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REFORMING JUVENILE JUSTICE IN INDIA: THE ROLE OF VICTIM-OFFENDER MEDIATION IN DIVERSION AND REHABILITATION

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ABSTRACT

Restorative justice has gained global recognition as an effective approach in juvenile justice, shifting the focus from punitive measures to rehabilitation and reconciliation. Victim-Offender Mediation (VOM) is one such practice that facilitates structured dialogue between victims and juvenile offenders, promoting restitution, accountability, and emotional healing. Jurisdictions such as the United States and Canada have successfully implemented VOM, demonstrating its potential to reduce recidivism and enhance victim participation. In India, the principle of diversion under Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015, provides a legal foundation for exploring alternative rehabilitative mechanisms like VOM. This research article examines the feasibility of incorporating VOM within India's juvenile justice framework to strengthen its restorative justice orientation. Using a doctrinal approach, it analyses statutory provisions, judicial precedents, and international best practices. It further evaluates procedural safeguards necessary to balance the rights of victims and juvenile offenders while ensuring compliance with due process. Additionally, the research article identifies key challenges such as infrastructural limitations, legal scepticism, and socio-cultural barriers that may affect its implementation. The findings suggest that VOM can serve as an effective diversionary mechanism within India's juvenile justice system, reinforcing its rehabilitative objectives. The

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research article concludes that integrating VOM could enhance victim satisfaction, improve juvenile reintegration, and contribute to a more restorative and effective justice system.

Keywords: *Restorative Justice, Victim-Offender Mediation (VOM), Juvenile Justice, Diversion, Rehabilitation*

1. INTRODUCTION

"The law has a heart-or, at least, must have."[1]

The special status that a child enjoys under law has existed for centuries and is as old as the Code of Hammurabi. It has been recognized that a child, being a person with very differential cognitive, physical, and mental development, could not be treated in the same manner as an adult. Their special needs, both as a victim and a perpetrator, needs to be recognized and given legal sanction. With the advancement of civilization, as we moved towards the establishment of a welfare state and not merely a police state, the goals, and aspirations that we sought from law changed fundamentally. The focus shifted to rehabilitation from deterrence and retribution. This is particularly true for juveniles, where *"often, the sinner is not the boy or girl but the broken or indigent family and the indifferent and elitist society."* [2]

A new subset of the criminal justice system, known as the juvenile justice system, came into being and evolved over time. This system was tailor-made to address the specific and varied needs of young adults known as juveniles. The system aimed at achieving a dual purpose of deterrence along with rehabilitation. The punishment objective of law was given a backseat, establishing rehabilitation as the ultimate goal and guiding principle. The juvenile justice system, being totally different from the criminal justice system, used different tools and instrumentalities to achieve its ultimate goal of rehabilitation.

Traditionally, the juvenile system also employed practices used by the adult system, thus mirroring the punitive goals of the adult criminal justice system. But in recent times, the juvenile justice system has undergone significant changes worldwide, where restorative practices have been recognized and given high importance, as it was noticed *"that the traditional methods of punishment -in particular, detention - often fail*

1 Hiralal Mallick v. State of Bihar, AIR 1977 SC 2236.

2 Ibid.

to sufficiently address the problems presented by crimes in which the offender is a juvenile. The shortcomings of utilizing detention as the primary method of dealing with juvenile crime create a void in effective response mechanisms, which can be filled by further integrating restorative justice practices and principles into the juvenile justice.[3]"

Restorative justice, as the name signifies, emphasizes restoration. What kind of restoration are we talking about? We are talking about the restoration of relations, emotional healing, reconciliation, and undoing the harm caused. Restorative Justice is "*centrally concerned with restoration. restoration of the victim, restoration of the offender to a law-abiding life, restoration of the damage caused by crime to the community. Restoration is not solely backward-looking; it is equally, if not more, concerned with the construction of a better society in the present and the future*"[4].

The Restorative justice model "*is based on a distinctive view of crime as harmful behaviour, and of "justice" as repairing harms caused by crime*[5]*.*" It moves the focus from punishment and punitive measures to repairing the harm and achieving positive behavioural changes in the perpetrator, with them realizing their fault, developing sense of responsibility[6] and then themselves engaging in repairing the harm caused.

