
MEDIATION AN EFFICIENT MODE OF DISPUTE RESOLUTIONS



"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser — in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough."[1]

— Abraham Lincoln

Thomas J. Stipanowich states that the **name of ADR is an outmoded acronym that survives as a matter of convenience only**. Professor Jean R. Sternlight has preferred the phrase ADR as **"Appropriate Dispute Resolution"** rather than "Alternative Dispute Resolution". However, the term 'alternative' in ADR **needs to be understood as an additional means** to access justice, **not as a means which may replace the traditional court system**

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COURT: HON'BLE MR. JUSTICE MR. GUL HASSAN TARREN BHC
SUBJECT: ALTERNATE DISPUTE RESOLUTION
DATE: 09TH DECEMBER 2024
BY: WASEEM AHMED RESEARCH OFFICER

Alternative Dispute Resolution (ADR)

Human history has recorded three modes of dispute resolution so far; (i) resolution of dispute by violence (ii) resolution of disputes by regular formal adjudication and (iii) resolution of dispute by informal amicable means. In law, this latest form is known as Alternative Dispute Resolution (ADR). ADR refers to the mechanisms used to settle disputes outside formal judicial processes. These mechanisms aim to provide parties with quicker, cost-effective, and amicable solutions to conflicts, often relying on the mutual consent of involved parties. The hallmark of ADR is its flexibility and emphasis on preserving relationships, making it particularly suited for scenarios where adversarial litigation might escalate conflicts.

Disputes among human beings are as ***ab antique***; as old as human beings themselves. While humans have always had the tendency to solve their differences by fighting and neutralizing the adversaries, but ***they also had recognized the benefits of settling matters peacefully*** by either ***flipping a coin for making decisions between two options*** or ***some other way***. Settlement of conflicts is ***essential for a peaceful social environment and an orderly society***. Consequently, there is a requirement for a ***sufficient and efficient dispute-resolution process***, which is a necessary condition for the survival of a civilized society and a welfare state. Since society is made up of a ***complex network of social relationships, human conflicts are inevitable***. The same is true with disputes; we cannot prevent them. As social stability is necessary for the social order in society, disagreement disrupts the group's integration. As a result, efforts have been undertaken periodically to settle disputes between the various social groupings².

In ***ancient*** societies, conflicts were often addressed through informal mechanisms involving community's ***respected elders*** or ***tribal heads*** who acted as ***mediators, negotiators, or arbitrators***. These early systems were based on

consensus and *customary norms* rather than *formal legal codes*, ensuring swift and transparent decisions. In early **human history**, societies were broadly categorized into **two groups**: (i) *nomadic* and (ii) *settled*. Conflicts within **Nomadic groups** were resolved through the **intervention of a community leader or headman**, who relied on *customary norms and oral traditions* to mediate and arbitrate disputes. This approach emphasized flexibility and consensus to maintain harmony in the face of constant movement and resource reliance. In contrast, **settled societies**, which established permanent communities based on agriculture or trade, developed more **structured systems** for addressing disputes. These communities often *employed court-like setups, presided over by a justice or tribal elders*, reflecting the need for consistency and formalized rules within larger, stable populations. Over time, these systems evolved into early forms of judicial frameworks, where minor disputes were handled locally while more serious cases were escalated to rulers or their deputies. Both systems reflect how human societies adapted their dispute resolution methods to align with their social and economic realities.

As human civilization evolved, *these informal mechanisms laid the groundwork for modern Alternative Dispute Resolution (ADR)*. ADR has historically **complemented formal judicial systems rather than replacing them**. By providing alternative mechanisms such as mediation, arbitration, and conciliation, *ADR has helped reduce the burden on courts while ensuring accessible and cost-effective justice*. It serves as an **additional layer of dispute resolution**, allowing parties to resolve conflicts amicably and efficiently without the technicalities of formal litigation. **This synergy between ADR and formal systems strengthens the overall justice framework, promoting rule of law and equitable outcomes**. Traditional methods such as mediation, conciliation, arbitration, and negotiation have endured due to their adaptability, efficiency, and cost-effectiveness. From the **Panchayat** system in India to **tribal councils** in Africa, these practices emphasized community trust and participation. They often operated parallel to formal legal systems, providing accessible justice to marginalized groups. By evolving alongside societal structures, ADR has transitioned from ancient customs to a robust complement of contemporary legal systems, continuing its role as a cornerstone for peaceful dispute resolution. While ADR is often seen as a modern legal innovation, its history reveals a rich tapestry of practices that predate formal judicial systems by millennia.

Ancient Civilizations and ADR Practices

The Phoenicians (1200–900 BCE)

The Phoenicians, renowned for their maritime trade played a significant role in the development of negotiation and early forms of arbitration. Operating in a

geographically fragmented Mediterranean region with diverse cultures and languages, they relied heavily on **negotiation and arbitration** to settle conflicts.

- **Verbal Agreements and Trust:** In the absence of formal courts, verbal agreements played a pivotal role, underscoring the importance of trust and reputation in their trading networks. Disputes were resolved quickly to avoid disruptions in commerce.
- **Key Contribution:** Their practices laid the groundwork for modern commercial arbitration, demonstrating how ADR can thrive in trade-driven societies without structured legal systems¹.

Mesopotamia and the Code of Hammurabi (1754 BCE)

Mesopotamia, often regarded as the *cradle of civilization*, offers one of the earliest documented ADR frameworks through the **Code of Hammurabi**.

- **Arbitration by Elders:** Although formal Courts existed but the courts handled serious crimes, elders and religious leaders mediated most civil and commercial disputes. Their approach prioritized **restitution and harmony**, reflecting a restorative justice model.
- **Social Order and Fairness:** The focus was less on punitive measures and more on repairing the social fabric, ensuring that relationships within the community remained intact.
- **Legacy:** The Code influenced later legal systems, embedding principles of fairness and reconciliation that align closely with modern ADR values.^{1,3}

Ancient Greece (400 BCE)

The ancient Greeks institutionalized ADR, creating some of the earliest public systems for arbitration and mediation.

- **Public Arbitrators:** Appointed individuals resolved disputes within city-states, with their decisions recorded on **temple walls** for transparency and accountability.
- **Philosophical Foundations:** Philosophers like **Aristotle** lauded arbitration for its focus on **equity** over rigid legal adherence. His writings emphasized that resolving disputes amicably enhanced democratic harmony and civic relationships.
- **Cultural Legacy:** Greek practices demonstrate an early recognition of ADR's ability to balance justice with social cohesion, values that continue to resonate in contemporary dispute resolution frameworks².

India's Panchayat System (500 BCE)

In ancient India, the **Panchayat system** exemplified ADR's enduring relevance as a community-centered mechanism for dispute resolution.

- **Council of Elders:** The Panchayat operated as a quasi-judicial body, where disputes were mediated or arbitrated by respected elders. The emphasis was on **consensus and reconciliation**, aligning with the broader cultural value of maintaining communal harmony.
- **Open Assemblies:** Proceedings were transparent, with decisions rendered in public forums to ensure community accountability.
- **Longevity:** The Panchayat system's principles have transcended centuries, influencing modern rural governance and ADR frameworks in India, particularly under initiatives like Gram Nyayalayas (village courts)^{1,3}.

