

Research Article

Addressing Cases Backlog Through ADR by Mitigating Challenges and Steering Disputes Toward Alternate Resolution in Pakistan

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Abstract

As the formal conventional system of adjudication has failed due to the continuous growth of complexity, Backlog, and high volume of cases have made traditional adjudication slow and less effective. This research aims to highlight the failure of formal court processes. It explores how Alternative Dispute Resolution (ADR) can help meet the needs of today's legal challenges, like any organic entity to meet the litigation challenges of the modern era. The study uses the official judicial statistics of Pakistan. It compares Pakistan's situation with other countries that face similar problems. It includes an in-depth review of expert opinion regarding Alternative Forums for conflict resolution. Over and above that to investigate the existing legislation, Act, Ordinance, Protocol, Statute, By-law, and precedent in Pakistan to provide a solid ground for the implementation of the Alternative Dispute Resolution (ADR). The findings show that, currently, Pakistan has many laws about ADR. But its use is still limited. The biggest issue is the enforcement of ADR outcomes, especially arbitration awards. In conclusion will suggest that Pakistan must take clear steps to explore potential avenues for improvement by identifying "What" specific steps can be taken to enhance its implementation along with efficiency, potential, and predictability. These changes can reduce the burden on courts and make justice faster and more reliable.

Keywords

Alternative Dispute Resolution (ADR), Case Backlog, Islamic Law and ADR, Islamic Principles in ADR, Challenges to ADR, Law About ADR in Pakistan, Solution for Pendency of Cases in Pakistan

1. Introduction

Alternative Dispute Resolution (ADR) is a forum to settle the dispute between the parties outside the formal conventional adjudication system. The concept of Alternative Dispute Resolution (ADR) is not a new tool for resolving the disputes irrespective of the nature of the cases in Pakistan. It can be observed that even before the independence, the people of Pakistan were used to prefer these forums either by their own

will or due to the boundaries set by norms and traditions of societies as practiced in the form of *Jirga*¹ or *Panchayat*².

Interestingly, not only do the traditions of the people of Pakistan but Islamic law also prefers Alternative Dispute Resolution (ADR) over the formal conventional adjudication system and holds it as something more excellent than fasting, prayer, and giving in charity. Unfortunately, the people in

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authority use these traditional modes of Alternative Dispute Resolution (ADR) as a powerful tool for the purpose of controlling society or giving binding judgment which is totally against the Principle of Justice and *Shariah*³. These tools serve as means to fulfill the devil's desires by In the context of Pakistan, terms like *Sardar*, *Malik Mir*, *Panjait*, *Nawab*, *Chaudhry* and *Khan* in past. while the remaining damages have been caused by the British rulers by limiting the people to the formal conventional adjudication system. Over time and continuous growth of the literacy rate along with the factor of the world as a global village affects severely not only the public trust as a result of *Wani*⁴ or *Swara*⁵, *Nikah-e-Badal*⁶, along with Forced Marriages in traditional modes but also because of the failure of our currently existing formal conventional adjudication system due to the continuous growth of complexity, Backlog, and high volume of cases. It results in the lost confidence of the general public in the institutions of justice.

Now, it is again the perfect time to explore the true and actual concept of Alternative Dispute Resolution (ADR) as an effective, speedious, productive, and impactful system to meet the Litigation challenges of the modern era. Ultimately, enlightening the recognized mode for Alternative Dispute Resolution (ADR) under the Islamic law can be helpful to provide a strong base for the implementation of Alternative Dispute Resolution (ADR) in our legal system in daily day affairs to Professionals and Intense conflict through the existing constitution, legislation, Act, Ordinance, Protocol, Statute, By-law, and precedent of Pakistan along with potential avenues for improvement in the national legal framework due to the following reasons.

2. Backlog and High Volume of Cases & the Global Approach

Approximately for the last 77 years, the Pakistani legal system has solely relied on the adjudication system given by British rulers. Which currently fails to deliver efficient, affordable, and timely resolution justice to the parties in dispute because of the backlog of cases, lengthy trials, inaccessibility for many citizens, and expensive legal procedures. Supreme Court of Pakistan recently issued a report claiming that "There are around 2.22 million (2,221,512) cases pending before all the courts in Pakistan. Out of these, 0.35 million (347,173) cases are pending in the Constitutional benches of the Supreme and High Courts. At the same time, the bulk of the pendency lies with the district Courts, amounting to 82% of such cases." Meanwhile, a report published by "Law and Justice Commission of Pakistan" stated that "civil cases constitute 64% of the pending cases, while the remaining 36% comprise criminal cases at the level of the district judiciary. To resolve these bulk volumes of disputes, the formal conventional legal system in Pakistan employs a paltry 4,000 judges to attend

to the legal woes of this mammoth populace. [1] If we do the math, that would mean that a single judge for 62,817 Pakistanis". This thus calls for employing means that could rein in this burgeoning challenge lest our entire judicial system collapses. This thus calls for employing means that could rein in this burgeoning challenge lest our entire judicial system collapses. Hence, it is imperative to seek and employ alternative means for the resolution of disputes which is where Alternative Dispute Resolution (ADR) comes into play. Hence, Adopting Alternative Dispute Resolution (ADR) is crucial to ensure timely and accessible justice for all.

