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Critical Appraisal of Alternative Dispute Resolution in the Legal System of Pakistan

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ARTICLE INFO			ABSTRACT
Article History:			<i>This study will enlighten the integration of alternative dispute resolution in the legal system of Pakistan, as conflict resolution has been an important factor for the progress of societies. The changes in the legislation of Pakistan will be discussed in the qualitative research methodology, that how Pakistan has undergone certain changes in its legal system for the implementation of Alternative Dispute Resolution. The Pakistani legal framework regarding this is divided into two different phases: before and after 2010. The legislation after 2010 was a milestone covered by the legislature for the adoption and implementation of Alternative Dispute Resolution (ADR) and recognition and enforcement of arbitral awards. ADR is also introduced in the taxation laws of Pakistan for deciding the tax disputes of the taxpayers in an amicable way.</i>
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Introduction

Alternative Dispute Resolution (ADR) refers to a set of rules for the settlement of disputes outside the court without any intervention of the conventional litigation procedure.¹ ADR is further categorised into arbitration, mediation, conciliation and negotiation, which have a separate mechanism for the settlement of disputes from the common litigation system of the court.² In Pakistan, the ADR procedure is not well established compared to other countries such as the United Kingdom, the USA, because the legislature in Pakistan has been unable to make laws on

¹ Dr. Muhammad Rizwan, Kashif Mahmood, "Rationalizing Alternative Resolution in Pakistan", *International Journal of Research and Social Sciences*, 2016, Vol: 06, Issue: 01, P. 89, available at https://pips.gov.pk/wp-content/uploads/2020/08/Rationalizing_Alternate_Dispute_Resolution_IJRSS_V6_I1_Jan_2016.pdf (accessed on 04 January 2025).

² Ibid.

the ADR procedure but after 2017, a shift from litigation to ADR has been observed in Pakistan.³ The existing laws on ADR in Pakistan are Arbitration Act, 1940, Prohibition of Offenders Ordinance, 1960, Section 10 and section 12 of the family court Act, 1964, Section 195C of the Customs Act and provincial laws and certain special laws based on enforcement and recognition of arbitral awards and amended legislations on ADR framework for strengthening the ADR laws in Pakistan.⁴

The ADR has not been completely implemented in the litigation system of Pakistan which has certain reasons such the role of lawyers, which has been negative to establish the ADR centres in the country and to shift the litigation towards the alternative dispute resolution.⁵ The Alternative Dispute Resolution is now becoming needful for the country with the enhancement of the corporate and business sector as the investment and commercial disputes cannot be solved with the help of traditional litigation system, which carries a lot of time to settle dispute.⁶ ADR can be a useful instrument in the laws involving the provisions of plea bargaining for the settlement of the disputes such as the National Accountability Ordinance, 1999 and in the criminal cases where the offences are compoundable to decrease the burden on the courts.⁷ Now it is not possible for the legal system of the country to survive without the insertion and integration of ADR.⁸

Arbitration act, 1940 was the supreme legislation regarding ADR in the country for settlement of disputes by mean of arbitration yet this single legislation was not able to cope up with all the modes of ADR and to fulfill this gap Alternative Dispute resolution Act, 2017 was enacted.⁹ Section 3 of the ADR Act, 2017 emphasize that all the civil matters defined in schedule of the said act will be transferred to ADR for the settlement of the matter in a non-coercive way without the court intervention and the court will have the power to refer that matter at any time of hearing.¹⁰ This section has certain limitations, as the cases decided in a manner of ex-parte judgment will not attract provisions of the act *ibid*.¹¹ This section is followed by the provisions of section 89-A of the Code of Civil Procedure(CPC) in which the court has power to transfer the case for settlement through ADR.¹²

The ADR provisions for the dispute resolution has also been enlightened in the Constitution of Pakistan, 1973, although there is no explicit mention of ADR in the Constitution yet the Article 153 and 154 are about the establishment and working of Council of Common Interest for disposing of the disputes outside the court.¹³ National Finance Commission as defined in article 160 and

³ Bilal Khan, Javed Iqbal, "Critical Analysis on Existing Framework of ADR in Pakistan." *Indus Journal of Law and Social Sciences*, 2023, Vol: II, Issue: II, P. 01, available at

https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=ADR+in+Pakistan&btnG= (accessed on 04 January 2025).