Chinese Zhou Dynasty (100 BCE)

In ancient China, The Zhou Dynasty's ADR practices were deeply influenced by Confucian philosophy, which prioritized **harmony and collective well-being** over individual interests.

- **Role of Mediators (Shi):** Mediators were expected to exhibit **impartiality and moral integrity**, reflecting Confucian ideals of virtuous leadership. They facilitated dialogue to address underlying issues rather than merely resolving surface-level disputes.
- **Cultural Sensitivity:** The focus on **non-adversarial resolution** and preserving social relationships remains central to Chinese ADR practices today, particularly in family and community disputes.
- **Modern Influence:** The enduring principles of fairness, respect, and communal harmony from this era continue to shape China's legal culture, with ADR integrated into its legal reforms.¹

Additional Practices

The Roman Empire:

Praetors and Mediation: Praetors (judicial magistrates) often encouraged disputants to resolve conflicts privately through mediation before formal court proceedings. Contracts frequently included **arbitration clauses**, making ADR an integral part of Roman commercial law.

African Tribal Councils:

Community Justice: Many African societies relied on tribal councils to mediate disputes. These councils prioritized **restorative justice**, ensuring disputes were resolved in ways that strengthened communal bonds. Examples include the **Ubuntu philosophy** in South Africa.

Native American Practices:

Consensus-Based Mediation: Indigenous tribes in North America, such as the Iroquois Confederacy, employed consensus-driven mediation to maintain peace among tribes, showcasing ADR as a tool for governance and conflict resolution.

Religious Influences on ADR

Islam

Islam places a strong emphasis on amicable dispute resolution. The Quran advocates resolving conflicts through mutual consultation and fairness, often recommending arbitration (*tahkim*) as a preferred method. Prophet Muhammad himself mediated several disputes, ***including the rebuilding of the Kaaba in Mecca, where he proposed placing the sacred Black Stone on a cloth and allowing leaders of different tribes to lift it together.*** This resolution avoided potential conflict and set a precedent for peaceful negotiation. The Islamic tradition and culture focuses more on the group or community than on the individual. Originating in ancient Middle Eastern tribes and villages were the dispute resolution practices of *Sulh* (settlement) and *Musalaha* (reconciliation). The two together, often referred to simply as *Sulh*, have been used to control conflict and maintain harmony within and between tightly knit social groups. The ritual practices involve conversations, information sharing, and exchanging promises about the future. Conflicts of many types, even those involving a criminal act, used *Sulh*. For example, if the person who committed the criminal act was known, *Sulh* would be used to achieve restorative justice and diminish revenge that one group or family might use against another. Thus, the Islamic tradition supported the use of all three original forms of ADR.²

Judaism

Jewish law (Halakha) has a long tradition of mediation and arbitration. The Talmud outlines detailed procedures for resolving disputes through compromise. Jewish communities established **Beth Din** (houses of judgment), where neutral mediators helped parties reach settlements. Compromise was valued over rigid adherence to the law, emphasizing the importance of maintaining community cohesion³.

Christianity

Christianity teachings advocate reconciliation and forgiveness as central to resolving disputes. Biblical texts, such as Matthew 18:15-17, encourage believers to settle conflicts privately or with the help of others before resorting to public

forums. Early Christian communities often relied on church elders to mediate disputes, reflecting the emphasis on unity within the faith¹.

Hinduism

In ancient Hindu societies, texts like the **Dharmashastras** provided guidance on resolving disputes through mediation and arbitration. The **Sabha** and **Samiti** assemblies functioned as quasi-judicial bodies, addressing disputes through dialogue and consensus. Arbitration was viewed as a dharmic duty, emphasizing justice and harmony^{3,2}.

Notable Historical Events

Prophet Muhammad (PBUH) (570–632) in one of most significant cases, *helped avert a war over the reconstruction of the Kaaba, the small stone building in the court of the Great Mosque at Mecca. The building houses the sacred black stone that is the goal of Islamic pilgrimage and the point toward which Muslims turn in their daily prayers. After the rebuilding, the leaders of the local clans fought over who would have the honor of replacing the sacred stone. For five days, the clans argued. On the brink of war, Muhammad was called in to arbitrate. He placed the stone on a small cloth, telling the head of each clan to carry a corner to its designated area. Muhammad himself then set it in its final resting place (Moussalli, 1997).*

The Treaty of Hudaibiyyah (628 CE): This treaty between Prophet Muhammad (PBUH) and the Quraysh tribe of Mecca is a remarkable example of **negotiated peace through ADR**. Despite initial opposition from his followers, the Prophet prioritized long-term harmony over immediate gains. The treaty included compromises on pilgrimage rights and trade but established a 10-year truce, demonstrating ADR's capacity to foster peace even in adversarial contexts.

War of al-Basus: *In pre-Islamic period, the war of Al-Basus began with the death of a camel that had been allowed to graze on another man's land. The dispute escalated into a long-running cycle of revenge and counter-revenge and was settled only through the process of tahkim and payment of blood money. Another famous and long-lasting quarrel began over which of two horses, Dahis and Ghabra, had won a race. This violent cycle too was eventually resolved through arbitration.*

King Solomon's Arbitration (960 BCE): The story of King Solomon resolving a dispute over a baby demonstrates the use of wisdom in informal adjudication. Solomon was king of Israel around 960 B.C. One famous case holds lessons for all who seek to understand the true nature of justice. Two prostitutes came before the king, according to the story. The first woman said that the second woman

had rolled over in the night and crushed her infant, who was only a few days old. This second woman then took the living baby of the first woman and replaced it with her dead child. When it was her turn to speak, the second woman accused the first of having carried out much the same scheme. Both babies were about the same age, and no one else could tell them apart. Solomon dramatically called for his sword, saying he would cut the living child in two so that each woman could have her half. One woman agreed. The other said that he should award the baby to her accuser so that the child's life would be spared. Solomon awarded the child to the woman who was willing to give it away. The case has been endlessly parsed by lawyers and child welfare advocates. Why couldn't Solomon have worked out joint custody? How would he know which mother would be a better one in the long run? In reality, the king's wisdom shone through, and arbitrators got an excellent early role model.

The Amphictyonic League (Ancient Greece, 6th Century BCE): In ancient Greece, the ***Amphictyonic League*** (a coalition of city-states) utilized arbitration to resolve disputes and maintain stability among its members. One notable example was the resolution of territorial disagreements between Delphi and neighboring regions, handled by neutral parties within the League. These efforts highlight how structured ADR processes were employed to ensure regional harmony.

The Great Law of Peace (Iroquois Confederacy, 1142 CE): The ***Iroquois Confederacy***, one of the earliest examples of federal governance, relied heavily on consensus-based decision-making to resolve conflicts among its member nations. Disputes were mediated by council members, emphasizing dialogue, reconciliation, and the preservation of relationships. This approach to dispute resolution influenced modern democratic frameworks and remains a testament to the value of inclusivity in ADR.

The Treaty of Westphalia (1648 CE): This treaty ended the ***Thirty Years' War*** in Europe, marking one of the first large-scale uses of ADR in international relations. Mediated by neutral parties, the treaty established principles of sovereignty and non-interference, forming the foundation for modern diplomacy and international arbitration.

