

## ADR: A SOLUTION TO CASE BACKLOGS IN PAKISTAN?

1. KASHIF MAHMOOD SAQIB, <sup>2</sup>MUHAMMAD SOHAIL ASGHAR, <sup>3</sup>HAMID MUKHTAR, <sup>4</sup>MUHAMMAD AWAIS ANJUM,

<sup>1</sup>School of Law, University of Okara, Okara, Punjab, Pakistan

<sup>2</sup>School of Law, University of Okara, Okara, Punjab, Pakistan

<sup>3</sup>School of Law, University of Okara, Okara, Punjab, Pakistan (Corresponding Author)  
hamid\_mukhtar41@yahoo.com

<sup>4</sup>School of Law, University of Okara, Okara, Punjab, Pakistan

### Abstract

*The emerging issue of backlog of suits is a major concern of Pakistan's Judicial system which hinders the way of fair justice, as of 2022, 2.2 million cases are pending in different courts. Supreme Court Justice Syed Mansoor Ali believes the judicial system will thrive when judges work together. Alternate dispute resolution or ADR is an effective solution which not only redresses pendency of suits, but also makes the judicial system strong. Traditional litigation procedures and jirga practices can be backed through potential procedures of ADR, as its procedures are quicker and cost friendly and less adversarial means of resolving disputes<sup>i</sup>. The research aims to focus on how modern ADR procedures can be implemented to compensate the case backlogs in Pakistan by giving a comparative analysis. This research adds new direction to the current Pakistani judicial reform debate by giving way forward.*

**Key words:** Pendency of suits, Alternate Dispute Resolution, Judicial system

### INTRODUCTION

Supreme Court Justice Mansoor Ali Shah expressed his views by saying: "When going through litigation it feels like a powerful bull but the final results resemble small sausage pieces"<sup>ii</sup>.

The worldwide increase of pending legal cases now creates major problems for judicial systems especially because it slows down their operations. The best approach now is to consider different methods to solve this problem. The rising trend of using ADR shows people prefer solving disputes through this simpler faster approach than traditional court battles. The judiciary in Pakistan struggles each year with the increasing number of pending cases that accumulate beyond reasonable time frames. The Law and Justice Commission of Pakistan revealed through its data that Justice Syed Mansoor Ali Shah explained 2,255,295 pending cases exist throughout Pakistani courts. In his remarks Justice Shah explained why arbitration offers better value to disputing parties through lower costs and quicker resolutions in discreet settings. He pointed out that arbitration makes life easier for courts and saves business time by offering fast dispute resolution which keeps operations flowing steadily. The Law and Justice Commission of Pakistan submitted their new Arbitration Act draft directly to the government which led to the Supreme Court's remarks. The Law Ministry wants to bring the Arbitration system up to date after its regulations stayed static between 1940 and today. The acceleration of cases that are awaiting trials is a common problem in almost every judicial system in the world. In its essence, the society loses confidence in its justice system since delays in delivery of justice has impact on-economic stability according to the World Justice Project. In our neighboring country, India alone, this figure has gone up to more than 50 million and in some cases may take up to 20 years for a single case to be disposed. The United States also has an extensive time to complete its procedures, especially in civil courts due to congested courts and lack of courts. The Fawad Naeem Rana vs. Qatar Lubricants Company WLL case under Section 126 of the Companies Act, 2017, underscores the role of ADR in corporate disputes. It was to rectify some of the records that the court referred shareholders to arbitration in order to avoid further execution of transfers that were deemed unlawful. Due to the LHC, the petitioners were seeking stay of proceeding by invoking Section 34 of the 1940 Arbitration Act and at the same time the court had to address the issue equitably. ADR techniques help people resolve their disputes quickly and affordably which makes them better than regular courtroom litigation. Cost assessments of



baseless lawsuits fulfill Article 10A's fair trial criteria as explained in Justice Shah's decision. The method blocks false claims while creating space for courts to address valid complaints. Modern dispute resolution has gained worldwide acceptance through legal frameworks because it addresses increasing demands for judicial system efficiency. ADR methods achieve favorable agreements through dialog-driven mediation which combines with arbitration that uses impartial third-party decisions while conciliation works by building joint solutions among disputing teams and negotiation generates agreements between parties without external intervention. The adoption of these dispute resolution methods achieves two benefits: they lighten court caseloads and they ensure fair and inclusive dispute settlement. The application of ADR practices in Pakistan faces essential implementation challenges because of doubts about its usefulness and public acceptance. Research must thoroughly evaluate ADR methods to determine their potential for reducing judicial backlog and enhancing case handling in Pakistan. The research investigates how ADR functions by analyzing its ability to reduce legal system delays in Pakistan when compared with regular litigation processes<sup>iii</sup>. This research strives to verify ADR's potential as an enduring solution for court-based dispute resolution by assessing its operational speed and user access alongside resolution outcome performance<sup>iv</sup>. The research examines implementation difficulties while recommending policy choices to fully integrate ADR within the mainstream legal practice. Legal systems welcome alternative dispute resolution tools such as mediation, arbitration, conciliation, and negotiation because they lighten court burdens while promoting equality<sup>v</sup>.

### DISCUSSION

The slow pace of case handling in Pakistani courts disrupts the legal process for both the judicial system and all parties involved. Both the clients and lawyers face extended wait periods as courts face an excessive workload beyond their capacity to balance. In Pakistan, Alternative Dispute Resolution (ADR) is now being acknowledged as an effective alternative to traditional court system for resolving disputes. The Arbitration Act, 1940 governs arbitration while mediation and conciliation are being gradually introduced into the legal system through various legislative reforms and schemes initiated by the judges. The government's pursuit for reduction of the backlog of cases in courts is reflected in the Code of Civil Procedure (Amendment) Act, 2020, which made ADR mandatory in a few civil matters. Millions of cases are pending in various courts and there is a huge judicial backlog in Pakistan. Faster and cost effective, ADR is a good alternative at most in commercial, family and labor disputes. There have been initiatives such as Sindh Mediation Centre set up under the Sindh High Court and Punjab and Khyber Pakhtunkhwa for promoting mediation as a feasible alternative dispute resolution mechanism. KCDR is one of the premier institutions for ADR for commercial matters, especially business and financial institutions. According to Mr. Jeroen Willems the main EU representative in Pakistan EU resources for alternative dispute resolution systems will reduce court delays and make justice easier to access. We show our work through training provided to Khyber Pakhtunkhwa's Dispute Resolution Councils alongside current training sessions. Different nations across the world have adopted arbitration and ADR practices to streamline legal processes and minimize workload. ICADRP supports court-related ADR by providing various dispute resolution services at budget-friendly rates between Pakistan-based and international users. As CEO of Safer Organizations Foundation Dr. Shoaib Suddle explained both the judiciary system needs to work quickly to protect legal principles.

