

BEYOND CARCERAL JUSTICE: EXPLORING RESTORATIVE AND TRANSFORMATIVE APPROACHES TO GENDER-BASED VIOLENCE

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ABSTRACT

Background: For four decades, the dominant legal answer to gender-based violence in India, as in much of the world, has been more criminal law: new offences, harsher sentences and faster trials. These reforms were hard won and remain necessary. Yet most survivors never approach the police, and many who do find that prosecution neither stops the violence nor meets their needs.

Objective: This paper asks whether restorative and transformative justice can offer survivors something the criminal system cannot, and under what legal conditions such approaches can be used without reproducing the coercion and silencing that feminist law reform set out to end.

Methodology: The study is doctrinal and analytical. “It examines Indian statutes and Supreme Court decisions, international standards including the Istanbul Convention and CEDAW General Recommendation No 35, survey data on help-seeking, and the theoretical and empirical literature on restorative and transformative justice”.

Findings: Carceral responses reach only a small share of survivors and often leave their practical needs unaddressed. Restorative processes show promise when they are voluntary, survivor-led and backed by safeguards, but become dangerous when used to push women into “compromise”. Indian courts have rightly refused to allow private settlement of serious sexual offences, while civil law under the Protection of Women from Domestic Violence Act 2005 already contains quietly restorative features.

Conclusion: The paper argues for a complementary rather than substitutive model: survivor-initiated, risk-screened processes that run alongside the criminal law, supported by public investment in shelters, economic security and community-level prevention.

Keywords: *gender-based violence, restorative justice, transformative justice, carceral feminism, survivor-centred justice, domestic violence, India*

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I. INTRODUCTION

A woman sits on a bench outside a police station in a small town. Her husband has hit her again, this time badly enough that a neighbour insisted she come. The officer on duty asks whether she wants to register a case. She hesitates. If he is arrested, who will pay the rent? What will his mother say? What happens to her children if the family turns against her? She does not want her husband in jail. She wants him to stop. She wants to be safe in her own home. And she wants someone, anyone, to acknowledge that what happened to her was wrong. The criminal law, as it stands, offers her one door: a first information report, an arrest, a trial that may take years. It is not surprising that so many women in her position get up from the bench and go home.

This paper begins from that moment of hesitation. It does not argue that the criminal law should retreat from gender-based violence. The campaigns that brought domestic cruelty, sexual harassment and rape into the heart of criminal justice were among the most important achievements of the Indian women's movement. But it does argue that a justice system built almost entirely around punishment serves only some survivors, and serves them only partly. The question is whether other models, namely restorative justice and transformative justice, can fill some of the gaps, and whether they can do so without handing power back to the families, communities and informal forums that have so often silenced women.

Part II sets out the research questions, hypothesis and method. Part III traces the rise of what scholars call the carceral approach to gender-based violence. Part IV examines its limits. Parts V and VI explain restorative and transformative justice and the feminist debates around them. Part VII examines the Indian legal framework, including the places where alternatives already exist, such as the civil remedies for domestic violence and conciliation under the workplace harassment law, and the places where courts have firmly shut the door. Part VIII considers international standards. Part IX proposes principles for a survivor-centred model. Part X tests the hypothesis, Part XI offers recommendations and Part XII concludes.

II. RESEARCH QUESTIONS, HYPOTHESIS AND METHODOLOGY

A. Research Questions

The paper asks three questions. What are the limits of a predominantly punitive response to gender-based violence, measured against what survivors say they need? Can restorative and transformative approaches address those limits, and what risks do they carry? And how far

does Indian law permit, prohibit or already contain such approaches?

B. Hypothesis

The hypothesis is as follows: *a justice response to gender-based violence that relies almost exclusively on criminal punishment fails a large proportion of survivors, and restorative and transformative approaches can meaningfully address this failure only where they are voluntary, survivor-initiated, supported by safeguards against coercion and positioned as complements to the criminal law rather than as diversions from it.*

If this hypothesis is correct, the evidence should show two things. First, the criminal system should be found to reach a relatively small share of survivors and to leave important needs unmet. Second, alternative processes should be found to help survivors where the safeguards exist, and to cause harm where they are used to pressure women into settlement.

