PRE-LITIGATION MEDIATION TO ENCOMPASS CRIMINAL CASES TO REDUCE THE BULK OF COURTS IN INDIA : A CRITICAL STUDY

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Abstract

In this era of Modernization where time is more precious than platinum and life and living is completely dependent on technology and where a person is no more known by his name but by Unique Identification Number, it would be breach in the system if the disputes whether criminal or civil has to be redressed by resorting to the rigid procedural mechanism of the lumbering Judicial structure, since it would be pre-judicial to a person in the context of both time and money. Therefore, in order to shrink the burden of the Judiciary, it was felt necessary to introduce the Civil Procedure-Alternative Dispute Resolution and Mediation Rules, 2003 which mandates the resolution of disputes through ADR MECHANISM. Down the line, the Commercial Courts Act under the provisions of section 12A provides for pre-litigation mediation as a mandate in case of disputes of Commercial nature before filing of the case in Commercial Courts. But again, there are bulk of other disputes including criminal disputes which are turning from pale to stale by petrification due to the sloggy regimentary regime of procedural laws in the courts of India and to our dismay the ambit of pre-litigation mediation is marginalized in this context. The sufferings and surmises of the commons against the long pendency of disputes in the law courts can be ameliorated by administration of justice through the Pre-Litigation Mediation, but the acrimony lies in the fact that it has a restrictive application especially in contrast to criminal cases. Thus, this study is meant to critically examine whether there is any scope to extend the periphery of Pre-Litigation Mediation to encompass criminal disputes so as to reduce the bulk of Judiciary in India and to pacify the pain of common people who are suffering the perils of life in the lingering procedural pit hole of darkness bfore the law courts of India. The method used in this study is Doctrinal one with qualitative and quantitative analysis of all the aspects in pari materia

Key Words: ADR, Pre-Litigation Mediation, Corporate Criminal disputes, statutes in-pari material, Criminal cases and Judicial System.

INTRODUCTION

India is a country which is egalitarian by nature and where both the rich and the poor can

mingle with equal ease of living. Now, in India above 70% of the people live their lives below the poverty line as per the Arjun Sengupta Committee Report and to add to their acrimony most of these people are entangled in criminal cases and are suffering the perils of their life under the never ending rigours of procedural laws before the law courts. Not only that the multinational companies which operate in India also use these category of people to get the most out of their cheap labour and are often subjected to exploitation by them which mostly tantamount to criminal breach of trust, criminal trespass, criminal misappropriation of property, cheating, fraud, misrepresentation and acts purporting to be criminal in nature as per the definition of Indian Penal Code. When these repressed category of people seek relief before the regular criminal courts or before the labour courts, then they have face the cumbersome process of procedural law and toil in the long lingering process and it is a genre that delay defeats justice and equity which appropriately fits to their situation and they ultimately remain dust clothed. Now, the Institution of Alternative Dispute Resolution (herein
after referred to as ADR) through arbitration, conciliation and mediation procedures present in India do not encompass criminal cases, therefore, in order to ameliorate their conditions an institution under specific judicature is required which would be equipped to address their problems and provide equitable relief to them without going through the lumbering rigours of procedural law.

