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THE EFFICACY OF RESTORATIVE JUSTICE IN JUVENILE JUSTICE SYSTEM: A STUDY BASED ON INDIGENOUS AND FAITH BASED PRACTICES (WITH SPECIAL REFERENCE TO PATNA DISTRICT)

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ABSTRACT

Restorative justice has gained significance in juvenile justice because it seeks to address not only the offence but also the harm caused to victims, families and communities. The Juvenile Justice (Care and Protection of Children) Act, 2015 incorporates principles of restoration, rehabilitation and social reintegration; however, the extent to which these principles operate as structured restorative processes remains insufficiently examined. This article examines the gap between the statutory commitment to restoration and its practical operation through a qualitative socio-legal study of Patna district. The study draws upon primary fieldwork involving 23 respondents comprising Juvenile Justice Board members, social workers and NGO representatives, faith leaders, and juveniles in conflict with law. The findings indicate that formal juvenile justice mechanisms remain predominantly reformatory, with counselling and probation more prominent than structured victim-offender dialogue. In contrast, indigenous and faith-based community practices demonstrate restorative elements through family supervision, community mediation, apology, dialogue and reconciliation. However, these informal mechanisms operate without consistent procedural safeguards and institutional oversight. The article argues that neither formal nor informal mechanisms, operating independently, are sufficient to realise the full potential of restorative juvenile justice. It proposes a rights-based hybrid model integrating community-based restorative practices with Juvenile Justice Board supervision, trained facilitation, voluntary participation, child-rights safeguards and continuing monitoring. The study concludes that restorative justice in Patna is partially efficacious and requires procedural and institutional strengthening to move from reformatory rehabilitation towards meaningful relational restoration.

Keywords: *Restorative Justice; Juvenile Justice; Indigenous Practices; Faith-Based Practices; Victim Participation; Rehabilitation; Patna; Socio-Legal Research.*

1. INTRODUCTION

The manner in which a legal system responds to children in conflict with law reflects its approach to childhood, responsibility and social reintegration. Juvenile justice therefore requires responses that protect the child's dignity and developmental interests while addressing the harm caused by an offence. The Convention on the Rights of the Child similarly requires that children alleged or found to have infringed penal law be treated consistently with their dignity and in a manner that promotes their reintegration and constructive participation in society.¹

The Indian juvenile justice framework reflects this rehabilitative orientation. The Juvenile Justice (Care and Protection of Children) Act, 2015 emphasises care, protection, development, treatment, social reintegration and rehabilitation,² while Section 3 recognises dignity, participation, best interests, family responsibility, institutionalisation as a last resort, and restoration and rehabilitation as guiding principles.³ Section 39 further provides for rehabilitation and social reintegration through an individual care plan, preferably through family-based care.⁴

Restorative justice, however, extends beyond rehabilitation. It focuses on the harm caused by an offence, the responsibilities arising from that harm, and the participation of victims, offenders and, where appropriate, affected communities in addressing it. The 2002 UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters recognise restorative processes as involving affected parties, ordinarily with the assistance of a facilitator,⁵ while emphasising voluntary participation, safety, proportionality and attention to power imbalances.⁶ The Principles also acknowledge the contribution of traditional and indigenous approaches to restorative justice.⁷

¹United Nations, Convention on the Rights of the Child, GA Res 44/25 (20 November 1989), Art 40(1), <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>

²Juvenile Justice (Care and Protection of Children) Act 2015 (India), No 2 of 2016, Long Title and s 3, <<https://www.indiacode.nic.in/handle/123456789/2148>>

³ibid, ss 3(i) and (xiv) (principles of restoration and rehabilitation and of institutionalisation as last resort).

⁴ibid, s 39.

⁵UN Economic and Social Council, Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, ECOSOC Res 2002/12, UN Doc E/RES/2002/12 (24 July 2002) ('UN Basic Principles'), <https://www.unodc.org/pdf/criminal_justice/Basic_Principles_on_the_use_of_Restorative_Justice_Programs_in_Criminal_Matters.pdf>.

⁶ibid, Principles 2 and 13.

⁷ibid, Principle 12 (recognition of traditional and indigenous restorative approaches).

