



ACCESS TO SPEEDY RELIEF: NECESSITY OF LEGISLATION ON MEDIATION PROCESS FOR SETTLEMENT OF CRIMINAL OFFENCES

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Abstract:

This article examines the nature of mediation process adhered by Civil Court on the basis of settle legal provisions and compared inadequate provisions of mediation process in criminal side. It also analyses the existing provisions relating to mediation for criminal cases which are insufficient and thereby failed to impart justice and speedy relief to litigants. Finally, the article focuses on the proposed amendment of legal provisions and mechanism to ensure the mediation process in criminal matters compoundable with or without permission of the criminal court and concludes that it is high time to consider introducing mediation process in criminal side legal system in order to impart speedy relief and to reduce the huge backlog of pending criminal cases in India.

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Introduction:

ADR (Alternative Dispute Resolution) includes mediation. Section 7 of the Code of Civil Procedure (Amendment) Act, 1999, which amended section 89 of the Code of Civil Procedure, 1908 (hereafter shortened to CPC), went into effect on July 1, 2002¹. The court should describe the five ADR procedures (Lok Adalat, judicial settlement, conciliation, arbitration and mediation) so that the parties can make decision to choose one of the forums. Agreement between disputants is facilitated by mediation. Therefore, parties can save both time and money by using mediation. Although

Section 2 (1) (c) of the Legal Services Authorities Act, 1987² (hereinafter Authorities Act) defines "legal service," it does not include mediation. The Authorities Act does not apply to the mediation process. If the court orders mediation, the mediator will be considered a Lok Adalat under the Authorities Act, according to the Supreme Court in the case of "*Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*"³. However, this interpretation of mediator as deemed to be a Lok Adalat is adequate only in cases of civil disputes, and the corresponding provision of section 320 of the Criminal Procedure Code, 1973 (hereinafter in short.

¹ Mulla's, The Code of Civil Procedure (Abridged), 15th Edition, 2012, Publication of LEXIS-NEXIS, Page-395

² Srivastava's, Legal Services Authorities Act, 3rd Edition (Prayagraj) Law Publishers (India) Pvt. Ltd, 2020,

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³ (2010) 8 SCC 24



CrPC) makes no provision regarding mediation in criminal cases. As a result, there is an absolute requirement for centralised legislation regarding the mediation of criminal cases.

Mediation process adhered by the civil Court.

The dispute must be referred to arbitration or conciliation with all parties' consent, but Lok Adalat, mediation, and judicial settlement can be done without it. Therefore, the civil court must carefully select the ADR process, considering the type of suit or dispute, the interests of the parties, and the timeliness with which they need to be resolved. Mediation is one of the best for lengthy or complicated suits. Lok Adalat should be used if the matter or suit is simple and the disputes can be easily and positively resolved. If the court thinks a judge's advice is needed, it can refer it to another judge for judicial settlement. However, there is no legislation on ADR processes for criminal disputes, so the Criminal Court cannot choose mediation as an ADR process.

As per Rule 24 part II of Civil Procedure Mediation Rules, 2006 of Civil Procedure- Alternate Dispute Resolution and Mediation Rules, 2006⁴ (hereinafter in short, ADR Rules 2006), the mediator writes the agreement which is signed by the parties in matter and their counsel and thereafter, mediator submits it to the Civil Court where the suit is pending if the parties and their counsel reach an agreement on all or some of the suit's issues. The settlement is then recorded and decreed by the Civil Court, if the settlement resolved all issues but settlement disposed of only those issues that are severable from others, a decree can be issued to that extent only and suit can continue on the other issues. The civil court must wait for the court's decision on unresolved issues if the settlement issues are not severable as per Rule 25 of ADR Rules 2006. Thus, this

is the procedure established by law on mediation process followed by Civil Court, but there is no law or any State or Central legislation on the point of mediation process to be adhered by Criminal Court to resolve offences that are punishable under Indian Penal Code, 1860 (hereinafter in short, IPC) compoundable with or without permission of the Criminal Court under section 320 of CrPC until today in India.

New Legislation on the Mediation Process for Criminal Offenses is Required.

It is significant to note that there are more than three times excess criminal cases than civil cases pending in lower judiciary in India. There are total 4,43,75,031 civil and criminal cases pending before Districts and the Taluka courts of India, out of which 3,33,13,595 criminal cases and 1,10,61,436 civil cases are pending in India as on 28.07.2023 as per the online information published by judiciary on National Judicial Data Grid-NJDG⁵. However, there is no express statutory provision of mediation either in respect of civil or criminal cases in the Authorities Act, 1987. Therefore, there is urgent need of either new legislation on ADR process of mediation in criminal cases or by way of amendment in section 320 of CrPC in order to reduce the huge backlog of criminal cases in India.

The Mediation Bill, 2021 is intended to settle only civil and commercial disputes.

The Rajya Sabha has introduced the Mediation Bill, 2021, which is Bill No. XLIII of 2021⁶(hereinafter in short, Bill, 2021), which is intended for mediation of civil suits or commercial special suits before going to the court or tribunal. According to Section 7 (1) of the said Bill, 2021, mediation cannot be used to resolve any matter mentioned in list prepared under the First Schedule, and clause (4) of the First Schedule prohibits

⁴ "Handbook on Mediation" prepared and published by Main Mediation Centre, High Court of Bombay print : year – 2019 Page No.55-56.

⁵https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard, visited on 28 of July 2023.

