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Efficacy of Mediation in Criminal Cases: A Case Study Approach

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Mediation is an effective method among alternative dispute resolution (ADR) techniques, which specialises in resolving conflicts that occur in civil situations. The criminal justice system currently restricts its use of Mediation. Mediation can help reduce case backlogs, decrease judicial weights, and produce restorative justice results. The effectiveness of criminal case mediation under Indian laws is analysed in this research by studying legal origins along with appropriate implementation and effects. Criminal cases usually function adversarially, but Mediation enables private conflict resolution that chooses reconciliation instead of punishment, particularly for compoundable crimes like matrimonial conflicts and financial scams—evaluating mediation practices' effectiveness in speeding up justice and reducing tension among adversaries and offender-victim dialogue development using qualitative case studies. The acceptance of criminal Mediation among Indian judges is shown by judicial precedents in the cases of Salem Advocate Bar Association v Union of India and Dayawati v Yogesh Kumar. The study states that integrating the criminal justice system with Mediation depends on critical elements: legislative backing, professional mediation services, and general public education. Upcoming transformations in criminal justice stem from Mediation because Mediation justifies justice system punishments with conflict resolution practices to deliver fair and rebuild justice. The abstract efficiently outlines research objectives, outcomes, and consequences to make ideas more accessible.

Keywords: *mediation, criminal, adr.*

INTRODUCTION

The year 1996 saw the Arbitration and Conciliation Act and in the year 1999¹, the amendment in the Civil Procedure Code (CPC) incorporating Section 89². While Mediation was recognised for the first time in 1947, these legal developments thereafter did much further their practice in general application to civil disputes. The measures improved the practice of Mediation, especially in civil disputes. For example, the BMC (2016) indicates that between 2011 and 2015, the cases referred for Mediation maxima reached 79.85% of matrimonial cases, followed by property disputes (8.86%).³ The civil field has seen growing success through mediation cases, but the criminal sector has experienced slow development in this practice. This paper analyses the legal bases that allow Mediation to enter the Canadian legal system when applied to criminal proceedings and the rationale behind this entry. Integrating meditative principles into plea bargaining practices will produce positive results that transform the performance of the Indian justice system.

In today's view, Mediation is a method that replaces trials in different societal conflicts. This will be the only way the judges can relieve the stifling burden of solving the many complex causes they have entered in the courtroom since the austerity budgets of the State's institutions do not create the fundamental premise to enhance personal schemes within the courts.

This judicial system designates a third-party entity as a mediator in disputes between parties through legal procedures and specified conditions. It exists as an alternative system to traditional judicial proceedings operated by judges. The path of an alternative justice of Mediation, which was much lower in cost, paid by people in conflict and by the State to which they belong, especially in recent decades when it was initiated and fostered on the European continent and other continents. Mediation is also favoured since it is a non-binding process, i.e. the parties in dispute retain the right to accept or turn down the offer to settle at the end of the process.

The voluntariness of Mediation is a mandatory requirement for its implementation. The core nature of Mediation stays Mediation despite the statement. The parties maintain complete

¹ The Arbitration and Conciliation Act 1996

² Code of Civil Procedure 1908, s 89

³ *Ibid*

discretion to use Mediation for solutions through procedures they create for themselves. The warring parties can make settlement decisions and terms regardless of whether their dispute came from court mediation referrals or contractual or statutory mediation requirements.

LITERATURE REVIEW

Mediation is slowly being recognized as an essential dispute-resolution tool through which one can enter the complex criminal justice system world. A series of judgments and scholarly analyses have emphasized Mediation's role in criminal cases. It highlighted Mediation's potential role in amicable settlements and fastening justice delivery.

Commentary on the Consumer Protection Act by G.B. Reddy & Baglekar Akash Kumar:⁴

The following commentary demonstrates a thorough study of dispute resolution tools based on Mediation and Mediation in consumer law to show how Mediation strengthens Consumer Protection Act disputes. The analysis presented by the authors successfully demonstrates how Mediation, together with Mediation tools, work as time-saving measures for consumer grievances while alleviating court workloads. The authors illustrate how Mediation operates to create voluntary settlements that deliver expedient justice instead of lengthy court procedures.

The work successfully presents mediation usage for consumer disputes but fails to expand its research investigation into criminal cases. The presented study evaluates contractual and consumer disputes but omits investigative data on criminal justice system applications of Mediation for no mediation criminal matters. Additional study is required to understand how mediation principles applied in consumer protection law function when implementing them for criminal matters, although they might specifically benefit victim-offender mediation.

