



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

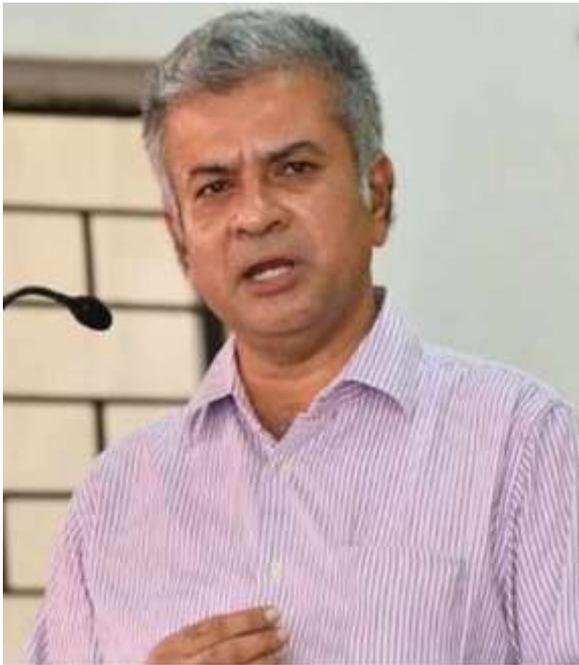
DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



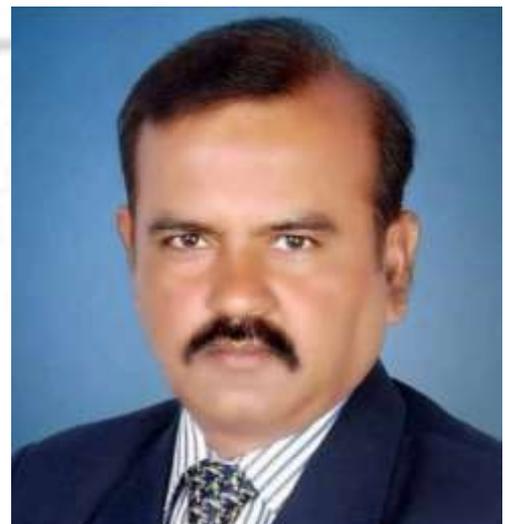
Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional Procurement from the World Bank.

diploma in Public

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

INDIAN JUDICIAL SYSTEM AND RESTORATIVE JUSTICE: AN ANALYSIS OF VICTIM PARTICIPATION

AUTHORED BY - ADITI INDRANI¹, ADARSH KUMAR SINGH²

“Criminal justice would look hollow if justice is not done to the victim of the crime. A victim of crime cannot be a forgotten man in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injuries. An honour which is lost or life which is snuffed out cannot be recompensed but then compensation will at least provide some solace.” - Justice Wadhwa³

Introduction

The inexorability of human society is the existence of crime. Two elements are created as a result of every crime, namely, offender (the one who committed the criminal act; the perpetrator) and the victim (the one against whom the crime was committed; the sufferer). The Indian judicial system has traditionally followed a retributive model of justice, similar to other legal frameworks around the world. The focus of this conventional criminal justice system is majorly towards the application of law, assessment of guilt and administration of punishment.⁴ The crime is commission of an illegal and wrongful act that not only harms the individual but also harms the society at large. Under the conventional system, it is viewed as merely a violation of law that must be punished. The courts response under the conventional justice system for such breach of law often emphasizes on the elements of punishment (through penalty and sanction), retribution (through punitive action), denunciation (through reprimand), deterrence (through cautionary measure and warning) and safety of community while sentencing. The focus is put on punishing the offender through a process that is state-controlled and would side-line the victim. The court puts emphasis on answering the questions like, what law has been broken and by whom and what punishment does that action deserve?

