

## Restorative Justice and Intimate Partner Violence in India: Constitutional Morality, Feminist Limits, and Tribal Legal Pluralism

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### ABSTRACT

Intimate partner violence (IPV) constitutes a grave violation of bodily autonomy, dignity, and the right to life under Article 21 of the Constitution of India. While the Indian legal framework relies predominantly on retributive criminal justice mechanisms to address domestic violence, persistent underreporting, survivor retraumatization, and systemic delays continue to undermine effective access to justice—particularly for women in tribal and marginalized communities.

This article critically examines the potential of restorative justice (RJ) as a constitutionally permissible adjunct to formal criminal adjudication in cases of IPV, with specific reference to the customary justice practices of the Khasi and Santhal tribal communities. Through a doctrinal legal methodology, supplemented by feminist jurisprudence and comparative constitutional analysis, the article evaluates whether restorative justice mechanisms embedded within tribal forums can be reconciled with constitutional guarantees of equality, dignity, and survivor autonomy.

The study finds that while Khasi and Santhal customary institutions incorporate restorative elements such as dialogue, community accountability, and reintegration, their unregulated and patriarchal operational structures risk coercion and the erosion of women's rights. Drawing on comparative models from Canada and New Zealand, as well as international human rights standards under CEDAW, the article argues that restorative justice must be statutorily codified, procedurally safeguarded, and subject to judicial oversight to be viable in IPV cases.

The article concludes that restorative justice, when framed within constitutional morality and feminist legal principles, can function as a survivor-centric, culturally responsive adjunct justice mechanism—provided it prioritizes voluntariness, accountability, and enforceability. In doing so, it offers a normative framework for integrating restorative justice within India's plural legal system without diluting protections against gender-based violence.

### Research Questions

1. Can restorative justice be constitutionally integrated as an adjunct mechanism in cases of intimate partner violence in India?
2. Do customary justice practices among the Khasi and Santhal tribes embody restorative principles compatible with feminist and constitutional mandates?
3. What legal safeguards are necessary to prevent coercion and re-victimization of survivors within restorative frameworks?
4. How can comparative Indigenous justice models inform statutory reform in the Indian context?

### Original Contribution

This article contributes to Indian feminist legal scholarship by:

- Distinguishing restorative justice from informal compromise in IPV cases
- Situating tribal customary practices within constitutional morality
- Proposing a statutory RJ framework grounded in survivor autonomy
- Bridging restorative justice theory with Indian tribal legal pluralism

### Methodology

This study employs a doctrinal legal research methodology, analysing primary legal sources including constitutional provisions, statutes, judicial decisions, Law Commission Reports, and international human rights instruments. The doctrinal approach is supplemented by comparative constitutional analysis, examining restorative justice frameworks in jurisdictions such as Canada and New Zealand, particularly in Indigenous justice contexts.

Secondary sources include peer-reviewed academic literature on restorative justice theory, feminist jurisprudence, tribal customary law, and legal pluralism. The article adopts a normative feminist lens to interrogate power asymmetries inherent in restorative processes, especially in cases of gender-based violence.

The Khasi and Santhal communities are examined as analytical case studies, not through empirical fieldwork but as normative illustrations of customary justice systems incorporating restorative elements. The focus is on legal structure, authority, and compatibility with constitutional rights rather than anthropological generalization.

This layered methodology enables an integrated analysis of restorative justice as a legal concept, a constitutional question, and a culturally embedded practice, culminating in a normative proposal for statutory reform..

## 1. INTRODUCTION:

Intimate Partner Violence (IPV) represents one of the most pervasive and structurally entrenched forms of gender-based violence in India. It operates within the private sphere of familial and intimate relationships, yet its consequences extend far beyond individual harm, implicating constitutional guarantees of equality, dignity, and personal liberty. Under Article 21 of the Constitution of India, the right to life has been expansively interpreted to include bodily autonomy, mental integrity, and the right to live with dignity. IPV directly violates each of these dimensions, rendering it not merely a private wrong but a constitutional injury.

Despite this constitutional recognition, the Indian legal response to IPV remains predominantly **retributive and adversarial**, anchored in criminal prosecution under the Indian Penal Code and civil remedies under the Protection of Women from Domestic Violence Act, 2005. While these frameworks signify important normative commitments to gender justice, they have not fully addressed the lived realities of survivors. Persistent underreporting, prolonged litigation, evidentiary burdens, social stigma, economic dependence, and retraumatization within adversarial proceedings continue to undermine effective access to justice—particularly for women located at the intersections of caste, class, geography, and tribal identity.

This crisis of implementation has prompted renewed scholarly attention to **alternative and adjunct justice mechanisms** that prioritize survivor agency, accountability, and healing over punitive finality. Within this discourse, **restorative justice (RJ)** has emerged as a contested yet compelling framework. Restorative justice reorients the focus of justice from punishment to repair, emphasizing dialogue, offender accountability, community involvement, and survivor participation. Internationally, RJ has been institutionalized in various forms, particularly within Indigenous justice systems, where it operates alongside formal legal structures rather than in opposition to them.

In the Indian context, however, restorative justice remains legally underdeveloped and normatively misunderstood. Courts frequently conflate restorative processes with informal compromise or reconciliation, particularly in cases involving domestic violence. This conflation has resulted in judicial resistance to non-punitive mechanisms in gender-based crimes, driven by legitimate concerns regarding coercion, dilution of accountability, and reinforcement of patriarchal control. Feminist critiques have further warned that restorative processes, if improperly structured, risk silencing survivors and prioritizing family or community harmony over women's autonomy and safety.

Yet, this skepticism often overlooks a critical distinction: **restorative justice is not synonymous with compromise**. Unlike private settlements that seek to extinguish legal liability, restorative justice—when properly designed—requires acknowledgment of harm, active accountability by the offender, and voluntary participation by the survivor, supported by procedural safeguards. The failure to distinguish between these models has foreclosed meaningful exploration of RJ as a

constitutionally viable adjunct to formal justice in India. This oversight is particularly significant in tribal contexts, where customary justice institutions continue to play a central role in dispute resolution. Among the Khasi community of Meghalaya and the Santhal community of eastern India, domestic and intimate conflicts are often addressed through community-based forums that emphasize dialogue, restitution, and reintegration. These mechanisms embody several restorative principles, yet they operate outside formal statutory frameworks and are shaped by localized power hierarchies that may disadvantage women.

The constitutional recognition of tribal autonomy under the Fifth and Sixth Schedules permits the operation of customary laws and institutions in matters of local governance, including dispute resolution. However, such autonomy is not absolute. The doctrine of **constitutional morality**, repeatedly affirmed by the Supreme Court of India, mandates that all legal and quasi-legal systems operate within the bounds of fundamental rights, particularly equality and non-discrimination. Consequently, the coexistence of customary justice and constitutional guarantees creates a complex legal terrain—one where cultural pluralism must be balanced against the state's obligation to protect women from violence.

This article situates restorative justice at this intersection of **gender justice, constitutional law, and legal pluralism**. It asks whether restorative justice can be constitutionally integrated as an adjunct mechanism for addressing intimate partner violence in India, particularly within tribal customary forums. By focusing on the Khasi and Santhal communities, the article does not seek to romanticize tribal justice or present it as an unproblematic alternative to state law. Rather, it treats these communities as **normative case studies** through which the possibilities and limits of restorative justice can be critically examined.