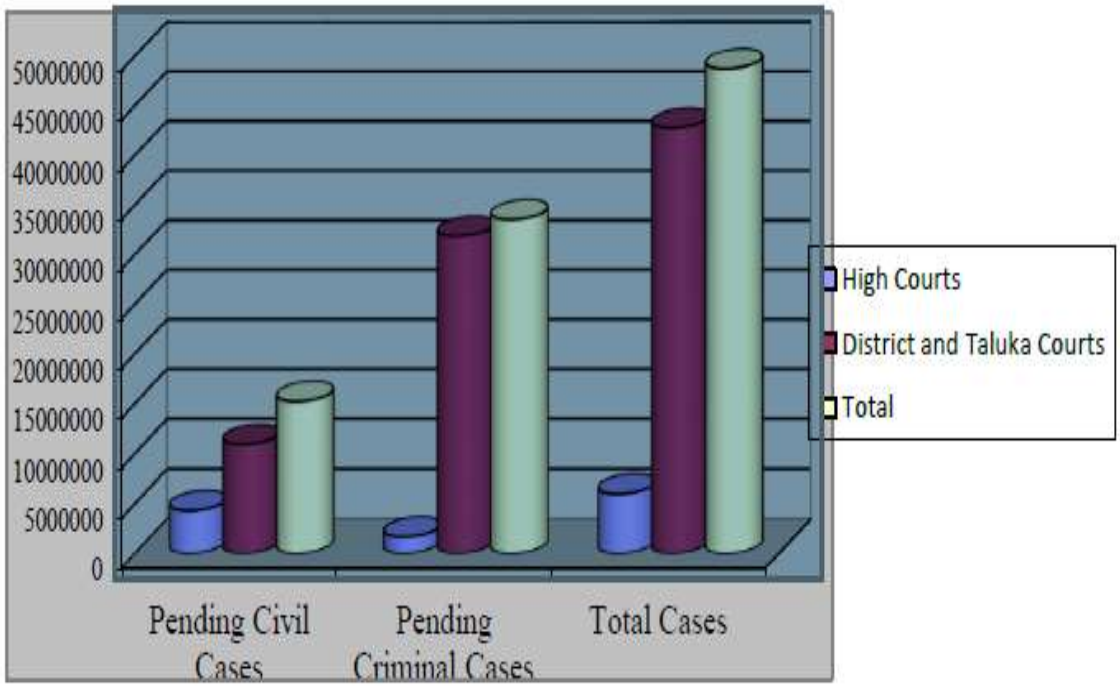
This study has been divided into several sub-headings which are elucidated categorically hereunder :

Sub-heading 1, deals with Introduction which gives a brief picture of the work itself,
Sub-heading 2, deals with the present position of ADR in India,
Sub-heading 3, deals with the present position of ADR in contrast to civil and criminal cases,
Sub-heading 4, deals with the scope of introducing ADR in Criminal Cases,
Sub-heading 5, deals with the view of Judiciary towards scope of introducing ADR in Criminal Cases,
Sub-heading 6, deals with the International aspect of ADR in Criminal Cases,
Sub-heading 7, deals with the suggestions and conclusion.

ADR IN INDIA

In India the entire judicial system is lumbering under the age old hegemony of procedural laws and the end results in a stale mate situation. Therefore, the poor litigants very rarely get to reap the harvest of their lis at its disposal. In the High Courts of India there are about 4288536 pending Civil Cases, 1667114 pending Criminal Cases, which totals to pending 5955650 cases, not only that in the District and Taluka Courts there are about 10896565

pending Civil Cases, 31837754 pending Criminal Cases, which totals to pending 42734319 cases as per the present data of the year 2022 till the month of October[1]. Let us take a glance in the form of a Bar Diagram to understand better the present situation of Indian Judiciary with reference to pendency disposal rate as elucidated herein below.[2]



Therefore, from the above it is quite clear that there is huge pendency of both civil and criminal cases. Therefore, in order to shrink the burden of the Judiciary, it was felt necessary to introduce the **Civil Procedure-Alternative Dispute Resolution and Mediation Rules, 2003**[3] which mandates the resolution of disputes through ADR Mechanism, thereafter Commercial Courts Act was introduced wherein the provisions of section 12A provides for pre-litigation mediation as a mandate in case of disputes of Commercial nature before filing of the case. But again, there are bulk of other disputes including criminal cases which are under the process of petrification under the regimentary regime of law courts in India but the ambit of pre-litigation mediation is marginalized in this context.

