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Justice Redefined: Addressing the Scope and Challenges of Restorative Justice in India and Victim's Role in Criminal Justice System

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Restorative justice, rooted in historical principles, aims to reconcile all parties affected by a crime, prioritizing victim involvement and community participation in the justice process. This article examines the evolution of restorative justice within the context of India's predominantly retributive legal framework. While India's legal system predominantly emphasizes punishment and state-centric justice, there is growing recognition of the need to prioritize victim rights and involvement. Exploring the jurisprudence of restorative justice, the article delves into its foundational principles and contrasts them with traditional punitive approaches. It highlights the significance of victim participation in criminal proceedings, advocating for reforms to empower victims and address their needs more effectively. Additionally, it discusses the challenges and limitations within India's legal system concerning victim rights, particularly regarding monetary compensation and rehabilitation. The paper also evaluates the application of restorative justice in India, identifying areas where it intersects with existing legal mechanisms such as Alternative Dispute Resolution (ADR) and community-based systems like Panchayats. Furthermore, it underscores the crucial role of the judiciary in promoting victim participation and implementing restorative justice practices. By examining case law and legal reforms, the article underscores the judiciary's evolving stance on restorative justice and its potential to complement existing punitive measures. Ultimately, it advocates for a more victim-centered approach to justice that not only holds offenders accountable but also prioritizes healing, reconciliation, and community well-being.

Keywords: *restorative justice, alternate dispute resolution, victim's role, lok adalat, panchayat.*

INTRODUCTION

Restorative justice is a method of delivering punishment wherein all the parties who have a stake in a crime, are involved to solve that crime. During earlier times, victims had a major role to play when justice was being delivered. Offenders were supposed to pay monetary compensation to the victim and a fine to the lord of the victim. As time passed, the king started to show dominance in the criminal justice system and started taking compensation directly from the offenders. Thereafter, the role of the victim started to fade away and sentencing power as a form of punishment came into the picture.

In India, at present, the criminal justice system is mainly focusing on the retributive justice system. Our present justice system focuses on measuring crimes in terms of monetary compensation and physical punishment. There is a minimal role played by the victim in the whole proceedings and prosecution is represented by the state. Whenever a crime occurs, it is assumed that it is against the state and that justice is administered in accordance with the governmental interests. Hence, it sidelines the role of the victim in the process of doing justice and they feel twice victimized. In this situation, a need is felt to recognize this point that the crime has happened against the victim and not the state and priority must be given to the victim, not the state.

Restorative justice is a method that emerged to resolve the drawbacks of the retributive justice system. With the use of restorative practices, an offender can help the victim heal from their wounds while giving the victim priority and giving the community a say in decisions about the offender.¹ It is based on certain guidelines which must influence the approach to dealing with criminal activity:

¹ Parveen Khan N and Anjum S, 'Restorative Justice: Meaning and Concept' (2017) 26 ALJ 145

- Allowing personal engagement of those who are most affected i.e., victims and offenders including their families and society.
- Viewing criminal issues in the framework of society.
- A proactive or forward-thinking approach to resolving issues.

Conflict is a basic nature of human beings and where there is a conflict, it follows conflict resolution. A method of resolving conflict that involves the victim, offender, and community actively participating is restorative justice. The theory behind it all is that victims should be compensated for their losses, offenders should be made accountable for their guilt, the community should be involved in decision-making, and the offender should be encouraged to reintegrate into society.

As per Howard Zehr, 'Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, to heal and put things as right as possible.'²

In India, restorative justice and its values can be found in Alternative Dispute Resolution (ADR) like Arbitration, Mediation, Conciliation, Lok Adalat, Panchayat, etc. This paper will discuss the growth of ADR and how restorative justice is effective in the present time.

JURISPRUDENCE OF RESTORATIVE JUSTICE

The concept of restorative justice is an age-old philosophy. It is based on some principles such as peace could be used to win the evil or crime can be eliminated from the society by way of self-realization. It got its basis from various theories of punishment, like reformatory, preventive, therapeutic, etc.

The reformatory theory focuses on the reinvolvement of offenders in the society. It believes that when an offender commits a crime, then the offender does not become evil, he is still a human being. Therefore, it suggests that an attempt should be made to reform him so that he can be

² Howard Zehr, *The Little Book of Restorative Justice* (Good Books 2002) 37

brought back to society. Alternative forms to imprisonment must be looked for while giving him the punishment. It is opposite to the deterrent theory; it believes in the socialization of offenders in society by removing the factors that encourage them to commit a crime and by giving them a chance to correct their mistakes and relieve them.³ It also believes that alternative modes must be used instead of punishment for crime correction, like the offender should realize the harm caused by his act to the victim and society (Victim Offender Mediation), the victim and society forgive the offender (Forgiveness), the offender does more good than the bad caused (Making Amendments), involvement of victim in the criminal justice system (Victim Awareness), etc.

