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Victims' Rights in the Era of Restorative Justice and its Impact on the Legal System and Social Cohesion

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ABSTRACT

Restorative justice has become an important component of contemporary debates concerning the treatment of victims, offender accountability and the future direction of criminal justice. In contrast to approaches that concentrate primarily on punishment, restorative justice places greater emphasis on the consequences of offending, the participation of affected persons, reparation and the restoration of damaged relationships. This article examines the position of victims within restorative justice and considers the consequences of restorative approaches for legal institutions and social cohesion. The study uses a qualitative, doctrinal and literature-based design. It draws on academic scholarship, empirical evaluations, policy materials and relevant legal sources rather than original interviews or other primary fieldwork. The literature indicates that restorative processes may enhance victims' participation, recognition and sense of procedural inclusion when participation is voluntary, informed and supported by appropriate safeguards. At the same time, the approach raises concerns regarding unequal power relationships, emotional harm, unequal access and the suitability of restorative processes in particular cases, especially those involving serious violence. The review further indicates that restorative practices may support community responsibility and reintegration, although their relationship with formal criminal justice requires clear institutional safeguards. The article concludes that restorative justice should be developed through a victim-centred framework based on autonomy, safety, informed consent, procedural fairness and access to support.

Keywords: *victims' rights, restorative justice, criminal justice, social cohesion, victim participation*

I. INTRODUCTION

Criminal justice has traditionally been organised around the identification, prosecution and punishment of persons accused of offences. Although victims are central to the consequences

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of crime, their role within conventional proceedings has often been limited. In many cases, the formal process is directed principally towards determining criminal responsibility, while the personal, emotional and relational consequences of the offence receive less attention. Restorative justice developed partly in response to this limitation and offers a framework in which harm, accountability, participation and repair are given greater importance.^{1,2}

The victim occupies a central position in this framework. Depending on the model and circumstances, restorative processes may allow victims to explain the impact of the offence, seek answers, communicate their needs and participate in discussions concerning reparation.³ This can provide a form of participation that is not always available within conventional criminal proceedings.^{4,5}

Restorative justice also adopts a wider understanding of the consequences of crime. Harm may extend to families, social networks and communities, and the repair of that harm may therefore require more than the imposition of a formal penalty. Community involvement, offender accountability and reintegration are consequently important components of many restorative models.^{6,7}

The approach is not free from controversy. Questions arise concerning voluntariness, victim safety, the possibility of coercion, power disparities and the suitability of restorative processes in cases involving severe violence or continuing relationships of dependency. A process intended to empower victims may become harmful if participation is pressured or if the interests of the offender dominate the process.^{8,9}

This article therefore examines the relationship between victims' rights and restorative justice and analyses the implications of restorative practices for legal systems and social cohesion. The article is based on a synthesis of published literature and documentary materials. It does not

¹ HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* (2002).

² TONY F. MARSHALL, *RESTORATIVE JUSTICE: AN OVERVIEW* (HOME OFFICE, RESEARCH DEVELOPMENT AND STATISTICS DIRECTORATE 1999).

³ GORDON BAZEMORE & MARK S. UMBREIT, *A COMPARISON OF FOUR RESTORATIVE CONFERENCING MODELS* (OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *Juvenile Justice Bulletin*, Feb. 2001) (NCJ 184738).

⁴ Mark S. Umbreit, Robert B. Coates & Betty Vos, *Victim-Offender Mediation: Three Decades of Practice and Research*, 22 *CONFLICT RESOLUTION QUARTERLY* 279 (2004), <https://doi.org/10.1002/crq.102>.

⁵ JOANNA SHAPLAND ET AL., *RESTORATIVE JUSTICE: THE VIEWS OF VICTIMS AND OFFENDERS: THE THIRD REPORT FROM THE EVALUATION OF THREE SCHEMES* (MINISTRY OF JUSTICE, Research Series 3/07, 2007).

