EMBRACING MEDIATION IN CRIMINAL LAW: PROMOTION OF ALTERNATIVE RESOLUTION IN INDIAN CRIMINAL COURTS

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ABSTRACT

This article reconnoitres the possibility of mediation as corresponding development to discharge the accused from criminal charges and settle the offence through an alternative dispute resolution mechanism. It is a restorative justice approach whereby the neutral third party appointed as Mediator enables communication between the parties to a criminal case, essentially the victim and the victimizer. The desire is to unearth the mutually acceptable resolutions that resolves the harm caused to the victim and encourages the reformation of the accused causing the harm to the victim. This article highlights the concept of restorative justice and contemplates the scope of mediation as an alternative dispute resolution mechanism in criminal justice system in India.

The process of mediation has grown significantly in civil disputes and hoping the same to emerge in criminal cases. This abstract is an attempt to explores the deeper concepts of mediation to identify its potential for applying them in the criminal cases to augment rehabilitation of the criminal and for restoration of the harm caused to the victim. The article shall effort to inspire the probable benefits of integrating mediation to augment rehabilitation efforts, reduce re-offense and compensate the sufferer effectively.

Keywords: Criminal Justice, Mediation, ADR mechanism, Discharge, Restorative Justice.

Introduction

In the multi-layered criminal law, a new pattern is developing that promises to reshape the way society interacts in relation to crime and destruction. This change branches from mediation, which has been associated with civil cases and now finds its place in the domain of criminal justice. presenting a non-adversarial approach that fosters dialogue, consensus, and constructive resolutions, thus forming the core of societal justice in criminal law. This comprehensive article explores the intricacies of mediation highlighting its essential components, advantages, challenges, and the anticipated changes which might transcend the conventional notion of justice by facilitating communication between victims and perpetrators in a structured manner under the guidance of an impartial mediator. This method contrasts sharply with traditional judicial processes that may perpetuate cycles of crime through adversarial court proceedings. Instead, mediation is rooted in restorative justice principles, focusing on mending the harm inflicted by criminal acts and re-establishing social integrity, thereby allowing affected parties to reclaim their narratives.

An effective mediation is its prioritization of direct communication. In stark contrast to conventional courts, where legal representation is predominant, mediation encourages open exchanges of feelings, experiences, and explanations. This interaction humanizes all participants, deepening their understanding of pain and the broader implications of crime. Such a humanistic approach addresses the layered effects of criminal behaviour, acknowledging its far-reaching impact on communities and relationships. Mediation aligns seamlessly with restorative justice principles, moving away from mere punishment towards rehabilitation, treatment, and systemic change in the criminal justice framework. It recognizes that the ramifications of criminal conduct extend well beyond the individual act, significantly affecting community cohesion and trust. By promoting accountability, mediation compels offenders to confront the repercussions of their actions and engage in meaningful rehabilitation and restoration.

However, incorporating mediation into criminal justice presents notable challenges. Not all cases are suitable for this approach; particularly serious crimes or scenarios that jeopardize victim safety and sustainability. Furthermore, the uncertainty surrounding the process which leads to unresolved mediation agreements can pose risks, as the process's success heavily relies on the willingness of involved parties, which can fluctuate based on various factors.

In conclusion, the introduction of mediation into criminal justice signifies a departure from traditional adjudication, embracing voluntary engagement,[1] direct communication, and restorative principles. This innovative model promises to facilitate healing, cultivate understanding, and enrich the dialogue surrounding crime, ultimately challenging the binary categorizations of guilty and innocent while delving into the complex emotional landscape shaped by criminal acts. Despite the existing challenges, mediation heralds a significant shift in addressing crime and its consequences.

History of Mediation in Criminal Cases

The history of mediation in criminal matters is a relatively recent development, emerging noticeably in the last few decades as an alternative to traditional criminal adjudication. Its origins can be traced in aboriginal and tribal justice practices, which emphasized community harmony and relationship improvement over punishment, forming the basis for restorative justice.[2] In the 1970s and 1980s, victim-offender mediation emerged, aimed at reconciling victims and perpetrators through dialogue focused on healing and understanding, rather than solely punishment.

