

Overview of Alternate Dispute Resolution with Special Reference to Arbitration Laws in Pakistan

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Arbitration is one of the prominent and widely practiced forms of Alternate Dispute Resolution. Different countries are strengthening their alternate dispute resolution mechanism, and focusing on arbitrations is a very important edge. Pakistan is in the phase of developing effective laws and policies to strengthen the process of arbitration. The Pakistan Arbitration Act of 1940 is very important to discuss and along with domestic laws the applicability of the international conventions must be discussed. This paper analyzed the situation of arbitration laws in Pakistan with respect to both the domestic laws and international laws applicable in the country.

Key Words : Arbitration Laws in Pakistan, Applicable Laws, Arbitration Act 1940,
ADR in Pakistan

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I. Introduction

Disputes are unavoidable but can be managed and resolved through different techniques. The most well- practiced form of dispute resolution around the world is litigation which is not only a publicly financed and administered form of settlement of disputes but is also carried out in a public forum and bound by mandatory rules of process, evidence, and testimony.¹⁾

Initially attempts have been made to speed up the litigation process and to reduce its cost but litigation remains an expensive and time-consuming way to resolve disputes. After which, 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.²⁾

In the abovementioned circumstances, ADR can be 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.”³⁾

In an advanced world, ADR will attain an important place. In some jurisdictions like the United States, it is observed that nearly 90 percent of disputes are resolved through this means.

Various forms of ADR mechanisms are commonly used, including arbitration, mediation, fact-finding, mini trial, small claims court, and rent-a-judge.⁴⁾

The use 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.⁵⁾

1) Navin Merchant (2006), Commercial Dispute Resolution, International Judicial Conference 2006, Supreme Court of Pakistan, 11–14 August, 2006

2) Ibid.

3) Ibid.

4) Stone Katherine V.W. (2004), Alternative Dispute Resolution, Encyclopedia of Legal History, Stan Katz, ed., Oxford University Press.

The roots of the existing judicial system in Pakistan can be traced back to the medieval period and even before. The judicial system that we practice today has passed through several epochs covering the Hindu era, the Muslim period including the Mughal dynasty, the British colonial period, and the post-independence period.⁶⁾

In Pakistan people generally resort to the courts for the resolution of their conflicts or disputes, which glaringly indicates that litigation is the most utilized form of dispute resolution here as well.⁷⁾ However, it is a wrong perception that the current increasing trend of adopting ADR in Pakistan is an imported project at the behest of West. The settlement of controversies through alternative dispute resolution mechanisms like “Punchayats” and “Jirgas” has had strong roots in our culture since centuries.⁸⁾

This paper will analyze the situation of laws on arbitration in Pakistan, the characteristics of ADR in Pakistan, along with a case law situation on ADR. The paper would explore the domestic laws on the subjects along with the applicability of the international conventions Pakistan is signatory to.

II. Overview on Arbitration Laws in Pakistan

Among the different ADR practices, arbitration is one of the most renowned and commonly exercised forms. Arbitration is the process by which the parties to a dispute submit their differences to the judgment of an impartial person or group appointed by mutual consent or statutory provision.

Ali and Shah (2009) argue that 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.⁹⁾

5) Isfandyar Ali Khan (2011), Critique of Section 89–A, Civil Procedure Code, 1908 and Case for Amendment

6) Dr. Faqeer Hussain (2011), The Judicial System of Pakistan, Supreme Court of Pakistan

7) Ibid

8) Zafar Iqbal Kalanauri (2012), Tracing the future of ADR in Pakistan, also available at www.zklawassociates.com/wp-content/uploads/2012/03/Tracing-the-Future-of-ADR-in-Pakistan1.pdf

Different developments were made to strengthen the laws of arbitration throughout the world and States have made efforts to get the maximum benefit from the process of arbitration. In Pakistan, the Arbitration Act of 1940 is only an enactment on this subject.