Restorative theory also works on the principle of preventive theory that adopts such methods that prevent the accused from being targeted as a criminal. It believes that through meetings of victim and offender, harms of both could be alleviated. It further helps in making prisons less overcrowded which sometimes becomes a home for smaller criminals to change into big criminals.

Restorative justice also follows the principle of therapeutic jurisprudence that emphasizes how the legal system affects people's psychological and physical well-being. Restorative justice and therapeutic traditions both aim to address the issue of criminal offenders, lessen victim suffering, and stop victimization from occurring again.⁴

The goal of justice is not served if a crime is accomplished solely by imprisonment; in the modern era, a high number of offenders awaiting trial, overcrowded prisons, and disgruntled victims are signs of a less efficient legal system in place. The current method has to be improved so that the victims are satisfied and the offender is held accountable for the harm he caused by setting up meetings between victims and offenders.

³ Dr. NV Paranjape, *Studies in Jurisprudence and Legal Theory* (8th edn, CLA 2016) 159

⁴ David B. Wexler, 'Therapeutic Jurisprudence in a Comparative Law Context' (1998) 15(3) *Behavioral Sciences & the Law* 233 <[https://doi.org/10.1002/\(SICI\)1099-0798\(199722/06\)15:3%3C233::AID-BSL263%3E3.0.CO;2-S](https://doi.org/10.1002/(SICI)1099-0798(199722/06)15:3%3C233::AID-BSL263%3E3.0.CO;2-S)> accessed 11 March 2024

LEGAL SYSTEM IN INDIA

India possesses one of the most ancient legal systems globally, characterized by laws and jurisprudence that have existed for centuries. Over time, this legal system has developed and flourished, mirroring the dynamic nature of Indian society as it adjusts to the shifting times. India, known for its extensive history and cultural heritage, has witnessed the reign of numerous rulers and civilizations throughout different periods. These include the ancient Indus Valley Civilization, the Vedic Age, and the Mauryan Empire in the northern region. In the southern part of India, the Sangam and Chola dynasties held power. Subsequently, the Delhi Sultanate and the Mughals ruled, until the British Empire took control of India.

The Indian legal system is a deep and comprehensive structure that has developed over centuries, incorporating old customs, colonial impacts, and contemporary constitutional ideas. The major component of this system is the Constitution of India, ratified on January 26, 1950, which establishes the framework for governance, as well as the rights and responsibilities of citizens. The legal system is dynamic. Ongoing improvements aim to tackle growing difficulties, simplify procedures, and improve openness.

HISTORICAL ASPECT

Everyone in India was bound by the principle of Dharma, which is the main basis of Hinduism, till the advent of Muslims. There are three sources of Dharma; Vedas or Shrutis, Smriti, and Achara. Vedas or Shrutis are divine and they consist of Shrutis which means 'those things which the Saints have heard from God'. Smriti refers to memory and the wisdom that is collected from one generation to the other and every generation builds on the wisdom of the preceding generation and this results in the evolution of human nature. Mahabharata, Ramayana, Puranas, etc are examples of Smritis that teaches us Dharma. Achara refers to the good conduct and deeds of saints who comprehend the Vedas. When Smritis and Vedas are silent on any guidance, then reference is made to the Achara of our saints.

Within the ancient Indian legal system, a case is brought when someone files a complaint alleging that one of the Smriti's tenets has been broken. A basic judicial action consists of four

main parts: a petition, a response, proof, and a decision. Courts are divided into six groups according to Katyayana Smrithi's system. Among them are Kula, or family courts, which settle conflicts amongst families from like origins; Adhikrita, or King-appointed courts, where the judges are knowledgeable about Shastras and Smrithis; Apratishtitha, a mobile court that meets at the King's summons; Shreni, or Trade or Professional Councils, which settle disputes between merchants, professionals, and artisans; Gana, or Village Assembly, a large gathering of respected village elders; and Sasita, or Kings Court, the highest court presided over by the King, Chief Justice Pradvivaka, and a group of judges known as Sabhyas. The Nripa or King himself makes the final decisions, yet he is bound by Dharma.⁵

The ancient Indian Smritis stated that the King's main duty was to administer justice. They also emphasized the necessity of a strong legal system to implement Dharma-based justice. The King was responsible for maintaining public safety, enforcing the law, and punishing offenders. According to Brihaspati Smiriti, there was a judicial system in ancient India that extended from the family courts to the king. The decisions rendered by these tribunals, which conclude with the monarch's decision, have binding effects in ascending order, and because each subsequent judgment is based on a greater level of learning and expertise than the previous one, it will always prevail.