C. Methodology

The research is doctrinal and qualitative. It draws on primary sources including Indian statutes, judgments of the Supreme Court of India, international treaties and United Nations documents, and on secondary sources including criminological and feminist legal scholarship and published survey data. The paper does not generate new empirical data. It reads existing evidence critically and uses it to build a normative framework suited to Indian conditions.

III. THE CARCERAL TURN IN THE RESPONSE TO GENDER-BASED VIOLENCE

“The term “carceral feminism” was popularised by the sociologist Elizabeth Bernstein to describe feminist activism that relies on policing, prosecution and imprisonment as the main tools for achieving gender justice”.² The label is sometimes used dismissively, which is unfair. In many countries, including India, the turn to criminal law was a response to decades in which violence against women was treated as a private family matter, beyond the concern of the State.

India’s story illustrates this well. In 1983, after sustained protest over dowry deaths, Parliament introduced section 498A into the Indian Penal Code, making cruelty by a husband or his relatives a criminal offence. After the Mathura custodial rape case and the campaign that followed, the law on rape was amended in the same period. The Delhi gang rape of December 2012 produced another wave of reform. “The Justice Verma Committee, set up in the aftermath, delivered a wide-ranging report within a month, and its recommendations shaped the Criminal

²Elizabeth Bernstein, ‘The Sexual Politics of the “New Abolitionism”’ (2007) 18 differences 128.

Law (Amendment) Act 2013, which broadened the definition of rape and created new offences such as stalking, voyeurism and acid attack”.³ “In 2018, a further amendment introduced the death penalty for the rape of girls below twelve years of age”.⁴ “With the replacement of the Penal Code by the Bharatiya Nyaya Sanhita, these offences have been carried forward, with cruelty by a husband or his relatives now found in section 85”.⁵

“India was not alone in this turn. In the United States, an influential experiment in Minneapolis in the early 1980s suggested that arresting men accused of domestic assault reduced repeat violence more effectively than mediation or separation”.⁶ The findings spread quickly and helped shape mandatory arrest and “no-drop” prosecution policies across many jurisdictions. Later replications in other cities produced mixed and sometimes contrary results, but by then the policy direction was set. The broader point is that, across very different societies, the State’s power to arrest and punish came to be seen as the clearest proof that violence against women was finally being taken seriously. Treating a wrong as a crime became a way of saying that it mattered.

It is worth pausing on the Verma Committee, because its report was far more than a call for harsher punishment. “It spoke of police reform, electoral reform, education and the constitutional obligation to secure women’s dignity”. It notably declined to recommend the death penalty for rape. Yet the political response picked out the punitive parts most readily. This pattern, in which broad visions of social change are narrowed into new offences and higher sentences, is at the heart of the critique that follows.

IV. THE LIMITS OF A PUNITIVE RESPONSE

A. Most Survivors Never Reach the System

“The first and most basic limit is reach. The National Crime Records Bureau records several lakh cases of crimes against women every year,⁷ a number that sounds large until it is set against survey data”. “According to the fifth National Family Health Survey, about 29 per cent of ever-married women aged 18 to 49 reported having experienced physical or sexual violence by their

³Justice JS Verma, Justice Leila Seth and Gopal Subramaniam, *Report of the Committee on Amendments to Criminal Law* (23 January 2013).

⁴Criminal Law (Amendment) Act 2018.

⁵ “Bharatiya Nyaya Sanhita 2023, s 85”.

⁶Lawrence W Sherman and Richard A Berk, ‘The Specific Deterrent Effects of Arrest for Domestic Assault’ (1984) 49 *American Sociological Review* 261.

⁷“National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs 2023)”.

husband, and only around one in seven women who had experienced physical or sexual violence had sought help from anyone at all”.⁸ Of those who did seek help, most turned to their own families rather than to the police.

These figures tell us something important. For the great majority of women experiencing violence at home, the criminal justice system is not the forum in which their experience is addressed at all. Any honest discussion of justice for gender-based violence must therefore ask what happens to the women who never file a complaint, and why they make that choice.

