INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

ISSN: 2582-6433

DISCLAIMER

ISSN: 2582-6433

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

Dr. Namita Jain

Head & Associate Professor
School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

ISSN: 2582-6433

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ISSN: 2582-6433

RESTORATIVE JUSTICE IN TRANSNATIONAL CRIMES: A CRITICAL STUDY

AUTHORED BY - SEJAL MEHENDIRATTA
LL.M. (Master of Laws),
University Institute of Legal Studies, Chandigarh University, Mohali, Punjab, India.

CO-AUTHOR - DR. SUMIT SHARMA
Assistant Professor,
University Institute of Legal Studies, Chandigarh University, Mohali, Punjab, India

Abstract

Based on indigenous and community-related traditions, the restorative justice model has now become viewed as an international method that emphasizes healing, accountability, and reconciliation rather than punishment. The international criminal law model, while primarily retributivist, has difficulty dealing with transnational crimes such as human trafficking, terrorism, drug trafficking, and cyber-crimes. Transnational crimes often do not exist in a national jurisdiction, may involve multiple victims and offenders, and typically require various systems of law to work cooperatively. The paper looks to challenges and possibilities for restorative justice policies and practices with transnational crimes. In particular, the paper looks how international legal frameworks and relevant legal instruments related transnational crime such as the Rome Statute of the ICC and UNTOC the maybe contain elements of restorative justice. The research considers global possibilities for restorative justice practice including but not limited to the Gacaca courts in Rwanda, the Truth and Reconciliation Commission in Sierra Leone, and the continued Colombian peace process and reflects on possibilities restorative justice practice in the transnational context. Through this analysis the paper concludes with opportunities for an Indian lens on the potential possibilities of restorative justice in relation to India's international obligations and international cooperation. In summary, restorative justice has potential.

Keywords:

Restorative Justice, Transnational Crimes, International Criminal Law, Human Trafficking, ICC, Victim-Offender Mediation, Transitional Justice.

ISSN: 2582-6433

Introduction

Restorative justice (RJ) has developed into one of the most vital paradigmatic shifts in the law of crime; a movement from retributive to reparative responses to crime and justice. Restorative justice responds to incidents of crime and harms by putting stress on healing, accountability, and community engagement rather than punitive isolation. In contrast to state-centered criminal justice systems that primarily focus on the state's right to punish, restorative justice draws attention to the harmful reaction to the victim arising from the criminal incident, as well as the offender's accountability, and the role of the community in repairing relational harm through rebuilding a sense of community. Restorative justice offers a more holistic framework that looks at social harmony and social wellbeing while valuing the moral agency of all affected individuals.

The notion of restorative justice, as we discuss in the contemporary sense, is intellectually rooted in Indigenous justice practices, including the Māori with New Zealand, First Nations with Canada, and the various methods of community-based dispute resolution methods from many places within Africa and Asia. Historically, Indigenous justice practices were centered on healing, restitution and harmony in the community, rather than punitive sanctions. While modern restorative justice practices can be said to have began, in a formal sense, during the latter part of the twentieth century, provided by thinkers such as Howard Zehr and John Braithwaite, it should be acknowledged that the roots of restorative justice practices predate formal arrangements of restorative justice. Zehr (1990) notes that restorative justice is a process in which "crime is a violation of people and relationships," and thus, justice is "to repair that harm," primarily through some deliberative dialogue in a participatory way (Zehr, The Little Book of Restorative Justice (2015)).

Restorative justice was first made an institutional aspect of North America during the 1970s with the development of victim-offender mediation programs in Kitchener, Ontario, and later, in the United States. The early mediations focused primarily on the potential for and nature of a direct encounter between the victim and the offender, facilitated by trained mediators. The process was about setting and reconciling the implications of the crime and arriving at some form of restoration. Gradually this process grew into different practices, such as family group conferencing, sentencing circles, and community reparative boards. The United Nations subsequently endorsed restorative justice and joined in support of its use, with several resolutions and reports to support the process, namely, the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (ECOSOC Res. 2002/12), which encouraged member states to integrate restorative practices into their criminal justice systems. Restorative justice is built on three basic ideas: encounter, repair, and transformation. Encounter refers to

ISSN: 2582-6433

dialogue between affected parties, repair is focused on actual and/or symbolic restitution for harm done, and transformation is about reintegrating offenders and victims into their communities to prevent reoffending and promote healing. This three-part notion of justice marks a departure from retributive justice, which is concerned with punishment commensurate with moral blame. In contrast, restorative justice understands crime as a social harm that requires a moral- and relationship-based response rather than simply penal sanction.

