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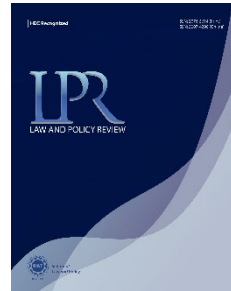
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Alternative Dispute Resolution in Pakistan: An Implementation Perspective

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Abstract

This paper outlines the successful aspects of Alternative Dispute Resolution, the struggles it faces, and the efforts made toward its implementation. Through thematic content analysis, this study highlights the shortcomings of the judiciary system, including concerns regarding weak institutional practices and public behavior towards litigation. The research examines how the weak application process of Alternative Dispute Resolution and chronic proceedings in court cases have severely affected the justice system of Pakistan. Although some attempts have been made in favor of ADR in recent years, there is still a dire need to improve its implementation. The study also discusses local forms of ADR currently practiced in various regions of the country, particularly through which tribes and communities resolve their conflicts. Additionally, some organizations and multinational companies have successfully settled down disputes using ADR proceedings. The paper concludes with practical solutions and recommendations to enhance the use and effectiveness of ADR in the country.

Keywords: arbitration, conflicts, litigations, mediation, panchayats

Introduction

Alternative Dispute Resolution (ADR) offers a flexible and informal approach to resolving conflicts outside of court. It encompasses various types and methods to resolve conflicts. There are numerous acts and laws for Alternative Dispute Resolution that support smooth and cost-effective settlement of disputes. Alternative Dispute Resolution practices and techniques aim to resolve legal disputes without initiating any chronic litigations. ADR typically encompasses mediation, arbitration, and a variety of hybrid processes, in which a neutral person (arbitrator or mediator) facilitates the resolution of legal disputes without formal proceedings. These alternatives to adjudication are advocated for a variety of reasons (Mnookin, [1998](#)). By focusing on resolving disputes without lengthy

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litigation, ADR promotes smoother, quicker resolutions and reduces the burden on the courts.

The Pakistani judiciary is currently overwhelmed by an enormous backlog of cases, highlighting the need for a more efficient dispute resolution mechanism. Over 1,86,9886 cases are pending before the superior and subordinate judiciaries in Pakistan. Among these cases, 38,539 are pending in the Supreme Court, 147,542 in the Lahore High Court and 30,764 in the Peshawar High Court, 93,335 in the Sindh High Court, 6,030 in the Baluchistan High Court and 16,278 in the Islamabad High Court (Asad, [2018](#)).

In the current global context, every country is striving to achieve the objective of low- cost and timely justice. As a result, many are introducing approaches that have both of these characteristics. Those mechanisms are collectively known as Alternative Dispute Resolution (Ali & Geng, [2019](#)).

This study evaluates the progress made so far in implementing ADR and the struggles and work done for its promotion. The study also analyzes the effectiveness of the performance of arbitration, mediation, and other ADR mechanisms in the resolution of disputes between parties. Pakistan has developed laws concerning international arbitrations and foreign awards almost exclusively with reference to the Act of 1937 and to a certain extent, the Act of 1940. It is only very recently that the courts have begun to deal with issues arising under the New York Convention (Won, [2013](#)).

The purpose of the study is to examine the need for Alternative Dispute Resolution among multinational companies, organizations, and the judiciary in Pakistan. It also seeks to evaluate the extent to which existing laws and acts of Alternative Dispute Resolution are effectively implemented in the country. The author analyzed the enforcement of laws and systems through the conceptual framework. The society's behavior towards the judiciary system remains largely negative, with many parties filing lawsuits based on false allegations to pressurize the opposing parties. Litigation and case proceedings are expensive and time-consuming, further contributing to this frustration.

