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From Death to Dialogue: Integrating a Restorative Approach to Indian Rape Laws

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ABSTRACT

In the wake of the recent incident of rape that happened at the RG Kar Medical College and Hospital, it is important to once again analyse the efficacy of the current rape legislations in India. It is undoubtedly true that steps have been taken time and again by the legislature to increase the punishment of rape and to widen the ambit of what constitutes rape. However, it is not clear as to whether such amendments in the current laws have led to any significant difference as the country continues to grapple with the issue. The present paper would therefore analyse the efficacy of the current legal framework that addresses the menace of rape in the country, analysing key metrics such as the crime-rate, the conviction-rate and the pendency- percentage. This shall be done to shed light on the efficacy of the current legislations and to point out their limitations and shortcomings. Secondly, the paper will evaluate the potential of restorative justice approach to overcome the limitations of the current system. For this, insights from the countries like New Zealand and Australia shall be drawn as they have already tested the implementation of restorative justice approach under their penal framework dealing with sexual offences. Thirdly, the study aims at suggesting integration framework for restorative and convention system. The paper shall test whether the current punitive system and the restorative justice approach may be bridged under the Indian legal framework to develop a more comprehensive and effective legal system that addresses both victim-participation and offender-accountability.

I. INTRODUCTION

Over the course of history, no other crime has caused as much fear and public outrage as rape. Rape is terrible because, in addition to being the most heinous sexual offense, it leaves many victims with lifelong scars and, whether on purpose or accidentally, keeps them out of society.[2] Because of this, rape is paradoxically a crime with two opposing approaches to punishment: preventative punishment, which aims to stop offenders from recidivism, and prophylactic punishment, which protects potential victims by deterring would-be rapists from committing the crime. Sexual desire, for example, is not criminalized by any other form of punishment, and

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[2] Abhishek Gupta, Decoding Deterrence: A Critique of the Criminal Law (Amendment) Act, 2018, 60 ILILR, 137, 136-155 (2018).

the costs incurred by victims and offenders are significantly more asymmetrical in nearly all other types of deviant behaviour.

The laws pertaining to sexual offenses are neither all-inclusive nor comprehensive. This is the "mobocratic" character of law reforms implemented in India, which shows that political power would ram through stringent legislation quickly in order to profit from sympathy or avert public animosity. Many of these laws lack a scientific and logical analysis of the facts by the politicians. Before they can present the necessary proof or think through the appropriate ramifications of certain laws, the political elite is pushed to the brink. The illegitimate child of buried discussion is hurried legislation. Those pie in the sky, so-called, 'stringent' measures might satisfy society's 'collective need' that something has been done or is being done but do they actually serve the purpose?

II. Overview of the current state of rape laws and the criminal justice system's response in India

When the IPC was drafted in 1860, rape was first mentioned in our legal system. "Sexual offence" was defined in sections 375-376E of the Indian Penal Code. Rape was defined as- "having sex without consent, with consent but while under false pretences, or with consent but while fearing death." Following independence, rape by the army, police, security forces, and well-known individuals gained prominence during the 1970s feminism movement.

Following the Mathura rape case in 1972[3], the Indian Penal Code underwent its first modifications, and the idea of aggravated rapes was introduced as a very "general" definition of rape. Mathura, a 16-year-old Adivasi girl, was allegedly raped by two or three inebriated male police officers in March 1972. Mathura filed a complaint against the police officers after being encouraged to do so by her family and neighbours; however, the lower court decided in favour of the officers, stating that "she was of loose morals." On the other hand, the Bombay High Court's Nagpur Bench overturned the lower court's decision; however, the Supreme Court overturned the high court's decision and cleared the officers after an appeal. Since Mathura was accustomed to having sex, the court noted that she "did not raise an alarm and had no visible marks or injury on her body," suggesting that she did not object to the advances and may have encouraged the police to engage in sexual activity with her. There was more pressure on the court to reexamine. This caused a stir throughout the nation, and the resulting Law Reform Movement resulted in changes to the law in 1983.

[3] Tukaram v. State of Maharashtra, AIR 1979 SC 185 (1978) (India).

Significant modifications were made to India's legal system regarding sexual offenses, particularly rape, by the Criminal Law Amendment Act of 1983[4]. In order to highlight non-consensual sexual contact, the definition of rape was clarified. The amendment attempted to address the issue of consent in a more balanced manner, even though the larger definition of what constitutes rape remained largely unchanged. The amendment strengthened penalties for rapes perpetrated by public servants, police officers, hospital or jail managers, and other individuals in positions of authority. Ten years of rigorous imprisonment, with the possibility of an extension to life in prison, was the minimum penalty for custodial rape.

Major reforms have taken place in India's legal system with regard to sexual offences in recent times, especially after the horrific gang rape case of 2012[5] in Delhi which had caused a countrywide agitation for stringent legislation and harsher penalties. Prior to the reforms, Indian rape laws were being widely criticized as antiquated and ineffective to deter crime because of their leniency and narrow scope.

The 'Nirbhaya Act', the historic amendment to the Indian Criminal Law in 2013[6], attempted to bring a sea change in the rape laws of India. The law set up fast-track courts specifically for dealing with rape cases; raised sentences for crimes against women; and expanded the list of sexual offences which constitute rape. Among the most controversial and heated points of contention was the fact that the 2013 amendment adopted the death penalty as maximum punishment for rape- in cases where the victim was dead or in a vegetative state.[7]

While those amendments aimed at improving deterrence and immediacy of justice, the criminal justice system continues to face formidable challenges in addressing sexual offences in an efficient manner. Conviction rates in rape cases remain appallingly low- generally much below 30%- due to reasons such as deficient investigations, victim-blaming mentality, inadequate support for survivors, and general mistrust in the system.

The recent rape and murder of a junior doctor at RG Kar Medical College and Hospital in West Bengal came to light despite all of the 1983 and 2013 amendments that strengthened India's rape laws and increased the severity of the punishment for rape. Following this incident, the West Bengal state government introduced the Aparajita Women and Child Bill, 2024[8], which aims to increase punishment, expedite investigations, and expedite the administration of justice. The bill specifically targets cases of sexual assault under the Protection of Children from Sexual

[4] The Indian Penal Code, 1860, as amended by Criminal Law (Amendment) Act, 1983.
[5] Mukesh v. State, NCT of Delhi, AIR 2017 SC 216 (India).
[6] The Indian Penal Code, 1860, as amended by Criminal Law (Amendment) Act, 2013.
[7] The Indian Penal Code, 1860, §.376A.
[8] The Aparajita Woman and Child (West Bengal Criminal Laws and Amendment) Bill, 2024.