⁶ <https://legalaffairs.gov.in/sites/default/files/mediation-bill-2021.pdf>, visited on 28 of July 2023.



mediation for disputes involving criminal prosecution. Hence, under the Bill, 2021, criminal cases cannot be mediated. The proviso of section 7 (1) of the said Bill, 2021 allows the court to if necessary, to refer to mediation any dispute between the parties regarding compoundable offences as well as matrimonial offences pertaining to or resulting from a civil proceeding. Thus, a dispute to mediation relating to compoundable offences can be referred only if it is connected with or arising out of civil proceeding or otherwise independent criminal disputes/cases in the nature of the offences that are punishable according to the provisions of the IPC specified in two tables compoundable with or without Court permission under section 320 of CrPC cannot be referred to mediation in said Bill, 2021. In section 7 (1) of Bill 2021, the outcome of such mediation in criminal compoundable offence shall not be considered to be a Judgment or decree of Court and the Court should further consider in accordance with the law. Thus, under the Bill, 2021, independent criminal matters of compoundable offences cannot be mediated.

The Need for New Legislation or Amendments to the Criminal Code Regarding Mediation.

In India, legal services Authorities and Committees established under the Authorities Act run 958 Mediation Centers⁷ in the absence of proper central legislation in criminal matters. There are total 56 compoundable offences: 43 compoundable offences in the Table given under sub- section (1) and 13 compoundable offences with the permission of the court in the Table given under sub-section (2) of Section 320 of CrPC which are confined to the offences punishable under IPC. The Criminal Court cannot refer parties to mediation under the CrPC. However, if an express statutory provision is made, the aforementioned 56 compoundable offences of the IPC and other compoundable offences under other laws with a punishment of less than 3 years can also be

referred for mediation in respective 958 Mediation Centers in India, and the massive pendency of criminal offences can be gradually reduced.

By resolving criminal disputes, Mediation Centers can help to reduce the massive backlog but effective legislation is required. The only precedent is *K. Srinivas Rao v. D.A. Deepa*⁸, where it is stated that the Criminal Court should inform the parties to consider mediation in appropriate cases, especially matrimonial disputes, even though offence under section 498-A of IPC cannot be compounded. Civil court mediation that results in a compromise decree is enforceable under Orde XXI of CPC, but the Criminal Court lacks statutory authority to enforce the settlement agreement. As a result, if the criminal offence is settled between the parties in the mediation process, and the accused refuses to follow the terms and conditions that have been agreed upon, particularly in the case of making payment of compensation in instalments, an amendment to the statutory provision of sections 357, 431 read with section 421 of the CrPC to that effect giving complainant, informant, or victim rights to recover the agreed amount in the same manner as a fine is required to be made. If the property of accused cannot be recovered, Sections 64, 65, 66, and 67 of the IPC should be amended to allow for default imprisonment if agreed compensation is not paid, but the consequences of such an amendment should be researched. For effective criminal mediation, research should also determine whether the legal heirs or legal representative of accused can be held liable for agreed compensation other than imprisonment. As a result of this discussion, the legislature should enact new legislation or amend existing legislation to ensure ADR processes, including mediation, in criminal offences, which can be considered as follows: -

1] By amending the Authorities Act, 1987, a separate chapter on ADR processes, including mediation, can

⁷ <https://nalsamediation.nic.in/> visited on 28 of July 2023.

⁸ (2013) 5 SCC 226,



be added to cover criminal offences punishable under the IPC sections specified in two tables and compoundable with or without Court permission under section 320 of the CrPC, as well as other crimes punishable under other laws or,

- 2] The Bill, 2021, can be amended to include a chapter on Alternative Dispute Resolution (ADR), including mediation, for crimes listed in two tables under Section 320 of the CrPC and other crimes punishable under other laws ,or
- 3] There may be completely new legislation on ADR processes, including mediation, to resolve all types of criminal offences or,
- 4] If the said three options are not viable, a separate amendment to Sections 320, 357, 421, and 431 of CrPC should allow criminal offences to be settled through mediation and give the Criminal Court the authority to execute and enforce the settlement agreement or,
- 5] Under section 477 of the CRPC, the High Court can make rules for ADR processes, including mediation for criminal offences, and publish them in the Official Gazette, binding subordinate judiciary to follow the mediation process, especially the Criminal Court.

Conclusion:

In conclusion, it is important to note that process of plea bargaining inserted in Chapter XXI-A under sections 265-A to 265-L of CrPC has not been successful. The main reason for this is that there is no mediator in plea bargaining and the accused must submit an application with an affidavit, which the Judicial Officer may view as

a confession of offence though statement made by accused in application cannot be used for any other purpose under section 265-K of CrPC so accused hesitate to plea bargain. The same Presiding Officer or Court before whom trial is being conducted with limitation must ensure that the entire process is completed voluntarily by the parties in order to reach a satisfactory conclusion to the case as per section 265-C of CrPC. The report of the mutually satisfactory disposition must be signed by the presiding officer and submitted to himself.as per section 265-D of CrPC. Another reason plea bargaining fails is imposing punishment on the accused despite compensating the victims under section 265-E of the CrPC, which means the plea bargaining does not result in acquittal. It is also important to note that informant, complainant, or victim are not always interested in keeping the accused behind bars, but punishment in the form of fine or compensation suffices to conclude the criminal trial. As a result, in criminal cases, mediation is essential to provide timely and effective relief to litigants, as well as a reduction in the huge backlog of pending criminal cases. Therefore, Parliament should amend sections 320, 357, 431, 421 of CrPC or should bring new legislation or can make necessary amendment in Authorities Act in order to make sure that ADR process of mediation in criminal offences should be mandatorily resorted before the commencement of trial or any time before Judgment in either Private Complaint or State Prosecution in the interest of access to speedy relief to litigants in criminal cases.

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