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RESTORATIVE JUSTICE IN THE INDIAN CRIMINAL SYSTEM: TIME FOR A PARADIGM SHIFT?

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ABSTRACT

Restorative justice (RJ) is an approach that prioritizes repairing harm to victims and communities, offender accountability, and meaningful participation of affected parties. In India, long governed by colonial-era criminal laws and a largely retributive criminal justice system, recent legislative reform most notably the three statutes enacted in 2023 and brought into force in 2024 creates openings to mainstream restorative approaches. This article (i) outlines restorative justice principles and global evidence, (ii) situates Indian reforms the (Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhiniyam) in this context, (iii) assesses statutory provisions (victim compensation, witness protection, probation/diversion, court facilitation and evidentiary change) for their restorative potential and gaps, and (iv) sets out recommendations for policy, law, and practice to realize a paradigm shift toward a restorative criminal justice in India.

KEYWORDS: Bharatiya Nyaya Sanhita, mediation, probation, Canada, non-custodial, District Legal Services Authorities.

INTRODUCTION

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The dominant paradigm of criminal justice in India has traditionally been adversarial and retributive: offences are defined and punished by the State; trials are contests between prosecution and defence; and victims are largely peripheral actors whose role is restricted to being witnesses. This framework finds its roots in colonial-era statutes and institutions which prioritized state authority and public order over victim-centered responses.² Over the past two decades, there has been growing attention both from scholars and policy-makers to victim rights, alternatives to prosecution, and community-based responses that emphasize healing and reintegration. The enactment of three new criminal statutes in 2023 the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhiniyam (BSA) and their phased enforcement in 2024 have opened a fresh moment for reimagining the system.³ This article examines whether these new laws create a feasible legal architecture for restorative justice in India and what systemic, legislative and institutional measures are required to translate law into practice.

WHAT IS RESTORATIVE JUSTICE?

Restorative justice is best understood as a values-driven framework and a variety of practices and processes that seek to address the harm caused by crime by engaging victims, offenders and the wider community in dialogues that prioritize

² *The Bharatiya Nyaya Sanhita, 2023* (Ministry of Home Affairs, Gazette) available at: https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf (last visited on Aug. 13, 2025).

³ The three statutes *Bharatiya Nyaya Sanhita, 2023*; *Bharatiya Nagarik Suraksha Sanhita, 2023*; and *Bharatiya Sakshya Adhiniyam, 2023* were enacted in Dec. 2023 and brought into force in parts during 2024. Available at: https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf; https://www.mha.gov.in/sites/default/files/2024-04/250882_english_01042024_0.pdf; https://www.indiacode.nic.in/handle/123456789/20099?view_type=browse (all last visited on Aug. 15, 2025).

acknowledgement, accountability, reparation and reintegration.⁴ Unlike punitive models which primarily ask "What law was broken and what punishment should be imposed?", the restorative lens asks "Who has been harmed, what are their needs, and how can those needs be met?" Typical RJ processes include victim-offender mediation, family group conferencing, circle processes, community reparative boards, and certain diversion or deferred-prosecution models. Empirical research particularly from restorative programmes in Canada, New Zealand, Australia, the UK and North America suggests restorative processes can reduce recidivism, increase victim satisfaction, and yield higher levels of offender accountability when implemented with safeguards.⁵

INTERNATIONAL STANDARDS AND INDIA'S OBLIGATIONS

International organizations and instruments support or encourage restorative practices as complementary to formal justice. The United Nations has promoted restorative justice within its justice and prison reform work, and UN guidance underscores RJ's adaptability to different legal systems while emphasizing voluntariness, informed consent, adequate safeguards for vulnerable participants and the need for state oversight where necessary.⁶ These normative frameworks are useful in calibrating any Indian reform to international good practice.

THE INDIAN LEGAL LANDSCAPE: A BRIEF LEGISLATIVE AND POLICY HISTORY

⁴ *Restorative Justice* (United Nations Office on Drugs and Crime) available at: <https://www.unodc.org/unodc/es/justice-and-prison-reform/cpcj-restorative-justice.html> (last visited on Aug. 10, 2025).

⁵ National Association for Community and Restorative Justice available at: <https://www.nacri.org/> (last visited on Aug. 10, 2025); UNODC *Restorative Justice* materials (last visited on Aug. 11, 2025).

⁶ See UN guidance referenced at UNODC (n 3) and practitioner guidance on safeguards and voluntariness.