Drawing on feminist legal theory, the article interrogates whether restorative justice frameworks can meaningfully counter power asymmetries inherent in intimate relationships and community structures. It engages with critiques that caution against cultural defenses in cases of gender-based violence, while also challenging the assumption that punitive justice is the sole or superior means of ensuring accountability. Through comparative analysis of Indigenous restorative justice models in jurisdictions such as Canada and New Zealand, the article demonstrates that restorative mechanisms can coexist with constitutional safeguards when subject to statutory regulation and judicial oversight.

The central argument advanced is that restorative justice, when framed within constitutional morality and feminist jurisprudence, can serve as a **survivor-centric adjunct to formal adjudication**, rather than a substitute for it. Such a framework must prioritize voluntariness, informed consent, legal representation, trauma-informed facilitation, and enforceable outcomes. Without these safeguards, restorative processes risk reproducing the very hierarchies they seek to dismantle.

By doctrinally separating restorative justice from informal compromise and situating it within India's plural legal landscape, this article contributes to ongoing

debates on access to justice, gender equality, and the future of criminal law reform. It ultimately argues that India's constitutional framework, far from foreclosing restorative justice, provides the normative tools necessary to reshape it into a mechanism that enhances—not undermines—justice for survivors of intimate partner violence.

## LITERATURE REVIEW

### A. Restorative Justice: Theory, Evolution, and Core Principles

Restorative justice (RJ) emerged as a critique of retributive criminal justice systems that prioritize state authority and punishment over victim repair and social reintegration. Early theorists such as John Braithwaite conceptualized RJ as a regulatory framework centered on accountability, reintegration, and community participation rather than deterrence through punishment. Braithwaite's model emphasizes that crime constitutes harm to relationships and social trust, necessitating processes that repair these harms through dialogue and responsibility rather than exclusion.

Howard Zehr further articulated RJ as a paradigm shift that redefines justice itself, repositioning victims, offenders, and communities as central stakeholders. According to Zehr, restorative justice is distinguished by three foundational questions: who has been harmed, what are their needs, and whose obligations are these? This reconceptualization directly challenges adversarial legal systems that marginalize victim voice and reduce justice to state-offender interactions.

Internationally, RJ has gained normative recognition through instruments such as the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002), which affirm RJ as a legitimate criminal justice response provided it adheres to voluntariness, proportionality, and due process. However, these instruments also caution against its unregulated application in serious offenses, underscoring the need for institutional safeguards.

Scholars broadly agree that RJ is not a singular practice but a **framework adaptable to cultural and legal contexts**. This adaptability has enabled its institutionalization in Indigenous justice systems across jurisdictions, where communal participation and relational accountability align closely with restorative principles. Yet, this same flexibility has rendered RJ vulnerable to misinterpretation, particularly when conflated with informal mediation or compromise—an issue acutely relevant in the Indian legal context.

### B. Feminist Engagements with Restorative Justice and Gender-Based Violence

The application of restorative justice to gender-based violence, particularly intimate partner violence, has generated significant feminist critique. Kathleen Daly's empirical work cautions that restorative processes may reproduce gendered power asymmetries if offenders dominate dialogue or if survivors are pressured to forgive. Daly's critique does not reject restorative justice wholesale but emphasizes that gendered crimes demand heightened procedural protections.

Similarly, feminist scholars warn that restorative forums

risk prioritizing emotional closure and relational harmony over survivor safety. Concerns of retraumatization, minimization of harm, and coercive participation have been repeatedly emphasized, particularly in contexts where women are economically or socially dependent on offenders.

However, a growing body of feminist scholarship challenges the assumption that adversarial justice inherently serves survivors better. Authors such as Donna Coker argue that criminal prosecution often disempowers survivors by removing decision-making agency and exposing them to invasive cross-examination, social stigma, and state control. Coker advocates for a **survivor-defined justice model**, where women retain autonomy over justice pathways—including the option of restorative engagement under protected conditions.

Crucially, feminist critiques distinguish between **restorative justice as theory** and its **maladapted practice**. The failure of informal mediation mechanisms—often mislabeled as restorative justice—should not be attributed to RJ itself but to the absence of feminist design principles. These include voluntariness, survivor veto power, legal counsel, trauma-informed facilitation, and enforceable outcomes.

Thus, feminist jurisprudence does not foreclose restorative justice in IPV cases; rather, it demands that RJ be constitutionally and procedurally structured to counter, rather than replicate, patriarchal domination.

### C. Indian Feminist Legal Scholarship and the Question of Custom

Indian feminist legal scholars have historically expressed skepticism toward non-state justice mechanisms in cases of domestic violence. Upendra Baxi critiques the uneven application of constitutional protections within informal legal systems, warning that tolerance of extra-legal forums may result in the erosion of women's fundamental rights. Baxi situates this concern within broader debates on access to justice and the state's failure to protect marginalized women.

Flavia Agnes similarly critiques the invocation of "custom" as a shield for patriarchal practices, arguing that customary dispute resolution often subordinates women's interests to familial or community cohesion. Agnes' work highlights how reconciliation-oriented mechanisms frequently pressure women to remain in abusive relationships under the guise of cultural preservation.

Yet, these critiques are primarily directed at **customary justice systems**, not restorative justice as a normative framework. The distinction is significant. Customary forums often lack the procedural architecture of restorative justice, operating without consent safeguards, accountability mechanisms, or external oversight. Conflating the two obscures the possibility that restorative justice—properly codified—could offer a survivor-centric alternative rather than a regressive compromise.

More recent Indian scholarship acknowledges the limitations of purely punitive responses to domestic violence. Law Commission Reports and judicial commentary increasingly recognize the need for victim-centric justice models that address emotional, psychological, and social harms alongside legal

accountability. However, these discussions remain tentative and under-theorized, particularly with respect to restorative justice.

#### **D. Tribal Customary Law, Gender, and Legal Pluralism**

The operation of tribal customary law in India must be situated within the framework of **legal pluralism**, wherein multiple normative systems coexist under constitutional supremacy. Scholars such as Virginius Xaxa and Walter Fernandes document how tribal justice systems emphasize collective harmony and social continuity, often resolving domestic conflicts through community deliberation rather than formal punishment. While these systems possess restorative elements, feminist critiques highlight their gendered limitations. Xaxa notes that customary laws frequently prioritize group stability over individual rights, particularly in cases involving women. Fernandes further argues that constitutional recognition of tribal autonomy has not translated into gender-sensitive governance, largely due to the absence of codified safeguards and institutional accountability.

Nandini Sundar's work underscores the dangers of state abdication in regulating customary justice. When the state refrains from intervening, customary institutions may legitimize violence through reconciliation mandates that silence survivors. This critique is particularly relevant in IPV cases, where social pressure and dependency severely constrain women's choices.

However, legal pluralism does not imply normative equivalence among legal systems. As Brian Tamanaha argues, pluralism must operate within constitutional limits; the coexistence of legal orders cannot justify practices that violate fundamental rights. This principle provides the doctrinal foundation for reforming—rather than rejecting—tribal justice systems through statutory integration of restorative principles.

