

Alternative Dispute Resolution (ADR) For Prompt Disposal of Cases

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Abstract

Litigation is bulging in courts. People infringed are looking for redressal and settlement of their complaints and disputes. Figures, as well as general perceptions, are that Criminal Justice System (CJS) is not aptly resolving lawsuits. This is a study to examine existing CJS and appraise its challenges. Analysis of how ADR is responding and aiding the CJS to dispose of cases. What has been done in the context, what are the advantages, risks in using ADR, and with the narration of few international best practices. And how ADR can be made more pragmatic and effective to ease people's grievances for timely settlement of the dispute. This paper will assess the prevailing ailments, laws in vogue, progress made, explore ADR as a legitimate manner to swiftly resolve disagreement among the citizens and with the state, along with few suggestions.

Keywords: ADR, Cases, Conciliation, Court, Dispute, Mediation, Offenses, Police, Prison, Settlement

Appraisal of Human Perceptions

Everyone from the Structuralist, Functionalist and Historian to Moralist agree that humans have evolved to become a superior race of all animal kingdoms as a founder of all civilizations. Though the human story of civilization is a complex narration of strong instinct for survival, Nazism, self-preservation, creativity, and destruction at the same time (Aamir Ghauri, The News International).

The journey of human evolution is not only a one-dimensional story of people, way of life, and ingenuity, but it is the tale of invoking the inner fear of the existence of vying DNAs. Human has been termed as a social animal but primary he is an existentialist. He has his biases, is prejudiced for his land, language, food, attire, customs, ideology, and loves kin. He adjusts for survival, perpetuates for his likes and interests. Self-perpetuation has been the hallmark of his life.

Modern Dwelling Paradigm

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The social contract mandates people to reciprocally acknowledge each other's rights in accord with an arrangement that creates laws and rules for good behavior in a society. This is generally imposed through the CJS, which is a set of laws and principles applied to persons on their wrongdoings. It illustrates the crimes, penalties, processes, and methods to reprimand those who breach the laws of society. However, with ever-rising populations, socio-economic situations, and political mayhem, criminal and civil offenses are on the rise. Police, courts, and prisons are overburdened with cases to be adjudicated.

Clash and Compromise

Clash and compromise, fight or flight are intrinsic individual qualities. Fight leads to dispute, argument, and lawsuit while pacification fosters compromise, settlement, intercession, and consensual reimbursement. The inborn human being features of resolution and harmony culminates social disputes and court cases.

Issues in CJS

No denial that results of organizations responding to complaints and claims are not forthcoming. Recompense and settlements are still a far cry. No doubt, the CJS comprising of police, courts, and prison attainment depends on efficacious functioning and immaculate coordination. However, all three tiers continue to sob and decry their ailment of resources, capacity, extraneous interference, concurrently hailing its workings as well.

1) Police

Analysis reveals that a total of 1970 police stations functioning all over the country register around over 7 lacs First Information reports (FIRs) every year. Underreporting, not recording, and burking are known facts, realistically this number of FIRs can swell to 20 lacs if every felony is registered. Solving a case is one thing and proving it in a court of law is another. Detection of cases (around 65%), recovery of property (around 55%), and conviction rate (around 18%) have never been very satisfactory. Though major cases due to public, media, and government pressure get spotlighted and are mostly traced. The system still looks for ocular testimony through

forensics, even though collaborative evidence is handy to determine the truth.

Parallelly, cases of false registration and perjury are not seriously rebuked, resulting in mounting up of more concocted and baseless allegations, upsurge in the resubmission of fake claims. Not accounted for are other thousands of non-cognizable cases being reported directly to the police stations, revenue offices, and courts. No denial that many disputes are settled through Jirgas, Panchayats, and in the lawyer's chambers whenever consent is developed between the differing parties.

Agony is that although most police organizations in Pakistan are understaffed, 35% of vacancies in police remain unfilled at any given time due to recruitment policy, capacity issues, politics, and management issues. Police primarily focus on 'operation work' and investigation goes to backbenches. As maintaining 'Order' is a priority, despite a lot of in-house reforms on detection techniques, investigations procedures, recovery of property, settlement of disputes, disposal of cases, and conviction can barely be claimed as "Adequate".

