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A Critical Assessment of Mediation in the Criminal Justice System

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ABSTRACT

Mediation, an essential element of Alternative Dispute Resolution (ADR), has traditionally been associated with civil and family law matters. However, its application is increasingly being explored within the criminal justice system, especially for non-violent and compoundable offences. Mediation broadly understands as a voluntary, party-driven process facilitated by a neutral third party to reach a mutually acceptable outcome has been recast in India by the Mediation Act, 2023, which creates structures for institutional, community and online mediation. This type of criminal mediation emphasizes restorative justice, seeking to repair harm through dialogue, understanding, and mutual agreement, rather than solely focusing on punishment. In recent years India's legal system launched by the Mediation Act, 2023, expanded institutional capacity and renewed interest in restorative justice. In recent years India's legal system launched by the Mediation Act, 2023, expanded institutional capacity such as court's mediation centre, NALSA initiatives and renewed interest in restorative justice has begun to test its boundaries within criminal practice.

This research paper provides a critical assessment of mediation within the criminal justice system, exploring its theoretical foundations, practical applications, and inherent limitations. It evaluates how mediation acts as a bridge between retributive and restorative justice models, while assessing its effectiveness in achieving accountability, ensuring victim satisfaction, and reducing reversion. Additionally, the paper analyses the ethical, procedural, and policy challenges associated with criminal mediation and offers recommendations for balancing restorative principles with due process protections.

RESEARCH OBJECTIVES

To examine the concept and evolution of mediation within the criminal justice system.

To evaluate the effectiveness of mediation in achieving restorative justice objectives such as offender accountability and victim satisfaction.

To recommend measures to strengthen the role of mediation within the Indian criminal Framework.

RESEARCH QUESTION

What is the role of mediation in transforming traditional criminal justice processes?

How effective is mediation in promoting victim satisfaction, offender rehabilitation, and social reintegration?

What policy and legislative reforms are necessary to integrate mediation effectively within the Indian criminal justice system?

RESEARCH METHODOLOGY

The study adopts a doctrinal research methodology. It mainly depends on secondary sources such as scholarly articles, government reports, statutes, and judicial decisions related to restorative justice. The research utilizes an analytical approach to critically evaluate theoretical concepts and legal frameworks governing criminal mediation.

LITERATURE REVIEW

Expanding the Role of Victim-Offender Mediation in the Criminal Justice System: Mediating Cases of Involuntary Manslaughter

AUTHOR: Doyeon Kim's

Despite the need for strong protections, academics such as the researcher contend that Victim-Offender Mediation (VOM) can humanize justice even in cases of major offenses. Sameera Khan and Kazi Hossain draw attention to the growing application of restorative justice in India while pointing out

cultural and legal constraints. Studies conducted in the United States indicate that VOM reduces recidivism and increases victim satisfaction, albeit primarily in minor or juvenile situations. Overall, the study highlights the potential of VOM while cautioning against its unrestrained growth into major crimes in the absence of appropriate regulation.

Victim-Offender Mediation in India's Criminal Administration: An Analysis of Emerging Practices through Restorative Principles.

AUTHOR: Sameera Khan

Examines the progressive adoption of VOM in India's criminal justice system, with a focus on the impact of traditional methods of resolving disputes. Although restorative justice is not wholly alien to Indian legal culture, Khan notes that its official incorporation into the criminal justice system is still restricted and undeveloped. The study looks at mediation techniques that have emerged in response to problems like sluggish case resolution, growing victim rights awareness, and the need for quicker, more affordable alternatives. Despite these advantages, Khan points out significant obstacles, such as ambiguous laws, a dearth of binding regulations, and societal beliefs that prioritize vengeance above peace making. The author warns against applying mediation indiscriminately to significant crimes without adequate protections and advocates for institutional infrastructure and legal reform to operationalize VOM, particularly in cases involving minor offenses.