It is not only Pakistan, who facing this scenario. Many developed countries that have a well administrative justice system face similar circumstances but those countries that let their administrative justice system like any organic entity to necessitate adoption and development through the integration of alternative dispute resolution (ADR) via reform of the national legal system. Countries like Malaysia, Singapore, and the United Kingdom [2] were facing significant case backlogs like our beloved country Pakistan, but they adopted Alternative Dispute Resolution (ADR) mechanisms to address the issue. By integrating alternative dispute resolution (ADR) these countries in particularly Malaysia have achieved remarkable success in lowering delays [3]. Now it is the perfect time to adopt Alternative Dispute Resolution (ADR) for such we need to look upon the very basic and primary authorities as the Legal Foundation or the recognized basis in the legal framework, which can be helpful for the implementation of Alternative Dispute Resolution (ADR) means and methods. Let us consider the some of the expert's opinions around the globe regarding the case-backlogs and integration of Alternative Dispute Resolution (ADR) means and methods. Which may be helpful to understand the importance of Alternative Dispute Resolution (ADR) to present a clear image indicate that it is has become a crucial tool in addressing the challenges faced by overburdened judicial systems worldwide.

2.1. Mr. Justice Sir Gavin Lightman

He emphasized the importance of ADR in the UK's justice system. He noted that over the past 20 years ago in the following words: Let quote him.

"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 accept".[4].

2.2. Frank S. Bloch

He is one of well-regarded American legal scholar having expertise in legal education and Practice. He emphasizes that Alternative Dispute Resolution (ADR) means and methods as more efficient, flexible, and less adversarial to the formal conventional adjudication system. According to Bloch:

"ADR not only helps to reduce the backlog of cases but also promotes more cooperative approaches to resolving disputes. It offers an effective way to manage disputes in a way that is quicker, less expensive, and more flexible than court procedures." [5].

2.3. Lord Woolf (UK)

Henry Thomas (Harry) Woolf, is a prominent British judge and legal figure. He served as the Lord Chief Justice of England and Wales from 2000 to 2005. He in his speech mentioned that:

"ADR is a vital mechanism to reduce case backlog and improve access to justice, ensuring disputes are resolved efficiently and amicably outside the courtroom." [6].

2.4. Hon. Chief Justice Sundaresh Menon (Singapore)

Hon. Chief Justice Sundaresh Menon of Singapore has long advocated for the benefits of Alternative Dispute Resolution (ADR) over traditional court proceedings. He has stated:

"Singapore embraced ADR to decongest its courts, fostering a culture of mediation and arbitration, which has significantly improved case management and timely justice delivery." [7].

2.5. Tan Sri Dato' Cecil Abraham

He is distinguished senior partner at Cecil Abraham & Partners and re-known legal expert. He emphasized the importance of Alternative Dispute Resolution (ADR) over traditional court proceedings in the following words:

"He has stated that ADR offers a more efficient and cost-effective means of resolving disputes, thereby alleviating the burden on the formal court system." [8].

2.6. UNCTAD (United Nations Conference on Trade and Development)

Recent finding of the United Nations Conference on Trade and Development clearly give an undisputed remarks statement as follow: "Countries that integrate ADR into their legal systems experience reduced case backlogs, enhanced judicial efficiency, and strengthened public trust in the legal process." [9].

2.7. Gary Born (International Arbitration Expert)

In a international conference on International Arbitration Gary Born, an respectable International Arbitration Expert, who has following around the global legal system of arbitration stated that:

"ADR mechanisms like mediation and arbitration provide timely, cost-efficient, and amicable solutions to disputes, making them indispensable for overburdened judicial systems worldwide." [10].

2.8. Justice Mian Saqib Nisar (Pakistan)

Former Chief Justice of Pakistan, who give most detail and Comprehensive judgment regarding Alternative Dispute Resolution (ADR) particularly arbitration. He in Pakistan Judicial Conference appreciate the Alternative Dispute Resolution (ADR) in Pakistan with the following words: "ADR is essential for Pakistan to tackle the overwhelming pendency of cases and provide an alternate route to justice that is swift and affordable." [11].

2.9. Dr. S. I. Strong (Research Scholar on ADR)

Dr. S. I. Strong is a renowned research scholar specializing in Alternative Dispute Resolution (ADR) for under devolved countries in the following words:

"Many countries have successfully reduced judicial delays and improved efficiency by prioritizing ADR over traditional litigation." [12].

As re-known experts worldwide have consistently emphasized the shift from traditional adjudication to Alternative Dispute Resolution (ADR) as an effective solution to the challenges of case backlogs and judicial inefficiencies. It is time for Pakistan to follow suit and embrace ADR as a crucial tool to decongest its courts. It will make sure that ensure swift, accessible, and affordable justice for the people of Pakistan.

3. Overcoming Court Backlogs by UK, US, and Malaysia

As mentioned more than once that, Pakistan is not the only one facing such a huge number of pending cases and its administrative system has completely failed to provide fast, accessible, and affordable justice to its citizens. In the past countries like the United Kingdom, America, and Malaysia faced a similar situation but they realized the importance of Alternative Dispute Resolution (ADR) on time and know let us explore what is the position of these countries regarding pending cases and statistics about the case pending before the forum of Alternative Dispute Resolution (ADR).

3.1. United Kingdom

A recent research highlights that “more than 70% of those using mediation services will resolve their issues outside of a courtroom. In 2019, only 3% of the two million civil proceedings issued went to trial, showing the vast majority of claims can be resolved without the need for a judgment” [13].