Restorative justice recognizes that juveniles, because of their young age, are more susceptible to positive behavioural changes than adults are. They could be processed to achieve changes that make them law-abiding and contributing members of society. This philosophy of restorative justice emphasizes the involvement of three stakeholders: the state, the community, and the juvenile himself in the rehabilitation and healing process, with the goal of achieving positive changes and reducing the chances of recidivism to a minimum. In addition, Restorative justice is a better alternative to retributive justice as the "*Retributive justice essentially refers to the repair of justice through unilateral imposition of punishment, whereas restorative justice means the repair of justice through reaffirming a shared value-consensus in a bilateral process.*[7]"

3 Judy C. Tsui, *Breaking Free of the Prison Paradigm: Integrating Restorative Justice Techniques into Chicago's Juvenile Justice System*, 104 J. CRIM. L. & CRIMINOLOGY 635, 666 (2014), http://www.jstor.org/stable/44113403 (last visited Mar. 26, 2025).

4 T. MARSHALL, RESTORATIVE JUSTICE: AN OVERVIEW 5 (1999).

5 Gordon Bazemore & Leslie Leip, *Victim Participation in the New Juvenile Court: Tracking Judicial Attitudes Toward Restorative Justice Reforms*, 21 JUST. SYS. J. 199, 226 (2000), http://www.jstor.org/stable/27977018 (last visited Mar. 26, 2025).

6 M. Wenzel, T.G. Okimoto, N.T. Feather & M.J. Platow, *Retributive and Restorative Justice*, 32 LAW & HUM. BEHAV. 375, 389 (2008), https://doi.org/10.1007/s10979-007-9116-6.

7 Ibid.

Juveniles, because of their age and low cognitive development, are very receptive to behavioural reform. They could be reformed abandon the criminal ways and become a law-abiding citizen. It is recognized that criminal behaviour is a learned behaviour that is learned in the process of socialization, means that if the children could learn to commit crime, the children with criminal tendencies could also be taught anti-criminal behaviour. The juvenile justice system in India, is majorly based on this philosophy only.

2. VICTIM-OFFENDER MEDIATION (VOM): A KEY COMPONENT OF RESTORATIVE JUSTICE

> *"Restorative Justice is a problem-solving approach to crime which involves the parties themselves, and the community generally, in an active relationship with statutory agencies".*[8]

One important tool or component of the restorative justice system is the Victim-Offender Mediation (VOM). VOM, as a process, provides for effective dialogue between the victim and the offender, with the aim of having communication to locate the harm and suffering caused and to reach a mutually acceptable restitution method. This mutually acceptable method should not be so lenient that the victim feels that injustice has been done to them, but at the same time, not so tough that it turns the offender toward the path of criminality and it triggers their recidivist tendencies. In this process both the parties to the case *"collectively resolve how to deal with the aftermath of the offence and its implications for the future".*[9]

This structured process of VOM in the juvenile justice system has produced positive results in terms of increasing offender accountability, victim satisfaction, and reducing recidivism rates in various jurisdictions, especially in the USA and Canada. However, the practice is still to be utilized in the Indian juvenile justice system.

This article critically analyzes the concept and process of Victim-Offender Mediation as present in other jurisdictions, with the aim of studying the feasibility, outcomes, and challenges of transporting the same process into the Indian juvenile paradigm.

Victim-Offender Mediation (VOM) is the process by which a mediator achieves a safe and structurally balanced dialogue between the victims and the offenders

8 TSUI, *supra* note 3.

9 Bhavya Sriram & Maheshwari S., *Towards a Restorative Criminal Justice System: Victim Offender Mediation*, (2005) 1 NSLR 16.

of the crime. Such a setting allows victims to vent their anger while the offenders accept the grievance and work together to find a common solution. Unlike typical punishment-only justice systems that often leave both victims dissatisfied and offenders unrehabilitated, VOM is a process wherein both agreed to participate actively in achieving justice. The victim-offender mediation, "*is a practice that allows a victim to voluntarily face the offender in a secure space with a trained mediator. Although the primary actors needed for victim-offender mediation are the victim and offender, there may be cases where the two parties are joined by family members or other individuals whom either party wishes to include. In mediation, the offender is given a chance to better understand the effects of his crime and to attempt to make amends with the victim.*[10]"

The basic elements of VOM include:

a. Voluntary Participation: The mediator ensures that the victim and the offender participate in a mediation process of their free will, as forced mediation yields no results, it rather is a wastage of time and previous legal resources. Coerced mediation defeats the whole purpose of restorative justice.

b. Neutral Mediation: The mediator is trained to listen, ensure balance in communications, and enhance constructive dialogue. He acts as a neutral 3rd party having no interest in the subject matter or the parties whatsoever. His role is to ask as a brige and connecting link between both the parties to facilitate meaningful communication aimed at reaching a viable solution for the problem at hand.

c. Restorative Focus: The victim-offender Mediation Program does not seek to impose retributive sanctions; rather, its central theme is restoring the victim and other harmed parties. Instead of vengeance or punishment, the focus is on 'healing'. Healing of spoiled relations, traumas, feelings etc, to undo the loss and harm caused as aftermath of the offence.

d. Negotiated Restitution: Here, the offender and the victim agree to the terms under which the offender will make restitution. The agreed restitution method is such that it is neither unjust to the victim and nor to harsh on the offender. There is balancing of the two conflicting interest to arrive at a mutually satisfactory settlement.

