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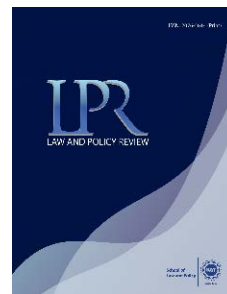
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Legal Framework of Alternative Dispute Resolution (ADR) Mechanisms in Pakistan: A Comparative Study with Turkey, Malaysia, and Bangladesh

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Abstract

‘Alternative Dispute Resolution (ADR) refers to a humane approach which delivers justice, empowers the parties, and fosters a sense of belongingness. The current research probed into the evolution of ADR in Pakistan by examining its historical aspects and incorporation into the legal regime. Moreover, it also explored practical challenges causing the slow assimilation of this dispute-resolution mechanism in the country. The process used to conduct the current study involved a qualitative approach, examining ADR-oriented interventions adopted globally from selected jurisdictions. The findings suggested that Pakistan can learn from Turkey’s strategies in institutionalizing ADR by conducting awareness campaigns. Malaysia and Bangladesh have successfully integrated ADR into their legislative frameworks through collaborations, training initiatives, and by fostering a cultural environment that embraces ADR methodologies. Through applying these approaches, Pakistan can further advance its ADR practices to promote better access to justice and ease the pressure on its legal system’.

Keywords: arbitration, confidentiality, conciliation, cost effective, mediation, negotiation, time saving

Introduction

Globalization and economic development have resulted in a surge in the number of disputes between parties, increasing the need for judicial intervention. This increase has strained the judicial resources worldwide, prompting the need for an evolution in how disputes are perceived and resolved. Resultantly, there is a need to adopt Alternative Dispute Resolution (ADR) mechanisms. Some key benefits of ADR include shorter timeframes for resolution and the preservation and strengthening of relationships among the parties involved (Absi et al., [2023](#)). Long, drawn-

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out courtroom battles make parties deem litigation redressal mechanism cumbersome. ADR mechanisms focus on humanizing the justice deliverance, bringing autonomy to the parties by considering the rational and emotional aspects of conflict and instill a sense of belongingness. It is a humane approach for delivering justice, empowering parties, and fostering a sense of belongingness (Ramanathan & Jayasimha, [2023](#)). Pakistan also aspires to enhance the ADR process in order to control the backlog of cases and to afford efforts to improve access to justice.

Literature Review

Understanding the Concept and Modes of Alternative Dispute Resolution (ADR)

Studies have underscored that ADR is a widely recognized and utilized approach to settling legal issues on a global scale, which operates outside the traditional court system (Vecaldo et al., [2015](#)). Its salient features include parties' ability to exercise control, maintain confidentiality, and demonstrate flexibility. Impartial mediators or arbitrators play a crucial role in facilitating the equitable communication. ADR presents a viable solution in terms of efficiency and cost-effectiveness, serving as a valuable complement to conventional Court systems to enhance the accessibility of justice (Belikova, [2020](#); Born, [2021](#)). ADR encompasses several methods, such as negotiation, arbitration, mediation, and reconciliation (Park & Lee, [2016](#)). Mediation, facilitated by an impartial mediator, facilitates the communication and consensus among conflicting parties, emphasizing confidentiality and adaptability (*The Imperial Electricity Company Case V Zhongxing Telecom Pakistan*, 2019 CLD 609). Arbitration, overseen by arbitrators, culminates in a legally enforceable determination and can be either ad hoc or institutional (*Zafarullah Khan V Government of Pakistan*, PLD 1998 Lahore 132). Negotiation entails the process of direct contact between involved parties, whereas conciliation has a resemblance to mediation, however, with the presence of a more proactive conciliator (Shonk, [2023](#); Shinde, [2012](#)). The utilization of technology, specifically the Internet, is a crucial aspect of Online Dispute Resolution (ODR), which facilitates the convenient resolution of cross-border disputes. Parties can customize these ADR approaches to suit their requirements (Ballesteros, [2021](#)).

Significance Of Alternative Dispute Resolution (ADR) in Current Scenario of Judicial System of Pakistan

The pursuit of expeditious justice is a paramount concern in the Pakistan's judicial system which is currently grappling with an escalating backlog of cases. Within this context, Alternative Dispute Resolution (ADR) emerges as a beacon for the restoration of swift justice. ADR represents a strategic departure from protracted formal litigations, offering a more streamlined approach to dispute resolution. This mechanism not only promises efficiency but also presents a viable solution to the challenges besieging the current judicial framework, effectively addressing the critical need for speedier, more accessible justice (Fatima, [2022](#)).