#### **E. Comparative Indigenous Justice Models: Lessons and Limits**

Comparative scholarship on Indigenous justice systems offers valuable insights into the institutionalization of restorative justice within constitutional frameworks. In Canada, sentencing circles rooted in Indigenous traditions operate under judicial supervision pursuant to section 718.2(e) of the Criminal Code. Scholars such as Rupert Ross and Mary Ellen Turpel-Lafond emphasize that these models succeed precisely because they function within, rather than outside, formal legal structures.

Similarly, in New Zealand, Māori-informed restorative conferencing has been incorporated into statutory sentencing processes, particularly in juvenile justice. Empirical studies by Gabrielle Maxwell and Allison Morris demonstrate that restorative outcomes are most effective when victim participation is voluntary and supported by state oversight.

These models caution against romanticizing Indigenous justice. Chris Cunneen warns that state appropriation of restorative practices without addressing colonial and patriarchal legacies risks reinforcing systemic inequalities. Consequently, comparative lessons must be adapted—not transplanted—into the Indian context.

#### **F. Synthesis: Towards a Constitutionally Grounded Restorative Framework**

The literature reveals a consistent tension between the promise of restorative justice and the risks posed by unregulated, informal practices—particularly in gendered crimes. Feminist critiques, far from rejecting RJ outright, converge on the necessity of procedural safeguards, survivor autonomy, and enforceability.

In the Indian context, the failure to distinguish restorative justice from compromise has stalled meaningful engagement with RJ as a legal reform tool. Tribal customary practices illustrate both the potential and peril of community-based justice: they demonstrate cultural compatibility with restorative principles while simultaneously exposing the dangers of patriarchal control.

This article positions itself within this scholarly gap, arguing that restorative justice can only be viable in IPV cases when **statutorily codified, constitutionally supervised, and feminist-informed**. The subsequent sections build upon this literature to evaluate how such a framework can be articulated within Indian constitutional law, tribal autonomy provisions, and judicial doctrine.

### **CHAPTER ONE: RESTORATIVE JUSTICE WITHIN THE LEGAL FRAMEWORK**

#### **A. Conceptual Foundations of Restorative Justice in Law**

Restorative justice (RJ) operates as a **normative legal framework**, not merely as an alternative dispute resolution mechanism. Its core premise lies in reconceptualizing crime as a violation of relationships rather than solely a breach of state authority. Unlike retributive justice, which centers on punishment proportionate to wrongdoing, restorative justice seeks to address the harm caused by an offence through structured dialogue, offender accountability, and victim participation.

The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters define restorative justice as a process whereby victims, offenders, and affected community members actively participate—voluntarily—in resolving matters arising from a crime, often with the assistance of a trained facilitator. Crucially, the UN framework emphasizes that restorative justice must operate within the bounds of legality, voluntariness, proportionality, and due process. This articulation positions RJ as **complementary to formal criminal justice**, not antagonistic to it.

From a jurisprudential perspective, restorative justice aligns with evolving theories of victimology and participatory justice. It challenges the traditional monopolization of justice by the state, arguing instead for a pluralistic model that recognizes victims as rights-bearing agents rather than passive witnesses. This shift has particular relevance in cases of intimate partner violence, where survivors often experience a loss of agency within adversarial proceedings.

#### **B. Distinguishing Restorative Justice from Compromise and Mediation**

A persistent obstacle to the acceptance of restorative

justice in India is its **conflation with compromise, mediation, or informal settlement**, particularly in cases involving domestic violence. This conflation has produced judicial resistance to restorative approaches, driven by concerns that non-punitive mechanisms trivialize serious offences or facilitate coercive reconciliation.

However, doctrinally and normatively, restorative justice is distinct from compromise. Compromise seeks to terminate legal proceedings through mutual concession, often extinguishing liability without acknowledgment of harm or accountability. In contrast, restorative justice requires an **explicit recognition of wrongdoing**, meaningful offender accountability, and survivor consent that is informed, voluntary, and revocable. The objective is not reconciliation for its own sake, but repair of harm under conditions that respect survivor autonomy and safety.

Judicial skepticism toward compromise in cases of gender-based violence is therefore not misplaced. Supreme Court jurisprudence has consistently held that serious offences affecting societal interest cannot be quashed merely on the basis of settlement between parties. However, this reasoning should not be extended uncritically to restorative justice, which does not seek to negate the public character of the offence but to **supplement state response with survivor-centered processes**.

The failure to doctrinally separate these models has foreclosed meaningful engagement with restorative justice as a legally regulated process. A properly structured RJ framework would operate **in parallel with formal adjudication**, subject to judicial oversight, and without displacing statutory remedies available to survivors.

### C. Restorative Justice and International Human Rights Law

International human rights law offers cautious but significant endorsement of restorative justice, including in contexts of gender-based violence. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) recognizes the need for effective remedies that prioritize survivor dignity, autonomy, and access to justice. CEDAW General Recommendation No. 35 explicitly permits restorative justice mechanisms in cases of gender-based violence, provided that participation is voluntary and that such mechanisms do not replace criminal accountability.

The emphasis on voluntariness and non-substitution is critical. Restorative justice must not function as a diversionary tool that shields offenders from legal consequences or pressures survivors into forgiveness. Instead, it must enhance the survivor's range of justice options while maintaining the state's obligation to prevent, investigate, and punish violence against women. International practice further demonstrates that restorative justice is most effective when embedded within statutory frameworks. In jurisdictions where RJ operates informally or without oversight, it risks violating principles of equality and non-discrimination. Conversely, where RJ is institutionalized—through legislation, judicial supervision, and trained facilitation—

it has been shown to improve survivor satisfaction and offender accountability without undermining legal standards.

### D. The Indian Legal Context: Underdevelopment and Opportunity

In India, restorative justice remains **conceptually acknowledged but institutionally absent**. Law reform bodies have intermittently recognized the need for victim-centric justice models, yet no comprehensive statutory framework for restorative justice exists. The Malimath Committee Report and the Law Commission of India's 277th Report both highlight the limitations of purely retributive systems and emphasize the need for greater victim participation. However, these reports also caution against the unregulated use of restorative mechanisms in serious offences.

This caution has often been interpreted as a rejection of restorative justice in cases involving violence against women. Such an interpretation is overly restrictive. What the reports underscore is the necessity of **procedural regulation**, not the unsuitability of restorative justice as a concept. In the absence of statutory guidance, courts have understandably treated restorative practices with suspicion, particularly when framed as compromise or reconciliation.

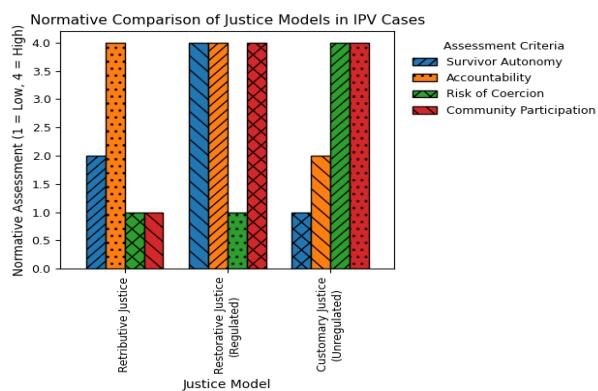
Yet, Indian constitutional jurisprudence increasingly recognizes participatory and dignity-based conceptions of justice. The Supreme Court's expansive interpretation of Article 21 encompasses not only protection from harm but also the right to meaningful remedies and procedural fairness. This jurisprudence provides fertile ground for the development of restorative justice as a constitutionally anchored adjunct system.

