

# **NATIONAL JUDICIAL ACADEMY, BHOPAL**

## **NATIONAL ORIENTATION PROGRAMME FOR JUNIOR DIVISION JUDGES (P-1093)**

**06<sup>th</sup> – 12<sup>th</sup> April, 2018**

### **‘ADR AND PLEA BARGAINING’**

**PRESENTATION BY  
DR. SUDHIR KUMAR JAIN  
PRINCIPAL JUDGE  
FAMILY COURTS (W)  
TIS HAZARI COURTS  
DELHI**

**ADR**

**• FAIR AND JUST PROCESSES FOR RESOLVING DISPUTES INDISPENSIBLE IN DEMOCRATIC SOCIETY**

**• EFFICIENT JUDICIAL SYSTEM EXISTS TO SECURE AND PROTECT RIGHTS OF CITIZENS IN A DEMOCRATIC COUNTRY**

**• A GOOD LEGAL SYSTEM PRODUCES JUST SOLUTIONS WITH SPEED, EFFICIENCY AND TO AVAILABLE TO ALL**

**• INDIA A DEMOCRATIC COUNTRY GOVERNED BY RULE OF LAW UNDER WRITTEN CONSTITUTION**

**• WELL DEFINED AND ORGANIZED JUSTICE DELIVERY SYSTEM PROVIDED UNDER CONSTITUTION**

**• PREAMBLE GUARANTEES JUSTICE SOCIAL, ECONOMICAL, POLITICAL**

**CITIZENS/COMMUNITIES BECAME MORE AWARE ABOUT CONSTITUTIONAL AND LEGAL RIGHTS**

**SEEK REDRESS THROUGH LITIGATIONS IN COURTS IN CASE OF INFRINGEMENT**

**BURDEN ON COURTS/LITIGATION EXPLOSION**

**INCREASED URBANIZATION, GOVERNMENTAL ACTIVITIES, WANING OF NON- JUDICIAL INSTITUTION ARE OTHER FACTORS FOR LITIGATION EXPLOSION**

**JUDICIAL RESOURCES SUCH AS INFRASTRUCTURE / NO. OF JUDGES AND JUDICIAL OFFICERS INADEQUATE TO MEET LITIGATION EXPLOSION**

**ELEPHANTINE BACKLOG OF CASES AND INORDINATE DELAYS IN ADMINISTRATION OF JUSTICE**

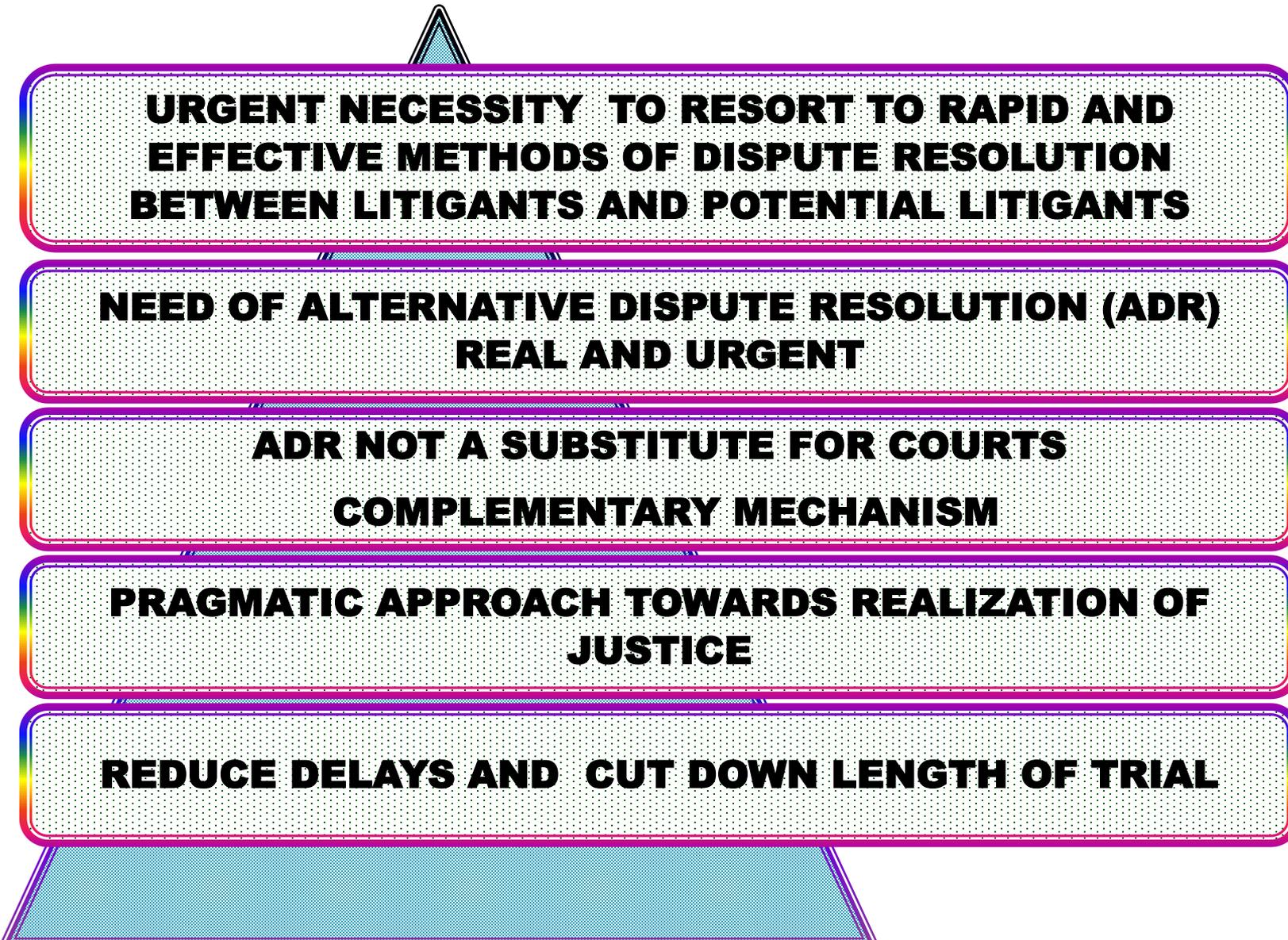
**QUALITY AND QUANTITY OF JUSTICE ADVERSELY AFFECTED**

**PENDENCY LIKELY TO INCREASE**  
**NOT POSSIBLE TO DISPOSE OF PENDING**  
**CASES TO SATISFACTION OF LITIGANTS**  
**WITHIN REASONABLE TIME**

**DELAYS CAUSED**  
**CYNICISM ABOUT EFFECTIVENESS OF**  
**JUDICIAL PROCESS**

**BENEFIT TO UNWORTHY**  
**PENALIZE HONEST**

**CHALLENGE FOR ALL JUSTICE DELIVERY**  
**SYSTEMS**



**URGENT NECESSITY TO RESORT TO RAPID AND EFFECTIVE METHODS OF DISPUTE RESOLUTION BETWEEN LITIGANTS AND POTENTIAL LITIGANTS**

**NEED OF ALTERNATIVE DISPUTE RESOLUTION (ADR)  
REAL AND URGENT**

**ADR NOT A SUBSTITUTE FOR COURTS  
COMPLEMENTARY MECHANISM**

**PRAGMATIC APPROACH TOWARDS REALIZATION OF  
JUSTICE**

**REDUCE DELAYS AND CUT DOWN LENGTH OF TRIAL**

# **BENEFITS AND ADVANTAGES**

**CREATIVE**

**EFFICIENT**

**RAPID**

**INFORMAL**

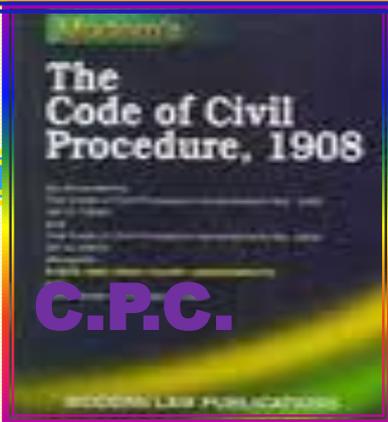
**ECONOMIC**

**PRIVATE**

**EASY ACCESSIBILITY**

**HARMONY**

**ADR INCLUDE AND REFER TO A BROAD RANGE MECHANISMS AND PROCESSES**



## **SECTION 89**

## **MODES OF ADR**

**PARLIAMENT INCORPORATED SECTION 89 IN THE CODE OF CIVIL PROCEDURE, 1908 BY THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999 WITH EFFECT FROM 01.07.2002**

