

RESTORATIVE JUSTICE: A COMPLEMENT TO THE PREVAILING CRIMINAL JUSTICE SYSTEM.

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“Everything has been said already, but as no one listens, we must always begin again”-
Andre Gide, French thinker and writer.

INTRODUCTION

Since the inception of human civilization there has been crime and punishments. From the retributive theory to the reformatory theory of punishment, it can be undoubtedly stated that, the norms and practices adopted by the present Criminal Justice System has done justice to some extent or the other. However, in the contemporary times one question is certain to rise i.e., whether the present Criminal Justice System sufficient in providing complete justice?

An event of crime involves three stakeholders: **the offender, the victim and the community at large**. Across the world, the victims of crime are not only protected but also restituted, assisted and compensated with the support of appropriate legislations. However in India, this is not the scene. The role of victims in India is insignificant and is merely restricted to being a witness in a case.

In the famous case of *Jennison v. Baker*² it was stated that “*Law should not sit limply, while those who defy it go free and those who seek its protection lose hope.*” The said quote aptly describes the present Criminal Justice System in India where there exist various maladies such as political corruption, lack of co-ordination in the system, delay in disposal of cases, complex and expensive procedures, which lead to large scale acquittals thereby allowing the offenders to defy the law and leave the victims with no hope.

All of the above said maladies can be reduced and the victim can be given the needed justice and rehabilitation through the adoption of **Restorative Justice System** alongside the prevalent criminal justice system, which not only punishes the offender but also make restitution or perform compensatory services for the victim of his crime and the community.³

¹ College Of Legal Studies, UPES, Dehradun.

² *Jennison v. Baker*, (1972) 1 All ER 997.

³ N.V. PARANJAPPEE, CRIME AND PUNISHMENT: TRENDS AND REFLECTIONS 251 (1st ed. 2016).

In India, the principles of Restorative Justice have been reflected through the Indian Constitution, The Code of Criminal Procedure, 1973 and the Probation of Offenders Act, 1958 where the rights of the victims have been recognised and compensatory schemes have been introduced. Recently, it is noteworthy that several High Courts have passed judgments in favour of the victims by providing them compensation, rehabilitation etc. This shows the slight inclination of the judiciary and the legislature in recognizing the implementation of the principles of Restorative Justice as a complement to the present Criminal Justice System.

Therefore, this paper shall provide an overview of the existing Criminal Justice System, loopholes present in it and the legislations that reflect the principles of Restorative Justice in India. Further, the paper shall also discuss the various Restorative Justice programmes adopted in other countries and how it can be effectively implemented in India in order to balance the interests of all the stakeholders involved in a crime, specially the victims.

EVOLUTION OF CRIME AND PUNISHMENT

A. Evolution of theories of punishment

Crime in general is defined as a “violation of right, considered in reference to the evil tendency of such violation as regards to the community at large”⁴. Eminent Sociologist, Emile Durkheim once said, “*To think of a crime-free society is a myth*”, and the truth in her statement is very evident taking into consideration the changing concept of crime. Therefore, in order to combat crime and protect the society from the law-breakers, every crime has its respective punishment which involves pain of such intensity which outweighs the pleasure derived by the offender from his criminal act.⁵

In primitive times, it was seen that offenders were punished according to the principles of *Dharma* which were based on the **Deterrent** and **Retributive theories of punishment** which have not only focused on punishing the offender but also have set an example to prevent any other person in the society from committing it.⁶ With time, there was evolution of crime and punishment. In 1860, Lord Macaulay introduced Indian Penal Code, 1860, a codified document which categorised the offences and prescribed appropriate punishments for the same. This legislation acted as an impediment and was founded on the line of **Preventive theory of punishment**.

4IV WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, 5 (1765).

5N.V.PRANJAPAYEE, CRIME AND PUNISHMENT: TRENDS AND REFLECTION 229 (1st ed. 2016).

6G.W. PATON, A TEXTBOOK ON JURISPRUDENCE 201 (4th ed. 1972).