### E. Constitutional Compatibility of Restorative Justice

From a constitutional standpoint, restorative justice engages multiple fundamental rights. Survivor participation and agency resonate with Articles 14 and 21, while safeguards against coercion and discrimination are necessary to satisfy Articles 15 and 19. The doctrine of constitutional morality further mandates that all justice mechanisms—formal or informal—operate in alignment with substantive equality and human dignity.

Restorative justice, when properly structured, does not undermine these principles. On the contrary, it has the potential to enhance them by centering survivor voice, facilitating accountability beyond incarceration, and addressing social and psychological harms that punitive justice often ignores. However, constitutional compatibility depends entirely on **design and regulation**. Without statutory safeguards, restorative processes may devolve into coercive reconciliation, particularly in patriarchal settings. This risk is amplified in intimate partner violence cases, where survivors may face familial, economic, or social pressure to participate. Therefore, constitutional compatibility requires that restorative justice be **legally framed**, not informally practiced.

### F. Restorative Justice as an Adjunct, Not an Alternative



**Figure 1.**

The normative distinction between retributive justice, unregulated customary mechanisms, and restorative justice as a constitutionally regulated adjunct framework is conceptually summarized in **Figure 1**, which evaluates these models across dimensions central to feminist constitutional analysis in intimate partner violence cases. This article advances the position that restorative justice must function as an **adjunct to the formal justice system**, not as a substitute. Adjunctive integration preserves the public character of intimate partner violence while expanding the survivor's menu of justice options. It ensures that restorative outcomes are legally recognized, enforceable, and subject to judicial review.

An adjunct model also resolves feminist concerns regarding leniency and impunity. By retaining formal legal processes alongside restorative engagement, the state continues to discharge its obligation to condemn and address violence, while survivors gain access to processes that prioritize repair, dignity, and agency.

Thus, the legal framework for restorative justice in India must be grounded in constitutional supremacy, international human rights standards, and feminist jurisprudence. Only under these conditions can restorative justice meaningfully contribute to addressing intimate partner violence without compromising survivor rights or legal accountability.

## CHAPTER TWO: TRIBAL AUTONOMY, CONSTITUTIONAL MORALITY, AND LEGAL LIMITS

### A. Constitutional Recognition of Tribal Autonomy in India

The Constitution of India embodies a distinctive commitment to legal pluralism through its recognition of tribal autonomy under the Fifth and Sixth Schedules. These provisions acknowledge the historical, cultural, and political distinctiveness of tribal communities and permit the continuation of customary laws and institutions in matters of local governance, including dispute resolution. The Sixth Schedule, in particular, empowers Autonomous District Councils in certain northeastern states to administer justice according to customary practices, while the Fifth Schedule provides a framework for governance in Scheduled Areas elsewhere in India.

This constitutional design reflects an attempt to reconcile the imperatives of national integration with respect for cultural autonomy. Tribal customary institutions—such as village councils, clan assemblies, and community

forums—thus enjoy a degree of legitimacy that distinguishes them from informal or extra-legal bodies like khap panchayats. In principle, these institutions serve as accessible, culturally resonant mechanisms for resolving disputes within the community.

However, constitutional recognition of autonomy does not amount to constitutional immunity. Tribal self-governance operates **within**, not outside, the constitutional order. The Constitution does not create parallel sovereignties; rather, it permits differentiated governance subject to the supremacy of fundamental rights.

### B. The Doctrine of Constitutional Morality and Its Implications

The limits of tribal autonomy are most clearly articulated through the doctrine of **constitutional morality**, a principle repeatedly invoked by the Supreme Court of India to invalidate customs and practices that violate fundamental rights. Constitutional morality demands adherence to the values underlying the Constitution—dignity, equality, liberty, and fraternity—even where social or cultural traditions point in a different direction. Judicial pronouncements have consistently affirmed that custom cannot trump constitutional guarantees. Practices rooted in tradition, religion, or community norms must yield where they infringe upon substantive equality or individual autonomy. This jurisprudence has particular salience for gender justice, as courts have increasingly rejected the argument that cultural preservation justifies discrimination against women.

Within this framework, customary justice institutions—tribal or otherwise—are subject to constitutional scrutiny. Their legitimacy depends not on historical continuity alone but on their compliance with fundamental rights. Where customary forums reproduce gender hierarchies, silence survivors, or prioritize collective harmony over individual dignity, they fall afoul of constitutional morality.

### C. Gender, Autonomy, and the Limits of Customary Justice

The intersection of tribal autonomy and gender justice presents a profound normative challenge. Customary justice systems often derive authority from collective values and elder leadership structures, which may marginalize women's participation in decision-making. In cases of intimate partner violence, this marginalization is especially pronounced, as survivors are frequently embedded in dense networks of kinship and economic dependence.

Feminist legal scholarship has long cautioned that community-based justice mechanisms may exert subtle but powerful forms of coercion. Pressure to preserve family unity, avoid public shame, or comply with elder authority can undermine voluntariness and silence dissent. In such contexts, the appearance of consensual participation may mask structural constraints on women's agency. As reflected in **Figure 1**, unregulated customary justice mechanisms, despite their emphasis on community participation, present a heightened risk of coercion and diminished survivor autonomy—particularly in contexts marked by entrenched gender

hierarchies and social dependency.

This does not imply that all customary justice systems are inherently incompatible with gender justice. Rather, it underscores the necessity of **procedural safeguards** that counteract power imbalances. Without such safeguards, customary autonomy risks becoming a vehicle for the normalization of violence, particularly in intimate relationships where inequality is already entrenched.

#### **D. Restorative Justice within the Constitutional Limits of Autonomy**

The question, therefore, is not whether tribal customary forums should be displaced by formal courts, but whether their restorative elements can be constitutionally re-engineered to protect survivor rights. Restorative justice offers a conceptual bridge between cultural autonomy and constitutional accountability, but only if it is framed within legally enforceable limits.

Restorative justice processes within tribal forums must be assessed against constitutional standards of equality, dignity, and due process. Participation must be voluntary in substance, not merely in form. Survivors must retain the right to decline or withdraw from restorative processes without adverse consequences. Outcomes must be proportionate, transparent, and subject to review to prevent impunity.

Importantly, constitutional morality requires that the state not abdicate its responsibility to protect women from violence under the guise of respecting autonomy. Where tribal institutions address intimate partner violence through restorative processes, the state remains obligated to ensure that such processes do not negate criminal accountability or deny survivors access to formal legal remedies.

#### **E. Judicial Oversight and the Role of the State**

Judicial oversight serves as the critical mechanism through which tribal autonomy and constitutional guarantees are reconciled. Courts need not supervise the day-to-day functioning of customary institutions, but they must retain the authority to intervene where fundamental rights are threatened.

