



RESTORATIVE MEDIATION IN INDIA’S JUVENILE JUSTICE SYSTEM: BRIDGING THE GAP BETWEEN LAW AND PRACTICE

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1. Introduction:

The juvenile justice system in India operates under a special legal framework that focuses on the ‘care,’ ‘protection,’ and ‘rehabilitation’ of children in conflict with the law. This approach has been developed with the understanding that children do not develop in the same way as adults and therefore should not be subjected to similar treatment. Instead, the system has adopted a ‘child-centred’ and ‘transformational’ approach, which reflects the ‘ideal’ of ‘best interests’ and ‘non-stigmatisation.’ The Juvenile Justice Act of 2015 encapsulates this approach and reflects the global standards prescribed by the United Nations Convention on the Rights of the Child by focusing on ‘rehabilitation’ rather than ‘punishment.’¹

Traditionally, various criminal justice systems have been based on retributive and deterrent theories of crime, considering crimes as a violation of the State only. On the other hand, the concept of restorative justice reflects a paradigm shift in the criminal justice system, considering crimes as a harm done to individuals and society as a whole.² It is focused on restoration through participatory methods of dialogue and mutual resolution rather than punitive methods of justice.³ This is particularly relevant to juvenile justice systems, as the end goal is not only to deliver justice

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¹ Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, §§ 3, 18 (India); Convention on the Rights of the Child art. 40, Nov. 20, 1989, 1577 U.N.T.S. 3

² Rashmi Rekha Baug, *Beyond Retribution: The Emerging Role of Restorative Justice in Indian Jurisprudence*, 11 Int’l J. L. 63 (2025).

³ U.N. Office on Drugs & Crime, *Handbook on Restorative Justice Programmes* 4 (2d ed. 2020).

but to transform the juvenile for life.

While the JJ Act of 2015 provides various restorative justice provisions such as diversion, counselling, community service, and vocational training, the formal establishment of restorative mediation as a part of the juvenile justice system is not clearly provided within the legislation. While the importance of restorative justice practices is acknowledged within the system and through legislation, the lack of clear procedural guidelines and legal recognition of mediation creates a gap between legislative intent and actual practice.⁴ As such, the practice of restorative mediation is not standardised and remains largely discretionary in nature.

Under such a scenario, restorative mediation, particularly victim-offender mediation (VOM), emerges as a vital tool that has the potential to take restorative justice to practical application. It not only promotes empathy and responsibility through restitution but also reduces rates of recidivism and facilitates the healing process.⁵ However, notwithstanding the benefits of restorative mediation, its development and conceptualisation within the framework of juvenile justice in India remain wanting.

This paper attempts to examine the role of restorative mediation in the juvenile justice system of India, particularly focusing on its integration into the existing framework of dealing with children who are in conflict with the law. It also attempts to assess the potential of the effective integration of restorative mediation into the existing framework. It argues that while there is a potential presence of restorative justice values in the JJ Act, 2015, the absence of a formal framework of restorative mediation has hindered its potential to a greater extent and thus needs to be addressed from a legal perspective.

2. Conceptual Foundations of Restorative Justice and Mediation:

Restorative justice in India is a significant departure from the traditional notion of punishing criminals in accordance with the law. Instead, it takes an entirely different view of what crime is. Essentially, traditional law views "crime" as something committed against the State; however, restorative justice takes the view that all crime is somehow an offence against the person or

⁴ Shubhashish Dwivedi, *Restorative Justice in Juvenile Law: Efficacy and Challenges in India*, Legalonus L.J. (2025).

⁵ Mark S. Umbreit, *The Handbook of Victim Offender Mediation: An Essential Guide to Practice and Research* 35 (2001).

society.⁶ To restore the offender to his or her proper place in society, there must be an attempt to repair the damage done to the victim of the crime, where doing so promotes healing through communication and a shared understanding between both victim and offender. In short, restorative justice not only punishes the offender for committing a deviant act but also aims to remedy the causes that led to the deviation.⁷ As such, this philosophy aligns well with the philosophy behind the juvenile justice system of India, which promotes making changes to the child as opposed to simply punishing him or her for committing a crime.