3.2. America: American

The U.S. Department of Justice has significantly benefited from ADR. In 2017, voluntary ADR proceedings achieved a 75% resolution rate, while court-ordered ADR had a 55% resolution rate. These efforts saved millions in litigation costs, avoided nearly 2,000 months of litigation, and saved thousands of attorney days. ADR also contributed to narrowing trial issues and advancing settlements. This demonstrates how ADR has effectively reduced case backlog and improved efficiency in the U.S. legal system. [14].

3.3. Malaysia

Malaysia has effectively included ADR in its legal system. It uses public-private partnerships thorough training programs and by creating awareness of Alternative Dispute Resolution (ADR). They promote Mediation as a culturally accepted method. This has made ADR widely accepted and easier to enforce. In Malaysia, 46% of case pendency has been reduced due to the public's growing shift towards Alternative Dispute Resolution (ADR). This trend has helped resolve disputes faster, easing the strain on the traditional court system. The increased use of ADR methods reflects their effectiveness in handling legal matters more efficiently.

These statistic from the different countries let no space for doubt that the one and only option left with Pakistan is to shift its focus to Alternative Dispute Resolution (ADR). This can be achieved by different means such as the strength of the law dealing with Alternative Dispute Resolution (ADR) and shifting all these cases with or without the consent of parties to dispute to refer the conflict before the forum of Alternative Dispute Resolution (ADR).

4. Key Laws for Implementing ADR in Pakistan

Shifting the legal framework for administrative judiciary to Alternative Dispute Resolution (ADR) is very difficult at very short time through alternation and amendment of law but we can focus on those existing operative law, which Implementing Alternative Dispute Resolution (ADR) in its true sense will promote efficient dispute resolution. Shifting adjudication to Alternative Dispute Resolution (ADR) mechanisms can significantly reduce case backlogs. This approach ensures timely justice and eases the burden on courts. Let us consider some existing supreme laws of the

state i.e., constitution of Pakistan and general and specific provision of law.

4.1. Constitution of Pakistan

The Constitution of the Islamic Republic of Pakistan, 1973 is the supreme law of the land, declares Islam State religion under Article 02 while Article 02-A makes it mandatory that Pakistan shall be governed in accordance with the principles of Islam, particularly those outlined in the Quran and Sunnah. Article 31 states that the Government shall take steps to impose and promote the Islamic way of life in the individual and collective lives of its citizens. Article 37D under Chapter 02 of the Constitution encourages inexpensive and expeditious justice, aligning with the objectives of Alternative Dispute Resolution (ADR) by reducing delays and costs in litigation. While article 203D empowers to court to examine the law and to declare it repugnant to the Injunctions of Islam if it is inconsistent with the injection of the Quran and Sunnah and finally article 227 of the Constitution of the Islamic Republic of Pakistan, 1973 that all laws in Pakistan must be consistent with the teachings of Islam. It requires that no law can be made that is repugnant to the Quran and Sunnah and Islamic injunctions must be followed in legislation.

Now it is very clear that the state and legislative are duty-bound to promote and adopt means and methods recognized and advised by Islamic law whether it is daily day affairs or official Professional affairs including Administrative tasks, Governmental duties, corporate matters, and Official proceedings to Adjudication system including Alternative Dispute Resolution (ADR).

4.2. Islam and Alternative Dispute Resolution (ADR)

Islam is the complete code of life covering every possible aspect of human life from the matters of *Ibadah* to legal systems. Resolution of Conflict and disputes by the means and methods other than of formal conventional system is nothing new to Islam specifically to the Islamic procedural law for dispute resolution and the Alternative Dispute Resolution (ADR) acts as a fundamental principle of civil justice in Islamic law. It is because there is no doubt that ADR has Spiritual holiness. After all, it has been originated from the Quran and Sunnah, were used to play an act role in solving disputes of a Grave nature therefore Islam encourages dispute resolution Explicitly Alternative Dispute Resolution (ADR) is more appreciable than individual Prayers, Zakat, and Charity. It was the reason that Hazrat Umer R. A sent a letter to Abu Musa Al-Ash'ri R. A for a profound guide on the importance and breadth of amicable settlement in resolving disputes as Qadi (Judge) by emphasizing the value of reconciliation and compromise as effective tools in dispute resolution. The exact words of Umar are: “All types of compromise and concilia-

tion among Muslim are permissible except those which make haram anything which is halal, and a halal as haram". [15] Now we are clear that Islam give super importance to the institution of Administrative justices and other modes for dispute resolution such as Arbitration known as *Tahkim* or mediation known as *Sulh* is highly arouse as evident in the Islamic literature.

4.3. Recognized Mode, and Recommendation of ADR Under Islamic Law

The following are recognized form of alternative dispute resolution are acknowledged under Islam from the authoritative texts and practices established by Islamic jurisprudence consisting upon Arbitration, Mediation, Riwan-ul-Mazalim, Hisbah, Reconciliation, Negotiation, Community Consultation, and conciliation. Every single mode has its characteristic and unique ability to solve the dispute in case of conflicts.

4.3.1. Arbitration (Tahkim)

When parties in a dispute mutually agree to submit their conflict to one or more persons or judges of their own choice known as arbitrators. Where the decisions of those arbitrators are binding upon the parties, even the court can't interface in the finding or award rendered by Arbitrator except in Extraordinary circumstances. This method is often used in commercial disputes and personal matters. The authority is recognized based on the following text.