In the context of restorative justice, oversight can take multiple forms: statutory guidelines governing permissible offences, mandatory reporting requirements, judicial review of restorative outcomes, and appellate remedies for survivors. Such oversight does not undermine autonomy; rather, it legitimizes customary processes by embedding them within the constitutional order.

The absence of oversight, by contrast, creates a legal vacuum in which restorative practices risk degenerating into coercive reconciliation. This vacuum disproportionately harms women, whose claims to justice are often subordinated to community interests.

#### **F. Reconciling Legal Pluralism with Gender Justice**

Legal pluralism, as recognized by the Indian Constitution, is not a value-neutral arrangement. It presupposes a hierarchy in which fundamental rights operate as non-negotiable constraints. The coexistence of multiple legal orders is constitutionally permissible only to the extent that each order respects core constitutional values.

From this perspective, restorative justice within tribal forums must be understood as **conditional pluralism**. Cultural practices are accommodated not as absolute entitlements but as evolving systems capable of reform. The Constitution does not demand the eradication of customary justice; it demands its transformation where necessary to uphold dignity and equality.

This approach aligns with comparative constitutional practice, where Indigenous justice systems are recognized and supported, yet regulated to ensure compliance with human rights norms. The Indian constitutional framework provides ample doctrinal space for such an approach, provided the state actively engages in regulation rather than passive tolerance.

#### **G. Normative Position of This Article**

This article adopts the normative position that tribal autonomy and gender justice are not irreconcilable. However, reconciliation requires deliberate legal design. Restorative justice, when constitutionally framed, offers a pathway to preserve culturally embedded dispute resolution mechanisms while safeguarding survivor autonomy and accountability.

The following section builds on this constitutional analysis by examining how these tensions manifest concretely within the Khasi and Santhal communities, revealing both the restorative potential and the structural risks inherent in customary justice responses to intimate partner violence.

### **CHAPTER THREE: RESTORATIVE PRACTICES IN THE KHASI AND SANTHAL COMMUNITIES: GENDER, POWER, AND ACCOUNTABILITY**

#### **A. Customary Justice as a Lived Legal Order**

Customary justice systems among tribal communities in India operate as **lived legal orders**, shaping everyday governance and social regulation beyond the reach of formal courts. Among the Khasi and Santhal communities, dispute resolution is not perceived as an external or adversarial intervention but as a collective responsibility embedded in social relationships. This embeddedness gives customary forums cultural legitimacy and accessibility that state institutions often lack.

At the same time, the authority of customary justice derives from **social consensus and hierarchy**, rather than codified law. Decisions are enforced through communal sanction, moral pressure, and the threat of social exclusion. While such mechanisms can facilitate compliance and reintegration, they also create conditions under which individual autonomy—particularly that of women—may be constrained.

In cases of intimate partner violence, this dual character becomes especially pronounced. The same community structures that enable dialogue and support may also silence survivors, prioritize family preservation, and normalize abuse as a private or relational matter rather than a rights violation.

#### **B. Khasi Customary Institutions: Matriliney without Gender Power**

Khasi society is frequently cited as an example of matrilineal social organization, with lineage, inheritance,

and clan identity passing through the female line. At first glance, this structure appears conducive to women's empowerment and autonomy. However, matriliney does not automatically translate into matriarchy or gender equality in governance.

Decision-making authority within Khasi customary institutions, particularly the Dorbar Shnong (village council), remains overwhelmingly male-dominated. Women's participation in deliberative forums addressing domestic disputes is limited, and leadership roles are typically occupied by male elders. This structural exclusion has significant implications for how intimate partner violence is addressed.

IPV cases within Khasi communities are often resolved through reconciliation-oriented processes that emphasize restoring household harmony and social stability. While these processes may involve dialogue, apology, and community mediation—hallmarks of restorative justice—they frequently lack mechanisms to ensure survivor voluntariness, safety, and long-term accountability.

The restorative potential of Khasi customary practices lies in their emphasis on collective responsibility and moral accountability. However, without procedural safeguards, these practices risk subordinating women's experiences of violence to broader community interests. The absence of trained facilitators, documentation, and enforceable outcomes further undermines survivor protection.

### C. Santhal Manjhi Hadam: Community Justice within Patriarchal Hierarchies

The Santhal community's customary justice system operates through the Manjhi Hadam, a village council led by male elders responsible for maintaining social order. Unlike the Khasi system, Santhal customary governance is explicitly patriarchal, with authority concentrated in male leadership and limited avenues for women's participation.

Disputes involving domestic conflict are commonly addressed through mediation aimed at restoring marital relations and preventing community disruption. Sanctions may include admonishment, symbolic penalties, or compensation, but these measures are often inconsistent and lack enforceability.

From a restorative justice perspective, the Manjhi Hadam embodies certain core elements: communal dialogue, acknowledgment of wrongdoing, and reintegration. However, these elements are embedded within power structures that privilege male authority and constrain women's agency. Survivors may face overt or implicit pressure to accept reconciliation, particularly where economic dependence or social stigma limits their options.

The risk of coercion is heightened by the absence of external oversight. Decisions are rarely documented, appeals are informal, and outcomes are not subject to judicial review. As a result, restorative processes may function as mechanisms of containment rather than transformation, managing violence without challenging its underlying causes.

### D. Restorative Justice or Coercive Reconciliation?

A critical analytical distinction must be drawn between **restorative justice** and **coercive reconciliation**. While both may involve dialogue and community participation, their normative orientations differ fundamentally. Restorative justice prioritizes survivor-defined needs, offender accountability, and voluntary participation. Coercive reconciliation, by contrast, prioritizes social harmony, often at the expense of individual rights.

In both Khasi and Santhal contexts, the line between these models is blurred. The absence of formal consent protocols, legal representation, and trauma-informed facilitation makes it difficult to ensure that participation is genuinely voluntary. Survivors may acquiesce to restorative processes not because they seek repair, but because refusal carries social or economic consequences. This ambiguity underscores the danger of treating customary practices as inherently restorative. Without legal regulation, restorative language can be appropriated to legitimize outcomes that perpetuate violence and inequality.

### E. Reimagining Customary Forums through Constitutional Restorative Justice

Despite these limitations, Khasi and Santhal customary institutions should not be dismissed as incompatible with constitutional justice. Their strengths—accessibility, cultural resonance, community engagement—offer valuable foundations for a regulated restorative framework.

A constitutionally compliant restorative justice model within tribal forums would require structural transformation rather than symbolic adoption. Key elements include:

- **Survivor-Centric Consent:** Participation must be informed, voluntary, and revocable, with explicit safeguards against social retaliation.
- **Facilitator Neutrality:** Trained, independent facilitators—preferably with gender-sensitivity training—must oversee restorative processes.
- **Documentation and Transparency:** Proceedings and outcomes must be recorded to enable accountability and review.
- **Judicial Interface:** Restorative outcomes must be subject to validation and oversight by formal legal institutions.
- **Survivor Exit Rights:** Survivors must retain unhindered access to formal legal remedies at all stages. Embedding these elements would allow customary institutions to retain their cultural identity while aligning with constitutional mandates.

