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THE ROLE OF RESTORATIVE JUSTICE IN CRIMINOLOGY: ADVANCEMENTS AND CHALLENGES

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I. Abstract

Restorative Justice, an alternative approach to addressing crime, has gained recognition in the field of criminology for its potential to foster healing and accountability. This research paper explores the role of restorative justice in the Indian context, focusing on its advancements and challenges. Drawing upon Indian laws, regulations, and relevant research, the paper examines the principles and practices of restorative justice, highlighting its benefits for victims, offenders, and communities. It also delves into the advancements made in restorative justice implementation in India, showcasing successful case studies and empirical evidence of its effectiveness. However, challenges persist, including resistance within the criminal justice system, concerns about re-victimization, and limited resources. By comparing the Indian tapestry to restorative justice practices in the Western world, this paper provides insights into the unique dynamics of restorative justice in India. It further explores strategies to overcome challenges, such as fostering collaboration between criminal justice agencies and restorative justice practitioners. The research concludes by emphasizing the potential of restorative justice to contribute to a more inclusive and effective justice system in India, while acknowledging the need for further research and policy reforms. Through this exploration, the research aims to inform scholars, policymakers, and practitioners about the advancements and challenges of restorative justice in the Indian criminological landscape, ultimately promoting a more victim-centred and community-oriented approach to justice.

KEYWORDS: Restorative justice, Indian criminology, Empowerment, Accountability, Community engagement

II. Introduction

A. Background and Significance of Restorative Justice in Indian Criminology

Restorative justice¹⁷, as a concept and practice, has gained increasing attention in the field of criminology worldwide, including in India. Traditional punitive approaches often prioritize retribution and fail to address the underlying causes of crime or provide meaningful support to victims. In contrast, restorative justice offers a

holistic and victim-centred approach that focuses on healing the harm caused by crime.

In the Indian context, restorative justice aligns with the country's cultural heritage, which emphasizes reconciliation, forgiveness, and community harmony. India's rich tapestry of diverse communities and traditions further highlights the need for a justice system that recognizes the importance of repairing relationships and restoring social bonds.

The significance of restorative justice in Indian criminology lies in its potential to address the limitations of the existing punitive model and

¹⁷ Wikipedia Contributors, Restorative Justice, Wikipedia <https://en.wikipedia.org/wiki/Restorative_justice> (accessed 6th June 2023-12.08 AM)

provide a more comprehensive and inclusive approach to justice. By prioritizing victim satisfaction, offender accountability, and community involvement, restorative justice offers an opportunity to shift the focus from punishment to healing, reconciliation, and prevention.

Restorative justice not only provides an avenue for victims to share their experiences, express their needs, and participate in the resolution process but also holds offenders accountable for their actions while offering opportunities for their rehabilitation and reintegration into society. Additionally, by engaging the community in the restorative process, it encourages collective responsibility and strengthens social bonds, ultimately contributing to safer and more resilient communities.

The integration of restorative justice principles within the Indian legal framework and its application within various jurisdictions has been a positive development. Legislative reforms and judicial pronouncements have acknowledged the potential of restorative justice, paving the way for its implementation in selected cases and regions. However, its wider acceptance and mainstream adoption within the Indian criminal justice system require further exploration.

By understanding the background and significance of restorative justice in Indian criminology, this research aims to shed light on its transformative potential in addressing the complex challenges of crime, victimization, and community healing. By examining its advancements and challenges, this research paper seeks to contribute to the ongoing discourse surrounding restorative justice and encourage its greater integration within the Indian legal landscape.

III. Understanding Restorative Justice

A. Definition and Key Principles of Restorative Justice

Restorative justice is an alternative approach to addressing crime that focuses on repairing the

harm caused to victims, reintegrating offenders into the community, and promoting community healing. It seeks to provide opportunities for dialogue, accountability, and reconciliation among all affected parties. Key principles of restorative justice include victim empowerment, offender accountability, and community involvement. The process involves voluntary participation, open communication, and a collaborative effort to reach a mutually satisfactory resolution¹⁸.

B. Comparison between Retributive Justice and Restorative Justice

Restorative justice differs from the traditional retributive justice system in several ways. Retributive justice primarily emphasizes punishment, deterrence, and isolating offenders from society. In contrast, restorative justice prioritizes healing, rehabilitation, and addressing the underlying causes of crime. While retributive justice tends to focus on legal guilt and punishment, restorative justice focuses on the harm done, the needs of victims, and the responsibility of offenders to repair the harm.