2) Courts

Interesting against the sanctioned 4,100 judges post presently 3,070 judges are working with an overall shortfall of 25% in 2,950 operational courts. There are 05 High Courts in Pakistan, having benches in 11 cities with 118 Judges providing justice against 145 sanctioned posts. There are still 27 vacant posts of judges in the High Courts of Pakistan.

District Judiciary generally comprises of District & Session Judges, Additional District, and Session Judges; Senior Civil Judges, Civil Judges/Judicial Magistrates/Family Judges, with Member of *Majlis-e-shoora* and with *Qazi* only in Baluchistan. The working strength of district judiciary all over Pakistan is 2,934 against the sanctioned strength of 3,955. There is a shortfall of 1,021 judges in the district judiciary, i.e., almost 25% of the sanctioned strength.

Around 51,387 cases are pending in the Supreme Court of Pakistan and 178 cases are pending in the Federal Sharia Court of Pakistan. 340,067 cases are pending in all principle and sub benches of High Courts in Pakistan, with 192,287 (56.5%) cases pending in Punjab only. 20,389 cases, which are 6% of the overall undecided cases in The High Courts, have remained unresolved for more than 10 years now.

1,772,822 cases are pending in the District judiciary all over Pakistan, with 1,343,900 (75.8%) cases pending in Punjab only. 10,808 cases, which are less than 1% of the total pending cases in District Judiciary of Pakistan, are still undecided for more than 10 years. In total, there are around 2,164,456 (2.16 million) cases pending in all courts of Pakistan.

3) Prisons

Inexcusably the existing 116 prisons have an authorized capacity of 55,550 inmates, whereas, at present, they are housing 83,701 prisoners – an over 50.7% more than the sanctioned authorized space. Amazingly, instead of confining convicts and rehabilitating them, 66% of them are under trial prisoners with many hundreds on trial, for the last many years - a fact to raise our eyebrow and look for a fix.

All three CJS components complain of a dearth of human resources, logistics, and infrastructure in this age of innovation and technology. But the fact is the lack of will, diligence, and dedication of stakeholders, they should lament for.

Predominant Ailment

Depressing heartbreak tales of deprivations, of being robbed and hoodwinked are all over. People are looking for their claims dispossessed through another false human assertion, greed, and manipulation. Should we continue with prevailing criminal justice system (CJS) procedures and structures, wishing it shall overcome stockpiles moving at a snail's pace or look for some for other measures featured as Alternate Dispute Resolution (ADR) to dispose of cases expeditiously?

Just wished reforming CJS was the first goal of the National Action Plan (NAP) rather than placing it as 'last but not the least' as 20th agenda item to be done.

Dispute and Resolution

A dispute is defined as "A precise quarrel relating a matter of truth, principle or strategy where an assertion of 'A' group is met with negation, counterclaim or rejection by the 'B' party. While Resolutions" is "The path of obtaining a result of a dispute by the deal of both the groups with some reciprocally decided terms."

Holy Quran Injunctions on ADR:

Following are some of the relevant assertions of the Holy Quran guiding course of actions to settle the dispute among the citizens:

- 1) Sura "Al Nisa" Ayat 35: "And if you fear a breach between the two, bring forth an arbiter from his people and her people an arbiter if they desire to set things right."
- 2) Sura "Al Nisa" Ayat 128: "Compromise is better".
- 3) Sura "Hujurat" Ayat 09: "And if two parties of the believers argue, reconcile between them".
- 4) Sura "Al-Shu'arā" Ayat 118 "Judge Thou, then, between me and them openly, and deliver me and those of the Believers who are with me."

Alternative Dispute Resolution (ADR)

ADR refers to an array of practices that assist groups to solve disagreements in an informal manner and without prosecution. Hence ADR is a sort of dispute resolution that seeks to limit the expenses of legal process by using different, frequently outside of-court methods, such as adjudication, reconciliation, and related proceedings. The system of ADR searches for Win-Win situations seeking better satisfaction of the interests of both the parties as in the Adversarial trial system, prosecutions proceed with the cases in terms of 'Entitlements' and not in terms of 'Concerns'.

