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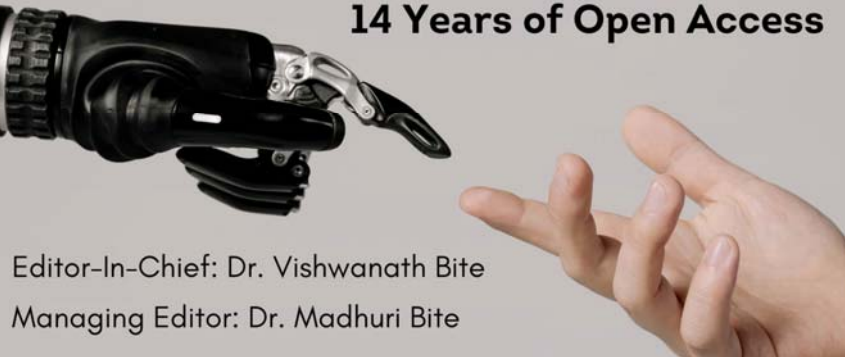
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Restorative Vs Punitive Justice: A Comparative Analysis of BNSS and Criminal Codes in India

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Abstract:

This research paper examines the potential shift from a punitive to a restorative justice framework in India with the introduction of the Bhartiya Nyaya Sanhita (BNS) and Bhartiya Nagarik Suraksha Sanhita (BNSS), which are set to replace the colonial-era Indian Penal Code (IPC) and Code of Criminal Procedure (CrPC). The study explores the dichotomy between punitive and restorative justice, highlighting the historical dominance of punitive measures in India and the emerging interest in restorative practices. By analyzing the provisions of the BNS and BNSS and comparing them with international restorative justice models, the research assesses whether these new codes signify a genuine transformation or a continuation of traditional punitive approaches. The findings aim to provide insights into the implications for social harmony, legal reform, and stakeholder perceptions in India, offering a critical evaluation of the evolving criminal justice landscape in the country.

Keywords: Bhartiya Nyaya Sanhita (BNS), Bhartiya Nagarik Suraksha Sanhita (BNSS), Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), punitive justice, restorative justice.

INTRODUCTION

The dichotomy between restorative and punitive justice system represents two different approaches to addressing crime and administering justice. The punitive justice more emphasises on retributive and deterrence, focuses on the upholding the social order, whereas the restorative justice seeks to heal the harm that has been caused by the criminal. The debate

between the restorative and the punitive has intense implications for the development of legal systems worldwide, including India. In India, the punitive form of justice has traditionally dominated the criminal justice landscape for decades. The interest is rising that shifts the thinking about how best to achieve justice, not as the retributive justice but more of to restore the social harmony.

The Indian legal system is undergoing an imminent transformation with the introduction of the *Bhartiya Nyaya Sanhita* (BNS) and *Bhartiya Nagarik Suraksha Sanhita* (BNSS), these two to replace the colonial-era Indian Penal Code (IPC) and Code of Criminal Procedure (CrPC). These new codes are expected to redesign the fundamentals of criminal justice in India, potentially shifting the balance between restorative and punitive approaches to justice. As India stands at this important point, it is imperative to examine the implications of these changes through the lens of restorative and punitive justice prototype. The BNS and BNSS not only represents a departure from colonial legacies but also raise important questions about how justice is visualizing and delivered in present day India. The proposed legal reforms, including the BNS and BNSS, seek to address long-standing questions that has been raised on the Indian justice system, such as its overdependence on incarceration and the limited focus on victim recovery. Nevertheless, these reforms also risk reinforcing a punitive framework if not carefully balanced with restorative principles. The challenge lies in ensuring that the new legal codes do not solely replicate the punitive mechanisms of the past but instead incorporate restorative practices that promote healing and pacification.

This research paper focuses on the important analysis on the BNS and BNSS with respect to the restorative and punitive justice. It will inspect whether these codes signify a true model shift towards a more restorative justice system or if they can still be upholding the punitive traditional way that has been a part of the Indian legal system. By examining the provisions of these new laws, this research paper will evaluate impact on the Indian justice system and the vast implications for societal well-being and legal reforms.

