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The Scope of Alternative Dispute Resolution in the Criminal Justice System

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ABSTRACT

Alternative Dispute Resolution (ADR) is a method of resolving issues other than via litigation. Arbitration, negotiation, mediation, and conciliation are all techniques an unbiased third party uses to settle a disagreement. The disagreement is settled without the need for the Court's participation. This article focuses to explain how ADR can be useful in today's criminal justice system and how it could speed up the process.

Keywords: *Justice, Plea Bargain, Litigation.*

I. INTRODUCTION

It is commonly advocated in the contemporary generation as a quick approach to obtaining justice. Legal justice is seldom guaranteed due to a vast backlog of pending cases, time-consuming formal procedures, and the complications of legal justice. There's also the adage, "Justice hurried, justice buried."

The situation is worse in developing and underdeveloped countries than in others. It has essentially been utilized by traditions for a long time. People continue to use this method rather than the official legal system since access to it is more expensive, confusing, and time-consuming. Humans have long been concerned with how to settle disagreements to avoid war and damage.

Suits have skyrocketed, while Alternative Justice Resolution has risen to prominence in practically every civilized society. ADR in the criminal context represents 'restorative' justice, which regards crime as a violation of one person's right by another and argues that justice in the criminal context should emphasize repairing the victim's harm.

In some jurisdictions, the final settlement must be revealed in court, but in civil processes, the same is secret and entirely between the parties.

II. ADR IN INDIA

Despite having one of the oldest known legal systems, Indian courts are overwhelmed with unresolved cases, rendering the Indian judiciary increasingly ineffective in dealing with

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ongoing litigation. Despite the building of nearly a thousand fast-track Courts, the number of unsettled cases continues to climb, indicating that the problem is far from fixed.

ADR (Alternative Conflict Resolution) may be a useful tool in such a case since it provides for a peaceful resolution of a dispute that is agreeable to all parties.

Arbitration, mediation, negotiation, and Lok Adalat are among the dispute resolution methods given by ADR. In this context, self-counselling between parties is referred to as bargaining, although it is not recognised by Indian law.

Articles 14 and 21 of the Indian Constitution, which deal with equality before the law and the right to life and personal liberty, are also the cornerstone of ADR in India. The goal of ADR, according to its preamble, is to promote social, economic, and political justice while maintaining society's integrity. As stated in Article 39-A of the Directive Principles of State Policy, another purpose of ADR is to ensure that everyone has equal access to justice and free legal counsel (DPSP).

III. CRIMINAL TRIALS IN INDIA

Because of the benefits that ADR proceedings bring, their use in the Indian Judicial System has expanded dramatically. It provides for a quick trial, is a private procedure, and is a financially viable technique for resolving disputes. As a result, it solves the vast majority of the challenges posed by litigation as a method of dispute resolution.

The Malimath Committee conducted a study of the judicial system in an attempt to reduce the backlog of litigation in Indian courts. The Committee suggested in its report that the Indian Criminal Justice Mechanism implement a plea negotiation mechanism to allow better case disposition, decrease the burden on the courts, and guarantee that individuals receive justice at the lowest possible cost in terms of time and money.

IV. INCLUSION OF PLEA BARGAIN

ADR techniques may be used to resolve civil cases and business disagreements. Because the seriousness of the breach of law varies in criminal situations, such methods are not suggested for use in criminal justice. In actuality, a distinct process of criminal justice is applied, called a Plea Bargain. The criminal justice system is a collection of government policies and institutions aimed at maintaining social control and preventing and reducing crime. The system's three main components are law enforcement, the legal process, and corrections. Plea bargaining in a criminal case is a legal agreement between the prosecution and the defence in which the accused pleads guilty rather than not guilty.

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This method has various benefits over the old trial procedure. The aforementioned method is only applicable in a limited number of situations and is not applicable in all forms of criminal trials. The new technique has the benefit of assisting the court in managing its workload, resulting in a reduction in the backlog of cases; it also relieves the magistrate of the job of producing a complete ruling.

Secondly, this strategy aids Public Prosecutors by freeing them of a load of questioning weak witnesses like children and domestic women.

Third, the court is more likely to accept the guilty plea; the judge is less inclined to reject the plea on minor issues, which is much more favourable for the accused. Finally, rather than having a costly and time-consuming trial, it assists in the offender's rehabilitation by accepting responsibility for their misdeeds and freely bringing themselves before the law.

Plea bargaining is not meant to reward repeat offenders or established criminals, but rather to assist beginners. To plead guilty, the accused must have a willing intention; if the intention is not voluntary, the plea will almost certainly be dismissed from the start.

In **Murlidhar Meghraj Loya v. State of Maharashtra**, the Supreme Court rejected the concept of plea bargaining because it violates a person accused of an offence's basic right not to be forced to testify against oneself.

The Supreme Court declared in **Kasambhai v. State of Gujarat & Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr** that plea bargaining is against public policy while criticizing and lamenting the agreement the judge accepted. According to the court, plea bargaining is also against society and the Constitution. It may also promote collaboration and corruption, tainting the pure fountain of justice.

Sections that recognise the concept of settlement

The procedural rules that the court must follow in a mutually satisfactory disposition are outlined in Section 265-C (Guidelines for Mutually Satisfactory Disposition). The court serves notice to the interested public prosecutor, the investigating officer of the case, the victim of the case, and the accused to attend the meeting to work out an acceptable resolution of the case in a case brought based on a police report. Only the accused and the victim are given notice in a complaint matter by the court.