B. The Process Can Harm the Survivor

“For those who do enter the system, the process itself can be painful. Pratiksha Baxi’s ethnographic study of rape trials in India describes how the courtroom can become a place where the survivor’s character and history are scrutinised, where delay wears down her resolve and where pressure to “compromise” often operates in the corridors outside the courtroom”.⁹ Trials can last for years. Survivors may be required to recount their experience again and again, to police, doctors, magistrates and defence lawyers. The system’s central question is whether the accused is guilty beyond reasonable doubt. The survivor’s own questions, about safety, recognition and repair, are secondary.

“The psychiatrist Judith Herman, after decades of work with trauma survivors, interviewed survivors about what justice would mean to them. Many spoke not primarily of punishment but of acknowledgement, of being believed by their community, of vindication, and of an assurance that the harm would not be repeated”.¹⁰ A system designed to establish guilt and assign a sentence is not built to deliver most of these things.

C. Collateral Consequences for Women

Punishment also has effects beyond the person punished. Where a woman depends economically on the man who harms her, his imprisonment may mean the loss of household income, the family home or the support of her in-laws. This is not an argument against prosecution, but it explains why many women do not want it, and why some withdraw complaints or turn hostile at trial.

“Scholars in the United States have shown that these costs fall hardest on women from

⁸“International Institute for Population Sciences and ICF, *National Family Health Survey (NFHS-5), 2019–21: India* (IIPS 2022)”.

⁹Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India* (OUP 2014).

¹⁰Judith Lewis Herman, *Truth and Repair: How Trauma Survivors Envision Justice* (Basic Books 2023).

marginalised communities. Beth Richie’s study of Black women in America describes how the expansion of policing in the name of protecting women often left the most vulnerable women unprotected, and sometimes criminalised them instead”.¹¹ “Leigh Goodmark has argued, on the basis of the American experience, that decades of investment in arrest and prosecution have not produced the reductions in intimate partner violence their supporters hoped for”.¹² The Indian context is different, but the lesson travels: a remedy designed around the State’s power to punish may not address the conditions that make violence possible.

D. A Backlash That Hurts Survivors

“There is one more, uniquely Indian, limit worth noting. The use of section 498A has attracted a sustained public narrative of “misuse”, which has shaped judicial and legislative responses. In *Arnesh Kumar v State of Bihar*, the Supreme Court laid down guidelines against automatic arrest in such cases”.¹³ Whatever one thinks of those guidelines, the debate shows how a response built entirely on arrest and imprisonment tends to generate a backlash that then falls on genuine survivors, who find their complaints met with suspicion. A wider range of responses might take some of the heat out of that debate.

E. The Uncertain Promise of Harsher Punishment

A final limit concerns deterrence. Much recent reform has assumed that harsher sentences, including the death penalty, will prevent violence. The evidence for this is thin. Certainty of consequences tends to matter more than severity, and certainty is precisely what a slow and overburdened system struggles to provide. There is also a less obvious risk. Official data consistently show that in the overwhelming majority of reported rapes, the accused is someone known to the survivor: a family member, neighbour, employer or partner.¹⁴ Where the possible punishment is extremely severe, families may put even greater pressure on a survivor not to report, or to retract, because the consequences for a relative seem too grave. The Verma Committee was alert to this concern, which is one reason it declined to recommend capital punishment for rape. A system that makes reporting harder in the name of being tough has not made women safer.

¹¹Beth E Richie, *Arrested Justice: Black Women, Violence, and America’s Prison Nation* (NYU Press 2012).

¹²Leigh Goodmark, *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence* (University of California Press 2018).

¹³*Arnesh Kumar v State of Bihar* (2014) 8 SCC 273.

¹⁴National Crime Records Bureau (n 6).