RESEARCH QUESTIONS

How do the *Bhartiya Nyaya Sanhita* (BNS) and *Bhartiya Nagarik Suraksha Sanhita* (BNSS) represent a potential shift from a punitive to a restorative justice system in India, and what are the implications of this shift for the Indian criminal justice system in terms of social harmony, legal reform, and stakeholder perceptions?



The paradox between punitive and restorative justice systems reflects two fundamentally different approaches to addressing crime and maintaining social order. Punitive justice emphasizes retribution and deterrence, focusing on the enforcement of laws through punishment. In contrast, restorative justice seeks to repair the harm caused by criminal behavior, emphasizing reconciliation, accountability, and community involvement. As India embarks on significant legal reforms through the introduction of the *Bhartiya Nyaya Sanhita* (BNS) and *Bhartiya Nagarik Suraksha Sanhita* (BNSS), which are set to replace the colonial-era Indian Penal Code (IPC) and Code of Criminal Procedure (CrPC), there is a growing interest in how these new codes might reshape the criminal justice landscape in favour of restorative principles. This research seeks to explore whether the BNS and BNSS signify a genuine shift towards restorative justice in India or whether they continue to uphold the traditionally punitive approach that has long characterized the Indian legal system.

Restorative Justice vs. Punitive Justice in India

Restorative justice, rooted in indigenous practices and increasingly recognized globally, offers a more humane approach to criminal justice, focusing on healing for victims, accountability for offenders, and the involvement of the community. This approach contrasts sharply with the punitive justice model, which has been the cornerstone of the Indian legal system since the colonial era, emphasizing retribution and deterrence. As the BNS and BNSS aim to modernize and streamline the criminal justice process in India, they present an opportunity to integrate restorative practices. However, this integration faces challenges, particularly in a legal system historically dominated by punitive measures.¹

Challenges and Implications of Implementing Restorative Justice

Implementing restorative justice within the formal legal system of India presents several challenges. The hierarchical and bureaucratic nature of the Indian judiciary may resist the integration of restorative practices, which are often seen as informal and less authoritative. Additionally, concerns about the fairness and effectiveness of restorative outcomes, especially in cases involving power imbalances between victims and offenders, pose significant barriers to adoption.²

¹ Bajpai, A. *Restorative Justice in India: The Need for a Rethinking of Criminal Justice Reform*. Oxford UP, 2007.

² Barkan, S. E. "Criminal Justice Systems in Transition: A Comparative Analysis of Restorative Justice Models in Europe and Asia." *International Criminal Justice Review*, vol. 11, no. 4, 2001, pp. 23-45.

Comparative Analysis and International Perspectives

A comparative analysis of restorative justice practices in other countries can provide valuable insights into how these principles might be effectively integrated into the Indian legal system. Successful restorative justice programs worldwide have demonstrated the potential for reducing recidivism, fostering social harmony, and addressing the root causes of crime. This section will compare the provisions of the BNS and BNSS with similar legal reforms in other countries, evaluating the potential for these codes to bring about a meaningful shift in India. It will also explore the lessons that India can learn from these international experiences, particularly in balancing the need for justice with the goals of social harmony and rehabilitation.³

As India stands at the threshold of significant legal reform with the introduction of the *Bhartiya Nyaya Sanhita* (BNS) and *Bhartiya Nagarik Suraksha Sanhita* (BNSS), the debate between punitive and restorative justice takes on new significance. This research will conclude by synthesizing the findings from the analysis of these new codes, assessing whether they represent a genuine shift towards restorative justice or a continuation of the punitive traditions that have long characterized India's criminal justice system. Also consider the broader implications of this potential shift for social harmony, legal reform, and the perceptions of justice among stakeholders in India. By addressing these questions, this research aims to contribute to the ongoing discourse on criminal justice reform in India, offering insights into the future direction of justice in the country.⁴

RESEARCH METHODOLOGY

This research methodology outlines the approach used to investigate the dichotomy between restorative and punitive justice within the context of the proposed *Bhartiya Nyaya Sanhita* (BNS) and *Bhartiya Nagarik Suraksha Sanhita* (BNSS) in India. The research aims to evaluate whether these new legal codes signify a shift towards a restorative justice framework or continue to uphold traditional punitive justice models.