10 Ibid.

2.1. Objectives of VOM in Juvenile Justice:

a. Holding offenders accountable by coming face-to-face with victims and learning about the effects of their actions develops a greater sense of responsibility in juvenile offenders.

b. Victims often feel that they never get to express themselves in the regular justice process. VOM will give them an opportunity to ask their questions and share their pain as they get on the path toward closure. . Through the VOM process "*the opportunity is provided for victims and offenders to discuss the offense, for victims to have answers to their questions and for all participants to express their feelings which include the impact of the crime on their lives*[11]".

c. Fostering Rehabilitation Over Punishment: Juveniles respond to treatment better than adults. Therefore, it can be assumed that VOM channels its effects more toward creating change rather than acting toward a punitive atmosphere.

d. Reducing Recidivism: Recidivism rate is regarded as "*the ultimate measure of success[of the criminal justice system*] *and is one of the most frequently compared outcomes of restorative and retributive procedures*". [12] Various researches on recidivism research indicates that youth who commit offenses and settle them through VOM are less likely to offend again than those who go through the standard judicial procedures. In fact, there is avaiblity of amble empirical studies that suggest the awarding incarnation, especially for a longer term, does more harm to the young adults then it cures. In the case Dharambir and Anothers v. State of Uttar Pradesh[13], the bench particularly noted the ill effects of long term sentences on young adults, the bench stated "*Long prison terms do not humanise or habilitate but debase and promote recidivism. Life imprisonment means languishing in prison for years and years. Such induration of the soul induced by indefinite incarceration hardens the inmates, not softens their responses. Things as they are, long prison terms do not humanise or habilitate but debase and promote recidivism. A host*

11 Lorraine Stutzman Amstutz, *Training Issues in Victim Offender Mediation*, 50 J. CORR. EDUC. 68, 71 (1999), http://www.jstor.org/stable/23292112 (last visited Mar. 25, 2025).

12 Alana Saulnier & Diane Sivasubramaniam, *Restorative Justice: Underlying Mechanisms and Future Directions*, 18 NEW CRIM. L. REV. 510, 536 (2015), https://doi.org/10.1525/nclr.2015.18.4.510 (last visited Mar. 26, 2025).

13 Dharambir and Anothers v. State of Uttar Pradesh, 1979 AIR 1595.

of other vices, which are unmentionable in a judgment, haunt the long careers of incarceration, especially when young persons are forced into cells in the company of callous convicts who live in sex-starved circumstances"[14]

e. Relief of the overburdened legal system: Through VOM, a case is resolved outside the court; hence there would be less case backlog allowing judicial resources to be directed toward more heinous crimes.

2.2 Enhancing Victim Participation, and Offender Accountability

One major limitation of the formal justice system is its marginal victimization of victims. These systems make victims play a passive role, presenting them just as witnesses with minimal say in the outcome of cases. VOM, on the other hand, takes a contrasting view by allowing victims to play an important and positive role in justice. Victims are able to express their feelings and explain the impact of the offense on them and to meaningfully seek restitution.

Oftentimes victims are left traumatized and distressed after a crime. This process provides a forum within which victims can confront their offenders and share their experiences. Most times, victims still have unanswered questions regarding the crime—why them, if at all they were targeted, or how the offender feels concerning the offense. The Mediation leads to feelings of justice in victims than those who went through traditional court proceedings.[15]

Traditional court systems, focused on an adversarial approach, often push juvenile offenders away from the process of justice. For many young offenders, the judicial process is punitive and dispassionately inspiring further delinquency rather than facilitating reform. VOM, on the other hand, extends a different framework that supports offender accountability without requiring punitive separation.

2.3. How does VOM contribute to enhanced accountability?

a. Interaction: Looking at the affected party face to face: When perpetrators have to face the reality of human damage they caused, they gain a new understanding of the effects of their actions.

14 Ibid, at page 646.

15 Anna Costanza Baldry, *Victim- Offender Mediation in the Italian Juvenile Justice System: The Role of the Social Worker*, 28 BRIT. J. SOC. WORK 729, 744 (1998), http://www.jstor.org/stable/23714860 (last visited Mar. 26, 2025).

b. Recognition of harm: Unlike the traditional legal defences (which often rely on minimizing guilt), VOM expects juveniles to embrace their responsibility.

c. Tailored restitution: Juveniles have a say in the best way to do a meaningful restitution, resulting in greater commitment to reparative acts.