2.1 Restorative Mediation as a Mechanism:

In this broad framework, restorative mediation, also known as victim-offender mediation, emerges as a key mechanism to carry out the implementation of restorative justice in practical life. It refers to a structured and voluntary process wherein the victim and the offender engage in a discussion facilitated by a neutral third party.⁸ The primary objective of restorative mediation is to create a secure setting where victims can talk about how the crime has impacted them, while the offender has the opportunity to assume responsibility. In this process of interaction, solutions are developed that are satisfactory to all parties. Unlike adversarial approaches, restorative mediation focuses on cooperation, understanding, and resolution to re-establish balance and trust between the parties.

2.2 Key Stakeholders in the Restorative Process:

The most significant principle of restorative justice is the involvement of various parties in a cooperative way, with each having unique and interrelated functions throughout the continuum of the restorative process. The victim is at the centre of the restorative process, thus allowing the victim to express his or her pain, request an explanation, and assist in defining the form of reparation needed.⁹ This process restores the victim's power to help correct the injustice caused by the offence; this is important because the victim usually becomes marginalised in the adversarial system. Also, the young person who has committed the offence has the opportunity to acknowledge the consequences of his or her actions and the effect on the victim, as well as to assist in repairing

⁶ Howard Zehr, *Changing Lenses: Restorative Justice for Our Times* 183 (25th Anniversary ed. 2015).

⁷ Baug, *supra* note 3.

⁸ Yvon Dandurand & Annette Vogt, *Handbook on Restorative Justice Programmes* 5 (2d ed. 2020).

⁹ Zehr, *supra* note 7, at 192-95.

the harm caused by the offence.¹⁰

The support of the victim and young person comes from the young person's family and social supports in the community, and ensures the resolution reached between them is fulfilled to assist the young person to re-enter the community.¹¹ The mediator provides an unbiased and neutral facilitative role to ensure the restorative process is fair and respectful, while taking into consideration any power imbalances during the process, and reaching an agreement that is satisfactory to both.¹² Ultimately, the State, through its structures and law, provides a supportive role as an authority by ensuring the promotion of referrals to restorative measures and ensuring due process while maintaining the integrity of the outcomes.¹³

2.3 Core Principles of Restorative Justice:

The mechanism of restorative justice is informed by a body of underlying principles that inform not only the theory of restorative justice but also its practice. The principle of accountability underscores the need for the offender to confess their wrongdoing for their actions and make amends for the harm done to the victim or community, transforming the negative concept of punishment into a positive concept of accountability. The principle of reparation underscores the need for reparative justice to be informed by the need for restorative action to make amends for the harm done to the victim or community.¹⁴

However, there is also the need for the principle of participation to underscore the need for inclusivity and equity in the decision-making process for the victim as well as the offender. There is also the need for reintegration to repair social relationships and reintegrate the offender into society as a law-abiding citizen.¹⁵ This principle is of critical importance in juvenile justice as it closely resembles the need for rehabilitation and de-stigmatisation.

The principles and practices of restorative justice and mediation are naturally conducive to the objectives of a juvenile justice system. Restorative mediation's emphasis on communication,

¹⁰ Baug, *supra* note 3, at 64.

¹¹ Larry Chartrand & Kanatase Horn, *A Report on the Relationship Between Restorative Justice and Indigenous Legal Traditions in Canada* 7 (2016).

¹² Dandurand & Vogt, *supra* note 9, at 57-58.

¹³ *Id.* at 10-12.

¹⁴ Dwivedi, *supra* note 5.

¹⁵ *Id.*; Baug, *supra* note 3.

accountability, and reintegration provides a means of achieving the objectives of a juvenile justice system in the manner prescribed by the legislation in India while linking legal principles to practical results through a framework for effective healing and rehabilitation.

3. Restorative Justice in India’s Juvenile Justice Framework

The juvenile justice system in India is primarily governed by the JJ Act 2015. This Act provides a unification of laws that cover both CICL and children in need of protection. In this regard, it represents a significant shift from previous legislative regimes towards one that is rehabilitation in focus.¹⁶ The main purpose of the Act is to move away from a punitive approach to caring for and protecting children, especially those who have developed as a result of their impaired growth and development. Rather, it recognises that children require care, protection and opportunities for rehabilitation when they are in conflict with the law.