1. Historical Perspective

Before and even after the advent of British Rule, the punchayat¹⁰⁾ system was practiced in British India as a means to settle the disputes 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."¹¹⁾

In Pakistan, the Arbitration Act of 1940 is currently applicable and if we look 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 enacted 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 1996.¹²⁾

9) Ali S.I. and Shah M. (2009), *Alternate Dispute Resolution and its Scope in Pakistan*. QLCian, Pakistan

10) A group of respectable of the locality to decide upon the disputes between the locals of that area.

11) *Chanbasappa Gurushantappa Hiremath v Baslingayya Gokurnay Hiremath* AIR 1927 Bombay 565, 568-9

12) Mr. Justice Mian Saqib Nisar (2006), *International Arbitration In The Context Of Globalization*:

The abovementioned was a matter regarding domestic laws, but British India was not much recognized as a distinct entity under the international law for certain purposes. In that capacity it was a signatory to the Geneva Protocol on the Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Awards of 1927. In 1937, an Act known as the Arbitration (Protocol and Convention) Act, 1937, was passed by the Indian legislature to give effect to international arbitration agreements. It showed that three years before having the domestic legislation regarding arbitration, British India had the statute that broadly dealt with international commercial arbitrations. The Act of 1937 continued to be in force in Pakistan after 1947 although Pakistan became a signatory to the New York Arbitration Convention on December 30, 1958. In July 2005 the convention was made a part of the Pakistani laws by the promulgation of an ordinance.

Pakistan developed laws in respect of international arbitrations and foreign awards almost exclusively with reference to the Act of 1937 and to a certain extent the Act of 1940. It is only very recently that the courts have begun to deal with issues arising under the New York Convention.

2. Laws of Arbitration in Pakistan

In the domestic field, Pakistan followed the Arbitration Act of 1940 for the resolution of disputes, the one adopted before the independence of Pakistan.

The sole purpose of the 1940 Arbitration Act was to curtail litigation in Courts and promote the settlement of disputes amicably through persons in whom both the parties repose their confidence. A brief analysis of the Act is included in this document.

The Statute

On March 11, 1940, by the enactment of Act No. X of 1940, an Act was passed by the Governor-General of the Indian Council, which was later on

adopted by the newly independent state of Pakistan in its letter and spirit to consolidate and amend the law relating to arbitration. The Act was called as The Arbitration Act, 1940, which came into force on the first day of July 1940.

The Act provides for three classes of arbitration which are (a) arbitration without court intervention (mentioned in Chapter II, Sections 3-19) (b) arbitration where no suit is pending but through court (mentioned in Chapter III, Section 20) and (c) arbitration in suits through court (mentioned Chapter IV, Sections 21-25).

The Act also contains further provisions common to all the three types of arbitration (mentioned in Chapter V, Sections 26-38).

Arbitration Agreement

Section 2(a) of the definition clause provides for an arbitration agreement according to which in all kinds of arbitrations there must be an arbitration agreement. The Arbitration Act of 1940 defines it as a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

Arbitrators

There can be one, two, three, or more number of arbitrators. The first schedule of the enactment provides for implied conditions of the arbitration agreements according to which in case the number of arbitrators is even, an umpire is to be appointed according to the procedure prescribed in the Act. In case the agreement of arbitration is silent about a specific number, the arbitration shall be done by a sole arbitrator. Sometimes the name of the arbitrator has already been mentioned in the arbitration agreement but at times it is left to be appointed by a designated authority.

Section 8 to 10 of the Act provides for a mode of appointment of Arbitrators. Where the arbitration agreement is silent about the mode of appointment of arbitrators and the parties also remain in disagreement about the choice of the arbitrator, the court is empowered to make the appointment per the procedure prescribed in the enactment.

Section 11 of the Act provides for the removal of the arbitrator by the court

after due inquiry in case he deliberately remains negligent in conducting the proceeding or is guilty of misconduct.

According to Section 6 of the enactment if the cause of action remains in field, even the death of a party cannot terminate the arbitration proceedings.

Section 13 of the act empowers the arbitrator to administer oaths to witnesses to state a special case for the opinion of the court, to correct any clerical mistake, etc.