Offences (POCSO) Act[9] and the Bharatiya Nyaya Sanhita[10]. Those found guilty of rape who caused the victim's death or put her in a vegetative state could be executed under the proposed Bill, which was approved by the legislative assembly unanimously and is now awaiting government approval to become law. Additionally, the law mandates that rape case investigations be completed within 21 days of the initial report, increasing the chances of false convictions due to hurried trials.[11]

The retributive underpinning in the workings of the current criminal justice system has been termed inadequate in providing rehabilitation processes for both victims and offenders and full reintegration of the victims to the community. Along with constantly being re-traumatized and ostracized, victims are almost never accorded any access to medical, mental health, and comprehensive support services that are crucial for their healing. Even after the changes in law, the occurrence of sexual offences in India bears telling statistics. According to the National Crime Records Bureau of India, one rape is reported once every 15 minutes, underscoring the urgency of a concrete and all-inclusive response to this menace.[12]

As many reform advocates have begun to adopt an alternative paradigm-like restorative justice-that focuses more on dialogue, responsibility, and community healing, this shift from mere punishment toward a healing philosophy that tackles the roots of sexual violence, reconciliation, and fairly compensates victims, offers the greatest promise of real justice and closure for victims and could also mitigate the chance of recidivism.

III. Rationale for exploring the integration of restorative justice practices

Informal agreements to settle different kinds of conflicts have always existed in one form or another in any civilization. In India, panchayats in village settlements gave parties to a dispute the opportunity to make decisions based on their local customs and traditions while also presenting the case informally. This is where informal settlement procedures made their debut. However, under Indian penal law, methods like these are largely redundant, with a few exceptions (such as the rehabilitation of adolescents).[13] This is because the criminal justice

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[9] The Protection of Children from Sexual Offences Act, 2012.
[10] The Bhartiya Nyaya Sanhita, 2023.
[11] *Supra* note 7 at cl.5.
[12] India Today, NCRB data 2018: 1 rape reported every 15 minutes in India, 2020, https://www.indiatoday.in/india/story/ncrb-2018-woman-reports-rape-every-15-minutes-in-india-1635924-2020-01-11 (last visited on 13.11.2024).
[13] Ajay George, Applicability of Restorative Justice in India: An Overview, 2 Indian J. Integrated Rsch. L., 1, 1-6 (2022).

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system in India does not prioritize victims.

Growing dissatisfaction with India's seemingly "inadequate punishments" against sexual crimes has led to increased interest in alternative frameworks such as restorative justice. Chief among the arguments for inserting restorative justice into the framework of rape legislation are that even with strict punishments, such as the death penalty, rape cases, on average, see the conviction rate lingering around 30%.[14] This is to say that a punitive approach has failed in having an effect on those who involve themselves in such kind of offences, conveniently transferring the blame on the victims. This has further intensified the discussion on the emergence of a more holistic approach to restorative justice that must address the aforementioned perspectives pertaining to victim needs for closure and accountability.

It is speculated that by giving the victim a more prominent role in the legal system, restorative justice may help to address—or at least, prevent—the disempowerment that occurred during the assault.[15] When restorative justice is used as an additional tool, it has been proposed that the process will either address the needs of victims that are not met by the adversarial system or in some way lessen the harm caused by secondary victimization. These arguments emphasize that it would allow the victim to tell their story uninterrupted and in their own words—a feature that the adversarial system denies but that victims frequently want. They argue that restorative justice has the potential to provide justice and healing to a larger group of victims than the adversarial system currently serves.[16] The victims' experience could be publicly validated by a restorative justice, who could also reassure them and acknowledge that they are not responsible for the assault. In general, restorative justice is thought to concentrate more on subjective conceptualizations of crime than legal ones, which promotes a more comprehensive understanding of the offense rather than one limited to legal considerations. This fact might make it easier to denounce the violence in ways that are significant and beneficial to all involved.

The introduction of a restorative justice model complementing the traditional criminal justice system is also necessary to provide to the perpetrators an opportunity of rehabilitation and reintegration into the mainstream society rather than casting upon him the stigma of being the offender of a crime as heinous as rape. Such an opportunity is desirable not only in the interest of the offender but also in the interest of the society. The admission of guilt and confrontation

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[14] Ministry of Home Affairs, Government of India, The National Crime Records Bureau Report, 2022.

[15] Shirley Jurich, Restorative Justice Responses to Sexual Violence: Perspectives and Experiences of participating persons responsible and persons harmed, 19 Int. J. Evid. Based Rs. Policy Pract., 1431, 1424-1449 (2024).

[16] Francesca Marsh & Nadia Wager, Restorative Justice in cases of Sexual Violence: Exploring the views of public and survivors, 62 Probat. J., 339, 336-356 (2015).

with the victim in a closed process would also lead to address the root causes of sexual violence and would reduce the chances of recidivism.

Moreover, the argument for inclusion of a restorative justice system is not limited to India. Countries like New Zealand and Australia have already developed a model based on this approach. The approach has recently been a global trend to address the issue of sexual violence. Since the restorative justice approach is more victim-centric, embracing this shift from a totally punishment-based system to a “dialogue-based” system may foster a sense of justice in the victims even in cases in which the formal structure of awarding punishment fails to meet such needs.

Finally, the exploration of integrating restorative justice within India’s rape laws aligns with the evolving global trends in addressing sexual offenses. Internationally, there is a growing recognition of the limitations of the punitive approach and an increased emphasis on the integration of restorative approaches that prioritize survivor wellbeing, offender accountability, and community-based healing. By embracing this shift, India could position itself at the forefront of innovative and holistic solutions to the pervasive issue of sexual violence.[17]

Supplementing the traditional criminal justice system in India with the restorative justice practices may help in addressing the shortcomings of the current system and provide a more robust framework and an effective response to sexual violence. The integration of a victim-centric model would ultimately lead to a sense of satisfaction to the primary stakeholder of the crime as to justice being served and eventually lead to a more offender-accountable system, thereby facilitating a more just and equitable society.

IV. Rape Laws in India: Punishments and Efficacy

A. Examination of existing rape laws and policies in India

The existing rape laws in India has not been so since its inception. Indian Penal Code, 1860 was the first codified law in India that dealt with the offence of rape.[18] This legislation since 1860 has been subjected to repeated scrutiny over time. The changes brought about has been so much so that the initially stipulated definition of the offence has now been completely overhauled. The IPC was finally replaced by the Bhartiya Nyay Sanhita in 2023.[19] However, even the current law contains the same provision on sexual offence as was contained in IPC post-amendments.

