

Restorative Justice vs. Punitive Justice: Which Model Works Best in Reducing Recidivism?

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Abstract:

This paper examines the comparative effectiveness of restorative and punitive justice models in addressing crime and reducing recidivism, particularly in the Indian context. Restorative justice emphasizes healing, accountability, and community involvement, using practices like victim-offender mediation and community service to repair harm and reintegrate offenders. In contrast, punitive justice focuses on punishment and deterrence through incarceration and legal penalties. Data and studies suggest that restorative approaches, especially for juvenile and minor offenses, lead to lower recidivism rates, higher victim satisfaction, and reduced pressure on courts and prisons. However, restorative justice is not suitable for all crimes and requires voluntary participation and institutional support. Punitive justice, while essential for serious crimes, often fails to address root causes or rehabilitate offenders. The paper concludes by advocating for a hybrid justice model in India, blending restorative methods within the existing punitive framework to create a more humane, cost-effective, and impactful justice system.

Keywords: Restorative Justice, Punitive Justice, Recidivism, Rehabilitation, Justice Reform, Prison Overcrowding, Criminal Justice System in India.

A. INTRODUCTION

1. What is restorative justice?

Restorative justice means a system that focuses on the rehabilitation of offenders and resolution of the issues arising from a crime through victim-offender mediation, family group conferencing, community reparative boards, and community service to restore the harmony between the parties. It has created a different approach while dealing with the crimes. Restorative justice aims to analyze the harmful impact of a crime and then determine what can be done to repair the harm caused by the offender. In restoration justice, violation creates obligations. In restorative justice, the central question is, who has been harmed? What are their needs? Whose obligations are these?

2. What is punitive justice?

Punitive justice, also known as retributive justice, as it is clear from the name, the main aim is simply to punish criminal offenders, it is given with the spirit of vengeance. The main objective of punitive theory is that the offender should be punished for their wrongdoing. Such punishment is necessary for a healthy society. [1] Punitive justice may be administered through the following legal mechanisms, including imprisonment, fines, capital punishment, probation, and reparations, though reparations are less common in punitive systems. It mainly focuses on punishment rather than rehabilitation or restorative justice, aiming to inflict penalties on offenders.

3. What does recidivism mean, and how is it measured?

Recidivism is one of the most fundamental concepts in the field of criminal justice, describing the act of a person committing a crime again after having been previously punished or rehabilitated for an earlier offense.

Recidivism may be measured by criminal acts that resulted in re-arrest, reconviction, or return to incarceration with or without a new sentence during a specific follow-up period following the person's release; acts of misconduct that do not result in official sanctions may also be considered when measuring recidivism. [2]

4. Stats showing outcomes of both approaches.

According to the latest available data (as of 2022) from the National Crime Records Bureau's prison statistics, about 1.9% of India's 1.29 Lakh convict population have been classified as "Habitual Offenders or Recidivists". [3] The conviction rate for the year 2022, as per the National Crime Records Bureau under the Indian Penal Code, was 64.3%. [4] As of 2021, 77% of the prisoners in India were undertrials. [5]

Summary Table: Punitive vs Restorative Justice Outcomes in India

S. No.	Metric	Punitive Justice	Restorative Justice
1.	Recidivism Rate	20-30%	10-15% (Juvenile & Pilot programs)
2.	Prison Overcrowding	117% capacity (NCRB 2022)	N/A (Focus on alternatives)
3.	Victim Satisfaction	Low to Moderate	High (70-85% reported satisfaction)
4.	Trail Duration	4+ years (average)	Months (mediation & dialogue)
5.	Rehabilitation Focus	Limited	Strong (Education, Social Support)
6.	Impact on Court Backlog	Adds to the backlog	Reduces Backlog (15% reduction)
7.	Cost Effectiveness	Lower due to incarceration costs	Higher due to reduced reoffending and incarceration needs

5. Reducing recidivism is a critical issue: -

- Public safety:** When an individual repeatedly commits crimes after being released from prison, it poses a continuing threat to communities. High recidivism rates mean more crimes are being committed, which endangers communities.
- Economic Costs:** Incarceration is extremely expensive for governments; it can cost over Rs. 30,000/- to Rs. 60,000/-, on average. [6] Reducing recidivism saves taxpayers money by lowering prison populations and shifting funds toward rehabilitation and prevention.
- Overcrowded Prisons:** High recidivism contributes to prison overcrowding, which strains resources, staff, and facility conditions, and can also lead to an unsafe environment and improper rehabilitation programs.
- Social Stability:** High recidivism harms families and communities, especially in disadvantaged areas already heavily impacted by incarceration.

