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MEDIATION IN CRIMINAL DISPUTES IN INDIA

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ABSTRACT

The restorative justice focuses on resolving the disputes between the parties and maintaining the harmonious relations between them. It creates opportunities for parties to crime to discuss the crime and its ramification, to repair the harm caused, and restore the amicable relations between the parties. Article 21 of the Constitution ensures just, fair and reasonable procedure. Sooner the disputes are resolved the better for all the parties concerned and society in general. Denial of justice through delay is the biggest mockery of law, but in India it is not limited to mere mockery; the delay in fact kills the entire justice dispensation system. Alternative Dispute Resolution mechanisms have become more crucial for businesses operating in India as well as those doing businesses with Indian firms. There are various reasons for which ADR is preferred over the conventional way of resolving the disputes. India being a developing country, going through major economic reforms within the framework of the rule of law, for expeditious resolution of disputes and lessening the burden on the courts, alternative mechanisms for resolution (ADR) are the only alternative through arbitration, conciliation, mediation and negotiation. This research paper is an attempt to analyse the concept and need of restorative justice. It also contains brief overview of restorative justice in Indian Criminal Justice System and its limitations.

INTRODUCTION

Desire for quick and affordable justice is universal. Right to speedy trial is a right to life and personal liberty of every citizen guaranteed under Article 21 of the Constitution, which ensures just, fair and reasonable procedure. "Any conflict is like cancer. The sooner it is resolved the better for all the parties concerned and society in general. If it is not resolved at the earliest possible opportunity, it grows at a very fast pace and with time and the effort required to resolve it increases exponentially as new issues emerge and conflicting situations galore. One dispute leads to another. Hence, it is essential to resolve the dispute, the moment it raises its head. Disposal of cases in time is the necessity to maintain the rule of law and providing access to

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justice, which is a fundamental right of every citizen guaranteed by the Constitution. "Behind almost every human conflict someone feels dismissed, dis-counted, disenfranchised or disrespected. Unresolved tensions that may have immersed below the surface can resurface and make situations difficult." Denial of justice through delay is the biggest mockery of law, but in India it is not limited to mere mockery; the delay in fact kills the entire justice dispensation system of the country. This has led to people settling scores on their own, resulting in a growing number of criminal syndicates and mob justice in various parts of the country and reflecting the loss of people's confidence in the rule of law. In 1996, the Indian Legislature accepted the fact that in order to lessen the burden on the courts, there should be a more efficient justice delivery system in the form of arbitration, mediation and conciliation as an Alternative Dispute Resolution (ADR) options in appropriate civil and commercial matters. Thus, Parliament enacted Arbitration and Conciliation Act, 1996, with a view to provide quick redressal to commercial dispute by private Arbitration. Speedy decision of any commercial dispute is essential for the smooth functioning of business and industry. ADR has been recently referred in many areas as "Appropriate Dispute Resolution" and not as "Alternative". In fact, litigation is being referred as "Judicial Dispute Resolution" or JDR. ADR is also being referred as a global system as it is not restricted by territorial jurisdiction, which is a major hurdle in litigation process.

WHAT IS RESTORATIVE JUSTICE?

A commonly accepted definition of restorative justice comes from Marshall, who defines restorative justice as 'a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future'.

Restorative justice processes can be used to divert offenders away from traditional criminal justice processes or can be complementary or supplementary to such processes. In comparison with the traditional criminal justice processes, restorative justice places more overt focus on the victim, gives decision-making power to a broader range of actors, and allows for more free discussion between a wide-range of parties.

IS ADR USED IN THE CRIMINAL JUSTICE CONTEXT IN INDIA?

The use of ADR processes in the criminal justice system is now 'mainstream' for juvenile offenders and has largely come in the form of: conferencing (including 'forum sentencing'), circle sentencing, and victim-offender mediation.

Broadly, the goals of each of these processes are to:

- divert offenders (particularly young offenders) away from court proceedings;
- allow for community involvement;
- provide an active role for victims in the criminal justice process;
- support victims of crime and assist their recovery;
- increase the confidence in the sentencing process amongst participants;
- encourage healing;
- allow the offender to make amends;
- empower the offender, the victim and communities; and
- address the causes of offending.