Arbitration & Alternative Dispute Resolution by Dr. N.V. Paranjape:⁵

Dr. N.V. Paranjape authored the foundational book about ADR mechanisms, which provides extensive knowledge on arbitration, Mediation, conciliation, and negotiation. The text reviews ADR development in India from when the Arbitration and Conciliation Act of 1996 came into force until the time of its amendments. The analysis covers both the procedural elements and the

⁴ G.B. Reddy and Baglekar Akash Kumar, *Consumer Protection Act: A Commentary* (2nd edn, EBC 2023)

⁵ N V Paranjape, *Law Relating to Arbitration & Conciliation in India* (9th edn, EBC 2020)

legal nature of ADR while exploring its benefits for shortening litigation duration while lowering expenses.

The book delivers thorough knowledge about ADR approaches, but its core analysis concentrates on arbitration and commercial disputing situations. The book introduces Mediation as a mediation resolution tool yet provides a limited examination of its use for criminal proceedings. The author offers an insufficient discussion about restorative justice principles and inadequate explanations of how criminal justice institutions could adopt mediation practices regarding plea agreements and compoundable offences. Studies must investigate Mediation's contribution to resolving tensions within criminal court disputes more precisely.

Alternative Dispute Resolution by Dr. S.R. Mayeni:⁶ Dr Mayeni's extensive research about ADR methods includes detailed examinations of both arbitration and Mediation, along with mediation practice in different legal settings. The author compares ADR in India through legislative and judicial evolution, which is in line with international ADR standards. The book provides an extensive explanation of court-attached mediation programs and the work of mediation facilities for civil cases.

The book provides substantial knowledge regarding ADR growth patterns yet fails to provide a detailed analysis of mediation effectiveness in criminal proceedings. The book offers an extensive examination of civil and commercial disputes but provides limited insights on criminal matter mediation beyond victim-offender reconciliation. The text does not mention court decisions involving criminal case mediation nor provides insights on existing legislative restrictions that might limit Mediation's existing Indian criminal courts.

Arbitration & ADR (Conciliation, Mediation & Negotiation) by Dr. U. Pattabhi Ramiah:⁷ This text provides detailed research about different ADR frameworks, specifically emphasizing arbitration and conciliation. The author analyzes mediation procedures while illustrating their superiority to typical court processes and how they enhance settlements. The text provides information about Mediation as it Mediation in international legal frameworks

⁶ S.R. Mayeni, *Alternate Dispute Resolution* (6th edn, EBC 2024)

⁷ U. Pattabhi Ramiah, *Arbitration & ADR* (Asia Law House 2018)

and presents an analysis of various jurisdictions' approaches to mediation implementation. The book comprehensively covers ADR yet lacks a thorough examination of criminal case mediation.

The book devotes extensive study to conciliation strategies and negotiation processes but fails to discuss implementation barriers and legal restrictions for using Mediation in criminal procedures. The book fails to investigate the utilization of Mediation to court case backlogs and develop victim-offender dialogue standards, nor does its relation to restorative justice. Further research must close this research gap to determine how Indian criminal justice system institutions can employ mediation methods.

STATEMENT OF PROBLEM

The court system, for example, is often characterized by a host of problems, including long delays in trial proceedings, overcrowding on court dockets, and the emotional drain imposed upon all persons involved in criminal cases. These problems are not only hindrances in the way of smooth justice delivery but also give rise to a trauma predicament and stress to the victims, accused, and the families of both. These are issues that, in a legal framework that is traditionally adversarial, might seem insurmountable, as the emphasis is very much on legal victory rather than the Resolution of the underlying conflicts or the needs of the parties involved. The adversarial criminal justice system may not effectively address the underlying causes of disputes, which are dispositions that do little or nothing to restore the harm and ensure healing. From this view, the following paper discusses the role of Mediation in remediations. Mediation offers an alternative direction that draws dialogue, mutual understanding, and collaborative problem-solving between the victim and offender. The idea, in a nutshell, is that the method is designed to produce more efficient, quicker, and less expensive dispute resolution than the delays and formalities incident to the traditional court process, and in some cases, restoration and healing by encouraging the greater involvement of the parties in the reconciliation of differences. In other words, the expressed goal of Mediation is to be an opportunity for victims and offenders to express feelings, concerns, and needs in a safe and controlled environment that could ideally lead to a restored sense of justice and peace that is not always the result of conventional legal processes. This implies that Mediation

should find some way to integrate itself within the criminal justice system, this time ensuring an impact on efficiency in resolving disputes and reconciling victims with offenders. Such inquiry may bring into focus paths toward a justice system that is more humane and, at the same time, practical, where the Resolution of criminal cases might be in line with principles of restoration, healing, and mutual respect rather than simple punitive forces of the law.

