



## ALTERNATE DISPUTE RESOLUTION IN CRIMINAL MATTERS

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### Abstract

Alternate Dispute Resolution refers to a set of techniques that are of an out of court settlement for any disputes. It has been recommended by various Law Commission reports that techniques of Alternate Dispute Resolution must be applied to criminal matters as well. In addition to these recommendations, the Supreme Court of India, in a plethora of judgments, has also advocated for the use of Alternate Dispute Resolution in criminal matters to reduce case burden on Courts. It is also of reference to statistics that the courts are overburdened with criminal cases and need an urgent way out. This paper examines Alternate Dispute Resolution as an alternative and faster method to solve these pending cases.

### Introduction

“Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often the real loser — in fees, and expenses, and waste of time. As a peace-maker the lawyer has a superior opportunity of being a good man. There will still be business enough.”- These were Abraham Lincoln’s words on Alternate Dispute

Resolution. The current routine of criminal trials in India falls short of providing the party with prompt and reasonable help. The process is also incredibly difficult. This prompts the quest for a substitute mechanism, which should be rapid and cheap. ADR (Alternative Dispute Resolution) techniques include out-of-court procedures. It typically comprises conciliation, collaborative law, arbitration, mediation, and negotiation. There are various forms of ADR to assist in various civil and criminal problems. In the year of 1979, in the case of *In Hussainara Khatoon v. State of Bihar*<sup>1</sup> the plinth for speedy trials was laid down by the Supreme Court. The Apex Court held that where under-trial prisoners awaiting trial have been incarcerated for longer than is necessary, and if found guilty, their continued incarceration would violate their Article 21 fundamental rights. Furthermore, in the case of *R. C. Sharma Vs Union of India & Ors.*<sup>2</sup>, where the Honourable Court held that “Nevertheless an unreasonable delay between hearing of arguments and delivery of Judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of Judgments.”

Moreover, in the case of *Madhav Hayawadanrao Hoskot Vs State of Maharashtra*<sup>3</sup>, the Court stated that procedure contemplated under Article 21 of the

<sup>1</sup>*Hussainara Khatoon v. State of Bihar*, 1979 AIR 1369

<sup>2</sup> *R. C. Sharma Vs Union of India & Ors.*, 1976 (3) SCC 574

<sup>3</sup> *Madhav Hayawadanrao Hoskot Vs State of Maharashtra*, 1978 (3) SCC 544



Constitution of India means "fair and reasonable procedure" which comports with civilized norms like Natural Justice rooted firm in community consciousness-not primitive processual barbarity nor legislated normative mockery." In pursuance to the above mentioned case laws, this paper proposes to introduce Alternate Dispute Resolution into criminal matters as a system to resolve the immense backlog in cases.

### **Types of Alternative Dispute Resolution Methods Available**

- Arbitration: It is a type of ADR that has been given legal legitimacy by the court to serve as an "out of court" resolution. Both parties are required to abide by the arbitration agreement, which involves the resolution of disputes by a third party (one or two persons). An arbitration award is enforceable in court and is legally binding for both parties.
- Negotiation: Through the production of an agreement on a plan of action that will be to each party's or the group's advantage, negotiation seeks to resolve issues between the parties. Each party's attorneys cooperate with one another during the negotiating process to move the case toward a resolution, such as a plea bargain. In many disagreements, whether they be in business, non-profit organizations, legal proceedings, government branches, between two or more nations, or in personal circumstances like marriage, divorce, parenting, etc., negotiation has become an essential component. The fundamental approach to alternative conflict resolution is this.
- Conciliation: Conciliation is a form of alternative dispute resolution (ADR), in which disputing parties hire a conciliator to mediate their differences by meeting with them both separately and jointly. Although the practice of this approach is very similar to that of mediation, it varies from mediation in that it has no legal standing, the conciliator has no legal authority to call witnesses or request evidence, and he or she typically does not write a decision or make an award.
- Mediation: By supporting the disputants in reaching a compromise, the mediation process, a type of ADR, tries to resolve conflicts. In mediation, a third person is involved, who attempts to address the specific disagreement by working on it. The ADR method most closely related to criminal justice is mediation. In order to facilitate a resolution of the issues between the disputants, mediators frequently employ the proper methods and/or talents.
- Plea Bargaining: Plea bargaining is one of the most notable aspects of mediated justice in criminal trials. The Code of Criminal Procedure, 1973 has also included the idea of plea bargaining. It is crucial to consider this idea critically. Furthermore, the 154th Law Commission recommended plea bargaining to be introduced in the Indian Criminal Justice System. Upon receiving the president of India's approval on January 11, 2006, the Criminal Law (Amendment) Act of 2005 added a new chapter XXI-A with the heading "Plea-Bargaining." It is applicable to offenses that are not punished by death, life in prison, or a sentence more than seven years in jail. It extends from Section 265-A through