CONFERENCING (OR 'YOUTH CONFERENCING') AS AN ADR PROCESS IN CRIMINAL MATTERS

Youth or family conferencing should be adopted as a form of ADR in the Indian criminal justice system. Conferencing refers to a facilitated group discussion about the impact of an offence between a young offender, the offender's support persons, the victim, the victim's support persons, police and an impartial facilitator. In all jurisdictions other than the ACT, the conference can take place without the victim's participation.

The aim of conferencing is for the parties to mutually develop a plan for the offender to repair the harm caused by the offence. Plans may require an offender to do such things as make an apology, undertake community service, undergo counselling, complete treatment for drug or alcohol addictions, or donate to a charity. If parties are unable to agree on a plan, the matter is sent back to the referring party (either the police or the court). By involving both the victim and the offender in developing this plan, conferencing aims to meet the specific needs of victims and to engender a sense of accountability in the offender.

Young offenders who are assessed as suitable can be referred to conferencing by police, prosecutors or courts, depending on the regime in place in the relevant jurisdiction. Whether a

matter is suitable for conferencing depends on several factors including the seriousness of the offence, whether the offence involved violence, the harm suffered by the victim, and the extent of offending by the offender. The legislation in some jurisdictions excludes certain offences from conferencing. Conferencing is also available for adult offenders in certain circumstances in NSW, and South Australia, and pilot programs for adult conferencing have been undertaken in other jurisdictions.

FORUM SENTENCING

In NSW, adult conferencing, called Forum Sentencing, is available only through referral by a court after a plea or finding of guilt.

In Forum Sentencing the conference develops an intervention plan which is then approved by the court. The offender must then complete the plan before sentencing. The court is then notified of the completion of the plan and this completion is a relevant factor in sentencing. Alternatively, the plan may form part of the sentence subsequently imposed by the court.

CIRCLE SENTENCING

Circle sentencing refers to a process in which sentencing of some adult Aboriginal offenders is performed in a community, rather than court, setting. The offender, a judge and community members (possibly including lawyers, the police, the victim, the offender's family and respected community members) form a circle to discuss the offence and the offender, and to communally determine a sentence that is appropriate for the specific offence and offender.

VICTIM-OFFENDER MEDIATION

Victim-offender mediation (VOM) refers to a facilitated discussion between the victim and offender about the offence, its consequences, and possible means of repairing the harm caused. VOM usually involves a trained mediator, the victim, the offender, and support persons.

In contrast to conferencing (in which victim involvement is usually optional), the victim must be involved for VOM to proceed. Depending on the jurisdiction mediation may be initiated by the offender, the victim or, in the case of WA and NT, the judge, the prosecutor or corrections officers. VOM services in WA and Tasmania take place prior to sentencing. In both Tasmania and WA mediation is available for certain offences after a finding of guilt but prior to sentencing. A mediation report is prepared and may be considered by the court in sentencing. VOM is offered

only after sentencing. In these jurisdictions, mediation has no impact on the sentence received by the offender and takes place strictly for 'restorative' purposes.

Are ADR processes in the criminal justice context 'effective'?

Numerous studies have been conducted to determine whether ADR in criminal justice is 'effective'. These studies have largely addressed two criteria of effectiveness: (i) effect on reoffending; and (ii) party satisfaction with ADR processes. Although these are the most commonly studied metrics of effectiveness, it should be noted that there are other relevant measures of effectiveness. In particular, the comparative cost of ADR and court processes is a notable consideration.

APPLICABILITY OF A.D.R. IN CRIMINAL CASES

These statistics reflect the ubiquity of plea bargaining i.e Relevancy of A.D.R. Plea bargaining involves the prosecutor trading a reduction in the seriousness of the charges or the length of the recommended sentence for a waiver of the right to trial and a plea of guilty to the reduced charges. Both sides usually have good reasons for settlement. In a case in which the evidence of guilt is overwhelming, the prosecution can avoid the expense and delay of a trial by offering modest concessions to the defendant. When the evidence is less clear-cut the government can avoid the risk of an acquittal by agreeing to a plea to a reduced charge. Because the substantive criminal law authorizes a wide range of charges and sentences for typical criminal conduct, and because the procedural law allows prosecutors wide discretion in selecting charges, the prosecution can almost always give the defence a substantial incentive to plead guilty.

Even the famous jurist Nani Palkhivala has said, "*The greatest drawback of the administration of justice in India today is because of delay of cases……. The law may or may not be an ass, but in India, it is certainly a snail and our cases proceed at a pace which would be regarded as unduly slow in the community of snails. Justice has to be blind but I see no reason why it should be lame. Here it just hobbles along, barely able to work*."

