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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE EFFECTIVENESS OF RESTORATIVE JUSTICE IN REDUCING RECIDIVISM RATES IN INDIA

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Abstract

Recidivism is the recurrence of criminal behaviour among previously convicted offenders. This remains a persistent challenge within India's criminal justice system. To quote Justice V.R. Krishna Iyer, "It is the weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our criminal law." To address this issue, this paper argues that restorative justice has the potential to emerge as an alternative approach, drawing attention for its potential to reduce recidivism rates and promote meaningful rehabilitation.

The study begins by examining certain provisions of the Code of Criminal Procedure which incorporate principles of restorative justice. It looks at Section 320 of the Code of Criminal Procedure, which talks about the compounding of offences, and looks at Section 18 of the Juvenile Justice Act, 2015, which although does not explicitly mention restorative justice, but are restorative in nature.

This paper also looks at how restorative justice cannot be used in all circumstances, and that it lacks the punitive aspect that is required to deter recidivism effectively. There are offenders that are beyond reformation and those who feel no remorse for their actions, for which traditional punitive measures might be required. The paper also identifies a lacuna in Indian laws concerning the limited integration of restorative justice principles within the criminal justice system. Despite some provisions in the CrPC that use these principles, the absence of a comprehensive and systematic framework for restorative justice implementation remains a challenge. The need to incorporate these principles stem from the recognition that punitive measures alone may not address the root causes of criminal behaviour effectively.

To ensure that the scope of the paper is specific, this paper considers empirical studies and case

studies conducted between 2010 and 2020, focusing on the outcomes of restorative justice interventions and their impact on recidivism rates in India.

Keywords: Restorative justice, recidivism, rehabilitation, reintegration, punitive measures

Introduction

Recidivism is the tendency of a convicted criminal to reoffend. According to a project undertaken by the Ministry of Human Resource Development of India, the criminal justice system has four foundations:

- a. Investigation by police
- b. Prosecution of the case by the prosecutors
- c. Determination of guilt by the courts
- d. Correction through the prison system

It can be seen from this that the criminal justice system of India focuses more on the crime and the criminal than on the victim of a crime. It places more emphasis on punishment as a deterrence for crime and does not make victims a part of the process of justice.

What are the key factors that influence the functioning of restorative justice programs in reducing recidivism in India?

There are a number of factors that determine whether a particular restorative justice program will turn out to be a success or not. Some of them are discussed below:

a) Community Engagement:

One of the key factors influencing the outcome of restorative justice programmes is community engagement. What this means is that when there is strong community involvement and support to help rehabilitate the offender, such programs are more likely to be successful.

The Role of Community in Restorative Justice Fernanda Rosenblatt talks about the importance of family links, friendship and other social ties, and the importance of other social traits or identities in aiding restorative justice practices. This book, through an empirical study highlights the importance of community engagement and acceptance act as a means to develop a more coherent framework for operationalising community involvement in restorative justice programs.

b) Cultural sensitivity

Cultural factors play a significant role in the success of restorative justice programs in India. Respecting cultural norms and practices is essential. The legal framework must be sensitive to the diverse cultural and religious practices in India, as these can impact how restorative justice processes are carried out. In a country as diverse as India, different cultures might react differently to the idea of restorative justice programs. There may be some cultures where the idea of restorative justice and reintegration of an offender back into society is accepted, whereas on the other hand, there may be cultures that prefer more punitive methods of punishment.

