



Restorative Justice: A False Compromise or The True Path to “Justice With Safety”? An Indian Legal Perspective

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ABSTRACT

Restorative justice has emerged as a significant normative and procedural alternative to the traditional retributive model of criminal justice. While the conventional system emphasizes punishment and deterrence, restorative justice focuses on repairing harm, promoting accountability, and involving victims, offenders, and the community in a participatory process. In India, although restorative justice is not formally codified as a standalone doctrine, its principles are embedded within statutory provisions and judicial practices. This article critically examines whether restorative justice represents a dilution of legal accountability or a viable pathway toward achieving “justice with safety.” Through doctrinal analysis of Indian statutes, constitutional principles, and leading judicial precedents, the article argues that restorative justice, when implemented with appropriate safeguards, does not undermine but rather complements the existing criminal justice framework by making it more humane, victim-centric, and effective.

KEY WORDS

Restorative Justice, Victim, Statutory Provision, Legal Accountability, Criminal Justice.

INTRODUCTION

The administration of criminal justice in India has traditionally been anchored in retributive principles, where crime is conceptualized as an offense against the State, warranting punishment proportionate to the wrongdoing. This model prioritizes deterrence, incapacitation, and maintenance of public order. However, it often marginalizes the victim and fails to address the broader social and relational dimensions of crime. Against this backdrop, restorative justice offers a paradigm shift by reconceptualizing crime as harm

inflicted upon individuals and communities rather than merely a legal transgression.

The central question that arises is whether restorative justice weakens the authority of law by encouraging compromise, or whether it strengthens the justice system by incorporating elements of healing, accountability, and social reintegration. This inquiry becomes particularly significant in the Indian context, where systemic challenges such as judicial delay, prison overcrowding, and limited victim participation necessitate alternative approaches.

Concept and Definition of Restorative Justice

Restorative justice is not defined in any single binding statute in India; however, its conceptual clarity is well established in international instruments and scholarly literature. The United Nations Office on Drugs and Crime (UNODC), in its Handbook on Restorative Justice Programmes, defines restorative justice as:

“a process in which the victim, the offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.”

Howard Zehr, widely regarded as the pioneer of restorative justice theory, describes it as:

“a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”

Similarly, Tony F. Marshall defines restorative justice as:

“a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.”

These definitions collectively demonstrate that restorative justice represents a fundamental shift from a purely punitive model of justice to a participatory and inclusive approach, emphasizing dialogue, accountability, reparation, and restoration of social harmony.

Statutory Recognition in Indian Law

Although restorative justice is not expressly defined or codified as a separate legal doctrine in India, its core principles are clearly reflected in multiple statutory provisions. These provisions, when understood together, show that Indian law already follows a partly restorative approach, especially in cases where reconciliation, compensation, and rehabilitation are more meaningful than strict punishment.

To understand this properly, each provision must be seen not just as a technical rule, but in terms of what it actually does in real life.

The Code of Criminal Procedure, 1973 incorporates restorative elements most directly through Section 320, which deals with compounding of offences. Compounding simply means that the victim and the accused can settle the matter between themselves, and the case can be closed without continuing the trial. This is allowed only in certain types of offences, generally less serious ones such as defamation, simple hurt, or minor disputes. The logic behind this provision is practical as well as restorative. In many such cases, the real issue is personal conflict rather than public harm. If the victim is satisfied and the accused has acknowledged the wrongdoing, continuing punishment may serve little purpose. Thus, Section 320 allows space for forgiveness, settlement, and restoration of relationships, which are central ideas of restorative justice.

However, the law also carefully limits this provision. Serious offences like murder, rape, or offences against the State cannot be compounded. This shows that Indian law tries to balance restorative justice with the need to maintain public order and deterrence.