Eventually, the genesis of **Reformative theory of punishment** took place which shifted the focus from 'Crime' to 'Criminal'. This approach emphasised on the reformation of offenders by means of clinical approach which was recognised as the cardinal principle of contemporary penology and penal policy. The Reformative theory supports rehabilitation of offenders in the society by enabling them to adapt to healthy lifestyle and ameliorate their inter-personal relationships.⁷

Analyzing the above theories of punishment, it is clear that until present times, punishment has been used as a measure to diminish the criminal incidents either by deterring the plausible offender or by incapacitating and preventing them from REPEATING crime or reforming them into a law abiding citizens. This makes the present criminal justice system more or less criminal-centric.

B. Lacuna in the present Criminal Justice system

The Criminal Justice System is a collective enterprise authorized and supported by the legitimacy and coercive power of the state to create and administer law.⁸ The ultimate goal of the Criminal Justice System is to protect the rights and personal liberty of individuals and the society against its invasion by offenders. The criminal law aspires to protect the weak against the strong, law abiding against lawless and peace against violence. Often it is the selfishness, greed and ill tolerance that leads to devaluation of the various rights of an individual.⁹ Therefore, in India the prime objective of Criminal Justice System is seen to deviate from its path due to the extant Criminal Justice System which is crippled due to various maladies and faults.¹⁰

One third of the Indian population is below the poverty line. The poor victims in India suffer because of two reasons, *Firstly*, ignorance and *secondly*, the lack of resources to approach the appropriate authorities.¹¹ Also, the lacuna of synergy among the judiciary, the prosecution and

7N.V. PARANJAPPEE, *supra* note 2, at 20-21.

8Justice K.G. Balkrishnan, *Criminal Justice System in India: Current Challenges*, http://14.139.60.114:8080/jspui/bitstream/123456789/1018/1/024_Criminal%20Justice%20System%20in%20India.pdf (last visited Feb 11, 2017).

9Shreya Mishra, et al., *Reformation Of The Indian Criminal Justice System*, 1INTERNATIONAL JOURNAL FOR LEGAL DEVELOPMENTS & ALLIED ISSUES 38, <http://ijldai.thelawbrigade.com/wp-content/uploads/2015/07/shreya-mishra-2-others.pdf> (last visited Feb. 11, 2017).

10Anup Kumar Varsbney, *Criminal Justice System: Need For Reforms*, http://14.139.60.114:8080/jspui/bitstream/123456789/991/1/055_Criminal%20Justice%20System%20Need%20for%20Reforms.pdf (last visited Feb. 11, 2017).

11R.K. SEN, et al., *CRIME AND CORRUPTION IN INDIAN ECONOMY* 53 (2003).

the police reduces the confidence of the common man in the Criminal justice system.¹² This lacuna is due to continuous institutional prejudices and bureaucratic in-capabilities. Apart from disharmony among the components of the Criminal Justice System, the other contributing factors for the inefficiency of the same are: violations and corruption by Police, tardy investigation, absence of witness, delayed, cumbersome and expensive procedure , lengthy judgments, paucity of criminal courts and large number of vacancies of judges.¹³ Also, the hierarchy of courts with appeal after appeals puts legal justice beyond the reach of the poor.¹⁴

Besides these technical and procedural flaws in the Criminal Justice System, the biggest shortcoming is the indifferent attitude towards the redressal of '**plight of the victim**'. "Victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.¹⁵

In our Criminal Justice System victims have no rights whatsoever and the state undertakes the full responsibility to prosecute and punish the offenders by treating the victims as mere witnesses.¹⁶ Their plight is neglected as the legal and procedural provisions contained in our statute books cannot suffice the large scale suffering of the victim of the crime. Therefore, this brings the need for a reformation in the present Criminal Justice System. The answer to this could be the need to adopt the "***Restorative Justice System as a complement to the prevailing Criminal Justice System***".

C. Principles of Restorative Justice.

121 GOVERNMENT OF INDIA, MINISTRY OF HOME AFFAIRS, COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM REPORT 3 (2001), http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf (last visited Feb. 13, 2017).

13Shreya Mishra, *supra* note 8.