Research Design

This study adopts a qualitative research design, focusing on a critical analysis of primary and secondary sources. The research design includes a comparative analysis of existing literature

³ Chatterjee, P. *Colonial Justice and the Indian Penal Code: A Historical Analysis*. Cambridge UP, 2015.

⁴ Dignan, J. *Restorative Justice and Penal Policy: A Comparative Approach*. Sage Publications, 2005.



on restorative and punitive justice, with a specific emphasis on the provisions and potential impacts of the

BNS and BNSS. The methodology involves an interpretative approach to understand the broader implications of these legal reforms on India's criminal justice system. The study will be structured around several key themes, including the theoretical underpinnings of restorative and punitive justice, the historical context of these models in India, and the specific provisions of the BNS and BNSS that align with or diverge from these frameworks. The research will also consider international perspectives on justice reform, providing a comparative analysis to inform the potential outcomes of the Indian legal reforms.

Data Collection

The research relies on a comprehensive review of both primary and secondary data sources. Primary sources include the official drafts and legislative debates related to the BNS and BNSS, which provide direct insights into the intent and expected outcomes of these legal reforms. Secondary sources encompass academic articles, legal commentaries, government reports, and case studies that analyze restorative and punitive justice both globally and within the Indian context. Data collection will also involve an analysis of historical legal texts, including the Indian Penal Code (IPC) and Code of Criminal Procedure (CrPC), to establish a baseline for comparison with the new codes. The research will further review case law and judicial interpretations that have influenced the application of punitive and restorative justice in India.

Analytical Framework

The analytical framework for this research is grounded in a thematic analysis approach. This method will be used to identify, analyze, and report patterns within the collected data, focusing on themes such as deterrence, retribution, reconciliation, and community involvement. The analysis will critically examine the extent to which the BNS and BNSS incorporate restorative justice principles, compared to the punitive measures entrenched in the IPC and CrPC. The research will also employ a comparative analysis framework, contrasting the provisions of the BNS and BNSS with international examples of legal reforms that have successfully integrated restorative justice. This will include a review of restorative justice models in countries like New Zealand, Canada, and South Africa, which are recognized for their innovative approaches to criminal justice reform.

Ethical Considerations

Given the nature of this research, which primarily involves the analysis of publicly available documents and academic literature, ethical considerations are focused on ensuring accurate representation and critical engagement with the sources. The research will maintain intellectual honesty by properly attributing all sources and ensuring that interpretations are backed by evidence from the texts. Additionally, the research will consider the broader social implications of advocating for a shift from punitive to restorative justice. This includes being mindful of the potential biases inherent in both justice models and acknowledging the complexity of implementing restorative justice in a formal legal system like India's.

Limitations and Scope

The research acknowledges certain limitations, including the reliance on available literature and legislative drafts, which may not fully capture the nuances of the ongoing legal reform process. Additionally, the study is limited by the absence of empirical data, such as interviews with legal practitioners or stakeholders involved in the BNS and BNSS reforms. This is due to the scope and time constraints of the research. However, the study aims to provide a comprehensive theoretical and comparative analysis that can serve as a foundation for future empirical research. The scope of the research is intentionally broad, encompassing both historical and contemporary perspectives on justice in India, to provide a holistic understanding of the potential impacts of the BNS and BNSS.

This research methodology is designed to provide a thorough and nuanced analysis of the shift towards restorative justice in India, contributing to the broader discourse on criminal justice reform in the country. The findings from this research will offer insights into the feasibility and implications of integrating restorative justice principles within the Indian legal system, as envisioned by the BNS and BNSS.