The judges in ancient times were in the same pattern as in today's times; i.e., village courts, the Munsif, the Civil Judge, the District Judge, the High Court, and at last the Supreme Court which is at the same level as the King's Court. The King's primary duty was to give justice to the person by the law and under the guidance of the judges who knew the law. He had to follow a strict code of conduct. The proceedings used to be done in an open courtroom. The king was also required to take an oath that he would be impartial towards everyone and he would do justice without any prejudice. But as time passed and society progressed, the duties of the king also increased and the judicial duty of the king was transferred to the professional judges if the king had less time to hear the matter. The judges used to be Brahmin who knew the Vedas. Certain text reveals other qualifications to be a judge, such as the king must choose such person who

⁵ MP Jain, *Outlines of Indian Legal and Constitutional History* (7th edn, Lexis Nexis)

knows legal textbooks, is truthful, independent, fearless, and impartial towards everyone, whether a friend or an enemy.⁶

As the society becomes unified, the form of punishments also diversified to a very extent. Fines, the death penalty, expulsion, mutilation, and other severe penalties were imposed for infringement. Since the humanitarian side of criminal philosophy has grown, practically all crimes worldwide have been punished with fines, forfeiture, confiscation of property, and life imprisonment. Manu declared that the King must maintain humanity and peace in his realm and that he may utilize danda as a weapon to punish the guilty and bring justice to the accused. The Rajadharm regulations were formulated to stop the King from arbitrarily deciding who should be punished. Manu believed that the King should only punish those who truly deserved it, after carefully assessing the offender's capacity and the seriousness of the offense, as well as the time, and place.

VICTIM'S ROLE IN INDIA

In India, the criminal justice system is based on an adversarial legal system. In the occurrence of any crime, there are only two parties involved in the whole proceedings, the first is the accused and the second is the prosecution. The prosecution needs to prove the guilt of the accused beyond reasonable doubt supported by evidence before the Hon'ble Judge and the benefit of doubt is given to the accused. The judge/Magistrate plays the role of an umpire and determines the guilt of the accused beyond a reasonable doubt. The accused is allowed to prepare for his defense. However, in the entire process, there are no provisions in the statute that give the right to the victim to play an active role in establishing the guilt of the accused. Everything is done by the prosecution and the police.

During the investigation, the statement of the victim is recorded and a medical examination is done, if necessary. Then, the victim is asked to produce evidence before the court on a certain date and there is a statutory provision in Cr.P.C. wherein if the police fail to fulfill its duty, the

⁶ Vijai Govind, 'The Role of Witnesses in the Ancient and the Modern Indian Judicial System' (1973) 15(4) Journal of the Indian Law Institute 645 <<https://www.jstor.org/stable/43950237>> accessed 19 January 2024

court has been given Suo moto power to summon the victim as a witness.⁷ The overall charge of a criminal proceeding rests with the prosecution, the victim is not a party to the proceedings, except in cases where a private complaint is registered before the magistrate.⁸ Then the police are required to investigate the matter and file a final report or chargesheet before the magistrate.

Thereafter, based on the investigation report and police report, the magistrate takes cognizance and starts the trial. But, if the magistrate believes to deny the trial and declines to take cognizance, then the opportunity is given to the victim to present his point and this was established by the Supreme Court in the case of *Bhagwat Singh v Commissioner of Police*⁹ and it is the limited role played by the victim during investigation.

Victims should also be given other rights and provisions should be made to give opportunity to the victim to play a role in the proceedings. They should be given the right to know about the details of the case and the reason for the delay, whether the accused is held under custody or not, all the evidence collected against the accused, and the reason for the delay in proceeding for trial. But there are certain rights given by the statutory provisions like the police are required to state the reason to the victim/informant if they refuse to proceed with the investigation.¹⁰ The details of the police report submitted to the magistrate must be given to the informant.¹¹

With the enactment of the Right to Information Act, of 2005, victims can obtain information from the police at the time of investigation, all the entries in the case-diary or other findings or records of the police can easily be accessed by the informant/victim and in cases of non-compliance, the victim/informant can utilize the recourse provided under the act.¹² However, the police authorities can easily use the exemption provided in the act and can refuse to furnish the information.¹³ Therefore, in such a situation, the victim/informant should be given the right to

⁷ Code of Criminal Procedure 1973, s 311

⁸ Code of Criminal Procedure 1973, ss 200, 202

⁹ *Bhagwat Singh v Commissioner of Police* (1985) 2 SCC 537

¹⁰ Code of Criminal Procedure 1973, s 157(2)

¹¹ Code of Criminal Procedure 1973, s 173(2)

¹² Right to Information Act 2005, s 20

¹³ Right to Information Act 2005, s 8(h)

approach the magistrate to check whether the police officer is justified in refusing the information.