2.4. Effect on offender rehabilitation:

a. Lower recidivism rate: experience from countries like USA and Canada shows that using medication techniques in juveniles' matters have resulted in decrease in the likelihood of reoffending.

b. Ensuring continued community connection: VOM techniques ensures community participation in the juvenile rehabliation process thus ensure there in protection of community ties and relationship.

c. Increased accountability: instead of outright punishing the juvenile, using mediation techniques for making them a became aware of the ill effects of their actions, increase Maturity and accountability in the child.

3. Comparative Analysis of Victim-Offender Mediation (VOM) in Other Jurisdictions

Various jurisdictions have adopted the mechanism of Victim-Offender Mediation (VOM) as an alternative to the traditional punitive practices. States like USA and Canada have shown a appreciable decrease in the reoffending rates and increase in the rehabilitation rates by incorporating VOM mechanism in their juvenile justice system. Not only that there is a noted decrease in recidivism rate, there is an increase in offender accountably, victim satisfaction and community engagement. This noted positive results has made the researcher curious about studying the suitability and adaptability of the same practice in the Indian juvenile justice system. To test this suitability and adaptability, we need to first understand how this system is implemented in USA and Canada.

3.1 Implementation of VOM in the United States and Canada

United States

In the United States, state laws and federal policy work together to encourage victim-offender mediation, or VOM, for youths. At the federal level, the Office of

Juvenile Justice and Delinquency Prevention (OJJDP) supports restorative justice initiatives, while the Juvenile Justice and Delinquency Prevention Act (1974) supports community-based alternatives to incarceration, which is consistent with VOM concepts. State-level legislation supporting juvenile VOM has been passed in a number of US states, Minnesota's State Court Administrator is required to encourage restorative justice[16], which includes VOM. Colorado's Colo. Rev. Stat. [17]permits mediation as part of diversion programs. Restorative justice can be used to resolve juvenile crimes informally under Texas Family Code. [18]VOM can be enforced by courts as part of juvenile disposition under Indiana's Ind. Code[19]. Through mediation programs, pre-adjudication diversion is made possible by Oregon's ORS § 419C.225[20]. According to Wisconsin Statute, [21]courts are allowed to make victim mediation a condition of disposition.

Although there isn't a statutory requirement in California, several states use mediation and restorative community conferencing as a component of their juvenile diversion programs. Together, these legal frameworks provide a strong foundation for the use of VOM in juvenile justice throughout the United States.

After the benefits of using mediation programs was recognised by united states department of justice, USA has incorporated the VOM practices its juvenile justice framework through various restorative justice initiatives. These initiatives stress on importance of having an effective dialog between the offender and the victim with the assistance of a qualified mediator to facilitate the discussion.

The aim of this communication/discussion is:

a. Providing the victim a platform to vent out anger and express his feelings and concerns.

b. Making offender understand the consequences of this act and thus take responsibility.

c. Decreasing the probability of recidivism by incorporating rehabilitative measures.

16 Minn. Stat. § 611A.775 (2024).

17 Colo. Rev. Stat. § 19-2.5-305 (2022).

18 Tex. Fam. Code Ann. § 54.0325 (West 2023).

19 Ind. Code § 31-37-19-5 (2023)

20 Or. Rev. Stat. § 419C.225

21 Wis. Stat. § 938.34(5) (2023).

Several US states like Minnesota, Texas, Illinois[22] and Pennsylvania, etc that have incorporated the VOM model in their juvenile justice framework have recorded significant positive results[23]. Researches indicate that juveniles who participate in mediation have shown a lower likelihood of falling again into the trap of criminality than the juveniles those were processed through the traditional punitive system, as "*restorative approaches offer many advantages over the traditional method of detention, including lowering costs to state and taxpayer, possibly reducing recidivism rates, putting a focus on the victim and the community generally, and providing a fitting response to crime, considering the unique ability of victim for rehabitation*". [24]Simultaneously, there has been a noteworthy increase in victim satisfaction rates as they now have an opportunity to share their feelings and thus get a closure. The primary aim of the program is to "*provide a restorative justice process which involves both victims, offenders, and the community in repairing the harm caused by a crime. Through this process the opportunity is provided for victims and offenders to discuss the offense, for victims to have answers to their questions and for all participants to express their feelings which include the impact of the crime on their lives*".[25]

Canada

One notable area of innovation is the development of restorative justice programs in Canada, especially for juveniles. VOM is one of the alternative measures prescribed under the Youth Criminal Justice Act (YCJA) of 2003 to help divert youth from a formal judicial proceeding. The Act supports rehabilitation rather than punitive sanctions case to the conviction and prevents escalation of minor offences by encouraging resolution of disputes in community. The primary focus of the VOM is to "assist in reconstructing the lives of the victims, who have been harmed by the crime and to deal with the relational aspects of the crime. Reconciliation became a primary focus, with restitution as a secondary goal, as it provided further healing for the victim."[26]

22 U.S. Dep't of Just., Nat'l Inst. of Just., *Trends and Issues 90: Criminal and Juvenile Justice in Illinois* (n.d.), https://www.ojp.gov/pdffiles1/Digitization/126480NCJRS.pdf (last visited Mar. 26, 2025).