"The Impact of Victim-Offender Mediation: Two Decades of Research"

RELEASED BY: U.S Courts

Analysis of empirical results from several VOM initiatives: When compared to traditional justice procedures, the paper, which compiles data from twenty years of research, finds persistent patterns of high victim satisfaction, decreased recidivism, enhanced feelings of safety and closure, and higher possibility of financial reparation. However, the analysis recognizes methodological flaws, such as inconsistent program implementation across jurisdictions and an excessive focus on mediation in less serious and juvenile cases. The paper highlights the need for more proof when using VOM in severe violent crimes, arguing that although promising, mediation's wide application still has to be carefully validated through comparative and long-lasting research.

"ADR in the Criminal Justice System in India."

AUTHOR: Kazi Akib Hossain

The focus is on how Alternative Dispute Resolution (ADR) processes, such as mediation, interact with the criminal justice system in India. Hossain contends that although alternative dispute resolution (ADR) has proven beneficial in India's civil and commercial conflicts, its use in criminal cases is still confined to compoundable crimes under the Criminal Procedure Code. The lack of explicit legislative recognition for mediation in criminal proceedings is criticized in the article as undermining victim rights and causing uncertainty in enforcement. Hossain also addresses practical issues including ignorance, the impact of socioeconomic disparities on negotiating power, and the necessity of finding a balance between private conflict settlement and public responsibility. According to the report, mediation should be methodically included into the criminal justice system while maintaining legal support and procedural integrity.

INTRODUCTION

Mediation is an alternative dispute resolution process in which a neutral third-party, a mediator, facilitates the parties in arriving at an amicable settlement through a structured process. It is a voluntary conversation between disputing parties and is mostly associated in civil and family-related cases. However, mediation has been recently introduced into criminal justice systems, representing a significant shift in how societies perceive justice, accountability, and rehabilitation. Mediation, in this context, offers a non-adversarial, dialogue-based process where victims and offenders can engage in mutual understanding and collaborative problem-solving. Unlike the traditional adversarial criminal justice system focused primarily on legal victory and punishment, mediation seeks to address the root causes of disputes, promote healing, and restore social harmony by involving the parties directly in resolving their conflict. Mediation can reduce court backlogs, improve the speed of justice delivery, and offer victim-offender reconciliation, which is often missing in formal criminal trials. It emphasizes accountability, victim participation, and offender rehabilitation, aligning with restorative justice principles rather than merely punitive measures. Despite these benefits, integration of mediation into the criminal justice system faces challenges such as ensuring quality mediator training, protecting the rights of parties, and securing legislative support. When effectively implemented, mediation can transform procedural justice by making it more humane, participatory, and restorative, fostering community cohesion and reducing recidivism.

FORMS OF MEDIATION IN CRIMINAL PRACTICE

The integration of mediation into criminal law represents a significant shift in how justice systems respond to wrongdoing. By moving beyond traditional adversarial and punitive approaches, mediation brings a more participatory and restorative approach to justice. While, In India is currently limited to certain types of offenses, international best practices suggest that mediation a can be applied at various stages of the criminal justice process. This section explores the key forms of mediation relevant to criminal practice.

VICTIM OFFENDER MEDIATION (VOM)

Victim offender Dialogue brings together crime victims and offenders in a facilitated conversation, aiming to address the harm caused and promote healing. By this process allows both parties to share experiences, emotions, and questions, and discuss the consequences of the crime. A facilitator ensures to provide safe and respectful environment. The dialogue can take in various forms such as face-to-face meetings, indirect communication, or virtual platforms. It complements the criminal justice system; VOD provides an alternative approach focused on repairing harm and promoting accountability. Through this dialogue various benefits are a raised like increased victim satisfaction, reduced recidivism, and improved emotional well-being for both parties. For this dialogue voluntary participation is required. The main focus is the empowerment of the victim, accountability of the offender, and restoration of losses. The dialogue gives a cleaner for the assessment of the emotional and informational needs of victims. They are important since they can also lead to the development of victim empathy in the offenders which can discourage criminal behaviour in the future.