V. RESTORATIVE JUSTICE: PROMISE AND PERIL

A. Core Ideas

Restorative justice begins from a different question. Instead of asking which law was broken, who did it and what punishment they deserve, it asks who has been harmed, what their needs are and whose obligation it is to meet them. ‘Howard Zehr, one of the founders of the field, described this as a change of lens rather than a mere change of procedure’.¹⁵ “John Braithwaite added the idea of reintegrative shaming: that wrongdoing is best addressed by disapproving of the act within a community of care, while leaving a path back for the person who committed it”.¹⁶

In practice, restorative justice takes many forms: facilitated meetings between the person harmed and the person responsible, family group conferences, circles involving community members, and indirect exchanges of letters or recorded statements. “The United Nations has recognised such programmes in its Basic Principles on the use of restorative justice in criminal matters, which stress that participation must be voluntary, that consent may be withdrawn at any time, and that power imbalances between the parties must be taken into account”.¹⁷

B. The Feminist Critique

Feminist scholars have long been wary of applying restorative justice to gender-based violence, and their concerns are serious. “Daly and Stubbs identified several risks: that processes built around dialogue may be manipulated by abusers who are skilled at charm and control, that survivors may be pressured to forgive, that the violence may be treated as a private matter rather than a public wrong, and that community participants may share the very attitudes that allowed the violence to happen”.¹⁸ Intimate partner violence, in particular, is usually a pattern of control rather than a single incident. A meeting in which both parties “share their perspectives” can easily become one more occasion for that control to operate.

These concerns are not theoretical in India. The pressure on survivors to settle, whether from families, community elders or even officials, is well documented. Any restorative process introduced into this environment must be designed on the assumption that such pressure will

¹⁵Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Herald Press 1990).

¹⁶John Braithwaite, *Crime, Shame and Reintegration* (CUP 1989).

¹⁷ECOSOC Res 2002/12 ‘Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters’ (24 July 2002).

¹⁸Kathleen Daly and Julie Stubbs, ‘Feminist Engagement with Restorative Justice’ (2006) 10 *Theoretical Criminology* 9.

be present, not in the hope that it will be absent.

C. What the Evidence Suggests

Nonetheless, carefully designed programmes have shown that restorative approaches can work even for sexual offences. “The RESTORE programme in Arizona, which offered a conferencing option for certain sexual offences with extensive preparation, screening and follow-up, reported that most survivors who took part felt safe and satisfied with the process, and that responsible persons who completed it met their accountability commitments”.¹⁹ The lesson is not that restorative justice suits every case, but that its success depends heavily on design: survivor choice, preparation, trained facilitation, risk assessment and real consequences for failure to follow through.

It also helps to be precise about what restorative justice is not. It is not mediation in the ordinary civil sense, where two parties of roughly equal standing bargain towards a compromise. In a properly run restorative process, responsibility for the harm is not up for negotiation; the person who caused it must accept that responsibility before any meeting takes place. Nor is it forgiveness. A survivor may choose to forgive, but no process that expects or encourages forgiveness can call itself survivor-centred. What restorative justice offers, at its best, is a structured space in which the survivor can say what happened to her in her own words, ask the questions that matter to her, and hear the person responsible acknowledge the harm without the defensive posture that a criminal trial demands. For some survivors this is exactly what they want. For others it is the last thing they want, and that choice must be respected equally.

VI. TRANSFORMATIVE JUSTICE: CHANGING THE CONDITIONS OF VIOLENCE

“Transformative justice grew largely out of the experience of women of colour, queer communities and survivors in the United States who could not safely rely on the police and did not want to rely on prisons. Groups such as INCITE! Women of Color Against Violence argued that anti-violence work had to address both interpersonal violence and the violence of the State, and that neither could be solved without the other”.²⁰ Where restorative justice focuses on repairing the harm between individuals, transformative justice asks what in the surrounding

¹⁹Mary P Koss, ‘The RESTORE Program of Restorative Justice for Sex Crimes: Vision, Process, and Outcomes’ (2014) 29 *Journal of Interpersonal Violence* 1623.

²⁰INCITE! Women of Color Against Violence (ed), *Color of Violence: The INCITE! Anthology* (South End Press 2006).

community allowed the harm to happen and how those conditions can be changed.