OBJECTIVE

In the broadest sense, the primary aim is to look in great detail at how Mediation works within criminal cases, focusing principally on Mediation's capacity to simplify the justice process. This will involve the assessment of procedural efficiencies introduced by Mediation, their potential to shorten case timelines and the impact on the overall speed of justice delivery compared to processes followed under traditional courts.

1. To Analyse Mediation's Role in Criminal Cases for Swift Justice Delivery
2. To evaluate Mediation's Effectiveness in Fostering Settlements and Mitigating Adversarial Tensions.
3. To explore participant Perceptions within the Criminal Mediation Process through a Case study.

RESEARCH METHODOLOGY DETAILED OVERVIEW

The research would be qualitative in design, based on the analysis of case studies, to pursue effectiveness in Mediation within criminal justice. Here, it is the underlying framework, and these explicit references underline the importance of Mediation as a mediation of dispute resolution in criminal matters. With this in mind, the paper will shed light on the subtleties of Mediation's role outcome that follows in the legal setting.

Therefore, the methodology consists of a deep analysis of each mediation case, which is a medical, criminal case in which a mediated agreement was conducted as a mechanism to resolve. This would mean passing through the process, outcomes, and subsequent impacts of Mediation with a keenness to understand how Mediation contributes to Resolution and promotes justice delivery.

It is designed to seek, across a broad spectrum of perspectives, insights into the mediation process, its mediation effectiveness, and the challenges met in striving to implement it. It aims, therefore, to develop a complete, multi-dimensional account of the efficacy of Mediation in remediations through synthesizing legal judgements and case outcomes. The structure will be facilitated to explore the depth of themes that may include procedural justice, the satisfaction of parties, and the transformative potential of Mediation in the mediation justice process.

HYPOTHESIS

That is, the argument presented would, therefore, be that the inclusion of Mediation in remediations would likely change the field of dispute resolution.

1. Mediation will be an effective way to lessen the burden of courts. It will fasten the delivery by the Indian judiciary system with leaps & bounds but will be limited to an extent, given the nature of the crime.

EXISTING DISPUTE RESOLUTION SOLUTIONS ARE NO LONGER SUFFICIENT

The most used, therefore, are Judicial Dispute Resolution and Extrajudicial Resolution. Resolution of commercial disputes around the world. The most common form of judicial Litigation is the Resolution before a lawsuit is pursued. One party file a suit against the other party. Such cases are usually brought before judicial institutions where laws from the Indian Contract Act 1872 become applicable. Similar to other Parliamentary documents, Penal Code, etc., forms as legal documents. Extrajudicial Resolution includes Resolution and different dispute resolution methods like arbitration, collaborative law, and Mediation, enabling Resolution between business organizations, governmental agencies, and individuals, including international entities and states. ADR develops from mutual agreements established between both participating parties. The issue of pending case backlog lacks any established solution from the World Health Organization or other similar organizations. Since democrats form the majority of our global population, our judicial system stands to be one of the best. The current position of our nation places us at 77 out of 140 countries within the ranking of the planet's rule of law index.⁸

⁸ 'National Judicial Data Grid' (*Ecourts*) <<https://njdg.ecourts.gov.in/hcnjdgnew/>> accessed 27 April 2024

Our judicial system consistently works to eliminate its large backlog through the adoption of FTC while striving to enhance operational efficiency. However, the population of India remains the world's largest since our citizens maintain improved knowledge compared to past generations.

Therefore, globalization, education, and the Internet are the primary reasons why society is witnessing changes around the country, leading to an increase in the number of cases filed.

As per the National Judicial Data Grid, a whopping total of 61,83,731 cases⁹ (civil and criminal) are pending at the disposal of the High Courts of India, of which 77,510, i.e. 1.25% of the total number of cases, have been pending for more than 30 years now, whereas a total number of 80,601 cases¹⁰ are pending in the Supreme Court of India.