Another important step toward restorative thinking is plea bargaining under Sections 265A to 265L of the Cr.P.C., introduced through amendments in 2005. Plea bargaining allows an accused person to voluntarily admit guilt in exchange for a reduced sentence or a mutually agreed outcome. Importantly, this process often involves compensation to the victim and a negotiated settlement. From a practical perspective, it helps reduce long court delays and gives both parties a quicker resolution. From a restorative perspective, it encourages the offender to accept responsibility, which is a key element of restorative justice.

At the same time, safeguards are built in. Plea bargaining is not allowed in serious offences, and the court must ensure that the accused is not being forced into admitting guilt. This ensures that the process remains fair and does not become a tool of misuse.

A very significant reflection of restorative justice in Indian law is found in Sections 357 and 357A of the Cr.P.C., which deal with victim compensation. Traditionally, criminal law focused mainly on punishing the offender, while the victim's suffering was largely ignored. These provisions change that approach. Section 357 empowers courts to order the accused to pay compensation to the victim for the harm caused. Section 357A goes even further by creating a Victim Compensation Scheme, under which the State itself provides compensation in cases where the offender is unable to pay or is not identified.

This is a major shift toward restorative justice because it recognizes that justice is not complete unless the victim's loss is addressed. It moves the system from being offender-focused to victim-inclusive, ensuring that the harm caused is acknowledged and, as far as possible, repaired.

Similarly, Section 89 of the Code of Civil Procedure, 1908 promotes alternative dispute resolution methods such as mediation, conciliation, arbitration, and Lok Adalats. Although this provision applies mainly to civil disputes, its philosophy is deeply restorative. Instead of long, adversarial court battles, parties are encouraged to sit together, communicate, and reach a mutually acceptable solution. This approach reduces hostility and preserves relationships, which is often more valuable than winning a legal battle.

Mediation, in particular, reflects restorative justice very closely because it focuses on dialogue, understanding, and voluntary agreement, rather than imposed decisions.

An even clearer embodiment of restorative principles is found in the Juvenile Justice (Care and Protection of Children) Act, 2015. This law deals with children in conflict with law and adopts a completely different approach from the adult criminal system. Instead of punishment, the focus is on rehabilitation, reform, and reintegration into society. The idea is that children are more capable of change, and exposing them to harsh punishment may do more harm than good.

Under this Act, children are often sent to observation homes, given counselling, education, and skill development, rather than being imprisoned. The goal is to correct behaviour and restore the child as a responsible member of society, which is at the heart of restorative justice.

When all these provisions are viewed together, it becomes clear that Indian law, even without explicitly using the term "restorative justice," already incorporates its essential principles. These include resolution through dialogue, acceptance of responsibility, compensation to victims, and reintegration of offenders.

At the same time, the law maintains a careful balance. Restorative mechanisms are generally limited to less serious offences, while serious crimes continue to be dealt with through strict punitive measures. This ensures that while the system becomes more humane and flexible, it does not compromise on public safety or justice.

In essence, the Indian legal framework reflects a hybrid model, where restorative justice operates alongside traditional punishment. This approach recognizes that not every case requires strict punishment, and in many situations, healing the harm is more important than imposing a penalty.

Judicial Engagement with Restorative Principles

Indian courts have played a pivotal role in advancing restorative justice through purposive interpretation of law. In *Gian Singh v. State of Punjab*, the Supreme Court held that criminal proceedings involving non-heinous offenses may be quashed on the basis of settlement, emphasizing that the objective of law includes promoting peace and harmony.

This approach was further refined in *Narinder Singh v. State of Punjab*, where the Court laid down guidelines for quashing proceedings based on compromise, balancing individual interests with societal concerns. In *State of Madhya Pradesh v. Laxmi Narayan*, the Court clarified that serious and heinous offenses cannot be resolved through compromise, thereby preserving the deterrent function of criminal law.

The principle of victim-centric justice was emphasized in *Ankush Shivaji Gaikwad v. State of Maharashtra*, where the Supreme Court underscored the importance of compensation under Section 357 Cr.P.C. as an integral component of justice. Similarly, in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.*, the Court highlighted the significance of alternative dispute resolution mechanisms in achieving substantive justice.