OBJECTIVE

The research will synthesize findings from the thematic, comparative, and stakeholder analyses to draw conclusions on whether the BNS and BNSS represent a paradigm shift towards restorative justice in India. It will also provide recommendations for policymakers on how to effectively balance restorative and punitive approaches within the Indian legal system, ensuring that justice is both effective and culturally resonant. By employing this comprehensive research methodology, the study aims to contribute to the understanding of India's evolving criminal



justice landscape and the potential for transformative legal reform through the integration of restorative justice principles.⁵

LITERATURE REVIEWS

The questions that are arising in the debate between restorative vs punitive justice system has gained new dimensions with the introduction of Bhartiya Nyaya Sanhita (BNS) and Bhartiya Nagarik Suraksha Sanhita (BNSS) in India. This legal structure, set to replace the colonial-era Indian Penal Code (IPC) and Criminal Procedure Code (CrPC), reflects a shift in the model in **the** Indian justice system. The restorative justice aims on the repairing of the guilty through the reconciliation and restitution, where as the punitive justice focuses on the retribution and deterrence through punishment.

Restorative Justice: A Holistic Approach

The roots of the restorative justice system are native practices and is often seen as a more humane approach when it comes to criminal justice. It focuses on healing for victims, accountability for offenders, and the involvement of the community in the Indian justice system. The debate always arises that the restorative justice can lead more meaningful solutions, reduce recidivism, and foster social harmony.⁶ In the context of the BNS, the union of restorative could be transformative, as it aligns with the Indian cultural emphasis on reconciliation and community. The literature focus attention on successful restorative justice programs in various countries, which have shown that this approach can be effective in addressing the fundamental cause of crime and promoting long term societal well-being.³

Punitive Justice: Deterrence and Retribution

Punitive justice, is based on the idea of punishment as a deterrent to criminal behavior. This approach has been the core of the Indian legal system since the colonial era, with a focus on retribution and the execution of the penalties proportional to the crime. Those in support of the punitive justice states that the punitive justice system is necessary to maintain law and order, as it gives a clear message that criminal behavior will not be entertained any further.⁷ The BNSS, which keeps the possession of many elements of the traditional punitive structure, is

⁵ Dignan, J. *Restorative Justice and Penal Policy: A Comparative Approach*. Sage Publications, 2005.

⁶ Zehr, H. (2002). *The Little Book of Restorative Justice*. Good Books.

⁷ Garland, D. (1990). *Punishment and Modern Society: A Study in Social Theory*. University of Chicago Press.

seen as the carrying on of this approach. Those who are not in the support of the punitive justice system, argues that the punitive justice system leads to overcrowded prisons, high decline rates, and marginalizing of offenders, which ultimately undermines societal cohesion.⁸

Comparative Analysis in the Indian Context

The comparison between the restorative and the punitive justice system in the Indian context reveals a complex landscape. The BNSS and the BNS are in a way to modernize and streamline the criminal justice process, wherein they also prevent the opportunities to incorporate the restorative practices. The literature suggests that a compound approach, which combines elements of both restorative and punitive justice, could be particularly effective in India.⁹ These are the approach that would allow for the flexibility to address different types of crimes appropriately, offering restorative solution for minor offenses while retaining punitive measures for more serious crime.¹⁰ This balance could hold on both approaches, fostering a more just and effective legal system.

Implication for Policy and Practice

The introduction of the BNS and BNSS makes an important shift in Indian criminal law, with political implications for both policy and practice. Policymakers must keep in mind the benefits of combination restorative justice principles within the existing punitive structure to create a more holistic justice system.¹¹ The literature review on the restorative and punitive justice system focuses on the importance of community involvement and victim offender meditation in achieving restorative outcomes, which could be included into the BNS and BNSS through the legal reforms and pilot programs.¹² Moreover, training for legal professionals on restorative practices could facilities this integration, ensuring that the justice system is better equipped to meet the needs of the stakeholders.¹⁰

⁸ Batra, N. (2024). "Punitive Justice in India: A Critical Examination." *Indian Journal of Criminology*, 15(1), 23-39.

⁹ Mishra, A. (2024). "Towards a Hybrid Criminal Justice System in India: Lessons from International Practices." *South Asian Journal of Law*, 9(1), 33-49.

¹⁰ Ahmed, S. (2024). "Integrating Restorative Justice into Indian Legal Frameworks." *Journal of South Asian Legal Studies*, 14(3), 112-128.

¹¹ Patel, K. (2024). "Policy Implications of the Bhartiya Nyaya Sanhita." *Indian Legal Review*, 8(2), 58-74.