#### *Report of LJC*

ADR could help Pakistan prevent judicial delays while making it easier for people to access courts by tackling current legal system overloads. Pakistan will modernize its legal process and help its citizens get faster disputes solved at lower costs when it strengthens ADR systems and teaches mediators while raising public understanding. In 2022 the Law and Justice Commission of Pakistan found that 2.1 million cases remained pending at Pakistani courts. Due to an increase in various legal issues spanning criminal cases, civil disputes, and family matters, the total case count has risen steadily. The system faces problems due to increasing yearly case loads plus restricted legal support and outdated rules. The Supreme Court's case inventory has grown past 30,000 awaiting



resolution. Court operations that move too slowly block the legal system which makes it hard to deliver quick verdicts. The time wait for legal decisions makes it harder for everyone to get justice. Plaintiffs experience fear during lengthy case processing before receiving a decision and often struggle to progress with their daily lives when facing important legal situations including inheritance disputes and custody cases. People stop trusting law and justice when they must wait too long for their cases to be resolved. The system delays create negative impacts across social aspects and economic performance<sup>vi</sup>.

#### **Factors Affecting Pendency**

Pakistan's case backlog exists due to fundamental system flaws and limited court funding while court procedures add another challenge to the problem. Court data shows Pakistani judges resolve 70-75% of cases annually with the remaining unresolved cases building up the backlog. Pakistan's case delays occur primarily due to court adjournments and lawyer strikes plus a shortage of judges and limited coordination with law enforcement agencies. The Alternative Dispute Resolution Act from 2017 describes ADR as a system of dispute settlement procedures that let parties resolve conflicts outside formal court litigation according to the National Assembly's 2017 law. ADR consists of four tools: settling together through conciliation, using mediation, using arbitration, and getting an independent analysis<sup>vii</sup>. The Jirga process operated as traditional ADR methods long before formal establishment of the ADR system in its present form. Throughout history and modern times people use the Jirga system to resolve conflicts through mediation and dispute settlement practices. Local leaders use the traditional Jirga system as a fundamental tool to settle disputes and build peaceful societies in Pakistan's tribal areas right now<sup>viii</sup>.

In Nawaz and Aman's (2022) study, "Dispute Resolution Councils of Khyber Pakhtunkhwa: Researchers conducted "The Personification of Jirgas" project to understand how people in Khyber Pakhtunkhwa would choose between various forums to resolve their civil and criminal cases. A total of 8% of participants indicated formal courts to handle criminal cases when 47.6% of them opted for Jirgas and the remaining 37.7% selected civil and police administration as their preferred resolution method. Among civil issues respondents had two choice options; Jirgas gained 59.1% preference while formal courts received 14% and civil and police administration received 16.9%. Most respondents (44.5%) picked formal courts instead of using Jirgas for complicated legal matters while Jirgas served just 5.8% of respondents during these situations. Pakhtun trust in Jirga decision-making remains higher than the formal court system according to study findings. The effectiveness of Jirga in tribal dispute resolution must balance against feedback from human rights activists and critics. Critics have pointed out that the Jirga system work based on social hierarchy, lack written documentation, uses only male council members, and enables power misuse and authority abuse. Human rights groups oppose the Jirga system for limiting women's freedoms by discriminating against them throughout the decision process. Women have zero right to participate in Jirgas even if they serve as witnesses or experience harm. A Jirga meeting in Kohistan, Khyber Pakhtunkhwa District blocked registered women voters from casting ballots in by-elections in 2011 through its decision<sup>ix</sup>.

#### **Shortages of Judges:**

The lack of judges in relation to cases is one of the main reasons for the delay of justice. For example, regular judge postings and transfers make the problem worse because new judges need time to become acclimated with prior decisions, and hence create more delays. The mismatch between ratio judges and the needs of litigants to get on with their lives results in a bottleneck, chiefly, where the two parties are each presenting a case with a number of competing cases that need the attention of a very limited pool of judicial officers. Judges, working at a heavy pace, have little latitude for changing procedures. Poor witness protection, insufficient monitoring and subpar legal procedure execution all also cause delays. To cope with the increasing number of cases, Pakistan's National Court Policy 2009 put a greater stress on expenditure by the government on court facilities, staff and infrastructure. However, in these areas the development is slow therefore the court is not really prepared to meet up to the needs of a population that is expanding. Looking at the number of judges as compared to its population, Pakistan stands out little. Law and Justice



Commission of Pakistan says there are about 2,000 judges there, with 240 million people living in Pakistan: about one judge for every 120,000 people. This number is much below international norms, perhaps one in 15,000 people in industrialised nations like the US or one in every 50,000 people in India. The effect of judges being scarce is longer wait times for hearings and verdicts<sup>x</sup>.