14Rakesh Kumar Handa, *Restorative Justice from Victimology Perspective and its Utility in India*, <http://hdl.handle.net/10603/32064> (last visited Feb. 11, 2017).

15 § 2(wa), as inserted by CrPC (Amendment) Act, 2008 w.e.f. December 31, 2008.

16Kumaravelu Chockalingam, *Measures for Crime Victims in the Indian Criminal Justice System*, http://www.unafei.or.jp/english/pdf/RS_No81/No81_11VE_Chockalingam.pdf (last visited Feb. 11, 2017).

While studying the trends and changes of the Criminal Justice System and keeping in view of the above stated problems, the Criminologists have realised that the present Criminal Justice System is failing to deal with the most important component of Crime, **the Victims and their life post crime.**

This gave birth to a new concept of 'Victimology' which specifically includes scientific study of the victims of crime and mediation between such victims and the Criminal Justice System consisting of the police, court, correctional officers, etc. The victims are redressed by catering them and their families support, assistance and easy approach to justice.¹⁷ This method of criminal justice is also known as 'The Restorative justice system.'

The Restorative Justice System majorly focuses on four principles viz., Restoration of the victim by supporting and assisting them, making the Offender accountable through the process of Victim-Offender Mediation, surveillance and opportunities provided by the community in order to help the victims to restore back to their normal life and look for their bright future, providing skill development through vocational training and employment opportunities.

APPLICATION AND IMPLEMENTATION OF RESTORATIVE JUSTICE AROUND THE WORLD.

Restorative Justice is both a new and an old concept. In a span of twenty five years, the concept of restorative justice has been accepted as a worldwide Criminal Justice reform. In round 100 countries worldwide, Restorative Justice Programmes play a pivotal role in the national response to crime, which further stimulated, informed and enriched the concept Restorative Justice.¹⁸

There are clear evidences of the practice of Restorative justice in the world through implementation of different programs and procedures like the victim and offender mediation, community and family group conferencing, peacemaking circles, victim assistance and involvement programs, circle sentencing and reparative probation. These programs also

17ANDREW KARMEN, CRIME VICTIMS: AN INTRODUCTION TO VICTIMOLOGY (5th ed. 2003).

18 Daniel W. Van Ness, *An Overview of Restorative Justice Around the World*, <https://assets.justice.vic.gov.au/njc/resources/c4518c8a-c200-4623-afd1-42e255b62cf9/01+an+overview+of+restorative+justice.pdf> (last visited Feb. 13, 2017).

include a discussion of indigenous and customary justice forums and the main characteristics of existing criminal justice programmes.¹⁹

1) **Victim- Offender Mediation:** It is also known as Victim-Offender Reconciliation Programme, which got initiated as an experiment in Kitchener, Ontario in 1970's. In this, a meeting is organised, between the victim and the offender, facilitated by a trained mediator, with the objective to resolve the conflict and to construct their own approach to achieve justice in the face of their particular crime. The meeting ends with the attempt to reach an agreement on the steps that the offenders would take in order to repair the harm suffered by the victim. This programme is efficiently practised in USA, Canada, Australia, New Zealand, UK, Austria, Norway and many other countries of the world.

2) **Community and Family Group Conferencing:** This model of Restorative Justice got its origin when it was adopted into the national legislation and applied to the youth justice process in New Zealand in 1989. For this conference the family and friends of both the victim and the offender, and also other members of the community partake, in order to confront the offender with the after- effects of his crime, develop a reparative plan and in more grave cases, determine the requirement for more restrictive supervision and/or custody. This method also serves as alternative measure programme to which an offender can be diverted from the criminal justice system. The model is successfully carried out in countries like South Australia, South Africa, Ireland, Lesotho, etc.²⁰

3) **Circle Sentencing:** This approach towards Restorative Justice is formulated to develop a consensus among the stakeholders, which include victims, their supporters, community members, offenders, their supporters, judicial officers/judges, prosecutors, defence counsel, police and court workers on an appropriate outcome that addresses the concerns of all interested parties. The main motto of this process is to heal the affected party by giving the offender the opportunity to make amends.²¹ This process is conducted in many aboriginal communities in Canada.