In this context, ADR presents a potential solution, but its implementation remains weak, outdated and underdeveloped in Pakistan. While the International community has progressed in both judiciary and in ADR systems, Pakistan continues to lag behind. This underdevelopment in

the ADR laws and their applications also discourages foreign parties to invest in the country. To address these concerns, the researcher has posed key questions to achieve the aims and objectives of this research study that: Why do multinational companies, organizations and judiciary in Pakistan require Alternative Dispute Resolution? And to what extent are the existing ADR laws and acts effectively implemented in Pakistan? The study deeply focuses the implementation perspective in the country over the past three to four years.

Literature Review

This section presents a review of the writings on the judiciary and enforcement of ADR in Pakistan.

ADR Forms

There are various methods available worldwide to settle disputes outside the courtroom, and Alternative Dispute Resolution (ADR) encompasses several forms that facilitate these processes, like arbitration, mediation, anchoring, reconciliation, and negotiation. But there are two main forms that are practiced in Pakistan: traditional ADR and formal ADR. Traditional ADR practices are not very well known in the international world, but have deep historical roots in the subcontinent and continue to be practiced in Pakistan. Panchayats is one of the traditional ADR forms that is practiced in Pakistan's rural and tribal areas.

Despite the availability of these ADR mechanisms, the public in Pakistan generally prefers to resolve disputes through litigation, making the formal court system the most commonly used avenue for conflict resolution. The mechanism of tribal justice is rooted in the tradition of Pakistan. The poor people get benefits from this because they are not able to go through the court proceedings. By the passage of time, many laws were enacted to declare panchayats and Jirga as official proceedings, but at the same time there was also an effort to terminate these forums. The detailed discussion is made in point iv.

Mediation

Mediation is a process in which a neutral third party helps the disputing parties reach a mutually acceptable resolution. The mediator does not make decisions for the parties or impose any solution but rather helps the parties to communicate effectively and find common ground.

The state believes that mediation is an effective solution for conflicts and problems to address the challenges faced by the judicial system of Pakistan. The state introduced the court-annexed ADR in 2017 through legislation in parliament. In Pakistan, mediation is recognized under the ADR Act 2017.

The court may refer a dispute to mediation if it believes that mediation could be a more effective way of resolving the dispute than going to trial. The mediator is either selected by the parties or appointed by the court, and must be neutral and impartial. The mediator's role is to facilitate communication between the parties, identify issues, and help the parties explore possible solutions. The mediator does not have the power to impose a solution on the parties but can help them develop their own resolution. If the parties reach an agreement through mediation, the agreement is typically documented in writing and signed by the parties.

The agreement is binding and enforceable, just like any other contract. If the parties do not reach an agreement through mediation, they can still pursue other forms of dispute resolution, such as arbitration or negotiation. Overall, mediation is a useful and effective form of alternative dispute resolution in Pakistan, particularly in cases where the parties have an ongoing relationship and want to preserve it. It is cost-effective, confidential, and can result in a resolution that is tailored to the specific needs of the parties involved. By recognizing the significance of mediation, Pakistan has set up ADR centers in Punjab through which mediation can take place. With the help of the World Bank, the International Monetary Fund (IMF) and the Asia Foundation, several initiatives have been undertaken to reform the law and the professional training of judges and mediators (Weinstein International Foundation, [2020](#)).

Arbitration

One of the most practiced and renowned forms of ADR in Pakistan is arbitration. Arbitration is a mechanism by which disputed parties submit their differences to the judgment of an impartial person or group by mutual consent or statutory provision (Won, [2013](#)). This is quasi-judicial mechanism where the parties nominate an arbitrator and then give a reward. However, the award must be submitted to the court for it to be declared as *Rule of Law*, but the party against whom the award is pronounced has the right to challenge it in the court.

The Arbitration Act 1940 is the only statute that deals with all types of arbitration processes in Pakistan. However, it does not deal with the recognition and enforcement process of international Arbitral Awards in Pakistan (Won, [2013](#)).

Arbitration is an esteemed system for resolving disputes related to agreements, contracts, or any issues involving international elements. This process is conducted by an impartial or independent arbitration, in line with a mechanism, infrastructure and both non-legal and legal substantive standards by the parties directly or indirectly.