C. Theoretical Foundations of Restorative Justice in the Indian Context

Restorative justice in the Indian context finds its roots in various theoretical foundations. The philosophy of restorative justice aligns with Indian cultural values of compassion, reconciliation, and forgiveness. It draws inspiration from the principles of non-violence (ahimsa) and social harmony (samrasta), which are deeply ingrained in Indian traditions. Additionally, concepts such as dharma (ethical duty) and karma (actions and their consequences) provide a moral framework for restorative justice in the Indian context, emphasizing the interconnectedness of individuals and communities.

Understanding the definition, key principles, and theoretical foundations of restorative justice lays the groundwork for exploring its application and potential impact in the Indian criminological landscape. By adopting a

¹⁸ Ibid.



restorative justice approach, India has the opportunity to promote a more holistic, victim-centred, and community-oriented justice system that addresses the needs of all stakeholders involved.

IV. Historical Development of Restorative Justice in India

A. Overview of Traditional Justice Practices in Indian Society

Indian society has a rich history of traditional justice practices that emphasize restoration, reconciliation, and community involvement. These practices vary across different regions and communities, reflecting the diversity of Indian culture. Examples include panchayats, community meetings, and mediation processes, where disputes are resolved through dialogue, compromise, and restoration rather than solely relying on punitive measures. These traditional justice practices recognize the importance of repairing relationships, maintaining social harmony, and preserving community bonds.

B. Introduction of Restorative Justice Concepts in the Indian Legal System

The introduction of restorative justice concepts within the Indian legal system has been a gradual process. Over the years, restorative justice principles and practices have been acknowledged and incorporated through legal reforms, policy initiatives, and judicial pronouncements. Efforts have been made to promote victim-offender mediation, diversion programs, and alternative dispute resolution mechanisms within the criminal justice system. These initiatives aim to provide opportunities for dialogue, reconciliation, and healing, reflecting the ideals of restorative justice.

C. Key Legislative Developments and Landmark Cases related to Restorative Justice in India

The progress of restorative justice in India has been influenced by significant legislative developments and landmark cases, highlighting a shift towards a more holistic and inclusive approach to justice. *The Juvenile Justice Act of 2015* introduced restorative justice

provisions for children in conflict with the law, emphasizing their rehabilitation and reintegration. Additionally, *the Legal Services Authorities Act of 1987* paved the way for alternative dispute resolution methods, including mediation. Notable cases like the *Vishakha case in 1997* acknowledged the importance of restorative justice in addressing gender-based violence and empowering victims.

These legislative developments and landmark cases reflect the growing recognition in India of the need for a justice system that goes beyond mere punishment. They emphasize restoration, rehabilitation, and community engagement as integral components of justice. By incorporating restorative justice concepts into legislation and case law, India has taken significant strides toward embracing a more comprehensive and inclusive approach.

The Code of Criminal Procedure of 1973 also incorporates elements of restorative justice in Indian criminal procedural law. Several rules within the code promote restorative principles and encourage agreements between victims and offenders. Plea bargaining, outlined in sections 265A-265L, enables the prosecution to save time by avoiding lengthy trials and allows offenders to receive more lenient sentences if they admit guilt. Compoundable offenses, as specified in Section 320, can be resolved through the consent of the victim and the offender, offering an opportunity for resolution outside the traditional adversarial system. The code also includes provisions for compensation, empowering courts to order offenders to pay fines directly to the victim to cover prosecution costs or as compensation for the victim's loss resulting from the offense. Moreover, Section 360 of the code grants courts the authority to release offenders on probation based on their good behaviour or after admonishment, promoting their rehabilitation.

Despite these advancements, challenges remain in fully implementing restorative justice practices in India. The role of the victim in the

adversarial trial process has been limited historically, with victims primarily acting as witnesses. However, recent developments have sought to rectify this by prioritizing victim participation and rehabilitation. Ensuring the victim's active involvement in decision-making is crucial for effective restoration, empowering them beyond the passive role in the traditional adversarial system. Studies indicate that most victims prefer bilateral settlement and intervention by a third party only when bilateral settlement is not feasible.

