

**A STUDY OF ALTERNATIVE DISPUTE RESOLUTION
SYSTEMS DEALING WITH DOMESTIC VIOLENCE IN
DELHI AND DARJEELING:
A RESTORATIVE JUSTICE PERSPECTIVE**

SWIKAR LAMA



**DEPARTMENT OF HUMANITIES AND SOCIAL SCIENCES
INDIAN INSTITUTE OF TECHNOLOGY DELHI
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A RESTORATIVE JUSTICE PERSPECTIVE**

by

SWIKAR LAMA

Department of Humanities and Social Sciences

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CERTIFICATE

This is to certify that the thesis entitled, “**A Study of Alternative Dispute Resolution Systems Dealing with Domestic Violence in Delhi and Darjeeling: A Restorative Justice Perspective**” submitted by **Mr. Swikar Lama** for the award of the degree of Doctor of Philosophy to the Indian Institute of Technology Delhi, is a record of bona-fide research carried out by him under our guidance and supervision. We are satisfied that the thesis presented by **Mr. Swikar Lama** is worthy of consideration for the degree of Doctor of Philosophy. The results of this thesis have not been submitted to any other University or Institute for award of degree or diploma.

(Dr. Purnima Singh)

Professor

Department of Humanities and Social Sciences

Indian Institute of Technology Delhi

Hauz Khas, New Delhi-110016

(Dr. Ravinder Kaur)

Professor

Department of Humanities and Social Sciences

Indian Institute of Technology Delhi

Hauz Khas, New Delhi-110016

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ABSTRACT

Alternative Dispute Resolution System is an attempt to devise a mechanism to provide an alternative to the conventional methods of resolving disputes. Apart from criminal courts, there are a number of alternative dispute resolution systems in India. These institutions follow more of a restorative approach where the focus is on compromise or mediation. These alternative dispute resolution systems provide a huge support to the formal courts where thousands and thousands of cases are pending. But in case of crimes against women like domestic violence, there is a big debate about whether restorative justice is actually a good idea. Though there have been a number of research studies on victims and restorative justice practices but most of these have been done in the Western countries. In India, the restorative justice practices are completely different and there has been scant research in this area taking a holistic approach into account the social, psychological and legal factors which lead to the failure or success of these practices.

This research study had four main objectives. The first objective was to study the reasons which make the victims approach the various alternative dispute resolution systems. The 2nd objective was to explore the determining factors in the acceptance of restorative justice by the victims and the offenders. The 3rd objective was to evaluate the pros and cons of such ADR systems and to understand necessary conditions under which forms of restorative justice may be successful. The last objective was to find out the needs and changes which the victims desire in the existing alternative dispute resolution systems.

The locations for the study were the mediation centres in Tis Hazari and Rohini District Courts in Delhi and the Samajs in various villages like Saureni, Turuk and Mamring, etc. in Darjeeling. These two locations were selected because of their different social settings. The kinship system in

North India is patriarchal and patrifocal (Seymour, 2006). Darjeeling is generally characterized by greater gender equality than plains in India (Allendorf, 2009). The institutions chosen are also different in nature-Mediation Centres are formal institutions while Samaj is an informal institution. Due to all these contrasts, these two institutions were chosen for the study. In brief, this study has been done using exploratory case studies. The individuals have been studied intensively as an entity taking into account the respondent's socio-economic background, the reason behind the offence, her values, etc. Case studies have been done through a multi model approach by using semi-structured interviews and participant observation with the sessions being observed during the study.

Stratified random sampling has been used to conduct the study. Victims of domestic violence have been taken for the study. 10 samples (women victims) from each institution (Mediation Centres and Samaj) who have settled their disputes in these institutions were chosen for case studies. 10 samples (women victims) from each institution (Mediation Centres and Samaj) who have not settled their disputes in these institutions and have approached the criminal courts were also chosen for the studies. A total number of 40 victims would be chosen for the study.

Qualitative analysis of data was done. Thematic analysis method developed by Braun and Clarke (2006) was used to analyze the qualitative data.

The 2nd chapter talks about the concept of alternative dispute resolution system in India, its history and the various alternate dispute resolution mechanisms in India. This chapter gives a vivid description of the history of various traditional alternative dispute resolution mechanisms like nyaya panchayats. The chapter then proceeds to discuss the evolution of these traditional forms of ADRS into the modern forms like mediation centres and family courts.

The 3rd chapter discusses whether various forms of alternate dispute resolution systems are one of the various choices which women victims of domestic violence can access to obtain justice or does it become a necessity for a large number of women who cannot access other forms of justice like the criminal justice system or the civil courts. This chapter explores the various factors which influence the decision making of women victims of domestic violence in making their choice of mechanism for obtaining justice. This chapter also makes a comparison between the social conditions of the women victims in Delhi and Darjeeling and evaluates whether the decision making of these women victims is affected by the same factors and to the same extent/degree by these socio-economic factors or not. The first chapter shows that more women in Delhi pointed out economic dependence as a reason for choosing ADRS as compared to their counterparts in Darjeeling.

Similarly more women in Delhi stated that lack of natal support, stigma of divorce were some of the reasons for their choice of ADRS to resolve their problem. Factors like unemployment/low income, lack of natal support, stigma of divorce and patriarchal attitude of society seemed to have a greater effect on the women victims in Delhi than in Darjeeling.

The 4th chapter explores the various determinants in victim's choice of justice. It examines the determining factors in the decision making of victims in accepting restorative justice. Apart from the socio-economic conditions which sometimes compel the victims to accept restorative justice; there are socio-psychological factors which play an important role in the decision making of the victims. This chapter juxtaposes restorative justice vis-a-vis forgiveness. The determinants for the decision making were divided into four categories-cognitive determinants, emotional determinants, contextual determinants and relational determinants. Victim's notion of justice, self-attribution and low self-esteem are some of the factors related to the victims which determine

the victim's choice of justice. The context of the abuse and the perpetrator of injustice are some of the mediating factors in the victim's choice of justice. The dispensers of justice and the personality and reaction of the offenders were also some of the determining factors. Victim's relationship with the perpetrator and relationship of the perpetrator with his children also influence the decision making of the victim.

The fifth chapter studies the two alternative dispute resolution systems i.e. mediation centre in Delhi and Samaj in Darjeeling through a restorative justice perspective. It attempts to find out the extent to which these institutions follow the principles of restorative justice while dealing with domestic violence. The main objective is to analyze both these institutions and bring out the pros and cons of these systems in handling domestic violence cases. This chapter conceptualizes restorative justice and defines the components of restorative justice. The chapter then proceeds to describe Mediation Centres and Samaj and their functioning. The functioning and process of dealing with domestic violence cases in Mediation centres in Delhi and various Samaj in Darjeeling were analyzed through a restorative justice perspective. The chapter analyses the case studies done through interviews and observation to scrutinize the Mediation Centres and Samaj to understand to what extent the processes followed while dealing with domestic violence have the ingredients of restorative justice as mentioned by Johnstone and Van (2006). The last chapter has also summarised the pros and cons of these institutions and concludes by stating that improvements could be made in these ADRS to bring more satisfaction to victims and help the offenders to reform and get re-integrated into the society. This study has unraveled the varying reasons behind women victims approaching alternative justice systems. This study has also brought out the strengths and weaknesses of the various alternative justice systems. This study could contribute in formulating policies regarding restorative justice in India. The limitation of

this study was that the numbers of cases is limited. Due to this constraint the findings of this study cannot be generalized. The findings can be used to conduct further studies especially quantitative ones in order to substantiate the findings of the study.

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