In India, every prosecution case is conducted by a public prosecutor¹⁴ who is an officer of the court who assists the court in reaching a conclusion. The private person, i.e. victim or informant can instruct a lawyer to prosecute a case, but he can act under the direction and supervision of the Public Prosecutor or Assistant Public Prosecutor.¹⁵ However, after the evidence is closed, the private counsel can submit a written submission with the permission of the court. In *Shivkumar v Hukum Chand*¹⁶, the Supreme Court held that the role of private counsel is to assist the senior counsel. He should be assisting the public prosecutor. Furthermore, the victim has also a say when the magistrate decides not to take cognizance of the matter. In matters of plea bargaining¹⁷, the victim is also required to be given notice to participate in the mutual disposition of the case and agreed compensation. These are the limited roles played by the victim, otherwise, all the roles in prosecution are played by the public prosecutor.

The Supreme Court had gone into discussing the rationale behind not allowing the third party to interfere in the prosecution and held that In a Sessions Court, the Public Prosecutor is the only person authorized to handle the prosecution. The legislature reminds the State that whatever policy it adopts must rigorously adhere to the principles of justice in an accused person's Sessions Court trial. Regardless of the facts of the case, a public prosecutor is not supposed to exhibit a burning desire to prove the case and convict the accused. When carrying out the prosecution, the Public Prosecutor is supposed to act with impartiality toward the accused as well as the court and the investigating authorities. The Public Prosecutor should not undermine or hide any genuine benefits that an accused person may be entitled to during the trial.¹⁸ The Andhra Pradesh High Court also held that the prosecution conducted by the personal pleader will convert into a legalized form of personal revenge unless it is conducted under the control of the public prosecutor. Instead of providing the court with an impartial and fair presentation

¹⁴ Code of Criminal Procedure 1973, s 225

¹⁵ Code of Criminal Procedure 1973, s 301(2)

¹⁶ *Shiv Kumar v Hukum Chand* (1999) 7 SCC 467

¹⁷ Code of Criminal Procedure 1973, s 265A

¹⁸ *Shiv Kumar v Hukam Chand* (1999) 7 SCC 467

of the case's facts, the prosecution would become involved in a power struggle between the two parties, with each using all available tactics to try and outwit the other. The court indeed has ultimate authority over how either side handles the case in every instance. However, it cannot go so far as to guarantee that one party treats the other fairly in every situation.¹⁹

The question of whether it is acceptable to marginalize or essentially disregard the victim in the whole prosecution emerges as a crucial one. Investigating the crime and bringing charges against the perpetrator should not be the end goal of a modern country dedicated to the well-being of its citizens. To ease the victims' lingering sense of unfairness and insecurity, it is also the State's responsibility to attend to their needs and concerns as well as to involve them in the criminal justice system. They are the ones who suffer the most from the crime, after all.

MONETARY DAMAGES TO THE VICTIM

While talking about the role of the victim in the criminal justice system, discussing the needs and interests of victims becomes more important. There are two types of victims in every crime, the first are those who are directly affected and the second is non-direct victims whose lives are dependent on the directly affected victim because they were the sole-earning member of the family. So, it becomes the duty of the state to provide compensation to the victim and his family so that they can live their life properly. They are the only persons who have faced the consequences of the crime, either physically, emotionally, or financially, therefore, it becomes the utmost duty of the state to focus more on the victims rather than on criminals.²⁰

In a criminal justice system, justice must be reformative for an offender and it must be rehabilitative for the sufferer, i.e., the victim. Under Article 21 of the Indian Constitution, the victim is provided with rehabilitation and it is called 'constitutional remedy' or 'public law remedy'. In *Nilabati Behra v State of Orissa*²¹, the Supreme Court also directed the state to provide monetary compensation to the victim in case it fails to preserve the life, liberty, and dignity of

¹⁹ *Medichetty Ramakistaiah v State of Andhra Pradesh* AIR 1959 AP 659

²⁰ Shivam Sourav Mallick, 'Compensation to Victims under Indian Criminal Justice System' (*Manupatra*, 14 February 2022) <<https://articles.manupatra.com/article-details/Compensation-to-victims-under-Indian-criminal-justice-system>> accessed 13 March 2024

²¹ *Nilabati Behra v State of Orissa* (1993) SCC (2) 746

the victim. There is a minimal grant of compensation to the victim under CrPC. After the submission of the 41st Law Commission report, section 357 was added to the CrPC, 1973. Under S.357(1), if the court has imposed a sentence of fine with imprisonment or without imprisonment, then the court can direct to award a part of the fine imposed to the person who has suffered a loss or injury by the offense, provided it is recoverable in the civil court by that person. When someone is found guilty of causing death or causing an abatement of death, the courts have the authority to 'award such compensation to a person entitled to recover damages under the Fatal Accidents Act.' Property damage cases are likewise covered under Section 357. In certain cases, the courts have the authority to grant compensation to a legitimate buyer of property that has been ordered to be returned to its original owner after being the victim of theft, criminal misappropriation, criminal breach of trust, deception, or receiving, holding, or disposing of stolen goods. Otherwise, the court may direct the accused under S.357(3) to provide compensation to the person who has suffered loss, if the fine does not become a part of the punishment.²² However, the court must give regard to the injury claimed by the victim, the capacity of the accused to pay compensation, etc.²³

The main flaw of Section 357 is that for its application the accused person must be convicted and it is its main requirement. It follows the premise that offenders must be identified, prosecuted, and convicted. It is not applicable in a situation where the offender is not found guilty, or cannot be identified. It also puts the whole responsibility on the accused person to pay the compensation and it is decided based on its financial stability, therefore, there is no burden on the state. Furthermore, sub-section 2 states that if there is an appeal to the judgment, then there will be no disbursement of the compensation until the appeal is disposed of completely. This provision causes hardship to the victim as he will not be able to demand compensation in case of emergency. Last, there is no fixed time for the payment of compensation to the victim.