At the same time, the judiciary has imposed clear limitations. In *Shimbhu v. State of Haryana*, the Court categorically rejected compromise in rape cases, holding that such offenses are crimes against society and cannot be settled privately. Likewise, in *State of Rajasthan v. Shambhu Kewat*, the Court refused to quash proceedings in serious offenses despite settlement. These decisions reflect a cautious and balanced judicial approach.

Restorative Justice: Compromise or Complement?

The idea that restorative justice may operate as a “false compromise” is one of the strongest criticisms against it, and this concern is not without merit, especially in the Indian context. The primary fear is that instead of delivering real justice, restorative mechanisms may sometimes lead to forced settlements, where the outcome reflects power dynamics rather than fairness. In a society like India, where economic, social, and cultural inequalities are deeply rooted, there is a genuine possibility that a victim may agree to a compromise not out of free will, but due to pressure, fear, financial dependency, or social influence. For example, in disputes involving influential accused persons or family-related matters, the victim may feel compelled to settle even when justice demands otherwise.

This raises serious concerns under Article 14 of the Constitution, which guarantees equality before law and equal protection of laws. If settlements are influenced by inequality, then justice risks becoming uneven, where stronger parties dictate outcomes and weaker parties are left with no real choice. Another concern is that excessive reliance on compromise may weaken the deterrent effect of criminal law. If offenders believe that matters can be “settled” easily, it may reduce the fear of legal consequences, particularly in cases where monetary compensation replaces accountability.

At the same time, it is important to recognize that these criticisms do not mean that restorative justice itself is flawed; rather, they highlight the risks of improper implementation. When properly regulated and applied in appropriate cases, restorative justice does not replace accountability but reshapes it in a more meaningful way.

This becomes clearer when we examine the limitations of the traditional retributive system. In the conventional criminal process, once a case is initiated, the dispute is largely taken over by the State. The victim, who is the most affected person, often becomes only a witness in the proceedings. The focus shifts to proving guilt and awarding punishment, while the victim’s emotional, psychological, and financial needs remain largely unaddressed. Even when a conviction is secured, the victim may still feel dissatisfied because there was no real acknowledgment of harm, no direct engagement with the offender, and no opportunity for closure.

Restorative justice attempts to fill this gap. It gives the victim an opportunity to be heard, to ask questions, and to receive acknowledgment of wrongdoing directly from the offender. It also requires the offender to take personal responsibility, not just in a legal sense, but in a moral and social sense. Compensation, apology, or community-based solutions often form part of the outcome, making justice more visible and meaningful to those involved. In this way, restorative justice enhances the legitimacy of the justice process by making it more participatory and responsive.

From a constitutional perspective, restorative justice finds strong support under Article 21 of the Constitution, which guarantees the right to life and personal liberty. The scope of Article 21 was significantly expanded in *Maneka Gandhi v. Union of India*, where the Supreme Court held that any procedure established by law must be just, fair, and reasonable, and not arbitrary or oppressive. Over time, this interpretation has come to include the right to live with dignity, respect, and meaningful access to justice.

Restorative justice aligns closely with these principles. By focusing on dignity of the victim, fair participation, and humane treatment of the offender, it strengthens the constitutional vision of justice. It ensures that the legal process is not merely a mechanical application of rules, but a human-centered system that addresses real harm and promotes social harmony.

Therefore, the debate should not be framed as a choice between compromise and justice. The real issue is whether restorative justice is being applied in the right cases, with proper safeguards, and under judicial supervision. When used appropriately, particularly in minor offences, family disputes, and cases where relationships matter, it acts as a complement to the traditional system, not a substitute.

