

A victim-sensitive approach towards victim – offender mediation in crimes: an analysis

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Abstract: Victim-offender mediation has experienced significant recent growth. Such mediation is a by-product of restorative justice theory, which downplays the need of punishing perpetrators severely in favour of assisting victims in obtaining justice and closure. The UN Declaration on Basic Principles of Justice for the Victims of Crime and Abuse of Power, adopted in 1985, calls for the use of informal procedures, such as mediation, arbitration, and the adoption of indigenous practices, to settle disputes and offer reparations to crime victims. The results of using a victim-sensitive approach to mediation are examined in this research. It intends to highlight the expense of setting up and operating restorative justice programmes in relation with criminal justice, as well as the major ethical and professional concerns involved. While addressing a number of crucial challenges for criminal justice, the paper also places these findings within the expanding international academic and policy debates concerning restorative justice.

Keywords: Victim. Sensitive. Mediation. Mediation in crime.

Summary: Introduction – Main text – Historical Development of Victim Offender Mediation – Best practices of VOM Programme in different jurisdiction – United States – Canada – Australia – Germany – France – Position in India – Role of victim-offender mediation in the criminal context – Guiding principles for Victim-Sensitive approach towards VOM – Final considerations – References

Objectives

The objective of the paper are as follows:

- Restorative justice for adult offenders may involve the community;
- What are the benefits of conferencing and mediation as restorative justice practices for adults in various jurisdictions?
- What is a better practical approach to VOM for the better implementation of restorative justice?

Summary: Restorative justice is a victim-centered approach to criminal justice that allows those most harmed by a criminal act to participate actively in repairing the harm that was done. Victim-offender mediation is a good step in the right direction since it enables the integration of ADR techniques into the criminal justice system.

The use of victim-offender mediation is growing fast. 75% of the mediation programmes had their origins in the 1980s and 1990s. Restorative justice principles are fundamental concepts within Christianity and Judaic faiths. These communities also began to actively implement and promote restorative practices. “The National Survey of Victim-Offender Mediation Programs” in the United States provides details on the features of the many victim-offender mediation programmes. It also compiles a comprehensive list of all victim offender mediation programmes that have been established in the nation along with contact details like addresses and phone numbers. The Restorative Justice (RJ) Unit of the Canadian Correctional Service (CSC) provides a secure and beneficial mechanism for victims and offenders to interact. With a focus on ensuring that offenders comprehend the human costs associated with their crimes, RO is a CSC-funded effort. Victim support services may offer victim/offender mediation as needed. Free, impartial, and private mediation will take place. A person who has been hurt in an incident (the complainant) and the person who caused it (the defendant) meet face-to-face during justice mediation. Victim-offender mediation (VOM) programmes in Germany are most frequently used in the criminal court system. The Victorian programme is restricted to situations where adults admit to committing property crimes. Since 1991, the juvenile criminal code specifically refers to TOA/VOMP as a court sanction. The French law formalised criminal mediation in 1993, and the Act of March 9, 2004 revised it further. The mediator (who may be a judge, police officer, prosecutor’s representative, or another person) works to ensure that the victim will be compensated for their losses and that the offence will no longer cause a nuisance. Mediation is not governed by law in India, but covered by a number of other statutes. The purpose of the bill is to encourage, facilitate, and advance institutional mediation. It also suggests requiring mediation before court proceedings. In some circumstances, immunity is granted to prevent revelation of the mediation process’s contents. The Mediation Council of India is established under the Bill, which also includes provisions for communal mediation. If there is a mediation agreement exist between the parties, the Bill mandates pre-litigation mediation. A Mediation Settlement Agreement (MSA) will be enforceable in court and can be registered within 90 days. It would be foolish to rule out the use of mediation in all criminal issues, despite the fact that it is generally viewed as an inappropriate remedy in criminal cases. Records show that mediation has been effective in cases involving adolescent delinquency and less serious offences. Even in India, judges have recommended mediation in cases of check bounce and divorce conflicts including criminal ones. Sherrif Elnegahya argues that a court only permits legal remedies, such as apologies, and that it has no place for extra-legal remedies. Legal systems can, however, get over these restrictions by practicing creative justice. The main manifestation of this type of justice is called mediation. The “Guidelines for Victim-Sensitive Victim

Offender Mediation: Restorative Justice Through Dialogue” is published by the U.S. Department of Justice. The first of six publications aims to help administrators improve their restorative justice programmes. It offers advice on how to facilitate fair and impartial mediation, which will protect everyone’s safety and honour. Victim-offender mediation is not a replacement for punishment in circumstances of violent crime. It provides a way to recover and a sense of closure that cannot be attained by punitive measures alone. The procedure can be used successfully in cases involving social justice and less serious criminal offences. Victim-offender mediation has many advantages over going to court. It gives victims a voice and elevates the sense of justice that one might not experience in a trial. The juvenile justice act would be strengthened if mediation were included in cases involving young offenders. Every victim is not required to take part in victim-offender mediation, family group conferencing, or any other restorative justice intervention. Each victim must decide whether or not to participate on a personal level. Victims should have the freedom to choose the session’s venue and start time, as well as the option to withdraw at any time.

Introduction

Restorative justice is a victim-centered approach to criminal justice that allows those most harmed by a criminal act which includes the victim, their families, and community to participate actively in repairing the harm that was done. Victim-offender reconciliation, also known as victim offender mediation, is a type of restorative justice that focuses on bringing victims and offenders together and integrating them into the criminal justice system. Most people mistakenly believe that it merely involves victim and offender speaking face to face. However, it goes much beyond that. For those involved in or impacted by horrific criminal offences, there is the Victim Offender Mediation Program (VOMP). After release from prison, the “mediator” supports and fosters a therapeutic conversation between the parties rather than getting involved and mediating. They give both the victim and the perpetrator the ability to address the problems, repercussions, and worries related to a crime. They answer any queries or worries about the offender’s future release back into society. In order to hold the offender responsible for his actions, victims are given the opportunity to confront their attacker in a controlled and safe environment. Victim-offender mediation is a good step in the right direction since it enables the integration of ADR techniques into the criminal justice system. Preliminary discussions normally follow the parties’ voluntary acceptance of the mediation, which occurs at the outset. The victim would be permitted to question the criminal at this point. The perpetrator may admit to the offence and, in most situations, express sorrow, remorse, and acceptance of responsibility.