Although the *Code of Criminal Procedure 1973* recognizes the victim as a person who has suffered loss or injury due to the accused person's actions, the definition provided in the code is narrower compared to the definition adopted by international organizations like the United Nations. The Indian definition does not comprehensively encompass the various forms of harm experienced by victims. Additionally, limitations on the victim's right to have an advocate present during hearings curtails their participation in the trial process. The victim's counsel is restricted to assisting the prosecution and cannot cross-examine witnesses or provide evidence independently.

Victim rehabilitation is another crucial aspect of restorative justice. Traditional criminal justice systems often focus on retribution rather than repairing the consequences of the crime. Prior to the 2008 amendment of the Code of Criminal Procedure, compensation for victims heavily relied on fines collected from the convicted individuals. However, this system had limitations, including dependence on the accused's ability to pay the fine and the requirement for exhausting all legal remedies before distributing compensation. The debate surrounding state responsibility for victim compensation gained traction, with courts recognizing the violation of victims' fundamental rights and the need for rehabilitation. The 2008 amendments introduced *Section 357-A*, allowing courts to order the state to provide compensation for rehabilitation when the compensation awarded

under *Section 357* is insufficient or when the case ends in acquittal or discharge.¹⁹

V. Advancements in Restorative Justice in India

A. Case Studies Showcasing Successful Implementation of Restorative Justice

1. Mediation and Conciliation Project Committee, Delhi High Court²⁰: Established in 2006, this project focuses on victim-offender mediation in criminal cases. The initiative has successfully resolved numerous cases, promoting dialogue, understanding, and restitution between victims and offenders.

2. Restorative Justice Program in Himachal Pradesh²¹: Implemented in 2010, this program incorporates restorative justice principles in cases involving juvenile offenders. It has demonstrated positive outcomes in terms of offender accountability, victim satisfaction, and reducing the chances of reoffending.

3. Victim-Offender Mediation Initiative in Maharashtra: Maharashtra State Legal Services Authority introduced this initiative to facilitate victim-offender mediation. It has proven effective in addressing minor offenses, promoting reconciliation, and providing an alternative to court proceedings.

B. Overview of Restorative Justice Programs and Initiatives in India

In recent years, India has witnessed the development of various restorative justice programs and initiatives:

1. Victim-Offender Mediation Centres:

These centres facilitate dialogue and negotiation between victims and offenders, encouraging accountability, restitution, and reconciliation.

¹⁹ Ajay Pal Singh, 'Restorative Justice and the Legal System: An Indian Perspective' (2021) 23 *Supremo Amicus* [600], (accessed 7th June 2023- 6.15PM)

²⁰ 'Mediation & Conciliation Rules' (*Delhicourts.nic.in*2023) <<https://delhicourts.nic.in/dmc/MediationConciliation.html>> (accessed 14th June 2023 – 8.30 PM)

²¹ 'Himachal High Court to Organize 2-Day Conference on Contemporary Judicial Development' (*Babushahi.com*2017) <https://www.babushahi.com/full-news.php?id=163505&headline=Himachal-High-Court-to-organize-2-day-conference-on-contemporary-judicial-development> (accessed 14th June 2023)

2. Diversion Programs: Indian courts have adopted diversionary measures such as community service, counselling, and rehabilitation programs, aiming to address the root causes of criminal behaviour and prevent recidivism.

3. Legal Aid and Counselling Services: Organizations like the National Legal Services Authority and State Legal Services Authorities provide legal aid and counselling services, emphasizing restorative approaches to dispute resolution and rehabilitation.

C. Empirical Evidence Supporting the Effectiveness of Restorative Justice in the Indian Context

Empirical research in India has highlighted the positive impact of restorative justice:

1. A study conducted by the National Law University, Delhi, found that victims participating in restorative justice processes reported higher levels of satisfaction, empowerment, and healing compared to those involved in traditional adversarial proceedings.
2. Research by the Tata Institute of Social Sciences showed that restorative justice interventions led to a reduction in hostility, increased empathy, and improved communication among participants, contributing to better outcomes in conflict resolution.
3. Evaluations of restorative justice programs in various Indian states have revealed lower recidivism rates among offenders engaged in restorative processes, indicating the potential for long-term behavioural change.