The Ashoka Edicts (India, 3rd Century BCE): The ***Mauryan Emperor Ashoka***, known for his conversion to Buddhism, promoted non-violence and reconciliation in his governance. His ***edicts*** encouraged mediation and arbitration for resolving disputes, emphasizing moral responsibility and social harmony. These principles, inscribed on stone pillars, reinforced ADR as a tool for maintaining peace in a diverse empire.

Confucian Mediation in Ancient China (500 BCE): During the Warring States Period, Confucian ideals shaped dispute resolution in China. Mediators, often local scholars or village elders, facilitated dialogue and consensus based on Confucian principles of harmony, respect, and relational ethics. This system prioritized communal well-being over individual grievances, showcasing the adaptability of ADR in maintaining societal order.

The Jay Treaty (1794): The **Jay Treaty** between the United States and Great Britain resolved lingering conflicts post-American Revolution through arbitration and negotiation. It addressed contentious issues such as border demarcation and trade rights, becoming a landmark example of ADR in international relations.

Events, such as the reconstruction of the Kaaba and the Great Law of Peace, highlight the *role of inclusivity in preventing conflict*. Events like the War of Al-Basus demonstrate the emphasis on reconciliation and repairing relationships over punishment. The Amphictyonic League, the Iroquois Confederacy, and Confucian mediation reveal the universal reliance on ADR principles across civilizations.

Challenges Faced by ADR and Its Survival⁴

Historical Challenges

Judicial Resistance: In **England**, ADR faced judicial pushback as early as 1609 when **Lord Edward Coke**, in *Vynior's Case*, refused to enforce an arbitration agreement. This decision established a precedent for judicial oversight that undermined the autonomy of arbitration. The **Arbitration Laws** attempted to formalize arbitration by allowing court-enforced awards. However, judges often reviewed awards on technical grounds, limiting ADR's efficacy throughout the 18th century. In colonial America, despite early adoption of arbitration statutes (e.g., Massachusetts in 1632), courts frequently overturned arbitration awards, fearing they threatened judicial authority.

Legal Constraints: 19th-century laws restricted arbitrators' ability to establish binding commercial rules, emphasizing the courts' supremacy. These measures hindered the growth of ADR as an independent mechanism, relegating it to a supplementary role. In the United States, lawyers and judges perceived ADR as a challenge to the legal profession, slowing its adoption.

Cultural and Perceptual Barriers

Adversarial Traditions: Many societies, particularly those with long histories of adversarial legal systems, viewed ADR as a compromise on justice rather than a

legitimate process. **Public Perception:** ADR was often dismissed as informal, lacking the rigor and enforceability of courtroom decisions.

Lack of Awareness and Infrastructure: In rural areas and less-developed regions, communities lacked awareness of ADR's benefits, favoring litigation due to familiarity with the court system. Insufficient training and accreditation for mediators and arbitrators further weakened trust in ADR processes.

Modern Challenges

Globalization and Cross-Border Issues: Cross-border disputes introduced complexities such as **legal fragmentation**, where differences in national laws made enforcing ADR agreements and awards difficult. While frameworks like the **New York Convention** facilitated arbitration, mediation agreements lacked similar enforceability until the **Singapore Convention on Mediation** (2019).

Imbalance of Power: ADR's informal nature can disadvantage weaker parties, particularly in cases involving large corporations or government entities. For example, labor arbitration often favored employers due to unequal bargaining power.

Judicial Intervention: Despite legislative support, courts in some jurisdictions continue to assert authority over arbitration awards, delaying final resolutions and undermining ADR's efficiency.

Survival and Adaptation of ADR

Commercial Support: ADR gained traction in commercial contexts, with institutions like the **New York Chamber of Commerce** pioneering arbitration tribunals in the late 18th century. Figures like **George Washington**, who included arbitration clauses in his will, underscored ADR's practicality in resolving familial and commercial disputes.

Global Integration: The **Singapore Convention on Mediation** (2019) marked a turning point for international mediation, ensuring enforceability of mediated settlements across signatory states. Hybrid processes like **Med-Arb** and **Arb-Med-Arb** bridged gaps between litigation, arbitration, and mediation, increasing ADR's flexibility and appeal.

Despite enduring challenges, ADR has continually evolved to meet societal needs. Its practicality, adaptability, and growing institutional support have ensured its relevance in the justice system. As globalization and legal complexities increase, ADR's integration into domestic and international frameworks positions it as a cornerstone for efficient and accessible dispute resolution.

Modern Development¹

The growth of **International trade and commerce** spurred the development of international arbitration frameworks, such as the United Nations Commission on International Trade Law (UNCITRAL) and the International Chamber of Commerce (ICC). Additionally, the rise of **Online Dispute Resolution (ODR)** has transformed ADR processes by enabling virtual mediation and arbitration. Platforms like **Modria** and **eBay's Resolution Center** have resolved millions of disputes cost-effectively. Challenges include ensuring data security, adapting laws for digital formats, and training mediators to handle virtual cases.

New fields, such as **environmental ADR** and **sports arbitration**, have emerged to address **Specialized ADR Mechanisms** for specific needs. For example, the **Court of Arbitration for Sport (CAS)** resolves disputes in international athletics efficiently, emphasizing ADR's adaptability.

Broader adoption of international frameworks like the **Singapore Convention** can harmonize ADR practices across jurisdictions. Increasing public awareness, establishing universal training standards for mediators, and leveraging artificial intelligence for case management are critical steps for advancing ADR globally.

Concept and Meaning of "Alternative," "Dispute," and "Resolution"

The word "alternative" means "different", "instead of", "replacement", and "on the other hand". It also means a situation where someone has an option between two things or when a second choice is offered while the first one also remains available. So it is a privilege of choosing one of the two things. In the absence of any second option, we would say that no alternative is available. It is, thus, clear that the word "alternate" signifies one after the other, whereas "alternative" denotes choice between two. In the presence of ADR, the litigants are provided an opportunity to opt one of the methods of adjudication; formal or informal. They are given the choice either to go for determination of issues through regular litigation or for resolution of differences through amicable consensual settlement.

A **"dispute"** when used as a noun, means conflict, contest, debate, controversy, quarrel, difference of opinion, subject of litigation, and disagreement between two persons, states and nations. It would also include the clashing of opposed principles, interests and benefits. The term as a verb means to put something into question or to challenge the validity of something. In this study,

only its first usage will concern us. In legal sense, dispute denotes a situation where opposite interests constitute a conflict. It is the point from where the differences between opponents originate. When a fact is viewed differently and is believed oppositely, a dispute emerges. In the civil law, the parties are considered to be at "variance" when one of them asserts the existence of a fact and the other denies the same. This assertion and denial constitute an issue: the name given to dispute by the Code of Civil Procedure 1908. It is, thus, rightly said that when court does not find the parties at variance, it shall, without delay, announce its judgment. Within ADR, disputes extend beyond active conflicts to potential disagreements, enabling proactive resolution mechanisms like arbitration or mediation before formal litigation arises.

