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**REPORT**

**ON**

**02 DAYS NATIONAL  
CONFERENCE ON  
ALTERNATIVE DISPUTE  
RESOLUTION**

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**16TH-17TH NOVEMBER, 2017**

**MR. SOHAIL SHERAZ NOOR SANI  
SR. DIRECTOR RESEARCH & PUBLICATION, KPJA.**

**MR. ZIA UR REHMAN**

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**DIRECTOR INSTRUCTIONS, KPJA**

**MS. AYESHA RASOOL  
DIRECTOR RESEARCH & PUBLICATION, KPJA.**

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# ABSTRACT

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The Khyber Pakhtunkhwa Judicial Academy with the support of UNDP organized 02 days national conference on the topic of alternative dispute resolution. In view of the ever growing significance of alternative dispute resolution, the core objective of the conference was thus to create awareness and map out the future of alternative dispute resolution in Pakistan and particularly for Khyber Pakhtunkhwa. The participants included Judges, lawyers, Academicians, Research scholars, professional mediators and other stakeholders of Justice sector. Original unpublished research papers/articles and case studies were invited from the judges, academicians/researchers and legal community to be presented in the conference, which will also form part of this report.

This report documents the proceedings of “National Conference on Alternative Dispute Resolution” held in Islamabad on 16th & 17th November 2017. This report is divided into three main parts i.e. Introduction, Proceedings and Annexure. The Introduction comprises of the Concept Note and background of the conference. The Proceedings Part covers the Sessions, Presentations, Consolidated Recommendations and Wrap Up. The Annexure Part contains the list of participants, agenda of the conference, the presentation and papers presented in the conference and Photographs.

## CONCEPT NOTE

### Alternative Dispute Resolution (ADR)

#### Background

Alternative dispute resolution or “ADR” refers to a set of practices and techniques aimed at permitting the resolution of legal disputes outside the courts.<sup>1</sup> ADR typically includes neutral evaluation, conciliation, negotiation, mediation, and arbitration. However, negotiation, mediation and arbitration are the most commonly used ADR mechanisms. Negotiation facilitates the parties to meet in order to settle a dispute. Mediation helps bring opposing parties together and attempt to work out an acceptable settlement for both parties. Arbitration is a simplified version of a trial involving limited discovery and simplified rules of evidence.<sup>2</sup> Practically, in many jurisdictions, ADRs have proved to be quite effective in reducing the ever-increasing burden of cases on the judicial system as well as in providing expeditious and inexpensive settlement of disputes.<sup>3</sup> Countries in the region like India, Malaysia and Sri Lanka have successful case studies of ADRs. However, they vary in terms of structure and scope of the ADRs.

#### Alternative Dispute Resolution (ADR) in Pakistan

In Pakistan, both, informal and formal ADR mechanisms are in practice. Informal mechanisms such as *Jirga* and *Panchayat* have been used for administration of justice since long. These centuries old systems may be good for simple cases but when it came to status quo issues, they can succumb to elite capture.<sup>4</sup> In many cases, these mechanisms have resulted in miscarriage of justice due to absence of transparent and fair rules of procedure. For formal ADR, several laws have provisions relating to its formation and legitimacy. These provision include the Arbitration Act 1940, Section 89-A of the Code of Civil Procedure, 1908, Section 10 of the West Pakistan Family Courts Act, 1964, and Local Government Acts of the provinces.

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<sup>1</sup> Mnookin, Robert, "Alternative Dispute Resolution" (1998). Harvard Law School John M. Olin Center for Law, Economics and Business Discussion Paper Series. Paper 232. <https://ssrn.com/abstract=631346>

<sup>2</sup> [https://www.law.cornell.edu/wex/alternative\\_dispute\\_resolution](https://www.law.cornell.edu/wex/alternative_dispute_resolution)

<sup>3</sup> Stone, Katherine V.W., *Alternative Dispute Resolution*. ENCYCLOPEDIA OF LEGAL HISTORY, Stan Katz, ed., Oxford University Press. Available at SSRN: <https://ssrn.com/abstract=631346>

<sup>4</sup> [http://www.ljcp.gov.pk/njc/Alternative%20Dispute%20Resolution%20\(ADR\).htm](http://www.ljcp.gov.pk/njc/Alternative%20Dispute%20Resolution%20(ADR).htm)

Recently, the Federal government has passed a special law on ADR i.e. The Alternative Dispute Resolution Act, 2017. The Act provides the formation of ADR centre and a panel of neutral for the purpose of the Act. The Act requires civil courts to refer certain cases for mediation, conciliation or arbitration before proceeding for before or after framing the issues. Under the Act, the court, with the consent of the parties, may appoint mediator, conciliators etc., to facilitate the compounding of the offence. The Punjab province has also set up ADR centres at the district courts with the support of the World Bank<sup>5</sup>. These centres aim at resolving civil as well as certain criminal cases<sup>6</sup>.

These court-based, non-trial based resolutions can ensure transparency, equity, fairness and consistency in the process. Similarly, in order to overcome the problem of delay in disposal of cases, case flow management techniques would also necessitate the use of non-trial resolutions by the courts. However, a substantial gap still exists in Pakistan between the law on books and its practical application. Keeping in view the issues pertaining to the effectiveness of ADR mechanisms given in the law of the country, the Khyber Pakhtunkhwa Judicial Academy (KPJA) organized a pre-consultation meeting with the representatives of federal and provincial judicial academies, subordinate judiciary in Khyber Pakhtunkhwa, Law and Justice Commission of Pakistan (LJCP), legal practitioners and faculty members of renowned law schools of the country. The meeting was aimed at outlining the concept note and agenda for the National Conference on Alternative Dispute Resolution (ADR) as well as discussing key issues and challenges with the ADR in Pakistan. In the meeting, all existing ADR mechanisms in the country were discussed in a detailed manner.

The participants discussed various suggestions for expeditious dispute resolution mechanisms within formal judicial system. They underscored evaluation of efficacy of dispute resolution mechanisms under the local government laws, tax and commercial laws and Dispute Resolution Councils (DRCs) introduced by Khyber Pakhtunkhwa Police. The participants agreed that there is a dire need to review the existing legal framework and formulate new rules and guidelines for effective ADR mechanism in Khyber Pakhtunkhwa. They

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<sup>5</sup> <https://timesofislamabad.com/first-adr-centre-established-punjab-judicial-academy/2017/03/07/>

<sup>6</sup> Compoundable offences under section 345 of the Code of Criminal Procedure 1898

highlighted the need of unambiguous rules and policy guidelines regarding the modes and mechanisms of referral of the disputes to the ADR. It surfaced from the discussion that the existing legal and framework particularly Section 89-A of the Code of Civil Procedure and related rules must be reviewed in the light of best practices. The meeting recommended streamlining of informal ADR mechanism and introducing a hybrid model including the attributes of both court-annexed and independent mechanisms. The participants also underlined the role of the Bar in implementation of the ADR mechanism and stressed upon the need of awareness among the legal fraternity about ADR mechanisms.

### **The National Conference on Alternative Dispute Resolution (ADR)**

The above discussion highlights the need for a national level dialogue among the justice sector stakeholders. In this backdrop, the Khyber Pakhtunkhwa Judicial Academy (KPJA), while recognizing the need to have an effective ADR mechanism in the province through a consultation process, intends to organize a two-day National Conference on ADR on November 16-17, 2017 in Islamabad. The Conference is aimed at discussing the issues and challenges of existing legal and informal ADR mechanisms and provide a forum to the stakeholder to deliberate for effective ADR mechanism(s) for the province. To achieve below given objectives of the Conference, the experts and practitioners from judiciary and legal fraternity, academia and civil society from all over the country will share their expertise on topics such as: efficacy of dispute resolution mechanisms under the local government laws, tax and commercial laws and Dispute Resolution Councils (DRCs) introduced by Khyber Pakhtunkhwa Police; role of Bar in implementation of the ADRs, expeditious dispute resolution mechanisms within formal judicial system; exploring a suitable ADR system for Khyber Pakhtunkhwa; and sensitization of stakeholders on ADR mechanism .

### **Objectives of the Conference**

The objectives of the Conference are:

- To discuss the efficacy of existing statutory and non-statutory ADR mechanisms at national and provincial / local level;
- To deliberate for an appropriate and effective ADR mechanism for Khyber Pakhtunkhwa;

- To devise communication strategies for sensitization and engagement of stakeholders on ADR mechanism.
- To propose recommendations for draft rules and policy guidelines/SOPs of ADR under substantive provisions of different laws, particularly Code of Civil Procedure and Code of Criminal Procedure.

## BACKGROUND

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Dispute resolution has always been a matter of concern to all. Whether one chooses litigation or other forms of dispute resolution, disputing parties strived for effective processes that will not lead to extra financial and psychological burden on them in the long run. Hence the need to utilize effective dispute resolution processes become a matter of whisking of minds, in order to find amicable ways of dispute resolution with a minimum financial involvement and time consumption.

One disincentive for a person to engage with the legal system is the problem of uncompensated costs that have to be incurred. Apart from court fees, cost of legal representation, obtaining certified copies and the like, the system fails to acknowledge, and therefore compensate, bribes paid to the court staff, the extra 'fees' to the legal aid lawyer, the cost of transport to the court, the bribes paid (in criminal cases) to the policemen for obtaining documents, copies of depositions and the like or to prison officials for small favours. In some instances, even legal aid beneficiaries may not get services for 'free' after all. It is important to acknowledge the existence of a general distrust of the legal system including its processes and institutions which are mystifying, alienating and intimidating; distaste of lawyers and courts as they seem imposing and authoritarian; seeing the whole legal process as of nuisance value resulting in irreversible consequences, an uninvited 'trouble' that has to be got rid of. Unless frontally addressed, a court annexed or an institutionalized ADR, mediation or conciliation system may soon be undermined by the same problems that afflict the formal legal system. The attraction of the alternative system would then lie in the promise of not only reduced costs and uncertainties but importantly a liberation from the stranglehold of the 'court annexed bureaucracy'.

There is an imperative need to acknowledge that those who are economically and socially disadvantaged see the entire legal system as irrelevant to them as a tool of empowerment and survival. The economically disadvantaged litigant is, notwithstanding the present concerted moves to reach legal aid through a geographically wide network of legal aid institutions, unable to effectively access the system as they encounter barriers in the form of expenses, lawyers and delays. The formal system, as presently ordered, tends to operate to the greater disadvantage of this class of society which then looks to devising ways of avoiding it rather than engaging with it. Without fundamental systemic changes, any alternative system, however promising the results may seem, is bound to be viewed with



suspicion. The participatory nature of an ADR mechanism, which offers a level playing field that encourages a just result and where the control of the result is in the hands of the parties, and not the lawyers or the judges, would act as a definite incentive to get parties to embrace it.

Effective dispute resolution mechanisms include negotiation, mediation, arbitration and a host of others, generally structured in ways they could be used to substantially complement the administration of justice. This is why such mechanisms are considered as effective and affordable complements to litigation because they ensure speedy settlement of disputes.

It is a fact that a large number of disputes, whether pending in the courts or not, are being consistently resolved by '*jirgas*' without any legal sanction or authority. In Pakistan, the need to evolve alternative mechanisms simultaneous with the revival and strengthening of traditional systems of dispute resolution have been reiterated in various reports of expert bodies and legislation. Reference in this context may be made to the *Masalihat-i-Committees* established under Local Government Ordinance, 2002, section 14 of Small Claims and Minor Offences Courts Ordinance, 2002, section 10 of Family Courts Act, 1964, section 89-A and Order X rule 1-A of C.P.C, section 345 of Cr.P.C. and section 73 of Khyber Pakhtunkhwa Police Act, 2017. However, implementations of the reforms still pose other kinds of challenges.