Main text

Historical Development of Victim Offender Mediation

The use of victim-offender mediation is growing quickly as a result of the expansion of both restitution and the victims movement: approximately 75% of the mediation programmes currently in existence had their origins in this decade. This amazing development has been noticeable around the world and across a range of socioeconomic and cultural circumstances. The history of victim offender mediation, also known as criminal court mediation by some, dates back many years to the province of Ontario in Canada.¹ A few miles north of Kitchener, Ontario, in Elmira, an experiment that would eventually lead to the global development of a new justice reform, began in May 1974. Since that time onwards various similar programs have been initiated across Canada and globally. Some basic principles of restorative justice, such as compassion and reparation, which are fundamental concepts within Christianity and Judaic faiths and, as such, these communities also began to actively implement and promote restorative practices.² More than twenty other Canadian jurisdictions now operate victim offender mediation and reconciliation programmes, many of which are run as “alternative measures” in accordance with the “Canadian Young Offenders Act of 1984”. Similar initiatives quickly developed in the United States after that. In 1978, “the Mennonite Central Committee”, probation officers, and a local judge in Elkhart, Indiana, started taking cases, which marked the beginning of VORP in the United States. In addition to the twenty six programmes in Canada, there were roughly 150 victim offender mediation or reconciliation programmes operating in the United States by the middle of the 1990s, and word of these programmes and efforts to replicate them started to spread internationally.

Best practices of VOM Programme in different jurisdiction

United States

Only a small number of victims from a few different areas took part in the early victim-offender mediation (VOM) programmes in the US when they started in the late 1970s.³ Today, VOM programmes serve thousands of crime victims across

¹ Justice.gc.ca. 2022. 3. *EMPIRICAL RESEARCH RESULTS – The Effects of Restorative Justice Programming: A Review of the Empirical*. [online] Available at: https://justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr00_16/p3.html [Accessed 7 October 2022].

² (3. *EMPIRICAL RESEARCH RESULTS - The Effects of Restorative Justice Programming: A Review of the Empirical*, 2022).

³ Ncjrs.gov. 2022. *National Survey of Victim-Offender Mediation Programs in the United States*. [online] Available at: https://www.ncjrs.gov/ovc_archives/reports/national_survey/natsurv3.html [Accessed 7 October 2022].

over 300 cities worldwide.⁴ “The Center for Restorative Justice & Peacemaking (formerly the Center for Restorative Justice& Mediation), School of Social Work, University of Minnesota”, received a grant from the “Office for Victims of Crime (OVC)” within the Office of Justice Programs of the “U.S. Department of Justice” (DOJ) in 1996 to assess the extent of this service’s use and to advance victim-sensitive mediation techniques.⁵ A significant programmatic intervention in the US that fully embraces the principles of restorative justice is victim-offender mediation. “The National Survey of Victim-Offender Mediation Programs” in the United States provides details on the features of the many victim-offender mediation programmes that are in existence across the country as well as the main challenges they face on a daily basis. Additionally, the Directory of Victim-Offender Mediation Programs in the United States compiles a comprehensive list of all victim offender mediation programmes that have been established in the nation along with contact details like addresses and phone numbers. The Directory’s main function is to make it simple for people to get in touch with a certain application. Programs for victim-offender mediation usually train the local volunteers to act as mediators. The average training time for staff or volunteer mediators is around 31 hours, while some of the survey’s participating organisations indicated much longer training times of up to 89 hours.⁶

Canada

The Restorative Justice (RJ) Unit of the Canadian Correctional Service offers a secure and beneficial mechanism for victims and offenders to interact and discuss the harms brought on by major crimes.⁷ The Restorative Opportunities (RO) programme allows for this across Canada. The bulk of requests were initially made by institutional employees who identified possible appropriate offenders.⁸ However, the number of recommendations that victims have received for this programme has significantly increased. With a focus on ensuring that offenders comprehend the human costs associated with their crimes, address the harms, and, as agreed upon by both the victim and the offender, restore some of the damage, RO is a

⁴ United States Courts. 2022. *The Impact of Victim-Offender Mediation—Two Decades of Research*. [online] Available at: <https://www.uscourts.gov/federal-probation-journal/2001/12/impact-victim-offender-mediation-two-decades-research> [Accessed 7 October 2022].

⁵ Ncjrs.gov. 2022. [online] Available at: https://www.ncjrs.gov/ovc_archives/reports/restorative_justice/restorative_justice_ascii_pdf/ncj176350.pdf [Accessed 7 October 2022].

⁶ Ncjrs.gov. 2022. *National Survey of Victim-Offender Mediation Programs in the United States*. [online] Available at: https://www.ncjrs.gov/ovc_archives/reports/national_survey/natsurv5.html [Accessed 7 October 2022].

⁷ Csc-scc.gc.ca. 2022. *Restorative Opportunities - Victim-Offender Mediation Services*. [online] Available at: <https://www.csc-scc.gc.ca/restorative-justice/003005-1001-eng.shtml> [Accessed 7 October 2022].

⁸ 2022. [online] Available at: <https://journals.sagepub.com/doi/10.1177/002087289904200209> [Accessed 7 October 2022].

CSC-funded effort. Having the inquiries and needs of victims attended to by those who are involved directly is an important step in giving victims with options for assistance.⁹ Each request for assistance is carefully examined to evaluate whether the intervention is necessary and whether the participants are prepared to continue communicating. If the other party is unavailable, reluctant to join, or if either side's motivation is deemed improper for the programme, some of these requests may be filtered out. Others will be managed through indirect communication, including letter and/or videotape exchanges and shuttle communication. Finally, some will be postponed to give more time for planning.¹⁰

Australia

New South Wales: The Victim-Offender Conferences, which take place when an adult offender is sentenced, are one of the restorative processes that the Restorative Justice Unit specialises in facilitating.¹¹ A victim-offender conference occur will if the perpetrator acknowledges guilt for the offence and both the victims and the perpetrator consent to attend.

Tasmania: Victim support services may offer victim/offender mediation as needed. Requests for victim-offender mediation may come from the victim of the crime, the victim's family, or the offender. Ensure that the offender and victim are prepared and able to participate in mediation.¹² Learn what each party expects from mediation. Determine whether each party's expectations are reasonable and likely to be met. Ascertain, to the extent possible, that the process will be advantageous to all parties. Ascertain that no one's safety is jeopardised.