In fact after the introduction of the ADR Mechanism till today we are having huge pendency of cases both in the High Courts of India and also in the District and Taluka courts of which there is a maximization of pendency of cases between 5 to 10 years and to our greatest

[1]https://njdg.ecourts.gov.in/hcnjdgnew/ (last visited on 31st Oct 2022.).
[2]https://njdg.ecourts.gov.in/njdgnew/?p=main/index, (last visited on 31st Oct 2022.).
[3]https://vidhilegalpolicy.in/wp-content/uploads/2021/03/Mandatory-Mediation-in-India-Resolving-to-Resolve.pdf (last visited on 31st Oct 2022.).

dismay we still have cases pending for more than 20-30 years and the same is laid down in the form of data manuscript herein below.[4]

HIGH COURTS OF INDIA[5]

Particulars	Civil	Criminal	Total
1 to 3 Years	777832(18.14%)	262714(15.76%)	1040546(17.47%)
3 to 5 Years	714661(16.66%)	249370(14.96%)	964031(16.19%)
5 to 10 Years	900526(21%)	323963(19.43%)	1224489(20.56%)
10 to 20 Years	733410(17.1%)	318619(19.11%)	1052029(17.66%)
20 to 30 Years	130994(3.03%)	49209(3.03%)	180203(3.03%)
Above 30 Years	49107 (1.15%)	19516(1.17%)	68623(1.15%)
Total	4288536	1667114	5955650

DISTRICT AND TALUKA COURTS OF INDIA[6]

Particulars	Civil	Criminal	Total
1 to 3 Years	2559068(23.49%)	7176775(22.54%)	9735843(22.78%)
3 to 5 Years	1711434(15.71%)	4931820(15.49%)	6643254(15.55%)
5 to 10 Years	1658364(15.22%)	4826197(15.16%)	6484561(15.17%)
10 to 20 Years	563038(5.17%)	2304725(7.24%)	2867763(6.71%)
20 to 30 Years	105927(1.14%)	380790(1.14%)	486717(1.14%)
Above 30 Years	32356 (0.3%)	65936(0.21%)	98292(0.23%)
Total	10896565	31837754	42734319

[4]https://njdg.ecourts.gov.in/hcnjdgnew/ (last visited on 31st Oct 2022.).
[5]https://njdg.ecourts.gov.in/hcnjdgnew/ (last visited on 31st Oct 2022.).
[6]https://njdg.ecourts.gov.in/njdgnew/?p=main/index. (last visited on 31st Oct 2022.).

Thus, from the above date we can clearly understand that despite the fact ADR is mandated in India still the pendency rate is quite high in the regular Law courts in India and the most shocking one is the pendency rate of criminal cases pending since 20 to 30 years and above 30 years.

Thus, it seems that we are unable to bring justice to the hearthstone of the litigants and it is said by William Ewart Gladstone during a House of Commons debate on 16 March 1868 "JUSTICE DELAYED IS JUSTICE DENIED"[7]and thereafter we find the application of this phrase in a similar pattern in *Magna Carta* of 1215[8], clause 40 of which reads, "To no one will we sell, to no one will we refuse or delay, right or justice."[9] So, getting justice within time is a right and if the same is somehow melted away or smeared to a point of slothing then it is denial of justice.

ADR IN INDIA IN CONTRAST TO CIVIL AND CRIMINAL CASES :

The concept of ADR was already present under Section 89 of the Code of Civil Procedure[10](which is herein after referred to as CPC) which empowers the Civil Courts to refer a case which has basic materials for amicable settlement outside regular courts through Alternate Dispute Resolution methods[11] such as arbitration, conciliation, mediation and judicial settlements through Lok Adalats and Mediation Centres. Thereafter, it was found by the legislature that there is a lack of interest for resolving the dispute by ADR Mechanism and the pendency of litigation is getting beyond control and in order to limit such raging pendency rate the Legislature introduced[12]***Civil Procedure-Alternative Dispute Resolution and Mediation Rules, 2003***[13]which mandates the resolution of disputes through ADR Mechanism at the first instance when introduced before a civil court, thereafter Legislature endeavoured to bring in, the international concept of dispute resolution before institution of the suit, to the domestic laws by enacting ***Commercial Courts Act*** wherein the provisions of **section 12A** provides for pre-litigation mediation as a mandate in case of disputes of Commercial nature before filing of the case. However, unlike civil disputes, the scenario is quite different when we come to the Criminal cases, and the role of legislature perhaps seems to be a bit lackadaisical in this aspect.