⁴ *Ibid*, P. 02.

⁵ Ahsan Iqbal, et al. "Reforming the Alternative Dispute Resolution in Pakistan", *Palarch's Journal Of Archaeology Of Egypt/Egyptology*, 2022, Vol: 19, Issue: 04, P. 314, available at <https://archives.palarch.nl/index.php/jae/article/view/11456/10188> (accessed on 04 January 2025).

⁶ *Ibid*, P. 313.

⁷ Nasir Majeed, Amjad Hilal, Tabinda Rani, "Alternative Dispute Resolution in Criminal Cases: Challenges and Possibilities in Pakistani legal Framework", *Bulletin of Business and Economics*, 2023, Vol:12, Issue:04, P. 579, available at [file:///C:/Users/AR&CO/Downloads/BBE.+12\(4\).+577-585.pdf](file:///C:/Users/AR&CO/Downloads/BBE.+12(4).+577-585.pdf) (accessed on 04 January 2025).

⁸ *Ibid*.

⁹ Sami ur Rehman, Sadia Tanveer, Amjad Hilal, "The Critical Analysis of Procedural Aspects in Applicability of Alternative Dispute Resolution Act-2017", *Journal of Int'l Affairs*, 2022, Vol:05, issue:02, P. 1118, available at <file:///C:/Users/AR&CO/Downloads/71-the-critical-analysis-of-procedural-aspects-in-applicability-of-alternate-dispute-reslution-act-2017.pdf> (accessed on 04 January 2025).

¹⁰ Alternative Dispute Resolution Act, 2017.

¹¹ *Ibid*.

¹² Code of Civil Procedure, 1908, Section 89-A.

¹³ Alternative Dispute Resolution in Pakistan, Salman Ravala, available at http://www.nyulawglobal.org/globalex/Pakistan_ADR.htm (accessed on 04 January 2025).

National Economic Commission as elaborated in article 156 also deal with the provisions of Alternative Dispute Resolution.¹⁴ The section 134A of the Income Tax Ordinance, 2001 is included in the ordinance for settling the tax disputes other than by way of litigation, as the tax proceedings are complex and lengthy in nature, which has adverse impact on the economy and revenue.¹⁵

The sales tax act, 1990 also comes up with the provisions of ADR to solve the Sales tax matter in a friendly way.¹⁶ The codification of all these legislations still leaves the question on impracticality of the Alternative Dispute Resolution in the country, as compare to common litigation a large work has been done on ADR since 2017 but no significant impact of the work has been observed yet.¹⁷ The main function of ADR is to lessen the burden on the courts but in Pakistan due to the intervention of courts in ADR, changed that system of dispute resolution into a litigation process.¹⁸

Research Methodology

The study will be conducted through the descriptive form of research methodology in which the literature on adoption and introduction of ADR in litigation system of Pakistan, being used in settlement of different disputes outside the court will be discussed.¹⁹ The main ambit of the study will revolve around the explanation of the rules and integration of ADR law with legal system of Pakistan.²⁰

Research Objective

This study aims to identify the progress of Pakistani legal system in adopting the provisions of Alternative Dispute Resolution in a specific manner from 1940 to the latest legislation regarding implementation of ADR in a country based on common and conventional litigation system. All the laws will be discussed in a descriptive manner for elaboration of laws and their implementation in order to achieve maximum outcomes of these laws for settling out the disputes outside the court and to lessen the case burdens on the courts. Additionally this paper will also describe the laws adopted and introduced after the rectification of the New York Convention regarding recognition and enforcement of the arbitral awards in the foreign or international jurisdictions.