"If you anticipate a split between them, appoint an arbitrator from his family and another from hers. If they desire reconciliation, Allah will restore harmony between them. Surely Allah is All-Knowing, All-Aware". (4: 35, *Al-Quran*).

4.3.2. Mediation (Sulh)

It is voluntary advisory process, which is used to reach at an amicable settlement between the parties. In *Sulh* a neutral third party assists communication and negotiation between disputing parties to help them reach a mutually acceptable agreement. Mediation is encouraged in Islamic law as a means to maintain relationships especially in between the personal and family disputes. This approach to resolving disputes is acknowledged in the text below.

"The believers are nothing but brothers, so make peace between your two brothers and beware of Allah that perhaps you may be shown mercy". (49: 10, *Al-Quran*).

4.3.3. Riwan-ul-Mazalim

The basic key factor of an Islamic society is fair and impartial judicial administration along with the accountability of citizens along with the authorities. Under this branch, a public ombudsman under the state or community authority hears complaints against public officials. He then issued Binding decisions sometimes even non-binding decisions depending

upon the circumstance of each case. This mechanism ensures accountability and justice in cases of misconduct by officials. The recognition of this mode of complaints and dispute resolution is derived from the following holly text.

"Let there be a group among you who call 'others' to goodness, encourage what is good, and forbid what is evil-it is they who will be successful". (3: 104, *Al-Quran*). "The Prophet (peace be upon him) said, 'Whosoever from you sees an evil, let him change it with his hand, and if he cannot, then with his tongue, and if he cannot, then with his heart, and that is the weakest of faith.'" (Muslim Shareef).

4.3.4. Hisbah

Hisbah, a unique institute under the Islamic teaching is a method promotes good and prevents evil by appointing a designated official known as *Muhtasib*. He is to oversee market activities, moral behavior, and binding enforcement of public morality and justice. It will have a binding authority according to the jurist if by an official authority while if it is issue by a private person then it will be advisory in nature. The following authorities highlighting the importance of Hisbah.

"You are the best community ever raised for humanity-you encourage good, forbid evil, and believe in Allah". (3: 110).

The Prophet Muhammad (PBUH) Promotes Hisbah and assigned this as a duty, urging believers to maintain modesty, avoid harm, exchange greetings, and actively promote good while discouraging wrongdoing, as narrated by Abu Sa'id Al-Khudri. Narrated by Narrated Abu Said Al-Khudri [16].

4.3.5. Reconciliation (Wasaṭa)

One of the most common practices from the initial days of human existence on earth for dispute resolution is Reconciliation known under the Islamic law as *Wasatas*. It is an advisory process for a voluntary agreement that involves seeking the assistance of intermediaries. The intermediary helps reconcile differences between parties and restore relationships by resolving disputes between the parties. The recognition of this method is substantiated by the authoritative texts referenced herein.

I did not hear him (Peace be Upon Him) grant any concession concerning anything that the people say of lies except in three cases: reconciling between people, war, and what a man says to his wife, or a woman says to her husband. (Muslim Shareef).

"Shall I not tell you of something that is better than fasting, prayer and charity?" They said: Yes. He said: "Reconciling between two people (Al-Tirmidhi- hasan).

4.3.6. Negotiation (Mufawada)

It is a distinguished mode of Alternative Dispute Resolution (ADR). In *Mufawada* a direct discussion between parties takes place with aiming to reach an agreement or settlement without the involvement of a third party. This informal

method is often the first step in resolving disputes specifically disputes of personal matters such as family disputes. It is Advisory in nature, relying on mutual agreement between the parties to disputes. The following text serves as the foundation for recognizing this mode.

In 6 AH, Prophet Muhammad (peace be upon him) negotiated a reconciliation treaty with Quraish, facilitated by Suhail ibn Ummr. Through this negotiation not only prisoners were exchanged but a 10-year truce was established [17].

Negotiation with Abi Sufian during the Conquest of Mecca: Another is the negotiation, with Abi Sufian, the leader of Quraish, to end the fighting during the conquest of Mecca. Abi Sufian said: "O messenger of God, the best warriors of Quraish have been wiped out; there is no Quraish after this day." The Prophet, God's blessing and peace be upon him, replied: "He who shuts his door is safe, and he who enters the home of Abi Sufian is safe [18]."

4.3.7. Community Consultation (Shura)

A Shura council is form of committee, consisting upon members elected based on their expertise, integrity, and standing within the community. It is collective decision-making process, which is mostly advisory in nature subject to the circumstances of cases. In Shura community members discuss and deliberate on issues, disputes, and conflicts and makes effort to provide solutions that reflect the collective wisdom of the group along with norm and tradition of the society. This text forms the basis for the recognition of this method of dispute resolution.

It is out of Allah's mercy that you 'O Prophet' have been lenient with them. Had you been cruel or hard-hearted, they would have certainly abandoned you. So pardon them, ask Allah's forgiveness for them, and consult with them in 'conducting' matters. Once you make a decision, put your trust in Allah. Surely Allah loves those who trust in Him. (3: 159 *Al-Quran*).