Now, the concept of ADR in the criminal aspect refers to a drift from *"reformative"* theory towards *"restorative"* theory, which means that instead of punishing the offender by making him languish in the prison only, it would rather make such offender to restore the loss caused by him to the victim, because crime is the infringement of an individual's personal right by the perpetrator and thus, the criminal jurisprudence ought to be concerned more on ameliorating the agony and sufferings of an individual upon whom the offence has been

[7]https://en.wikipedia.org/wiki/Justice_delayed_is_justice_denied#Origin (last visited on 31st Oct 2022.).
[8]ibid
[9]ibid
[10]https://www.casemine.com/act/in/5a979daf4a93263ca60b7265 (last visited on 11th Oct 2022.)
[11]https://blog.ipleaders.in/alternate-dispute-resolution-criminal-jurisprudence/ (last visited on 19th Oct 2022.)
[12]https://www.casemine.com/act/in/5a979daf4a93263ca60b7265, (last visited on 12th Oct 2022.)
[13]https://blog.ipleaders.in/alternate-dispute-resolution-criminal-jurisprudence/ (last visited on 14th Oct 2022.)

perpetrated by providing adequate compensation, than punishing the offender only by way of awarding sentences.

It is true that, if ADR could be introduced in the criminal cases then it would carry the concept of reparation in the traditional justice delivery system, which is alien to the concept of civil jurisprudence.

Reparation basically requires/compels the accused to do something beneficial on behalf of the person upon whom such offence has been perpetrated and the society at large by providing compensation to the victim or her family, to cater community services, restore the damage caused by him to the victim, etc., whereas under the Civil Vertical, ADR is only a judicial settlement wherein both the parties after negotiation comes down to a probable settlement upon which they resort to and abide by. Furthermore, ADR in criminal cases if be introduced, then it would involve the settlement of disputes in the court and compel the offender to abide by the same, whereas in civil matters, the same is *in personam* which means a matter between the parties. Moreso, the implementation of the orders of the criminal court can be made by issuing warrant against such offender which alien to the concept of civil jurisprudence.

SCOPE OF ADR IN CRIMINAL CASES :

In criminal cases, several times we have seen that in case of offences which is not punishable by death sentence, life imprisonment or imprisonment for term not exceeding 2 years[14] or offences such as theft and allied offences, insult which provokes a breach of peace under section 504 or offences under the provisions of section 454 and 456 of Indian Penal Code[15](herein after referred to as IPC), the Courts adopt Summary Procedures laid down under the provisions of **Chapter XXI** of the Criminal Procedure Code(hereinafter referred to as Cr. P.C.) and in summary procedure, the trial is to be conducted as in summons cases and upon conjoint reading of section 251 to 265 of Cr.P.C. which contains provisions for Summons and Summary procedures to be followed by a regular court of law, we find that for petty offences the court is empowered to award sentences if the accused pleads guilty of such offence and framing of charge shall not be necessary as it is done in regular course of trial in warrant cases. Moreso, the accused is not at all required to come before the court if he desires to plead guilty and he may send his plea of guilty by a letter addressed to the concerned Judge by post or by a messenger along with the fine amount as laid down in the summons delivered to the accused person.

Therefore, the legislature has clarified its intention to the effect that in case of summary procedures the procedural intricacy and stringency, can be made lucid and if that be so then it gives a hint that ADR can be introduced since the legislature has intended to relax the procedural stringency.[16]

[14]https://www.casemine.com/act/in/5a979daf4a93263ca60b7265 (last visited on 17th Oct 2022.)
[15]ibid
[16]https://blog.ipleaders.in/alternate-dispute-resolution-criminal-jurisprudence/ (last visited on 11th Oct 2022.)

Further down the line we can see that **section 357 A** was introduced in the Cr.P.C. under chapter XXVII by the amendment[17] Act 5 of 2009, section 28 w.e.f-31.12.2009[18] wherein the Legislature endeavoured to introduce *VICTIM COMPENSATION SCHEME* whereby the victims of criminal acrimony will be provided compensation by the Government for their rehabilitation. Thus, from this aspect we see that there is an intention of the Legislature to make a drift towards "restorative justice " than to " reformative justice" and one of the aspect of restorative justice is ADR and if ADR is considered as genus then pre-litigation mediation is one of the species because ADR includes Arbitration, Conciliation and Mediation.