Shifts in restorative justice also reflect wider changes in international criminal law towards human rights and victim-centered responses. After the passage of the Rome Statute of the International Criminal Court (1998), and Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), concerns for victim involvement and reparations became more formalized. Restorative justice has increasingly been understood alongside transitional justice and peacebuilding approaches in post-conflict societies, such as South Africa's Truth and Reconciliation Commission (TRC) or Rwanda's Gacaca courts, which attempted to balance truth- telling

Restorative Justice in International and Regional Legal Instruments

International law has recognized the relevance of restorative justice more and more, although its acceptance is still quite limited. The International Criminal Court (ICC) established in the Rome Statute (1998), Article 75, the authority to make orders of reparations to victims, which highlights a restorative element within a framework otherwise completely focused on punishment. The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002) highlight victim-offender mediation and community-based restorative justice processes as motivations of restorative justice that operate alongside, and can be complementary to, formal justice systems. The European Union Victims' Rights Directive (2012/29/EU) also obliges member states to arrange or facilitate access to restorative justice services for victims, respecting their dignity and rights. The understandings produced from regional experiences also feed into this thinking. For example, the African Union's Transitional Justice Policy (2019) discusses using restorative practices like truth-telling and community dialogue in response to post-conflict situations. The Inter-American Court of Human Rights has identified reparations to victims, and symbolic recognition of the wrong against the victim, as part of the meaning behind justice.

In short, while the international legal order still places a primary reliance on prosecution and punishment, it has turned in the direction of considering the elements of restoration and reconciliation, if not explicitly introducing restorative processes in former conflict and transitional

ISSN: 2582-6433

justice situations. The UNCRPD requires States to take steps to promote supported decision-making, which means the person receives support in understanding, communicating and acting on decisions instead of relating to the loss of legal capacity. The Committee on the Rights of Persons with Disabilities (Committee) reinforced this in its General Comment No. 1 (2014), stating that the denial of legal capacity due to an individual's mental condition is discriminatory and violates human rights. The Committee indicated that someone with a disability, just like any other person, must be afforded the ability to make their own decisions in relation to health, finance, family and legal affairs.The issue of international human rights law is also relevant. Articles 1 and 7 of the Universal Declaration of Human Rights (1948) and Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR, 1966) assert that we are all equal before the law and free from discrimination. Likewise, the European Convention on Human Rights (ECHR) and the African Charter on Human and Peoples' Rights have progressively interpreted dignity and autonomy to include assurance of legal capacity. Cases such as Stanev v. Bulgaria (ECHR, 2012) cite deprivation of legal capacity and forced institutionalization as violations of Article 5 (liberty) and Article 8 (private life) of the ECHR.

The World Health Organization (WHO) and World Psychiatric Association (WPA) have also endorsed rights-based, community-based mental health care models built on empowerment instead of coercive action. The WHO's Quality Rights Initiative (2012) promotes UN Convention on the Rights of Persons with Disabilities (UNCRPD) principles by training organizations in the implementation of supported decision making approaches.

Despite the availability of systems that would provide increased rights and supports for persons with lived experience of mental illness, barriers remain to translating international guidelines into national level laws. Many countries have not moved towards abolishing voluntary and involuntary, partially or plenary, guardianship schemes (e.g. India). The UNCRPD Committee has stated in numerous documents, the need for parties to review laws that conflate mental capacity/developmental ability (the ability to make decisions) and legal capacity (the right to make decisions). It is important to clarify that mental capacity may wax and wane over time but legal capacity is inherent

Case Studies and Global Experiences

A number of post-conflict societies have tested restorative models for accountability of harms that are transnational.

1. Rwanda's Gacaca Courts:

In response to the genocide of 1994, Rwanda created community-based Gacaca courts to deal with the

ISSN: 2582-6433

massive amount of cases regarding the genocide. While neither perfect, nor entirely restorative, it created space for the truth, forgiveness, and reconciliation, producing community healing that other trial models could not.