The distinction is significant in the Indian context. Although the JJ Act contains principles and measures compatible with restoration, it does not establish a comprehensive statutory procedure for restorative conferencing involving children, victims and affected communities.⁸ At the same time, community, family, panchayat and faith-based practices may incorporate dialogue, apology, reconciliation and supervision, but generally operate outside a uniform framework of legal safeguards.

This article examines this intersection through a qualitative socio-legal study of Patna district, focusing on the operation of formal juvenile justice institutions alongside indigenous, community and faith-based restorative practices. It further undertakes a comparative examination of New Zealand, Canada and South Africa, where community and victim participation have been incorporated into juvenile justice through different legislative mechanisms. The article argues for a rights-based hybrid approach in which appropriate community participation and restorative processes are connected to the formal juvenile justice system under Juvenile Justice Board supervision, without compromising the rights and interests of children or victims.

2. RESTORATIVE JUSTICE AND THE INDIAN JUVENILE JUSTICE FRAMEWORK

2.1 Understanding Restorative Justice in the Juvenile Context

Restorative justice shifts the focus of criminal justice from the offence as a violation of the State's law to the harm caused to individuals and relationships, emphasising accountability, reparation, participation and reintegration. The UN Economic and Social Council's Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters defines a restorative process as one in which victims, offenders and, where appropriate, affected community members participate actively in resolving matters arising from an offence, ordinarily with the assistance of a facilitator.⁹ It recognises processes including mediation, conciliation, conferencing and sentencing circles.

In juvenile justice, this approach complements the developmental and reintegrative objectives of rehabilitation. Accountability may involve apology, restitution, community service and

⁸Juvenile Justice (Care and Protection of Children) Act 2015 (India) (n 2), ss 4 and 8 (Juvenile Justice Board constitution and powers).

⁹UN Basic Principles (n 5), Principle 2 (definition of restorative process including mediation, conciliation, conferencing and sentencing circles).

dialogue, rather than punishment alone, while enabling the child to acknowledge responsibility and reintegrate into family and community life.

Restorative justice is not, however, an unregulated alternative to criminal justice. The 2002 UN Basic Principles require sufficient evidence to proceed against an alleged offender and emphasise the free and voluntary consent of victims and offenders, the right to withdraw, proportionality, attention to power imbalances, cultural differences and participant safety.¹⁰ These safeguards are particularly important for children, who may be vulnerable to familial or community pressure.

The UN framework also recognises the contribution of traditional and indigenous approaches to restorative justice.¹¹ Their incorporation into contemporary justice systems must nevertheless be assessed against rights-based and procedural safeguards rather than assumed to be inherently restorative.

2.2 The Juvenile Justice (Care and Protection of Children) Act, 2015

The Indian statutory framework provides a substantial basis for a restorative and reintegrative approach. The long title of the Juvenile Justice (Care and Protection of Children) Act, 2015 emphasises care, protection, development, treatment, social reintegration, a child-friendly approach and rehabilitation. Section 3 further recognises dignity, participation, best interests, family responsibility, institutionalisation as a last resort, and restoration and rehabilitation as guiding principles.

However, these principles do not establish a comprehensive restorative procedure. Sections 4 and 8 place the Juvenile Justice Board (JJB) at the centre of the formal process, while Sections 14 and 18 provide for inquiry and rehabilitative orders.¹² Section 18 permits measures including counselling, community service and probation, reflecting the Act's reformatory orientation.¹³ The distinction is significant: rehabilitation is not necessarily restorative justice. Counselling, probation and vocational interventions may facilitate behavioural reform and reintegration, but do not necessarily provide victims an opportunity to express the harm suffered or participate in its resolution. Restorative justice therefore adds a relational and participatory dimension to India's existing rehabilitative framework.

¹⁰ibid, Principles 7, 13 and 14 (free and voluntary consent; right to withdraw; proportionality; attention to power imbalances; participant safety; special attention to vulnerability of children).

¹¹ibid, Principle 12.

¹²ibid, ss 14 and 18.

¹³ibid, s 18 (rehabilitative orders including counselling, community service and probation).

2.3 Rehabilitation and Social Reintegration under the JJ Act

The statutory emphasis on rehabilitation becomes more explicit in Chapter VII of the Act. Section 39 deals with the process of rehabilitation and social reintegration and requires rehabilitation to be based on an individual care plan, with preference given to family-based care where appropriate.¹⁴ The Act also provides for different forms of rehabilitation and social reintegration services, including education, skill development, counselling and other forms of support.