This conference was intended to invite thinkers, scholars, researchers, legal practitioners and experts from all-over the country and share their knowledge on various issues relating to modern trends in effective dispute resolution. The potential conference participants includes members of the bar, judiciary, chamber of commerce, non-governmental organizations, academics, educators, researchers, arbitrators, professional mediators, and law students. The broad objective of this conference is to promote effective dispute resolution processes whether they are used purely as stand-alone mechanisms or court-annexed, which could facilitate the KPJA in preparation of drafting ADR rules.

## PROCEEDING

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Two-day long National Conference on Alternative Dispute Resolution was organized by Khyber Pakhtunkhwa Judicial Academy with the financial assistance of United Nations Development Program [UNDP] and EU. In order to facilitate the participants across the country, the conference was arranged at Islamabad. Schedule of activities is annexure-A, while list of participants is annexure-B.

The first session of Day-One was chaired by Director General Judicial Academy Baluchistan, Justice (Ret) Nadir Khan, which was formally commenced after recitation from the Holy Quran by Mr. Qazi Ejaz, Civil Judge/ Judicial Magistrate, Peshawar.

DG Khyber Pakhtunkhwa Judicial Academy, Mr. Raja Masood Khan in his inaugural address, besides warmly welcoming all the participants, highlighted importance and need of ADR. His welcome address is annexure-C.

Mr. Muhammad Aftab Alam Executive Director, Institute for Research, Advocacy and Development [IRADA], enlightened aims and objectives of the conference for the formulation of draft ADR Rules, within existing legal framework. While sharing his views, he also highlighted role of UNDP and EU in strengthening rule of law in the country.

Ms. Nusrat Yasmeen Aftab, District & Sessions Judge/ Special Judge ANF, Khyber Pakhtunkhwa, presented the first paper in the conference, and while referring certain verses of Holy Quran and sayings of Holy Prophet Muhammad (PBUH), highlighted the role of Bar in encouraging ADR. The paper shared by her is annexure-D.

Mr. Zia-ur-Rahman Additional District & Sessions Judge/ Director Instructions, Khyber Pakhtunkhwa Judicial Academy presented his paper on "*Expeditious dispute resolution mechanisms within formal judicial system of Pakistan*". He shared his views with regard to application and enforceability of ADR method under existing legal framework provided under C.P.C, Cr.P.C., SCMO & LGA etc. His views are annexure-E.

Mr. Nadeem Ahmed Sohail Cheema Additional District & Sessions Judge/ Senior Instructor, Punjab Judicial Academy apprised the participants about establishment and functioning of ADR centers in almost all District Courts of Punjab under the Supervision of Hon'ble Lahore High Court, which are being managed by trained Civil Judges under the

administrative control of concerned District & Sessions Judge. Similarly, he also gave an overview of SOPs of said ADR centers. His detailed presentation is annexure-F.

After tea break, participants were divided into four groups for formulation of their recommendations on *“Role of Bar in ADR implementation”* & *“ADR within formal Judicial System”*. After lunch and prayer break, representatives of each group shared their recommendations with the rest. The house was open for questions, answers and discussions. All the suggestions and recommendations were noted down by the report writers of KPJA. The day was concluded with the note of thanks and to continue the activity next day.

Second day session was presided over by Registrar Azad Jammu & Kashmir High Court. After recitation of some verses from Holy Quran by Mr. Qazi Ejaz, Civil Judge/Judicial Magistrate, Peshawar, Professor Dr. Sohail Shehzad Faculty of Law University of Peshawar apprised the participants about role of Local Governments in ADR. His detailed views are annexure-G.

Mr. Suhail Sheraz Noor Saani District & Sessions Judge/ Senior Director Research and Publications presented a paper on importance of ADR in commercial transactions. The paper presented by him is annexure-H.

Thereafter, participants were again divided into four groups for formulation of their recommendations on *“Efficacy of DRCs & Local Governments in Dispute Resolution”* & *“Commercial Disputes & ADR”*.

After tea-break, there was an open house discussion and deliberation for suggesting suitable ADR mechanism for Khyber Pakhtunkhwa, formulation of ADR Rules and guidelines and sensitization of stakeholders over said rules, so proposed. after conclusion of discussion, Mr. Amjad Zia Siddiquee Additional District & Sessions Judge, Shangla [Khyber Pakhtunkhwa] presented draft *“the Khyber Pakhtunkhwa ADR Rules, 2017”* to the Senior Director Research and Publication, Khyber Pakhtunkhwa Judicial Academy and Senior Instructor Punjab Judicial Academy. These draft rules are annexure-I.

At the end, Director General Khyber Pakhtunkhwa Judicial Academy thanked all the participants for sharing their precious experience and knowledge over this widely acclaimed public cause. Thereafter, on behalf of Khyber Pakhtunkhwa Judicial Academy, certificates and shields were awarded to all distinguished guests.

## GROUP RECOMMENDATIONS

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The submissions received in response to the Discussion Papers provided much valuable insight of the participants on ADR, role of different stakeholders, capacity building of stakeholders, and practical approaches needed for the effective mechanism of ADR in KP. All the participants of different groups placed a greater emphasis on encouraging parties to explore Alternative Dispute Resolution (ADR) to assist in reducing the congestion of cases going before the Courts and to encourage litigants to focus on resolving their disputes. This emphasis on ADR has been heightened by the introduction of the section 89-A, Order 10, Rule 1 of CPC, which the courts intend to enforce robustly. The effect of incentivizing parties to keep costs down, requiring parties to file detailed costs budgets and to consider all alternative options prior to going to court appears set to result in a boom in the use of ADR. Participants were of the view that there should be a clear policy, mechanism and guideline to encourage those who do not want their disputes aired in a public forum and would like to go for ADR. The group stressed that the use of without prejudice discussions can also drive parties into making concessions behind closed doors, and anything raised in negotiations during the course of ADR can and should be made without prejudice so that it will not impact on the parties' formal positions. This gives the parties' added flexibility to negotiate the resolution of a dispute. The group suggested that the litigants should be apprised of the outcome of ADR and litigation both. This process demands an active participation and engagement on the part of Judge and respective lawyers, which further leads to the need of training lawyers on ADR and specifically for mediation. The group recommended the establishment of court annexed ADR centers, with the panel of mediators/neutrals for each district. A standard of procedure for ADR, Emoluments of Neutrals/mediators, time frame for dispute settlement and the exceptions to be developed by Higher Judiciary . The overall recommendations of the groups are summed up as following.

### **1. Sensitization of Stake holders**

The first step in this regard is Identification of gaps and challenges that exist regarding ADR in Pakistan in general and more specific in KP, through case studies, surveys, interviews, etc. It would be then the preparation of material for dissemination of information through Publicity through Mass Communication., Seminars/Walks, Use of electronic media/social

media etc. The submission from the group discussions highlighted the significance of different stakeholders in ADR and suggested separate policy and strategy for each stakeholder such as a. Civil Society , Govt. institutions, Legislative Body, Local elected bodies, Bar, NGOs, Educational institutions., Business Community, Chamber of commerce/ trade associations etc.

It was also suggested that Ministry of religious affairs shall design certain course/Prescribed religious sermons highlighting significance of ADR and reward ordained by the creator.

Moreover, it was also noted that in educational institutes, and universities, ADR should be part of curriculum of L.L.B and L.L.M programs.

Professional mediation courses and short courses should be introduced by Bar and judicial academies.

Ministry Of Social welfare, Law and Justice Commission and Ministry of information and Ministry of Local government should play an active role in devising strategies and implementation of the awareness campaigns for community orientation and mobilization through print and electronic media.

## **2.Role of Local Govt.**

There is no doubt, the government, be it Federal or Provincial Governments are striving for promoting ADR mechanisms which is evident from promulgation of ADR 2017 at Federal level and ADR centers in Punjab and DRCs in KP. However the group recommended that all efforts should be made to take the idea and initiative to the grass root level by empowering the local governments because it is the basic unit as well as the parameter of good governance. The NWFP local government Ordinance 2001 Provided for *Musalihat-e-Anjaman Committees* at the union council level comprising of local elected representative and having the mandate to resolve the dispute at the local level. the small claims and minor offences law provides a list and schedule of civil and criminal matters which may be referred to ADR apparatus available. the group recommended that the present KP Local Government Act which does not prescribe any such mode and mechanism of alternative dispute resolution, should be amended, so as to aim at revival of the repealed law in this regard.

Instead of dispute resolution centers in court premises, or under the umbrella of police or any other department, such centers should be established at village or union council level, having due representation of civil society, elected representatives, local government and lawyers.

### **3. Role of Bar and lawyers in ADR**

#### **(i) Role of Lawyers individually**

The role of the lawyers in ADR is double folded. Firstly it comes at the very early stage when parties are entering into the contract. Regardless of the nature of the contract, ADR should be an essential tool in every lawyer's toolbox to be able to draft an agreement that looks to the eventuality if things between the contracting parties go sour. Therefore, the appropriate clause to add into the contract can have far-reaching effects upon how the parties will resolve their differences should any disputes arise.

Before considering the type of clauses that can be used, lawyer should consider the various methods of ADR such as negotiation, mediation and arbitration, and what the lawyer's responsibility is in respect of ADR. The role for the lawyer is to take and explain the benefits of ADR to the client, either as the dispute arises or in resolving the ADR clauses.

The second role the lawyers can play in ADR process as mediators- (qualified), as neutrals, or as Musliheen (under Shariah Regulations 2009) during the initial stages of case or dispute resolving. Submissions unanimously agreed that it is vital that a lawyer be clear about the role he or she is playing in an ADR process. For example, if acting as an ADR practitioner in mediation, the lawyer should be impartial and thus avoid advocating for either party. However if acting as a lawyer for a disadvantaged client, the role might include explaining the nature of the ADR process, ensuring that the process is conducted fairly, advising on the strengths and weaknesses of the client's case, and 'reality testing' any settlement options against the likely outcome if the matter were litigated. Submissions revealed that in practice these roles may not be so clearly defined, with ADR practitioners in facilitative processes sometimes providing an opinion on the likely outcome of a matter if it were to be litigated

#### **(ii) Role of Bar**

The participants stressed that to play their role in ADR effectively, lawyers need more than just knowledge of the law and familiarity with legal issues. They need to have knowledge of the particular type and model of ADR and the skills to enable them to use ADR processes to the benefit of their clients, for example an understanding of how and when to use different negotiation styles. It is the bar who has to take the responsibility in that regard through training of lawyers which include special courses, specialised trainings, conferences, workshops and other resources.

The participants also emphasized on the need to include ADR provisions in legal practitioners act and bar council rules. Bar licensees should be issued subject to the condition of rendering voluntary services as mediator at community level.

#### **4. Court Annexed/ Controlled ADR mechanisms**

One of the challenges inherent in ADR implementation is the lack of uniformity in the definitions and practice of the various processes. ADR process is not simply “alternatives” to litigation, rather it has become supplementary to litigation and there are instances where mediation or arbitration has been one of the core components of the judiciary and integrated into the litigation process such as Section 89-A Order X-Civil Procedure Code, Nizam-e-Adl Regulation, Family Act etc. The recommendations are as under;

1. The Punjab model of ADR Centre in each district under supervision of a serving judicial officer should be promoted and followed in other provinces. Therefore, the respective high courts should frame Rules for that matter, under SEC 122 of the Code of Civil Procedure and under Sec 554(2) of the Criminal Procedure Code, so as to provide the mandate as well as the guidelines for the centres.
2. Our Procedural laws need amendments, making it incumbent upon the litigants to have recourse to the above mentioned centers before institution of the cases.
3. It should be binding upon the courts to seek consent of the litigants before commencement of the trial as to whether they want the dispute to be resolved through the said Centre.

