canada's Criminal Code directs courts to consider sanctions other than imprisonment, with particular attention to the circumstances of Indigenous offenders, and sentencing circles have been used in many communities. Northern Ireland adopted youth conferencing as a statutory element of its youth justice system. The Council of Europe's Recommendation CM/Rec(2018)8 provides guidance on safeguards, including voluntariness, confidentiality, trained facilitators and access to legal advice.

7.2 What the evidence shows

The empirical research is generally encouraging but should be read with caution. Reviews of randomised trials, including the work of Sherman and Strang (2007) and a later systematic review prepared under the Campbell Collaboration, have found that restorative conferences are associated with higher victim satisfaction and lower fear of re-victimisation, and with modest reductions in repeat offending, particularly for violent offences. Outcomes depend on the quality of facilitation and on the willingness of participants, and results vary among programmes. The evidence does not suggest that restorative justice is a universal solution, but it supports its use as one component of a diversified response.

7.3 Lessons for India

Three lessons emerge. First, restorative programmes succeed when they are statutory, well-resourced and supported by trained facilitators. Second, they work best when linked to the formal system, with referral from courts or prosecutors and judicial confirmation of outcomes. Third, the choice of offences matters: the strongest support is for juvenile offences and less serious property and personal offences, with greater caution for sexual and domestic violence.

VIII. TOWARDS A RESTORATIVE FRAMEWORK FOR INDIA

8.1 A statutory framework. Parliament should enact provisions, or a separate statute, recognising restorative processes in criminal matters, defining their purposes, setting out eligible categories of offence, and prescribing procedure. This would replace the present dependence on inherent powers and case-by-case discretion.

8.2 Eligibility and exclusions. Eligibility should be determined by the gravity of the offence, the vulnerability of the victim, and the offender's history. Offences such as murder, sexual violence and offences against children should ordinarily be excluded from settlement, consistent with *Madan Lal*, though victims could be offered support and, where they wish, opportunities for non-negotiated forms of communication that do not affect the sentence. Restorative processes in domestic violence cases should be approached with particular caution and, if permitted, only with specialised facilitators and strong safeguards.

8.3 Safeguards. Participation must be voluntary and informed. The framework should provide for legal advice for both parties, a cooling-off period, confidentiality of what is said in the process, the right to withdraw, and no adverse inference against an accused who declines to participate. Courts should scrutinise any agreement for voluntariness and proportionality before giving effect to it.



8.4 Trained facilitators and institutions. Restorative practice depends on the skill of the facilitator. A national accreditation scheme, linked to the Legal Services Authorities and the existing mediation infrastructure, should provide training in trauma-informed practice, gender sensitivity and conflict resolution. Pilot programmes in selected districts should be evaluated before national roll-out.

8.5 Integration with sentencing. Restorative outcomes should be a recognised factor at the sentencing stage. The sentencing hearing under the BNSS should include consideration of the harm caused, any acceptance of responsibility, any reparation made, and the views of the victim. A statutory statement of sentencing purposes, as proposed elsewhere in the sentencing reform literature, should include repair and reintegration among them.

8.6 Operationalising community service. The community service provision in the BNS requires subordinate rules specifying the nature of the work, the number of hours, supervising agencies, record-keeping and sanctions for breach. Without this, the provision is unlikely to be used. Probation services should be strengthened and funded to support it.

8.7 Strengthening victim compensation. Compensation orders should be routine and enforced, and State schemes should be adequately funded and publicised. Victim support services, including counselling and legal aid, are a precondition of meaningful participation.

8.8 Restorative practice in prisons and juvenile institutions. Programmes that allow convicted persons to participate in dialogue with victims, where the victim consents, can contribute to rehabilitation and are relevant to decisions on remission and release. Juvenile Justice Boards should be supported to use restorative dispositions systematically.

8.9 Monitoring and research. The framework should require data collection on referrals, participation, outcomes, compliance and re-offending, disaggregated by gender and caste, to allow independent evaluation and to identify misuse.

IX. CONCLUSION

Restorative justice is often described as a foreign import, but its core concerns, the position of the victim, the possibility of reform, and the repair of social relationships, are already present in Indian law and constitutional values. Compounding, compensation, probation, plea bargaining, Lok Adalats and juvenile justice dispositions all express restorative thinking, and the Supreme Court has created, through decisions such as *Gian Singh* and *Ramgopal*, a judge-made jurisdiction that facilitates settlement in suitable cases. The BNS has added community service as a punishment. What is missing is structure. The existing mechanisms are fragmented, discretionary and weakly resourced, and the risks of coercion, gender inequality and impunity are real. A restorative framework that is statutory, limited to appropriate offences, protective of vulnerable participants, supervised by courts and supported by trained facilitators would allow India to realise the benefits of restorative justice while avoiding its dangers. It would not replace punishment, but would ask of every sentence an additional question: what does it do to repair the harm? A criminal justice system able to answer that question is likely to be both more humane and more effective.

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