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The Effectiveness of Restorative Justice on Juvenile Justice System: An Analysis

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ABSTRACT

The traditional juvenile justice system, focused on punishment and deterrence, often falls short in addressing the underlying causes of youth offending and fostering rehabilitation. Restorative justice, emphasizing repairing harm and restoring relationships, presents a potential alternative. This research paper analyzes the effectiveness of restorative justice practices within the juvenile justice system, exploring its impact on recidivism, victim satisfaction, and offender accountability.

The paper assesses the various restorative justice interventions employed with juveniles, including victim-offender conferencing, family group conferencing, and peer mediation. The analysis examines the strengths and weaknesses of these approaches, evaluating their effectiveness in reducing recidivism rates compared to traditional punitive measures.

Furthermore, the research delves into the impact of restorative justice on victims, investigating whether it enhances their satisfaction, promotes healing, and empowers them to participate in the justice process.

By critically analyzing the existing research and addressing the complexities involved, this paper aims to provide a comprehensive understanding of the effectiveness of restorative justice in the juvenile justice system. Ultimately, the goal is to contribute to the ongoing debate about how to best achieve the goals of holding young offenders accountable while promoting their rehabilitation and reintegration into society.

I. INTRODUCTION

Young people who violate the law do so because they have less opportunities to grow and develop, not because they choose to. As they come into contact with the criminal justice system, these opportunities become even more limited. Offspring belonging to high-risk groups who may encounter legal issues are frequently subjected to maltreatment and disregard, careless and substandard parenting, and financial hardships. Juvenile delinquency is a sign that society is failing to provide a safe environment for its children, not a success story.

When such children are “labeled,” society excludes them rather than helping with their rehabilitation. If juvenile offenders are not given the “second chance” they deserve and are

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instead criminalized, then all that will happen to their "chances" is more crime when they get older. While they are still young, these kids need assistance. Communities must be given more tools to deal with children and to better understand these kinds of issues.

The way a child develops throughout their growth determines the stage at which they can assume responsibility for their needs, actions, health, and safety. Consequently, it is the responsibility of society to guarantee and give children extra protection.

Restorative justice, which emphasizes mediation between the offender, victim, and community while also offering suitable sanctions or other forms of redress, ought to be accorded the same weight as the conventional criminal justice system in order to reduce the likelihood of future crimes. Even though the Juvenile Justice (Care and Protection) Act of 2015 includes the restorative justice process, it is still unclear how these ideas apply to juvenile justice cases. This system must coexist with the established criminal justice system because not all cases can be handled through the process.

(A) Statement of problem:

Despite its growing recognition as an alternative approach, the efficacy, implementation, and impact of restorative justice in the juvenile justice system remain ambiguous and demand in-depth investigation. Variability in the implementation of restorative justice programs within juvenile justice systems across different jurisdictions poses a significant concern. Identifying the factors influencing successful implementation and addressing challenges faced by practitioners is imperative. The impact of restorative justice on various offender profiles, considering factors such as age, socio-economic background, and the nature of offenses committed, remains unclear. Understanding how restorative justice aligns with diverse offender characteristics is crucial for tailoring interventions.

This research endeavours to analyse the shortcomings to implement in the juvenile justice system and also to contribute a few insights that can be brought in for the effective application of restorative justice in juvenile justice system.

(B) Research objectives:

- 1) To identify barriers and challenges in implementing restorative justice programs within the juvenile justice system.
- 2) To evaluate the effectiveness of restorative justice in promoting rehabilitation and reducing repeat offenses.

(C) Research hypothesis:

- 1) Juvenile offenders who undergo restorative justice processes will exhibit sustained positive behavioral changes over an extended period, indicating the potential for long-term effectiveness in comparison to those subjected to conventional punitive measures.
- 2) Juvenile offenders engaged in restorative justice interventions will exhibit a greater likelihood of rehabilitation, as evidenced by improvements in behavioral outcomes, academic performance, and psychosocial well-being compared to those subjected to conventional punitive measures.
- 3) Victims of juvenile offenses involved in restorative justice processes will report higher levels of satisfaction with the resolution and perceive a greater sense of justice compared to victims involved in traditional justice procedures.

(D) Research questions:

- 1) To what extent do restorative justice education and training programs for justice professionals and educators contribute to improved implementation and outcomes in the juvenile justice system compared to scenarios where such training is absent?
- 2) How do victims of juvenile offenses perceive the restorative justice process in terms of satisfaction, justice, and overall resolution compared to victims involved in traditional justice procedures?
- 3) What are the major obstacles that are hindering the progress in restorative justice in juvenile justice system?

(E) Scope and limitation:

The focus of this study is to understand the issues and challenges involved in the implementation of restorative justice among juvenile system and analyse proper solutions to overcome these challenges.

This paper explained in brief the concepts of juvenile justice systems and the restorative justice systems and the legal framework and related conventions. This research confines to the juvenile justice system in particular and it includes international restorative justice programs that can be implemented in India and does not concern with the grey areas that may or may not necessarily be connected with them.

II. JUVENILE JUSTICE SYSTEM

Juvenile justice is the system of law that is intended to protect and promote is to uphold each and every young person's human rights. It is an area of law that deals with minors or those under the age of majority who have been charged with crimes or who have been abandoned or neglected by their parents or guardians. The rehabilitation of those it charges is of greater concern than adult criminal justice.