⁶ John Braithwaite, *In Search of Restorative Jurisprudence*, in *RESTORATIVE JUSTICE AND THE LAW* 150 (Lode Walgrave ed., 2002).

⁷ Joanna Shapland et al., *Situating Restorative Justice Within Criminal Justice*, 10 *THEORETICAL CRIMINOLOGY* 505 (2006), <https://doi.org/10.1177/13624806060068876>.

⁸ Kathleen Daly, *Restorative Justice: The Real Story*, 4 *PUNISHMENT & SOCIETY* 55 (2002), <https://doi.org/10.1177/14624740222228464>.

⁹ Shapland et al., *supra* note 7.

report original interviews, focus groups or participant quotations, and the findings are accordingly presented as themes emerging from the reviewed literature.

II. STATEMENT OF THE PROBLEM

The conventional criminal justice model has frequently placed the prosecution and punishment of offenders at the centre of the legal process. Although victims may participate as witnesses and may have access to certain legal remedies,^{10,11} their needs for information, recognition, participation, reparation and emotional support have not always received equivalent attention.¹² Restorative justice attempts to address this concern, but its use creates a further set of legal and ethical questions.

The principal problem is how restorative justice can provide meaningful recognition and participation to victims while preserving safety, voluntariness, equality and procedural fairness. Further questions concern the appropriateness of restorative processes in serious cases, the influence of power differences between victims and offenders, unequal access to restorative programmes and the relationship between restorative outcomes and the functions of formal criminal justice.

The existing scholarship does not present a uniform picture. Many victims report positive experiences, while others may find restorative participation inappropriate or distressing. The central challenge is therefore to develop a model that respects individual victim choice and provides effective safeguards rather than assuming that one restorative process is suitable for every offence or every victim.

This article addresses that problem by examining the contribution of restorative justice to victims' rights, participation and well-being, while also considering its potential effects on legal institutions and community relationships.

¹⁰ In India the victim is now statutorily defined. Section 2(wa) of the *Code of Criminal Procedure*, 1973, inserted by the *Code of Criminal Procedure (Amendment) Act*, 2008 (Act 5 of 2009) with effect from 31 December 2009, defines a victim as 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 includes his or her guardian or legal heir. The corresponding provision is now s. 2(1)(y) of the *Bharatiya Nagarik Suraksha Sanhita*, 2023 (Act 46 of 2023), in force from 1 July 2024.

¹¹ The victim's independent right of appeal was introduced by the proviso to s. 372 of the *Code of Criminal Procedure*, 1973, also inserted by Act 5 of 2009, and is now contained in the proviso to s. 413 of the *Bharatiya Nagarik Suraksha Sanhita*, 2023. It permits the victim to appeal against an order acquitting the accused, convicting for a lesser offence or imposing inadequate compensation, to the court to which an appeal ordinarily lies against an order of conviction of that court.

¹² See LAW COMMISSION OF INDIA, *Report No. 154 on the Code of Criminal Procedure, 1973* (1996), which devoted a chapter to victimology and recommended a victim-oriented reorientation of the Code together with State responsibility to compensate victims; and COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM, MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA, *Report*, vol. I (March 2003) (the Malimath Committee), which recommended that the victim be permitted to participate at all stages of the trial and that victim compensation be treated as an integral part of criminal proceedings.

III. OBJECTIVES OF THE STUDY

- To examine the place of victims' rights within restorative justice.
- To analyse the literature concerning victim participation, recognition and emotional responses to restorative processes.
- To examine the difficulties associated with restorative justice in serious criminal cases.
- To assess the importance of voluntariness, power relationships and procedural safeguards.
- To explore the relationship between restorative practices, community reintegration and social cohesion.

IV. REVIEW OF LITERATURE

Restorative justice is generally associated with a shift away from an exclusive emphasis on punishment and towards the consequences of offending. Its central concern is the harm caused to persons and relationships and the responsibilities that follow from that harm. Zehr¹³ and Marshall¹⁴ are among the principal scholars whose work helped establish the conceptual foundations of modern restorative justice.