**ARBITRATION**

**CONCILIATION**

**JUDICIAL  
SETTLEMENT**

**LOK ADALAT**

**MEDIATION**

**ADR STATUTORILY RECOGNISED**

**SUPREME COURT IN CASE SALEM ADVOCATE BAR ASSOCIATION V. UNION OF INDIA, (2003) 1 SCC 59 UPHELD CONSTITUTIONAL VALIDITY OF AMENDMENTS IN CODE OF CIVIL PROCEDURE, 1908 MADE BY AMENDMENTS ACTS OF 1999 AND 2002**



**9. IT IS QUITE OBVIOUS THAT THE REASON WHY SECTION 89 HAS BEEN INSERTED IS TO TRY AND SEE THAT ALL THE CASES WHICH ARE FILED IN COURT NEED NOT NECESSARILY BE DECIDED BY THE COURT ITSELF. KEEPING IN MIND THE LAW'S DELAYS AND THE LIMITED NUMBER OF JUDGES WHICH ARE AVAILABLE, IT HAS NOW BECOME IMPERATIVE THAT RESORT SHOULD BE HAD TO ALTERNATIVE DISPUTE RESOLUTION MECHANISM WITH A VIEW TO BRING TO AN END LITIGATION BETWEEN THE PARTIES AT AN EARLY DATE.**

**10. IN CERTAIN COUNTRIES OF THE WORLD WHERE ADR HAS BEEN SUCCESSFUL TO THE EXTENT THAT OVER 90 PER CENT OF THE CASES ARE SETTLED OUT OF COURT, THERE IS A REQUIREMENT THAT THE PARTIES TO THE SUIT MUST INDICATE THE FORM OF ADR WHICH THEY WOULD LIKE TO RESORT TO DURING THE PENDENCY OF THE TRIAL OF THE SUIT.**

**SUPREME COURT IN CASE SALEM ADVOCATE BAR ASSOCIATION V. UNION OF INDIA, (2005) 6 SCC 345 ADOPTED CIVIL PROCEDURE ADR AND MEDIATION RULES**

## **MEDIATION AND CONCILIATION PROJECT COMMITTEE**

**SUPREME COURT OF INDIA CONSTITUTED A  
MEDIATION AND CONCILIATION PROJECT  
COMMITTEE (MCPC) ON 9<sup>TH</sup> APRIL, 2005 TO  
OVERSEE DIRECTLY IMPLEMENTATION OF  
MEDIATION AT NATIONAL LEVEL**

### **PILOT PROJECT**

**A PILOT PROJECT INITIATED AT TIS  
HAZARI COURTS, DELHI ON JUDICIAL  
MEDIATION UNDER THE SUPERVISION  
OF MCPC**

# **FACTORS TO BE CONSIDERED**

**TRAINED NEUTRALS**

**ADR CENTERS**

**REFERRAL OF CASES**

**TRAINING OF REFERRAL JUDGES**

**AWARENESS AMONG ADVOCATES, LITIGANTS**

**ETHICAL CODE OF CONDUCT**

**STATUTORY ENACTMENT**

**NATIONAL POLICY**

**SETTLEMENT CULTURE**

# RESOLUTIONS



**JUDICIAL DISPUTE  
RESOLUTION  
(COURTS/TRIBUNALS)**

**ALTERNATIVE  
DISPUTE  
RESOLUTION**



**SUITS**

**PETITIONS**

**COMPLAINTS**

**APPEALS**

**REVISIONS**

**REVIEWS**

**NEGOTIATION**

**CONCILIATION**

**MEDIATION**

**ARBITRATION**

**JUDICIAL  
SETTLEMENT**

**LOK ADALAT**



## **MEDIATION**

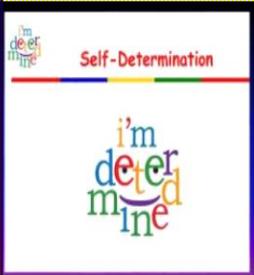
**MEDIATION IS A  
STRUCTURED  
PROCESS IN WHICH  
AN IMPARTIAL  
PERSON - A  
MEDIATOR-  
FACILITATES THE  
PARTIES IN AMICABLE  
RESOLUTION OF  
DISPUTES BY USING  
SPECIALISED  
COMMUNICATION AND  
NEGOTIATION  
TECHNIQUES**



# PROCESS



**IMPARTIAL**



## RECOGNISE

**RIGHT OF SELF DETERMINATION**



**CONFIDENTIAL**



**QUALITATIVE**



**REQUIRE COMPETENCE OF MEDIATOR**



**REQUIRE EXACT RECORDING OF SETTLEMENT**



**CREATIVE FLEXIBLE**

# MEDIATION IS NOT



all the extras  
at no extra cost

All-inclusive packages for the price of an Anytime ticket



**BAR TO LITIGATION /  
ARBITRATION**

**WHAT JUDGES/ LAWYERS DO**

**WASTE OF MONEY/TIME IF FAILS**

**FURTHER COST TO PARTIES**

**WEAK**

**RISKY**

# **FAMILY PORTRAIT**

A ROLE PLAY TO DEMONSTRATE DIFFERENCE  
BETWEEN  
JUDICIAL PROCESS/ARBITRATION AND MEDIATION

**FATHER DIED RECENTLY LEAVING FAMILY PROPERTIES TO TWO SONS. MOTHER DIED EARLIER. BOTH SONS ARE SOLE SURVIVING HEIRS. FATHER'S WILL WAS CLEAR REGARDING FAMILY PROPERTIES – EVERYTHING DIVIDED EQUALLY. WILL MENTIONS THAT FAMILY PORTRAIT SHALL TO GO FATHER'S "FAVOURITE CHILD". WILL NOT NAME HIS FAVOURITE CHILD. TWO BROTHERS NOT AGREE ABOUT FATHER'S FAVOURITE CHILD .**

**RESOLVE DISPUTE USING**

**(I) JUDICIAL PROCESS/ARBITRATION,**

**AND**

**(II) MEDIATION**

# **JUDICIAL PROCESS/ARBITRATION**

**ADJUDICATOR / ARBITRATOR FIRST DECIDE ISSUE IN DISPUTE : WHICH CHILD IS “FAVOURITE CHILD”?**

**EACH CHILD SHALL PRESENT REASONS TO ADJUDICATOR/ ARBITRATOR AS TO WHY HE BELIEVES THAT HE WAS FAVOURITE CHILD**

**ADJUDICATOR / ARBITRATOR SHALL EVALUATE EVIDENCE AND DECIDE WHO FITS DEFINITION OF “FAVOURITE CHILD” – PAINTING IS AWARDED TO THAT CHILD**

**NO COMPROMISE PERMITTED. ADJUDICATOR / ARBITRATOR MUST MAKE A DECISION AS TO WHO IS RIGHT AND WHO IS WRONG DEPENDING ON (I) THE MEANING OF “FAVOURITE CHILD” AND (II) AN APPRAISAL AND COMPARISON OF EACH PARTY’S EVIDENCE AS TO WHY THEY WERE “FAVOURITE CHILD”.**

