MEDIATION AND CRIMINAL LAW IN INDIA: A CRITICAL STUDY

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# ABSTRACT

Crime is an action or omission which constitutes an offence and is punishable by Law. The criminals who commit these offences do so because of some psychological factor enacting in their mind. They may be subjected to violence, abusive nature, family problems, and peer pressure, unhealthy past and so on.

A person does not choose to harm another with any cause. This paper discusses ‘why some people commit crimes?’ and also ‘what can be the different ways of dispute resolution to reduce the burden on courts’. It lays special weight on mediation as a part of ADR technique and its relevance and applicability in India along with a comparative analysis of different countries in the world.

# INTRODUCTION

Mediation forms part of Alternative Dispute Resolution which is often termed as ‘out of court settlement’. Criminal Law in India is governed by The Indian Penal Code, 1860 and its procedural aspects are dealt under Code of Criminal Procedure, 1973. Mediation has been defined as “the act of a third person who interferes between two contending parties with a view to reconcile them or persuade them to adjust or settle their dispute”.[[1]](#footnote-1)

Mediation has become quite significant in every civilized society along with negotiation, arbitration and conciliation. In arbitration, there is a third-party binding agreement but in mediation; the parties come up with a settlement amicable for all. Abraham Lincoln was a firm supporter of ADR and was often heard saying;

Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time.[[2]](#footnote-2)

The information exchange always yields better result when it is done across the table rather than in a court of law as the trial proceedings often get vitiated by inordinate delays and unnecessary hearings.

## RESTORATIVE JUSTICE

This is a form of justice where the offender is asked to be restored back into the society and there is more interaction between offender and victim to involve them in criminal administration and also to understand the impact of the incident on the victim as well as the offender. It is rarely seen in India where the victim and offender are made to sit across the table for diffusing the circumstance that lead to the offence and to build an amicable relationship for the future. Sometimes just punishing the offender in order to put him/her behind the bars does not serve the purpose that criminal justice aims to achieve.

## PSYCHOLOGY AND CRIMINAL LAW

Criminal Psychology is that branch of Criminology which deals with the study of thoughts, actions and reactions of criminals. In the 21st century, the inference of crime should not be taken in its literal sense but on a broader perspective. Presently, crime has moved way beyond its definition of just being an offence defined under the Indian Penal Code, 1860 as it deals with the psychological intent of the person than his criminal intent. This question often comes into our minds that why would anyone want to commit a crime? And the answer can be only given after understanding the psychological cycle of the person.

We may divide criminals into 4 types:

1. Those who commit crimes owing to external circumstances.
2. Those who commit crimes due to an irresistible impulse.
3. Those criminals who are mentally unstable as criminal tendencies are foreign to his personality.
4. Those who express their anti-social attitude by committing crimes.

## ALTERNATIVE DISPUTE RESOLUTION AND ITS RELEVANCE IN CRIMINAL LAW

There are more than 3 crore cases pending across different jurisdictional courts pan India. The judge per capita ratio is 17.48 per million populations highlighting the appalling situation in the country. Also, the government has to spend money to maintain prisons and prisoners.

But all these can be curbed if we apply other methods of dispute resolution for offences where it is possible and should be allowed for the greater good of the society. Right to speedy trial in a court of law is an integral and essential part of fundamental right under article 21.[[3]](#footnote-3) This should be kept in mind at all times. Plea-bargaining is defined under Chapter XXI A of Code of Criminal Procedure as ‘an arrangement between prosecutor and defendant whereby the defendant pleads guilty to a lesser charge in exchange for a more lenient sentence or an agreement to drop other charges’.[[4]](#footnote-4) It is mandatory to note that the bargain for sentence is not forced onto the victim and the court is fully aware of the fact.