23 Nuzhat Parveen Khan & Shabeena Anjum, *Restorative Justice: Meaning and Concept*, 26 ALJ 145 (2018–19).

24 Ibid.

25 Lorraine Stutzman Amstutz, *Training Issues in Victim Offender Mediation*, 50 J. Corr. Educ. 68, 71 (1999), http://www.jstor.org/stable/23292112 (last visited Mar. 26, 2025).

26 Ibid.

How Canada approaches VOM ?

a. Pre-charge and post-charge diversion: Regularly, juveniles can be referred to mediation either pre or post charge, as part of sentencing

b. Community mediation programs: Local agencies partner with law enforcement to conduct mediation sessions.

c. Restitution and rehabilitation emphasis: The processes encourage offenders to make restitution for their causing harm — this can take the form of compensation, community service, apology, or similar actions.

Similar to USA the Reports from the Canadian Department of Justice has shown that VOM has increased offender accountability, victim satisfaction, community engagement and reduced the reoffending rates. USA and Canada are not the only two counties that have incorporated restorative justice practise in their criminal system. In the case, Minister of Justice and Correctional Services *versus* Janusz Jakub Walus[27], the Supreme Court of Appeal of South Africa stated that *"restorative justice process restore the balance and the harm caused to the victim's family, as well as the community as a whole…[It] also assist the offender [to] come to terms with the crime committed as well as to accept responsibility for the crime and thereby contribute towards his own healing and rehabilitation pathway. This can be achieved either through the VOD and/or VOM process or whichever process is deemed appropriate by the qualified professionals[28]."*

The positive results that VOM has achieved in USA and Canada could work as an inspiration for Indian to incorporate similar practices in its juvenile justice system. Both these counties like india have multicultural heterogeneous population, and the core principles applicable in the juvenile justice framework of both the countries are very similar to that of india. Thus, there is agreat potential for legal borrowing. To incorporative this restorative practice in its framework, Indian could make amendments in the Juvenile Justice (Care and Protection of Children) Act, 2015 to make clear statutory provisions to employ VOM as a valid diversionary measure. As a skilled mediator is one who carries the whole process of the mediation on his shoulder, the success of a mediation greatly depends on its mediator abilities[29],

27 Minister of Justice and Correctional Services v. Janusz Jakub Walus, 2017 SCC OnLine ZASCA 93

28 Ibid.

29 Lawrence W. Sherman et al., *Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review*, 31 J. QUANT. CRIMINOLOGY 1, 24 (2015), http://www.jstor.

"mediators play a much more prominent (and more negotiator-like) role in controlling the discussion in VOM than conference facilitators[30]*"*. Thus, a training program could be established for mediators where they could be additional taught how they could interact with the vulnerable population like juveniles to ensure that the process is carried out in a child friendly atmosphere and without violating the rights of juveniles. At the same time, training will ensure that the mediation follow a structured mechanism to effectively involve victims in the mediation process at all the stages to ensure protection of their rights and interest. Community-based mediation approach, as existing in Canada could also be deployed to enhance restorative justice initiatives. The success, results and outcomes of the practice could be periodically monitored by the high-level monitoring committee as provided in the JJ act 2015. Taking inspiration from all these systems, India could also develop Victim-Offender Mediation (VOM) system that is tailored to its unique socio-legal circumstances.

4. Feasibility Of Implementing VOM In India

In the case Anupam Sharma v. NCT of Delhi[31], the high court of Delhi while deliberating on the feasibility of incorporating restorative mechanism like VOM in the Indian criminal system, called 'Restorative justice' as a synonym for mediation, and stated, *"The object and nature of restorative justice aims at restoring the interest of the victim. Involvement of the victim in the settlement process is welcome in the process of restorative justice*[32]*."* Considering India's unique social, legal and political circumstances; through the mechanism of Victim-Offender Mediation (VOM) aligns with India's legal and rehabilitative goals; its implementation requires a nuanced examination.

4.1. Legal Framework and Procedural Safeguards

Although there isn't a specific law in India that addresses victim-offender mediation (VOM), there are a number of present laws that support it. Victims have a say in the process because to laws like the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) that permit plea bargaining[*Sections 290–303 – Plea Bargaining (Chapter XXVIII of*

org/stable/43552168 (last visited Mar. 27, 2025).