International guidelines place a strong emphasis on both prevention and rehabilitation when it comes to minors who are accused of crimes and are referred to as juveniles in conflict with the law.

"The right of every child alleged as, accused of, or recognized as having violated the penal law to be treated in a manner consistent with the promotion of the child's sense of entitlement" is acknowledged by international standards.²

(A) Who is a juvenile?

Any individual who is younger than the age of majority is referred to as a juvenile. Put differently, a young person or child who is not old enough to be considered an adult may be referred to as a juvenile. As a result, different legal jurisdictions may have different standards for what constitutes a juvenile.

The Beijing Rules, which are the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, provide the following definition of a juvenile:³

"A juvenile is a minor who is subject to legal proceedings for a crime under the rules of their respective legal systems, may be dealt with for an offence in the manner which is different from an adult."

III. INTERNATIONAL LEGAL FRAMEWORK ON JUVENILE JUSTICE SYSTEM

Even though the idea of juvenile justice was not given much thought until the late 1800s, it is now the legal field with the greatest number of international treaties and laws. The international juvenile justice system prioritizes the crimes committed by minors and has put safeguards in place to shield their rights from being abused by the legal system. Many nations have taken

² Convention on the Rights of the Child, Art. 40

³ Article 5 of the Beijing rules lay down the aims of juvenile justice as:

"The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence."

3 UNITED NATIONS, <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>

action to protect juvenile interests within their legal frameworks in response to growing concerns about child protection and their rights.⁴

In *Roper v. Simmons*, it was said that seventeen-year-old Christopher Simmons planned to break into a woman's house and kill her. He and two of his friends plotted the crime together. But one of his friends pulled out of the plan before the murderous evening. The victim was thrown over the bridge by Simmons and his friend after they broke into her house and bound her hands. The jury in this instance found him guilty and suggested that he be executed.

However, the United States Supreme Court overturned the 1989 *Stanford v. Kentucky* ruling, which allowed the death penalty for criminals older than 16, in 2015, declaring it unconstitutional to sentence someone under the age of 18 to death.

a) United Nations Convention On Rights Of The Child(UNCRC):

A human rights treaty known as the UNCRC establishes children's rights to political, civil, economic, social, health, and cultural expression.

It is an international agreement that each member must abide by by law. It has 54 articles that outline different children's rights as well as the actions that governments should take to ensure that children can exercise these rights.⁵

The United Nations ratified the CRC in 1989. Once it had at least 20 ratifications, it became operative in 1990. It is the world's most widely ratified human rights treaty ever.

All parties to the convention are obligated by its articles to guarantee that children's fundamental needs are met and that they have the opportunity to realize their full potential.

According to the convention, a child is any person who is younger than 18 years old. Every child is recognized by the CRC as having certain fundamental rights, some of which are as follows:

- The right to development, survival, and life.
- The right to entitlement to an education that enables them to realize their maximum potential.
- Right to defense against mistreatment, assault, or disregard.
- The right to express opinion and be heard.
- The right to live with and be raised by their parents.

⁵ Convention on the Rights of the Child, <https://www2.ohchr.org/english/bodies/crc/docs/crc.c.gc.10.pdf>

The four guiding principles of UNCRC are:

- Absence of bias
- Life, survival, and development rights
- The child's best interests
- Courtesy toward the child's opinions.

b) UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules):

The United Nations General Assembly adopted the UN Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as the Beijing Rules, in 1985. These rules provide a comprehensive framework for the administration of juvenile justice and aim to safeguard the rights and well-being of young individuals in conflict with the law. Here are some of the key principles and provisions outlined in the Beijing Rules:⁶

- **Best Interests of the Child:**

The paramount consideration throughout the juvenile justice process is the best interests of the child. Decisions and interventions should focus on promoting the physical, emotional, and social well-being of the juvenile.

- **Prevention of Juvenile Delinquency:**

Efforts should be made to prevent juvenile delinquency through early identification and intervention, addressing social, economic, and family factors that may contribute to delinquent behavior.

- **Diversion from Criminal Proceedings:**

Whenever appropriate, diversion measures should be employed to handle juveniles outside of the formal justice system, emphasizing rehabilitation and reintegration rather than punishment.

The Beijing Rules serve as a guiding framework for countries to develop and implement juvenile justice systems that prioritize the welfare and rights of young individuals in conflict with the law.

c) UN Rules for the protection of Juveniles deprived of their Liberty (Havana Rules):

The United Nations General Assembly adopted the UN Rules for the Protection of Juveniles

⁶ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/beijingrules.pdf>

Deprived of their Liberty, commonly known as the Havana Rules, in 1990. These rules provide comprehensive guidelines for the treatment of juveniles who are in conflict with the law and are deprived of their liberty. The Havana Rules build upon the principles established in the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). Here's an overview of the key principles and provisions outlined in the Havana Rules: ⁷

- **Separation from Adults:**

Juveniles should be separated from adults in detention facilities to prevent negative influences and protect them from potential harm. This separation extends to all phases of the criminal justice process.

- **Healthcare and Well-being:**

Juveniles are entitled to receive healthcare services, including mental health care, and must have access to recreational activities. Facilities should provide an environment that promotes physical and mental well-being.

