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MEDIATION IN PROSECUTION OF JUVENILE OFFENDERS- Mansi Uniyal¹**Abstract:**

In this fast-moving world, everything has picked up its pace and so has crime. We have seen people of every age group involved in some kind of crime. As concerning as it is that there is a crime in society, another alarming concern is that youngsters somehow find their way into this dark alley. Now as important as it is to punish them, it is equally important to guide them for a better future.

This article covers all the possible methods that state the "importance of mediation in the prosecution of young offenders in India"

The main purpose of this article is to help people understand the importance to rehabilitate juvenile offenders in the hope that they will not carry forward criminal behaviour in their adulthood. Proper guidance when combined with a structured skill development program such as VOMP (Victim-offender mediation program) can help them in choosing the right path in the future and contribute to the progress of society

Keywords:

Alternative Dispute Resolution (ADR), Child in Need of Care and Protection (CINOCAP), Child in Conflict with Law (CICWL), Victim-Offender Mediation Program (VOMP), Juvenile delinquency.

1. Introduction:

Since juvenile delinquency crimes/offenses committed by anyone who has not reached 18 years of age have become completely separate from India's criminal justice system, the ultimate objective of young courts is the rehabilitation of young offenders in order to prevent them from entering adulthood.

Earlier in 1899, crimes committed by people under the age of 18 were viewed differently from

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crimes committed by people under the age of 18. There was a need for something from the box that allowed criminals to learn from errors or mistakes and to become a productive part of their community, rather than punishing the young offenders.

Almost every nation has remained in the philosophy of the rehabilitation of young offenders and is now implemented throughout the world by developing a separate juvenile and criminal justice system.

Juveniles in India are categorized into two groups, they are:-

1. Child In Need Of Care and Protection (CINOCAP).
2. Children in Conflict with Law (CICWL).

Juvenile justice mainly focuses on the correction of the juvenile accused of committing a crime. These Corrections of the juvenile may be institutional or non-institutional. The goals of corrections of the juvenile accused of an offence/crime includes as follows:

- a. Reformation
- b. Rehabilitation
- c. Humanization
- d. Reorientation of institutions
- e. Recognition of the rights
- f. Introduction of scientific methods etc.

Many countries throughout the world have a criminal justice system or framework which is focused on the retribution. A crime is said to be an offense committed against the state and eventually the state has the obligation to try the criminal by law and to achieve or to bring about the sense of justice to the victims of such crimes/offences.

Anyhow, emphasizing upon retribution alone has neither unnerved the offenders from perpetrating such crimes in the future when get back to the civil societies, nor has it always satisfied the victims. This prompts an augmentation of issues in terms of controlling law and order. It was extremely evident when the supreme court of India observed that the prisons were overcrowded and stuffed to the extent of 600%.

Mediation makes use of a neutral third party to reach voluntary agreements and consensus. The mediator seeks to resolve amicable disputes between the parties with the view to reaching a

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peace agreement. The main goal/object of mediation is to search for a practical/empirical and enduring solution that both parties consider to be most beneficial. Mediation is the most popular form of ADR in criminal justice.[1] Mediation is a process by which a properly appointed neutral expert assists the parties to a dispute to reach a valid agreement to resolve the dispute. Both parties can voluntarily terminate it (mediation) at any stage of mediation and at any time without any adverse consequence for the same. Thus, there is an element of party autonomy. Disputes between the disputed parties are usually resolved within a few weeks, and is cost efficient as compared to litigation.

The rights of the parties in dispute or disputed parties are stated in terms of long term and greater interests. Some of the mediation techniques used in criminal justice is as given under:

