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Importance of ADR in Criminal Justice

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ABSTRACT

Alternative Dispute Resolution or simply ADR is the procedure for settlement of disputes between two or more disputant parties, usually outside the court without following rigid litigation processes, by means of mediation, arbitration or negotiation. The main purpose behind the establishment of the system of ADR was to reduce the burden on courts, to make the litigation inexpensive and less rigid to those who can't afford more time and money. In the Criminal Jurisprudence any criminal acts/offences are regarded as crimes against the State, but not against the victim and only State has the Jurisdiction to address it. Since, ADR is a dispute resolver, it is very difficult to call crime a dispute and hence, ADR is only restricted to petty crimes like matrimonial disputes, motor vehicle cases etc. But the Indian Courts today are flooded with numerous cases resulting in pending litigation. But it is also very necessary to reduce the over-burden of litigation on the Courts.

Thus, this paper focuses on the essentiality of ADR in Criminal trial and to increase its scope for the same. The main purpose behind this paper was to educate people and make them realise the importance of ADR. In addition, this study also analyses the system of Alternative Dispute Resolution in India, its types, their functions, role in the Indian Criminal Judicial system and a brief comparison of ADR in different countries.

I. INTRODUCTION

Lon L. Fuller describes Alternative Dispute Resolution (ADR) as: “a road that parties must travel to arrive at their goal of mutually satisfactory settlement.” Any dispute is just like a Cancer. If it is resolved sooner, it is better for all the parties concerned to it. In Indian courts the no. of cases pending are huge. The present system falls short to deliver rapid and reasonable support to the party. The procedure is also very complex. This leads to a search for an alternative mechanism which should be inexpensive and quick. A new inclination that can be observed in the realm of alternate dispute resolution is its applicability in criminal matters. Alternative Dispute Resolution (ADR) includes methods that are out of court proceedings. It usually includes negotiation, mediation, arbitration, collaborative law and

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conciliation. Thus, there are different types of ADR for facilitating in different civil as well as Criminal matters.

The foundation of justice administration in any state-based formal justice system involving civil and criminal justice, institutions like police, public prosecution, and courts³. However, in spite of well-established formal mechanism of criminal justice system in India, there is huge backlog and pendency of cases, due to which the justice has often been delayed. The essence of Criminal Justice is speedy trial and it is certain that delay in trial by itself be equivalent to denial of justice. The emphasis on the need of ADR can't be enough. This paper tries to shed some light on it. ADR, particularly mediation, focuses on resolving the disputes between the parties and maintaining the harmonious relations between them. Hence, it is perfect tool for rendering the restorative justice in criminal matters. When it comes to ADR in criminal cases there are arguments both for and against it because there are certain limitations that have also been pointed out in this study.

There is a judicially recognized 'right to speedy trial' as part of **Art 21** of the Indian Constitution. However, the right to speedy trial is not made accessible to the citizens making the trial procedure prolonged because of undue delays. Although, the Indian Constitution has provided its citizens with *right to speedy trials*, Indian Courts' system is suffering with huge number of cases pending. The saying "justice delayed is justice denied" perfectly applies to the Indian Judicial system. Therefore, to solve this issue, the successful implementation of ADR in India is very much essential. There are countries which has given importance to ADR long before and are gradually adapting it in every day matter. The paper has also mentioned a comparative study on this to see where Indian stands when it comes to implementation of ADRs.

II. TYPES OF ADR IN INDIAN JUSTICE SYSTEM

These are the following types of ADRs practiced in Indian Justice System.

- **Arbitration**- It is a form of ADR which has got legal sanctity by the court to act as the 'out of court' settlement. Arbitration includes resolving disputes by the third party (one or two persons) and both the parties are bound to follow the same. An arbitration award is legally binding on both sides and enforceable in courts.
- **Negotiation**- Negotiation intends to solve the disputes between the parties by producing an agreement, upon course of action, for the individual's or collective

³EwaWojkowska, *Doing Justice: How informal justice systems can contribute* (Oslo), 2006, 9.

advantage. In the process of negotiation, the attorneys of each party work together to drag the dispute on the path of settlement, *ex-plea-bargain*. Negotiation has become an integral part of a lot of disputes weather it is in business, non-profit organizations, legal proceedings, government branches, amid two or more nations or in personal conditions such as marriage, divorce, parenting etc. This is the basic method of alternative dispute resolution.

