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APPLICABILITY OF ADR MECHANISMS IN INDIAN CRIMINAL JUSTICE SCENARIO: AN ANALYSIS

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ABSTRACT

Alternative dispute resolution techniques are elaborately accepted because they are comparatively efficient, cheap and speedy alternatives than court litigation. Within the criminal justice administrative system, cases are largely being resolved through a form of alternative dispute resolution called restorative justice. In the restorative justice system, a meeting is convened between the victim, the perpetrator and the society at large. In India, due to heavy backlog of cases, “the justice has often been delayed, that is, denied”. The restorative justice applications may provide a remedy to this issue, especially in the case of compoundable offences. Current trend that can be noticed in the field of ADR is its applicability in the criminal arena. Mediation is the most acceptable form of ADR, in which the criminal matters also is concerned. The wave of Indian penal law jurisprudence has shifted from not recognising the point of alternate dispute resolution in criminal issues to including the concept of reconciliation to reduce the court workload. Even then, the ambit of reconciliation is somewhat restricted in criminal arena because crime is generally considered as violation against the state, not against the victim. The state should take all possible efforts to affirm the rule of law and justice. ADR helps the culprits and affected parties to reconcile the situation. This helps the accused to understand his guilt, to repent and to make good it by repairing the same. This article covers an overview of ADR and criminal justice system, definition of restorative justice, ADR and restorative justice, alternative dispute practices in India, plea bargaining, ADR and Indian Constitution, benefits of restorative justice as ADR, limitations of ADR in criminal justice and judicial trend on ADR in criminal arena.

KEY WORDS: Alternative Dispute Resolution, Criminal Justice system, Offenders, Restorative Justice, Victim

I. INTRODUCTION

Even though there is well organized, formal mechanism of criminal justice system in India, heavy backlog of cases, the justice has often been delayed, that is, denied. Alternative dispute resolution (ADR) system being more accessible and speedy resolution, the system may provide

a remedy on this issue, specifically in the case of compoundable offences¹. The methods of alternative dispute resolution can move beyond mediation, arbitration, negotiation and conciliation. Restorative justice seeks to solve the conflict by having all parties incorporated come together to reach an agreement. It is a different way of tackling crime and conflict. Restorative justice rests on holding the offender responsible in a more meaningful way.

ADR is a method for settling the disputes by negotiation, mediation, conciliation and arbitration other than litigation. There is no intervention from the part of courts. In this method there is a third party who settles the disputes impartially. These types of techniques are getting more popular since access to the formal legal system is more time consuming and expensive as compare to ADR method. In arbitration, the parties rely on an impartial decision-maker to reach binding judgments. In case of negotiation, attorneys of the parties move together to settle disputes. The system of mediation uses a neutral third-party to bring about a mutual resolution and settlement.

II. ADR AND CRIMINAL JUSTICE SYSTEM

The base of justice administration in any state-based formal justice system including civil and criminal justice, institutions like police, public prosecution and courts. In spite of well-established formal mechanism of penal law system in India, there is mass backlog and pendency of cases, due to that the justice has been often delayed. The very base of criminal justice is speedy trial and it is clear that delay in trial by itself is equivalent to denial of justice. There is a principle that “justice delayed is justice denied” and many of the people heard about this theory. The pendency of cases before the judiciary has become a threat for the judicial set up of our country.

A current trend which can be noticed in the realm of ADR is its applicability towards the criminal matters. Mediation is the most acceptable form of ADR, in which the issue of criminal justice is dealt with. The Indian criminal jurisprudence has shifted on from not recognising the concept of ADR in criminal issues to adding the principle of plea bargaining into CrPC and also issuing guidelines to recognise the mutually agreed settlement by the parties to the dispute in cases which are not of a grave nature and doesn't affect the community at large.

The frustration and resentment due to the non-recognition of victims within the formal penal system have been accountable for alternative approaches. ADR is an exception to the

¹ Ewa Wojkowska, *Doing Justice: How informal justice systems can contribute* 9 (Oslo, 2006).

traditional court procedures and must be used more comprehensively and regularly². The criminal jurisprudence is completely different from the ADR mechanism, since in the matter of a criminal dispute, penal provisions are sought after to place a benchmark. In the case of ADR, some sort of settlement which may not result into court proceedings is sought after.