The core intent of the JJ Act is to balance the provision of child protection with concerns regarding community safety. As such, the controversial provision in the Act permits children aged 16-18 years to face trials as adults (under certain circumstances and following an initial determination of the child’s suitability for such) for serious offences.¹⁷ However, the underlying intent of the JJ Act is still to rehabilitate, reintegrate, and restore justice to children who have been placed in conflict with the law. The JJ Act provides for a variety of non-custodial and rehabilitative alternatives to imprisonment and offers various forms of restorative justice to juvenile offenders, including counselling, community service, and skills enhancement.¹⁸

3.1 Key Concepts and Guiding Principles:

The Child in Conflict with Law (CICL) definition indicates that children under the age of eighteen at the time they are accused of or found to have committed an offence are entitled to the protection afforded to child victims under the Act.¹⁹ This terminology represents a distinct departure from historically used derogatory terms, such as ‘juvenile delinquent’, demonstrating commitment to the principle of dignity and non-stigmatisation as enshrined in law.

¹⁶ Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016 (India).

¹⁷ Shweta Mittal, *Juvenile Justice in India: Challenges, Reforms, and the Way Ahead*, 5 Indian J. Integrated Rsch. L. (2025).

¹⁸ U.N. Office on Drugs & Crime, *supra* note 4, at 56.

¹⁹ Juvenile Justice (Care and Protection of Children) Act, 2015, § 2(13) (India).

The primary lens through which authorities are to make decisions under the Act should be based upon the ‘best interests’ of the child. Therefore, authorities must consider a child’s overall welfare, developmental needs, and future opportunities prior to administering any form of punishment, placing emphasis on rehabilitation rather than punishment after the fact.²⁰ This also extends into the principle of ‘new beginnings’ of removing disqualifications for incidents prior to being adjudicated as an offender and clearing criminal records so that they do not face lifelong stigmas, and therefore enabling their reintegration.²¹

As a result of these principles working in conjunction with one another, the rehabilitative focus of the juvenile justice system supports global standards for children’s rights and the broader goals that restorative justice seeks to accomplish.

3.2 Role of Juvenile Justice Boards:

The Juvenile Justice Boards (JJBs) facilitate the effective implementation of juvenile justice by functioning as specialised adjudicatory bodies at the district level. The JJB consists of a Principal Magistrate and two social workers, thereby providing a combination of legal and social inputs during the decision-making process.²²

JJBs are expected to maintain a child-friendly atmosphere, protect procedural rights, and concentrate more on rehabilitation than punishment. The scope of JJBs is not limited to the adjudicatory process but extends to the implementation of restorative actions, including counselling, community service, and diverting techniques like mediation. Most importantly, JJBs, under the JJ Act, 2015, have the power to conduct a preliminary assessment of cases involving serious crimes, keeping in view whether a child between the ages of sixteen and eighteen years possesses mental and physical capacities for trial as an adult.

Though this provision attempts to deal with the problem of serious crimes, it has come under fire for undermining the rehabilitative purpose of juvenile justice by reintroducing elements of retributive punishment. In this manner, JJBs play a vital role in striking a delicate balance between the conflicting objectives of child welfare and public safety.

²⁰ Dev Vrat (Minor) v. State (Govt of NCT of Delhi), (2006) 3 JCC 1430 (India).

²¹ Juvenile Justice (Care and Protection of Children) Act, 2015, s 3.

²² Id. s 4.

3.3 Judicial Interpretation and Reinforcement of Reformative Ideals:

Indian courts have always been instrumental in moulding the reformative guidelines that provide a foundation for juvenile justice. In *Sheela Barse v. Union of India*, the Supreme Court expressed its views on removing children from adult facilities because of the negative impact that can occur on their mental growth due to being housed with adults.²³ This decision has opened the door to numerous other institutional reforms, including the establishment of observation homes, and has confirmed that the Indian Constitution embodies a commitment to the welfare of children in Article 21.

Also, in the case of *Hari Ram v. State of Rajasthan*, the court explained how juvenile justice legislation could apply retroactively, stating that anyone who was under the age of eighteen at the time of the offence is to be judged as a juvenile, regardless of their age at trial.²⁴ The court also stated that the focus must be shifted from punitive to child-oriented methods in order to fulfil the goals of rehabilitation as outlined in the Act.