Code of Civil Procedure, 1908 – Section 89A

In the litigation system of Pakistan all civil matters are dealt according to the procedure given in the Civil Procedure Code, 1908 (CPC), where the provisions related to transfer of a matter to ADR has been inserted through an amendment as Section 89A of the code, which is provided as:²¹

¹⁴ Ibid.

¹⁵ Income Tax Ordinance, 2001, Section 134A.

¹⁶ Sales Tax Act, 1990.

¹⁷ Hamaish Khan, Umair Afzal, Sunila Iqbal, "Comparative Analysis of Alternative Dispute Resolution Laws in Pakistan: Its Adaption, Procedure and Compatibility," *Annals of Human Social Sciences*, 2022, Vol:03, Issue: 03 P. 23, available at [file:///C:/Users/AR&CO/Downloads/3.+Comparative+Analysis+of+Alternative+Dispute+Resolution+Laws+in+Pakistan+its+Adaption,+Procedure+and+Compatibility%20\(1\).pdf](file:///C:/Users/AR&CO/Downloads/3.+Comparative+Analysis+of+Alternative+Dispute+Resolution+Laws+in+Pakistan+its+Adaption,+Procedure+and+Compatibility%20(1).pdf) (Accessed on 22 November 2024).

¹⁸ Ibid.

¹⁹ Abida Hassan, Dil Muhammad Malik, "Status of ADR in Existing Laws of Pakistan, A Brief Study", *Global Regional Review*, 2020, Vol:V, No: III, P. 264, available at <https://humapub.com/admin/alljournals/grr/papers/op9NVO79Jt.pdf> (accessed on 05 January 2025).

²⁰ Ibid.

²¹ *Supra Note. 12.*

“The Court can, when it finds appropriate, having respect to the facts and circumstances of the case, follow with the agreement of the parties an alternative conflict settlement process, including mediation and conciliation, to obtain expeditious disposition of a case, in or to a suit.”

The important thing to elaborate is that no procedure for ADR has been provided under these statutory provisions related to ADR in the code, which can be challenging for the implementation of this section in the legal framework.²² This section depends upon the sole power of the court and the court may, on the application by the parties or on its own motion may refer the case to ADR, but the intervention of the court has been an important factor in deciding the fate of ADR implementation in Pakistan.²³ This section empowers the court to carry on ADR proceedings in the conventional litigation procedure of the country, and empowering the dispute settlement through ADR is a semi-litigation form of dispute settlement, such as evidence recording, pronouncement of decree by the court and the court's intervention in ADR proceedings.²⁴ The cases which are to be decided through ADR are not explained under this section which is a bar on legislation of Pakistani legislation on adopting the alternate dispute resolution mechanism.²⁵

Family Courts Act, 1964 (Family Laws ADR)

The Family Court Act, 1964 promotes ADR in several ways for the friendly outcomes of the family related disputes; this act permits the pre-trial negotiation under section 10 and after closing of evidence under section 12 and the only form of ADR defined under these sections is reconciliation.²⁶ The procedure or rule for settlement through alternative dispute settlement is not provided under this act which raises question on smooth mechanism of ADR in these disputes, although certain ADR centres has been established under this law but practical implementation of this has not been observed due to the cultural differences and court's intervention in ADR commission's proceedings.²⁷

The ADR system provided for settlement of family disputes in Pakistan is just like litigation, which includes the involvement of courts and engagement of lawyers Dispute Resolution experts which has put down the cause for establishing this law of settlement of dispute between a husband and wife regarding family disputes by way of reconciliation.²⁸

The procedure opted by these traditional laws extends the proceeding time of trial just like the normal litigation system and a mixed system comprising both ADR and conventional litigation prevails which minimizes the basic purpose of the integration of ADR in litigation system of Pakistan for decreasing the case burden of courts.²⁹ These gaps in litigation system of Pakistan, which has a prevalence over ADR framework in all the forms and ambiguity by the lawmaker in defining a separate procedure can be covered by establishing a separate system for trials under

²² Supra note, 19, p. 265.