The evolution of the rape laws can be marked by various milestones in the history of criminal

[17] George, *Supra* note 12, at 4.
[18] The Indian Penal Code, 1860, §.375.
[19] The Bhartiya Nyaya Sanhita,2023, §.63.

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law. The major changes in the laws were brought about with the landmark reforms of 2013, which were made in order to address the major lacunae that had arisen after the 2012 Delhi Gang Rape.[20] Prior to the landmark reforms introduced in 2013, the definition of rape under IPC was quite narrow which made punishable only the act of penile-vaginal penetration and excluded various other forms of sexual assault. The restrictive interpretation of rape under the statute was criticised by several legal scholars, mainly the women right activists and also the general public, who argued that it failed to adequately address the reality of the land and conveniently ignored the diversity in acts of sexual violence in the country.

The turning point came in the massive incident of the Delhi gang rape case in the year 2012, which sparked nationwide outrage, putting a pressure on the government to bring in new laws to address the issue.[21] Established on December 23, a three-member committee headed by former Chief Justice of India, Justice J.S. Verma, was tasked with suggesting reforms to the penal law that would accelerate the legal process for the people accused of committing sexual assault against women and also to make amendments in the punishments.[22] However, the committee opposed the idea of prescribing death sentence as a punishment for the offence of rape. It was recommended that the punishment for rape should be severe, including rigorous imprisonment for life and that for gang rape should be minimum 20 years of imprisonment extending to life imprisonment.

The resulting Criminal Law (Amendment) Act, 2013[23], also known as the "Nirbhaya Act," brought about a significant expansion in the legal definition of rape. After the amendment, the offence of rape now encompasses the penetration of the vagina, mouth, urethra, or anus, using any body part or object.[24] The Act recognized new forms of sexual assault, such as acid attacks, stalking, and voyeurism, as punishable offenses. The Act also mandated the establishment of dedicated fast-track courts to handle rape cases, with the aim of ensuring speedier trials and convictions.

While the Nirbhaya Act represented a significant step forward in strengthening India's legal response to sexual offenses, the country's criminal justice system continues to face significant challenges in effectively addressing these crimes. Conviction rates for rape cases remain alarmingly low, often under 30%,[25] due to factors such as poor investigation, victim-blaming

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[20] *Supra* note 4.
[21] *Ibid.*
[22] Ministry of Home Affairs, Government of India, Report of the Committee on Amendments to Criminal Law, 2013.
[23] The Indian Penal Code, 1860, as amended by Criminal Law (Amendment) Act, 2013.
[24] *Ibid.*
[25] Ministry of Home Affairs, Government of India, National Crime Records Bureau Report, 2022.

attitudes, and inadequate support for survivors.

An 8-year-old girl named Asifa Bano was abducted from her village in January 2018 and subjected to rape for 3 days and was subsequently killed in the Kathua district of Jammu and Kashmir.[26] Sanjhi Ram, the temple's priest, was the primary accused; his son and nephew, both of whom were minors, were also charged. This case sparked national aggression, particularly because it involved a child and the priest of the temple was involved in the incident inside the temple. After nationwide outrage and protest regarding the case, the President of India gave assent to the Criminal law Amendment Act, 2018 on 21st April, 2018.[27]

The 2018 Amendment Act brought down the three-levels of punishment under the IPC to two in the offence of rape. The Act provided that subsection (1) of Section 376 shall be amended to state that the punishment for rape must be at least 10 years extending to life imprisonment.[28] The addition of Section 376(3) stated that anyone found guilty of raping a woman under the age of 16 years would face a mandatory minimum sentence of twenty years extending to life sentence, which would mean that the offender would be imprisoned for the remainder of their natural life, in addition to a fine.[29]

According to Section 376 AB of the Indian Penal Code,[30] anyone found guilty of raping a woman under the age of twelve would be convicted for a minimum imprisonment for 20 years which may extend to life, meaning thereby, the remaining of the natural life of the offender or even with death. Section 376 DA was also added[31], which stated that, if a woman under the age of sixteen is gang raped, each of those individuals will be considered to have committed the crime of rape and will be punished with a life sentence, which would mean the remainder of their natural life, as well as a fine.

Therefore, what was opposed by the Justice Verma Committee after the outrage of 2013 was finally inserted in the IPC through the amendment of 2018. It is not that the punishment prescribed after the amendment was per se controversial due to it being opposed by the committee but the later incidents of rape in India and the NCRB data clearly provide that the enhancing of punishment to make them stringent and strict helped little in creating a deterrent effect as far as the offence of rape was concerned.

Despite these legislative and policy interventions, India continues to grapple with alarmingly

[26] The State of Jammu & Kashmir v. Shubham Sangra, (2022) SCC Online 1592.
[27] The Indian Penal Code, 1860, as amended by Criminal Law (Amendment) Act, 2018.
[28] The Indian Penal Code,1860, §.376(1).
[29] *Id.* at §.376(3).
[30] *Id.* at §.376AB.
[31] *Id.*at §.376DA.

high rates of sexual violence, with a rape reported every 15 minutes, according to the country's National Crime Records Bureau.[32] This persistent challenge underscores the need for a more holistic and effective approach to addressing sexual offenses, one that not only strengthens the legal framework but also tackles the deep-seated societal attitudes and structural inequalities that enable such crimes to thrive.

B. Evaluation of crime-rate, conviction-rate and pendency-percentage in cases of rape in India

In India, according to the National Crime Records Bureau (2022)[33], there were 32,032 rape cases, 3,941 attempted rape cases, and 47,324 POCSO act cases in 2021. Rape accounts for 7.4% of all reported crimes against women, 15% of all crimes against Scheduled Tribes (STs) and 38.1% of all reported crimes against children. It accounts for 12.7% of all crimes against Scheduled Tribes in urban areas. Even more horrifying is the fact that, in 96.5% of all rape cases, the perpetrator is someone the victim knows rather than a complete stranger, according to the same report. Additionally, the underreporting of this crime and the exclusion of rape against men and marital rape result in the unfortunate realization that these figures only represent a small portion of the horrific reality that many people in India still have to deal with.