In the case of *Dr. Subramanian Swamy v. Raju*, the Supreme Court upheld the constitutional validity of differential treatment of juveniles, stating that they are a special class requiring a separate justice system that focuses on rehabilitation rather than punishment.²⁵ The ruling emphasised the differences in development and cautioned against the automatic importation of punishment standards in the justice system for juveniles.

Moreover, in *Re: Exploitation of Children in Orphanages in Tamil Nadu v. Union of India*, the Supreme Court recognised the importance of restorative and rehabilitative justice, directing the authorities to strengthen the protection of children and ensure that institutions provide care in accordance with the principles of dignity, reintegration, and social justice.²⁶

4. Operationalising Restorative Mediation in Juvenile Justice:

A restorative mediation provides a way to implement the rehabilitative philosophy of juvenile justice. While typically associated with a single event or stage in a process, restorative mediation

²³ *Sheela Barse v. Union of India*, (1986) 3 SCC 596 (India).

²⁴ *Hari Ram v. State of Rajasthan*, (2009) 13 SCC 211 (India).

²⁵ *Dr. Subramanian Swamy v. Raju*, (2014) 8 SCC 390 (India).

²⁶ *Re: Exploitation of Children in Orphanages in Tamil Nadu v. Union of India*, (2017) 7 SCC 578 (India).

is a flexible and adaptable process that can be applied at multiple points in the juvenile justice system, thereby enhancing its ability to promote accountability, healing, and reintegration.

4.1 Points of Intervention within the Juvenile Justice Process:

Restorative mediation can be intentionally utilised at several points in the juvenile justice system to serve as an alternative and complement to formal court processes. During the diversion phase (pre-charge or pre-trial), restorative mediation allows police officers or Special Juvenile Police Units to direct youth away from formal court proceedings. Doing this avoids attaching an early label to a youth and allows a young person, especially someone who is a first-timer throughout the process, to take responsibility for and remedy his or her behaviour in an environment that promotes community involvement. During the pre-trial stage (post-charge but prior to adjudication), the Juvenile Justice Boards ("JJBs") can refer cases for restorative mediation while formally suspending the prosecution of the case. When the restorative mediation process is successful, the participants will enter a mutually agreeable plan for repairing the harm caused by the young person's behaviour through community involvement and satisfaction.²⁷

Restorative mediation is essential for facilitating reintegration, including the post-adjudication stage. Restorative mediation during the post-adjudication stage focuses on repairing relationships, addressing victim trauma, and preparing juveniles for successful reintegration into society, especially after incarceration.²⁸

4.2 Procedural Framework of Restorative Mediation:

Restorative mediation is conducted in a systematic and ordered way to ensure fairness, voluntariness, and safety. The first step in restorative mediation is referral, in which cases are referred to mediation through NGOs, police, and the JJB. This is done when there is enough evidence, when the juvenile admits to the offence, and when there is voluntary consent from the two parties.²⁹ The second step is preparation, which is critical in ensuring the integrity of the mediation. This is done through one-on-one meetings between the mediator and the victim and the offender to assess their emotional readiness, potential risks, and whether the mediation will not re-

²⁷ Dandurand & Vogt, *supra* note 9, at 42.

²⁸ *Id.* at 42-43; Dwivedi, *supra* note 5.

²⁹ Dandurand & Vogt, *supra* note 1, at 50-51.

traumatise them.³⁰

Mediation meetings guided through an impartial and secure environment allow the victim to voice the impact of the crime and encourage the perpetrator to accept their accountability and remorsefully engage in a constructive dialogue. If this is accomplished, the mediation meeting will conclude with an outcome agreement that identifies the specific reparations that will result from the mediation process, such as an apology, financial restitution, counselling, or completing volunteer service work in the community. Ideally, the results of the mediation will lead to equal and positive outcomes, and ultimately, all parties involved should have an equal voice in agreeing to the outcome.³¹

Follow-up procedures are an essential part of ensuring compliance with the restorative agreement. Successful mediation might result in resolution of the matter through the restorative process, while unsuccessful mediation can lead to referral back to the formal adjudication process.³²