It is the policy and purpose of law to have speedy justice for which efforts are required to be made to come to the expectation of the society of ensuring speedy untrained and unpolluted justice. The problem of delay and backlog of cases is rather more acute in criminal cases as compared to civil cases. The Criminal Law (Amendment) Act 2005 has been introduced in order to eradicate challenges in criminal cases.

India's population is day by day increasing. This increase in population leads to increase in number of detrimental acts. This increase in number of detrimental acts has led to the creation of many new policies. These policies in its practice requires a greater number of litigations. As a result, courts are overburdened with cases. It is the temptation that has led the legislature to incorporate the concept of Plea Bargaining in India and hopefully the result will be satisfying in many aspects.

LEGISLATIVE INTENTS

Right to Speedy Trial

There is a judicially recognized right to speedy trial as part of art 21 of the Constitution. However, because of inordinate delays, the right to speedy trial is not made available to the citizens making the trial procedure lengthy.

Constitutional Obligation

The preamble of the Constitution, enjoins the state to secure social, economic and political justice to all its citizens, making the constitutional mandate for speedy justice inescapable. This Directive Principle of State Policy directs the state to strive for reducing inequalities amongst groups of people in different areas [art 38 (1)]. This is elaborated by specifically adding that:The State shall secure that the operation of the legal system promotes justice., to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (art 39A).

While interpreting this provision the Supreme Court held that:social justice would include 'legal justice' which means that the system of administration of justice must provide a cheap, expeditious and effective instrument for realization of justice for all sections of the people irrespective of their social or economic position or their financial resources.

Criminal Case Management Systems

In order to ensure fair, speedy and inexpensive justice, the Supreme Courthas suggested a model Case Flow Management System in which a judge or an officer of the court would be required to set a time-table and monitor a case from its initiation to its disposal.

A bench comprising YK Sabharwal, DM Dharmadhikari and Tarun Chatterjee JJ, while suggesting changes in CPC to incorporate recommendations by Justice Jagannadha Rao

Committee, pointed out that a study by the Committee had revealed that case management system had yielded exceedingly good results in other countries.

In a judgment delivered on 3 August 2005, the bench further directed high courts to examine the elaborate model Case Flow Management Rules framed by the Committee, headed by former apex court judge and Law Commission Chairman M Jagannadha Rao J, and consider adopting it with or without modifications within a period of four months. Though the court had upheld the constitutional validity of the amendments earlier, it had appointed the Committee to frame modalities for the implementation of the provisions inserted by the amendments. The judgment, delivered after the court considered the report, records the suggestions made by the Committee.

The Supreme Court not only wanted to put cases on the fast track, it wanted them to be graded as sprint, middle-distance and long-distance according to priority. Each category was to have its own deadline.Under the plan, which has yet to be passed into law by the Parliament, Track I cases are to comprise of crimes punishable with death. So, do cases of rape, other sexual offences and dowry deaths. The endeavour is to complete the Track I cases within a period of nine months.

Other criminal cases where the accused have been denied bail and kept in jail custody are to be Track II cases and are to be decided within a year. The 12-month deadline is to apply to Track III cases, which relate to mass cheating, economic offences, illicit liquor tragedy and food adulteration. Terrorism-related cases under special laws like (the now revoked) Prevention of Terrorism Act, as well as drugs and corruption cases, are to be on Track IV, with a 15-month deadline. All other criminal cases will be on Track V and must be disposed of in 15 months. The Supreme Court has suggested that not only trial courts but each high court, too, classify criminal appeals pending before it into different tracks on the same lines.

In most cases of prisoners where the accused are illiterate or poorly educated and lack the means to hire a lawyer the Supreme Court judgment has suggested that they be allowed the services of amicus curiae or state legal aid counsel.

As for writ petitions before high courts, those of habeas corpus must have highest priority. The Supreme Court has ruled that high courts should issue notice at the first hearing of such writs and make them returnable within 48 hours. Which means the government, or the police must respond within 48 hours of the notice being issued. Other writ petitions are to be classified into three categories: fast-track (deadline: six months)' normal-track (not more than a year) and slow-track.

The last group petitions, subject to pendency of other cases in the court, should ordinal, be disposed of within a period of two years.

In civil cases, the court of appeal should consider if there is a possibility. of a settlement, between the parties, at the first hearing, and the court concerned can, if it feels there is a possibility, make a reference mediation or conciliation, for a settlement.