Western Australia: Between victims of crime and criminals, the Victim-Offender Mediation Unit (VMU) offers a mediation service. Both adult and juvenile criminals, as well as the victims of their crimes, may use this programme. Free, impartial, and private mediation will take place.¹³

Queensland: A person who has been hurt in an incident (the complainant) and the person who caused it meet face-to-face during justice mediation (the defendant). It is free, confidential, and optional. When a victim, victim's family, or

⁹ Justice.gc.ca. 2022. [online] Available at: https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr00_16/rr00_16.pdf [Accessed 7 October 2022].

¹⁰ Csc-scc.gc.ca. 2022. *Restorative Opportunities – Victim-Offender Mediation Services*. [online] Available at: <https://www.csc-scc.gc.ca/restorative-justice/003005-1001-eng.shtml> [Accessed 7 October 2022].

¹¹ 2022. [online] Available at: https://www.jstor.org/stable/1147608#metadata_info_tab_contents [Accessed 7 October 2022].

¹² Justice.tas.gov.au. 2022. *Victims rights | Victims Support Services*. [online] Available at: <https://www.justice.tas.gov.au/victims/victims-rights> [Accessed 7 October 2022].

¹³ Victim services for victims and offenders, Government of Western Australia, <https://www.wa.gov.au/service/community-services/counselling-services/victim-services-victims-and-offenders> (last visited Oct 7, 2022).

offender requests to meet the other party after the court process is over, the Justice Mediation Program will accept the referral.¹⁴ Typically, these demands relate to heinous crimes like manslaughter and murder. They call for a different procedure and can occur at any point following sentencing. The senior Justice Mediation Program staff typically handles the case management and conducts these mediations. They do not happen very often and usually involve offenders who are in prison or on parole.

Victoria: The Victorian programme is restricted to situations in which adults admit to committing property crimes, and mediation is not available for some violent crimes including sexual offences and domestic violence. The programme is a pre-sentence option rather than a replacement for judicial proceedings.¹⁵

Germany

In contrast to other nations, particularly common law jurisdictions, victim-offender mediation (VOM) programmes in Germany are most frequently used in the criminal court system. However, a number of provisions in the German (Juvenile) Criminal Code enable victim-offender mediation to be taken into account during the judicial decision-making process. Since 1991, the juvenile criminal code specifically refers to TOA/VOMP as a court sanction.¹⁶ If the young person makes a sincere effort at victim-offender reconciliation, the district attorney, who serves as the public prosecutor, may also choose not to initiate a formal process. Even though the common law systems offer much more options, the legality principle in German law (section 152 StPO/German Criminal Procedure Code) concerning to adult offenders does not authorization for extensive use of discretionary power within law enforcement. However, there are some extraordinary situation for mandatory prosecution that expressly refer to VOM.

France

Contrary to American efforts, penal (or victim-offender) and community mediation are relatively new occurrences in France, with the first projects starting in the middle of the 1980s.¹⁷ A few French organisations started to try mediation in criminal cases in the middle of the 1980s with the help of a few magistrates,

¹⁴ *Victim Services for victims and offenders*, Western Australian Government www.wa.gov.au/service/community-services/counselling-services/victim-services-victims-and-offenders. [Accessed 7 October 2022].

¹⁵ citeseerx.ist.psu.edu/viewdoc/download. [Accessed 7 October 2022].

¹⁶ *410 Gone*, classic.austlii.edu.au/au/journals/BondLawRw/2001/16.html.

¹⁷ *Penal and Community Mediation: The Case of France*, SpringerLink link.springer.com/chapter/10.1007/978-94-015-8064-9_11.

taking inspiration from North American initiatives.¹⁸ The law formalised penal mediation on January 4, 1993, and the Act of March 9, 2004 revised it. The mediator (who may be a judge, a police officer, the prosecutor’s representative, or another person) works to bring the parties together in order to ensure that the victim will be compensated for their losses, that the offence will no longer cause a nuisance, and that the offender will be reclassified. The mediator (who may be a judge, a police officer, the prosecutor’s representative, or another person) works to bring the parties together in order to ensure that the victim will be compensated for their losses, that the offence will no longer cause a nuisance, and that the offender will be reclassified.

Prior to any judicial procedures, a penal mediation may only be started by the prosecutor. As a “delegate of the prosecutor,” the mediator is able to establish and sign “official minutes” with the parties, which is known as a “requisition” in the French model provided by the Ministry of Justice.

Only the prosecutor has the authority to begin a criminal mediation before any judicial processes. The mediator has the authority to create and sign “official minutes” with the parties as a “delegate of the prosecutor,” which in the French model provided by the Ministry of Justice is known as a “requisition”. The official minutes have the same legal weight as an official decision or ruling and are binding. It must be made clear that this only applies to minor offences.¹⁹ The mediator meets with the offender and victim, who are both welcome to request legal representation if they so choose. The parties will attempt to settle their dispute amicably with the assistance of the prison mediator. If a settlement is achieved, the mediator creates a written agreement that both the offender and the victim sign.²⁰ The mediator checks that the conditions of the agreement are being followed and gives the prosecutor a report on the mediation’s results.

Position in India

Despite being effective in other nations, mediation has not been able to advance much in India, mostly because people are not aware of mediation and its advantages. In December 20, 2021, the “Mediation Bill, 2021” was introduced in the Rajya Sabha, and the Parliamentary Standing Committee was tasked with reviewing the Bill. The Rajya Sabha received the committee’s report on 13th July, 2022.²¹ In its report, the Committee makes significant recommendations

¹⁸ *The Double Life of Victim-Offender Mediation in France*, ArbitrationLaw.com arbitrationlaw.com/library/double-life-victim-offender-mediation-france-wamr-2005-vol-16-no-7.

¹⁹ http://en.wikimeditation.org/index.php?title=Penal_mediation_in_France.

²⁰ *Penal mediation in France*, WikiMediation en.wikimeditation.org/index.php.