“Mimi Kim has described transformative justice as a movement from carceral feminism towards community-based responses that seek safety, accountability and healing without routing everything through the criminal system”.²¹ Its tools include community accountability processes, in which people close to the person who caused harm work with them over time to change their behaviour; survivor support networks; and prevention work aimed at the social norms, economic dependence and silence that make violence possible. “Practical handbooks have been developed for addressing even child sexual abuse within families and communities”.²² “Activists have also written candidly about the difficulty of applying these ideas within their own organisations”.²³

“These ideas connect with a wider abolitionist tradition, associated with thinkers such as Angela Davis and Mariame Kaba, which questions whether prisons can ever produce safety”.²⁴ “Kaba in particular insists that abolition is not about doing nothing in response to harm, but about building the relationships and institutions that make real accountability possible”.²⁵ One need not accept the full abolitionist argument to find value in its central insight: that safety depends less on the severity of punishment than on the strength of the structures around survivors.

These ideas have particular force for survivors whom the police in India have often failed. Dalit and Adivasi women have long reported difficulty in getting complaints registered, especially where the accused belongs to a dominant caste. Transgender persons and queer women describe police stations as places of ridicule rather than refuge. Women in sex work, or women whose partners are themselves the subject of police attention, may fear that approaching the police will bring more harm than help. For all of them, a justice system with only one door is, in practice, a system with no door. Transformative justice at least asks how safety and accountability can be built for people who cannot, or will not, rely on the State.

Transformative justice also has limits. It depends on communities willing and able to hold

²¹Mimi E Kim, ‘From Carceral Feminism to Transformative Justice: Women-of-Color Feminism and Alternatives to Incarceration’ (2018) 27 *Journal of Ethnic & Cultural Diversity in Social Work* 219.

²²generationFIVE, *Ending Child Sexual Abuse: A Transformative Justice Handbook* (generationFIVE 2017).

²³Ching-In Chen, Jai Dulani and Leah Lakshmi Piepzna-Samarasinha (eds), *The Revolution Starts at Home: Confronting Intimate Violence Within Activist Communities* (South End Press 2011).

²⁴Angela Y Davis, *Are Prisons Obsolete?* (Seven Stories Press 2003).

²⁵Mariame Kaba, *We Do This 'Til We Free Us: Abolitionist Organizing and Transforming Justice* (Haymarket Books 2021).

people accountable, and in many Indian settings the “community” most readily available is itself deeply patriarchal. A process led by caste elders or a village panchayat that shares the abuser’s assumptions will not transform anything. The idea travels only if it is anchored in women’s own collectives, trained support workers and a State that stands behind the survivor.

VII. THE INDIAN LEGAL FRAMEWORK

A. *Where the Law Already Leans Restorative*

“It is sometimes forgotten that one of India’s most important laws on gender-based violence is not primarily a criminal statute. The Protection of Women from Domestic Violence Act 2005 gives women civil remedies: protection orders, residence orders that secure their right to remain in the shared household, monetary relief and custody orders”.²⁶ “The Act also allows the magistrate to direct either or both parties to undergo counselling”.²⁷ “Criminal law enters mainly through the back door, when a protection order is breached”.²⁸

In this sense, the Act is closer to a restorative model than is often recognised. It focuses on the survivor’s immediate needs, especially shelter and financial security, rather than on punishing the abuser. Its weaknesses lie mostly in implementation: too few protection officers, inadequate shelter homes and slow proceedings. Strengthening the Act may do more for survivors than any new criminal offence.

B. *Where the Courts Have Drawn a Firm Line*

“At the same time, the Supreme Court has been clear that serious sexual offences cannot be settled privately. In *Shimbhu v State of Haryana*, it held that a compromise between the parties could not be a ground for reducing the sentence in a rape case”.²⁹ In *State of Madhya Pradesh v Madanlal*, it went further, holding that mediation or compromise in a case of rape or attempted rape was impermissible because it offended the dignity of the woman.³⁰ “Earlier, in *Gian Singh v State of Punjab*, the Court had explained that while High Courts may quash some criminal proceedings on the basis of settlement, this power does not extend to heinous and serious offences such as rape”.³¹

²⁶Protection of Women from Domestic Violence Act 2005, ss 18–22.