Since ADR processes do not strictly rely on legal principles and emphasize parties' interests more than their legal rights, therefore, the outcomes of the disputes through the ADR system are much more flexible. This flexibility allows third-party facilitators to adopt or consider social norms in ADR to attain a more acceptable solution.

Advantages of ADR

Following a famous quote meticulously illustrates the notion of ADR.

“Discourage litigation. Persuade neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser – in fees, expenses, and a waste of time. As a peacemaker, the lawyer has a superior opportunity of becoming a good man (Abraham Lincoln).

Following are some of the advantages of ADR:

1) Not Expensive

Court unravels, even those which last a brief period, are very expensive. But ADR costs substantially less than court procedures.

2) Swifter

It is a known fact, court trials take a long time to be concluded, leading to long waits for any issues to be resolved. On the other hand, unofficial interventions are much faster, and the probability of a speedy outcome is real.

3) Not Incompatible

In an argumentative official approach, the risk of aggravation can provoke both sides for hostility. Using modes of ADR, both parties hear each other and can agree on the outcome.

4) Preferred Conclusions

Sequels of ADR are much wider in range than that of law court. Sometimes a mere confession, an excuse, or alteration in program or procedure by the organization leads to easily obtainable decisions through ADR.

5) Suppleness

ADR courses are normally more accommodating. Complaints can be investigated through phone calls, letters, records with no official examination. Both parties in a one-to-one dialogue in presence of a mediator moves ahead.

6) Durable

It is durable on settlement. Generally diffuses discontentment. ADR delivers a solution that fulfills the needs of both sides.

7) Secrecy

ADR respects privacy and generally conceals the debate between heated parties. The mediation and negotiations are conducted without media coverage yielding successful discreet settlements.

Risks Involved in ADR

Some of the risks in using ADR are:

1) Power Disparity

Inequality of power and status does make face-to-face mediation unreasonable. Fear of threats, influence and violence affects the decision-making, swaying the arguments on one side.

2) Noncompliance With Urgent Matters

There may be an urgent need that acquires an immediate legal remedy, for example, a stay order against a dispute.

3) Unwilling Adversaries

ADR is based on agreeing to a unanimous resolution of an issue. No agreement or willingness among parties prevents discussions for any reconciliation.

4) No models

ADR is mostly confidential. Techniques and rapprochement cannot be used as precedence to cite for any future settlements. Each case has its particular dynamics.

5) No Edicts

No commands are dictated to get a ruling on one's legal rights and entitlements. Prejudices and violations of human rights cannot be ruled out.

6) Reduce Reimbursement

The compensation amount of ADR is substantially lower. Settlement amounts are lower than the claimed amount. Claims and payments are reasonably settled.

7) Mandatory rulings

ADR decision agreed by conflicting parties is binding in nature. There is no stipulation to appeal for or go to an alternate forum after an approved decision through ADR.

8) Illegal and Depraved Outcome

It could lead to a regretful and unhealthy outcome as a result of jirga or panchayat decisions. The outcome can be Vani or Swara, doing settlement in murder, adultery, settling debts, kidnapping, abduction, that is giving a minor girl in the marriage to a man of the opposite group to resolve the dispute. This heinous practice is an outcome of 400 years old Panchayat system.

Types of ADR

Following are seven types of prevailing ADR:

- 1) **Arbitration** – ثالثی
- 2) **Negotiations** - مذاکرات
- 3) **Mediation** - مصالحت
- 4) **Conciliation** - مفاہمت
- 5) **Adjudication** - عدالتی فیصلہ
- 6) **Expert determination** - ماہر عزم
- 7) **Ombudsman** – محتسب

ARD Across the World

Nations have instituted reforms and embraced ADR practices in countering the questions of build-up and a continually escalating load on the court. UK, Australia, China, Japan, India, Sri Lanka are some of the countries that have used these ADR techniques with impressive results.