### F. Gender Justice as the Measure of Restorative Legitimacy

The legitimacy of restorative justice in cases of intimate partner violence must ultimately be assessed through the lens of **gender justice**. Processes that fail to protect survivor autonomy, safety, and dignity cannot be justified by cultural authenticity or community acceptance.

This does not entail the imposition of adversarial justice models onto tribal contexts. Rather, it requires the **constitutionalization of restorative practices**, ensuring that cultural adaptation does not become a pretext for rights violations.

Khasi and Santhal customary practices reveal both the promise and peril of community-based justice. They demonstrate that restorative principles are culturally intelligible within Indian tribal contexts, but also that unregulated autonomy can entrench gendered harm.

### G. Analytical Conclusion

The Khasi and Santhal case studies illustrate that restorative justice cannot be transplanted wholesale from customary practice into formal legal systems. Nor can customary justice be romanticized as inherently restorative. The path forward lies in **legal transformation**, not cultural erasure.

By reframing customary forums as sites of constitutionally regulated restorative justice, India can harness the strengths of legal pluralism while safeguarding women's rights. The following section turns to Indian judicial responses to non-adversarial justice mechanisms, examining how courts have navigated—and often resisted—these tensions in cases involving intimate partner violence.

## CHAPTER FOUR: INDIAN JUDICIAL INTERPRETATION: RESISTANCE, RISK, AND POSSIBILITY

### A. Judicial Suspicion of Non-Adversarial Justice in Gendered Crimes

The judiciary's apprehension toward non-punitive justice mechanisms in cases of intimate partner violence can be understood in light of the risks illustrated in **Figure 1**, particularly the potential for coercion and diluted accountability in unregulated or informal frameworks. Indian courts have historically approached non-adversarial justice mechanisms with caution, particularly in cases involving violence against women. This skepticism is rooted in the judiciary's commitment to deterrence, public accountability, and the symbolic condemnation of gender-based violence. Crimes such as intimate partner violence are treated not merely as private wrongs but as offences with serious societal implications. As a result, judicial discourse has frequently framed compromise, settlement, or reconciliation as incompatible with justice in such cases. Courts have consistently rejected attempts to extinguish criminal liability through private arrangements, especially where there is a risk of coercion or social pressure on survivors. This jurisprudence reflects an acute awareness of structural inequality within intimate and familial relationships.

However, in adopting this stance, courts have often failed to distinguish between **informal compromise** and **restorative justice as a regulated legal process**. The absence of a statutory restorative framework has contributed to this conflation, leading courts to treat all non-punitive mechanisms with equal suspicion.

### B. Supreme Court Doctrine on Compromise and Serious Offences

The Supreme Court's jurisprudence on quashing criminal proceedings under Section 482 of the Code of Criminal Procedure illustrates this judicial resistance. In *Gian Singh v. State of Punjab*, the Court held that serious and

heinous offences, including those involving mental depravity or violence against women, cannot be quashed on the basis of compromise between parties. The Court emphasized that such offences have a public dimension that transcends individual interests.

Similarly, in *Narinder Singh v. State of Punjab*, while permitting quashing in certain categories of offences, the Court expressly excluded crimes involving cruelty, sexual violence, and domestic abuse from the scope of permissible settlement. These decisions underscore the judiciary's concern that compromise may function as a tool of coercion, particularly in patriarchal settings.

While doctrinally sound, these judgments implicitly equate compromise with all forms of consensual resolution. They do not engage with restorative justice as a distinct model premised on accountability, voluntariness, and survivor participation. The judicial fear of dilution of justice is thus directed at the **absence of regulation**, rather than at restorative principles themselves.

### C. Domestic Violence Jurisprudence and the Limits of Formalism

Judicial interpretation of the Protection of Women from Domestic Violence Act, 2005 further reflects the courts' commitment to formal remedies. Courts have repeatedly emphasized the Act's remedial and protective objectives, recognizing domestic violence as a continuing offence that warrants timely and effective intervention.

At the same time, judicial practice reveals the limitations of formalism. Delays in adjudication, inconsistent enforcement of protection orders, and the burden of proof placed on survivors undermine the Act's effectiveness. Courts have acknowledged these systemic failures, calling for expeditious disposal and survivor-centric interpretation.

Despite these acknowledgments, there has been little engagement with alternative justice pathways that could supplement formal remedies. The absence of restorative justice from judicial discourse is striking, particularly given the judiciary's increasing emphasis on dignity, autonomy, and access to justice under Article 21.

### D. Restorative Justice through Judically Supervised Frameworks

The judiciary's concern regarding coercion and impunity can be addressed through **judically supervised restorative justice frameworks**. Comparative jurisprudence demonstrates that restorative justice does not require the abandonment of state authority; rather, it can operate under judicial oversight to enhance accountability.

Indian courts have, in other contexts, demonstrated openness to structured alternatives that preserve legal scrutiny. For instance, court-referred mediation and plea bargaining are statutorily regulated and subject to judicial control. These mechanisms illustrate that the judiciary is not opposed to innovation *per se*, but to unregulated informality.

Restorative justice, if codified, could similarly be integrated through judicial referral, validation of outcomes, and appellate review. Such integration would ensure that restorative processes do not function as

substitutes for criminal accountability but as complementary mechanisms focused on survivor needs.

#### **E. Feminist Concerns and Judicial Responsibility**

Judicial resistance to restorative justice is often justified through feminist concerns regarding survivor safety and equality. These concerns are legitimate and must inform any restorative framework. However, feminist jurisprudence does not mandate exclusive reliance on punitive justice. Rather, it calls for justice models that respect survivor autonomy and address structural harm. Courts have a responsibility to move beyond binary frameworks that position punishment as the sole guarantor of justice. A survivor-centric approach recognizes that justice may take multiple forms, provided they are constitutionally sound and procedurally fair. Judicial endorsement of restorative justice would therefore require a paradigm shift—from a punitive monopoly to a plural justice model anchored in constitutional values. Such a shift is consistent with the judiciary's evolving understanding of dignity-based justice.

#### **F. Emerging Judicial Signals and the Scope for Reform**

Recent judicial observations indicate a growing awareness of the limitations of existing frameworks. High Courts have increasingly emphasized the need for victim-centric adjudication and timely relief in domestic violence cases. References to trauma, dignity, and lived experience suggest an openness to rethinking traditional approaches.

While these developments do not amount to judicial recognition of restorative justice, they create doctrinal space for its future integration. The absence of legislative guidance remains the primary barrier. Courts are unlikely to endorse restorative mechanisms in IPV cases without clear statutory parameters.

This underscores the need for legislative action that articulates the scope, safeguards, and limits of restorative justice. Judicial interpretation can then operate within this framework, balancing survivor protection with restorative possibility.

#### **G. Analytical Conclusion**

Indian judicial resistance to non-adversarial justice in intimate partner violence cases is grounded in legitimate concerns regarding coercion, impunity, and gender inequality. However, this resistance has been shaped by the absence of a legally recognized restorative justice framework, leading to the conflation of restorative processes with informal compromise.

This article argues that restorative justice, when constitutionally structured and judicially supervised, does not undermine accountability or gender justice. On the contrary, it offers a means of expanding survivor agency and addressing harms that punitive justice alone cannot remedy.