The above statistics shows not only the fact that the offence of rape in India is a deep-rooted issue but also throws light on the fact that the introduction of harsher punishment under rape laws did not prove to be fruitful in creating deterrence. The graph of the crime-rate in the offence of rape has not seen a decline even after it was made punishable with mandatory minimum imprisonment of 10 or 20 years, and worse, with death.

The data from the NCRB on pendency and conviction-rate in cases of rape[34] speaks volume about why the law seems to have failed in curbing what it was brought in for. The NCRB data of 2022 points out a pendency of 90% in the cases of rape, 95.2% in cases of murder with rape or gangrape and 95.3% in cases of attempt to commit rape. The rate of conviction under these offences is 27.4, 69.4 and 20.1% respectively. The high rate of pendency and low rate of conviction, especially in the case of rape, not only show the inefficiency of the judicial system in adjudication of justice but also shows that the current law itself is inefficient in curbing the menace.

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[32] *Supra* note11.
[33] *Supra* note 24.
[34] *Ibid.*

V. Efficiency of the current laws

According to the proviso of Section 154 of the CrPC[35], which was modified by the Criminal Amendment Act of 2013, it is required that a woman police officer or any other female officer record the statements of victims of rape offences or offences under Section 509 of the Indian Penal Code. However, Human Rights Watch's Survey[36] indicates that the aforementioned amended rule is not being followed. The dearth of women in India's police force is the major cause of non-compliance. Only 11.7% of police officers are female, despite multiple warnings from the Ministry of Home Affairs.[37] One of the biggest practical obstacles to the successful implementation of laws meant to protect women is a skewed police force with sufficient gender representation. Serious concerns have been raised about the judiciary's ability to provide fair and prompt justice in India due to the growing number of judicial officer vacancies, insufficient funding for infrastructure development, and unrealistic disposal targets for judicial officers also.

Another issue with the mandatory wording of amendments is that there are no legal repercussions for breaking them; that is, if police or judicial officers violate any of these mandatory provisions, there would be no legal or penal repercussions for their actions. Without any punitive measures against them for not adhering to these time limits, these 'time bound' provisions to complete timely investigation or trial could be rendered null and void. As a result, it is the responsibility of the legislature to include consequential provisions in addition to the 'time bound' provisions to address instances of noncompliance or infraction.

Moreover, the victim as well as the accused rehabilitation into the mainstream society has been a long-faced challenge under the offence of rape.[38] It is rather unfortunate that the victims of rape are ousted from the society, if not deliberately or inhumanly, then in the process of the society over-sympathising and re-reminding the victims of the incident. Although the victim and the accused of the offence of rape cannot be placed at the same pedestal, it is a fact noteworthy that the stigma of being the accused of a crime as heinous as rape gets attached with the accused, narrowing down the scope of reformation and making it difficult for that person to survive in the mainstream society.

The current legal framework of rape laws does not adequately address any of these concerns. Despite the fact that the gradual increase in the punishment of rape post 1983 till 2018 has not led to any decline in the cases of rape, the focus of the Legislature in India has not shifted to

[35] The Code of Criminal Procedure, 1973, §.154.

[36] Harleen Kaur, Conviction of Sexual offenders in India: Need to Address the Gaps, 19 EEO, 2206-2213 (2020).

[37] Bharti Jain, "Women's representation in India falls short of 33% target: Home Ministry Report" *The Times of India,* Dec 6, 2023.

[38] Kaur, *Supra* note 35, at 2210.

draft a comprehensive legislation that addresses these challenges.

VI. Key challenges and limitations of the current approach

The effectiveness of the current system is undermined due to several interlinked reasons. One of the primary reasons for the failure in establishing efficacy under the current laws is the focus of the system on punishment, in full ignorance of prevention of crime and rehabilitation of the victims and offenders. This focus on the punitive measures only creates a fundamental imbalance in the system which limits it from addressing the role of victim-participation and offender-accountability. The inefficiency of the system is further accelerated due to persisting socioeconomic disparities, limited access to legal resources, and the lack of comprehensive victim support services.[39] The deeply entrenched social-stigma and patriarchal role in the current set-up creates a vicious cycle where victims are discouraged from reporting crimes due to fear of re-victimization, social ostracization, and the prolonged, traumatic nature of the legal process, ultimately perpetuating a culture of impunity for perpetrators and failing to deliver justice to survivors of sexual violence.

Secondary Victimization

The criminal justice system has been heavily criticised for re-traumatizing and secondary traumatizing victims of sexual violence, in addition to the low conviction rates for rape and sexual assault. As a kind of secondary victimization, victims usually report that the various agents they encountered during their journey through the criminal justice system engaged in ineffective and frequently degrading behaviour. The victim may experience symptoms of poor psychological functioning and an intensified sense of self-blame as a result of secondary victimization. In addition, victims who have been subjected to secondary victimization and they're also not only more likely to suffer from negative psychological effects, but less likely to ask for additional assistance.

Under-reporting of Cases

One of the most underreported crimes in the world is violence against women, especially sexual assault.[40] The underreporting of violence against women, particularly sexual violence, is widely acknowledged in India. Rape victims in the present societies are not only victimized by the offence that is committed against them but also by social stigma and the victim-blaming attitude of the society. The lack of sensitivity from the society as well as from the authorities like police

[39] Mars, *Supra* note 15, at 350.
[40] Paribhasha Sharma & Gemma Hamilton, Police responses to rape in Metropolitan India, IJCJSD, Aug., 2024, at 13 (2024).

men and judges leads to secondary trauma and re-victimization. This shows the apathy of the system and the society towards the victim and the reason behind this is that the society attaches a stigma with the rape-victim rather than being sensitive towards them, leading to underreporting of cases.

Lack of gender-sensitivity

Lack of gender sensitivity is problem that persists not only under rape laws but as a general mindset of the police personnels, the judiciary and the society at large. The reason behind it can be linked to the patriarchal society that India has had for the longest time and continues to be, in substance. The approach of the society as well as the other officials expected to stand as a support to the victim are seen to be creating more hurdles and troubles for the victim. Victim-blaming attitudes and insensitive questioning make the matter only worse. It is therefore necessary that the police personnels and the judges are sensitized about the gravity of importance of the task they are assigned with.