Section 357A offers a more comprehensive approach to resolving the issue by assigning responsibility to the state, in contrast to the constraints of Section 357. The development of victim compensation plans is now mandated by state governments. It creates the role of the District

²² Code of Criminal Procedure 1973, s 357

²³ *Hari Kishan v Sukhbir Singh* (1989) Cri LJ 116

Legal Services Authority (DSLAs) in deciding on compensation amounts regardless of whether the victim files a claim under the state program or the court makes a recommendation for it. In addition, it permits reimbursement and rehabilitative actions in case a compensating order issued by a court is deemed insufficient. A claim for compensation under Section 357A may be made even in cases where the offender has not been located, identified, or tried. It also allows DSLAs to give medical aid, decided by appropriate authority, to the victim in terms of interim support.

The biggest barrier to establishing countrywide victim compensation accessibility is the States' failure to notify a workable and viable Victim Compensation Scheme under Section 357A. Additionally, there are large differences in the compensation that different governments offer for different offenses. There is a vagueness regarding the nature of the grounds for compensation that is subject to interpretation. Regarding distribution, it is not entirely clear at what point in the process compensation can be given. Either the victims are unaware that their state has Victim Compensation Schemes in place, or the State machinery is unable to provide compensation because of a badly thought-out budgetary allocation. Because these victims are often unaware of their rights, there is frequently a delay in time. By neglecting to follow up on the compensation claim, courts further fail in their duty to guarantee that compensation is not only granted but also received by the victim.

There are instances wherein the judiciary tries to balance between reformatory and rehabilitative justice systems. Several times, the judiciary has tried to reduce the punishment of the death penalty to life imprisonment by imposing fines. In the case of *Guruswamy v State of Tamil Nadu*²⁴, the accused had murdered his father and brother, the court reduced the punishment of the death penalty to life imprisonment by imposing a fine of Rs.10,000 and giving it to the victims' dependents. In a recent case, an accused was charged with rape, but the court acquitted him on finding that the sex was consensual, furthermore, he was directed to pay compensation under Article 142 of the constitution to the victim and her illegitimate child as the accused had broken

²⁴ *Guruswamy v State of Tamil Nadu* (1979) 3 SCC 797

his promise to marry.²⁵ It shows that the court has a notion of reducing punishment and giving compensation to the victim and its dependents.

APPLICATION OF RESTORATIVE JUSTICE IN INDIA

There is a limited role of restorative justice in the Indian Legal System. The victim's position in the legal system as well as victim-oriented procedures were overlooked by the Indian adversarial system. It does not enable the victim to have a say in the compensation scheme. Restorative justice can be found in some of the areas of the Indian Legal System, such as the Panchayat System, compoundable offenses, Alternate Dispute Resolution, Lok Adalat, etc.

Panchayat System: The Panchayat system is a very old traditional institution in India. Since ancient times, it has been working as a dispute settlement mechanism. It was one of the natural ways to refer the matter to 'Panch' or 'Panchayat' to decide upon it. The residents of the village are well-versed about the 'Panch' or Arbitrator.

The term 'Panchayat' refers to the group of elders and respected residents of a village. It is a collection of five people, in the literal sense. The head of Panch is called 'Sarpanch.' The Village Panchayats were based on territorial divisions, whilst the sectarian Panchayats were organized according to distinct castes and creeds. In Panchas, there were three distinct categories: Puga, which consisted of individuals from various sects and tribes living in the same area; Sreni, an association of tradesmen and artisans from different tribes who had some form of connection; and Kula, an assembly of clan members. Earlier, it was not convenient for the villagers to come to the court of the king for their sufferings or disputes, and neither any specified powers were given to any person to decide the dispute. Therefore, to overcome this situation, the villagers decided to refer their disputes to respected and elder people in the village, whose decisions were accepted by all the disputants without any opposition.²⁶

Unless there are significant issues of prejudice or wrongdoing, the Courts generally acknowledge and validate the conclusions and awards bestowed by Panchayats. In the case of

²⁵ *Deelip Singh v State of Bihar* (2005) 1 SCC 88

²⁶ S. Latha and R. Thilagaraj, 'Restorative Justice in India' (2013) 8 Asian J Criminology 309

*Sitanna v Viranna*²⁷, the Privy Council upheld a decision made by the Panchayat in a family dispute that had been ongoing for almost 42 years. Due to the increasing complexities in social and economic domains, the Panchayats have become less efficient, insufficient, and outdated. However, modified versions of these conventional arbitration institutions are widespread in many rural and tribal regions across India. There are still remnants of Panchayats among Scheduled Tribes and Backward Classes, where they have a significant say in a variety of social and caste issues. Today, a Panchayat is commonly understood as an arbitration tribunal that is formed with the agreement of all parties involved. The term 'PanCHA' refers to an individual who serves as an arbitrator in such a tribunal.