¹² Desai, M. (2023). "Community Involvement in Restorative Justice: An Indian Perspective." *Global Journal of Restorative Justice*, 5(4), 89-105. ¹⁰ Rao, S. (2024). "Training Legal Professionals in Restorative Practices: Challenges and Opportunities." *Indian Bar Journal*, 20(1), 77-92.



The Role of Community in Restorative Justice and its Relevance to BNS and BNSS

Community involvement is core to the restorative justice, which seeks to repairs the harm caused by the crime through collective healing processes. The literature underlines the importance of community participation in ensuring the success of restorative justice initiatives, especially in societies with deep communal ties like India.¹³ The Bhartiya Nyaya Sanhita (BNS) and Bhartiya Nagarik Suraksha Sanhita (BNSS) present a unique opportunity to formalize community-based justice mechanisms within the legal structure. According to the studies involving community members in the process of the justice system not only helps in the reintegration of offenders but also strengthens the social bonds and fosters a sense of collective responsibility.¹⁴ Executing these principles within the BNS and BNSS could lead to a more inclusive and effective justice system that aligns with India's cultural values of reconciliation and harmony.¹⁵ Nevertheless, the challenges lies in balancing community involvement with the need for formal legal processes to ensure fairness and accountability.¹⁴

The literature review on difference between the restorative and punitive justice, provides valuable insights into the potential impact of the BNS and BNSS on India's criminal justice system. While punitive justice has been the dominant prototype, the incorporation of restorative principles offers a promising avenue for reform. By adopting a compound approach that balances retribution with reconciliation, India can move towards a more just and fair legal system. The BNS and BNSS represent an opportunity to bring up to date the Indian law while addressing the limitations of purely punitive measures, ultimately fostering a more harmonious society.

PROBLEM ISSUE

The Indian legal system is on the threshold of an important transformation with the proposed replacement of the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC) by the Bhartiya Nyaya Sanhita (BNS) and Bhartiya Nagarik Suraksha Sanhita (BNSS). This move around has reignited the debate between restorative and punitive justice design, raising critical

¹³ Zehr, H. (2002). *The Little Book of Restorative Justice*. Good Books

¹⁴ Sharma, R. (2023). "Restorative Justice in Indian Culture: An Analysis." *Journal of Indian Law and Society*, 12(2), 45-67.

¹⁵ Mishra, A. (2024). "Towards a Hybrid Criminal Justice System in India: Lessons from International Practices." *South Asian Journal of Law*, 9(1), 33-49. ¹⁴ Batra, N. (2024). "Punitive Justice in India: A Critical Examination." *Indian Journal of Criminology*, 15(1), 23-39.

questions about the future direction of India's criminal justice system. Whereas punitive justice, characterized by retribution and deterrence, has long dominated India's legal landscape, the potential integration of restorative justice principles in the new legal codes presents an opportunity to redefine justice in a more holistic manner. This research paper explores the problem of balancing these two-justice prototype within the structure of the BNS and BNSS, focusing on the challenges and implications for India's legal reforms.

One of the main issues in the debate between restorative and punitive justice in India is the well-established reliance on punitive measures, which focus punishment as a means of maintaining social order. This approach has often led to jammed prisons, high recidivism rates, and disenfranchise of offenders, thereby undermining societal cohesion. The introduction of the BNS and BNSS elevate the question of whether these new codes will perpetuate the punitive traditions of the past or pave the way for a more restorative approach that highlight healing, accountability, and community involvement. This is especially important in the Indian context, where cultural values of pacification and social harmony are deeply embedded in the societal fabric.¹⁶

The potential for restorative justice to address the primary causes of crime and promote long-term societal well-being is well-documented, yet its incorporation into a formal legal system like India's presents significant challenges. The BNS and BNSS offer a framework for incorporating restorative practices, but their success will be dependent on careful policy design, legal reforms, and a broader cultural shift within the judiciary. The hierarchical and bureaucratic nature of India's legal system may resist such integration, viewing restorative practices as informal and less authoritative. This resistance poses a significant barrier to the widespread adoption of restorative justice, which requires not only legal changes but also a transformation in the mind-set of legal practitioners and society at large.¹⁷