4.3 Institutional Roles in the Mediation Process:

For restorative mediation to be successful, it must have the cooperation of all major institutional stakeholders that operate within the juvenile justice system. The Juvenile Justice Boards (JJBs) set out the legal framework for restorative mediation, including determining whether mediation is an appropriate remedy for a case, giving guidance on how to resolve any issues that arise during mediation, and ensuring that the outcome of mediation meets the best interests of the child involved and adheres to the child's procedural rights.³³

The work done by Non-Governmental Organisations (NGOs) helps to link formal legal institutions such as the JJBs with community-based efforts. One example of this is through the Council to Secure Justice in Delhi, which provides victim-offender mediation through the use of trained mediators, as well as providing post-mediation services to assist with the supportive reintegration of the offender back into the community.³⁴

³⁰ *Id.* at 56-57.

³¹ *Id.* at 62.

³² *Id.* at 63.

³³ Juvenile Justice (Care and Protection of Children) Act, 2015, s 15 (India).

³⁴ Dwivedi, *supra* note 5.

The mediator is the trained, impartial third party who is essential to the mediation process. The mediator will assist the parties in communicating effectively and developing an agreement that works for them, while also addressing issues such as equality of power between parties, voluntariness of both parties to participate in mediation, and the creation of a safe, productive, interactive place for the parties to communicate openly and ultimately resolve their conflicts constructively.

4.4 Impact on Rehabilitation and Reintegration:

Restorative mediation is key to meeting rehabilitative goals within the juvenile justice system. This mediation creates opportunities for victims and offenders to interact in a meaningful way. Victims' concerns are addressed through engagement and empathy. Additionally, offenders take responsibility for their actions while understanding how their behaviour affects others. Studies indicate that young offenders who participate in restorative practices show less recidivism than young offenders who receive punishment only.³⁵

Victims can expect higher levels of satisfaction through restorative mediation as a result of having a way to communicate their feelings about the crime, resolving their issues with the offender, and receiving appropriate restitution for what happened to them.³⁶ The restorative mediation process allows healing for the victim by addressing the trauma caused by the crime and allowing the offender to develop greater empathy towards the victim. It also promotes social reintegration and reduces the chances of presenting a stigma, which in turn supports the goals and objectives of the juvenile justice system.

5. Efficacy and Benefits of Restorative Mediation for Rehabilitation:

Restorative mediation has shown considerable success in promoting the rehabilitative goals of juvenile justice systems by yielding observable results across various aspects.

- a) **Reduction in Recidivism:** Decrease in Reoffending: Empirical studies consistently show that restorative practices lower recidivism rates more effectively than conventional

³⁵ Lawrence W. Sherman et al., *Twelve Experiments in Restorative Justice: Jerry Lee Program of Randomized Trials of Restorative Justice Conferences*, 11 *J. Experimental Criminology* 501 (2015).

³⁶ Umbreit, *supra* note 6, at 35.

punitive methods. Research on Victim-Offender Mediation (VOM) indicates that youths engaged in these programs are significantly less prone to reoffend, with recidivism rates around 20.3%, in contrast to 41.6% for those dealt with via traditional systems.³⁷ This decrease is credited to the focus of the process on accountability, empathy, and behavioural reflection.³⁸

- b) **Victim Satisfaction:** The purpose of restorative mediation is to support victims by meeting their emotional and informational needs, which can often be neglected during traditional adversarial (or contentious) procedures. There is a wide array of global data that demonstrates the significant satisfaction of victims with restorative mediation. For example, surveyed victims report a satisfaction rate of up to 86% with New Zealand's restorative conferencing approach.³⁹ These higher rates of satisfaction are attributed to the ability to have open discussions, receive acknowledgement of the harm, and actively shape the future outcomes of the process.⁴⁰
- c) **Psychological Healing:** Through the use of restorative practices, the psychological healing of victims and the reduction of post-traumatic stress, anxiety, and anger suffered as a result of being victimised are enhanced. The facilitated discussion provides the opportunity for the victim to regain a sense of control over their life and achieve closure, while having the offender develop empathy toward the victim and gain an understanding of the consequences of their actions. Engaging in this collaborative process creates an opportunity for both parties to experience emotional change and decreases the level of hostility and aggression between them.⁴¹
- d) **Reintegration:** Through effective integration of juveniles into the community by preventing formal stigma or exposure to custody; assisting family, community network, and societal connection; and reducing youth being marginalised or exposed to negative peer influence through knowledge and practice of participation will promote strong ties

³⁷ Dandurand & Vogt, *supra* note 9, at 90.