- **Conciliation**- Conciliation is an alternative dispute resolution (ADR) process whereby the parties to a dispute use conciliator, who meets with the parties both separately and together in an attempt to solve their disputes. This method is nearly same as the process of mediation, it differs in and of itself, has no legal standing, and the conciliator has no legal authority to seek evidence or call witness, usually writes no decision, and also makes no award.
- **Mediation**- The process of mediation is a form of ADR which aims at resolving disputes by assisting the disputants to come to an agreement. Mediation involves a third party, who by working on that particular dispute tries to resolve it. Mediation is that form of ADR which is concerned with criminal justice the most. Mediators often use appropriate techniques and/or skills to resolve the differences between the concerned disputants, aiming to help them reach an agreement.

III. NEED FOR ADR IN CRIMINAL TRIAL

Judiciary is regarded as the most vital organ where people have faith. Judiciary exists to solve all kinds of disputes, to render justice to the innocents by punishing the offenders by being impartial and independent. But now-a-days people are losing their trust in Indian Courts, and one of the reasons is delay in Justice due to pending litigation. Hence, Alternative Dispute Resolution (ADR) is one such mechanism established in the Indian Judicial system to reduce the burden on courts to some extent. During this COVID19 lockdown situation, the no. of pending cases are increasing exponential and ADR has become necessity in certain cases more then just an option. Chhattisgarh High Court and Legal Authority pioneered e-Lok Adalats in the state during the lockdown time. Chhattisgarh has become the first state in the country to do so. Through video conferencing amicably the litigants were connected to the concerned court and as many as 156 cases has been taken up out of which 155 has already been settled. Thus, ADR has always facilitated in reducing the burden of the courts no matter the situation are.

Alternative Dispute Resolution mechanism in criminal cases was developed to provide easy and accessible remedy to poor criminals who are guilty of motor accident cases and other petty criminal cases, to save them from for huge time consumption, high litigation cost and rigid procedure. *The Legal Services Authorities Act, 1987* has accorded legal status to such alternative attempts to solve the disputes of the parties outside the court, which are known as Lok Adalat and the award passed by it is given the status of a 'Civil Court decree'. Lok Adalats are now acquiring a new dimension in order to reduce the litigation miseries of the weaker sections of the society. It provides a statutory forum to the litigants to resolve their disputes through negotiated settlements in presence of the Lok Adalat judges. The amendment effected to the Legal Services Authorities Act, 1987 in 2002 provides the establishment of permanent Lok Adalat for the settlement of disputes relating to public utility services by applying ADR mechanism in order to decongest the courts.⁴

As already discussed above, the traditional courts' system is too much time consuming and expensive, which is unaffordable to many, resulting in injustice to the innocents. There are approximately 59,867 criminal cases pending before the Supreme Court of India. The condition is even worse in subordinate judicial system like there are 44.75 lakhs pending cases before the various High Courts of India, out of which 13.1 lakhs are criminal cases and 3.14 crores pending cases before the district and subordinate Courts. Flooding in the number of cases also results in over-population of convicts and increase in the number of prisoners.

There is a saying, "*Quality of justice suffers not only when an innocent person is punished or a guilty person is exonerated, but when there is enormous delay in deciding the criminal cases.*"⁵ Speedy trial is an essence of criminal justice, but it is getting trotted in the Indian Judicial system. Therefore, due to this alarming situation of the Indian Judicial system, ADR mechanism is the need of the hour, especially to resolve the criminal cases. The preference to ADR is more because of its inexpensive litigation, less wastage of time and the confidentiality that is being maintained in this process of ADRs.

Certain basic steps are to be taken by the State in order that the rule of law and justice can be directed as it should be. But there is some hesitation upon the solicitation of ADR in criminal justice. In the instance of the criminal justice, the term ADR comprehends various practices which are not contemplated as a part of conventional criminal justice such as victim/offender mediation; family group conferencing; victim offender-panels; victim support programs; communal crime prevention programs; sentencing circles; community service; plea

⁴ A Critical study on ADR in Criminal Trial: <https://madhavuniversity.edu.in/critical-study-on-adr.html>

⁵ Criminal cases and ADR: <https://www.lawctopus.com/academike/criminal-cases-adr/>

bargaining; school programs.

But still the scope of ADR in Criminal Justice is very less because crime is regarded as violation against the State and not against the victim. Also only State has the Jurisdiction to address it. This kind of system came with the Norman invasion of Britain in 12th century. Prior to it, Western Law had viewed crime as conflict to be dealt between an offender and victim. This may make an offender realize his crime, repent it and also helps him to make sense of the tragedy or heal his wounds.⁶ 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.