4.3.8. Conciliation (Sulh al-Sitna)

Last but not least, Sulh al-Sitna, a form of mediation where the focus is on restoring harmony and resolving disputes amicably. It is often employed in family law to settle disputes and conflicts regarding divorce, inheritances, and the maintenance extra. In short, it is the advisory resolution promoting peace in between the community without invoking the formal conventional adjudication process. This method of dispute resolution is recognized in accordance with the text below.

Make good that which is between them with justice and be equitable. Surely, Allah loves those who are equitable." (49: 9, *Al-Quran*).

"There is no good in much of their private conversation except for someone who enjoins giving of charity, good deeds generally or making good that which is between people." (4: 114).

"The most beloved of people to Allah are those who bring the most benefit to others." (Sahih al-Jami', *Al-Quran*).

These are the Major modes of alternative dispute resolution available under Islamic law and interestingly, Islamic law appreciates these modes more than the formal conventional adjudication system because of its private and flexible nature. ADR provides parties the opportunity to exercise greater control over the way their dispute is resolved than would be the case in formal court litigation. it's usually faster and less stressful than going to court, Parties in an ADR proceeding have control over how proceedings should occur and which methods should be used.

5. Pakistani Statute Dealing ADR

It will be a misrepresentation and ignorance of ground reality if one claims that there are no rules and regulations relating to alternative dispute resolution (ADR) in Pakistan's legal framework. Unfortunately from the individual to the government, it has been ignored either deliberately or unknowingly in the past and it's taken too long to appreciate and avail the application of Alternative Dispute Resolution (ADR) with its spirit. As a result, the number of pending cases before our judiciary increased day by day, and finally the judicial system of Pakistan collapsed. Even still the large number of people used to refer their disputes to the formal conventional system. Let us explore the current rules and regulations under the Law of Pakistan available for resolution of conflicts thorough Alternative Dispute Resolution (ADR) as some of primarily important are given below:

5.1. Civil Procedural Code CPC

There are different sections along with rules and regulations under the civil Procedural Code to solve the disputes of a civil nature among the conflicting parties. Some of the said rules and regulation are given below:

5.1.1. Section 89A

Section 89-A of the Civil Procedure Code (CPC) of 1908 in Pakistan allows courts to use Alternative Dispute Resolution (ADR) methods to resolve civil or commercial cases.

5.1.2. Order X, Rule 1A

Order X, Rule 1A of the Code of Civil Procedure (CPC) in Pakistan allows the court to adopt any lawful procedure or Alternative Dispute Resolution (ADR) method to settle a dispute.

5.2. Criminal Procedure Code CrPC

The concept of Alternative Dispute Resolution (ADR) in Pakistan is usually associated with a dispute of a civil nature but there are certain provisions under Pakistani law that allow

for the use of ADR in criminal cases as well.

Section 345 of the Criminal Procedure Code (CrPC)

This section gives us the framework for the settlement of certain criminal cases through compromise from outside the court. These compromises can be made through different mode of Alternative Dispute Resolution (ADR) such as Mediation, Negotiation, Conciliation, and Arbitration.

5.3. Other Provision Dealing with ADR

There are following general and specific provision relating to the dispute resolution by the application Alternative Dispute Resolution (ADR) mechanism.

5.3.1. Arbitration Act 1940

The Act provides for three classes of arbitration: 1) arbitration without court intervention (Chapter II, sections 3-19); 2) arbitration where no suit is pending, (but through court) (Chapter III, section 20); and 3) arbitration in suits (through court) (Chapter IV, sections 21-25).

5.3.2. Commercial Dispute

The Alternative Dispute Resolution Act, 2017 provides a simple and efficient way to resolve commercial disputes in Pakistan. It validates methods like mediation, conciliation, and arbitration in commercial disputes to solve the conflict without suffering from lengthy court cases. The Act saves time and reduces costs for businesses. It ensures confidentiality, protects business interests, and allows parties to choose neutral mediators or arbitrators.

5.3.3. Family Law

Sections 10 and 12 of the Family Courts Act, 1964.

5.3.4. Custom Law

Section 195C of Customs Act, 1969 and chapter XVII of the customs rules, 200.

5.3.5. Law of Evidences

Article 163 of the Qanun-i-Shahadat Order, 1984 (decision on oath).

5.3.6. Tax Law

Section 134A of the Income Tax ordinance, 2001 and rule 231 C of the Income Tax Rules, 2002 and Section 47A Sales Tax Act 1990 and Chapter X of the Sales Tax Rules, 2004.

5.3.7. Punjab Alternate Dispute Resolution Act 2019

This act aims to establish a strong system of ADR for both civil and criminal disputes all over the Punjab. It was for the purpose to prioritize inexpensive and speedy justice through Alternative Dispute Resolution (ADR). The Act

mandates referring cases listed in Schedules I and II to ADR, ensuring eligible disputes are resolved through alternative methods.

5.3.8. Khyber Pakhtunkhwa (KPK) ADR Act of 2020

The Khyber Pakhtunkhwa (KPK) ADR Act of 2020 provides a clear legal framework for resolving disputes through Alternative Dispute Resolution (ADR). It aims to improve access to justice in the province. The Act encourages parties to resolve conflicts actively. It also expands the types of disputes that can be settled using Alternative Dispute Resolution (ADR).

5.3.9. ADR Accreditation Rules 2023

It is for the purpose of establishing a well-structured framework for accrediting alternative dispute resolution professionals in Pakistan. ADR Accreditation Rules 2023 will ensure high standards and professionalism in Mediation and Arbitration. It is latest documents that set rules and provide criteria for eligibility, training, and certification. It is set a general standard along with key responsibilities and conduct expected of accredited individuals.