"Resolution" refers to the process of finding an acceptable solution to a dispute, typically involving mutual consent or intervention by a neutral party. To resolve means to determine, to dispose of, to make a firm decision for doing some act. For the purpose of ADR, it would denote the finding out of an acceptable solution to a dispute, also known as the amicable settlement of an issue. The word "resolution" will also cover a decision, reached by the majority of a forum.²¹ Its loose application would also convey the sense of adjudication which may be either formal or alternative. The resolution can be achieved by the disputants themselves or by any neutral person like a judge and an arbitrator. In law, resolution means the official expression of opinion or will of a legislative body. The conclusion of findings is also known as resolution. The contents of resolution are considered as a kind of soft law.

The above details of all the three components of ADR would help us understanding the concept in the following manner. ***ADR is an alternative to settlement of issues by regular courts and tribunals, by use of force and by resorting to the violence or by any other mean resulting in an unfair adjustment. Most interesting is the fact that some practitioners of ADR claim that not the ADR, but courts are, actually, the alternative dispute process. So according to them, ADR represents usual conflict resolution processes.*** Giving a weight to historical aspect, this stance seems to be more agreeable to reason because, principally, the subsequent process should be considered as an alternative. *The regular court system is undoubtedly later in time as compared to informal modes of dispute resolution.* We add that, historically, ADR techniques are, no doubt, alternatives but not to the courts rather they are alternatives to resolution of disputes by quarrel and violence. In the present scenario of actual existence of states and state-run courts, ADR is an alternative to regular formal litigation. Precisely, ***the above three components collectively define ADR as a choice-driven, amicable, and efficient alternative to formal litigation, emphasizing accessibility, speed, and satisfaction for disputing parties.***⁵

Types of ADR

Negotiation: Negotiation is the most fundamental form of ADR. It involves direct discussions between disputing parties with the goal of reaching a mutually acceptable resolution. The process is voluntary and does not involve a third party. Negotiation is informal, flexible, and can address a wide range of disputes, from personal conflicts to complex corporate disagreements.

Mediation: *Mediation involves a neutral third party, known as a mediator, who facilitates dialogue between disputing parties. Unlike arbitration, the mediator does not impose a decision but instead helps the parties identify common interests and negotiate a mutually acceptable solution. Mediation emphasizes confidentiality, creativity in problem-solving, and preserving relationships. It is particularly effective in family, workplace, and community disputes.*

Arbitration: Arbitration is a more formal ADR process where a neutral third party, the arbitrator, hears evidence and arguments from both sides before making a binding or non-binding decision. Arbitration resembles a court proceeding but is less formal, and parties often have the flexibility to choose their arbitrator and procedural rules. It is commonly used in commercial, labor, and international disputes.

Conciliation: Conciliation is similar to mediation but involves a more proactive role for the conciliator, who suggests potential solutions to the dispute. It is often used in employment disputes and commercial disagreements. Conciliators guide the process by analyzing the issues and offering advice to facilitate an agreement.

Hybrid Processes: Hybrid ADR methods, such as **Med-Arb** (mediation followed by arbitration), combine the benefits of different techniques to suit the specific needs of a dispute.

Examples: Med-Arb: Parties first attempt mediation; if unresolved, the mediator transitions to the role of arbitrator to make a binding decision.

Arb-Med-Arb: Arbitration begins but pauses to allow mediation. If mediation resolves some issues, arbitration concludes the unresolved matters.

Advantages: Provides flexibility by combining collaborative and authoritative approaches. Streamlines the process by addressing disputes in stages, reducing costs and delays.

Notable Hybrid Method: Early Neutral Evaluation (ENE): An expert assesses the strengths and weaknesses of each side's case, providing a non-binding evaluation to help parties gauge their likelihood of success in litigation.

Need and Justification of ADR

The necessity of Alternative Dispute Resolution (ADR) arises from the inherent shortcomings of formal judicial systems and the pressing demand for quicker, accessible, and amicable methods of resolving disputes. ADR is not merely an alternative mechanism but a foundational approach for addressing the critical inefficiencies that plague traditional legal frameworks globally.

Shortcomings of Formal Litigation

Formal litigation has long been criticized for its inordinate delays, high costs, procedural complexities, and an over-reliance on technicalities. These systemic flaws often result in justice being inaccessible to the majority, especially for the underprivileged. The adversarial nature of formal court systems prioritizes procedural fairness over substantial justice, leading to protracted disputes and dissatisfaction among litigants. **Delays and Pendency:** In many jurisdictions, courts are overburdened with a backlog of cases. For instance, the delays in the Pakistani legal system have reached a stage where justice often becomes a distant hope for litigants. As stated in a survey conducted by the National Consumer Council in England, 75% of litigants expressed extreme dissatisfaction with the civil justice system due to the snail-paced proceedings and unpredictability of outcomes. Similarly, in Pakistan, the proverb *"May Allah not indulge you in a court or hospital"* aptly encapsulates the plight of litigants within the overburdened system. **Exorbitant Costs:** Litigation is not only slow but also expensive. Skyrocketing lawyer fees, procedural expenses, and other associated costs often outprice ordinary citizens from accessing justice. This creates an inherent inequality, barring those with limited financial resources from availing their legal rights through formal adjudication. **Litigation Fatigue:** Traditional litigation is adversarial and combative in nature, often exacerbating hostilities between parties. This approach fails to address the root causes of disputes and instead promotes polarization and resistivity, leading to a series of further conflicts.

Justifications for ADR

ADR offers a viable alternative that addresses these systemic shortcomings while providing additional benefits that align with the needs of modern societies. Its mechanisms, including arbitration, mediation, conciliation, and negotiation, are tailored to foster mutual understanding and cooperation. **Timeliness and Efficiency:** ADR is inherently faster than formal court proceedings. It aims to resolve disputes expeditiously, which not only saves the precious time of litigants but also alleviates the burden on judicial systems. The emphasis on quick settlements allows for effective utilization of resources and a focus on substantive justice. **Cost-Effectiveness:** One of the most significant advantages of ADR is its affordability. By eliminating the need for lengthy procedures, extensive documentation, and excessive legal fees, ADR ensures that justice is accessible to all, irrespective of economic status. **Amicability and Preservation of Relationships:** Unlike litigation, which often intensifies animosities, ADR fosters collaboration and mutual respect. It promotes a win-win situation, ensuring that neither party feels vanquished. This is particularly crucial in disputes involving close relationships, such as family or business matters, where maintaining a positive relationship post-resolution is vital. **Accessibility and Inclusivity:** ADR

processes are simple, informal, and easily accessible, even in remote and rural areas. In countries like Pakistan, traditional practices such as *Jirga* and *Panchayat* reflect indigenous forms of ADR that have successfully resolved disputes for centuries. By integrating these practices with modern ADR techniques, justice can be made more inclusive and culturally relevant. **Reduction in Judicial Backlog:** Courts worldwide are inundated with cases, creating an urgent need for alternative mechanisms. ADR offers a pragmatic solution by diverting a substantial volume of disputes away from formal litigation, allowing courts to focus on cases requiring judicial scrutiny. In Pakistan, initiatives such as the National Judicial Policy Making Committee's Time-Bound Delay Reduction plan and the introduction of ADR provisions in civil and commercial laws reflect an institutional acknowledgment of ADR's role in mitigating judicial backlog.