ADR is not to punish the offender, but rather to guide them to repent for their crime, strive to mend the injury they have done, and reintegrate them into the community.⁷ The model for example, which the victim-offender mediation contributes to and exercises, is a response against the model of traditional justice⁸. Revenge is not the answer to all the crimes committed against the victims. It does not restore the losses of victims, answer questions, relieve fears, provide closure, or help to make sense of a tragedy. For all the victims, that the offender has been punished by the state does not necessarily restore the losses they have suffered—it does not “answer their questions, release their distresses and help them understand their tragedy or heal their injuries.

The formerly mentioned line of reasoning emphasizes the need of ADR, as it promotes the communication and resolution between the parties rather than, discouraging it. And hence, for the smooth functioning of the judicial system, it is very much necessary for India also to adopt U.S.A’s model of victim-offender mediation which enhances the scope of ADR in Criminal Justice, at the same time reduces the over-burden of cases on the Indian courts. Therefore, we can regard that ADR mechanism in Criminal trial is need of the hour.

IV. ADR IN INDIAN CRIMINAL JUSTICE SYSTEM

Application of ADR has been gradually increasing in criminal matters. It has become the new trend, not only because it is affordable but also because it is less time consuming and we already know about the huge pendency of the cases in Indian courts. Thus, for giving an easy and faster way to the settlement of cases ADR is necessary. The following mechanism of

⁶ Alyssa H Shenk. Victim-Offender Mediation: The road to Repairing Hate Crime Injustice from: <http://www.vorp.com/articles/crime.html>

⁷ Ric Simmons, Private Criminal Justice, Wake Forest Law Review. 2007; 42:945

⁸ Markus D Dubber: The Victim in American Penal Law: A Systematic Overview, Buff. Crim. L. Rev. 1999; 3(6):3

ADR is mostly used in Indian criminal cases-

- Mediation in Criminal Cases

Mediation is a kind of process in which parties themselves settle the disputes which is acceptable by them. Both the parties have right to withdraw anytime from the mediation proceedings and need not to assign a reason for the withdrawal. It is a party centered process as parties have direct and active participation in the process of mediation for resolution of their dispute. On October 06, 2006 Hon'ble Allahabad High Court took initiative to inaugurate Allahabad High Court Mediation and Conciliation Centre (AHCMCC).

Mediation is considered as a very effective process as it facilitates better and effective communication between the parties and also helps to maintain, improve and restore relationship between them. Mediation can bring a win-win situation for the parties whereas in the court. There is a win-lose situation and also gives a final result. It results in speedy, efficient and cost-effective resolution of the dispute and also mutually beneficial settlement is reached out in it.

In criminal justice system there are a number of ADR practices such as Victim/Offender Mediation; Family group conferencing, Victim offender panels, Victim assistance programs, Community crime prevention program, sentencing circles, ex-offender assistance, community service, plea bargaining school programs which are not considered as traditional criminal justice. Mediation had done wonders in many countries namely United States, Canada, UK, Sweden etc. and now it is becoming a very important and effective tool by the litigants of our country, our last one decade or so. This mechanism is acting as a great exchequer in India as it is doing tremendously well. Millions of cases had been disposed of through *Lok Adalat* across the country.

- LOK ADALAT

'Lok Adalat' roughly means "People's court". Lok Adalat is an innovative form of ADR mechanism developed by India for resolving the disputes amicably, where the cases are sent for speedy justice among the parties who are willing to settle the differences between them. Lok Adalat included conciliation and negotiation methods together for the resolution of disputes and no court fees are levied in Lok Adalat.

The History and Role of Lok Adalat

Arbitration and Conciliation Act, 1996 has a western approach towards ADR, while *National Legal Services Authority Act, 1987* which is constituted of Lok Adalats is necessarily an

Indian approach to achieve an affordable and swift alternative dispute resolution. India is a country, which has had a long history of resolving disputes through the mediation of village elders called 'sarpanch', which was then considered as equivalent to Courts of Law. The system of Lok Adalat is an improvement and is based on Gandhian principles. The Lok Adalat was first held at Junagarh in Gujarat on March 14, 1982. Maharashtra commenced Lok Nyayalaya in 1984. Lok Adalat obtains the statutory recognition under Legal services authorities Act 1987. According to Section 19 (5) A of the Legal Service Authorities Act, 1987 referral of compoundable offences to Lok Adalat is permitted.

