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Victim Offender Mediation in Juvenile Delinquency : A Reformatory Approach

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Abstract

Juvenile delinquency requires reformatory approach and not purely punitive measures. This article evaluates the idea of integrating mediation specifically the victim offender mediation (VOM) model into the traditional juvenile justice system in India to fulfil the goals of restorative justice. The current justice delivery mechanism offers the victim a limited scope to participate in the adjudication process and at the same time it fails to adequately address the rehabilitative needs of young offenders. On the other hand the victim offender mediation model involves both the victim and the offender in the process equally by facilitating dialogue and acknowledging the harm caused. The article critically analyses the international practices, including jurisdictions where VOM has been a long stand practice in an institutionalised manner to draw insights relevant to Indian context. It also outlines the criticism and challenges that are associated with the implementation of VOM within the juvenile justice system. The article concludes by proposing a structured way forward suggesting the incorporation of VOM within the system through statutory framework, trained mediators, clear guidelines and adequate safeguards. Such an integration can bring a change towards the victim centric approach of criminal justice system while fostering rehabilitation, accountability, and reintegration of juvenile offenders into the mainstream society.

Keywords : Victim Offender Mediation, Restorative Justice, Juvenile Delinquency, Rehabilitation.

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Introduction

With the ever-increasing backlog of cases finally affecting the courts, Alternative Dispute Resolution mechanisms are being seen as helpful tools to assist parties in arriving at amicable settlements.² Among these tools, mediation proves to be an efficient way of resolving disputes. In India, this belief has been further strengthened by the enactment of the Mediation Act 2023, reflecting the government's commitment towards a structured, efficient, and credible dispute resolution process. Though the law has imposed certain restrictions on mediating criminal cases, yet a lot of scope still remains for the addition of mediation to the criminal justice administration to support and not replace it. This becomes all the more important in cases of juvenile offenses, where the VOM model can facilitate opportunities for rehabilitation and reconciliation.³

An ideal criminal justice system is based on three main principles: Retribution, Reformation, and Rehabilitation.⁴ The current criminal justice delivery system in India focuses mainly on punishment whereas reformatory justice aims to reform offenders and help them reintegrate into the mainstream society. Restorative justice seeks to repair the damage caused by crime. The core aim of restorative justice is to bring both victims and offenders as close as possible to their pre-crime conditions acknowledging that complete restoration is often unattainable, yet striving to achieve it to the greatest extent possible.⁵ Mediation, when thoughtfully applied, holds the potential to operationalize these restorative ideals within the criminal justice context.

Understanding the Concept of Restorative Justice

Restorative justice practices bring all stakeholders involved in an offense together to decide what is to be done to repair the harm caused and its repercussions in the future. Fundamentally, this approach recognizes that crime is not just a violation of the law or an

² Law Commission of India, *Report No 245: Arrears and Backlog—Creating Additional Judicial (Wo)Manpower* (2014) 6.

³ S Mohan, 'Mediating the Victim–Offender Mediation in India: Possibilities and Challenges' (2025) 4 *NUJS Journal of Dispute Resolution* 1.

⁴ Mirko Bagaric and Julie Clarke, 'Criminal Rehabilitation: A Taxonomy and a Defense' (2022) 4 *Journal of Criminal Law and Criminology* 1

⁵ Howard Zehr, *The Little Book of Restorative Justice* (Good Books 2002).

offense against the state; rather, it is essentially a breach of trust between people and the relationships connecting them.

The intellectual roots of restorative justice can be traced to the work of psychologist Albert Eglash, who introduced the concept of “Creative Restitution.”⁶ This approach focused on humanity and accountability as its main ideas. The goal is to reduce the victim's pain and also to provide genuine chances for the offender to rehabilitate. Unlike traditional punishment methods, restorative practices aim to encourage dialogue and responsibility offering a way to achieve reconciliation.

In this model of justice, the focus is on addressing the root causes of the offence, recognizing the circumstances in which it happened, and creating ways for the offender to show remorse. At the same time, the victim seeks acknowledgment and satisfaction.⁷ In contrast, the traditional criminal justice system mainly looks at three questions: What law was broken? Who broke it? What punishment is fair? However restorative justice shifts the focus to: Who has been harmed? What do they need? How can we repair the harm as much as possible?