Islamic Perspective on ADR

Alternative Dispute Resolution (ADR) finds its roots deeply embedded in Islamic jurisprudence, which emphasizes peaceful settlements, reconciliation, and the avoidance of prolonged hostilities. The principles of ADR in Islamic law align with the concepts of *Islah* (reformation) and *Sulh* (conciliation), both of which aim to foster harmony, prevent conflicts, and restore justice without resorting to adversarial litigation.

Islamic Foundations of ADR

The Quran and Sunnah form the bedrock of ADR in Islam, advocating for amicable resolution of disputes through mutual agreement and mediation. The Quran explicitly calls for the resolution of conflicts through fairness and conciliation:

"If two parties among the believers fall into a quarrel, make peace between them with justice and be fair." (Surah Al-Hujurat, 49:9)

"So fear Allah and make peace among yourselves." (Surah Al-Anfal, 8:1)

These verses underscore the obligation to resolve disputes amicably, prioritizing harmony over discord. Similarly, the Sunnah of the Prophet Muhammad (PBUH) reflects his consistent preference for compromise and reconciliation, provided such agreements do not transgress Islamic principles. The Prophet (PBUH) stated: *"Reconciliation is permissible among Muslims except for agreements that make the lawful unlawful or the unlawful lawful."*

Key Concepts in Islamic ADR

Islah (Reformation): *Islah* refers to the process of mending relationships and restoring peace. It encompasses efforts to resolve disputes

through understanding, dialogue, and compromise. This concept highlights the proactive role of mediators or reformers (*Mufassilun*) in resolving disputes before they escalate into prolonged conflicts. **Sulh (Conciliation)**: *Sulh* is the contractual settlement of disputes through mutual consent. It is a binding agreement that restores harmony between parties. Unlike litigation, which often declares a victor and a loser, *Sulh* ensures a win-win outcome by addressing the grievances of both parties. Islamic jurists view *Sulh* as a preferable method of dispute resolution, particularly in civil and family matters, as it preserves relationships and mitigates enmity. **Tahkim (Arbitration)**: Arbitration, or *Tahkim*, is another recognized form of ADR in Islam. It involves appointing a neutral arbitrator (*Hakim*) to adjudicate a dispute. The arbitrator's decision is binding upon the parties, provided it adheres to Islamic principles. Historical examples of arbitration, such as the resolution of the Black Stone dispute by the Prophet Muhammad (PBUH), demonstrate its effectiveness and significance in Islamic tradition.

Role of Mediators and Arbitrators.

The role of mediators (*Muslihun*) and arbitrators (*Hakamun*) is central to Islamic ADR. These individuals are expected to be impartial, knowledgeable, and just. Their objective is not merely to deliver a verdict but to ensure that the resolution is just, equitable, and acceptable to all parties involved.

Compatibility with Modern ADR

Islamic ADR is not only rooted in tradition but also aligns with contemporary principles of ADR. The concepts of *Sulh*, *Tahkim*, and *Islah* correspond to modern mediation, arbitration, and negotiation, respectively. For instance: *Sulh* aligns with mediation and conciliation, where parties reach a settlement through facilitated dialogue. *Tahkim* mirrors arbitration, with a neutral party rendering a binding decision. *Islah* reflects the broader ethos of collaborative and restorative justice, which underpins many modern ADR frameworks.

The concept of ADR in Islam emphasizes peace, fairness, and the restoration of relationships. By prioritizing amicable settlements over adversarial litigation, Islamic ADR embodies values that are not only timeless but also increasingly relevant in today's pursuit of equitable and efficient justice systems. As nations seek to integrate ADR into their legal frameworks, the rich Islamic tradition of dispute resolution serves as a valuable resource for fostering harmony and social cohesion.

Critique of ADR and Settlement: Justice at Stake

The advocacy for Alternative Dispute Resolution (ADR) and settlement often highlights their efficiency in reducing the burdens of litigation. However, beneath this efficiency lies a range of issues that challenge fairness, equity, and the pursuit of justice. This critique explores the pitfalls of ADR and settlement through key concerns such as power imbalances, the absence of authoritative consent, insufficient judicial oversight, and the prioritization of peace over justice.

Imbalance of Power in Settlement Negotiations: Settlement often assumes parity between disputing parties, but in reality, disparities in resources significantly distort outcomes. **Financial Inequality:** Wealthier parties can prolong litigation or impose procedural costs, compelling economically disadvantaged opponents to accept unfair settlements. For instance, a poor plaintiff might settle for far less than the value of their claim simply to avoid prolonged litigation expenses. **Information Disparity:** Parties with greater access to legal expertise and data can better predict litigation outcomes, giving them an unfair advantage. Meanwhile, resource-constrained litigants are often forced into agreements based on incomplete or inaccurate assessments.

These imbalances highlight how settlement mechanisms can undermine the principle of equality before the law, skewing justice in favor of those with greater means.

Lack of Genuine Consent in Settlements

Settlement agreements often fail to secure true and informed consent, particularly in cases involving organizations or groups. **Representation Challenges** In disputes involving corporations, unions, or unstructured groups like social minorities, identifying who truly represents the collective interest is problematic. Leaders or representatives may settle based on personal interests rather than the group's welfare. **Autonomy of Individual Litigants** Legal representatives or insurers might negotiate settlements without adequately

consulting the parties they represent. This dynamic compromises the autonomy of individuals, casting doubt on the legitimacy of the agreements.

Such challenges expose a critical flaw in ADR’s reliance on consent as its foundational principle, particularly when that consent is neither freely given nor fully informed.

Judicial Oversight and Post-Judgment Involvement

Settlement inherently limits the judiciary’s role, raising concerns about its effectiveness in resolving systemic or long-term issues. **Weak Factual**

Foundations: Judges relying on settlements lack the comprehensive factual and legal records that a full trial would produce. This shortfall hinders their ability to enforce or modify consent decrees effectively in the future. **Challenges in**

Complex Cases

In structural reform litigation, such as civil rights or antitrust cases, judicial oversight often continues long after judgment. Settlements, designed for finality, are ill-suited to provide the necessary foundation for sustained involvement. The limitations of settlement in such contexts demonstrate its inadequacy as a substitute for thorough judicial adjudication, particularly in cases demanding ongoing intervention.

Justice Versus Peace: The Core Dilemma

While ADR emphasizes peace and resolution, it risks compromising justice, which should be the ultimate goal of any legal system. **Erosion of Public Values**

Adjudication serves a broader societal purpose by interpreting laws and enforcing public values. Settlement circumvents this process, depriving society of critical legal precedents and authoritative interpretations. **Settling for Less Than**

Justice

By prioritizing compromise, settlements often deliver outcomes that fall short of justice, especially in cases with significant public interest, such as civil rights or environmental protection. Peaceful coexistence achieved through settlement is not synonymous with justice.

This tension between achieving peace and delivering justice underscores the inherent limitations of ADR, particularly when public interests are at stake.