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India's primary criminal statutes historically the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC) and the Indian Evidence Act were products of the 19th century, designed for a very different polity and policing paradigm. A slow evolution in law and practice over the 20th century introduced some victim-centered and reformatory elements such as victim compensation schemes, probation, plea bargaining and mediation in certain contexts but implementation remained uneven.⁷ Landmark Supreme Court jurisprudence (for example, the rights-based expansion of victim compensation) pushed the system horizontally towards considering victim interests, yet institutional inertia and adversarial courtroom practices limited systemic change.⁸

THE 2023 LEGISLATIVE OVERHAUL: BNS, BNSS AND BSA

In December 2023 Parliament enacted three statutes intended to modernise India's criminal justice architecture: the Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhiniyam. These statutes were published and made available by the Ministry of Home Affairs and other official repositories and were brought into force in parts during 2024.⁹ The three statutes replacing the IPC, CrPC and the Evidence Act in whole or in part retain many familiar features while introducing significant reorganizations and new provisions.¹⁰

WHY THESE STATUTES MATTER FOR RESTORATIVE JUSTICE

⁷ *Overview of Criminal Law Reforms* (PRS Legislative Research) available at:

<https://prsindia.org/billtrack/overview-of-criminal-law-reforms> (last visited on Aug. 14, 2025).

⁸ *Victim Compensation* (National Legal Services Authority) available at: <https://nalsa.gov.in/victim-compensation/> (last visited on Aug. 10, 2025).

⁹ See *supra* note 2.

¹⁰ BNSS ss. 395–399; consolidated BNSS PDF (PRS) (*supra* note 2).

Two aspects of the new laws are particularly relevant to restorative possibilities.

1. The BNSS expressly consolidates and expands the statutory role of the State vis-à-vis victims, including a statutory victim-compensation scheme and express provisions on the treatment of victims and witness protection.¹¹ By placing a statutory duty on State actors to ensure compensation, interim relief and rehabilitation-oriented responses, BNSS provides a statutory canvas upon which restorative programmes (which often require compensation, reparation plans and rehabilitation pathways) can be scoped and integrated.¹²

2. Structural changes across the three statutes especially those enabling non-custodial sentences (probation, admonition, community service), judicial powers to recommend reparation and explicit mention of diversionary mechanisms create legal space for resolving suitable offences through non-adversarial, community-involving procedures.¹³ Sectional provisions on probation and orders releasing offenders on probation, as well as judicial powers to recommend compensation and to record special reasons when deviating from restorative-leaning options, show legislative awareness of alternatives to incarceration.¹⁴

ASSESSING STATUTORY PROVISIONS: POTENTIAL AND LIMITATIONS

1. Victim compensation and rehabilitation (BNSS, s. 396)

BNSS s.396 requires State governments, in coordination with the center, to prepare schemes for providing funds for compensation and rehabilitation to victims or their dependents; it also directs the District or State Legal Services Authorities to determine

¹¹ Section 396, BNSS, 2023 (*Indiankanoon*) (*supra* note 2).

¹² *Victim Compensation* (NALSA) (*supra* note 7).

¹³ For discussion of diversion, probation, and non-custodial orders, see BNSS ss. 395–401; India Code BNSS page and PRS materials (*supra* notes 9, 6).

¹⁴ On comparative models and pilot lessons, see UNODC restorative justice resources and country case studies summarised in practitioner literature; see UNODC (*supra* note 3).

the quantum on recommendation by courts, and provides for interim first-aid and medical relief pending enquiry.¹⁵ This statutory of compensation strengthens victim-centered outcomes and addresses a long-standing lacuna delays and discretionary obstacles in accessing relief that historically has pushed victims to seek private civil remedies or long judicial battles.¹⁶

a) Restorative potential: Compensation is often a tangible component of restorative agreements. A legislated victim compensation scheme lowers transactional barriers to reparation. When linked to court-facilitated restorative processes, compensation can be coupled with apology, mediation, community service and rehabilitation plans.

b) Limitations: Compensation as money alone cannot substitute for non-pecuniary restorative needs such as apology, symbolic reparation, community reintegration or therapeutic support. Moreover, automatic reliance on State compensation risks crowding out offender-provided reparation unless statutory design encourages offender-led restorative settlement where appropriate and safe.

2. Diversion, probation and non-custodial orders

BNSS contains provisions that mirror and expand traditional CrPC provisions on release on probation, admonition and community sentences.¹⁷ These are critical legal vehicles for embedding restorative interventions: diversionary referral to restorative conferencing is only meaningful where the law recognizes non-custodial outcomes as legitimate sentencing and where courts can condition outcomes on compliance with restorative agreements.