Section 265-L. When the defendant changes his plea from "not guilty" to "guilty" in exchange for an offer from the prosecution or when the judge informs the defendant informally that pleading guilty will result in a lesser sentence, there has been a plea bargain between the prosecution and defence. The defendant in this case switches from a "not guilty" to a "guilty" plea. Such a deal between the two parties is known as "plea bargaining." It is a component of the criminal process that makes it less expensive to uphold the law (for both parties) and frees the prosecution to concentrate on more serious offenses.

### A Comprehensive Look into Plea Bargaining

Plea-bargaining as an ADR mechanism provides benefits to the victims like he/she can easily get compensation, avoid long drawn judicial process, less time and money consuming and benefits to the accused like avoid long drawn judicial process, he/she will get half punishment in case of minimum punishment, may be released on probation or admonition, no appeal lies against the judgment in favour of him, admission of the accused cannot be used for any other purposes except for plea-bargaining, less time and money consuming etc.

Criminal jurisprudence is aimed at the protection and preservation of the rights of the individual and the State against the

international invasion by others. It strives to shelter the weak from the strong, the lawful against the lawless and the hospitable against the hostile. The life, liberty and property of the citizens are inter alia, the solemn obligation of the State to protect. However, cases like that of Zahira Habibulla H Sheikh and Anr vs State Of Gujarat and Ors<sup>4</sup> (Best Bakery), State vs Siddarth Vashisth & Manu Sharma<sup>5</sup> (Jessica Lal murder case), Vishal Yadav vs State Of Uttar Pradesh<sup>6</sup> (Nitish Katara murder case) and State (Through CBI) v Santosh Kumar Singh<sup>7</sup> (Priyadarshini Mattoo murder case), are reminiscent of the foremost loopholes which linger in the criminal justice delivery mechanism, and testify against the wholesomeness of the justice system. The administration and deliverance of criminal justice acknowledges the incidence and implications of plea-bargaining. Most criminal cases are promptly and absolutely disposed of such is the beauty of plea-bargaining. The under trials who are charged under a singular or different sections of the Indian Penal Code, according to numerous reports, face the twin dilemma of firstly, the denial of the most necessary human rights and secondly, are involuntarily made to fritter away the productive years of their lives, while imprisoned, sans any hope of respite anytime in the immediate future. One would but realize that such incarceration of under trials in some cases, the period transcending the prescribed penalty defies all principles of punishment, and screams for redemption.

<sup>4</sup> Zahira Habibulla H Sheikh and Anr vs State Of Gujarat and Ors, 2004 (5) SCC 353

<sup>5</sup> State vs Siddarth Vashisth & Manu Sharma, Crl. A. No. 179 of 2007

<sup>6</sup> Vishal Yadav vs State Of Uttar Pradesh, SC Case No. 78/2002

<sup>7</sup> State v Santosh Kumar Singh, 2007 CriLJ 964, 133 (2006) DLT 393



The Supreme Court reprimanded the prevalent system in *Kadra Pahadiya v. State of Bihar*<sup>8</sup>, where it held, “It is a crying shame upon our adjudicatory system which keeps men in jail for years on end with no trial.” Furthermore, the court observed with empathy that: “No one shall be allowed to be confined in jail for more than a reasonable period of time, which we think cannot and should not exceed on year for a session trial, we fail to understand why our justice system has become so dehumanizing that lawyers and judges do not feel a sense of revolt at caging people in jail for years without trial.” The practice of ‘plea-bargaining’ has been subject to considerable scrutiny during the last few decades of conclusion of the previous century, and whatever time has elapsed in the present.

The burden of the courts can be greatly reduced through the process of plea-bargaining. The state of Karnataka, was the frontrunner to introduce the concept of plea-bargaining in India. HK Patil, the Law minister of Karnataka, stated that the backlog from the courts would be weeded out by the concept of plea-bargaining. Arvind Narain, a lawyer allied with the Alternative Law Forum, opined that plea-bargaining was one of the methods of erasing the accumulation. The perennial problems of delays have mired the justice system of this country. Matters—both civil and criminal—flutter along with time, with there being no clear time period within which good and equitable justice could be expected. The pursuit of justice is more often than not an agonizing journey, which is seldom unsuccessful in resulting in the disastrous sensation that it is but a waste

of time. Judges and jurists alike, have proposed a mechanism to facilitate the criminal adjudication system, while expressing grave apprehensions about the sluggish, slothful and sleeping state of the justice distribution system.