## **6. Expeditious Dispute Resolution Mechanism within Formal Judicial System.**

Another recommendation that floated from group discussion was to focus on ways for the expeditious dispute resolution within formal judicial system of Pakistan. With the courts encouraging and in fact actively requiring the parties to consider ADR options and the lawyers advising them to explore ADR, there is a real incentive to litigating parties. If the dispute can be resolved then this may result in a significant saving in time and costs, and conversely if the other party refuses to participate in ADR then this will be a factor the court will take into account in assessing the issues of costs at the end of the court process. It can also be a useful tool in assessing the strength and weaknesses of the case at a relatively early stage. ADR is on the increase, it is being pushed more than ever and is here to stay. It was agreed upon and recommended that courts need to play pro active role in dispute resolution by encouraging the parties to negotiate or mediate before or during trial. In Pakistan, the first and foremost is the Arbitration Act, 1940, that is widely used in commercial contracts. The idea is that once a dispute occurs, the aggrieved party can have recourse to an arbitrator to decide the matter. Such type of arbitration can be with or without the intervention of the court. However, the court always has some degree of control. In the year 2002, the Law and Justice Commission of Pakistan recommended for implementation the Alternate mode of Dispute Resolutions. Subsequently, the Government of Pakistan amended the Civil Procedure Code, 1908, whereby powers were given to the civil courts under Section 89 to adopt (subject to the consent of the parties), to settle a dispute by Alternate Dispute Resolution. Complementary addition was also made in Order X of Civil Procedure Code, whereby the court has been empowered to pass necessary orders for expediting the trial proceedings.

On the recommendation of the Federal Tax Ombudsman, necessary amendments were also made in the Central Excise, Customs, Income Tax and Sales Tax laws through the Finance Act, 2004, to introduce provisions regarding Alternate Dispute Resolution in the tax laws. The academia and legal community both are supporting ADR through their efforts via writings and proposing reforms in laws or to provoke the existing provisions relevant to alternative or amicable dispute resolution . In more than 20 enactments like Land Revenue



Act 1967, Electricity Act 2003, Income Tax Ordinance 2001, Custom Rules 2001, Custom Act 1969, Sales Tax Act 1990, Federal Excise Act 2005, Family Laws and Banking Act, separate provisions are available for informal amicable settlements. *Muslihat -e Anjaman* (conciliation council) is the salient feature of Local Government Ordinance 2001<sup>7</sup>. Other such mechanisms, working under the umbrella of law include Arbitration Councils, Union Councils and Conciliation Courts. Arbitration Councils were confined to issues of divorce, permission for second marriage, and maintenance for existing wives. Union Councils provided the arbitration forum (through elected councilors) under Muslim Family law Ordinance 1961 and looked after family related issues. Conciliation courts were established under Conciliation Courts Ordinance 1961 and were vested with limited civil/criminal/pecuniary jurisdiction. The group recommended the utilization of all such existing mechanisms and provisions by courts before or during trial for the expeditious and speedy resolution of dispute within formal judicial system.

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<sup>7</sup> Mr. Dr. Qazi Attaullah1 And Dr. Lutfullah Saqib " Tracing The Concept Of ADR In *Shari'ah* And Law" A Comparative Study.

## ANNEXURES

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## ANNEX- AGENDA

### DAY – ONE (16<sup>th</sup> November, 2017)

Time	Activity	Remarks
09:30am – 09:45am	Arrival and Registration of guests	Registration Desk
09:45am - 09:50am	Recitation from Holy Quran	
09:50am – 10:00am	Welcome Address	Director General Khyber Pakhtunkhwa Judicial Academy
10:00am – 10:15am	Objectives of the Conference	Mr. Muhammad Aftab Alam
10:15am – 10:35am	Paper Presentation	Guest Speaker
	Role of Bar in ADR Implementation	
10:35am –10:55am	Paper Presentation	Guest Speaker
	Expeditious dispute resolution mechanism within Formal Judicial System	
10:55am – 11:10am	Tea Break	
11:10am– 11:15pm	Groups Formation Participants to be divided in groups	Facilitators
11:10am–01:00pm	Group Discussion and Formulation of Recommendations	Facilitators Mr. Suhail Sheraz Noor Saani SDR&P, KPJA
	(A) Role of Bar in ADR Implementation	Ms. Ayesha Rasool DR&P, KPJA
	(B) Expeditious dispute resolution mechanism within Formal Judicial System	Ms. Hajira Rehman D.I-1, KPJA Mr. Zia Ur Rehman D.I-II, KPJA
01:00am– 02:00pm	Lunch & Prayer Break	
02:00am– 03:00pm	Sharing the outcomes of groups discussion	Leader of Each Group
<b>Tea</b>		

### Day-Two (17<sup>th</sup> November 2017)

Time	Topic	Remarks
09:30am—09:40am	Recitation from Holy Quran	
09:40am—10:00am	Paper Presentation	Guest Speaker
	Efficacy of DRCs and Local Governments in Dispute Resolution	

<b>10:00am – 10:20am</b>	Paper Presentation	Guest Speaker
	Commercial Disputes and ADR	
<b>10:20am—1030am</b>	Groups Formation	Facilitators
<b>10:30am – 11:30am</b>	Group Discussion	Facilitators
	(A) Efficacy of DRCs and Local Governments in Dispute Resolution	Mr. Suhail Sheraz Noor Saani SDR&P, KPJA
		Ms. Ayesha Rasool DR&P, KPJA
	(B) Commercial Disputes and ADR	Ms. Hajira Rehman D.I-1, KPJA
		Mr. Zia Ur Rehman D.I-II, KPJA
<b>11:30am – 11:45am</b>	Tea Break	
<b>11:45am – 01:00pm</b>	Groups discussion on:	Facilitators
	<ul style="list-style-type: none"> <li>• Suitable ADR Mechanism for Khyber Pakhtunkhwa</li> <li>• Formulation of ADR Rules and Guidelines</li> <li>• Sensitization of stakeholders</li> </ul>	
<b>01:00pm – 02:00pm</b>	Lunch and Prayer Break	
<b>02:00pm – 03:00pm</b>	Sharing the outcomes of groups discussion	Leader of Each Group
<b>03:00pm – 03:30pm</b>	Closing Remarks	Chief Guest
<b>03:30pm – 03:45pm</b>	Note of Thanks	Senior Director, Research Khyber Pakhtunkhwa Judicial Academy (KPJA)
	Tea	

## ANNEX- LIST OF PARTICIPANTS

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1. Hona'ble Mr. Justice Qalandar Ali khan, Peshawar
2. Registrar, Peshawar High Court
3. Registrar, Islamabad High Court
4. Registrar ,Lahore High Court
5. Registrar, Sindh High Court
6. Registrar, Baluchistan High Court
7. Registrar , Chief Court Gilgit
8. Registrar, Azad Jamu & Kashmir High Court
9. Registrar, Supreme Court of Pakistan
10. Registrar Federal Shariat Court Islamabad.
11. Director General Federal Judicial Academy
12. Director General Punjab Judicial Academy
13. Director General Sindh Judicial Academy
14. Director General Baluchistan Judicial Academy
15. Anwar Ali Khan, District & Sessions Judge Peshawar
16. Mr.Nasrullah Khan Ganda Pur, District & Sessions Judge Karak.
17. Ms. Nusrat Yasmeen Intikhab, District & Sessions Judge/Judge Special Court CNSA.
18. Mr. Ishfaq Taj, District & Sessions Judge Tor Ghar.
19. Mr.Amir Nazir Bhatti, District & Sessions Judge Kohistan
20. Mr.Amjad Zia Siddique, Additional District & Sessions Judge Shangla.
21. Mr.Jehanzaib Shanwari, , Additional District & Sessions Judge Bunair.
22. Mr.Mohammad Shoaib, Additional District & Sessions Judge Matta.
23. Ms. Kulsom Azam, Additional District & Sessions Judge Mansehra.
24. Ms.Saadia Arshad, , Additional District & Sessions Judge Peshawar.
25. Ms.Zeba Rasheed, Additional District & Sessions Judge Nowshera.
26. Ms.Nadia Sayed, Additional District & Sessions Judge Swat.
27. Mr.Jamal Shah Mehsud, Additional District & Sessions Judge Kohat.
28. Mr.Ahmad Iftikhar, Additional District & Sessions Judge Chitral.
29. Mr.Raja Muhammad Shoaib, Senior Civil Judge Kohat.
30. Mr. Muhammad Iqbal Civil Judge/Judicial Magistrate Sawabi .
31. Ms.Saira Bano Civil Judge/Judicial Magistrate Abbotabad .

32. Mr.Qazi Ijaz Ur Rehman, Civil Judge/Judicial Magistrate Peshawar.
33. Mr.Sheraz Tariq, Civil Judge/Judicial Magistrate Kohat.
34. Ms.Qurat ul Ain Rashid, Civil Judge/Judicial Magistrate Battagram.
35. Alia Bibi, Civil Judge/Judicial Magistrate Mansehra
36. Ms.Saeeda Akhtar, Civil Judge/Judicial Magistrate Peshawar.
37. Ms.Sana Afzal, Civil Judge/Judicial Magistrate Nowshara.
38. Secretary, Law and justice commission of Pakistan, Islamabad.
39. Secretary, Law, Parliamentary Affairs and Human Rights Department, KPK.
40. Secretary, Law, Parliamentary Affairs and Human Rights Department, Lahore.
41. Secretary, Law, Parliamentary Affairs and Human Rights Department, Sindh.
42. Secretary, Law, Parliamentary Affairs and Human Rights Department, Baluchistan.
43. Chairman, Pakistan Bar Council, Islamabad.
44. Chairman, KP Bar Council.
45. President, Peshawar High Court Bar Association.
46. President, District Bar Association, Peshawar.
47. Additional Chief Secretary, FATA.
48. President Chamber of Commerce KPK.
49. President Chamber of Commerce Islamabad.
50. DIG Training KPK.
51. Secretary Local Government, KPK.
52. Chairman Islamic Ideology Council, Islamabad.
53. Director General, Sharia Academy, Islamabad.
54. Director General, Prosecution KPK.
55. Chairman, Islamic University Women Campus, Islamabad.
56. Chairman, Abdul Wali Khan University, Mardan.
57. President Aurat Foundation.
58. Mr. Muhammad Shair, Director HDOD, US AID Peshawar
59. Senior Member Board of Revenue, KPK.
60. Aftab Alam, Consultant.
61. Idrees Hayat ADR Specialist, UNDP.
62. Mr. Wajid Ali, District & Sessions judge (West), Islamabad
63. Mr. Malik Mumtaz, District & Sessions Judge (East), Islamabad
64. Dr. Suhail Shahzad, Law Department, University of Peshawar
65. Mr. Attaullah, Professor, University of Malakand

66. Barrister Isfandiyar Ali Khan, Coffey International
67. Mr. Arshad Nawaz Khan, HoD, School of Law, Quaid e Azam University
68. Mr. Kamran Arif, Legal Adviser, Open Society Foundation
69. Mr. Azam Nazeer Tarar, Chairman Legal Education Committee, Pakistan Bar Council
70. Mr. Ahsan Bhoon, Vice Chairman Pakistan Bar Council
71. Mr. Muhammad Sarir, Vice Chairman, KP Bar Council
72. Mr. Raza Shah Khan, CEO, SPADO
73. Syed Raza Ali, Executive Director, Peace & Justice Network

## CONFERENCE PAPERS

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## ROLE OF BAR IN ADR IMPLEMENTATION.

