

Scope of ADR in Criminal Justice System in India



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1- Introduction

People have a comprehensive concept of the law as a regulator of social well-being and as a safeguard for society. In India, the law is split into three categories: judiciary, legislature, and executive. Furthermore, the legislation has been both substantive and procedural in nature. People come to the law for aid with a variety of issues, including civil cases, criminal cases, family disputes, and consumer-producer disputes, among others. All of the other subjects, with the exception of criminal law, are disputes between people or groups of individuals, whereas criminal law deals with disputes between the state and an individual or group of individuals. The state has sole jurisdiction over the punishment of those who have been accused or found guilty of crimes. In this situation, it's critical to understand why the government is intervening in criminal issues. The reason for this is that the state's responsibility is to maintain law and order. The prevailing policy in India is that those who are guilty should be punished. This principle has been in use from the beginning of time to the present day.

People and legal professionals have recently debated whether punishment should be the only answer to a crime. Why is there no other option for resolving problems? Unlike civil law, criminal law necessitates greater caution in both interpretation and execution, as even a single error can result in a significant loss of law, order, and justice. However, this article will go into some of the ways that Alternative Dispute Resolution can be used to resolve certain sorts of offences¹.

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2- Pendency of cases and delay in justice in Indian Judicial System and Right to Speedy Trial

The phrase "pending" refers to a case that has yet to be decided by a court of law. The number of pending cases is growing every day, demonstrating the judiciary's inability to provide justice on time. When we compare the Indian court system to other judicial systems around the world, we can see that it is more competent and reliable. However, in comparison to other court systems throughout the world, the number of cases pending in India is higher.

Art 21 of the Indian Constitution contains a judicially recognised 'right to a speedy trial.' Citizens, on the other hand, do not have access to the right to a fast trial, causing the trial process to drag on unnecessarily. Despite the fact that the Indian Constitution guarantees citizens the right to speedy trials, the Indian

¹ <https://www.legalbites.in/adr-in-the-indian-criminal-justice-system/>

court system is burdened with a large number of cases pending. The proverb "justice delayed is justice denied" properly describes the Indian legal system. As a result, a successful deployment of ADR in India is critical to resolving this problem. There are countries that have prioritised ADR for a long time and are gradually incorporating it into daily life.

3- Alternate Dispute Resolution in Criminal Cases

The concept of an alternative dispute resolution (ADR) mechanism in criminal cases arose from a desperate need to provide a simple and accessible remedy to poor criminals who are guilty of motor vehicle accidents and other petty criminal cases, as well as some civil disputes such as matrimonial matters, debt recovery, and other civil disputes, in order to save them from inordinate delay, high litigation costs, and rigid procedure. The Legal Services Authorities Act of 1987 gave legal status to such conciliatory efforts, dubbed Lok Adalat, and the award it issued was given the status of a civil court order. Lok Adalats are now taking on a new dimension in order to help the lower sectors of society deal with their legal woes.

The civil courts have the authority under Section 89 of the Code of Civil Procedure to refer a case to Lok Adalats for alternative conflict resolution methods such as conciliation, arbitration, mediation, and judicial settlement. However, unlike civil disputes, the scenario in the criminal context differs, and the distinction has been enunciated as follows:

In the criminal context, ADR symbolises a trend toward restorative justice, which considers a crime as a violation of one person's right by another, with justice focusing on mending the victim's pain.

In the criminal context, ADR includes a concept of reparation in the context of transitional justice, which may or may not be present in civil mediation.

In criminal instances, ADR entails a final settlement that must be declared in court under varied rules, however in civil situations, the same is confidential and solely between the parties.

The Indian criminal justice system, on the other hand, was not open to the idea of including mediation as an option, as evidenced by the landmark case of Afcons Infrastructure and Ors. v. Cherian Varkey Construction and Ors², which held that criminal cases should not be decided through alternative dispute resolution methods³.

² <http://www.legalservicesindia.com/article/1248/Afcons-infrastructure-and-Ors.-v.--Cherian-Verkay-Construction-and-Ors.html>

³ <https://blog.iplayers.in/alternate-dispute-resolution-criminal-jurisprudence/>

Mediation in Criminal Cases:

Mediation is a type of dispute resolution method in which the parties voluntarily decide on a solution that is acceptable to them. Both parties have the ability to withdraw from the mediation process at any moment without having to give a reason. It is a party-centered approach since parties participate directly and actively in the mediation process for the resolution of their conflict. The Allahabad High Court Mediation and Conciliation Centre were inaugurated on October 6, 2006 by the Hon'ble Allahabad High Court (AHC/MCC). Mediation is thought to be a very beneficial method since it allows for better and more effective communication between the parties while also assisting in the maintenance, improvement, and restoration of their relationship. In contrast to the courtroom, mediation might result in a win-win situation for the parties. There is a win-loss situation, as well as a final outcome. It leads to a quick, efficient, and cost-effective resolution of the issue, as well as a mutually beneficial settlement.