Under the Act, the Lok Adalats (mock courts) are held by State Authority, District Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee, Taluk Legal Services Committee periodically. These are usually governed or controlled by retired judge, social activists, or members of legal profession.

A new episode to the justice dispensation system was added with the introduction of Lok Adalat. The cases are presided over by retired judges, social activists, or other members of legal profession. Compromising between the parties is the main function of Lok Adalat. Lok Adalat cannot decide the case on merits; it facilitates the parties to come with settlement⁹. The settlements which are made by the Lok Adalat are binding on both the parties. No court fees are levied in Lok Adalat. The case again goes to the court if the matter is not resolved in Lok Adalat. Therefore, we can say that Lok Adalat plays a vital role in resolving the matter through ADR making it a cost effective, less time consuming and at the same time helps in reducing the burden of cases on the Courts.

- PLEA-BARGAIN

Another very common ADR mechanism that we can observe in criminal cases is the *Plea-bargaining or Plea-deal* which is basically a negotiation which takes place pre-trial between prosecution and accused. The agreement in a criminal case between the prosecution and the defense regarding the plea of the accused is known as plea-bargain. This is done in the presence of a judge, in which the accused changes his plea from not guilty to guilty and accept an offer made by the prosecution that his sentence will be minimized, if he pleads guilty¹⁰.

Now, if we talk about applicability of plea-bargain in India, keeping in mind the pendency of criminal cases, the Law Commission of India in its 142nd report suggested reform, which also

⁹ Legal Services Authorities Act, 1987 s 20(3)

¹⁰<http://www.indlawnews.com/display.aspx>

comprised the application of plea bargaining in our country¹¹. Further, to increase the efficiency in disposing criminal cases, the 154th Report of the Law Commission recommended for including ‘plea bargaining’ as an alternative method to deal with colossal pendency of criminal cases, which was supported by the *Malimath Committee Report*.

The draft Criminal Law (Amendment) Bill, 2003 was introduced in the parliament¹² to give effect to the recommendation. Despite of huge objections against the amendment, the amendment was accepted and as a result of this, Chapter XXIA was added in the Code of Criminal Procedure, 1973. The particular chapter deal with plea bargaining specially containing Sections 265A to 265L. This method could reduce burden of criminal courts and would enable the criminal courts to decide criminal cases expeditiously, and without undue loss of time.

V. COMPARATIVE STUDY OF PLEA BARGAINING IN DIFFERENT COURTIERERS

- **Plea Bargaining in Canada:** In Canada, then most of the criminal cases are determined through the acceptance of guilty pleas only: Successful plea negotiations between Crown and defense counsel is contributing in most of these pleas. The Crown and the accused effectively determine the nature of the charge(s) that will be laid where a plea bargain has been implemented. It is clear that the parties to a successful plea negotiation enjoy the de facto power to exercise a considerable degree of influence over the sentence that is ultimately imposed by the trial judge¹³ as the nature and quantum of sentences are primarily based on the charge(s) brought against the accused,
- **Plea Bargaining in USA:** Plea bargaining in the United States is very common; the vast majority of criminal cases in the United States are settled by plea bargain rather than by a trial. The frequency of plea-bargain in USA has gradually escalated —they rose from 84% of federal cases in 1984 to 94% by 2001.¹⁴ There are different States and jurisdictions having different rules. The court has to approve the plea-bargain. To analyze the plea-bargaining decision¹⁵ Game theory has been used.

In United States of America, plea bargaining has a vital role to play. The validity of plea bargaining was first observed by White J, in a US case of *Brady v. United*

¹¹ LAW COMMISSION OF INDIA REPORTS (101 – 169), <http://lawcommissionofindia.nic.in/101-169/index101-169.htm>

¹²State of Uttar Pradesh v. Chandrika 2000 Cr.L.J. 384(386).

¹³<http://www.ADRunderCriminallitigationinCanada.com>

¹⁴ Fisher, George, plea bargaining's triumph: a history of plea bargaining in america (Stanford University Press, 2003)

¹⁵ Baker S Mezzotint, C, Prosecutorial resources, plea bargaining, and the decision to go to trial. Journal of Law, Economics, and Organization 17 (1), 2001, 149–167.

*States*¹⁶ and he upheld its validity.