### **The Battle against Backlogs in Cases**

Just rules form the essential foundation for civilized communities that explain what their members can expect and need to perform. In Roman legal tradition, Narasappa (2019) shows that true justice requires moral values and sound reasoning approaches in legal treatment. According to "Nicomachean Ethics Book V" fair treatment stands out as a valued virtue for Aristotle who describes it as a mindset that leads us toward sensible and equal behavior. According to the Supreme Court of Pakistan's ruling in *Ishtiaq Ahmed v. Hon'ble Competent Authority through Registrar* justice keeps the constitutional democratic system lawful. Hon'ble Competent Authority through Registrar. The Supreme Court confirmed that fair legal processes and honest courts form the basic structure needed for communities to unite and governments to function well. We still find it hard to deliver justice in practice despite our conceptual framework. The Pakistani judicial system experiences extensive case backlogs because recent changes and technological updates have not solved its operational challenges completely. The court's ability to deliver justice and fairness suffers because an inefficient system reduces public trust and slows case resolutions. Mr. Justice Miangul Hassan Aurangzeb of the Islamabad High Court demonstrated why attorneys need to take charge in promoting arbitration and alternative dispute resolution in Pakistan. He states that law professionals refuse to support ADR and arbitration in Pakistan because this is a key reason preventing widespread use. He examined the Turkish approach to this system. Law firms set aside special rooms in their office buildings to help mediations flourish across Turkey as part of their ADR strategy. He proposed using this basic system could help Pakistan improve its practices<sup>xi</sup>. Special training needs were pointed out for Pakistan's arbitration panels and mediators to analyze cultural specifics of their local areas. Lawyers experience fear and unease when they think ADR and arbitration promotion limits their business opportunities. Supporting arbitration and ADR systems both brings down court waiting times and creates fresh opportunities while allowing lawyers to work in their preferred areas. The many cases that surpass the capacity of Pakistani courts result in serious delays throughout Pakistan's legal system. At the start of 2022 Pakistan's courts listed over 2.1 million pending cases in their civil criminal and family caseload. Each year files more cases than it can handle so courts maintain a backlog due to limited resources. Besides 30,000 Supreme Court cases awaiting resolution, every other court system faces major bottlenecks. People facing hardship mainly suffer from slow court processes because they often require immediate legal help. Under the Construction Act parties can extend the settlement duration from 28 days up to 42 days by mutual consent. *Messrs Telenor Pakistan (Pvt.) Ltd. v. Federation of Pakistan*, shows the relationship between Alternate Dispute Resolution (ADR) and tax liability. Here, Telenor Pakistan had chosen ADR under section 134A of Income Tax Ordinance, 2001, voluntarily in order to resolve its tax dispute. The committee led the ADR mechanism which then formulated a settlement which the petitioner and the Federal Board of Revenue both agreed upon. The ADR process, as well as the settlement of the dispute resulting from it, did not compel the court to conclude that the liability to pay tax arised upon adjudication of the tax, and is not dependent on a consolidated order regarding all associated proceedings. As a result, even after the ADR proceedings, recovery of tax which became due under the Ordinance section 138 is still possible.<sup>xii</sup>

RICS arbitrators offer their expertise from the building industry to decide disputes based on the presented evidence for a final decision that stays until a court or arbitration rules otherwise. A study by Ullah (2022) reveals how Pakistan's business relationships with international companies have declined because of delayed court cases which block worldwide commerce. Economic progress stops when the judiciary slows down due to its inefficient handling of cases needed by industries seeking fast dispute resolution. Current contract enforcement delays put Pakistan in position 156



when the World Bank assesses business environment conditions among 190 countries. This score demonstrates that the poor processing speed of legal matters blocks business growth. The Peshawar High Court stressed in the case *Said-ur-Rehman v. Raj Muhammad* (2021 CLC 1206) the compromise and other ways of dispute resolution (ADR) in civil matter that concerns property and right. The court allowed parties to settle their disputes at any point, and courts were given wide leeway to choose their own cases according to such settlements. The judgment stated that ADR, conferencing, and reconciliation are necessary for the disputes to be settled in a time-bound way, and consequently provisions such as Order XII Rule 6 of the Civil Procedure Code, 1908, had been inserted in the legal framework.<sup>xiii</sup>

### **Comparative Analysis of countries**

➤ The ADR systems we use today across the world offer quick dispute resolution methods that work to strengthen our legal framework. The Federal Arbitration Act ensures breaks arbitration agreements from state and federal court enforcement and represents the main legal structure supporting Alternative Dispute Resolution in the United States<sup>xiv</sup>. ADR participants maintain complete freedom to pick their preferred dispute resolution supplier and work off-the-record. Large businesses can pressure customers into arbitration agreements while limiting their access to justice which leads to major problems for America's ADR system. Singapore built its judicial framework to support both user-friendly ADR access and high performance standards of disputes and that aims to make the judicial system strong. In the Federal Arbitration Act, which guarantees that binding arbitration settlements are unenforceable in both state and federal courts, is one example of the widely recognized legal framework in the US that supports ADR<sup>xv</sup>. Participants have considerable discretion in choosing respective ADR suppliers and the system is essentially private.

➤ ADR has been included into Singapore's judicial system with an emphasis on availability as well as productivity. Singapore operates its alternative dispute resolution (ADR) practices with a well-organized approach even as the Singapore International Arbitration Centre (SIAC) and Singapore Mediation Centre (SMC) handle important global dispute settlement roles<sup>xvi</sup>. While the US allows ADR and mediation to be chosen at will, Singapore enforces a rule that all civil and business dispute participants must try mediation prior to trial. The government works to make Singapore a global leader in solving conflicts by promoting ADR in local and foreign markets. Singapore stands out for its straightforward ADR laws plus the court system actively encourages people to solve disputes through mediation.

Legal systems back the implementation of mediation and arbitration outcomes while the state actively supports alternative dispute resolution methods. Research shows that civil cases in Pakistan usually take between 5 to 7 years to finish whereas many developing nations complete theirs in just 2 to 3 years. To balance this issue organization need to change both their structure and the way they handle legal matters to build better efficiency and responsibility<sup>xvii</sup>.

