



REPORT



KHYBER PAKHTUNKHWA JUDICIAL ACADEMY

2-Day Workshop on Commercial Dispute Resolution: Concept & Understanding, 20-21 March, 2023



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PURPOSE OF THE REPORT

This report reflects proceedings and recommendations of the two days workshop on “Commercial Dispute Resolution: Concept & Understanding” conducted by the Khyber Pakhtunkhwa Judicial Academy (KPJA) from 20th to 21st March, 2023. The report provides workshop’s background, learning objectives and outcomes. It also contains summary of the proceedings, schedule of activities, consolidated recommendations of the participants and information about the participant’s along with pictorial coverage of the activity.

INTRODUCTION & BACKGROUND

Justice institutions play a significant role in economic development, particularly through their impact on credit markets and firm growth, the protection of vulnerable populations, their capacity to deter violence, and their influence over people’s trust in formal institutions’.¹ Establishment of specialized commercial courts was one of the recommendations made in “Seminar on Fast Track Dispute Resolution for Investment, Contracts and Transactions”.² Specialization of courts can reduce cost and increase pace of dispute resolution.

Establishment of special courts for adjudication of commercial disputes is a relatively recent phenomenon in Pakistan. The Khyber Pakhtunkhwa Board of Investment & Trade (KP- BOIT) and Directorate of Industries, as part of the ‘Ease of Doing Business’ initiative originally proposed the re-designation of the Consumer Courts already established under the Consumer Protection Act, 1997³ as “Consumer and Commercial Courts” by proposing amendment in the law. Eventually, the Khyber Pakhtunkhwa Resolution of Commercial Disputes Act, 2022 (the Act) is promulgated whereby the existing Consumer Courts are declared as “Commercial Courts”.⁴ The Peshawar High Court, Peshawar has directed all the District & Sessions Judges/Zilla Qazis in the Khyber Pakhtunkhwa to transfer all cases involving commercial

¹ Ramos Maqueda, Manuel; Chen, Daniel L. 2021. The Role of Justice in Development : The Data Revolution. Policy Research Working Paper; No. 9720. © World Bank, Washington, DC, <https://openknowledge.worldbank.org/entities/publication/cfc8755c-02a9-5585-94f8-ec2e4a594e93> accessed on March 1, 2023

² Report of Seminar on Fast Track Dispute Resolution for Investment, Contracts and Transactions (May, 2017) available on: <https://www.kpja.edu.pk/content/report-one-day-seminar-fast-track-dispute-resolution-investment-contracts-and-transactions> accessed on March 1, 2023

³ Khyber Pakhtunkhwa Consumer Protection Act 1997

⁴ Section 3, the Act 2022

disputes to the concerned Commercial Courts.⁵ An Appellate Tribunal comprising of a Chairman and two members is also established to hear and decide the appeals arising out of the judgment, decree or order of the Commercial Courts.⁶

After promulgation of the Act, it is imperative to create clear understanding of the concept and legal framework for commercial dispute resolution amongst the relevant justice sector institutions. The workshop will provide an opportunity to the relevant stakeholders to discuss the law, modalities for its effective implementation and highlight further legislative or administrative reforms, for carrying out purposes of the Act.

LEARNING OBJECTIVES & OUTCOMES

Objectives of the workshop were to:

- Shine light on significance of the commercial dispute resolution;
- enhance understanding of the Resolution of Commercial Disputes Act and to sensitize participants on effective implementation of the Act;
- discuss practical aspects of procedure of Commercial Courts working in the Province for uniformity and consistency in practice; and to
- suggest legislative or administrative reforms, if so needed.

At conclusion of activity, it was expected that the participants would have been able to:

- understand significance of commercial dispute resolution ;
- comprehend and effectively implement the Act;
- bring uniformity and consistency in practice and procedure of the commercial courts; and
- highlight procedural and administrative bottlenecks and recommend way forward for effective implementation of the law.

PROCEEDINGS

Registration: Registration of the participants was conducted.