# **MEDIATION**

**MEDIATOR FACILITATES NEGOTIATION ON SAME ISSUE. PARTIES WILL TRY AND WORK OUT A SOLUTION BETWEEN THEMSELVES RATHER THAN GIVING CONTROL OF RESOLUTION OF DISPUTE TO ADJUDICATOR/ ARBITRATOR . PARTIES FREE TO CHOOSE CREATIVE SOLUTION . NO ONE WILL BE RIGHT AND WRONG AND THERE NEED NOT BE ONLY ONE WINNER**

## **MEDIATOR**

**IDENTIFIES NEED**

**CREATS OPTIONS**

**CONTROL PROCESS**

**RESTORE RELATIONSHIP**

INSTITUTION OF CASE

**PLEADINGS**

**ADR CASE FLOW**

**TRIAL CASE FLOW**

**PARTIES PREFERRED TRIAL**

**PARTIES EVIDENCE**

**DEFENCE, ARGUMENTS**

**JUDICIAL VERDICT**

**WIN/LOSE**

PARTIES AGREE FOR ADR

REFERRAL

NEUTRAL SELECTED

ADR SESSIONS

PARTIES REACH IMPASSE

BACK TO TRIAL

**PARTIES SETTLED**

**RESOLUTION OF DISPUTES**

**WIN/WIN**



**AFCONS INFRASTRUCTURE LTD & ANR.**  
**V**  
**CHERIAN VARKEY CONSTRUCTION**  
**CO.(P) LTD. & ORS**  
**(2010)8SCC24**

**S 89(2)(C) JUDICIAL  
SETTLEMENT**



**S 89(2)(C)  
MEDIATION**

**S 89(2)(D)  
MEDIATION**



**S 89(2)(D) JUDICIAL  
SETTLEMENT**

**FORMULATION AND  
REFORMULATION OF  
TERMS OF SETTLEMENT**



**SUMMARY OF  
DISPUTES**

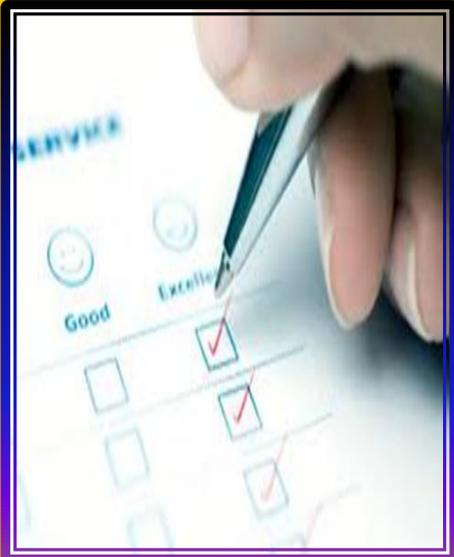
**8. The mix-up of definitions of the terms "judicial settlement" and "mediation" in Section 89 is apparently due to a clerical or typographical error in drafting, resulting in the two words being interchanged in clauses (c) and (d) of Section 89(2). If the word "mediation" in clause (d) and the words "judicial settlement" in clause (c) are interchanged, we find that the said clauses make perfect sense.**

**AFCONS**

**12. It will not be possible for a court to formulate the terms of the settlement, unless the judge discusses the matter in detail with both parties. The court formulating the terms of settlement merely on the basis of pleadings is neither feasible nor possible. The requirement that the court should formulate the terms of settlement is therefore a great hindrance to courts in implementing section 89 of the Code. This Court therefore diluted this anomaly in Salem Bar (II) by equating "terms of settlement" to a "summary of disputes" meaning thereby that the court is only required to formulate a `summary of disputes' and not `terms of settlement'.**

**AFCONS**

**TO CONSIDER  
RECOURSE TO ADR  
MANDATORY**



**OBJECTIVE ASSESSMENT OF  
CASE BEFORE REFERRAL**

**SUMMARY OF DISPUTES  
NATURE OF DISPUTES**

**ACTUAL REFERENCE  
TO ADR NOT  
MANDATORY**

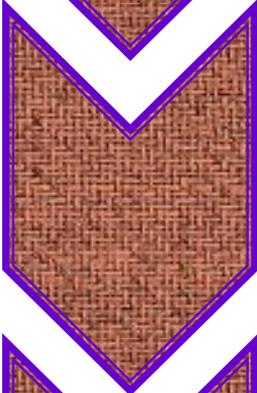
**15. Therefore the only practical way of reading Section 89 and Order 10, Rule 1-A is that after the pleadings are complete and after seeking admission/denials wherever required, and before framing issues, the court will have recourse to section 89 of the Code. Such recourse requires the court to consider and record the nature of the dispute, inform the parties about the five options available and take note of their preferences and then refer them to one of the alternative dispute resolution processes.**

**17. Therefore, having a hearing after completion of pleadings, to consider recourse to ADR process under section 89 of the Code, is mandatory. But actual reference to an ADR process in all cases is not mandatory. Where the case falls under an excluded category there need not be reference to ADR process. In all other case reference to ADR process is a must.**

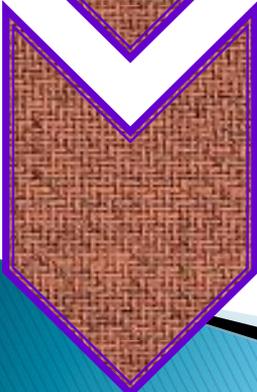
# CASES NOT SUITABLE FOR ADR



- **REPRESENTATIVE SUITS (ORDER I RULE 10)**



- **ELECTION TO PUBLIC OFFICES**



- **PROBATE/ LETTER OF ADMINISTRATION**



- **CRIMINAL OFFENCES**



- **FRAUD/FORGERY / IMPERSONATION**



- **MINORS/DEITIES/ MENTALLY CHALLENGED**



# CASES SUITABLE FOR ADR



## TRADE/COMMERCE/CONTRACTS

- CONSUMER/ RECOVERY /INSURANCE SPECIFIC

PERFORMANCE/BANKS/BUILDERS



## FAMILY DISPUTES

- MATRIMONIAL/MAINTENANCE/CUSTODY
- PARTITION/FAMILY MEMBERS



## PROPERTY/ESTATE

- INJUNCTION/POSSESSION/DIVISION OF PROPERTY/TENANCY



## COMMUNITY DISPUTES

- **NEIGHBOURS/HOUSING SOCIETIES**

## TORTIOUS LIABILITIES

- **MOTOR ACCIDENT CLAIMS/DAMAGES**
- **INTELLECTUAL PROPERTY**



## LABOUR DISPUTES

- **TERMINATION/WAGES/SERVICE CONDITIONS**

## CRIMINAL COMPOUNDABLE OFFENCES



# STAGE FOR REFERRAL

**AS PER SECTION 89  
READ WITH ORDER X  
RULE 1A CPC CASE BE  
REFERRED**

- AFTER COMPLETION OF PLEADINGS
- BEFORE FRAMING OF ISSUES

**CASE MAY BE  
REFERRED**

- AFTER FRAMING OF ISSUES
- AFTER COMMENCEMENT OF EVIDENCE

**REFERRAL IN  
FAMILY/MATRIMONIAL DISPUTES  
AFTER SERVICE OF RESPONDENTS  
AND  
BEFORE FILING OF WRITTEN  
STATEMENT**

**29. the stage at which the court should explore whether the matter should be referred to ADR processes, is after the pleadings are complete, and before framing the issues.**

**However, if for any reason, the court had missed the opportunity to consider and refer the matter to ADR processes under Section 89 before framing issues, nothing prevents the court from resorting to Section 89 even after framing issues.**

**30. in family disputes or matrimonial cases, the ideal stage for mediation will be immediately after service of respondent and before the respondent files objections/written statements.**