Shawna van Scoyoc in his paper titled “The Role of Empathy and Cultural Awareness in Implementation of Restorative Practices” talks extensively about the need for society to be more accepting of offenders in order to help them to be brought back into society, and looked upon as outcasts. It can also be the case where such offenders are only treated as outcasts and not woven back into the fabric of society, it is very likely that recidivism rates will increase. This is because when an offender does not have any connections to society after incarceration, they are unlikely to be able to get a job and live a stable life. In the absence of a job to give them a steady income to live their life, they often resort to criminal activities again, as they believe that society is not ready to accept them.

c) Need for adequate human resources

Restorative justice is not a simple approach. There are various factors that go into making an effective restorative justice program. This approach is not only heavily reliant on human acceptance of an offender and trying to reintegrate him into society, but also requires a substantial amount of financial resources in order to implement these programs to target the intended beneficiaries. For this to happen, the legal framework in that particular justice system must play an important role. This could be from the legislature enacting laws to protect the rights of these offenders, and the judiciary must also play an active role in providing a clear legal foundation in establishing the rights of these offenders, and try to work for their welfare as well.

Christopher Marshall, in his book “Beyond Retribution: A New Testament Vision for Justice, Crime, and Punishment” stated that “Preventing and responding to crime requires more than political slogans or programs that leave unattended the complex causes and multifaceted remedies. The evidence clearly indicates that the current criminal justice system with its over-

reliance on retributive punishment merits critical critique and creative reform. While restorative justice is no simple panacea, it does offer a broader lens, different goals, and alternative practices to retribution and incarceration”

While his remarks were made with respect to the criminal justice system in the United States of America, the same applies to India as well. The criminal justice system in India is more focused on punitive measures and deterrence of crime rather than focusing on the victim. At the end of the day it cannot be called justice if the person who has suffered the harm does not feel that the wrong done to them has been reversed. To elaborate this point, in “The Little Book of Restorative Justice” by Howard Zehr, he states that “restorative justice is a process that involves, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.” It is important to note that restorative justice cannot be applied in all cases. In more serious offences like murder, it may not be the best option to include the victim in the process of justice as their emotions will cloud their judgement, and fairly so. Moreover, in such cases of heinous crimes, even if the victim was willing to forgive the criminal, it may not be the most viable option as the offender might be beyond reform. In such cases, it is impractical to try and reintegrate the offender with society, as there are high chances that he might still pose a threat to society.

The above mentioned factors are only illustrative and not exhaustive. There are also several other factors that are not discussed in this paper.

“The current criminal justice approach defines crime as a violation of the law and the state. Restorative justice, on the other hand, deems crime to be a violation of people and relationships. According to the dominant practice, justice requires the state to determine blame and impose punishment. Proponents of the restorative alternative understand that justice involves victims, offenders, and community members in an effort to put things right.” The central focus of criminal justice is “offenders getting what they deserve” while restorative justice focuses on the victims’ needs and the offenders’ responsibility for repairing harm

How can restorative justice help reduce recidivism rates?

Recidivism rates for individuals involved in restorative justice processes versus those subjected to traditional punitive measures in India can vary due to factors such as the specific nature of

the restorative justice program, its quality of implementation, and the types of crimes involved. It's important to recognize that restorative justice isn't a one-size-fits-all approach, and outcomes depend on a range of circumstances. Moreover, the availability and utilisation of restorative justice programs can differ across regions and jurisdictions in India.

Below is a brief comparative overview of how both of these systems work.

Restorative justice focuses on healing the harm done to victims, holding offenders accountable, and promoting dialogue between victims and offenders. It typically involves mediation, victim-offender conferences, or community-based processes. Research from other countries has indicated that restorative justice programs may sometimes lead to lower recidivism rates compared to traditional punitive measures. This may be because offenders gain a better understanding of the consequences of their actions and a stronger sense of responsibility. Most restorative programs manifest themselves outside prison. There are several reasons for this. One is that it's far easier for offenders to form amends if they're not in prison. One more reason is that restorative justice is usually community-based, which suggests that the programs work with victims and offenders within the community. The reason has been the hope of policymakers that restorative justice is going to be a way of reducing court and prison overcrowding.