Paper presented at:

National Conference on Alternative Dispute Resolution

16<sup>th</sup> & 17<sup>th</sup> November 2017,

Islamabad.

by

Mrs. Nusrat Yasmeen

(District and Sessions Judge)

ADR alternative dispute resolution, means bringing about settlement between the opponents. It is primarily the duty of every Muslim to strive for an amicable settlement of a dispute if two Muslims have developed the same between them. It is one of the commandments of Allah Subhan-o-taala in the holy Quran and has been mentioned in the following words:

وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ فَاصْلِحُوا بَيْنَهُمَا ۚ فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّىٰ تَفِيءَ  
إِلَىٰ أَمْرِ اللَّهِ ۚ فَإِنْ فَاءَتْ فَأَصْلِحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا ۚ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ  
إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ فَأَصْلِحُوا بَيْنَ أَخَوَيْكُمْ ۚ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ  
تُزَكَّوْنَ

اور اگر مومنوں میں سے کوئی دو فریق آپس میں لڑ پڑیں تو ان میں صلح کرا دو۔

اور اگر ایک فریق دوسرے پر زیادتی کرے تو زیادتی کرنے والے سے لڑو

یہاں تک کہ وہ خدا کے حکم کی طرف رجوع لائے۔ پس جب وہ رجوع لائے

تو دونوں فریق میں مساوات کے ساتھ صلح کرا دو اور انصاف سے کام لو۔

کہ خدا انصاف کرنے والوں کو پسند کرتا ہے (سورۃ حجرات۔ ۹)

مومن تو آپس میں بھائی بھائی ہیں۔

تو اپنے دو بھائیوں میں صلح کرادیا کرو۔

اور خدا سے ڈرتے رہو تاکہ تم پر رحمت کی جائے

(سورة حجرات. ۱۰)

Discourage litigation. Persuade your neighbors to compromise, whenever you can. Point out to them how the nominal winner is often a real loser -- in fees, expenses and waste of time.

A very famous saying of **Abraham Lincoln**...

Conflicts are bound to occur within the communities and within any kind of relationship. States have taken the responsibility to protect the rights of the citizens and to resolve the conflicts of the disputing citizens by providing legal justice through the implementation of law in place. The idea of achieving justice through the implementation of law, however, has gone through intense debate over the last few decades. And the proponents of legal positivism have been very vocal in outlining the weaknesses of the idea and system of such dispute resolution. This philosophy paved ways for ADR as a mechanism for dispute resolution that may be with or without the intervention of the courts.

Alternative Dispute Resolution or “ADR” as is manifest from its very nomenclature connotes and means any dispute resolution methodology which is an alternative to the conventional litigation or litigation process. The mechanism used for resolving disputes through ADR may be through negotiations, conciliation, mediation, arbitration or neutral evaluation.

The alternative dispute resolution Act 2017 defines ADR as:

“A process in which the parties resort to resolving a dispute other than by adjudication by courts and includes, but is not limited to Arbitration, mediation, conciliation and neutral evaluation”.

When we talk of the role of the bar in the dispensation of justice or for that matter, in ADR implementation; it is understood that Bar has been one of the key players in the dispensation of justice across the legal history. The Bench and bar relations have been at the forefront of each jurisdiction. However, the mode of relationship is that one person belongs to bar asking for his claim and the other on the bench allowing or denying the claim. In ADR not only the fundamental idea of justice and how to achieve that idea is changed rather the players and their role is also changed drastically. So much so that the principles of engagement of all the players do not apply under ADR and thus we need to ponder upon new terms and new rules, guidelines for such engagement and co-ordination.

The Bar and Bench both are accustomed, taught and trained under the idea of black and white without any room for grey area. The rights have been pre-determined under the law and facts have to be applied by the Bench through the assistance of Bar and its members.

However, as we have said before that the idea of justice and its model is undergoing radical and fundamental change, the Justice is now not seen as something the State provides to the people rather it is seen as something which is achieved by striking peace between people, peace which people bestow upon each other. State's role may be redefined to provide enabling environment to achieve that goal.

While underlining the role of the bar, the first and the important step that requires to be taken is to inculcate the significance of ADR into all actors of the justice sector including the state functionaries. It is to be made to understand to the justice sector actors why ADR is needed and only then they would be able to understand properly the role they can play or they ought to play. The lawyer community may pose the question; Why ADR is needed in the now-a-days dispute resolution grassland when proper judicial system is already in place and they may feel insecure in terms of their clientage. It is not to be lost sight of that the state has guaranteed the provision of inexpensive and expeditious justice to every citizen of this country. However the labyrinthine and archaic judicial procedures of the centuries old adversarial judicial system have rendered getting of justice an extremely expensive & time-consuming commodity. Similarly since the justice system is highly overburdened with an awful caseload on the courts across the country that has made it somewhat difficult for the

state to keep its promise, and thus the acquisition of expeditious & inexpensive justice for a common man has become a daydream. Here the ADR mechanisms have been resorted to just to do away with the cumbersome process of court litigations. There is no blinking the fact that ADR has assumed significance across the world. It is also because of the advantages ADR carries with it. The beauty of ADR is seen in the fact that it does not involve agonies of trial and lengthy litigation process and leads to a Parties driven solution which helps maintaining relationship and effaces social or family conflicts. It terminates dispute in a win-win solution. It also Diminishes caseloads on courts and if practiced properly would promote business environment even for the people practicing law.

Since ADR increases avenues for conflict resolution therefore it is bound to increase role of the practitioners in the justice system. When we speak of the role of legal practitioners in ADR in the context of our own system, that role currently may not be visibly seen. When we talk of the foreign jurisdiction it may be noted that ADR assumed greater significance across the world and the bars or the law firms are actively engaged in the process. According to a rough estimate ADR had been successfully applied in over 30 % non-criminal including over 68% commercial conflicts in Europe & American jurisdictions with the active support and assistance of their legal practitioners through what they call as “Legally Assisted Mediation”. In our jurisdiction the non-active involvement of the legal practitioners is due to non-existence of a proper legislation for their direct involvement. The little or no interest shown is also because of no value seen by the bar. Nonetheless bar can play extremely important role in ADR implementation in a number of diverse ways and manners.

Legal practitioners come from the society & are well known personalities to the litigants from their vicinities. As their role in the society is otherwise significant, so is significant their role in the conflict resolution of the litigants from their areas and thus the Bar Council can undertake this responsibility upon itself and can place it upon each of its members to act as a pro-bono mediator or conciliator in the disputes pertaining to the areas of their abode or of the litigants known to them. The bar has to bring about a change in its attitude towards litigants & litigations and to realize the demand of the time. The focus is now to be diverted to the idea to resolve the disputes & discourage litigation. The bar as a whole can strive to find alternatives outside the judicial system and can utilize their expertise for the use of non-judicial methods to resolve disputes. They can even offer services to disputants of all kinds to circumvent the expense and time wasting involved in adversarial context of the court. It is proven that the clients who cannot afford to engage private practitioners can often achieve

better outcome by participating in the legally assisted mediation than they would, by appearing unrepresented in the courts.

The bar councils can prepare and maintain panel of the lawyers who may be called upon to become mediators in cases where the courts need legally assisted mediation particularly in the cases of socially disadvantaged and/or marginalized people. Thus the bar can play role in all kind of dispute resolution process that is court based or even without the intervention of the court.

When it comes to dispute resolving mechanism in the litigation before the court, here again an advocate can play extremely important role:

That is that he encourages the parties for ADR and can also mediate between them. It is perhaps more convenient for the advocate or advocates of the parties than the court itself, who Can settle issues between the parties with their consensus and that is because the lawyers can persuade the parties for settlement or for mediation of a third person. An advocate of a party in a liberal manner can tell the party about the range of possible outcomes of litigations and also the range of acceptable outcomes of settlement and this way the lawyer can bring about a peaceful solution of the problem.

In any case the Inclusion of lawyers and bar in the efforts to implement ADR to achieve the desired goals of achieving harmony and peace in the society is indispensable. Any effort to change the course of legal system will meet with a failure without the inclusion of the lawyer community. The inclusion of Bar has to come with the security of business for the lawyers. Just an ideological inclusion cannot automatically enable the lawyers to embrace the floating idea. It is important that the bar councils should approach the idea with open mind. The system of ADR does bring in quick disposal of cases and that was one of the compelling reasons due to which the idea was embraced in the foreign jurisdictions and it became a big success. The quick disposal of cases does seem like less business for bar members, but this is not true in essence. In fact there is need to understand that there are more causes or what we may legally call as causes of action, which do not transform into cases before courts due to the prolonged proceedings, rigors of courts and trials and due to social norms of our country where it is still considered better to stay quiet and bear the harm than to approach the courts for remedy. This holds especially true in business and family matters. The business community scare for loss of their reputation and same is the reason for family matters. While scared of troublesome process, people take law into hands. If there is this predictability that

disputes can be resolved in short span of time without private affairs being discussed in front of public, then this means more parties approaching the forums of dispute resolution, which in turn means more business for the people practicing law.

Moreover, the business amongst lawyer's community is also not fairly distributed. There is no mechanism of equitable distribution of work load, which means that the above-mentioned loss of business holds true for only fraction of lawyers and not all. The bar members, especially the combination of youth and more experienced lawyers can play their due role, keeping in view the enthusiasm of the youth and the experience of the seniors. The youthful lawyers need to be more receptive to the idea and that is what the normal trend of the age usually is, while the more experienced lawyers can use their knowledge of law to tender legal advice during the proceedings and encourage ADR by offering their mediation services. Likewise, the more experienced lawyers can command more respect of the parties and create enabling environment for the parties to achieve desired result.

The Bar needs to be receptive to the idea of ADR instead of dismissing it. The system, which has achieved success in the other jurisdictions, is not new to our part of the world. The Asian societies in general and the south Asian in particular have rich background of informal system of dispute resolution. The Bar should now play a proactive role to revive the informal system of dispute resolution. Things required to be done from the root level, so, the bar should recommend the inclusion of the courses in the curriculum for LLB degree and should also conduct seminars and workshops to create an environment of debate around the topic for its complete understanding and proper implementation.

It is true that any new idea needs to be understood in its entirety to enable its implementation, but it is not possible that all the members of bar councils would feel inclined to the idea. Some people may not be able to accept the idea at once owing to their way of thinking, but one cannot wait for everyone to achieve a consensus to give a fair start to the process. The least that the bar members can do is to allow a space for the system to be put in place and not feel aggrieved by the vision and pursuit of the views behind ADR. This healthy attitude of being critical in constructive manner can go a long way in contributing towards the formulation of a system which has been efficient and result oriented in so many jurisdictions and is still being accepted by other jurisdictions.

Role of lawyers can be extended to being mediators between the parties in the proceedings that are being sent for mediation by the courts to the mediation centers (if are in place). The

lawyers therefore need to be fully acquainted with their respective roles and the role if played well, with fruit bearing result, would obviously contribute in the increase of number of client.

The parties to litigation depend on the advice of their counsels and so the objective assessment regarding the claim of the parties and honest rendering of such opinion becomes very important and paves ways for an amicable and quick settlement of the dispute.

Lawyers should be able to detach themselves from the whole proceedings in terms of procedures and should not insist on making the proceedings formal. The minimum formality requirements that are necessary for carrying out the ADR proceedings are to be understood.

The bar also needs to set standards, rules and procedures for the purpose of ADR proceedings and members of the bar should be informed of such rules. The violation of such rules should trigger in motion the regulatory role of the bar. The lawyers should be held responsible in case of violation of such rules so that the bar's role as regulator becomes more and more prominent and to avoid becoming irrelevant.