The studies also explore that, quest for an efficient justice system transcends geographical boundaries, with countries like the UK and the US also entangled with challenges similar to those faced by Pakistan, leading to a global inclination towards Alternative Dispute Resolution (ADR) methods because same have been identified as increasingly vital alternatives to conventional litigation, primarily due to their ability to expedite the resolution process. This trend is particularly noticeable in the commercial sector. Despite its commitment to equity, justice, and fairness, the adversarial justice system in Pakistan remain epicenter of debates due to its procedural intricacies. ADR presents a solution to mitigate issues related to delays, high costs, and societal discord. Additionally, it enhances access to justice by offering a more accommodating environment, especially for women and minorities. Pakistan has attempted to integrate ADR into its legal framework through various legislative acts. However, these initiatives have not yet achieved the anticipated outcomes, primarily due to multiple underlying factors. There is a pressing need for further reforms within the country to establish public trust and enable ADR to effectively complement the standard legal procedures (Hameed & Khan, [2021](#)).

ADR offers litigants a viable alternative, allowing for the resolution of conflicts outside the traditional courtroom setting. This approach is particularly noted for its efficiency, circumventing the often lengthy, convoluted, and costly procedures characteristic of standard litigation. By streamlining the dispute resolution process, ADR not only alleviates the caseload burdening the courts but also significantly reduces the time and

financial costs for the parties involved, highlighting its role as a facilitator of more accessible justice (Hassan et al., [2021](#)).

Historical Perspective of Legislative Framework and Institutional Support of Alternative Dispute Resolution (ADR) within the Country

The historical origins of ADR in Pakistan can be traced back to its British Indian legal framework. The proclivity towards ADR became apparent via the implementation of the Bengal Regulations of 1782 and gained more prominence within the legal framework with the enactment of the Code of Civil Procedure in 1882. This legislation included special sections addressing ADR, which was subsequently followed by the introduction of the Arbitration Act in 1899. The appointment of Sir Erel Richard to the Governor General’s council by Lord Curzon in 1905 was a significant development that brought about a crucial change. It also introduced sophisticated ADR procedures in the subcontinent as well. The Code exhibited characteristics consistent with a Court-annexed ADR approach, whereas the Arbitration Act functioned autonomously without the need for Court participation. In order to enhance efficiency, the legislative body created the Arbitration Act of 1940, which established a comprehensive ADR structure. Despite its extensive cultural past, Pakistan has exhibited a slower trajectory while reforming its arbitration laws as compared to other countries in the subcontinent (Iqbal, [2022](#)).

Sr. No	National Legislations Disseminating ADR in Pakistan
1	Constitution of Pakistan, 1973 (Arts. 153-55).
2	S.89-A of the Civil Procedure Code, 1908 (as amended in 2002) read with Order X Rule 1-A (deals with alternative dispute resolution methods)
3	The Small Claims and Minor Offences Courts Ordinance, 2002.
4	Sections 10 and 12 of the Family Courts Act, 1964.
5	Sections 10 and 12 of the Family Courts Act, 1964.
6	ADR provisions of the Code of Criminal Procedure, 1898.
7	Plea Bargaining (sec. 25 of NAB Ordinance, 1999)
8	The Probation of Offenders Ordinance, 1960
9	The Arbitration Act, 1940.
10	Article 163 of the Qanoon-e-Shahadat Order, 1984 (decision on oath).
11	Customs: Section 195C of Customs Act, 1969 and Chapter XVII of the Customs Rules, 2001.
12	Income Tax: Section 134A of the Income Tax Ordinance, 2001 and Rule 231 C of the Income Tax Rules, 2002.
13	Sales Tax: Section 47A of the Sales Tax Act, 1990 and Chapter X of the Sales Tax Rules, 2004.
14	The Punjab Sales Tax Act 2012: Section 69 of the Act read with notification No PRA/Orders dated 06/2012.
15	Public Procurement Rules 2004: Rule 49.
16	Punjab Public Private Partnership Act 2019: Section 28.
17	Section 17 of the Commercial Courts Ordinance (Since Repealed)
18	ADR under SBP vide circular No 1 of 2010,

The inception of Pakistan's ADR mechanisms may be traced back to the 1908 Code of Civil Procedure. The enactment of the Arbitration Act of 1940 further reinforced the significance of ADR. Over time, the 1973 Constitution embraced ADR to resolve water issues between provincial and federal entities. Additionally, the Qanoon-e-Shahadat Order of 1984 implemented a system of decision-making based on oaths. Throughout the 21st century, a sequence of legislative measures emerged to foster the practice of mediation and facilitate the reconciliation process (Awais, [2018](#)). The 2009 National Judicial Policy, also stipulated Alternative Dispute Resolution (ADR), as essential medium to control the Court backlog and improving the availability of legal remedies (National Judicial Policy, [2009](#)). It is important to note that several national legislations as mentioned in illustration above, emphasize the significance of ADR within the legal framework of Pakistan.

From the perspective of institutions, the implementation of Alternative Dispute Resolution (ADR) in Punjab began in 2002 with the establishment of two ADR centers in Lahore. These facilities were specifically designed to facilitate the resolution of family disputes through reconciliation. Within the province of Punjab, mediation centers were formed based on a court-annexed model, resulting in the successful resolution of more than 11,000 cases within a span of one year. Numerous organizations, including philanthropic endeavors encompassing those dedicated to the promotion of mediation and legal reforms, were instrumental in facilitating this progress. (Awais, [2018](#)).