¹ Advocate, HC Of Delhi

² Research Scholar, University Of Lucknow

³ *State of Gujarat v. Hon'ble High Court of Gujarat*, (1998) 7 SCC 392

⁴ Ligi TK, 'Introduction of restorative justice practices in criminal justice system: An overview' (2024) 4(1) IJCSL 132-138 <<https://www.criminallawjournal.org/article/77/4-1-22-902.pdf>> accessed 30 November 2024

The victims were wholly ignored in the whole process and were reduced to mere witnesses in the criminal proceedings. However, with passage of time, the understanding has evolved to include crime as not only infringement of law but also violation of human relationships and as an offence that injures not only the victim but the society at large and also the offender. This understanding has led to the transformation of conventional system towards a restorative criminal justice system whereby the requirement of true justice is the restoration of affected parties of the crime, namely, the victims, the offenders, the communities and the government. This was also facilitated when “victimology” was added as a branch of criminology.⁵

The practices of restorative justice calls for compensation to the victim along with measures taken to rectify the underlying factors that lead to the crime and to provide reassurance to the society that the offender has been sufficiently punished and healed to be no threat to the society anymore. From a restorative justice point of view, the questions posed are more like, who was hurt because of the action of breaking the law and what their needs are to facilitate healing are and who is responsible for this.

Restorative justice offers an alternative to punitive measures by providing a more victim-centric approach and puts emphasis on the rehabilitation of offenders through methods like reconciliation with victims and the community.

The inverse relationship between restorative justice and retributive justice of the conventional criminal justice system can be understood by thinking of restoration as a future oriented approach owing to the fact that it is concerned with resolving the problem created by the offender's acts in the future. In contrast, retributive justice focuses on the past to prove accountability and imposes punitive measures on the offender for the actions committed by them and hence it focuses solely to remedy the wrongs.

What is restorative justice?

The concept of restorative justice has ancient roots and it would not be correct to attribute its inception to a single inventor or person.⁶ An American psychologist by the name of Albert

⁵ Jo Anne Wemmers and Katie Cyr, ‘Victims’ Perspectives on Restorative Justice: How much Involvement are Victims Looking For?’ (2004) 11 Int. Rev. Vict. 259.

⁶ Restorative Justice 101, ‘Who Invented Restorative Justice?’ < [https:// r estorativejustice101.com / who-invented-restorative- justice/](https://restorativejustice101.com/who-invented-restorative-justice/)> accessed 30 November 2024

Eglash is generally given the credit of using the term “restorative justice” for the first time in his 1959 article, “Creative Restitution: Its Roots in Psychiatry, Religion and Law”.

The term “restorative justice” is a wide term which has a diverse spectrum of approaches. With the prevailing lack of consensus on a particular definition for “restorative justice”, the meaning and understanding of the term can range from “being a process where the stakeholders collectively decide measures to deal with the offence, its consequences and the potential future ramifications” to “being a way of responding to crime which focuses on redressing the harm and attempting to restore the interest of the involved stakeholders”.

In 1977, Eglash described restorative justice as “a justice approach based on restitution and input from both victims and offenders”. He advocated for use of restorative justice in criminal cases in addition to its prevalent use in civil wrongs.

According to Tony E. Marshall, “Restorative Justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future”⁷

As per Braithwaite, the theoretical roots of restorative justice can be found in “re-integrative shaming” which is “*an integration of labeling, sub-cultural, control, opportunity, and learning perspectives.*”⁸ As per the theory, the acts of contrition and reparative practices facilitate the healing of the offender.⁹

Howard Zehr, often called the grandfather of restorative justice gave three major design of restorative justice as followed:

1. Under this system, the power to decide is given to the individual considered “most affected” by the crime. Here the “most affected” is not limited to “victim”.
2. Next concern relates to “repairing” the harm caused as a result of the crime.
3. Lastly, it focuses on “rehabilitation” of the offender.