Another example of applicability of ADR in India is Lok-Adalats which is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled or compromised amicably. Lok-Adalats have been given statutory status under the Legal Services Authorities Act, 1987. If the parties are not satisfied with the award of the Lok-Adalat though there is no provision for an appeal against such an award, but they are free to initiate litigation by approaching the court of appropriate jurisdiction, in exercise of their right to litigate.[[5]](#footnote-5)

# MEDIATION IN CRIMINAL JUSTICE SYSTEM: COMPARATIVE ANALYSIS

## POLAND

Here, mediation is regulated in the provisions of Cr.P.C. as the general conditions of mediation, institutions and people authorized to conduct mediation proceedings as well as the mode of conducting them have been mentioned. The scope of matters which can be subjected to mediation are not limited in any way by the Criminal Procedure Code i.e. it is possible to apply for mediation in any case irrespective of its character or gravity. However, a final decision is taken by the court and the prosecutor.

Mediation can be conducted in motion or ex officio by an institution or a trustworthy person. Proceedings must be entered into a relevant register maintained by regional court and the person who wants to become a mediator should have conflict-solving skills, as well as knowledge especially in psychology, pedagogy, sociology, rehabilitation and law. [[6]](#footnote-6)

Mediation does not end the proceedings in the case. A report is prepared which is further submitted to the court, the prosecutor and the police. After this, the judgment is finally pronounced.

## US

It was in the year 2008, when American Bar Association proposed to start Mediation in criminal matters across the country. The vast majority of mediation programs in US relate to victim-offender scenario. In a victim-offender mediation, the victim and the offender of the crime are brought together to meet face-to-face under the structured guidance of a mediator.

Victim-offender mediation, as discussed above, is largely limited to misdemeanors and the less serious property crimes. Furthermore, the vast majority deal with juvenile crimes, with almost half dealing exclusively in them.64 Mediation is particularly well-suited for these types of cases, where the offender is young and/or has committed a minor crime and therefore shows strong promise of rehabilitation.[[7]](#footnote-7)

## THAILAND

Thailand also has a regulation named as Regulation on Mediation by Public Prosecutors which makes the disputant (prosecutor) responsible to initiate proceedings if they wish to do so.

Types of Criminal Cases Which Can Benefit from This Regulation

1. **Compoundable Offences ( excluding** offenders who are either professional criminal or habitual offender)
2. **Non-compoundable Offences**

Public prosecutor(s) has full discretion to include non-compoundable offences as well but only civil-dispute part of the criminal case can be settled under this Regulation. For example, compensation arising out of a bodily harm can be mediated but not the sentence. The conclusion of dispute shall be reported to the Attorney-General or the court.[[8]](#footnote-8)

## AUSTRALIA

The victim-offender mediation is limited to cases where adults plead guilty to property offences and some crimes of violence (domestic violence offences are excluded) and both the victim and offender agree to take part. The process is not an alternative to court proceedings; rather, it is a pre-sentencing option. It is aimed to reduce the number of people committing offences for a second time, reduce fear of crime and improve disposal time of cases in criminal justice system.[[9]](#footnote-9)

# CONCLUSION

Mediation in criminal law has not been extensively researched upon yet. The dominant model for these criminal mediations is the “victim-offender” model, which brings the victim and the offender together for a dialogue in the presence of a trained mediator. Victim-offender mediation is the foremost expression of the model of restorative justice, a reaction against the traditional model of retributive justice.

1. Black’s Law Dictionary. [↑](#footnote-ref-1)
2. http://mediate-la.com/3-quotations-lincoln-conlict-resolution/. [↑](#footnote-ref-2)
3. Maneka Gandhi v Union of India; AIR 1978 SC 597. [↑](#footnote-ref-3)
4. s. 265C of Criminal Procedure Code, 1973. [↑](#footnote-ref-4)
5. https://nalsa.gov.in/lok-adalat. [↑](#footnote-ref-5)
6. <http://karne.pl/en/mediation.html>. [↑](#footnote-ref-6)
7. <https://www.americanbar.org/content/dam/aba/migrated/dispute/docs/2010_BoskeyEssay_Winner_FloraGo.pdf> [↑](#footnote-ref-7)
8. <https://siampremier.com/criminal-case-mediation-by-public-prosecutors-an-alternative-justice-system/> [↑](#footnote-ref-8)
9. <https://justice.nt.gov.au/__data/assets/pdf_file/0004/483430/NTLRC-Report-17A-Mediation-and-the-Criminal-Justice-System-1996.PDF>. [↑](#footnote-ref-9)