D. Role of Restorative Justice in Reducing Recidivism Rates in India

Restorative justice plays a significant role in reducing recidivism rates in India:

1. By focusing on addressing the underlying causes of criminal behaviour and facilitating offender accountability, restorative justice interventions promote rehabilitation and reintegration, reducing the likelihood of reoffending.

2. Restorative processes encourage offenders to acknowledge the harm they have caused and take responsibility for their actions, fostering a sense of remorse and commitment to personal growth.

3. Through victim-offender dialogues and restorative interventions, restorative justice programs aim to restore relationships and strengthen community ties, providing a supportive environment that helps offenders reintegrate successfully into society.

The advancements in restorative justice in India, as evidenced by successful case studies, program implementations, empirical research, and the reduction of recidivism rates, demonstrate the transformative potential of restorative justice in the Indian criminological landscape.

VI. Benefits of Restorative Justice in the Indian Context

A. Empowering Victims through Participation and Healing

Restorative justice provides significant benefits to victims in the Indian context:

1. Enhanced Participation: Victims are actively involved in the restorative justice process, allowing them to share their experiences, express their needs, and have a voice in decision-making. This empowers victims and helps restore their sense of control and agency.

2. Emotional Healing and Closure: Restorative justice processes create opportunities for victims to confront offenders, ask questions, seek explanations, and receive sincere apologies. This can contribute to emotional healing, closure, and a sense of justice beyond traditional legal proceedings.

3. Restitution and Reparation: Restorative justice emphasizes the importance of restitution, where offenders take tangible actions to repair the harm caused. This can involve financial compensation, community service, or other forms of reparation, providing a tangible means of addressing victims' material and emotional losses.

B. Promoting Offender Accountability, Responsibility, and Rehabilitation.

Restorative justice offers several benefits for offenders in the Indian context:

1. Accountability: By actively engaging with victims, offenders are held directly accountable for their actions, understanding the impact of their behaviour on others. This fosters a sense of responsibility and encourages them to take ownership of their wrongdoing.

2. Rehabilitation and Personal Growth: Restorative justice promotes the rehabilitation of offenders by providing them with opportunities for self-reflection, understanding the consequences of their actions, and making amends. This can contribute to their personal growth, promoting positive behavioural change and reducing the likelihood of reoffending.

3. Community Reintegration: Through restorative justice processes, offenders are encouraged to reintegrate into the community. By actively participating in the resolution of the harm they caused, they can rebuild trust, demonstrate their commitment to change, and develop positive relationships with community members.

C. Strengthening Community Relationships and Social Cohesion in India

Restorative justice has significant benefits for communities in the Indian context:

1. Social Cohesion: Restorative justice processes involve community members, fostering a sense of collective responsibility for addressing crime and promoting community healing. This strengthens social cohesion by emphasizing shared values and mutual support.

2. Conflict Resolution Skills: Restorative justice initiatives develop conflict resolution skills within communities, empowering individuals to resolve disputes peacefully and maintain harmonious relationships. This contributes to a more peaceful and inclusive society.

3. Preventing Future Offending: By addressing the root causes of crime, promoting

understanding, and building supportive networks, restorative justice helps prevent future offending. It focuses on addressing the underlying issues that contribute to criminal behaviour, creating a safer and more resilient community.

VII. Challenges in Implementing Restorative Justice in India

A. Resistance and Scepticism within the Indian Criminal Justice System

One of the primary challenges in implementing restorative justice in India is the resistance and scepticism within the criminal justice system. Traditional punitive approaches are deeply ingrained, and there may be a reluctance to embrace alternative methods. Some stakeholders, including law enforcement officials, prosecutors, and judges, may question the effectiveness and fairness of restorative justice, leading to hesitance in its adoption and integration into existing practises.

B. Addressing Concerns about Re-victimization and Protecting Vulnerable Individuals

Implementing restorative justice in India requires careful attention to address concerns about re-victimization and ensure the protection of vulnerable individuals. Restorative justice processes involve direct communication between victims and offenders, which can be emotionally challenging and potentially re-traumatizing for victims. Measures need to be in place to ensure the safety, well-being, and consent of all participants, especially vulnerable individuals such as victims of domestic violence, sexual assault, or marginalized communities.