**AFCONS**



**CONSENT**

**ASCERTAIN  
WILLINGNESS**

**REFERRAL  
PREFERABLY WITH  
CONSENT OF PARTIES**

**FREE/ VOLUNTARY**

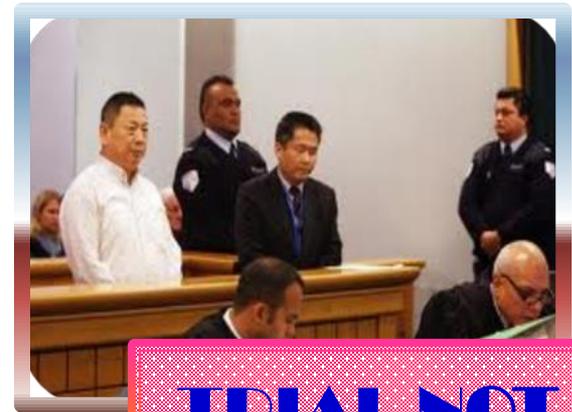
**CONSENT NOT MANDATORY**

**26. If the parties are not agreeable for either arbitration or conciliation, both of which require consent of all parties, the court has to consider which of the other three ADR processes (Lok Adalat, Mediation and Judicial Settlement) which do not require the consent of parties for reference, is suitable and appropriate and refer the parties to such ADR process.**

**AFCONS**



**TIME  
LIMIT**



**TRIAL NOT  
TO BE  
DISTURBED**



**TRIAL  
SCHEDULE**



**FIXED CASE  
FOR FURTHER  
STAGE**



**NO  
DELAY**

**ENCOURAGE  
LAWYERS/LITIGANTS**

**HIGHLIGHT PROCESS  
AND BENEFITS**

**ADDRESS CONFIDENTIALITY  
AND RIGHT OF SELF  
DETERMINATION**

**FIND PREVIOUS  
ATTEMPTS SETTLEMENT**

**ASCERTAIN CAUSE OF  
REFUSAL**



**MOTIVATING AND  
PREPARING  
PARTIES**

# POST MEDIATION

**IF ADR  
SUCCESSFUL**

**IF ADR FAILS**

**EXAMINE SETTLEMENT**

**DECREE AS PER ORDER 23 RULE  
3**

**IF SETTLEMENT  
INCLUDES NOT SUBJECT  
MATTER OF SUIT, APPLY  
S21, LEGAL SERVICES  
AUTHORITIES ACT, 1987**

**IF SETTLEMENT *ex facie*  
ILLEGAL/UNFORCEABLE  
DRAW ATTENTION OF PARTIES**

**PROCEEDS  
WITH  
TRIAL**

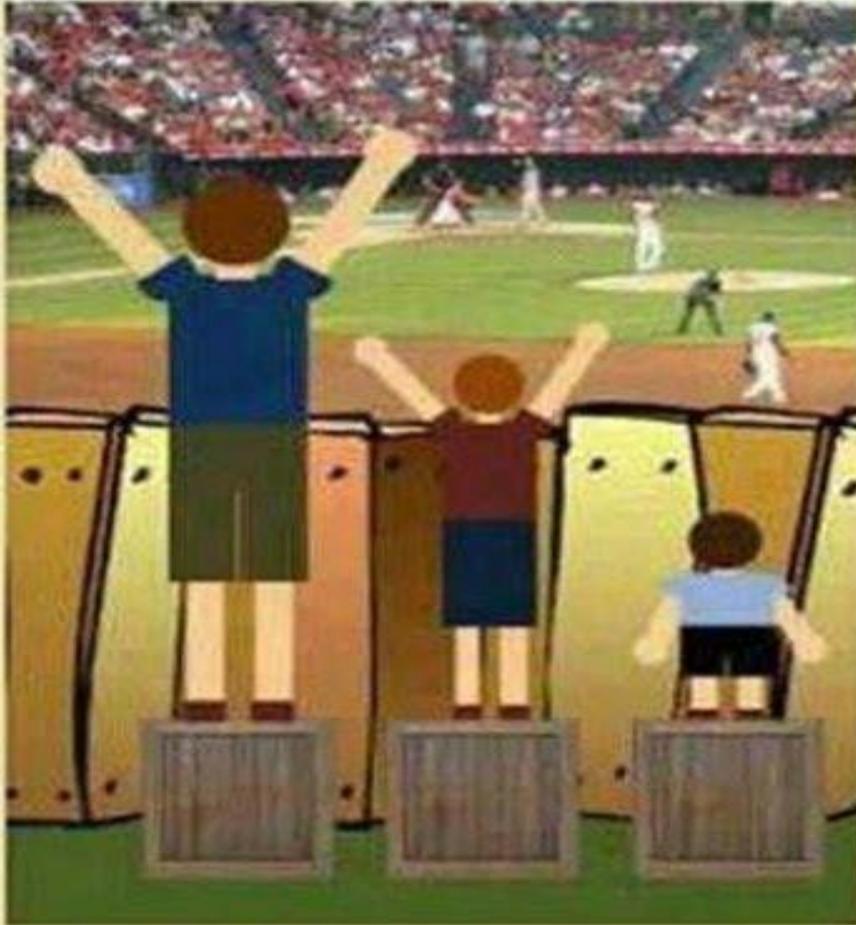
**FRESH  
EFFORTS  
FOR  
SETTLEMENT**

**28. Where the reference is to a neutral third party ('mediation' as defined above) on a court reference, though it will be deemed to be reference to Lok Adalat, as court retains its control and jurisdiction over the matter, the mediation settlement will have to be placed before the court for recording the settlement and disposal.**

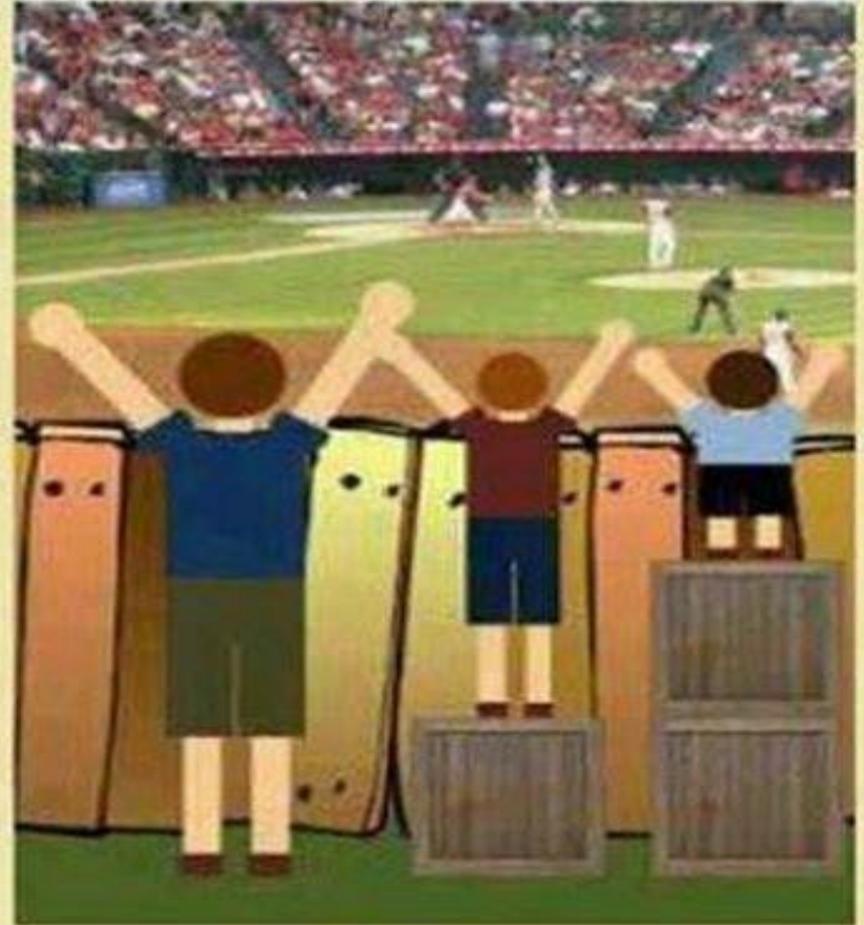
**Whenever such settlements reached before non-adjudicatory ADR Fora are placed before the court, the court should apply the principles of Order 23 Rule 3 of the Code and make a decree/order in terms of the settlement, in regard to the subject matter of the suit/proceeding. In regard to matters/disputes which are not the subject matter of the suit/proceedings, the court will have to direct that the settlement shall be governed by.....Section 21 of the Legal Services Authorities Act, 1987 (in respect of settlements by a Lok Adalat or a Mediator). Only then such settlements will be effective.**