Inaugural Session: The workshop formally commenced with an inaugural ceremony chaired by Ms. Farah Jamshed, Director General, Khyber Pakhtunkhwa Judicial Academy. Mr. Justice

⁵ Peshawar High Court, letter No.17031-64/ADMN dated 20.12.2022

⁶ Section 8 of the Act

Ishtiaq Ibrahim, hon'ble Judge Peshawar High Court/Administrative Judge of the Commercial Courts was Chief Guest of the ceremony. The Dean Faculty and all Directors of the Academy also participated. In her welcome address the Director General reflected upon the aims and objectives of the workshop. She expressed hope that after attending the workshop, the participants will be able to conduct trial in cases involving commercial disputes, effectively. In his address to the participants, hon'ble the Chief Guest highlighted significance of the commercial courts in reducing cost and saving time of the parties by providing speedy service delivery, ensuring better contractual compliance and encouraging commercial activity. The inaugural ceremony ended with the group photo of the participants with the Chief Guest.

Overview of Proceedings: Overview of the daily proceedings is reflected in the schedule of activities as below:

Day – 1 : 20 March 2023			
S.#	Activities	Resource Person	Duration
1.1	Inaugural Session		09:00 – 09:35
	Recitation from the Holy Quran		09:00 – 09:10
	National Anthem		09:10 - 09:15
	Welcome Note	Director General	09:15-09: 20
	Address of hon'ble the Chief Guest	Mr. Justice Ishtiaq Ibrahim, Hon'ble Judge, Peshawar High Court	09:20 - 09: 25
	Group Photo		09: 25- 09:35
1.2	Commercial Courts: Beginning of a new Era	Mr. Muhammad Hanif Khan, Additional Director, Directorate General, Industries, Commerce & Technical Education, Peshawar	09:35 – 9:45
1.3	Commercial Courts: Reflections on the Punjab Experience	Mr. Muhammad Ahmad Husnain Khan, Additional District & Sessions Judge, Lahore	9:45 – 10:45
1.4	Concept & Understanding of Commercial Disputes Resolution:	Mr. Shumail Ahmad Butt, Advocate Supreme Court of Pakistan	11:15 – 12:30
1.5	Commercial Dispute Resolution Act: An Overview		
1.6	Commercial Dispute Resolution: Panel Discussion	Panelists: 1. Mrs. Nusrat Yasmeen Intikhab, Judge Commercial Court 2. Mr. Shahab Nawaz, Deputy Director Commerce 3. Barrister Amir Khan Chamkani 4. Mr. Ishtiaq Ali, Coordinator R&D, Sarhad Chamber of Commerce Moderated by Director Instructions-I	01:30 – 03:00

Day – 2 : 21 March 2023			
2.01	Recitation from the Holy Quran Reflections		09:00 – 09:15
2.02	Group Formation	Dean Faculty	09:15 – 9:30
2.3	Commercial Dispute Resolution Act: Group discussions Groups 1 & 2 - Preamble & Chapters I & II Group 3 & 4 Chapters III & IV	Moderated by faculty and all Directors	09:30 - 10:45
2.4	Formulation of Group Recommendations	Group Leaders	10:45 – 11:00
2.3	Presentations and Discussion on: a. Trial Procedure including determination of Costs (Group-1) b. Alternative Dispute Resolution (Group-2) c. Issues and Bottlenecks (Group-3) d. Recommendations for effective implementation (Group-4)	Presentation by Group Leaders 1. Ms Zeba Rasheed, Judge Commercial Courts 2. Syed Asghar Ali Shah, Judge Commercial Courts 3. Mr. Ishtiaq Ali, Coordinator R&D, Sarhad Chamber of Commerce 4. Barrister Amir Khan Chamkani	11:30 – 12:15
3.5	Concluding Ceremony		12:15 – Onwards
	Class Representative Remarks		
	Certificate Distribution Ceremony		

CONCLUDING CEREMONY

The workshop was concluded with a formal ceremony presided over by the Director General. Dean Faculty and all the Directors also attended the ceremony. Mr. Muhammad Asif Khan, Judge Commercial Court Peshawar, as class representative, expressed gratitude to the Academy for holding the workshop timely. He was of the view that it will enable all Commercial Courts to adopt uniform procedure and that the recommendations of the workshop would help rule making in proper context. At the end, the Director General distributed certificates amongst the participants.