C. Limited Resources and Capacity for Restorative Justice Programs in India

A significant challenge is the limited resources and capacity for restorative justice programs in India. Effective implementation requires trained facilitators, mediators, and support staff who can navigate the complexities of restorative processes. However, there is a shortage of trained professionals and specialized training

programs in restorative justice. Insufficient funding, organizational support, and infrastructure can also impede the establishment and sustainability of restorative justice initiatives, particularly in resource-constrained areas.

Overcoming these challenges requires concerted efforts to raise awareness, build trust, and develop the necessary infrastructure and expertise. Sensitizing key stakeholders, investing in training programs, and allocating adequate resources are essential steps to overcome resistance, address concerns, and strengthen the implementation of restorative justice in India.

VIII. Comparative Analysis: Restorative Justice in India and the Western World

A. Overview of Restorative Justice Practices in Select Western Countries

Restorative justice practices have gained significant traction in several Western countries, including Canada, New Zealand, and Norway. These countries have implemented comprehensive frameworks and programs that emphasize healing, reconciliation, and community engagement. They have developed restorative justice legislation, established specialized courts, and integrated restorative approaches into their criminal justice systems. Victim-offender mediation, family group conferencing, and community-based initiatives are some of the prominent practices in these countries.

B. Comparison of Key Similarities and Differences with the Indian Context

While there are similarities between restorative justice practices in the Western world and the Indian context, notable differences exist:

1. Cultural Context: Restorative justice approaches in India need to be sensitive to cultural nuances and diversity, considering the vast range of religions, languages, and social structures. This requires tailoring restorative justice principles to align with Indian cultural values and traditions.

2. Legal Framework: Western countries often have specific legislation and policies supporting restorative justice. India, on the other hand, has incorporated restorative justice through legal interpretations, case law, and policy initiatives. Formalizing restorative justice within the Indian legal framework may require legislative reforms and clearer guidelines.

3. Resource Allocation: Western countries have invested significantly in restorative justice infrastructure, training programs, and research. In contrast, resource constraints in India pose challenges in establishing and sustaining restorative justice programs on a larger scale.

C. Lessons That India Can Learn from Western Experiences with Restorative Justice

India can draw valuable lessons from the experiences of Western countries in implementing restorative justice:

1. Holistic Approach: Western experiences emphasize a holistic approach to justice, encompassing healing, rehabilitation, and community engagement. India can prioritize the integration of restorative principles within the criminal justice system to complement punitive measures.

2. Collaboration and Training: Western countries have emphasized the importance of collaboration between justice stakeholders, including law enforcement, legal professionals, community organizations, and academia. India can invest in training programs to develop a cadre of skilled facilitators, mediators, and practitioners.

3. Research and Evaluation: Western experiences highlight the significance of rigorous research and evaluation to assess the impact and effectiveness of restorative justice programs. India can prioritize evidence-based practices and conduct comprehensive studies to build a strong empirical foundation.

By examining the practices in Western countries, India can adapt and contextualize successful strategies, taking into account its unique socio-cultural landscape and legal framework. Collaborative efforts, research-driven approaches, and resource allocation will



be crucial in implementing effective and culturally sensitive restorative justice practices in India²².

IX. Overcoming Challenges and Future Directions

A. Strategies for Promoting Wider Acceptance and Integration of Restorative Justice in India

To promote wider acceptance and integration of restorative justice in India, the following strategies can be employed:

1. Awareness and Education: Conduct extensive awareness campaigns and educational programs to inform the public, legal professionals, and policymakers about the principles, benefits, and potential of restorative justice. This can help dispel misconceptions, build trust, and generate support.

2. Training and Capacity Building: Invest in comprehensive training programs for justice professionals, including judges, lawyers, police officers, and probation officers, to enhance their understanding of restorative justice principles and practices. This will facilitate their active participation and support in implementing restorative justice.

3. Collaboration and Networking: Foster collaboration between criminal justice agencies, restorative justice practitioners, community organizations, and other stakeholders. Encourage the sharing of knowledge, best practices, and resources to develop a cohesive and coordinated approach to restorative justice implementation.

B. Collaborative Approaches between Criminal Justice Agencies and Restorative Justice Practitioners

Collaboration between criminal justice agencies and restorative justice practitioners is essential for effective implementation. The following collaborative approaches can be adopted:

1. Partnership Building: Establish formal partnerships and collaborative frameworks between criminal justice agencies, such as police departments, courts, and correctional facilities, and restorative justice practitioners. This can facilitate the seamless referral of cases, shared decision-making, and coordinated implementation.

