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Harmonizing Tradition with Modernity: Analyzing the Evolution of Mediation in Pakistan's Legal Landscape



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Abstract: *Pakistan, a nation steeped in tradition, is witnessing a slow but steady transformative shift in its legal system concerning mediation and dispute resolution. The conventional dispute resolution methods deeply rooted in Pakistan's history, such as jirgas and panchayats, have long served as community-centric means of conflict resolution. However, the evolving legal landscape calls for adaptive measures that integrate these traditional approaches with formalized mediation structures. This paper aims to delve into the multifaceted evolution of mediation practices within Pakistan's legal framework. It begins by exploring the historical roots and cultural influences shaping traditional dispute resolution methods prevalent in Pakistan. Furthermore, the paper investigates the legislative reforms and initiatives undertaken by the Pakistani government to incorporate mediation into its legal system. It assesses the impact of these reforms on the judiciary, legal practitioners, and society at large.*

Keywords: ADR, mediation, IMDRC, reforms, barriers, judiciary, framework, access, resolution, tradition

Introduction

The foundation of Pakistan's current judicial framework traces its origins to ancient epochs, spanning centuries of evolution and adaptation. From its roots in the medieval period and beyond, the system has navigated through diverse eras, encompassing the Hindu, Muslim, Mughal, and British colonial and post-independence epochs. Amidst successive transitions of power, each heralding socio-economic and political shifts in Indian society, the judicial system exhibited resilience, steadily advancing without enduring significant upheavals or fractures. Its trajectory has been one of continuous growth, refinement, and consolidation, a testament to its enduring endurance across a millennium of change.²

Amid the pressing need for swift and cost-effective justice, nations worldwide are actively embracing innovative methodologies known as Alternative Dispute Resolution (ADR). These approaches encompass various forms like negotiation, arbitration, mediation, and reconciliation. Among these, mediation stands out as a prevalent and increasingly favored method in contemporary dispute resolution practices globally. Mediation embodies a structured process of collaboration, facilitated by a neutral third party, known as a mediator. This intermediary adeptly guides the resolution of disputes, aiding the involved parties by

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² Ali, S. H. "An Analytical Study of Criminal Justice System of Pakistan (with Special Reference to the Province of Punjab)." *Journal of Political Studies* 22, no. 1 (2015): 17. <https://www.questia.com/library/journal/1P3-3703186471/an-analytical-study-of-criminal-justice-system-of>.

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proposing alternatives, dissecting contentious issues, and steering them towards a mutually agreeable settlement.³

Mr. Justice Sir Gavin Lightman expressed the importance of the ADR in justice system of the UK in the following words, “The spiraling costs of contentious litigation, and the delays, uncertainties and lasting acrimony which such litigation occasions, have however over the past 20 years led to the increasing recognition by the judiciary, legal advisers and the disputants themselves that contentious litigation itself should be recognized as the option of last resort, and every facility should be afforded by the legal system, and every effort should be made by legal advisers, to achieve by alternative means a resolution of disputes which both parties can accept⁴.”

Exploring Pakistan's Contemporary ADR Legal Terrain

In Pakistan, several laws incorporate provisions concerning Alternative Dispute Resolution (ADR). These include the Constitution of Pakistan, 1973 (Articles 153-155); the Code of Criminal Procedure, 1898, which encompasses ADR provisions; Section 89-A of the Civil Procedure Code (CPC), 1908, as amended in 2002, along with Order X Rule 1-A addressing various alternative dispute resolution methods. Additionally, the Civil Procedure Code, [1908](#) (CPC), features provisions related to dispute settlement, emphasizing the contemporary concept of mediation.