According to Justice Venkatachaliah, judiciary should adopt the new techniques and technology which will speed up process and reduce delays. It means there is stubborn need of ADR in criminal matters to alleviate the burden of the courts. ADR, particularly restorative justice applications, concentrates on resolving the disputes among the parties and establishing the harmonious relationship between them. Therefore, it is a perfect tool for providing justice in criminal issues. This system highlights on the reformation of culprits as well as restoration and reintegration rather than punitive angle of punishment. The process of restorative justice provides equal opportunities for all the affected parties and society, who are directly involved to be heard and settling the conflict and meeting its issues.

In order that the rule of law and justice can be administered efficiently, certain basic measures are to be taken by the state. With reference to the criminal justice, the system of ADR embraces a number of practices which are not contemplated part of traditional penal justice such as victim-offender mediation, family group conferencing, victim-offender panels, victim assistance programs, community crime prevention programs, sentencing circles, ex-offender assistance, community service, plea bargaining and school programs.

ADR simplifies the communication and conciliation between the victim and culprit rather than leading to incarceration. As a consequent to this, western developed countries like U.S.A have hugged ADR models like victim-offender mediation, in their penal law system. ADR works not to punish the culprits, but rather to guide them to repent for their activity, strive to mend the wrong committed by them, and reintegrate them into the society. This model for example, which the victim-offender mediation contributes to and exercises, is a response against the traditional justice system. Revenge is not the solution to all the crimes committed against the persons. It does not restore the damages of victims, answer the questions, relieve anxieties, provide closure, or help to make sense of a trouble. For all the victims, which the offender has been punished by the state does not invariably restore the damages they have suffered. It does

² <<https://blog.iplayers.in/alternate-dispute-resolution-criminal-jurisprudence/>> last visited on June 6, 2026.

not fully “answer their questions, relieve their distresses and help them to understand their tragedy or heal their grievances”.

ADR in the criminal scenario represents a shift towards restorative justice, which considers the crime as the violation of one individual’s right by another and justice in the criminal circumstance should focus on healing the victim’s harm. Conflict and the aftereffects of conflict are viewed as ‘a chance for individuals to study and grow from their activities’³. Restorative justice offers opportunities for those directly involved, both individuals and societies, to be heard and have a voice in “resolving conflict and meeting its consequences”. Active involvement of all stakeholders involved is a key aspect of restorative justice and is “considered as a means to encourage the peaceful reflection of conflict, to promote patience and inclusiveness, create respect for diversity and encourage responsible community practices”⁴.

ADR in the criminal context contains an idea of reparation in the transitional justice aspects, which might not be an ingredient of civil mediation. Reparation refers to an act from the part of an perpetrator to do something positive on behalf of the victims and the society which may involve compensation, reparation, community services etc., whereby in the civil matters it is just a part of the judicial settlement. ADR in criminal issues involves the final settlement to be delivered in the court in various jurisprudential contexts, whereas in civil matters, the same is confidential and just a matter among the parties. Annoyance and dissatisfaction with the absence of recognition of victims within this justice process has been in part accountable for alternative perspectives.

III. DEFINITION OF RESTORATIVE JUSTICE

Restorative justice was introduced in the 1970s as an alternative to retributive way of treatment of offenders on the settlement of crimes among the perpetrators of offence and victims. Tony Marshall, defined the practice of restorative justice in following words, “restorative justice is a procedure whereby parties with a stake in a particular offence collectively resolve how to deal with the consequence of that offence and its implications for the future”⁵. United Nations Office on Drugs and Crime defines the term restorative justice as, “a process for resolving crime by

³ Restorative Justice Council, *Restorative justice in youth offending teams Information pack 3* (2015).

⁴ United Nations Office on Drugs and Crime, *Handbook on Restorative Justice programmes* 11 (Criminal Justice Handbook Series, 2006).

⁵ Theo Gavrielides, *Restorative Justice Theory and Practice: Addressing the Discrepancy* 2-3 (Criminal Justice Press, Helsinki, 2007).

focusing on redressing the harm done to the victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of that conflict”⁶.