This legislative architecture is consistent with the developmental understanding of juvenile justice. Reintegration is not merely the physical release of a child from an institution; it involves creating conditions in which the child can resume a constructive role within family and society. The present study accordingly treats rehabilitation as a multidimensional concept, including behavioural reform, family reintegration, educational redirection, vocational engagement and aftercare.

However, the restorative perspective requires one further question: reintegration into whose community and after what form of accountability? If rehabilitation is confined to the transformation of the child without addressing the victim's experience or the relational consequences of the offence, the process remains predominantly reformatory. Conversely, an informal reconciliation that secures an apology but provides no continuing educational, psychological or economic support to the child may address the immediate relationship while failing to achieve sustainable rehabilitation.

2.4 Constitutional and International Foundations

The juvenile justice framework must also be interpreted within the constitutional commitment to dignity, equality and child welfare. Article 21 of the Constitution of India provides the fundamental right to life and personal liberty,¹⁵ while Article 15(3) permits the State to make special provisions for children.¹⁶ Article 39(e) and (f) direct State policy towards protecting children from abuse and ensuring conditions in which they can develop in a healthy manner and with dignity.¹⁷ These provisions form part of the constitutional context within which juvenile justice legislation operates.

¹⁴ibid, s 39 (rehabilitation and social reintegration through individual care plan with preference for family-based care).

¹⁵Constitution of India, Art 21 (right to life and personal liberty).

¹⁶Constitution of India, Art 15(3) (special provisions for children).

¹⁷Constitution of India, Arts 39(e) and (f) (Directive Principles relating to protection of children from abuse and conditions for healthy development with dignity).

The international framework reinforces this orientation. Article 40(1) of the Convention on the Rights of the Child requires a child alleged, accused or recognised as having infringed penal law to be treated consistently with the promotion of dignity and worth, while taking account of the child's age and the desirability of promoting reintegration and a constructive role in society.¹⁸ Article 40 therefore supports a model in which juvenile justice is directed towards reintegration rather than simply punishment.

This international standard is particularly significant for restorative justice because it connects accountability with reintegration. Restorative processes must consequently remain compatible with the child's rights and cannot be used to circumvent procedural protections. The UN Basic Principles similarly require restorative agreements to be voluntary and proportionate and insist that power imbalances and participant safety be considered.¹⁹

The Supreme Court has also repeatedly recognised the distinctive constitutional and statutory rationale of juvenile justice. In *Salil Bali v Union of India*, the Court upheld the constitutional validity of the Juvenile Justice (Care and Protection of Children) Act, 2000 and rejected the proposition that the juvenile justice framework should simply be displaced by the ordinary criminal justice system because of the seriousness of offences committed by some children. The judgment recognised the statutory framework as being grounded in constitutional and internationally recognised principles.²⁰

Similarly, in *Dr Subramanian Swamy v Raju*, the Supreme Court considered challenges concerning the application of the juvenile justice framework to a child accused in a serious offence. The Court recognised that the administration of criminal justice is principally a function of the State while also acknowledging that, in exceptional circumstances, victims or their family members may have a limited role in the criminal process.²¹

This tension is important for restorative justice. A restorative model cannot simply transfer the responsibility for criminal justice from the State to the victim, the child's family or community actors. Rather, it must create a structured opportunity for participation within a system that continues to protect the child's legal rights and the victim's legitimate interests. The challenge, therefore, is one of institutional design rather than substitution.

¹⁸United Nations, Convention on the Rights of the Child (n 1), Art 40(1).

¹⁹UN Basic Principles (n 5), Principles 13–15 (voluntary and proportionate agreements; attention to power imbalances and participant safety).

²⁰*Salil Bali v Union of India*, Writ Petition (C) No 10 of 2013, judgment dated 17 July 2013, (2013) 4 SCC 705 (Supreme Court of India), <<https://indiankanoon.org/doc/78971373/>>.

²¹*Dr Subramanian Swamy v Raju* through Member, Juvenile Justice Board, Criminal Appeal No 695 of 2014 arising out of SLP (Crl) No 1953 of 2013, judgment dated 28 March 2014, (2014) 8 SCC 390 (Supreme Court of India), <<https://indiankanoon.org/doc/134314390/>>.