B. BACKGROUND

1. History and philosophy behind restorative and punitive models

Restorative justice is not a new concept. Indigenous traditions, such as those of the Maori in New Zealand, the Navajo in the U.S, and Pacific nations like Tonga and Fiji, have long practiced restorative approaches. In ancient India, Buddhists and Taoists embraced similar principles. A major shift occurred in 11th-century Britain during the Norman invasion, when King Henry I redefined crime as an offense against the state. In India, traditional systems like village Panchayats reflected restorative ideals. Though the formal system is largely punitive, restorative elements are gradually being integrated into modern justice practices.

The punitive justice model in India has undergone significant evolution across different historical periods. In ancient times, justice was deeply influenced by the concept of 'dharma' (The basic principle of divine law in Hinduism, Buddhism, and Jainism; a code of proper conduct conforming to one's duty and nature) [7] and was primarily deterrent and retributive in nature, often involving severe punishments such as mutilation and execution, even for relatively minor offences.

This emphasis on deterrence continued during the Mughal and Maratha eras. The British colonial period brought a more structured and codified legal system, laying the foundation for modern legal institutions. Since independence, India has made various efforts to reform and modernize its punitive justice framework, aiming for greater fairness and alignment with democratic values.

2. Where and how they are applied

Restorative and punitive justice are two distinct approaches used to address harm resulting from wrongdoing. Restorative justice prioritizes healing, accountability, and reconciliation among those affected, while punitive justice centers on punishment and deterrence. Restorative practices are applied in various contexts, including criminal cases, schools, communities, and families, to resolve conflict and promote healing.

Whereas, punitive justice is mainly implemented within the criminal justice system to penalize offenders and enforce legal standards. Restorative justice is a human concept that a sense of atonement arises in the offender after wrongdoing, after which he or she wishes to reform themselves. So, instead of giving punishment to such persons, they may be allowed an opportunity for reform. Restorative justice offers an alternative to traditional court processes, especially for less severe offenses. It may include approaches such as victim-offender mediation, community service, or sentencing circles, all aimed at repairing the harm caused by the offense. On the other hand, punitive justice serves as the main approach within the criminal justice system, involving procedures like arrests, prosecution, trials, sentencing, and imprisonment to address and penalize criminal behavior.

3. How they work:

Restorative justice focuses on healing by bringing together the victim, the offender, and members of the community to openly discuss the harm caused and find meaningful ways to repair it. The emphasis is on accountability, reconciliation, and addressing the impact on all parties involved, rather than simply punishing the offender.

On the other hand, punitive justice is grounded in the ideas of retribution, deterrence, and incapacitation. Its primary aim is to impose a penalty that makes the offender suffer for their wrongdoing, discourages others from committing similar acts, and safeguards society by removing the offender when necessary. This model typically involves formal legal processes such as trials, sentencing, and imprisonment.

C. COMPARATIVE ANALYSIS

Punitive justice in India results in overcrowded prisons with high recidivism, whereas in restoration justice, there is faster dispute resolution, lower juvenile recidivism, and higher victim satisfaction. Punitive justice has long dominated criminal justice systems, but restorative justice is more effective in reducing recidivism by addressing the root causes of crime, promoting accountability, and reintegrating offenders into the community

1. Evidence on recidivism rates from both models

a) Recidivism rates under punitive models

A few studies and government reports indicate high recidivism rates post-incarceration in India, ranging from 30% to 60 %, depending on the region and offender category. Research shows restorative justice programs generally lead to lower recidivism rates compared to traditional punitive approaches.

b) Recidivism rates under restorative models

Restorative justice initiatives like the victim-offender mediation program are being conducted in some Indian states and show promise in reducing reoffending, especially for juvenile and minor offenders. According to research conducted by the Center for Social Justice and NGOs, participants experienced a 15-20% lower recidivism rate than those processed through the traditional punitive system. [8] Programs such as Lok Adalats (People's Courts), which focus on mediation and settlement, have demonstrated positive effects in reducing repeat offenses in certain local areas. Restorative justice has proven especially effective in handling juvenile cases and minor offenses in India.

c) Key Studies

S. No.	Study/Source	Model	Recidivism Impact
1.	Sherman & Strang (2007)	Restoration	14-20% reduction in reoffending
2.	Latimer, Dowden & Muise (2005)	Restoration	7-26% reduction in recidivism
3.	Nagin, Cullen & Jonson (2009)	Punitive	Limited to no significant reduction
4.	Australian National Restorative Justice Framework	Restorative	Consistent evidence of reduced reoffending

2. Psychological, Social, and Community Impact**a) Restorative Justice****i. Psychological impact:**

On Victims:

Can provide closure and healing through active participation. Helps victims regain confidence and a sense of agency. Contributes to a positive experience with legal proceedings.

