

## Alternative Dispute Resolution in Criminal Justice System: Need of the Hour?

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**Abstract:** Jurists, academicians, lawyers, prosecutors and under-trial litigants in present scenario in India, would unequivocally agree that the Criminal Justice System in India needs a serious reform and mechanism for speedy disposal of cases. The justice delivery system is crumbling under the huge burden of the pending cases. This Article seeks to explore the avenues of Alternative Dispute Resolution in the realm of criminal cases pending before various courts, also explore the scope of settling disputes at pre-litigation stage and investigation stages, reference of certain classes of criminal cases for mediation and conciliation, which can help dispose of cases which are either compromised by the parties themselves or such cases which would lead to acquittal owing to lacunae or lack of incriminating evidences against the accused, thereby reducing the burden on the judiciary and save resources and precious time of Courts.

### Introduction:

According to a Report released by the National Crime Records Bureau (NCRB) in 2017, it is found that in India, criminal cases remain pending in trial courts for long periods of time and the offences punishable with imprisonment for three years or lesser are alarming. Out of the cases punishable for the offence of theft, about 34.8 percent (2,97,624) is said to be pending for over five years, and 3.1 percent trials (26,919) have been pending for over ten years; in cases for criminal breach of trust, about 44.2 percent (46,670) have remained pending for over three years and 4.1 percent (4,416) have remained pending for over ten years. More serious offences like those affecting the human body, a whopping 3,71,775 are pending for 5 to 10 years and 1,11,808 are pending for more than 10 years. Further the NCRB's prison statistics show that 26.1% of under-trials have been in the prisons for over a year awaiting trials to be concluded.

In spite of the above shocking number of pending cases, it is appalling to note that the overall conviction rate at the end of 2017 was 48.8 percent for offences under IPC and less than 25% in case of economic offences as per the NCRB's report for 2018. In states like Karnataka, Gujarat, West Bengal and Maharashtra having metropolitan cities, the conviction rate is less than 10% for such offences in 2018. The conviction rates for theft and criminal breach of trust are said to be lower than the average: at 36 percent and 23.6 percent respectively.

The above statistics of huge pendency of cases on one hand, and the poor conviction rates on the other begs the question: "how and why is the justice delivery mechanism failing?" It is the collective responsibility of the Police, Government, lawyers and judiciary to find a solution to this ever increasing mountain of pending criminal cases, harassment to the Accused, oppression at the hands of Investigating Authorities, Media trials and shame which the Accused has to undergo only ultimately to be discharged/ acquitted and those who cannot afford the costs of litigation languish for years together waiting for the trial to conclude and to be acquitted. In India, fighting a criminal litigation is the prerogative of rich who can afford to bear the costs of litigation and manage to crawl through the system. To add to it is the lack of infrastructure in courts, inadequate staff and judicial officers, and a mind-boggling 'Judge to Population ratio of 1:72,441' (in 2018), delaying tactics adopted by defence lawyers, have all crippled the judiciary under the heavy burden of pending cases thus hampering the progress in trial and speedy disposal of cases.

The Indian Criminal Justice System is founded on the basis of the Anglo-Saxon jurisprudence, which swore by Blackstone's Ratio that: "it is better that 100 guilty Persons should escape than that one innocent Person should suffer", subsequently, the proposition was endorsed by various jurists like Benjamin Franklin, Sir Mathew Hale etc., and it became the guiding principle of the criminal jurisprudence. The criminal trial in India is a long and tedious process under which the Accused has to be 'proved guilty beyond doubts' in order to be punished/ convicted. The above mentioned low conviction rates can be attributed to the loop holes in criminal laws, fundamentally flawed investigations by the Police and Investigating Authorities owing to various factors of corruption, red-tapism, nepotism, political pressures and influences etc. Such flawed investigations and Police

Reports enable the accused/ offenders to escape from the clutches of law in most of the cases and sometimes some innocent people are also implicated under false allegations out of vengeance etc.

Therefore, ironically and quite contrary to Blackstone's ratio, several thousands and lakhs of innocents are suffering under the banes of our criminal justice system today due to lack of effective legal aid, slow trials, under-trials languishing in jails for longer periods than the actual punishment period prescribed for the alleged offences!

**Efforts of Courts in speedy disposal of cases:**

The imminent need for speedy disposal of criminal cases and the sorry plight of the under trials is not unknown to the apex court of this country and this dire need has been recognized, upheld and guidelines have been formulated by the Supreme Court from time to time.