From above definitions it can be decided that, the primary aim of restorative justice is to reintegrate the relationship between the parties of the disputes, in case of criminal cases, among the offender and victim. ADR, particularly mediation, concentrates on resolving the disputes between the parties and maintaining the harmonious relationship between them. Therefore, it is a perfect tool for administering the restorative justice in penal matters. In restorative justice applications, a meeting is convened between the offender, the victim and the community at large. It concentrates on conflict resolution between the parties involved. According to Prof. Carrie Menkel Meadow, “restorative justice is more of an idea, philosophy, set of values, or sensibility than a single concrete and uniform set of practices or processes”. ADR can be regarded as, “a road the parties must travel to arrive at their goal of mutually satisfactory settlement”⁷.

Restorative justice works on three principles

- Repair
- Encounter
- Transformation

Restorative justice is contemplated to bring about, in particular, some sort of outcomes. It does this through a process by which both parties feel that they are treated justifiably and they are given the equal consideration, speaking time, preparation and so on. It provides equal opportunities for both individuals and communities, who are directly impacted to be heard and resolving the conflict and addressing its consequences. Active involvement of all stakeholders is an crucial aspect of restorative justice and is “viewed as a means of encouraging peaceful expression of conflict, enhancing tolerance and inclusion, building respect for diversity and promoting good social practices”⁸.

IV. ADR AND RESTORATIVE JUSTICE

The notion of restorative justice like ADR is not new. Historically Kings, the local leaders and parents have been mediating the issues between parties allowing misdeeds to be acknowledged and personal actions to be told. It was and is considered a common-sense attitude which

⁶ United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes* 6 (Criminal Justice Handbook Series, New York, 2006).

⁷ Lon L Fuller, Mediation, “Its Form and Its Functions” 44 California Law Review 305-327 (1971).

⁸ Thrishla Dwivedi, *Restorative justice in relation to mediation* (Readers’ Blog, Jan 2022).

highlighted on those who have done the harm acknowledging the responsibility and the injury being put right in some other way. The victim invariably becomes the state rather than an individual or a community⁹. Whenever a crime is occurred in the community, people are hurt, not a matter what kind of offence is committed, like, theft, extortion, robbery, dacoity, murder, rape, cruelty, cheating, criminal intimidation, assault, hurt, criminal force, etc. Although the parties who are accountable for the same have some responsibility for it, restorative justice applications generally offers a space for the wrongdoer as well as the victim to settle the same. This process reinstates an appropriate and satisfactory attitude towards it. Therefore, it can be considered as a feature of alternative dispute resolution technique.

Although the perspectives differ, ADR commonly negotiates to identify and agree upon mutually acceptable interests, while restorative justice processes may include the emotional level as well, by interpreting the expression of feelings to be crucial to the process. As mentioned earlier, the concept of restorative justice was originated in the 1970s as mediation on reconciliation among the victims and offenders. Restorative justice practices can be applied in many of the similar types of contexts in which one should use ADR techniques. In a broad perspective, encounter attitudes within restorative justice can be viewed as conflict-resolving, problem-solving tactics to harm.

In the retributive criminal justice system, after the punishment is awarded, there is no scope for rehabilitation of the offender, which is a crucial object of any legal system. Since the culprit is at the center of the trial and prosecution is administered by the state, the victim is neglected¹⁰. The involvement of the affected party is largely limited to that of a witness, making tussle the property of lawyers¹¹. Thus, punitive justice fails to account for the wants of both the and the victim. But the restorative justice methods are not a specific procedure but rather a set of guiding values and principles, a framework for meeting and distinguishing the injuries and responsibilities.

Restorative justice process creates opportunities for the parties of crime to deal with the crime and its ramifications, to repair the injury caused, and restore the amicable relationship between them. Restorative justice means that the sufferings caused by the offender is “balanced by offering the support to victim and requiring the offender to make amends, with the help of the

⁹ Walker, L. “Restorative Justice: Definition and purpose”, in Van Wormer, K. S. & amp; Walker, L. (eds) *Restorative Justice Today: Practical applications* 3-13 (Sage Publications, USA, 2013).

¹⁰ Justice Chandrachud, *Mediation: Realizing the Potentials*, available at <http://lawcommissionofindia.nic.in/adr_conf/chandrachud3.pdf> last visited May 30, 2026.

