

Legal Status and Future of Mediation in Pakistan: A Critical Exploration of ADR Frameworks

Ihtesham Ullah Khan,

Ph.D. Scholar, Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University of
Malaysia (IIUM). ihteshamkhan044@gmail.com

Dr. Nurah Sabahiah Bt. Mohamed,

Assistant Professor, Legal Practice Department, Ahmad Ibrahim Kulliyah of Laws (AIKOL),
International Islamic University of Malaysia (IIUM). sabahiah@iium.edu.my

Dr. Sodiq Omoola,

Assistant Professor, Legal Practice Department, Ahmad Ibrahim Kulliyah of Laws (AIKOL),
International Islamic University of Malaysia (IIUM). sodiq_omoola@iium.edu.my

Abstract

In Pakistan, Alternative Disputes Resolution (ADR) practices are rooted in customary societal practices. The practice of resolving disputes outside the courts is deeply ingrained in the culture of various provinces. The ADR is increasingly recognized within the legal landscape of the country which is characterized by a patchwork of legislative instruments that vary across provinces. This paper aims to critically analyse these legislative frameworks to assess their effectiveness, identify gaps, and propose improvements. By exploring the interaction between traditional practices and modern ADR approaches, this research seeks to propose improvement in the implementation of ADR in the country. A thorough analysis of the relevant general and special laws regarding ADR mechanisms in Pakistan reveals a significant gap in the legal framework governing community mediation. Specifically, there is no established framework for community mediation, including the training and qualifications of community mediators and the creation of community mediation centres. Current provisions for ADR, including mediation, are fragmented and insufficiently developed to address the full scope of dispute resolution needs, particularly at the community level. This research advocates for the creation of a unified legal framework that addresses all aspects of mediation, including community mediation, mediation centers across the country, and trained community mediators. Such a framework would facilitate the expeditious and cost-effective resolution of neighbourhood disputes more amicably, reducing the reliance on formal court proceedings.

Keywords: *Alternative Dispute Resolution (ADR), Community Mediation, Legal Framework, Pakistan*

1- Introduction

Alternative Dispute Resolution (ADR) has gained prominence in Pakistan as an effective mechanism for resolving disputes outside the traditional court system. This approach is increasingly recognized within the legal landscape of the country, reflecting a shift towards more flexible and accessible dispute resolution methods. ADR mechanisms, including arbitration and mediation, have been integrated into various legal frameworks to address the growing need for efficient dispute resolution methods.

The legal landscape for ADR in Pakistan is characterized by a patchwork of legislative instruments that vary across provinces. The prominent Acts are the Alternative Dispute Resolution Act 2017 for Islamabad, the Punjab Alternate Dispute Resolution Act 2019, and the Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020. While aiming to standardize ADR practices, these provincial laws reflect regional adaptations and nuances. In addition, national legal provisions also support ADR processes. The Constitution of Pakistan 1973, specifically Articles 153-155, provides a foundation for the establishment of alternative dispute resolution bodies. It incorporates fundamental provisions related to Alternative Dispute Resolution (ADR) with the aim to resolve disputes efficiently. Section 89-A of the Civil Procedure Code 1908 (amended in 2002), alongside Order X Rule 1-A, further details the procedures for ADR methods.

Other significant legislative frameworks include the Small Claims and Minor Offences Courts Ordinance 2002, which offers ADR mechanisms for minor disputes, and Sections 10 and 12 of the Family Courts Act 1964, which facilitate the resolution of family-related issues through alternative means. The Code of Criminal Procedure 1898 also contains provisions for ADR in criminal cases, while the Arbitration Act 1940 outlines arbitration procedures. Additionally, Article 163 of the Qanun-i-Shahadat Order 1984 and the Khyber Pakhtunkhwa Police Order (Amendment) Act 2015 introduce specific ADR-related measures.

This diverse array of legal provisions underscores the complex and evolving nature of ADR in Pakistan. This paper aims to critically analyze these legislative frameworks to assess their effectiveness, identify gaps, and propose improvements. By exploring the interaction between traditional practices and modern legal reforms, this study seeks to provide a comprehensive understanding of the current state and future potential of ADR in Pakistan's legal system.

2- The Constitution of Islamic Republic of Pakistan 1973

The Constitution of the Islamic Republic of Pakistan 1973 establishes the Council of Common Interest (CCI) to resolve disputes between the Federation and the provinces or between the provinces. The CCI deals with disputes on economic, investment, special economic zones, disaster relief natural resources, petroleum exploration, public debt management, privatization, energy, and reconstruction, population census, water, etc.

Article 155(6) provides that: “No proceeding shall lie before any court at the instance of any party to a matter which is or has been in issue before the Council or of any person whatsoever, in respect of a matter which is actually or has been or might or ought to have been a proper subject of the complaint to the Council under this Article”.¹ Therefore, it is a constitutional requirement that any dispute that comes under the jurisdiction of the CCI has to be submitted first to the CCI - before filing the case before any court of law to settle the disputes amicably among the Federation and the Provinces. In this way, the Federation and Provinces can function in harmony and complementary with one another.