²³ Ibid.

²⁴ Ibid.

²⁵ Supra Note. 13.

²⁶ Family Courts Act, 1964 – Section 10 & 12.

²⁷ Supra Note. 13.

²⁸ Halima Sadia, Zoya Chaudary, Iqra Mushtaq, “Effectiveness of Current Mediation Centres in Family Disputes”, *Islamabad Law Review*, 2022, Vol: 06, Issue: 01, P. 5,6 available at <https://www.iiu.edu.pk/wp-content/uploads/2023/03/ILR-Vol-6-Issue-1-Article-1-280323.pdf> (accessed on 05 January 2025)

²⁹ Ibid.

these sections for settlement of family disputes, especially matters regarding Divorce, recovery of dower and matrimonial disputes.³⁰

Alternative Dispute Resolution Act, 2017

This act is legislated to bring the provisions of alternative dispute resolution in the present litigation system of Pakistan in order to settle the conflicts in a non-judicial conventional manner and up-bring the awareness regarding amicable ways of dispute settlement in the public and the lawyers to increase the shift of cases from a traditional system to the non-coercive means.³¹ The concept of ADR was fascinating before its implementation but after the implementation of this law many challenges are being faced by the judicial system and the legislature in the enforcement of these provisions in a country which has been relying on a litigation system inside the court and the only nearest system to ADR in Pakistan was the Panchayat system.³² This law was given preference over all the other laws having provisions related to ADR in order to implement the alternative legal system comprised of rules and procedure in a thorough way.³³

The Pakistan's legal system is in the process of adapting an alternative code of rules for settling the disputes although the act is legislated to fulfill the needs of loopholes in existing framework of ADR yet this law also remained unable to address certain problems regarding the implementation of ADR as a new dispute settlement system.³⁴ The act *ibid* contains all the necessary provisions regarding insertion of ADR in current litigation system of Pakistan but is facing troubles in its own sole implementation, as it is not easy to implement a new legal system in a feudal-minded culture.³⁵

Special Ordinance (Small Claims and Minor Offences Courts Ordinance), 2002

Certain special courts were established in Pakistan regarding the small claims and minor offences for quick and speedy disposal of the cases, which builds a connection of common litigation system with the Alternative Dispute Resolution that is also based on efficient and inexpensive mode of dispute settlement.³⁶

These courts have power to use modes of ADR in settlings these matters or may compel the parties to go for the amicable means for disposal of their legal problems with the help of good office as a mean of ADR.³⁷ These courts promote a mixed system involving both litigation and ADR to meet the ends of justice in a shortest possible way and by using ADR means these courts compel the parties in a matter to end up the matter in the form mutual admitted solution, which does not cause the justice to delay by lengthy trails.³⁸ This ordinance was implemented for the resolution of matters, which come under the ambit of section 89A of CPC for efficient trails and decreasing the case burdens on the courts.³⁹

³⁰ Muhammad Amir Munir, "Family Courts in Pakistan in Search of Better Remedies for Women and Children", LAWASIA Journal, 2006, P. 207, available at <https://heinonline.org/HOL/LandingPage?handle=hein.journals/lawasiaj7&div=12&id=&page=> (accessed on 05 January 2025).

³¹ Alternative Dispute Resolution Act, 2017.

³² *Supra Note. 9*, P. 1115.

³³ *Ibid*.

³⁴ Ghulam Nabi Abbsasi, "ADR Mechanism", The DAWN NEWS, 2021, available at <https://www.dawn.com/news/1649473> (accessed on 05 January 2025).

³⁵ *Ibid*.

³⁶ Small Claims and Minor Offences Courts Ordinance, 2002, Preamble.

³⁷ Issac Ali Qazi, "The Law on Alternative Dispute Resolution", 2016, *Insaf Book House*, P: 68.