In conclusion, restorative justice is not inherently a false compromise. It becomes problematic only when misused or applied without safeguards. When implemented carefully, it serves as a powerful tool that balances accountability with compassion, and legality with humanity, thereby moving the justice system closer to the ideal of fair, inclusive, and meaningful justice.

Justice with Safety: Toward a Balanced Model

The idea of “justice with safety” goes beyond the traditional understanding of justice as mere punishment. It requires a system that not only holds the offender accountable but also ensures that society becomes safer in the long run. In other words, justice should not end with a conviction or sentence; it should also prevent future harm, restore social balance, and reduce the chances of the same offence being repeated.

In the conventional criminal justice system, safety is often equated with punishment. The assumption is that by imprisoning or penalizing the offender, society is protected. While this is necessary in serious offences, it does not always address the deeper causes of crime. Many offenders, after serving their sentence, return to society without any real reform, sometimes becoming repeat offenders. This shows that punishment alone does not always guarantee long-term safety.

Restorative justice contributes to the idea of “justice with safety” by shifting the focus from exclusion to reintegration. Instead of treating the offender as someone to be permanently isolated, it aims to make the offender understand the consequences of their actions, take responsibility, and re-enter society as a law-abiding individual. When an offender genuinely acknowledges harm and takes steps to repair it, the likelihood of reoffending is significantly reduced. This directly contributes to public safety in a more sustainable way.

At the same time, restorative justice also strengthens the position of the victim. In many cases under the traditional system, victims feel ignored or dissatisfied, even after the conclusion of the trial. Restorative mechanisms give them a platform to express their suffering, seek answers, and receive compensation or apology. This leads to a sense of closure and trust in the system, which is an important aspect of social stability.

In the Indian context, the relevance of this approach becomes even more significant due to existing systemic challenges. Courts are burdened with a massive backlog of cases, trials often take years, and prisons are overcrowded. In such a situation, restorative mechanisms such as compounding, mediation, and plea bargaining can help resolve less serious cases more efficiently. This not only reduces the burden on courts but also ensures quicker relief to victims and faster resolution of disputes.

However, the effectiveness of restorative justice depends entirely on how it is implemented. Without proper safeguards, it can lead to misuse. One of the biggest concerns is the possibility of coercion, where victims may be pressured into settlement. To prevent this, it is essential that participation in restorative processes remains completely voluntary and that courts carefully examine whether the settlement is genuine and fair.

Judicial oversight plays a crucial role here. Courts must ensure that restorative mechanisms are used only in appropriate cases and that the rights of victims are fully protected. There must also be clear boundaries—serious offences such as crimes against women, children, or society at large should remain outside the scope of such processes, as already emphasized in judicial decisions.

Therefore, restorative justice should not be seen as a replacement for the traditional criminal justice system. Instead, it should function as part of a hybrid model, where both systems work together. Serious offences continue to be dealt with through strict punishment, while less serious and personal disputes can be resolved through restorative methods. This approach ensures that accountability is not compromised, while also allowing space for reconciliation and healing.

In conclusion, “justice with safety” can only be achieved when the system balances punishment with prevention, and law with humanity. Restorative justice, when carefully integrated into the existing framework,

helps achieve this balance. It ensures that justice is not only delivered in a legal sense but also felt in a social and human sense, ultimately contributing to a more stable and secure society.

CONCLUSION

Restorative justice in India represents an evolving and nuanced paradigm that bridges the gap between legal formalism and social realities. It is neither a false compromise nor a universal solution. Instead, it is a complementary framework that enhances the effectiveness of the justice system by incorporating elements of healing, participation, and reparation.

Judicial precedents and statutory provisions demonstrate that Indian law already accommodates restorative principles, albeit in a fragmented manner. The challenge lies in institutionalizing these practices through clear guidelines and safeguards.

Ultimately, the pursuit of “justice with safety” demands a balanced approach that integrates deterrence with dignity, punishment with reparation, and legal authority with human values. Restorative justice, when carefully implemented, offers a meaningful pathway toward achieving this objective.

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