²⁷Protection of Women from Domestic Violence Act 2005, s 14.

²⁸Protection of Women from Domestic Violence Act 2005, s 31.

²⁹*Shimbhu v State of Haryana* (2014) 13 SCC 318.

³⁰*State of Madhya Pradesh v Madanlal* (2015) 7 SCC 681.

³¹*Gian Singh v State of Punjab* (2012) 10 SCC 303.

“The most striking statement came in *Aparna Bhat v State of Madhya Pradesh*, where the Court set aside a bail condition requiring a man accused of sexual assault to visit the complainant and have her tie a rakhi on his wrist. The Court warned judges against suggesting compromise or marriage between the accused and the survivor, and against any order that trivialised the harm”.³² Read together, these decisions reflect a hard-won understanding: in the Indian context, “reconciliation” has too often been a polite word for pressure.

Advocates of restorative justice should welcome these decisions rather than resent them. They protect survivors from exactly the kind of coerced settlement that feminist critics feared. A genuine restorative process does not replace prosecution or substitute a private bargain for public accountability. It offers the survivor an additional avenue, which she may choose alongside or after the criminal process, never as a condition for withdrawing it.

C. When “Alternatives” Protect the Accused

“The history of family welfare committees shows what happens when alternatives are designed around the concerns of the accused rather than the survivor. In *Rajesh Sharma v State of Uttar Pradesh*, a two-judge bench directed that complaints under section 498A be referred to committees of civil society members before any arrest”.³³ “Within months, a three-judge bench in *Social Action Forum for Manav Adhikar v Union of India* withdrew that direction, noting that such committees had no basis in the statute and could not take over the functions of the police and courts”.³⁴ The episode is a warning. A pre-arrest filter, introduced to address fears of misuse, is not restorative justice. It is diversion, and it serves the accused.

D. A Model Already in the Statute Book: Conciliation under the Workplace Law

Indian law already contains one clear example of a survivor-initiated alternative. Under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, the Internal Committee may, before starting an inquiry and only at the request of the aggrieved woman, take steps to settle the matter through conciliation. “The statute adds an important safeguard: no monetary settlement may be made the basis of conciliation”.³⁵ If the terms agreed are not complied with, the woman can ask the committee to proceed with a full inquiry.

This design gets several things right. The process begins only if the woman asks for it. It cannot

³²*Aparna Bhat v State of Madhya Pradesh* (2021) 16 SCC 179.

³³*Rajesh Sharma v State of Uttar Pradesh* (2018) 10 SCC 472.

³⁴*Social Action Forum for Manav Adhikar v Union of India* (2018) 10 SCC 443.

³⁵Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 10(1).

be bought off with money. And she keeps the right to return to the formal process if the settlement fails. In practice, of course, the provision has its critics, who point out that women may feel pressured by employers or colleagues to request conciliation, and that Internal Committees are not always independent. But the structure of the provision shows that Indian law is capable of accommodating a voluntary, reversible, survivor-controlled alternative, and it offers a template worth studying for other contexts.

E. Nari Adalats and Informal Forums

India also has experience with women-led community forums. The Mahila Samakhya programme supported women's collectives that ran village-level Nari Adalats from the 1990s onwards. "More recently, the Ministry of Women and Child Development has piloted Nari Adalats under the Mission Shakti scheme in selected gram panchayats in Assam and Jammu and Kashmir. According to a reply in Parliament, by the end of October 2024 these pilots had registered 222 cases between them, most of which were reported as resolved".³⁶

These forums could become a home for survivor-centred restorative practice, especially in places far from courts. But the risks are obvious. Forums built around negotiation and reconciliation can easily reproduce the very pressure the Supreme Court warned against. "Resolved" is not the same as "safe". "The contrast with caste and community panchayats that have punished couples for marrying by choice, conduct the Supreme Court condemned as illegal in *Shakti Vahini v Union of India*",³⁷ is a reminder that community justice is only as good as the values of the community administering it. Whether Nari Adalats become instruments of women's empowerment or of family pressure will depend on training, referral systems and clear rules about which cases they must not handle.