In Maneka Gandhi's case (Maneka Gandhi v. Union of India, AIR 1978 SC 597), the Supreme Court elevated the 'right to a speedy trial' as a 'fundamental right' inherent within the scope of Article 21 of the Constitution of India in the celebrated case of HussainaraKhatoon v. Home Secy., St. of Bihar, AIR 1979 SC 1360. The state of affairs of criminal justice delivery has not improved much after 40 years of the HussainaraKhatoon Judgment in which Justice P. N. Bhagawati said:

"They (under trial prisoners) have over the years ceased to be human beings; they are mere ticket-numbers. It is high time that the public conscience is awakened and the Government as well as the judiciary begin to realise that in the dark cells of our prisons there are large number of men and women who are waiting patiently, impatiently perhaps, but in vain, for justice - a commodity which is tragically beyond their reach and grasp. Law has become for them an instrument of injustice and they are helpless and despairing victims of the callousness of the legal and judicial system. The time has come when the legal and judicial system has to be revamped and restructured so that such injustices do not occur and disfigure the fair and otherwise luminous face of our nascent democracy..... What faith can these lost souls have in the judicial system which denies them a bare trial for so many years and keeps them behind bars, not because they are guilty, but because they are too poor to afford bail and the courts have no time to try them. It is a travesty of justice that many poor accused, 'little Indians, are forced into long cellular servitude for little offences' because the bail procedure is beyond their meagre means and trials don't commence and even if they do, they never conclude..... that a procedure which keeps such large number of people behind bars without trial so long cannot possibly be regarded as reasonable, just or fair so as to be in conformity with the requirement of that Article. It is necessary, therefore, that the law, as enacted by the legislature and as administered by the courts, must radically change its approach to pre-trial detention and ensure 'reasonable, just and fair' procedure which has creative connotation after Maneka Gandhi's case (supra)."

To read the above passage brings tears at the collective failure and regret that even after over 40 years every word said in the above judgment holds good till this day!

Many subsequent judgments of High Courts and Civil Courts have reiterated the high ideology in the above judgment but we have failed to deliver it to the needy litigants.

**Efforts made towards securing the fair trials and endeavour for speedy disposal of cases:**

**The Legal Services Authority** under the Legal Services Authority Act, 1987 (brought into force in 1994) has been established with the purpose of providing "free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise LokAdalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity". While the Act provides for free legal aid, it has made provisions under Sections 19 to 22E for setting up, functioning, powers etc. of Lok-Adalats and Permanent Lok-Adalat which lay emphasis on settling disputes through Lok-Adalat which virtually means settlement through the mode of mediation and conciliation. The Lok-Adalats are headed by presiding or retired Judges so appointed at all levels of courts at Taluk, District, High Courts and they hold Lok-Adalats at such prescribed intervals. Litigants are advised to compromise disputes and end the litigations in a meaningful manner. The settlements and final Orders disposing of the cases through Lok-Adalats are in the nature of Decrees and binding upon all concerned parties.

Under section 19 (5) of the Act, a LokAdalat "shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of (i) any case pending before; or (ii) any matter which is falling within the jurisdiction of, and is not brought before, any Court for which the LokAdalat is organised."

However, so far as the criminal cases are concerned, the Proviso to section 19 (5) provides that: "the LokAdalat shall have no jurisdiction in respect of any case or matter relating to an offence **not compoundable** under any law." Therefore, the powers of the Magistrate to compound offences and settle disputes under the Lok-Adalat scheme is circumscribed to section 320 of the Criminal Procedure Code or as provided under any other statute.

The Courts all over the Country have been making earnest efforts to make use of the mechanism of Lok-Adalat to settle and dispose of as many cases as possible. As per the recent Report of the Statement of Karnataka State

Level Legal services Authority, a total of 70822 were disposed of in National Lok-Adalat held on 08-02-2020 out of which 66326 were from pending cases and 4496 were pre-litigation stage. Also apart from the said National Lok-Adalat, a total of 11,806 were disposed in regular lok-Adalats. Out of the said total 11,806 disposed cases, 11,709 were from pending cases and 97 pre-litigation cases during the period from 16-12-2019 to 07-02-2020.