The philosophy of restorative justice is often expressed through the “Five R’s”: Relationship, Respect, Responsibility, Repair, and Reintegration. These principles focus on rebuilding social bonds, recognizing dignity, accepting responsibility, restoring harm, and helping offenders return to the community. Thus restorative justice offers a complete way to address crime. It goes beyond punishment and aims for healing and transformation for everyone involved.⁸

VOM as a Model for Restorative Justice

Victim-Offender Mediation (VOM) is one of the most practiced and studied model of restorative justice.⁹ It is a structured mediation process that allows direct, face-to-face communication between the victim and the offender. This happens with the help of a trained and neutral mediator, often in presence of relevant stakeholders. Unlike adversarial procedures, where parties stand against each other, VOM promotes dialogue and

⁶ Albert Eglash, ‘Creative Restitution: Some Suggestions for Prison Rehabilitation Programs’ (1958) 4(1) *American Journal of Correction* 20.

⁷ Daniel W Van Ness and Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice* (5th edn, Routledge 2015) 43.

⁸ Gerry Johnstone, *Restorative Justice: Ideas, Values, Debates* (2nd edn, Routledge 2011) 78.

⁹ Mark S Umbreit, Robert B Coates and Betty Vos, *Victim Meets Offender: The Impact of Restorative Justice and Mediation* (Willow Tree Press 2001) 3.

understanding by letting both sides share their experiences and viewpoints.¹⁰ This process gives victims space to talk about the personal impact of the crime, including emotional, social, and material effects at the same time it also allows offenders to take responsibility, show remorse, and explain their behavior.

The primary goal of VOM is not just to find guilt or impose punishment rather it focuses on developing a restitution plan that both parties can agree on.¹¹ This plan usually aims to repair the harm suffered by the victim while guiding the offender toward accountability and reintegration. By highlighting the offender's recognition of harm and the victim's right to be heard, VOM addresses the human aspects of crime that traditional justice processes often miss. For many victims, the opportunity to confront the offender directly offers a sense validation and closure. For offenders, this process encourages empathy, responsibility, and the chance for moral growth.¹²

The juvenile justice system being a different framework from the regular criminal justice system, makes it an ideal choice for mediation particularly using the VOM model. Juvenile courts focus on rehabilitation instead of punishment.¹³ The aim is to guide young offenders away from crime and toward positive citizenship. Mediation supports this rehabilitative approach by allowing young offenders to reflect on their actions, recognize their impact, and make amends for the harm they caused.¹⁴ It also gives victims a chance to be heard and validated, while minimizing the stigma and confrontations that can deepen delinquent behaviors in young people. Therefore, VOM can be an effective tool in preventing reoffending and encouraging social reintegration for juvenile offenders.

Like other mediation models, VOM relies on confidentiality, voluntary participation, and neutral facilitation.¹⁵ The mediator's role is not to determine outcomes but to ensure that the conversation is respectful, balanced, and constructive and at the same time to make sure that

¹⁰ Allison Morris, 'Critiquing the Critics: A Brief Response to Critics of Restorative Justice' (2002) 42(3) *British Journal of Criminology* 601, 603.

¹¹ Tony F Marshall, *Restorative Justice: An Overview* (Home Office Research Development and Statistics Directorate 1999) 7.

¹² Mark S Umbreit, *Mediating Interpersonal Conflicts: A Pathway to Peace* (West Conshohocken: Infinity Publishing 2005) 24.

¹³ Barry C Feld, *Bad Kids: Race and the Transformation of the Juvenile Court* (Oxford University Press 1999) 20.

¹⁴ Allison Morris and Gabrielle Maxwell, 'Restorative Justice for Juveniles: Conferencing, Mediation and Circles' in Allison Morris and Gabrielle Maxwell (eds), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Hart Publishing 2001) 7.