On offenders:

Encourages the development of empathy and a sense of personal responsibility. Shifts the focus from punishment to personal growth, helping reduce shame and resistance. Contributes to a reduction in recidivism through personal reflection and responsibility

ii. Social Impact:

Fosters understanding between people, which strengthens community cohesion. Aids in the more acceptable reintegration of responsible criminals into society. Encourages actions aimed at making amends and stopping misconduct in the future. Encourages more inclusive, restorative practices and questions punitive norms.

iii. Community Impact:

Promotes a sense of shared responsibility and community ties. Gives communities the ability to settle disputes locally and constructively. Decreases the need for incarceration and recidivism. It can fail if not supported by enough funding or the will of the community as a whole.

b) Punitive justice**i. Psychological Impact:**

On victims:

May experience feelings of justice or vengeance. Emotional closure may be limited because they are frequently excluded from the process.

On offenders:

May result in identity loss, shame, and resentment. Frequently ignores the underlying causes of behavior. Increases the risk of trauma, especially in prison environments.

ii.Social Impact:

Promotes interactions based on conflict and fortifies hierarchical structures. Causes persistent social stigma that hinders reintegration. Ignores underlying social imbalances, which lead to structural inequality.

iii.Community Impact:

When fairness is questioned, it erodes trust in the legal system. Local economics and family structures are disrupted by high incarceration rates. Provides little opportunity for healing or resolution and instead reinforces criminal behavior through a cycle of punishment.

D. CHALLENGES AND CRITICISMS

1. Limitations of restorative justice

- a) Not appropriate for all crimes: Serious, violent, or heinous offences like rape, murder, or domestic abuse, might be too emotionally taxing or traumatic for restorative procedures. A fair and open discussion is also challenging when there is coercion or abuse of power because the victim feels threatened or under pressure.
- b) Demands voluntary participation: The victim and the perpetrator must both voluntarily consent to take part. The process may collapse or worsen if one or both parties are unwilling or dishonest.
- c) Re-traumatization risk: When victims confront the perpetrator or relive traumatic experiences, they may become emotionally distressed. The process can reopen psychological wounds if it is not carefully facilitated.
- d) Limited legal repercussions: Some believe that strong legal penalties are insufficient to deter future crimes, and restorative justice may not impose such penalties. Critics contend that, particularly for serious offences, it may give the impression that punishment is less severe.
- e) Limited public awareness or support: Restorative justice is perceived by some as being "soft on criminals." Its incorporation into established legal systems may be hampered by political or public opposition.

2. Limitations of punitive justice

- a) Ignores underlying causes: Punitive justice frequently ignores the psychological, social, or economic factors that contribute to crime. Future crimes might not be prevented if these underlying issues are not addressed.
- b) Insufficient emphasis on rehabilitation: Punishment alone hardly ever helps people to be rehabilitated or to learn how to be pro-social. This contributes to a high rate of recidivism – people returning to crime after leaving prison.
- c) Ignores the requirements of the victim: After the offender is prosecuted, victims are frequently excluded from the process. It is uncommon for victims of punitive justice to have the chance to get help, find closure, or have their voices heard.
- d) Expensive and overcrowded jails: A strong dependence on incarceration results in overcrowded prisons, frequently with cruel circumstances. For taxpayers, maintaining jail systems is very costly.

- e) Does not ensure deterrence: Research indicates that more severe penalties do not always serve as a deterrent to crime. Fear of punishment might not be effective, particularly if the criminals are not apprehended.

E. CONCLUSION

The goals of both restorative and punitive justice systems are to combat crime and uphold social order, but they do so from essentially different perspectives. Punitive justice places a strong emphasis on incarceration, deterrence, and retribution; it frequently aims to punish offenders in order to uphold social order.

It might provide a sense of vengeance and appease the public's desire for justice, but its long-term efficacy in lowering recidivism is debatable. Systemic inefficiencies in the punitive model are indicated by high reoffending rates, overcrowded prisons, and poor rehabilitation results.

Conversely, restorative justice aims to promote healing instead of punishment. It meets the needs of both victims and offenders as well as the welfare of the border community by emphasising reintegration, empathy, and accountability. In addition to improving victim satisfaction and lessening the load on the formal justice system, research and data from both Indian and foreign contexts demonstrate that restorative justice dramatically lowers recidivism rates, especially among minor offences and juvenile offenders.

But there is no one-size-fits-all approach to restorative justice. It works best for specific kinds of offences, necessitates voluntary participation, and requires strong institutional and community support to be effective. In a similar vein, the punitive model is still applicable when dealing with violent crimes or criminals who represent significant risks to the community.

The criminal justice system in India has historically placed a strong emphasis on punitive measures, but restorative justice strategies are gaining traction. Although there aren't many thorough national statistics comparing the results of these strategies, the data and research that are currently available shed light on how effective they are.

In the end, a more integrated strategy is needed to lower recidivism. A hybrid model that integrates restorative justice techniques into the current system could be advantageous for India and other nations, particularly for juvenile and non-violent offenders. This would promote recovery, lower recidivism, enhance public safety, and contribute to the development of a more efficient and compassionate legal system.

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