**AFCONS**

# Equality doesn't mean Justice



**Equality**



**Justice**

**IF YOU COME AT ME WITH YOUR FISTS  
DOUBLED, I THINK I CAN PROMISE YOU THAT  
MINE WILL DOUBLE AS FAST AS YOURS; BUT  
IF YOU COME TO ME AND SAY,**

**“LET US SIT DOWN AND TAKE COUNSEL  
TOGETHER; AND IF WE DIFFER FROM ONE  
ANOTHER, (LET US) UNDERSTAND WHY IT IS  
THAT WE DIFFER FROM ONE ANOTHER (AND  
UNDERSTAND) JUST WHAT THE POINTS AT  
ISSUE ARE,”**

**WE WILL PRESENTLY FIND THAT WE ARE  
NOT SO FAR APART AFTER ALL, THAT THE  
POINTS ON WHICH WE DIFFER ARE FEW AND  
THAT IF WE ONLY HAVE THE PATIENCE AND  
THE CANDOR AND THE DESIRE TO GET  
TOGETHER, WE WILL GET TOGETHER.**

**WOODROW WILSON**

# **PLEA BARGAINING**

**EFFICIENCY IN CRIME INVESTIGATION, PROSECUTION AND TRIAL PROCESS FACING CRISIS OF CREDIBILITY**

**LOW CONVICTION RATE**

**OVER CROWDED CRIMINAL JUDICIAL SYSTEM**

**DIFFICULT TO SECURE EVIDENCE TO ESTABLISH CRIME THROUGH INVESTIGATION**

**PLEA BARGAINING ALTERNATIVE**

**PRE-TRIAL NEGOTIATIONS BETWEEN ACCUSED AND PROSECUTION**

**ACCUSED AGREES TO PLEAD GUILTY IN EXCHANGE FOR CERTAIN CONCESSIONS BY PROSECUTION**

## **CHARGE BARGAIN**

**PROSECUTION  
ALLOWS AN ACCUSED  
TO PLEAD GUILTY TO  
A LESSER CHARGE OR  
TO ONLY SOME OF  
CHARGES**

**NEGOTIATION WITH  
PROSECUTION AND  
REDUCE NUMBER OF  
CHARGES FRAMED  
AGAINST ACCUSED**

## **SENTENCE BARGAIN**

**ACCUSED CONVEYS IN  
ADVANCE WHAT HIS  
SENTENCE WILL BE IF HE  
PLEADS GUILTY**

**ALLOWS PROSECUTION TO  
OBTAIN A CONVICTION IN  
MOST SERIOUS CHARGE  
ASSURING ACCUSED AN  
ACCEPTABLE SENTENCE**

# • PLEA BARGAINING IN US

• SIXTH AMENDMENT TO US CONSTITUTION ENSHRINES FAIR TRIAL PRINCIPLE

• PRACTICE OF PLEA BARGAINING NOT MENTION

• CLASSIC CASE OF PLEA BARGAINING IS CASE OF ASSASSINATION OF MARTIN LUTHER KING JR

• IN 1969 ACCUSED JAMES EARL RAY PLEADED GUILTY TO MURDER OF MARTIN LUTHER KING JR TO AVOID DEATH PENALTY AND GOT 99 YEARS OF IMPRISONMENT

• SIGNIFICANT PART OF CRIMINAL JUSTICE SYSTEM

• ROUGHLY 90% OF CRIMINAL CASES SETTLED

• US SUPREME COURT IN BORDENKIRCHER V HAYNES, 397 U.S. 742 (1970) ACCEPTED CONSTITUTIONALITY

# • **LAW COMMISSION OF INDIA**

• **ADVOCATED INTRODUCTION OF PLEA BARGAINING IN 142ND, 154TH AND 177TH REPORTS**

## • **142ND REPORT**

• **SET OUT *IN EXTENSO* RATIONALE AND ITS SUCCESSFUL FUNCTIONING IN USA AND HOW STATUTORY SHAPE CAN BE GIVEN**

• **RECOMMENDED THAT BE APPLICABLE TO OFFENCES WHICH ARE PUNISHABLE WITH IMPRISONMENT OF LESS THAN SEVEN YEARS AND/OR FINE INCLUDING THE OFFENCES COVERED BY SECTION 320**

• **RECOMMENDED THAT PLEA BARGAINING CAN ALSO BE IN RESPECT OF NATURE AND GRAVITY OF OFFENCES AND QUANTUM OF PUNISHMENT**

• **OBSERVED THAT SHOULD NOT BE AVAILABLE TO HABITUAL OFFENDERS AND ACCUSED OF SOCIO-ECONOMIC OFFENCES OF GRAVE NATURE AND OFFENCES AGAINST WOMEN AND CHILDREN**

# 154TH REPORT

**RECOMMENDED DEALING WITH HUGE ARREARS OF CRIMINAL CASES.**

**RECOMMENDATION OF 154TH LAW COMMISSION REPORT WAS SUPPORTED AND REITERATED BY LAW COMMISSION IN ITS 177TH REPORT**

**REPORT OF COMMITTEE ON REFORM OF CRIMINAL JUSTICE SYSTEM, 2000 UNDER CHAIRMANSHIP OF JUSTICE (DR) MALIMATH**

**STATED EXPERIENCE OF UNITED STATES WAS AN EVIDENCE OF PLEA BARGAINING BEING A MEANS FOR DISPOSAL OF ACCUMULATED CASES AND EXPEDITING DELIVERY OF CRIMINAL JUSTICE**

**MALIMATH COMMITTEE RECOMMENDED THAT A SYSTEM OF PLEA-BARGAINING BE INTRODUCED INTO CRIMINAL JUSTICE SYSTEM OF INDIA TO FACILITATE EARLIER RESOLUTION OF CRIMINAL CASES AND REDUCE BURDEN ON COURTS**

# **JUDICIAL RESPONSE**

**TERMED AS IMMORAL COMPROMISE IN CRIMINAL CASES OR TRADING OUT IN INDIA**

**MORAL ISSUES DOMINATES CRITICISM**

**NOT IN FAVOUR DUE TO PREVAILING CIRCUMSTANCES**

**MURLIDHAR MEGHRAJ LOYA V. STATE OF MAHARASHTRA, AIR 1976 SC 1929**

**“...CALL PLEA BARGAINING‘, PLEA NEGOTIATION‘, TRADING OUT‘ AND COMPROMISE IN CRIMINAL CASES‘ AND THE TRIAL MAGISTRATE DROWNED BY A DOCKET BURDEN NODS ASSENT TO THE SUB ROSA ANTEROOM SETTLEMENT. THE BUSINESSMAN CULPRIT, CONFRONTED BY A SURE PROSPECT OF THE AGONY AND IGNOMINY OF TENANCY OF A PRISON CELL, TRADES OUT‘ OF THE SITUATION, THE BARGAIN BEING A PLEA OF GUILT, COUPLED WITH A PROMISE OF NO JAIL‘. THESE ADVANCE ARRANGEMENTS PLEASE EVERYONE EXCEPT THE DISTANT VICTIM, THE SILENT SOCIETY...”**

## **KACHHIA PATEL SHANTILALKODERLAL V. STATE OF GUJARAT AND ANR, 1980 CriLJ55316**

**PRACTICE OF PLEA BARGAIN AGAIN WAS STRONGLY DISAPPROVED BY OBSERVING THAT PRACTICE OF PLEA BARGAINING IS UNCONSTITUTIONAL, ILLEGAL AND WOULD TEND TO ENCOURAGE CORRUPTION, COLLUSION AND POLLUTE THE PURE FOUNT OF JUSTICE.**