Again, in ADR we follow negotiation and compounding of dispute by a mediator to a probable settlement between the parties and therefore the very word compounding bears the essence of ADR Mechanism. To our utter surprise we find the use of this word in the criminal jurisprudence laid down under section 320 of Cr.P.C., wherein the offences committed under section 289, 312, 323, 379, 403, 417, 420, 447, 482, 494, 497, 509, etc, etc of IPC[19] are made compoundable by the consent of the victim against whom such offence has been committed and such offences also includes offences against woman to wit miscarriage(section 312), intentional insult and outraging the modesty of a woman(section 509). Not only that, if a person is convicted and he is in appeal stage still the offence can be compounded with consent of the Appellate Court as per **sub-section 5 of section 320** and **sub-section 4 of section 320**[20]provides an opportunity of compounding of offences by the family member of the victim, and the effect of such compounding will result in acquittal of the offender. Therefore, from here it can be said that the Act has provided opportunity to settle the dispute at any stage and if that be so, then it gives a hint of the application of ADR Mechanism. Therefore, it can be said that ADR can be introduced in criminal cases and if ADR can be introduced then pre-litigation mediation can also be made applicable so that the victims do not have to face the long process and rigours of procedural acrimony, to get justice by coming to the court and it is the intention of the Legislature to bring justice to the hearth stone of the litigants and the Indian Constitution imbibes the concept of welfare state and if ADR can be implemented in criminal cases then the concept of Welfare State can be said to have been appropriately implemented.

Again the ADR mechanism incorporates pre-litigation resolution of disputes through mediation and the same essence is bore in the Cr.P.C. under chapter XXIA, under the name ***"Plea Bargaining".*** the concept of Plea Bargaining[21] was introduced by the Legislature by the Criminal Law (Amendment) Act, 2006(Act 2 of 2006), Section 4.[22] The said term "Plea Bargaining" may be interpreted to mean a settlement between the offender and the victim prior to trial of such offence, wherein the offender pleads guilty in order to get relieved from the rigours of full term imprisonment upon conviction. Plea Bargaining is allowed for offences where the sentence is upto seven years and such offence shall not adversely affect

[17]https://www.casemine.com/act/in/5a979daf4a93263ca60b7265
[18]S.N. MISRA, "THE CODE OF CRIMINAL PROCEDURE, 1973" 532-533, Edn 17, (2011).
[19]Ibid, p.483
[20]https://prsindia.org/files/bills_acts/bills_parliament/2021/SC%20Report_Mediation%20bill.pdf (last visited on 16th Oct 2022.)
[21]https://blog.ipleaders.in/alternate-dispute-resolution-criminal-jurisprudence/ (last visited on 11th Oct 2022.)
[22]https://www.casemine.com/act/in/5a979dae4a93263ca60b725c (last visited on 13th Oct 2022.)

the economic and social condition of the nation and such criminal act is not committed against a woman or a child below 14 years of age[23].

Further more, section 265-C of Cr.P.C. under the sub-heading "Mutually satisfactory disposition" enumerates the procedures which the court ought to follow in such cases to dispose of such matters. In a case, instituted otherwise than a police report or FI.R., the Notice is served by the Court only on the offender and the victim to participate in the meeting to work out a satisfactory disposition of the case.[24]Where case instituted by F.I.R., the police prosecutor, the investigating officer of the case, the victim/complainant/F.I.R. maker of the case and the Offender are called by the Court by servicing notice upon them asking them to participate in the meeting fixed on a particular date, to work out a mutually satisfactory disposition of the case.[25] Again, Section 265-D under the sub-heading "Report of the Mutually Satisfactory Disposition", provides for the procedure for preparing a report of mutually satisfactory disposition and submission of the same[26], and under section 265 E where a satisfactory disposition of the case has been worked out under section 265 D, the court shall dispose of the case either by releasing the accused person on probation of Good Conduct under section 360 or under the provisions of Probation of Offenders Act,1958[27] and award compensation to the victim. If on hearing it appears that minimum punishment of sentence is to be awarded the court may award either ½ of the sentence of the offence committed or ¼ th of such sentence depending upon the situation.[28]