MEDIATION AS AN ALTERNATIVE DISPUTE RESOLUTION

Mediation was introduced in the Singapore legal system in 1994—judgment by the Subordinate Courts. However, Mediation is a significant factor in dispute resolution, with people being at the centre of it all. The litigation lawyer can hardly help with this. While there is now the promotion of family mediation in the Family Court as well as the availability of the Commercial Mediation Service at the Singapore Academy of Law, and the Court-Annexed Mediation Law is likely to be enhanced, there is a need to keep the Singapore lawyer conversant on the facts about Mediation and his/her professional ethics. Therefore, this article now focuses on the effects of Mediation, both positive and negative. The definition of Mediation will be discussed in this chapter section. Much of our discussion will be on the facilitative approach to Mediation, which is, by and large, the most prevalent practice of Mediation today. It may be assumed that some fundamental notion of Mediation can be discussed in this chapter, at least on a preliminary level, in legal practice. Nevertheless, until there is a general grasp of what Mediation represents, we will not be able to see why the installation of Mediation will be effective.

⁹ *Ibid*

¹⁰ *Ibid*

UNDERSTANDING MEDIATION

Mediation is a method of settling disputes by which two or more parties, without harsh Litigation, which is expensive, time-consuming, and destructive to relationships, use an independent third person to bring them together so they can reasonably compromise and settle their differences.¹¹ They may meet informally on their initiative for the same purpose. The dispute may be pending Litigation or a dispute that can go into Litigation. Mediation is considered most helpful in various types of disputes in commercial transactions, personal injuries, construction, workers' compensation, labour community relations, divorce, domestic relations, employment or any other matter that does not have complex procedural and evidentiary issues. Concerned parties shall be present at the conference by their own will unless otherwise ordered by the legislature or contract.

The mediator is a person with patience, persistence, and common sense. He has an arsenal of negotiation techniques, human dynamics skills, and the ability to listen effectively, articulate, and restate.¹² The mediator is a facilitator and has no power to resolve the conflict. The parties fashion the solution together as the mediator moves them through the process. In most jurisdictions, the mediator is an attorney but can't give legal advice while in the role of a mediator. However, the mediator's expertise in the subject matter may be beneficial to the parties in the wording and framing of the mediated agreement or where parties are amenable to neutral case evaluation. Mediation is one of the primary mechanisms for dispute resolution based on the role played by the mediator as a facilitator but not a decision-maker. The whole concept behind Mediation is a facilitative approach: the mediator helps the parties in dispute reach a resolution independently. Resolution assumes the nature of arbitration or Litigation if the mediator assumes a decision-making role.

Of course, differentiating between Mediation and Mediation of dispute resolution processes, such as Litigation and arbitration, is the duty simply because they are based on the opposite values of decision-making and decision-making power. It's that distinction that makes Mediation a preferred method of dispute resolution. As the definitions show, Mediation is a

¹¹ Stephen B. Goldberg et al., *Dispute Resolution: Negotiation, Mediation and Other Processes* (7th edn, Aspen Publishing 2020)

¹² Christopher W. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict* (2nd edn, Wiley 1996)

mode of negotiation, which is an extended form of negotiation in the way the settlement intervenes in decision-making in the disputants. The primary function of the third party in Mediation is to remediate a decision, whatever the essence of the dispute is. Instead, the third party only acts as one of the mediators between the contesting parties either to minimize communication problems and sometimes to present to both sides a different perspective of the disagreement or to bring new ideas and present them to the disputing parties to reach a peaceful settlement. One of the main merits of Mediation is that the parties find a solution that is close to acceptable. The Resolution is still under their Resolution; they are in complete control of power to help choose the kind of solution that would fit. Mediation is not a newfangled import from Western legal systems but a tradition from ancient times, which is prominent in different cultures and traditions worldwide. For example, in most Asian societies, the family heads usually deal with family disagreements while the village elders or Penghulu resolve community issues.¹³

MEDIATION & CRIMINOLOGY

This complex relationship between criminology and globalization has been brought to the forefront of contemporary discourses, more so as urbanization takes off at its fastest rate. This tide of urbanization, compared with the bullet-like fast path, seems to starkly contrast against society's static, unchanging mental viewpoint that is obstinately disobedient to any kind of forward movement. Much as the physical spaces and infrastructures may have undergone tremendous change and evolution, bringing in modernization, the attitudes to crime and justice seem to be longing perceptions that further exude extreme nervousness about criminal activities. This is evidenced by the recorded increase in the number of criminal cases.

This development is disproportionately high and raises alarming signals when compared with the resources of the judiciary in the shape of the number of judges and adequately equipped courtrooms. The root causes of these disputes are multifold, from a growing population and burgeoning societal issues to what is often referred to as 'sick mindset problems.' The term 'sick mindset problems' entails the malaise of contemporary societal ills affecting mental and

¹³ *Ibid*

moral faculties. This is the case with the present judiciary in India, which is representing these challenges and struggling with grave inefficiencies.