2.5 Research Gap

The statutory and international frameworks establish that Indian juvenile justice is compatible with restorative justice. Principles of dignity, participation, rehabilitation, family responsibility, restoration and social reintegration provide a normative basis for restorative interventions, although their procedural articulation remains limited.

The 2002 UN Basic Principles envisage facilitated restorative processes subject to safeguards concerning consent, withdrawal, proportionality, power imbalances and participant safety. The JJ Act provides rehabilitative and community-oriented measures but does not establish a comprehensive procedure for restorative conferencing involving children, victims and affected communities.

The evidence from Patna nevertheless identifies informal practices involving families, panchayats and faith leaders, including dialogue, apology, reconciliation, supervision and restitution. However, these mechanisms operate without equivalent procedural safeguards and institutional oversight.

The resulting gap is therefore clear: the formal system provides institutional safeguards but limited structured participation, whereas community mechanisms facilitate relational engagement without comparable legal safeguards. A regulated integration of these dimensions may strengthen restorative juvenile justice while protecting the rights and interests of both children and victims.

3. COMPARATIVE LEGISLATIVE FRAMEWORK: INDIGENOUS AND COMMUNITY-BASED RESTORATIVE JUSTICE IN JUVENILE JUSTICE

The comparative experience demonstrates that restorative justice can be incorporated into juvenile justice through different legislative techniques. The relevant distinction is not simply between jurisdictions that recognise restorative justice and those that do not, but between systems in which restorative values remain general statutory objectives and systems in which community participation, victim involvement and restorative processes are given a defined institutional role. For the purposes of the present study, New Zealand, Canada, South Africa and Namibia provide particularly relevant comparisons because each demonstrates a different method of connecting community-based or culturally grounded practices with formal justice institutions.

3.1 New Zealand: Family Group Conferencing and Māori-Informed Juvenile Justice

New Zealand provides the most significant comparative example for the present research because the Family Group Conference (FGC) places family and community participation within the statutory youth justice process. The Oranga Tamariki Act 1989 provides a detailed legislative framework governing youth justice conferences.²² For specified proceedings against young persons, the legislation requires consultation with a youth justice coordinator and provides for the convening of a Family Group Conference before proceedings are instituted, subject to statutory exceptions.

The composition of the conference demonstrates its participatory character. Section 251 permits the child or young person, parents or guardians, members of the family or whānau, the youth justice coordinator, relevant justice officials, the victim and representatives of the child or victim to participate.²³ The legislation therefore recognises that the response to youth offending may appropriately involve persons beyond the State and the accused child.

The conference is also entrusted with substantive functions. It may make decisions or recommendations and formulate plans concerning the young person's circumstances, while the legislation provides mechanisms for reviewing those decisions and their implementation. The statutory framework further requires records of conference decisions, recommendations and plans to be made available to relevant participants, including the victim and the court.²⁴

The significance of New Zealand for India therefore lies in the institutionalisation of participation. Family and community involvement is not left entirely to informal practice; it is incorporated into a legally recognised process with defined participants, functions, documentation and review. This is particularly relevant to the present study because the Patna fieldwork identified family participation and community-based reconciliation as important elements of existing practice, but without a comparable statutory restorative procedure.

3.2 Canada: Extrajudicial Measures and Youth Justice Committees

Canada adopts a somewhat different legislative model through the Youth Criminal Justice Act 2002 (YCJA).²⁵ Rather than establishing one single restorative forum for all cases, the Act

²²Oranga Tamariki Act 1989 (New Zealand), No 24 of 1989, <<https://www.legislation.govt.nz/act/public/1989/0024/latest/whole.html>>

²³ibid, s 251 (persons entitled to attend family group conference, including child or young person, parents or guardians, members of family or whānau, youth justice coordinator, relevant justice officials, victim and representatives).

²⁴ibid, s 260 (youth justice coordinator to make record of decisions, recommendations and plans of family group conference and make them available to relevant participants including victim and court).

²⁵Youth Criminal Justice Act, SC 2002, c 1 (Canada), <<https://laws-lois.justice.gc.ca/eng/acts/y-1.5/>>.

integrates restorative principles through extrajudicial measures, community-based programmes and Youth Justice Committees.