The conceptual understanding of restorative justice depicts it as a system of criminal justice

⁷ Tony F. Marshall, ‘Restorative justice: an overview’ (Research Development and Statistics Directorate, 1999) <http://www.antonioacasella.eu/restorative/Marshall_1999-b.pdf> accessed 30 November 2024

⁸ John Braithwaite, *Crime, Shame, and Reintegration* (Cambridge University Press 1989, 16th printing 2006) <<https://johnbraithwaite.com/wp-content/uploads/2016/06/Crime-Shame-and-Reintegration.pdf>> accessed 1 December 2024

⁹ Holly V. Miller, Mathieu Deflem, ‘Restorative Justice’ (2019) 1 *The Handbook of Social Control* 167

that focuses on healing and empowering the victims at the same time addressing the accountability of the offenders and facilitating engagement of the community in the whole process. It emphasizes the importance of restoring relationships and promoting accountability.¹⁰

There has always been some presence of restorative principles in the legal systems around the world. To pinpoint one particular source, therefore, becomes difficult as it can be seen as far back in the civilization of Babylon. In the modern era, the principles of restorative justice could be first seen as a formalized practice in Canada around the 1970s. It was also introduced in the Indian criminal justice system around the same time. The development of the concept of restorative justice and in essence rehabilitation and reintegration is a collective effort of many who are of the opinion that only putting behind bars does not make an individual understand the depth of harm caused. There has to be other measure which would allow the offender to understand the society vis-à-vis allowing the society to understand and help the offender.

Principles governing restorative justice:

1. Individuals and relationships are harmed by the act of committing an offence. It not only violates the victims but also hurts the communities and offenders and at the same time it conceives an onus of liability to make things right, i.e., rectify the wrong. Restoration, therefore, is understood to involve repairing the harm which was done as a result of the commission of the crime and rebuilding the hence damaged relationship.
2. The justice process keeps the victims and communities at its centre. The parties, i.e, the victim, the offender, the community and the government are join forces collectively to form a response to the crime.
3. The needs of the victims are considered the primary focal point of justice system. The thought process of the victim and the effect the crime had on him or her is the key element which determines the harm that has been done and the best course of action to restore and bring accountability to the offender.
4. Once the victim is satisfied, the secondary goal is to restore the society as it was before the crime to the highest degree possible. For the wrongs committed by the offender, he is liable on a personal level to not only the victim but also to the community. As the

¹⁰ Restorative Justice 101, 'Pioneers and Turning Points in the History of Restorative Justice' <<https://restorativejustice101.com/pioneers-and-turning-points-in-the-history-of-restorative-justice/>> accessed 30 November 2024

parties involved in the process of restorative justice practices, they are all linked and have a collective responsibility to repair the harm. The community has an equal responsibility to ensure the well-being of all its members which includes both the victims and the offenders.

5. No individual must be left without dignity and self-worth. The end goal of the restorative justice practices is to ensure that both the victim and the offender have the power to continue with respect and integrity after the justice process is over and are able to re-integrate them in the society and be positive functioning contributors of it.

Who is a victim?

As per the *Code of Criminal Procedure (Amendment) Act, 2008*¹¹, the term “victim” was added to the *Code of Criminal Procedure (CrPC), 1973*¹². The section 2 (wa) of the Code prescribes that, “*a victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir*”. The same has been reiterated in section 2 (1) (y) of the *Bharatiya Nagarik Sukraksha Sanhita, 2023*.¹³

The individuals who exclusively fall within this definition of “victim” are authorized by law to engage in a criminal proceeding. The term usually covers those individuals who have either directly or imminently suffered as the aftermath of the crime. In the situation or cases where the victim is unable to speak for themselves, the law considers the following people as having exercisable legal rights on their behalf, the spouse of the victim, a common law recognized partner of the victim (provided that they were cohabitating for at least a year before the death of the victim), any person who has custody rights of the victim and any relative of the victim.

During the trial process, the term “victim” is seldom used and its usage is often frowned upon. This is owing to the fact that the usage of the phrase is considered as a violation of the constitutional right of fair trial of the accused as it presupposes the commission of a crime. The distinct term of “victim” is provided in order to give recognition to the significant place the a victim holds in the criminal justice system.