5.3.10. Alternative Dispute Resolution (Accreditation) Rules, 2023

These rules aim to improve mediation quality in Pakistan. It will ensure only qualified individuals can mediate disputes. The rules cover education, experience, and training requirements.

The above-mentioned provision makes it very certain that all almost every type of dispute can be through the Alternative Dispute Resolution (ADR) and these provisions are not for the purpose of enlarging the number of Sections or increasing the weight of books but to implement and use them. These cases include but are not limited to the following categories only, which are excluded from the purview of ADR under the legal framework of Pakistan.

6. Exclusions from Alternative Dispute Resolution in Pakistan

Alternative Dispute Resolution (ADR) is although an effective, impactful, and speedy in nature but we can't subject every single dispute and case under the umbrella of Alternative Dispute Resolution (ADR) due to the exceptional nature of these dispute such as they require unavoidable judicial intervention, Essential prosecution, and judicial oversight to safeguard public interest. These cases include but are not limited to the following categories only which are excluded from the purview of ADR under the legal framework of Pakistan.

6.1. Non-compoundable Criminal Cases with Severe Punishments

Criminal cases which are not compoundable in nature and may have punishment more than seven years specifically cases involving heinous crimes such as Honor-killing, Rape (involving Minor), Terrorism, and Blasphemy. These are not subject to Alternative Dispute Resolution under our legal system because they are require prosecution under the Pakistan Penal Code (PPC) and proper trial in criminal courts of the land.

6.2. Constitutional Rights and Validity of Laws

Disputes regarding constitutional rights or matters regarding the validity and constitutionality of laws. It is because these fall under the jurisdiction of the higher judiciary, High Courts, and Supreme Court of Pakistan such as the Enforcement of fundamental rights.

6.3. Statutory Interpretation and Election Disputes

Disputes, which require the interpretation of statutory provisions or laws because it is limited to the domain of constitutional benches of the Supreme Court such as Election disputes under the Election Act, 2017.

6.4. Public Interest and Collective Rights Disputes

Dispute that must be refer to the court due to the factor of public interest and enforcement of public rights or the collective interest of society such as Environmental protection lawsuits.

6.5. Jurisdiction of Anti-corruption Bodies

Disputes and Cases falling under the jurisdiction of anti-corruption bodies like the National Accountability Bureau (NAB) or Federal Investigation Agency (FIA) are excluded. It is because these are criminal in nature and require strict legal scrutiny. Which is not possible by the application of Alternative Dispute Resolution (ADR).

6.6. Insolvency, Bankruptcy, and Company Liquidation Matters

Generally, those disputes involving insolvency, bankruptcy, or liquidation of companies specifically those companies that are public in nature. It requires judicial oversight as per the Companies Act, 2017 and related laws due to the factor of accountability.

These matters can't be subjected to Alternative Dispute Resolution but those that can be resolved outside the court, if

prevented from reaching the court. The former matter will not require an adjudication system having the same or higher qualities of ADR and can be resolved by the currently overburdened courts in the shortest possible period due to the reduced caseload.

7. Challenges in Implementing Alternative Dispute Resolution (ADR)

If the Alternative Dispute Resolution (ADR) is such a good forum than why not Pakistan is implementing it despite its numerous advantages? it is because stems from a combination of structural, institutional, and cultural challenges that hinder its widespread adoption in Pakistani legal system. No matter how effective the legislation is for regulating the Alternative Dispute Resolution (ADR) forum, it will fail unless and until the following challenges are addressed.

7.1. Undermining the Effectiveness of ADR

Generally, the Pakistani legal system from the supreme judiciary to private entities undermines the true effectiveness of the Alternative Dispute Resolution (ADR) forum. They treat it as a supplementary mechanism rather than a primary tool for resolving disputes.

7.2. Cultural Role

Our traditional dispute resolution mechanisms such as *Jirga* and *Panchayat* were used a tools by the person in authority to render some decisions against the Basic principle of justice such as *Nikah-Badala*, and use these platforms to control their subordinate. Therefore, now people do not want such alternative dispute regulations to solve their conflicts.

7.3. Non-protection of Public Rights

There is a very strong narrative that the Alternative Dispute Resolution (ADR) forum may not adequately safeguard the rights of the public. Particularly in criminal cases where public interest is not only in question but paramount and requires enforcement.

7.4. Disregarding Victims

The current system of Alternative Dispute Resolution (ADR) processes may overlook the needs and rights of victims due to the un-expertise and lack of well-formed structure of Alternative Dispute Resolution (ADR). As a result, it may solely focus on expediency and negotiation between the accused and prosecution instead of satisfaction in the form of punishment for the accused.

7.5. Compromising Constitutional Rights of Accused

In currently existing traditional forum of Alternative Dispute Resolution (ADR) practices may infringe upon the constitutional protections afforded to accused individuals. It is because the elders in these forum usually know to parties and may judge them on their previous conduct and relation towards them.

7.6. Excessive Court Involvement

Courts in Pakistan often interfere in Alternative Dispute Resolution (ADR) even in the arbitration. Where the decision is given by the expert of the field, interestingly these arbitrators are elected by the parties themselves. Thus courts in Pakistan undermines the autonomy of Alternative Dispute Resolution (ADR) and as a result the properly decided case is dragged for years by the decree-defaulter in the courts of Pakistan.