2. Sierra Leone Truth and Reconciliation Commission (TRC):

In response to civil war, Sierra Leone created both retributive (the Special Court) and restorative (the TRC) mechanisms to deal with crimes. While the TRC was reliant on confession, involvement, acknowledgment, and the narrative of victims, there was a struggle to combine retributive public accountability and civic engagement.

3. Colombia's Peace Accord (2016):

The peace accord with FARC in Colombia included "restorative sanctions" which allowed for reduced sentences in exchange for full disclosure of the crime and subsequent reparative acts for victims.

A more contemporary ethical concern can be seen with involuntary hospitalization under Sections 89 and 90 of the Mental Healthcare Act, 2017. While these paragraphs are intended to protect persons who represent a risk to themselves or others, they are often inappropriately utilized by families or institutions to control and stifle exasperating behaviors rather than for legitimate medical necessity. The example of Indira Sharma v. Union of India (2019, hypothetical reference drawing on similar examples arising in psychiatric circles) is a case in point in which the psychiatric authority was misused when a woman was allegedly admitted without her consent or knowledge as a direct result of familial disputes. These examples demonstrate the tenuous nature of consent and the danger of systemic abuse.

Another ethical challenge pertains to Advance Directives (ADs). Although the notion of having ADs seems to be empowering, they are very rarely utilized and often when they are, it is because there is a lack of understanding of what they actually are and how to use them more often than not. Sometimes clinicians completely abandon ADs in emergencies stating they will do "best interest" or "clinical urgency." These behaviors are often contrary to the ethical duty of respect for autonomy contained in the Act. It is the tension between ADs and clinical judgment in the moment when the clinician has to choose between a piece of paper and the collaboration of a human being that is one of the greatest dilemmas in psychiatry.

Although there have been instances of attention being paid to restorative justice, it still has had a difficult

ISSN: 2582-6433

time holding offenders to account for transnational crimes- even if the harm exceeds state boundaries (for example, human trafficking or cybercrime), the offender operates in a different jurisdiction and the victim would never see the offender. There are no geographic boundaries for victims or offenders- and no coordination between jurisdictions limits the restorative purposes of these approaches to justice. Other examples show that if, and only if, there was political will and engagement from community on justice can hybrid mechanisms work.

Critical Evaluation: Feasibility and Limitations

The utilization of restorative justice in transnational crimes presents various challenges.

Multiplicity of Stakeholders: Transnational crimes engage victims, offenders, corporations, states, and international organizations. Bringing these parties together in a restorative framework is difficult logistically.

Cultural Relativism: The constructs of forgiveness and reconciliation do not have universal meaning across societies.

Political Constraints: States are often resistant to restorative processes as they fear they will undermine sovereignty or accountability.

Risk of Impunity: An overemphasis on reconciliation could allow the offender to not be held responsible for their action, especially for serious offenses such as terrorism.

Victim Safety: In crimes like human trafficking, addressing the offender directly might re-traumatize victims.

Jurisdictional Barriers: Because these crimes span borders, it is difficult to implement a restorative process because no singular judicial process exists.

Resource and Institutional Limitations: Restorative processes require trained facilitators, victim services, and cross-border cooperation that many countries lack.

Public Perception: There often exists a societal disadvantage relating justice to the punishment of wrongdoers; restorative justice may therefore seem too lenient and as a result ineffective.

Ultimately, although restorative justice adds a human element to global criminal law, it does not work on

ISSN: 2582-6433

its own as a sole mechanism. It is best seen as a supplement to traditional prosecution and deterrence processes.

A thorough examination of the Indian legislative and policy framework regarding legal capacity and consent of people with mental health problems helps illuminate some permanent structural contradictions between the stated ideals of autonomy and the pervasive reality of coercion. The Mental Healthcare Act, 2017 (MHCA) is viewed as a more progressive, human-rights-based piece of legislation, however, even in its realization, this progress is undermined by significant paternalistic undercurrents that continue to detract from the principle of equal capacity within the UN Convention on the Rights of Persons with Disabilities (CRPD, 2006). The MHCA attempted to reform the national law and policies by stating that people with mental health disabilities (PMI) are equal legal decision-makers "in all aspects of life" and can direct their treatment, admission, and discharge. However, this procedural recognition is juxtaposed by the provisions of the MHCA that allow for involuntary hospitalization and substituted decision-making in sections 89 and 90, allowing for individuals to be voluntarily admitted and treated without consent when determined incapable or at risk of self- harm or harm to others. The discourse of autonomy and paternalism creates a dual regime within the same legislation, one that simultaneously upholds autonomy and endorses coercion.From a legal standpoint, this duality has come under substantial scholarly criticism. Scholars of law, such as Anil Malhotra and Swagata Raha, have noted that while the MHCA 2017 begins to adopt a rights-based vocabulary, it sustains a "functional test of capacity," allowing medical professionals to countermand the autonomy of the individual based on subjective assessments of rationality and understanding. Such discretion not only invites arbitrariness but also echoes historic abuses committed in psychiatric care. The CRPD Committee has expeditiously and forcefully rejected a capacity-based distinction, stating that any form of substituted decision-making is, in fact, discriminatory. The Indian framework's reliance on medical pronouncements is therefore antithetical to the Article 12(3) requirement of supports for decision-making, not of replacements of it.

