



RESEARCH PAPER

Comparative Analysis of Alternative Dispute Resolution Laws in Pakistan: its Adaptation, Procedure and Compatibility

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ABSTRACT

The judicial system of Pakistan is well structured and organized. Regular courts are actively functioning in the country. Despite formal litigations, various developed countries of the World have adopted the resolution of disputes through alternative ways, most popularly through Alternative Dispute Resolution. Alternative dispute resolution is such a method whereby issues of the people are solved without formal cases in the courts. The alternative dispute resolution system, already have its roots in the customary structure of the society. Pakistan has also codified various laws with respect to Alternative Dispute Resolution. In this research paper various Alternative Dispute Resolution laws are comparatively analyzed. Its adaptation, procedure and compatibility are discussed and recommendations are given for its effective legislation and implementation. Background and objective of alternative dispute resolution processes and laws are discussed. Role of the ADR laws is also highlighted with respect to reducing of burden of cases from the judiciary.

Keywords: Adaptability, Adaptation, ADR Acts, ADR Procedure, Alternative Dispute Resolution Law

Introduction

The notion, alternative dispute resolution refers to the mode of dissolving issues among people through non-formal court's litigations. This system includes all the processes and methods of dispute resolution that are settled outside of the court. Mediation, arbitration, conciliation, negotiation are the major practiced modes of alternative dispute resolution.

The various alternative dispute resolution processes having the same pre-requisites i.e enabling the parties to reach into consented solutions to their disputes outside of court proceedings, but are governed by different rules. For instance, in negotiation there is no third party who intervenes to help the parties reach an agreement, unlike in mediation and conciliation, where the purpose of the third party is to promote an amicable agreement between the parties. In arbitration, the third party will play an important role as it will grant an arbitration award that will be acceptable to the parties. In comparison, in conciliation and mediation, the third party does not impose any binding decision.

People in Pakistan generally approach to the courts for the resolution of their disputes, which shows that litigation is the most utilize mode of dispute resolution (Hussain, 2011). However, it is a wrong trend that the present increasing perception of adopting ADR in Pakistan is an imported project at the behest of West. Rather, the settlement of conflicts through alternative dispute resolution mechanism like "Panchayats" and "Jirgas" has had strong roots in our culture since time immemorial (Klanauri, 2012).

In Pakistan ADR laws are prevailing in the country, with certain changes of ADR laws among provinces. The most common ADR laws adopted in the country are that of the Alternative Dispute Resolution Act, 2017 (Islamabad), Punjab Alternative Dispute

Resolution Act, 2019 and Khyber Pakhtunkhwa Alternative Dispute Resolution Act, 2020. All the Acts have certain similarities and also differences.

Literature Review

The alternative dispute resolution is defined as: "Any alternative to the two established and traditional methods of dispute resolution, namely litigation and arbitration, is encompassed by the term ADR, even including some processes which involve an imposed decision" (Merchant, 2006). Arbitration has been introduced to overcome some of the problems encountered in litigation but this also proved itself very similar to litigation in both cost and time. Gradually the judicial systems of the world started recognizing Alternate Dispute Resolution (ADR) as one of the options to deal with this situation (Merchant, 2006). Various forms of ADR mechanisms are commonly used, including arbitration, mediation, fact-finding, mini trial, small claims court (Katherine, 2004). The utility of ADR mechanisms is wide due to its lower time consumption and costs. In commercial disputes, arbitration, a form of ADR, provides a platform for the parties to save their reputation and business relationship and to resolve their disputes confidentially (Won, 2013). ADRs in the 21st century mean finding domestically and internationally a quicker, inexpensive, and more effective alternative system to litigation which is currently time-consuming and expensive (Ali & Shah, 2009).

The main aim of this research paper is to critically analyze the alternative dispute resolution laws in Pakistan. To highlight the quantum of its adaptation in the country. Also to give detail about procedure of alternative dispute resolution under the prevailing laws. It also has the objective to discuss the compatibility of alternative dispute resolution processes in the present judicial system of Pakistan. This study is further aimed to shed light on the utility of alternative disputes resolution processes as to aware the people to adopt alternative dispute resolution system for settlement of their issues without entering into formal court cases. Its object is also to reduce burden of pendency on regular courts as majority of cases are subjudice before the courts which can easily be dispose of through alternative mode of ADR. This research study is also intended to provide the inexpensive and expeditious disposal of issues to the public.