### **Current status of ADR in Pakistan**

The suits brought before Pakistan's many Alternative Dispute Resolution (ADR) programs have had impressive success rates in resolving conflicts, establishing the ADR's capacity to ease the back log of the country's crushing court system. The Karachi Centre for Dispute Resolution (KCDR) in particular, has a resolution rate in cases referred to mediation of over 70%. The high resolution rate exhibited in this experiment is a strong indication of the effectiveness of mediation as a method of cooperative conflict resolution<sup>xviii</sup>. In the same fashion, the Pakistan Mediation Centre, which has been created to handle civil and family problems, records success rate of not less than 60 per cent to 80 per cent for the settlement of family problems? These numbers show that alternative dispute resolution (ADR) is so successful at finding peaceful solutions and eliminating cases that absolutely must be settled in the courts by dragging them out<sup>xix</sup>. The evidence of the practical advantages of ADR in these high rates of settling is evidence to prove the fact that ADR is capable of reducing court overcrowding and giving faster, easier access to justice to disagreeing parties. Since the last few decades, Alternative Dispute Resolution (ADR) i.e. mediation, arbitration, conciliation, is of considerable interest in Pakistan as a viable equivalent to conventional litigation<sup>xx</sup>. Case backlogs render this system crippling subject to backlogging, an alternative dispute resolution mechanism is





an alternative, economical, and time efficient way of resolving conflicts. Yet alternative dispute resolution (ADR) has not been widely used in Pakistan, despite its promise. But its recognition within the legal system is but a sign of increasing efforts to institutionalize these other channels. These laws aim to put ADR in place in the larger legal system, and indeed illustrate the Nation's recognition that alternative routes to justice are desirable<sup>xxi</sup>. Over the years, Pakistan has created a time that the ADR center, hub for mediation arbitration has been set up in major cities such as Karachi, Lahore, and Islamabad. These organizations have lowered the load by providing efficient arbitration services aimed to the unique needs of companies and start-ups. But they don't just fasten up the process of conflict resolution but also set an environment of collaboration and trust in the business sector for others to agree to using ADR over court. The Peshawar High Court, in the case *Tameer Steel Zone v. The petitioners, Government of Pakistan* (2021 PTD 1423), contended that the task of resolving such a dispute necessitated further investigation into factual controversies already investigated under Part-VIII of the Anti-Dumping Duties Act, 2015. It held that an alternate and efficacious remedy was available to review the investigation records and whether they were legal before an Appellate Tribunal as under Section 70(1) of the Act, with a further sole and appeal to the High Court under Section 70(13). An instance of ADR as the means of settling disputes concerning share ownership and company registers. This case is decided through intervention by the judiciary under the Companies Ordinance, 1984 but raises the issue of complexities associated in corporate cases of the illegal transfer of shares without proper documentation. Such matters could have been resolved quicker and less expensively by ADR methods, such as mediation or arbitration, before resorting to court. It may be possible to use ADR as a means for settling such disputes between corporations, particularly those involving shareholder rights, without the extended process of litigation, such as with share transfer, ownership, and governance. Had the parties to this case attempted to go through an ADR mechanism, it would have been possible for them to resolve the issue of fraudulent share transfer in a more efficient and amicable way without waiting for a long legal battle.<sup>xxii</sup>

#### *ADR alleviate judicial delays*

Litigation and dispute resolution has a huge gap and can only be minimized by having an alternative methods dispute resolution emphasized by a strong judicial system. While these projects fill the gap between conventional litigation and present-day conceptions of justice, they signal a major step forward in mainstreaming alternative dispute resolution (ADR) in Pakistan. In a report, a 2019 fiscal year (FY) report from the Equal Employment Opportunity Commission looked at detailed data and information on the success of ADR programs at agencies. This publication continues to examine EEOC analysis of department ADR programs in FY 2021, specifically of the flaws in the Management Directive 715 program and the Form 462 complaint records<sup>xxiii</sup>. The focus of this paper was on the experience of the managers and the complainants during participation in alternative dispute resolution (ADR) which was primarily mediation. Ranging from peripheral schemes of limited efficacy to ambitious efforts to completely institutionalize ADR in Pakistan, this dissertation still shows how these techniques could or should induce change through the current framework and centers. Ultimately, ADR may make a large contribution to access to justice and in cutting case backlogs if it is continuously given priority in mediator training, in public awareness, and in the enforcement issues considered. ADR has been so successful for resolving conflicts in Pakistan because it has been so tremendously effective as compared to traditional litigation regarding the amount of time and money used to resolve conflicts. A big problem for plaintiffs' cases has been the often lengthy time required to capture the case. Alternative dispute resolution (ADR) process—especially mediation—gets things done quicker by not pursuing most of the procedural delays associated with formal court proceedings. Alternatively, alternative dispute resolution (ADR) processes such as mediation and arbitration have traditionally been thought to have lower costs: approximately 40% to 50% less than traditional litigation. This decrease stems primarily from the duration of shorter ADR procedures and absence of a number of court ordered process prerequisites. For the 2019 fiscal year (FY), the Equal Employment Opportunity Commission



reviewed detailed data and information on the success of ADR programs at agencies, in a report. This publication continues EEOC analysis of agency ADR programs in FY 2021, highlighting flaws in the Management Directive 715 program and the Form 462 complaint records. This paper focuses on the experiences of manager and complainers involved in alternative dispute resolution (ADR), with most mediation. The Khyber Pakhtunkhwa Alternate Dispute Resolution (ADR) Act, 2020, arguing that it was unconstitutional, claiming it introduced a parallel judicial system akin to the Frontier Crimes Regulation, 1901, and undermined judicial independence. The Provincial Government defended the Act, stating it aimed to provide inexpensive and expeditious justice and that its provisions applied only with the mutual consent of the parties involved. The court, after reviewing the case, concluded that the Provincial Assembly was competent to legislate on the matter and found no evidence of mala fide intent. The Act's provision requiring consent for ADR procedures was deemed valid, with the selection of Saliseen (arbitrators) being transparent and involving the parties' input. The court emphasized the advantages of the ADR system, including its culturally sensitive and non-technical approach, and dismissed the petition, ruling the Act constitutional<sup>xxiv</sup>. However, with regards to Alternative Dispute Resolution (ADR), the case of Mehr Ashraf and another vs the Station House Officer and others can be tied to the general idea of resolving disputes away from the courtroom. This case, though involving a petition for habeas corpus and mental health considerations, illustrates the circumstance in which family sought legal redress in order to be assured of how a mental disordered individual was being confined. Had ADR mechanisms such as mediation or arbitration been present in this case or even been considered, then, had family members elected to pursue this dispute amicably, they would have been able to do so through formal judicial process.