CONSOLIDATED RECOMMENDATIONS

1. Preamble

In preamble of the Khyber Pakhtunkhwa Resolution of Commercial Disputes Act, 2022, the words “commercial disputes may arise which may hamper the efficient provision of goods to the people” may be substituted with the words “smooth business activity”.

2. Definition of Commercial Dispute:

In definition clause section 2, sub clause (d) limited explanation of “commercial dispute” is provided as compared to section II of the Indian Commercial Courts Act, 2015. Further, definition is confined only to the extent of defining parties engaged in such disputes rather than defining nature of disputes that fall within jurisdiction of commercial courts. Redefining nature & scope of commercial disputes is suggested.

3. Trial Procedure

- The trial procedure provided in the Civil Procedure Code, 1908, (CPC) cannot meet the objectives of the Act i.e. “expeditious disposal of commercial disputes”. It is proposed that special summary procedure e.g. summary procedure provided under order 37 of the CPC, may be considered for adjudication of commercial disputes. In alternate, Commercial Courts may be empowered to adopt any procedure available in any law for disposal of cases of civil nature in view of the nature of commercial dispute.
- Preliminary hearing on maintainability is not provided in the law. It is proposed that maintainability may be determined by the Court at first instance. Relevant amendments in the law may be considered.
- Special timeframe for trial of suits concerning commercial disputes was mandatory requirement of this special legislation; however, no timelines have been given in the Act. Statutory period for disposal of commercial disputes will help in their expeditious adjudication.

4. Recovery of Costs

In section 4 sub section 3 clause (b) it is provided that the commercial court or the Appellate Tribunal, under exceptional circumstances, may adjourned hearing of the case for not more than seven days subject to payment of such costs as may be determined by the Court or

Tribunal, as the case may be. However, procedure for recovery of costs is not provided. Mechanism for the purpose needs to be provided.

5. Alternative Dispute Resolution (ADR)

The Act provides ADR according to section 89-A of CPC which has been repealed by the Khyber Pakhtunkhwa Alternate Dispute Resolution Act, 2020. It is proposed that ADR may be invoked at the very inception of the trial suo moto by the courts subject to consent of all parties, within the parameters of the later law.

6. Appellate Tribunal

- Early constitution of the Tribunal is proposed.
- Section 8 appears to be in conflict with Article 175 of the Constitution of Islamic Republic of Pakistan as it seems in contravention of the principle of tracheotomy of powers. It needs reconsideration.
- The inclusion of the Technical member would have been more beneficial if the Tribunal was exercising powers in original jurisdiction rather than appellate jurisdiction.
- Parameter for exercising powers by the Appellate Tribunal needs to be defined.
- It is recommended that the High Court may be declared as Appellate Court under the Act.

7. Oversight committee

In presence of the Appellate Tribunal, there is hardly need for the oversight committee.

8. Limitation

- There is need to provide limitation filing of suits before commercial courts under the Act.
- In Section 9, words “within period of thirty days from the date of announcement of such judgment or decree or order” may be substituted with words, “within period of thirty days from availability of judgment, decree or order”.

9. Rules

Rules need to be prescribed at the earliest, for ensuring effective implementation of the Act. In prescribing the rules special attention needs to be given to the following;

- a) Rules pertaining to filling of the Appeal (Copies, Format & Pleadings etc as well as other ancillary matters) are needed.

- b) Organogram of support staff along with clear TORs in order to ensure smooth functioning of the Tribunal.
- c) Qualifications and eligibility of the members of the Tribunal.
- d) The powers of the Appellate Tribunal including but not limited to taking additional evidence, remand and other ancillary matters.
- e) Limitation, condonation of delay and other supplementary matters.
- f) Powers of summoning record and/or additional documents.