¹⁹UN OFFICE ON DRUGS AND CRIME, HANDBOOK ON RESTORATIVE JUSTICE PROGRAMMES 13 (2006).

²⁰*Id.*, at 20.

²¹Dep't of Justice and Constitutional Development Republic of South Africa, *RESTORATIVE JUSTICE: the road to healing*, <http://www.justice.gov.za/rj/2011rj-booklet-a5-eng.pdf> (last visited Feb. 13, 2017).

4) **Indigenous and Customary Justice Forums:** Instances of the Restorative Justice approach were also seen in the olden times in the form of Customary approaches. These indigenous and customary practices have served as the foundation for the modern approaches of restorative justice. In fact, two of the most important forms of restorative justice family group conferences and peacemaking circles are adaptations (but not replications) of the above traditional ways.²² Countries like Australia, Canada, Nigeria, Uganda, Philippines, New Zealand, etc. have their own Indigenous and Customary Justice practices which in one way or other promote the concept of restorative justice with the primary aim to restore social responsibility, reconciliation between the offender and the victim and a sense of justice.²³

APPLICATION OF RESTORATIVE JUSTICE IN INDIA

To look at it in a way, the concept of Restorative Justice was not new to India. In olden days, the approach of solving an issue through restoration and reconciliation between the offender and the victim was seen to be prevalent in the *Gram Panchayats* generally headed by the senior citizens of the said *Panchayat*. This was later adopted by the Indian Constitution in the 1990's. Article 40 of the Indian Constitution directs the state to take steps to organize village *Panchayats* and endow them with such power and authority as to enable them to function as units' of self-government.²⁴

The dispute resolution mechanism adopted by the *Panchayati Raj* primarily focused on the interests of the victims over other elements involved. This was nothing but what we call now to be the **Restorative Justice System**. In majority of the situations, the offenders were made to restore or compensate the harm that was done to the victims. Therefore understanding the need for such implementation, the Law Commission in its 114th Report on "*Gram Nyayalaya*" stated the need for the Village *Panchayat* in resolving the disputes. Further, the *Gram Nyayalaya Act of 2008* and *Nyaya Panchayat Bill of 2009* were introduced to revitalize and

22HOWAR ZEHR & ALI GOHAR, THE LITTLE BOOK OF RESTORATIVE JUSTICE 45-46 (2003), available at <https://www.unicef.org/tdad/littlebookrjpakaf.pdf> (last visited Feb. 13, 2017).

23Restorative Justice: An International Perspective, <https://www.educ.cam.ac.uk/research/projects/restorativeapproaches/seminartwo/SiaLucio.pdf> (last visited Feb. 13, 2017).

24M.K.Gandhi, *Panchayati Raj* 28 (1996).

bring back into picture, the Restorative Justice mechanism already prevalent in the *Panchayati Raj* System.

Apart of the above, the glimpses of the concept of Restorative Justice can be seen through The Juvenile (Care and Protection of Children) Act, 2015. The Act aims to provide proper care, protection and treatment of the juveniles in conflict of the law.²⁵ When a juvenile commits a crime, they are treated separately. They are kept in observation homes during the pendency of an inquiry under this Act.²⁶ There is care and classification done keeping in mind the age, physical and mental status and degree of offence committed by the Juvenile.²⁷

Apart, from the juvenile crimes, the Restorative Justice practices are also seen in the cases of child abuse. Children are often been subjected to various sorts of torture and injuries by parents, care takers, employers etc. The Legislature however, has taken into consideration the need to strengthen the position of the child victims and has enumerated various statutes and programmes such as National Commission for the Protection of Child Rights, Juvenile Justice (Care and Protection of Children) Act, 2015, the Child Marriage Restraint Act 1929, Child Protection scheme, Immoral Trafficking Prevention Act etc., The Indian penal Code, 1860, The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 etc. Besides the above, there is also a constitutional support given to the child abuse victims enshrined through the Articles 14, 15, 15(3), 21, 21(A), 23, 24, 39(e), 39(f) of the Indian Constitution.