KEY FEATURES OF VOM

Voluntary Participation: Both victim and offender must agree to participate, ensuring the process is built on mutual consent.

Facilitated Dialogue: A trained mediator guides the meeting. The mediator ensures a respected environment, clarifies ground rules, and encourages open communication.

Direct Communication: Victims share the impact of the crime, and offenders are given a chance to acknowledge responsibility, apologize, and understand the emotional and practical consequences of their actions.

Focus on Healing and Accountability: The process enables victims to seek answers, express feelings, and discuss restitution. Offenders confront the real effects of their behaviour, often leading to greater empathy, sorrow and reduced recidivism.

Mutually Agreed Outcomes: Typically, VOM ends with a tangible agreement such as financial restitution, community service, or commitments about future behaviour crafted by the participants themselves and sometimes finalized under court supervision.

STEPS OF VICTIM-OFFENDER MEDIATION¹

INTAKE PHASE:

The court refers the case, typically requiring the offender to admit guilt. However, some cases may be referred before admission of guilt as part of deferred prosecution. A mediator is then assigned to the case.

PREPARATION PHASE:

The mediator meets separately with the victim and offender, ensuring a safe and comfortable environment for both. Through active listening and empathy, the mediator helps each party express their perspectives emotions, needs, and concerns. This phase prepares both parties for a potential dialogue, them to communicate openly and honestly.

After separate meetings, the mediator confirms both parties' willingness to participate in mediation, emphasizing voluntariness and self-determination. This approach empowers them to own the outcome and find a satisfactory resolution.

MEDIATION PHASE:

Once both parties agree to participate, a joint meeting is scheduled. The mediator sets ground rules and facilitates communication. The session proceeds in two parts:

Expressing feelings and facts- Victims share their experiences, emotions, and questions, while offenders listen and respond. This helps offenders understand the impact of their actions and show remorse. Discussing losses and restitution- The parties discuss the harm caused and work towards a mutually acceptable restitution agreement. This process allows victims to find closure and offenders to take responsibility for their actions. The focus is on holding offenders accountable and providing fair compensation to victims. The settlement is voluntary, reached through mutual agreement between the parties, without mediator imposition.

FOLLOW-UP PHASE:

This phase commences once the restitution agreement is approved by the referral agency. If the mediation is successful, the process results in the closure of the case. The tasks that are to be done in this phase include communication with the victim to ensure that the restitution agreement is fulfilled. If required, the agency contacts a probation officer to secure the offender's compliance. The completion of this phase results in the final closure of the case.

¹ Khan, S. (N.D.). Victim-Offender Mediation In India's Criminal Administration: An Analysis Of Emerging Practices Through Restorative Principles.

In India, VOM has been cautiously adopted in select contexts. For instance, the Juvenile Justice (Care and Protection of Children) Act, 2015, under Section 18 promotes advisory, counselling, and community service for juveniles in conflict with the law elements that parallel restorative mediation.

Moreover, in *Gian Singh vs State of Punjab*, the supreme court upheld that in cases of a personal nature (e.g. matrimonial, financial, or partnership disputes), settlements between the parties could justify quashing of criminal proceedings under Section 482 of the CrPc.

KEY FINDINGS

In 2023, by analysis found restorative justice programs like VOM were associated with a roughly 12% reduction in the odds of general recidivism compared to traditional approaches, though reductions in violent recidivism were not statistically significant. Overall, VOM is associated with higher participant satisfaction and perceptions of fairness, which may contribute to its preventative effects on reoffending, especially among moderate-to-high-risk youth.

COURT-ANNEXED MEDIATION

It refers to mediation processes integrated within the judicial framework, often managed through dedicated mediation centres attached to district courts or High courts. While primarily used for civil and commercial disputes under Section 89 of the Civil Procedure Code, 1908, Indian courts have progressively extended it to criminal cases that are personal in nature². The Supreme Court in *Narinder Singh v. State of Punjab*³ and *Parbatbhai Aahir v. State of Gujarat*⁴ held that criminal proceedings may be quashed through settlement when offences are not heinous and the compromise promotes justice rather than frustrates it. This has led to mediation being encouraged in cases such as cheque dishonour (Section 138, NI Act).