To administer the rule of law and justice, certain necessary steps need to be taken by the state. In case of civil matters there are alternate options available such as alternate dispute resolution mechanisms, thus there is a procedure by which pendency of cases can be tackled. However, such a facility is not available in administration of criminal justice. There is a need to evolve an alternative approach of resolving criminal cases in a constructive manner. Although, there are very few alternatives to prosecution in a criminal trial, however, the pre-trial processes of investigation and prosecution can be rationalised, and alternatives founds to prolonged trial procedures. Compounding of offences of less serious nature and plea bargaining are some areas, which can help to speed up the trial and increase the conviction rate.

Compounding of offences: Need to Reframe Section 320 Cr PC

Section 320 of Criminal Procedure Code (Cr PC) provides for compounding of offences. Part one gives a list of offences which can be compounded without the consent of the court, while the second part provides for compounding of serious offences with the court's permission. Some examples of compoundable offences are causing hurt, wrongful restraint, criminal trespass, adultery, enticing defamation, criminal intimidation and act caused by making a person believe that he will be an object of divine displeasure.

The second part deals with relatively serious offences, that can be compounded with the court's permission. Section 381 talks about theft by clerk or servant of property in possession of master, where the value of the stolen property does not exceed Rs 250. As per s 320(2) the court's permission has to be obtained to compound the offence. There are various other provisions in the IPC that require that permission by the court be taken to compound the offence. There is a need to widen the scope of compounding offences with provision of details for procedure, principles and safeguards to reduce the burden of prosecution and the trauma of trial.

If an offence falls beyond the scope of compounding, and where the trial is necessitated the accused must get a favourable and fair opportunity to voluntarily plead guilty but with certain safeguards**.**

Appraisal OF CRIMINAL ADR SYSTEMS.

Some criminal ADR programmes like Victim-Offender Mediation Programs have been successfully mediating to bring justice between crime victims and offenders for over twenty years. There are now over 300 such programs in the U.S. and Canada and about 500 in England, Germany, Scandinavia, Eastern Europe, Australia and New Zealand.

Some statistics from a slice of the North American programs reveal that about two-thirds of the cases referred resulted in a face-to-face mediation meeting; over 95% of the cases mediated resulted in a written restitution agreement; over 90% of those restitution agreements are completed within one year. On the other hand, the actual rate of payment of court-ordered restitution (nationally) is typically only from 20-30%.

Privatizing the public harm. With the growth of the ADR movement, Owen Fiss in his seminal article *Against Settlement,* argued that ADR advocates naively painted settlement as a "perfect substitute for judgment" by trivializing the remedial role of lawsuits and privatizing disputes at the cost of public justice.

Mediation mostly being followed. Mediation has been adopted in various countries as a means to resolve the criminal disputes. To be specific, mediation has been consistently applied in juvenile justice programmes.

As an example, Romania has been applying mediation to the field of Criminal Law. Articles 67-70 in the **Law 192/2006** of Romania lay down provisions regarding mediation in the criminal cases. In countries like Canada, England, Finland, and even in the United States, the system of mediation is being used to resolve the juvenile offences.

Though, the mediation of severely violent crimes is not usual, in a chunk of victim-offender programs, victims and survivors of severely violent crimes, including murders and sexual assaults, are finding that confronting their offender in a safe and controlled setting, with the assistance of a mediator, returns their stolen sense of safety and control in their lives. The emphasis is upon healing and closure. But in cases of severely violent crimes, victim-offender mediation cannot replace punishment.

Not a flawless process. There have been several criticisms against the applicability of ADR in criminal disputes, which render ADR techniques unlikely to succeed. The victim-offender mediation considered to be highly emotionally charged. Further mediation is argued to be successful where there is a moderate level of conflict. Further, the offender may feel to be under pressure to reach an agreement, rather than genuinely seeking to repair the harm done.

Other criticisms include that ADR is an appropriate remedy, where the parties have an ongoing relationship (which provides a significant motivation to achieve reconciliation). But this is not usually the case with victim-offender mediations.

Crime and State

Today crime is treated as violation against not the victim but the state, and accordingly the state and not the victim has the jurisdiction to address it. This is a continuation of the change that came with the Norman invasion of Britain in 12th century. Prior to it, Western law had viewed crime as conflict to be dealt with between the individual victim and the offender. It was only under William the Conqueror that crime began to be conceptualized as breach of king's peace.