¹⁵ Centre for Justice and Reconciliation, 'Victim Offender Mediation' (Prison Fellowship International, 2012) <https://www.restorativejustice.org> accessed 18 October 2025.

the agreement reached is fair and meaningful for everyone involved. However, VOM is different from civil mediation because the parties are not traditional disputants rather they are connected through the commission of a crime. The process can start through referrals from the police, the prosecution, or the courts. It may happen either before prosecution or after someone admits guilt. Successful completion of a mediation agreement can restore a sense of dignity and closure for victims, while providing offenders with the opportunity to make amends and move forward in a socially responsible manner.

It is however essential to ensure that participating in VOM does not further traumatize the victim. Safeguards must be in place to create a safe and supportive environment for the mediation to take place. Participation should be completely voluntary for both the parties.¹⁶ Only in such conditions can VOM genuinely reflect the restorative goal of repairing harm while promoting reconciliation and reintegration.

Legal Policy and Framework in India

The creation of a separate justice system for juveniles intends that prisons are meant for adult offenders. The state has a responsibility to focus on reforming and rehabilitating children who break the law, helping them reintegrating to the mainstream society. In India, the main law governing this is the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act 2015).¹⁷ This act lays out a clear framework for protecting, caring, treating, and rehabilitating children who are in conflict with the law or who need care and protection.¹⁸

The JJ Act 2015 replaced the earlier Juvenile Justice Act from 2000 and introduced important reforms, focusing more on rehabilitation and reintegration. The Act follows international standards, especially the United Nations Convention on the Rights of the Child (UNCRC).¹⁹ It ensures that young offenders are treated with respect, that their privacy is protected, and that they have access to legal help throughout the process.²⁰ It also establishes various institutions, including Children's Homes for those in need of care and protection, Special Homes for juveniles who come into conflict with the law, Observation Homes for temporary

¹⁶ United Nations Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programmes* (2nd edn, UN 2020) 33.

¹⁷ Juvenile Justice (Care and Protection of Children) Act 2015.

¹⁸ Ved Kumari, *The Juvenile Justice System in India: From Welfare to Rights* (Oxford University Press 2010) 145.

¹⁹ United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

²⁰ Juvenile Justice (Care and Protection of Children) Act 2015, s 3 (Principles of child-friendly justice).

reception during inquiries, and After-Care Organisations to support children moving out of institutional care.²¹

Despite its focus on rehabilitation, the JJ Act 2015 does not include mediation as a tool in the juvenile justice system. It is worth mentioning because mediation, especially through the Victim-Offender Mediation (VOM) model, could help achieve the Act's goals. By creating a space for dialogue, accountability, and restitution, mediation could support existing rehabilitation efforts. It can aid in reintegrating juvenile offenders into society while also giving victims a sense of closure and recognition that is often missing in traditional processes.

International Models

1. Canada

Victim Offender Mediation (VOM) started in Canada in 1974 when two people who had been charged with vandalism met with their victims to talk about how to make things right. Many people think that this was the first official VOM program in the world. Since then, many similar projects have started all over the country and have sparked similar movements around the world.

A number of significant legislative and policy developments have impacted the development of restorative justice in Canada. The first significant turning point was the passage of Bill C-41, which emphasised community-based sanctions and granted legal recognition for alternatives to incarceration.²² Second, the important decision in *R v. Gladue*²³ by the Supreme Court of Canada made clear the necessity of addressing the special requirements of Indigenous offenders and minimising the use of incarceration. The Court clarified that the goal of restorative justice principles is to make amends for the harm caused by crime while taking victims, offenders, and communities into account. It is not about being lenient. The 1999 Speech from the Throne, which acknowledged restorative justice as an important component of Canada's social and legal framework, was another significant event.

²¹ Juvenile Justice (Care and Protection of Children) Act 2015, ss 47–50, 53–55.

²² Sentencing Reform, Bill C-41, *An Act to amend the Criminal Code (sentencing)*, SC 1995, c 22.

²³ *R v Gladue* [1999] 1 SCR 688.