Moreover, the implementation of restorative justice within the BNS and BNSS raises concerns about the fairness and compatibility of restorative outcomes, particularly in cases involving power imbalances between victims and offenders. While restorative justice offers a more benevolent approach, particularly for minor offenses and juvenile cases, there is a risk that it could be distinguished as lenient or inadequate in addressing serious crimes. The challenge lies in striking a balance between retribution and reconciliation, making sure that justice is not only

¹⁶ Zimbardo, P. G. *The Lucifer Effect: Understanding How Good People Turn Evil*. Random House, 2007.

¹⁷ Fattah, E. A. *Restorative Justice: An Alternative to the Traditional Criminal Justice System*. Oxford UP, 2010.



served but also perceived as fair by all parties' associate. This balance is important for the legitimacy and successfulness of the BNS and BNSS in achieving their intended goals.¹⁸

In conclusion, the transformation from the colonial-era IPC and CrPC to the BNS and BNSS respectively represents an important moment in India's legal history, offering a unique golden opportunity to rethink the country's approach to justice.¹⁹ The integration of restorative principles within these new codes could possibly transform India's criminal justice system, moving away from purely punitive measures towards a more balanced, holistic approach. Nevertheless, the success of this transfiguration will depend on addressing the challenges of implementation, ensuring fairness, and fostering a broader cultural shift towards restorative justice. The BNS and BNSS must deliberately navigate these issues to create a legal framework that not only upholds social order but also promotes healing, reconciliation, and social harmony in a diverse and complex society like India.²⁰

HYPOTHESIS

The transition from the colonial-era Indian Penal Code (IPC) and Code of Criminal Procedure (CrPC) to the Bhartiya Nyaya Sanhita (BNS) and Bhartiya Nagarik Suraksha Sanhita (BNSS) represents a pivotal moment in India's criminal justice system, with the potential to shift the balance from a predominantly punitive model towards a more restorative justice framework. This shift, if effectively implemented, could address the long-standing issues of overcrowded prisons, high recidivism rates, and the marginalization of offenders, thereby promoting social harmony and community involvement.²¹ However, the successful integration of restorative principles within the BNS and BNSS will depend on overcoming significant challenges, including resistance from a legal system historically rooted in punitive practices, and ensuring that restorative justice outcomes are perceived as fair and legitimate by all stakeholders.²²

¹⁸ Ghosh, P., and M. Roy. "Reimagining Justice in India: The Potential of Restorative Justice Practices Within the Context of New Legal Reforms." *South Asian Journal of Law*, vol. 16, no. 4, 2023, pp. 225-249.

¹⁹ Matthews, R. *The Nature and Ethics of Restorative Justice*. Routledge, 2013.

²⁰ Schmid, G. "Restorative Justice: The Global Context of Criminal Law Reform." *European Journal of Crime, Criminal Law, and Criminal Justice*, vol. 14, no. 3, 2006, pp. 227-244.

²¹ Tift, L., and D. Sullivan. *Restorative Justice: A Critical Analysis*. Criminal Justice Press, 2003.

²² United Nations Office on Drugs and Crime (UNODC). *Handbook on Restorative Justice Programs*. UNODC, 2017.

Shifting from Punitive to Restorative Justice

The introduction of the BNS and BNSS offers a unique opportunity to rethink India's approach to justice, moving away from the retributive model that has dominated since the colonial era. Punitive justice, with its focus on deterrence and retribution, has led to overcrowded prisons and high recidivism rates, reflecting the limitations of this approach in achieving long-term societal well-being. In contrast, restorative justice emphasizes healing, accountability, and community involvement, which aligns more closely with India's cultural values of reconciliation and social harmony. The hypothesis posits that the BNS and BNSS, if designed with restorative principles in mind, could significantly transform India's criminal justice system by addressing the root causes of crime and promoting long-term societal well-being.²³

