

Alternative Dispute Resolution in the Indian Criminal Justice System

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Abstract

Alternative Dispute Resolution (ADR) refers to procedures that take place outside of the courtroom, unlike litigation and trials. ADR means a number of methods that help parties settle disagreements amicably and without going to court. ADR has grown in significance in virtually every civilized society as a result of the unprecedented number of court disputes and lawsuits. The most popular forms of ADR are negotiation, mediation, collaborative law, and arbitration. Conciliation is occasionally added as a fifth kind; however, it can be regarded as a form of mediation for our purposes. In arbitration, decisions are made by a neutral third party and are legally binding. If there is a negotiation, the parties' attorneys work together to settle differences. A neutral third party is used in mediation to encourage consensual resolution and settlement. In contrast to the ADR system, criminal jurisprudence seeks to use the

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penal code as a guideline when there is a dispute in a criminal matter. ADR looks for a resolution that might or might not include going to court. The use of alternative dispute resolution in criminal cases is a current development in the field. The most popular type of ADR in the criminal justice system is mediation. The paper will thus, present an insight into the use of ADR in criminal disputes in India.

Keywords: Alternative Dispute Resolution, Arbitration, Mediation, Negotiation.

Introduction

Alternative Dispute Resolution (ADR) is a procedure used to handle or amicably resolve disputes between parties without the involvement of a judicial institution and without the requirement for a trial. Any disagreement that cannot be settled through normal channels of communication, such as civil, commercial, industrial, or familial disputes, may be settled using ADR. A neutral third party is typically used in ADR to support the parties' communication, discussion of their differences, and conflict resolution. It is a manner that people and groups can maintain social order and cooperation while also giving them a chance to reduce hostility. ADR can be classified into five broad categories i.e., Arbitration, Conciliation, Mediation, Negotiation and Lok Adalat. Arbitration is different from other types as dispute is decided by

imposing an award and it is binding on the parties while in other kinds, the assistance is advisory in nature. Through its many approaches, ADR plays a significant role in India in addressing the state of cases that are still outstanding in Indian courts. The ADR procedure provides the Indian judiciary with scientifically developed procedures, reducing the burden on the courts.

Research Problem

Alternative Dispute Resolutions are available and have benefits, but they are rarely used. To be able to respond to the question of whether ADR may only be used in small criminal offenses and not on significant offenses, we must first understand why this is the case. In addition, there is a high possibility that the individual who is convicted is innocent but pleads guilty because of the concessions made during plea bargaining. There is a high risk of corruption and coercion by investigating agencies, which may go against the principles of a fair trial, even if a lenient sentence is taken into account as part of the circumstances of a case after a regular trial. It is crucial to ascertain whether the use of plea bargaining is effective in India as merely accepting guilt should not be based on crime reduction. Thus, the main problem of this paper is restricted to the ADR process in criminal cases in India. The researcher also mentions a number of significant cases to help readers comprehend the position of

the judiciary on the idea of plea bargaining in criminal cases in India.

Research Objectives

- (i) To study the evolution of ADR in criminal law as well as its importance in criminal cases.
- (ii) To study the attempt made by the judiciary to guarantee speedy trial through a number of important judgements.
- (iii) To understand the loopholes of ADR in criminal law.
- (iv) To examine the idea of plea bargaining in India.

Research Methodology

The method of research paper is doctrinal and is descriptive in nature. The sources preferred for this research paper are primary sources such as The Indian Constitution, The Criminal Law (Amendment) Act, 2005, Civil Code of Procedure, 1908 as well as secondary sources. Books, Articles, Journals are the major sources referred and the researcher has limited the scope of research to the Indian laws

Alternate Dispute Resolution Mechanisms (ADR)

"It is the spirit and not the form of law that keeps justice alive." LJ Earl Warren.² A novel non-adversarial conflict resolution method has been devised through conflict management using alternative dispute resolution. A dispute is simply a *"lis inter partes,"* and the Indian legal system has found an ADR Mechanism as an alternative to confrontational litigation. In order that the rule of law and justice can be administered properly, certain basic steps are to be taken by the state. As far as the picture of pendency is concerned in the civil cases, that can be tackled by the alternatives available such as the ADR mechanisms. But there is some doubt upon the application of ADR in criminal justice. In reference to the criminal justice, the term ADR encompasses a number of practices which are not considered part of traditional criminal 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; school programs.³ It may also take the shape of cautioning and specialist courts (such as Indigenous Courts and Drug Courts). Contemporary conflict resolution techniques,

² *Exploring the scope of Alternative Dispute Resolution in India*, THE LAW BLOG, <https://thelawblog.in/tag/mediation-and-negotiation/> (2017). Last accessed: May 07, 2023.