Within this framework, victims' rights include more than the right to receive information or compensation.¹⁵ Participation, respectful treatment, safety and the opportunity to communicate the consequences of the offence are also important. Restorative processes may therefore provide victims with a more active role than they traditionally occupy in formal criminal proceedings.

Research concerning restorative programmes has identified victim satisfaction as an important issue. Shapland and her colleagues examined the views of victims and offenders in the evaluation of restorative schemes and highlighted the importance of preparation, the quality of participation and the manner in which restorative processes are conducted.¹⁶ The evidence suggests that victims may value the opportunity to express the effects of the offence and to receive acknowledgement or information from the offender.

Some studies and evaluations also identify possible emotional benefits. A victim may value an apology, an explanation or recognition of the harm caused. Such outcomes may contribute to

¹³ ZEHR, *supra* note 1.

¹⁴ MARSHALL, *supra* note 2.

¹⁵ In India, compensation is provided for by s. 357A of the *Code of Criminal Procedure*, 1973, inserted by Act 5 of 2009, which requires every State Government, in coordination with the Central Government, to prepare a scheme for compensating victims and their dependants. The corresponding provision is now s. 396 of the *Bharatiya Nagarik Suraksha Sanhita*, 2023.

¹⁶ SHAPLAND ET AL., *supra* note 5.

satisfaction with the justice process, although they cannot be assumed to produce healing in every case.¹⁷ Individual circumstances and expectations remain important.

The use of restorative justice in serious offences continues to generate debate. The literature does not support an automatic conclusion that serious offences can never be addressed through restorative processes. Instead, the circumstances of the individual case, the wishes of the victim, the level of risk and the offender's attitude are significant factors. Research involving victims of serious violence indicates that some victims may seek dialogue, while others may not wish to participate.¹⁸

Power imbalance represents a further challenge. Restorative dialogue takes place within social relationships that may contain differences in status, resources, emotional strength or previous control. Braithwaite emphasises that restorative justice should not be transformed into a mechanism through which victims are expected to forgive or reconcile.¹⁹ Participation must remain voluntary and victims must be free to decline or withdraw.

Restorative justice also has a community dimension. Through participation by families, community members and support networks, restorative processes may encourage shared responsibility and assist reintegration. This potential connection with social cohesion is nevertheless dependent on public confidence, institutional resources and equal access to restorative services.

The relationship between restorative justice and formal criminal justice is equally important. Shapland and her colleagues examined the place of restorative justice within criminal justice and demonstrated the importance of understanding restorative practice as something that may operate alongside formal legal institutions.²⁰ Effective integration requires clear rules concerning referral, participation, confidentiality, safeguards and the legal consequences of restorative outcomes.

Overall, the literature presents restorative justice as a potentially valuable but conditional approach.²¹ Its contribution to victims' rights and social cohesion depends on the quality of

¹⁷ Heather Strang et al., *Victim Evaluations of Face-to-Face Restorative Justice Conferences: A Quasi-Experimental Analysis*, 62 JOURNAL OF SOCIAL ISSUES 281 (2006), <https://doi.org/10.1111/j.1540-4560.2006.00451.x>.

¹⁸ Mark S. Umbreit, Betty Vos, Robert B. Coates & Marilyn P. Armour, *Victims of Severe Violence in Mediated Dialogue with Offender: The Impact of the First Multi-Site Study in the U.S.*, 13 INTERNATIONAL REVIEW OF VICTIMOLOGY 27 (2006), <https://doi.org/10.1177/026975800601300102>.

¹⁹ Braithwaite, *supra* note 6.

²⁰ Shapland et al., *supra* note 7.

²¹ Mark S. Umbreit, Betty Vos, Robert B. Coates & Elizabeth Lightfoot, *Restorative Justice in the Twenty-First Century: A Social Movement Full of Opportunities and Pitfalls*, 89 MARQUETTE LAW REVIEW 251 (2005).

implementation, the protection of autonomy and safety, and the availability of institutional accountability.