## **KRIPAL SINGH V. STATE OF HARYANA**

**OBSERVED THAT NEITHER THE TRIAL COURT NOR THE HIGH COURT HAS JURISDICTION TO BYPASS THE MINIMUM SENTENCE PRESCRIBED BY LAW ON THE PREMISE THAT A PLEA BARGAIN WAS ADOPTED BY THE ACCUSED.**

## **KASAMBHAI V. STATE OF GUJARAT, AIR 1980 SC 854**

**EXPRESSED AN APPREHENSION OF LIKELY MISUSE.**

## **STATE OF UTTAR PRADESH V. CHANDRIKA, 2000 Cri.L.J 384 (386)**

**THE SUPREME COURT HELD THAT IT IS SETTLED LAW THAT ON THE BASIS OF PLEA BARGAINING COURT CANNOT DISPOSE OF THE CRIMINAL CASES. GOING BY THE BASIC PRINCIPLES OF ADMINISTRATION OF JUSTICE MERITS ALONE SHOULD BE CONSIDERED FOR CONVICTION AND SENTENCING, EVEN WHEN THE ACCUSED CONFESSES TO GUILT, IT IS THE CONSTITUTIONAL OBLIGATION OF THE COURT TO AWARD APPROPRIATE SENTENCE. COURT HELD IN THIS CASE THAT MERE ACCEPTANCE OR ADMISSION OF THE GUILT SHOULD NOT BE REASON FOR GIVING A LESSER SENTENCE. ACCUSED CANNOT BARGAIN FOR REDUCTION OF SENTENCE BECAUSE HE PLEADED GUILTY.**

# **SHIFT IN JUDICIAL THINKING**

**GUJARAT HIGH COURT RECOGNIZED UTILITY IN STATE OF GUJARAT V. NATWAR HARCHANDJI THAKOR , (2005) Cr.L.J. 2957, AS AN ALTERNATIVE MEASURE OF REDRESSAL TO DEAL WITH HUGE ARREARS IN CRIMINAL CASES.**

## **COURT REASONED THE CHANGE AS FOLLOWS**

**THE VERY OBJECT OF LAW IS TO PROVIDE EASY, CHEAP AND EXPEDITIOUS JUSTICE BY RESOLUTION OF DISPUTES, INCLUDING THE TRIAL OF CRIMINAL CASES AND CONSIDERING THE PRESENT REALISTIC PROFILE OF THE PENDENCY AND DELAY IN DISPOSAL IN THE ADMINISTRATION OF LAW AND JUSTICE, FUNDAMENTAL REFORMS ARE INEVITABLE. THERE SHOULD NOT BE ANYTHING STATIC. IT CAN THUS BE SAID THAT IT IS REALLY A MEASURE AND REDRESSAL AND IT SHALL ADD A NEW DIMENSION IN THE REALM OF JUDICIAL REFORMS.**

# **PLEA BARGAINING: AMENDMENT TO CRIMINAL LAW**

**PROCESS OF PLEA BARGAINING INTRODUCED IN 2005 BY THE CRIMINAL LAW (AMENDMENT) ACT, 2005 (ACT 2 OF 2006)**

**THE STATEMENT OF OBJECTS AND REASONS MENTIONS THAT, THE DISPOSAL OF CRIMINAL TRIALS IN THE COURTS TAKES CONSIDERABLE TIME AND THAT IN MANY CASES TRIALS DO NOT COMMENCE FOR AS LONG AS 3 TO 5 YEARS AFTER THE ACCUSED WAS REMITTED TO JUDICIAL CUSTODY.. THOUGH NOT RECOGNIZED BY THE CRIMINAL JURISPRUDENCE, IT IS SEEN AS AN ALTERNATIVE METHOD TO DEAL WITH THE HUGE ARREARS OF CRIMINAL CASES.**

**SECTION 4 INTRODUCED CHAPTER XXIA TO THE CODE HAVING SECTIONS 265 A TO 265 L WHICH CAME INTO EFFECT ON 5TH JULY, 2006**

# 265A

## **APPLICABLE**

**ACCUSED AGAINST WHOM THE REPORT FILED UNDER SECTION 173 OR PROCESS UNDER SECTION 204 ISSUED**

## **NOT APPLICABLE**

**OFFENCE PROVIDING PUNISHMENT OF DEATH OR OF IMPRISONMENT FOR LIFE OR OF IMPRISONMENT FOR A TERM EXCEEDING SEVEN YEARS**

**OFFENCE AFFECTS SOCIO-ECONOMIC CONDITION OF COUNTRY OR COMMITTED AGAINST A WOMAN OR A CHILD BELOW AGE OF FOURTEEN YEARS**

**JUVENILE OR CHILD AS DEFINED IN CLAUSE (K) OF SECTION 2 OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000(SECTION 265 L)**

## **PROCEDURE (265B)**

**APPLICATION BY ACCUSED MAY FILED IN COURT  
IN WHICH SUCH OFFENCE IS PENDING FOR TRIAL**

**APPLICATION SHALL CONTAIN A BRIEF  
DESCRIPTION OF CASE INCLUDING OFFENCE**

**AFFIDAVIT OF ACCUSED**

**VOLUNTARINESS**

**NATURE AND EXTENT OF PUNISHMENT  
UNDERSTOOD**

**PLEA BARGAINING**

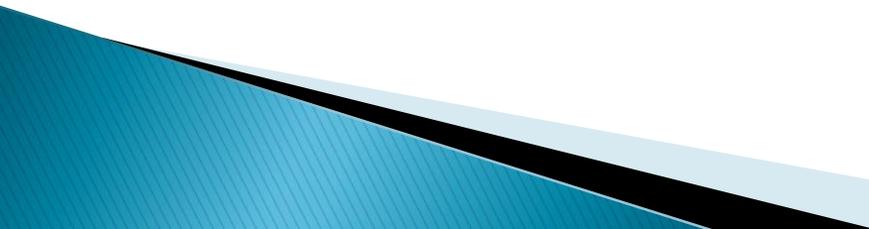
**NOT PREVIOUSLY CONVICTED WITH SAME  
OFFENCE**

**NOTICE ISSUED TO PUBLIC PROSECUTOR OR  
COMPLAINANT OF CASE AND TO ACCUSED FOR  
APPEARANCE**

**COURT EXAMINES ACCUSED IN CAMERA TO SATISFY  
VOLUNTARINESS**

**TIME GIVEN TO PUBLIC PROSECUTOR OR  
COMPLAINANT AND ACCUSED FOR A MUTUALLY  
SATISFACTORY DISPOSITION OF CASE INCLUDING  
COMPENSATION AND OTHER EXPENSES TO ACCUSED**