ANNEXURES

ANNEXURE-A: PARTICIPANTS

ANNEXURE-B: WORKSHOP IN PICTURES

ANNEXURE-A: PARTICIPANTS

S. No	Name	Designation & Station
Peshawar High Court		
	Mr. Aabid Sarwar	Additional Registrar (Admin)/Focal Person Commercial Court
Commercial Courts		
1.	Mr. Muhammad Hamid Mughal	Judge, Commercial Court, Charsadda
2.	Syed Asghar Ali Shah	Judge, Commercial Court, Mardan
3.	Mr. Muhammad Asif Khan	Judge, Commercial Court, Peshawar
4.	Mr. Abdul Ghafoor Qureshi	Judge, Commercial Court, Nowshera
5.	Mr. Muhammad Jamal	Judge, Commercial Court, Karak
6.	Mrs. Nusrat Yasmeen Intekhab	Judge, Commercial Court, Lakki
7.	Mrs. Muneera Abbasi	Judge, Commercial Court, Haripur
8.	Mr. Muhammad Arshad	Judge, Commercial Court, Swabi
9.	Mr. Badruddin	Judge, Commercial Court, D.I.Khan
10.	Mr. Amjad Zia Siddiqui	Judge, Commercial Court, Chitral
11.	Mrs. Sadia Arshad	Judge, Commercial Court, Abbottabad
12.	Miss Hajira Rehman	Judge, Commercial Court, Malakand
13.	Miss Faryal Zia Mufti	Judge, Commercial Court, Mansehra
14.	Mr. Ishfaq Ali Haider	Judge, Commercial Court, Bannu
15.	Ms. Zeba Rasheed	Judge, Commercial Court, Kohat
16.	Ms. Sadia Andaleeb	Judge, Commercial Court, Swat
17.	Arbab Aziz Ahmad	Judge, Commercial Court, Tank
Government of Khyber Pakhtunkhwa		
18.	Ms. Shama Niamat	Additional Secretary-I, Industries, Directorate General, Industries, Commerce and Technical Education, Peshawar
19.	Mr. Muhammad Hanif Khan,	Additional Director Industries, Directorate General, Industries, Commerce and Technical Education, Peshawar

20.	Mr. Shahab Nawaz	Deputy Director, Directorate General of Industries and Commerce, Government of Khyber Pakhtunkhwa, Peshawar
District Attorneys		
21.	Mr. Samad Khan	District Attorney, Mardan
22.	Mr. Muhammad Daud Jan	District Attorney, Charsadda
23.	Mr. Khalid Sarwar	District Attorney, Peshawar
Commercial Law Practitioners/Advocates		
24.	Mr. Isaac Ali Qazi	Advocate Supreme Court of Pakistan, Peshawar
25.	Qazi Jawad Ehsanullah	Advocate Supreme Court of Pakistan, Peshawar
26.	Barrister Amir Khan Chamkani	Advocate, Peshawar
27.	Ms. Nida Khan	Advocate, Peshawar
Chambers of Commerce and Industries		
28.	Mr. Ijaz Khan Afridi	Vice President, Sarhad Chamber of Commerce and Industries, Peshawar
29.	Syed Jawad Hussain Kazmi	President Khyber Chamber of Commerce and Industries, Peshawar

ANNEXURE – B: WORKSHOP IN PICTURES



Inaugural Ceremony of 2 Day
Workshop on Commercial
Dispute Resolution: Concept & Understanding



Brainstorming session on Commercial Courts: Beginning of a new Era by Muhammad Hanif Khan, Additional Director, Directorate General, Industries, Commerce & Technical Education, Peshawar



An experience sharing session by Mr. Muhammad Ahmad Husnain Khan, Additional District & Sessions Judge, Lahore



A Discourse on Concept & Understanding of
Commercial Disputes Resolution:
By Mr. Shumail Ahmad Butt,
Advocate Supreme Court of Pakistan



Panel Discussion on KPK Resolution of
Commercial Disputes Act, 2022



Group Discussion on:

1. Trial Procedure Including determination of Costs;
2. Alternative Dispute Resolution;
3. Issues and Bottlenecks;
4. Recommendations for effective implementation.



Recommendations by 4 Groups; on KPK Resolution of Commercial Disputes Act, 2022



Glimpses of Concluding Ceremony