The YCJA expressly recognises the importance of rehabilitation and reintegration and encourages responses that address the harm caused to victims and the community. Its statutory framework also recognises the involvement of parents, extended family, community and social agencies where appropriate.

A particularly relevant feature is the statutory role of Youth Justice Committees. Section 18 permits governments to establish committees of citizens to assist in administering the Act and in programmes or services for young persons.²⁶ Their functions may include advising on appropriate extrajudicial measures, supporting victims by obtaining their concerns and facilitating reconciliation between victims and young persons, arranging community support and involving community members in mentoring and supervision.²⁷

The legislation also expressly authorises community-based programmes that can operate as alternatives to judicial proceedings, including victim-offender reconciliation, mediation and restitution programmes.

The Canadian model is consequently significant for two reasons. First, it places victim participation within the restorative framework. Second, it creates a statutory role for community members without transferring the entire administration of juvenile justice outside the formal legal system. This offers a potentially useful model for India, where the existing JJ framework already permits community service, counselling and probation but does not systematically connect these measures with structured victim participation and community reconciliation.

3.3 South Africa: Ubuntu and Statutory Restorative Justice

South Africa provides an especially important comparison because restorative justice is expressly incorporated into the Child Justice Act 75 of 2008, alongside the African concept of Ubuntu.²⁸ The Act's objectives include promoting Ubuntu by fostering children's dignity, holding children accountable while safeguarding victims and community interests, supporting reconciliation through restorative justice, and involving parents, families, victims and

²⁶ibid, s 18(1) (establishment of youth justice committees by Attorney General of Canada or province).

²⁷ibid, s 18(2)(a)(i)–(iii) (functions of youth justice committee: advising on extrajudicial measures; supporting victims and facilitating reconciliation; arranging community support and mentoring).

²⁸Child Justice Act 75 of 2008 (South Africa), <https://www.justice.gov.za/legislation/acts/2008-075_childjustice.pdf>. See also the full consolidated version at Southern African Legal Information Institute, <https://www.saflii.org/za/legis/consol_act/cja2008132/>.

appropriate community members in procedures designed to encourage reintegration.

The Act also provides a statutory definition of restorative justice. It describes restorative justice as an approach involving the child, victim, families and community members in collectively identifying and addressing harms, needs and obligations through responsibility, restitution, prevention of recurrence and reconciliation.²⁹

The legislative framework goes beyond a general statement of principle. Section 73 permits a child justice court, following conviction, to refer a matter to a Family Group Conference, victim-offender mediation or another restorative justice process. The court may then confirm, amend or substitute the recommendations arising from that process, thereby maintaining judicial oversight.³⁰

South Africa therefore illustrates a particularly relevant legislative technique: an indigenous normative concept such as Ubuntu is recognised within a formal child justice system, but restorative processes remain subject to statutory procedures and judicial supervision. This is important for India because the existence of community or faith-based restorative practices cannot by itself justify their unrestricted incorporation. Their integration must remain compatible with child rights, procedural fairness and institutional accountability.

3.4 Namibia: Recognition of Customary Justice Within Statutory Limits

Namibia demonstrates another approach through its Community Courts Act 2003. The legislation formally recognises and establishes community courts and provides for the application of customary law.³¹ Importantly, however, customary law is recognised only insofar as it does not conflict with the Namibian Constitution or applicable statutory law.

The Act provides community courts with jurisdiction in matters involving compensation, restitution and other claims recognised under customary law. It also requires proceedings to comply with principles of fairness and natural justice. Community courts are courts of record, their proceedings are documented, and mechanisms exist for transfer and appeal to magistrates' courts and ultimately the High Court.³²

²⁹ibid, s 1 (definition of restorative justice as approach involving child offender, victim, families and community members to collectively identify and address harms, needs and obligations through accepting responsibility, making restitution, taking measures to prevent recurrence and promoting reconciliation).

³⁰ibid, s 73 (restorative justice sentences: referral to family group conference, victim-offender mediation or other restorative justice process; court may confirm, amend or substitute recommendations arising from that process).