²¹ Vikram Karuna, *Explained | The Mediation Bill, 2021*, The Hindu (Oct. 3, 2022), www.thehindu.com/news/national/explained-the-mediation-bill-2021/article65967986.ece.

for amending the Mediation Bill in order to institutionalise mediation and create the Mediation Council of India. Although mediation is not specifically governed by law in India, it is covered by a number of other statutes, including the Arbitration and Conciliation Act (1996), Code of Civil Procedure (1908), the Companies Act (2013), the Consumer Protection Act (2019) the Commercial Courts Act (2015), and. The Supreme Court of India’s Project Committee on Mediation and Conciliation describes mediation as a tried-and-true alternative to traditional conflict resolution methods. It is appropriate to adopt legislation governing both domestic and international mediation because India is a member to the “Singapore Convention on Mediation” (officially known as the “United Nations Convention on International Settlement Agreements Resulting from Mediation”. The purpose of the bill is to encourage, facilitate, and advance institutional mediation as a means of resolving disputes, both business-related and not. The Bill also suggests requiring mediation before court proceedings. It also protects the rights of litigants to seek immediate relief from competent adjudicatory forums or courts. In some circumstances, immunity is granted to prevent revelation of the mediation process’s contents. A Mediation Settlement Agreement (MSA), the result of the mediation process, will be enforceable in court and can be registered with the State or district or taluk legal authority within the period of 90 days to ensure genuine records of the settlement.

The Mediation Council of India is established under the Bill, which also includes provisions for communal mediation. If there is a mediation agreement exist between the parties, the Bill mandates pre-litigation mediation for the parties prior to initiating any lawsuit or court process. Without a valid excuse, parties that skip pre-litigation mediation may be charged. But according to Article 21 of the Constitution, having access to justice is a fundamental right that cannot be curtailed or constrained. Making mediation anything other than voluntary would be a denial of justice. There does seem to have been a lack of resourcefulness on the government side, as well as the legal community, to raise knowledge of mediation across the nation. Even though judges in India have been quick to point out that using mediation more frequently can help cut down on case backlogs and delays, Indian lawyers have not been able to respond to mediation quickly enough. Additionally, this part of reaching out to the public is hardly ever taken care of by the current court-assisted mediation centres. The renowned Malimath Committee Report,²² which will have implications on solving and reducing the more number of disputes affecting the ordinary man, addressed key elements must be kept in mind while creating a wide variety of diverse justice delivery systems. Additionally,

²² www.mha.gov.in/sites/default/files/criminal_justice_system.pdf.

the Law Commission's 129th Report proposed a few fresh approaches that would make it easier to quickly resolve matters in cities. These are listed below:²³

- Creating the Nagar Nyayalaya in the same way as the Gram Nyayalaya, with a professional judge and two lay judges, and with same authority, jurisdiction, and procedures. However, if mediation is unsuccessful, the Nagar Nyayalaya will first try mediation before starting legal action;
 - Setting up Neighborhood Justice Centers to involve local residents in dispute resolution;
 - Conciliation court system, currently in use in Himachal Pradesh;
- Both the adoption of the Arbitration and Conciliation Act in 1996 and the addition of section 89 to the Civil Procedure Code²⁴ (hereafter CPC) in 1999 were significant turning points in the development of India's legal system. Although the idea of mediation was accepted in 1947, it became more well known after the revisions. They contributed to the expansion of mediation practise along with other legal advancements. To promote and institutionalise it, however, judges and attorneys reacted with protracted inaction. Only when the Supreme Court established a agenda for model norms, standards, and the creation of centres for mediation in the subsequent case of "*Salem Advocate Bar Association v. Union of India*"²⁵ did the practise of mediation begin to acquire popularity. Before 2015, certain courts would order parties for attending mediation sessions, but the Apex Court ruled in "*Afcons Infrastructure v. Cherian Varkey Construction*"²⁶ that mediation in criminal cases was inappropriate. Even though they involve criminal components, some cases—particularly those involving family disputes—that can be resolved by mediation are still referred to it. The question of whether mediation is appropriate in a criminal setting is complicated by the fact that Indian Law currently contains laws governing compounding of offences. The judge may, if necessary, submit the matter to the court's in-house mediation centre under Section 89 of the Code of Civil Procedure. However, this is only relevant in civil situations and is completely voluntary. Plea bargaining was also introduced in the Malimath committee report, the 142nd²⁷ and 154th²⁸ law commission reports, and other publications to support the incorporation of ADR into criminal law. In "*Mohd. Mushtaq Ahmad*

²³ lawcommissionofindia.nic.in/101-169/report129.pdf.

²⁴ *Indiakanon.Org*, indiakanon.org/doc/174517104/.

²⁵ *Indiakanon.Org*, indiakanon.org/doc/342197/.

²⁶ *Indiakanon.Org*, indiakanon.org/doc/1875345/.

²⁷ lawcommissionofindia.nic.in/101-169/Report142.pdf.

²⁸ *Parliament Digital Library: 154th Report of Law Commission*, eparlib.nic.in/handle/123456789/35432.

v. State”,²⁹ the wife filed for divorce and a FIR under Section 498A IPC against the husband after disagreements developed between the two of them following the birth of a girl child. The Karnataka High Court Under Section 89 CPC, directed the parties to mediate. In that case the wife decided to withdraw the FIR after the dispute was harmoniously settled via mediation. As per the court’s judgement, “The court may cancel the criminal proceedings or the FIR or complaint in appropriate instances in order to fulfil the goals of justice.” The facts in “*Gurudath K. v. State of Karnataka*”³⁰ are the same as those in the previous case. “Even if the offences are non-compoundable, if they pertain to marriage conflicts and the Court is convinced that the parties have settled the same amicably...,” the court ruled in this case. The ability to revoke a FIR or criminal complaint in relation to such offences would not be prohibited by Section 320 of the Criminal Procedure Code. As a result, the court permitted the offences to be compounded after determining that the wife was not the subject of any threats or pressure. Although offences punishable under Section 498-A IPC are not compoundable, the court held in “*K. Srinivas Rao v. D.A. Deepa*”³¹ that in suitable cases, if the parties are willing to mediate and if it seems to the criminal court that there are high probabilities of settlement, the court must direct the parties to use the opportunity of settlement through mediation. In that situation the Judges must make sure that this exercise does not result in the erring spouse exploiting the mediation procedure to avoid the law’s grasp. If there is a settlement, the parties will avoid the trials and tribulations of a criminal prosecution, which will ease the court’s workload and serve the greater good. The Supreme Court made it clear in the case of “*Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd that*”³² “even when a case is referred to a mediator, the court retains its control and jurisdiction over the matter, and the mediation settlement will have to be placed before the court for recording the settlement and disposal.” This demonstrates the Court’s attempts to prevent mediation from being conducted arbitrarily. The potential for mediation can be assessed once the case has advanced to the stage of trial, reliant on whether the offence is compoundable or not. In section

²⁹ *Indiakanon.Org*, indiakanon.org/doc/48924752/.