Lack of focus on victim rehabilitation and support

One of the biggest problems faced by the current legal system is its primary focus on punishment. It was the most ancient society that used retribution as a theory of punishment. As the societies evolved, the concept of rehabilitation and reformation came into being, which was also precisely the idea behind introducing the release of the offender on parole as well as equipping the prisoners with some skills so that they can easily reintegrate into the mainstream society. However, the approach of the legislature in crimes as heinous as rape has not been seen to be rehabilitative or reformatory. Under the current system, there is no focus on the emotional and mental state of the victim as well as the offender, which is one of the most desired characteristics for actual and proper rehabilitation.

VII. INTEGRATING RESTORATIVE JUSTICE UNDER INDIAN RAPE LAWS

A. Conceptual overview of restorative justice principles and practices

The term "restorative justice" has no universally recognized definition. However, definitions usually fit into one of two groups. Process-based definitions that highlight the significance of interactions between the parties involved in the crime and its aftermath make up the most restrictive category. Justice-based definitions that highlight the principles and/or results of restorative justice make up the broadest category. The following definition blends the two (and falls somewhere in the middle of the two categories in terms of expansiveness): Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal

behaviour. It is best accomplished through inclusive and cooperative processes.[41]

There is a global trend for making justice more meaningful and victim-centric, focusing on the needs of the victim, acknowledging the harm caused by the offender, and reintegrating both of them within the community through restorative practices.[42] Certain fundamental ideas serve as the basis for restorative practices, which place an emphasis on particular core values. It acknowledges that crime damages social ties and interpersonal relationships and establishes obligations to mend those harms. Not only does the perpetrator have an obligation to "make things right," but the community also has a responsibility to support the victim. The restorative model is distinct in that it emphasizes the reasons behind each offender's actions. This accomplishes two goals. It facilitates the personalization of conferencing procedures to increase their efficacy. It also results in the realization that the criminals may actually be injured victims in need of social integration and rehabilitation.

The emphasis is moved from the crime as an offense against the State to an act that injures a person. The needs of the community and victims are given precedence over the frequently misinterpreted and paternalistic ideas of justice. As a result, it expands the role of victims in the legal system beyond that of merely reporting crimes to include members of the public who are deserving of real justice. It alters the meaning of justice, whether it be justice for the victims to have their needs met or to have their offenders punished.

B. Review of international case studies and best practices on restorative justice for sexual offenses

New Zealand

The crime of "rape or unlawful sexual connection" is defined by the New Zealand Crimes Act of 1961[43] as one in which the "accused did not have the victim's consent, and did not reasonably believe that the person was consenting." The Crown must establish three things beyond a reasonable doubt in order to secure a conviction[44]:

i. that there was a sexual encounter;

ii. that the complainant objected to the sexual encounter in question; and

iii. that the accused did not reasonably believe that the complainant gave consent to the

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[41] Ness Van & W Daniel, Contemplating a restorative justice system, Paper presented at Building a Global Alliance for Restorative Practices and Family Empowerment, (Richmond, Canada) (2004).

[42] Howard Zeher, Ali Gohar, *Little Book of Restorative Justice* (Good Books, Intercourse, Pennsylvania, USA, 2003).

[43] The Crimes Act, 1961, §.128B.

[44] Amy Kasparian, Justice Beyond Bars: Exploring the restorative justice alternative for victims of rape and sexual assault, 37 Suff.Transn'l L. Rev., 392, 377-410 (2014).

sexual- encounter. Although there isn't a precise definition of consent, New Zealand took the lead in 1985 by enacting legislation that clarified this crucial concept. The guidelines outlined the situations in which consent is not considered to exist.

Since low reporting and conviction rates indicated that there are significant issues with the current legal system, the Ministry of Justice in New Zealand recently examined alternatives to the adversarial system for crimes involving sexual violence.[45] The Ministry has been examining the "current criminal justice system's inability to respond to the diverse needs of victims and offenders" in particular. The Ministry of Justice has also expressed concern about cultural groups and women with disabilities, who need a more customized response. Given the evidence that imposing longer sentences on offenders may actually dissuade some victims from reporting the crimes, it may also be necessary to modify the length of sentences.

There is currently legislation in New Zealand that allows the use of restorative justice at various stages of the criminal justice process. Project "RESTORE" is one program that offers restorative justice to victims of sexual assault, emphasizing circumstances in which the victim and the perpetrator are already acquainted.[46] Within Project RESTORE, some cases begin in the criminal justice system following the admission of guilty pleas as court referrals, while others originate entirely outside the court system and only function in response to referrals from community organizations such as hospitals, schools, or churches.

A panel comprising a victim specialist, an offender specialist with knowledge of restorative justice, two community experts, a clinical psychologist who offers professional supervision but has no interest in the parties, and a restorative justice facilitator with extensive knowledge of the dynamics of sexual violence conducts the conference. Researchers from Project RESTORE-NZ discovered that although the program had a high qualitative success rate, it would be difficult to measure the success in a way that would enable the program to receive future funding.[47] The majority of victims tended to believe that being able to address the root causes of the offense and witnessing the offender confess in front of their community were prerequisites for success in the program.

United States: RESTORE

The first initiative to apply feminist and restorative justice principles to a victim's needs in adult sexual violence cases was RESTORE (Responsibility and Equity for Sexual Transgressions

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[45] *Ibid.*

[46] Venezia Kingi & Jan Jordan, Responding to Sexual Violence: Pathways to Recovery, Crime and Justice Research Centre (Ministry of Women's Affairs, New Zealand) (2009).

[47] *Ibid.*

Offering a Restorative Experience), a program in Arizona that began in 2004.[48] Because RESTORE was started through court referrals and an offender could avoid prosecution and a felony classification by completing the program, it operated under the criminal adversarial system. Referral and intake, preparation, conference, and accountability and reintegration were the four phases of the program's operation. Only first-time offenders, acquaintance rapes, and non-penetrative offenses involving little force were eligible. Although the RESTORE program's funding period ended in 2007, it regrettably closed, but it had a significant impact on the creation of subsequent initiatives.[49]

Due to its requirement that offenders complete a year of rigorous treatment, continuous monitoring, and monthly reviews, RESTORE has gained recognition for its work intertwining therapeutic jurisprudence with restorative justice. Regretfully, prosecutors only referred the few cases they thought would not succeed in court, which ultimately caused the program to encounter an external issue. Eighty percent of the enrolled cases finished the program by the end, and those offenders' admissions of responsibility differed significantly from their original declarations.[50] After initiation, none of the victims left the program, and the majority continued to communicate with program staff even after the offender had finished the exit meeting.