Nothing is impossible and when there is a will there is a way.

Paper presented at:

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16<sup>th</sup> & 17<sup>th</sup> November 2017,

Islamabad.

by

Mr. Suhail Shiraz Noor Saani

(District and Session Judge)

Senior Director Research & Publication

Khyber Pakhtunkhwa Judicial Academy.

Peshawar.

e-mail: sdrp@kpja.edu.pk

WORKING PAPER: Not for citation or distribution without permission of the author.

### **Abstract**

This paper attempts to probe, analyze and encourage the growing phenomenon of the use of Alternative Dispute Resolution mechanism for settling disputes, in particular commercial disputes. Alternate Dispute Resolution is an informal, less stressful and more effective mechanism of settling disputes outside the courtroom. It has been internationally recognized and being practiced in many countries around the world. Main components of ADR includes mediation, arbitration, neutral evaluation, and so on. The process is usually faster, flexible and cost effective than litigation and since courts carry huge arrears and backlog of pending cases, ADR can be a very effective way to reduce the workload of courts considerably.

ADR with its non complicated techniques and procedures aims to bring harmony by bridging the gap between the ever-growing socioeconomic needs of society and the law. The resolution of disputes in formal judicial system does offer many positive attributes, e.g.



independence of judiciary, less court fees and the availability of the right of appeal, however the problem of delay along with the complexity of procedure makes ADR as a preferred mode of dispute resolution, particularly for commercial disputes. ADR is one of the most discussed and debated issues and has undergone many debates and reforms in the last few decades in many jurisdictions, such as UK, USA, Australia, Singapore, India, Srilanka etc. Most of the developed as well as developing countries have adapted ADR in some or another way, most commonly for commercial disputes and now the time is ripe for Pakistan to follow suit.

## **Introduction**

The use of Alternative dispute resolution for commercial transactions has grown tremendously in the last several years across the world. As the dispute resolution under the formal justice system has been repeatedly criticized for being lengthy, expensive and complicated, it prompted the adoption of ADR techniques in many modern countries. The use of ADR methods have not only acquired recognition but have also been now actively promoted by laws both at the national and international level specifically for commercial transactions. This is primarily due to the fact that the business community has come to realize that it is a vital tool to preserve business relationships and provide a speedy, cost-effective and less-adversarial alternative to litigation. Litigation impedes the working relationships among businesses, while the confidential and courteous nature of ADR may take at least some of the sting out of a public business conflict

<sup>1</sup>. And this phenomenon of keeping and preserving the relationships unstrained is the essence of corporate world. Another leading strength of ADR is probably its ability to offer procedural and substantive flexibility. ADR offers to the parties is the resolution of disputes at their own terms in an inexpensive and expeditious manner Generally, the ADR techniques are in addition to the courts in character and can be used in almost all contentious matters, which are capable of being resolved, under, the law by agreement between parties. As a matter of fact, ADR has been successfully employed in several categories of disputes, especially civil, family, industrial and commercial disputes. The informal nature of the ADR allows matters be resolved much quicker than other process driven alternatives. There is no long wait for court dates and conflicts are usually resolved within short span of time.<sup>2</sup>

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<sup>1</sup> Randy.J.Aliment, "Alternative Dispute Resolution In International Business Transactions" 2009

<sup>2</sup> Zafar Iqbal Kalanary, "Tracing the Future of ADR in Pakistan"

Similarly the cost-effectiveness of ADR may be appreciated from a recent Australian study, which has concluded that mediation of commercial disputes by the Australian Commercial Disputes Centre, costs 5% of the cost of litigating the same matter. In this respect court-sponsored ADR mechanism for commercial and corporate disputes, can drastically enhance the speed and quality of social justice. Keeping the aforementioned facts and the international best practices in view, this paper focuses on the need of ADR centres in Pakistan for commercial disputes that should cater for various clients in the social, business and commercial industry.

### **ADR, Commercial Disputes and Pakistan**

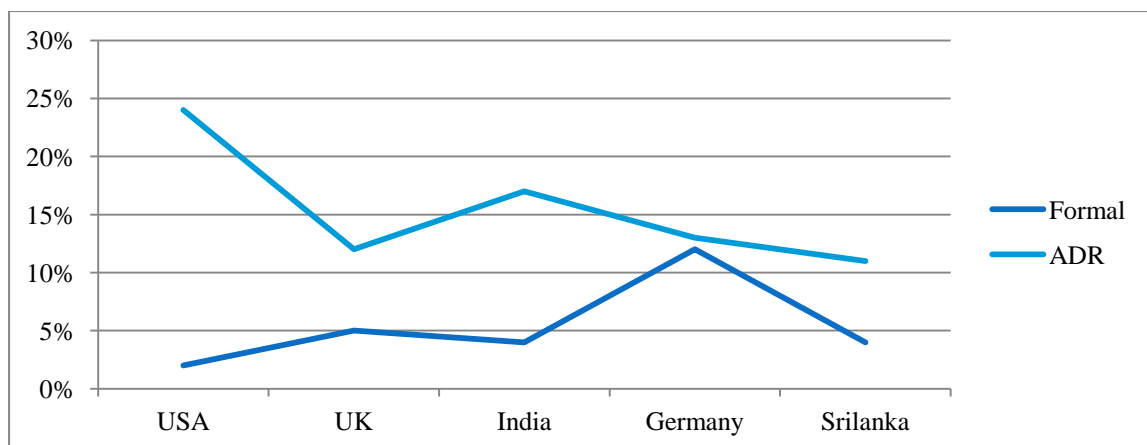
The concept of ‘Alternate Dispute Resolution’ (ADR) has been a centuries-old practice mostly to resolve disputes ranging from family to property in particular, through village panchayats and jirgas systems in the rural and tribal areas of the subcontinent.<sup>3</sup> With the expansion of the free market philosophy, the late 1970s saw economic and commercial activism throughout the globe and greater interdependence of nations on global trade, overseas employment and investments multiplied the number of cases in courts of law. Consequently alternate dispute resolutions, which are generally based on mediation and arbitration, started gaining grounds in almost all the developed countries.<sup>4</sup> In this regard a survey conducted by International Arbitration Institution for Trade and Commerce's (2001), showed that there was substantial increase in the settlement of commercial disputes through mediation and arbitration throughout the developed and developing countries of the world as compared to formal legal systems.<sup>5</sup>

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<sup>3</sup> Zafar Iqbal Kalanauri “Implementation strategy for ADR in Pakistan, p.2 ”. Also see Naveed Ahmad Shinwari, " Understanding the informal justice system: opportunities and possibilities for legal pluralism in Pakistan" p.3.

<sup>4</sup> Ibid.

<sup>5</sup>. International Arbitration Institution (IAI) 2002, accessed at <http://www.iaiparis.com/>



The forward trend witnessed in the disposal of commercial disputes through ADR, have also prompted countries like Pakistan to take initiatives to resolve commercial disputes through ADR if not domestically. On international arena, Pakistan is party or an active member of various international regimes on arbitration;<sup>6,7</sup> the international conventions of United Nations conventions like New York Convention of 1958 and the Convention for the Recognition and Enforcement of Foreign Arbitral Awards (REFAA).<sup>8</sup> An interesting figure provided by International Arbitration Institution is that Pakistan has taken more cases on commercial disputes to international arbitration forums than any other country in the South Asia.<sup>9</sup> However, the local regime on employing informal methods or court sponsored ADR are still scanty in the domestic laws of Pakistan. The domestic laws i.e. The Arbitration Act of 1940; Chapter XXII of the Code of Criminal Procedure of 1898 (summary trial provisions); The Small Claims and Minor Offences Courts Ordinance of 2002; and Sections 102-106 of the SBNP Local Government Ordinance of 2001; explicitly mention of ADR methods and mechanisms.<sup>10</sup> Further Salman Ravala stipulates that although “no explicit mention of ADR is mentioned in the Constitution of Pakistan, a reference to commercial and financial activities can be pinpointed in the Constitution, which may, however lead

<sup>6</sup> Case in reference is Multilateral and Investment Guarantee Agency or MIGA. To promote its goal, in 1996, MIGA began offering dispute resolution services to help governments and foreign investors find creative solutions to their disagreements.

<sup>7</sup> International Center for Settlement of Investment Disputes (ICSID). Pakistan is a member of ICSID. ICSID is also an institution of the World Bank that “provides facilities for conciliation and arbitration of international investment disputes. See <https://icsid.worldbank.org/en/>

<sup>8</sup> Op Cit, Kalanauri, p.1.

<sup>9</sup> OP Cit, SIB Report 2001, p.113.

<sup>10</sup> Op Cit, Kalanauri, p.3. also see Michael Pryles, Kluwer, Dispute Resolution in Asia, Law International, Oct. 2002.

implicitly, to a view that Pakistan practices certain methods of ADR. A quick review of the Constitution reveals that articles 153-154 deal with the Council of Common Interest, article 156 deals with the National Economic Council, article 160 deals with the National Finance Commission, and article 184 of the Constitution gives rise to original jurisdiction to the Supreme Court of Pakistan in “any dispute between any two or more Governments”.<sup>11</sup> However, it is important to point out that various provincial governments have recently endeavored to rectify the gaps in the formal justice system by introducing various provincial laws for establishing ADR centre across the provinces. One such case is the initiative of the Punjab government that have established a number of ADR centers in the province.<sup>12</sup> A study by Zafar Iqbal reveals currently each case that is filed in any court takes on average 1000-1300 working days to come to a conclusion which is causing a cluster of cases in the courts, but the cases in ADR center have substantially decreased the flow of cases to the courts particularly the cases of commercial disputes.<sup>13</sup> Substantiating this point, an independent study conducted in August 2017, revealed the success of ADR centers in addressing small to medium commercial disputes in a short span of time. The figures provided by the study testifies the fact that ADR centers have been successful in curtailing the costs and time consumed in such disputes.<sup>14</sup>

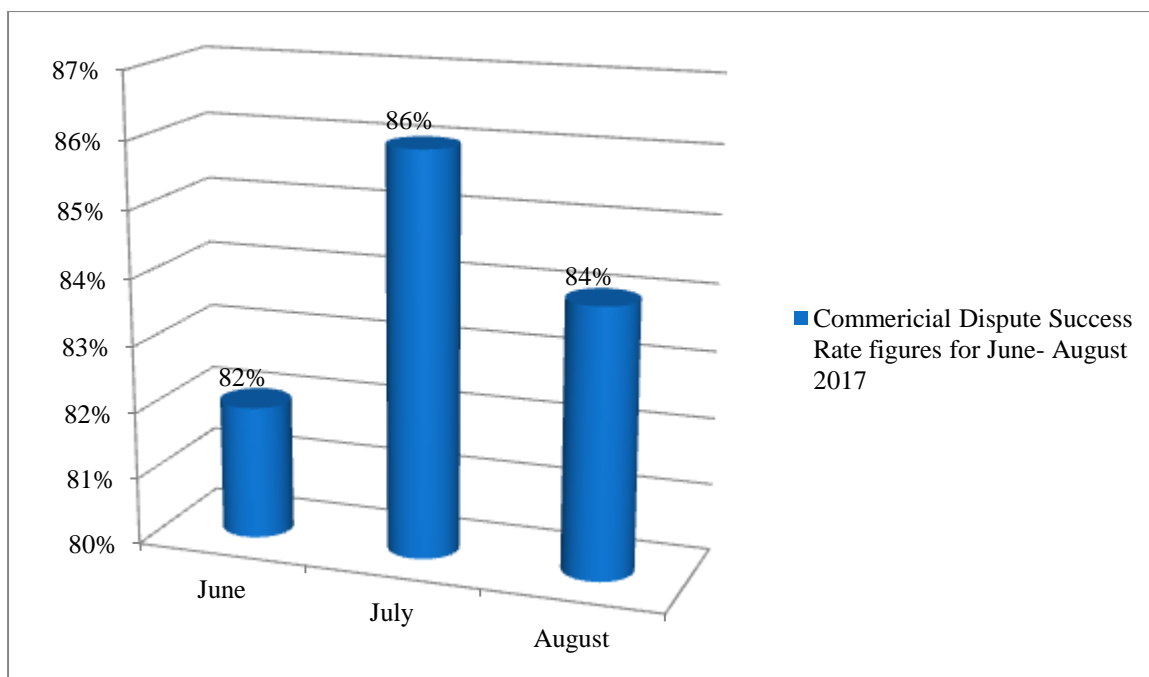
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<sup>11</sup>Salman Ravala, Alternative Dispute Resolution in Pakistan, accessed on 10 October, 2017. [http://www.nyulawglobal.org/globalex/Pakistan\\_ADR.html](http://www.nyulawglobal.org/globalex/Pakistan_ADR.html)

<sup>12</sup> <https://www.pakistantoday.com.pk/2017/05/30/adrs-to-help-courts-in-providing-speedy-justice-in-punjab/>

<sup>13</sup> Ibid.