There are a number of ADR practises in the criminal justice system that are not considered traditional criminal justice practises, such as victim/offender mediation, family group conferencing, victim offender panels, victim assistance programmes, community crime prevention programmes, sentencing circles, ex-offender assistance, community service, and plea bargaining school programmes. Mediation has worked miracles in many nations, including the United States, Canada, the United Kingdom, and Sweden, and it is now considered a highly essential and useful tool by litigants in our country during the last decade or so. In India, this mechanism is operating as a wonderful exchequer, as it is performing exceptionally well.

LOK ADALAT:

The term 'Lok Adalat' loosely translates to "People's Court." Lok Adalat is an innovative form of alternative dispute resolution (ADR) method developed by India for settling disputes amicably, in which cases are referred for fast justice among parties wanting to settle their issues. Lok Adalat combines conciliation and negotiating approaches to resolve issues, and there are no court expenses in Lok Adalat.

With the creation of Lok Adalat, a new chapter in the justice system was added. Retired judges, social activists, and other members of the legal profession preside over the cases. The major function of Lok Adalat is to facilitate compromise between the parties. The Lok Adalat cannot judge the issue on its

merits; instead, it assists the parties in reaching an agreement. The settlements reached by the Lok Adalat are legally binding on both parties. In Lok Adalat, there are no court fees. If the problem is not settled in Lok Adalat, the case would be brought back to court. As a result, we can conclude that Lok Adalat plays an important role in settling the dispute through ADR, making it more cost-effective, time-consuming, and efficient.

4- TYPES OF ADR IN INDIA:

Arbitration: Arbitration is a type of alternative dispute resolution that has been granted legal status by the court to serve as a "out of court" settlement. Arbitration entails a third party (one or two people) deciding a dispute, with both parties agreeing to follow the rules. Both parties are legally bound by an arbitration award, which can be enforced in court.

Negotiation: Negotiation aims to resolve issues between parties by reaching an agreement on a course of action that benefits the individual or the group. During the negotiation process, the attorneys for each party work together to steer the issue toward a resolution, such as a plea bargain. Negotiation has become an important aspect of many disagreements, whether they are in business, non-profit organisations, legal proceedings, government branches, between two or more countries, or in personal situations like marriage, divorce, and parenting. The most basic form of alternative dispute resolution is this.

Concept of Plea Bargaining:

Plea Bargaining is utilised successfully in many jurisdictions throughout the world, and it is defined as a pre-trial settlement between the accused and the prosecution in which the accused pleads guilty in exchange for concessions from the prosecution.⁴

However, the Supreme Court was not always in favour of introducing Plea Bargaining into the Indian criminal jurisprudence, which is evident from the following judgments:

- In *Murlidhar Meghraj Loya vs the State of Maharashtra*, the Hon'ble Supreme Court was not in favour of the inclusion of the concept of plea bargaining as it intrudes with the fundamental right of a person

⁴ <https://blog.iplayers.in/alternate-dispute-resolution-criminal-jurisprudence/>

accused of an offence shall not be compelled to be a witness against himself

- In *Kasambhai vs State of Gujarat & Kachhia Patel Shantilal Koderlal vs State of Gujarat and Anr*, The apex court, while criticising and regretting the plea bargaining accepted by the magistrate stated that plea bargaining is against public policy. Furthermore, the court also held that plea bargaining was ultra-vires to the society and the Constitution and also that it might encourage collusion, corruption and pollute the pure fount of justice.
- In *Thippeswamy vs State of Karnataka*, the Court stated that persuading or leading an accused to plead guilty under a promise or assurance would be violative of Article 21 of the Constitution. .
- It was the 154th Report of the Law Commission, which first suggested the inclusion of the concept of Plea Bargaining in Indian Criminal Jurisprudence as an alternate to the traditional dispute resolution via courts and the hence paved way in the Criminal Procedure Code, 1973 (CrPC) as Chapter XXIA, Sections 265 A to 265L through the Criminal Amendment Act, 2005. It allows for plea bargaining for cases wherein the maximum imprisonment is for 7 years, wherein the offence does not affect the socio-economic condition of the country and also where the offence is not committed against a woman or a child below 14 years of age.⁵

Conciliation: Conciliation is an alternative dispute resolution (ADR) method in which the parties to a dispute hire a conciliator, who meets with them separately and together to try to resolve their differences. This procedure is similar to mediation, but it varies in that it has no legal standing, and the conciliator has no legal authority to seek evidence or summon witnesses, and normally does not publish a judgement or make an award.