The next section turns to comparative jurisdictions to demonstrate how restorative justice has been successfully integrated within formal legal systems, offering instructive lessons for the Indian society.

### **CHAPTER FIVE: COMPARATIVE JURISDICTIONS: INDIGENOUS RESTORATIVE JUSTICE AND LESSONS FOR INDIA**

#### **A. Why Comparative Indigenous Models Matter**

Comparative constitutional analysis plays a critical role in evaluating restorative justice in plural legal systems. Jurisdictions with Indigenous populations have confronted legal dilemmas analogous to those faced by India: how to recognize culturally embedded justice practices without compromising constitutional guarantees of equality, due process, and gender justice. Canada and New Zealand offer particularly instructive examples, as both jurisdictions have institutionalized restorative justice mechanisms grounded in Indigenous traditions while retaining judicial oversight. These models demonstrate that restorative justice need not operate in opposition to formal law. Instead, when carefully codified, it can function as a constitutionally compliant adjunct that enhances access to justice and cultural legitimacy without sacrificing rights protection.

#### **B. Canada: Sentencing Circles and Judicial Supervision**

In Canada, restorative justice has been formally integrated into the criminal justice system through statutory recognition and judicial interpretation. Section 718.2(e) of the Canadian Criminal Code requires courts to consider alternatives to incarceration, particularly for Indigenous offenders, in recognition of the systemic discrimination faced by Indigenous communities. This provision has enabled the development of **sentencing circles**, community-based forums rooted in Indigenous traditions.

Sentencing circles involve victims, offenders, elders, community members, and judicial officers in a structured dialogue aimed at determining appropriate sanctions and reparative measures. Importantly, these circles do not replace criminal proceedings. Judicial authority is retained at all stages, and participation is voluntary.

Scholars such as Rupert Ross emphasize that the success of sentencing circles lies in their **embeddedness within formal legal structures**. Courts validate outcomes, ensure proportionality, and intervene where rights are threatened. Mary Ellen Turpel-Lafond further argues that judicial supervision prevents the romanticization of Indigenous practices and guards against the reinforcement of patriarchal norms.

However, Canadian jurisprudence also reflects caution. Courts have limited the application of sentencing circles in cases involving serious violence, particularly sexual and domestic offences, unless stringent safeguards are in place. This judicial restraint underscores a key lesson for India: restorative justice must be **context-sensitive and offence-specific**, not universally applied.

#### **C. New Zealand: Māori Restorative Conferencing**

New Zealand's restorative justice framework is deeply influenced by Māori traditions of collective responsibility and relational repair. Unlike Canada's sentencing-stage focus, New Zealand has integrated restorative justice conferencing across multiple stages of the criminal process, particularly in juvenile justice and sentencing. The Sentencing Act 2002 formally recognizes restorative

justice processes and requires courts to consider restorative outcomes when determining sentences. Māori-informed practices such as family group conferencing emphasize victim participation, offender accountability, and community involvement.

Empirical studies by Gabrielle Maxwell and Allison Morris demonstrate that restorative conferencing in New Zealand has led to higher levels of victim satisfaction and offender compliance when participation is voluntary and facilitated by trained professionals. Crucially, the system incorporates **state oversight**, mandatory reporting, and judicial review.

At the same time, feminist scholars in New Zealand have raised concerns about the application of restorative justice in cases of intimate partner violence. These critiques have prompted reforms, including stricter consent requirements, risk assessment protocols, and limits on the use of restorative conferencing in cases involving ongoing coercion.

New Zealand's experience illustrates that restorative justice is not static; it evolves through **iterative reform informed by feminist critique and empirical evaluation**.

#### D. Lessons from Comparative Jurisdictions

Three key lessons emerge from Canadian and New Zealand models:

##### 1. Institutionalization is essential

Restorative justice gains legitimacy and safety when embedded in statutory frameworks and supervised by courts. Informal or ad-hoc practices are more likely to enable coercion and inequality.

##### 2. Restorative justice must be adjunctive, not substitutive

In both jurisdictions, restorative processes operate alongside formal adjudication. Criminal liability is not extinguished merely by participation in restorative forums.

##### 3. Gender-based violence requires heightened safeguards

Neither Canada nor New Zealand treats restorative justice as automatically appropriate for intimate partner violence. Its use is conditional, regulated, and subject to survivor consent and risk assessment.

These lessons are directly applicable to the Indian context. They demonstrate that cultural grounding and constitutional compliance are not mutually exclusive but mutually reinforcing when mediated through law.

#### E. Avoiding the Transplant Fallacy in India

Comparative analysis must avoid the **transplant fallacy**—the assumption that legal models can be directly imported without regard to social, cultural, and institutional context. India's tribal diversity, patriarchal structures, and uneven access to legal services necessitate a cautious and context-specific approach.

Unlike Canada and New Zealand, India lacks a unified statutory framework for restorative justice. Moreover, tribal customary institutions vary significantly in structure and authority. Any attempt to integrate restorative justice must therefore proceed incrementally, with pilot frameworks, continuous evaluation, and strong oversight.

Importantly, comparative experience cautions against romanticizing Indigenous justice as inherently egalitarian. Both Canada and New Zealand have confronted internal critiques regarding gender bias within Indigenous forums. Their response has been regulation, not abandonment.

#### F. Comparative Insight and Indian Constitutional Possibility

The comparative record affirms that restorative justice can be reconciled with constitutional supremacy when framed as a regulated adjunct to formal justice. Canada and New Zealand demonstrate that Indigenous restorative practices can be preserved without insulating them from rights-based scrutiny.

For India, these examples support a **constitutionally grounded restorative framework** that respects tribal autonomy while enforcing fundamental rights. Such a framework would draw on tribal practices for cultural legitimacy but rely on statutory safeguards for gender justice and accountability.

The following section builds on these comparative insights to propose concrete legal and policy reforms for integrating restorative justice into India's response to intimate partner violence.

### CHAPTER SIX: POLICY PROPOSALS AND STATUTORY DESIGN FOR RESTORATIVE JUSTICE IN IPV CASES

#### A. The Need for Statutory Intervention

The preceding analysis demonstrates that restorative justice cannot operate safely or legitimately in cases of intimate partner violence without **clear statutory authorization and procedural safeguards**. Informal or customary adoption of restorative practices—however culturally resonant—risks coercion, impunity, and the erosion of survivor autonomy. The absence of a legal framework has resulted in judicial reluctance, doctrinal confusion, and uneven practice.

Accordingly, this article argues that restorative justice in IPV cases must be **legislatively constructed as a regulated adjunct** to formal criminal adjudication. Statutory intervention is necessary not to replace existing remedies but to structure restorative processes in a manner consistent with constitutional morality, feminist jurisprudence, and international human rights obligations.

#### B. Codifying Restorative Justice: A Proposed Legislative Framework

India requires a **dedicated Restorative Justice Framework**, either through a standalone statute or as a detailed chapter within existing criminal procedure law. Such a framework should clearly define the scope, objectives, and limits of restorative justice, particularly in cases involving gender-based violence.

The statute must expressly distinguish restorative justice from compromise or settlement. Restorative justice should be defined as a **facilitated, survivor-centric process** that operates alongside, and not in substitution of, formal legal proceedings. Participation must not result in automatic quashing of criminal liability, especially in cases involving physical, sexual, or psychological violence.