Court Intervention

Per Section 20 of the Act, in case one party to an arbitration agreement declines to go to arbitration, the other party can seek intervention from the court in order to compel a reference to arbitration.

Per Section 30 of the Act the arbitrator or umpire is bound to observe the essentials of natural justice, failing which, the arbitrator's award can be set aside for misconduct or on other grounds mentioned in the same section.

The Award

Section 28 along with the first schedule of the enactment deals with the award according to which the award must be pronounced within the time limits laid down in the arbitration agreement or (failing such agreement), within 4 months of the commencement of hearing. However, the time limit can be extended by the court in certain circumstances. The award has to be in writing and signed by the arbitrator. In case there is more than one arbitrator, the opinion of the majority would prevail.

Court Control Over the Award

To enforce an award, the judgment of the court has to be obtained per Section 17 of the Act. The Arbitration Act of 1940, provides the following powers to a court: either to pass a judgment in terms of the award per Section 17, to modify or correct the award per Section 15, to remit the award (on any matter referred to arbitration), for re-consideration by the arbitrator or umpire

per Section 16, or to set it aside per Section 30.

In short, the court has to adopt one of the three courses. It may totally accept the award, totally reject it, or adopt the intermediate course of modifying it or remitting it.

Modification of Award by Court

Section 15 of the Act provides that the Court may, by order, modify or correct an award in the situations mentioned below:

- (a) Where it appears to the court that a part of the award is upon a matter not referred to arbitration and can be separated from the other and does not affect the decision on the matter referred.
- (b) Where the award is imperfect in form, or contains an obvious error which can be amended without affecting such decision.
- (c) Where an award contains a clerical mistake or an error arising from an accidental slip or omission.

Remitting the Award

The court may remit the award or any matter referred to arbitration to the arbitrators or umpires for reconsideration per Section 16 of the Act in the following situations.

Where the award has left undetermined certain matters, where it determines matters which are not referred to arbitration and which cannot be separated from the rest, where the award is so indefinite as to be incapable of execution, where an objection to the legality of the award is apparent on the face of it (Section 16).

Setting Aside the Award

Section 30 of the Act provides the court power to set aside the award on the grounds mentioned below.

- (a) That the arbitrator or umpire has misconducted himself or the proceedings
- (b) That the award has been made after issue, by the court, of an order

superseding the arbitration (c) That an award has been improperly procured or is otherwise invalid.

3. International Approach

1) International Conventions Applicable in Pakistan

Almost 137 countries ratified The New York Convention including Pakistan and India. Pakistan and India signed the Convention in 1958 but Pakistan didn't pass any related domestic legislation, which India did in 1961. All the countries which were signatory to the Geneva Protocol and Convention enforced through the Act of 1937 were also party to the New York Convention. Due to several reasons, the Convention could not be incorporated into Pakistan's municipal law for a long time, and this absence was felt increasingly. Finally, in 2005, an ordinance was promulgated to give effect to the Convention.

Under Pakistan's Constitution, an ordinance has the same effect as an Act of the Parliament, but lapses after four months. An Act is yet to be passed by the Parliament to give a permanent legal effect to the Convention. So far, it appears to have been kept alive as part of the municipal law by means of successive Ordinances issued from time to time.¹³⁾

The ordinance enforcing the New York Convention repeals the Act of 1937 to make any challenge to the enforcement of an international award even more difficult as compared to the Act of 1937. Second, an ordinance directly confers exclusive jurisdiction with regard to its subject matter on the High Court. It is likely to speed up the process of international arbitration and enforcement of foreign awards to a greater extent.¹⁴⁾

The ordinance, like the Act of 1937 mainly deals with legal proceedings brought in Pakistan regardless of the existence of an international arbitration agreement and the enforcement of foreign awards in Pakistan.

13) Ibid.

14) Ibid.

2) Pakistan Enacts a Statute to Implement the ICSID Convention

Pakistan while defending investment claims and in order to restore investor's confidence, in 2011, the Pakistani President introduced a law to secure foreign investments.