Arbitration process can be effectively applied at the family courts, courts of small causes and very effectively in the commercial disputes before the court.

Although the Muslim Family Law has provided for an opportunity for arbitration between the parties at litigation, unfortunately, the groups circumvent it very easily, and the consequences are dire, which results in a burden on the courts. Panchayats and Jirgas

Traditional dispute resolution methods, such as Panchayats and Jirgas, continue to play a significant role, especially in rural and tribal areas of Pakistan. The practice of resolving conflicts through ADR mechanisms or forms like Panchayats and Jirga has deep roots in the culture of Pakistan (Won, [2013](#)). The tradition of community elders settling inter-community conflicts has been part of the culture of Pakistan, even before the independence. With the advent of the modern era, a culture of mediation has gradually developed in the country.

Panchayats are prevalent in rural areas, particularly in Khyber Pakhtunkhwa and Punjab. According to a report by the Human Rights Commission of Pakistan. Panchayats are often used to resolve disputes related to land, water sharing, and village affairs (Human Rights Commission of Pakistan [HRCP], [2017](#)).

Jirgas are similar to Panchayats, but they are specific to Pashtun society, particularly in the Khyber Pakhtunkhwa and Baluchistan provinces. Jirga and Panchayats have been practiced since the ancient times. These mechanisms were used in the subcontinent in the Mughal era, the British era, and even after the independence. These mechanisms are now also practiced in villages, small towns and walled cities in Pakistan. According to a report in the Dawn newspaper (Bhatti, [2018](#)), the power of panchayats

and Jirgas to deal with criminal disputes is in conflict with the judgment of the Supreme Court of Pakistan, wherein the court, while declaring functioning of all sorts of jirgas and panchayats as unconstitutional, had ruled that they may operate under a law to the extent of civil disputes.

Despite their cultural relevance and ability to provide quick, informal justice, these mechanisms have faced legal and human rights challenges. It emphasizes that Panchayats and Jirga played a significant role in addressing both criminal and civil disputes. It was also stated in January 2019 that these systems primarily handle civil conflicts.

Jirgas have traditionally been involved in settling disputes related to land, inheritance, and criminal cases. However, they have also been criticized for making decisions that violate human rights and perpetuate discrimination, particularly against women. The Pakistani government does not officially recognize both Panchayats and Jirgas, as their decisions can often conflict with the country's legal system and can be at odds with fundamental human rights. Jirgas have been praised for their ability to resolve disputes quickly and informally, and for their accessibility to rural communities (United Nations Development Programme [UNDP], [2013](#)). Nevertheless, these traditional ADR mechanisms remain deeply embedded in rural life and continue to influence how justice is administered outside the formal court system.

Research Methodology and Conceptual Framework

The research approach used in this study is ‘Qualitative approach’ with the analysis being conducted through ‘Thematic Content Analysis’ of two different newspapers one is ‘Dawn’ and other is ‘Daily. Times’. Thematic analysis (TA) is a method for identifying and analyzing patterns of meaning in a data set (Braun & Clarke, [2006](#)). It illustrates which themes are important in the description of the phenomenon under study (Joffe, [2012](#)).

Conceptual Framework

The table about themes of ADR of chosen newspapers evaluates the laws and acts of ADR. All the successful cases and implementation steps is discussed with the help of this conceptual framework. In coding section of conceptual framework, DP stands for Dawn newspaper while DTP means Daily Times newspaper.