³⁸ *Ibid*.

³⁹ *Supra Note. 01*.

Arbitration Act, 1940 (The Supreme Legislation)

The Arbitration Act, 1940 was the sole enactment related to ADR in the country before Alternative Dispute Resolution Act, 2017 and is serving as a procedural law for carrying out the arbitration proceedings in the country.⁴⁰ This act covers the arbitration proceedings, collection of evidence and pronouncement of arbitral awards.⁴¹ The act is consisted of all the rules to be followed by the arbitration court for settling the dispute in a non-coercive way.⁴² Like all other acts, this act also contained provisions based on semi-judicial proceedings such as intervention of courts and enforcement of the arbitral award by a civil court instead of the arbitration court itself and no concept of special arbitration courts elaborated in this act.⁴³ Another important factor of this act is arbitration agreement, which means that if no arbitration agreement has been made between the parties, then this act will not come into force for settling the disputes and was especially enacted for commercial and investment disputes.⁴⁴ The cultural difference is also an important factor as no regular system of arbitration, such as Panchayat or similar systems, was discussed under this act, which were serving before this legislation of this act and providing free of cost arbitration without any intervention of legal system.⁴⁵

ADR in The Constitution of Pakistan, 1973

For the settlement of social and economic issues between the federal and provincial governments, the Council of Common interest is established under the Article 153 of the constitution of Pakistan, which serves for the disposing off the disputes without the intervention of Supreme Court of Pakistan.⁴⁶ The National Economic Council is also established for the same purpose to settle the disputes regarding finance between the governments under article 154.⁴⁷ Although these laws have no specific link with ADR yet they aim to settle the disputes outside the court so these can be regarded as a way to the settlement of dispute in non-traditional system which falls under the ambit of ADR.⁴⁸ These articles are promoting ADR without any direct connection as the basic purpose of ADR is bypassing the conventional way of litigation and these councils are serving as good office in respect of ADR and can be an important factor for solving the economic disputes.⁴⁹

The ADR Act, 2019 and Provincial Legislations

The alternative dispute resolution act, 2019 was basically legislated to come up with a new system of solving the certain civil and criminal disputes in an amicable way without intervention of court in the matter referred to ADR.⁵⁰ This act defines that the court will transfer the matter to ADR within 30 days of filling of the case in any court of law within the jurisdiction of Pakistan.⁵¹ This act provides a freedom to the parties for nominating their own arbitrator or mediator for the

⁴⁰ The Arbitration Act, 1940, Preamble.

⁴¹ Ibid.

⁴² Ibid.

⁴³ A study of Arbitration Law Regime in Pakistan, Riaa Barker Gillete, P. 02, available at <https://www.riabarkergillette.com/usa/wp-content/uploads/Insight-Article-A-Study-of-the-Arbitration-Law-in-Pakistan.pdf> (accessed on 06 January 2025).

⁴⁴ Ibid.

⁴⁵ Komal Sarwar, "Pitfalls in the Domestic and International Commercial Arbitration in Pakistan, *Journal of Int'L Affairs*, 2023, Vol:06, Issue:02, P.543, available at <file:///C:/Users/AR&CO/Downloads/39-pitfalls-in-the-domestic-and-international-commercial-arbitration-in-pakistan.pdf> (accessed on 06 January 2025).

⁴⁶ Constitution of Pakistan, 1973, Article 153.

⁴⁷ Constitution of Pakistan, 1973, Article 154.

⁴⁸ Ibid.

⁴⁹ *Supra Note. 19*, P. 266.