The Constitution of Pakistan incorporates fundamental provisions related to Alternative Dispute Resolution (ADR), reflecting its underlying principles aimed at addressing disputes efficiently. The inclusion of ADR mechanisms in the supreme law of the land primarily seeks to mitigate delays in legal proceedings and address disputes between the state and its provinces. The Constitution designates specific constitutional bodies as the exclusive authorities for resolving such disputes, thereby excluding the jurisdiction of other courts in Pakistan. This constitutional framework underscores the commitment to resolving conflicts promptly and ensuring that disputes involving state and provincial matters are managed effectively through designated constitutional channels.

3- The Alternative Dispute Resolution Act 2017

The Alternative Dispute Resolution Act 2017 was promulgated on 30th May 2017. In this Act, the processes of arbitration, mediation, and conciliation are mentioned as alternative dispute resolution. This is the first codified special law for ADR in Pakistan. The ADR Act is enacted primarily for the speedy disposal of disputes. However, the Act applies to Islamabad Capital

¹ The Constitution of Islamic Republic of Pakistan 1973, Article 155 (6).

Territory only. Under section 2(a)², the term ADR is defined as “a process in which parties restore a method of resolving dispute other than by adjudications by courts and includes arbitration, mediation, conciliation, neutral evaluation”. Section 2(i) defines ‘mediation’ as “a process in which a mediator facilitates dispute resolution by encouraging communication and negotiation between the parties for them to arrive at a mutually satisfactory agreement”.

If the court thinks that there is a possibility of resolving the dispute through ADR, it may refer any civil matter mentioned in the Schedule to an ADR mechanism with the consent of the parties as long as it does not involve a question of law or fact.³ After consultation with the High Court, the Government forms a panel of Neutrals for each district consisting of lawyers with not less than seven years of practicing experience, retired judges and civil servants, jurists, Ulema (Islamic religious scholars), technocrats, experts and any other person who possesses reputation and integrity in the society.⁴ The ADR Act confers the power to the Government to arrange training and courses as necessary for such appointed Neutrals with the view to ensure efficient ADR services.⁵

With the consent of the parties, the court may refer the dispute to an ADR Centre or appoint a Neutral. In cases where the parties could not agree on the appointment of a Neutral, the court can appoint such Neutral in its discretion.⁶ Then, the court will direct the parties to appear before the ADR Centre or the Neutral on the date and the time fixed accordingly.⁷ Either the parties to the dispute or their representatives can appear in person for the ADR proceedings.⁸ An ADR Centre or a Neutral will have to dispose of the matter within thirty days subject to further extension of fifteen days with sufficient excuse.⁹ Once the settlement is reached between the parties, the Neutral has to record such settlement agreement duly witnessed as well as signed by him and by the parties or their representatives; and submit it to the court to be pronounced such settlement as the decree.¹⁰ If the Neutral fails to settle the dispute, the court will proceed with the adjudication of the case accordingly.¹¹

² Alternate Dispute Resolution Act 2017, s 2(a).

³ Alternate Dispute Resolution Act 2017, s 3(1)(a)-(c).

⁴ Alternate Dispute Resolution Act 2017, s 4(1).

⁵ Alternate Dispute Resolution Act 2017, s 4(2).

⁶ Alternate Dispute Resolution Act 2017, s 5.

⁷ Alternate Dispute Resolution Act 2017, s 7.

⁸ Alternate Dispute Resolution Act 2017, s 9(1).

⁹ Alternate Dispute Resolution Act 2017, s 9(2).

¹⁰ Alternate Dispute Resolution Act 2017, s 10(1).

¹¹ Alternate Dispute Resolution Act 2017, s 11.

4- The Punjab Alternate Dispute Resolution Act 2019

The Punjab ADR Act was passed on 11th October 2019. In Punjab ADR Act, alternative ways are provided for both criminal and civil cases as mechanisms to resolve disputes in an inexpensive and expeditious manner. Under section 3 of this Act, the court can refer a civil dispute to ADR with the consent of the parties.¹² Section 3 (4) of the Act, further provides a time frame for completion of ADR proceedings which is six months in maximum.¹³ Besides, Section 4 (1) (a) of the Act provides that a criminal dispute can be referred to ADR by the public prosecutor with the consent of the complainant in pursuant to Section 345(1) of the Criminal Procedure Code (Cr.PC) 1898, at any time before framing of charge.¹⁴ Moreover, a court can also refer a case to ADR under section 345 (2) Cr.PC, even after framing of charge in case of FIR¹⁵. Similarly, in case of a complaint, on consent of the parties, the said matter can also be referred to ADR. A time frame of not exceeding 90 days is fixed for ADR proceedings before the case is reverted to the court.

Under this Act, the parties in dispute may select the person or persons of ADR¹⁶. In case of non-agreement of the parties, the court will provide a list of accredited ADR Service Providers or ADR Centres to the parties for selection¹⁷. The whole of the proceedings of ADR shall be kept confidential in all matters. After the conclusion of the ADR proceeding the case shall be reverted to the court for final disposal. In case where the process of ADR fails to resolve the dispute, the case will be reverted to the court for proceedings according to the prevailing procedure.¹⁸ If the ADR proceeding succeeds, an award shall be submitted to the court, a judgment shall be pronounced, and a decree shall be passed considering the terms of the award.