³⁰ *Indiakanon.Org*, indiakanon.org/doc/169708272/.

³¹ *Indiakanon.Org*, indiakanon.org/doc/14713882/.

³² *Indiakanon.Org*, indiakanon.org/doc/1875345/.

320 Cr.P.C. the Compoundable Criminal Offenses are listed while the remaining Offenses designates as Non-Compoundable .

The IPC contains compoundable offences against women in Sections 294, 499, 503, and 509. They permit a resolution that can be acquired through mediation. This has far-reaching effects since it would weaken the intent behind using punishment or fines to prevent crime. Due to their seriousness and the effects they have on society, non compoundable offences under the IPC cannot be resolved. It used to be possible to compound sexual harassment under IPC Section 354. Then, in 2009, an amendment prohibited settlement under the clause. Another legal system that allowed for mediation against non-compoundable offences emerged throughout the course of numerous instances. It should be mentioned that the Supreme Court has frequently permitted ADR in non-compoundable matters. In the case of “*B.S. Joshi and others v. State of Haryana and another*”,³³ the Apex Court observed that “*in view of the special facts and circumstances of the case, quashing criminal proceedings under exercise of powers under Sec 482 Cr.P.C. is allowed even where the offences were non- compoundable.*” In “*K. Srinivas Rao v. D.A. Deepa*”,³⁴ the Supreme Court stated that in suitable situations, the criminal court should advise the parties to consider the prospect of settling through mediation while maintaining the rigour, effectiveness, and intent of the non-compoundable offence. Only if the High Court determines that the settlement is fair and genuine in all circumstances will it dismiss the criminal complaint. According to the court, such a course will be advantageous to those who sincerely desire to lay their problems to rest. In “*Gian Singh v. State of Punjab*”,³⁵ the Supreme Court has stated the essence of amicable resolution of disputes , by perceiving as under:- “*The High Court may quash the criminal proceedings if in its view, if it would be unfair or contrary to the interest of justice to continue with the criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings.*”

In the case of “*Parabathbai Aahir and Parabathbai Bhimsinhabhai Karmur and Ors Vs State of Gujarat and Anr*”,³⁶ The Apex Court ruled that the discretion granted by Section 482 should only be used carefully. The Court must give the offense’s seriousness and nature significant consideration. Crimes that are heinous and

³³ *Indiankanoon.Org*, indiankanoon.org/doc/469138/.

³⁴ *Indiankanoon.Org*, indiankanoon.org/doc/14713882/.

³⁵ *Indiankanoon.Org*, indiankanoon.org/doc/69949024/.

³⁶ *Indiankanoon.Org*, indiankanoon.org/doc/7293093/.

serious and include mental depravity, or crimes like murder or rape, cannot be overturned since they are not private in nature and have a grave effect on society. Therefore, it is established that, in certain situations, criminal proceedings involving sexual harassment may be arbitrated in a court of law. Under section 482 of the CrPC, it is permissible at the discretion of the relevant High Court, and only in the event that each parties are equally eager to form an agreement and settle the conflict through mediation. Even while the Apex Court stated in “*Afcons Infrastructure Ltd. and Anr. V. Cherian Varkey Construction Co. Pvt. Ltd. and Ors*”.³⁷ that ADR is inappropriate for the trial of criminal offences, the opinion also emphasises that the classification is “illustrative and flexible.”

Role of victim-offender mediation in the criminal context

When we look more closely at studies on restorative justice practises, we discover more or less thorough accounts of how programme goals are really implemented in each stage of the process such as preliminary discussions, access to cases, reparation measure, mediation process. It would be foolish to rule out the use of mediation in all criminal issues, despite the fact that it is generally viewed as an inappropriate remedy in criminal cases and that its practical use may reveal some shortcomings.³⁸ Records show that mediation has been effective in cases involving adolescent delinquency and less serious offences. Even in India, judges have recommended mediation in cases of check bounce and divorce conflicts including criminal cases. Two questions determine whether mediation is appropriate in criminal cases. First, the question of whether through mediation justice can bring in a criminal situation because the fundamental aim of dispute resolution is justice.³⁹ Second, is there solid proof that mediation in criminal cases is preferable to, or at least equally effective to, traditional adjudication? In order to answer the questions, scholars divided the methods of administering justice into 2 categories: justice which is based only on the law and justice based on the disputants’ and the issue’s perception of the law’s applicability. Whereas the latter is mentioned to as the creative justice, the former is known as formal justice. The matter must be determined on the merits in accordance with formal justice. It defends the interests of the entire society, which is among other things, upholding uniformity in the

³⁷ *Indiankanoon.Org*, indiankanoon.org/doc/1875345/.

³⁸ Restorative Justice. 2022. *Victim-Offender Mediation and Violent Crimes: On the Way to Justice – Restorative Justice*. [online] Available at: <https://restorativejustice.org/rj-archive/victim-offender-mediation-and-violent-crimes-on-the-way-to-justice/> [Accessed 7 October 2022].

³⁹ *Cardozo Journal of Conflict Resolution*. 2022. *Volume 18.3: Spring 2017 – Cardozo Journal of Conflict Resolution*. [online] Available at: <https://www.cardozojcr.com/volume-183-spring-2017/> [Accessed 7 October 2022].