Sentencing circles, community conferences, and victim-offender mediations are the three primary forms of restorative practice models that emerged in Canada as a result of these developments. During the 1991–92 fiscal year, the Correctional Service of Canada (CSC) began providing victim-offender mediation services in a limited capacity, primarily in the Ontario and Pacific regions. Recognising the benefits of restorative practices, CSC established the Restorative Justice Division in 1996 and the Restorative Opportunities (RO) Program nationwide in 2004. In order to foster understanding, accountability, and emotional healing, this program encourages communication between victims and offenders, incorporating restorative dialogue into the correctional process.

VOM is one of the aspects that CSC can utilize in ensuring safe and effective reintegration. To criminals, it allows them an opportunity to know the human price of their actions, accept responsibility and make amends that are meaningful. To victims, it provides an avenue to air the physical, emotional and financial impact of crime, directly ask questions and finding closure in the process of a conversation. The Criminal Code of Canada has been amended in 1996 reinforcing the restorative principles.²⁴ These developments emphasized the necessity of community-oriented sentences and promoted the responsibility of the offender and his compensation. According to paragraph 718.2(e) of the Code, the only thing stated is that all the available sanctions besides imprisonment as long as they are reasonable under the circumstances should be considered on all offenders with specific references to the circumstances under which Aboriginal offenders are involved.²⁵

All of these legal, institutional, and philosophical shifts have entrenched restorative justice in the criminal justice system of Canada. VOM, specifically, is an important tool that facilitates rehabilitation of offenders and healing in the community. It portrays a broader social trend towards reconciliation and restorative responsibility as well.

2. Sweden

Victim-Offender Mediation (VOM) started to develop in Sweden in the late 1980s. It wasn't until the Mediation Act was passed that the practice gained a formal legal basis. Under the law, VOM is part of the municipalities' social welfare system, making it a locally run service instead of a court function.²⁶ It provides that each municipality must ensure that mediation

²⁴ Criminal Code of Canada, RSC 1985, c C-46, as amended by SC 1995, c 22.

²⁵ Criminal Code of Canada, RSC 1985, c C-46, s 718.2(e).

²⁶ Mediation Act 2002:445, s 1–2.

services are available for cases involving individuals under the age of twenty-one who have committed an offence. The local mediation service decides whether to accept or reject a case for mediation. They evaluate the suitability of each situation based on its specific details.

Initially, there was significant resistance in Sweden to using VOM in serious crimes. Many thought it was only appropriate for minor or non-violent cases. However, this view has gradually changed. Now, the approach is seen as suitable for more types of offences. A young offender's willingness to take part in mediation is seen as an important factor that can affect prosecutorial discretion, especially when deciding whether to waive prosecution.²⁷ Likewise, the occurrence of mediation may also influence the court's decision on the type or severity of the punishment imposed.

Though VOM in Sweden collaborates with the conventional justice system, it is not an alternative to formal prosecution but is a complementary process that aims at promoting accountability, restitution, and dialogue. The Mediation Act offers an approximate guideline regarding the implementation of the mediation services. The Act establishes the scope and ethical standards of mediation but permits numerous other details of its procedure, including referral and location of services, to be left to local discretion. This way, the Act offers flexibility and yet the principles are evenly spread across the country.

The Law on Special Provisions concerning Young Offenders stresses on the mediation importance. It mandates police to question the juvenile criminals to determine whether they have been provided with mediation and report it to the social services. Municipal social service agencies then have to initiate the required measures in order to make mediation an alternative to every case. Notably, victim-offender mediation does not involve the court process, the courts take no part or preside over the mediation process. But the outcome of mediation can be taken into account by both prosecution and judicial ruling in regard to waivers or sentencing.

The Sweden's model shows how restorative justice can fit into a decentralized, welfare-based system while maintaining the integrity of formal legal processes.

3. USA

²⁷ Mediation Act 2002:445, s 3; see also prosecutorial guidelines in Swedish Prosecution Authority practice.

The victim-offender mediation in the United States during the 1990s acquired greater importance. This happened in conjunction with the rise of the restorative justice movement in search of positive options to supplement the normal retributive approach of criminal justice. The growth in interest reflected a shift toward practices emphasizing accountability, dialogue, and healing at the community level rather than punishment alone. VOM became, over time, one of the most utilized restorative approaches within the country. It supplemented the formal justice process rather than replacing it.