³ Mr. Anoop Kumar, *Applicability of ADR in Criminal Cases*, MANUPATRA (2012), <https://articles.manupatra.com/article-details/Applicability-of-ADR-in-Criminal-cases>.

including ADR, allow parties to address the core issues at stake in disagreement in a more efficient and cost-effective way. Also, these procedures provide the parties the chance to reduce hostility, regain control, accept the result, resolve the conflict amicably, and achieve a greater level of justice in each particular situation. Private dispute resolution is widely used because it is more practical, affordable, and effective.⁴ The five most popular forms of ADR are arbitration, conciliation, mediation, negotiation and Lok Adalat (conciliation is frequently included for the purposes that it can be regarded as a form of mediation.)

Arbitration: An arbitral tribunal receives the dispute and renders a decision (an "award") that primarily binds the parties. Compared to a trial, it is less formal, and evidentiary norms are typically relaxed. An arbitrator's decision generally cannot be challenged. Judicial interference in the arbitration process is minimal, with the exception of a few interim remedies.

Conciliation: A neutral third party, known as the conciliator, helps disputing parties come to a mutually agreeable settlement through the non-binding process of conciliation. A less formal type of dispute

⁴ Amrisha Jain, *Need of ADR in Criminal Cases*, <https://viamediationcentre.org/readnews/MTg0/Need-of-ADR-in-criminal-cases>. Last accessed: May 07, 2023.

resolution is conciliation. The conciliator's recommendations are up for acceptance or rejection by the parties.

Mediation: The parties are assisted in their efforts to come to a mutually acceptable resolution of the issue by a third party known as a "Mediator." The mediator doesn't make decisions; instead, they help the parties communicate so that they can work to find a solution on their own. After mediation, the outcome is still under the parties' hands.⁵

Negotiation: A non-binding process in which the parties engage in direct negotiations with one another in order to resolve their differences through negotiation. It is the alternative conflict resolution strategy that is most frequently used.

Lok Adalat: An intriguing aspect of the Indian legal system is the formation of volunteer organizations called Lok Adalat (Peoples' Courts). The Legal Services Authority Act and the new Arbitration and Conciliation Act were both passed in an effort to promote out-of-court settlements. Lok Adalat, or "People's Court," is a relaxed setting that encourages conversations in the presence of a judge and where disputes are settled without excessive emphasis on legalese.

Important Provisions Related To ADR

Section 89 of the Civil Procedure Code, 1908 provides that opportunity

⁵ Madhu Sweta, *Alternative Dispute Resolution in India: A Brief Overview*, S&P (2020).

to the people, if it appears to court there exist elements of settlement outside the court then court formulate the terms of the possible settlement and refer the same for: Arbitration, Conciliation, Mediation or Lok Adalat.

The Acts which deal with Alternative Dispute Resolution are

- (i) Arbitration and Conciliation Act, 1996 and,
- (ii) The Legal Services Authority Act, 1987⁶

Constitutional Obligation Of ADR

The Indian Constitution is based on the idea of the welfare and well-being of the people, and the state is required to provide justice to the aggrieved party through judicial or non-judicial dispute resolution forums that guarantee prompt and efficient justice and the enforcement of fundamental rights for every person in the state. ADR's primary objective was to relieve the courts of the mounting load. To handle the issue and fulfill a "Constitutional aim" of justice, legislative and judicial action was taken. According to the Preamble of the Indian Constitution, the state must ensure social, economic, and political justice for all of its citizens. Equality before the law and equal protection under the law are guaranteed by Article 14. In order for there to be equality before the law,

⁶ Vinay Vaish, *India: Alternate Dispute Resolution (ADR) In India*, VAISH ASSOCIATES ADVOCATES, MONDAQ (2017).

all parties to a legal proceeding must have equal access to the court and equal opportunity to present their claims there. Due to their inability to afford the court fee and attorneys' fees, among other reasons, access to the court would continue to be a myth for those who are impoverished and unable to meet their financial obligations. So, a speedy trial would help them manage the case's delay while still being reasonably priced.⁷ Speedy justice is a fundamental right protected by Article 21 of the Constitution, according to a more expansive reading of the provision.⁸ In the case of *Hussainara Khatoon vs. Home Secretary, the State of Bihar* acknowledged the right to a speedy trial as a basic freedom protected by Article 21 of the Indian Constitution.⁹ In its ruling, the court mandated a reduction in the amount of time between being arrested and going to trial as well as better access to bail and more humane living conditions. According to the definition given by the Hon'ble court in the *Maneka Gandhi case*, no system can be deemed reasonable, fair, or equitable if it does not guarantee a quick, cost-effective trial.¹⁰ Article 38(1) mentions that the preamble of the Constitution requires the state to give social, economic, and political justice to each and every one of its citizens,

⁷ INDIA CONST. art. 14.