¹¹ Act No. 5 of 2009

¹² Act No. 2 of 1974

¹³ Act No. 46 of 2023

Victim participation in restorative justice

In a conventional justice system the role of the victim is secondary or in a passive form as the duty to prosecute the offender on behalf of the society lies in the hands of the state. However, the core principle of restorative justice is to facilitate victim participation. The following practices in Indian criminal justice system allow a degree of victim participation at the same time following the restorative practices:

1. Panchayat system

The practice of taking disputes to an assembly of elders and respected members of the village known as “*Panch*” is a very ancient practice in India. The same has been given a legal backing through the legislation of *Gram Nyayalayas Act 2008*.¹⁴

2. Lok Adalat

It is an exclusive Indian approach through the *National Legal Service Authority Act 1987*¹⁵. It is most commonly referred as “People’s Court”. It is a “non-adversarial system” where mock courts are held by the State Authority on a periodic basis and are usually presided over by retired judges, social workers or attorneys. It has proved exceptionally helpful in resolving financial disputes.

3. Arbitration and Conciliation

The *Arbitration and Conciliation Act 1996*¹⁶ has been pivotal in establishing the mechanism which governs the resolution of disputes through mechanisms like arbitration, mediation and conciliation.

4. *Juvenile Justice (Care and Protection) Act, 2015*¹⁷

This Act governs juveniles and as such has taken special care to establish alternative sanctions to facilitate rehabilitation of the juveniles back into the society.

Importance of victim participation

Crime must be viewed as an act that causes harm to the relationship of an individual not only with the individual that committed the offence but also harm to the relationship between the individual (victim) and the society. In order for the victim to feel justice, it is important that they heal from this traumatic event.

¹⁴ Act No. 4 of 2009

¹⁵ Act No. 39 of 1987

¹⁶ Act No. 26 of 1996

¹⁷ Act No. 2 of 2016

This healing is facilitated by restorative justice in the following manner:

1. Having their voices heard: In a conventional justice system, the victim only provides the facts of the crime to the state machineries that are liable to prosecute the offender. However, when they are given a chance to express how the crime affected them, like done in restorative justice practices, they are able to process it better. A crime not only hurts an individual physically but also emotionally and financially.
2. Direct accountability from the offender: By employing methods like dialogues between the victim and offender or through mediation, victim is able to engage with the person that caused them harm and ask for acknowledgement and understand the reasoning behind such act and also access the guilt the offender is feeling.
3. Participation in outcome: When the victim is allowed to play a role in deciding what punishment must be given to the offender, it generates a feeling of control and helps restore the harm.
4. Emotional and psychological healing: From the above participation in the process, a sense of closure is experienced by the victims who in turn reduce the feeling of vengeance and anger.

Historical Context of Victim Participation in Indian Judicial System

Pre-Independence Legal Framework: During the colonial period, the Indian criminal justice system was in its core modeled after the English Criminal justice system, making it primarily adversarial in nature. This implied that the legal process undertaken for all intents and purposes was a dispute involving only two parties, the state (prosecution) and the accused. The implication of the above statement is that in the process of justice, the victims were treated as merely witnesses and hence were not active participants of the process. The main focal point of the judicial process was to either prove the guilt or innocence of the suspect rather than to facilitate a holistic understanding of the impact of the crime. It would imply that the judicial process did not employ proper compensation mechanisms and rarely prioritized them, making the rehabilitation of victims a non-significant concern. The psychological trauma to the victim was a completely alien concept. In a nutshell, the colonial legal system viewed crime as an offense against the state, effectively marginalizing the individual victim's experience and needs.

Post-Independence Developments: The year 1947 was a significant year for the legal system in India as with the independence, the legal system went through major changes and evolved

to include the constitutional and legislative reforms which had the protection of rights of the individual as their core value.