Mediation- Mediation is a type of ADR that tries to resolve conflicts by supporting disputants in reaching an agreement. Mediation entails the involvement of a third person who attempts to resolve a conflict by working on it. Mediation is the type of alternative dispute resolution that is particularly concerned with criminal justice. Mediators frequently employ appropriate

⁵ Ibid

strategies and/or talents to help disputants overcome their differences and come to an agreement.

5- INTERNATIONAL INSTANCES WHERE CRIMINAL CASES WERE SOLVED USING ADR

USA (Victim-Offender Mediation Process)- The victim and the offender of the crime are brought together to meet face-to-face under the organised leadership of a mediator in the United States. Mediation can happen at any point during the legal process, but it nearly always happens after the court has been involved. According to a national survey performed by the US Department of Justice, nearly a third of mediations occur before any formal judgement of guilt, while more than half occur thereafter. In the United States, even the most serious violent offences, such as serious assault and homicide, have been successfully mediated.

Philippines: A locally chosen Barangay captain and a "peacekeeping committee" hear cases involving conflicts amongst residents under the Barangay court system. A mediation session is held, which is facilitated by the captain or another committee member. This process results in legally enforceable agreements that are recognised by the courts. One of the first restorative justice projects was victim-offender mediation.

Canada: Many aboriginal communities across Canada have sentencing circles. In circle sentencing, all parties, including the judge, defence counsel, prosecutor, police officer, victim, and offender, as well as their relatives and community members, sit in a circle facing one another. Those who plead guilty to a crime are usually eligible for a circle sentence. The sentencing circle is a process that takes place in the criminal court system and involves justice professionals. It aids in the sentencing process. The circle's decision is usually presented to the judge, who may or may not have taken part in the circle directly, and is not binding on the court. Circle sentencing is an example of how restorative justice ideas can be applied in a holistic framework in which justice system employees share power and authority with members of the community. In contrast to the formal and often adversarial approach to justice, circle sentencing can help individuals, families, and communities re-acquaint themselves with problem-solving skills, rebuild relationships, promote

awareness and respect for values and the lives of others, address the needs and interests of all parties – including the victim – and focus action on causes rather than symptoms of problems.

Czech Republic: In an endeavour to mediate effective and pro-social remedies to crime-related issues, the Probation and Mediation Service is involved in pretrial and court processes. Mediation can only take place if both parties agree to it voluntarily. Effective bargaining is a skill that mediators possess. They assist conflicting parties in resolving their disagreements and finding a mutually acceptable solution to the problem.

South Africa: Occasionally, community conferencing is utilised as an alternative measure programme to divert an offender from the criminal court system. These programmes are usually run by community organisations or agencies, with or without government funding. Compliance with the terms of the agreement by the offender may or may not be supervised by law enforcement or justice officials. Peacemaking gatherings produce restorative outcomes such as apologies, restitution, and recompense.

Need of ADR in Criminal Disputes:

The judiciary is recognised as the most important organ in which people place their trust. The purpose of the judiciary is to resolve all types of conflicts and to provide justice to the innocent by punishing offenders in an impartial and independent manner. People are losing faith in Indian courts these days, and one of the causes is the delay in justice caused by outstanding litigation. As a result, Alternative Dispute Resolution (ADR) is a method established in the Indian judicial system to alleviate part of the pressure on courts. During the COVID19 lockdown, the number of pending cases is growing at an exponential rate, and ADR has become more than an alternative in some circumstances. During the state's shutdown, the Chhattisgarh High Court and Legal Authority pioneered e-Lok Adalats.

Chhattisgarh has become the country's first state to do so. The litigants were connected to the concerned court pleasantly through video conferencing, and a total of 156 cases were taken up, with 155 of them already settled. As a result,

ADR has always aided in lessening the burden of the courts, regardless of the situation.

Alternative Dispute Resolution (ADR) in criminal cases was created to provide a simple and accessible remedy to impoverished criminals who are involved in motor vehicle accidents and other petty criminal matters, saving them time, money, and a strict procedure. The Legal Services Authorities Act of 1987 has given legal standing to such alternative methods of resolving conflicts between parties outside of court, known as Lok Adalat, and the award made by it has the status of a "Civil Court order." Lok Adalats are taking on a new dimension in order to alleviate the legal woes of the poorer sectors of society.