**APPLICATION INVOLUNTARILY OR ACCUSED  
PREVIOUSLY CONVICTED WITH SAME OFFENCE  
THEN FURTHER TRIAL PROCEEDED**



# **265C GUIDELINES AND PROCEDURE FOR MUTUALLY SATISFACTORY DISPOSITION**

## **CASE INSTITUTED ON A POLICE REPORT**

**COURT SHALL ISSUE NOTICE TO PUBLIC PROSECUTOR, INVESTIGATING OFFICER, ACCUSED AND VICTIM FOR PARTICIPATION**

**VOLUNTARINESS OF PARTIES BE ENSURED**

**ACCUSED MAY PARTICIPATE WITH HIS PLEADER**

**(ACCUSED + VICTIM + IO + PUBLIC PROSECUTOR + PLEADER, IF PARTIES DESIRES)**

## **CASE INSTITUTED OTHERWISE THAN ON POLICE REPORT**

**COURT SHALL ISSUE NOTICE TO ACCUSED AND VICTIM OFFOR PARTICIPATION**

**VOLUNTARINESS OF PARTIES BE ENSURED**

**ACCUSED MAY PARTICIPATE WITH HIS PLEADER**

**(ACCUSED + VICTIM + PLEADER, IF PARTIES DESIRES)**

**265D**

**REPORT OF THE MUTUALLY SATISFACTORY  
DISPOSITION**

**COURT SHALL PREPARE A REPORT OF  
MUTUALLY SATISFACTORY DISPOSITION**

**SIGNED BY PRESIDING OFFICER OF THE  
COURT AND PARTICIPATING PERSONS**

**COURT SHALL RECORD OBSERVATION IF NO  
SUCH DISPOSITION AND PROCEED FURTHER**



## **265E. DISPOSAL OF CASE**

**COMPENSATION TO THE VICTIM**

**PARTIES BE HEARD ON QUANTUM OF PUNISHMENT**

**RELEASE ON PROBATION OF GOOD CONDUCT**

**ADMONITION UNDER SECTION 360**

**DEAL ACCUSED UNDER PROBATION OF OFFENDERS ACT,  
1958(20 OF 1958)**

**ANY OTHER LAW FOR TIME BEING IN FORCE**

**PROCEDURE FOR IMPOSING PUNISHMENT ON ACCUSED  
FOLLOWED**

**IF MINIMUM PUNISHMENT, ACCUSED SENTENCED TO  
HALF OF SUCH MINIMUM PUNISHMENT**

**OTHERWISE ONE-FOURTH OF PUNISHMENT PROVIDED**

**265E & F**

**JUDGMENT DELIVERED IN THE OPEN COURT AND SIGNED BY PRESIDING OFFICER**

**265G**

**JUDGMENT FINAL AND NO APPEAL EXCEPT THE SPECIAL LEAVE PETITION UNDER ARTICLE 136 AND WRIT PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION)**

**265H**

**COURT HAVE POWERS OF BAIL, TRIAL OF OFFENCES AND OTHER MATTERS RELATING TO THE DISPOSAL OF A CASE**

**265-I**

**BENEFIT OF SECTION 428**

**265K**

**STATEMENTS OR FACTS STATED BY AN ACCUSED SHALL NOT BE USED FOR ANY OTHER PURPOSE**

## **ROLE OF COURT**

- ▶ **ASCERTAIN VOLUNTARINESS/FAIR PLAY BETWEEN PARTIES AND PROCESS**
- ▶ **FACILITATION**
- ▶ **ENSURE NO MISUSE OF PROCESS**
- ▶ **HEAR ON POINT OF SENTENCE AND DECIDE QUANTUM OF SENTENCE**
- ▶ **NO ACTIVE PARTICIPATION BUT GUIDANCE AND SUPERVISION**
- ▶ **MAINTAIN CONFIDENTIALITY**

## **“PLEA OF GUILTY” AND “PLEA BARGAINING”**

**SUB-SECTION (2) OF SECTION 240 PROVIDES THAT THE CHARGE SHALL THEN BE READ AND EXPLAINED TO THE ACCUSED AND HE SHALL BE ASKED AS TO WHETHER HE PLEADS GUILTY OF THE OFFENCE CHARGED OR CLAIMS TO BE TRIED. SECTION 241 PROVIDES THAT IF THE ACCUSED PLEADS GUILTY MAGISTRATES SHALL RECORD THE PLEA AND MAY IN HIS DISCRETION CONVICT HIM THEREON. NOW, IT IS NOT OBLIGATORY ON THE PART OF THE MAGISTRATE TO CONVICT HIM EVEN IF THE ACCUSED PLEADS GUILTY, HE MAY PROCEED WITH THE TRIAL.**

**EVERY "PLEA OF GUILTY" DURING THE COURSE OF OBSERVANCE OF THE MANDATORY PROCEDURE PRESCRIBED IN CODE AND PARTICULARLY IN SECTIONS 228(2), 240(2), 252 AND ALSO IN SECTION 253 FOR THE TRIAL OF CASE BY THE MAGISTRATES, WHEN PLEA OF GUILTY IS RECORDED AS PER THE PROCEDURE PRESCRIBED CANNOT BE SAID TO BE A "PLEA BARGAINING".**

**AHMADABAD HIGH COURT IN [STATE OF GUJARAT V NATWAR HARCHANDJI THAKOR , 2005 CRILJ 2957](#) BROUGHT OUT DISTINCTION BETWEEN PLEA OF GUILTY AND PLEA BARGAINING THE COURT SAID THAT BOTH THINGS SHOULD NOT HAVE BEEN TREATED AS THE SAME AND COMMON.**

# **ADVANTAGES**

## **TIME SAVING**

**REDUCES DELAY, BACKLOG OF CASES  
SPEEDY DISPOSAL  
SAVES COURTS TIME**

## **REDUCING CONGESTION IN PRISONS**

## **RAISES CONVICTIONS ENSURING CREDIBILITY**

## **COMPENSATION TO VICTIMS**

## **VICTIMS NEED NOT GET INVOLVED AS WITNESS**

**ACCUSED MIGHT GET HALF OF MINIMUM PRESCRIBED PUNISHMENT OR ONE FOURTH OF PUNISHMENT PRESCRIBED OR RELEASED ON PROBATION OR AFTER ADMONITION OR GET CONCESSION OF CONSIDERING PERIOD OF UNDERGONE IN CUSTODY AS SUFFERING SENTENCE UNDER SECTION 428 OF CRPC**

## **RELIEVED OF APPEALS**

## **ADMISSION NOT USED FOR ANY OTHER PURPOSE**

# **DISADVANTAGES**

**SOFT FOR ACCUSED**

**ALTERNATIVE WAY OF LEGALIZATION OF CRIME TO SOME EXTENT**

**PROSECUTION OVERCHARGES ACCUSED**

**SHORTCUT TO REDUCE NUMBER OF UNDER-TRIAL PRISONERS**

**INCREASES CONVICTIONS WITH OR WITHOUT JUSTICE**

**INNOCENTS MAY BE PAID BY ACTUAL PERPETRATORS OF CRIME**

**COERCION NOT RULED OUT AS POLICE IS INVOLVED**

**DERAILMENT OF TRIAL**

**COURT MAY NOT STRICTLY ADHERE TO OR DEPART FROM THE REQUIREMENT OF PROOF OF BEYOND REASONABLE DOUBT**

**ACCUSED GIVE UP CONSTITUTIONAL RIGHTS AND PLEAD GUILTY**



# **DUTY OF DEFENCE COUNSEL**

**ACCUSED ENTITLED TO EFFICIENT, FAIR AND HONEST  
ADVICE FROM DEFENSE COUNSEL IN PLEA  
BARGAINING.**

## **US SUPREME COURT DECISIONS**

**IN MISSOURI V. FRYE, NO. 10-444 (2012), THE US  
SUPREME COURT FOUND THAT A DEFENSE ATTORNEY  
HAD A DUTY TO CONVEY ALL WRITTEN PLEA OFFERS  
TO THE CRIMINAL DEFENDANT AND THE FAILURE TO  
DO AMOUNTS TO INEFFECTIVE ASSISTANCE OF  
COUNSEL AND A VIOLATION OF THE DEFENDANT'S  
SIXTH AMENDMENT RIGHTS.**

**IN LAFLER V. COOPER, NO. 10-209 (2012) THE COURT  
HELD THAT BAD ADVICE FROM DEFENSE COUNSEL  
ABOUT WHETHER OR NOT TO TAKE A PLEA  
AGREEMENT MAY AMOUNT TO INEFFECTIVE  
ASSISTANCE OF COUNSEL AND A VIOLATION OF THE  
DEFENDANT'S SIXTH AMENDMENT RIGHTS.**

## **cases of plea bargaining**

**Plea Bargaining was claimed on the ground of old age BUT REJECTED IN Corruption CASE. Plea bargaining may please everyone except the distant victims and the silent society.**

**A person who was accused of supplying substandard material to ONGC causing immense losses sought the plea bargaining. The trial court rejected but was allowed by high court.**

