

Exploring The Efficacy of Mediation in Pakistan's Conflict Resolution Landscape

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Abstract

This article explores the role of mediation in Pakistan as an important alternative dispute resolution (ADR) method to address the inefficiencies of litigation, such as delays, high costs, and adversarial processes. With a growing backlog in the judiciary, mediation presents a more cooperative, cost-effective solution, particularly beneficial in a commercial and civil context. While mediation is culturally compatible with traditional Pakistani dispute resolution methods like jirgas and panchayats, its formal adoption remains limited. Legislative efforts, including the Alternative Dispute Resolution Act of 2017, have laid a foundation for mediation, yet practical challenges hinder its full implementation. The whole world is adopting mediation and limiting dependence on courts. This study examines Pakistan's mediation landscape, highlights the benefits of international frameworks like the Singapore Convention, and advocates for making mediation mandatory in commercial disputes. Through a qualitative analysis of mediation practices, obstacles, and global best practices, the study offers insights to advance mediation as an accessible and effective dispute resolution method.

Keywords: Mediation, Commercial disputes, Family Courts, Alternate dispute resolution

Significance of Study

The study holds significance in addressing the critical need for an efficient mediation mechanism in Pakistan that aligns with international standards, attracts foreign investment, and supports commercial growth. By examining the legal framework, institutional structures, and challenges of mediation in Pakistan, the research underscores the potential for mediation to reduce case backlogs, enhance trust in the judiciary, and foster a collaborative business environment. The findings contribute to the academic understanding of mediation in Pakistan and present practical solutions for developing mediation as a culturally relevant and systematic approach to dispute resolution.

Research Methodology

This research utilizes a qualitative approach to analyze the current state of mediation in Pakistan. By examining legislative texts, judicial

precedents, and relevant literature, it provides an in-depth understanding of the legal framework and challenges to implementing mediation. The study also includes a comparative analysis of international best practices, particularly the Singapore Convention, to propose practical recommendations for Pakistan. This methodology ensures a comprehensive exploration of mediation's potential, grounded in both theoretical and empirical perspectives, to inform policymakers and practitioners on strengthening ADR mechanisms in Pakistan.

Introduction

A peaceful settlement is better than a good lawsuit. Humans, as inherently social beings, interact with one another and frequently engage in relationships that give rise to legal obligations and rights between parties. In these interactions, disputes can often arise when one or more party's act in bad faith, leading to unresolved conflicts. Traditionally, these disputes have been resolved through litigation (court proceedings) or non-litigation methods. Ideally, litigation should be a last resort; however, the practicalities of the court system in Pakistan, such as prolonged delays, high costs, and adversarial proceedings, often make litigation an ineffective solution for timely and affordable conflict resolution. This inefficiency has contributed to a growing backlog of cases in Pakistan's Supreme Court, impeding the provision of quick and economical justice. There are many cases that are pending in courts Pakistan. Mainly the commercial or civil suits takes a lot of time when it comes to their resolution.

Against this backdrop, commercial mediation emerges as an essential alternative, offering a flexible, less adversarial, and cost-effective approach for resolving business disputes. Mediation can not only reduce litigation costs but also foster better business relationships by focusing on cooperation and consensus. In Pakistan, the complexities of its legal system and an increasingly interconnected business environment have heightened the need for effective dispute resolution mechanisms that support commercial growth. Although mediation aligns well with Pakistan's cultural inclination toward reconciliation (evident in traditional dispute resolution practices like jirgas and panchayats), its adoption has been slow. Legislative efforts, including the Alternative Dispute Resolution Act of 2017, aim to institutionalize mediation, yet significant challenges remain in its practical implementation and widespread acceptance.

This article explores the Pakistani landscape of commercial mediation, analyzing its legal framework, institutional support, and challenges. By examining international best practices, it aims to propose improvements that can make mediation a robust and culturally relevant method of dispute resolution in Pakistan. Such advancements could ease the burden on the judiciary, facilitate commercial harmony, and encourage foreign investment. The study's qualitative approach provides an in-depth

understanding of mediation practices, and the obstacles faced, contributing to both academic literature and practical applications. As Pakistan's business environment continues to evolve, fostering a business community well-versed in alternative dispute resolution mechanisms, especially mediation, could lead to a more collaborative and growth-oriented economy.