The above discussed combined efforts exemplify Pakistan's dedication to efficient dispute resolution. The commercial dispute center in Karachi, which was established in 2007 as a result of an international cooperation agreement, has garnered significant backing from small firms and banks. This facility accepts referrals for both court proceedings and private mediation. Despite encountering initial opposition, the organization has successfully provided training to mediators and fostered heightened awareness among professionals and corporations (Barbieri, [2011](#)).

ADR-Specific Legislation and Implementation Challenges

In an endeavor to enhance the country's legal framework, significant efforts were undertaken to integrate ADR (Alternative Dispute Resolution). In this regard, the first legislation in the country was 'The Islamabad

Alternative Resolution Act 2017', which enunciates the objective to promote ADR mechanisms as a cost-effective and efficient alternative to formal litigation. It provides definitions for key terms related to ADR and mandates that listed civil and criminal matters involving compoundable offences in the schedule be referred to ADR. The Act establishes a panel of qualified *Neutrals*, appoints them for ADR proceedings, and allows referrals to ADR centers. Parties can also agree to ADR before the commencement of legal proceedings. Time limits are set for ADR processes and settlements or awards reached through ADR are submitted to the Courts for judgments and decrees. If ADR fails, the Court resumes proceedings. The Act also covers costs and fee, privileges, penalties for violations and provisions for appeal and revision (Rahman, et al., [2022](#)).

Similarly, other crucial ADR-oriented legislations adopted in the province of Punjab, The Punjab Alternate Dispute Resolution Act 2019, is a significant legislation. This legislation is aimed to establish a robust system of ADR for civil and criminal disputes within the province. It focuses on the core principles to provide inexpensive and expeditious justice through ADR processes, such as mediation, conciliation, and evaluation. The Act emphasizes the referral of cases mentioned in schedule I and schedule II to ADR, ensuring that eligible disputes are considered for alternative resolution methods. The Act outlines the procedure for the referral to ADR. In civil disputes, the Court must refer the case to ADR within a specific timeframe after the defendant files a written statement. For criminal disputes under Section 345(1) of the Code of Criminal Procedure, the Court can refer the case to ADR under certain circumstances, such as before framing charges or after summoning the accused.

Choosing an ADR professional is an additional pivotal component of the legislation. The parties possess the opportunity to achieve a consensual agreement regarding the selection of an ADR professional. However, if an agreement cannot be reached, the Court offers a compilation of licensed ADR service providers and centers. If there are more disputes, the Court would refer the parties to an officially recognized ADR service provider. Parties can engage in the proceedings in person, through duly authorized representatives, or legal counsel. Nevertheless, it is impermissible for attorneys who have already participated in ADR proceedings on behalf of one party to represent another in the same matter subsequently. Accreditation and compliance with regulatory guidelines are mandatory for

ADR facilities and service providers, followed by registration in accordance with the provisions outlined in the Companies Act of 2017.

The Act emphasizes a crucial need for confidentiality by requiring the parties involved in ADR to maintain confidentiality pertaining to the proceedings and any matters discussed during the ADR procedure. In cases where ADR fails to resolve the disagreement effectively, the law requires the Court to proceed with adjudicating the matter in line with the relevant legal regulations. If an ADR procedure results in a settlement or resolution that is mutually recognized by the parties involved, the Court would proceed to give a judgment and issue a decree following the agreed-upon terms. In situations where the outcome of ADR is still unclear, the Court may choose to seek further clarification from the ADR practitioner. The Act includes provisions for appeal, revision, privilege, and admissibility in ADR proceedings, a Code of Conduct for accredited providers, designated authority, and governmental jurisdiction (Hussain, [2022](#)).

Likewise, the Khyber Pakhtunkhwa (KPK) ADR Act of 2020 offers a comprehensive legal framework to facilitate the effective implementation of ADR processes within the province. The Act aims at improving access to justice and enhancing parties' ability to actively resolve their conflicts by broadening the range of disputes eligible for ADR. Moreover, it also allows flexibility in the decision-making process for referring cases to ADR and safeguarding confidentiality and privilege in ADR proceedings. The *Saliseen Selection Committee* facilitates a transparent process to appoint facilitators. On the other hand, provisions for settlement-oriented negotiations, indemnity, and a Code of Conduct contribute to the effectiveness and integrity of ADR. Time-bound proceedings, integration with existing laws, and research-oriented rule-making authority further enhance the Act's comprehensive approach to efficient dispute resolution in Khyber Pakhtunkhwa (Khan et al., [2022](#)).

To promote the ADR framework, specialized training sessions have been organized under the Punjab and Islamabad ADR Acts. These training programs were not limited to judicial officers but also extended to other stakeholders, including lawyers and various government departments, to foster a comprehensive understanding of ADR principles and practices (Express, 2023). Despite ADR legislation Pakistan is still facing challenges due to lack of expert service providers, inadequate ADR centers, and insufficient training opportunities. After the identification of these

obstacles, recent initiatives were taken to address them as well. Needless to say, Pakistan's ADR landscape faces a research gap, requiring comparative analysis with successful models to enhance effectiveness in resolving domestic conflicts through ADR.