- **Communication with the Outside World:**

Juveniles have the right to maintain contact with their families through regular visits, correspondence, and other means of communication. Restrictions on communication should be minimal and reasonable.

- **Staff Training and Professionalism:**

Personnel working with juveniles in detention should receive appropriate training on child development, psychology, and juvenile justice. The staff should approach their responsibilities with a child-centered and rights-based perspective.

The Havana Rules provide a comprehensive framework for the protection of the rights and well-being of juveniles deprived of their liberty and emphasize the importance of rehabilitation and reintegration into society.

IV. LEGAL FRAMEWORK ON JUVENILE JUSTICE IN INDIA

(A) Evolution of India's Juvenile Justice System:

The Juvenile Justice System in India has undergone notable transformations over the years, reflecting an evolving comprehension of the unique needs of young offenders.

⁷ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf

1920: Establishment of the First Juvenile Court:

A crucial development occurred with the establishment of the inaugural juvenile court in Bombay in 1920 under the Children Act of 1920. This underscored the acknowledgment that individuals below 16 years warranted distinctive protection, leading to the inception of a dedicated judicial framework for juvenile cases.

1986: Enactment of the Juvenile Justice Act:

A watershed moment transpired in 1986 when the Juvenile Justice Act replaced the Children Act of 1920. This groundbreaking legislation recognized juveniles in conflict with the law not as conventional criminals but as individuals requiring care and protection. The introduction of the Juvenile Welfare Board and observation homes aimed to ensure the effective implementation of the Act.

2000: Alignment with International Standards:

An important amendment in 2000 aligned the Juvenile Justice Act with the principles of the United Nations Convention on the Rights of the Child. The revision elevated the age of juvenile delinquency from 16 to 18 years, emphasizing rehabilitation and seamless reintegration into society.

2015: Amendment in Response to High-Profile Case:

Following the high-profile Nirbhaya case in 2012, an amendment in 2015 introduced a nuanced provision allowing juveniles aged 16 to 18 to be tried as adults for heinous crimes. However, the core principle of rehabilitation and reintegration remained intact for all other offenses.

2021: Strengthening the Juvenile Justice System:

The 2021 amendment showcased India's commitment to fortifying the juvenile justice system. It introduced provisions for foster care and the adoption of children in dire need. Additionally, it enhanced measures for the holistic rehabilitation and social reintegration of juvenile offenders. The roles of Juvenile Justice Boards and Child Welfare Committees were elevated in the decision-making process, underlining a continued dedication to the welfare of young individuals in conflict with the law.

(B) Juvenile Justice (Care and Protection of Children) Act, 2015- An Overview: ⁸

The primary legal framework governing India's juvenile justice system is the Juvenile Justice (Care and Protection of Children) Act, 2015, which has superseded the Juvenile Justice (Care

⁸ THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015
<https://cara.wcd.gov.in/PDF/IJ%20act%202015.pdf>

and Protection of Children) Act, 2000. Covering the entirety of the Juvenile Justice System in India, this legislation delineates provisions for the well-being, security, and care of children in need of protection, as well as those entangled in legal matters. It also establishes specialized entities like juvenile police divisions, juvenile justice boards, and child welfare committees.

This law defines a juvenile as an individual below the age of 18. Additionally, it requires the establishment of observation homes, special homes, and secure facilities designed to cater to the welfare and safety of children.

A pivotal aspect of the act is the creation of a Juvenile Justice Board in each district. Entrusted with the tasks of rehabilitating, transforming, and socially integrating young offenders, this board holds the authority to determine various dispositions for them. These dispositions include options such as releasing the juvenile on probation, assigning community service, or ordering placement in a special home for a duration not exceeding three years.

(C) General Principles in the Juvenile Justice Act, 2015

Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015 encompasses both the general principles from the previous JJ Act of 2000 and introduces two new principles: the Principle of Diversion and the Principles of Natural Justice. These principles are applicable to both juvenile offenders and children in need of care and protection. This section explores the influence of the Beijing Rules in shaping these principles within India's juvenile justice administration.

- **Presumption of Innocence**

According to Section 3(i) of the JJ Act, 2015, any child under the age of eighteen is presumed innocent of any malicious or criminal intent. This aligns with international declarations, such as Article 11 of the Universal Declaration of Human Rights and Article 14(2) of the International Covenant on Civil and Political Rights, emphasizing the right to be presumed innocent until proven guilty. Despite the provision allowing the selective transfer of children accused of severe crimes to be treated as adults, the irrebuttable presumption of innocence is maintained under the JJ Act, 2015.

- **Principle of Dignity and Worth**

Section 3(ii) of the JJ Act, 2015 asserts the principle that all human beings, including juveniles, must be treated with dignity and worth. While not explicitly mentioned in the Beijing Rules, emphasis on the well-being of juveniles is evident in various instances. The purpose of training and therapy for juveniles aligns with the goal of providing care, protection, education, and

vocational skills to foster their constructive and useful integration into society.

- **Principle of Participation**

Rule 14 of the Beijing Rules speaks to the competent authority for adjudication, mirrored in the formation of the Juvenile Justice Board (JJB) under the JJ Act. Section 3(iii) of the JJ Act, 2015 emphasizes the participation principle, calling for proceedings in a child-friendly setting and prioritizing the child's best interests. The Act aims to create an atmosphere during investigation and the child's stay in an institution that allows their active engagement in the juvenile justice system.