In reality the Act is a response to the highlighting of the Supreme Court of Pakistan's 2002 decision¹⁵⁾ that the International Convention on the Settlement of Investment Disputes (ICSID) convention, although ratified by Pakistan, having not been incorporated into the laws of Pakistan by implementing legislation, the domestic courts had no power to enforce the provisions of the Convention while ignoring the existing national enactments relating to arbitration.

In the same case the Supreme Court upheld the lower courts' decision not to keep the arbitration proceedings under the Pakistani Arbitration Act following the commencement of the ICSID arbitration.

The rationale of the Act is to apply the International Convention on the Settlement of Investment Disputes between States and Nationals of other States, with an intent to bring transparency in the settlement of investment disputes. The Act attaches the ICSID Convention as a schedule.¹⁶⁾

In addition to this Act, Pakistan is also preparing the enactment of two statutes relating to international arbitration. First, a law to enforce the New York Convention has been passed by the National Assembly and is currently awaiting consideration before the Senate. Second, a new Arbitration Act, based on the UNCITRAL Model Law, is pending before the National Assembly.

4. Proposed Legislation in Pakistan

In recognition of the New York Convention, The Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act of 2011 was passed by the National Assembly.

The Arbitration Bill of 2009 (the Bill) was introduced into the Pakistan National Assembly on April 24, 2009. This bill was introduced with an intent to

15) in cases such as *SGS v Pakistan*

16) Laurence Burger (2011), *Pakistan Enacts A Statute To Implement The ICSID Convention*,

remove the deficiencies in the Arbitration Act of 1940 earlier. The preceding Arbitration Act of 1940 that governs domestic arbitration in Pakistan has several deficiencies. The Preamble shows the intention to implement the UNCITRAL Model Law on International Commercial Arbitration in Pakistan.

The Bill is intended to supersede and build on the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance of 2007 (REAO) which implemented the United Nation's Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (NY Convention) into Pakistani law. The Bill also proposes to establish an arbitration and conciliation center in Pakistan.

III. Characteristics of Alternate Dispute Resolution in Pakistan

ADR is not a new phenomenon but can be traced back in the primitive societies of the past in the form of the Panchayats, Panchs, Jirgas, and Qazi's. Despite having no legal backing, their decisions were respected and obeyed. Now once again in this new era of law and order this mechanism is gaining importance due to the prolonged, costly, and nerve-racking process of litigation.

ADR includes numerous methods for the expeditious disposal of disputes such as negotiations, mediation, conciliation, and arbitration along with other modes.

1. Historical Perspective

Since its inception in 1947, Pakistan adopted various laws from the British India i.e Sub Continent where litigation was considered as the best form of dispute resolution therefore all the procedural laws leaned towards either lengthy procedures of evidence and testimony or summary trials without the concept of ADR being found in procedural laws adopted from there.

2. Constitution of Pakistan

Although no explicit mention of ADR can be viewed in the Constitution of Pakistan, there is a reference to commercial and financial activities which may lead implicitly to a view that Pakistan practices certain methods of ADR. A quick review of the Constitution reveals that Articles 153-154 deal with the Council of Common Interest, Article 156 deals with the National Economic Council, Article 160 deals with the National Finance Commission, and Article 184 of the Constitution gives rise to the original jurisdiction to the Supreme Court of Pakistan in “any dispute between two or more Governments.”¹⁷⁾

3. United Nation’s Conventions

Pakistan is a signatory of the New York Convention which is also known as the New York Convention of 1958 and the Convention for the Recognition and Enforcement of Foreign Arbitral Awards.

4. Domestic Laws of ADR in Pakistan

As regards the ADR in Pakistan, some of the relevant laws are as follows: Arbitration Act, 1940; Conciliation Courts Ordinance, 1961; Muslim Family Laws Ordinance, 1961/Family Courts Act, 1964; Section 89-A of the Civil Procedure Code, 1908 read with Order X Rule 1-A; The Small Claims and Minor Offences Courts Ordinance, 2002; Punjab Local Government Act, 2012; Khyber Pakhtunkhwa Local Government Act, 2012.