³¹Community Courts Act, No 10 of 2003 (Namibia), s 1 (definition of customary law as norms, rules of procedure, traditions and usages of traditional community in so far as they do not conflict with Namibian Constitution or any other statutory law), <<https://namiblii.org/akn/na/act/2003/10>>.

³²ibid (community courts have jurisdiction to hear and determine matters relating to claims for compensation, restitution and other claims recognised under customary law; proceedings subject to principles of fairness and natural justice; parties aggrieved by community court orders may appeal to magistrates' court).

Namibia therefore demonstrates a different form of institutional integration: customary justice is given legal recognition while simultaneously being placed within a hierarchy of statutory and constitutional safeguards. The lesson for India is not necessarily to establish customary courts for juvenile matters, but to recognise that community-based dispute resolution can coexist with formal law only when jurisdiction, procedure, record-keeping and rights-based limitations are clearly defined.

4. RESEARCH METHODOLOGY

The study adopts a qualitative socio-legal research design to examine the relationship between the formal juvenile justice framework and restorative practices operating within community and faith-based settings in Patna district, Bihar. The socio-legal approach was adopted because the research seeks to examine not only the statutory framework governing children in conflict with law but also the manner in which legal principles relating to rehabilitation, restoration and reintegration operate within social institutions and community practices. The dissertation accordingly conceptualises socio-legal research as an examination of the interaction between law, social institutions, cultural practices and lived experiences.

The empirical study was confined to Patna district and focused primarily on juveniles in conflict with law and stakeholders involved in their rehabilitation and reintegration. Primary data were collected from 23 respondents, comprising five Juvenile Justice Board members, five social workers/NGO representatives, six faith leaders representing Hindu, Muslim, Christian and Sikh communities, and seven juveniles in conflict with law. The selection of these groups enabled the study to examine restorative justice from institutional, community and experiential perspectives.

The research employed qualitative interactions and interviews to understand the functioning of formal rehabilitative measures, the extent of victim and community participation, and the nature of indigenous and faith-based practices relevant to restoration and reconciliation. The primary findings were analysed thematically and considered alongside the statutory framework, judicial decisions, international instruments, government reports and existing academic literature.

The study does not claim statistical generalisability beyond the research setting. Its purpose is instead to provide a context-specific socio-legal assessment of restorative justice in practice

and to identify patterns that may inform the development of restorative mechanisms within the Indian juvenile justice framework. The comparative legal analysis of New Zealand, Canada, South Africa and Namibia is used as a normative and institutional reference point rather than as a basis for assuming that foreign models can be directly transplanted into India.

The empirical findings are therefore assessed against three principal dimensions of restorative justice: participation, repair of harm and reintegration, while also considering the safeguards necessary to protect the rights and dignity of children and victims.

5. EMPIRICAL FINDINGS: OPERATIONALISATION OF RESTORATIVE JUSTICE IN PATNA

The empirical component of the study examined the manner in which restorative and rehabilitative principles operate within the formal juvenile justice system and within community and faith-based settings in Patna. The data has been collected from 23 respondents, including five members of the Juvenile Justice Board, five social workers and NGO representatives, six faith leaders and seven juveniles in conflict with law. The findings indicate that the formal juvenile justice system has incorporated several reformatory and reintegrative measures, but structured restorative processes involving victims remain limited. At the community level, practices involving family participation, dialogue, apology, reconciliation and supervision were identified, although these mechanisms generally operate outside a formally regulated legal framework.

5.1 Institutional Practice and the Predominance of Reformatory Measures

The Juvenile Justice Board, Patna, reflects a predominantly reformatory approach towards children in conflict with law. The Board members interviewed emphasised counselling, probation, family involvement and rehabilitation, while the proceedings observed reflected attention to the child's family circumstances, education and prospects of reintegration.

This approach is consistent with the Juvenile Justice (Care and Protection of Children) Act, 2015, which provides rehabilitative measures including counselling, community service and probation, alongside rehabilitation and social reintegration through an individual care plan. The responses obtained from institutional stakeholders similarly placed greater emphasis on counselling and probation, followed by community service and aftercare, while structured victim-offender dialogue received comparatively limited emphasis. These responses are

indicative of the practices examined in the study and should not be treated as prevalence estimates for the wider juvenile justice system.