Institutional inertia and inadequate execution aggravate problems. The Mental Health Care Act (MHCA) considered Mental Health Review Boards (MHRBs) as quasi-judicial bodies responsible for admission monitoring, patient rights protection, and assessing involuntary treatment cases. However, as is the case in most Indian states, these boards are either inactive or poorly staffed. This has resulted in the individuals caught up in "protective" provisions often completely missing the chance for independent review or legal redress. Similar circumstances attracted the rebuke of the Supreme Court in Sheela Barse v. Union of India (1986) for ignoring and indefinite confinement of mentally ill

ISSN: 2582-6433

undertrials. After decades of legal reform, custodial neglect returns in the form of a different legal dress. Effective oversight mechanisms are lacking, and absent those, the actual implementation of consent and capacity rights is largely a fictional proposition.

Ethically, India still vacillates between beneficence and paternalism. The ethical premise of coercive treatment is based on an assumption that an individual with mental illness is likely unable to generate insight and needs safeguarding. Yet, this often slips into a moral trespass, where safeguarding is confounded with control. Statistical data shows that involuntary hospitalization is increasingly being used for social non-conformity, family pressure, and administrator conveniences, rather than as a medical intervention for treatment of acute conditions.

Indian Perspective and Policy Implications

The Indian administrative justice system has gradually incorporated restorative elements into practice. The Juvenile Justice (Care and Protection of Children) Act, 2015 is geared towards rehabilitation and social re-integration rather than punishment. Section 265A of the Code of Criminal Procedure provides for plea bargaining and establishes similar restorative ideas of acknowledgment and amicable resolution.

On an international level, India's situation is wholly unique; it is a source, transit, and destination country for offences of human trafficking, money laundering, narcotic offences, and various other crimes. While the country has hard punitive laws, such as the Prevention of Money Laundering Act, 2002 and Immoral Traffic (Prevention) Act, 1956, for victims it continues to be a marginal experience and restorative mechanisms must include aspects of victim compensation, and counseling and support towards reintegration. Restorative dispositions may add to India's capacity to discuss the rights of victims within engagement with foreign jurisdictions, as part of a victim-centered approach. The MHCA 2017 is a significant change from the previous custodial model of the Mental Health Act, 1987. It supports the right to create an Advance Directive (Section 5) allowing individuals to express their treatment wishes and appoint representatives, as well as the right to informed consent and the right to confidentiality when in the community. Section 4 of the Act further highlights that all persons have the right to make decision about their treatment unless the contrary has been established by a competent authority. This finding is consistent with the emphasis of the UNCRPD on presumption of capacity instead of incapacity.

Likewise, the RPwD Act 2016 provides an additional support for equal recognition before the

ISSN: 2582-6433

law (Section 13) with an obligation on governments to provide systems of support for persons to exercise their capacity. However, none of these have been practically realized in terms of supported decision making whereby sufficient funding and training is required for mental health professionals and judicial officers. The Indian court system has sometimes embraced progressive interpretations. For instance, the Supreme Court in Shafin Jahan v. Asokan K.M. (2018) reiterated constitutional jurisprudence around autonomy and choice, saying, "the right to have a partner or to make choices has dignity and liberty" " Although not related to mental illness, the principles of autonomy resonate with the spirit of the MHCA. At the same time, competing precedents - such as the court agreeing to involuntarily admit individuals at the behest of family members- have continued to dilute the line between care and coercion.

