

RESTORATIVE JUSTICE IN ADR: AN ALTERNATIVE TO TRADITIONAL PUNISHMENTS?

- Yogiraj*

Introduction: Suppose somebody broke your toy. What would you like? Just to see them suffer the punishment? Or would you like them to know how you felt and perhaps mend or replace your toy? That second solution for dealing with problems is what we term Restorative Justice, and it is quite different from punishing somebody in the old way. For example, "You did something bad, now suffer the consequences," Restorative Justice says, "Sit with me. Talk with me. Feel the pain and let's heal it somehow." It takes a moment of pain and turns it into an opportunity for growth, learning, and human connection.

Keywords: *Restorative Justice, ADR, Criminal law.*

ADR Meaning: ADR means Alternative Dispute Resolution. It refers to resolving battles or court issues apart from the common courts. Courts may take long and cost a lot of money. ADR provides individuals quicker and more cheerful means of resolving issues. **Tony Marshall**, defined the term in following words : "Restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of that offence and its implications for the future." **The United Nations Office on Drugs and Crime** defines the term Restorative justice as, "a process for resolving crime by focusing on redressing the harm done to the victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of that conflict". There are various types of ADR, such as:

1. Mediation

Mediation is a friendly way to solve problems when two people or groups are having a fight or disagreement. A third person, called a mediator, helps both sides talk nicely and

*Student at Chhatrapati Shahu Ji Maharaj University

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

understand each other. The mediator does not give orders like a judge, but helps them find a solution that both sides agree on.

In India, there are regulations named the Mediation and Conciliation Rules, 2004, enacted under a large law named the Arbitration and Conciliation Act, 1996. Also, according to Section 89 of the Civil Procedure Code, 1908, the courts are empowered to ask individuals to opt for mediation rather than engaging in a lengthy court case. Another act, the Legal Services Authorities Act, 1987, also assists in establishing mediation centers throughout the nation.

2. Arbitration

Although Arbitration is **not** used in criminal law, arbitration is basically when two groups or individuals select a person known as an arbitrator to hear the quarrel between them and make a ruling. The ruling is referred to as an award, and both parties are required to comply with it. The primary legislation for arbitration in India is the Arbitration and Conciliation Act, 1996. Some modifications were done in 2015 to make arbitration quicker and more equitable. If the battle is among citizens or businesses of other countries, an international guideline known as the New York Convention (1958) ensures that the ruling is accepted in India.

3. Conciliation

Conciliation is similar to mediation but with a twist. The third party, the conciliator, doesn't only facilitate the two parties to converse, they actually provide ideas or suggestions on how to resolve the issue. But, just like in mediation, no one has to reach an agreement.

The Arbitration and Conciliation Act, 1996 discusses conciliation as well, particularly in Part III of the legislation. It describes how to select a conciliator, how the negotiations are to proceed, and how to draft the agreement if they resolve the issue. The law was revised in 2015 to make the process more efficient and faster.

4. Negotiation

Negotiation is the easiest and most casual method to resolve a problem. The two individuals or groups communicate directly with one another and attempt to resolve the problem by themselves.

There isn't any special law for negotiation, but it is very frequent and normally the initial move people make before attempting mediation or litigation. Section 89 of the Civil Procedure Code, 1908, also permits this type of amicable conversation prior to actually commencing a court trial.

5. Lok Adalats (People's Courts)

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

Lok Adalats are unique people's courts in India. They resolve minor issues quickly, easily, and at a low cost without approaching the normal court. They function as a group of wise individuals (usually retired lawyers or judges) who assist both parties to become peaceful through discussions.

The Legal Services Authorities Act, 1987 formulated the rules for Lok Adalats at the national, state, and district levels. Section 89 of the Civil Procedure Code, 1908, also favors referring certain cases to Lok Adalats so that courts don't get congested and justice reaches people at the earliest.

Why Choose Restorative Justice in ADR?

1. Victim-Centered Approach

Conventional processes of justice push victims to the sidelines, and the state versus accused comes into focus. Restorative Justice (RJ) puts victims right in the center. They get to narrate their stories, question the offender directly, and gain emotional closure. This active role, this participatory way gives them dignity, trust, and a sense of justice, which conventional punishments cannot provide.

2. Rehabilitation of Offenders

While only punishing criminals, RJ is built on the idea of bringing wrongdoers to book for what they have done and acknowledging the actual effect of actions in the real world. For facilitated conversation, wrongdoers stand a higher chance of being sorry and willing to change for the good, hence reducing the likelihood of reoffending. This aspect of rehabilitation makes RJ a revolutionary method of solving crime and civil cases.

3. Community Healing

Individual, civil, or criminal disputes tend to spill over into families, workplaces, schools, or communities. RJ practices like community circles and conferencing make sure all who are affected are heard, enabling each to take responsibility for harm and to come up with joint solutions. This facilitates increased social cohesion, community-level accountability, and reparation to damaged relationships.

4. Time and Cost Efficiency

Litigation is a lengthy, costly, and confrontational process, however. Restorative procedures via ADR techniques such as mediation or conciliation are quicker, cheaper, and informal. They clog up courts but lead to a more empathetic and customized result for the parties.