Canada has been very forthcoming with its interest in such a swift practice, for it has undertaken discussions revolving around the actual nature of the practice and the most amicable term to christen such practice. The Law Reform Commission of Canada, in 1975, decided that ‘plea-bargaining’ was ‘any agreement by the accused to plead guilty in return for the promise of some benefit’. Significant objections arose against offering an asylum to a practice that many felt led to the purchase of justice at the bargaining table. As a consequence, there was a stark departure from the employment of the term ‘plea-bargaining’, and towards the usage of more unbiased terminologies such as ‘plea negotiations’, ‘plea agreements’, ‘plea discussions’ and ‘resolution discussions’. The usage of such expressions, testified for the maturity of and revolution in the practice itself, while indistinctly accrediting that the concept of ‘plea-bargaining’ had surpassed the primitive belief of being a simple bargaining procedure and now entailed the contemplation of other issues, rather than there being an agreement for a reduced penalty contingent to the accused pleading guilty.

The Doctrine of *Nolo Contendere*, is recognized to have inspired the Indian concept of plea bargaining. Owing to the inability of the Indian criminal justice

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<sup>8</sup> *Kadra Pahadiya v. State of Bihar*, 1991 (2) PLJR 85 (SC)



mechanism to effectively afford and ensure speedy and economical justice to its citizens, this doctrine has been under consideration, for quite some time now, to be introduced and employed in the justice system. Since the Courts are flooded with astronomical arrears, the lifespan of a trial is excruciatingly long, tedious and expensive. Moreover, there is a huge influx of cases which are arising under the criminal jurisdiction, with the rate of conviction being negligible. The Government of India, acting on the recommendations of the Law Commission, has freshly accepted the Doctrine of *Nolo Contendere*. The concept of plea-bargaining has been considered keeping in mind the economic as well as social conditions dominant in the State. Accordingly, the Criminal Procedure Code, 1973, has been appropriately amended. It is believed that this infant concept of plea-bargaining, shall be expedient and sufficient to mount a challenge to the problems of mounting criminal cases and pending trials.

The Indian criminal jurisprudence is not exactly unacquainted with the ideals of plea bargaining. Yet it is undeniably a marked shift in this nation's criminal jurisprudence, as evident from various decisions of the Conclusive Court, where it has expressly observed that Indian criminal jurisprudence does not recognize the concept of plea-bargaining. Hiddavatullah J., speaking on behalf of the Supreme Court, opined in one of the foremost cases—*Madan Lal Ram Chandra Daga v. State of Maharashtra*<sup>9</sup>, that:

“If the court thinks that leniency can be shown on the facts of the case it may impose a lighter sentence. But the court should never be a party to a bargain by which money is recovered for the complainant through their agency.” The observations of Krishna Iyer J., as made in *Murlidhar Meghraj Loya etc. v. State of Maharashtra*<sup>10</sup>- a case pertaining to offenses of food adulteration and governed by the Prevention of Food Adulteration Act, 1954, are extremely interesting to note, for other than reflecting the position of Indian law while distinguishing the same from American law in 1976, its viewpoint stands correct and applicable for the present amendments, since socio economic offenses are not covered under the present provisions that deal with plea bargaining.

Justice Krishna Iyer had famously remarked in *Babu Singh v. State of Uttar Pradesh*<sup>11</sup>, while dealing with a bail petition: “Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to fair trial whatever the ultimate decision.

Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings.” Theoretically professing, the plea-bargaining mechanism aims at reducing the administration of criminal justice to a system of exchange or barter, where the negotiating concerns various degrees of legal punishment and also of gains to the wrongdoer. Sadly

<sup>9</sup> *Madan Lal Ram Chandra Daga v. State of Maharashtra*, 1968 AIR 1267

<sup>10</sup> *Murlidhar Meghraj Loya etc. v. State of Maharashtra*, 1976 AIR 1929

<sup>11</sup> *Babu Singh v. State of Uttar Pradesh*, AIR 1965 SC 164



though, an innocent accused would also bow to the pressures of incorrect compromises and false convictions in order to be liberated from the ordeal of a lengthy and lavish trial. Furthermore, cases which might finally allow the accused to secure acquittal could be mutated into cases of unwarranted conviction. In such a situation, all hope in the justice dispensing system could escape the accused forever. In such a situation, one might condemn plea-bargaining as being rebellious towards the principles as enshrined under Article 21 of the Constitution.