³⁸ *Id.* at 8.

³⁹ *Id.* at 97.

⁴⁰ *Id.* at 101.

⁴¹ Ana M. Nascimento et al., *The Psychological Impact of Restorative Justice Practices on Victims of Crimes-a Systematic Review*, 24 *Trauma, Violence, & Abuse* 1929 (2022).

within and outside the family's home.⁴²

- e) **Cost-effectiveness:** It acts as a diversionary mechanism to reduce the cost burden on the justice system by decreasing the number of cases that go to the courts and expediting case processing times, so that fewer juveniles are committed to institutional settings, resulting in better utilisation of resources and ultimately better outcomes for rehabilitation.⁴³

6. Global Perspectives on Restorative Justice in Juvenile Law:

An analytical study of the restorative justice systems implemented in various countries has provided considerable scope for the development and formalisation of India's juvenile justice system, particularly in terms of rehabilitation and reintegration of juvenile offenders. Various countries, like New Zealand, Norway, and Canada, have implemented restorative justice systems in their national laws and indigenous cultures, and these examples can be followed in the development of India's juvenile justice system.⁴⁴

6.1 New Zealand: Family Group Conferences (FGCs):

New Zealand has gained global recognition for its effective incorporation of restorative justice in its juvenile justice system, particularly through the application of Family Group Conferences (FGCs). FGCs are largely based on indigenous cultures and focus on the concept of shared responsibility and restoration, involving the victim, offender, families, and the entire community in the resolution of conflicts.⁴⁵ FGCs emerged as the major mechanism in addressing juvenile offences in New Zealand under the Children, Young Persons, and Their Families Act of 1989.⁴⁶ This method focuses on rehabilitation and reconciliation, as opposed to punitive measures, and is statutorily required before prosecution in most cases. This has significantly reduced recidivism and has promoted a culture of participatory justice, allowing the victim and families to participate in the resolution of conflicts.

⁴² *Restorative Circles Within the Juvenile Justice System*, Enfold India, at 1.

⁴³ Mittal, *supra* note 17.

⁴⁴ Baug, *supra* note 3.

⁴⁵ Pooja Vohra & Kritika Goswami Ahuja, *The Role of Mediation in Restorative Justice for Juvenile Offenders*, 7 Int'l J. Multidisciplinary Rsch. (2025).

⁴⁶ *Children, Young Persons, and Their Families Act 1989* (N.Z.).

6.2 Norway: Institutionalising Social Mediation:

Through its National Mediation Service, created by the Municipal Mediation Service Act 1991, Norway exhibits a strong commitment to restorative principles.⁴⁷ The National Mediation Service functions as a decentralized system of trained mediators who work with parties to resolve disputes and minor criminal issues (including those involving minors). The National Mediation Service promotes communication, accountability and reintegration; therefore, mediation can be used at any point during the criminal justice process (pre-trial, post-conviction or while on probation). Norway's model illustrates how restorative mediation can coexist and enhance the formal criminal justice system and be easy for communities to access and instil public trust in a non-adversarial process. The reliance on volunteer mediators from their community system makes this model scalable and sustainable, key considerations for the development of restorative justice systems in developing economies such as India.

6.3 Canada: Community-Based and Psychological Support Models:

A community-oriented focus towards implementing a restorative justice-type system in Canada stems from the enactment of the Youth Criminal Justice Act, 2002. This statute emphasises the values of accountability, reconciliation and reintegration.⁴⁸ The restorative justice model in Canada is based upon the use of three primary processes: Victim-Offender Mediation (VOM), Family Group Conference (FGC), and Healing Circle (HC), all of which are derived from indigenous tradition.⁴⁹ Restorative justice processes in Canada also incorporate psychological counselling with mediation to address both psychological and social elements associated with criminal behaviour. For example, Healing Circles provide for open lines of communication and a shared healing experience for those present that gives them an opportunity to address trauma caused by the offence, to seek forgiveness, and to seek the re-establishment of their relationship with one another. Overall, the comprehensive structure of these programs exemplifies a more evolved understanding that, for rehabilitation to be effective, it must involve legal and psychological considerations of justice.