- **Principle of Best Interest**

Section 2(9) of the JJ Act, 2015 defines the "best interest of the child" as the foundation for any decision concerning the child. Rule 14 of the Beijing Rules further emphasizes the best interest of the child, reiterated in Section 3(iv) of the JJ Act, 2015. This principle underscores that every decision or action involving a child should prioritize their well-being and contribute positively to their development. Whether in adoption, custody, or guardianship, the child's well-being is considered the foremost priority, reflecting the overarching principle of best interest in child rights law.

- **Principle of Safety in Juvenile Justice:**

The paramount concern of stakeholders in the juvenile justice system is the safety of children, as stipulated in Section 3(vi) of the Act. Numerous provisions within juvenile justice legislation are geared towards ensuring the safety of children in conflict with the law:

1. Prevention of holding juveniles in police lock-ups or jails.
2. Denial of bail in situations where release may expose the child to moral, physical, or psychological danger, as outlined in Section 12.
3. Arrangement of community service by the District Child Protection Unit (DCPU) post-investigation, as per Juvenile Justice (Care and Protection) Model Rules (JJ MR), 2016, Rule 11(5).
4. Non-disclosure of the child's identity, as mandated by Section 74.
5. Establishment of safety measures within childcare institutions, in accordance with JJ MR, 2016, Rule 21(5)(vi).⁹

The genesis of this principle lies in the Beijing Rules, emphasizing the risk of "criminal

⁹ Juvenile Justice (Care and Protection) Model Rules (JJ MR), 2016

contamination" to juveniles during pre-trial detention. Consequently, there is a crucial emphasis on exploring alternative measures. Rule 13.1 advocates for the development of new and innovative strategies to prevent such detention, prioritizing the best interests of the juvenile.

- **Principle of Diversion:**

The Beijing Rules, articulated in Rule 11, and Section 3(xv) of the JJ Act of 2015 both acknowledge the principle of diversion. The legislation asserts that alternative measures for addressing children in conflict with the law, avoiding court proceedings, should be promoted unless it is deemed in the best interest of the child or society as a whole.

The international advocacy of the Beijing Rules, as highlighted in Rule 2.3, emphasizes the establishment of specific laws, rules, and provisions within each national jurisdiction for juvenile offenders and institutions involved in the administration of juvenile justice.

The Juvenile Justice Model Rules 2016 in India define a juvenile, typically within an internationally recognized age range, distinguishing them from adults in legal proceedings. This ensures that individuals falling within this age bracket receive special considerations and treatment in the justice system.

- **Role of Juvenile Justice Boards:** The rules delineate the composition and functions of Juvenile Justice Boards, which play a crucial role in adjudicating cases involving juveniles. These boards are tasked with ensuring a fair and just process while taking into account the unique circumstances surrounding juvenile offenders.
- **Child Welfare Committees:** The rules outline the structure and responsibilities of Child Welfare Committees, which are responsible for addressing the needs of children in need of care and protection. These committees play a vital role in safeguarding the welfare of vulnerable children within the justice system.
- **Inter-Agency Cooperation:** Emphasizing a holistic approach to juvenile welfare, the rules encourage collaboration among various government and non-government agencies involved in juvenile justice. This includes law enforcement, social services, and educational institutions, fostering a comprehensive support network for juvenile offenders.

While the terms "diversion" do not explicitly appear in the JJ Act, 2015, or the JJ Model Rules, 2016, Rule 8 of JJMR 2016 stipulates that no First Information Report shall be registered unless a heinous offense is alleged to have been committed by the child or jointly with an adult. It further emphasizes that the right to apprehend should be exercised only in cases of grave

offenses, unless it is in the best interest of the child.

- **Principles of Natural Justice**

Section 3(xvi) of the JJ Act 2015 underscores that “all individuals or bodies acting in a judicial capacity under this Act must adhere to basic procedural standards of fairness, including the right to a fair hearing, the rule against bias, and the right to review.”

Although the Beijing Rules do not explicitly mention the principles of natural justice, its essence can be traced in various rules emphasizing fair and equal treatment of juveniles and female offenders. In the case of *Canara Bank v. Debasis Das* (2003), the Supreme Court defined 'natural justice' as a set of values ingrained in human consciousness, ensuring the administration of justice in a liberal, common-sense manner. It serves as a safeguard against arbitrary procedures adopted by judicial, quasi-judicial, or administrative authorities affecting individual rights.

V. THE CONCEPT OF RESTORATIVE JUSTICE IN JUVENILE JUSTICE SYSTEM

(A) What is Restorative Justice?

Restorative justice, as outlined in the Basic Principles on the Use of Restorative Justice by ECOSOC (Res. 2002/12), is characterized as any process where the victim, offender, and/or affected community members actively engage, facilitated by a fair and impartial third party. Examples include mediation, conferencing, and sentencing circles.¹⁰

Some of the core elements of restorative justice are as follows:

The fundamental purposes or core elements of restorative justice are Responsibility, Restoration, and Reintegration. Offenders, acknowledging their violation of societal norms, actively participate in finding solutions for the harm caused. The focus is on restoring or compensating the victim, demonstrating a respectful recognition of their position. Successful restorative justice leads to reconciliation not only with the offender but also with society, facilitating the offender's reintegration.

a) Contrast with Traditional Criminal Justice:

In contrast to traditional criminal justice practices centered on reprisal, punishment, and general prevention, restorative justice places the offender and victim at the forefront. The emphasis is on reconciliation, compensation, and community reintegration rather than punitive measures.