The Role of Community in Restorative Justice

Community involvement is central to restorative justice, which seeks to repair the harm caused by crime through collective healing processes. The BNS and BNSS present an opportunity to formalize community-based justice mechanisms within the legal framework, potentially leading to a more inclusive and effective justice system that resonates with India's cultural emphasis on reconciliation and harmony. The hypothesis suggests that integrating community participation in the justice process under the BNS and BNSS could strengthen social bonds, promote collective responsibility, and aid in the reintegration of offenders, thereby enhancing the legitimacy and effectiveness of the criminal justice system.²⁴

Restorative Justice in Juvenile Offenses

Restorative justice has proven particularly effective in addressing juvenile offenses, offering alternatives to the harsh punishments often imposed by traditional justice systems. The BNS and BNSS could incorporate restorative practices, such as victim-offender mediation and family group conferencing, to create a more rehabilitative approach for young offenders. This integration would align with the broader goals of restorative justice by reducing recidivism

²³ Wilson, D., and D. Karp. *Restorative Justice: A Comparison of Global Models*. Cambridge UP, 2006.

²⁴ Kabeer, N., and A. Yadav. "Transforming Justice: Restorative Practices in Contemporary India." *Indian Journal of Legal Studies*, vol. 12, no. 3, 2021, pp. 135-150.



rates among juveniles and promoting their rehabilitation, ultimately contributing to a more compassionate and effective juvenile justice system in India.²⁵

Challenges in Implementing Restorative Justice

Despite the potential benefits, implementing restorative justice within the formal legal system poses significant challenges. The hierarchical and bureaucratic nature of the Indian judiciary may resist the integration of restorative practices, viewing them as informal and less authoritative. Additionally, concerns about the fairness and compatibility of restorative outcomes, particularly in cases involving power imbalances between victims and offenders, may hinder the adoption of these practices. The hypothesis asserts that overcoming these challenges will require careful policy design, legal reforms, and a broader cultural shift within the judiciary and society to embrace restorative principles.²⁶

Balancing Restorative and Punitive Approaches

The success of the BNS and BNSS in promoting restorative justice will depend on their ability to strike a balance between punitive and restorative approaches. While restorative justice offers a more humane and holistic approach, particularly for minor offenses and juvenile cases, it must be complemented by punitive measures for more serious crimes to ensure that justice is perceived as fair and legitimate by all parties involved. The hypothesis concludes that the BNS and BNSS, by incorporating a balanced approach, could create a legal framework that not only upholds social order but also promotes healing, reconciliation, and social harmony in a diverse and complex society like India.²⁷

CONCLUSION

This research highlights the evolving dynamics in India's criminal justice system, driven by the potential shift from a punitive to a restorative justice framework through the introduction of the Bhartiya Nyaya Sanhita (BNS) and Bhartiya Nagarik Suraksha Sanhita (BNSS). While the colonial-era Indian Penal Code (IPC) and Code of Criminal Procedure (CrPC) have historically

²⁵ Hood, R. *The State of Restorative Justice: A Global Perspective*. Routledge, 2002.

²⁶ Pojman, L. P., and J. H. Reiman. *The Ethics of Punishment: Restorative Justice vs. Punitive Justice*. Wadsworth Publishing, 2005.

²⁷ McCold, P. "Restorative Justice: A Summary of the Theory and Practice of Restorative Justice." *Center for Justice and Reconciliation*, 2000.

focused on retribution and punishment, the new codes propose a paradigm shift towards rehabilitation and social reintegration, which are core principles of restorative justice. The analysis of these new provisions, alongside international restorative justice models, suggests that while some elements of the BNS and BNSS align with restorative practices, the transition may not fully sever ties with traditional punitive approaches.

The findings reveal that while restorative justice principles have gained traction, their integration within the Indian legal framework faces challenges, particularly in terms of implementation and the ingrained punitive mindset. The societal and legal landscape of India still predominantly favors retribution, and while restorative justice practices may gain ground, the pace of change remains slow.

Ultimately, the success of these reforms will depend on how effectively they are adapted to India's unique socio-cultural context, the support from all legal stakeholders, and the commitment to fostering a culture of rehabilitation over retribution. If implemented thoughtfully, the BNS and BNSS could indeed mark a significant step forward in creating a more just, compassionate, and effective criminal justice system in India.

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