1) ADR in the United Kingdom

In the UK, Lord Woolf, the Chief Justice of England and Wales, in his Judicial Reforms report has shown concern and advocated for ADR. His reports proved to be a facilitator in the UK and led to drastic amendments in the civil procedure rules, incorporating ADR. Courts are emphasizing litigants to adopt ADR for dispute settlement.

2) ADR in Australia

Mediation in Australia kicked off in 1983 when the Victorian County Court Building Cases List made provisions for matters to be referred to mediators for the resolution of cases. Before that, it was primarily used to resolve family matters or trivial disagreements between neighbors. Presently almost all commercial disputes are prioritized to be settled through mediation.

3) ADR in China

Historically settling disputes in China has generally been through mediation. Their culture, values, and binding family system enforce resolutions almost exclusively through negotiation. Reconciliation is the desired way. It is obligatory as a matter of fact, as an opening step. Litigation comes as the last resort when differing parties fail to agree. It is an unwelcome trait to approach courts.

4) ADR in Japan

In Japan, the uniformity of society scores in a natural loathing to lawsuits. Citizens commonly favor conciliation and compromise rather than bringing their cases to the court.

5) ADR in India

In India, the LokAdalat constituted under “The Legal Services Authority Act, 1987” effectively provides the ADR solution to the weaker section of society. LokAdalat is commonly known as people’s court. In old times this system was the Panchayat system.

6) ADR in Sri Lanka

This is a unique practice where a person cannot file for his 'right' in any dispute till he has acquired a document from the Mediation Board to the effect that mediation has flopped. Individuals have to undergo this forum prior to exhibiting a desire to approach courts.

UN Peacekeeping Paradigm

United Nations have explicitly, intervened in various war-torn countries. On consent of disputed parties, the UN has helped to reform and restructure, prevent further loss, and have mitigated several disruptions by supporting communities and actors at the sub-national level to ensure peace. UN has spawned prospects for public discourse, mediation endeavors, and confined peace agreements and understanding processes that reduced the toll of civilian casualties and livelihood disruption to a great extent. UN peacekeeping missions still firmly believe that dialogue is still the best way of managing disagreement.

Dispensation of Justice

The concept of dispute resolution through mediation is not new in the subcontinent. The deeply rooted culture of "Jirga" and "panchayat" already existed. The decision of these forums have no legal value but had maintained a binding force for the people.

One of the most important functions of the state is the dispensation of justice as our state is mandated under Article 37 of the Constitution of the Islamic Republic of Pakistan is to "ensure in-expensive and expeditious justice" to the people of Pakistan. Regrettably, delayed justice has become a serious issue for litigants as millions of cases are pending in the courts. Police stations and District Courts present a dismal portrait of people's miseries, awaiting for months, years, and years to have their cases decided. Other factors like a flaw in the routine law, the deferring procedures adopted by the parties, and the existence of the adversarial culture in our country have created doubts about the expediency of CJS.

ADR as a Way Forward

But remarkable Pakistan is now cultivating an interest in out-of-court methods of disagreement resolve. With commercial alterations and COVID -19 crisis especially, the quantity of fresh legal disputes has grown substantially. The fact is courts of general jurisdiction are overloaded by civil cases. An ordinary court case has become too costly for most people. In such situations, a society needs less expensive, more accommodating options for legal action.

ADR Techniques via Legal Framework

Extraordinary growth has been observed in ADR in the last few decades owing to the public complaints about the inadequacy and complexity of our CJS. While people are expecting a timely settlement from CJS general outlooks are:

- 1) Public – are looking for a fair, smooth, and speedy trial
- 2) Courts – are vying for completion of the due process
- 3) Police – are striving for the completion of Challan and legal formalities.

Prevailing Laws Acknowledging ADR

Listed below are various relevant laws in the country that acknowledge dispute resolution through arbitration for amicable settlement of disputes.