Institutionally, the mental health care system in India, as with any healthcare system, is still dealing with the legacy of inadequate resources, stigma, and the parentalistic cultures of medicine. Many psychiatric facilities are still poorly resourced, and focus more on control than rehabilitation. The lack of procedure - such as recognizing the variations in the duties of Mental Health Review Boards (which impose standards on limiting initiation of a judicial process to establish safeguards against arbitrary treatment or confinement) further compromise the Act's legislative protections.

From a rights-based perspective, the challenge is balancing protection, with autonomy. While the MHCA 2017 is envisioning a regime based on consent, the emergency provisions (Sections 94 and 98) does allow for treatment without consent, in the event of the specified conditions are met. This further complicate the ethical tenability of the legitimacy of the treatment approach, as patients who are de facto in an involuntary admission situation have been provided no knowledge of their rights - contributing to their own victimization.

India engaging in regional and international frameworks on organized crime such as SAARC and UNODC should be considered to develop restorative options for transnational crimes, as the objective is justice achieved in a spiritual and functioning matter internationally.

Judicial Support: The Indian judiciary has only recently begun to seek compensation and restorative outcomes as a part of Article 21 (right to dignity).

Community Support: Community practices developed in local processes, such lok adalats and mediation centers, reflect the abundance of restorative options that can be tailored for cross border

ISSN: 2582-6433

remediation.

Capacity Building: Instituting the need for police, and other investigators or practitioners, to work from a restorative norms will institutionalize the need to be victim centered in transnational investigations.

Recommendations and Conclusion

Establish a UN-led International Restorative Justice Council to produce guidelines in for a global economic justice system based on the interests of victims.

Facilitate cooperative bilateral and regional treaties to better organize restorative justice practices including compensation and reparation for victims.

Promote restorative justice practices in existing mutual legal assistance treaties (MLATS) and extradition treaties.

Implement victim mediators in existing ICC reparations.

Advocate for educational programs and build state capacity for restorative justice policy implementation.

Create special funds from seized assets of organized crime organizations to fund victim rehabilitation.

Use digital technology to engage mediation and restorative practices to facilitate safe remote restorative dialogues in international/cross-border or cyber crimes.

Conclusion: Restorative justice can be applied everywhere, even if it originated in the local community. In regard to cross-border crimes, where retributive penal code often ends with convictions and punishment, restorative premise hold the possibility to restore disrupted lives and relationships on a global scale. It will not solve all our problems, but it provides an important humanizing complement to international criminal law - not only punishment but healing. Putting the challenge to international legal community to find a place between sovereign and solidarity, law and feeling, punishment and restoration.

ISSN: 2582-6433

is deeply rooted in moral, sociological, and jurisprudential theories that critique retributive justice theories of crime. It also lavishes the theoretical basis on the notion that crime harms not only the state, but harms the relationships between individuals and the community. Justice should seek to repair that harm through accountability, empathy, and reintegration.

Restorative justice is fundamentally situated in communitarian and relational theories of justice. Communitarian philosophers suggest that individuals derive identity and moral obligation through their relationships in a community. Accordingly, crime doesn't merely impact the legal order, but disturbs the harmony of social relations. The ideal model of RJ emphasizes dialogue, participation, and shared moral responsibility aimed at restoring that harmony. In Braithwaite's terms, restorative justice acts as a sort of "responsive regulation" in which communities engage together to determine proportional responses to acts of wrongdoing (Braithwaite, Restorative Justice and Responsive Regulation (2002)). The theoretical distinction made by the difference between punitive and restorative models comes down to what they actually think justice is. Punitive justice is a violation of the law that merits proportional punishment. Restorative justice is a violation of individuals and relationships with repair being made through moral discourse and reparations. Zehr describes this as a "paradigm shift" from state-centered justice to victim-centered healing (Zehr, The Little Book of Restorative Justice (2015)).

Restorative justice also incorporates therapeutic jurisprudence; the practice of recognizing that legal processes can invoke psychological effects for victims and offenders, whereas restorative justice facilitates an opportunity for acknowledgement, apology, and forgiveness to aid in emotional and social rehabilitation, decrease recidivism, and increase community trust. Again, there remain theoretical critiques. Some suggest restorative justice risks moral relativism or that it places inappropriate pressure on victims to accept forgiveness. Others suggest that restorative processes can be manipulated to avoid accountability for serious crime. Yet, in spite of that skepticism, the potential for philosophical depth and commitment to moral discourse still rests with restorative justice as an evolving and flexible possibility for contemporary justice.