Further, if looked into the crimes committed against women, the Criminal Justice System seems to have implemented the restorative approaches if not to the maximum but atleast to some extent. Since the dawn of Indian Independence and even prior to that, women have always been subjected to various sorts of crime. These include rape, dowry death, bride burning, domestic violence, acid attacks etc. However, the legislature and the judiciary have played an active role²⁸ through the Protection of Women from Domestic Violence Act, 2005 in the cases of domestic violence which solves the issues in the restorative justice approach by emphasizing on the needs of the women victim.

Further, in cases of rape there is interim and final monetary compensation and assistance that is provided. Also, section 327 of the Cr.P.C. also provides for relief to the victims of crime by

²⁵Ved Kumari, *Juvenile Justice System in India* 5 (2010).

²⁶§8, Juvenile Justice Care and Protection of Children Act, 2015, (Act 2 of 2015).

²⁷*Id.*

²⁸State v. Ramdev Singh, AIR 2004 SC 1290.

conducting the trial *in camera*. Also, placing reliance on the case *Delhi Domestic Women's Forum v. Union of India*²⁹, there has been constitutional support under Article 21 to the victims of rape as it was stated that right to life included right to live with dignity.³⁰ Further through the case of *S/o Maharashtra v. Chandra Prakash Mewalchand Jain*³¹ and *Shri Bodhisattwa Gautam v. Miss Subhra Chakroborthy*³² the courts have given the privilege to the women victims to keep their name in anonymity.

The fragments of Restorative justice could be further seen in the Indian legal system by the adoption of Plea bargaining and *Lok Adalats*. The concept of 'Plea Bargaining' was adopted by the 177th law commission report with support of the Malimath Committee Report in 2003. In effect to this Chapter XXII of the Cr. P.C. has been added with section 265A and 265L which specifically talk about Plea Bargaining. Plea-bargaining is a pre-trial negotiation that is done between the defence and the prosecution, where the defence pleads guilty and requests the prosecution to aid some concession. The defence in this case acts as a mediator in order to resolve the quantum of compensation

Similar to Plea-bargaining, *Lok Adalats* are special courts that deal with certain matters in a very restorative manner. These courts aim at resolve the dispute by direct talk with the litigants and urge the spirit of practice of "restorative justice."³³ Cases such as the Landlord-tenant dispute, compoundable offences, matrimonial cases including property in the form of debt, securities, guardianship, Custody of children are dealt by the *Lok Adalats*.

The other aspect which manifests the restorative justice principles are the Open Prison system. The Open Prison system has no armed guards, no confined walls and other security. The prisoners in this case are made to move freely and are taught to maintain self-discipline and strive for their livelihood through labour. This approach is nothing but a reformatory and rehabilitative approach to restore the life of the offender in the prison. It believes in providing therapeutic and other correctional treatments³⁴ that can further compensate the victim.³⁵

29 *Delhi Domestic Women's Forum v. Union of India*, (1995) 1 SCC 14.

30 *Maneka Gandhi v. Union of India*, AIR 1981 SC 746.

31 *S/o Maharashtra v. Chandra Prakash Mewalchand Jain*, AIR 1990 SC 658.

32 *Shri Bodhisattwa Gautam v. Miss Subhra Chakroborthy*, AIR 1996 SC 922.

33 *Rakesh Kumar Handa*, *supra* note 13, at 197.

34 *Lingala Vijaykumar & Ors. v. Public Prosecutor, Andhra Pradesh*, AIR 1978 AP 1485; *Umed Singh and another v. State of Haryana*, AIR 2009 P&H 1056.

35 *State of Gujarat v. Hon'ble High Court of Gujarat*, AIR 1998 SC 3164.

Further, the sight of Restorative justice is also seen through Article 141 of the Indian Constitution, where the state is meant to make suitable provision for securing rights towards education and public assistance in case of unemployed, old age, sick and disabled victims, Section 358 of Cr.P.C, 1973, which deals with compensation to persons who are groundlessly arrested and Section 359 which deals with the mandate to pay costs in the case of non-cognizable offences. Also, it is seen in Section 5 of the Probation of Offenders Act, 1958 which deals with the required offenders to pay compensation and costs.