Traditional punitive measures, on the other hand, such as imprisonment, probation, and fines, primarily aim to punish offenders and separate them from the community. The deterrence aspect of punishment is a fundamental principle behind traditional punitive measures. Recidivism rates in the context of punitive measures can fluctuate based on the severity of the punishment and the quality of rehabilitation and reintegration programs in place. It's important to recognize that the effectiveness of restorative justice programs depends on the willingness of victims and offenders to participate, as well as the dedication of professionals involved in the process. Research and data specific to India's context regarding recidivism rates are limited, and the efficacy of restorative justice programs can vary from one location to another.

In India, we follow a more traditional approach where the purpose of punishment is deterrence. In the words of Gerald Ford, former president of the United States, "For too long, the law has centred its attention more on the rights of the criminal than on the victims of crime. It is high time we reverse the trend and put the highest priority on the victims and potential victims."

In *Narotam Singh v. State of Punjab* The Supreme Court held that a reformatory approach to punishment should be the thing of legal code, to market rehabilitation without offending community conscience and to secure social justice. In *Padmarthi Subrahmanyam v. The State of Republic*, it was held that the deterrent method of punishment may make criminals more hardened and such criminals ultimately even after serving the sentence might not join the mainstream of society. It can't be said that reformatory theory in criminal jurisprudence is merely a futile exercise.

In *Anupam Sharma v NCT of Delhi and Another*[14], the "Delhi High Court" said that restorative justice can be used interchangeably with mediation. Purpose of "Restorative justice" and nature are to restore the "victim's interest". Participation of the victim in the "settlement" process is encouraged in restorative justice.

In *Manohar Singh v State of Rajasthan and Ors* The Supreme Court said that the whole point of Section 357 the "Code of Criminal Procedure 1973" is to make sure that the interests of the victims are taken into account in the "criminal justice system". Sometimes, the situation is so bad that it doesn't make sense to keep a person in prison. Instead, directing the accused to pay some money to the victim or the person who was hurt due to the crime can make sure that total justice is served.

The Juvenile Justice Act makes special provisions for the care, protection, development & rehabilitation of delinquent offenders. The Act empowers the State Governments to free children from the clutches of jails to determine Juvenile Homes for the reception of neglected juveniles & Special Homes (Observation Homes) for the reception of delinquent juveniles. Justice Bhagwati in *Munna v. State of U.P* "delinquency is, by and large, a product of social & economic maladjustment... The law throws a cloak of protection around juveniles & seeks to isolate them from criminal offenders because the stress placed by law isn't incarceration but on reformation ". In *Musa Khan v. State of Maharashtra* The Supreme Court observed that this act may be a piece of social legislation that's meant to reform juvenile offenders to stop them from becoming hardened criminals by providing an educative and reformatory treatment to them A 2007 study found that victim-offender mediation, a form of restorative justice, had the best rate of victim satisfaction and offender accountability compared to other methods.

All of these examples only goes to show that restorative justice can potentially change the way our justice system operates, and make it more victim centric.

Restorative Justice is recognized for its potential to reduce reoffending rates by around 14%. A significant portion of this reduction is likely attributed to the fact that offenders may not have previously confronted the full consequences of their actions. Encountering the victim as a genuine individual with emotions and learning about the tangible impact of their actions on the victim's life can profoundly affect the offender's perspective on their behaviour.

Restorative Justice offers offenders a chance to take responsibility for their actions. When appropriate, this approach allows offenders to take steps to rectify some of the harm they've caused. For instance, in cases of theft, an offender might assist the victim in recovering their stolen belongings.

An evaluation of a restorative justice initiative was conducted in the city of Winnipeg, distinguishing it from a previous program review which featured a one-year follow-up. This current assessment extended the observation period to three years after the program's completion. The participants in the restorative justice program were compared to a group of probationers who shared similar offence profiles and criminal histories but did not engage in the restorative justice program.

The results revealed that those who participated in the restorative justice program exhibited lower rates of recidivism in comparison to the matched group of probationers. Over the course of the follow-up, the differences in recidivism rates between the two groups grew more pronounced. In the first year, the restorative justice participants had a recidivism rate of 15%, as opposed to 38% for the probation group. In the second year, these figures changed to 28% and 54%, and by the third year, the rates stood at 35% for the restorative justice participants and 66% for the probation group.