### **Barriers to Adoption of ADR**

Pakistan's reliance on trial courts blocks the acceptance of international dispute resolution practices that people do not know about. Men and women in Pakistan receive minimal training in mediation and arbitration options at law schools because the education system focuses mainly on learning to take cases to court. Lawyers stay away from suggesting ADR options to clients because their professional income depends on lengthy trials<sup>xxv</sup>. According to research conducted by the Pakistan Bar Council in 2021 seven out of ten legal professionals reported minimal expertise in alternative dispute resolution approaches. The research demonstrates how structural limits shape the legal profession's development<sup>xxvi</sup>.

Courts have moved slowly to put ADR procedures into proper practice across all legal systems<sup>xxvii</sup>. Despite legal support from statutes like the Alternative Dispute Resolution Act of 2017 and the Arbitration Act of 1940 the judiciary has little commitment to implement ADR practices effectively. SDRs face strong challenges from both the public's distrust and slow court adoption.

#### **Absence of ADR Knowledge and Training:**

One major hurdle in the adoption of ADR in Pakistan is that even the legal community's experts are not aware of it and the general public is not aware of existence of ADR processes. While several workshops and training programs were executed in principal cities of Karachi, Lahore and Islamabad but location is still limited, especially in rural and out of reach areas. A 2022 research by the Karachi Centre for Dispute Resolution (KCDR) shows that only 15 per cent of respondents in the country were aware of alternative dispute resolution (ADR) and what it might hold in store for them. Most of the respondents believed that ADR was a peculiar or unnecessary procedure. This lack of training does not affect only the general population; mediators and arbitrators are, likewise, not trained<sup>xxviii</sup>. There is a desperate need of qualified and experienced ADR professionals in Pakistan. At present, only about 500 of them are certified mediators or arbitrators in Pakistan, the Pakistan Institute of Mediation and Arbitration (PIMA) said in 2023. This lack of experience, however, damages public trust in the process, and the lack of experience decreases the quality of ADR services. Say, poor arbitration hearings or poor mediation sessions leave parties unhappy, sabotaging other parties to engage in other dispute resolution

### **Solution for the growth of ADR**



Zafar Iqbal Kalanautri's dissertation emphasizes how important it is for legal frameworks to incorporate mediation and alternative dispute resolution (ADR) initiatives. It emphasizes how urgently judicial personnel must be trained as mediators along with referral judges with the goal to reduce courtroom backlogs and offer an enhanced settlement process<sup>xxix</sup>. With the goal of promoting mediation as a successful and adaptable settlement technique, this handbook acts as an outline for mediators, judges, along with other authorities. Kalanautri has an approach to implementation, highlighting the role of reforming judiciary and education through; establishment of ADR centers, training of judicial capability and public education. The article considers legislative initiatives aimed at advancing ADR in Pakistan under consideration of Pakistan's particular legislator framework by altering the Civil Procedure Code and in coercion of mediation provision in contract arrangements. It recognizes the problems attributable to a strongly entrenched legal tradition, judicial opposition; and a greater acceptance and understanding of ADR on the part of the participants. In her conclusion, Kalanautri claims that if ADR is implemented well, it can improve access to justice, lessen the load on the legal system, and boost the economy by fostering an atmosphere that is more favorable to trade along with enterprise<sup>xxx</sup>.

Governments everywhere have backed the need for alternative dispute resolution (ADR), allowing companies to operate knowing that their decision to use ADR is accepted, that ADR rulings will be upheld, and that national governments will probably enforce ADR awards if necessary<sup>xxxi</sup>. The volatility of various legislative frameworks is one of the most concerning aspects of the fight to globalize alternative dispute resolution (ADR) in cross-cultural economic transactions. Like Stallard notes, transitioning nations are particularly affected by a number of contemporary issues with dispute resolution analysis and implementation.<sup>42</sup> The ones "going through substantial economic, political, or social change" are considered transitioning nations, and as such, they face numerous "institutional obstacles, including the key challenge of upholding the rule of justice<sup>xxxii</sup>". As an effective and economical substitute for traditional litigation, alternative dispute resolution (ADR) has great potential to ease the strain on Pakistan's legal system. The importance of alternative dispute resolution (ADR) is currently being recognized more and more, especially in areas where the costs and delays of legal processes are particularly noticeable, such as family law matters and business conflicts. By resolving more than 70% of cases sent to mediation in a matter of months, the Karachi Centre for Dispute Resolution (KCDR) has shown the effectiveness of alternative dispute resolution (ADR) and considerably lessened the burden on civil courts. In a similar vein, arbitration facilities, including those affiliated with the Lahore Chamber of Commerce & Industry (LCCI), have been useful in resolving commercial conflicts, saving the parties concerned time and money<sup>xxxiii</sup>. Certain advantages are particularly relevant in the context of international business alongside act as triggers for improved effectiveness and activity in the international marketplace. Statistics of international experiences such as the United Kingdom, show that 95% of those cases referred to mediation refuse to go to trial, which proves ADR has the potential of doing away with those case backlog. The advantages of ADR could be replicated on a large scale in ADR in Pakistan, a role complementary to the formal judicial system and which ensures speedy justice for citizens<sup>xxxiv</sup>.