Research Questions, Material and Methods

The current study examined the historical and complex aspects of ADR legislation in Pakistan while focusing on its effects and practical application. The judicial system has been implementing ADR through institutionalization, legislation, and training of ADR human resources. However, challenges persist in its effective implementation. The current lack of academic literature in this field emphasizes the necessity for further research and examination to ascertain and modify proven alternative dispute resolution (ADR) procedures from international jurisdictions for efficient application in Pakistan. The possible application of successful strategies from international jurisdictions in Pakistan has the capacity to boost the effective execution of alternative dispute resolution (ADR) methods. Comparative analysis with global legal jurisdictions, such as Turkey, Malaysia, and Bangladesh may help identify the strategies for an effective ADR implementation. By analyzing successful practices, Pakistan can enhance its ADR framework, improve access to justice, and alleviate the burden on the judiciary. The current research aimed to provide practical recommendations in order to improve the efficiency of Pakistan's ADR system by learning from and adopting successful practices from these jurisdictions. Sampling-comparative analysis is restricted to the Muslim countries only because they have cultural and social assimilation with the jurisdiction.

Discussion: Analysis of Successful ADR Mechanisms and Strategies in Selected Jurisdictions

The successful application of ADR strategies in selected jurisdictions can be determined by exploring and elucidating the background and key features of ADR mechanisms.

ADR Mechanism in Turkey (Legal Framework, Institutions, Programs, and their Success)

Turkey has established a robust legal framework for ADR including mediation, arbitration, and reconciliation. The Turkish Mediation Law in

2012 promoted mediation and has played a crucial role in reducing case backlog (Dost, [2014](#)).

Turkey has implemented mediation facilities, training initiatives, and incentives for dispute resolution. The practice of ADR in Turkey has a historical context influenced by Western legal systems and traditional dispute resolution methods. The country is now expanding its dispute resolution procedures to improve justice accessibility, reduce Court burden, and facilitate faster dispute resolution (Gürsel, [2018](#)).

The Law of Mediation 2012 promotes mediation as a primary dispute resolution tool, outlining fundamental principles, protocols, and eligibility criteria. It allows voluntary mediation in civil disputes and enforces mediation settlement agreements. Mandatory mediation is now required for employment and commercial disputes involving receivables and compensation claims. Nonetheless, an attempt to resolve the disputes through mediation failed; the state pays for the first two hours of mediation so that lawyers and parties can be encouraged towards it (Elveris, [2018](#)).

The Mediation Law allows parties to jointly select and appoint a mediator, with Court-controlled bureaus or chief clerk offices appointing from a list of accredited mediators within the Ministry of Justice, Türkiye. The Head of Mediation Department maintains a list of registered mediators, reporting their expertise to commission presidencies. If no bureau is created, lists are delivered to mediation bureaus or the chief clerk's office of the appointed civil Court of peace. The European Code of Conduct for mediation services in Turkey outlines the principles for mediators to voluntarily adhere to. These principles can be used in conjunction with the 2004 European Code of Conduct for mediators and other recommendations and guidelines from the Council of Europe and the European Commission to promote justice.

Turkey has established rules and regulations for ADR procedures including arbitration, reconciliation committees, and expert determination. The Turkish International Arbitration Law and the Law on Civil Procedure covers arbitration, while the Reconciliation Committees Law provides a framework to resolve specific civil disputes through reconciliation committees. Turkey has several ADR institutions and initiatives, with the Ministry of Justice overseeing and enforcing ADR activities. The Mediation Department coordinates and oversees mediation efforts, train mediators and

accredit the institutions by offering mediation training. Turkey has several specialist mediation facilities, such as the Istanbul Mediation Center and the Grand Bazaar Istanbul. These facilities serve as forums for parties to participate in mediation, provide educational programs for mediators, and maintain a roster of competent mediators. Additionally, universities, bar associations, and chambers of business have implemented ADR programs and dedicated centers to provide education and training in ADR techniques. It also fosters the growth of a proficient ADR workforce and integrates ADR into the legal education system (Legal Aid Society, [2022](#)).

The adoption and integration of ADR procedures in Turkey have resulted in notable achievements. The enactment of Mediation Law in 2012 marked a significant turning point in the Turkish legal system and the overall societal progress of Turkey. In the realm of statistical analysis, a total of four cases underwent mediation procedures in the year 2012. However, with the progression of time, a huge number of disputes were resolved through ADR (Paksoy, [2020](#)). The Act has also channeled the mediation involving commercial disputes in terms of consultation with a mediator, time frame of mediation, remuneration of mediator and legal binding of mediation agreement. The creation of Mediation Department and specific legislation has fostered the ADR as an alternative mechanism to resolve disputes outside the Court. Mediation has earned significant acceptance and respect within the legal community, corporate entities, and the broader public (Aydin & Eryiğit, [2015](#)).

The implementation of ADR in Turkey has resulted in efficient and cost-effective resolution of complex issues. This has reduced Court workload, mitigated case backlogs, and has also improved the legal system's effectiveness. ADR has also preserved relationships, especially in terms of business and familial disputes. Turkey's legal infrastructure, institutional support, government incentives, and awareness initiatives demonstrate its potential for dispute resolution.