¹¹ Nils Christie, “Conflict as Property”, 17 *British Journal of Criminology* 1-15 (1977).

society if necessary”¹², in contrary to balancing the injury by inflicting harm on the offender. Accordingly, criminal justice should address the necessities of the victim, the accused and the community. In the case of *Anupam Sharma v. NCT of Del and Anr*¹³, the Delhi High Court made it clear that restorative justice can be used as a synonym for mediation.

Victim-offender mediation is a procedure which offers interested victims a chance to meet their accused in a safe and structured setting, and engage in a mediated discussion of the offence. Therefore yes, there is a trained mediator present, who is there mainly to facilitate discussion and assure the safety of both the victim and the individual who committed the crime. And in this mediated discussion, victims are supposed to explain how the crime impacted them and are given the chance to ask the perpetrator questions about the incident. Meanwhile, the culprit is supposed to narrate their side of the story and take direct liability by making amends of some kind. So generally, at the end of the meeting, there is this agreement which is reached by both parties and offers a solution to the conflict¹⁴.

There is growing interest in inculcating restorative justice applications into ADR as a way to enhance more efficient and equitable solution of disputes. Restorative justice is an amicable approach to dispute resolution which strays from the typical use of legal principles and punishment, and instead concentrates the wants of those who have been directly affected by the dispute as well as others who have been influenced. This process extends beyond a typical victim-offender structure and often involves the families and the society in the resolution process. Restorative justice procedures acknowledge that the dispute has wide-reaching consequences which impact not only an individual but all those who around them as well.

The problem is, about what constitutes restorative justice, distinguish from other kinds of dispute resolution, arises because restorative justice procedure doesn't come with a globally accepted phenomenon. According to Polavarapu, “whether the accused, those who have harmed, and community stakeholders are involved varies across dispute resolution instances. The common thread is the importance of arriving at accountability”¹⁵.

A recent high-profile attempt to reconcile criminal cases through restorative justice process can be viewed in our penal justice system. Conflict and the after-effects of conflict are seen as a

¹² Otto Heinz, et al., *Restorative Justice on Trial* (2 ed. 1992).

¹³ 146(2008) DLT 497.

¹⁴ <<https://pitjournal.unc.edu/2023/03/22/impacts-of-restorative-justice-on-recidivism/>> last visited May 22, 2026.

¹⁵ Aparna Polavarapu, *South Carolina Restorative Justice Initiative*, NBC News.

possibility for individuals to learn and grow from their actions. Restorative justice is an approach of criminal justice in which the meeting is arranged among the victim and the offender or the society at large. This set up highlights on the reformation of offenders and also on reintegration and healing rather than retribution and incarceration.

The restorative justice focuses on reconciling the disputes among the parties and keeping the harmonious relationship among them. Within the penal justice system, cases mainly are being resolved through a form of alternative dispute resolution called restorative justice. It creates circumstances for parties to crime to discuss the crime and its ramification, to repair the harmful effects caused, and restore the peaceful relationship between the parties.

Restorative justice, much like ADR, provides an alternative way to tackle criminal cases. In this system, victims and involved parties are provided the space to express both the emotional and material ramification of the offenders' actions. Offenders are motivated to take responsibility for their harm-causing activities by way of apology, community service or otherwise agreed upon solutions. Through non-punitive results, restorative justice intends to help the offenders in evading future wrongs. Ultimately, one of the main aim of restorative justice is to serve meaningful justice, that is, justice that transcends beyond precedent and legislation, and is affirmly rooted in empathy¹⁶.

V. ALTERNATIVE DISPUTE PRACTICES IN INDIA

ADR in the current scenario has gained an immense relevance for settling the disputes among the parties without the intervention of courts. In India, the ADR are supported by many provisions in the statutes which assist the system in smooth functioning without any interruption. The pronouncement of the Arbitration and Conciliation Act, 1996 and the insertion of Section 89 into the Civil Procedure Code (hereinafter CPC) in 1999¹⁷, put forward crucial stages of evolution in the process of administering justice in India. The arena of amicable dispute resolution outside the formal courtroom was the focus of the 129th Law Commission Report¹⁸ and its recommendations were shaped into Section 89 of the CPC. The

¹⁶ < <https://www.yorku.ca/osgoode/jib/2021/06/16/exploring-the-role-of-restorative-justice-in-the-adr-process/> > last visited June 1, 2026.