5- The Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020

The KP ADR Act was passed on 28th December 2020. The purpose of the Act is to introduce alternative modes of dispute resolutions between the disputant parties. The process of resolving

¹² Punjab Alternate Dispute Resolution Act 2019 (Act XVII of 2019), s 3.

¹³ Punjab Alternate Dispute Resolution Act 2019 (Act XVII of 2019), s 3(4).

¹⁴ Punjab Alternate Dispute Resolution Act 2019 (Act XVII of 2019), s 4(1)(a).

¹⁵ First Information Report (FIR) is a written document prepared by the police when they receive information about the commission of a cognizable offence. It is a report of information that reaches the police first in point of time and that is why it is called the First Information Report.

¹⁶ Punjab Alternate Dispute Resolution Act 2019 (Act XVII of 2019), s 7(1).

¹⁷ Punjab Alternate Dispute Resolution Act 2019 (Act XVII of 2019), s 7(2).

¹⁸ Punjab Alternate Dispute Resolution Act 2019 (Act XVII of 2019), s 8(1).

disputes without indulging in formal court cases ensures inexpensive and expeditious justice to the public.¹⁹ Under the Act, the court can refer a civil dispute for ADR on the wish of the parties in dispute.²⁰ A deputy commissioner of the district or any other designated officer can also refer a civil dispute for ADR.²¹ The period for the ADR process is limited to 6 months in maximum.²² Similarly, in criminal matters, all the compoundable offenses under Section 345 Cr.PC can be referred to ADR, on the consultation of parties by the Court²³. In criminal matters, the time frame for ADR proceedings is limited to three months.

The Act provides composition of Saliseen (mediators) selection committee that consists of the commissioner of the division as chairman, a senior civil judge as an admin, an official of law enforcement agencies, a regional director of the prosecution department, an officer of special branch and deputy commissioner as members. The referring authority can select one or more Salis from the roll of Saliseen for dispute resolution.²⁴ After completion of the ADR proceeding, the dispute will be submitted to the Court for final disposal. The whole of the proceeding of ADR shall be kept confidential. In case where the ADR fails to resolve the dispute, the said dispute is to be resolved by the court under the law.²⁵ It is to note that no appeal or revision can be filed from the decree or order of the Court, passed in consequence of ADR. Under this Act, Saliseen shall not represent the parties to an ADR in future proceedings. Moreover, proceedings under this Act are privileged and not admissible in evidence.²⁶

6- ADR under the Civil Procedure Code

In 2002, the Civil Procedure Code 1908 (CPC) was amended, wherein a new Order 89(A) was added. This new Order provides that: “The court may, where it considers it necessary having regard to the fact and circumstances of the case, with the object of securing the expeditious disposal of a case in or about a suit, adopt with the consent of the parties alternate dispute resolution method including mediation and conciliation or any such other means”.²⁷ Further, the amended Order X,

¹⁹ Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020 (Act No XLVIII of 2020), s 2(a).

²⁰ Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020 (Act No XLVIII of 2020), s 3.

²¹ Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020 (Act No XLVIII of 2020), s 3(2).

²² Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020 (Act No XLVIII of 2020), s 3(4).

²³ Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020 (Act No XLVIII of 2020), s 4.

²⁴ Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020 (Act No XLVIII of 2020), s 7(1)-(2)

²⁵ Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020 (Act No XLVIII of 2020), s 14.

²⁶ Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020 (Act No XLVIII of 2020), s 19.

²⁷ Civil Procedure Code 1908, s 89A.

Rule 1(A)(III) of the CPC has a similar provision which provides that: “The Court may adopt, with the consent of the parties, any alternative method of dispute resolution including mediation, conciliation or any such other means”.²⁸ These two provisions encourage the court, as it deems fit and with the consent of the parties, to refer a civil case to any ADR mechanism which includes ‘mediation’ and ‘conciliation’ or any other means as such.

Furthermore, Order XXIII, Rule 3 of the CPC provides that: “Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to the suit”. Hence, when a case is referred to mediation, the court will wait for a mutual settlement and act following that settlement agreement between the parties if they manage to settle. The court may further grant, on such terms as it thinks fit, the plaintiff permission to withdraw from such suit or abandon.²⁹

7- Compromise or Reconciliation in the Family Courts

The Family Courts Act 1964 also has provisions that allow the court to refer a case to ADR mechanisms. Section 10 requires the Court to fix an early date for a pre-trial hearing of the case once the written statement is filed accordingly.³⁰ At the pre-trial, the Court may ascertain the precise points of controversy between the parties and attempt to effect a compromise between them.³¹ Only when a compromise is not possible, the Court may proceed with a trial and record evidence of the parties.³² If reconciliation fails in a suit for dissolution of marriage, the Court will immediately pass the judgment for the dissolution of marriage.³³ In addition, even after recording evidence of the parties, Section 12 requires the Court to make another effort for a compromise or reconciliation between the parties within a period not exceeding fifteen days.³⁴ Only when a compromise is not possible between the parties, the Court will immediately pass the judgment.³⁵ Under the concept of ‘compromise’ in this section, ‘mediation’ may be used to resolve family

²⁸ Civil Procedure Code 1908, Order X, r 1(a).