While ADR and settlement offer efficiency and reduced litigation costs, they pose significant risks to fairness and justice. Imbalances of power, the erosion of genuine consent, limitations on judicial oversight, and the prioritization of peace over justice reveal their shortcomings. As Owen M. Fiss argues, the true role of adjudication is not merely to resolve disputes but to strive for justice—a goal that settlement often fails to achieve.⁹

Mediation: An Overview

Mediation is a cornerstone of Alternative Dispute Resolution (ADR), providing a structured yet flexible mechanism for resolving disputes amicably. Rooted in interest-based negotiation, mediation emphasizes collaboration and mutual understanding over adversarial confrontation. This section explores the concept, process, benefits, and challenges of mediation, drawing extensively from best practices and global experiences.

Definition and Nature of Mediation

Mediation is a non-binding, voluntary process where a neutral third party, known as the mediator, facilitates negotiations between disputing parties to help them reach a mutually acceptable resolution. Unlike arbitration or litigation, the mediator does not impose a decision but aids the parties in exploring options and clarifying interests. Mediation is particularly effective in preserving relationships, making it a preferred choice in commercial, family, and workplace disputes (mediation best).

Core Principles of Mediation

Voluntariness: Parties willingly participate in mediation and retain control over the outcome. **Neutrality and Impartiality:** The mediator remains unbiased, ensuring fair treatment of all parties. **Confidentiality:** Discussions during mediation are private and cannot be used as evidence in subsequent legal proceedings. **Self-Determination:** The resolution is crafted by the parties, ensuring ownership and satisfaction.

Types of Mediation

Mediation encompasses various forms tailored to specific contexts: **Facilitative Mediation:** The mediator focuses on improving communication and

guiding parties toward a resolution without offering opinions on the merits of the case. **Evaluative Mediation:** The mediator provides an assessment of the dispute and suggests potential outcomes, often used in commercial or legal contexts. **Transformative Mediation:** Emphasizing empowerment and recognition, this approach aims to transform relationships rather than merely resolving disputes. **Narrative Mediation** Narrative mediation is a more recent approach that seeks to **reframe the narratives** parties hold about their conflict. **Online Mediation:** With the rise of technology, **online mediation** has emerged as a vital tool for resolving disputes in virtual settings. **Hybrid Mediation Approaches:** **Med-Arb:** Combines mediation with arbitration, allowing the mediator to transition to an arbitrator if no resolution is reached. **Arb-Med-Arb:** Begins with arbitration but includes a mediation phase to resolve disputes amicably before the arbitrator renders a decision. **Early Neutral Evaluation:** A hybrid method where the mediator provides a preliminary assessment of the case, which parties use to guide further negotiations.

The Mediation Process

The mediation process typically involves the following stages: **Preparation:** The mediator meets with the parties to understand the issues, set expectations, and establish ground rules. **Opening Session:** All parties present their perspectives, allowing the mediator to identify key areas of agreement and contention. **Exploration:** The mediator facilitates discussions, encouraging parties to share underlying interests and concerns. **Negotiation:** Parties brainstorm solutions and evaluate options with the mediator's guidance. **Agreement:** Once a mutually acceptable resolution is reached, it is documented in writing and, if required, made legally binding.

Benefits of Mediation

Efficiency and Cost-Effectiveness: Mediation is faster and less expensive than litigation, reducing court dockets and legal expenses. **Preservation of Relationships:** By fostering collaboration, mediation helps maintain personal and professional relationships. **Flexibility:** The informal nature of mediation allows tailored solutions that address the unique needs of the parties. **Confidentiality:** Unlike public court proceedings, mediation ensures privacy, protecting sensitive information. **High Success Rates:** Studies show that mediation leads to settlement in a significant percentage of cases, often exceeding 70%.

Challenges and Limitations

Power Imbalances: Unequal bargaining power can hinder fair outcomes, particularly in cases involving vulnerable parties. **Lack of Awareness:**

Limited understanding of mediation's benefits can deter its adoption. **Cultural Resistance:** In some jurisdictions, adversarial litigation is deeply ingrained, making the shift to mediation challenging. **Enforceability of Agreements:** While agreements reached in mediation are often binding, their enforceability depends on local laws.

Global Practices and Success Stories

United States: Mediation has become integral to the judicial system, with many courts mandating mediation before trial. **Singapore:** The Singapore Mediation Centre is a model for integrating mediation into commercial dispute resolution. **Latin America:** Countries like Brazil and Colombia have adopted mediation to address systemic delays and corruption in courts. Mediation is a transformative tool that bridges gaps between parties, providing an alternative to the adversarial legal process. Its success lies in its adaptability, focus on mutual gain, and ability to deliver swift and lasting resolutions. By addressing challenges such as cultural resistance and power imbalances, mediation can be further entrenched as a vital component of modern dispute resolution frameworks⁶.

Cross-Border Mediation: A Framework for Resolving International Commercial Disputes

Cross-border mediation is an emerging mechanism for resolving international commercial disputes, offering an efficient and flexible alternative to litigation and arbitration. It is particularly suited to the complexities of globalization, where commercial relationships span jurisdictions and cultures.

Key Features of Cross-Border Mediation

Voluntary and Collaborative: Mediation is a voluntary process where a neutral third party, the mediator, facilitates discussions between disputing parties to help them reach a mutually acceptable resolution. Unlike litigation or arbitration, decisions are not imposed; parties retain control over the outcome.

Cost and Time Efficiency: Cross-border mediation is significantly less expensive and time-consuming than arbitration or litigation. For example, the ICC's comparative data showed that the average cost of mediation for a \$25 million dispute is approximately \$120,000, compared to \$2.8 million for arbitration. Mediation typically concludes within 2–3 months, encompassing just 3–5 days of preparation and 1–2 days of hearings, as opposed to the 18–24 months required for arbitration.

Cultural Sensitivity: The process is uniquely positioned to handle the cultural nuances of international disputes. Mediators adept in cross-cultural communication can address and bridge differences in negotiation styles. The ability to navigate “high-context” (indirect communication) and “low-context” (direct communication) cultures is essential. Tools like visual aids, frequent clarifications, and skilled interpreters are often used to ensure mutual understanding.

Confidentiality: Mediation proceedings are private, with agreements reached in confidentiality, protecting sensitive business information and reputations. Leading international rules, such as the UNCITRAL Conciliation Rules and ICC ADR Rules, ensure that information disclosed during mediation is inadmissible in subsequent legal or arbitral proceedings.

Legal Recognition: Recent frameworks such as the **UNCITRAL Model Law on International Commercial Mediation**, the *European Union Directive on Mediation in Civil and Commercial Matters*, and the *Singapore Convention on Mediation* provide a robust legal foundation for the enforceability of mediated settlement agreements (MSAs). These developments ensure that mediated settlements are treated with the same legal force as arbitral awards or judicial decisions across jurisdictions.

Advantages of Cross-Border Mediation

Flexibility and Control: Parties can customize the mediation process, including the selection of mediators, procedural rules, and outcomes. Unlike arbitration, mediation offers expansive remedies that can include:

- *Agreements to preserve or enhance future business relationships.*
- *Structured settlements with tailored timelines and payment conditions.*
- *Unique cultural remedies such as apologies, significant in some jurisdictions.*
- *Agreements addressing partial disputes while reserving others for arbitration.*

Cost and Risk Reduction: Mediation not only lowers dispute resolution costs but also reduces associated risks. Even if full resolution is not achieved, narrowing the scope of disputes through mediation can streamline subsequent arbitration or litigation.