7.7. Reluctance of Legal Professionals

Many legal professionals such as lawyers perceive Alternative Dispute Resolution (ADR) as a threat to their earnings. Such a perception contradicts the ground realities as fully understanding and effectively working with these forum could actually increase their earnings.

7.8. Limited Training

The majority of legal practitioners lack training in ADR methods, which affects their ability to guide clients toward these mechanisms effectively.

7.9. Trust Deficit in ADR

The Parties to the dispute often mistrust Alternation Dispute Resolution (ADR) due to the fear of bias or undue influence it is because the judges included in ADR are usually Private judges.

Addressing these challenges is super important to enhance the role of Alternation Dispute Resolution (ADR) in Pakistan. Once the legal system of Pakistan overcomes these challenges, it will reduce the case backlogs in the judicial administrative system of the country. All those subject-matter that can't governed by Alternation Dispute Resolution (ADR) can even be resolved by our formal conventional adjudication system, which is currently failing to address those due to overburden on the courts.

8. Recommendations Implementing Alternative Dispute Resolution in Pakistan

Finally, now we are in the position to makes recommen-

dations to overcome the discussed challenges and to present a perfectly true image of the Alternation Dispute Resolution (ADR). These recommendations aim to bridge the gap between theory both positive and negative and the implementation of Alternation Dispute Resolution (ADR) as a generally acceptable mode and method for the resolution of conflicts between the private parties, parties with the government, and in-between the governmental institutes. By addressing these barriers, Pakistan will not only ensure a trusted and effective system but will reduce the burden of case backlogs. The following recommendations are based on a combination of the author's personal observations in the field of Alternation Dispute Resolution (ADR) from the last two years. The author's personal observations are company by extensive consultations with legal experts such as lawyers, arbitrators, scholars, Police officers, and judges for the purpose of identifying practical solutions to the challenges facing ADR in Pakistan. These recommendations are the following;

8.1. Obligatory Alternative Dispute Resolution (ADR) Forum

One of the most effective, Rapid, and practical ways to implement Alternative Dispute Resolution (ADR) without any amendment or lengthy legal procedure is to make obligatory Alternative Dispute Resolution (ADR) forum in certain dispute for which clear rules and regulations already exist within the law to resolve these conflicts efficiently.

For example: All commercial disputes must be subject to the forum of Arbitration.

8.2. Application of Section 345 of CrPC in Minor Offenses

Section 345 of the Criminal Procedure Code (CrPC) must be applied between the parties for 30 days before resorting to the formal conventional adjudication system in offenses that carry a punishment of less than 7 years or are compoundable in nature.

For example: Punishment for hurt by rash or negligent act under section 337-H of the Pakistan Penal Code.

8.3. Promoting ADR Awareness and Reflection Period Before Court Filings

Inform the litigants about ADR, its advantages, and how it differs from the formal adjudication system. Provide them with 14 days to consider using ADR before permitting them to file a case in court.

For example: In a property dispute between neighbors over a boundary wall and they want to file a lawsuit in court. In such a scenario the court must inform both parties about the benefits of ADR, and explain how ADR differs from formal litigation. Both parties are then given 14 days to reflect and

decide whether they want to resolve the issue through ADR before proceeding to file a formal case in court.

8.4. Strengthening the Legal Framework by Uniform Regulations

The state must be strengthening the Legal Framework of Alternative Dispute Resolution (ADR) through uniform regulations throughout the country. These uniform ADR regulations will provide people with a clear understanding of the process, fostering trust and encouraging its use for resolving disputes.

For example: In a landlord-tenant dispute over unpaid rent. In the case of uniform ADR regulations it will be helpful for both parties to understand the process clearly along with their rights and the steps involved.

8.5. Restriction on Jirga and Panchayat Authorities

To restore public trust and ensure fair justice, restrictions must be placed on the authority of *Jirgas* and *Panchayats*. It is because these traditional customs may lead to unjust outcomes and can be used as tool for the people in authority to control subordinate one. Such restriction can be helpful in restoring which public trust and will ensure fair justices.

For example: restrictions must be put upon the practices like *Nikah Badala*, *Sawara*, and forced marriages of accused with victims.

8.6. Training Legal Professionals

Bar council and higher education commission of Pakistan with collaboration with law schools must introduce the course regarding the Alternative Dispute Resolution (ADR). Regular training sessions should be conducted for practicing lawyers, judges, and arbitrators extra to enhance their understanding of the legal framework and to improve their professional skills as legal professionals.

For example: The lower judiciary in Pakistan typically handles arbitration proceedings as civil cases, which results in discouraging those who are willing to apply Alternative Dispute Resolution (ADR). Such practice highlights the need for specialized training and courses on ADR for legal professionals.

8.7. Limit the Appeal to Matters Decided by ADR Forums

The judicial administrative system must limit the number of appeals, reviews, and revisions on disputes settled by the Alternative Dispute Resolution (ADR) forum. Appeal, review, and revision may only be entertained in exceptional circumstances such as where an error in the proceeding or judgments is floating over the surface of the record⁷.

For example: appeal, review, and revision can only be entertained in case of huge misconduct in proceeding by the Alternative Dispute Resolution (ADR) forum such as passing judgment against a person without giving him an opportunity to present his case before them.