**David Headley Case: Pakistani-American David Headley ,LeT operative, charged with conspiracy in the Mumbai terror attacks, has pleaded guilty before a US court to bargain for a lighter sentence to avoid capital punishment. He was arrested by FBI in October 2009.**

**David Headley has moved the plea bargain at a court in Chicago. He was facing six counts of conspiracy involving bombing public places, murdering and maiming persons in India and providing material support to foreign terrorist plots and LeT; and six counts of aiding and abetting the murder of US citizens in India.**

## PLEA BARGAINING IN 304A CASES AND SENTENCING

In *Ranbir Singh v State*, the Petitioner challenged sentencing accused to imprisonment for six months besides penalty of Rs.5000 under Section 304A IPC and in default to undergo an additional imprisonment for one month and also the sentence to pay the fine of Rs. 5,000/- under Section 279 IPC and in default of payment of fine to undergo Simple Imprisonment for one additional month in a case where the Petitioner had entered into plea bargaining. The Trial Court has power to direct the sentence for imprisonment of 1/4th of the sentence provided if an accused enters into plea bargaining however, while awarding the sentence of 1/4th of the sentence provided the learned Trial Court is bound to look into the mitigating circumstances. None of the mitigating circumstances were considered while awarding the maximum punishment. Petitioner is the only bread earner and has two minor children and old parents to support. Despite being poor the Petitioner gave an amount to the satisfaction of the victims. He has also placed on record the affidavit of the legal heirs of the deceased to state that the parties have entered into a settlement and no dispute remains between them. The prosecution on the other hand contended that the offences under Section 304A IPC of killing by rash and negligent driving are on the rise and stern action was needed for deterrent effect. Even Section 265E Cr. P.C. permitted the Court to award a sentence to 1/4th of the punishment provided even on the mutually satisfactory deposition being arrived at between the parties. Moreover the judgment by the trial court is final and no appeal lies against it as prescribed under Section 265G of the Code. Delhi High Court held that —though it cannot be said that in view of these mitigating circumstances the Petitioner should not be awarded any imprisonment and should be let off, however, he should not have been awarded the maximum punishment as done by the learned Trial Court. The court modified the sentence to four months imprisonment under Section 304A IPC and a fine of Rs. 1,000/- Section 279 IPC and in default to undergo Simple Imprisonment for a period of one week.

# **CONCLUSION**

**DISPUTED CONCEPT AND DOUBTFUL PRACTICE**

**INEVITABLE COMPONENT OF ADVERSARIAL SYSTEM**

**MECHANISM OF CONVENIENCE AND MUTUAL BENEFIT THAN AN ISSUE OF MORALITY, LEGALITY OR CONSTITUTIONALITY**

**SWIFT AND INEXPENSIVE RESOLUTION OF CASES**

**POLICE, JUDICIARY AND BAR NEED TO UNDERSTAND**

**DEFENCE ADVOCATES TO ENCOURAGE LITIGANT TO OPT FOR PLEA BARGAINING**

**CAPACITY BUILDING OF POLICE AND JUDGES PRE-REQUISITE**

**BE GIVEN A CHANCE OF SURVIVAL**

**BE ACCEPTED AS ONE OF REQUIRED MEASURES FOR SPEEDING UP CASELOAD DISPOSITION**

**STUDY OF WORKING, IMPACT ON CRIME RATE, CONVICTION RATE AND EFFECT ON RULE OF LAW**

**NEED FOR A RADICAL CHANGE**

# ADR MECHANISMS AT A GLANCE

## LOK ADALATAS (AS ON 31.12.2011)

LOK ADALATS : 9,95,622

CASES SETTLED : 3,58,71,146

## MEDIATION( AS ON 31.07. 2011)

TRAINING PROGRAMMES : 330

REFERRAL JUDGES/  
AWARENESS PROGRAMME : 1117

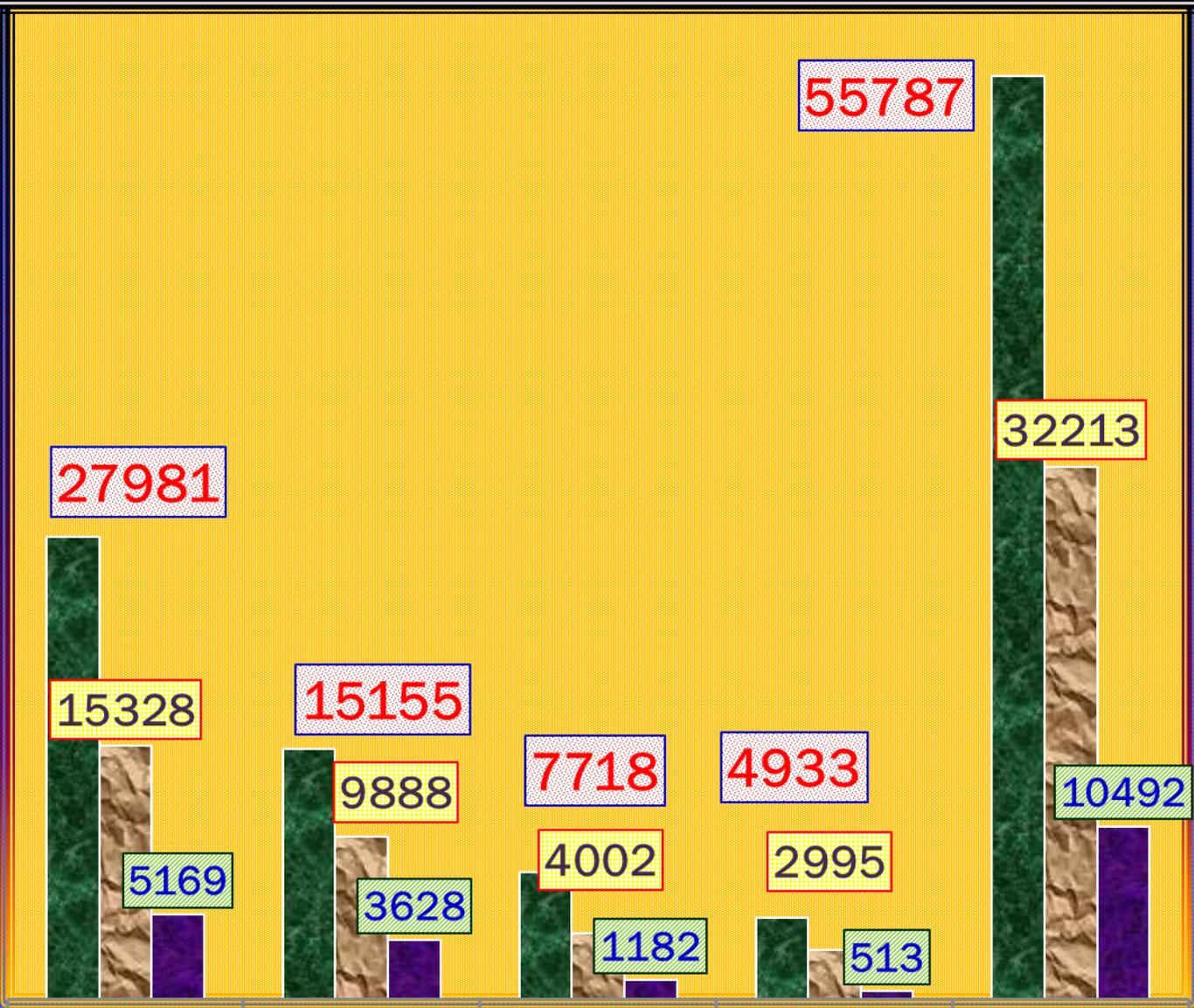
MEDIATION CENTERS : 537

TRAINED MEDIATORS : 4541

REFERRED CASES : 157203

SETTLED CASES : 71866

NATIONAL SUCCESS RATE : 45.72%



- REFERRED**
- SETTLED**
- CONNECTED**

**TIS  
HAZARI**

**KKD**

**ROHINI**

**DWARKA**

**TOTAL**