¹⁵ A Review of Criminal Law Reforms (SSRN) available at:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5361043 (last visited on Aug. 15, 2025).

¹⁶ Victim Compensation (NALSA) (supra note 7).

¹⁷ BNSS ss. 360–375; see also PRS, *Bharatiya Nagarik Suraksha Sanhita, 2023: Comparison with Code of Criminal Procedure, 1973* (supra note 6).

a) Restorative potential: Probation and community orders can be structured to include victim-offender mediation, community service tailored to repair, counselling, and monitoring by trained restorative practitioners or probation officers. Where statutory language allows court discretion to suspend prosecution or sentencing in favor of restorative plans, the incentive structure favors negotiated settlements prioritizing repair.

b) Limitations: Success depends heavily on procedural safeguards, informed consent, the availability of trained mediators, and robust monitoring. Risk-averse judges or overburdened probation services may default to traditional orders unless clear procedural frameworks and resources are provided.

WITNESS PROTECTION AND TREATMENT OF VICTIMS

BNSS also codifies witness protection schemes and rights entitling victims to dignified treatment and special measures in court.¹⁸ A credible witness protection framework is essential for RJ processes to be safe and accessible especially in offences involving coercion, organized crime, or gender-based violence. Victims' willingness to engage in restorative processes is closely tied to confidence in safety and procedural dignity.

EVIDENTIARY REFORMS UNDER THE BSA

The Bharatiya Sakshya Adhiniyam (BSA) introduces modernized rules of evidence and recognizes scientific and digital evidence schemes more coherently.¹⁹ For RJ, evidentiary changes matter in two respects: (i) where restorative agreements are reached, courts must be able to record and enforce such settlement (for which the

¹⁸ BNSS ss. 399–401; also see *Witness Protection Scheme 2018* (Ministry of Home Affairs) available at: <https://mha.gov.in/sites/default/files/WitnessProtectionScheme2018.pdf> (last visited on Aug. 15, 2025).

¹⁹ *Bharatiya Sakshya Adhiniyam, 2023, Parts II–III*; see also PRS, *Bharatiya Sakshya Adhiniyam, 2023 – Key Features* (*supra* note 6).

evidentiary weight of recorded admissions, apologies or agreements is relevant); and (ii) protection of victim privacy and trauma-informed processes require evidentiary rules that allow in-camera proceedings or redaction without lowering the quality of adjudicative fairness.

PROCEDURAL AND INSTITUTIONAL GAPS

Despite statutory openings, several gaps need attention.

- **No express statutory framework for restorative processes:** While BNSS and allied laws enable compensation and non-custodial orders, they do not provide a dedicated statutory scheme for restorative conferencing, referral mechanisms, standards for mediation or regulatory norms for restorative practitioners. This absence risks ad hoc, uneven experiments rather than nationwide pilot-to-scale programmes.
- **Victim safety and power asymmetries:** Restorative dialogues can be deeply beneficial but also risky especially where there are power imbalances (domestic violence, sexual offences, caste-based crimes) or where offenders are unrepentant or influential. Legislation must require risk assessments, informed consent protocols and opt-out safeguards.
- **Resource and capacity constraints:** RJ requires trained mediators, community reparative boards, and probation officers who understand trauma-informed practices. India's criminal justice institutions are resource-stretched; without earmarked budgetary allocations and training curricula, implementation will falter.
- **Monitoring, enforcement and recidivism:** For restorative outcomes to be durable, courts and probation services must be able to monitor compliance, impose sanctions for breach, and offer rehabilitative services. Legal provisions that make restorative outcomes non-binding or difficult to enforce will reduce confidence among victims.

- **Data, evaluation and transparency:** Scaling RJ requires robust data-collection, evaluation mechanisms and transparent reporting. The new laws do not yet mandate a central monitoring mechanism for alternative dispute resolution outcomes in criminal matters.