⁴⁷ *Municipal Mediation Service Act* 1991 (Nor.).

⁴⁸ *Youth Criminal Justice Act*, S.C. 2002, c. 1 (Can.).

⁴⁹ Chartrand & Horn, *supra* note 12, at 4-5.

7. Challenges Hindering the Implementation of Restorative Mediation in India:

Restorative mediation has great potential to transform India's juvenile justice process; it is currently limited due to multiple structural and normative barriers to the implementation of restorative mediation in the juvenile justice system. Legislative change and a specific legal framework that formally recognises restorative mediation will provide greater consistency and legal clarity to restorative mediation in India's juvenile justice system, due to a major barrier being the lack of a complete legal framework.⁵⁰ The Juvenile Justice (JJ) Act, 2015, while embodying reformative principles, does not establish a framework for mediation, victim participation, or enforcement of the results from the mediation process. As a result, the JJ Act has experienced a staggered, inconsistent and selective implementation pattern.

Deficiencies in institutions, such as the lack of capable mediators, standard protocols, and existing referral systems within Juvenile Justice Boards (JJB), add to the issues at hand. Restorative practices, which are currently driven by NGOs and take place separately from the traditional court system, have limited efficacy due to their current structure.⁵¹ Incorporating restorative practices into JJB operations through defined procedural frameworks and skill-building processes, including tailored training of judges, police, and social workers, will result in greater success

Cultural resistance is also present as a reason for resistance to these concepts. Traditional attitudes are punishing, and people involved in the mediation process (including victims) do not see mediation as a valid form of resolution due to its relatively less punitive nature.⁵² Developing ongoing educational or sensitisation campaigns will help promote restorative justice as a viable alternative to punishment-based systems and as an additional form of resolving disputes through accountability and healing, rather than impunity.

According to national records, the system has limited resources, which manifests as a lack of infrastructure and capacity in the juvenile justice system, according to reports published by the National Crime Records Bureau.⁵³ To be able to execute successfully, a school must improve its

⁵⁰Baug, supra note 3, at 66-67.

⁵¹ Dwivedi, supra note 5.

⁵² Baug, supra note 1, at 66.

⁵³ Nat'l Crime Recs. Bureau, Ministry of Home Affairs, *Crime in India 2022* (2023).

financial resources, infrastructure, and access to qualified professionals.

Legal uncertainty exists when serious crimes are not allowed to be a basis for legal action. For example, the judiciary found that offenders who are being prosecuted for crimes under the Protection of Children from Sexual Offences Act 2012 cannot enter into any form of mediation due to the risk of coercion and to protect the accountability of those convicted. As a result, legal guidelines should define the limits of restorative mediation in order to provide protection for all parties involved in a restorative mediation arrangement.

In conclusion, there is no national body to create a system to measure recidivism rates and victim satisfaction in India, while countries like New Zealand directly incorporate restorative practices into formalised structures that involve legal backing and have significant oversight.⁵⁴ A centralised organisation in India could also facilitate the development of standards, data collection, and the creation of long-term policies, but simply implementing these types of models in India is likely to be constrained by differences between the two countries that affect the nature of the legal system, as well as by the available resources and the culture's view on justice.

8. Conclusion:

Restorative mediation marks an important shift in the philosophy of juvenile justice from a system that emphasises punishment and deterrence to one that emphasises accountability, communication, and healing in the community. This approach, under the JJ Act, 2015, is in complete harmony with other important provisions like the best interest of the child, de-stigmatisation, and reintegration. This approach also changes the focus of crime from a violation against the State to a violation against people and society, allowing for active participation by victims, offenders, and society in general, thereby changing the focus of justice to include more people in its processes.

However, this approach also requires changes in its practice in terms of its legal and structural capabilities. An approach towards a more restorative model requires not just legal recognition but also a more fundamental shift in legal culture and structure. In this context, restorative mediation is not seen as an alternative but an essential part of a child-centred justice system that focuses on healing rather than punishment and reintegration rather than segregation.

⁵⁴ Dandurand & Vogt, *supra* note 9, at 100-03.