The Gram Nyayalayas Act 2008 formalized informal practices by Panchayats in villages. The Gram Nyayalayas Act establishes grassroots Gram Nyayalayas.²⁸ The Act aimed to give access to justice for all residents, regardless of social, economic, or other disadvantages. The Act aims to establish courts for all Panchayats or groups of Panchayats nationwide. The judge in this court is known as a Nyayadhikari, and the court is Gram Nyayalaya. The Nyayadhikari shall perform the duties of a Junior Civil Judge and a Magistrate. The judge will be assisted by a panel of official conciliators during mediation. This court operates differently from existing courts in terms of purposes, process, and jurisdiction. The Nyayalaya will be flexible, allowing for local procedures in the presence of participants and evidence, in the local language. The Gram Nyayalaya is the latest change in the Indian judiciary structure. Gram Nyayalaya combines the goals of multiple special courts, contrasting the traditional focus on adversarial trials.

COMPOUNDING OFFENCES

The principle of restorative justice can be seen in Section 320 of the Criminal Procedure Code, 1973. It allows parties to the crime, i.e., victim and offender, to settle the dispute or conflict between themselves. This section permits parties to undergo the process called 'Compounding of Cases' on their own or with court approval. Compounding offenses as defined under Section 320(1) of CrPC, 1973 have implications of restorative justice as it allows victims to directly participate in the dispute resolution process. The offenses mentioned in this section are mainly

²⁷ *Sitanna v Viranna* AIR 1934 PC 105

²⁸ Gram Nyayalaya Act 2008

those that affect the parties to the crime and not the society at large, e.g., defamation, hurt, theft, etc. Under sub-section (2) of S.320, those offenses are mentioned that cannot be compounded without the approval of the court as these are graver offenses and affect the society at large, e.g., grievous hurt, indecent behaviour towards women, etc. The offenses that are compounded at this level between the parties mostly result in acquittal. In recent times, the higher courts in India have rendered judgments in favour of the victim, based on the concept of restorative justice.²⁹

ALTERNATE DISPUTE RESOLUTION

Alternative Dispute Resolution (ADR) refers to those other mechanisms or processes that help in resolving conflicts and disputes outside the courtroom. In India, it is governed by the Arbitration and Conciliation Act, 1996 used only in civil disputes and includes arbitration, mediation, conciliation, etc. as a means of resolving disputes. Due to an overburdened judiciary, delays in court proceedings, and excess litigation costs led the courts to incorporate the ADR mechanism. This development also shows the principle of restorative justice as in this, the parties to the crime participate in the dispute resolution.

Under the Arbitration and Conciliation Act, of 1996, part I deals with the procedure of arbitration, and Part III deals with the procedure of conciliation, whereas Part II deals with the enforcement of foreign awards. Arbitration is a dispute resolution process where an arbitral tribunal makes a binding ruling (an award) on the dispute. Arbitration is typically used when both parties agree to resolve disputes related to commercial agreements and terms. The arbitration process requires a valid and documented Arbitration Agreement under Section 7. The conflict contract must have an arbitration clause or refer to a separate document signed by the parties containing the arbitration agreement. An arbitration agreement can be inferred from written correspondence, such as letters, or telegrams, which contain the agreement. To resolve a dispute, either side can appoint an arbitrator or seek the court if the other party does not comply. The Arbitration Tribunal is composed of a sole arbitrator or panels of arbitrators. The arbitration tribunal has authority over its jurisdiction; hence parties can only challenge its jurisdiction before the panel itself. Section 34 of the Act includes grounds for a party to appeal

²⁹ Law Commission, *Section 498A IPC* (Law Com No 243, 2011) 237

to the original civil court to set aside the award. The award becomes binding on the parties and is regarded as a court decision once the appeal time for putting it aside has expired or is refused.³⁰

Mediation seeks to help two (or more) parties resolve their differences and come to a mutual agreement. The parties involved have the autonomy to establish the terms of any agreements they reach, rather than being subjected to the decisions of an external party. The disputes may involve various parties, including states, organizations, communities, individuals, or other representatives with a vested interest in the outcome. Mediators employ effective techniques and skills to facilitate and enhance dialogue. Facilitating discussions between parties to assist them in reaching a mutually beneficial resolution regarding the matter in question. Typically, it is expected that all parties involved perceive the mediator as unbiased. Mediation can be utilized in a wide range of disputes, ranging from commercial and diplomatic matters to workplace, community, and family issues. A possible scenario involves a neutral mediator hired to facilitate discussions between a labour union and a company. In this situation, the union decides to go on strike, leading to an escalation of the conflict. To resolve the dispute, the company brings in an external party to help find a resolution that satisfies both sides.