¹⁷ Code of Civil Procedure, 1908, s.89.

¹⁸ Justice Jagannadha Rao, *Concepts of Conciliation and Mediation and their Differences*, available at <http://lawcommissionofindia.nic.in/adr_conf/concepts%20med%20rao%201.pdf> (last visited May 28, 2026).

provision lays down the authority of the courts to refer a dispute including elements of an “amicable settlement” to various ADR methods.

Indian courts are overcrowding with unresolved matters, pending cases are alarmingly increasing. It creates bulk of burden on the Indian courts. But this issue is being resolved by the method of ADR. This method may be useful for the Indian courts and it deal with the issue of the pending cases. It allows for a peaceful resolution of a conflict which is acceptable by all the parties. Article 14 and 21 which deals with the equality before the law and the right to life and personal liberty, are also the very basic foundation of the ADR in India. The objective of ADR is to attain the justice with the integrity of the community and this justice can be political, economic and social. There are at least four various forms of ADR are negotiation, mediation, arbitration and conciliation¹⁹.

The other legislations which deals with ADR provisions in India are, Legal Services Authorities Act 1987²⁰, Arbitration and Conciliation Act, 1996, Mediation Act, 2023, etc. A review of the judicial set up was done by the Malimath committee to alleviate the burden of the cases on the Indian courts. The committee recommended in its report that the Indian criminal justice administration must introduce a plea negotiating system to decrease some workload on the courts and to ensure that the justice is delivered to the people of the India at least possible cost and save the time and money of the parties involved.

VI. PLEA BARGAINING

Plea bargaining may be viewed as an agreement in a criminal matter between the prosecution and the defence by which the accused changes his version from not guilty to guilty in exchange for an offer by the prosecution or when the court has informally made the accused aware that his punishment will be reduced, if the accused pleads guilty²¹. In other words, it is a method of criminal procedure which decreases the enforcement costs for both parties and permits the prosecutor to focus on more meritorious matters²².

Keeping in mind that the pendency of criminal cases have gone above the roofs, the Law Commission of India in its 142nd report suggested reform, which included the implementation

¹⁹<<https://www.legalserviceindia.com/legal/article-14900-alternative-dispute-resolution-in-criminal-cases.html>> last visited May 23, 2026.

²⁰ Legal Services Authorities Act, 1987, s. 20(1).

²¹ Sidhartha Mohapatra and Hailshree Saksena, *Plea Bargaining: A unique remedy*, Indlaw News.Com, available at <<http://Www.Indlawnews.Com/Display.Asp?4762>> last visited Apr 10, 2026.

²² Ibid.

of plea bargaining in India²³. Further, to decrease the delay in disposing of criminal cases, the 154th Report of the Law Commission recommended the introduction of 'plea bargaining' as an alternative method to deal with heavy arrears of criminal matters, which found a back up in the Malimath Committee Report.

To give effect to the recommendations of the Malimath Committee Report, the draft Criminal Law (Amendment) Bill, 2003 was introduced in the Parliament²⁴. In spite of a very huge hue and cry against the amendment, it was accepted and as an effect of the same, Chapter XXIA was included in the Code of Criminal Procedure, 1973. The said chapter includes Sections 265 A to 265L, which deal with plea bargaining.

Cases which can be included by the plea-bargaining process are:

- Where the maximum punishment is imprisonment upto 7 years,
 - Where the crimes don't affect the socio-economic condition of the country,
 - When the matters are not committed against a woman or a child below 14 years of age.
- Plea bargaining is successfully implemented in many jurisdictions around the globe and it may be understood as a pre-trial settlement among the accused and the prosecution on the assumption, wherein the accused pleads to be guilty in order to receive some reductions in the punishment. However, the apex court of our country was not always in favour of applying plea bargaining into the Indian criminal jurisprudence, which is very evident from the following judgments.

In *Thippeswamy v. State of Karnataka*²⁵, the court made it clear that persuading or leading an offender to plead guilty under a promise or assurance would be violative of Article 21 of the Constitution. In another instances like, *Kasambhai v. State of Gujarat*²⁶ & *Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr*²⁷, the apex court, while criticising and regretting the plea bargaining awarded by the magistrate, stated that plea bargaining is against the public policy and the court strongly convey the disapproval towards the practice of plea bargaining. In addition, the court also held that the practice of plea bargaining was unconstitutional, unethical and illegal and also would tend to encourage corruption, collusion and impure the

²³ LaW Commission Of India Reports 101-169, <<http://lawcommissionofindia.nic.in/101-169/index101-169.htm>> last visited Apr 20, 2026.