Need of Restorative justice

A retributive perspective (on which todays criminal justice system of most of the countries is based upon) punishes the offender because the offender "deserves it" due to his being morally culpable (to the society at large).

The term restorative justice was coined by Albert Eglash who sought to differentiate between what he saw as three distinct forms of criminal justice. The first is concerned with retributive justice, in which the primary emphasis is on punishing offenders for their wrong deeds. The second relates to what he called 'distributive justice', in which the primary emphasis is on the rehabilitation of offenders. The third is concerned with idea of 'restorative justice', which he broadly equated with the principle of restitution. He claimed that the first two focuses on the criminal act, deny victim participation in the justice process and require merely passive participation by offenders. The third one, however, focuses on restoring the harmful effects of the act of crime, and actively involves all parties in the criminal process. the theory of restorative justice is not to punish the offender, but rather to guide him/her to repent for his/her crime, strive

to mend the injury he/she has done, and reintegrate him/her into the +community. Revenge does not restore the losses of victims, answer questions, relieve fears, provide closure, or help to make sense of a tragedy.

The fact that restorative justice creates opportunities for crime victims, offenders and community members who want to do so to meet to discuss the crime and its ramification; expects offenders to take steps to repair the harm they have caused; seeks to restore victims and offenders to whole, contributing members of society (reintegration); and provides opportunities for parties with a stake in a specific crime to participate in its resolution (inclusion).

Restorative justice, the model which victim-offender mediation subscribes to and practices, is a reaction against this model of conventional retributive justice. For the victims, that the offender has been punished by the state does not necessarily restore the losses they have suffered—it does not "answer their questions, relieve their fears, help them make sense of their tragedy or heal their wounds." The above discussion underlines the need of ADR, as it facilitates the communication and resolution between the parties rather than, deterrence. As results of this, western countries like USA, have adopted ADR models like victim offender mediation, in their criminal justice system.

Moreover, lack of victims ultimate control over the adjudicative process and the outcomes of the dispute, hampered the need to address the psychological needs of the victim in restoring the status quos. The criminal justice system has attracted a set of criticisms: it is seen as unsuccessful in reducing rates of recidivism (and even may increase the likelihood of reoffending for groups, such as juveniles and Indigenous persons); it ignores the victims of crime and fails to recognise crime as a form of social conflict. Margery Fry, a British reformer, claimed that victims were being ignored by the criminal justice system, and proposed a formal use of restitution. In Braithwaite's opinion, where offenders enter constructive dialogue with victims and community members about their behaviour, they may restore self-esteem and self-worth and move closer to reintegration within the community.

NEED FOR ADR IN CRIMINAL CASES- THE INDIAN SCENARIO

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. It may also take the shape of cautioning and specialist courts (such as Indigenous Courts and Drug Courts).

Dispute and Crime

Majority of crimes originates from dispute between individuals and communities. Hence, use of ADR, which aims at resolution of dispute, will not only resolve the dispute but will also prevent the future crime likely to arise out of such dispute.

ADR and Restorative Justice in Practice Victim-offender mediation

it is a process wherein; the victim and the offender of the crime are brought together to meet face-to-face under the structured guidance of a mediator. The mediation may take place at any time during the justice process, but almost all of them take place after court involvement. According to a national survey conducted by the U.S. Department of Justice, about a third of the mediations take place prior to any formal finding of guilt, but over half take place after. the U.S. Department of Justice survey found that the mediators judged "facilitating a dialogue between the victim and offender" to be their most important task (28% of the respondents), followed by "making the parties feel comfortable and safe (24%). "Assisting the parties in negotiating a restitution plan" came in as a relatively distant third (12%). Even the severe violent crimes such as serious assault and homicide have been successfully mediated in USA.

In Australia, all the states and territories except Victoria have statutory-based schemes which provide for conferencing as an element in the hierarchy of responses to youth crime. The overarching purpose of such legislative schemes is to divert young people from the formal justice system, to contribute to the development and reintegration of offenders, and to develop a response to crime which meets the needs of both the victim and the offender.

Mediation in Criminal justice in Ethiopia

In Ethiopia, in rural areas, particularly criminal dispute resolution processes dealing with victims and criminal offenders are widely practiced and deep rooted with varying degrees among the different ethnic groups in the country. For instance, the use of mediation process through *Jaarsa Biyyaa* or *Jaarsa Araaraa* among the Oromo and the other ethnic groups has been used. Studies have underlined the utility of Victim offender mediation programme wherein, victims and offenders going through mediation were far more satisfied with the criminal justice system than those who went through regular court (79% to 57%). Even the United Nations has supported the use of "informal mechanisms for the resolution of disputes, including mediation," where it is appropriate to "facilitate conciliation and redress for victims.