Court-annexed mediation ensures procedural legitimacy since it occurs under judicial oversight. Typically, a judge refers a matter for mediation, after which sessions are conducted by trained mediators within the court-annexed facility, and the outcome is reported back to court. Centres like the Delhi High Court Mediation and Conciliation Centre (Samadhan) have successfully mediated thousands of criminal and quasi-criminal cases, with notably high settlement rates⁵.

COMMUNITY BASED MEDIATION

Community mediation extends dispute resolution beyond judicial forums into the social domain. It relies on trained community mediators, often social workers, local leaders, or NGOs, to facilitate dialogue between victims and offenders. This model is especially effective in addressing minor offences, neighbourhood conflicts, and juvenile cases, where social harmony and rehabilitation take precedence over punishment⁶.

Community mediation resonates strongly with India's indigenous dispute resolution traditions, such as the panchayat and Lok Adalat systems. Under the Legal Services Authorities Act, 1987, Lok Adalats are empowered to resolve various criminal matters through compromise. The Supreme Court in *Afcons Infrastructure Ltd v. Cherian Varkey Construction Co (P) Ltd* affirmed the legitimacy of such alternative mechanisms as integral components of the justice system.

Delhi Police Mediation Scheme (2005), where police stations refer minor disputes, especially family or community conflicts, to mediation cells before the filing of a First Information Report (FIR).⁷ This early-stage intervention has reduced litigation backlogs and improved community relations.

PRE-TRIAL AND POST-TRIAL MEDIATION

Mediation may occur at distinct stages of criminal proceedings, depending on the legal framework and policy objectives.

a) Pre-Trial Mediation

It aims to resolve disputes before charges, it also encourages early dialogue, minimises the criminalisation of minor conflicts, and conserves judicial resources. Family Courts in India frequently employ pre-litigation mediation in matrimonial offences under Sections 85 and 86 of BNS⁸.

In *Rajesh Sharma v State of Uttar Pradesh*, the Supreme Court directed the formation of Family Welfare Committees to review complaints under Section 85 of BNS before arrest, reflecting a shift towards restorative approaches even in criminal contexts.

b) Post-Trial Mediation

² Code Of Criminal Procedure, No.2 Of 1974 & 320, India Code (1974)

³ *Narinder Singh V. State Of Gujarat*, (2017) 9 Scc 641 (India)

⁴ *Parbatbhai Aahir V. State Of Gujarat*, (2017) 9 Scc 641 (India)

⁵ Delhi High Court Mediation & Conciliation Centre, Samadhan Annual Report (2024)

⁶ National Legal Services Authority (Nalsa) Report On Lok Adalat's 2023 (Gov't Of India 2024)

⁷ Delhi Police, Mediation Cell Annual Report 2023.

⁸ Family Courts Act, No.66 Of 1984, India Code (1984)

Mostly prevalent in jurisdictions like United Kingdom and Canada, facilitates reconciliation after conviction. While in India has not yet formally incorporated this model, similar restorative concepts exist within juvenile reform programmes and plea bargaining under Chapter XXI-A of the CrPC, both of which encourage acknowledgement of guilt.

HYBRID AND SPECIALISED MEDIATION

Recent practice has witnessed the emergence of hybrid mediation it includes legal, psychological, and community elements.

Domestic Violence Mediation Cells, established under the Protection of Women from Domestic Violence Act, 2005, which provide counselling and reconciliation opportunities before formal trial.

Police and Community Partnership Mediation Cells in states such as Tamil Nadu and Kerala, where minor offences are resolved through restorative dialogue.

Juvenile Justice Boards (JJBs) empowered under Section 19 of the Juvenile Justice Act, 2015, to recommend community-based interventions rather than punitive standards⁹. These mechanisms collectively represent a gradual integration of restorative justice within India's criminal process, prioritising rehabilitation and reintegration over retribution.