The finding reinforces the distinction between rehabilitation and restorative justice. While counselling, probation and community service primarily address the child's rehabilitation and reintegration, restorative justice additionally provides scope for victims and other affected persons to participate in addressing the harm caused. The formal system examined therefore remains predominantly rehabilitative, with restorative processes yet to acquire comparable institutional significance.

5.2 Victim Participation and the Absence of Structured Restorative Conferencing

A significant finding is the limited participation of victims in restorative decision-making. Interviews with JJB members indicated that victims generally participate through ordinary procedural mechanisms, but no systematic process was identified for professionally facilitated dialogue between victims and children.

The absence of trained facilitators and specific guidelines for victim-offender conferencing was identified as an institutional limitation. None of the seven juveniles interviewed reported participation in a formal restorative conference, although some referred to apologies or compensation facilitated through their families. Several also expressed willingness to communicate with victims or offer a personal apology where a safe process was available.

The findings therefore suggest that the limited use of restorative conferencing is primarily institutional rather than attributable to unwillingness among the children interviewed. While the JJ Act recognises restoration and rehabilitation, it does not establish a comprehensive conferencing mechanism through which victims and children can participate in addressing the harm caused by the offence.

5.3 Indigenous and Community-Based Practices

The study identified several community practices containing restorative elements, including family discussions, panchayat mediation, apology, reconciliation, restitution and continuing supervision of the child. These processes emphasised dialogue, acknowledgement of harm and restoration of relationships, with families often assuming responsibility for the child's subsequent conduct.

However, their informal nature presents limitations, particularly the absence of consistent procedures for documentation, voluntariness, facilitation and monitoring. Reconciliation or settlement cannot, therefore, be treated as inherently restorative where social or familial

pressure may affect the autonomy of the child or victim. The findings accordingly suggest that community practices in Patna possess restorative potential, but their integration into the formal juvenile justice system would require appropriate procedural safeguards.

5.4 Faith-Based Practices and Restorative Engagement

Interviews with six faith leaders from Hindu, Muslim, Christian and Sikh communities indicated that their role primarily involved counselling, moral guidance, communication and reconciliation rather than adjudication. The practices described included acknowledgement of wrongdoing, apology, forgiveness, reconciliation and collective responsibility, demonstrating potential for dialogue and reintegration within existing community networks.

However, no formal referral mechanism between faith-based actors and the Juvenile Justice Board was identified. These practices remained largely informal and lacked uniform standards concerning documentation, consent, facilitation and institutional review. Their integration into restorative justice must therefore remain subject to child-rights protections, constitutional principles and procedural safeguards.

5.5 Rehabilitation, Reintegration and Continuing Support

The collected data further demonstrates that restorative justice cannot be separated from the broader question of rehabilitation and social reintegration. The juveniles interviewed generally viewed counselling, education and vocational activities as useful components of their rehabilitation. Stakeholders similarly identified family support as an important factor in successful reintegration.

At the same time, the study identified limitations in post-disposal monitoring and continuing support. Economic difficulties, family circumstances and inadequate follow-up may affect the sustainability of rehabilitation after the formal proceedings have concluded. The findings consequently indicate that relational restoration alone cannot constitute complete rehabilitation. The child's continuing access to education, vocational opportunities, family support and appropriate aftercare remains necessary for meaningful reintegration.

5.6 Synthesis of the Empirical Findings

The findings reveal two interconnected dimensions of juvenile justice in Patna. The formal system emphasises counselling, probation, community service and rehabilitation, while community and faith-based practices provide greater scope for dialogue, apology, reconciliation and family participation, but with limited procedural standardisation.

Accordingly, the restorative potential of the existing framework remains only partially realised. The principal gap lies not in the absence of restorative values, but in the lack of a structured mechanism connecting formal institutional safeguards with the relational resources available within families and communities. The comparative experience of New Zealand, Canada and South Africa demonstrates that such participation can be integrated into formal juvenile justice through defined statutory mechanisms. Adapted to the Indian context, this approach could strengthen the restorative dimension of the JJ Act while retaining appropriate legal safeguards.

6. DISCUSSION: TOWARDS A RIGHTS-BASED HYBRID MODEL FOR INDIA

The empirical findings, when considered alongside the comparative legislative framework, suggest that the principal difficulty in operationalising restorative justice in India is not the absence of a statutory commitment to rehabilitation or restoration. The difficulty lies in the absence of a sufficiently structured mechanism through which the child, victim, family and community can participate in repairing the harm caused by an offence. The comparative experience is relevant precisely because it demonstrates different ways in which such participation can be connected to formal juvenile justice institutions.