⁸ INDIA CONST. art. 21

⁹ *Hussainara Khatoon vs. Home Secretary, the State of Bihar*, AIR 1979 SCR (3) 532.

¹⁰ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597; (1978) 1 SCC 248.

making the requirement for speedy justice inescapable.¹¹ Article 39A mentions that the State is responsible for ensuring that the functioning of the legal system promotes justice and that no citizen's ability to get justice is restricted because of their financial situation or other disadvantages.¹² In interpreting this clause, the Supreme Court held that "social justice" includes "legal justice" in the case of *L Babu Ram vs. Raghunathji Maharaj and others*.¹³ This means that the administration of the justice system must offer an affordable, quick, and effective tool for the realization of justice for all groups of the population, regardless of their social or economic status.

Plea Bargaining

Plea bargaining may be defined as an agreement in a criminal case between the prosecution and the defense by which the accused changes his plea from not guilty to guilty in return for an offer by the prosecution or when the judge has informally made the accused aware that his sentence will be minimized, if the accused pleads guilty.¹⁴ In other words, it is an instrument of criminal procedure which reduces enforcement costs (for both parties) and allows the prosecutor to

¹¹ INDIA CONST. art. 38(1).

¹² INDIA CONST. art. 39-A.

¹³ *L Babu Ram vs. Raghunathji Maharaj and others*, AIR 1976 SC 1734.

¹⁴ Sidhartha Mohapatra and Hailshree Saksena, *Plea Bargaining: A unique remedy*, INDLAW NEWS.COM, <http://www.indlawnews.com/display.aspx?4762>. Last accessed: May 07, 2023.

concentrate on more meritorious cases.¹⁵

Applicability in India: Keeping in mind that the pendency of criminal cases have gone through numbers, the Law Commission of India in its 142nd report suggested reform, which included implementation of plea bargaining in India.¹⁶ Further, to reduce the delay in disposing criminal cases, the 154th Report of the Law Commission recommended the introduction of ‘plea bargaining’ as an alternative method to deal with huge arrears of criminal cases, which found support in Malimath Committee Report. To give effect to the recommendations, the draft Criminal Law (Amendment) Bill, 2003 was introduced in the parliament.¹⁷ Despite a very huge hue and cry against the amendment, the amendment was accepted and with the effect of the same, Chapter XXIA was added in the Code of Criminal Procedure, 1973. The said chapter contains Sections 265 A to 265L, which deal with plea bargaining. In *State of Gujarat vs. Natwar Harchandji Thakor*,¹⁸ The court recognized the value of plea bargaining and that each "Plea of guilt," which is considered to be part of the process of a criminal trial, should not be assessed factually but rather evaluated on a case-by-case

¹⁵ *A Critical study on ADR in Criminal Trial*, MADHAV UNIVERSITY, <https://madhavuniversity.edu.in/critical-study-on-adr.html>.

¹⁶ LAW COMMISSION OF INDIA REPORTS (101 – 169), <http://lawcommissionofindia.nic.in/101-169/index101-169.html>.

¹⁷ *State of Uttar Pradesh v. Chandrika* 2000 Cr.L.J. 384(386).

¹⁸ *State Of Gujarat vs Natwar Harchandji Thakor* (2005) 1 GLR 709.

basis. The legitimacy and constitutionality of plea bargaining were then resolved. That is a legal issue that needs to be handled on a case-by-case basis. The court ruled that the entire purpose of the legislation is to deliver quick, economical, and straightforward justice by resolving disputes while taking into consideration how society and the law are always changing.¹⁹ Under the CrPC, plea bargaining is allowed for offences carrying a maximum sentence of seven years in prison. This tool cannot also be utilised in crimes that have a detrimental effect on the nation's financial position, crimes committed against women, or crimes committed against children under the age of 14. Plea agreements in India's criminal court system are now constitutionally valid according to the Criminal Law (Amendment) Bill, 2003. However, the Criminal Code (Amendment) Bill, 2005, which was passed by the Rajya House on December 13, 2005, and the Lok Sabha on December 22, 2005, reinstated the same clauses with minor changes. Over the years, the acceptance of plea bargaining has had a significant impact and grown in significance in Indian criminal law. In the *State of Gujarat vs. Natwar Harchandji Thakor*, the court recognized the value of plea negotiations and declared that every "plea of guilty" that is understood to be a component of the legal process in the criminal trial should not be seen as a "plea