Thus, from the above it can be clearly understood that the Legislature has paved the way for ADR by coming down to a mutually satisfactory disposition of offences in criminal jurisprudence under the regime of Cr.P.C. Therefore, the scope is quite wide to introduce ADR in criminal cases to dispose of the same in no time and to the benefit of the victims of the criminal acrimony and also the offenders who has to languish and suffer rigours of procedural laws[29].

The Law Commission of India in its 154th Report[30], made suggestions for including the concept of Plea Bargaining under Criminal Laws, as an alternative platform to settle the disputes of criminal nature without going through the rigours of the age old hegemony of dispute resolution under the aegis of the Criminal Procedure Code and laws akin thereto, in the regular Criminal Courts of India.

To my greatest dismay somehow the legislature was lackadaisical in their approach to adopt the recommendation and implement the same to reduce the burden of the Indian Judiciry and also to ameliorate the dire sitation of the repressed category of people.

5. Judicial view towards scope of introducing ADR in Criminal Cases

Indian Judiciary had a diverse view with regards to the implementation and adoption of the procedure of ADR in criminal cases and such diversed view are laid down hereunder.

[23]Ibid.
[24]https://www.casemine.com/act/in/5a979dae4a93263ca60b725c (last visited on 13th Oct 2022.)
[25]Ibid.
[26]Ibid.
[27]https://www.casemine.com/act/in/5a979dae4a93263ca60b725c, (last visited on 14th Oct 2022.)
[28]S.N. MISRA, "THE CODE OF CRIMINAL PROCEDURE, 1973" 420-421, Edn 17, (2011).
[29]ibid
[30]https://blog.ipleaders.in/alternate-dispute-resolution-criminal-jurisprudence/ (last visited on 11th Oct 2022.)

Gian Singh vs State of Punjab SLP (CRL) NO. 8989/2010, Judgment dated 24.09.2012, Supreme Court[31]

> *"51. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim* ***quandolexaliquidalicuiconcedit, concedituret id sine qua res ipsaesse non potest.*** *The full import of which is whenever anything is authorized, and especially if, as a matter of duty, required to be done bylaw, it is found impossible to do that thing, unless something else not authorized in express terms be also done, may also be done, then that something else will be supplied by necessary intendment.* ***Ex debitojustitiae****is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection."*

In **Madan Mohan Abbot v. State of Punjab**[32], in the appeal before the Hon'ble Supreme Court which arose from an order of the High Court refusing to quash the FIR against the appellant lodged under Sections 379, 406, 409, 418, 506/34, IPC on account of compromise entered into between the complainant and the accused, in paragraphs 5 and 6 (pg. 584) of the Report, the Court observed :

> *" 5. It is on the basis of this compromise that the application was filed in the High Court for quashing of proceedings which has been dismissed by the impugned order. We notice from a reading of the FIR and the other documents on record that the dispute was purely a personal one between two contesting parties and that it arose out of extensive business dealings between them and that there was absolutely no public policy involved in the nature of the allegations made against the accused. We are, therefore, of the opinion that no useful purpose would be served in continuing with the proceedings in the light of the compromise and also in the light of the fact that the complainant has on 11-1-2004 passed away and the possibility of a conviction being recorded has thus to be ruled out.*
>
> *6. We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law."*

[31] https://indiankanoon.org/doc/69949024/ (last visited on 11th Oct 2022.)
[32] ibid