1) Small Claims and Minor Offences Courts Ordinance, 2002

The Small Claims and Minor Offences Court Ordinance is a law promulgated with the intention to establish a court of Small Claims and Minor Offences, where the value of the small claims suit is Rs.100,000 (\$1600) or less in case of

17) Salman Ravala (2010), *Alternative Dispute Resolution in Pakistan*, available at www.nyulawglobal.org/globalex/Pakistan_ADR1.htm

civil suits and offences punishable up to three years, or fine or both can be adjudicated upon.

The ordinance also provides for a simple, specific, and expeditious procedure for process serving in order to finalize the case for trial. The court is also awarded with the power to persuade the parties to adopt any of the processes of ADR to reach an out-of-court settlement for the expeditious disposal of their cases but in the event of failure in the ADR proceedings the court would proceed to determine the suit through a prescribed summary procedure.¹⁸⁾ The purpose of the law is to provide an “inexpensive and expeditious disposal” of minor claims and offences.¹⁹⁾

2) The Code of Civil Procedure (Amendment) Ordinance No. XXXIV of 2002

In order to provide an opportunity to courts for the adoption of the methods of ADR including mediation and conciliation,²⁰⁾ in order to bring an end to the controversy and expeditious disposal of a case, Section 89-A and Order X Rule 1-A have been inserted in the Code of Civil Procedure of 1908.²¹⁾

3) The Punjab Consumers Protection Act, 2005

The Punjab Consumers Protection Act, 2005 provides for a mandatory provision for the use of the ADR mechanism for the resolution of consumer disputes presented before it. The Act empowers the Consumer Tribunal to adopt any mode of ADR in order to bring an end to the controversy before it.²²⁾

18) Zafar Iqbal Kalanauri (2012), *op. cit.*

19) M. Mahmood, Jawad Mahmood (2012), *The Civil Major Acts*, Al-Qanoon Publishers, 10th Edition, 2012

20) M. Mehmood (2012), *The Code of Civil Procedure, 1908 : amendments & case law up to date*, al-Qanoon Publishers 11th Edition, 2012

21) 2011 CLC 758

22) Zafar Iqbal Kalanauri(2012), *op. cit.*

4) The Local Government Ordinance, 2001

The Punjab Local Government Ordinance, 2001 under Sections 102 and 103 provides for the constitution of the “Mosalehat Anjuman” and “Insaf Committees” for resolving local disputes. Section 104 empowers the Courts to refer cases to Mosalehat Anjuman. These Mosalehat Anjumans are empowered to resolve and settle the disputes related to Civil, Criminal, Family, and Revenue matters brought before it either through courts or by parties.²³⁾

5) The Arbitration Act, 1940

The Arbitration Act of 1940 was enacted before the independence of Pakistan in 1940 for all of British India but adopted by it in its letter and spirit and still applicable in Pakistan today. The purpose of this enactment is to provide a domestic tribunal for the settlement of disputes between the parties and a provision of expeditious relief.²⁴⁾

6) Some other Enactments

In 1961, in order to enable people to settle certain disputes through conciliation, the Conciliation Courts Ordinance, 1961 was promulgated. Conciliation Courts are mandated to adjudicate upon specified civil disputes and minor offences.

Provisions were also made in the Family Laws making it incumbent for the Family Court to strive for, bringing about reconciliation for settling family disputes. For the resolution of labor disputes, "shop stewards" acted as a link between the workers and the employer to help workers in the solution of problems connected with their work.

The appointment of "conciliators" was visualized by the Industrial Relations Ordinance of 1969 (now of 2002) to negotiate and to bring about an amicable settlement of the disputes.

23) The Punjab local government ordinance (2001)

24) PLD 2010 S.C (AJ & K) 1

For settling fiscal disputes, relevant Laws have been amended. The addition of Rule 231-C has been made in the Income Tax Rules, encouraging the resolution of disputes through the Alternate Dispute Resolution Committee.