OPERATIONAL PROPOSALS: TRANSLATING LAW INTO PRACTICE

- **Draft a national Restorative Justice Framework (executive guideline) grounded in BNSS and BSA provisions:** The Centre through the Ministry of Home Affairs in conjunction with the National Legal Services Authority (NALSA) should issue a model framework that defines eligible offences for RJ (generally minor to moderate non-violent offences, but with case-by-case discretion), standards for voluntary participation, risk assessment protocols, and data-reporting obligations.
- **Enable statutory recognition of restorative agreements:** Amend procedural rules or subordinate legislation to enable courts, after satisfying themselves about voluntariness and safety, to record restorative agreements as part of the judicial record and to convert them into binding, enforceable orders (for example as conditional discharge, compensation orders enforceable like court decrees, or as part of probation conditions).
- **Invest in capacity building:** Allocate central and State funds to: train mediators (with a standardized certification syllabus combining legal, psychological and social work modules); mainstream RJ modules into law school and judicial training programmes; and strengthen probation services to supervise restorative orders.
- **Institutionalize community reparative structures:** Work with District Legal Services Authorities (DLSAs), Gram Sabhas and civil society to create local restorative panels multi-stakeholder bodies including victim representatives,

trained facilitators, community leaders and social workers that can mediate, design reparation plans and supervise implementation.

- **Protect vulnerable victims:** For offences involving sexual violence, trafficking, domestic abuse, or where there is evidence of coercion or serious power imbalance, restorative processes should be available only as a complement (not substitute) to criminal prosecution and must include specialist victim-support services. Protocols should require independent legal advice for victims prior to any restorative engagement.
- **Data, monitoring and research:** Mandate reporting on restorative referrals, acceptance rates, compliance, victim satisfaction and recidivism; centrally collate data (with appropriate privacy safeguards) for independent evaluation and course correction.

ILLUSTRATIVE MODELS AND LESSONS FROM OTHER JURISDICTIONS

Countries such as New Zealand and Canada, and several US states, have institutionalized RJ in certain offence categories with defined referral mechanisms and monitoring systems; New Zealand's Victims' Rights framework and Canada's Victim-Offender Mediation programs show both promise and limitations (notably the risk of procedural coercion and the need for specialist safeguards).²⁰ The UNODC has published practitioner-oriented guidance stressing voluntariness, safety and the need for make-up services for victims and their communities.²¹ India should adapt rather

²⁰ Government of New Zealand, *Victims' Rights Act 2002* and related amendments; Public Safety Canada, *Restorative Justice Program* available at: <https://www.publicsafety.gc.ca/cnt/cntrng-crm/crmnl-jstc/rstrtv-jstc-en.aspx> (last visited on Aug. 15, 2025).

²¹ United Nations Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programmes* (2nd edn, UN 2020) available at: https://www.unodc.org/documents/justice-and-prison-reform/20-00673_Handbook_on_Restorative_Justice_Programmes.pdf (last visited on Aug. 15, 2025).

than adopt ensuring cultural appropriateness, sensitivity to caste and gender dynamics, and alignment with constitutional rights.

CASE SELECTION AND THE POLITICS OF RESTORATIVE JUSTICE

Not all crimes are suitable for restorative responses. Serious, violent crimes, murders, and crimes against the State usually require formal adjudication and public accountability. However, many everyday offences property crimes, minor assaults, juvenile offences, certain economic offences and first-time non-violent offenders are promising candidates. Selection must be evidence-informed, victim-centred and flexible, not rigidly mechanistic.

RESTORATIVE JUSTICE AND SOCIAL JUSTICE: CASTE, GENDER AND POWER

A uniquely Indian dimension to any RJ project is the overlay of caste, gender, and communal power. Community-based restorative processes risk reproducing social hierarchies unless participation is carefully structured to protect marginalized victims. Restorative design must therefore be intersectional: providing legal aid, independent counselling, anonymity options, and forum-shopping protections (so victims need not rely on local panels dominated by local elites).

CONCLUDING ASSESSMENT: IS IT TIME FOR A PARADIGM SHIFT?

The enactment of the BNS, BNSS and BSA has altered India's statutory landscape and created legal openings for restorative practices statutory victim compensation, explicit mention of rehabilitation and probation, and modernized evidentiary rules provide the scaffolding for a restorative turn.²² But law alone cannot produce a paradigm shift. For restorative justice to become a substantive alternative (or complement) to

²² BNSS ss. 395–401; BNS, Chapters on Sentencing and Probation; BSA, provisions on admissibility of recorded agreements (supra note 2).

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retributive adjudication in India, legislative openings must be matched by policy frameworks, institutional investment, training, safeguards for victims, and a strong evidence base.

The road ahead must be incremental and cautious. Pilot projects (district-level restorative pilots), transparent evaluation, victim-centered safeguards and statutory recognition of enforceable restorative agreements can together translate the promise of the new criminal statutes into meaningful restorative practice. If India takes these steps grounded in human dignity, informed consent and robust public oversight the new legal era may well become the moment when the criminal justice system begins to repair harm, restore relationships, and reintegrate citizens rather than merely punish them.