Principles of Restorative justice reflected under Section 357 of the Criminal procedure Code, 1973.

The major motive of the 'Restorative justice system' concept is to protect the interests of the victims by involving them actively in the crime resolution process and to adequately compensate the victim for the harm caused either by the offender or the State.

Section 357 of the Criminal procedure code, 1973 specifically talks about the court's order to compensate the victims. In brief this provision states:

There should be compensation awarded to the victim who has suffered loss due to the offence (Section 357 (1) (a) and (b)) and in the case of claiming damages under the Fatal Accidents Act, 1855 from the accused for the death, the person who is capable to claim damages can claim them (Section 367 (1) (c)). Further, this provision also states that in the case of theft, misappropriation, criminal breach of trust, cheating and stolen property the court may order the offender to compensate the *bonafide* purchaser for the loss suffered by him due to property being returned to the true owner. It further states that, where a sentence doesn't contain any fine, then the court shall order the accused to pay the victim certain amount to compensate the loss suffered by him.

Following this, through the Cr.P.C Amendment Act, 2008, Section 357A was inserted which talks about the **Victim Compensation Scheme**. This provision enumerates the following details on the scheme.

It states that the State Government along with the Central Government shall prepare a certain scheme/fund in order to compensate the victim or their dependents who have been a part of the loss caused due to the crime and need rehabilitation. The quantum of compensation

however, will be decided by District Legal service Authority or the State Legal Service Authority with the recommendation of the court³⁶

This section also states that, if after the trial, the trial court is not satisfied by the quantum of compensation awarded for the adequate rehabilitation, then it can recommend for more. Also, in cases for the offender is not traced but the victim is identified, then in such cases with an application to the State or District Legal Services Authority and further with verification within 2 months the compensation is paid.

Further, State and the District Legal Services Authority may alleviate the suffering of the victim by ordering immediate first aid facility or medical benefits to be made available free of cost with necessary certificate to the police officer³⁷

Therefore, this provision holds the essence of restorative justice by providing reparation to the victims through paying compensation and rehabilitation³⁸

The above mentioned were the fragments of the restorative justice principles reflected in various legislatures in India. On the other hand, there have also been judgments which focused on the plight of the victims.

In the case of *State of Gujarat v. Raghavbhai Vashrambhai and Ors*,³⁹ Justice J.N. Bhatt stated that “In a realm of Victimology the decision is one of the aspect towards fulfilling the design and desideratum and restorative justice to the victims of crime.....”

In another case of *Anupam Sharma v. NCT of Delhi and Another*,⁴⁰ the Hon’ble Justice Pradeep Nandrajog stated “Restorative justice may be used as a synonym for mediation. The object and nature of restorative justice aims at restoring the interest of the victim. Involvement of the victim in the settlement process is welcome in the process of restorative justice. It is a process of voluntary negotiation and concentration, directly or indirectly between the offender and the victim.”

36§357(1), Code of Criminal Procedure, 1973 (Act 2 of 1974).

37“Police officer” in this case is an officer who is not below the rank of the officer in charge of the police station or Magistrate of the area concerned.; *Chairman, RailwayBoard v. Chandrima Das*, AIR 2000 SC 988.

38State of Gujarat v. Hon’ble High Court of Gujarat, AIR 1998 SC 3164.

39State of Gujarat v. Raghavbhai Vashrambhai and Ors, (2003) 1 GLR 205.

40Anupam Sharma v. NCT of Delhi and Another, (2008) DLT 497.

SUGGESTIONS AND IMPLEMENTATION OF RESTORATIVE JUSTICE SYSTEM AS A COMPLEMENT TO THE PREVAILING CRIMINAL JUSTICE SYSTEM

With millions of cases pending, with cumbersome and expensive court procedures, with hundreds of reports from the Law commission and several other organisations requesting for a reform in the Criminal Justice System, it can be clearly stated that the present Criminal Justice System has failed to administer justice to the fullest⁴¹. Nevertheless, the present Criminal Justice System has provided justice to some extent or the other, but this is only twenty percent of the whole. Presently, it has been recorded that more than 70% of the victims are sidelined for decades together due to the various drawbacks that are prevalent in our Criminal Justice System. Therefore, adopting an alternative system like the Restorative becomes a mandate and not an option.⁴²