- **Judicial and Legal Reforms:**

Arbitration as a means of private conflict settlement focuses on the independence and adapting nature of the parties and thus creates procedures that suit their needs. It is widely touted to be a successful substitute for lawsuits because it moves into self governance. But one of the best changes is the New York Convention's pro-enforcement stance which would offer less discretion to the enforcement of international arbitral awards<sup>xxxv</sup>. This idea is also supported by Pakistan's legal system particularly its norm about and the Recognition and Enforcement (Arbitration Arrangements & Foreign Arbitral Awards) Act, 2011 that don't allow local courts to substitute arbitration however to assist it. Second, emphasis on minimal court intervention reinforces confidence in arbitration as a variety of Alternative Dispute Resolution (ADR) procedure and secures arbitration's place among the methods of settling international conflicts and ensuring functioning in international trade<sup>xxxvi</sup>. As a pillar of judicial reform the Pakistani government has been increasingly interested in employing alternative dispute resolution (ADR) to address the persistent problem of case



pendency<sup>xxxvii</sup>. My suggestion is that if in one of the categories of family, inheritance and business conflicts there is prior alternative dispute resolution (ADR) as a precondition to litigation it would greatly reduce the number of cases in the courts. Such pre-litigation restrictions have worked well in other jurisdictions. For example, Singapore has a settlement rate of almost 70% on the initial day of mediation because court-annexed mediation is required for certain civil matters. *Tariq Iqbal Malik v. The work of the Multiplierz Group Pvt. Ltd.* pointed out that the judicial perception on commercial property disputes is very different from potential use of ADR mechanisms on such disputes. In this instance, the petitioner in this case wanted to handle a commercial dispute through a legal petition and using the statutory provisions related to criminal investigations but the petition was dismissed on the ground that the petitioner did not have a standing. This is apparent because business related grievance was a rigid, bureaucratic process within the traditional legal system.<sup>xxxviii</sup>

- **ADR Initiatives:**

Similar initiatives might have a significant impact on Pakistan, especially when it comes to resolving problems that are naturally non-adversarial, like family issues. Education of judges, attorneys and mediators both builds capacity and facilitates the use of alternative dispute resolution (ADR) within the legal system.<sup>xxxix</sup> Public awareness campaigns can also promote adoption of ADR by litigants, which can be helpful if the jurisdiction adopts ADR and publicizes the advantages of ADR: the speed, decrease in costs, and decreased adversarial nature. If Pakistan can build on successful models in the USA, which has institutionalized and adapted ADR procedures based on its various legal and cultural contexts to save the federal courts millions of dollars annually, it might both institutionalize and improve ADR procedures appropriate to Pakistani context to yield a more effective yet conveniently available legal system<sup>xl</sup>. While alternative systems have an area, judges and attorneys shouldn't argue for them, especially when commercial defendants and organizations are demanding them through region and global schemes, pushing them through large-scale regional and global initiatives<sup>xli</sup>.

**Recommendations for Strengthening ADR Framework**

The growing case backlog in Pakistan requires Strategic measures and focused changes in ADR to make it successful answer of the growing case backlog. These actions should close regulatory gaps, improve the ADR practitioner's skills, and increase public knowledge in order to promote trust and get involved in ADR processes<sup>xlii</sup>.

- ***Capacity Building and Public Awareness***

In effect ADR calls for qualified experts who can arbitrate or mediate conflicts in an unbiased and capable manner. But Pakistan's lack of qualified arbitrators and mediators weakens the quality of ADR results. Such initiatives as training courses and certification exams for ADR professionals should be encouraged<sup>xliii</sup>. Parties in Pakistan may be offered access to other international standards whilst engaging with foreign organisations such as the Chartered Institute of Arbitrators (CIArb) and the International Chamber of Commerce (ICC). Further, a public awareness effort is essential to overcome cultural opposition and to skepticism of ADR systems. A poll by Lahore Chamber of Commerce found that 60 per cent of litigants were unaware of alternatives to dispute resolution. Educating the public about the benefits of alternative dispute resolution (ADR) — like its speed and ability to be less expensive than traditional litigation — may be pursued through media, community outreach, and legal aid groups' educational campaigns. These ads can be targeted at academic and legal professionals hoping it will help them encourage their clients to choose alternative dispute resolution (ADR) as a better option. Implementation of these suggestions can increase trust in the alternative dispute resolution (ADR) systems in Pakistan, strengthen its ADR framework, and largely reduce the backlog of cases in the courts while guaranteeing speedy and fair access to justice<sup>xliv</sup>.

## CONCLUSION

In a nut shell, Pakistani diverse courts have the estimated file of above 2 million pending cases and this need to be changed by various new methods of ADR. All such sort of issues have only one

solution in form of Alternate Dispute Resolution because civil and criminal cases take long time to get completed because of reason having good beliefs of procedural delays. Even so, there is no question that ADR can complement the official court system in cases of civil and family law, where timely and economical solutions are required. The future of ADR in Pakistan looks bright in doing away with backlog of cases and also in making access to justice. If more and more people and legal experts figure out the convenience and benefits of alternative ADR there is a chance that these alternative mechanisms will keep growing. In the future, it is anticipated that efforts by government to institutionalize ADR procedures will increase<sup>xlv</sup>. For instance, the 2017 ADR Act makes the country's broader use of ADR possible. If implemented, mandatory ADR for some instances, such as business conflicts, family problems, would cut dramatically the burden of courts. Boosting the use of ADR also requires programs of awareness and training. When mediators, arbitrators and legal experts receive specific training, ADR procedures can be made more effective and professional.<sup>xlvi</sup> Other jurisdictions such as Singapore and the United States have already made effective use of alternative dispute resolution (ADR) within their legal systems and Pakistan might stand to gain a lot by looking at them because there's a lot to learn from nations those have well grown systems of ADR.<sup>xlvii</sup>