South Australia

The Sexual Assault Archival Study (SAAS), conducted in 2005, examined the handling of youth sexual offense cases in court versus restorative justice conferences through an archival analysis of nearly four hundred cases of youth sexual assaults in South Australia.[51] Comparing processes, results, and recidivism rates, this study was among the first empirical investigations on restorative justice and sexual assault. A young person who had confessed to a sexual offence was offered the opportunity to barter the uncertainty of a possible conviction for the assurance of what might occur at a restorative justice conference, according to the conference program. The study came to the conclusion that, from the standpoint of the victim, restorative justice conferences are preferable to criminal prosecutions because they allow victims to confront denials or justifications for offenses and explain the consequences of the offense to an admitted offender. On the other hand, almost half of the cases that were heard in court were dismissed, meaning that the victims did not receive any justice.[52] Notably, compared to youths who went

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[48] Mary P. Koss, The RESTORE Program of Restorative Justice for Sex Crimes: Vision, Process and Outcomes 29 J. Interpers. Violence, 1645, 1623-1660 (2013).
[49] Kaparian, *Supra* note 43, at 392.
[50] Kaur, *Supra* note 35, at 2212.
[51] Kathleen Daly, Restorative Justice and Sexual Assault: An archival study of Court and Conference cases 46 Br. J. Criminol., 336, 334-356 (2006).
[52] *Ibid.*

through the court system, those who had finished the conference program had a much lower rate of recidivism.

C. Potential benefits and concerns around incorporating restorative justice within India's rape laws

There are three issues with usurpation of the criminal justice system by the State in rape cases.[53] First of all, the State bears a part of the blame in some of these situations, and defining it in this way diminishes the State's obligation to accept any accountability. Second, the way the process goes, the victim is subjected to secondary victimization by the police and during the trial, when she is forced to describe the atrocities of the event and is subjected to endless interrogation and cross-examination. Thirdly, it deprives her of the ability to choose the path of justice she desires. It is possible that no retributive or reformative model of enforcing justice meets the needs of the victim or lessens the trauma she experiences because rape is a unique crime due to the trauma that results from it. But defining the crime against the State and letting it determine how justice is administered frequently limits attention to the tendencies and motivations of the offender rather than the victim's need for justice.[54] Every time a woman feels unsafe while walking through a place, it shows how the state apparatus has failed to keep the roads safe. Therefore, the State effectively places all of the blame on the offender in order to conceal its own shortcomings. In addition to accepting moral responsibility, the State also owes the victim an explanation and accepts a part of the blame.

The incorporation of restorative justice principles within India's rape laws presents both promising opportunities and significant challenges. On the benefits side, restorative justice could address several current systemic limitations by providing victims with greater agency in the justice process, reducing courtroom trauma, and potentially increasing reporting rates by offering alternative resolution pathways. Emotional closure can result from restorative justice.[55] Following a rape, the victim experiences emotional and psychological trauma in addition to physical harm. They can more effectively reclaim justice in a controlled environment with supporters and people they can trust. Neither the victim's lipstick colour nor the length of her skirt is held responsible for the offender's actions and behaviour in a restorative setting. She is viewed as a victim who has suffered harm and is entitled to justice. She is completely in charge of how she pursues that justice. She is under no obligation to forgive and move on, but she is

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[53] Varunavi Bangia, Restoration in rape: Restorative Justice in Sexual Offence, 9 NLR, 290, 286-317 (2022).
[54] Mary Koss & Mary Archiles, Restorative Justice Responses to Sexual Assault, National Online Resource Centre on Violence Against Women, Feb., 2008.
[55] *Ibid.*

free to do so.[56] Therefore, the victim's forgiveness does not indicate that the restorative process was successful. On the other hand, admitting fault and offering an apology are critical parts of the process. When there is a genuine admission of guilt, the criminals accept direct accountability and responsibility for their acts rather than placing the blame on moral depravity and society. More than anything else, what restorative justice practice does is to reduce recidivism.

Forgiveness is therefore never compelled in restorative practices. While this is sound in theory, it could be problematic when it comes to actual rape cases. The community's high regard for certain values is reflected in the justice system as a result of its participation in this process. Even though every attempt is made to avoid placing blame on victims, it's possible that a woman who declines an apology is being subtly pressured to accept it by her community and society. As a result, power disparities persist throughout the procedure, which is a persuasive defence to disqualify the use of restorative practices in cases involving sexual offences.

The admission of guilt is another component of any restorative justice procedure. Despite the fact that applying restorative practices in rape cases can occasionally be advantageous, there are a number of structural issues with doing so. It may be beneficial in that it can prevent the trauma of secondary victimization that befalls the criminal justice system in rape cases, but it can occasionally be challenging to guarantee that the offenders participate in the process effectively. Male entitlement and their use of stereotypical sexual roles as justifications are the causes of this. The offender must accept responsibility for the harm he has caused and feel some degree of guilt as a necessary prerequisite.[57] This admission of guilt becomes more difficult in rape cases when perpetrators begin to externalize the blame. They frequently accuse the culture of commodifying sex and creating stereotypes of sexual roles. Any attempt at reconciliation will inevitably fail if the offender lacks a sense of guilt. As a result, the procedure will never proceed. This is more likely to occur when the victim knows the perpetrator. Rape is a unique crime because of this as well. In most cases, the victim and the perpetrator are acquainted, and in these circumstances, society as a whole fails to acknowledge the act as morally repugnant, in addition to the perpetrator, who externalizes the blame and defends his actions.

The offender is frequently given a sense of liberation and pride in his or her vulnerabilities during any restorative process. They are urged to be honest and truthful about their vulnerabilities, weaknesses, and fears. In rape cases, this becomes very helpful because the

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[56] Bangia, *Supra* note 52, at 291.
[57] Daly, *Supra* note 51.

woman can seek solace and the man can see past the smokescreen of his masculinity. His past victimization may have contributed to his urge to violate her. The typical criminal justice process never reveals these things. The restorative justice process gives the offender a way to vent in addition to giving the victim closure. Men are frequently under pressure to live up to rigid ideals of masculinity.[58] Only procedures like these can address the harms that result from this.

However, the use of restorative justice in the context of sexual assault is also criticized for many reasons.[59] While some arguments essentially oppose its use as a substitute for the traditional adversarial justice system, others are equally applicable to situations in which restorative justice could be employed as an additional intervention within the traditional justice system. First, it is argued that by offering what may be viewed as a lenient or "soft option" for punishing offenders, removing cases of sexual violence from the court system could serve to lessen the perceived seriousness of the crime.[60] Secondly, there are worries that this could negatively affect the major advances the feminist movement has already made. Because of the power disparity between the victim and the perpetrator, there are concerns that this informal process could serve to victimize the victims again or endanger the safety of the victims and potential victims in the future. Advocates of this fear often stress that when there is an ongoing relationship between the victim and the perpetrator, the negative consequences of this could be exacerbated.