If Restorative Justice Principles are effectively applied in the Indian Criminal Justice System then high results can be yielded out of it. Suggestions for effective implementation of Restorative Justice System in India are as follows:

1. Increasing Victim Participation: As stated previously, a victim to a crime is a mere witness and does not hold a significant position. Being the most affected person in a crime, the victim should be given an opportunity to adduce the evidence in regards to his loss, pain and suffering and assist the court in determining the quantum of compensation.⁴³In certain cases, where the prosecution may withdraw the case, the victim should be given a chance to assist the court and offer the responsibility to continue the proceedings.

To further strengthen the role of a victim, the programmes such as Victim offender mediation, Family and community group conferencing, and sentencing circles etc. which bring the victim face-to-face to the offender must be effectively adopted in India and corrective measures should also be taken in order to check on such implementation. The legislature should also extend its hand in making suitable laws for the implementation of the said programmes.

⁴¹Rakesh Kumar Handa, *supra* note 13.

⁴²*Id.*

⁴³*Supra* note 11.

Besides the above, the inclusion of the principles of Restorative Justice in the legislations of the following crimes shall automatically increase the role of the victim.

A. Juvenile Crimes: The major motive of the Juvenile (Care and Protection of Children) Act, 2015, aims to restore the juvenile offender through training, rehabilitation and education. Similarly, bringing the juvenile in direct talk to the victim where the victim shares with the juvenile the loss suffered to him due to the crime will enable the juvenile offenders to understand the harm caused by their behaviour and further make necessary amends to their victims and communities. This shall not only adhere to the interest of the juvenile offender but also to the interest of the victim.

B. Women and children related crimes: There have been numerous legislations and judgments in favour of women and children in the recent times. Nonetheless, the above are providing justice and compensation⁴⁴ to the victims but what has been sidelined is the recovery of the victim after crime. This shows the inefficiency of the state to totally resolve the trauma of the victim.

Therefore, by enforcing the principles of Restorative Justice which not only focus on compensating the victims but also focus on reforming them in a way to get back to life will yield better results to the victim in the long run.

C. Encouraging Plea Bargaining: Plea bargaining is a recent concept which enshrines the principle of Restorative Justice. In this procedure, the victim plays a pivotal role in deciding the case. Moreover, the major principle of Restorative Justice that is to balance the interest of both victim and offender is clearly seen through plea bargaining. Therefore, by encouraging the practice of Plea bargaining, the victim is made a substantial part of distribution of justice

2. Adoption of useful features of Inquisitorial System: Our Criminal Justice System, to a large extent, is inclined majorly towards the accused and is seen to be insensitive to the rights and plight of the victim. This has caused a great loss of confidence of the people in the justice system. Therefore, there is an ardent need to come with a system which a convergence of the positive feature of adversarial and inquisitorial legal systems.⁴⁵

⁴⁴*Supra* note 36.

⁴⁵ Abraham S. Goldstein, 41 *Israel Law Review* (1997).

Although it is observed that our adversarial system assures better fairness of trial, yet it lacks dynamism due to the absence of a lofty ideal to inspire. On the contrary, the inquisitorial system has been entrusted with a positive duty to discover truth by the active participation of the Judges themselves. We should come up with a legal system in which the Judge should not simply sit as a mere referee or umpire at a contest between the prosecution and the defence trying to prove their argument,⁴⁶ rather there should be pro-active participation of the Judge so as to surface the truth and to ensure that the justice is being done. Further, he should be given power to give instructions to the investigating officers and the prosecution agencies for the seeking the truth in order to impart complete justice to the victims.