30 Arthi Ramchandrana & Ramachandra Subramanian, *Beyond the Courtroom: Exploring the Potential of Alternate Dispute Resolution in Domestic Violence Cases in India*, 5 JCLJ 28 (2024).

31 Anupam Sharma v. NCT of Delhi, 2007 SCC OnLine Del 1128.

32 Ibid.

*BNSS)]*and the mutual settlement[*Section 360 – Compounding of Offence*] of some offenses. The Juvenile Justice Act[*Section 18 and 19 – Dispositional Orders*] promotes healing and mediation, particularly in cases involving juvenile offenders. Probation of Offenders Act, 1958, also stresses on reformation rather than retribution. Additionally, Lok Adalat [*section 19 & sec 22A-22E- Legal Services Authorities Act, 1987*]offer a forum for more cooperative and understanding resolution of minor criminal matters. When taken as a whole, these legislative instruments show a move toward a judicial system that prioritizes healing and reconciliation in addition to punishment.

The Juvenile Justice (Care and Protection of Children) Act, 2015 along with the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, is the main legislative framework governing India's juvenile justice system. The chapter II section 3 of the 2015 act provides 16 principles that are to be followed in administration of the act. Out of this principle the second last principle that is the 15th principle is the 'principle of diversion'. Section 3(xv) explain the principle of diversion as "*Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole*[33]". Thus, the act the act dissuades 'resorting to the judicial proceedings' and encourages the use alternative dispute resolution methods (ADR) instead of the ordinary judicial procedure, as processing the juvenile though the judicial procedure could itself be criminogenic[34] in many cases. One just diversion mechanism that is not very much utilised in India is the Victim-Offender Mediation (VOM) mechanism for dispute resolution.

To "*engineer a shift towards restorative justice without departing from the safeguards that have been given to the accused persons in our constitutional and criminal jurisprudence*[35]", several procedural safeguards have to be incorporated in Indian juvenile justice framework to introduce the VOM mechanism. Such safeguards include:

a. Legislative Amendments: Though the section 3 and various other sections of the Juvenile Justice (Care and Protection of Children) Act, 2015 by implication provides ample ground for employing VOM mechanism, but

33 The Juvenile Justice (Care and Protection of Children) Act, 2015, § 3(xv), No. 2, Acts of Parliament, 2016 (India).

34 Gwen Robinson & Joanna Shapland, *Reducing Recidivism: A Task for Restorative Justice?*, 48 BRIT. J. CRIMINOLOGY 337, 358 (2008), http://www.jstor.org/stable/23639090 (last visited Mar. 27, 2025).

35 Nuzhat Parveen Khan & Shabeena Anjum, *Restorative Justice: Meaning and Concept*, 26 ALJ 145 (2018–19).

considering the act the maximum clarity in criminal laws ensues maximum justice, explicit provisions for VOM must be incorporated by amendment in the act to provide a legal basis for its application. Such amendment should provide a framework for *"procedural guidelines, training standards for mediators, and provisions for the integration of restorative justice principles in sentencing*[36]*"*. Along with this Either a specific Restorative Justice and Mediation Act should be introduced, or the BNSS should be modified. Victim-Offender Mediation (VOM) must be explicitly defined in this statute as a voluntary, dialogue-based process that promotes accountability and healing. Prioritizing juveniles, first-time offenders, and those with less serious offenses, may be establish eligibility requirements.

b. Judicial Oversight: Juvenile Justice Boards while conducting inquiry under section 14 or the children court while conducting trial under sec 17 of the act should have the authority to refer appropriate cases to VOM when they consider that there is a probability of settlement of the case by mediation and the same in is the best interest of the child and the victim. Though, ideally there should be minimum judicial intervention in the mediation process, however considering the special vulnerable status of the offender as a juvenile, the VOM process in the juvenile justice system should be under certain level of judicial oversight to ensure that the rights of the juvenile as well as the victim are protected during the course of mediation process.

c. Confidentiality and Voluntariness: The participation in mediation process must be voluntary for both victims and offenders. It should be ensured that no coercion is used and both the parties are participating willingly, as forced mediation yields no results, it rather is a wastage of time and previous legal resources. To increase the willingness of offenders to engage in victim-offender mediation, *"it is crucial to implement measures that address their concerns and foster a positive perception of the process. Educating offenders about the benefits of mediation, emphasizing personal growth and the opportunity for reconciliation, can help dispel misconceptions and encourage active participation. Providing support and preparation before the mediation process can address their uncertainties and ensure they understand the process and their rights*[37]*"*.