8.8. Institutional Support

The legislative and Supreme Court should make sure that all the departments and government institutes shall work in aid of the Alternative Dispute Resolution (ADR) forum.

For example: In a commercial dispute between a private partner and the government regarding a public-private partnership project, the Ministry of Finance must aid in the form of immediate payment to a private partner if the arbitrator gives an award in his favor.

8.9. Incentivizing Legal Professionals

The government must take the initiative to highlight the potential financial and professional benefits of Alternative Dispute Resolution (ADR) for legal practitioners. The government encourages them to integrate these methods into their practice by awarding them a financial award even for a temporary period.

For example: The government may introduce a scheme where lawyers who successfully resolve cases through ADR methods such as mediation or arbitration will be rewarded with financial incentives or tax benefits.

8.10. Promoting Awareness and Accessibility

The government must launch public awareness campaigns to educate litigants about the benefits, processes, and availability of Alternative Dispute Resolution (ADR) mechanisms. This can be achieved by Establishing ADR centers across the country.

For example: The government shall launch a nationwide campaign using electronic and print media along with community outreach to inform the public about ADR options such as mediation and arbitration.

By implementing these recommendations, Pakistan can overcome the challenges hindering the adoption of Alternative Dispute Resolution (ADR) forums in the shortest possible period. As a result will have a system that has the ability to provide a faster, cost-effective, and culturally appropriate alternative forum to resolve our conflicts and disputes. The implementation of Alternative Dispute Resolution (ADR) mechanisms in Pakistan will offer a significant opportunity to enhance the efficiency and accessibility of justice to every single person. Alternative Dispute Resolution (ADR) has the potential to significantly reduce the burden on the formal judiciary administrative system and will alleviate the case backlogs and high volume of cases.

9. Conclusion

The research highlights that the formal adjudication system has proven inadequate in delivering timely and efficient justice, resulting in a significant loss of public trust. It is not strange for a country to face the case backlogs, but those countries that adopt legal reform as a necessity for the complexities of modern govern systems pop themselves out as demonstrated by America, the United Kingdom, and Malaysia. Now it is the perfect time for Pakistan to shift its litigation system toward Alternative Dispute Resolution (ADR) mechanisms as the global approach. It would be completely wrong to say that this requires a huge reform in our legal work. No, the Pakistani legal system urgently needs to work and focus on the existing law for Alternative Dispute Resolution (ADR) through precedent and other means by overcoming the challenges causing hurdle in the implementation of Alternative Dispute Resolution (ADR) mechanism. Above to that we need to press that the Islamic provision and ruling toward Alternative Dispute Resolution (ADR) It is not only our obligation to follow, but the Muslim jurists have done great work regarding it. Therefore, the legislature will not need to frame new rules and regulations, which will save time and be acceptable to every Muslim without any objection. Ultimately, It will not only be helpful in restoring public trust in ADR but will also reduce the large number of pending cases before the judicial administrative system of Pakistan.

Abbreviations

ADR	Alternative Dispute Resolution
CPC	Civil Procedure Code
CrPC	Criminal Procedure Code
PPC	Pakistan Penal Code
IIUI	International Islamic University Islamabad
UNCTAD	United Nations Conference on Trade and Development
ITA	Institute for Transnational Arbitration
NAB	National Accountability Bureau
FIA	Federal Investigation Agency
KPK	Khyber Pakhtunkhwa
ORCID	Open Researcher and Contributor ID

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Author Contributions

Shahsawar Khan is the sole author. The author read and approved the final manuscript.

Conflicts of Interest

The author declares no conflicts of interest.

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Biography

Shahsawar Khan is a legal professional and researcher with an LLB (Honors) from the Faculty of Shariah and Law, International Islamic University Islamabad (IIUI). He is a member of the Khyber Pakhtunkhwa Bar Council and the Institute for Transnational Arbitration (ITA), USA. His academic and professional focus lies in legal reform and alternative dispute resolution, particularly in the context of improving access to justice. He is currently based at Suite D-6, JK Shopping Mall, Arbab Stop, University Road, Peshawar, 25000, Khyber Pakhtunkhwa, Pakistan.

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- 1 A Jirga is a traditional assembly of leaders in Pakistan and Afghanistan that resolves disputes and makes decisions based on local customs and tribal laws.
- 2 A panchayat is a traditional village council in South Asia, particularly in India and Pakistan, that adjudicates disputes and makes decisions based on customary laws and local practices.
- 3 Shariah refers to the Islamic legal system derived from the Quran and the Hadith, encompassing laws, ethics, and guidelines that govern the moral, social, and legal aspects of life for Muslims.
- 4 Wani is refers to a traditional practice in some South Asian cultures, particularly among certain tribal communities, where a girl is married off as compensation for a crime committed by her male relatives, often without her consent.
- 5 Swara is a traditional practice in Phushton society Pakistan and Afghanistan where girls or women are exchanged to settle disputes, often related to honor or blood feuds.
- 6 Nikah-e-Badal is a concept, an agreement to marry their children to each other in exchange for a certain benefit or compensation. This arrangement is usually decided by the elders of a Jirga or Panchayat, often without the consent or will of the couple involved.
- 7 Court is not vested with power to undertake reappraisal of evidence in order to discover any error/infirmary in the award as per 2003 YLR 2596, 2008 CLC 798, and 2017 CLC 588.