In order to amalgamate the beneficial features of the inquisitorial system with our prevailing Adversarial system we do not need to introduce new procedures or come up with a new statute altogether. The existing provisions, to a great extent, will fill up the gaps, if interpreted in an appropriate manner. For instance:

- Under Section 482 of the Code of Criminal Procedure, Inherent powers can be exercised in the interest of justice, in the absence of a statutory provision to meet the situation.⁴⁷ Inherent powers should be granted to the other subordinate criminal courts. By the use of the inherent powers the judicial officers or judges can increase their part in quest for the truth in order to provide complete justice.
- A provision similar to Section 311 of the Code of Criminal Procedure can be inserted in the court where the courts should be given power to issue directions to the investigating officer or the supervisory officer to take appropriate actions for proper or adequate investigation in order to support the Court in discovering the truth.

All such modifications to our present Criminal Justice System, by the adoption of the some good and useful features of the Inquisitorial System will definitely strengthen our system.

3. Effective implementation of Section 357A of Cr.P.C.: It has been noticed that there is very little implementation of Section 357A in the past seven years of its enactment. It has been recorded that the upper limit of the compensation decided by the State and the District legal service authorities have been arbitrarily low and not in accordance to the intent of the legislature.

⁴⁶Ram Chandra v State of Haryana, AIR 198 SC 1036.

⁴⁷*Supra* note 11, at 30.

Further, the interim relief that has to be provided under section 357A (6) has also been noted to be low and not according to the gravity of the crime. Therefore, in order to overcome such shortcomings, the following suggestions can be implemented:

- (i) The quantum of compensation decided by the court shall be solely on the basis of the facts and circumstances of the case⁴⁸
- (ii) Workshops have to be organised for the lawyers, judicial officers and public prosecutors in order to make section 357A more operative.
- (iii) Along with the quantum of compensation that has to be paid, the time within which it has to be paid should also be decided. Necessary measures should be taken to see that the offender pays the said compensation.

Along with the above stated suggestions which can administer justice to the maximum to the victims the following measures can also be adopted:

1. The victims should be made aware of the violation of their rights and exploitation they have faced. There shall be establishment of victim literacy camps to allow them understand the situation and stand up for their own rights.
2. Along with the various support lines that the state provides for its citizens, a Victim helpline can also be provided for the victim and their relatives to address their grievances over a telephonic conversation which can save a lot of time and resources
3. The above suggestions should be implemented properly even in the lower courts which can reduce the procedural technicalities and the delay in justice.
4. Apart from the State, the community as a whole should come forward and take initiatives to rehabilitate the victims especially in cases of rape, acid attack, domestic violence etc.

CONCLUSION

Restorative Justice System gives answers to the lacuna present in the current Criminal Justice System along with new approaches of responding to them. The Restorative Justice System

⁴⁸Satya Pal Anand v. State of M.P. (2014) 4 SCC 800; *In re Gang Rape Ordered by Village Kangaroo Court in W.B.*, (2014) 4 SCC 786.

not only includes the State and the offender but also includes all the affected parties involved in an event of crime. It focuses on reparation of the victims by providing rehabilitation and compensation, transformation of relationship between people along with the social and physical environment, enabling the offender to understand the harm caused by him and preventing him from doing it in future. All of the above seem to be absent in the Criminal Justice System.

The Criminal Justice System aims solely on providing punishment to an offender for violating law, whereas, Restorative Justice looks beyond it by taking into consideration the harm caused, the reasons for it and the responsibility of the offender to correct such wrong by providing the necessary aid to the victim. Further, Restorative Justice gives opportunity to the victims in order to understand the harm inflicted upon them, the violation of their rights and what has to be done for the reparation of such harm inflicted on them, which is seen to be sidelined by the present Criminal Justice System.

Therefore, all of the above makes it evident for the need of restorative justice system in India. However, taking into consideration the gravity and nature of different crimes it is not possible to apply restorative justice principles on all of them. What the present paper proposes is to let the adversarial system of Criminal Justice System remain for grave offence and adopt other models of effective resolution such as Restorative Justice System alongside of it. The change of the Criminal Justice System to the Restorative or Victim Justice System as discussed throughout the paper shall be perceived complementary and not contradictory to the existing Criminal Justice System.

In conclusion the present paper takes a stand that the current Criminal Justice System complementary to the Restorative Justice System and shall not only yield better administration of justice but also bridges various gaps present in the prevalent Criminal Justice System.