Overview of ADR Framework and Successful Initiatives in Malaysia

Malaysia has successfully integrated ADR into its legal system through public-private partnerships, comprehensive training programs, and promotion of mediation as a culturally acceptable dispute resolution method, facilitating its enforcement and widespread acceptance. The primary legislation governing ADR in Malaysia is the Arbitration Act of

2005, based on the United Nations Commission on International Trade Law (UNCITRAL) and Model Law. The legislation mentioned above establishes a legally binding framework for local and international arbitration, guaranteeing the enforcement of arbitral decisions. Likewise, the Mediation Act 2012 stipulates the requisite regulations for mediation, that is, confidentiality and enforcement mechanism, while also delineating the necessary prerequisites that mediators must adhere to (Ahmad et al., [2022](#)). Additionally, Malaysia has also enacted specific rules and regulations of specialized forms of ADR including construction adjudication, consumer dispute resolution, and Islamic banking and finance mediation (Dhiraj et al., [2019](#)).

Malaysian institutes, offering ADR services, promote its use as an ADR mechanism. The Financial Mediation Bureau (FMB), a self-governed entity under the Central Bank of Malaysia, facilitates conflict resolution between customers and financial service providers, particularly in the banking and insurance sectors. The Insurance Mediation Bureau (IMB) and Banking Mediation Bureau (BMB) issue awards within 60 days of hearings. The Malaysian Mediation Bureau integrates mediation into pre-trial Court proceedings. The Tribunal for Consumer Claims, established under the Consumer Protection Act of 1999, adjudicates consumer claims against suppliers or manufacturers. Malaysia's Islamic finance industry has specific dispute resolution mechanisms, such as the Ombudsman for Financial Services and the Arbitration Rules of the Kuala Lumpur Regional Centre for Arbitration (Yusoff & Oseni, [2019](#)). These mechanisms allow to resolve disputes related to Islamic finance products through mediation, arbitration, and adjudication. These legislative and institutional frameworks demonstrate Malaysia's commitment to provide a comprehensive ADR system that offers parties effective alternatives to litigation.

Malaysia has formed numerous institutions and taken certain initiatives dedicated to ADR to enable recourse to ADR. The Malaysian Mediation Centre (MMC) is a reputable institution, coupled with mediation services which also imparts training programs. The Mediation and Mitigation Center (MMC) offers various mediation services, encompassing commercial, family, and community disputes. It also maintains a registry of accredited mediators (Dhillon & Ling, [2015](#)). Correspondingly, other entities, such as bar councils, universities, and trade and industry chambers provide ADR services and training programs. The advancement and regulation of ADR

within the legal profession in Malaysia are primarily facilitated by two entities, namely the Malaysian Bar Council and the Malaysian Institute of Arbitrators. These organizations facilitate workshops, conferences, and CPD programs to augment the expertise and understanding of professionals. Malaysia actively promotes the establishment of public-private partnerships within ADR. The establishment of specialist ADR institutions, such as the Kuala Lumpur Regional Centre for Arbitration and the Asian International Arbitration Centre are facilitated by collaboration among government entities, professional groups, and private organizations. These centers offer a platform to facilitate arbitration, mediation, and other ADR processes, thereby ensuring the availability of diverse services to resolve conflicts.

The access to ADR procedures in Malaysia are also achieved through online technologies to facilitate the settlement of disputes through mediation, conciliation, arbitration, or expert determination (Yusoff & Oseni, [2019](#)). The integration of online dispute resolution mechanisms in Malaysia keeps the cost of settling disputes low and maintains high standards for grievance remedial methods. These efforts reflect Malaysia's recognition of the importance of ADR in promoting efficient and cost-effective dispute resolution mechanisms. The country emphasizes culturally acceptable methods and has also implemented specialized programs. For instance, mediation in Islamic banking and finance and use of online ADR mechanisms to meet the unique needs of its diversified society.

Insight into ADR Systems and Achievements in Bangladesh

Bangladesh has effectively incorporated ADR into its legal framework through legislation and establishment of dedicated ADR institutions. The legal basis for arbitration in Bangladesh is provided by the Arbitration Act of 2001, which offers a comprehensive procedure for ADR. Additionally, the Bangladesh International Arbitration Centre has played a significant role in the development and expansion of arbitration. The success of Bangladesh can be ascribed to the proactive involvement of the government in fostering ADR, conducting public awareness initiatives, and incorporating ADR into the formal curriculum of legal education. ADR in Bangladesh can be traced back to conventional mechanisms of resolving conflicts, including village Courts and *shalish*, which are community-based arbitration processes. The necessity to establish a regulated and organized ADR system was conceived to offer accessible and efficient means of resolving disputes. The primary objective of the implementation of ADR

procedures in Bangladesh is to mitigate the workload on the judicial system, decrease expenses associated with litigation, and support the amicable settlement of conflicts (Patoari et al., [2020](#)).