2. Interdisciplinary Training: Organize joint training sessions and workshops that bring together criminal justice professionals and restorative justice practitioners. This interdisciplinary approach can promote a deeper understanding of each other's roles, foster mutual respect, and enhance collaboration.

3. Coordinated Case Management: Develop protocols and guidelines for the efficient management of restorative justice cases, ensuring smooth coordination between criminal justice agencies and restorative justice practitioners at each stage of the process. This can include sharing information, joint risk assessments, and coordinated victim support services.

C. Recommendations for Policy and Legislative Reforms to Support Restorative Justice in India

To support the effective implementation of restorative justice in India, the following policy and legislative reforms are recommended:

1. Legal Framework: Enact specific legislation that recognizes and provides a clear legal basis for restorative justice practices. This can include defining restorative justice principles, establishing procedural safeguards, and outlining the roles and responsibilities of stakeholders involved.

2. Institutional Support: Allocate sufficient resources and establish dedicated restorative justice units within relevant government departments or judicial bodies. These units can oversee the development, implementation, and evaluation of restorative justice programs and provide ongoing support to practitioners.

3. Integration into Sentencing Guidelines: Incorporate restorative justice options into

²² Debra Heath Thornton, Restorative Justice | Law, Conflict Resolution & Victim Empowerment | Britannica, *Encyclopaedia Britannica* (2023), <<https://www.britannica.com/topic/restorative-justice>>, (accessed 15th June 2023)

sentencing guidelines, allowing judges to consider and recommend restorative justice processes as appropriate. This can provide a legal framework for restorative justice to be integrated into mainstream criminal justice practices.

By implementing these strategies and reforms, India can overcome challenges and move toward a future where restorative justice plays a more significant role in the criminal justice system. It will require collective efforts from policymakers, practitioners, and communities to create an enabling environment that supports the growth and sustainability of restorative justice practices.

X. Conclusion

A. Recap of the Advancements, Benefits, and Challenges of Restorative Justice in Indian Criminology

In conclusion, this research paper has explored the role of restorative justice in Indian criminology, focusing on its advancements and challenges. Restorative justice has gained recognition as an alternative approach that emphasizes healing, accountability, and community engagement. It offers a paradigm shift from punitive measures by providing opportunities for dialogue, reconciliation, and rehabilitation.

The advancements in restorative justice in India have been witnessed through the successful implementation of various case studies, legislative developments, and the establishment of restorative justice programs. These advancements have showcased the potential of restorative justice to address the needs of victims, promote offender accountability and rehabilitation, and strengthen community relationships.

However, the implementation of restorative justice in India also faces significant challenges. Resistance and scepticism within the criminal justice system, concerns about re-victimization and protecting vulnerable individuals, and limited resources and capacity are some of the

key challenges that need to be addressed. Overcoming these challenges requires concerted efforts, collaboration, and policy reforms.

B. The Potential for Restorative Justice to Contribute to a More Inclusive and Effective Justice System in India

Restorative justice holds immense potential to contribute to a more inclusive and effective justice system in India. By empowering victims through participation and healing, restorative justice offers them a voice, validation, and the opportunity to address their needs and seek closure. It promotes offender accountability, responsibility, and rehabilitation by encouraging them to face the consequences of their actions, make amends, and reintegrate into society.

Furthermore, restorative justice strengthens community relationships and social cohesion in India. By involving community members in the resolution process, it fosters a sense of ownership, shared responsibility, and collective healing. It provides an avenue for communities to actively participate in addressing the harms caused by crime and in preventing future offenses.

By embracing restorative justice principles and practices, India has the potential to build a justice system that is more victim-centred, rehabilitative, and focused on community well-being. However, realizing this potential requires sustained commitment from stakeholders, including policymakers, legal professionals, community organizations, and the public.

In conclusion, restorative justice, with its advancements and challenges, offers a promising path for Indian criminology. It has the power to transform the justice system by prioritizing healing, accountability, and community engagement. By recognizing the benefits and addressing the challenges, India can move closer to a justice system that is more just, inclusive, and responsive to the needs of all stakeholders involved.



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