In **Ishwar Singh v. State of Madhya Pradesh**[33], the Court was concerned with a case where the accused - appellant was convicted and sentenced by the Additional Sessions Judge for an offence punishable under Section 307, IPC. The High Court dismissed the appeal from the judgment and conviction. In the appeal, by special leave, the injured - complainant was ordered to be joined as party as it was stated by the counsel for the appellant that mutual compromise has been arrived at between the parties, i.e. accused on the one hand and the complainant - victim on the other hand during the pendency of the proceedings before this Court. It was prayed on behalf of the appellant that the appeal be disposed of on the basis of compromise between the parties. In para 12 (pg. 670) of the Report[34], the Court observed as follows:

> *"12. Now, it cannot be gainsaid that an offence punishable under Section 307 IPC is not a compoundable offence. Section 320 of the Code ofCriminal Procedure, 1973 expressly states that no offence shall be compounded if it is not compoundable under the Code. At the same time, however, while dealing with such matters, this Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence."*

In **Jetha Ram v. State of Rajasthan**, **Murugesan v. Ganapathy Velar** and **Ishwarlal v. State of M.P.**[35]the Hon'ble Apex Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable.

But it was also stated that in **Mahesh Chand v. State of Rajasthan**[36]such offence was ordered to be compounded"

In State of Karnataka vs M. Devendrappa[37]the Hon'ble Apex Court observed the following in para No.6 :

> *"6.....It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal*

[33]ibid
[34]ibid
[35]ibid
[36]ibid
[37]ibid

> *possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle* ***quandolexaliquidalicuiconcedit, concederevidetur et id sine quo res ipsaeesse non potest****(when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised* ***ex debitojustitiae****to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice....."*

Now, in India the Justice Delivery System concerning Criminal cases was not generous enough to accept the philosophy of settlement of dispute/offences by introducing ADR Mechanism and the same was reflected from the landmark judgment passed in **Afcons infrastructure &Ors. v. CherianVarkey Construction &Ors**[38], wherein it was observed that offences committed as per IPC or any other penal laws in force in India shall not be decided by adopting or resorting to the ADR Mechanism, since it affects the rights and liberties of the offender. Thus, such decision was heart breaking one and future of the ADR Mechanism in India seemed gloomy, ice-cold and not very encouraging one.

Oflate, the ice has melted and in the lights of the judgment passed by the Hon'ble Supreme Court in **Sonadar vs State of Chattisgarh**[39]**2022 LiveLaw (SC) 889** a pathway was provided which laid down the guide line for disposing of criminal cases by resorting to the *triple method of plea bargaining, compounding of offences and also under the Probation of Offenders Act, 1958.*

Thus it can be said that the Hon'ble Apex Court has now considered that the mechanism of ADR can be invoked by these procedures to dispose of long standing criminal cases and to remove the stagnancy figures as discussed and referred to herein above.

INTERNATIONAL ASPECT OF ADR IN CRIMINAL CASES:

[38]https://indiankanoon.org/doc/1875345/ (last visited on 11th Oct 2022.)
[39]https://www.livelaw.in/top-stories/splea-bargaining-supreme-court-explores-options-of-allowing-accused-to-consent-for-lesser-sentence-while-not-conceding-guilt-207408. (last visited on 1 st Nov 2022)

Unlike India various countries of the world have adopted the idea of introducing ADR Mechanism in disposing of criminal cases. Now let us take some examples of such countries who has fruitfully used the process to ADR in disposing of their criminal cases.

U.S.A.

This is country which is not only economically well advanced by also legally well developed. The country has adopted the OFFENDER-VICTIM DISPUTE RESOLUTION MECHANISM through Mediation whereby the offender and the victim is made to face each other in the presence of a mediator. Now, the mediation may take place after the Police authority finds prima facie charge against the offender and before going to the formal court the dispute may be resolved by pre-litigation mediation in the presence of police and other state authorities and a mediator appointed by the state, it may also happen that both the offender and the state may appoint two individual mediator and the two of them would appoint a third mediator who would chair the mediation process and all the expenses will be borne by the offender or his relations. Again, where the matter goes to court for trail, the scope of mediation is invoked by the courts and far to stretch the mediation is also available to convicts including convicts of serious offences pertaining to body and property.