The comparative models share an important feature: community participation is institutionally connected to, rather than positioned wholly outside, the formal justice system. This is the aspect of comparative experience that has the greatest relevance to the findings from Patna.

6.1 The Need to Distinguish Rehabilitation from Restoration

The findings indicate that rehabilitation is a substantial component of juvenile justice in Patna, while opportunities for victims and children to jointly address the harm caused remain limited. This distinction is important for developing restorative justice under the JJ Act. Restorative justice should not merely relabel existing rehabilitative measures such as counselling or probation. Where appropriate, it should facilitate voluntary dialogue, enabling the victim to express the consequences of the offence and the child to acknowledge responsibility, while preserving the rights and safeguards applicable to both.

6.2 A Possible Institutional Mechanism

The existing institutional structure of the Juvenile Justice Board provides a suitable basis for introducing a Restorative Justice Facilitation Mechanism. The mechanism could screen cases

for suitability based on the nature of the offence, the child's circumstances and willingness to participate, the victim's wishes and safety, power imbalances, family involvement and the child's best interests. Suitable cases could then be referred to trained facilitators for voluntary dialogue involving the child, victim and, where appropriate, their families or community representatives, with the final outcome remaining subject to the JJB's authority. Such a framework draws from South Africa's use of Family Group Conferences and victim-offender mediation and New Zealand's integration of Family Group Conferences within the formal youth justice process.

6.3 Incorporating Community and Faith-Based Resources

The findings indicate that community and faith-based institutions possess certain restorative resources, including family supervision, mediation, reconciliation and counselling. These mechanisms may complement restorative programmes, but their role should remain facilitative rather than adjudicatory. Community or faith representatives may assist communication, family support and reconciliation, but should not determine guilt or replace the statutory authority of the Juvenile Justice Board. Given the risk of informal pressure on children or victims, participation must remain voluntary and all restorative agreements should be subject to JJB oversight. This approach is consistent with comparative restorative justice models, which integrate community participation within a regulated legal framework rather than as an independent system of dispute resolution.

6.4 Procedural Safeguards

Any restorative framework should incorporate safeguards against coercion, including informed and voluntary participation, the right to withdraw, confidentiality, appropriate support for the child, and protection against power imbalances or discriminatory practices. Restorative justice must also be distinguished from forced reconciliation: neither the victim should be compelled to forgive nor the child to apologise. These safeguards are consistent with the UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, which emphasise voluntary participation, proportionality, participant safety and attention to power imbalances.

6.5 Monitoring and Aftercare

Effective restorative justice requires follow-up beyond the conclusion of the restorative agreement. Given the limited post-disposal monitoring identified in the Patna fieldwork, implementation of agreements should be reviewed by the JJB or designated facilitator,

particularly where they involve counselling, community service, restitution or family supervision. Such monitoring would enable restorative measures to complement rehabilitation while ensuring accountability and continued support. The Indian framework should therefore incorporate a regulated restorative mechanism within the existing juvenile justice system, retaining JJB oversight and protecting the rights of both children and victims.

7. CONCLUSION

The findings from Patna indicate that the formal juvenile justice system is predominantly reformatory, with counselling, probation, community service and family involvement forming important components of rehabilitation. However, structured victim participation and facilitated processes for addressing harm remain limited. Community and faith-based practices demonstrate restorative elements such as mediation, apology, reconciliation and family supervision, but their informal nature raises concerns regarding voluntariness, consistency and procedural safeguards.

The comparative experience of New Zealand, Canada and South Africa demonstrates that community and victim participation can be incorporated within formal juvenile justice systems without displacing institutional oversight. For India, the study therefore supports a rights-based hybrid restorative framework within the existing JJ Act, under which trained facilitators could facilitate voluntary dialogue involving children, victims and, where appropriate, families or community representatives, subject to JJB supervision.

Such an approach would supplement rather than replace existing rehabilitative measures. Its purpose would be to strengthen accountability, repair of harm and reintegration, while safeguarding the dignity, best interests and rights of children and victims.