Table 1*Conceptual Framework*

Themes	Sub Themes	Codes
1) Issued Notification for Enforcement of Law	- KPK Gov issued notifications for enforcement of KPK ADR Resolution Act - Home department ordered the imposition of Laws	DP1
2) Holding Jirga and Panchayats	- Rabia Khel & DDM tribes held a Jirga - 5 Years old dispute resolved in Panchayat by ADR - Most functional tool at local level	DP1, DP3, DP5 DP3 DP1, DTP1
3) Provisions and Legislative development of ADR	-Pakistan enacted laws to implement its provision -Introduction of ADR laws in the parliament -Replacement of Police Act -CPC & CRPC enabled the courts to adopt ADR method	DP4 DP4 DP4, DP1 DP1, DPT1
4) Adoption of mediation according to islamic law	- Islam stimulated the mediation - Muslim Law family provided an opportunity of arbitration	DTP1, DTP6, DP5 DTP4
5) Utilization of ADR as a tool for social change	-Efforts for diminishing evil confederation -Immediate Relief to women in distress - Women Accession to Justice -Efforts for enhancement of women	DTP4, DTP5 DTP5 DTP5, DPT1
6) Establishing new institutions for ADR	- Participation in state institutions -Formation of Saliseen Committee -Establishing ADR institutions by federal and provincial governments -Held an International Conference on ADR -Initiation of Mediation Council	DTP5, DPT1 DP3, DP1, DP5 DP2, DP4 DP5 DP1

Data Analysis and Discussion on Existing Laws and Execution Work

Data analysis and discussion focuses on interpreting the gathered data. Firstly, researcher examines the ADR laws and acts currently in force in Pakistan. Following this, an analysis of the various themes is conducted, with detailed discussions on their implications. Second last section covered the weak implementation and drawbacks of alternative dispute resolution. The final section offers critiques of alternative dispute resolution system and the factors that are affecting it.

Existing ADR Laws and Acts

ACT NO XX OF 2017 (Alternative Dispute Resolution Act) (Senate of Pakistan, [2017](#)). It is for all the disputing parties except who do not admit doing ADR and where a complex law question is engaged, and it delivered alternative dispute resolution in Pakistan.

Different changes were made to strengthen the laws of arbitration throughout the world and states have made efforts to get the maximum benefits from the process of arbitration. The arbitration Act of 1940 is only an enhancement on this subject in Pakistan. (Won, [2013](#))

The Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act 2011, commonly known as the *REFA Act 2011* is also extended all over Pakistan and it applies on all the arbitration agreements. One of the main laws include *The Arbitration* (Protocol and convention) *Act, 1937*. It is an act, that makes some additional provisions with respect to the law of arbitration in a country.

There has been an implementation of an international convention, and Pakistan enacted laws to implement its provisions in 2011. It is also discussed in the theme number five (5) of the conceptual framework.

“Nearly 137 countries ratified the New York Convention including Pakistan and India. Pakistan signed the Convention in 1958 but Pakistan did not pass any relative domestic legislation, which India did in 1961” (Won, [2013](#)).

The International Investment Dispute Act was enacted in April 2011. Muslim family law also contributed to dispute resolution in Pakistan. MFLO provided an option and method of arbitration among the disputing parties. It mainly concerned the divorce and different approaches to separation

cases. Section 89 – A CPC provides an allowance to do Alternative dispute resolution of commercial and civil affairs.

One of the important acts is The *KPK ADR Act 2020*. It is an Act, which gives the system of ADR in the KPK province, and Article 37 clause (d) of the constitution of Pakistan supports it.

The other new provision of the Local Government Act section – 118A made room for mediation councils that were abrogated later on, which it is said that violation of article 175 of Pakistan's constitution has done. Later on, this ADR act passed by the Provincial Assembly in 2020.

ADR Act Section 1 (3) issued an assurance that law is operational and the Home Department ordered the imposition of these laws as given in the Theme no 1 of conceptual framework. This law also allows the Mediators Selection Committee to be directed by the senior civil judge, higher officials of law enforcement agencies, and the divisional commissioner. The ADR Act of 2017 also promotes conflict resolution. It allows ODR and covers all concerns regarding dispute resolution. It also given in theme 2 of the conceptual framework with the coding of DP1, DP2.

The *Punjab ADR Act 2019* also known as Act XVII of 2019 works in whole Punjab. This act is used in criminal and civil disputes.