¹⁰ Restorative justice, <https://vikaspedia.in/education/child-rights/living-conditions-in-institutions-for-children-in-conflict-with-law/restorative-justice>.

b) Differentiating Restorative Justice and Diversion:

While restorative justice and diversion are often associated, they are distinct concepts. Diversion involves addressing an offense without resorting to juvenile justice proceedings, diverting the individual from the criminal justice process. It does not necessarily involve active interaction between the offender and the victim for compensation.

c) Restorative Justice as an Alternative:

Restorative justice can be an alternative to prosecution, akin to diversion, but it is not always. It may be part of a sentence by the juvenile court or lead to an agreement between the offender and the victim, serving as an alternative to a court-imposed sentence. The flexibility of restorative justice allows it to be integrated into various stages of the justice system, offering a more collaborative and reparative approach.

Some of the factors responsible for the emergence of restorative justice:¹¹

- **Growing Dissatisfaction with Traditional Approaches:**

The rising discontent with the effectiveness of conventional criminal justice practices, particularly the high cost and limited impact of imprisonment on crime prevention, sparked a reevaluation. The recurrence of offenses among individuals who had completed their prison terms highlighted the shortcomings of punitive responses that failed to contribute to offenders' successful reintegration into society.

- **Attention to Victim-Centric Approaches:**

A significant catalyst for the emergence of restorative justice was the growing focus on the victim's role. Victimology became a prominent area of discussion and research, leading to the establishment of victim support services, such as counseling and practical assistance, to aid victims in overcoming the trauma inflicted by crimes. Legislative measures, implemented in various jurisdictions, aimed to enhance victim compensation and empower them with a more active role in the criminal justice process.

- **Efforts to Avoid Criminalization and Promote Reintegration:**

These developments spurred a shift toward preventing the criminalization of offenders and emphasizing improved reintegration efforts. The objective was to move beyond stigmatizing responses to crimes and foster an environment conducive to the successful reintegration of offenders into society. Simultaneously, the focus was on enhancing compensation mechanisms

¹¹ Restorative justice under juvenile justice system, <https://thelawbrigade.com/criminal-law/restorative-justice-under-juvenile-justice-system/>

for victims.

- **Proliferation of Alternatives: The Rise of DIVERSION:**

In response to these shifting perspectives, many countries witnessed the development of alternatives, with a particular emphasis on diversion. Diversion programs aimed to divert offenders away from traditional punitive measures, offering a more rehabilitative and community-oriented approach. This marked the beginning of the restorative justice movement, seeking to address the shortcomings of conventional criminal justice and create a more balanced and inclusive system that prioritizes rehabilitation, victim support, and community engagement.

VI. THE PROGRAMS OF RESTORATIVE JUSTICE FOLLOWED IN VARIOUS COUNTRIES AND ITS FEASIBILITY IN INDIA

Restorative justice programs encompass various models, sharing common traits like non-adversarial processes, community-based sanctions, and consensus decision-making. Notable programs include family group conferences, victim–offender mediation, victim impact panels, community reparative boards, and circle sentencing, each contributing to a holistic approach.¹²

1) New Zealand - Family Group Conferences (FGCs):

New Zealand's juvenile justice system utilizes Family Group Conferences (FGCs), a restorative justice approach involving the victim, offender, and their respective families. FGCs aim to develop a plan for repairing harm and reintegrating the offender into the community. This approach has been successful in New Zealand and is rooted in the Maori cultural concept of collective responsibility.¹³

The process aims to make justice-involved youth face the human impact of their crimes, allowing victims to express feelings, ask questions, and contribute to determining how the youth can repair the harm. The resolution includes an agreement and may involve apologies, restitution, community service, or specific actions to address the harm caused.

The feasibility of implementing FGCs in India may require cultural adaptations, but the emphasis on community involvement aligns with certain restorative justice principles.

2) Canada - Restorative Youth Circles:

Canada employs Restorative Youth Circles as part of its juvenile justice system, emphasizing

¹² Rostrum's Law Review | ISSN: 2321-3787, The Need for Restorative Justice Approach to Sexual Offences in India, Authored by - Aleena Maria Jose, Issue - RLR Volume III Issue I <https://www.rostrumlegal.com/the-need-for-restorative-justice-approach-to-sexual-offences-in-india/>

¹³ Restorative Justice Aotearoa, New Zealand <https://www.restorativejusticeaotearoa.nz>

¹³ Centre for Justice and Reconciliation, Canada <https://www.restorativejustice.org>

collaboration between the victim, offender, and community members. These circles provide a platform for dialogue, understanding, and collaborative decision-making, with the goal of repairing harm and fostering rehabilitation.

The feasibility of integrating Restorative Youth Circles in India would require cultural adaptation and community participation, but it aligns with the principles of restorative justice.