## REFERENCES

- <sup>i</sup>Khurshid, M. (2022). *Jirga system in Pakistan: A transgression of human rights*. Research Society of International Law. <https://rsilpak.org/2022/jirga-system-in-pakistan-a-transgression-of-human-rights/>
- <sup>ii</sup> The Asia Foundation. (2019). *Alternative dispute resolution gains traction in Pakistan*. The Asia Foundation. Retrieved from <https://asiafoundation.org/alternative-dispute-resolution-gains-traction-in-pakistan/>
- <sup>iii</sup>Shonk, K. (2022). *What is alternative dispute resolution?* Program on Negotiation. <https://www.pon.harvard.edu/daily/dispute-resolution/what-is-alternative-dispute-resolution/>
- <sup>iv</sup> Roberts, K. A. (2008). Legislators target abuses in a growing insurance field. *The National Law Journal*. Retrieved from [www.nlj.com](http://www.nlj.com)
- <sup>v</sup>Department of Justice Canada. (2022). *Dispute resolution reference guide: Dispute resolution series, practice module 1*. Dispute Prevention and Resolution Services. <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/03.html>
- <sup>vi</sup> Law Reform Commission. (2010). *Report on alternative dispute resolution* (Report No. 98). Law Reform Commission. <https://www.lawreform.ie/fileupload/reports/r98adr.pdf>
- <sup>vii</sup>Raisfeld, R. D. (2007). *How mediation works: A guide to effective use of ADR*. *Employee Relations Law Journal*. Retrieved from [https://scholar.google.com/scholar?hl=en&as\\_sdt=0%2C5&q=mediation+adr&oq=adr](https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=mediation+adr&oq=adr)
- <sup>viii</sup>Akhtar, Z. (ADR (Grand Jirga), Truth, Justice and Reconciliation Commission and peace on the Pakistan-Afghanistan frontier. Queen Mary University of London. <https://www.qmul.ac.uk/law/humanrights/media/humanrights/docs/adr-grand-jirga.pdf>
- <sup>ix</sup>Akhtar, Z. (ADR (Grand Jirga), Truth, Justice and Reconciliation Commission and peace on the Pakistan-Afghanistan frontier. Queen Mary University of London. <https://www.qmul.ac.uk/law/humanrights/media/humanrights/docs/adr-grand-jirga.pdf>
- <sup>x</sup>Shidiq, R. A., & Pulungan, M. S. (2022) *Alternative dispute resolution for customary land through customary courts*. Retrieved from <https://www.researchgate.net/topic/Alternative-Dispute-Resolution/publications>
- <sup>xi</sup>GSG Hukum. *Mediation as a charming dispute resolution mechanism*. Retrieved from <https://www.gsghukum.com/en/publications-bulletins/articles/mediation-as-a-charming-dispute-resolution-mechanism-gsg.pdf>

- <sup>xii</sup> TELENOR PAKISTAN (PVT.) LTD. v. FEDERATION OF PAKISTAN through Ministry of Finance and 4 others, 2022 P.T.D. 1097 (Islamabad High Court). Retrieved from <http://www.plsbeta.com/LawOnline/law/casedescription.asp?Casedes=2022I6003>
- <sup>xiii</sup> Said-ur-Rehman v. Raj Muhammad, 2021 CLC 1206 (Peshawar High Court). Retrieved from <http://www.plsbeta.com/LawOnline/law/SearchResultnotes.asp?Years=5&Catsearch=&CaseTypes=&Description=alternate%20dispute%20resolution&CourtName=&SearchOption=QuickSearch&StartingRecord=21&ShowPage=1>
- <sup>xiv</sup> Federal Arbitration Act, 9 U.S.C. §§ 1-14.
- <sup>xv</sup> Brummans, B. H. J. M., Higham, L., & Cooren, F. (2021). The work of conflict mediation: Actors, vectors, and communicative relationality. *National Center for Biotechnology Information (NCBI)*. <https://pmc.ncbi.nlm.nih.gov/articles/PMC8862124/>
- <sup>xvi</sup> Wall, J. A., Jr., & Lynn, A. (1993). Mediation: A current review. *Journal of Conflict Resolution*, 37(1), 160–194. <https://doi.org/10.1177/0022002793037001007>
- <sup>xvii</sup> Center for Law, Economics, and Business. (1998). *Alternative dispute resolution* (Discussion Paper No. 232). Harvard Law School. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=117252](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=117252)
- <sup>xviii</sup> Menkel-Meadow, C. (2015). *Mediation, arbitration, and alternative dispute resolution (ADR)*. In *International Encyclopedia of the Social & Behavioral Sciences* (2nd ed.). Elsevier Ltd. [UC Irvine School of Law Research Paper No. 2015-59]. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2608140](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2608140)
- <sup>xix</sup> <https://asiafoundation.org/alternative-dispute-resolution-gains-traction-in-pakistan/?utm>
- <sup>xx</sup> Carver, T. B., & Vondra, A. A. (1994). Alternative dispute resolution: Why it doesn't work and why it does. *Harvard Business Review*. <https://hbr.org/1994/05/alternative-dispute-resolution-why-it-doesnt-work-and-why-it-does>
- <sup>xxi</sup> Dispute resolution: The foundational articles. (2022). *Fordham Law School Scholarship Repository*. [https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2263&context=faculty\\_scholarship](https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2263&context=faculty_scholarship)
- <sup>xxii</sup> Akhtar, M. A., & Allied Developers (PVT.) LTD. (2022). *Lt. Gen. (Retd.) Mahmud Ahmad Akhtar and another—Petitioners vs. Messrs Allied Developers (PVT.) LTD. through Chief Executive and 3 others—Respondents* [Lahore (Rawalpindi Bench)]. 2022 C L D 718. Retrieved from <http://www.plsbeta.com/LawOnline/law/casedescription.asp?Casedes=2022L5026>
- <sup>xxiii</sup> Evans, E. A., Lentz, D. G., & Weil, R. L. (2017). *A dispute resolution primer*. In R. L. Weil, D. G. Lentz, & E. A. Evans (Eds.), *Litigation services handbook: The role of the financial expert* (6th ed., Chapter 1). Wiley. <https://doi.org/10.1002/9781119363194.ch1>
- <sup>xxiv</sup> Khan, F. A. (2022). *Fawad Afzal Khan v. Government of Khyber Pakhtunkhwa through Chief Secretary and 3 others* [Peshawar]. 2022 C L C 142. <http://www.plsbeta.com/LawOnline/law/casedescription.asp?Casedes=2022P203>
- <sup>xxv</sup> Ury, W. L. (1994). *Alternative dispute resolution: Why it doesn't work and why it does*. Harvard Business Review. <https://hbr.org/1994/05/alternative-dispute-resolution-why-it-doesnt-work-and-why-it-does>
- <sup>xxvi</sup> Barnes, P., & Davies, M. (2015). *Settlement of disputes*. In P. Barnes & M. Davies (Eds.), *Architect's legal handbook: The law for architects* (13th ed.). Wiley-Blackwell. <https://doi.org/10.1002/9781118655498.ch13>
- <sup>xxvii</sup> Iqbal Kalanautri, Z. (2020). *Designing ADR/Mediation program for judges content*. Advocate Supreme Court of Pakistan, Accredited Mediator, and Mediation Master Trainer, U.S.A. & CEDR (U.K.). From <https://zafarkalanauri.com/wp-content/uploads/2020/05/Designing-ADR-Mediation-Program-for-Judges-Content.pdf>
- <sup>xxviii</sup> Viswanathan, B. (2022). *Resolving disputes with dignity: The case for mediation*. ResearchGate. <https://www.researchgate.net/topic/Alternative-Dispute-Resolution/publications>
- <sup>xxix</sup> Main, T. O. (2005–2006). ADR: The new equity. *University of Cincinnati Law Review*, 74, 329. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ucinlr74&div=24>