Philippines

This is a small country but nevertheless it has also adopted the ADR Mechanism for disposing of the criminal cases. A peace keeping committee is formed area-wise with local residents as its members and a Captain to chair such committee. The Committee takes up disputes of criminal nature and makes endeavours to resolve it by participation of the family members of the offender and the victim. The amicable settlement so reached is also accepted by Law Courts of the country.

CZECH REPUBLIC

This is a country which has adopted the pre-litigation mediation as one of the modes of disposing of conflicts in between parties which are criminal in nature. The Committee is formed with the intervention of the Administrative authority and the conflicts of criminal nature are taken up in the presence of the offender and victim. The Administrative authority acts a mediator in disposing of such conflicts and if the parties are dissatisfied then they may opt for the Court to refer their dispute to a mediator which the court thinks appropriate, and in that way the conflict is resolved without going through the regular trials.

Australia

This country has adopted a role model where the offender is made to make all arrangements to prevent themselves from going through the rigours of trial and conviction thereafter. In this country the police at first finds out prima facie whether there is a chance of actual commission of the offence or not and if it appears to them that the prima facie evidence reveals that the offence may have been committed by the offender, then they make the offender go through all the evidences collected by them and asks him either to admit the same and go for settlement through mediation and in case of denial the matter is placed before

regular courts for trial. Here the offender is made to arrange a place where the mediation would take place and also pay fees for the mediator whom he selects from the Board of Mediators maintained by the State Authorities.

New Zealand

This country has adopted a Community Conferencing Model where the family members of the offender and the victim are made to sit face to face with the presence and interference of the dignified members of the community and a mediator is chosen from the members of the community who tries to resolve the dispute with the intervention of all. Thus, pre-litigation mediation model so adopted by this country is also followed by Ireland, Green land and Finland.

South Africa

The Community Conferencing Model is also adopted by this country and state agencies are kept away from such. Here the offence is first acknowledged by the committee and then the offender and the victim is made to appear before each other with the intervention of the respected members of the community and with the intervention of family members and friends the matter is sorted out.

Canada

In this country the criminal disputes are resolved by Sentencing Circle which is constituted by the investigating officer, prosecution, defense counsel, members of the judiciary and family members of both the victim and offender. When the matter comes before the regular court and the offender pleads guilty then the court refers the matter to the Sentencing Circle and thereafter a report is place by such Circle before the Court mentioning the outcome of reference. The outcome is binding upon the parties but the court may refrain from such outcome if it thinks there are reasons to do so.

This particular model draws an analogy to the Plea Bargaining procedure adopted by India under Cr.P.C. within the frame work of **Chapter XXI A**. Therefore, it can be said that the Legislature and the Courts of India can use this scope to the fullest and introduce the ADR Mechanism for resolving of disputes through pre-litigation mediation also.

CONCLUSION AND SUGGESTIONS

Thus, from the above discussion we can see that the pre-litigation mediation which is a part of ADR Mechanism is not at all equipped to deal with all cases involving criminal judicature and therefore, there is a sky scraping pendency of criminal cases in India adversely adding to the sufferings of the common people.

But we can see an endeavor on the part of the judiciary to shift from, not recognizing the ADR Mechanism in the Criminal cases to invoking the concept of plea bargaining, compounding of offences and utilizing the scope of Probation of Offenders Act for disposing of criminal cases through the intervention of the court. Though the system of resolving of criminal cases through pre-litigation mediation is yet not adopted but we may keep high hopes that at one point of time the same will be adopted and will become an effective tool for resolving criminal disputes and shrinking the burden of the Indian Judiciary.

My humble suggestion in this regard would be that the Legislature should formulate laws to encompass criminal cases within the ambit of the ADR System and mandate the resolution of criminal dispute prior to litigation by invoking the Pre-Litigation Mediation procedure. From above discussion we can see that there is ample scope under the provisions of Cr.P.C. and Probation of Offenders Act for introducing ADR Mechanism for redressal of criminal dispute and appropriate amendments may also be made by the Legislature to introduce Pre-Litigation Mediation therein for settlement of disputes outside the Court prior to framing of charge in criminal cases.