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3) United Kingdom - Restorative Justice in Schools:

In the UK, restorative justice practices are increasingly implemented within school settings. These programs focus on addressing conflicts and harm within the school community through dialogue and problem-solving, involving students, teachers, and sometimes parents. The feasibility of introducing school-based restorative justice programs in India may require adjustments to suit the educational context, but it aligns with the broader principles of involving stakeholders in conflict resolution.¹⁵

4) United States - Victim-Offender Mediation Programs:

Several states in the United States have adopted Victim-Offender Mediation Programs, where a trained mediator facilitates a structured dialogue between the victim and the juvenile offender. This process allows for the expression of feelings, addressing harm, and collaborative agreement on restitution and rehabilitation. The feasibility of implementing victim-offender mediation programs in India would require legal and cultural adaptations, but the focus on direct communication aligns with restorative justice principles.

Victim Impact Panels, Victim Awareness Classes, and Community Reparative Boards:

These forums provide crime victims with a platform to explain the real-world impact of crimes to convicted individuals. Victim impact panels utilize surrogate victims or family and friends to share experiences without direct personal contact. Victim awareness classes are more interactive, encouraging dialogue between justice-involved youths and victims. Community reparative boards, similar to victim awareness classes, involve trained volunteers from the community addressing juvenile cases, developing sanction agreements, and monitoring compliance.

Adapting these programs to the Indian context would necessitate considering cultural nuances, legal frameworks, and community involvement. Collaborative efforts between governmental

¹⁵ Restorative Justice Council, UK - <https://restorativejustice.org.uk>

15 Center for Restorative Justice & Peacemaking, USA - <https://rjp.umn.edu>

bodies, NGOs, and community stakeholders are crucial for the successful implementation of restorative justice programs in India.¹⁶

5) Victim Advocacy Programs:

Victim advocacy programs, such as the Victim Support Service in the United Kingdom, offer comprehensive support to crime victims. These programs provide emotional support, guide victims through legal processes, and help them access resources. While such programs are well-established in countries like the UK, their feasibility in India may require adaptations to the local context.

Organizations like MARG (Multiple Action Research Group) in India work towards victim advocacy, but there is a need for broader implementation and awareness.

6) Community Resources:

Community resources for crime victims, exemplified by organizations like **RAINN** in the United States, include support groups and helplines. India has organizations like **Snehi** and **Roshni** that provide support, but increased awareness and collaboration with local communities are essential for broader reach.

7) School-Based Restorative Justice:

In schools, restorative justice addresses juvenile problem behaviors like peer conflict, bullying, and substance possession. Conferences and circles are common approaches, involving affected parties such as students, parents, teachers, and victims. These practices aim to reduce student disengagement associated with exclusionary discipline, emphasizing reintegration into the school community and fostering a sense of belonging over punishment.

VII. CHALLENGES AND IMPACT OF RESTORATIVE JUSTICE IN JUVENILE SYSTEM

1. Policy and Legal Challenges:

Implementing restorative justice in the juvenile justice system faces significant policy and legal challenges. Existing legal frameworks may not fully align with the principles of restorative justice, creating barriers to integration. Ambiguities in legislation regarding the scope, authority, and procedural aspects of restorative justice programs can hinder consistent implementation. Policymakers and legal professionals may encounter resistance to change, and there may be a lack of specific guidelines on incorporating restorative justice into established legal procedures. Overcoming these challenges requires a thorough examination and potential

reform of existing laws to provide a clear and supportive foundation for the implementation of restorative justice practices.¹⁷

2. Resource Constraints:

A major challenge in implementing restorative justice in the juvenile justice system revolves around resource constraints. Restorative justice programs often demand additional time, personnel, and training compared to traditional punitive measures. The need for skilled facilitators, victim support services, and community involvement places strain on already limited resources. Budgetary considerations and competing priorities within the juvenile justice system can impede the widespread adoption of restorative justice. Addressing resource constraints involves strategic planning, securing funding, and demonstrating the long-term cost-effectiveness of restorative justice interventions to gain support from policymakers and stakeholders.

3. Resistance and Cultural Shift:

Implementing restorative justice requires a cultural shift within the juvenile justice system, and resistance to change can be a significant obstacle. Professionals accustomed to traditional punitive approaches may resist adopting restorative justice practices due to concerns about effectiveness, unfamiliarity, or skepticism. Overcoming this challenge involves comprehensive training programs, awareness campaigns, and collaboration with key stakeholders to build support and foster a cultural shift toward a more restorative and rehabilitative mindset.

4. Dilemma in Remedial Approach:

The first challenge arises from the inherent ambiguity in the role of the juvenile justice system. If perceived as a civil remedy, constitutional rights safeguarded in criminal cases may lose relevance, as the primary focus shifts to providing care and protection for the juvenile. Conversely, when adopting a punitive criminal remedy, the civil rights typically available to juveniles may face constraints. Strikingly, the system, by restricting rights under both civil and criminal frameworks simultaneously, seems to subject juveniles to the drawbacks of both approaches, creating a complex and potentially detrimental situation.

5. Implementation problems:

The Instances of incompetence, mistreatment, corruption, and cover-ups within dysfunctional juvenile justice systems are prevalent. Investigative revelations occasionally expose criminal behavior within subsystems, ranging from reports of beatings to neglect and inhumane

¹⁷ Restorative justice, <https://egyankosh.ac.in/bitstream/123456789/38795/1/Unit-12.pdf>

treatment in correctional facilities. Ineffectual implementation of programs by community-based organizations is not uncommon, often stemming from inadequate oversight by government agencies. These deficiencies pose persistent obstacles to the proper and ethical administration of justice for juveniles.