law and outlining shared morals. It has been noted, however, that the general population is more focused on receiving compensation for injustices and easing their injuries. Sherrif Elnegahya asserts that a court only permits legal remedies, such as apologies, and that it has no place for extra-legal remedies. Legal systems can, however, get over these restrictions by practising creative justice, which calls for the parties to a dispute to settle it via dialogue and in accordance with their own beliefs. The main manifestation of this type of justice is called mediation. A person usually expects to be treated fairly when they enter a conflict resolution setting. In addition to the process' transparency, it is crucial that the parties must be recognised, heard, and not mistreated. The nature of mediation is such that these issues must be addressed in order to reach a mutually accepted solution, even if a lot of this depends on the mediator's expertise. Additionally, mediation encourages the concepts of restitution and forgiveness. As a result, when done properly, the approach allays worries about due process and advances restorative justice. VOM can be used successfully in cases involving social justice and less serious criminal offences. For instance, a reckless driving-related accident that has a negative impact on the victims' lives. In such a situation, the perpetrator would be able to explain why it occurred and would also have the chance to somewhat directly repay the victim. This will make it easier for the perpetrator to comprehend and feel sympathy for the victim. Second, the idea can be applied to the issue of prison overpopulation in India. Giving inmates access to a mediation procedure can have transformative effects. It would aid in the reduction of the term as well as the rehabilitation and eventual reintegration of the convicts into society. Third, domestic violence situations may benefit from victim-offender mediation. It's even simpler because everyone involved is a family. On the one hand, it would empower women who worry that going to court would ruin their families, and on the other, it would significantly reduce the number of false allegations filed by women because mediation makes it easier to catch legal abuses early on. Fourth, the juvenile justice act would be strengthened if mediation were included in cases involving young offenders. As a result, minor offenders will receive extra attention and won't run the possibility of being imprisoned. To help offenders understand the impact of their crime, victim-offender mediation can also be employed in non-compoundable offences in addition to the law. They could be forced to accept accountability for compensating the victim for their losses. The main manifestation of this type of justice is mediation. A person usually expects to be treated fairly when they enter a conflict resolution setting. In addition to the process' transparency, it is crucial that the parties are heard, recognised, and not mistreated. The process of mediation is that the issues must be addressed in order to reach a mutually accepted

solution, even if a lot of this depends on the mediator's expertise.⁴⁰ Additionally, mediation encourages the concepts of restitution and forgiveness. Additionally, there was a lower chance of recidivism for offenders. According to some theories, mediation may produce the same outcome as conventional trial process.⁴¹ At least in cases of serious crimes, mediation provides the victims with a sense of closure and healing via discourse in addition to a greater sense of security. Mediation matters are private affairs, whereas court trials are public record.⁴² The cost of mediation is also far lower than that of traditional litigation, which includes charges such as court costs, attorney fees, etc. More crucially, compared to litigation, it imposes a lower evidence burden on the complainant to support their claims. In contrast to courts, which can take months or even years to handle sexual harassment cases,⁴³ mediation promises a quicker conclusion, lessening the pain experienced by the victim. The fact that the parties decide the resolution of their issue through mutual consent is the primary justification for choosing mediation over other dispute resolution methods. They lack a final ruling that dissatisfies either one party or both parties. Because they created the solution themselves to best suit their interests, the parties are therefore more likely to admire the choice. Due to the individualised nature of sexual harassment at work, which a court cannot permit, the solution may take the shape of an apology, policy revisions, staff training, etc. The fact that mediation encourages communication between the parties involved is another significant advantage. They gain an understanding of one another's viewpoints and create a stance that is acceptable to both parties by talking to one another until they reach an agreement on the proposed solutions. In many victim-perpetrator mediations, sexual harassment victims discover that challenging their offender in a secure environment, with the help of mediator, which restores their sense of security that has been taken. Victims who take part are given the chance to speak up, confront the emotional damage brought on by the crime and its aftermath, and ask for restitution. It can be a very effective strategy to provide the victim closure when the perpetrator is immediately opposed with the results of his conduct and call upon to explain the reason for crime. By sincerely apologising to the victim and promising to change his ways, the harasser shows that he or she has a genuine understanding of the victim's situation and is making an effort to right the wrongs.

⁴⁰ Tali Gal, *Repairing the Harm: Victims and Restorative Justice*, Semantic Scholar www.semanticscholar.org/paper/Repairing-the-Harm:-Victims-and-Restorative-Justice-Strang-Sherman/1ea2e2b9bad08ed8766fac40f00913bffa7e14.

⁴¹ *Repairing the Harm: Victims and Restorative Justice*, Australian National University (College of Asia and the Pacific) researchprofiles.anu.edu.au/en/publications/repairing-the-harm-victims-and-restorative-justice.

⁴² Taylor & Francis, *Victim-Offender Mediation: The Road To Repairing Hate Crime Injustice*, (Nov. 12, 2012), www.taylorfrancis.com/chapters/edit/10.4324/9780203446188-45/victim-offender-mediation-road-repairing-hate-crime-injustice-alyssa-shenk.

⁴³ Fordham Law Authors, *Error*, ir.lawnet.fordham.edu/cgi/viewcontent.cgi.

While victim-offender model is one of the effective for criminal mediation, has the potential to creatively address these issues by supporting the participants in developing their own resolutions and their own justice, it is not without drawbacks which includes the possibility that the victim may have to witness the crime when confronting the criminal or the possibility that the offender could thwart justice with a formal apology. Therefore, the application of VOM is still mostly limited to certain offences. This is not to justify that VOM must be fully abandoned; in fact, it shown to be effective in various areas. The idea of plea bargaining, which already exists in criminal law but has had a shaky reputation in India, might be improved instead as a superior strategy.⁴⁴ However, if mediation were used directly in this situation, it might endanger the system rather than strengthen it. As a result, the idea of mediation needs to be modified for plea negotiations. To put it another way, it is necessary to incorporate the fundamental tenets of mediation, including the inclusion of a third party, secrecy, voluntary involvement and dialogue facilitation. This would improve the mechanism in some ways while also expanding the use of mediation in the criminal justice system. The benefits of mediation between homicide victim's family members and their perpetrator were created to give victims a chance to meet with their offenders in a controlled setting. Through the victim-offender mediation, victims could speak with their offender face-to-face and explain how the incident had affected their life. The victims' dread and anxiety decreased thanks to the treatment. Compared to those of victims in cases like theirs who are handled through the system, there were higher levels of satisfaction. Most frequently, in criminal justice matters, mediation serves as a means of avoidance of prosecution. Therefore, the offender may profit by avoiding prosecution in the criminal justice system if the offender and victim agree to finish the mediation and if the offender fulfils any obligations set forth in the mediation agreement. Additionally, probation for criminals may include a mediation requirement.⁴⁵ Although they discussed the incident and how it affected the victim, as well as the offender's confession of his motivations for committing the crime, this may be to the victim's disadvantage. Few individuals would still oppose the release of their offender from prison. The neighbourhood context has an impact on VOM programme procedures, practises, and programme design and viability. Many interviewees mentioned the vindictive, "conservative" sentiments prevalent in their local communities. They lamented having to deal with apathetic judges, attorneys, and victim services staff.⁴⁶ Programs may reduce mediation training and even limit the process when

⁴⁴ Tali Gal, *Restorative Criminal Justice*, Academia.edu (Dec. 15, 2015), www.academia.edu/19680116/Restorative_Criminal_Justice.