IV. Alternate Dispute Resolution Cases in Pakistan

1. Traditional Case

ADR stands for alternative dispute resolution and refers to alternatives to the established and traditional method of dispute resolution in the form of litigation. Two types of ADR are practiced in Pakistan: traditional ADR and formal ADR. Traditional ADR comprises the centuries old systems including Panchayat in Punjab and Jirga in Khyber Pakhtunkhwa as well as Balochistan. The latter refers to the ADR attached to public bodies; for example, Arbitration Councils, Union Councils, Conciliation Courts, and Musalihat Anjuman.

Pakistan has some experience with alternative means of dispute resolution in the form of so-called “panchayats.” Panchayat literally means the assembly of five wise and respected elders chosen and accepted by the village community. Traditionally, these assemblies settle disputes between individuals and villages. However, these judgments are legally nonbinding and are typically applied to personal or family disputes. In short, there are no effective alternatives to lengthy and costly judicial procedures for Pakistani enterprises to settle any commercial disputes.

2. Current Situation

The need for an alternative to litigation is becoming increasingly popular, primarily because of time and cost considerations but also because it helps to avoid the adversarial process, which leaves wounds and destroys relationships.

A courageous 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 Superior Judiciary in Pakistan to reduce the burden of millions of cases pending with the courts through the adoption of ADR mechanisms.

Several laws have already been amended and some more are on their way to facilitate mediation, conciliation, arbitration, and other alternative dispute resolution mechanisms, as the result of the efforts was tremendously encouraging.

Under a pilot project, it is intended that ADR should be initiated in the selected districts and in a class of cases, under the supervision and control of the High Courts, which can eventually be extended to all the districts. This mechanism would save an average court time of seven to ten years.²⁵⁾

The Islamabad Declaration adopted at the conclusion of the three-day International Judicial Conference, 2013 approved some recommendations on ADR which includes that the training programs for the Bench, the Bar, and other stakeholders on ADR should be devised by the Bar Councils in collaboration with the Law and Justice Commission, and that the Pakistan Bar Council should introduce a course on ADR in the LL.B degree program. Similarly, an official institute of arbitrators is to be established so that persons from fields relevant to the matter in dispute are readily available.²⁶⁾

3. Business and ADR Center, Pakistan

The trade bodies, whose members are the target end-users, are now showing greater eagerness to have recourse to this alternate mechanism to release their assets caught up in litigation. They have also started thinking in terms of having a clause for mediation inserted into their future contracts and asking the Center to arrange in-house mediation training for the member firms.

There are only two ADR Centers established in the country. One is the Karachi Center for Dispute Resolution and the other is the Lahore High Court

25) Zafar Iqbal Kalanauri (2012), *op. cit.*

26) Islamabad Declaration of international judicial conference(2013), 19–21 April 2013

Annexed ADR Center.

As Pakistan is still at the inception of the adoption of the ADR mechanism at a professional and official level, no case law and precedents are officially published; however, the Karachi Center for Dispute Resolution (KCDR) has shared some success stories at their official website.²⁷⁾

The Lahore High Court Annexed ADR Center has not started working and no case has been taken up yet. However, some cases at an international level, where the Pakistan party is, can be found.²⁸⁾

V. Conclusion

Along with ADR, arbitration has a bright future in Pakistan. With strong arbitration instruments in Pakistan, foreign and domestic investments in the country can increase as investors are discouraged by lengthy and costly litigation processes.

The judiciary can play an important role in practically executing the arbitration process and in encouraging the litigants to adopt the process of arbitration in a speedy and cost-effective manner. The legal profession has to accept business and market needs, equip themselves with the knowledge and skills of mediation, and develop professional capacity in the field of ADR as this is a major requirement for modern-day clients.

The National Judicial Conferences are giving an important place to ADR mechanism to discuss its benefits, problems, and future development including its recommendations.