In a country like India where the process of litigation takes years altogether at times even to the next generation. There might be cases where an innocent person may opt for plea bargaining for the crime which he has not committed but confesses to having committed only to avoid lengthy litigation which would cost him time and financial resources. Thereby the principle of law states that 'let the hundred guilty be acquitted but one innocent should be convicted' may be violated by plea bargaining. One of the major drawbacks of plea bargaining has been discussed under the 142nd Law Commission Report wherein it was stated that plea bargaining would give space for corrupt practices. There is no time limit within which the entire process of plea bargaining should be completed by the parties to the suit and the Court should ensure the key objective of the plea-bargaining system, that is, to ensure speed of delivery of justice in criminal cases. Moreover, as there is no time within which the Court is supposed to make the report regarding the success or the failure of the

meeting between the accused and the prosecutor or the victim to come to a mutual decision for speedy disposal of the case. In such conditions, the Court has the discretion to take its own time for the preparation of the report which may lead to a delay in the criminal justice system which indeed makes the main objective of a speedy criminal justice system to be ineffectual in India. Though the Plea-bargaining mechanism has proved to be feasible and a sustainable instrument of justice, there is a significant need to take the drawbacks of the present system of plea bargaining to make it more effective in India.

Initially, the Courts criticized the concept of plea bargaining in the Indian scenario. The Hon'ble Supreme Court held that "It is indolent to speculate on the virtue of negotiated settlements of criminal cases, as attained in the United States but our jurisdiction, it may result in dangerous economic crimes and corruption, this practice invades on society's interests by opposing society's decision expressed through predetermined legislative fixation of minimum sentences and by delicately subverting the mandate of the law. In this case, the court disapproved of the concept of plea bargaining and held that it was against the interest of society. In *Kasambhai v. State of Gujarat*<sup>12</sup>, the Apex court held that the practice of plea bargaining is unconstitutional and illegal, and it tends to increase in corruption, collusion and pollute justice. The same was reiterated in *Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr*<sup>13</sup>. In the case of *Thippaswamy v. the*

<sup>12</sup> *Kasambhai v. State of Gujarat*, 1980 AIR 854

<sup>13</sup> *Kachhia Patel Shantilal Koderlal v. State of Gujarat and Anr*, 2000 (6) SCC 195



State of Karnataka<sup>14</sup>, the Court held reducing or letting an accused plead guilty on the agreement would be a violation of Article 21 of the Constitution of India. Thereby the Court stated that “In such cases, the Court of appeal or revision should set aside the conviction and sentence of the accused and remand the case to the trial court so that the accused can if he so wishes to defend him against the charge and if he is found guilty, a proper sentence can be passed against him.” In *State of Uttar Pradesh v. Chandrika*<sup>15</sup>, the court held that “it is settled law that on the idea of bargaining Court cannot eliminate the criminal cases. Mere acceptance or admission of guilt must not be a ground for reduction of sentence. Neither can the accused bargain with the Court as he is pleading guilty sentence to be reduced.” The basic principle of administration of justice says that merit alone should be considered for conviction and sentencing of the accused, even if the accused confesses the guilty.

However, it is the constitutional obligation of the court to provide an appropriate sentence. The Apex Court was against the concept of plea bargaining and thus held this practice as unconstitutional and illegal. Conversely, the Hon’ble Court was of the view that on the plea bargaining that it cannot be the basis of disposing of criminal cases, mere acceptance of the guilt should not be the reason for giving a lesser sentence and it was further held that the accused cannot bargain for reduction of the sentence because he pleaded guilty.

The Court acknowledged the importance of plea bargaining in the case of *State of Gujarat v. Natwar Harchandji Thakor*<sup>16</sup> and held that every “plea of guilty” which is construed to be a part of the statutory process in the criminal trial, should not be understood as a “plea bargaining” ipso facto. Considering the dynamic nature of law and society it is recommended that fundamental reforms such as to eradicate arrears of criminal cases and the court held that the very object of the law is to provide an easy, cheap, and expeditious justice by resolving disputes.