In the pre and post British Rule era, the panchayat system was practiced in British India as a method to solve the issues out of court. In 1927 the Bombay High Court observed in *Chanbasappa Gurushantappa Hiremath v. Baslingayya Gokurnaya Hiremath* that "to refer matters to a panch is one of the natural ways of deciding many disputes in India." In Pakistan, the Arbitration Act of 1940 remained applicable and if one looks into the background of arbitration in Pakistan, it can be traced back to the period before the independence of Pakistan in 1947 when Pakistan was a colony of British India, also known as a sub-continent. Arbitration as a dispute resolution mechanism was recognized in the sub- continent prominently with the Indian Arbitration Act of 1899. This Act had a limited scope and initially it was applicable only to the presidency-towns of Madras, Bombay, Calcutta, and few others. Later in 1908, a new Code of Civil Procedure applicable to the whole British India was promulgated and in the second schedule a provision was included regarding arbitration in respect of pending suits. This was an effort to make arbitration a part of laws. The civil justice committee of India gave proposals and suggestions in 1925 to present a new and comprehensive Arbitration Act although it was not shaped until 1940 after being passed by the Indian Legislative Assembly. This Arbitration Act of 1940 remains in force in Pakistan till today but it expired in India in 1996 (Won, 2012).

The importance for an alternative to litigation is becoming increasingly famous, primarily because of speedy disposal and low cost. An effective initiative of the judiciary in Pakistan to institute an alternative dispute resolution system through "National Judicial Policy, 2009" which remained a matter of consideration even in the National Judicial Conference, 2013, showing a strong commitment of the august Superior Judiciary of

Pakistan to reduce the burden of millions of cases pending with the courts through the adoption of ADR mechanisms (Won, 2012).

In consequences, various laws are codified in the country. These laws include, the Alternative Dispute Resolution Act, 2017, Punjab Alternative Dispute Resolution Act, 2019 and Khyber Pakhtunkhwa Alternative Dispute Resolution Act, 2020. In the mentioned Acts, the procedure of alternative dispute resolution processes have been provided, which is the epi center of this research study.

Material and Methods

In this research paper, qualitative research methodology was used. All the relevant national and international laws and rules were observed, compared, textually analyzed and results are adduced. The precedents of domestic and foreign superior courts are also analyzed and the relevant case laws are applied, whenever applicable. Practical recommendations are given for solution of the research problem. The evaluation of facts, statistics and information, relating to the research is conducted and conclusion is drawn. Previous work of the jurists and relevant research work are also studied.

Analysis of ADR Act, 2017 (Islamabad)

The Alternative Dispute Resolution Act 2017 was promulgated on 30th May, 2017. In this Act, the processes of arbitration, conciliation and mediation are provided as Alternative Dispute Resolution. This is the first codified special law regarding ADR in Pakistan. In this Act, it has been provided that each civil dispute as enumerated in the schedule shall be reoffered by the court to ADR, except where the parties having no consent, where it is satisfied by the court that the matter cannot be resolved through ADR or where any material question of law and fact is involved. Under this Act panel of Neutrals have been provided including experienced lawyers, retired judges, retired civil servants, *ulamas*, jurists, technocrats and experts, whom shall conduct ADR proceedings in the ADR centers. In this Act time frame has been provided for ADR proceedings, whereby a matter shall be disposed of within 30 days, extendable by next 15 days on request of Neutral. After successful conclusion of ADR proceeding, the Neutral shall record settlement and grant award. The same will be submitted to concerned court. After submission of award, judgment shall be announced and decree shall be passed in light of terms of the award. It has also been provided that if the efforts of the Neutral failed for resolution of the dispute, the same may be referred to the court concerned. In order or decree, passed by the court in consequences of ADR proceedings shall be executable under the relevant law. In addition, the court can also appoint Neutral to conduct ADR proceedings in compoundable offences, under the criminal law. Under the provisions of this Act the court or the Neutral may hire the evaluator for expert opinion to sort out any financial issue or other technical nature. Under this Act no appeal or revision is maintainable from the decree or any order of the court.

Analysis of Punjab ADR Act, 2019

The Punjab ADR Act was promulgated on 11th October 2019. In this Act mechanism is provided for both civil and criminal disputes through alternative dispute resolution for ensuring inexpensive and expeditious justice. Under this Act, the court can refer a civil dispute to ADR with the consent of parties within 30 days of the attendance of the defendants. A time frame has also been provided for completion of ADR proceedings, which is six months in maximum. Similarly, the criminal disputes can also be referred to ADR by the public prosecutor with the consent of complainant under section 345(1) of the Code of Criminal Procedure 1898, at any time before framing of charge. In addition, a court can also refer a case to ADR Suo Moto u/s 345(2) Cr.PC, even after framing of charge in a case of FIR. Similarly, in case of complaint, on consent of the parties, the said matter can also be referred to ADR. A time frame has also been provided in ADR proceeding by the court not exceeding 90 days.

Under this Act, the parties in dispute may select the person or persons of ADR. In case of non-agreement of the parties, the court can provide a list of accredited ADR Service Providers or ADR Centers to the parties for selections. After ADR proceeding the case shall be return to the court for final disposal. Whole of the proceeding of ADR shall be keep confidential in all matters. Where ADR failed to resolve a matter, the same can be return to the court for proceedings according to prevailing procedure. In case of success of ADR proceeding, after submission of award, judgment shall be announced and decree shall be passed in light of terms of the award.