The legislation regulating ADR domestically is the Arbitration Act of 2001, based upon UNCITRAL Model Law. The aforementioned legislation has devised a comprehensive procedure for domestic and foreign arbitration regarding the recognition and enforceability. Furthermore, in order to facilitate the practice of mediation, the Mediation Act of 2012 was enacted to supplement the existing arbitration mechanisms. It espouses a framework for mediation, delineating the requisite protocols, mediator credentials, and the binding nature of mediation agreements. Bangladesh has enacted distinct legal provisions and regulatory frameworks to effectively handle various aspects of ADR, however, they are not limited to family conflicts, labor disputes, and business disputes. The legislative basis for specialized ADR processes in the fields of family law, labor law, and commercial disputes is established by the Family Courts Ordinance of 1985, the Labor Act of 2006, and the Commercial Dispute Resolution Act of 2018 (Hasan & Anzum, [2021](#)).

Bangladesh has a range of ADR institutions and initiatives that intend to foster and streamline the utilization of ADR mechanisms. The Bangladesh International Arbitration Centre is a renowned establishment that offers arbitration services. It functions as an autonomous and impartial entity, oversees the conduct of arbitration processes, and manages the details of competent arbitrators. Similarly, the Mediation Council of Bangladesh has been established to supervise and govern the implementation of mediation domestically. It is responsible for establishing and enforcing the criteria for mediators, accrediting the institutions that provide mediation training, and maintaining a registry of accredited mediators. Additionally, it is worth noting that colleges, law groups, and professional organizations in Bangladesh provide ADR programs, training seminars, and certification courses. These programs facilitate the growth of a proficient ADR human resource and enhance the understanding of ADR techniques among legal practitioners and general public.

Bangladesh has achieved extensive advancements to promote ADR procedures, specifically by including arbitration and mediation within its legislative framework. This phenomenon has resulted in expedited and economically efficient resolutions for various conflicts. The government

has proactively supported ADR mechanisms by implementing legislative reforms and creating dedicated institutions, such as the BIAC and the Mediation Council.

Findings: Key Lessons for Pakistan

The comparative qualitative analysis of ADR mechanisms in Turkey, Malaysia, and Bangladesh yields illuminating insights regarding the enhancement of ADR mechanism's in Pakistan. The basis of Turkey's ADR model success is institutional structure, with specialized bodies standardizing and supervising ADR practices to ensure credibility and professionalism. The public awareness campaigns and trainings also augment this. The state-sponsored mediation sessions highlight the government's preference for ADR over traditional litigation.

The Malaysian ADR framework is robust due to the collaboration between government bodies, professional entities, and private institutions. Malaysia's approach, tailored to its cultural fabric through specialized ADR methods, such as those for Islamic banking, demonstrates the need for conflict resolution mechanisms that reflect societal norms. Moreover, it has also progressed in online dispute resolution mechanisms. Another aspect is Malaysia's incorporation of ADR into legal education, which prepares aspiring legal professionals for a future in which ADR would be prevalent.

In the meantime, Bangladesh demonstrates the transformative force of government assistance. ADR has been brought to the forefront of the justice paradigm through targeted legislative reforms, specialized ADR bodies, and public awareness campaigns. Customized ADR statutes for specific industries, such as family and labor, demonstrate the value of context-sensitive legislation. In addition, Bangladesh's emphasis on cultivating a competent ADR professional community, supported by extensive training and accreditation, provides a road map to enforce ADR standards.

In synthesis, the findings from these nations provide a tapestry of strategies that, if carefully adapted, could guide Pakistan towards a more effective and culturally sensitive ADR system.

Recommendations: Practical Approaches for Improving Pakistan's ADR Framework

In the light of above findings, the adoption of following approaches may further enhance the ADR framework in Pakistan.

Enact Comprehensive ADR Legislation

Pakistan should consider the enactment of more comprehensive legislations, with the provision of a clear legal framework by ensuring the enforceability of ADR outcomes and establishing standards for ADR practitioners. The recently promulgated legislation needs certain amendments to make it consonant with general substantive and procedural law. Additionally, there is also a need to bring the existing ADR legislation in consonance with the UNCITRAL model, so that a pro-arbitration nature can be associated with the legal jurisdiction.

Cultural Integration

Special measures are needed to promote ADR methods aligned with Islamic principles in order to resolve financial and commercial disputes, fostering cultural acceptance, and trust among stakeholders nationwide.

Establish Specialized ADR Centers

Pakistan should establish specialized ADR centers at regional and district levels to provide accessible ADR services, facilitate training programs, and maintain a pool of qualified mediators and arbitrators.

Develop Training Programs

Pakistan should focus to develop comprehensive training programs for mediators and arbitrators, ensuring that they have the necessary skills and knowledge to effectively handle disputes. Training should cover mediation techniques, legal principles, ethics, and cultural sensitivity. In this regard, collaboration with international institutes and service providers is indispensable.

Online Dispute Resolution (ODR)

The implementation and enhancement of Online Dispute settlement (ODR) platforms in Pakistan can significantly enhance the country's ADR procedures. It would positively impact the accessibility and efficiency by providing accessible avenues for dispute settlement to a broader population.