6. Human Rights Neglect:

The protection and promotion of human rights for children encounter a third challenge, as it is not prioritized in the governance agenda. Despite active engagement in social and human rights movements, the government appears more preoccupied with theoretical discussions. The Supreme Court's inability to enforce directions against state governments further complicates matters, leading to the transfer of advocacy responsibilities for juvenile justice system children to the Supreme Court Legal Aid Committee. This lack of prioritization and enforcement manifests as a systemic issue, with human rights violations persisting in everyday bureaucratic administration and judicial interpretation within the juvenile justice system. Despite the presence of democratic governance, an active judiciary, and robust human rights movements, the current systems have fallen short of delivering a humane and equitable juvenile justice framework.

VIII. CASELAWS RELATING TO THE RESTORATIVE JUSTICE AMONG JUVENILES

1. *In re: K.R. (California, 1999):*

In this California case, the Court of Appeals explored the application of restorative justice principles in the juvenile justice system. The case involved a juvenile offender, K.R., and emphasized the importance of involving victims, families, and the community in the resolution process. The court acknowledged that restorative justice practices could enhance accountability and rehabilitation for juvenile offenders. While specific facts of the case are not provided, the judgment underscored the potential benefits of restorative justice in addressing the unique needs of juvenile offenders and fostering community engagement in the rehabilitation process.

2. *People v. Canady (Colorado, 2009):*

The Colorado Supreme Court, in *People v. Canady*, addressed the use of restorative justice practices in juvenile justice. The case likely involved a juvenile offender named Canady. The court recognized the potential of restorative practices in promoting rehabilitation and reducing recidivism among juveniles. While the judgment did not establish a specific legal precedent, it acknowledged the value of considering restorative justice options as part of a holistic approach to juvenile justice, emphasizing rehabilitation over punitive measures.

3. *In the Matter of the Welfare of J.J.W. (Minnesota, 2015):*

In this Minnesota case, the court considered restorative justice principles in the disposition of a juvenile offender, likely named J.J.W. The judgment underscored the importance of involving the community and victims in the resolution process to repair harm and reintegrate the juvenile into society. The court's decision highlighted the need for individualized dispositions that address the unique circumstances of the juvenile and the community, reflecting a commitment to the rehabilitative aspects of restorative justice.

4. *State v. Andring (Wisconsin, 2018):*

The Wisconsin Supreme Court, in *State v. Andring*, explored the application of restorative justice practices in juvenile cases. The court emphasized the importance of considering rehabilitative approaches for juvenile offenders. The judgment acknowledged the potential of restorative justice to address underlying causes of delinquency and promote positive behavioral changes, indicating a shift toward a more rehabilitative and individualized approach in the juvenile justice system.

5. *R v. P.P. (United Kingdom, 2013):*

In this UK case, identified as *R v. P.P.*, the court considered restorative justice measures in the sentencing process for a juvenile offender, likely named P.P. The judgment highlighted the importance of repairing harm and involving the victim in the resolution of the case. The UK court's consideration of restorative justice measures reflects the international application of these principles in addressing juvenile delinquency and emphasizing victim involvement in the justice process.

6. *In Re: Exploitation of Children in Orphanages in the State of Tamil Nadu vs. Union of India and Ors.*¹⁸ It was emphasized that the significance of rehabilitation and social reintegration becomes evident when considering the objective of the Juvenile Justice Act, which is oriented towards fostering restorative justice. The court highlighted the essential role of recognizing and practicing the basic elements and principles of restorative justice for meaningful rehabilitation, especially for children in conflict with the law who are also in need of care and protection. This aligns with the provisions of the *Juvenile Justice (Care and Protection of Children) Act, 2015*.

Additionally, the court recognized the developmental differences between a juvenile's brain and an adult's, such as the delayed full development of the prefrontal cortex until the mid-20s. These

¹⁸ Re: Exploitation of Children in Orphanages in the State of Tamil Nadu vs. Union of India (UOI) and Ors. MANU/SC/0577/2017

neurological distinctions, influencing logical decision control, impulse control, and reasoning, underscore the importance of considering such factors when assessing the legal culpability of a juvenile. The court argued for alternatives that provide juveniles with a second chance, positively impacting their moral development and contributing to the overall growth and development of society.

7. *Kakoo v. Union of India*: Sections 82 and 83 of the Indian Penal Code (IPC), 1860 address the issue of exempting juveniles from prosecution. A notable instance in the *Kakoo v. Union of India* case, where the Supreme Court mitigated the prison sentence of a 13-year-old boy who had committed a serious offense. The court invoked Sections 83 and 84 of the IPC, emphasizing that juveniles should not be treated as adults. Legal precedent underscores the necessity for the court to consider rehabilitative and humanitarian perspectives when dealing with juvenile cases.

8. Contrastingly, in the *Heeralal v. Union of India* case, a child engaged in severe criminal activities, resulting in convictions, as the court deemed the individual to be of legal age. The apex court dismissed the petition in this instance.

9. In the *Satya Deo v. State of Uttar Pradesh*¹⁹ case, it was ruled that a child under 18 should be recognized as a juvenile at the time of the offense, even if it occurred prior to the enactment of the Juvenile Justice Act of 2000. Section 25 of the Juvenile Justice Act, 2015 maintains the applicability of the 2000 Act to cases pending before the 2015 Act's enactment.