- 1) CPC 1908, Sec. 89-A (Read with Order X Rule 1)
- 2) The Alternate Dispute Resolution Act, 2017
- 3) The Punjab Alternate Dispute Resolution Act, 2019
- 4) The KPK Alternate Dispute Resolution Act, 2020
- 5) Code of Civil Procedure (Sindh Amendment Act, 2018)
- 6) The Small Claims & Minor Offences Courts Ordinance, 2002
- 7) The Local Government Ordinance 2001

- 8) The Family Courts Act, 1964
- 9) The Arbitration Act, 1940
- 10) Local Government Laws.
- 11) Arbitration (International Investment Disputes) Act, 2011
- 12) Recognition & Enforcement (Arbitration Agreements & Foreign Arbitration Awards) Act, 2011
- 13) The Income Tax Ordinance, 2001
- 14) The Sales Tax Act, 1990
- 15) Customs Act, 1969
- 16) Federal Excise Act, 2005
- 17) Industrial Relation Act, 2012 (Islamabad)

The Code of Civil Procedure (Amendment) Ordinance:

Justly a specific Section 89-A authorizes the courts to secure expeditious disposal of a case by adopting ADR methods, including mediation and conciliation, with the consent of the parties, wherever deemed necessary.

The Alternate Dispute Resolution Act, 2017:

On the other hand, in 2017, Federal Government had introduced the Alternative Disputes Resolution Act, a very comprehensive piece of legislation, providing a system of alternative disputes resolution of civil, criminal, and commercial disputes.

Following the guidelines, the Provincial Governments have also made legislation like:

- 1) Punjab enacted The Punjab Alternative Disputes Resolution Act 2019

- 2) Sindh government has presented the Code of Civil procedure (Sindh Amendment) Act 2018 on 89-A, in addition to section 2 in definition and Order X Rule I.
- 3) KP – The KP Alternate Dispute Resolution Act, 2020 (Composition of Saliseen selection Committee)

While Baluchistan is still following and redressing ADR through its Baluchistan Local Government Act 2010. The amendments and new legislation on ADR reflect the acceptance that an alternative already has gained and is evidence of the change in judicial attitude toward ADR. The bench, which once regarded personal arbitration as an intrusion on the authority of the courts, at present sees replacements as offering comfortable relief to the courts while offering major gains to complainants.

A Successful Story

It is heartening to learn that Ismaili Community in Gilgit Baltistan is making their dispute resolution through their arbitration council. They do not go to police or courts; instead, settle disagreements through this council which has the public's trust. They had developed an ADR system on consents of conflict parties, has a well-placed mechanism where parties abide by the council decision.

Related Progress

An ADR report of Punjab from June 2017 to 30 April 2021 indicates that the number of cases dealt by ADR centers was 24,906: break up details are as follows:

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|----|-------------------|---|------|
| 1) | Family cases | – | 23 % |
| 2) | Civil cases | – | 21% |
| 3) | Criminal cases | – | 16 % |
| 4) | Utility Companies | – | 33 % |

Figures depict that the mediation success rate was around 56 %

In KP twenty-four districts 44137 cases were brought up, of which 35745 cases ended in being compromised. Besides legal actions were initiated against 7213 complaints and whereas presently 1179 cases are under process for adjudication.

EU focuses ADR program in KP and Balochistan

It is reassuring that European Union and UN agencies in collaboration have launched a program that aims to promote the rule of law and enhance the CJS in Pakistan, with a specific focus on the provinces of Khyber-Pakhtunkhwa (KP) and Balochistan. It is expected to span from 2021 till 2025. It aims to support reform processes to ensure the delivery of people-centered justice, enhance access to justice for all, particularly women and less privileged/marginalized groups; and improve service delivery of the security sector in line with constitutional safeguards and international standards. The project will provide technical assistance to legal reforms and the Rule of Law roadmaps in KP and Balochistan. Special focus will be set on access to justice through free legal aid and alternative dispute resolution, as well as legal literacy for citizens. On the institutional side, the project will assist in upgrading facilities and processes to enhance citizen-friendly service delivery (LJRC press release, the News International).