¹⁹ Mr. Anoop, *supra* note 2.

bargaining" ipso facto.²⁰ The court also ruled that plea negotiations must be decided on a case-by-case basis. The court further noted and remarked that the entire aim of the law is to provide inexpensive, easy, and quick justice by resolving the matter in a brief length of time with no harm, considering the changing nature of law and society. Thus, the specifications were subsequently incorporated into The Criminal Law (Amendment) Act and introduced Chapter XXI-A or Sections 265 A–265 L, to the Code of Criminal Procedure in 1973.²¹

Disputes That Cannot Be Resolved By ADR

The Hon'ble Supreme Court established the following categories of cases that are not suited for ADR in the case of *Afcons Infrastructure Ltd. vs. Cherian Varkey Construction Co. (P) Ltd. & Ors.*²²:

- (i) Cases affecting the public interest or the interests of numerous individuals who are not parties to the proceedings are covered by Order I, Rule 8 CPC.²³
- (ii) Accused of a felony carrying a life sentence or the death penalty, or a charge carrying a term of less than seven years.

²⁰ State of Gujarat vs. Natwar Harchandji Thakor, (2005) 1 GLR 709.

²¹ The Criminal Law (Amendment) Act, 2005, Act 2 of 2000, (India).

²² *Afcons Infrastructure Ltd. vs. Cherian Varkey Construction Co. (P) Ltd. & Ors* , (2010) 8 SCC 24.

²³ Civil Code of Procedure, 1908, Order 1, Rule 8.

Importance Of ADR

- (i) ADR plays a significant role in India via its many approaches, in addressing the state of cases that are still outstanding in Indian courts.
- (ii) The ADR procedure provides the Indian judiciary with scientifically developed procedures, reducing the burden on the courts.
- (i) ADR provides a variety of conflict resolution options, including arbitration, conciliation, mediation, negotiation, and Lok Adalat. Although it is not recognized legally in India, negotiation in this context refers to self-counseling between parties to resolve a disagreement.
- (ii) ADR is also based on fundamental rights, such as articles 14 and 21, which speak to the rights to life and personal liberty as well as equality before the law, respectively.
- (iii) ADR's objective, as stated in the preamble, is to advance social, economic, and political justice while upholding the integrity of society.

- (iv) In accordance with Article 39-A of the Directive Principles of State Policy, which promotes equal justice and free legal assistance, ADR also advances these causes (DPSP).
- (v) At all levels of the judiciary, ADR has been successful in reducing the backlog of cases; in the past three years, Lok Adalat alone have resolved, on average, more than 50 lakh cases annually.
- (vi) However there doesn't seem to be much knowledge of these systems' existence. More information on these should be disseminated by the National and State Legal Services Agencies so that potential litigants give them priority.

Need Of ADR In India

The enormous number of cases waiting in courts is the most critical factor contributing to the tremendous strain on the Indian judicial system. The increase in the number of cases filed in Indian courts in recent years has resulted in pendency and delays, emphasizing the need for alternative methods of dispute resolution. In this context, on December 4, 1993, in New Delhi, under the direction of the then-Prime Minister and chaired by the Chief Justice of India, the Chief Ministers and Chief Justices of States passed a Resolution. It said: "*The Chief Ministers and Chief*

Justices concurred that the whole weight of the legal system could not be supported by the courts and that certain disputes may be settled through alternative channels like arbitration, mediation, and negotiation. They emphasized the significance of employing alternative dispute resolution since it offers procedural flexibility, reduces costs and time, and spares parties from the stress of a traditional trial ". There is no better choice than to endeavor to construct facilities for delivering conflict resolution through arbitration, conciliation, mediation, and nephrology in a growing nation like India where significant economic changes are taking place within the framework of the rule of law.²⁴

Advantages Of ADR

- (i) **A single procedure:** ADR enables parties to agree to settle a legal disagreement involving intellectual property that is protected internationally in a single process, sparing them the expense and difficulty of international litigation as well as the risk of inconsistent outcomes.
- (ii) **Party autonomy:** ADR gives parties greater control over the resolution of their dispute than would be possible in a judicial proceeding

²⁴ Mr. Anoop, *supra* note 2.

due to its private nature. Unlike court litigation, the parties can pick the most appropriate arbitrators for their case. Also, they have the option of choosing the court, the location, and the language of the proceedings. Because parties are free to choose the most effective procedures for resolving their differences, greater party autonomy can also result in a quicker process.