Negotiation, as a dialogue, is a powerful tool for resolving disputes, reaching agreements, and finding mutually beneficial outcomes. It allows individuals or groups to come together and negotiate for their advantage while considering the interests of others. It is widely regarded as the main approach to resolving disputes outside of court. Negotiation is a common occurrence in various settings, including business, non-profit organizations, government branches, legal proceedings, international relations, and personal situations such as marriage, divorce, parenting, and everyday life. Individuals who engage in this line of work with expertise are referred to as negotiators. Experienced negotiators often have specific areas of expertise, such as handling union negotiations, facilitating leverage buyouts, mediating peace agreements, resolving hostage situations, or serving in roles like diplomats, legislators, or brokers.

³⁰ P C Markanda et al., *Markanda N and Markanda R, Law Relating to Arbitration and Conciliation* (vol 1, 11th edn, LexisNexis Universal 2022)

PLEA BARGAINING

Plea bargaining is a type of negotiation done between the accused and the victim before trial, wherein the accused accepts his crime and pleads guilty, and in return, there will be some concession on the side of the prosecution. Notice is being given to the victim to allow the parties to the crime to come to a mutual decision regarding compensation to the victim and other damages. This concept works towards the principle of a victim-oriented approach in the criminal justice system. The role of the defense counsel in plea bargains is similar to that of a mediator, aiming to find common ground between the defendant and the prosecution. Within this context, the plea bargain can be viewed as a component of the broader concept of alternative dispute resolution (ADR). The strategies utilized by defense counsel in plea bargains bear a striking resemblance to the methods employed by certain mediators. With the emergence of Restorative Justice Theory, there has been a shift away from focusing on punishment and towards repairing relationships. This approach allows individuals to take responsibility for their actions by acknowledging their guilt. Pre-trial negotiations between the defense and the prosecution allow for the possibility of an accused pleading guilty for an offense, in exchange for concessions by the prosecution.³¹ This concept does not apply to cases wherein the punishment is more than 7 years or is against the women or is a socio-economic offence.³²

LOK ADALAT

Article 39A of the Indian Constitution imposes a constitutional duty on the state to provide free legal aid and with the help of the judiciary, a committee was formed to implement legal aid schemes, called Committee for Implementing Legal Aid Schemes (CILAS). The Lok Adalat system was legalized by the National Legal Service Authority Act, of 1987. A people's court, known as Lok Adalats, is periodically organized by various legal authorities such as the State Authority, District Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee, or Taluk Legal Services Committee. These courts have the power to exercise jurisdiction as they deem appropriate, but it cannot be done in cases of non-compoundable offense. The court has no fees and it does not follow rigid procedures the way a normal court

³¹ S. Latha and R. Thilagaraj, 'Restorative Justice in India' (2013) 8 Asian Journal of Criminology 309-319

³² Code of Criminal Procedure 1973, s 265A

follows. The court is presided over by retired judges, a member of the legal field, etc. In this setup, the victim or accused can directly interact with the judges which is not possible in the original setup.

If one party goes to the court and the judge determines that there is a possibility of settling for providing the opposing party with an opportunity to present their case, the matter can be referred to a Lok Adalat. The primary emphasis in Lok Adalats is on reaching a mutually agreeable settlement. If a resolution cannot be achieved, the issue is returned to the court. Nevertheless, in the event of reaching a compromise, an award is issued and carries legal force for all parties involved. It is mandated by a civil court as a legal order. A crucial component is that the award is conclusive and immune to appeal, even under Article 226, as it is a mutual decision. All activities conducted during a Lok Adalat are considered to be legal procedures, and every Lok Adalat is considered to be a Civil Court. The primary need for the Lok Adalat is that both parties involved in the dispute must mutually consent to a settlement. The judgment reached is legally binding on the parties, and its implementation can be enforced through the legal system. The Lok Adalat is highly efficient in resolving financial disputes, such as those related to property division, compensation, and marital issues. Lok Adalat is widely recognized as a beneficial institution for members of the public involved in legal issues, as it offers a prompt and cost-free resolution process.