- 1. Victim-Offender Mediation (VOM) Programs:** VOM programs design to encourage direct or one to one communication between victim and offender. The victims who participated in it were given the opportunity to ask questions, discuss the crime and the emotional trauma caused by its consequence and also seek atonement.[2]
- 2. Community Dispute Resolution Programs (CDRP):** CDRP resolves minor unresolved conflicts and blocks crime dockets.
- 3. Victim-Offender Panels (VOP):** VOPs have evolved over the past 20 years as a result of the growing victim rights movement. In particular, it provides an opportunity to assess the harm and impacts of drunk driving and survivors of convicted and convicted drunk drivers who oppose drunk driving. As with VOM, the goal is to reduce the likelihood of recurrence.
- 4. Community Crime Prevention (CCP) Programs:** “CCP programs cover 4 wide ranges of activities, including anti-drug media campaigns, silent surveillance programs and environmental disputes resolution programs.”
- 5. Private Complaints Mediation Services (PCMS):** PCMS equips arbitration as an alteration to formal criminal proceedings between individuals. In addition to the aforementioned programs, there are punitive mechanism, support for ex-criminals, community services, school programs, and special courts. “These programs represent gradual shift prevention to reparation as a form of criminal justice in many countries. In short, they show the application of restorative justice.”

Of the above mentioned methods, the Victim-Offender Mediation program can be
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appropriately applied to juvenile delinquency cases. “Through VOM, victims and perpetrators alike have the opportunity to express their feelings and views. There they try to resolve conflicts and develop their own approach to justice in the face of crime. This allows them to dispel their misconceptions.” This meeting is aimed at agreeing on the actions that the perpetrator can take to compensate for the damage suffered by the victim.

The VOM (victim-offender mediation):-

VOM helps victims and perpetrators both voice their feelings and state their views. When crime occurs, the residents must try to use an approach of conflict resolution and justice that is specific to their location. Having the ability to do so, it allows them to clear their misconceptions. The purpose of this meeting is to agree on actions that the perpetrator can take to compensate for the damage caused by the victim. Thus, the process somehow contributes to the fundamental restoration of justice to the criminal justice system. Like any other arbitration, VOM guarantees the voluntary participation of the parties. However, it can always be argued that the motive for the perpetrators consent is to avoid onerous court decisions. The role of mediators and mediators is to facilitate dialogue between criminals and victims and achieve what both parties believe to be fair in order to address victim trauma and conflicts arising from the actions of victim-criminals. This gives the parties the opportunity to play a more active role in determining the importance of justice in a particular case.

The process consists of four stages: the transfer and acceptance of cases, preparation for arbitration, the arbitration itself, and any necessary follow-up actions (for example, the execution of the indemnification agreement). Often, such cases involve formal conviction at the VOMP or in court after the sentencing. However, some cases bypass such orders in order to avoid criminal prosecution.[3] To continue mediation activities, the mediator must ensure the following:

1. It is a goal of the parties to go through the mediation as a positive experience for them.
2. The offender will not cause any further harm to the victim by their meeting.
3. Participation is voluntarily accepted by both of them.

The parties meet to identify injustices, remedy damage (to rectify the situation or restore justice) and develop a payment / monitoring plan. They present their versions, complaints. Victims have the opportunity to talk to the victim about the victim’s personal aspects and tell the perpetrator how this behaviour has affected their lives. This allows you to find answers to current questions. In the meantime, the offender is free to express remorse and offer a description of the

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circumstances of his transgression. In order to restore the victims injury, the parties agree on the nature and extent of the damage caused. A contract for compensation is outlined in writing, for example, reimbursements for costs, in-kind allowances, payment plans, and the like.

1. International Perspective:-

In 1989 in Kitchener, Ontario, a juvenile probation officer began in Canada to get acquainted with the victims of crime, persuading the judge of two young men convicted of vandalism to meet the victim of crime. The judge ordered the two young men, after the meeting, to pay compensation in parole to these victims. For example, a VOM parole alternative and a post-sentence alternative exists in Canada. In 1978, Indiana launched the first American programme. The programme has spread to the USA and elsewhere in Europe and has led to almost 800 VOM programmes in the USA and Europe.

2. Indian scenario:-

Pursuant to section 89 of the Civil Procedure Code[4], a judge can apply for assistance to the arbitration centre itself. Lawyers are trained as intermediaries and provide their services free of charge. It should be noted that the court can only send a party to arbitration and cannot get instructions to mediate the dispute. On the part of the parties, nothing else is needed but good faith efforts. As previously mentioned, the parties have the right to terminate the arbitration if they do not wish to continue the arbitration.

When the case went to court, one of the parties wanted to resign due to a confidentiality clause, but what happened at the trial was not reported. There are times when a judge accidentally comes to the arbitration table and is happy with the agreement. This section applies only to civil proceedings.