- <sup>xxx</sup> Iqbal Kalanautri, Z. (2020). *Designing ADR/Mediation program for judges content*. Advocate Supreme Court of Pakistan, Accredited Mediator, and Mediation Master Trainer, U.S.A. & CEDR (U.K.). From <https://zafarkalanauri.com/wp-content/uploads/2020/05/Designing-ADR-Mediation-Program-for-Judges-Content.pdf>
- <sup>xxxi</sup> Chappell, D. (2017). *Dispute resolution procedures*. In D. Chappell, *Construction contracts: Questions and answers* (Chapter 23). Wiley Blackwell. <https://doi.org/10.1002/9781119415268.ch23>
- <sup>xxxii</sup> Scholar Commons. (2003). Examining Alternative Dispute Resolution in the International Business Domain. Retrieved from <https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1127&context=scjilb>
- <sup>xxxiii</sup> Scholar Commons. (2003). Examining Alternative Dispute Resolution in the International Business Domain. Retrieved from <https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1127&context=scjilb>
- <sup>xxxiv</sup> <https://viamediationcentre.org/readnews/MTExMQ==/Laws-related-to-ADR-in-Pakistan-An-analysis>
- <sup>xxxv</sup> Waters, B., Wood, W., Shipman, S., & Brown, H. (Eds.). (2018). *Brown & Marriott's ADR: Principles & practice* (4th ed.). London, UK: Sweet & Maxwell. [Canterbury Repository](#)
- <sup>xxxvi</sup> Stempel, J. W. (2002–2003). ADR is here: Preliminary reflections on where it fits in a system of justice. *Nevada Law Journal*, 3(1), 289–324. [HeinOnline](#)
- <sup>xxxvii</sup> Senate of Pakistan. (2017). *Report on the state of the economy*. Senate of Pakistan. [https://www.senate.gov.pk/uploads/documents/1497249886\\_554.pdf?utm](https://www.senate.gov.pk/uploads/documents/1497249886_554.pdf?utm)
- <sup>xxxviii</sup> Malik, T. I. (2022). *Tariq Iqbal Malik v. Messrs Multiplierz Group Pvt. Ltd. & 4 others* [C.L.D. 468, Lahore (Rawalpindi Bench)]. Retrieved from <http://www.plsbeta.com/LawOnline/law/casedescription.asp?Cases=2022L5022>
- <sup>xxxix</sup> Waks, A. (2022). *Dispute resolution methods: Uses of alternative dispute resolution*. Davis Wright Tremaine LLP. <https://www.dwt.com/blogs/family-business-resource-center/2022/03/alternative-dispute-resolution-methods>
- <sup>xl</sup> Thomson Reuters. (2022). *Problems and benefits of using alternative dispute resolution*. Legal Insights. <https://legal.thomsonreuters.com/en/insights/articles/problems-and-benefits-using-alternative-dispute-resolution?utm>
- <sup>xli</sup> Sander, F. E. A. (2000). The future of ADR - The Earl F. Nelson Memorial Lecture. *Journal of Dispute Resolution*, 2000(3). Retrieved from <https://heinonline.org/HOL/LandingPage?handle=hein.journals/jdisres2000&div=7&id=&page=>
- <sup>xlii</sup> Stipanowich, T. J. (2004). ADR and the “vanishing trial”: The growth and impact of “alternative dispute resolution.” *Journal of Empirical Legal Studies*, 1(3), 843–912. <https://doi.org/10.1111/j.1740-1461.2004.00025.x>
- <sup>xliii</sup> Center for Law, Economics, and Business. (1998). *Alternative dispute resolution* (Discussion Paper No. 232). Harvard Law School. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=117252](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=117252)
- <sup>xliv</sup> Rizvi, I. (2021). *ADR: Midway between court and Jirga system*. Courting The Law. <https://courtingthelaw.com/2021/09/14/laws-judgments-2/adr-midway-between-court-and-jirga-system/>
- <sup>xliv</sup> Karbeshian, L. A. (1994). ADR: To be or... *North Dakota Law Review*, 70, 381. Retrieved from <https://heinonline.org/HOL/LandingPage?handle=hein.journals/nordak70&div=27&id=&page>
- <sup>xlvi</sup> Smith, J. (2018). *Alternative Dispute Resolution: International Best Practices and Applications in Pakistan*. Oxford University Press.
- <sup>xlvi</sup> Frie, Arndt, & Danborn. *Alternative dispute resolution – Negotiation*. Frie Arndt. <https://frieandtd.com/general/alternative-dispute-resolution-adr-negotiation/>