By the 1990s, mediation became more widespread, with pilot programs assessing its effectiveness in cases involving juvenile delinquents or less serious crimes, emphasizing solutions beyond traditional penalties and conviction. The 21st century saw a trend of integrating mediation and restorative justice into national criminal justice systems, with legal frameworks facilitating this approach, especially for first-time offenders.[3]

Mediation in criminal matters has many reimbursements, noteworthy among them are reducing litigation, giving victims autonomy to explain and express, hovering awareness of the liability of offenders and providing the best possible solutions and reparations. However, challenges exist, such as harmonizing justice, managing power dynamics, determining pertinent consequences, and ensuring process integrity with needful amendments to law. The adoption to such variety of mediation varies by nations, reflecting a growing acknowledgement of justice as an approach that outdoes punishment and encourage healing and social restoration. Overall,

[1] https://www.chantillymediationandfacilitation.com/blog/mediation-voluntary-really-means-voluntary
[2] Restorative Justice Today: Practical Applications: Online pub date: December 26, 2013
[3] https://www.academia.edu/32197585/An_overview_of_restorative_justice_around_the_world

the evolution of mediation in criminal matters signifies a paradigm shift toward a more comprehensive, effective, and inclusive perspective on justice.

The Increase of Crimes in India

In 2021,[4] India reported over 3.6 million criminal cases under the Indian Penal Code (IPC),[5] with a crime rate of 2.94, marking a 0.86% increase from 2020, which itself had seen a 0.53% increase from 2019. The trends indicate a gradual rise in criminal cases since 2018, despite fluctuations in year-over-year statistics. Several factors contribute to the increasing crime rates in India, necessitating a comprehensive analysis before pursuing solutions. Key causes include population growth, which increased by about 8.7% in 2021, leading to a potential rise in criminals even if the crime rate remains stable.[6] Rapid urbanization which saw a 2.05% increase in 2022,[7] which further exacerbates the crime situation through social issues such as unemployment, poverty, inadequate social services and the rapid pace of urbanization.[8] Economic inequality also plays a significant role, prompting those in poverty to engage in criminal activities for their survival of sorts.[9] Additionally, social and cultural changes, like family disruptions and the spread of new ideologies, indoctrination and insomnia, can further influence crime.[10] Lastly, high unemployment rates can compel individuals to resort to crime when legitimate job opportunities are scarce.[11] Addressing these factors is crucial for formulating effective crime reduction strategies.

Furthermore, lack of effective law enforcement allows offenders to commit crimes without fear of consequences.[12] Technological advancements contribute to new forms of crime, such as cybercrime and identity theft.[13] Drug trafficking result in violent crimes, with about 13% of individuals affected under the age of 20 in India.[14] Additionally, ongoing political conflicts/vendetta and media sensationalizing of crimes in prime time news reporting and big

[4] https://www.statista.com/statistics/632333/crime-cases-reported-under-the-ipc-india/
[5] https://www.macrotrends.net/countries/IND/india/crime-rate-statistics
[6] https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=IN
[7] https://www.macrotrends.net/countries/IND/india/urban-population
[8] https://www.iosrjournals.org/iosr-jhss/papers/Vol.%2021%20Issue1/Version-4/G021146874.pdf
[9] https://journalofeconomicstructures.springeropen.com/articles/10.1186/s40008-020-00220-6
[10] https://www.jetir.org/papers/JETIR1905D28.pdf
[11] https://www.journals.uchicago.edu/doi/10.1086/320275
[12] http://ignited.in/I/a/305557
[13]https://www.researchgate.net/publication/222416247_Taking_advantage_of_new_technologies_For_and_against_crime
[14] https://www.thehindu.com/news/national/kerala/13-of-drug-abuse-victims-in-india-are-below-20-years-un-official/article66148608.ece

banner movies can escalate criminal activities.[15]