The judicial system in India reflects these challenges and is currently facing what can be termed as very critical inefficiencies. Long delays and an overwhelming backlog of cases characterize the system.¹⁴ Procedural tardiness and the high costs associated with Litigation inflict mental and marked physical distress on the individuals involved, further compounding their plight. This scenario, therefore, brings to sharp focus the challenges of accessing justice, especially by the economically disadvantaged sectors of society to whom legal redress seems a mirage. Given these emergent issues, adopting alternative dispute resolution (ADR) has become increasingly recognized as indispensable. ADR represents a suite of processes designed to facilitate the Resolution of disputes outside judicial mechanisms.

Therefore, the methods are highly valued as a quick and relatively cheap delivery of justice, lightening the burden of the regular court system. India has contributed Lok Adalat and Mediation to jurisprudence from the various ADR methodologies. Lok Adalat is an Indigenous concept embedded in the institution of Mediation in its mediation sinews of Indian society, particularly at the grassroots level through Panchayats. These institutions realize community-based Resolution and stand very instrumental in justice administration with a means that is both expeditious and accessible. These institutions reflect the profound and revolutionary approach regarding legal disputes. Besides reducing the load on the formal judicial mechanism, this mechanism also encapsulates the cultural-centric means of dispute resolution that resonated with the socio-economic realities and communal values of Indian society.

Mediation is an inherently powerful, yet so many times overlooked, means through which parties embroiled in criminal proceedings may be able to arrive at an outcome that, to a certain degree, can be appreciated as representing a 'win-win' scenario. More so in cases where the offences may not be of immediate amicable-compound nature (non-compoundable offences); however, in Mediation, the Mediation of a way forward for amicable settlement is provided under some specific set of circumstances.

¹⁴ National Judicial Data Grid (n 8)

APPLICABILITY OF MEDIATION IN CRIMINAL CASES

Mediation can be put in place for most criminal cases, more so where personal relations are involved, for example, matrimonial or family disputes. Since the nature of many criminal offences doesn't allow direct mediation, Court, or mediation cases, I see the advantage of facilitating dispute resolution outside of the traditional adversarial trial process.

This is particularly relevant to cases where the root causes are better tackled by talks and bargaining rather than punishment only.

Court-Directed Mediation: In such a case where settlement is possible, the parties show readiness to subject their matter to Mediation. The courts may refer the parties to Mediation at an early stage of the proceedings. The aim is to resolve conflict in a way that will give way to justice yet realizes personal dynamics. For instance, in matrimonial disputes, there might be an attempt by Mediation to address emotional and family aspects that a conventional criminal proceeding could overlook.

Process and Outcome of Mediation: In criminal law, Mediation is a process that involves the mediator helping the accused and the victim discuss issues to find common ground for possibilities and ideas on how they can reach an acceptable agreement for both parties. The procedure is confidential, very informal, and essentially non-adversarial and supportive of the needs and realities of the two persons involved.

The result of the Mediation will be reported to the Court: In the courtyard, the Court is to check that the fairness and genuineness of the settlement are not the consequence of coercion and, at the same time, reasonably cover the gravity of the offence.

Quashing the Criminal Complaint: In the event of the Mediation, the Court would be competent to apply for being quashed on the criminal complaint of the Court of the said parties. This is an essential step since it, in an effective stroke, does away with all legal proceedings about the offence, provided the Court is pleased with the nature of the settlement. The Court should decide to quash the complaint only if the Resolution conforms to the people and legal standards.

Advantages of Mediation in Criminal Proceedings: Several benefits come with applying Mediation in remediations. **Reduction in Legal Burden:** Mediation can significantly reduce the legal burden of courts by settling matters out of the courtroom. **Personalized Justice:** It allows for solutions specifically tailored to the needs and circumstances of the individuals involved. **Restorative justice** brings the interested parties together around the table to address the needs of the victims through Mediation, which emphasizes that Mediation repairs the harm and can be more satisfying than outcomes from retributive methods. **Preservation of Relationship:** In family or matrimonial disputes, Mediation is necessary to preserve relations or bring about a harmonious dissolution.