²⁹ Civil Procedure Code 1908, Order XXIII, r 1.

³⁰ Family Courts Act 1964, s 10(1).

³¹ Family Courts Act 1964, s 10(3).

³² Family Courts Act 1964, s 10(4).

³³ Family Courts Act 1964, s 10(5).

³⁴ Family Courts Act 1964, s 12(1).

³⁵ Family Courts Act 1964, s 12(2).

matters even though it does not specifically mention the word mediation. Again, the term ‘reconciliation’ used in this section signifies that the process should rebuild peace and maintain the marriage bond between the parties. The reconciliation may be obtained by way of mediation by an experienced mediator between the parties.

8- Amicable Settlement for the Small Claims and Minor Offences

In Pakistan, the Small Claims and Minor Offences Courts Ordinance 2002 was enacted to provide inexpensive and expeditious disposal of small claims and minor offenses. Under section 14(1), the Court - at any stage of the proceedings - may conciliate, arbitrate, mediate, or resolve the claim or offense through ‘Salis’ or any other person either on the application of any party or otherwise if there is a possibility of ‘amicable settlement’ between the parties with their consent. The ‘amicable settlement’ referred to in this Ordinance includes settlement through arbitration, mediation, conciliation, or any other lawful means mutually agreed upon by the parties.³⁶ However, the Court cannot opt for amicable settlement for non-compoundable offences if such settlement is either against the public policy or interest of the State. The term ‘Salis’ mentioned in this Ordinance means the person acting as a conciliator, a mediator, or an arbitrator.³⁷ Salis is mainly responsible for “facilitating negotiations between the parties and steer the direction of discussion to find a mutually acceptable solution; and assist the parties in reaching an agreement”.³⁸

9- Dispute Resolution Council in Khyber Pakhtunkhwa

The Khyber Pakhtunkhwa Police Order (Amendment) Act 2015 establishes a conflict resolution body called the ‘Dispute Resolution Council (DRC) to settle minor cases amicably without having to go to a court of law. Under Article 186(A) of the Act, the DRC is established at the District, Sub-Division, or Police Station level and consists of a Provincial Police Officer as well as individual members who possess respect and repute in the society for their honesty and impartiality. The DRC has to have at least one female member. Hence, the Act empowers the Provincial Police Officer to act as a mediator for petty cases too. The Act defines the ‘petty nature

³⁶ Small Claims and Minor Offences Courts Ordinance 2002, s 2(a).

³⁷ Small Claims and Minor Offences Courts Ordinance 2002, s 2(g).

³⁸ Small Claims and Minor Offences Courts Ordinance 2002, s 17(b)-(c).

case' as a small, minor, of less or inconsiderable importance and affected amity in the society or any cause pleading towards provocation which may lead to a criminal offense.

10- Code of Civil Procedure (Sindh Amendment) Act 2018

Sindh government has also made amendments to the Code of Civil Procedure by introducing Code of Civil Procedure (Sindh Amendment) Act 2018. In the amended Act, the Court is allowed to use Alternate Dispute Resolution (ADR) methods to resolve cases of civil or commercial matters. Section 2 (1A), defines "Conciliation" as a process that is conducted confidentially in which a neutral person (the conciliator) actively assists parties in working towards a negotiated agreement of a dispute or difference, putting forward proposals for the settlement with the parties in ultimate control of the decision to settle the terms of resolution, the conciliator having no decision-making power or authority to impose solutions on the parties or force settlement between the parties."³⁹ Further, section 3 (11A) defines "Mediation" as a process that is conducted confidentially in which a neutral person (mediator) actively assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle the terms of resolution, the mediator having no decision-making power or authority to impose solutions on the parties or force settlement between the parties."⁴⁰

Upon examining the relevant general and special laws about Alternative Dispute Resolution (ADR) across various provinces of Pakistan, it becomes apparent that the legal framework specifically addressing dispute resolution is not comprehensive. None of the Acts provide provisions on the training and qualifications of mediators in ensuring the effectiveness of the application. Further, there was no establishment of community government-recognized dispute resolution centers at present. Additionally, the existing ADR provisions within these laws are predominantly court-annexed. They do not directly address community or neighborhood disputes unless such disputes are first brought before the court, which may then refer them to mediation processes as outlined in the relevant legislation. This reveals a significant gap in the legal infrastructure for addressing ADR outside the formal judicial system, highlighting the need for a more robust framework to manage and resolve disputes at the community level.

³⁹ Code of Civil Procedure (Sindh Amendment) Act 2018 (Sindh Act No IV of 2019), s 2(1A).

⁴⁰ Code of Civil Procedure (Sindh Amendment) Act 2018 (Sindh Act No IV of 2019), s 3(11A).

11- Critical Analysis of The Legal Position of ADR Laws And Provisions in Pakistan

A thorough analysis of the relevant general and special laws regarding Alternative Dispute Resolution (ADR) mechanisms in Pakistan reveals a significant gap in the legal framework governing community mediation. Specifically, there is no established framework for community mediation, including the training and qualifications of community mediators and the creation of community mediation centers. The Council of Common Interests (CCI), as established under the Constitution of the Islamic Republic of Pakistan 1973, is tasked with resolving disputes between the Federation and the Provinces. However, its mandate is limited to these specific categories of disputes and does not encompass neighborhood or community-level disputes. Consequently, the absence of a comprehensive legal structure for community mediation remains a critical issue, leaving a void in addressing local disputes effectively.