²⁴ *State of Uttar Pradesh v. Chandrika* 2000 Cr.L.J. 384 (386).

²⁵ AIR 1983 SC 747

²⁶ (1980) 3 SCC 120.

²⁷ Ibid.

clean fount of justice. In *Murlidhar Meghraj Loya v. the State of Maharashtra*²⁸, the Hon'ble Supreme Court was not in favour of the inclusion of the principle of plea bargaining as it intrudes upon the fundamental right of individuals accused of an offence should not be compelled to be a witness against oneself.

VII. ADR AND INDIAN CONSTITUTION

The Constitution of India is based on the principle of the welfare and well-being of the people. It is the duty of the state to impart justice to the aggrieved persons by judicial and non-judicial forums of dispute resolutions that lays timely and efficient justice and enforcement of fundamental rights²⁹. There is a popular dictum, like this, “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 cases³⁰”. Through a case, the judiciary made it clear that arbitration must be simple, less technical and more responsible to the actual reality of situations, responsive to the principle of justice and fair play³¹.

Indian courts are overloading with unresolved matters. It creates bulk of burden on the shoulder of judiciary. But this problem is being solved by the technique of ADR. This method may be very useful for the Indian courts and it can deal with the bulk of the pending cases. This allows for a peaceful settling of the dispute which is acceptable by the parties involved. Article 14 and 21 which deals with the equality before the law and the right to life and personal liberty, are also the basis of the ADR in India. The purpose of this technique is to achieve justice with the integrity of the society and this justice can be economic, political, and social.

There is a judicially and constitutionally recognized ‘right to speedy trial’ as part of Art 21 of the Constitution of India. However, the right to speedy trial is not made accessible to the persons making the trial procedure prolonged because of unreasonable delay. Although, the Constitution of India has provided its citizens with right to speedy trials, Indian judicial system is suffering with heavy number of cases pending. The dictum “justice delayed is justice denied” perfectly applies to the Indian judicial system.

²⁸ 1976 AIR 1929.

²⁹ <<https://viamediationcentre.org/readnews/nti4/constitutional-provisions-and-legislations-for-adr-in-india>> last visited May 29, 2026.

³⁰ *Criminal cases and ADR*, available at <<https://www.lawctopus.com/academike/criminal-cases-adr/>> last visited on May 30, 2026.

³¹ *Food Corporation of India. v. Joginderpal*, AIR 1989 SC 1263.

There is also a well-known principle that free legal aid must be given to the indigent persons who are unable to defend themselves in a court of law on the grounds of economic or other disabilities³². As per Article 39A of the Constitution of India, ADR tries to achieve equal justice and free legal aid under the directive principles of state policy. People who cannot defend themselves before a court of law due to the reason for insufficient economic capacity, have the right to free legal aid. Now it is also made compulsory under Article 39-A and Article 21 of our Constitution³³. Therefore, to solve this problem, the successful implementation of ADR in our country is very much unavoidable.

VIII. BENEFITS OF RESTORATIVE JUSTICE AS ADR

A “restorative process” is defined as “any process in which the victim and the offender, and, when appropriate, any other individuals or members of the society affected by a crime, participate together actively in the settlement of matters arising from the crime, generally with the aid of a facilitator”. The restorative justice system offers opportunities to consider the matter beyond the court process which are beneficial to the parties involved. The parties involved in the issue themselves can determine their own path forward.

When the restorative justice applications are going to be practiced in the criminal justice system, the following advantages can be seen:

- an opportunity to convert the context right
- lowering of recidivism
- a coordination between the parties of offence
- a stronger society
- meaningful relationship, rather than punitive, between the culprit and victim
- cost effectiveness than the retributive justice system

Mediation or rather the role of a mediator or facilitator is a part and parcel of the system of restorative justice. However the phrases like, ‘resolution, inclusiveness, resolving conflict, reconciliation, relationship building, and mutual agreement’, which in various ways convey the advantages linked with mediation, which give rise to the anticipation that restorative justice and mediation are basically the same when in reality both are very different.