Section 89-A outlines alternate dispute resolution within the legal framework: “The Court may, where it considers necessary, having regard to the facts and circumstances of the case with the object of securing expeditious disposal of a case, in or in relation to a suit, adopt with the consent of the parties alternate dispute resolution method, including mediation and conciliation.⁵”

Order X Rule 1A empowers the Court to adopt any lawful procedure, not conflicting with the Code, for specific purposes, such as conducting preliminary proceedings to expedite case processing, issuing commissions with parties' consent for witness examination and document admission, and most notably, embracing alternative dispute resolution methods like mediation or conciliation with the parties' agreement.⁶

Besides these following are certain other provisions and laws pertaining to and encouraging Mediation in Pakistan

1. The Arbitration Act, 1940;
2. The Probation of Offenders Ordinance, 1960;
3. Sections 10 and 12 of the Family Courts Act, 1964;
4. Section 195C of Customs Act, 1969;
5. Chapter XVII of the Customs Rules, 2001;
6. Article 163 of the Qanun-i- Shahadat Order, 1984 (decision on oath);
7. Plea Bargaining (sec. 25 of NAB Ordinance, 1999);
8. Section 134A of the Income Tax Ordinance, 2001;
9. Rule 231 C of the Income Tax Rules, 2002;
10. The Small Claims and Minor Offences Courts Ordinance, 2002;
11. Section 47A of the Sales Tax Act, 1990
12. Chapter X of the Sales Tax Rules, 2004;
13. Section 38 of the Federal Excise Act, 2005;
14. Rule 53 of the Federal Excise Rules, 2005; and

³ Ali, M., and L. L. Geng. 2019. "Alternative Dispute Resolution (ADR) in Pakistan: The Role of Lawyers in Mediation Procedure." *International Journal of Research* 6 (4): 421–430. Accessed June 28, 2024. <https://www.journals.pen2print.org/index.php/ijr/article/download/17657/17595>.

⁴ Eysten, P. a. W. 2003. "ADR and Commercial Disputes edited by Russell Caller." *Arbitration International* 19 (1): 113–114. doi:10.1093/arbitration/19.1.113.

⁵ Code of Civil Procedure, 1908, § 89-A

⁶ Code of Civil Procedure, 1908, Order X, Rule 1A.

15. Sections 96–99 of the Local Government Act, 2013.

Pakistan's legal landscape regarding Alternative Dispute Resolution (ADR) reflects a promising yet evolving framework. The state has made significant strides in recognizing the value of ADR mechanisms, notably mediation, as effective tools for resolving disputes outside the traditional court system. The existing legal framework in Pakistan demonstrates a gradual shift towards accommodating and promoting ADR methods, evident through legislative initiatives ADR Act, 2017. However, the full potential of ADR remains untapped due to various challenges, including a lack of comprehensive regulation, limited awareness, and cultural barriers.

Emergence of ADR Act 2017

The Alternative Dispute Resolution Act 2017 was promulgated on 30th May, 2017. The procedures of mediation, conciliation, and arbitration are listed under "Alternative Dispute Resolution" in this Act. This is Pakistan's first codified special law pertaining to ADR which invests certain Power in Law and Justice Division of Ministry of Law to accredit and notify individual mediators and mediation centers. This Act stipulates that every civil dispute listed in the schedule will be reoffered to alternative dispute resolution (ADR) by the court, unless the parties refuse, the court determines that ADR is not the appropriate course of action, or there is a material question of law or fact at stake. Pakistan's legal landscape regarding Alternative Dispute Resolution (ADR) reflects a promising yet evolving framework. The state has made significant strides in recognizing the value of ADR mechanisms, notably mediation, as effective tools for resolving disputes outside the traditional court system. The existing legal framework in Pakistan demonstrates a gradual shift towards accommodating and promoting ADR methods, evident through legislative initiatives ADR Act, 2017. However, the full potential of ADR remains untapped due to various challenges, including a lack of comprehensive regulation, limited awareness, and cultural barriers. ADR Act of 2017 is the focal point of our research as an overwhelming majority of ADR Practice in Pakistan revolves around it including accreditation and notification of mediators and mediation practices. A panel of neutrals, comprising seasoned solicitors, retired judges, retired civil servants, ulamas, jurists, technocrats and specialists, has been established under this Act and will lead ADR sessions in the ADR centres.⁷

This Act establishes a 30-day limit for ADR proceedings, which can be extended by further 15 days upon the request of the neutral party. Following a successful ADR proceeding, the Neutral will record the settlement and issue the award. (Ibid, Section 10).