V. RESEARCH METHODOLOGY

This article employed a qualitative, doctrinal and literature-based research design. No original interviews, focus groups, surveys or other primary fieldwork were undertaken for the article. Consequently, the article does not claim an original participant sample, fieldwork period, jurisdiction-specific field investigation or primary empirical dataset.

The analysis was based on secondary materials, including peer-reviewed research, empirical evaluations, scholarly books, policy reports and relevant legal and institutional materials. The sources were examined in relation to five themes: victim participation and empowerment; emotional and psychological responses; risks and power imbalance; community reintegration and social cohesion; and the relationship between restorative justice and formal criminal justice.

A qualitative thematic approach was used to identify recurring arguments, findings and disagreements across the literature. The analysis compared the ways in which the sources addressed victim participation, safety, accountability, reparation, community involvement and institutional integration.

The results presented in this article therefore constitute a synthesis and interpretation of published scholarship and documentary evidence. They do not represent findings obtained through original interviews or other primary research with human participants.

Because the study did not involve the recruitment of participants or the collection of identifiable personal information, no participant-level ethics approval or primary fieldwork clearance was undertaken for this literature-based article.

VI. RESULTS AND DISCUSSION

The literature synthesis produced five principal themes: victim participation and empowerment; emotional and psychological responses; serious offences and power imbalance; social cohesion and reintegration; and the relationship between restorative practices and formal legal institutions.

A. Victim Participation and Empowerment

Participation is one of the principal features distinguishing restorative justice from conventional criminal proceedings. Depending on the model used, victims may communicate the

consequences of the offence, ask questions, identify their needs and contribute to discussions concerning repair or reparation.²²

The importance of such participation is particularly evident where victims perceive that conventional proceedings have focused almost entirely on the offender. Restorative processes may give victims an opportunity to explain the personal impact of the offence and to receive recognition of their experience.

However, participation is meaningful only when it is genuinely voluntary. A victim-centred process must recognise both the right to participate and the right not to participate. Victims should not be expected to forgive, reconcile or communicate directly with an offender merely because a restorative programme is available.

Information and preparation are therefore essential. Victims need to understand the nature of the process, possible outcomes and available safeguards before making a decision. Support services can further assist victims in making an informed choice.

B. Emotional and Psychological Responses

The reviewed literature indicates that some victims value restorative processes because they can provide opportunities for acknowledgement, explanation, apology and direct communication. These experiences may contribute to satisfaction with the justice process and, in some circumstances, emotional relief.²³

Victims may also seek answers to questions that remain unresolved after conventional criminal proceedings. The opportunity to communicate the effects of the offence or to hear the offender accept responsibility may be important to some victims.

The evidence nevertheless does not justify the conclusion that restorative justice invariably produces emotional healing. The consequences of participation depend on the nature of the offence, the victim's expectations, the conduct of the offender and the manner in which the process is facilitated.

Accordingly, restorative justice should not be designed around the assumption that all victims desire dialogue. Individual assessment and respect for victim autonomy are essential.

C. Serious Crime, Power Imbalance and Risk

Serious offences require particular caution because the harm may be severe and the relationship between the victim and offender may involve fear, intimidation or continuing dependency.

²² BAZEMORE & UMBREIT, *supra* note 3.

²³ Strang et al., *supra* note 17.

Nevertheless, the literature shows that some victims of serious violence may seek restorative dialogue for reasons including the desire for answers, acknowledgement or the opportunity to communicate the impact of the offence.²⁴

The potential value of such dialogue must be balanced against the possibility of further distress. Case assessment should consider the victim's wishes, safety, emotional condition, the offender's conduct and the possibility of continuing coercion or intimidation.