PRINCIPLES OF RETRIBUTIVE JUSTICE AND PRINCIPLES OF RESTORATIVE JUSTICE

In context of mediation in India, the principles of retributive and restorative justice play crucial roles in shaping dispute resolution processes. Retributive justice focuses on punishing offenders in proportion to their crimes, aiming to deter future offenses and uphold justice within the legal framework, as outlined by laws such as the Arbitration and Conciliation Act, 1996, and the Mediation Bill, 2021. Retributive justice is the traditional foundation of most criminal law systems including India. The offender, have violated the social contract, must "pay" for the harm caused, thereby reaffirming moral and legal order. Restorative justice refers to healing and rehabilitation for both victims and offenders, prioritizing the repair of harm caused by the crime and fostering reconciliation. Victim-offender mediation, rooted in restorative principles, facilitates dialogue between the parties involved, promoting accountability and closure. This approach is rooted in restorative justice principles and is used in Indian mediation to facilitate healing and accountability. It requires a deep understanding of both retributive and restorative justice principles to be effective.

Community-Based mediation involves the community in the mediation process, leveraging local leaders and norms to resolve disputes. This approach is particularly relevant in India, where community structures are strong. By incorporating community-based mediation, the principles of both retributive and restorative justice can be applied in a manner that is culturally sensitive and effective. Courts play a significant role in promoting mediation and supporting the mediation process. In India, the judiciary has been instrumental in encouraging the use of mediation the use of mediation and ADR methods. Mediation is particularly useful in family disputes, where the goal is often to preserve relationships alongside resolving the dispute. In India, family mediation can apply both retributive and restorative justice principles to address issues like divorce, child custody, and property division in a way that respects family dynamics and promotes healing.

BENEFITS OF MEDIATIONS IN CRIMINAL CASES

Mediation in criminal cases offers several potential benefits for all parties involved. Here are some key benefits:

Victim Empowerment and Participation: Mediation allows victims to actively participate in the justice process, unlike traditional adversarial systems where they play a limited role. It provides victims a voice, enabling them to express emotions, seek explanations, and negotiate directly.

K. Srinivas Rao v. D.A Deepa ¹⁰it held that matrimonial dispute under Section:498A of the IPC (Section:85 of BNS) concerning cruelty by a husband or his relatives towards a wife. The couple's prolonged conflict led to multiple criminal proceedings, creating emotional damage and procedural strain. The Supreme court took note of the rising number of matrimonial offences under Section: 498A IPC (Section 85 of BNS) and the growing misuse of criminal proceedings that often causes issues between spouses rather than resolving underlying emotional or family issues.

To address this, the court encouraged mediation as alternative dispute resolution (ADR) mechanism, especially in cases involving family, matrimonial, and relationship related offences. The court observed that criminal prosecution often destroys the possibility of reconciliation between spouses. Mediation, on the other hand, allows open dialogue, emotional release, and mutual understanding, the scope for reconciliation and emotional closure. It recognizes that not all matrimonial disputes demand punishment: many require soulful resolution. In mediation, the husband/offender acknowledges his behaviour and seeks to make changes without undergoing a punitive process. This shows genuine accountability and a chance for behavioural correction rather than imprisonment. "We are of the view that the courts dealing with matrimonial matters should make serious efforts at reconciliation and mediation before taking the extreme step of prosecution or conviction."

⁹ Juvenile Justice (Care And Protection Of Children) Act, No.2 Of 2016,19, India Code (2016)

¹⁰ K. Srinivas Rao V. D.A Deepa, (2013) 5 Scc 226.

So, based on this judgement, High courts and Family courts they referring section 498A of IPC (Section:85 of BNS) cases and related domestic disputes to Mediation Centres before proceedings to trial. The case laid the base for institutionalized pre-litigation mediation in matrimonial and quasi-criminal contexts.