In so far as the civil cases are concerned, the Civil Procedure Code was amended by the Code of Civil Procedure (Amendment) Act, 1999 with effect from 01.07.2002, with the purpose "to implement the 129th Report of the Law Commission of India and to make conciliation scheme effective, it is proposed to make it obligatory for the court to refer the dispute after the issues are framed for settlement either by way of arbitration, conciliation, mediation, judicial settlement or through LokAdalat. It is only after the parties fail to get their disputes settled through any one of the alternate dispute resolution methods that the suit shall proceed further in the section in which it was filed." (Statement of objects and Reasons to the Code of Civil Procedure (Amendment) Act, 1999.) The Supreme Court also said that the courts shall apply their mind so as to opt for one or the other of the five ADR methods mentioned in section 89 CPC and if the parties do not agree, the court shall refer them to one or other of the said modes. (*Salem Advocate Bar Association v. Union of India (II)*, AIR 2005 SC 3353.)

However, the drawback here is that the effort for mediation or settlement can be made by referring the matter to alternative dispute resolution mechanism only if both the parties to the litigation agree for such reference and not otherwise. It does not make it mandatory for the parties to undergo a mediation/ conciliation process either before filing the case or later. Therefore, the possibility of settlement of disputes under the said provision is only a mere chance and depends on the parties agreeing for such reference. Further the parties would have lost much time in the preliminary procedures of just service of suit summons, filing of written statements, framing of issues etc. that the parties are discouraged to waste any further time to explore alternative dispute resolution due to fear of losing further time and delay

#### **Compounding of Offences as a measure to settle criminal cases and aid faster disposal:**

As already stated above, the scope of settlement of cases in criminal cases through Lok-adalat or other alternative dispute resolution mechanism is very much limited as only those offences which are listed out under section 320 of the Cr. P. C. can be resolved or compounded. All other offences which are non-compoundable are considered as crime against State and prosecuted in the regular, tedious procedure prescribed under the Criminal Procedure Code. And further offences under special statutes also cannot be compounded unless it is expressly said to be compoundable under the given statute. The Supreme Court has noted these limitations with respect to settlement of disputes in criminal cases and held that in cases disputes are of personal nature does not survive to be prosecuted when parties themselves have agreed to settle their dispute and do not wish to continue the litigation, such cases can be compounded.

In the earlier times, the Supreme Court was not very lenient in approving compounding of non-compoundable offences and adhered to the norm of permissibility of compounding of an offence under the law under which a person is charged and in the absence of such permissibility the law must take its course and the charge enquired into resulting in conviction or acquittal. (*Biswabahan Das v. Gopen Chandra Hazarika*, AIR 1967 SC 895; *Ramesh Chandra J. Thakur v. A. P. Jhaveri*, AIR 1973 SC 84 & *Rajinder Singh v. State (Delhi Administration)*, AIR 1980 SC 1200.) In some other stray cases, the Supreme Court though did not wholly compound the offences, but in view of the compromise between complainant and Accused, reduced the sentence. (*Ram Pujan v. Uttar Pradesh*, AIR 1973 SC 2418; *Mahesh Chand v. St. of Rajasthan*, AIR 1988 SC 2111.) Later, the Supreme Court appreciated compounding of non-compoundable offences depending on the facts and circumstances of the cases and it is apt to quote Justice V. R. Krishna Iyer: "The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship and reunion ... we consider it a success of the finer human spirit over its baser tendency for conflict." (*Shakuntala Sawhney v. Kaushalya Sawhney*, (1980) 1 SCC 63, per V R Krishna Iyer and V. D. Thulzapurkar JJ.)

Gradually, the Courts started more liberally invoking the inherent powers under section 482 of the Cr.P.C. to quash such proceedings in order to put an end to the unnecessary prosecution which would be a futile exercise for the courts. With respect to the scope of the powers of High Court under section 482, the Supreme Court had held: "(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party; (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice; (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code." (*Madhu Limaye v. st. of Maharashtra*, AIR 1978 SC 47.)

Further, the Supreme Court also observed that offences relating to matrimonial disputes such as those under section 498-A, 323,406 etc. which are of private nature had increased to a large extent and could be quashed if parties had amicably settled the dispute between themselves. It laid down that the broad principle guiding the compounding of offences has been that, those offences which are private in nature and not having very serious

implications may be compounded and heinous crimes, crimes against humanity and society cannot be allowed to be compounded even though the parties agree to compromise. (*B S Joshi v. St. of Haryana*, (2003) 4 SCC 675.) The Supreme Court observed that the High Court can exercise power under Section 482 Cr.P.C. to do real and substantial justice and to prevent abuse of the process of Court when exceptional circumstances warranted the exercise of such power. (*Central Bureau of Investigation v. Ravi Shankar Prasad and Ors.* (2009) 6 SCC 351:(2009 AIR SCW 3942.)