Therefore, even though there are some limitations, using restorative justice techniques in rape cases can be very helpful in resolving some issues that the criminal justice system is blissfully ignorant of. Therefore, it is proposed that these practices could be more successfully employed as supplemental tools in adjudication of cases relating to sexual offences rather than replacing the traditional adjudication system in order to maintain the perception that rape is a serious crime and also to complement it with a healing procedure.

VIII. Integration Framework: Bridging Retributive and Restorative Justice

There are four myths[61] underlying the claims made by proponents of restorative justice: (1) it is the antithesis of retributive justice; (2) it is based on indigenous justice practices and was the

[58] Rhiana Wenger & Antonia Abbey, Sexual Assault Perpetrators' Justification for their Action: Relationships to rape supportive attitudes, incident characteristics, and future preparations, 21 VAWOFG, 80, 76-90 (2015).
[59] Mars, *Supra* note 15, at 352.
[60] Madeline Donaghy, Restorative Justice for Cases of Sexual Violence: A Literature Review, Brisbane Rape and Incest Survivor Support Centre, University of Queensland, Brisbane, June, 2020.
[61] Kathleen Daly, Restorative Justice: The Real Story, School of Criminology and Criminal Justice, Griffith University, Brisbane (2001).

predominant pre-modern form of justice; (3) it is a “care” (or feminine) response to crime as opposed to a “justice” (or masculine) response; and (4) it is anticipated that restorative justice will result in significant changes in individuals. Based on what has been found in the studies conducted in Australia and New Zealand (as discussed above), it can be said that what has been perceived as its inherent characteristics by the restorative justice advocates is not all true. It is evident that the seemingly incompatible ideas of reparation and retribution ought to be seen as interdependent. In an ethical or psychological sense, retributive censure should ideally take place prior to reparative gestures (or a victim’s interest or movement to negotiate these). Both censure and reparation must take place before a victim or community can “reintegrate” the offender into society. Offenders may perceive both as “punishment” (even if this is not the intention of decision-makers). There is no set order in which these intricate and contingent interactions must be expressed; they can be expressed in a variety of ways. Furthermore, one cannot presume that later events, like the victim forgiving the offender, will actually happen.

Although restorative justice offers a different perspective on wrongdoing, it is insufficient to uphold law and order and address the intricate problems associated with crime. Therefore, unless and until society has advanced to the point where they can participate in crucial criminal justice issues, we will need a combination of both for the time being.[62] This is particularly true in developing and impoverished regions where victim blaming is still prevalent. Since people’s perspectives cannot be rapidly altered, societal and educational reforms will be required. It is more appropriate to act in the victim’s and society’s best interests until that time comes.

A. Legislative and policy reforms required to enable restorative justice

In the case of *State of Gujarat* v. *Hon’ble High Court of Gujarat*[63], Justice Wadhwa stated that, “criminal justice would look hollow if justice is not done to the victim of the crime. A victim of crime cannot be a ‘forgotten man’ in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injuries. An honour which is lost or life which is snuffed out cannot be recompensed but then compensation will at least provide some solace.” This demonstrates that the justice system’s function need not be restricted to punishing the offender. An approach like this is insensitive to the victim who has to deal with the repercussions of the crime. It ought to be capable of offering the victim reparations and compensation for the harm they endured.

[62] Dhiraj Kumar Mishra, A Critical Review of Rape Laws and its Application in India 15 Indian J. Law Justice, 119, 115- 128(2024).
[63] AIR 1998 SC 3164.

In the case of *Anupam Sharma* v. *NCT of Delhi and Another*[64], the Delhi High Court ruled that mediation and restorative justice could be used interchangeably. Restoring the victim's interests is the goal of restorative justice. It promotes the victim's involvement in the settlement procedure by engaging the victim and the offender in a voluntary negotiation during this process.

The researcher, therefore, suggests three stages at which the restorative justice approach may be aligned with the conventional justice delivery system to bring efficacy into the laws and the enforcement machinery. These three stages shall include an opportunity for each, the offender, the victim and finally the courts to incorporate the restorative justice approach to serve justice. The three stages shall be:

i. Plea-Bargaining Law in India

The criminal procedure code's system of plea bargaining is an effort to offer alternative dispute resolution procedures included in Chapter XXIII of BNSS (Chapter XXIA of the Criminal Procedure Code)[65] for a mutually agreeable criminal case resolution. The application of plea bargaining is the sole prerogative of the offender under the current scheme of laws. The choice for inclusion of restorative justice approach under the conventional network of laws, at the stage of plea bargaining, therefore lies with the offender. However, the application of the provision of the plea bargaining under the BNSS is limited to the offences that do not come within the purview of socio-economic offences or offence against a child or women[66] – which is the point of concern for this paper. The provision is also limited in its scope as it applies only to the offences for which a punishment of less than seven years has been prescribed.[67] The reason behind such limitation can be understood in the light that the provision is employed primarily as a practical tool rather than as a way to actually address harm and encourage healing. As can be inferred from the provision and its scope, it can be made out that despite being sufficiently progressive to align with the principles of restorative justice, restorative plea bargaining is not without its difficulties and detractors. It can be contended that it might not always produce results that are truly restorative, particularly because of the intent with which it is being applied under the existing criminal justice system.

Therefore, if the provision relating to plea bargaining under the current statutes is modified to be understood not as a mere practical tool to speed up the trial procedure or to quickly dispose

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[64] (2008) 146 DLT 497.

[65] The Bhartiya Nagrik Suraksha Sanhita, 2023 (Act 46 of 2023), ch. XXIII.

[66] *Id.* at §.289(1)(b).

[67] *Id.* at §.289(1)(a).

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of the case but so as to incorporate the true features of restorative justice system by promoting dialogues between the offender and the victim, the provision can be used to reflect the restorative justice approach under the criminal justice system. However, it is also necessary that such promotion of dialogue between the victim and the perpetrator is free from any undue influence by the officers who form a part of the meeting held for the purpose of plea bargaining. Moreover, the meaning of the term plea 'bargaining' should not be construed to understand bargain in its literal sense. The process should promote open-dialogue between the parties, aiming to bring out their real vulnerabilities and admission of guilt by the accused irrespective of whether, after such admission, the parties come to an agreement regarding the amount of compensation. This would ensure that the accused does not engage in such dialogues only for the purpose of bargaining upon the amount of compensation or to get relief from being sentenced.