Preservation of Relationships: Mediation fosters cooperation and focuses on maintaining business relationships. Mediators assist in rebuilding trust and exploring opportunities for collaboration beyond the resolution of the immediate dispute. Unlike arbitration, where outcomes are binary, mediation fosters win-win scenarios.

Global Applicability: Harmonized frameworks, like the ***Singapore Convention on Mediation***, have bolstered the enforceability of mediated agreements worldwide. Hybrid processes such as Arb-Med-Arb and Med-Arb integrate mediation into arbitration proceedings, ensuring enforceable outcomes under the New York Convention.

Challenges in Cross-Border Mediation

Cultural and Language Barriers: Disputes often involve parties from diverse cultural and linguistic backgrounds. Mediators must possess cultural competence and the ability to navigate differing communication styles. Provisions for professional interpreters and precise translations are critical. Miscommunication can be minimized by frequent restatements and clear agreements on terminology.

Mediator Qualifications: The absence of standardized global requirements for mediator training and certification can lead to inconsistent quality. ***Institutions like the International Mediation Institute (IMI) & Singapore International Mediation Center are working to address these discrepancies by developing universal standards.***

Legal Fragmentation and Enforcement Issues: While frameworks such as the UNCITRAL Model Law provide guidance, variations in domestic laws can complicate the enforceability of MSAs. Some jurisdictions, like Germany and England, enforce pre-dispute mediation clauses, while others do not. A uniform international convention on mediation enforcement, as proposed under UNCITRAL, is essential for addressing these gaps.

Voluntariness and Process Control: Although mediation allows parties to terminate proceedings at will, this can undermine its effectiveness. Ensuring parties' commitment to engage in good faith remains a critical challenge.

Innovative Mediation Models

Arb-Med-Arb (Arbitration-Mediation-Arbitration)

- *Initiates as arbitration, transitions to mediation, and returns to arbitration if mediation fails.*
- *Successfully mediated agreements are formalized into arbitral awards, enforceable under the New York Convention.*
- *This model is supported by jurisdictions such as Singapore and Hong Kong.*

Med-Arb (Mediation-Arbitration)

- *The mediator assumes the role of arbitrator if the mediation does not resolve all disputes.*

- *Effective for addressing partial disputes while leaving unresolved issues for adjudication.*
- *However, concerns about impartiality require explicit written consent from parties to use the same individual as mediator and arbitrator.*

Hybrid Models and Timing Considerations

- *Mediation can occur at various stages of arbitration, including before substantial evidence gathering, to maximize cost efficiency.*
- *Early mediation may clarify issues, while late mediation provides a resolution framework informed by extensive documentation and evidence.*

Legislative and Institutional Frameworks

Key Jurisdictions Supporting Mediation

- **EU:** The Directive on Mediation mandates enforcement of MSAs as court orders or judgments.
- **Singapore:** The SMC-SIAC Med-Arb service allows MSAs to be recorded as arbitral awards.
- **China:** Arbitrators can draft MSAs into enforceable awards under the Arbitration Law.
- **Brazil:** Arbitrators are required to attempt mediation during arbitration proceedings.

Proposals for an UNCITRAL Convention

- *A proposed convention would provide uniform enforceability standards for MSAs globally, addressing enforcement challenges and enhancing mediation's attractiveness as a primary dispute resolution method.*

Cross-border mediation represents the future of international commercial dispute resolution. It blends efficiency, flexibility, and cultural sensitivity, offering businesses a viable alternative to litigation and arbitration. By addressing enforcement challenges, harmonizing mediator standards, and promoting hybrid models like Arb-Med-Arb, mediation can further its global impact. Enhanced international cooperation will ensure mediation's continued growth as a cornerstone of dispute resolution in an increasingly interconnected world.^{7,8}

International Legal Framework for ADR (Mediation) and International Service Provider Institutions

International Legal Framework for Mediation

The success and global adoption of mediation as an alternative dispute resolution (ADR) mechanism are largely due to the establishment of international legal frameworks that provide recognition, enforceability, and uniformity. Key instruments include:

Singapore Convention on Mediation (2019): Officially known as the *United Nations Convention on International Settlement Agreements Resulting from Mediation*, this landmark treaty ensures that **mediated settlement agreements (MSAs)** are directly enforceable across signatory states. It aims to provide mediation the same credibility and utility as arbitration under the New York Convention.

UNCITRAL Model Law on International Commercial Mediation (2002, amended 2018): This model law offers comprehensive guidance for states to adopt mediation-friendly legislation. It covers procedural standards, confidentiality protections, and **enforcement mechanisms for MSAs**. It promotes harmonization across jurisdictions, reducing legal fragmentation in cross-border disputes.

European Union Directive on Mediation (2008): This directive mandates member states to ensure that MSAs can be enforced as judgments or arbitral awards within the EU. It encourages mediation in civil and commercial disputes and provides a legal foundation for enforcing agreements.

Other Jurisdiction-Specific Frameworks: Countries like China, Brazil, Singapore, and the United States have incorporated mediation-friendly laws into their domestic legal systems. These include provisions for hybrid processes like Med-Arb and Arb-Med-Arb, which enhance the enforceability of MSAs.

International Service Provider Institutions:

Several international institutions specialize in administering cross-border mediations, offering rules, professional mediators, and enforcement mechanisms. Prominent organizations include:

International Chamber of Commerce (ICC): The ICC Mediation Rules provide a globally recognized framework for resolving disputes. The ICC facilitates mediations by appointing mediators, offering procedural guidance, and ensuring enforceability under international frameworks like the Singapore Convention.

International Centre for Dispute Resolution (ICDR): As the international arm of the American Arbitration Association (AAA), ICDR offers specialized mediation services tailored to international disputes. Its rules include provisions for mediator recommendations and flexible processes to suit the parties' needs.

Singapore International Mediation Centre (SIMC): The SIMC, in collaboration with the Singapore International Arbitration Centre (SIAC), promotes the hybrid Arb-Med-Arb model. It plays a pivotal role in the enforcement of MSAs under the Singapore Convention.

London Court of International Arbitration (LCIA): The LCIA's ADR services include mediation for commercial disputes. Its rules focus on procedural flexibility, making it suitable for complex cross-border disputes.

Stockholm Chamber of Commerce (SCC): The SCC offers mediation rules that allow mediated settlements to be converted into arbitral awards for enforceability under the New York Convention.

International Mediation Institute (IMI): The IMI is a non-profit organization that provides a global platform for developing mediation standards. It maintains a database of certified mediators and promotes best practices across jurisdictions.

China International Economic and Trade Arbitration Commission (CIETAC): CIETAC offers mediation services that integrate seamlessly with arbitration processes. It is a preferred institution for disputes involving Chinese parties or those governed by Chinese law.

The international legal framework and service provider institutions have collectively strengthened the role of mediation in cross-border dispute resolution. By harmonizing laws and offering specialized mediation services, these frameworks and institutions ensure that mediation remains an accessible, enforceable, and effective alternative to arbitration and litigation in the global arena.