<sup>14</sup> ADR: A Way Forward, Pakistan ADR Initiative Report 217.



The study also revealed that the average time consumed on approximately 12000 cases of commercial dispute nature were settled on average 46 hours per case.<sup>15</sup> Analyzing these facts and figures, the utility of ADR for commercial disputes cannot be underestimated. ADR is a great balancer of power as it allows the parties an opportunity to have a dispute resolved quickly, cost-effectively and privately, rather than having to suffer from an imbalance in representation, which may lead to heavy expenses as well as public mauling in the courts. Court cases usually end with win-lose situation whereas the ADR process provides win-win scenario which is an important aspect of business relationships. Another advantage of ADR from commercial perspective is the flexibility of timetable and procedure . In litigation, there are strict time-tables and rules of procedure laid down by the court, which both parties have to follow. On the contrary, ADR has flexible rules. The parties and the mediators can mutually agree to change them, as the process matures. Last but not least, litigation can affect the reputation, share value and overall management of a business involved, while ADR, being private and confined offers a great rescue for businesses and commercial disputes.

Since Pakistan is a regional and commercial hub of the region, it would be advisable to establish such ADR centers which could settle the disputes of commercial nature more amicably and in a less time frame. The formal Justice system in part can also introduce the idea of legal pluralism whereby the courts directed ADR centers could help reduce the

<sup>15</sup> Ibid.

pendency of disputes thereby bring quality of justice. A case in point would be Europe Commission Model, where court sanctioned ADR centers are specifically tailored to settle commercial disputes.

### **Conclusion**

In Pakistan, the tremendous increase in the number of cases filed in the courts has resulted in pendency and delays underlining the need for alternative dispute resolution methods. It has been realised by the judges, lawyers, litigants and other stakeholders that the Courts were not in a position to bear the entire burden of justice system and the system must take advantage of alternative dispute resolution which provides procedural flexibility, saved valuable time and money and avoids the stress of a conventional trial<sup>16</sup>. The idea to establish ADR centers for commercial disputes in Pakistan is critically important and aims to institutionalize social and commercial dispute resolution through mediation, conciliation and arbitration for the private sector to provide a platform to resolve such matters faster and at lower costs. The occurrence of disputes between commercial firms or individuals etc is very common and often results in lengthy, costly and time-consuming processes. Most of these disputes gradually become adversarial, which in most cases damage business relationships. ADR provides them an equal platform to resolve their disputes; a much better option than fighting through litigation. ADR is a symbol of the times; we are (despite crime rates and outlier data) gradually attempting to be more peaceful with one another and peaceful people tend to talk things out more than outright attack each other.

Pakistan is in the phase of developing effective laws and policies to strengthen the process of alternative dispute resolution. The establishment of ADR centers for commercial disputes will be the start of a new era where a modern, robust and well-equipped program will provide efficient, easy, and cost-effective solutions to a multiplicity of problems and disputes for the business and commercial sectors. The step in particular is a long awaited need of the business community and it is expected that it will receive the due attention and support.

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## EXPEDITIOUS DISPUTE RESOLUTION MECHANISM WITHIN FORMAL JUDICIAL SYSTEM OF PAKISTAN

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Paper presented at:

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Islamabad.

by

Mr. Zia Ur-Rehman

(Additional District and Sessions Judge)

Director Instructions

Khyber Pakhtunkhwa Judicial Academy.

Peshawar.

e-mail: di@kpja.edu.pk

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### **Abstract**

This paper provides the first comprehensive insight on Expedious dispute resolution mechanism within Formal Judicial System of Pakistan, which is an important aspect of the current ever-expanding debate on the issue of delay and legal efficacy. Delay in justice system is a chronic phenomenon that is inherent in almost every judicial system, but the situation in Pakistan is particularly alarming.

Delay is one of the major concerns that force people to settle their disputes out of the courts through other alternative dispute resolution mechanisms. Another reason could be related to



the complexity of procedure. People in general are afraid of mishandling cases by police, exploitation of lawyers and the complex court procedures. Litigation, therefore, is never the first choice of parties in Pakistan. They tend to opt for other informal dispute resolution mechanisms, such as jirga or panchayet. Despite their inadequacy in most of the legal matters. I would like to add from the Pakistani perspective that we have raised legions of individuals who are not attuned to their rights and would rather cave and settle over fighting it out in court.

And this is one of the reasons why ADR has been introduced in many legal systems around the globe including Pakistan. The term 'Alternate Dispute Resolution' implies the use of amicable, informal and conclusive strategies like mediation, arbitration, negotiation and conciliation to resolve disputes of varying nature outside the ambit of formal justice system<sup>1</sup>. This paper refers to the word ADR as an amicable dispute resolution and argues that the same can be utilised within the existing formal judicial system of Pakistan. As initiated and presented by Professor Frank E.A. Sander in USA, the existing courts can work as a Multi Door House for efficient delivery of justice through employing multiple dispute resolution mechanisms or programs including litigation, conciliation, mediation, arbitration and other social and governmental services<sup>2</sup>. Backing the same patronage, this paper would like to urge the Lawyers, judges and other stakeholders to visualize the civil courts as an offertory of dispute resolution procedures tailored to fit the variety of disputes that parties bring to the justice system.

## **Introduction**

Alternative dispute resolution is a growing and valuable global phenomenon to resolve disputes outside the court and in that sense, ADR is usually misinterpreted as a replacement to litigation, which is not the case. ADR mechanisms have not displaced the traditional litigation; hundreds of thousands of lawsuits are filed everyday in courts around the globe<sup>3</sup>. However, there are some reasons to believe that the ADR mechanism has some success over

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<sup>1</sup> Hensler, Deborah R. "Our courts, ourselves: How the alternative dispute resolution movement is re-shaping our legal system." *Penn St. L. Rev.* 108 (2003): 165.

<sup>2</sup> Sander, Frank EA. "The multi-door courthouse." *Barrister* 3 (1976): 18.

<sup>3</sup> Hensler, Deborah R. "Our courts, ourselves: How the alternative dispute resolution movement is re-shaping our legal system." *Penn St. L. Rev.* 108 (2003): 165.

the past few decades in changing business and legal decision makers views of how best to resolve legal disputes.<sup>4</sup> Even in Pakistan, there have been instances where the significance of ADR has been recognized, either by establishing dispute resolution centers or in a sense that courts have tended to anticipate the changes or interpret the existing rules in way which is compatible with the essence of ADR<sup>5</sup>.

In this context, Pakistan, being a common law country, followed the suit after Lord Woolf introduced his reforms to the civil justice system of England<sup>6</sup>. The main planks of the reforms were pre-trial conferencing and trial scheduling with a vision of less adversarial, faster, cheaper and more affordable justice system. The Woolf report proved to be a catalyst in the U.K and led to drastic amendments i.e. Civil procedure Act 1997 and Rules of Civil procedure 1998. Objectives of these reforms are firstly, the establishment of a new fast track for straightforward and simple cases saving expense and time of the litigants.

Secondly, more Active management of larger cases by judges while dealing with cases proportionally. Judges are required to play a pro Active role in case management through pre trial conferencing to plan the litigation, narrow down the issues, encourage settlement and if necessary organise the trial<sup>7</sup>. A particularly important role for the judges at these conferences will be to "*level the playing field*" or ensuring that parties are on Equal footing when they have very different amounts of resources<sup>8</sup>.

Thirdly, a range of measures to encourage openness, co-operation, and earlier settlements, including protocols of steps to be taken before proceedings are issued, positive encouragement by the courts to use mediation and other methods in appropriate cases. This concept of amicable dispute resolution through case management is not in a contrast with the essence of ADR in anyway, rather it considers adopting the same approaches within the existing formal legal setup. We need to understand that ADR is not and cannot be an outright and exclusive substitute to formal justice system. The problems of backlog and delayed justice cannot be tackled purely through employing ADR, unless there is an institutional and attitude change in the main Actors of the judicial process i.e. the Bench, the Bar and the

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<sup>4</sup> *ibid*

<sup>5</sup> Won, Sung-Kwon. "Overview of Alternate Dispute Resolution with Special Reference to Arbitration Laws in Pakistan." *J. Arb. Stud.*23 (2013): 149.

<sup>6</sup> Zuckerman, Adrian AS. "Lord Woolf's Access to Justice: Plus ça change...." *The modern law review* 59, no. 6 (1996): 773-796.

<sup>7</sup> De Smet, P. A., and Willem A. Nolen. "St John's wort as an antidepressant." *BMJ: British Medical Journal* 313, no. 7052 (1996): 241.

<sup>8</sup> *ibid*

litigant public<sup>9</sup>. And as rightly pointed by His Lordship Mr. Justice (Retd.) Tassaduq Hussain Jilani "*this process of dispute resolution through case management has to commence at the basic level i.e. at the subordinate judiciary level. The subordinate courts are the backbone of the entire judicial hierarchy. It is here that the concept of rule of law confronts the first trial; it is here that more than 95 % of cases are filed and pending; it is here that the impressions and perceptions about the judiciary take shape; it is here that people in litigation suffer for months, years and decades and spend the best part of their lives waiting for that elusive Justice which at times is delayed, at times denied, and at times is bitter with expense it entails.*"

### **ADR within the formal Judicial System**

The Concept of dispute resolution has multiple strands, which have been woven together in a complex fashion giving each strand a different meaning and shape depending on the mode and forum of its application. Nonetheless, at the core, all of them aim at providing the prompt and fair resolution of a dispute. Keeping this view, I would like to express that courts can be the best forum for expeditious dispute resolution within Pakistan for a number of reasons. Firstly and Most importantly, According to the constitution of Pakistan, 1973 dispute resolution is the domain of judiciary. Judiciary has expertise and legal background of law and is mandated by the constitution for dispute resolution.

Secondly despite all the lacunas, the element of transparency and public faith is attached to the judiciary. It might not be the same with other modes of dispute resolutions.