The procedure for preparing and submitting the report of mutually suitable disposition is outlined in Section 265-D. However, two situations that are specifically listed in the provision itself may occur in this context:

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If, at a meeting held according to section 265-C, the court prepares a report of the satisfactory disposition, if any, it must be signed by the court's presiding officer and every other participant.

Once the application under subsection (1) of section 265-B has been filed in such a case and the observations of the failure of the disposition have been noted, the court shall continue the trial of the accused if no resolution has been reached by their PC.

V. DOMESTIC COURTS PERSPECTIVE

The following cases show that the courts recognized the idea of alternative dispute resolution procedures after the establishment of plea bargaining in Indian criminal law:

In **Gian Singh v. State of Punjab**, the Supreme court held and recognised that the outside court settlement was in the exercise. In **Gian Singh v. State of Punjab**, the Supreme Court held and acknowledged that the out-of-court settlement was a result of the High Court using a legal authority granted to it by Section 482 of the Criminal Procedure Code. The Supreme Court further stated that "criminal cases which have an overwhelmingly and predominantly civil flavour, such as those of commercial, financial, mercantile, civil, partnership or such like transactions, or the offences arising out of matrimony relating to dowry, etc., or the family disputes where the wrong is essentially private or personal in nature and the parties have resolved their entire dispute. In these situations, the High Court has the authority to halt the criminal proceedings if it determines that the offender and victim have reached a full and final settlement and compromise, which renders the prospect of a conviction remote and bleak, and that continuing the criminal case would subject the accused to great oppression and prejudice and result in grave injustice to him.

The Supreme Court recognized the need for ADR techniques in the criminal matter when it held in **K. Srinivas Rao v. D.A. Deepa** that the complaint filed under Section 498A of the Penal Code, 1860, though a non-compoundable offence, could be resolved outside of court and suggested that the same shall first be referred to the Mediation centres in appropriate cases if the parties are willing and if it appears to the criminal court that there exist elements of the settlement.

According to section 19(5) of the Legal Services Act, 1987, the Lok Adalat has jurisdiction over only those criminal issues that relate to offences compoundable by law, i.e., under Section 320 of the CRPC. or under any special enactment, as stated in **Dayawati v. Yogesh Kumar Gosain.** The court further noted that Section 320 of the Criminal Procedure Code (CrPC) expressly authorises and acknowledges the settlement of certain criminal offences. Of course, the parties will only agree to the settlement voluntarily. No external third-party help to the parties, such as

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that of impartial mediators or conciliators, can be excluded to facilitate this process.

In **Parabat Bhai Aahir @ Parbatbhai Bhimsinhabhai Karmur v. the State of Gujarat**, J. D.Y. Chandrachud, speaking for the three-judge bench, upheld the principle of the Gian Kaur decision and held that the mediation or out-of-court settlement shall be done only in private matters, like those of commercial, financial, mercantile, partnership, or similar transactions with an essentially civil flavour, and not in those matters, which have a serious impact on the society, heinous and serious crimes like those of murder, dacoity and rape.

VI. DISADVANTAGES OF PLEA BARGAIN

To recognise the benefits of plea bargaining, we must stay objective. Plea bargaining is only a cover-up for the government's shortcomings in addressing every matter that comes before it.

It highlights the limitations of customary procedural laws in a roundabout way. The prosecutor is required under the negotiating (or negotiation) procedure to consult with the police on evidence and other considerations (much as the court depends on the charge sheet produced by the police), because in a nation like India, the very name police connote a great deal of corruption, coercion, and violence, threats against the accused or victim, and so on**.** Furthermore, all politicians, anti-social groups, and the powerful ruling class may seize control of the negotiations through the police. The scope of plea bargaining is not protected in privacy; it must be regulated, and police intervention must be limited to a reasonable amount. This system is also acknowledged to have a large amplitude.

There are some other disadvantages to this strategy as well. In general, the plea bargaining procedure reduces criminal justice administration to a barter system, with the offender negotiating between legal penalties and advantages. 14 Second, even innocent defendants may agree to inappropriate concessions and convictions to avoid the suffering of a protracted and costly trial. Third, situations in which the accused may eventually be exonerated would be reclassified as unjustified convictions. Such defendants may develop scepticism about the legal system.

Finally, plea bargaining may be considered a breach of the ideals enshrined in Article 21 of the Indian Constitution, which provides that no person's liberty shall be forfeited except in compliance with the legal system.

Human rights groups in the United States have been the most vocal in their condemnation of plea bargaining, claiming that it violates the accused's human rights. Involving police investigators in the plea bargaining process would also invite pressure and corruption. If the

accused's guilty plea submission is refused, he would have a tough time demonstrating his innocence before the same trial Court.

THE UNITED STATES OF AMERICA: Victim-offender The victim and the perpetrator of the crime are brought together to speak face-to-face during the mediation process in the US, all under the organised direction of a mediator. Although mediation can occur at any point during the legal process, it nearly always happens after court participation. A national survey by the U.S. Department of Justice found that over half of mediations took place after formal findings of guilt, while about a third occur before. Even the most serious violent offences, like murder and major assault, have been effectively resolved in the USA.

VII. CONCLUSION

The concept of plea bargaining has been incorporated into the Criminal Procedure Code (CRPC), and guidelines have also been formed to recognise the mutually agreed settlement by the parties to the dispute in cases that are not serious and do not impact society at large. Previously, the Indian Criminal Jurisprudence did not recognise the concept of Alternate Dispute Resolution in criminal matters. The use of alternative dispute resolution should be expanded and used more frequently because it is an exception to the standard court processes. Therefore, these out-of-court agreements are crucial to lowering the excessive strain on the courts and ought to also become the "new normal."

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