Despite the introduction of court-annexed mediation under the CPC, there are no detailed rules that govern the conduct of mediation, the training and qualifications of mediators, and the mediation centers. In this regard, one of the Judges of the Supreme Court of Pakistan, Justice Tassaduq Hussain Jilani, commented that: “Notwithstanding the legislative and executive measures taken, the Courts have not made use of section 89 of the CPC very frequently. There is more than one reason for this. Firstly, for any new scheme to succeed, institutional support is a sine qua non which has been mostly lacking. Secondly, not much has been done for training and capacity building of the judges. And thirdly, the amendments in the CPC were not followed by amendments in the rules for procedural details to invoke ADR techniques”.⁴¹

Similar to the Civil Procedure Code (CPC), the Family Courts Act of 1964 lacks detailed guidelines on how compromise or reconciliation should be conducted between disputing spouses. Consequently, in practice, judges may sometimes leave the parties alone in their chambers to negotiate and discuss the matter independently. This approach highlights a gap in the legal framework, where the absence of structured procedures for reconciliation can lead to inconsistent and informal handling of disputes in family court settings. For example, in the case of *Mst. Ajminah Bibi v. Bakhtyab R/o* [2008] Wari Dir Upper KP (Civil Suit no. 26/3FC), the parties were advised to avoid traditional advocacy. Then, they opted for direct communications and the

⁴¹ Hasan Awais and Muhammad Amir Munir, “Alternative Dispute Resolution (ADR) in Trial Courts of Pakistan: A Practical Approach towards New Era of Timely Justice as a Means of ‘Justice for All’”, Report of the 8th Judicial Conference, Law and Justice Commission of Pakistan (2018) p 13.

reconciliation was successful after two or three hearings.⁴² This approach may work well for amicable couples; however, it can be problematic if the parties are hostile towards one another. In such cases, leaving the parties alone to negotiate can exacerbate tensions and potentially lead to further conflict, highlighting the need for a more structured and guided reconciliation process.

The Small Claims and Minor Offences Courts Ordinance 2002 encourages courts to refer cases for amicable settlement through Alternative Dispute Resolution (ADR) mechanisms, including arbitration, mediation, conciliation, or any other mutually agreed-upon lawful means. While the Ordinance provides some detailed guidelines, such as preparing lists of arbitrators, mediators, or conciliators and outlining their responsibilities, it falls short of establishing a comprehensive framework. The current provisions do not adequately address the need for detailed rules governing the conduct of these ADR processes, nor do they cover the training of personnel and the establishment of appropriate venues. To ensure an efficient and effective ADR service, a more robust legal framework with specific rules, training protocols, and designated facilities is required.

In the same vein, the Shariah Nizam-E-Adl Regulation 2009 also encourages a court to refer any civil or criminal case to Sul'h (mediation) lead by either 'Musleh' or 'Musleheen'. Besides, it also provides that the Musleh or Musleheen will have to decide the case based on the Shari'ah. The irony here is that, in some cases, the Shari'ah itself is subjected to various interpretations by numerous scholars. Accordingly, it would be difficult to apply a particular ruling if there are two or more views but somehow contradictory with a particular issue. Although it obliges the court to maintain a list of Musleheen, there is no mention of the qualifications of a Musleh. In addition, the place and the conduct of mediation as to where and how the Musleh or Musleheen should settle the dispute are not well covered under the Regulation. In addition, this is only applicable to a handful of areas of KP and not, (provincewide).

Moreover, all of these relevant laws that have provisions for ADR mechanisms, i.e., the CPC, the Family Courts Act 1964, the Small Claims and Minor Offences Courts Ordinance 2002, the Shariah Nizam-E-Adl Regulation 2009, and the ADR Act, are court-annexed ADR in nature. Thus, it does not directly deal with neighbourhood disputes in the community unless the dispute

⁴² Qazi Attaullah and Lutfullah Saqib, "Tracing the Concept of Negotiation in Law, Pakistani Legal System and Shari'ah", *Jihāt al-Islām*, 2017, Vol. 11, No. 1, pp. 53-68.

is brought before the court and the court refers it to a mediation process prescribed under such relevant laws.

On the other hand, the Dispute Resolution Council (DRC) established under the Khyber Pakhtunkhwa Police Order (Amendment) Act 2015 Act can be a good example of community mediation in amicably settling neighbourhood disputes without having to go to a court of law. Nonetheless, it does mention clearly whether the DRC has the jurisdiction to deal with civil cases only, or both civil and criminal cases. In the same vein, it fails to limit the monetary value of a dispute for civil cases and the sentence for criminal cases if it is found to have jurisdiction to handle criminal cases.⁴³ As of right now, neither the qualifications nor the procedures for conducting mediation are clearly defined, and there are no rules governing the conduct of mediators. It is difficult to guarantee consistent and successful mediation procedures without thorough regulation, which emphasizes the necessity of a formal framework to deal with these problems.