Thirdly, courts always leave the door open for appeal. In other alternative resolution mechanisms the theme is optional, until the parties are satisfied. for example in ADR or jirga there is usually no right of appeal. More importantly dispute resolution through the courts is more or less negotiating or mediating peacefully under the umbrella of law. Lord Woolf, the Chief Justice of England and Wales, in his report on "*Judicial Reforms in U.K.*" argued that *. Without effective judicial control, however, the adversarial process is likely to encourage an adversarial culture and to generate an environment in which the litigation process is too often seen as a battlefield where no rules apply. In this environment, questions of*

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<sup>9</sup> Jilani, Tassaduq Hussain. "Delayed justice and the role of ADR." *Pakistan Law Journal* (2012).

*expense, delay, compromise and fairness may have only low priority. The consequence is that expense is often excessive, disproportionate and unpredictable; and delay is frequently unreasonable. This situation arises precisely because the conduct, pace and extent of litigation are left almost completely to the parties. There is no effective control of their worst excesses. Indeed, the complexity of the present rules facilitates the use of adversarial tactics and is considered by many to require it.”*

### **Various Modes of ADR Within The Formal Judicial System**

Various modes of Dispute resolution within the formal judicial system developed over a period of time in different jurisdictions. Reforms in Procedural law of civil courts started after a good deal of criticism by Dean Roscoe Pound's 1906 speech on The Causes of Popular Dissatisfaction with the Administration of Justice<sup>10</sup>. He contended that the system of the court was "*archaic and our procedure behind the times.*" resulting in the "[u]ncertainty, delay and expense, and above all, the injustice of deciding cases upon points of practice<sup>11</sup>. And due to these drawbacks "*there is "a deep-seated desire to keep out of court, right or wrong, on the part of every sensible man in the community.*" The solution that he came up with was case management. The procedural revolution Pound commenced was the most thoroughly successful one in twentieth-century American law resulting into amendments of CPC USA in 1938. and rule 16 A was included.

In England the credit of further development goes to sir Raymond Evershed for his recommendations on the more Active role of judiciary in dispute resolution in 1953<sup>12</sup>. He came up with the suggestion of pre trial conferencing and pre trial scheduling based on the concept that judges should pursue a more Active and dominant course in the interest of litigants.

Another milestone in this regard was the recommendations of Morrine Solomon in 1970 with the objective to streamline the judicial proceedings. On his recommendation American bar association constituted a commission on standards of judicial administration. His

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<sup>10</sup> Sherman, Edward F. "Dean Pound's Dissatisfaction with the Sporting Theory of Justice: Where Are We a Hundred Years Later." *S. Tex. L. Rev.* 48 (2006): 983.

<sup>11</sup> Roscoe Pound, The Causes of Popular Dissatisfaction with the Administration of Justice, 40 *AM. L. REV.* 729, 742 (1906)

<sup>12</sup> Evershed, Francis Raymond. "Our Common Heritage of Law." *NYUL Rev.* 27 (1952): 32.

recommendations were published, under the title, case flow management in trial courts, 1973<sup>13</sup>.

Australian federal court adopted docket system in 1987, whereby judges started direct monitoring of cases from initial filing to final resolution whether by settlement or by trial<sup>14</sup>. Lord Woolf's vision of access to justice in 1996 contributed a great deal and All this work on court delay appears to have made a real impact on policies and programs in a number of courts globally and the modes now in practice for dispute resolution are following.

- (i) Case Management
- (ii) Judicial Settlement
- (iii) Early Neutral Evaluation
- (iv) Mediation
- (v) Arbitration and
- (vi) Summary Judgment.

### **Expeditious Dispute Resolution in Pakistan within Formal Justice System; what is needed?**

In Pakistan several laws do contain provisions for initiating settlement of disputes through ADR, However due to our predominant adversarial culture the practical utilisation is very limited. For instance, in family laws there is a specific provision for pre-trial and post-trial conciliation/mediation effort by the court. Similarly in 2002 Section 89 A was embedded in Pakistan Civil Procedure Code to make room for ADR. Section 89 A. if co-related with non trial centric provisions, or inquisitorial provisions Section 30 and (order 10-15 of Civil Procedure Code) can work effectively and efficiently for case management and dispute resolution at the early stages of the case. Similarly Arbitration Act 1940 provides step by step guidelines for arbitration. All these provisions are already applied individually by judges, but a systematic, organised and professional effort is required on the part of ad judicature.

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<sup>13</sup> Mashaw, Jerry L. "Management Side of Due Process: Some Theoretical and Litigation Notes on the Assurance of Accuracy Fairness and Timeliness in the Adjudication of Social Welfare Claims." *Cornell L. Rev.* 59 (1973): 772.

<sup>14</sup> Von Nessen, Paul E. "The Use of American Precedents by the High Court of Australia, 1901-1987." *Adel. L. Rev.* 14 (1992): 181.

Similarly on criminal side, provisions related to compoundable offences provide mandate to the judges for dispute resolution without formal trial.

There is no denial of the fact that our procedural laws are not only trial centric and mainly based upon adversarial norms of justice .However ,the present laws and rules in Pakistan do not prevent judges from calling litigants to preliminary hearing for thoroughly scrutinizing their pleading, evaluating the evidence, making attempts for resolving the disputes through ADR modes ,narrowing down the controversies and summary adjudication of the matters ,where need be . The Code of Civil Procedure, 1908 indeed provides an effective mechanism in this regard. For instance section 30 of the Code read with order X to XV obliges the judge to become fully involved and play a more activist role at the pre trial stage. The purpose is to prevent the parties and their advocates, or even the ministerial staff of the court from taking charge of the proceeding, by indulging in or resorting to tactics, which may hamper the speedy disposition of cases. Therefore, pre trial proceedings, internationally known as pre trial conferences and scheduling orders, if properly conducted, would result in complete paradigm shift. These provisions are indeed the tool and techniques for case management and objectives aimed by legislature may be inferred as under,

- 1- Seeking clarification from parties with regard to nature and justification of the claim through examination.
- 2- Ascertainment of the nature of the process to be issued, as to whether for final disposal of the case or for settlement of the issue
- 3-Obtaining admissions of the facts and /or documents.
- 4- Evaluating and deciding admissibility of the evidence before framing the issues.
- 5- Discovery management system, regarding facts based upon oral assertions or documents, through interrogations.
- 6- Avoiding collection of unnecessary and irrelevant proof.
- 7- Amendment of pleading so as to include only the essential and exclude the non-essential material.
- 8- Scheduling miscellaneous application hearing, i.e. injunctions , impleadment, rejection etc.

9- Constituting commissions for recording evidence, carrying inspections and production of documents.

10- Summary adjudications.

11- Encouraging the parties to try and reach an out of court, amicable settlement of disputes, through any of the alternative means of dispute resolving, arbitration, conciliation or mediation.

12- Finding material for framing of issues.

13- To set time lines .i.e. case scheduling orders.

14- Restricting /limiting the number of factual and expert witnesses to the mere essential.

It may not be out of context to state here that such pre trial conference is mandatory in some jurisdictions like Fiji, Hong Kong, martial islands, Philippines and United States. The courts there are bound to apply such procedures and the parties obliged to comply. For default on the part of a party, sanctions can be imposed. Some states prescribe specific and indeed quite detailed procedures on the subject like Australia, Nigeria , Singapore and the USA

It is pertinent to mention that the two reports on our civil laws reforms, justice S.A Rehman's Laws reform commission report (1958-59) and justice Hamood-ur- Rehman's law reform commission report (1967-70) recommended the initiation of formal pre-trial hearing for expeditious resolution of preliminary issues, thereby helping to expedite the pace of trial.

It is observed that order X CPC, which mandates examination of parties, if applied properly ,is likely to result in admission of many facts, thereby reducing the necessity of recording evidence .Sec 10 of the Family courts Acts , 1964 provides the same mechanism besides statutory ADR arbitration in terms of spirit of verse 35 of Sura- e- Nisa.

Likewise the provisions of order 11 of the code , providing for discovery by interrogation , production and inspection of documents further empower the courts in curtailing unnecessary proceeding and expediting the process of adjudication. Certain enabling provisions are needed for effective implementation of this case management system, regarding which KPJA has already taken the initiative by drafting order 9-A and 15-A CPC and the draft bill has already been submitted to the rule making committee of honourable Peshawar High court.

As far as our criminal justice system is concerned, though no such exhaustive legal framework is available for case management in the Code of Criminal Procedure, 1898 yet there is no impediment for the judges to take the support & invoke certain enabling provisions in this regard. For example, scrutiny of the prosecution case can be made upon submission of final report (challan) if sec 190 and sec 204 of the code are properly applied. The process is not to be issued mechanically for procuring attendance of the accused unless and until a prima facie case is made out from the record submitted. Yet another stage is that of framing of charge, whereby the court is again empowered to assess the case, as to whether there is any probability of conviction of the accused, if the answer is otherwise then the matter can be buried then and there as far as the accused nominated is concerned. Sec 345 of the code provides list of compoundable cases, meaning thereby that the court can play Active role in resorting to ADR modes. The relatively new concept of 'Nolo contendere'<sup>15</sup>, (plea of no contest) ,which has already been endorsed by our precedent law<sup>16</sup> in 2009, is also an effective mode for expeditions dispute resolution. However , there is a dire need for legislation regarding management of the criminal cases and for that matter we need not to amend or disturb main scheme of the code but the objective can be accomplished by framing of the rules by honourable high court in consultation with the respective provincial governments under sec 554 of the code . The KPJA again took the lead in this regard by drafting the rules of Criminal case management, which have been circulated to the stakeholders for their feedback. Moreover , the KPJA after examining international best practices of many common law jurisdiction i.e. UK ,USA , south Africa , Australia , new Zealand , Singapore , Malaysia etc. on case management, has adopted this as its flagship programme. Not only the judges but also the lawyers are being trained in this respect focusing on their skill development.

## **Conclusion**

The term ADR has seen an extraordinary growth in the last few decades owing to the public complaints about the inefficiency and complexity of our formal judicial system<sup>17</sup> . Unfortunately our legal system is trail based. Law has provisions as how to decide the petty cases, with the name summary and judges are empowered to decide the cases summarily in

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<sup>15</sup> Lenvin, Nathan B., and Ernest S. Meyers. "Nolo Contendere: Its Nature and Implications." *The Yale Law Journal* 51, no. 8 (1942): 1255-1268.

<sup>16</sup> (PLD 2009 LHR 312)

<sup>17</sup> Edwards, Harry T. "Alternative dispute resolution: Panacea or anathema?." *Harvard Law Review* 99, no. 3 (1986): 668-684.



petty issues. But in practice, every claim be it minor or major is being routed through regular trail. Moreover, perhaps because of scheme of our procedural laws, rules premised on adversarial and advocacy systems, with legal decision-makers, simply do not respond to the cases as they were intended to<sup>18</sup>. Given the analytical approach towards dispute resolution in both stages, (i) pre-trial conferencing and (ii) during trial court referral to ADR, we must consider to highlight the utilisation and importance of existing rules and enforcement mechanism within formal judicial system. That is to say, even if we don't have any new legislation on ADR, the existing laws can be utilised to a certain extent whereby the speedy dispute resolution is made possible. There are many relevant enabling provisions, for expeditious dispute resolution such as Section 89 A of CPC, Section 190, 204, 242, 265 (d), 345 and chapter 22 of CrPC, section 10 of Family Courts Act 1964 if read with Verse 35 of ch4. Of Holy Quran, and local government rules and ADR Act 2017. Two chapters are in pipe line for amendments in Civil & Criminal Procedure Code in this regard. However there is a dire need to utilise the available legal framework for speedy disputes resolution. Technical adjudication is not the spirit of law. it's basically the speedy delivery of justice. Courts must play their part to make the process more transparent through proper documentation and framing stepwise rules or SOPs.