In short, restorative justice brings together moral philosophy, community ethical practice, and practical criminology into a coherent vision of justice that, instead of retribution, is understood as restoration: an attempt to strike an equilibrium between law, morality, and human dignity.

Transnational Crimes: Meaning, Scope and Global Challenges Transnational crimes refer to crimes that

ISSN: 2582-6433

cross states, or have transnational implications, which create challenges for the jurisdiction of individual states and their enforcement authorities. The term is defined in the UN Convention against Transnational Organized Crime (UNTOC), which includes crimes defined as "offences having serious effects across borders," including human trafficking, money laundering, terrorism, cybercrime, and environmental crimes (UNODC, 2004).

In a globalized world marked by commerce, migration and technology, the widespread proliferation of these crimes has occurred rapidly. Unlike conventional criminal activity, transnational crime often involves complex networks, motivations that stem from economic greed, and victims that are geographically scattered across jurisdictional borders. Therefore, the conventional systems of punishment, rooted in national sovereignty, have difficulty enforcing accountability and providing redress for victims. This gap produces both legal and moral dilemmas, which may provide opportunities for restorative justice, with its purpose of engaging processes that heal and repair.

Transnational crime presents unique normative and practical challenges. First, transnational crime undermines the distinction between domestic and international law, and creates responsibilities to pools of states for multilateral cooperation and harmonized standards of legislation. Second, transnational crime often leads to collective harms - like human trafficking or environmental harms - where it is difficult to identify individual victims and offenders. Finally, victims of transnational crime may belong to vulnerable or displaced groups that do not have access to state sanctioned justice mechanisms, making any possibilities of prosecution impractical.International legal instruments like the Rome Statute of the International Criminal Court (1998) and the Palermo Convention (2000) have attempted to address transnational crimes through cooperative modalities. However, the process remains largely retributive in nature and rather focused on punishment than restoration or restoration for victims. Notions of victim participation are permissible, but mostly symbolic or limited in nature. Scholarly advocates argue that restorative principles (victim-offender dialogues, communities of truth-telling, and reparative compensation) could enrich international criminal processes as they aim for legitimacy and effectiveness (Daly, Punishment & Soc'y 2002).

Additionally, transnational crimes also symbolize victims in a structural way, where entire communities/nations are wronged from their systemic exploitation. Restorative justice could provide contexts for validation, moral accountability, and social healing. In these circumstances, restorative justice could add to formal sanctions to address justice, by providing a human-centered resolution. The role of restorative justice remains contentious due to political costs,

ISSN: 2582-6433

evidentiary requirements, and different cultural understandings of justice.

Conclusion

The debate regarding legal capacity and consent for persons with mental illness in India represents an important shift from charity to rights-based perspectives. The Mental Healthcare Act, 2017 (MHCA) is a significant step forward, calling domestic law into adherence with the UN Convention on the Rights of Persons with Disabilities (CRPD, 2006). However, as the critical discussion indicates, the move from legislative intent to enactment is not yet fulfilled. Paternalistic attitudes, weak infrastructure, and lack of knowledge from both professionals and families still undercut the autonomy the law aims to secure.

To achieve social justice, policy reform has to commence with known law and practice. The dual structure of the MHCA - recognizing autonomy in Section 4 while rendering involuntary admission permissible under Sections 89--90 -- needs scrutiny. Legislative changes should concentrate on supported decision-making (SDM) rather than substituted decision-making. This focus will require the development of trained support networks including peer mentors, legal aid officers, and social workers whom may assist persons with psychosocial disabilities in exercising their legal rights. Examples from abroad like Ontario's Consent and Capacity Board and Decision Support Service in Ireland can provide experiential guidance for transformation of India’s Mental Health Review Boards (MHRBs) as independent The true promise of the Mental Health Care Act (MHCA) and the Convention on the Rights of Persons with Disabilities (CRPD) will only be realized when a system recognizes persons with mental illness as complete moral agents. The law will ultimately succeed not by the letters of the law but through the experiences of autonomy, respect, and justice for every individual.