Some of the cases where the dispute was resolved through criminal Mediation are as follows:

To better understand the evolution and application of Mediation under Mediation⁹ of the Code of Civil Procedure, 1908¹⁵ (CPC) and its recognition in various legal cases, we delve into specific court rulings that illustrate the approach towards Alternative Dispute Resolution (ADR) in India. Here are more detailed analyses of the instances mentioned:

Salem Advocate Bar Association, T.N. v Union of India:¹⁶

Context and Challenge: This case primarily focused on the constitutionality of amendments brought to the CPC through the Amendment Acts of 1999 and 2002 that aimed to encourage alternative dispute resolution (ADR) techniques so that courts may decrease their burden and reduce the delay in court-based dispute resolution.

Court's Observations: The Supreme Court upheld the amendments but, considering the practicalities, found it necessary to have definite operational guidelines for the ADR mechanisms newly introduced. A committee was then set up to be chaired by a former Justice of the Supreme Court and the Chairman of the Law Commission of India. The committee was to frame a model case-management formula and establish elaborate rules for the ADR processes.

¹⁵ Civil Procedure Code 1908, s 89

¹⁶ *Salem Advocate Bar Association v Union of India* (2003) 1 SCC 49

Implications: This result further underlines the necessity of procedural norms by which the integration of ADR can effectively be made part and parcel of the judicial system. It will help create a more efficient dispute resolution frame across Indian courts.

Dayawati v Yogesh Kumar:¹⁷

Issue at Hand: This case related to whether criminal compoundable cases, such as those under Section 138 of the Negotiable Instruments Act regarding check bounce, could be validly referred to Mediation.

Court-directed Mediation: The Delhi High Court, after holding that Mediation was a Mediation legal avenue in such cases, further stressed that the mediation process must be duly recorded in the form of parties' consent and the settlement agreement to prevent abuse of the judicial process while upholding the rights of all the parties involved.

Broader Impact: The decision illustrated the adaptability of Mediation to remediations of a myriad of forms. It served to emphasize its role in court reduction by reducing caseloads and facilitating quicker resolutions.

Smriti Madan Kansagra v Perry Kansagra:¹⁸

Background: This was a hotly contested custody battle, so Mediation was important to try and work out a peaceful settlement. Mediation consisted of the parents and the child being brought in for interactions with the help of mediators and counsellors.

Challenges in Mediation: Confidentiality became a significant concern, with all aspects of mediated discussions, communications, or reports being reliable and admissible in deciding in Court. The case stressed the need for the very subtle balance involved with Mediation, especially Mediation for both parties within personal and emotional instances, such as custody disputes.

Outcome: The Mediation was deemed unsuccessful, leading to a judicial decision. This case is a critical example of Mediation's limits and potential pitfalls in mediation matters.

¹⁷ *Dayawati v Yogesh Kumar* (2017) SCC Online Del 11032

¹⁸ *Smriti Madan Kansagra v Perry Kansagra* (2020) SCC Online SC 1021

Ayush Poddar and Ors v State of Chhattisgarh:¹⁹

Legal Framework: The Court read into the possibility of using Mediation in disputes, and one of the outstanding examples is the one under section 498-A of the IPC, which involves a charge of cruelty by a husband or his family against the wife.

Judicial Approach: The Chhattisgarh High Court even argued that even in these extreme cases, Mediation could be subject to the conspicuous willingness of the parties and an apparent opportunity for reconciliation.

Significance: This progressive judgment indicates a broader acceptance of Mediation in criminal justice processes, not only as a dispute resolution process but also in rehabilitating relationships and promoting societal peace.

These cases illustrate a judicial response to Mediation, which is that Mediation is growing in acceptance in the Indian legal system as a legitimate and often effective dispute resolution process in cases both civil and criminal. The exercise not only helps decongest the courts but also maintains relationships by moving forward in a more conciliatory manner in resolving disputes.

POWER OF INDIAN COURTS TO REFER A CRIMINAL CASE TO MEDIATION

Mediation is primarily a process that involves a third person who assists the disputing persons in coming to the desirable solution. Justice Jagannadha Rao characterized Mediation as a mediation process. During Mediation, the Mediation does not bind the disputing parties to a decision but only encourages them to reach an amicable solution.²⁰

Nevertheless, the 129th Law Commission Report touched on the fact of an equitable settlement between the parties without a court of law. ²¹Their suggestions became a part of §89 of CPC.²² 'The clause endows to the court the power to refer a dispute with either of the mentioned features to four alternative dispute resolution methods, namely mediation.' Through this method, the parties to civil Litigation can now opt for a mediation that is statutorily directed

¹⁹ *Ayush Poddar and Others v State of Chhattisgarh* (2021) CRMP No 162/2021

²⁰ *Ibid*

²¹ *Ibid*

²² *Salem Advocate Bar Association v Union of India* (2003) 1 SCC 49

by the Supreme Court at the close of their pleadings, wherein the Court recommends Mediation as one option that the litigants can explore.