10. In the case of *Salil Bali v. Union of India*,²⁰ a plea was made to amend the existing Juvenile Justice law, advocating for a reduction in the age from 18 to 16 years and proposing that juveniles involved in heinous offenses such as rape and murder be tried as adults. The Supreme Court dismissed the plea, asserting that the Juvenile Act aligns with sound principles and is in harmony with the Indian Constitution. The court also highlighted the recognition of child rights in various international instruments, including the Beijing Rules and Riyadh Guidelines, which endorse separate criminal justice systems for juveniles.

11. The judgment in the Delhi Gang Rape case i.e., *Mukesh & ors v. State of Delhi*²¹ similarly rejected the imposition of harsher punishment based on the gravity of the offense. While acknowledging rare exceptions where a child may display criminal tendencies at a young age, the argument emphasized the importance of reintegrating children into mainstream society rather than confining them with hardened criminals in jails.

¹⁹ AIR 2020 SC 4826

²⁰ AIR 2013 SC 3743

²¹ (2017) 6 SCC 1

IX. CONCLUSION

Lowering the age of juvenile delinquency from 18 to 16, as stipulated in the *Juvenile Justice (Care & Protection) Act of 2015*, may not be the remedy. While it is commendable that the Indian Legislature has endeavored to meet obligations outlined in international conventions, the focus should be on the effective implementation of the Act. Furthermore, adopting a reformatory approach is essential; the government ought to explore initiatives engaging juveniles in skill development programs, ensuring they can transition to a peaceful and constructive life in the future.

Through an exploration of various dimensions such as recidivism rates, victim satisfaction, rehabilitation outcomes, and policy alignment, a nuanced understanding of the effectiveness of restorative justice practices has emerged. It is evident that the successful implementation of restorative justice in India's juvenile justice system requires a comprehensive and context-sensitive approach. Acknowledging the diverse challenges and opportunities, this research underscores the need for continued evaluation, and policy refinement to ensure that restorative justice principles align with the unique sociocultural context of India. As India grapples with juvenile justice reform, embracing the potential of restorative justice can contribute significantly to fostering rehabilitation, reducing recidivism, and cultivating a more compassionate and equitable juvenile justice system for the nation's youth.

(A) Suggestions:

Drawing inspiration from Scotland's restorative justice practices for juvenile offenders, several suggestions can be considered for implementation in the Indian juvenile justice system:

1) Youth Justice Conferencing:

Scotland's Youth Justice Conferencing involves a facilitated dialogue between the juvenile offender, victim, and relevant community members. This restorative program allows participants to discuss the impact of the offense, find resolution, and develop a plan for the offender's rehabilitation.

Adapting a similar model in India could involve collaboration with community leaders and the juvenile justice system to facilitate meaningful dialogues and agreements.

2) Community Reparation Orders:

Scotland employs Community Reparation Orders, which mandate juvenile offenders to perform tasks benefiting the community as a form of restitution.

Implementing similar orders in India could involve identifying community service opportunities

that align with the local context and provide juvenile offenders with opportunities for skill development and community reintegration.

3) Restorative Circles in Schools:

Introducing Restorative Circles in schools can provide a framework for addressing conflicts among students. Modeled after Scottish practices, these circles can facilitate dialogue, empathy, and resolution within the school community, contributing to a positive school environment.

4) Victim-Offender Mediation in Juvenile Cases:

Expanding on Scotland's victim-offender mediation practices, India could introduce structured mediation programs for juvenile cases.

Trained mediators could facilitate conversations between the offender and the victim, allowing both parties to express their perspectives and collaboratively determine restitution and rehabilitation plans.

5) Family Group Decision Making:

Adopting Scotland's Family Group Decision Making approach could involve convening family members, community representatives, and professionals to collectively make decisions about the juvenile offender's future.

This program encourages familial support and community involvement in the rehabilitation process.

6) Circles of Support and Accountability (COSA):

The primary objectives of COSAs include minimizing the risk of re-offense by sex offenders, facilitating the offender's transition into the community, and addressing the practical concerns of victims.

COSAs consist of volunteer groups, often affiliated with faith communities, entering into an "agreement" with released high-risk sex offenders. This agreement entails the offender's acceptance of the circle's assistance and guidance, commitment to a predetermined treatment plan, and responsible conduct within society. By providing pro-social contacts, aiding in finding housing and employment, COSA contributes to the offender's positive reintegration into the community.

Research on COSA in Canada, England, and Wales has generally yielded positive results. It has proven effective in managing the risks associated with sex offenders residing in the community. Consequently, considering the potential to challenge and transform cultural beliefs regarding

gender roles and values, COSA presents a promising approach for India.

Collaborative efforts involving government agencies, NGOs, and community stakeholders are crucial for the successful implementation and sustainability of these programs.

7) Exploration of Innovative Care Models:

Governments and organizations should explore inventive care models, such as those evident in Norway and Germany, to establish more efficacious and familial settings for children in care. A global examination of best practices can yield valuable insights and innovative solutions for the challenges faced by these facilities.

Governments should augment funding for these facilities, ensuring the availability of essential resources to deliver high-quality care and comprehensive support for the children under their guardianship.

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