Integration into Legal Education

Pakistan should incorporate ADR modules into law school curricula and provide continuing educational programs for legal professionals to promote the understanding and utilization of ADR methods.

Public Awareness Campaigns

Public awareness programs in Pakistan should be initiated to educate the general public, businesses, and legal experts pertaining to the advantages associated with ADR. It is recommended that these efforts prioritize the communication of the affordability, effectiveness, and confidentiality aspects of ADR procedures.

Enforcement Mechanisms

There is a need to develop efficient procedures to ensure the enforcement of ADR outcomes. This entails the establishment of adherence to mediated settlement agreements and arbitral rulings to foster trust in the efficacy of ADR mechanisms.

Financial Incentives

The government needs to incentivize the public to try resolving their disputes through the ADR mechanism. There is a need to provide financial incentives to the litigant for not adopting legal recourse of approaching the Court as a dispute resolution platform. Citizens can be provided with shared costs if mediation or arbitration has opted for civil or commercial dispute resolution. Moreover, the state can also provide funds to mediation centers offering dispute resolution services for family disputes. It would result in lowering the pressure on the national backlog of cases.

By implementing the aforementioned recommendations, Pakistan can effectively enhance its ADR system, facilitate better access to justice, mitigate Court backlogs, and foster the adoption of efficient mechanisms to resolve disputes.

Conclusion

Historical factors and legislative measures have shaped the ADR mechanisms in Pakistan. Despite all efforts, ADR in Pakistan has faced multiple challenges. These challenges include for non-reduction of case backlog, delays due to burden over the system, and non-availability of ADR-oriented infrastructure and human resources, resulting in obstacles to achieve desired results. After deciphering the approaches and mechanisms that resulted in the advancement of ADR in selected jurisdictions, a discourse was prepared on how the said policies would help the promotion of ADR in Pakistan. Turkey's ADR system emphasizes knowledge enhancement, legal integration, public engagement, and government fiscal

incentives. Malaysia's model promotes cooperation, cultural acceptability, adoption of online ADR procedures and integration of ADR in law programs. Bangladesh's government's support, regulations and capacity-building programs offer valuable insights for Pakistan, suggesting that the country can improve its ADR framework. The successful strategies discussed above can potentially strengthen ADR enforcement mechanisms and elevate its status as a primary mode of resolving disputes in Pakistan.

References

- Absi, W. Z., Martini, M., & Rusniati, R. (2023). Imposing restorative justice sanctions on online loan users who commit criminal fraud and compensating online loan victims through alternative dispute resolution. *International Journal of Social Science Research and Review*, 6(2), 138–142. <https://doi.org/10.47814/ijssrr.v6i2.963>
- Ahmad, S. O., Kahar, R., & Hasbullah, M. (2022). Knowledge, attitude and practice of community mediators in Malaysia. *Kajian Malaysia Journal Malaysian Studies*, 40(2), 45–64.
- Awais, H. (2018, May 4–5). *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 8th Judicial Conference, Law and Justice Commission of Pakistan). <https://tinyurl.com/bde42n6y>
- Aydin, G., & Eryiğit, B. (2015, January 23). *Progress of alternative dispute resolution mechanisms in Turkey*. Mondaq. <https://www.mondaq.com/turkey/civil-law/368614/progress-of-alternative-dispute-resolution-mechanisms-in-turkey>
- Ballesteros, T. (2021). International perspectives on online dispute resolution in the e-commerce landscape. *International Journal on Online Dispute Resolution*, 8(2), 85–101. <https://doi.org/10.5553/ijodr/235250022021008002002>
- Barbieri, G. L. (2011). *Alternative dispute resolution center manual: Guide for practitioners on establishing and managing ADR centers* (The World Bank Working Paper No. 78223). <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/906371468169461301/alternative-dispute-resolution-center-manual-guide-for-practitioners-on-establishing-and-managing-adr-centers>