The sentencing of participators is confined to offences that are so natured that it is a wrong against the society publicly and not to a private person. This council of opinion might have been the critical pillar of the adversarial system undertaken in India, where the standard law system is in practice. This type does not pay special attention to forgiveness and reconciliation issues, which might lead to the fact that some of the stakeholders' needs were not considered. Accordingly, the system is faulty in the sense that it overlooks that certain crimes are inherently private. It excludes the victims of those crimes and weakens the role of apologies and forgiveness.

In s320 CrPC, this has been matched by the provision of 'compounding,' where only religious feelings are being hurt, or injury is caused to a human being deliberately. The 41st Law Commission Report stipulated that compoundable offence 'where the offence is purely private and of minor seriousness.' Compounding of offence is where 'the offender is pardoned from prosecution' because the aggrieved party would instead settle the dispute 'amicably.' In this way, the offender can feel remorseful and apologize to the victim for acting a certain way. There is another way the offence could be compounded if the offeror about the offence is in a position where he commits a minor offence instead of instituting a criminal case against the offender or if he agrees to accept compensation or something that the offender can compound. Compounding is not tantamount to pleading for a sentence reduction because the victim's willingness to forgive defers to the act of solatium in exchange for forgiveness.

Paraphrasing s320 of the CrPC indicates that doing so would clarify that all offences, apart from those mentioned expressly in that section, are not compoundable. For instance, the most serious offences (for example, murder or rape) are processed by the State, which should deal with the case in the name of the society and of the private party which suffered the adverse impact of the offending act. Moreover, the courts, on some occasions, stand for the rights of the victim, especially in matrimonial disputes where there are criminal factors.

The approach had been first deliberated in the context of B.S. Joshi. In *K. Srinivas v State of Haryana*, the wife had filed a complaint under Section 498-A of the IPC for tort, and after that,

she willingly agreed to a mutual divorce, which was mutely consented and deserted by the High Court. When the respondent filed an appeal to the Supreme Court, it stands to be held that the appeals would be entertained u/s 482 of the CrPC²³ and that the Court may quash the First Information Report since the parties have patched up and there is no more trouble in the marriage. Although an offence to compound does not mean compounding, the Court held that in this case, because the parties mutually.

Meanwhile, in the case of **Ashok Sadarangani v Union of India**²⁴, the Hon'ble Court opined that the continuation of criminal proceedings based on the comprises achieved amongst both the parties is an 'exercise in futility' which entitles to quash the FIR under Article 142 of the Constitution of India. Consensus as a valid consideration for criminal jurisprudence is demonstrated by the withdrawal of the FIR, considering that it was based on mutual agreement.

The similar relation between the Mediation and criminal offences was highlighted with an illustration of the **Sreelal v Murali Menon**.²⁵ Arbitration is related to Mediation as it is the sharing of consent by the two parties, giving and taking only from one or both sides and focuses on conciliation as the primary objective. The difference between Mediation and Mediation is that a third person is absent, and restitution agreements are not drawn. In this way, the most fundamental perceptions of Mediation may account for its place in the law of compoundable offences, which lays the foundations for Mediation in Indian criminal jurisdiction.

MEDIATION & ITS APPLICABILITY IN CRIMINAL MATTER

Notwithstanding that Mediation in Mediation cases is primarily improper and ineffective, its introduction into the practice might be accompanied by a few negative consequences. However, the scope of its practical use in a criminal lawsuit should not be generalized. The records thereafter include delinquency and minor crimes to prove the application of

²³ Code of Criminal Procedure 1973

²⁴ *Ashok Sadarangani and Anr v Union of India & Ors* (2013) 1 SCC (Civ) 298

²⁵ *Sreelal v Murali Menon* (2014) 3 KLT 536

Mediation. The mediation judges referred to the check bounce cases and the matrimonial dispute between criminal charges and Mediation.²⁶

The question of the merit of Mediation in criminal issues revolves around two issues. Therefore, Mediation can be the primary and ultimate goal of conflict resolution. Next, does research prove that Mediation in criminal cases is more effective or no less effective than the traditional adjudication mechanism?²⁷

Scholars examine human nature differently in terms of justice; justice depends on the law, and it is determined by the suitability of the litigants. Both these are called as formal justice and creative justice, respectively. The facts and circumstances will decide whether the case should be condemned. It does this by protecting general societal interests that are conveyed through shared values and individual solidarity. On the other hand, it is also argued that the public gets preoccupied with seeking reparations for misdeeds and with remedies for their injuries.²⁸

Sherif Elnegahya insists that a court just orders remedies with the purview law and does not have the margin for extrajudicial remedies like tenders of apology. ²⁹However, these hurdles can be overcome by the system of law sensitively and in a manner of justice. The parties can choose how to solve a dispute by discussing their values and concluding that one solution is as good as the other.