³² Constitution of India, 1950, Art. 39 A.

³³ Avtar Singh, *Law of Arbitration and Conciliation* 397-398 (. Eastern book Company, Lucknow, 7th ed).

IX. LIMITATIONS OF ADR IN CRIMINAL JUSTICE

“Mediation is a way of settling disputes which helps the parties involved to reach an amicable agreement with the support of an impartial mediator. The parties rather than the mediator, settle the terms of the agreement³⁴”. When it forwarded to ADR, in criminal cases, there are arguments both for and against it, because there are certain limitations. The ambit of ADR in criminal matters is very less because crime is considered as violation against the state and not against the affected party. Again, only the state has jurisdiction to address it.

The below mentioned are the limitations faced in the application of ADR in criminal justice system in India:

- * Alternative dispute resolutions can only be practiced in minor criminal cases and cannot on serious matters.

- * Existence of dispute is one among the prerequisites of ADR. But in certain criminal instances, like rash and negligent driving, drunken driving etc., resulting in injuries or even death of the parties, there might not be any conflict between the offender and victim, and in such difficulties limit the application of ADR in criminal trial.

The Indian penal justice system was not open to the notion to incorporate the option of mediation which is very relevant from the landmark case of *Afcons infrastructure and Ors. v. Cherian Varkey Construction and Ors*³⁵, in which the court held that criminal issues shall not be decided through alternate dispute resolution methods. That is why the dictum says like this, “it can be easier to train total newcomers than to train experienced mediators to do restorative justice work”.

ADR and mediation generally presume that there is a kind of moral equilibrium between the parties. Restorative justice rests on the assumption that all parties are moral agents and acknowledges that moral liability may be shared. However, usually there is a moral imbalance which must be specifically acknowledged. Someone has caused the injury and some other has been harmed, and the fact is placed in the center of the encounter. Because of this moral disequilibrium, the neutral language of ADR may be difficult in criminal matters, especially in cases of severe offences. Someone who has lost a kid through murder and is being called to meet with the person responsible for it, may find the language of resolution to be offensive. Although all parties involved may have some responsibility for the incident and the outcomes, restorative justice generally offers space for wrongdoer to be named. Again, the procedure is

³⁴ Brookes D and McDonough I, *The Differences between Mediation and Restorative Justice Practices* (2006).

³⁵ 2010 (8) SCC 24.

designed to affirm that satisfactory and relevant accountability happens. Often, the ADR narrates its facilitators as neutral or impartial, restorative justice practitioners are more likely to understand their role. Restorative justice facilitators may not be neutral or impartial about the injury, which was done, yet must care equally for and support all parties.

Many ADR matters require little or no distinct, face-to-face communication with the individual participants or groups before the incident happens. In most restorative justice processes, individual preparation is viewed as essential and in grave violence cases, preparation and follow-up is elaborative. Training in the dynamics of trauma is generally a crucial part of facilitator training for serious and violence cases. Restorative justice may include interests, it attracts the emotional level as well, understanding the expression of emotions and the telling of stories to be pivotal to the process.

While realistic and workable resolutions are essential for restorative justice, in general, it exactly more relationship-focused and the procedure may be as important, or more important, than the happening. It is clearly principle-driven and value-based system. The reconciliation approach is alarmingly recognized by the judiciary as appropriate for use in civil matters. Partly because of this combination and partly for the reasons stated above, criminal courts are often hesitant to its application in criminal issues. Restorative justice is not a specific procedure but rather a set of guiding tenets and values, a framework for identifying and addressing harms and responsibilities. It is more approachable than specific encounter models³⁶.

X. JUDICIAL TREND ON ADR IN CRIMINAL ARENA

In any formal justice system incorporating civil and criminal justice systems, mechanisms like police, prosecutors and the judiciary form the elementary foundation of justice administration³⁷. Restorative justice procedures can be used before, during and after the judicial process. It can be practiced in the legal system as a diversion procedure managed by the prosecuting attorney's office. ADR is a step taken by the judiciary to alleviate the crimes and attain the constitutional goal for achieving justice.