Laws and Rules on Mediation

Mediation has transformed over time and can also be attributed to both domestic as well as international stimuli in Pakistan. The Small Claims and Minor Offences Courts Ordinance, 2002 was amongst the first formal acknowledgements of mediation. The statute gave judges the power to order non-binding mediation on various grounds and made settlements reached through this Process enforceable, keeping a norm of including ADR in the mainstream. The second important Legislative development was the Alternative Dispute Resolution (ADR) Act of 2017, which in Addition to an arbitration provision laid down a comprehensive legal framework on mediation and other ADR mechanisms. The Act provided a general framework for mediation, enhanced the Ability of courts to refer cases to mediation and formalized mediated settlements. Moreover, various provincial laws have fostered mediation, and The Sindh Alternative Dispute Resolution Act 2013 is one such law which works to promote the use of alternate dispute resolution Mechanisms especially in civil and commercial matters. Nonetheless, the situation seems unclarity concerning traditional systems like jirgas and panchayats in this legal framework; with ongoing Debates on whether they are legally recognized or not

Mediation Ordinance in Pakistan

Pakistan's mediation structure evolved in the last two decades. One of the first legislative steps to give some recognition in formal judicial system was amendment brought about Section 89-A of Code of Civil Procedure, 2002. This amendment enabled courts to refer cases to mediation at any point; however, the provision was limited by no guidelines on how mediations could be conducted, and qualifications for mediators or enforceability of settlements. The introduction of the small claims and Minor Offences Courts Ordinance (2002) then served to entrench mediation with small claims courts even being given power to refer cases for mandatory or voluntary mediations. The ordinance did not have much of an effect because there was limited public awareness and resources fulfilled. The same trend of democratization is apparent in many other laws and regulations (e.g. if Local Government Ordinance 2001, introduced Muslahathi Committees for the purpose to incorporate traditional dispute resolution within the formal legal system). While these committees were useful in resolving disputes of a relatively small nature, they faced problems with maintaining consistency to rulings made both between themselves and the courts as well as concerns

regarding their legal authority (in terms of being an arbitration does not state body), impartiality from one another and enforcement

Mediation in Commercial Disputes in Pakistan

Mediation, a vital alternative dispute resolution (ADR) method, has gained traction in Pakistan as a mechanism to streamline commercial dispute resolution and improve the business environment. With international trade and foreign investment being key economic priorities, Pakistan's accession to the Singapore Convention on Mediation (2019) offers notable advantages. The Convention, formally known as the United Nations Convention on International Settlement Agreements Resulting from Mediation, enables parties from member countries to seek court orders to enforce mediated settlement agreements across borders. This framework enhances the enforceability of mediated agreements between Pakistani enterprises and their foreign counterparts, fostering trust and efficiency in cross-border trade. Several of Pakistan's prominent trading partners, such as China, have signed the Singapore Convention, with nations like Qatar and Singapore having ratified it. This growing international support for the Convention highlights the potential benefits of Pakistan's accession, especially in facilitating international business transactions. By joining the Convention, Pakistan could make it simpler for foreign enterprises to resolve commercial disputes with local firms, boosting Pakistan's appeal as a destination for investment and trade.

Article 8 of the Convention allows Contracting Parties to make reservations when necessary. Such reservations provide countries with the discretion to exclude certain types of mediated agreements from the Convention's scope, particularly those involving state or government entities. For Pakistan, it would be prudent to adopt such reservations, especially concerning matters of national security and state interests. These targeted reservations would enable Pakistan to benefit from the Convention while protecting its sensitive areas from unintended exposure.

The Singapore Convention presents an opportunity for Pakistan to strengthen its business environment, attract foreign investment, and enhance dispute resolution capabilities. Through strategic reservations, Pakistan can protect its national interests while reaping the benefits of streamlined cross-border mediation. Simultaneously, formalizing mandatory mediation domestically would encourage the effective resolution of commercial disputes, aligning Pakistan with global ADR practices and enhancing its economic appeal.

Role of Mediation Centres in Family Disputes

Mediation centres have become essential for resolving family disputes by providing a less adversarial alternative to traditional litigation. Since the late 19th century, the popularity of mediation centres has grown globally, with several countries giving them statutory recognition. Australia,

for instance, mandates mediation before court intervention in family disputes. This international trend demonstrates the preference for mediation in resolving sensitive family issues. Mediation centres offer a platform that emphasizes confidentiality and privacy, key elements that make the process particularly effective for family matters. This approach is instrumental in dealing with cases of divorce, child custody, maintenance, dowry-related conflicts, domestic trauma, and other family issues.