⁴⁵ *The Advantages of Mediation Cases over Traditional Lawsuits*, FindLaw (Apr. 4, 2016), www.findlaw.com/adr/mediation/the-advantages-of-mediation-cases-over-traditional-lawsuits.html.

⁴⁶ www.jstor.org/stable/26209973.

volunteer mediators lack the necessary level of dedication. Rural areas with a strong sense of community may benefit from programmes that might assist create and accomplish the mediation session's objectives. Issues of confidentiality can be particularly crucial and difficult in a place where "everyone runs into everyone" constantly. VOM programmes operate rather independently of one another, and mediators frequently settle cases with little interaction. The interviewees attributed this isolation to either a lack of resources or geographic isolation. Prior to the mediation session, the excellent VOM programme offers the mediator an upfront brainstorming session with staff. Programs like VOM are being requested to resolve offences that are more serious and complex. Cases frequently involve more violent crimes that have been perpetrated by individuals with a history of convictions.⁴⁷ Some programme directors contend that because victims of property crimes have experienced little to no personal suffering, it doesn't seem necessary to interview them. The VOM programme team is adamant that mediation has good effects on participants and their communities. Victim-offender mediation is making its way into several States' legal codes. Many initiatives are practically conducted on a minimal budget. There is little doubt that the excitement and commitment of programme staff and mediators have contributed to the increased interest in restorative justice practises. In order to support their children and later motivate them to follow the agreement, several mediation programmes work to persuade the parents of young offenders to attend the mediation session. Other programmes discourage parents from being there, believing that they might be invasive and domineering and lessen the experience for the young person. In order to maintain the intimacy of the face-to-face conversation, several organisations try to restrict the number of participants in mediation sessions. Others ask the parties to pick who gets to speak first, giving each party an equal chance to speak. The approach and attitude of the mediator – who listens calmly, doesn't push or press, and gives the conversation enough time to flow naturally – are the most crucial components of victim sensitivity. Maintaining objectivity and dealing with challenging individuals are crucial skills for trainees to learn. Empathy-building for the offender and properly working with children are crucial issues as well. The importance of post-mediation follow-up as a topic for in-depth and inventive VOM programming is growing. Several programmes are experimenting in various ways with the follow-up phase. Several months following mediation, some are using volunteers to do in-person interviews with the parties. Others are requesting that mediators debrief staff members, volunteers, and other mediators during routine debriefing sessions. Programs for victim-offender mediation (VOM) are sometimes hindered by a lack of

⁴⁷ *Articles Manupatra*, articles.manupatra.com/article-details/Applicability-of-ADR-in-Criminal-cases.

financing, referrals, and assistance from the public and the legal system. A community-wide shift toward a more rehabilitative view of criminal behaviour may result from such an investment. The issues raised by interviewees may point to areas where victim-offender mediation needs to develop (VOM).

Guiding principles for Victim-Sensitive approach towards VOM

The “Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice” awarded the Center for Restorative Justice & Peacemaking the task of creating the document. Six documents in total, four of which are about victim-offender mediation, a significant programmatic intervention that completely embodies the principles of restorative justice, address a variety of crucial topics linked to restorative justice. The “Guidelines for Victim-Sensitive Victim Offender Mediation: Restorative Justice Through Dialogue”,⁴⁸ the first of these six publications, helps administrators create or improve their restorative justice programmes. It offers mediators helpful advice on how to facilitate fair and impartial mediation, which will protect everyone’s safety and honour. Some of the important points of the guidelines are given below:

- 1. Safety of the victim:** Protecting the victim’s safety is a crucial principle for VOM programmes. The mediator shall take all reasonable precautions to protect the victim. As the process progresses, the mediator must keep a positive rapport with the victim, observe verbal and non-verbal cues, and get their input. The mediator must be ready to take immediate action, offer options, end a mediation session, and provide an escort for the victim exiting mediation if they feel unsafe. The victim should be urged to bring one or two supporters to the mediation in order to secure their safety. The mediation should also take place in a location that the victim deems safe. Another mediator for the session may be requested by the mediator.
- 2. Screening of Cases:** Every mediation programme must have its criteria for selection, such as the type of offence, the offender’s age (youthful or adult), whether it is the first offence or a pattern of offences. In addition to programme requirements, staff, mediators, or both, should use judgement as each case is formed and at each stage of the procedure, determining if the case is appropriate for mediation and should move forward.

⁴⁸ www.ncjrs.gov/ovc_archives/reports/restorative_justice/restorative_justice_ascii_pdf/ncj176346.pdf.

- 3. Meeting with the Offender:** A mediator typically talks with the criminal first before speaking with the victim. This can be communicated later to the victim and a meeting set up if the perpetrator agrees to take part in mediation. The victim may feel revictimized if the mediator first meets with the victim, obtains his or her permission to participate in mediation, and then learns that the offender will not participate – having created hopes for some resolution to the crime, only to be denied that opportunity.
- 4. Offender’s Choice to Participate:** Offenders must actively engage in all phases of the mediation process on their own volition. Offenders must be aware that they may decline to participate, despite pressure from the legal system. Victims may find mediation unpleasant and even damaging if perpetrators are coerced into it. The victim may view the offender’s hesitation or sincerity as an additional transgression.
- 5. Victim’s Choices:** A victim of crime frequently feels defenceless and unprotected after the crime. The victim’s interactions with the criminal or juvenile justice systems, which put the offender in the spotlight, are added to this. A victim of a crime frequently displays a loss of control over his or her life after the event, which can exacerbate fears and anxiety. A sense of power may result from the victim having alternatives and choices during the mediation process. Healing is aided by empowerment. The victim must always be given the freedom to decline mediation and refuse to take part, as well as the right to have their choice upheld. The choice of support people to go to the mediation session with the victim is a crucial decision. A convenient time for the victim should be chosen for the mediation session. During the initial narrative phase of the mediation session, the victim should have the option of speaking first or speaking last. The parties are typically sitting across from one another, allowing them to have direct eye contact as their conversation progresses. One of the mediator’s most important responsibilities is to pay attention to the victim, listening intently, calmly, and sympathetically out of a sincere want to learn about the victim’s experience. The victim’s option to take part in mediation extends to their right to terminate it at any time.
- 6. Mediator’s Obligations:** The mediator must provide the victim with complete and accurate information about the programme itself, including its aims, history, the demographic it serves, and any costs for potential participants, both verbally and in writing, during the in-person premediation session with the victim.