Evaluation and Discussion in-reference of Islamic context

The study analyzed the situation of the enforcement of ADR in Pakistan. The Khyber Pakhtunkhwa government issued notifications for ADR implementation in the province along with the enforcement of laws by the Home Department. The measures have been taken on ADR in KPK province. The Dispute Resolution councils had been set up. The Jirga and Panchayats system is very functional at the local levels in Pakistan. Many old disputes have been solved by Jirga sessions.

Islam also encourages mediation, and the ADR system aligns with Islamic principles, such as promoting peace, justice, equality and harmony in the society. As given in the Daily Times newspaper on February 21, 2019 (Chattha, [2019](#)) that,

“Pakistan is a state with the population of 96.4% who follow Islam as religion and the hallmark of Islam is ‘justice’ for everyone.” The Quran says “O you who believe! Stand out firmly for justice, as witnesses to Allah, even if it be against yourselves, your parents, and your relatives, or whether it is

against the rich or the poor...” (Quran 4: 135)”

Mediation, negotiation, arbitration, and ombudsman are the processes of ADR and concept of all these mechanisms comes from Arab and Islam. These mechanisms are mentioned in the Quran and were practiced by Prophet Muhammad (P.B.U.H), who was a staunch proponent of amicable conflict resolution. Islamic laws inherently incorporate alternative dispute resolution (ADR) concepts and mechanisms, making them an essential foundation for ADR practices in Pakistan. Therefore, leveraging both Islamic laws and international laws, Pakistan should implement the fully fledged systems and laws of ADR and ensure their effective enforcement.

Numerous social factors are hindrances to the effective functioning of the justice system in Pakistan. Public behavior toward the judiciary is often problematic, with many individuals filing lawsuits on fake allegations to put pressure on their opponents. This not only overburdens the judges and courts of Pakistan but also has bad impact on the image of Pakistan’s judiciary in the eyes of the international community.

Pakistan; MFLO 1961, Family court Act 1964, DMMA 1939, CMRA 1929, Dowry and Bridal Gift Restriction 1976, Muslim Personal Law (Shariat) Application Act 1962 (Siddiqah, [2019](#)).

To further support ADR initiatives, the Saliseen (mediators) was established at the divisional level under Khyber Pakhtunkhwa Act no XLVIII of 2020 as given in the theme no eight of C.P with coding DP3, DP5 and DP1. Saliseen committee operates exclusively in KPK. Under the KPK ADR Act 2020, Saliseen (mediators) Selection Committee is responsible for forming and maintaining a panel of mediators for counselling of the district administration.

Drawbacks and Weak Implementation of ADR in Pakistan

The research identifies various drawbacks and flaws in the judiciary of Pakistan and the factors hindering the effective implementation of ADR. In many cases where agreements are made between local and international parties, or even among various countries, arbitration laws and clauses are considered the primary way to resolve the conflicts, but Pakistan is lacking this part. While some arbitration clauses and laws exist, they are either not implemented effectively or are absent altogether, leading to a gap in the ADR system. The ADR has many benefits, such as affordable justice, flexible proceedings and quicker resolution times.

Furthermore, the legal education in Pakistan fails to adequately address ADR concepts. The law curriculum at the bachelor's level does not include relevant ADR content which contributes to long-term issues within the justice system. Even the laws that support women rights (regarding judiciary issues or participation in justice) to women in the society, are lacking in the implementation area.

Pakistan is lacking modern ways of ADR. The National Commission on the Status of Women filed another petition to declare the performance of Panchayats and Jirga as unconstitutional and illegal across the country.

One petition was filed by In October 2018, the KPK government filed a petition against a judgment of the High Court of Peshawar in which the court had announced Fata Interim Governance Regulation (FIGR)'s few provisions in dispute with the constitution and to establish courts in the erstwhile Fata (Shah, [2021](#)).

These are the reasons that government could neither establish arbitration institutes for criminal conflicts nor various systems could be presented for diverse areas. There are ADR bodies in the country, but ADR bodies and existing institutions did not have the full independency to execute and implement their laws and decision.