To effectively curtail crime and establish a safe environment for citizens, India must adopt a comprehensive strategy like:

- Enhancing resources and training for law enforcement to improve their investigative capabilities.
- Fostering cooperation and information sharing among law enforcement agencies for better crime prevention.
- Reducing case backlog and improving court systems to independently handle the increasing number of cases through the addition of judges and faster legal processes.
- Encouraging Police and Community collaboration to identify and address crime related issues.
- Targeting at-risk communities, particularly youth, with initiatives designed to protect them from criminal influences.
- Creating programs focused on mentoring, skills development, and recreational activities to keep youths away from crime.
- Helping former offenders reintegrate into society to reduce recidivism risks.
- Promoting public awareness of crime consequences and legal rights through educational programs and events.
- Implementing policies to combat poverty, unemployment, and inequality to decrease crime prevalence.
- Leveraging advanced technologies for crime detection and prevention, such as surveillance and predictive analytics.
- Enhancing services to provide victims with necessary support and legal assistance.

[15] https://qrius.com/skewed-reality-inaccuracies-ncrbs-crime-india-report/

- Revising laws to effectively address emerging crimes, including cybercrime and white-collar offenses.

- Focusing on healing and reconciliation to tackle root causes of crime.

- Collaborating across government, civil society, and business sectors to address serious crime.

The successful implementation of these strategies hinges on the collaboration among government entities, civil society, and the general public, along with regular evaluations of their effectiveness tailored to India's unique challenges and crime types. That apart, a restorative approach to find remedies to the offence in collaboration with the stake holders to the crime can be a noteworthy move towards curbing, curtailing and curing it's menace.

Mediation for Criminal Cases: A Technique for Restorative Justice

Mediation presents an innovative approach to justice that significantly alters the landscape of criminal procedures, emphasizing emotional healing and accountability over traditional punitive measures. This transformative method allows victims to overcome the frequent exposure to investigation, long drawn trial and appeal phases in the hierarchical courts and the related associated stigma, loss of time and unnecessary costs. Mediation functions within the framework of restorative justice, which aims to repair the harm perpetrated through crime by fostering dialogue among victims, offenders, and sometimes community members, creating opportunities for mutual understanding and resolution. [16]

A key characteristic of mediation is its reliance on voluntary participation, which cultivates a collaborative environment where trust can flourish. Participants comprising victims, offenders, and occasionally community representatives engage willingly, enabling genuine dialogue that addresses the emotional, psychological and material impacts of crime on victims' lives primarily and the possible reliefs that can be best compensated by the offender. This process empowers victims by granting them means and a voice often overlooked in conventional justice systems, thereby allowing them to partake in the establishment of reparation agreements

[16] https://www.legalserviceindia.com/legal/article-9111-restorative-justice-concept-and-scope-in-india.html

essential for their recovery from being the victim.[17]

Conversely, mediation encourages offenders to acknowledge their wrongdoing, fostering a sense of responsibility, self-reprimand and reform their personal growth. This rehabilitative aspect contrasts sharply with the criminal justice system, where the focus is predominantly on punitive legal outcomes.[18] Through mediation, offenders engage in a growth and reformative process, understanding the real-life repercussions of their actions, which can lead to a deeper moral awareness and self-introspections.

During mediation sessions, negotiated agreements may encompass various forms of restitution, including financial compensation, community service, and more, which collectively promote reconciliation and create pathways for redemption. Such measures are instrumental in nurturing a relationship between the victim and the offender while also working towards reducing recidivism by addressing the underlying issues that precipitate the crime primarily.

By prioritizing recovery and development, mediation contributes to a broader social objective of fostering safety and peace within communities. It serves as an effective alternative to protracted litigation, alleviating the burdens on criminal justice systems while delivering timely resolutions. This not only benefits the immediate parties involved but also liberates resources for addressing other societal issues. Consequently, mediation stands as a compelling alternative model over punishments within criminal cases, embodying the principles of restorative justice and advocating for a more empathic approach to crime and its aftermath.