- **Plea Bargaining in European Countries:** The concept of plea bargaining prevails in England, and most of the other nations of the British Commonwealth. Earlier Germany was referred to as “the land without plea bargaining”. The system of plea bargaining was introduced by statute afterward due to time-taking trials and growing white-collar crimes in Germany.¹⁷

VI. LIMITATIONS OF ADR IN CRIMINAL JUSTICE:

The following are the limitations of application of ADR in Criminal Jurisprudential System faced in India:

- Alternative Dispute Resolutions can only be used in petty criminal offences and not on serious offences.
- Existence of dispute is one of the prerequisite of ADR. But in certain criminal cases like rash and negligent driving, drunken driving etc. resulting in injuries or even death of the pedestrians, there may not be any dispute between the criminal and victim, and such difficulties limit the scope of ADR in Criminal trial.
- Arbitration decisions are final. There are very few exceptions where the decision arbitration can be appealed, with fraud being an obvious exception. Additionally, certain states does not enforce decisions of arbitrators that have unfair penalty. The scope of arbitration is limited to specic disputes because some clauses are broad, others are narrowly. If we take the case of any court then the decisions of a court, usually can be appealed to an appellate court for a variety of legal grounds and for numerous alleged procedural errors.

VII. ADR IN OTHER COUNTRIES AROUND THE WORLD

Canada:

In the 1980s and 1990s Canada saw the beginning of a “cultural shift” towards the growth of ADR practices. During this time, they felt the need of alternative dispute resolution against the more adversarial approach to dispute settlement that is typical in the traditional court proceedings. That is when, the growth of ADR started and continued for decades till it is widely being accepted as a legitimate and effective approach to dispute resolution. Though many provinces in Canada have not yet recognized the importance of ADRs, some of the

¹⁶ 397 U. S. 742 (1970), also available at JUSTIA: US SUPREME COURT CENTRE
<http://supreme.justia.com/us/397/742/case.html>

¹⁷<http://kja.nic.in/article/PLEA%20BARGAINING.pdf>

provinces have at least examined the need of ADR as an alternative to traditional court proceedings¹⁸.

Somalia:

Somalia has a cultural and historical mediation and justice system known as ADR, which is an informal justice system. It is a kind of system in which, the arbiter listens and he himself finds a solution to solve the difference of the disputant parties, to which both parties agree⁷.

United Kingdom:

In the UK, Alternative Dispute Resolution is encouraged as a mean of resolving taxpayers' disputes with Her Majesty's Revenue and Customs¹⁹. ADR in recent years is being widely used in the UK across many sectors such as: communications, energy, finance and legal sectors. On October 1st, 2015 the UK adopted the Alternative dispute Resolution for consumer disputes Regulations 2015.²⁰

VIII. CONCLUSION AND RECOMMENDATION

In India, Judiciary along with the two other organs, Legislature and Executive have been established to safeguard the rights of the citizens, but for its violation, the citizens have to question it only before the Judiciary. India is a country with enormous population and that's one of the main reasons for increase in number of cases which is resulting in exhaustion of the courts. There are many attempts being made in the country to reduce this burden but these attempts are not satisfactory and Courts are still in need of a strong mechanism. Alternative Dispute Resolution (ADR) is one such tool which can successfully lessen the burden of pending-litigation on courts by resolving the disputes outside the courts.

In recent years, the scope for Alternative Dispute Resolution in India is gradually increasing. It has many merits such as; it is inexpensive, less rigid, less time consuming... In this connection, Alternative Dispute Resolution (ADR) has a significant role in criminal trial as well especially to the convicts who are devoid of basic facilities. It is agreeable that applicability of ADR in criminal trial has limitations, but as our research has stated that, it is convenient for India to adopt victim-offender model of ADR where offender can feel sorry for what he has committed, which will also reduce the increasing no. of prisoners in India and speedy trial can be rendered in a positive way.

ADR system, undertaken in appropriate conditions, can support court reform, improve access

¹⁸Alternative dispute resolution: <https://en.m.wikipedia.org>

¹⁹HMRC 'Tax disputes: ADR' 2015.

²⁰The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015: <https://en.m.wikipedia.org>

to justice and to increase disputant satisfaction. ADR processes have capability to decrease significantly the costs and delays associated with traditional court proceedings. In present situation we must apply ADR system in wider way, and to decrease the caseload we should enforce ADR system from the root level.

Rising awareness and effective initiatives are the tools of ensuring proper justice by ADR system. People should realize the importance of ADR, only then it is possible to ensure the quick and substantial justice. ADR initiatives can ensure the cost-effective and speedy justice among the common people of India.