Crucially, the statute should specify **offence categories** where restorative justice may be considered, subject to judicial discretion and survivor consent. IPV cases should be approached with heightened caution, allowing restorative engagement only where risk assessments indicate survivor safety and voluntariness.

### C. Survivor-Centric Safeguards

Any statutory framework must place **survivor autonomy at its core**. The following safeguards are essential:

#### 1. Informed and Revocable Consent

Survivors must receive independent legal advice prior to consenting to restorative processes. Consent must be revocable at any stage without adverse legal or social consequences.

#### 2. Right to Exit and Parallel Remedies

Participation in restorative justice must not bar survivors from accessing criminal prosecution, civil remedies, or protective orders. Restorative processes should pause—not extinguish—formal proceedings.

#### 3. Trauma-Informed Facilitation

Facilitators must be trained in gender sensitivity, trauma response, and power-imbalance recognition. This is particularly critical in tribal contexts where social hierarchies are entrenched.

#### 4. Protection from Retaliation

Statutory provisions must criminalize retaliation or coercion linked to participation or withdrawal from restorative processes.

### D. Procedural Architecture and Judicial Oversight

The balanced normative positioning of constitutionally regulated restorative justice in **Figure 1** underscores the necessity of statutory safeguards, judicial supervision, and enforceability as preconditions for its legitimacy in intimate partner violence cases.

Restorative justice must operate within a **transparent procedural architecture**. This includes:

- Mandatory documentation of proceedings and outcomes
- Judicial validation of restorative agreements
- Clear standards for proportionality and enforceability
- Appellate remedies for survivors dissatisfied with outcomes

Judicial oversight is not antithetical to restorative justice. On the contrary, it legitimizes restorative outcomes and ensures constitutional compliance. Courts should retain discretion to approve, modify, or reject restorative agreements, particularly where there is evidence of coercion or disproportionate outcomes.

In tribal contexts, oversight mechanisms must be designed to respect autonomy while preventing rights violations. This may include designated judicial officers trained in tribal law and restorative justice principles.

### E. Institutional Design and Oversight Bodies

To prevent ad-hoc implementation, the statute should establish **independent restorative justice boards** at the district or state level. These bodies should include judicial officers, women's rights advocates, psychologists, tribal representatives, and legal services authorities.

Their functions would include:

- Accrediting facilitators

- Monitoring restorative processes
- Collecting data and evaluating outcomes
- Issuing best-practice guidelines

Such institutionalization ensures that restorative justice evolves through evidence-based reform rather than informal experimentation.

### F. Integrating Tribal Customary Institutions

Rather than displacing tribal customary forums, the proposed framework should **transform their role**. Customary institutions may function as culturally grounded sites for restorative engagement, provided they comply with statutory safeguards.

This requires:

- External facilitation rather than elder-controlled mediation
- Gender-inclusive participation structures
- Mandatory referral pathways to formal courts

By reframing tribal forums as partners in a constitutionally regulated restorative system, the state can preserve cultural legitimacy while enforcing rights protection.

### G. Monitoring, Evaluation, and Accountability

Finally, restorative justice must be subject to **continuous monitoring and impact assessment**. The statute should mandate:

- Periodic reporting on outcomes in IPV cases
- Survivor satisfaction and safety audits

- Parliamentary or judicial review of implementation

Without empirical evaluation, restorative justice risks becoming symbolic rather than transformative. Accountability mechanisms ensure that reform remains responsive to feminist critique and lived experience.

### H. Normative Justification

The proposed framework does not dilute the seriousness of intimate partner violence. Rather, it recognizes that justice is not monolithic. A constitutionally regulated restorative justice system expands survivor choice, enhances accountability, and addresses harms that punitive justice alone cannot remedy.

By embedding restorative justice within statutory and constitutional limits, India can move toward a **plural yet principled justice model**—one that respects cultural diversity without sacrificing gender equality.

## CONCLUSION

Intimate partner violence represents one of the most persistent failures of justice in contemporary legal systems, exposing the limits of punitive, adversarial responses in addressing relational harm, survivor autonomy, and structural inequality. In India, these failures are magnified within tribal and marginalized communities, where access to formal legal institutions is uneven and customary justice continues to shape lived experiences of conflict resolution. This article has argued that the binary opposition between state criminal law and customary justice is both analytically insufficient and normatively limiting.

Through a doctrinal, feminist, and comparative analysis, the article demonstrates that **restorative justice—when constitutionally framed and statutorily regulated—**

**can function as a viable adjunct to formal legal responses to intimate partner violence.** It rejects the false equivalence between restorative justice and informal compromise, emphasizing that restorative justice, properly understood, is not a mechanism of leniency but a structured process of accountability, repair, and survivor participation.

The examination of Khasi and Santhal customary institutions reveals a critical insight: restorative principles are culturally intelligible and historically embedded within Indian tribal justice systems, yet their unregulated application risks reproducing patriarchal domination and coercive reconciliation. These case studies illustrate that cultural legitimacy alone cannot guarantee justice. Without procedural safeguards, customary autonomy may undermine survivor dignity and equality, particularly in cases of intimate partner violence where power asymmetries are deeply entrenched.

Indian constitutional jurisprudence provides the normative tools necessary to address this tension. The doctrine of constitutional morality, coupled with expansive interpretations of Articles 14, 15, and 21, mandates that all justice mechanisms—formal or informal—operate within the bounds of dignity, equality, and non-discrimination. Rather than foreclosing restorative justice, constitutional law demands its **legal transformation**. Judicial resistance to non-adversarial mechanisms in gendered crimes is best understood not as hostility to restorative principles, but as a response to the absence of statutory regulation and enforceable safeguards.

Comparative experience from Canada and New Zealand reinforces this conclusion. Indigenous restorative justice models in these jurisdictions demonstrate that cultural practices can be preserved without insulating them from

constitutional scrutiny. Their success lies in institutionalization, judicial oversight, and iterative reform informed by feminist critique. These lessons are particularly instructive for India's plural legal landscape, cautioning against romanticization while affirming the possibility of principled integration.

This article's central contribution lies in articulating a **constitutionally grounded restorative justice framework** for intimate partner violence—one that respects tribal autonomy while unequivocally prioritizing survivor autonomy, safety, and accountability. By proposing statutory safeguards, judicial supervision, and institutional oversight, the article offers a concrete pathway for reform that neither abandons cultural pluralism nor compromises gender justice. The comparative assessment presented in **Figure 1** reinforces the article's central claim that restorative justice, when constitutionally framed as an adjunct mechanism, enhances survivor autonomy and accountability while mitigating the coercive risks associated with both punitive and informal justice models.

Ultimately, restorative justice should not be viewed as an alternative to law, but as a means of **deepening justice** where punitive systems fall short. In recognizing survivors as active agents rather than passive complainants, and communities as accountable participants rather than coercive enforcers, a regulated restorative justice framework holds the potential to transform how intimate partner violence is addressed in India. The challenge is not whether restorative justice is compatible with the Constitution, but whether the law is willing to evolve to meet the demands of dignity, autonomy, and lived justice.

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