Mediation serves as a valuable approach to addressing the complexities and consequences of crime by fostering open dialogue, reflection, accountability, and effective remediation. It signifies a transformative shift within the justice system that prioritizes justice and compassion through voluntary engagement, empowerment of victims, accountability of offenders, commitment to reparative measures, and efforts to reduce recidivism. This method possesses the potential to rebuild lives and communities while fostering peace and harmony.

In a world increasingly in search of innovative solutions, mediation emerges as a form of restorative justice, offering hope for a more just and compassionate future. Criminal mediation can occur at various stages, particularly when the involved parties are ready to reconcile.

[17] https://ojp.gov/ncjrs/virtual-library/abstracts/restorative-justice-victims-communities-and-offenders
[18] https://digitalcommons.law.uidaho.edu/cgi/viewcontent.cgi?article=1203&context=faculty_scholarship

Ideally, mediation is most effective before formal charges are prepared by the Court. This article emphasizes the favourable outcomes that may arise from engaging in mediation, advocating for its formal recognition and to enhance the restorative justice process.

Reconciliation and Accountability

The scheme of restorative justice emphasizes the importance of discussion and accountability within the judicial system. It facilitates a platform for the accused to engage in restorative processes, acknowledging their responsibility for their actions and offering opportunities for resolution with the victims. This victim centred approach focuses on the needs and welfare of the victim, allowing them to express their concerns and engage in the resolution process, which can include seeking restitution, restoration of rights, or receiving apologies from the offender.

Braithwaite[19] draws a distinction between **accountability** as "being answerable to give a public account" and **responsibility** as "a responsibility to do right thing." This difference is significant for theoretically separating the processes of "answerability" and "accountability," to do correct things. Braithwaite further segregates between passive responsibility and active responsibility meaning holding responsible for the past act and taking responsibility for the future acts. Agreeing with the above distinctions, the restorative justice conceptually separates accountability and responsibility calling it to account and holding to account for criminal acts. Accountability oblige reparative justice similar to that of what responsibility does on the forward-facing end of being liable. Responsibility is like holding on from the back end of agreeing and gratifying those commitments.

Lastly, there could be a doubt that whether there could be accountability without being responsible and vice versa? The response is straight and if there is such denial, lag or lethargy in either of the two; accountability and responsibility in converging terms, then the whole of the commitments and agreements are ideally to be fruitless to be hopeful of restorative justice through mediation.[20]

Challenges and Conclusion

Although the rule of restorative justice demonstrates boundless promises; the headwinds such

[19] Accountability and responsibility through restorative justice. Public Accountability: Designs, Dilemmas and Experiences, 33–51.
[20] Rossner, M., & Bruce, J. (2018). Trajectories and typologies of pre-sentence restorative justice rituals. Australian & New Zealand Journal of Criminology, 51(4), 502–518. https://doi.org/10.1177/0004865817749263

as statutory disapproval, procedural and practical complexities of laws and Courts, the need for inclusive legal infrastructure, mind to mediate criminal offences, conventional conclusions, cultural influences and social taboos need to be addressed for an effective and efficient employment and implementation of the said scheme restorative justice through mediation.

In conclusion, it is opined herein by the authors that the principles and practices of restorative justice being implemented in the Indian criminal law offers a holistic and futuristic resolutions of criminal cases. By integrating restorative justice, the criminal law can steer remedy providing healing and accountability, and contribute to a more equitable and compassionate society. The integration does not limit to ensure justice but also determines the well-being of all stakeholders. The vision of justice would be to limit the conflicts by replacing them with a more inclusive, humane and holistic process.

Nonetheless, as this union of combined effect takes shape, it calls for cautious deliberation of cultural distinctions and practical synchronization. The restorative justice in the criminal law signifies a transformative approach where justice is indorsed, accountability is nurtured and social wrongs are addressed, holding the supremacy to restore the fabric of society and brighten a path towards a more compassionate and unbiased future.