- 7. Mediator's Role for the Preparation the Victim:** When the victim agrees to proceed with mediation, the mediator must let the victim know what to anticipate. This could be carried out at the initial meeting or at later meetings. The victim should be given a list of the rights that are granted to victims in that State. The mediation process might not live up to the expectations of the victims (e.g., reconciliation with the offender, complete healing or peace of mind, rehabilitation of the offender, or total repair of the damage done).
- 8. Support to the Offender:** An offender has the option to bring a friend or family member with them to the mediation session. Support people can heighten the gravity of the mediation process by being there.
- 9. Obligation of Mediator During Premediation Session:** Including the Offender In the first encounter with the offender, the mediator tries to build trust and a connection. The mediator must listen to the offender's experiences in order to complete these tasks, as well as provide information about the mediation process, address any offender inquiries, and encourage the offender to consider mediation as a possible alternative. As stated in principle number 6, the mediator, acting as an attentive listener, learns about the offender's experiences and emotions in relation to the crime, then offers information and addresses the offender's queries. The offender needs to be informed about the mediation programme, the mediator, the mediation process, how it relates to the legal system, the offender's rights, and the resources that are accessible.
- 10. Mediator's Roles for Preparing the Offender:** The mediator must get the offender ready for the session once they have consented to take part in mediation. Before the mediation conference is scheduled, the offender must feel ready to move forward. He or she needs time to process the incident and their feelings in relation to it, as well as time to plan exactly what they want to say to the victim.
- 11. Use of Victim-Sensitive Language:** The language used by mediators must be carefully chosen. Certain words and phrases have the ability to express expectation or indicate judgement.
- 12. Use of Humanistic Model of Mediation:** A humanistic strategy that is "dialoguedriven" rather than "settlementdriven" governs the mediation itself. Time must be set out during the mediation session for conversation between the victim and the offender as well as for personal accounts. One must respect silence.

13. Followup After the Mediation Session: The mediator must make good on promises made and respond to inquiries made during the mediation session. The settlement that results from the mediation session must be closely observed. The mediator should follow up with the offender on a regular basis to confirm what was agreed upon at the mediation session and to offer assistance with any issues that would prevent the offender from carrying out the agreement.

14. Training for Victim Sensitivity: A mediator's initial training and ongoing education should cover topics like referral resources, acceptable communication techniques, victim and offender rights, and principles for victim-sensitive mediation. Victim advocates and actual victims must speak to the trainees.

Final considerations

Victim-offender mediation is not a replacement for punishment in circumstances of violent crime. It does, however, provide a way to recover and a sense of closure that cannot be attained by punitive measures alone. Victims and survivors of crimes with extreme violence, facing their crimes, such as murders and sexual assaults, is offenders in secure and supervised environments, with the mediator's help, restores the sense of security and control that has been stolen from them. Although victim-offender mediation may not be suited for all victims of violent crimes, it has consistently shown to be helpful in situations like these when it has been used. The procedure can be used successfully in cases involving social justice and less serious criminal offences. In such a situation, the perpetrator would be able to explain why it occurred and would also have the chance to somewhat directly repay the victim. This will make it easier for the perpetrator to comprehend and feel sympathy for the victim. Second, the idea can be applied to the issue of prison overpopulation in India. Giving inmates access to a mediation procedure can have transformative effects. It would aid in the reduction of the term as well as the rehabilitation and eventual reintegration of the convicts into society. Third, domestic violence situations may benefit from victim-offender mediation. It's even simpler because everyone involved is a family. On the one hand, it would empower women who worry that going to court would ruin their families, and on the other, it would significantly reduce the number of false allegations filed by women because mediation makes it easier to catch legal abuses early on. Four, the juvenile justice act would be strengthened if mediation were included in cases involving young offenders. As a result, minor offenders will receive extra attention and won't run the possibility of being imprisoned. To help offenders understand the impact of their crime, victim-offender mediation can also be employed in non-compoundable

offences in addition to the law. They could be forced to accept accountability for compensating the victim for their losses. Though putting the procedure into practice has many advantages, there are issues that restrict victim-offender mediation's application. First, those who have been the victims of horrible crimes may utilise it as a delay technique, and occasionally an offender may be pressured into participating in mediation. Denial of a fair trial in such a situation constitutes a blatant breach of Article 6(1) of the European Convention on Human Rights. Second, the party providing agreement to any type of ADR must do so. Given that a youngster cannot offer consent under the Indian contract statute, the guardians of juvenile offenders would need to approve the use of mediation in these circumstances. A guardian may get intimidated by such complexity. Third, because the loss might not always be quantifiable, a financial agreement cannot always be struck. Fourth, there is always a chance that fraud, coercion, and undue influence will occur. The victim is given more influence throughout the victim-offender mediation process while the offender's dignity is upheld. It gives the victim a voice and elevates the sense of justice that one might not experience in a trial. Additionally, it offers the criminal a chance to make amends by making up for lost time instead of going to jail. If India decides to use the process in the future, awareness-raising efforts, a good follow-up and evaluation process, as well as explicit legislation that permits victim-offender mediation and applies to cases, should be put in place. Mediators should also receive proper training to deal with the sensitivity levels in such proceedings. It would take the Indian judiciary 320 years to resolve the millions of unresolved cases, according to Justice V.V. Rao. It would not be inaccurate to presume that other conflict resolution forums, such as mediation, might be a more practical choice for parties to seek relief given the state of the Indian courts today. Every victim is not required to take part in victim-offender mediation, family group conferencing, or any other restorative justice intervention, according to the Office for Victims of Crime. Each victim must decide whether or not to participate on a personal level. However, we fervently urge that all restorative justice initiatives pay close attention to the needs and worries of victims who want to meet with their perpetrators. Victims should not be coerced into participating; participation must be entirely voluntary. Victims should have the freedom to choose the session's venue, start time, and format, as well as the option to withdraw at any time. As this note proposes, the victim-offender mediation was regarded as having a strong emotional component due to which it is considered that mediation is effective when there is a modest level of conflict.

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