In Pakistan, mediation centres and NGOs such as The Asia Foundation and the Riphah Mediation Centre in Islamabad provide valuable services in family dispute resolution. These centres operate under state laws and adhere to international best practices, ensuring that the process meets modern standards. However, traditional and non-regularized methods, like jirgas and panchayats, remain widespread in Pakistan and can lead to adverse effects. In contrast, state-regulated centres have a structured approach to conflict resolution. The enactment of the Alternate Dispute Resolution Act, 2017, has expanded the role and scope of mediation centres in Pakistan, allowing for a more systematic approach to family disputes.

Mediation centres address various challenges associated with formal court litigation, which generally involves four stages: society, police, lawyers, and courts. In Pakistan, several hurdles exist at each stage, such as a lack of public awareness about human rights, bureaucratic inefficiencies, and outdated customs. These obstacles delay justice and make it difficult for people, especially women in rural areas, to pursue legal remedies. Women in these areas often face additional barriers rooted in conservative traditions that confine them to their homes. Any woman who challenges these customs to seek justice may encounter backlash, making the litigation process even more challenging. In such cases, mediation offers an accessible and supportive alternative to navigate these barriers and seek justice.

Research has shown that mediation has a high success rate in resolving family disputes, including divorce, child custody, and issues of domestic abuse. Mediation not only reduces the burden on courts but also fosters a collaborative environment that helps parties reach a dignified resolution. Family disputes, particularly in matters of divorce, child custody, and maintenance, often involve deeply personal issues. Mediation provides a space that respects the emotional needs of the parties, as opposed to the rigid and public nature of court litigation. By allowing parties to avoid lengthy court procedures, mediation preserves their privacy and dignity.

Mediation centres play a pivotal role in family dispute resolution by offering an alternative to the complexities and adversities of traditional litigation. Their emphasis on privacy, confidentiality, and flexibility makes them particularly suited to handle family matters that are highly personal and emotionally charged. With the backing of the ADR Act of 2017, mediation centres in Pakistan are well-positioned to continue providing effective

resolutions for family conflicts, enabling parties to reach amicable agreements while preserving their dignity and rights.

Pendency in Lahore High Court

More than one million cases pending before district judiciary. A physical audit has revealed that over one million cases are pending before the Lahore High Court and the district judiciary of Punjab, according to a press release issued by the LHC.

The audit, conducted under the direction of Chief Justice Aalia Neelum, “marks the first time that a comprehensive physical audit of pending cases has been carried out in the Lahore High Court’s history”, the statement claimed. The interim report shows that around 103,000 cases remain unresolved in the LHC, including 65,975 cases at the principal seat in Lahore.

Pendency in Bahawalpur, Rawalpindi and Multan

This backlog includes 11,836 civil cases, 25,312 criminal cases, 26,175 writ petitions, and 2,652 commercial and tax cases. Also, 9,703 cases are pending in Bahawalpur, 22,675 in Multan, and 5,343 in Rawalpindi benches of the high court. The district judiciary of Punjab faces an even greater backlog, with over 1.4 million cases still awaiting resolution, including 1.19 million civil cases and 217,000 session cases. “These numbers highlight the need for effective measures to reduce the backlog of cases and ensure timely justice for all litigants,” the press release added. A comprehensive plan to address the backlog is expected to be finalised in an upcoming meeting of the LHC’s administration committee

Pendency in Supreme Court

ACCORDING to recent reports, the new chief justice has set about implementing a recently adopted plan for clearing the backlog of thousands of cases pending before the apex court. This Thursday, he formed several committees to devise a plan to clear some 60,000 pending cases, of which more than 3,000 pertain to revenue and taxation

Pendency in District Courts

A report earlier this year revealed that the pendency of cases at the district court level had touched 1.86m, accounting for 82pc of all pending cases in the Pakistani judicial system. According to the report issued in February, civil cases constitute 64pc of the pending cases in the district judiciary, while the remaining 36pc comprise criminal cases. Regrettably, in the two and a half years since the current regime took control of legislation, it has done nothing to address the problem