“The concept of plea bargaining [5] has been recognised in the Indian Penal Code [6] as an alternative to traditional judicial mechanisms which are slow and burdened by the courts, as recommended in the 142nd and 154th law commission and the Malimath Committee report.” This is simply a criminal agreement between the prosecutor and the accused defendant. Where the defendant changes his confession in exchange for the prosecutor's consent or the judge informally informs the defendant that, if the defendant is guilty, the sentence shall be commuted. This cuts the costs (for both parties) of law enforcement and enables prosecutors to focus more on this case. [7]

Many countries around the world are moving in whole or in part from competitive criminal justice models to restorative justice models to achieve promising results in the war on crime.

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Arbitration, as a form of restorative justice, makes local judicial systems more consistent, coherent, and comprehensive. The state's role is decreased and public participation promoted. The KhapPanchayat shouldn't be confused. "Due process, transparency, participation and accountability are desirable features of restorative justice. The system respects diversity as a social fact, connectivity as a virtue, and the primary objectives of loss correction/healing."

Under the age of 7, a child is considered unfit and incapable of committing a crime under section 82 of the IPC. The section 83 of the IPC declares that an act committed by a child between the ages of 7 and 12 that the child could not understand is not criminal under section 40 of the IPC. An excellent example of this is the Indian Penal Code, which differentiates between children in connection with criminal activity.

Child offenders are treated the same as adults when it comes to the provision of treatment for those who are under the age of 18. It is an offshoot of the new criminal law, and is done to prevent courts, procedures, and prisons from making juvenile offenders unhappy. The system once polluted criminals through prisons along with other criminals. Future citizens have the right to enjoy all the love and care. Responsibility is something that children are born with, and when innocence is introduced to environmental factors that can cause criminal tendencies, the result is a much greater and superior person.

In the Juvenile Justice (Care and Protection) Act, 2015[8] consolidating and amending various laws regarding children suspected of breaking the law, as well as those who are in need of protection and those who require assistance, while also providing for the needs of people in general through appropriate care, protection, development, and treatment, and social inclusion), new laws have been enacted to help consolidate and amend various laws dealing with children who are suspected of breaking the law, as well as those who are in need of protection, and those who require assistance. Through planned processes, as well as the institutions and institutions created within this framework, and through problems associated with or associated with a problem that needs to be solved or eliminated, the child solves problems in the best interests of the child and chooses an appropriate approach to rehabilitation. It is therefore primarily based on rehabilitation justice rather than the criminal justice system based on the criminal justice system. The law has been established to fulfil the state's obligation to provide that all the child's basic needs are met and to protect the child's human rights.[9]

Whereas retributive justice [10] focuses on society and the state, restorative justice focuses on victims and perpetrators. The victim was recently acknowledged, on March 19, 2017, by Chief Justice Kehar in the criminal justice system, lack of cooperation, and public awareness.[11]. As

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mentioned earlier, VOMP offers victims a more proactive role.

“It is important to note that young actors have strong minds that take time to understand the seriousness of their actions. The existing system leaves no room for reform. I completely understand. This label is a nickname to be worn throughout your life. Punishment can be fearful, but you don’t understand that it is not only illegal or immoral, but also has serious consequences. Thus, you lose one of your main goals in the long run. i.e., prevent others from following the same path of crime.”

It is often said that mediation works in moderate conflicts rather than serious crimes. Alternative Dispute Resolution is an appropriate method if the parties have a long-term relationship (this is an important motive for reconciliation). However, this usually does not apply to mediation between the victim and the perpetrator. “In addition, monetary trade-offs cannot be achieved under all circumstances, as monetary losses are difficult to measure. Caution should be exercised when using VOMP and other ADR mechanisms, as in serious cases the perpetrator may try to free them from legal constraints.”

It is very problematic to ensure that mediation in crimes, primarily those related to the establishment of power, is carried out on an equal footing. This leaves enough room for explicit and implicit coercion of survivors. Madras High court decisions, in Satyavani Ponrani v. Samuel Raj of the Madurai Court, have given rape victims the opportunity to be heard and become more involved in legal proceedings. “In particular, in the relationship between the state and the accused, the active participation of victims in the criminal justice system can be ensured through the appointment of special prosecutors when such cases are necessary. By resolving a request for law enforcement assistance; Survivors are represented by a council at all stages of the process and ensure that appropriate witness protection mechanisms” are in place.