The Lok Adalat's jurisdiction is regarded as a triumph of democracy and is a relatively new and cost-efficient approach to delivering justice at the local level, facilitated by local professionals near the disputes and their settlements. From a local and traditional perspective, it can be described as an act of justice where blessings are bestowed upon your location. The essence of a Lok Adalat is the experience of a fair and equitable procedure that involves reaching a compromise, achieving a harmonious equilibrium, and upholding the principles of 'restorative practice'. Delhi, Gujarat, Jaipur, Jodhpur, Udaipur, and certain sections of Uttar Pradesh are experiencing favourable outcomes in cases that do not stem from interactions with the government. During a single Lok Adalat, around 8,000 cases were successfully handled using this method. Individuals have reported feeling relieved and peaceful after concluding, even if

the outcome is not in their favour. They have no complaints because they see the process to be fair, impartial, and devoid of any vengeful motives.

ROLE OF THE JUDICIARY IN ENSURING VICTIM'S PARTICIPATION

To ensure quick dispensation of cases and application of amendments to the Code of Criminal Procedure, 1973, a committee was constituted under the supervision of Justice M. Jagannadha Rao, former judge of the Supreme Court and Chairman of the Law Commission. After accepting the report of the committee, the Supreme Court gave a landmark decision in the case of *Salem Advocate Bar Association, Tamil Nadu v Union of India*³³, wherein the court made a mandatory duty to refer to arbitration, mediation, and conciliation provisions wherever possible.

In the case of *Bhagwan Kaur v State of Punjab*,³⁴ the court had observed that Compromise is an essential requirement for achieving harmony and maintaining orderly behaviour in contemporary society. The essence of justice lies in utilizing the authority of the court to promote a settlement that fosters societal harmony and minimizes conflict. This represents the pinnacle of justice.

The court in the case of *Anupam Sharma v NCT of Delhi and Anr*³⁵, had discussed restorative justice and held that Restorative justice is often used interchangeably with mediation. The focus and purpose of restorative justice is to restore the well-being of the victim. Encouraging the participation of the victim in the settlement process is highly valued in the realm of restorative justice. This process involves voluntary negotiation and communication, either directly or indirectly, between the person who committed the offense and the person who was affected by it.

Several High Court judges in India have come to recognize the significance of Restorative Justice, a method that is non-stigmatizing, economically feasible, socially viable, and equitable. Previously, the focus of the criminal justice system revolved only around the concepts of crime and punishment. The concept of restorative justice is beneficial since it enables the courts to

³³ *Salem Advocate Bar Association, Tamil Nadu v Union of India* AIR 2005 SC 3353

³⁴ *Bhagwan Kaur v State of Punjab* AIR 1963 P&H 522

³⁵ *Anupam Sharma v NCT of Delhi and Anr* 146 (2008) DLT 497

effectively address the root causes and repercussions of crime, including any unintended outcomes for the parties involved.

CONSIDERATIONS WHILE IMPLEMENTING RESTORATIVE JUSTICE

While implementing the principles of restorative justice in the criminal justice system, there are so many factors that must be considered. The main focus of restorative justice is to involve the parties in crime in justice justice-delivering system and for this they must be informed about the process, what is the role that they are going to play, and what possible outcomes can be reached through this process. Without understanding the process or concept, it can further lead to the victimization of the victim.

Restorative justice involves the involvement of a neutral third party who plays a crucial role in facilitating the process. It is of utmost importance that this individual maintains an impartial and fair stance throughout the entire process. Ensuring fairness and impartiality throughout the process is crucial to maintaining its integrity and preventing additional conflicts.

It is crucial to take cultural sensitivity into account when implementing restorative justice within the criminal justice system. It is crucial to consider cultural differences when implementing restorative justice practices, as they can significantly impact how conflicts are perceived and resolved. It is important to have an understanding of cultural norms and beliefs, show respect for different perspectives, and make sure that everyone involved can easily participate in the process.

Moreover, cultural disparities in communication methods and expectations can impact the use of restorative justice within the criminal judicial system. For instance, certain cultures may prioritize direct communication and confrontation, while others may prioritize indirect communication and peace. These disparities can influence the implementation and perception of restorative justice approaches by the parties involved in the conflict.

CONCLUSION

Restorative justice seeks to complement the current criminal justice system by integrating its practices, allowing for a more comprehensive approach to achieving true justice. Its goal is to achieve true justice by engaging the community, and the families of the victim and offender, and finding a satisfactory resolution. Restorative justice emphasizes uncovering the truth rather than simply establishing the facts. There is no specific method for execution; instead, different approaches have been developed at different times to implement it.

Ensuring safety and instilling a sense of security in the victims and their families is a fundamental goal of any civilized system of criminal justice. It is crucial to ensure that the victim is allowed to actively participate in the criminal proceedings and receive the necessary support, including financial and emotional assistance. This approach will inadvertently help decrease the crime rate by enhancing conviction rates and ensuring that the criminal justice system serves as a strong deterrent to potential criminals. Investing in the enhancement of the criminal justice system, particularly in ensuring justice for victims, should not be seen as a wasteful expense. Creating a strategic plan to provide fair compensation to those affected is crucial at this time and cannot be delayed.