Power differences may affect the fairness of restorative encounters. Risks may be increased where offenders are manipulative or where victims lack adequate support. Safeguards may include informed consent, professional facilitation, careful preparation, support persons and the right to end participation.

A restorative process should not treat reconciliation as a compulsory outcome. Accountability and repair can be pursued without requiring the victim to forgive or restore a personal relationship with the offender.

D. Social Cohesion and Community Reintegration

Restorative justice extends the discussion of crime beyond the individual victim and offender. Families, community members and support networks may also be affected by crime and may have a role in processes of repair and reintegration.

Community participation can encourage collective responsibility and may help rebuild relationships damaged by offending. Restorative processes may also support reintegration where offenders acknowledge responsibility and comply with appropriate obligations.

The contribution of restorative justice to social cohesion is nevertheless dependent on context. Communities require confidence in the fairness of the process and sufficient institutional resources. If access is unequal or outcomes appear inconsistent, public confidence may decline.

Reintegration must also be balanced with victim safety. The return of an offender to the community cannot be treated as an automatic benefit of restorative justice and must be subject to appropriate legal and protective conditions.

E. Restorative Justice and the Formal Legal System

The literature suggests that restorative justice is most effectively understood as capable of operating alongside formal criminal justice rather than necessarily replacing it.²⁵ Its integration raises important questions concerning referral, procedural protections, confidentiality, legal

²⁴ Umbreit et al., *supra* note 18.

²⁵ Shapland et al., *supra* note 7.

representation and the relationship between restorative agreements and formal legal outcomes.²⁶

A coherent framework should establish the circumstances in which restorative processes may be offered, the safeguards available to participants and the responsibilities of facilitators. Participants should also be able to withdraw without being subjected to pressure.

Equal access is an additional concern. Restorative services should not be available only to individuals with greater financial resources, social influence or geographical access. The legitimacy of restorative justice depends in part on its accessibility and consistency.

Restorative justice should therefore complement, rather than weaken, fundamental legal protections. Victims, offenders and communities require a framework that combines participation with fairness, accountability and institutional oversight.

VII. CONCLUSION

This article examined the relationship between victims' rights and restorative justice through a synthesis of published research and documentary materials. The analysis indicates that restorative justice can enlarge the role of victims by providing opportunities for participation, communication, recognition and involvement in discussions concerning repair.

The evidence also demonstrates that restorative justice is not universally appropriate and should not be presented as a complete substitute for formal criminal justice. Emotional distress, coercion and unequal power relationships remain significant concerns. The suitability of restorative intervention must therefore be assessed with reference to the individual circumstances of the victim and the case.

Restorative practices may contribute to social cohesion through accountability, community involvement and reintegration. Their success depends, however, on effective safeguards, professional facilitation, equal access and public confidence in the fairness of the process.

The principal conclusion of this literature-based study is that restorative justice should be organised around victim autonomy, safety, informed participation and procedural fairness. When these principles are respected, restorative justice can complement formal legal processes and contribute to a more participatory and socially responsive conception of justice.

²⁶ Indian law already contains a statutory mechanism for a negotiated disposition in which the victim participates and compensation may be directed, namely plea bargaining under ch. XXIA (ss. 265A–265L) of the *Code of Criminal Procedure*, 1973, inserted by the *Criminal Law (Amendment) Act*, 2005 (Act 2 of 2006) with effect from 5 July 2006, and now ch. XXIII (ss. 289–300) of the *Bharatiya Nagarik Suraksha Sanhita*, 2023.

The value of restorative justice should not be measured solely by whether reconciliation occurs. Its contribution may also lie in enabling victims to be heard, requiring offenders to confront the consequences of their conduct, encouraging community responsibility and creating appropriate opportunities for repair.

Future research may examine the long-term effects of restorative programmes across different legal jurisdictions and offence categories. Such research should clearly distinguish original empirical research from literature-based analysis and should transparently report the sample, jurisdiction, fieldwork period, methodology and ethics approval whenever human participants are involved.