Suggestions

To improve and make ADR viable following is suggested;

- 1) The judicial system, Government Ministries, Bar Associations, Bar Councils, law schools, and law societies should immediately devise awareness programs on ADR for litigants, lawyers, law students, and other components of CJS.
- 2) The stakeholders should organize seminars, workshops, and certified training courses for lawyers and neutrals for improving their mediation, negotiation, and arbitration skills for adjudicating effective ADR proceedings.
- 3) The print and electronic media should educate the general public on ADR by hosting talk shows, reporting news, and making documentaries on successful cases decided by ADR courts in local languages. Along with legal, the main characteristics of these

legislations are logistic, technical, and operational support of the Government and Judicial system to litigants.

- 4) The Government should notify the panel of neutrals (arbitrators, evaluators, and mediators) after consultation with the High Courts amongst lawyers, retired Judges, retired civil servants, Ulema, Jurists, technocrats, and experts.
- 5) Police being directly involved in an investigation of crime sometimes may not be the best forum for managing ADR, however, they may be involved to collect collaborative pieces of evidence to substantiate findings.
- 6) The Alternate Dispute Resolution Act 2017 is a more appropriate forum.
- 7) The establishment of ADR Training Centers in the Judicial Academies is imperative.
- 8) Only the superior judiciary has the potential and authority to lead the way. Need robust monitoring mechanism.
- 9) Allocation of budget and creation of infrastructure by the federal and provincial governments is essential.
- 10) District judiciary must ensure that all judges refer minor offenses/disputes to the ADR forums that already exist.
- 11) The respective Provincial and Federal Governments should develop rules, SOPs, and robust monitoring mechanisms to govern ADR functions.

Viable Proposition

A few years back, Police Reform Committee (PRC) was formed to reform police workings and sojourn extraneous interference in police functioning, in times of Chief Justice Asif Saeed Khosa. Complaints cells were established under the supervision of SP all over Pakistan, which to a greater extend, lessened the load from an overflow of unabated applications under 22-A and 22-B by 27% at the courts. Fortuitously many disputes were disposed of at the initial stage.

Courts directed applicants to exhaust all forums and especially police complaints cell prior to seeking any relief under 22-A and 22-B to improve the system of public complaints. Intriguing earlier all applications were entertained at courts then

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send to police stations and reverted to courts and in many cases police stations took cognizance after a long route and delay with no positive solution.

Data Analysis of complaint cell for 2021 reveals some interesting finds: In the first 05 months of 2021, 77,437 complaints were received in the complaint cells all over Pakistan. During the same period 92% of the complaints, that are 71,228, were decided thus reducing the frivolous applications load at courts.

The highest contributing categories of complaints were:

- 1) Others complaints (non-cognizable cases and petty disputes)– 55%
- 2) Nonregistration of FIR – 33%
- 3) Misbehavior/High handedness – 5.6%.

The last three-year of complaint cell data reveals as follows: In 2020, the number of complaints received increased by 10 % as compares to 2019. In 2021, the number of complaints received has increased by 15 % as compares to 2020.

It is proposed that these complaint cells can serve as mediation centers, be an effective tier with ADR, which refers to an assortment of procedures helping parties to resolve disputes without a trial.

Conclusion

Let not, justice, be a comfort of the rich, and allow the malice of the wicked to be reinforced by the weakness of the virtuous' (Churchill). Time to change ground reality and reverse common man perception of chestnut talk 'show them the man and they will show you the rule'.

ADR has a complementary function to the standard judicial system. The suggested reforms to upgrade Civil Justice have welcomed the incorporation of ADR, which has a vital impact on the way litigation is conducted. The judicial tiers have anticipated the amendments to an acceptable extent understanding current rules that are well-matched with ADR philosophy.

To do away with ongoing muddle what matters now the most is, government and stakeholders begin responding appropriately and be not late forever. Relief be given to those limping in police stations and courts for years and give them what

probably is theirs It is imperative to resolve and restore peace between warring parties before there is nothing else to be lost among them. ADR is the way forward.

ADR has the potential to demonstrate as a panacea in initiating the peace process and leading to an amicable settlement. This concept needs to be given serious considerations, particularly by the power corridors. Consequently, the trend of litigation may significantly shrink if not completely erased.

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