The policy implications of this study were as follows:

Evidence from the general literature indicates that restorative justice programs can have an impact on offender recidivism that ranges from a two to eight per cent reduction in recidivism. Thus, it is worth considering restorative justice approaches in the development of criminal justice policies.

Practical problems with restorative justice

While these examples make the idea of restorative justice sound very simple, it is easier said than done. There will be cases where the victim does not want anything to do with the offender, and see the offender get the maximum punishment possible. There will also be cases where the offender is beyond reformation and could pose a threat to society if he is brought back into society. Moreover, in the adversarial form of trial prevalent in India, the victim (or her representative) had no or very limited role apart from being a mere witness. The primary reason for keeping the victim completely out of the trial process is meant to ensure that the trial does not become a vindictive duel and they are only considered as private parties.

In the case of Rekha Murarka, the Supreme Court missed an opportunity to advance victim justice jurisprudence and rectify legal shortcomings. Instead, the verdict runs counter to the previous jurisprudential trajectory. It held that "Preserving the victim's right to participation should not come at the expense of "curtailing the rights of the accused." This right to participation can indeed be realised without discrimination at the appropriate stages of legal proceedings. Rather than scrutinising a "normative balance" between the rights of the accused and those of the victim, the ruling restricts the rights of the victim through an erroneous interpretation of the role and responsibilities of the victim's advocate."

There is also ample evidence to support that restorative justice is not as effective as it is said to be. In one study conducted, there were 2 approaches taken to find out the effectiveness of restorative justice programs in reducing recidivism rates. First, a review of the literature on the impact of restorative justice programs on offender recidivism was conducted. The review consisted of published and unpublished studies and included studies conducted with both adults and juveniles. Second, a restorative justice program in Canada was formally evaluated with recidivism measured three years after completion on the program. The results from the literature review found that restorative justice programs had a small effect on offender recidivism. Based on 46 studies with nearly 23,000 participants, restorative justice programs, on average, were associated with a decrease of three percent in recidivism. Contrary to expectations, the programs were more effective with adults (8% reduction) than with youth (2% reduction). Providing some form of restitution to victims was the activity most associated with reductions in offender recidivism.

Restorative justice in India faces a myriad of challenges. Firstly, there is a notable lack of widespread awareness and inconsistent implementation of restorative justice programs, often due to limited resources, insufficiently trained personnel, and inadequate infrastructure. India's diverse cultural and societal landscape further complicates the effective application of these programs, with differing community perspectives on justice and reconciliation. Resource constraints, primarily in rural areas, hinder the growth and reach of restorative justice initiatives. Furthermore, successful restorative justice outcomes rely on the willingness of both victims and offenders to participate, which can be challenging to secure. The lack of a well-established legal framework within India's predominantly punitive legal system can result in uncertainty and inconsistency in the application of restorative justice principles. Additionally, ensuring the safety and privacy of victims and offenders, particularly in sensitive or violent cases, presents a complex balancing act. Quality control and standardisation in restorative justice practices are also needed to ensure program consistency, which would entail the development of practitioner training and accreditation. Rehabilitation and reintegration of offenders into society are essential for preventing recidivism but can be difficult to achieve. India also lacks comprehensive monitoring and evaluation mechanisms to assess the effectiveness of restorative justice programs, impeding the identification of areas in need of improvement. Victims who participate in restorative justice processes may face social stigma and rejection, potentially deterring their engagement in such processes. Finally, the unequal access to restorative justice, especially for marginalised communities in remote areas, exacerbates disparities in the justice system. Addressing these challenges necessitates heightened awareness, capacity building, and legislative support for restorative justice in India. Local adaptation and community involvement are essential for tailoring restorative justice approaches to the distinct cultural and social contexts in various regions of the country.