⁵⁰ Alternative Dispute Resolution Act, 2019

⁵¹ Ibid.

resolution of dispute and the government is responsible for the implementation of this act for ADR provisions.⁵² In addition to this act certain provincial legislations were also made such as Punjab ADR Act, 2019 and KPK ADR Act, 2020 were aimed to bring the ADR provisions nationwide for introducing the amicable way of dispute resolution with the assistance of a good office serving as the forum for non-conventional settlement of disputes.⁵³

Recognition and Enforcement of Foreign Arbitral Award Act, 2011

This act was the supreme legislation for the adoption of New York Convention, 1958 for the recognition and enforcement of arbitral award in the foreign jurisdictions for observing the true outcomes of ADR especially Arbitration.⁵⁴ This act is a complete framework for the enforcement of arbitral award under the umbrella of the Convention *ibid* and this act makes all the arbitral awards binding in the jurisdiction of Pakistan and provides a mechanism that how an award will be enforced and executed in the territory of the country.⁵⁵ This act is also regarded as one of the clearest act and without any ambiguity in regard of the promotion of ADR in the country and this act creates a confidence among the parties that their rights are protected under the ambit of this act in regard of award recognition and enforcement.⁵⁶

Tax Law Amendments, 2024

The tax laws in Pakistan are governed under the supreme legislations of Income Tax Ordinance, 2001 and Sales Tax Act, 1990, in the recent amendment passed, certain sections in both acts were introduced regarding alternate dispute resolution.⁵⁷ Section 134-A of the Income Tax Ordinance, 2001 states the procedure and pre requisites for entering into ADR for the settlement of dispute outside the court and a complete procedure is given under this section.⁵⁸ In the sales tax act, 1990 the provisions of ADR are attracted under section 47A of the Sales Tax Act, 1990 which provides that if the ADR proceedings are initiated in tax proceedings no other legal proceedings can be taken and the formation of ADR committee with respect to dispute settlement with complete procedure.⁵⁹

Conclusion and Recommendations

Pakistan is a country, which revolves between two litigation systems; the conventional litigation system and the alternative dispute resolution mechanisms for the settlement of disputes. The countries like the USA and UK have shifted to resolve the disputes through alternative dispute resolution mechanisms and have adopted certain other types of ADR such as Good office, transactional ADR and evaluative ADR, which are now a new form of ADR in certain cases. Pakistan has legislated certain laws on alternative dispute resolution since its independence but these laws were ambiguous in nature and were incompetent to address the problems as the laws provided by the legislature were incomplete as they were lacking the procedures in certain provisions. In Pakistan, a complete shift has been seen after the year 2010 where the laws regarding recognition and enforcement of foreign arbitral awards were introduced and provincial legislations were proposed in this subject. The ADR centres have also been the point of discussion

⁵² *Ibid*.

⁵³ *Ibid*.

⁵⁴ Recognition and Enforcement of Foreign Arbitral Award Act, 2011

⁵⁵ *Ibid*.

⁵⁶ *Ibid*.

⁵⁷ Tax Law Amendment Act, 2024.

⁵⁸ *Supra* Note. 15.

⁵⁹ *Supra* Note. 16.

in Pakistan, which has been addressed through the ADR act of 2019. A new bill regarding the updated system of Alternative Dispute Resolution has been proposed in the year 2024, which is still under legislation. Keeping in view the above narration following recommendations are made:

Alternative Dispute Resolution has come up with a shift in traditional dispute resolution systems and in Pakistan, it is very important to integrate ADR into the conventional judicial system of Pakistan, which can be done through drafting of certain legislations and proper implementations of existing laws on ADR.⁶⁰

The certain provisions which are elaborated in the law as ADR provision are not in common use as the section 89-A of the CPC is still not in practice as it is the duty of the courts to implement this section by using their power to refer the cases of such nature in ADR for speedy settlement of the disputes.⁶¹

Alternative dispute resolution can also be implemented by using modern techniques as there is no awareness in public regarding transfer of disputes to ADR from common litigation system and in addition to that, the lawyers are also not well-trained in carrying the process of alternative dispute resolution. Social media advertisement and public awareness campaigns can play a vital role in the integration of ADR in litigation system which may come with a hybrid model of dispute resolution.

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⁶¹ *Supra note.* 19, P. 267.

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