In the United States, VOM programs are often run by nonprofit organizations that get referrals from courts, probation departments, or parole officers.²⁸ These programs work closely with the justice system but have an independent, community-based structure. Mediators are typically volunteers or professional staff that are objectively trained as neutral facilitators. They provide a platform upon which victims and criminals can express their experiences of being harmed and seek means of mending it. Once an agreement is made between the two parties, they usually sign a written contract which usually contains restitution, apologies and on rare occasions, the parties may engage in rehabilitation activities as a measure of ensuring they do not repeat offending. Although these agreements are not consistent in the legal court, they are mostly perceived as key milestones in solving emotions and accountability.

Depending on the state one applies in, the eligibility conditions to VOM are highly different, which is an indication of federal system of justice in America. For instance, in California, victims can seek mediation even in serious offence cases like murder, kidnapping, or sexual assault, as long as all parties agree to take part.²⁹ Conversely, Colorado does not allow courts to require restorative justice interventions in sexual assault or intimate partner violence cases, although VOM is still used for victims of other violent crimes such as homicide, assault, and robbery.³⁰ These differences reflect how criminal justice is affected at the state level by legislation and judicial discretion regarding incorporating restorative practices into criminal justice process.

²⁸ Mark S Umbreit and Marilyn Peterson Armour, *Restorative Justice Dialogue: An Essential Guide for Research and Practice* (Springer 2010) 43.

²⁹ California Code, Penal Code § 14150 et seq

³⁰ Colorado Revised Statutes § 18-1.3-104 (2023); Colorado Restorative Justice Coordinating Council, *Restorative Justice Practices in Colorado* (2021) <https://rjcolorado.org> accessed 22 October 2025.

The American VOM model is a diverse and locally responsive model that is based on grassroots participation. It promotes personal responsibility, victim empowerment, and reintegration into society by getting victims and offenders to talk to each other. These ideas are very much in line with the restorative justice philosophy that guides modern criminal reform policy in the United States.

The Need for Victim - Offender Mediation in Juvenile Delinquency

VOM (Victim Offender Mediation) offers a unique, victim-centered approach to addressing juvenile delinquency that aims to restore both the material and emotional losses to the victim while at the same time assist the young offender's moral and social rehabilitation. Thus, VOM focuses on restoring the victim's losses through the mediation process and assists the young offender in understanding the consequences of his/her behavior through the restitution process. The mediation process is used to educate the juvenile about the consequences of his/her actions and to develop empathy toward the victim. VOM creates a new and positive way to experience the justice system that replaces the traditional punitive experience where the juvenile was simply punished for the violation and provided no opportunity to learn from the violations.

Juvenile Justice Systems around the world have a common goal; to reintegrate youth back into society and to provide opportunities for the youth to develop positive life skills.³¹ International standards recognize that the primary goal of juvenile justice systems should focus on helping youth to become productive members of society.³² VOM is a valuable resource for creating positive relationships between victims and offenders and can help to reduce the distance between them.³³ VOM allows the young offender to begin to re-establish a connection to their community through recognition and reparations to the victim. Additionally, VOM provides the victim with emotional closure through the acknowledgment of their loss and the payment of reparations to them. Overall, VOM is consistent with the rehabilitative and restorative principles of the juvenile justice philosophy and humanizes the traditional justice system.

³¹ United Nations, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*, GA Res 40/33 (29 November 1985) Rule 26.1.

³² United Nations, *Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)*, GA Res 45/112 (14 December 1990) para 5.

³³ UN Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programmes* (2nd edn, United Nations 2020) 41–44.