The Constitution of the Islamic Republic of Pakistan under Article 37 is mandated to ensure inexpensive and expeditious justice. The use of ADR is defiantly one of the best possible options to resolve disputes expeditiously and restore the confidence of the people in the judicial system.

ADR provides an alternative to litigants to settle their disputes by avoiding

27) <http://www.kcdr.org/index.php>

28) Jacob Grierson and Dr. Mireille Taok (2009), Comment on *Dallah v. Pakistan* : Refusal of Enforcement of an ICC Arbitration Award against a Non-Signatory, *Journal of International Arbitration* vol.26(6), pp.903–907

lengthy, multiple, and cost-oriented proceedings. ADR has proven to be the best method for resolving disputes so efforts should be made by the Bench and the Bar for referring the matter to ADR as provided in the above laws.

An alternative facility in Pakistan is yet to take a meaningful uplift but the current efforts of establishing ADR Centers, among others, in order to assist the ADR system in Pakistan's justice delivery process is highly appreciable and will open a new horizon in our legal firmament. A meaningful expansion of ADR in Pakistan is the first step to bringing change. A second important milestone to achieve in the practice of this system is its implementation at the grass roots level.

Another important thing to be kept in mind while exploiting our resources in the expansion of this system of ADR as discussed above is that by strengthening our local, existing, and highly respected and accepted system of ADR, Punchayats and Jirgas need not be discarded but strengthened so that maximum benefits can be achieved.

National and international arbitrations conducted are small in number but a positive approach can be assumed for Pakistan to attain a better position in the field of arbitration law in the coming few years. Lawyers will need to support mediation in the larger interest of their clients as prolonged litigation does not favor litigants and a quick resolution through the mediation process can provide clients with a win-win solution.

References

- Ali, S.I, and Shah, M., "Alternate Dispute Resolution and its scope in Pakistan". QLCian. Pakistan, 2009.
- Chanbasappa Gurushantappa Hiremath v Baslingayya Gokurnay Hiremath AIR 1927 Bombay 565, pp. 568-569
- Dr. Faqeer Hussain, "The Judicial System of Pakistan", *Supreme Court of Pakistan*, 2011.
- International Judicial Conference, "Islamabad Declaration", 19-21 April, *Supreme Court of Pakistan*, 2013.
- Isfandyar Ali Khan, *Critique of Section 89-A, Civil Procedure Code, 1908 and Case*

for Amendment, 2011.

Jacob Grierson and Dr. Mireille Taok, "Comment on *Dallah v. Pakistan* : Refusal of Enforcement of an ICC Arbitration Award against a Non-Signatory", *Journal of International Arbitration*, vol. 26 no. 6, pp.903-907, 2009.

Laurence Burger, *Pakistan Enacts A Statute To Implement, The ICSID Convention*, 2011.

M. Mahmood, Jawad Mahmood, *The Civil Major Acts*, *Al-Qanoon Publishers*, 10th Edition, 2012.

M. Mehmood, *The Code of Civil Procedure, 1908 : amendments & case law up to date*, al-Qanoon Publishers 11th Edition, 2012.

Mr. Justice Mian Saqib Nisar, "International Arbitration In The Context Of Globalization: A Pakistani Perspective", *International Judicial Conference*, 2006.

Navin Merchant, "Commercial Dispute Resolution, International Judicial Conference 2006", *Supreme Court of Pakistan*, 11-14 August, 2006.

Salman Ravala, "Alternative Dispute Resolution in Pakistan", Retrieved from www.nyulawglobal.org/globalex/Pakistan_ADR1.htm

Stone, Katherine V.W., *Alternative Dispute Resolution, Encyclopedia of Legal History*, Stan Katz, ed., Oxford University Press, 2004

Zafar Iqbal Kalanauri, "Tracing the future of ADR in Pakistan", Retrieved from www.zklawassociates.com/wp-content/uploads/2012/03/Tracing-the-Future-of-ADR-in-Pakistan1.pdf

The Punjab local government ordinance, 2001.