Turkey Cope with Pendency of Cases using Mediation

According to daily statistics on the e-justice system, approximately 2,579,000 cases are pending in civil courts. The Ministry of Justice has taken significant steps to decrease this burden. The Law on Mediation in Civil Disputes nr. 6325, prepared by considering the UNCITRAL Model Law and

the EU regulations, was put into effect in 2013. The statistics released by the Ministry of Justice show that 963,990 disputes were referred to voluntary mediation between November 2013 and May 2022, and the rate of settlement is 99%. A new era began in January 2018 with the launch of mandatory mediation for certain disputes in which resorting to mediation is a pre-condition to filing a lawsuit in Turkish courts. Since its implementation, 1,481,761 files in labour disputes, 483,702 in commercial disputes, and 150,297 in consumer disputes have been referred to mandatory mediation. The success rate for those files is also significant: the settlement rate in labour disputes was 58%, while this rate was 52% in commercial and consumer disputes. Considering these promising results, one can conclude that mandatory mediation helps to reduce the courts' workload and raise awareness for a culture of resolution. Türkiye ratified the Singapore Convention on Mediation, which was entered into force for Türkiye in April 2021. As announced in the Foreign Investment Strategy Plan, Türkiye aims to increase the use of mediation for investment disputes.

The other side of the coin is the establishment of the Istanbul Arbitration Centre ("ISTAC") in 2015. To provide efficient dispute resolution services for both domestic and international parties, ISTAC brought about substantial changes in the field of arbitration in Türkiye. The ISTAC Arbitration Rules, complying with international standards, establish a modern and efficient set of rules. The ISTAC Rules also address the needs of users. In 2022, ISTAC registered more than 140 cases, 43% of which were filed under the Fast-Track Arbitration Rules. The number of cases at the ISTAC increases every year.

Weaknesses/Obstacles Towards Mandatory Mediation

There is no question that ADR is an effective and powerful tool for the promotion to get access to justice, but there are some weaknesses that are acting as barriers to the effective ADR system which can be:

- a. Ignorance and neglect to the mechanism generally.
- b. Inadequacy on the part of legal professionals and officials.
- c. Non-existence of a sustainable and well-functioning mechanism.
- d. Lack of experts to facilitate and regulate mediation.
- e. Reluctance among lawyers to practice mediation professionally.
- f. No awareness in small cities in lawyers especially South Punjab
- g. Expensive mediations trainings only for some who can afford
- h. No system of trainings of mediation at Government level

Settlement Through Mandatory Mediation

As compared to other parts of the world, most settlement of cases through Mandatory mediation has been termed as free and fair especially regarding infiltration by vices such as bribery. Over the years, the judicial offices have declined the confidence of people under the taint of bribery and

partial Adjudication. But the mediation process makes the people believe they are Part of the process as both parties have a role in selection and appointment of mediator. Also, the whole setup of hearing the parties reduces and decreases the potential biased decisions and malpractices. This poses greater trust and confidence in this system above the conventional court Systems. Mediation on a voluntary basis has been introduced in Pakistan since a long time ago and is mentioned in ADR Act, 2017 as well. But now efforts Should be made to make mediation mandatory for parties before knocking The door of court for resolving their dispute as instituted in Turkiye and other Parts of the world. In *Messrs. Alstom Power Generation through Ashfaq Ahmad v. Pakistan Water and Power Development Authority through chairman and Another* it is held that dispute resolution via mediation and other alternate Modes is a globally accepted manner of dispute resolution. There seems no Hindrance to accept this as a means of dispute resolution. Further, it is Empirically an inexpensive, low cost, expedient, convenient, advantageous And successful parallel system for adjudication. In another case, *Dr. Mrs. Yasmin Abbas v. Rana Muhammad Hanif And Others* the Court observed that there should be no impediment to Accept mediation as a means of dispute resolution. Different modes of Dispute settlement are being inculcated as a fast and speedy resolution Mechanism. It is quite evident from the case law and active participation of judicial authorities that ADR is the ultimate solution to the case backlog of Pakistan particularly in the civil justice system.

Conclusion

Mediation holds significant promise as an efficient alternative dispute resolution mechanism for both commercial and family disputes in Pakistan. By reducing reliance on adversarial litigation, mediation can enhance access to justice, foster amicable settlements, and improve business relationships. However, practical challenges, including lack of awareness, insufficient trained mediators, and resistance from the legal profession, limit its full potential. For mediation to truly thrive, Pakistan could benefit from stronger legislative backing, mandatory mediation protocols, and alignment with international standards such as the Singapore Convention. Such measures could not only alleviate the judiciary's burden but also build public confidence in mediation as a viable and culturally compatible method of conflict resolution.

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25. For more see, <https://istac.org.tr/tr/uyusmazlik-cozumu/dava-istatistikleri/> and https://istac.org.tr/wp-content/uploads/2018/05/rakamlarla_istac_tr.pdf