- Belikova, K. (2020). Some ideas on pre-trial dispute settlement in BRICS countries. *Revista Quaestio Iuris*, 13(4), 1649–1671.
- Born, G. (2021). *International arbitration: Law and practice* (2nd ed.). Wolters Kluwer
- Dhillon, G., & Ling, L. S. (2015). Alternative dispute resolution methods and processes in Malaysia. *Malayan Law Journal Articles*. <https://tinyurl.com/drczu36s>
- Dhiraj, N. S., Nasucha, M. N., Alansary, O. M., & Alkhateeb, A. J. (2019). Hybrid dispute resolution in Islamic capital market: A Malaysian perspective. *International Journal of Management and Applied Research*, 6(4), 344–354. <https://doi.org/10.18646/2056.64.19-026>
- Dost, S. (2014). Mediation for disputes in private law in turkey. *International Journal of Academic Research in Business and Social Sciences*, 4(10), 81–99. <https://doi.org/10.6007/ijarbss/v4-i10/1210>
- Elveris, I. (2018, March 3). Turkey: Mandatory mediation is the new game in town. *Kluwer Mediation Blog*. <https://mediationblog.kluwerarbitration.com/2018/03/03/turkey-mandatory-mediation-new-game-town/>
- Fatima, S. (2022, September 30). Alternative dispute resolution in the light of arbitration laws. *Pakistan Journal of Social Research*, 4(3), 831–838. <https://doi.org/10.52567/pjsr.v4i03.777>
- Gürsel, Y. (2018). New rising star: Implementation of the mediation system under Turkish legal system and its development. *Social Science Research Network*, Article e3440038. <https://doi.org/10.2139/ssrn.3440038>
- Hameed, U. & Khan, N. A. (2020, January 1). Community Participation - The Missing Link In Pakistan ADR System -The Way Forward. *Research Society of International Law Review*. <https://rsilpak.org/wp-content/uploads/2023/03/COMMUNITY-PARTICIPATION-THE-MISSING-LINK-IN-PAKISTANS-ADR-SYSTEM-THE-WAY-FORWARD.pdf>
- Hasan, I., & Anzum, N. (2021). the development of alternative dispute resolution in family court of Bangladesh: Challenges and prospects.

International Journal of Law, Humanities & Social Science, 4(6), 81–102.

Hassan, R. S., Ahmed, N., & Siddiqui, F. A. (2021, December 31). Judicial System and Public Policy: Strategy for Expedious Disposal of Backlog. *JISR Management and Social Sciences & Economics*, 19(2), 193–205. <https://doi.org/10.31384/jisrmsse/2021.19.2.11>

Hussain, R. (2022, January 1). Autonomous Nature of Alternative Dispute Resolution (ADR) and its Role as Court Assistant in Pakistan. *Social Science Research Network*; RELX Group (Netherlands). <https://doi.org/10.2139/ssrn.4219096>

Iqbal, A. (2022, November 4). Reforming the alternative mechanisms of dispute resolution in Pakistan. *PalArch's Journal of Archaeology Egypt*. <https://archives.palarch.nl/index.php/jae/article/view/11456>

Khan, H., Afzal, U., & Iqbal, S. (2022). Comparative analysis of alternative dispute resolution laws in Pakistan: Its adaptation, procedure and compatibility. *Annals of Human and Social Sciences*, 3(3), 21–26. [https://doi.org/10.35484/ahss.2022\(3-iii\)03](https://doi.org/10.35484/ahss.2022(3-iii)03)

Legal Aid Society. (2022). *Decongesting court dockets through ADR*. https://www.las.org.pk/wp-content/uploads/2022/07/LAS_Apr-Jun_Newsletter_O.pdf

National Judicial Policy (2009, September 20). <https://www.supremecourt.gov.pk/download/national-judicial-policy-2009/>

Paksoy, F. C. (2020, October 11). *Development of mediation in turkey*. ADR Istanbul. <https://www.adristanbul.com/en/development-of-mediation-in-turkey/>

Park, M. S., & Lee, H. (2016). Legal opportunities for public participation in forest management in the republic of korea. *Sustainability*, 8(4), Article e369. <https://doi.org/10.3390/su8040369>

Patoari, M. M. H., Nor, A. H. M., Awang, M. N. B., Chowdhury, A. H., & Talukder, J. (2020). Legal and administrative challenges of Alternative Dispute Resolution (ADR) as a peaceful means of resolving the land dispute in the rural areas of Bangladesh. *Beijing Law Review*, 11, 415–428. <https://doi.org/10.4236/blr.2020.112026>

- Rahman, S. U., Tanveer, M. S., & Hilal, A. (2022). The critical analysis of procedural aspects in applicability of alternate dispute resolution ACT-2017. *Pakistan Journal of International Affairs*, 5(2), 1112–1127. <https://doi.org/10.52337/pjia.v5i2.499>
- Ramanathan, U., & Jayasimha, S. (2023, February 7). *Conflict resolution: The way forward*. Asian Development Bank. <https://doi.org/10.56506/VBTH7594>
- Shinde, D. U. (2012). Conciliation as an effective mode of alternative dispute resolving system. *IOSR Journal of Humanities and Social Science*, 4(3), 1–7. <https://doi.org/10.9790/0837-0430107>
- Shonk, K. (2023, August 22). What is alternative dispute resolution? Familiarize yourself with mediation, arbitration, and a hybrid approach using alternative dispute resolution. <https://www.pon.harvard.edu/daily/dispute-resolution/what-is-alternative-dispute-resolution/>
- Vecaldo, R. T., Clemente, R. C., & Tamangen, A. Y. (2015). Effectiveness of bodong as an alternative dispute resolution: A glimpse of kalingas' peace framework. *Sociology and Anthropology*, 3(3), 145–152. <https://doi.org/10.13189/sa.2015.030301>
- Yusoff, S. S. M., & Oseni, U. A. (2019). Standardisation of legal documentation in Islamic home financing in Malaysia. *Journal of Islamic Accounting and Business Research*, 10(3), 448–465. <https://doi.org/10.1108/jiabr-02-2017-0016>