VIII. INTERNATIONAL STANDARDS

"International law reflects the same tension. The Istanbul Convention of the Council of Europe prohibits mandatory alternative dispute resolution processes, including mediation and conciliation, for all forms of violence covered by the Convention".³⁸ The emphasis on the word "mandatory" matters: what is forbidden is compulsion, not every form of voluntary dialogue.

The CEDAW Committee, in its General Recommendation No 35, similarly cautions that

³⁶Lok Sabha Unstarred Question No 2063, Ministry of Women and Child Development (6 December 2024)

³⁷*Shakti Vahini v Union of India* (2018) 7 SCC 192.

³⁸Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (adopted 11 May 2011, entered into force 1 August 2014) CETS No 210, art 48.

alternative dispute resolution must not be used in a way that leads to further violations of women's rights, and that referral of cases to such processes should be strictly regulated and allowed only where specialised staff have ensured the survivor's free and informed consent.³⁹

"The United Nations Office on Drugs and Crime, in its handbook on restorative justice programmes, likewise accepts that such processes can be used in cases of gender-based violence only with special safeguards, specialised facilitators and careful attention to safety".⁴⁰

India is not a party to the Istanbul Convention, which is a regional European instrument, but it has ratified the Convention on the Elimination of All Forms of Discrimination against Women, and the Supreme Court has repeatedly drawn on international standards when interpreting constitutional guarantees of equality and dignity. The guidance of the CEDAW Committee is therefore directly relevant to Indian policy. It supports exactly the distinction the Supreme Court has drawn in its own decisions: that serious offences must not be pushed into private settlement, but that carefully regulated, voluntary processes are not ruled out.

The international position, then, is neither a blanket ban nor an uncritical embrace. It is conditional acceptance: voluntary participation, specialist support, risk screening and no substitution for the survivor's right to pursue criminal justice.

IX. TOWARDS A SURVIVOR-CENTRED MODEL

Drawing these threads together, it is possible to outline principles for a model suited to India.

Survivor choice at every stage. No process should begin unless the survivor asks for it, and she must be free to leave it at any point without consequence. Referral by police, judges or family members should never be a substitute for her own request.

Complement, not substitute. Restorative processes should run parallel to, or after, criminal proceedings, and should never be a condition for bail, a ground for reduced sentence in serious offences or a route to withdrawal of complaints. This is consistent with the Supreme Court's decisions discussed above.

Risk assessment and specialist facilitation. Cases involving ongoing coercive control, serious injury or threats to life require particular caution. Facilitators must be trained in the dynamics

³⁹Committee on the Elimination of Discrimination against Women, 'General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19' (26 July 2017) UN Doc CEDAW/C/GC/35.

⁴⁰UNODC, *Handbook on Restorative Justice Programmes* (2nd edn, United Nations 2020).

of gender-based violence and independent of the parties' families and communities.

Material support for survivors. No survivor can negotiate freely while she depends on the person who harmed her for food and shelter. Shelter homes, maintenance, residence rights and livelihood support are therefore not extras; they are the preconditions for any meaningful choice.

Real accountability. Agreements reached through a restorative process should include concrete commitments, such as participation in behaviour change programmes, and should be monitored. Where commitments are broken, the survivor must retain full access to criminal and civil remedies.

Transformation at the community level. Beyond individual cases, resources should go into prevention: school programmes on consent and equality, work with men and boys, support for women's collectives and campaigns against the social acceptance of violence.

Illustrating the Model

Consider how these principles might work in a concrete case. A woman obtains a protection order and a residence order under the Domestic Violence Act. Her husband has been ordered to stay away from her and to pay maintenance. Some months later, she tells her protection officer that she would like her husband to hear directly how the violence has affected her and their children, and that she wants him to commit to a programme to change his behaviour. She is clear that she does not want to withdraw her case.