5. Reducing Prison Overcrowding

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

Among the greatest challenges of India's criminal justice system is prison overcrowding with first-offenders or undertrial. RJ offers a solution by releasing rightful cases particularly minor and non-violent crimes without jailing them. This not only decongests the prisons but also conserves state expenditure and channels the offenders towards constructive social contact.

Applications of Restorative Justice in India

Though still in its early stages, Restorative Justice is slowly taking root in India's justice administration system. Some of the most crucial fields of its practice are:

1. Juvenile Justice System

The Juvenile Justice (Care and Protection of Children) Act, 2015 operationalises restorative values in the form of reform rather than retribution. Victim-offender counseling and mediation are being more and more persuaded to be used by juvenile homes and observation homes, which allows juveniles in conflict with law to turn into productive assets in society.

2. Lok Adalats and Mediation Centers

India's family courts, court-connected mediation centers, and Lok Adalats tend to follow the philosophy of RJ in enhancing peaceful resolutions. These courts prioritize communication, emotional closure, and long-lasting peace over hard legal decisions thereby providing very fertile ground for RJ strategies, mostly in neighborhood disputes, minor criminal cases, and family conflicts.

3. Plea Bargaining

Introduced through an amendment to the CrPC in 2005, plea bargaining allows the accused to plead guilty in exchange for a reduced sentence. While not fully restorative, it introduces a form of negotiated justice and reduces court burden.

Few Case Laws are :

In **K. Srinivas Rao v. D.A. Deepa**, the Supreme Court noted that despite Section 498A of the Indian Penal Code offences being non-compoundable, complaints giving rise to disputes can still be settled out of court. The Court suggested that in appropriate cases, where there is a likelihood of settlement and both sides are willing, the case should first be sent to mediation centres. This indicates the court's understanding of Alternative Dispute Resolution (ADR) mechanisms playing a role even in some criminal matters.

In **Dayawati v. Yogesh Kumar Gosain**, the Delhi High Court held that Lok Adalats may only handle criminal cases that are compoundable under the law as provided under Section 320 of the Criminal Procedure Code or other special statutes, according to Section 19(5) of the Legal Services Authorities Act, 1987. The Court focused on the aspect that settlements in

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

such cases must be voluntary between the parties involved, and neutral third parties mediators or conciliators can have a valid role in brokering these resolutions.

In the case of **State of Maharashtra v. Tasneem Rizwan Siddiquee (2018)**, the Bombay High Court encouraged the parties to consider mediation as a way to resolve a criminal defamation dispute. Although the matter eventually went to trial, the court's suggestion demonstrated its openness to exploring alternative dispute resolution (ADR) methods, even in certain criminal cases.

Limitations of ADR in the Criminal Justice System

Though ADR presents an appealing alternative, its extension to criminal cases is restricted by some inherent limitations:

1. **Limited to Minor Offences:** ADR can apply only to compoundable or minor criminal cases. It is not applicable to serious or non-compoundable offences involving serious injury or public interest.
2. **Need for a Dispute:** ADR depends on the presence of a dispute among parties. Where injury is inflicted unwittingly, as in rash or negligent driving, and there is no personal conflict, ADR mechanisms might not be available.

Some of the directions mooted for the future are:

1. Legal Recognition and Framework

A formal legislative structure is needed for uniform application of restorative justice in a sector. India may emulate the New Zealand or South African model of legislating and implementing RJ under state powers. The legislation should specify the type of cases that are amenable to RJ application, procedural protections, and protection to victims.

2. Integration into Legal Education and Training

Restorative Justice needs to be integrated into law schools and judicial academies. Judges, lawyers, mediators, and police officers should be sensitized through special training so that resistance to non-punitive methods is demystified and more acceptance follows.

3. Community-Based Restorative Programs

Community- and grassroot-level interventions such as school-based RJ circles, village mediation committees, or workplace reconciliation units can step in early to manage harm before it escalates. NGOs, local-level self-governments, and youth organizations can play significant roles in pioneering such models with cultural sensitivity.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

4. Victim Support Infrastructure

To help build trust in the RJ process, there has to be victim support structures including counseling, legal aid, and safety assurances. RJ must never come in place of justice but as an additional tool empowering the victim while, at the same time, ensuring that the culprit is punished.

Conclusion

Restorative Justice is a person-focused approach to addressing the facelessness and adversarialism of standard formal legal proceedings. Shifting the emphasis from punishment to healing, taking responsibility, and repairing harm, RJ improves the standard of justice provided, particularly in an ADR setting.

While India is going ahead with its justice system evolving with new law and innovative means of dispute settlement, there is a good chance to embrace RJ as a mainstay practice, not merely for efficiency, but for creating a softer, kinder, more human, and more equitable society.

But this is only possible through combined efforts by legislatures, lawyers, educators, and the public. The path to restorative justice from punitive justice is not straightforward, but necessary for a future where justice involves more than punishment.

References

<https://linksharing.samsungcloud.com/ybaccRfR9j46>

<https://blog.ipleaders.in/alternate-dispute-resolution-criminal-jurisprudence/>

<https://www.lawyered.in/legal-disrupt/articles/adr-criminal-cases/>

<https://jamesonlaw.com.au/criminal-law/exploring-alternative-dispute-resolution-in-criminal-law-a-guide-to-restorative-justice-alternative-dispute-resolution-adr/>

The Arbitration and Conciliation Act, 1996

The Code of Civil Procedure, 1908

Legal Services Authorities Act, 1987

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>