Constitutional Provisions:

1. Article 21: Right to Life and Personal Liberty

This constitutional provision has been a boon to victims' rights advocates. The meaning of this provision has been expanded to include not only dignified life but various other personal right protections.

2. Article 39A: Equal Justice and Free Legal Aid

This constitutional provision makes it the responsibility of the state to provide free legal aid to whoever may seek it. It makes sure that nobody is denied justices because of barriers of finance.

Significant Legislative Reforms:

1. Criminal Procedure Code (CrPC) Amendments

Even though the Code has been replaced by Bharatiya Nagarik Suraksha Sanhita, 2023, the restorative justice provisions and the legal protections provided to the victims remain the same. It includes provisions like,

- a. Plea bargaining: Sections 290-300 of the Sanhita contain the provisions of "plea bargaining". It helps both the offender and the victim to avoid the harrowingly slow process of the court.
- b. Compoundable offence: Section 359 of the Sanhita covers compounding of an offence. This however, only applies to the offences listed in the concerned section.
- c. Compensation: The legislature has made sure to keep in mind the pain the victim has went through because of the commission of the crime. As such when court levies a "fine" on the offender as part of punishment, the court can order such fine to be paid to the victim. Section 396 of the new criminal law provides for the compensation to be provided to victims in cases of criminal trials. However, this provision does not fully encapsulate the practice of restorative justice but it provides acknowledgement to the victim. The courts can facilitate this restitution through ordering compensation to the victim through schemes funded by the state or by pockets of offender.

2. Mediation and Conciliation:

As an alternative dispute resolution, the mechanism of mediation has been experimented a lot with in India. The Supreme Court also set up a Mediation and Conciliation Project Committee (MCPC) in 2005. This practice has been deemed helpful in cases involving matters of civil, family or minor criminal nature. This often focuses on restitution and reconciliation by allowing the victims and offenders to mutually reach a resolution.

3. Introduction of Victim Impact Statements:

With the inclusion of this practice in the justice system, the victim is given a formal platform to express in detail their personal feelings and put in words their sufferings. This helps the stakeholders involved understand the psychological, physical, emotional and economic consequences of the crime. It gives the crime the context of its aftermath left behind which is not truly depicted by the evidence collected and presented¹⁸. This also enables the judges to understand the broader impact of the crime and its far-reaching consequences.

The legal system in our country has always been adversarial and retributive in nature making the concept of restorative justice relatively new. Therefore, there is a lack of comprehensive legislation to regulate the standards of practice of restorative justice system as seen in legislations of other countries. However, an effort has been made by including “community service” as a mode of punishment in the new criminal law, i.e. Bharatiya Nyaya Sanhita, 2023¹⁹. From the above discussion, the fundamental shift of transformation that could be noticed is mainly the shift that has occurred in the justice system from a purely punitive approach to incorporating restorative practices. The victims are given their fair due of recognition and with the involvement in the judicial process; they are not left feeling dissatisfied with the justice provided. From the colonial period, a major shift in the emphasis of the judicial process is also seen as now it is more focused on maintaining human rights and dignity.

¹⁸ V., Pavithra, Muralidhar, Riktha, ‘Victim Rights in India: Is the Focus of the Criminal Justice System Shifting from the Accused to the Victim?’ (2021) 4 (2) IJLMH 774-74-781 <<https://ijlmh.com/paper/victim-rights-in-india-is-the-focus-of-the-criminal-justice-system-shifting-from-the-accused-to-the-victim/#:~:text=In%20India%2C%20the%20term%20%E2%80%9Cvictim.a%20result%20of%20a%20crime>> accessed 1 December 2024

¹⁹ Bharatiya Nyaya Sanhita, 2023, Act No. 46 of 2023

Challenges to victim participation in India

Restorative justice has many elements which would provide for a fairer and better justice in the Indian society but it also faces many challenges owing to the various cultural and financial barriers.