11.1- Analysis of ADR Act, 2017 (Islamabad)

The Alternative Dispute Resolution Act 2017 was enacted on 30th May 2017. This is the first codified special law regarding ADR in Pakistan. In this Act, mediation, conciliation, and arbitration procedures are provided as Alternative Dispute Resolution. This Act provides that each civil dispute as enumerated in the schedule shall be referred by the court to ADR, except where the parties have no consent, or where the court is satisfied that the matter could not be resolved through ADR, or where it involved any material question of law and fact.⁴⁴ A panel of neutral (mediator or arbitrator) as provided in the Act, includes retired judges, retired civil servants, experienced lawyers, religious scholars, and other experts, who shall conduct the ADR procedure at the ADR Centre. A time frame for the conclusion of the ADR is provided within 30 days, however, the time can be extended to another 15 days at the request of the neutral panel. After the successful conclusion of the ADR proceeding, the Neutral shall record the settlement and grant an award. The award report will be submitted to the concerned court.⁴⁵ After the submission of the award to the court, a judgment shall be pronounced and a court decree shall be passed in the light

⁴³ Waseem Ahmad Shah, "Despite Amendment in Law DRCs' Jurisdiction Still Not Clear" (17 August 2015) Today's Paper https://epaper.dawn.com/DetailImage.php?StoryImage=17_08_2015_181_007 accessed 1 September 2024.

⁴⁴ The Alternative Dispute Resolution Act, 2017 (Islamabad)

⁴⁵ The Alternative Dispute Resolution Act, 2017 (Islamabad)

of the ADR panel decision. It is also provided that if the efforts of the Neutral failed to resolve the dispute, the case will be reverted to the court concerned. In addition, the court can appoint Neutral to conduct ADR proceedings in compoundable offences, under the criminal law of Pakistan. Under the provisions of this Act, the court or the Neutral may hire an evaluator for expert opinion to sort out any financial issue or other technical nature. Under this Act, no appeal or revision is maintainable from the decree or any order of the court.⁴⁶

The ADR Act in Islamabad introduces a broad spectrum of Alternative Dispute Resolution (ADR) mechanisms, including arbitration, mediation, conciliation, and neutral evaluation, for courts to consider when referring cases. However, this legislation appears overly ambitious in attempting to encompass such a diverse range of ADR methods within a limited set of provisions. Each ADR process requires detailed rules governing its conduct, as well as guidelines for the training and qualifications of personnel, their appointment, and the establishment of appropriate venues. Moreover, the Act is applicable solely within the Islamabad Capital Territory and does not extend to the rest of Pakistan. Additionally, there are no official reports available regarding the progress or effectiveness of the Act in practice.

11.2- Analysis of Punjab ADR Act 2019

In the province of Punjab, the ADR Act was promulgated in October 2019. The Act authorises both civil and criminal disputes to be referred to alternative dispute resolution for a speedy and cost-effective resolution. Pursuant to the Act, the court may refer any civil dispute to ADR with the permission of the parties within 30 days of the attendance of the defendant. The ADR proceedings is scheduled to be resolved within the maximum period of six months. Besides, the public prosecutor may refer a criminal dispute for ADR with the consent of the complainant under section 345(1)⁴⁷ of the Criminal Procedure Code 1898, at any time before framing of the charge. Additionally, the court can also refer a case to ADR *Suo Moto* under Section 345(2) Cr.PC, even after the framing of charge in case of FIR. Similarly, in case of a complaint, on the consent of the parties, the said matter can also be referred to ADR.⁴⁸

⁴⁶Alternative Dispute Resolution Act 2017 (Islamabad)
https://senate.gov.pk/uploads/documents/1497249886_554.pdf accessed 3 September 2023.

⁴⁷ Punjab Alternate Dispute Resolution Act 2019 (Act XVII of 2019), s 4(1).

⁴⁸ Punjab Alternate Dispute Resolution Act 2019 (Act XVII of 2019), s 4(2).

Under this Act, the parties in dispute may select the person or persons for the ADR process. In case of non-agreement of the parties, the court will provide a list of ADR Service Providers or ADR Centers to the parties for selection. After the conclusion of the ADR proceeding the case shall be reverted to the court for final disposal. The whole of the proceeding of ADR shall be kept confidential in all matters. In case, where the ADR fails to resolve the dispute, the case will be reverted to the court for proceedings according to the prevailing procedure. Meanwhile, where the ADR proceeding succeeds, after submission of an award to the court, a judgment shall be pronounced, and a decree shall be passed. The Act also provides that no revision or appeal can be filed from the decree or order of the court. However, a public prosecutor is allowed to challenge the court order under section 345(2) of the Code.⁴⁹