The landmark Judgment regarding quashing of non-compoundable offences was pronounced by the Supreme Court in *Gian Singh v. State of Punjab* ((2012) 10 SCC 303), and held that the powers could be exercised where the settlement or compromise must satisfy "the conscience of the court. The settlement must be just and fair besides being free from the undue pressure, the court must examine the cases of weaker and vulnerable victims with necessary caution."

In the said *Gian Singh's* case, the Supreme Court endorsed the consolidated guidelines for exercise of inherent jurisdiction by High Courts under section 482 of the Criminal Procedure Code, laid down by a five-judge Bench of the Punjab & Haryana High Court in wherein it endorsed the guidelines laid down by the Punjab & Haryana High Court in *Kulwinder Singh and others v. State of Punjab*, another ((2007) 4 CTC 769.), which had extracted the decisions of the Supreme Court in *Madhu Limaye* (AIR 1978 SC 47), *Bhajan Lal* (AIR 1992 SC 604: 1992 AIR SCW 237), *L. Muniswamy* (AIR 1977 SC 1489), *Simrikhia* (AIR 1990 SC 1605), *B.S. Joshi* (AIR 2003 SC 1386: 2003 AIR SCW 1824) and *Ram Lal* (AIR 1999 SC 895: 1999 AIR SCW 566). In a nut shell, the import of the said guidelines is that in offences arising out of matrimonial discord, property disputes between close relations which are predominantly civil in nature, dispute between old partners or business concerns with dealings over a long period, minor offences as under Section 279, IPC, offences under Section 506 IPC in most cases which are based on the oral declaration with different shades of intention, offences under Sections 147 and 148, IPC could be liberally compounded. Further it was also observed that offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding **may not be permitted**. Heinous offences like highway robbery, dacoit or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by public servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge of their duty must remain non-compoundable. Offences against the State enshrined in Chapter-VII (relating to army, navy and air force) must remain non-compoundable. However, as a broad guideline, the Court held, the offences against human body other than murder and culpable homicide may be permitted to be compounded when the court is in the position to record a finding that the settlement between the parties is voluntary and fair.

The above stand has been reiterated by the Supreme Court in several subsequent cases like *Narinder Singh v State of Punjab* ((2014) 6 SCC 466.) but warned and highlighted the need to exercise the said inherent powers with caution and that it should **refrain** from quashing the criminal proceeding based on compromise between the victim and the offender, if the offence is under a special statute like Prevention of Corruption Act or committed by public servants while working in that capacity. (*State of Rajasthan v Shambhu Kewat* ((2014) 4 SCC 149.)

**Plea Bargaining:** The Law Commission in its 142nd, 154th and 177th reports recommended the insertion of provisions for 'Plea Bargaining' which meant that an accused could admit his offence and seek a lesser punishment. The recommendations were based on the experience of United States of America in disposal of accumulated cases and expediting the delivery of criminal justice. However, the idea of Plea Bargaining was not received well among the jurists and the Supreme Court also condemned it as unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fount of justice and apprehended that such a provision was likely to be abused. (*Murlidhar Meghraj Loya v. State of Maharashtra*, AIR 1976 SC 1929; *Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr* 1980 CriLJ 553; *Kasambhai v. State of Gujarat*, AIR 1980 SC 854.)

Finally, based on the recommendations of the Malimutt Committee Report, Chapter XXI-A under Sections 265-A to 265-L of Cr.P.C, was inserted under the Criminal Law (Amendment) Act, 2005 (Act No. 4 of 2006) w.e.f. 5-07-2006, providing for a procedure for Plea Bargaining in all cases punishable with imprisonment upto 7 years. Under the said provisions of plea bargaining, the victim also would have to be included in the process of plea bargaining as it contemplates 'a mutually satisfactory disposition of the case which may also include giving compensation to victim and other expenses' in case of offences which are not punishable either with death or with imprisonment for life or with imprisonment for a term exceeding seven years. The other important features of these provisions among others being that, under section 265-G no appeal shall lie against such judgment and section 265-L makes the chapter 'not applicable' in case of any juvenile or child as defined in Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000.

However, one may note that under these new provisions the Courts can adopt this procedure of Plea Bargaining only after furnishing of report by the Investigating Officer under section 173 of the Cr. P. C.

**Conclusion:**

The delay in disposal of criminal cases has become a pressing need of the hour as our criminal justice system is buckling under the pressure and burden of lakhs of pending cases. As narrated above, to secure fair trial, speedy justice and protection of the Fundamental Right of Right to personal liberty under Article 21 are the constitutional goals which a section of the citizens of this country are deprived of.