Under this Act no revision or appeal can be filed from the decree or order of the court, however, a public prosecutor can challenge order of the court falling under section 345(2) Cr.PC.

Analysis of KP ADR Act, 2020

The KP ADR Act was promulgated on 28th December 2020. This Act was aimed to introduce the method of dispute resolution among parties in issue, through the alternative mode of resolving the dispute, by the system of alternative dispute resolution without indulging into formal court cases in order to ensure inexpensive and expeditious justice to the public. According to this Act, the court can refer a civil matter for ADR on the consent of parties in dispute. Similarly, a Deputy Commissioner or any other designated officer can also refer a civil dispute for ADR. The time frame for ADR proceeding is provided as 6 months in maximum. Similarly, in criminal matters, all the compoundable offences U/s 345 Cr.PC can be referred to ADR, on the consultation of parties by the Court. Moreover, the Deputy Commissioner or the DRC can also refer a matter to ADR. The time frame for ADR proceeding is provided as three months in criminal matters. The Court can also record evidence during postponement.

Under this Act, composition of Saliseen Selection Committee has been provided, consist of Commissioner of the Division as Chairman, RPO, Senior Civil Judge (Admin), an official of law enforcement agencies, Regional Director Prosecution, representative of Special Branch and Deputy Commissioner as members. The referring authority can select one or more Salis from the roll of Saliseen for dispute resolution through ADR. After completion of proceeding of ADR, the dispute be submitted to the Court for final adjudication. Whole of the proceeding of ADR shall be kept confidential. Where the ADR fail to resolve a dispute, the said dispute is to be resolved by the court under the law. While no appeal or revision can be filed from the decree or order of the Court, passed in consequences of ADR.

Under this Act, it has been provided that Saliseen shall not represent the parties to an ADR in future proceedings. It has also been provided that, proceeding under this Act to be privileged and not admissible in evidence. In consequences of this Act, Section 89-A of the Code of Civil Procedure 1908 and Section 29 (i)(iv) and 118-A of the KPK Local Government Act, 2013 are repealed.

Compatibility of ADR laws in Pakistan

Pakistan is one of the most populous countries in the World. Pakistan has a well-structured and well organized judicial system. The people refer their miscellaneous disputes to the courts as a last forum for its resolution. Thus, the judiciary is over burden of pending cases, despite serious efforts, state of the art working and record disposal of cases by the honorable judges of the country. According to a report, the country's superior and lower courts are dealing with a huge backlog of 2.144 million cases, as 4.102 million cases were decided and 4.06 million new cases were filed during 2021(DAWN, 2021). Hence, there is huge pendency of court cases across the country.

Thus, referring of pity nature cases and small claims to ADR centers will be fruitful for its early disposal and will ultimately reduce burden of cases on judiciary. Hence, implementation of ADR laws, under the supervision of judiciary, is more compatible.

Conclusion

To sum up, it is inferred that, Alternative Dispute Resolution is an alternative mode of resolving of disputes without going into formal litigations by the parties. It is a good way for speedy settlement of disputes. The ADR system has its historical background in Pakistan. Keeping in view the utility of ADR system, special laws are codified in Pakistan. These laws are including, the Alternative Dispute Resolution Act 2017, Punjab Alternative Dispute Resolution Act 2019 and Khyber Pakhtunkhwa Alternative Dispute Resolution Act 2020. Under these Acts a specific process has been provided, wherein, both the parties can resolve a dispute through the alternative system of ADR, without formal court cases against each other by the process of negotiation, mediation and conciliation by the medium of ADR. There is difference in the procedure of all the Acts, however, aim of all the Acts are the same that is to provide inexpensive and expeditious justice to the people by means Alternative Dispute Resolution System. The ADR system is compatible in Pakistan and it can result into reducing the burden of pending cases on the judiciary.

Recommendations

Following are the recommendations for effective legislation and implementation of ADR laws in Pakistan;

- All the ADR laws prevailing in different provinces of the country may be codified in uniform structure as to avoid contradiction.
- Proper ADR Centers may be established under the supervision and control of judiciary.
- The ADR service providers must have legal knowledge, experience and qualification.
- The time frame for ADR proceedings may be reduced.
- Penal provisions may be inserted in ADR laws for default of ADR services providers, as to strengthen the element of efficiency and accountability.
- Regular ministerial staff may be hired for ADR centers.
- Special training sessions may be arranged for the ADR service providers and its supporting staff as to equip them with maximum skills and techniques.
- Proper budget may be granted to the ADR Centers and all other relevant stakeholders to smoothen and expand the working of ADR across the country.

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