While prior to 2015, some courts ordered the parties to mediation centers, the Supreme Court laid out in *Afcons Infrastructure v. Cherian Varkey Construction*³⁸ that criminal matters were not suitable for mediation. Nonetheless, there are instances particularly of family conflicts,

³⁶ <<https://emu.edu/now/restorative-justice/2010/08/13/restorative-justice-mediation-and-adr/>> last visited May 31, 2026.

³⁷ Ewa Wojkowska, *Doing Justice: How informal justice systems can contribute* 9 (Oslo, 2006).

³⁸ (2010) 8 SCC 24, 25.

where a compromise is possible which is referred to mediation, though they have criminal ingredients. Moreover, provisions describing compounding of crimes have already been added in Indian law, raising questions concerning the applicability of mediation in the criminal scenario.

It was only some years later that the system of mediation started to gain popularity, especially after the judgment of the apex court in the case of *Salem Advocate Bar Association v. Union of India*³⁹, put forward a framework for model rules, guidelines and the establishment of mediation centers. Also in the case, *Food Corporation of India. v. Joginderpal*⁴⁰, the Court stated that arbitration should be simple, less technical and more accountable to the actual reality of situations, in response to the principle of justice and fair play.

In *Gian Singh v. State of Punjab*⁴¹, the Supreme court held and reiterated that the outside court settlement was in the exercise of a statutory power of the High Court under Section 482 of the Criminal Procedure Code. The apex court also upheld the validity of settlement agreements in criminal matters, providing a framework for their evaluation. The guidelines put forward by the Court intend to balance the interests of justice of the parties involved.

Again in the case, *K. Srinivas Rao v. D.A. Deepa*⁴², the Supreme Court stated that the complaint filed under Section 498A of the Penal Code, 1860, though a non-compoundable matter, can be sorted outside the court and opined that the same may first be referred to the mediation centres in relevant cases, if the parties are willing and it appears to the criminal court that there exists elements of the settlement. Therefore, reiterating the need for ADR techniques in the criminal matters as well.

The Hon'ble Delhi High Court in, *Dayawati v Yogesh Kumar Gosain*⁴³, opined that the lok adalat has jurisdiction over only such criminal issues which relate to crimes compoundable by law, i.e. under Section 320 of the CrPC or under any other specific enactment, as per the section 19(5) of the Legal Services Act, 1987⁴⁴.

Over the past several decades, the judicial approach to crime is moving in two directions. One is innovative and the other is retributive. In the former instance, it offers a change in the exiting

³⁹ (2005) 6 SCC 344, 345.

⁴⁰ AIR 1989 SC 1263.

⁴¹ 2012 AIR SCW 5333.

⁴² AIR 2013 SC 2176.

⁴³ CrI. Ref. No. 1/2016.

⁴⁴ Legal Services Authorities Act, 1987, s. 19(5).

forms of criminal justice, to deliver justice differently. The later version is repetitive. It promises to intensify the established system of criminal justice, to do justice more justifiably. Innovative jurisprudence is not constant. It is an ongoing venture. It can reduce the negative side effects of legal procedures. It encourages the outcomes of justice system such as conflict prevention and compromise, respect for the law and legal administrators, institutions and offender reintegration.

XI. CONCLUSION

Alternative conflict resolution techniques are highly relevant and meaningful in the legal scenario, because it assists the parties to seek justice on time with least amount of money and it reduces the overburden of cases issue on the court system. Restorative justice applications presumes that the parties involved in it are moral agents and admits that moral accountability may be assumed, even though there is usually a moral disequilibrium which must be acknowledged. When a crime has occurred, someone has caused the injury and another has been harmed, and this matter is placed for the mediator. Because of this moral imbalance, the neutral alternative dispute resolution techniques can be more tricky in criminal cases of extreme violence⁴⁵.

The primary objective of ADR is to impart a resolution for the ever increasing burden of the courts. It was a step taken by the legislative wing and judiciary to reduce the stress of the situation and achieve constitutional goal for attaining justice. But if “justice is delayed, justice is denied”, also “justice is hurried, justice is buried”. Collective harmony, that is, harmony between the individuals as well as within societies is an ever increasing aim of restorative justice which originates directly from indigenous dispute resolution practices. So, a new way to deliver justice in society is to adopt restorative justice practices as an alternative dispute resolution mechanism.

⁴⁵ Trishla Dwivedi, “Restorative Justice in relation to Mediation” (2022).