11.3- Analysis of Khyber Pakhtunkhwa (KP) ADR Act 2020

The KP ADR Act was enacted on 28th December 2020. This act aimed to introduce the method of dispute resolution among parties in an issue, through the alternative modes of resolving dispute, without indulging in formal court cases to ensure inexpensive and expeditious justice to the public. Pursuant to this Act, the court may refer a civil matter to ADR on the consent of the parties in dispute. Similarly, a Deputy Commissioner or any other designated officer may also refer a civil dispute to ADR.⁵⁰ The time frame for ADR proceedings is provided for 6 months in maximum. Similarly, in criminal matters, all the compoundable offences under Section 345 Cr.PC can be referred to ADR, on the consultation of parties by the Court.⁵¹ Moreover, the Deputy Commissioner or the DRC can also refer a matter to ADR. The time frame for ADR proceedings in criminal matters is provided for three months. The Court can also record evidence during postponement.⁵²

For the ADR process, the Act provides the composition of Saliseen Selection Committee to consist of the Commissioner of the Division as Chairman, RPO, a Senior Civil Judge (Admin), an official of law enforcement agencies, a Regional Director Prosecution, a representative of

⁴⁹ The Punjab Alternate Dispute Resolution Act 2019 ACT XVII OF 2019 <<http://punjablaws.gov.pk/laws/2739.html>> (accessed on 04 September 2024).

⁵⁰ Section 3, The Khyber Pakhtunkhwa Alternate Dispute Resolution Act, 2020 (Khyber Pakhtunkhwa Act No. Xlviii Of 2020 <<https://www.pakp.gov.pk/acts/the-khyber-pakhtunkhwa-alternate-dispute-resolution-act2020/>> (accessed on 04 September 2024).

⁵¹ Section 3, The Khyber Pakhtunkhwa Alternate Dispute Resolution Act, 2020

⁵² The Khyber Pakhtunkhwa Alternate Dispute Resolution Act, 2020 (Khyber Pakhtunkhwa Act No. Xlviii Of 2020

Special Branch and Deputy Commissioner as members.⁵³ The referring authority can select one or more Salis from the roll of Saliseen for dispute resolution. After completion of the ADR proceeding, the matter will be submitted to the Court for disposal. The whole of the ADR proceeding shall be kept confidential. In case where the ADR fails to resolve the dispute, it will be resolved by the court under the law. While no appeal or revision can be filed from the decree or order of the Court, passed in consequence of ADR. it is provided that Saliseen shall not represent the parties to an ADR in future proceedings. Moreover, the proceedings under this Act is to be privileged and not admissible in evidence. In consequence of this legislation, Section 89-A of the Code of Civil Procedure 1908 and Section 29 (i)(iiv) and 118-A of the KPK Local Government Act, 2013 are repealed.⁵⁴

For the modern legal ADR concept, the KP government adopted this complementary system to support the judicial system for the needs of the society. In order to assimilate this informal judicial system into a proper mechanism there is a need for the implementation of laws. However, instead of providing a comprehensive legal framework in the province, the KP government has implemented a bureaucratic type of system, which created a path for sluggish litigation instead of speedy justice. The main aim of the KP government seems to be a quick resolution of disputes outside of formal litigation, aiming to side-track society from Courts towards “Saliseen Committees”. However, it is worth noting that these committees lack specialization. There is no framework for training or skills for the ADR committee. However, it must be acknowledged that not all of these nominated individuals possess the necessary qualifications and expertise to effectively carry out alternate dispute resolutions between parties. The ADR process requires certain skills to effectively bring the parties into a dialogue and negotiate for settlement.

Based on the discussion of the ADR Act, it is suggested that dedicated ADR Centre be established at the District and Tehsil levels to handle disputes more effectively. Additionally, a structured mechanism should be developed for selecting negotiators and mediators, drawing on experienced professionals such as lawyers, judges, ulema, and other distinguished individuals from traditional systems. This mechanism must ensure that selected mediators possess mandatory legal knowledge and skills, which should be validated through rigorous training and examinations.

⁵³ The Khyber Pakhtunkhwa Alternate Dispute Resolution Act, 2020 (Khyber Pakhtunkhwa Act No. Xlviii Of 2020

⁵⁴ Section 30, The Khyber Pakhtunkhwa Alternate Dispute Resolution Act, 2020.

Involvement in alternative dispute resolution should not be treated as a part-time or post-retirement role but rather as a specialized profession requiring thorough preparation and expertise.

11.4- Critical analysis of the latest ADR laws in Pakistan

Alternative Dispute Resolution (ADR) offers methods for resolving disputes without resorting to formal litigation. It is an effective means for the swift settlement of conflicts, with a historical foundation in traditional practices such as Jirga, Panchayat, Faislo, and Baloch Jirga in Pakistan. To modernize and formalize ADR processes, Pakistan has codified several laws. These include the Alternative Dispute Resolution Act 2017, the Punjab Alternative Dispute Resolution Act 2019, and the Khyber Pakhtunkhwa Alternative Dispute Resolution Act 2020. Each of these Acts provides a specific framework for resolving disputes through negotiation, mediation, and conciliation, allowing parties to avoid formal court proceedings. While there are procedural differences among these Acts, they share a common goal: to offer affordable and expedited justice through the ADR system.