This forum can recommend the adjudicator to frame rules, under section 554 CrPC, whereby high courts are empowered to make rules. Also the role of Bar and lawyers is less clear but more important in this regard. Lawyers should be sensitised about their role in relation to dispute resolution whether it is within the formal judicial system or ADR. Globally, Lawyers play more Active role in ADR and they are expected to be familiar with the various forms of ADR, explain them to clients, as to which method to select for any given case, and represent clients effectively using the chosen method<sup>19</sup>. This trend should be encouraged in Pakistan as well and lawyers must perform their role for the speedy delivery of justice, through counselling and advising, developing strategy, understanding the law and ethics, advocating

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<sup>18</sup> Menkel-Meadow, Carrie. "Ethics in Alternative Dispute Resolution: New Issues, No Answers from the Adversary Conception of Lawyers' Responsibilities." *S. Tex. L. Rev.* 38 (1997): 407.

<sup>19</sup> Schmitz, Suzanne J. "What Should We Teach in ADR Courses: Concepts and Skills for Lawyers Representing Clients in Mediation." *Harv. Negot. L. Rev.* 6 (2001): 189.

and representing their clients well and concluding the mediation, negotiation or any other mode of dispute resolution<sup>20</sup>.

As an end note, I would also like to recommend legal education and training about ADR and expeditious dispute resolution within the formal judicial system both for judges and lawyers. I expect that such initiative will help, not only the judges to understand how to utilise the existing mechanisms for speedy justice but will also encourage and engage lawyers to learn the practical skills of representing clients in pre trial conferences, mediation, negotiation and other dispute resolution processes.

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<sup>20</sup> Bush, Robert A. Baruch. "Efficiency and Protection, or Empowerment and Recognition: The Mediator's Role and Ethical Standards in Mediation." *Fla. L. Rev.* 41 (1989): 253.

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10. Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 40 *AM. L. REV.* 729, 742 (1906)
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15. Won, Sung-Kwon. "Overview of Alternate Dispute Resolution with Special Reference to Arbitration Laws in Pakistan." *J. Arb. Stud.* 23 (2013)
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## ANNEX PRESENTATION

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Slide 1

### ADR (Within Formal Judicial System) Punjab Model

Nadeem Ahmad Sohail Cheema

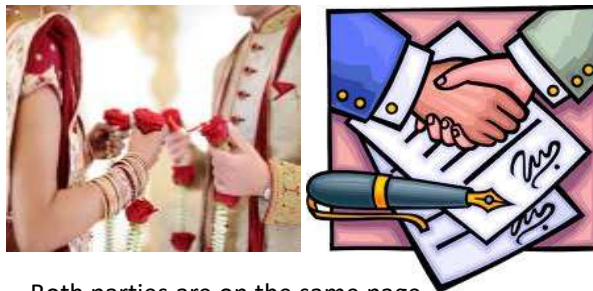
AD&SJ/ Senior Instructor PJA, Lahore

[nascheema5pak@gmail.com](mailto:nascheema5pak@gmail.com)

03004311424

Slide 2

A Happy Start



Both parties are on the same page

What if things go wrong?



**Dispute on terms of the contract  
Serious Differences Emerge**



**Adjudication** is:

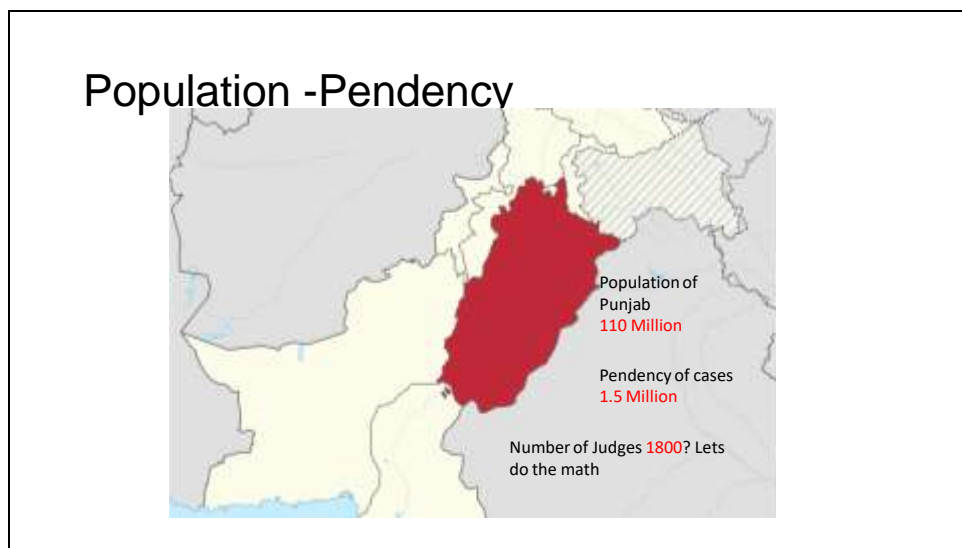
- Costly.
- Time consuming.
- With uncertain outcomes.

Is there any alternative ?.

Slide 5

- Yes**
- ADR**
- ARBITRATION
- EARLY NEUTRAL EVALUATION
- MEDIATION
- “JUDICIAL MEDIATION”**

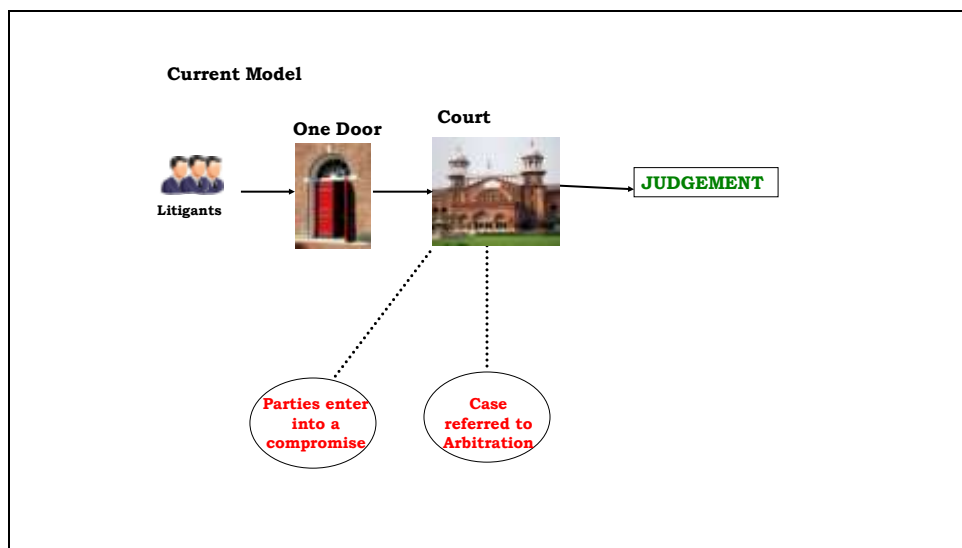
Slide 6



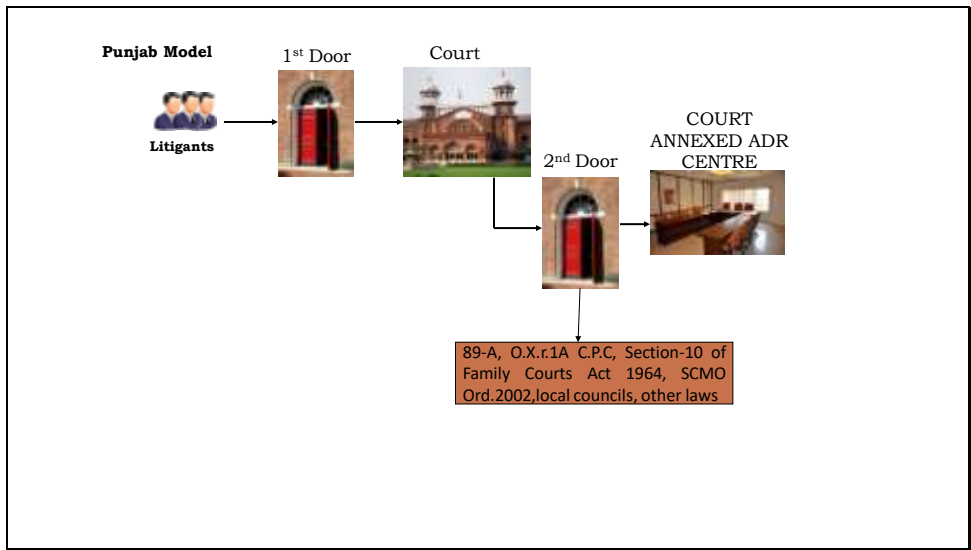
**INNOVATION AT THE DISTRICT  
COURTS IN PUNJAB  
ADR CENTRES IN PUNJAB**

Advantages:

- Part of the Dispute Management System of the Court
- Court redefined and expanded
- Easily referred & monitored by the court



Slide 9



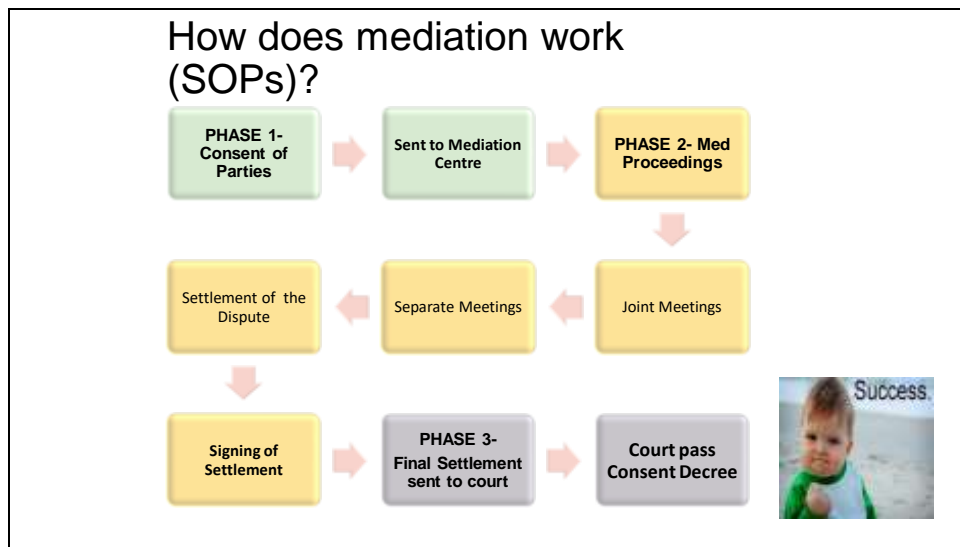
Slide 10

**Every options has its benefits/pitfalls**

The slide features three illustrations: on the left, a hand holding a gavel over a scale of justice; in the center, a yin-yang symbol; on the right, a group of people in a meeting with a glass of water and the text 'All or Nothing'.



Slide 11



Slide 12

### ADR Progress Report of (38) Mediators of Punjab

01.06.2017 to 03.11.2017 (Ihc.Punjab.gov.pk)

Cases Received	Successfully Mediated	Percentage
6718	4365	64.97%

## Using Mediation

- IDENTIFY CASES FIT FOR MEDIATION
- TRAINING OF JUDGES
- EDUCATING AND RAISING AWARENESS IN PEOPLE
- TAKING LAWYERS ON BOARD

## Thanks



## ANNEX-CONFERENCE PICTURES

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## GROUP PHOTO



**KHYBER PAKHTUNKHWA JUDICIAL ACADEMY**  
*02-days National Conference on “Alternative Dispute Resolution” Under Strengthening Rule of Law*  
*Programme on 16th-17th November, 2017, at Islamabad*