Research into the effectiveness of Victim Offender Model programs has indicated that victims were more satisfied with the reconciliation method than with the normal court setting.³⁰ If they were not included in the lists of victims under Victim-Offender Mediation, there is a possibility of re-victimizations-victimization in a prolonged court process. Moreover, recidivism was less for offenders. Moreover, in cases of grave crimes, the Victim Offender Model provides hope and gratification to the victims through dialogue and promotes a sense of security.

²⁶ Ilyssa Wellikoff, 'Victim-Offender Mediation and Violent Crimes: On the Way to Justice' (*Restorative Justice Exchange*, 04 June 2015) <<https://restorativejustice.org/rj-archive/victim-offender-mediation-and-violent-crimes-on-the-way-to-justice/>> accessed 15 January 2025

²⁷ *Ibid*

²⁸ *Ibid*

²⁹ *Ibid*

³⁰ Alyssa H. Shenk, *Victim-Offender Mediation* (1st edn, Routledge 2001)

CONCLUSION & SUGGESTION

Finally, the research paper looks at the effectiveness of ADR, which is mediation in the criminal justice system. I will briefly conclude by providing a summarised discussion of how this tool could be used in the serious improvement of methods of justice delivery. This study underscores, from the historical and legal basis and various examples, that Mediation proves to be a more humane and efficient alternative to processes in a traditional court. Mediation is the preferred process because it leads to faster dispute resolution and emphasizes the maintenance and restoration of relationships and community harmony, which are generally left behind by adversarial legal proceedings.

Thus, Mediation is where the parties to the dispute control the outcome of their conflict. In this regard, empowerment and mutual respect of the parties are drawn by this aspect of Mediation, outcomes reach satisfaction and enduring. Mediation, on the other hand, reduces the emotional and financial costs of Litigation, a crucial factor in a legal system choked by delays and high case volumes.

The outcome of this research brings out the transformative potentiality of Mediation in procedural justice, alleviation of legal congestion, and raising the general sense of satisfaction and fairness of the disputants. Despite these substantial benefits, the process of integrating Mediation into the justice system entails several challenges. Greater recognition would be achieved through the legal and social establishment of intense training programs for mediators that guarantee quality and uniformity in the mediators' practices and guidelines for protecting the rights and interests of the parties.

Transparency and accountability will need to be at the core of the mediation process for the mediation process to remain human and practical.

The following suggestions aim to further strengthen the role of Mediation in criminal cases:

Legislative Support: Enact laws recognizing Mediation as a preferential method in certain types of criminal cases, especially where the cases involve non-violent and personal disputes.

Training and Certification: Develop standardized training programs and certification of the mediators to ensure these personnel, who will transact on sensitive cases like criminal ones, have the acquired skills and ethical understanding.

Public Awareness Campaigns: Publicity campaigns need to be carried out to make the public aware and sensitize the legal fraternity about the benefits of Mediation. This mediation is going to lead toward building up trust and acceptance, which eventually makes the mediation process attractive for the settlement of disputes.

Monitoring and Evaluation: Establish mechanisms for monitoring and evaluation of the processes and outcomes of Mediation. This Mediation helps refine practices and strategies to enhance their effectiveness and fairness.

Integration with Legal Education: A comprehensive course for Mediation should be incorporated into the subject area of legal education so that, along with the degree, future lawyers are equipped with a much broader view of alternative dispute resolution techniques.

Creating a Supportive Infrastructure: The setting up of mediation centres to have resources and necessary infrastructure with trained personnel who can handle all kinds of disputes arising from criminal matters for adequate accessibility and efficiency. The following reflects on how these challenges should be addressed and implemented through the measures proposed for effectively integrating Mediation into the mediation justice system. This would enhance the system's efficiency and promote a more reconciliatory approach to criminal justice, prioritizing healing and Resolution over punishment and Resolution. Adoption of Mediation is a progressive step toward a justice system that is humane and more effective, aligning with the principles of restorative justice and community involvement.