Despite the advances made by the existing ADR laws, there are notable shortcomings that hinder their effectiveness. To address these issues, several recommendations are proposed for enhancing the ADR framework in Pakistan. First, it is essential to codify all ADR laws into a uniform structure to eliminate contradictions and ensure consistency across different provinces. Second, community ADR centers should be established under the oversight of the Federal Ministry of Law and Justice, ensuring proper regulation and standardization. Additionally, ADR service providers must possess comprehensive legal knowledge, relevant experience, and appropriate training and qualifications to perform effectively. Finally, a dedicated budget should be allocated to ADR Centres and other relevant stakeholders to facilitate their operations and support the expansion and improvement of ADR services nationwide.

11.5- Modern ADR system can help in Combatting Delays in the Civil Justice System of Pakistan

The system of civil justice in Pakistan bears crippling problems of delays and the high number of litigations. The courts are overburdened with caseloads beyond their capacity. In Pakistan, a large number of cases are pending before the courts. According to an estimate, 1.86 million cases are pending in courts. “This was stated by the Minister of State on Law and Justice Shahadat Awan at

the Lower House of the Parliament. He was responding to a question raised by Nuzhat Pathan regarding the state of pending cases in the Supreme Court and high courts of the country in the last five years. The House was told that a total of 186,1616 cases have remained unaddressed in the last five years in various superior courts in the country”.⁵⁵

Civil cases in Pakistan normally take two decades to be decided, which spans the lives of many litigants and ends up with his/her next of kin. In the Civil Justice System of Pakistan, the remedies awarded are very limited and sometimes there are no remedies at all, which makes it risky for the parties to opt for the court litigation system.⁵⁶ The increasing volume of litigation has significantly overburdened the courts, highlighting their incapacity to manage the rising caseload effectively. This situation underscores the urgent need for comprehensive legislation to address the limitations of the current legal framework. The introduction and promotion of thorough ADR legislation, coupled with the institutionalization of traditional dispute resolution methods, are crucial steps towards creating a more effective and efficient system. Such measures will encourage public engagement in ADR processes, leading to lawful, cost-effective, and timely resolutions. By addressing delays in the civil justice system, this comprehensive approach can mitigate the backlog of cases and enhance the overall efficacy of legal dispute resolution in Pakistan.

12- Conclusion and Recommendations

The exploration and analysis of the various legal frameworks that incorporate Alternative Dispute Resolution (ADR) mechanisms reveal a pressing need for a comprehensive legal structure in Pakistan. Current provisions for ADR, including mediation, are fragmented and insufficiently developed to address the full scope of dispute resolution needs, particularly at the community level. This research advocates for the creation of a unified legal framework that encompasses all dimensions of mediation, with a specific emphasis on community mediation. Such a framework would facilitate the expeditious and cost-effective resolution of neighbourhood disputes more amicably, reducing the reliance on formal court proceedings.

⁵⁵ Shahadat Awan, Staff Report, “1.86 million cases pending in courts, NA told”, Daily time News Pakistan, March 31, 2023. < <https://dailytimes.com.pk/1078876/1-86-million-cases-pending-in-courts-na-told/dir> > (accessed 5 September 2023).

⁵⁶ Fizzah Mamoon, Effectiveness of ADR Methods in Combatting Delays in the Civil Justice System, PCL Student Journal of Law, vol 1, 2017, p 122.

Pakistan's existing legal provisions for ADR, while a step in the right direction, are limited and lack cohesion. The introduction of a comprehensive, national ADR program would enhance the efficacy of dispute resolution processes and ensure a more structured approach to handling disputes. This framework should be meticulously designed to integrate traditional dispute resolution methods prevalent in Pakistan, thereby respecting and incorporating local customs and practices into the modern legal system.

Some Recommendations for the Development of a Comprehensive Legal Framework: The government should legislate a detailed and cohesive ADR framework that addresses all aspects of mediation, including community mediation, mediation centers across the country, and trained community mediators. This framework should outline procedures, qualifications for mediators, and standards for mediation practice to ensure consistency and reliability in dispute resolution. Secondly Incorporation of Traditional Dispute Resolution Methods, the new legislation should integrate traditional dispute resolution practices into the ADR framework. This approach will not only preserve cultural heritage but also enhance the acceptance and effectiveness of ADR mechanisms within local communities. Thirdly Countrywide ADR Program Implementation, to establish a national ADR program with clear guidelines and resources to support the implementation and operation of ADR mechanisms across the country. This program should include training and certification for mediators, public awareness campaigns, and the development of standardized ADR procedures.

Further Recommendations are to introduce a monitoring and evaluation system for ongoing monitoring and evaluation of ADR practices and outcomes. This will help in assessing the effectiveness of the ADR framework, making necessary adjustments, and ensuring continuous improvement. In addition, Legislative Support and Funding are vital in ensuring the success of the application. There is a need to secure legislative backing to effectively materialise and standardise the application. Certain allocations or appropriate funding is significant to support the development and operationalization of the ADR framework. Lastly, public education and outreach, to initiate educational programs to inform the public about ADR mechanisms, their benefits, and how they can be accessed are indispensable. Greater awareness will encourage community engagement with the ADR system and promote its use.

By adopting these recommendations, Pakistan can create a robust and efficient ADR system that addresses the needs of its diverse communities, reduces the burden on the formal judicial system, and fosters more harmonious and cost-effective dispute resolution.

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