Under the model proposed here, the protection officer would refer her to a trained facilitator attached to the district legal services authority. The facilitator would meet each of them separately, assess the risk of further violence, confirm that the husband accepts responsibility and explain that nothing said in the process will reduce his legal obligations. If both agree and the risk is judged manageable, a facilitated meeting might follow, perhaps with a support person for her present. The outcome could be a written plan: attendance at a behaviour change programme, continued maintenance, no contact outside agreed arrangements, and a review after six months. If he breaks the plan, the protection order remains in force and the criminal law remains fully available. At no point has she been asked to forgive, reconcile or give anything up.

The example is modest, and that is deliberate. Restorative justice is most likely to succeed in India if it begins as a narrow, well-supported option within existing legal structures rather than

as a sweeping replacement for them.

X. TESTING THE HYPOTHESIS: FINDINGS

The evidence reviewed supports both parts of the hypothesis.

First, the punitive model reaches a small minority of survivors. National survey data show that most women experiencing spousal violence never seek help from anyone, let alone the police. For those who do, the process can be slow, painful and focused on questions that are not their own. The model also produces collateral costs and a backlash that can harm survivors.

Second, restorative and transformative approaches offer real benefits when properly designed. Programmes such as RESTORE show that survivors can experience these processes as safe and meaningful. But the Indian record also shows how easily “alternatives” become instruments of pressure, whether through compromise in rape cases, rakhi-tying bail conditions or committees designed to filter complaints. The difference between the two outcomes lies precisely in the conditions identified in the hypothesis: voluntariness, survivor initiative, safeguards and a complementary rather than substitutive role.

It is worth addressing three objections directly. The first is that any alternative to prosecution is a form of leniency that signals violence against women is not serious. But the model proposed here removes nothing from the criminal law; it adds options. A survivor who wants prosecution keeps that right in full. The second objection is that restorative processes privatise a public wrong, turning violence into a family matter once again. This is a real risk, which is why the processes must be publicly regulated, independently facilitated and recorded, and why serious offences must remain within the criminal system regardless of any agreement. The third objection is that these approaches place a new burden on survivors, asking them to do the emotional work of confronting the person who harmed them. That is true of a badly designed process. It is not true of one that the survivor chooses freely and can leave at any point. The purpose is to widen her choices, not to hand her new duties.

In short, the choice is not between prison and forgiveness. It is between a narrow justice system with one door and a wider one with several, each of which the survivor can choose to open or keep closed.

XI. RECOMMENDATIONS

Strengthen the civil route. Appoint full-time protection officers under the Protection of

Women from Domestic Violence Act in every district, expand shelter capacity, and set time limits for deciding applications for protection and residence orders.

Pilot survivor-initiated restorative programmes. State legal services authorities, working with experienced women's organisations, could pilot restorative conferencing for survivors who request it, with independent evaluation and strict exclusion of cases involving continuing danger.

Regulate Nari Adalats. Issue clear guidelines on the cases Nari Adalats may handle, mandatory referral of serious offences to the police, training for Nyaya Sakhis, and public reporting of outcomes, including survivors' own assessment of their safety.

Invest in behaviour change programmes. Courts and protection officers should have access to accredited programmes for men who use violence, with attendance monitored and reported.

Fund prevention. A portion of funds earmarked for women's safety should be directed towards community-level prevention, gender education in schools and support for women's collectives.

Collect better data. Record not only arrests and convictions but also what survivors wanted, what they received and whether they were safe afterwards.

XII. CONCLUSION

Go back to the woman on the bench outside the police station. The criminal law must remain available to her, and she must be able to use it without being talked out of it. But she should not have to choose between filing a first information report and going home to the same danger with nothing. Justice for her might mean a protection order enforced promptly, a secure right to stay in her home, money for her children, a husband compelled to confront what he has done, and a community that no longer looks away.

None of this will happen by itself. It requires legislators willing to look beyond the next new offence, judges who continue to guard against coerced compromise, and public investment in the unglamorous work of shelters, counsellors and community education. It also requires listening to survivors themselves, whose views on what justice means are far more varied than any single system has so far allowed.

Carceral justice was built to answer the question of what an offender deserves. Restorative and transformative justice ask a different question: what does the survivor need, and what must

change so that this does not happen again? Neither question is enough on its own. A mature legal system should be able to ask both, and to let the person who was harmed decide which answers she wants.