Critiques

Critiques provide the detailed criticism on the shortcomings in the implementation of ADR mechanisms in Pakistan. These critiques, featured in both the *Dawn* and *Daily Times* newspapers, provide detailed analysis of the gaps in ADR laws and their execution. It is discussed in Dawn newspaper on 1st October 2021 (Abbasi, [2021](#)) that, "The ADR has many merits as it provides justice in true meanings and ADR Act of 2017 covers all these concerns, but it was never implemented".

Similarly, *Dawn* raised concerns about Pakistan's legal framework on January 31, 2021 (Malik, [2021](#)), questioning: "Why do contractual disputes tend to be decided abroad, and why do substantive and procedural laws used differ from the domestic laws?"

Daily Times, in an article published on February 21, 2019, criticized the stagnation in the country's legal system (Chattha, [2019](#)), asking "Why is it so difficult to apply modern mechanism of justice in Pakistan to fix the problems within the legal system?"

These concerns stem from the persistence of the chronic proceedings and outdated laws and acts that are very unintelligible with the country's circumstances. The behaviors and attitudes of people of Pakistan is also the cause of hindrance of justice in the country. A segment of society appears to exploit the judicial process, deliberately dragging opponents into prolonged and unnecessary litigation to inflict suffering.

Further criticism has been directed at Pakistan's governance system. As reported by *Daily Times* (Chattha, [2019](#)), "Governance system of Pakistan is so complex, outdated, overlapped and unsuitable that many decades have been passed by seeking administrative and judicial justice for the common man".

It is reported in the Dawn newspaper on 31 January 2021 (Malik, [2021](#)) that: "Interference of other institutions in the ADR proceedings prevent International bodies to find solutions to their disputes in Pakistan by Pakistan's laws and acts".

Conclusion

The study has concluded that there are ADR systems and arbitration mechanisms that are practiced in their various local forms, such as Panchayats, Masalihah committees and Jirga but it is unfortunate that where all modes are available for the conflict resolution, the trust in litigation is much higher. The impact of litigation and a large number of lawsuits that are pending would be harmful and we are losing the trust factor of the international community too.

Laws are present but they are not implemented properly in the country. There is no proper framework for Alternative Dispute Resolution. And there are only a handful of people who know arbitration works. Additionally, the judicial system does not respect the process of Alternative Dispute Resolution. For instance, the courts succumb to pressure and grant injunctions (stay) even when the parties in their agreements had agreed to refer their dispute to ADR.

The research has concluded that the lack of implementation of ADR mechanisms is due to several reasons, including weak affiliation between rich classes of society, outdated laws and rules, people's behavior in society and poor education of the legal system among the public and they are not equipped with contemporary methods.

It has always been a difficult and challenging task to enforce the Laws. The recommendations regarding effective and good implementation of ADR are given below:

Government & Judiciary Participation

The government must work to strengthen the country's judiciary system through the ADR. The judiciary system must need to eliminate of unnecessary litigations. The judiciary can play a crucial part in the implementation of arbitration. Stimulate disputants to endorse arbitration mechanism and other ADR methods concurrently beneficial and speedy. Unnecessary involvement of institutions and courts in cases that are under ADR mechanisms prevent foreign parties to invest in Pakistan and or to choose Pakistan as an arbitrator platform.

Modern Mechanisms of Arbitration and ADR

There is a dire need to strengthen the methods of ADR in both civil justice and semi judicial sides. The old mechanisms should be changed now. As the world is evolving day by day, governance and judiciary should use the contemporary methods and processes for the solution of cases. Modern Mechanisms like ODR (online dispute resolution) can one of the most effective ways to resolve the conflicts within minimum time and with less expenses. Law study and degrees should include the chapters regarding Alternative Dispute Resolution and how the developed countries judiciary works in their Alternative Dispute Resolution processes.

These recommendations can be very beneficial for the depletion of large backlog of cases that are pending before the ordinate and subordinate Judges.

Conflict of Interest

The authors of the manuscript have no financial or non-financial conflict of interest to declare in the subject matter or materials discussed in this manuscript.

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