It will be brought before the court having jurisdiction to hear the matter. Following the submission of the award, a decree that takes the terms of the award into consideration will be issued and judgement rendered. Additionally, it has been stated that the matter may be brought before the relevant court in the event that the Neutral's attempts to resolve it were unsuccessful. (Ibid, Section 11)

Any judgement or order issued by the court as a result of alternative dispute resolution (ADR) procedures will be enforceable under applicable legislation. Furthermore, for the purpose of resolution of dispute of Criminal nature, the court may designate Neutral to lead ADR proceedings for offences that are compoundable, in accordance with the Pakistan Penal code, 1860. (Ibid, Section 14) The evaluator may be hired by the court or the neutral under the terms of this Act to provide an expert opinion on any financial matter or other matter of a technical type. No appeal or revision of the decree or any other judicial order may be maintained under this Act. (Ibid, Section 18).

Challenges and Opportunities in Implementing ADR in Pakistan

Despite the legislative advancements and the enactment of the ADR Act of 2017, Pakistan faces several challenges in effectively implementing alternative dispute resolution mechanisms like mediation. These challenges stem from various factors, including legal, cultural, and infrastructural limitations. One significant challenge lies in the lack of comprehensive regulation governing ADR processes. While the

⁷ Section 4 of Alternate Dispute Resolution Act, 2017.

ADR Act of 2017 provides a framework for mediation, conciliation, and arbitration, there is still a need for detailed procedural guidelines and standards to ensure consistency and fairness in ADR proceedings. Without clear regulations, there is a risk of ambiguity and inconsistency in the application of ADR methods, undermining their effectiveness and credibility.

Moreover, limited awareness and understanding of ADR among the general public and legal practitioners pose significant barriers to its adoption. Many individuals remain unaware of the benefits of mediation and other ADR mechanisms, relying instead on traditional litigation processes. Legal professionals may also lack the necessary training and skills to effectively participate in ADR proceedings, further hindering their widespread acceptance and utilization. Cultural barriers and societal attitudes towards dispute resolution also present challenges to the implementation of ADR in Pakistan. Traditional norms and customs often favor informal, community-based methods of resolving conflicts, such as jirgas and panchayats. While these mechanisms may offer quick resolutions, they may not always adhere to principles of fairness, equality, and due process. Integrating formalized ADR processes into existing cultural frameworks requires careful consideration and sensitivity to local customs and traditions. Despite these challenges, Pakistan's legal landscape presents numerous opportunities for advancing ADR practices. The ADR Act of 2017 serves as a critical milestone in promoting mediation and other alternative dispute resolution methods. By establishing accreditation mechanisms for mediators and mediation centers, the Act lays the groundwork for building a skilled and reputable cadre of ADR professionals. Furthermore, the inclusion of ADR provisions in various laws and regulations, such as the Civil Procedure Code and the Family Courts Act, reflects a growing recognition of the value of ADR in the legal system. These legislative initiatives provide a solid foundation for mainstreaming ADR practices and integrating them into judicial proceedings. Additionally, advancements in technology offer new avenues for expanding access to ADR services, particularly in remote and underserved areas. Online mediation platforms and virtual dispute resolution mechanisms can overcome geographical barriers and facilitate the resolution of disputes in a timely and cost-effective manner.

Conclusion

In conclusion, the evolution of mediation in Pakistan's legal landscape represents a harmonization of tradition with modernity, as the nation navigates the complexities of its diverse cultural heritage and the imperatives of a rapidly changing society. While traditional dispute resolution methods continue to hold sway in many communities, there is a growing recognition of the need to embrace innovative approaches that offer greater efficiency, fairness, and accessibility.

The enactment of the ADR Act of 2017 marks a significant milestone in this journey, providing a legislative framework for promoting mediation and other alternative dispute resolution mechanisms. However, realizing the full potential of ADR in Pakistan requires concerted efforts to address the challenges of regulation, awareness, and *cultural* acceptance. By leveraging legislative reforms, raising awareness, and fostering a culture of collaboration and consensus-building, Pakistan can harness the transformative power of mediation to enhance access to justice, promote social cohesion, and strengthen the rule of law. In doing so, Pakistan can position itself as a leader in the field of alternative dispute resolution, embodying the principles of justice, equity, and inclusivity in its legal system.