It offers litigants with a statutory forum to settle their issues through negotiated settlements in front of Lok Adalat judges. In order to decongest the courts, the Legal Services Authorities Act, 1987 was amended in 2002 to provide for the establishment of a permanent Lok Adalat for the settlement of disputes connected to public utility services using an ADR procedure.⁶

As previously said, the existing judicial system is excessively time consuming and costly, making it unattainable for many people, resulting in injustice to the innocent. The Supreme Court of India is currently dealing with 59,867 criminal cases. The situation is significantly worse in the subordinate judicial system, with 44.75 lakh cases outstanding before India's different High Courts, 13.1 lakh of which are criminal cases, and 3.14 crore cases pending before district and subordinate courts. Overcrowding of convicts and a growth in the number of prisoners result from an increase in the number of cases.

"Quality of justice suffers not only when an innocent person is punished or a bad person is exonerated, but when criminal cases are decided with excessive delay," according to a saying. The right to a speedy trial is a cornerstone of criminal justice, however it is rarely used in the Indian legal system. As a result of the worrying state of the Indian judicial system, an alternative dispute resolution mechanism is urgently needed, particularly to decide criminal matters.⁷ The attraction for ADR stems from the fact that it is less expensive

⁶ A Critical study on ADR in Criminal Trial: <https://madhavuniversity.edu.in/critical-study-on-adr.html>

⁷ Alyssa H Shenk. Victim-Offender Mediation: The road to Repairing Hate Crime Injustice from: <http://www.vorp.com/articles/crime.html>

than traditional litigation, takes up less time, and maintains sec However, because crime is seen as a transgression against the state rather than the victim, the scope of ADR in criminal justice is limited. In addition, only the state has the authority to deal with it. The Norman invasion of Britain in the 12th century ushered in this type of organisation. Western law had previously considered crime as a quarrel between a criminal and a victim to be resolved. This may help an offender recognise his wrongdoing, repent, and make meaning of the tragedy or heal his wounds.⁸ This discussion highlights the need of ADR, as it facilitates the communication and conciliation between the victim and offender rather than leading to deterrence. As consequent to this, Western Developed Countries like U.S.A have embraced ADR models like victim-offender mediation, in their criminal justice system.

The goal of ADR is not to penalise the offender, but rather to help them repent for their actions, work to repair the harm they have caused, and reintegrate into society. The paradigm, for example, is a response to the traditional justice model, which the victim-offender mediation contributes to and implements. Revenge is not the appropriate response to all atrocities perpetrated against victims. It does not compensate victims for their losses, nor does it provide answers to concerns, alleviate worries, provide closure, or aid in the understanding of a catastrophe.

The aforementioned line of reasoning stresses the importance of ADR because it encourages rather than discourages conversation and resolution between the parties. As a result, for the judicial system to run smoothly, India must also adopt the United States' model of victim-offender mediation, which expands the scope of ADR in criminal justice while simultaneously reducing the overburdening of cases on Indian courts. As a result, we can say that an ADR mechanism in a criminal trial is urgently needed.

CONCLUSION:

In India, the Judiciary, together with the Legislature and the Executive, was designed to protect citizens' rights, but citizens can only bring their complaints to the Judiciary if their rights have been violated. India has a large population, which is one of the main causes for the rise in the number of cases, which is

⁸ Criminal cases and ADR: <https://www.lawctopus.com/academike/criminal-cases-adr/>

causing the courts to become overburdened. Many attempts are being made in the country to alleviate this load, but these efforts are insufficient, and the courts still require a strong system. Alternative Dispute Resolution (ADR) is one such technique that, by resolving disagreements outside of the courts, can successfully reduce the weight of outstanding litigation on the courts. Alternative Dispute Resolution (ADR) has gained popularity in India in recent years. It offers numerous advantages, including being less expensive, less strict, and less time demanding. In this regard, Alternative Dispute Resolution (ADR) plays an important role in criminal trials, particularly for offenders who lack access to essential services. Although the applicability of ADR in criminal trials has limitations, as our research has shown, it is advantageous for India to adopt a victim-offender model of ADR in which the offender can feel sorry for what he has done, which will help to reduce the growing number of prisoners in India and speed up the trial process. The ADR system's tools for guaranteeing proper justice are increased awareness and effective actions. People need to understand the importance of ADR; only then will they be able to ensure that justice is delivered quickly and effectively. ADR actions can ensure that the common people of India receive cost-effective and timely justice.



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