While the Courts have emphasised the need to find alternative means and methods for disposal of the cases, the statutory provisions for compounding of offences under section 320 of Cr.P.C., Lok-Adalat and Plea Bargaining under Chapter XXI of Cr.P.C., cast a limitation on the powers of the Magistrate and Court of sessions to compound offences and dispose of cases until completion of the Police investigation and filing of Police Report under section 173 of Cr.P.C. As it is well known that after registration of FIR, the Police investigations take years together and Charge-sheet/ Police Reports are not filed for years.

Therefore, in case of disputes/complaints arising out of matrimonial discord, property disputes between close relations, dispute between old partners or business concerns, offences which are private in nature, minor offences as under Section 279, IPC, offences under Section 506 IPC, offences under Sections 147 and 148, IPC etc., which the Supreme Court has held could be compounded as per the decisions cited hereinabove, the parties, if willing to compound the offences, would have to wait until the Charge Sheet is filed by the Police/Investigating Authorities or knock the doors of High Courts seeking quashing of the offences by exercising the inherent powers under Section 482 of Cr.P.C which would only increase the burden on the High Courts.

Therefore, adopting Alternative Dispute Resolution in the aforesaid cases is the only method by which a major chunk of the burden on the Courts can be reduced without having to invoke the inherent powers of the High Courts and also justice can be seen to be delivered in the modern times.

#### **Suggestions:**

In the light of the above discussions made, the author would make the following suggestions which may aid in speedy disposal of criminal cases:

1. In civil suits, the obligation for reference to mediation/conciliation/lok-adalat under section 89 of CPC should be made compulsory before commencement of trial so that genuine efforts can be made by trained mediators to encourage parties to resolve disputes instead of carrying on the litigation for years together.
2. Section 320 of the Criminal Procedure Code should be amended to include other offences which are considered as capable of being compounded by the Supreme Court in the aforementioned cases so that such cases can be compounded at the Magistrate and Sessions Court level itself without having to seek the intervention of the High Courts under section 482 of Cr.P.C.
3. Appropriate amendments have to be made to the Legal Services Act to expand the powers of the Presiding officers of Lok-Adalats/ Permanent Lok-Adalats to settle and dispose of compoundable offences even at the investigation stages, where the complainant/ victim is willing to compound the offences voluntarily and without any coercion or undue influence. This would do away with the necessity of the Courts having to wait for the Police Reports to be filed in genuinely compounded cases and would save the precious time of courts in unnecessary procedures under the Code.
4. The process of Mediation/ADRs should include a separate wing consisting of specially trained mediators for the purpose of counselling, mediating and conciliating criminal cases which are of compoundable nature in order to save the Court's time in trying to compound the offences and the cases so compounded through mediation could be disposed of on the basis of the Mediation Reports.
5. An obligation should be cast upon criminal courts similar to the obligations of civil courts under section 89 of Civil Procedure Code to refer matters for mediation which can explore the possibilities of compounding of offences thereby aid speedy disposal of many criminal cases as well.

#### **References**

1. Chadha, N. E. E. R. U. (2016). Food Security In India: Issues And Challenges. *International Journal Of Humanities, Arts, Medicine And Sciences*, 4(1), 79-86.
2. Okurebia, S. O., & Offiong, E. S. Petroleum Oil, Environmental Pollution And Health Management In Nigeria:(A Case Of The Niger Delta Region). *Best: Journal Of Management, Information Technology And Engineering (Best: Jmite)*, 1(2), 31-40.
3. Aboodh, K. S., Farah, R. A., Almardy, I. A., & Osman, A. K. (2018). Solving Delay Differential Equations By Aboodh Transformation Method. *International Journal Of Applied Mathematics & Statistical Sciences*, 7(2), 55-64.
4. Bawa, J., & Bedi, H. S. (2017). A Critical Analysis Of Gandhian Philosophy Of Conflict Resolution And Way Ahead. *International Journal Of Humanities And Social Sciences (Ijhss)*, 6(6), 15-28.
5. Ray, K., & Srivastava, S. Faith Of The People In The Justice Of The Village Council And Resolution Of Disputes As Opposed To Modern Courts (Munshi Premchand's 'Panch Parmeshwar').

6. Auccahuasi, W., Ovalle, C., Flores, E., Sernaqué, F., Poicon, E., Ruiz, M., ... & Rojas, G. Edge Detection Technique On Objects Present In High Resolution Optical Satellite Images.