The Indian society follows a hierarchical structure where patriarchy and family name hold major stakes. This leads to stigmatization of the victims as there is fear of retribution from the offender or from the community, especially in cases of sexual or caste-based violence.

The practices like victim-offender mediation in the restorative justice process are not widespread in India, and many victims may be unaware of these opportunities. Moreover, the lack of trained mediators and counselors in the justice system hampers the development of such programs. There is a need for extensive training and education for legal practitioners to embrace restorative principles fully as many legal professionals, including judges and lawyers, are accustomed to the adversarial model of justice.

Landmark Judgments Promoting Victim Rights

The case of State of Gujarat v. Anirudh Singh (1997) put emphasis on the rights of the victims to be provided compensation. In this case the court also recognized the psychological trauma faced by the victim.

In the case of *Sudha Sharma v. State of Bihar* (2005), the need for a victim-centric legal approach was felt which in turn expanded the interpretation provided to the rights of victims. In *Anupam Sharma v NCT of Delhi and Another*²⁰, the Hon'ble Delhi High Court said that "*restorative justice can be used interchangeably with mediation. Purpose of "Restorative justice" and nature are to restore the "victim's interest". Participation of the victim in the "settlement" process is encouraged in restorative justice. It is a voluntary process of negotiation and collaboration between the offender and the victim, either directly or indirectly.*" This judgment is a favorable step ahead in fulfilling the scheme and aspirations of restorative justice for victims of crime²¹.

²⁰ (2008) 146 DLT 497

²¹ *State of Gujarat v Raghav Bhai Vashrambhai and Others* (2003) 1 GLR 205.

In *Manohar Singh v State of Rajasthan and Ors*²², the Supreme Court said that “the whole point of Section 357 the Code of Criminal Procedure 1973 is to make sure that the interests of the victims are taken into account in the "criminal justice system". Sometimes, the situation is so bad that it doesn't make sense to keep a person in prison. Instead, directing the accused to pay some money to the victim or the person who was hurt due to the crime can make sure that total justice is served.”

Victim and the trial process in India

Owing to the adversarial form of trial in India, the victim or their representatives has either a minimal or no role in the whole process apart from being questioned as a mere witness. The reasoning behind keeping the victim away from the trial process lies in the effort to keep the trial process fair. For a fair trial to happen, it is important that it does not become vindictive in any form or nature.²³ It is equally important that there is no bias introduced so that the judges are not emotionally swayed.

However, it seems wholly undesirable to keep the victim out of the trial process and take from them their restorative aid. In light of the popularity of “restorative justice” in the Indian legal discourse, efforts are put in to slowly integrate the victim into the process of trial.

Conclusion and Recommendations

The integration of restorative justice into the Indian judicial system presents a significant opportunity to transform the way justice is delivered, making it more victim-centric and healing-focused. The criminal justice system must be oriented towards restoration of the victim by lending them a listening ear. As the individual who has “borne the immediate burnt” of the offence, it is essential that proper healing is done. It was only through the amendment of 2008 that the term “victim” got legal recognition in the criminal acts. Though, the government has worked effectively after that with legislating on victim compensation schemes, like the Rajasthan victim compensation Scheme of 2015.

There is still need for substantial development of “victim justice” in India. the victims must be

²² (2015) SC 1124

²³ Victim Law Article, ‘Use of the Term “Victim” In Criminal Proceedings’ (NCVLI, 2009) <<https://law.lclark.edu/live/files/21940-use-of-the-term-victim-in-crim-proc11th-edpdf>> accessed 1 December 2024

provided with proper information relating to their case and there must be provisions made for them to avail consulting at various phases of their cases, wherever they feel the need.

It is not enough to merely make provisions for victim participation, it is equally important to ensure that this participation happens by providing victims with proper safety measure. The following initiatives can make the road ahead smoother, victim-offender mediation programs, compliance programs and victim rights clinics.