Plea bargaining has a great deal of potential to apply the restorative justice framework when used with the principles of restorative justice in mind. Offenders accept responsibility for their own violations by entering into a plea agreement and acknowledging their guilt. The element of accountability can also be established once this acknowledgement flows. The state, as a party to a criminal trial, may decide to punish, but the offender's personal responsibility for the victim's injuries must be established via accountability. Ultimately, how plea bargaining is used will greatly influence its ability to foster healing and reconciliation. It can provide a route to recovery and restoring damaged relationships when combined with restorative justice procedures, victim participation, and due process considerations.

ii. Pre-sentence hearing

As the plea-bargaining law in India gives a pathway to the accused to get his case bargained, the stage of pre-sentence hearing under the Bhartiya Nagrik Suraksha Sanhita (s. 258(2) and 271(2))[68] can be modified to incorporate the victim participation. This makes up the second stage. It is an opportunity for the victim to gain a true sense of justice for herself by opting for a restorative justice approach at the pre-sentence hearing. The restorative justice approach can be mingled with the convention sentencing system by allowing the victim, at the stage of pre-sentence hearing, to decide if she wants to adopt the restorative justice measures. This would serve both the purposes of a criminal law- the admission of guilt by the offender, as only after the accused has been found guilty, the sentencing stage comes into play; and; the opportunity for the victim to decide the kind of "justice" she wants.

[68] *Supra* note 64 at §.258(2),271(2).

The current legal framework on the laws relating to rape has been drafted in full ignorance of the 'feminist practical reasoning'.[69] It can be contended that the situation of the laws and its implementation had not been so had the women's reasoning been considered while drafting laws relating to women. The studies in the pilot-programs of the countries that have tested the application of restorative justice approach under rape laws show that four out of six victims were willing to participate in such programmes and were satisfied by it as it makes them the centre of the issue ang gives them an opportunity to prioritize their needs and offender accountability.

Therefore, it is not only in a few but most of the cases that the victims of sexual offences want their experience to be taken into account while deciding the punishment for the offender. And this is what can be achieved by incorporating the restorative justice model at the pre-sentence hearing. This would not only provide the victims an opportunity of active-participation in the case but also inculcate in them a true sense of justice.

iii. Victim Compensation: Section 395 BNSS

Since it is the prerogative of the court to award compensation under this provision, it is an opportunity for the court to include the restorative justice approach while granting compensation and to make justice meaningful for the victim. The current framework under Section 395 is largely retributive, concentrating on punishment and minimal financial restitution. It fails to address the psychological, emotional, and social rehabilitation of victims. The compensation is often inadequate and does not meaningfully involve the offender in understanding the impact of their actions or taking responsibility for rehabilitation.

To effectively incorporate restorative justice principles, Section 395 should be amended to include several key components. First, the section should mandate a comprehensive victim impact assessment that goes beyond monetary evaluation. This assessment should include psychological trauma, social rehabilitation needs, and long-term recovery requirements. Second, the amendment should introduce a dialogue process between the victim and the offender, supervised by trained restorative justice facilitators. Instead of treating compensation as a mere financial transaction, the provision should view it as part of a broader rehabilitation and restoration process. The compensation should be linked to the offender's active participation in rehabilitation programs, skill development, and efforts to make amends. The court should have the discretion to structure compensation in installments, tied to the offender's

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[69] Ruchi Singh & Guru Prakash, Revisiting the Changing Notion of Rape Laws in India through Feminist Legal Methods of 'Asking the Women Question', 'Feminist Practical Reasoning' and 'Consciousness Raising', ILILR, 246, 235- 257 (2022).

progress in rehabilitation and commitment to non-repetition of the offence.

IX. Conclusion

The data from the NCRB (as discussed above) sufficiently show the inefficacy of the current legal framework in India in addressing rape cases. Not only has the conviction rate been lingering around only 30% but also the pendency rate has been so high. The problem lies not just with the laws but also with the enforcement mechanism. The attitude of the police personnels and the investigating agency towards the victims of sexual offences has been apatetic. The victims under the current system are not only wronged by the offender but also face re-victimization at the hands of these police personnels and investigating agencies. Not only this but the continuous increase in the punishments of sexual offences made by the amendments of 1983, 2013 and 2018 have proved to be little helpful in creating a deterrent effect as the crime-rate in cases of sexual offences has not seen a decline even after introduction of death penalty in cases where the victim dies or is caused to be in persistent vegetative state.

It is not true that the inclusion of restorative justice approach makes the justice-administration process free from all the vices. This approach also comes with its own limitations. Enough resources will be needed to guarantee that a system with the necessary security features can be constructed to enable mediation and community conferences. Power dynamics in these situations have the potential to skew results in favour of offenders. One of the prominent arguments that can be made while pointing out at the limitations of the restorative justice approach is that the offenders of the same offence may receive differential treatment by the virtue of the fact that the victims in their cases decided to act differently. If a victim decides not to participate in the restorative justice program, the offender in that case might face a more severe punishment than the offender whose punishment is reduced due to the dialogue-session.

But it is also equally true that the restorative justice approach does not dismiss the idea of punishment. Moreover, even in a court of law, not all the offenders are given the same punishment for the same offence. The range of punishment varies between the minimum and the maximum limit. The restorative justice approach only aims to promote restoration and rehabilitation. Therefore, even if two offenders receive different treatment, the victims in both the cases receive the kind of justice they want and none of the offenders receive sentences exceeding the maximum limit prescribed by the penal statute.

Therefore, notwithstanding these shortcomings, the victim is given the freedom to narrate her own story through the restorative justice process, unrestricted by the formal adversarial trial process. Since friends or family members commit most cases of sexual assault, victims might

favour restorative measures over punitive ones. The spirit of restorative justice needs to be advanced in order to create a complementary and successful remedy through independent legislation, which would allow the victim to seek their share of justice.

The present research has been conducted under certain limitations which include paucity of time to conduct an empirical research and collect the data that show the ground reality. Moreover, the research on the subject needs implementation of a pilot-program in India to test the efficacy of the restorative justice approach under rape laws in India because so far only the data from the pilot programs conducted in countries like New Zealand and Australia are being used, the results of which might not per se be applicable to the Indian Scenario.

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