ADR, Restorative Justice in Indian Criminal Justice

System- Lok- Adalat

Section 19 (5) A of the Legal Service Authorities Act, 1987 expressly bars reference of non-compoundable offences to the Lok Adalat. In other words, it impliedly permits referral of compoundable offences to Lok Adalat.

Plea bargaining

Plea bargaining may be defined as an agreement in a criminal case between the prosecution and the defence 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.

The Law Commission of India recommended Plea Bargaining in Criminal Cases. It was one of the first step towards adopting ADR in Criminal justice system. Justice V.S. Malimath Committee on Criminal Justice Reforms endorsed these recommendations by the Law Commission. Plea Bargaining was formally introduced in India through the code of Criminal Procedure in the year 2005.

The Plea Bargaining is applicable only in respect of those offences in which punishment extends for a period of 7 years.

Limitations of ADR in Criminal System

- ADR can be used only in moderate criminal offences.

- Existence of dispute is one of the prerequisites of ADR.
- In certain criminal cases there may not any dispute between the parties for e.g. rash and negligent driving resulting in injuries to pedestrians.

CRITICISM

Advocates or attorneys, basically the criminal lawyers, are opposing the plea-bargaining process. As this process is an alternative to the litigation, the prosecutor or the defendant may avoid engaging an attorney. So, the criminal lawyers are not in favour of this process. But, the question arises, whether this process should engage the litigating attorneys? Attorneys know the court process, the prosecutors and most importantly, how the law works. When an attorney reviews your case, he or she may find potential legal issues that can result in evidence being excluded or your case being dismissed. If your case goes to jury trial, an attorney will know how to prepare for trial and what needs to be proved. The burden in a criminal case is always on the government to prove your guilt beyond a reasonable doubt. Your attorney does not have to put on any evidence, however he or she does need to cross-examine the government's witnesses. Cross-examination is a skill, and good cross-examination is very effective.

Although the legislature has adopted the concept of Plea Bargaining with certain reservation and cautions. The criticism of this Plea Bargaining is basically of two types: Firstly, the defendants loose up their constitutional rights eg. Right to trial, right to appeal as guaranteed by CrPC, right to fair procedure (as it should be just, fair and reasonable, right to equality. Secondly, its effects on sentencing policy as it points out that society's interest in appropriate punishment for crime is reduced by Plea Bargaining. It's also being criticised by saying that there is reduction in deterrence as criminal spend less time in jail. It can be rebutted by saying that long processing times are not only costlier in jail time and psychological wear tear, but also tend to remove the probability of conviction.

CONCLUSION

Use of court administered ADR mechanism (use of other Models in addition to Lok-Adalat) in compoundable offences my help in rendering speedy trial in Criminal matters which has been recognized as the fundamental right by the Supreme Court. It may also help in reducing the burden on courts and allowing them to concentrate on serious crimes. Reduced burden on courts

will substantially expedite the Criminal Justice mechanism. Alternative Dispute Resolution mechanism (ADR) is not a re-placement of litigation, rather it would be used to make our traditional court systems work more efficiently and effectively. We must formulate effective Alternative Dispute Resolution mechanisms to ease the present burden of judicial functioning. The backlog of cases is increasing day by day; however, judiciary alone is not responsible for the same. It must be noted that the backlog is a product of "inadequate judge population ratio" and the lack of basic infrastructure. The government must play a pro-active role in this direction. The researcher is of the view that in order to make Alternative Dispute Resolution Mechanisms more effective and taking it out of very narrow and limited area of application and widening the area of its operation. Further the lawyers must play a very active and positive role and they should never forget that dispute is a problem, which needs to be solved and not contest, which needs to be won. Due to unloading of backlog cases, the jails will not be over-packed. The constitutional obligation to provide speedy trial is also being fulfilled; reduction in the number of under trial prisoners. Due to plea-bargaining, the faith of the people in criminal justice system can be regained and crime rate can also be decreased. The plea-bargaining can also reduce the serious congestion in the courts. By the words of Earn Warren, *"It is the spirit and not the form of law that keeps the justice alive. So, the proceeding must be fair and reasonable to have best results.*