3. Benefits of VOMP in cases involving juvenile delinquents[12]:-

This enables victims, rather than focusing on the criminal justice system's processes, to solve conflict on a sensitive way, taking into account the individual needs of the victim and of the offender. Consequently, individuals and communities prevail over the state, which acts in criminal cases as the sole prosecutor. It is often assumed that the victims were not involved in the crime. “This discontent generates discontent and leads to the belief that criminals are generally not held accountable for their actions. These programs provide high levels of customer satisfaction, victim participation and compensation, and reduce victim fear and crime.” This gives victims the opportunity to directly participate in identifying the perpetrators of their behaviour. Those who were directly involved and committed crimes were given the opportunity

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to play an important role in restoring peace and resolving conflicts. The perpetrator is directly responsible for his actions, so you must feel the full impact of this action and develop a plan to rectify as many of the perpetrators as possible. If the perpetrator does not comply with the indemnification contract, the court imposes additional consequences.

This allows for victims to solve conflicts in a sensitive way, with an account to the individual needs of the victim and the offender, rather than focusing on the processes of the offender which dominate the system of criminal justice. As a result, individuals and communities take precedence over the state, which serves as the sole prosecutor in criminal cases.

Its intent or goal is to repair the emotional and material damage to victims and to rectify, but not punish, young offenders. Thus, VOM plays a more positive role, as it encourages criminals to recognize their mistakes and gives them the opportunity to correct themselves by actively compensating for their losses instead of passively accepting the worst punishment.

4. Conclusion/Outcome:

Separating juvenile delinquency from the criminal justice system is primarily intended to rehabilitate juvenile offenders in the expectation that they will refrain from adult criminal behaviour in maturity. The experience of criminal justice both for victims and perpetrators needs to be humanised. The personality traits of the intervention are interesting because it's pragmatic and decisively very profitable/successful technique to juvenile justice. When added with a structured skill development program such as Victim Offender Mediation Program also known as VOMP, relapse rates can be reduced. Mediation places direct responsibility on the offender towards the victim. This will allow victims of crime and the general public to participate more actively in the judicial process and further reduce the criminal activity of criminals. In the early 1980s, many wondered if crime victims wanted to meet with their offenders in person. In Western countries, a concept has been developed according to which, under certain circumstances, a face-to-face meeting between the victim and the offender can be fruitful. However, caution should be exercised in juvenile criminal mediation. There is no single path. There may be drawbacks, but these drawbacks can also be corrected if the intervention is seen as a tool rather than an alternative.

Bibliography

- [1] <http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=5ff4acc7-53ef-4d12-a0a8-1b41ab12beba&txtsearch=Subject: Arbitration>

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- [2] John R. Gehm “Victim-Offender Mediation Programs: An Exploration of Practice and Theoretical Frameworks”, *Western Criminology Review* 1 (1). [Online]. Available: <http://wcr.sonoma.edu/v1n1/gehm.html>.
- [3] <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/victim-offender-mediation/>
- [4] The purpose of referring to the provision is to only throw a light on the mediation mechanism that is currently followed in the county.
- [5] <http://www.questjournals.org/jrhss/papers/vol3-issue11/I3116882.pdf>
- [6] Section 265A to 265L in Chapter XXIA
- [7] <http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=5ff4acc7-53ef-4d12-a0a8-1b41ab12beba&txtsearch=Subject: Arbitration>
- [8] Amendment act 2016
- [9] Under clause (3) of Article 15; clauses (e) and (f) of article 39, article 45 and article 47 of the Constitution of India.
- [10] Retributive system views crime as an offence against the state and offers almost no help to the crime victim
- [11] <http://www.hindustantimes.com/india-news/let-us-have-a-heart-and-reach-out-to-victims-of-crime-says-cji-khehar/story-ulerLUBQIZnhizw1im4HNJ.html>
- [12] https://www.ncjrs.gov/ovc_archives/reports/96517-gdlines_victims-sens/guide4.html