The genesis of plea-bargaining was to facilitate as an alternative remedy to parry the existing problems of congested jails, overtaxed courts and unnecessary delays. The practice of plea bargaining has been widely celebrated for it has achieved the desired effect, and has provided a fillip to the system by leading to the speedy disposal of criminal cases and appeals, which has further helped in alleviating the under trial prisoners of their paranoia of perpetually awaiting the inauguration and cease of trials. The accused may be awarded a lighter sentence by the Court, honouring the settlement reached as a result of such bargaining.

The Apex Court has nevertheless been observant and employed foresight in its landmark judgments, where it has declared the practice of plea bargaining to be illegal, unconstitutional and one which is inclined to nurture corruption, collusion and stain the pure fountain of justice. The minimum limit of sentence as prescribed by law, is therefore

<sup>14</sup> *Thippaswamy v. the State of Karnataka*, AIR 1983 SC 747

<sup>15</sup> *State of Uttar Pradesh v. Chandrika*, AIR 1999 SC 164

<sup>16</sup> *State of Gujarat v. Natwar Harchandji Thakor*, (2005) 1 GLR 709



necessary to be honored by every adjudicating authority. Notwithstanding the issues which smear the practice of plea-bargaining with incensed remarks and observations, such a practice has matured to be an effective mechanism to remove the backlog in courts. An offender must befriend the tiniest shred of humanity resting within himself and be willing to confess and agree to the terms of the victim. Every procedure may be wrought into use or misuse. At the end of the day the humanity of the alleged 'in-humans' would be tested. The texture of plea-bargaining, imaginatively interweaves the concept of compensation it seems.

### **The Need for Alternate Dispute Resolution in the Indian Criminal Justice System**

The judiciary is thought to be the most important organ of the government in any society. The judiciary exists to settle all types of disputes and to uphold the rights of the innocent by punishing offenders in an unbiased and independent manner. The fact that justice is delayed because of outstanding litigation is one of the reasons why people today are losing faith in Indian courts. Hence, Alternate Dispute Resolution is a necessity to be introduced into the criminal justice system in India. The old judicial system is overly complex and expensive, making it unaffordable for many people and leading to injustice to the defenceless. The Supreme Court of India is currently hearing about 59,867 criminal cases. The situation is considerably worse in the lower courts, where there are currently 31.4 crore cases pending before district and subordinate courts and 44.75 lakh cases pending before India's high courts, 13.1 lakh of which are criminal cases. A surge in the number of

cases also contributes to an overabundance of detainees and convicts.

Criminal justice requires swift trials, however these are not always practiced in the Indian judicial system. ADR mechanisms are therefore essential in light of the worrying state of the Indian judicial system, notably to settle criminal matters. The advantages of ADR over traditional litigation include lower costs, less time wasted, and the maintenance of secrecy throughout the ADR process. The Legislature must take a few fundamental actions in order for justice and the rule of law to be administered as they should be. However, there is significant hesitancy regarding the use of ADR in criminal justice.

In order to protect poor criminals who are responsible for motor vehicle accidents and other minor crimes as well as some civil disputes like matrimonial matters, debt recovery, etc. from excessive delay, high litigation costs, and rigid procedure, the concept of an alternative dispute resolution (ADR) mechanism in criminal trials emerged out of a dire need to provide them with an easy and accessible remedy. Such attempts at negotiation, known as Lok Adalat, now have legal standing thanks to the Legal Services Authorities Act of 1987, and the judgment it rendered qualifies as a civil court order. To ease the legal suffering of the society's poorer groups, Lok Adalats are now taking on a new dimension. It gives plaintiffs a legal setting where they can negotiate settlements of their issues in front of the Lok Adalat judges. The Legal Services Authorities Act, 1987 was amended in 2002 to include the establishment of a permanent Lok Adalat for the use of ADR to settle disputes connected to public utility services and relieve the court system of some of the backlog.





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### Conclusion

Certainly, the basic definition of law says that law develops with the development of the society. Although the concept of plea bargaining is not new to India as it was already recognized under Article 20(3) of the Constitution. Initially when plea bargaining was implemented it was hard for the Indian system to accept the concept of its disadvantages, but the law must grow rapidly according to the changes in the society and over a period Criminal Justice system has reformed its standards both legally and socially. In India the Plea-bargaining process is a voluntary process with the objective to reduce the burden of the judiciary and to provide fast and expeditious justice. However, the very essence of ADR is lost if it is not implemented in the true ethos. The role of the judiciary and the bar is especially important for the successful implementation and to achieve the objective of plea bargaining. There are certain loopholes of ADR in the criminal justice system in India which must be given utmost care to achieve efficacy.

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