36 Sameera Khan, *Victim-Offender Mediation in India's Criminal Administration: An Analysis of Emerging Practices Through Restorative Principles*, Int'l J. Food & Nutritional Sci., ISSN 2319-1775 (Print), 2320-7876 (Online), https://ijfans.org (last visited Mar. 27, 2025).

37 Ibid.

d. Enforceability of Agreements: The agreements reached as the outcome mediation, such as restitution or community service, must be mutually acceptable to both the parties and have some amount of bindingness to ensure compliance.

By ensuring compliance to these basic safeguards, India can integrate VOM within its juvenile justice framework while maintaining the integrity of the juvenile justice process.

4.2 Potential Challenges: Infrastructure, Legal Scepticism, and Socio-Cultural Barriers

Though there are various potential benefits that VOM process will yield if it is integrated in the Indian legal system, but there several challenges could hinder the implementation of VOM in India.

a. Infrastructure and Resource Constraints

Due to limited funds allocated, the India's juvenile justice system is already in deficit of resources like lack of trained personnel, juvenile homes, and rehabilitation centres. Infact the juvenile homes personnel are already overworked and understaffed. To conduct VOM there is a requirement of setting up VOM centres, which would require additional funding and administrative support. Availability of these additional funding and administrative support is one such challenge that could be faced for implementing VOM mechanism, specially in rural areas due to limited infrastructure.

b. Legal and Institutional Scepticism

The Indian legal system is majorly adversarial in nature thus incorporating ADR mechanism in criminal matters may face resistance from conventional legal practitioners. There may be lack of interest shown by the among law enforcement agencies and judicial officers to refer cases to VOM as the same may not be considered as effective as the judicial process by them. Restorative mechanism like VOM have been "*inserted in different degrees into most systems of responding to crime, especially youth crime. In the maximalist ambition of some advocates, this is a step toward full- fledged systemic restorative responses to crime. Others consider the maximalist option far too ambitious. They see restorative justice as basis for diversions or alternate sanctions, do not believe*

that restorative practices can be applied to serious crimes, and are sceptical about the possibilities of combining restorative practices with legal safe-guards".[38]

c. Cultural and Psychological Barriers

In India, punishment is valued over reconciliation and crime is frequently viewed through a retributive lens. It would take significant awareness campaigns to alter the public's view of mediation as a valid legal process. In most of the cases the victims are unwilling to participate in the process as they *"fear that they may be forced to settle on unfavourable terms. There is a possibility that the offender has some clout which they can use to force the victim into a settlement which is favourable to them*[39]*"*.Due to fear, trauma, or cultural stigma, victims may be reluctant to participate in mediation, especially in cases involving serious offenses; juvenile offenders, particularly those from marginalized backgrounds, may not have access to the necessary legal advice or assistance to successfully navigate mediation procedures.

d. Due Process Issues and Ethical Issues

Many a times the situation of the victim is so or the victim is under such trauma post crime that making the victim face the offender could cause secondary victimization for him. Thus, it is very crucial to ensure that the victim is wilfully participating in the mediation process, under no case shall the victim be coerced to face the offender or take part in the mediation process as the same could result in added trauma and excessive emotional distress. Clear rules must be established to ensure and preserve the voluntary nature of participation. Neither could the juvenile be coerced to participate if he is unwilling to face the *"victim's anger and claims for restitution or compensation based on the concern that these would be too severe*[40]*"*.

To address and overcome the above-mentioned challenges and implementation barriers, and successfully incorporate the Victim Offender Mediation [VOM] mechanism, following

38 Lode Walgrave, *Restoration in Youth Justice*, 31 CRIME & JUST. 543, 597 (2004), http://www.jstor.org/stable/3488354 (last visited Mar. 26, 2025).

39 ARTHI RAMCHANDRANA & RAMACHANDRA SUBRAMANIAN, *supra* note 30.

40 Ibid.

Following measures are recommended:

a. Capacity Building: Structured training modules on restorative justice principles, communication skills, trauma-informed care, and mediation ethics should be included of this program for police, probation officers, judicial officers, social workers, and legal aid attorneys. In tandem with NGOs, the Judicial Academies could lead this endeavour. Along with this, as mediators are the backbone of the mediation process. It is the capabilities and the skills of the mediator on which the success and the failure of the mediation process depend. It is the who mediator facilitate communication between the parties and ensure the all the important dimensions of the issue are addressed to reach a mutually acceptable settlement. Thus, Training programs should be introduced for capacity building of mediators and equip them with the sufficient knowledge and skills to deal with sensitive matters, follow a child friendly approach and ensure that the whole process of mediation is carried in such a way that does not result in secondary victimization. "*Training for victim offender mediation needs to be more specialized in areas such as a knowledge of the criminal justice system as it relates to victims and offenders… A key component of the training is sensitivity and awareness of victim and offender issues, and this is often led by resources within the community who work collaboratively with the victim offender program. Training materials also need to reflect language that is specific and sensitive to victims and offenders*[41]".