(iii) **Neutrality:** In court-based litigation, where knowledge with the relevant legislation and local procedures can provide significant strategic benefits, ADR can be unbiased to the parties' laws, languages, and institutional cultures, eliminating any home court advantage that one of the parties may have.

(iv) **Confidentiality:** ADR processes are private. The parties might agree to keep the processes and any outcomes confidential. This enables them to concentrate on the merits of the disagreement without being concerned about how it will be received by the public, which is crucial when business reputations and trade secrets are at issue.

(v) **Finality of Awards:** Arbitral awards often cannot be appealed, unlike court judgments, which are typically subject to challenge through one or more rounds of litigation.

(vi) **Award Enforceability:** According to the 1958 New York Convention, which was adopted by the United Nations, arbitral awards are normally recognized on a same basis with domestic court judgments

and are not subject to merits assessment. This makes cross-border award enforcement simpler.²⁵

Alternative conflict resolution may not always be better than court action. ADR is less suitable, for instance, if one of the two parties is especially obstinate, as would be the case in a case of extra-contractual infringement, because it is consensual. Furthermore, a court decision will be preferred above an award that is limited to the relationship between the parties if a party wants to establish a public legal precedent to clarify its rights. In any event, in order to choose the process that best serves their interests, potential parties and their counsel must be aware of their available dispute resolution options.

Disadvantages Of ADR

(i) **No requirement that judges follow the Plea-Bargaining Agreement:** Even if the accused and the prosecution agree on a plea deal. The plea-bargaining agreement is not needed to be followed by an Indian judge. As a result, the court has the authority to reduce the charges or reject the agreement if they feel that a plea deal is being offered in bad faith.

²⁵ WIPO, IP Services, ADR Advantages,
<https://www.wipo.int/amc/en/center/advantages.html>.

(ii) **It provides light justice:** A guilty party who accepts a plea deal frequently receives a sentence reduction. So, it could be seen as a prosecutor's escape route. Few would contest the fact that admitting guilt and obtaining a certain punishment are not the same as being found guilty and getting a sentence.

(iii) **Plea deals take the appeals process out of the equation:** There are several reasons for an appeal if a case goes to trial and the defendant is found guilty; but, in a plea agreement, the defendant must admit guilt to all charges, even if they are downgraded. It consequently restricts one's ability to file an appeal in any situation.

(iv) **It could lead to a criminal record even for innocent people:** In some cases, an innocent person may decide to negotiate a plea deal for a crime he did not commit but has admitted to doing in order to avoid drawn-out court proceedings that would cost him time and money.

(v) **Judges are not required to abide by the plea-bargaining agreement:** Plea bargains in India are not legally binding on judges. As a result, courts have the authority to reject plea agreements and impose harsher punishments or none at all, even when the parties and the prosecution agree to one. If a judge thinks a plea deal is being given with malice, they may also decide to hold a trial.

Conclusion

In India, the judiciary, legislative branch, and executive branch all play crucial roles in upholding citizens' rights and providing redress when they are violated. To protect and advance the rights of the people, courts have been set up at every level of government in the nation. Alternative Dispute Resolution (ADR) is crucial in criminal proceedings and for offenders without access to basic services. The conviction rate is high when plea deals are involved. An ADR system can promote court reform, increase access to justice, and increase disputant satisfaction with outcomes when used effectively. It has cut down on both the time and the expense it takes to settle disputes. Individuals frequently believe that because the criminal justice delivery system's process for adjudicating cases takes a long time and is expensive, a criminal litigation will never end once it starts. ADR processes have the potential to significantly cut down on the expenses and delays involved in traditional court procedures. We need to make better use of the ADR system and lessen the effort in the current situation. We need to build an ADR system from scratch. The ADR system employs successful initiatives and awareness-raising to guarantee proper justice. When people are aware of the advantages of ADR, they can work to obtain quick and thorough justice.

Initiatives in ADR can guarantee fair and prompt justice for the general population.