Reduction in Judicial Backlog: Mediation significantly reduces the burden on the judiciary by resolving minor and compoundable offences outside traditional courtroom processes. The enactment of the Mediation Act,2023 though primarily civil in scope, inspired the institutional expansion of mediation centres to handle minor criminal disputes under Section: 320 and 482 of the Code of Criminal Procedure. (CrPC)¹¹

Restorative justice and Healing: Mediation focuses on repairing the harm caused by the crime and restoring relationships to the extent possible. It offers a platform for open dialogue, empathy, and understanding, which can gradually heal and both the victim and the offender. Restorative justice principles reduce the harm to individuals and communities, promoting reconciliation, and addressing the issues.

Community Based and Social Harmony: Mechanisms such as Lok Adalat's and Gram Nyaya Layas under the Legal Services Authorities Act,1987, demonstrate how restorative dialogue can rebuild trust and prevent the raise of minor criminal conflicts into litigation.¹²

Speed and Efficiency: Mediation can be a quicker and more efficient process compared to traditional court proceedings. It allows for a flexible schedule, avoids lengthy court delays, and reduces the burden of the legal system. Resolving cases through mediation can save time and resources for all parties involved.

State of Madhya Pradesh v. Laxmi Narayan¹³ in this case it states where the High court had quashed criminal proceedings based on a compromise between the parties. The offences involved such as Section: 307,294,323,34 of IPC (Section: 109,296,115,3(5) of BNS) attempts to murder, obscene acts, hurt, and common intention. The State of Madhya Pradesh appealed before the Supreme Court, arguing that such serious offences cannot be quashed merely on compromise, as they are non-compoundable under Section: 320 CrPC. Key issue in this case is under inherent powers Section: 482 CrPC. The Supreme Court of India, in a bench comprising Justices M.R Shah and Ashok Bhushan, laid down clear principles on when mediation can be recognized in criminal proceedings.

"Offences which have a serious impact on society cannot be quashed merely on the basis of compromise between the victim and the offender, as such offences are not private in nature but have a social impact." This reasoning is crucial because the criminal mediation can be applied to grave offences or not, it could undermine the public interest aspect of criminal law. Therefore, the Court states the legitimacy of mediation and compromise only in private, personal, or matrimonial disputes, and prohibited.

RECOMMENDATIONS

- 1.Establish a Restorative Justice Board or Mediation Authority under the Ministry of Law and Justice, which could ensure coordination, monitoring, and standardization of practices across jurisdictions.
- 2.Mediators must receive advanced training in trauma-informed facilitation, criminal procedure, ethics, and cultural sensitivity.
- 3.Establish safeguards for voluntariness and victim protection; participation must be volunteered by both the victims and offenders, with the right to withdraw at any stage.
- 4.Must be integrated with the existing legal system so that eligible cases can be referred to mediation before formal prosecution, i.e., pre-trial.
- 5.Awareness campaigns must be encouraged for educating the communities about the restorative goals of mediation and also to erase misconceptions regarding it.

Encourage empirical research to continuously assess mediation's impact and refine practices accordingly.

CONCLUSION

India's Mediation Act,2023, expanding mediation infrastructure, and active institutional. Introduced various mediations centres, NALSA training and national campaigns it creates a rare policy opening to innovate responsibly. Criminal Law is not a private contract it includes public interest and victim's rights and mediated outcome be shielded from coercion and undue private bargaining power. Mediation is not universally applicable, especially in the most grievous offences, where the public need for resolving the dispute remains high, the incorporation of mediation into criminal justice marks a shift towards restoration, accountability, and collective healing. For future reforms must denotes accessibility, public awareness, and evaluation to realize its full potential.

¹¹ The Mediation Act,2023, No.19, Acts Of Parliament,2023(India)

¹² The Legal Services Authorities Act, 1987,No.39,Acts Of Parliament,1987 (India)

¹³ State Of M.P. V. Laxmi Narayan, (2019) 5 Scc 688