Challenges and Criticism

Although the Victim-Offender Mediation (VOM) model has numerous advantages, it also possesses certain challenges. Among the most acute questions, there is the potential of power imbalance between the victim and the accused. There are also cases when victims may feel implicit or explicit pressure to participate in mediation and this would compromise the voluntary nature of the process. The same can be said of offenders who can agree to mediation in order to receive a lighter sentence or better deal in the courts not because they are repentant or wish to recompense their sins.³⁴

Another valuable criticism is that VOM is not applicable to certain kinds of offence, particularly sexual assault, domestic violence or a highly personal and traumatic crime.³⁵ Under such circumstances, the victim might be retraumatized after facing the offender, which nullifies the very restorative objective of emotional healing.³⁶ To protect the victim against further psychological damage, numerous jurisdictions do not allow the use of VOM in such cases.

One other issue is the connection between consent and juvenile delinquency. Any other dispute resolution processes are all consensual, but in the case of minors, informed consent is a complex issue since the legal authority to make informed consent is complicated. Ethical and procedural issues regarding voluntariness and informed participation are in force since children are often believed to be incapable of fully comprehending the consequences of the mediation process. As such, there must be protection to ensure that the rights and well being of the victim, as well as the juvenile, are adequately preserved.

In addition, the institutional and structural challenges to the successful implementation of VOM in India are quite significant. The process remains in its infancy with little awareness among stakeholders, lack of policy frameworks that can guide mediation, and to mediate on such delicate victim-offender relationships, there are no qualified mediators. Mediation

³⁴ Joanna Shapland and others, *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders* (Routledge 2011) 85–86.

³⁵ UN Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programmes* (2nd edn, United Nations 2020) 61–63.

³⁶ *ibid* 64–65.

sessions expose the risk of not realizing its restorative purpose or even increasing the pre-existing tension between parties.

All this combined reflects the way VOM has to be implemented cautiously and contextually, supported by professional training, victim-centered procedures, and involving clear procedural protective measures, to ensure that mediation does contribute to the purpose of restorative justice.

Conclusion and way forward

In the phenomenon of alternative dispute resolution, mediation has taken a centre stage as a means of resolving civil issues in a friendly and non-disclosure manner and has become a highly effective means of seeking an amicable solution to legal wrangles. Victim-Offender Mediation, especially, is being promoted as a very promising instrument of the restorative justice paradigm, and is being adopted in a slow and significant manner, literally transforming the way we view the criminal justice system. Nonetheless, the concept of VOM is unrecognized and uncovered by both the current Juvenile Justice Act, 2015 or the Mediation Act, 2023.³⁷ The plea bargaining process under the Bharatiya Nyaya Sanhita 2023 exists but that does not quite fit in the model that VOM is founded on which focuses more on real communication, healing and reconciling emotions.³⁸

Concerning the victim-offender mediation system within the criminal justice system of India, the legislative reform is urgently needed in order to transform the given process into the institutionalised norm. An effective legislative system, which incorporates the ideas of victim-offender mediation and restorative justice into the framework of larger justice, could be formulated. It will need to clearly state what kind of cases would be eligible to the mediation and establish the eligibility requirements, and then the process that will be followed by the mediators. A system that achieves all this will also introduce codes of ethical behaviour and the mediator training courses that will be provided to equip the mediators to utilize their skills on communications, sensitivity to traumas, conflict resolutions and restorative measures, everything that could be incorporated in a holistic legal code. Correct

³⁷ The Juvenile Justice (Care and Protection of Children) Act 2015; The Mediation Act 2023 (India).

³⁸ Bharatiya Nyaya Sanhita 2023, s 289–303.

certification and training on such issues will also provide the needed legitimacy and will also continue to grow, protect, rights of the victims, and the offenders.

VOM implementation will be guided by the context-sensitive approach. The fact not every offence, especially those that include serious violence or sexual offenses, can be mediable means that a single-fits-all approach would not fit this case. Any framework proposed must thus possess a mechanism of sieving cases in order to ascertain their appropriateness in ascertaining voluntariness, an informed procedure and non-coercion. Participants who are in danger, especially children, would be given special consideration, and abuse of restorative mechanisms through the claim of leniency would be avoided.

In my opinion, the introduction of victim-offender mediation to the Indian juvenile justice system offers a possibility of switching to a more humane, inclusive, and restorative approach to justice. VOM can be a path forward in an issue where justice not only rules but also restores by balancing between accountability and compassion, reparation and reintegration.