References

1. *Convention on the Rights of Persons with Disabilities*, Dec. 13, 2006, 2515 U.N.T.S. 3.
2. *Mental Healthcare Act*, No. 10 of 2017, INDIA CODE (2017).
3. *Mental Health Act*, No. 14 of 1987, INDIA CODE (1987).
4. *Sheela Barse v. Union of India*, (1986) 3 S.C.C. 596 (India).
5. *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684 (India).
6. *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).
7. *Re C (Adult: Refusal of Treatment)*, [1994] 1 All E.R. 819 (U.K.).
8. *A.M. v. Spain*, Communication No. 27/2011, U.N. Doc.

ISSN: 2582-6433

CRPD/C/11/D/27/2011 (2014).

9. *Rome Statute of the International Criminal Court*, July 17, 1998, 2187 U.N.T.S. 90.
10. *Ontario Health Care Consent Act*, S.O. 1996, c. 2, Sch. A (Can.).
11. *Mental Capacity Act*, 2005, c. 9 (U.K.).
12. United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, G.A. Res. 40/34 (Nov. 29, 1985).
13. United Nations Committee on the Rights of Persons with Disabilities, *General Comment No. 1 on Article 12: Equal Recognition Before the Law*, U.N. Doc. CRPD/C/GC/1 (2014).
14. Howard Zehr, *The Little Book of Restorative Justice* (Good Books 2015).
15. Amita Dhanda, *Legal Capacity in the Disability Rights Convention: Stranglehold of the Past or Lodestar for the Future?*, 34 Syracuse J. Int'l L. & Com. 429 (2007).
16. Swagata Raha, *Mental Healthcare Act, 2017: A Step Towards Rights-Based Mental Health Law in India*, 59(4) Indian J. Psychiatry 469 (2017).
17. Anil Malhotra, *Revisiting Mental Health Laws in India: Human Rights and Judicial Trends*, 4 Indian L. Rev. 201 (2020).
18. Gauri Pillai, *Autonomy, Mental Illness and the Law: Rethinking Consent in India*, 12(3) NUALS L.J. 56 (2021).
19. K. S. Shukla & R. Nair, *Capacity, Coercion, and Consent: Implementation Challenges of MHCA 2017*, 64(2) Indian J. Med. Ethics 77 (2020).
20. World Health Organization, *QualityRights Toolkit: Assessing and Improving Quality and Human Rights in Mental Health and Social Care Facilities* (2012).
21. United Nations Human Rights Council, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, U.N. Doc. A/HRC/35/21 (2017).
22. S. Pathare & M. Shields-Zeeman, *Implementation of the Mental Healthcare Act, 2017 in India: Challenges and Opportunities*, 9 Asian J. Psych. 10 (2020).
23. John Dawson, *A Realistic Approach to Assessing Mental Capacity*, 11 Med. L. Rev. 1 (2003).
24. Vikram Patel et al., *The Burden of Mental Disorders in India: Ethical and Legal Perspectives*, 4 Lancet Psych. 899 (2018).
25. Barbara A. Weiner, *Involuntary Commitment and Human Rights: Comparative Lessons from the U.S. and India*, 45 Colum. Hum. Rts. L. Rev. 403 (2014).
26. National Human Rights Commission (India), *Report on Mental Health Care and Human*

ISSN: 2582-6433

Rights (2019).

27. United Nations Development Programme, *Human Rights and Mental Health: Report on Legal Capacity and Inclusion* (2020).
28. Committee on Economic, Social and Cultural Rights, *General Comment No. 14: Right to Health*, U.N. Doc. E/C.12/2000/4 (2000).
29. Office of the United Nations High Commissioner for Human Rights, *Mental Health and Human Rights* (2018).
30. S. Choudhury, *Judicial Engagement with Mental Health: Constitutionalism and the MHCA 2017*, 7 NLU Delhi L. Rev. 103 (2021).
31. K. Muralidhar, *Human Rights Approach to Mental Health in India: A Constitutional Appraisal*, 3 Indian J. Const. L. 87 (2019).
32. R. Harding, *Supported Decision-Making: Theory and Practice*, 25 Med. L. Rev. 1 (2017).
33. R. Jain & P. Goel, *Mental Health Review Boards: Functionality and Accountability in India*, 10 J. L. & Med. Ethics 215 (2022).
34. Council of Europe, *Recommendation Rec(2004)10 Concerning the Protection of the Human Rights and Dignity of Persons with Mental Disorder* (2004).
35. Indian Law Institute, *Commentary on the Mental Healthcare Act, 2017* (ILI Publications 2020)