Conclusion and Recommendations

In India, the challenge of recidivism has persisted within the criminal justice system, often overshadowing the needs and rights of victims. Justice V.R. Krishna Iyer once lamented the neglect of victims and their grievances within the legal framework, underscoring the importance of victim reparation, which remains an elusive objective in Indian criminal law. This paper has explored the potential of restorative justice as an alternative approach to address the issue of recidivism, promote rehabilitation, and, most importantly, restore the victims' place within the justice process.

To understand the scope and challenges of implementing restorative justice in India, this study delved into certain legal provisions that embody restorative justice principles, albeit in a scattered manner. The Code of Criminal Procedure (CrPC) contains Section 320, which addresses the compounding of offences, and the Juvenile Justice Act, 2015, particularly Section 18, which, although not explicitly restorative, encompasses restorative characteristics. These provisions offer a glimpse of how restorative justice concepts have entered the Indian legal framework, albeit without a comprehensive and systematic framework for implementation.

Nevertheless, as the paper has highlighted, restorative justice cannot be universally applied and lacks the punitive aspects necessary for effective deterrence in all cases. There are individuals who may remain beyond the prospect of reformation and show no remorse for their actions, requiring the continued use of traditional punitive measures. This underscores the importance of a balanced approach within the criminal justice system, one that combines restorative principles with punitive measures as the situation demands.

Empirical studies and case analyses have played a crucial role in exploring the outcomes of restorative justice interventions and their impact on recidivism rates in India. These studies have provided valuable insights into the effectiveness and limitations of restorative justice programs in various contexts.

The research has revealed that several factors significantly influence the success of restorative justice initiatives in India. Community engagement has emerged as a critical factor, emphasising the importance of strong community involvement and support for offender rehabilitation. Cultural sensitivity has also been highlighted, emphasising the need to respect diverse cultural norms and practices. India's rich cultural diversity requires an approach that acknowledges and accommodates varying cultural reactions to restorative justice programs. Furthermore, the presence of adequate human and financial resources is essential for the successful implementation of restorative justice programs, emphasising the role of legislation and the judiciary in establishing and safeguarding the rights of offenders.

In the pursuit of justice, the criminal justice system in India has traditionally focused on punishing offenders, sometimes at the expense of the victims and their healing. Restorative justice presents a different paradigm, one that views crime as a violation of individuals and relationships rather than just a breach of the law. It seeks to engage victims, offenders, and

community members in a collective effort to restore and heal the harm caused.

Nevertheless, there are instances where restorative justice may not be the ideal solution. In cases of severe crimes like murder, the emotional involvement of the victim may preclude their participation in the restorative process. Additionally, some offenders may prove resistant to reform, rendering their reintegration into society impractical and potentially unsafe.

The paper has illustrated that while restorative justice offers a unique and promising approach to reducing recidivism, its effectiveness may vary based on factors such as the nature of the program, the quality of implementation, and the types of crimes involved. Its success hinges on the willingness of victims and offenders to participate and the commitment of professionals involved.

Moreover, this paper has touched upon the lack of a comprehensive legal framework for restorative justice in India, presenting the need for further legislative support and standardisation. Additionally, it has highlighted the need for rehabilitation and reintegration programs, the significance of monitoring and evaluation mechanisms, and the challenge of overcoming social stigma and unequal access to restorative justice.

In conclusion, the pursuit of restorative justice in India holds significant potential to transform the criminal justice landscape, redefining the balance between punitive measures and victim-centred justice. While challenges persist, and there are cases where restorative justice may not be applicable, its emphasis on healing and reconciliation has the power to mend the rifts caused by crime. The integration of restorative principles into the Indian criminal justice system requires sustained efforts, awareness, and a willingness to adapt to the diverse cultural and societal contexts that define India. By doing so, India may find an effective tool to reduce recidivism, enhance rehabilitation, and, crucially, prioritise the restoration of victims in the pursuit of justice.