b. Awareness Campaigns: as discussed above there may be reluctance to opt for VOM instead of the traditional judicial process. The victim may believe that the VOM will not make good to the loss he suffered, the offender may believe that we will be denied his guaranteed rights in mediation, the legal professional and law enforcement agencies might have their own prejudices related the VOM mechanism. Public awareness initiatives can be used to shift societal attitudes towards mediation as a viable form of justice.

c. Pilot Programs: before making amendments in the law, to assess the success VOM in achieving it desired goals in Indian setup, it could first be implemented on a trial basis in select jurisdictions. Based on the results generated by these pilot programs, modifications could be done and then the final decisions could be taken.

41 SAMEERA KHAN, *supra* note 36.

d. Multi-Stakeholder Collaboration: Community involvement plays a crucial role in restorative justice model. A restorative justice model requires active engagement from various stakeholders to ensure fairness, efficiency, and sustainability. For this Partnerships between the judiciary, law enforcement, civil society organizations, and victim advocacy groups could be entered to create a comprehensive support system for VOM implementation. Similar to Canada, in India also community-based mediation centres could be set up. Civil society organisation could provide counselling, victim support services and rehabilitation programs. Victim advocacy groups could provide legal aid and advice. In the like manner, all these stakeholders could provide their bit to ensure successful implementation of the mediation procedure.

By addressing these legal, infrastructural, and cultural challenges, India can pave the way for an effective, restorative, and victim-inclusive juvenile justice system through VOM to encourage pretrial diversion. However, it should be noted that in order to maintain justice and avoid secondary victimization, victim-offender mediation, or VOM, must be used sparingly because it is not a uniformly suitable technique. Because of the possibility of revictimization or pressure to make amends, some offenses—especially those involving extreme violence[42], coercion, or power imbalances[43]—might not be appropriate for mediation. Therefore, it is essential to establish a precise taxonomy of offenses for which VOM is suitable prior to incorporating VOM into India's criminal justice system.

5. CONCLUSION

The viability of using victim-offender mediation (VOM) as a diversionary strategy in India's juvenile justice system (JJS) is critically analysed in this study. The study emphasizes that compared to conventional punitive measures, which take time and an often criminogenic in itself; VOM, a restorative justice procedure, offer a better alternative than it as it facilitates structured dialogue between victims and juvenile offenders, promoting restitution, accountability, emotional healing and an opportunity for the victim to express his feelings, *"When victims express their satisfaction with a restorative procedure, people subsequently assign less harsh punishment*

42 Gauri Pillai & Shrikrishna Upadhyay, *Juvenile Maturity and Heinous Crimes: A Re-look at Juvenile Justice Policy in India*, 10 NUJS L. REV. 49 (2017).

43 Kwek Mean Luck, *The Prevention of Juvenile Delinquency in Singapore: The 1990s and Beyond*, 12 SACLJ 345 (2000).

for offenders. The knowledge that victims are satisfied elevates people's own feelings of satisfaction with the restorative justice outcome, as people infer that victims have reached closure and that offenders are on the road to reform. The addressing of this dual justice goals diminish punitive responses, implicating the central role of both concern for the victim and concern about the offender in people's justice-related judgments."[44]

Based on practical experience of various jurisdictions, especially US and Canada who has encountered significant decrease in the juvenile recidivism rate in the last few decades, the study concludes that restorative mechanism of VOM lowers probability of juvenile reoffending, greatly improves victim satisfaction with the criminal system, and encourages offender accountability, Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015, already includes the diversionary principle encourages resorting to non-judicial proceedings for dispute settlement, prioritizes rehabilitation over punishment. However, structured restorative justice mechanisms like VOM are absent from India's current juvenile justice system, which is still primarily adversarial. The study highlights the difficulties and opportunities for integrating VOM into India's juvenile justice system.

By shifting from the traditional punitive model to the restorative justice model, India's juvenile justice system can become more effective, humane, and equitable. VOM affords an offender the chance to reform while also ensuring that victims are respected, heard, and compensated. With legal legitimacy, institutional backing, and public acceptance, Victim-Offender Mediation (VOM) can revolutionize India's juvenile justice system, opening the door to a more restorative and rehabilitative juvenile crime policy.

44 Dena M. Gromet et al., *A Victim-Centered Approach to Justice? Victim Satisfaction Effects on Third-Party Punishments*, 36 LAW & HUM. BEHAV. 375, 389 (2012), http://www.jstor.org/stable/43586858 (last visited Mar. 27, 2025).