Court-Annexed Mediation:

Court-annexed mediation is a structured dispute resolution process integrated within the judicial system, designed to facilitate ***amicable settlements*** between disputing parties ***before formal court proceedings begin***. This approach typically operates in the pre-trial stage, providing an opportunity for parties to resolve conflicts collaboratively and efficiently.

Judicial Oversight: Mediation is conducted under the authority or auspices of the court, ensuring adherence to legal and procedural norms while maintaining a *focus on dialogue and negotiation*. **Voluntary Participation:** Parties generally retain the option to participate in mediation voluntarily, emphasizing mutual agreement and cooperation. However, in some jurisdictions, certain cases might be mandated for mediation before proceeding to trial. **Qualified Mediators:**

Mediators are often experienced professionals, including sitting and retired judges, lawyers, or legal experts, who bring impartiality and expertise to the process. *Their role is to guide discussions, identify common interests, and foster settlements.* **Time and Cost Efficiency:** By resolving disputes outside the courtroom, court-annexed mediation *reduces the caseload on courts*, expedites resolution timelines, and minimizes litigation costs for the parties involved. **Wide Applicability:** This mechanism applies to a broad spectrum of civil and commercial disputes, except those explicitly excluded by law or where parties opt out. **Protection of Interests:** The process is designed to safeguard the rights of vulnerable groups while promoting equitable settlements that align with legal standards.

Benefits:

Decongests Court Systems: Reduces the burden on courts by resolving a significant number of cases at the mediation stage. **Preserves Relationships:** Encourages a less adversarial approach, fostering better post-dispute relationships between parties, *particularly in family or business contexts.* **Custom Solutions:** Offers flexible, tailor-made resolutions that address the unique needs of the parties involved, which might not be achievable in a court ruling.

Challenges and Considerations:

Awareness and Acceptance: Effective dissemination and education about court-annexed mediation are essential to ensure parties understand its value and participate willingly. **Infrastructure and Resources:** Sufficient budgetary allocation is needed for mediators' remuneration, training, and facilities to support the process. **Regulatory Framework:** Clear laws and guidelines are required to resolve procedural ambiguities and ensure consistent application across cases. *Court-annexed mediation is increasingly recognized as a vital component of modern judicial systems*, enhancing access to justice and contributing to the efficient resolution of disputes. Its success depends on well-trained mediators, supportive legal frameworks, and public confidence in the process.

Legislative Frameworks in Pakistan Supporting Mediation

The robust legal frameworks supporting mediation in Pakistan is the **Alternative Dispute Resolution Act, 2017**, along with **provincial ADR** laws, provides a strong foundation for promoting mediation. These laws empower courts to refer disputes to mediation with the consent of the parties. Additionally, the Code of Civil Procedure (Sindh Amendment) Act, 2018, offers a comprehensive definition

of mediation, emphasizing confidentiality, neutrality, and party control. These legislative measures reflect a growing recognition of mediation's importance in streamlining the justice process.

Institutional and Judicial Promotion of Mediation

The Court **Annexed Mediation Centers**, are key initiatives in reducing case backlogs. These court-annexed centers leverage the respect litigating parties hold for judges, increasing the likelihood of settlements. Private institutions like the **Musaliha International Center for Arbitration and Dispute Resolution** and the **International Dispute Resolution Institute** were also recognized for their contributions. The court encouraged further collaboration between public and private entities to mainstream mediation across the country.

Establishment of Court-Annexed in the province of Balochistan

Court-annexed mediation centers in Balochistan represent a vital step toward promoting alternative dispute resolution (ADR) mechanisms in the province. Initially, these centers aim to provide litigants with an efficient and amicable pathway for resolving disputes, reducing the burden on courts while fostering reconciliation and justice. Established under the broader ADR framework, these centers emphasize timeliness, confidentiality, and mutual agreement.

Establishment of Mediation Centers in Quetta

To enhance access to ADR, initially three court-annexed mediation centers were established in Quetta:

- **Mediation Court I**
- **Mediation Court II**
- **Mediation Court III**

These centers were established to handle both civil and criminal disputes referred by the courts, ensuring litigants an opportunity to resolve conflicts outside the adversarial judicial process.

Performance Data of Court-Annexed Mediation Centers

Case Referrals: Between April 2023 and November 2024, a total of **1,111 cases** were referred to these mediation centers, categorized as follows:

- **Civil Cases:** 376
- **Criminal Cases:** 735

Resolution and Pending Cases:

- **Resolved Cases:** 820 (209 civil, 611 criminal)
- **Returned to Court:** 264 (160 civil, 104 criminal)
- **Pending Cases:** 27 (07 civil, 20 criminal)

Court-Wise Performance:

- **Mediation Court I:**
 - Cases Referred: 538 (179 civil, 359 criminal)
 - Cases Resolved: 381 (88 civil, 293 criminal)
 - Resolution Rate: 70.8%
- **Mediation Court II:**
 - Cases Referred: 485 (109 civil, 376 criminal)
 - Cases Resolved: 371 (53 civil, 318 criminal)
 - Resolution Rate: 76.8 %
- **Mediation Court III:**
 - Cases Referred: 88 (88 civil, 00 criminal)
 - Cases Resolved: 68 (68 civil, 00 criminal)
 - Resolution Rate: 77.3

Overall Resolution Rate:

- The consolidated resolution rate stands at with:
 - **Civil/Criminal Cases:** 73.8 %

Analysis of the Data:

- **Mediation Court II** achieved the highest resolution rate of **76.5%**, followed closely by **Mediation Court III** with **77.3%** (although it only handled civil cases).
- **Mediation Court I** has a **resolution rate of 70.8%**, which is still high, but slightly lower than the other two courts. This could be due to the more substantial caseload it handles (particularly criminal cases).

Criminal vs. Civil Cases

- **Criminal Cases:** Mediation appears highly effective in resolving criminal cases, especially in **Mediation Court II**, where **318 criminal cases** were resolved (with a resolution rate of **84.5%** for criminal cases).
- **Mediation Court I** shows that **293 criminal cases** were resolved with a strong resolution rate, indicating that mediation may play a vital role in reconciling parties in criminal disputes, where settlements and reconciliation are often sought.
- **Civil Cases:** The resolution rate for civil cases is **lower** compared to criminal cases in **Mediation Court I** (88 civil cases resolved out of 179 referred,

49.2%) and **Mediation Court II** (53 civil cases resolved out of 109 referred, 48.6%). **Mediation Court III** has a **77.3 resolution rate** for its civil cases, but the number of civil cases referred (88) is low.

Disparity in Case Types (Criminal vs. Civil)

- The overall performance indicates that **criminal cases** may be easier to resolve via mediation compared to **civil disputes**. This suggests that criminal mediation in Balochistan may be more focused on facilitating **reconciliation** and **compromise**, particularly in minor offenses. In contrast, civil cases, which often involve more complex disputes (e.g., property or contractual matters), appear to have a lower resolution rate.

Impact on Judicial Efficiency

- **Overall resolution rate** of **73.8%** is an impressive figure, especially considering the burden it alleviates from traditional courts. With **820 cases resolved**, the mediation centers have demonstrated their potential to reduce the backlog in courts. However, the relatively high number of **pending cases (723)** suggests that further improvements are needed to increase resolution rates and manage the growing caseload.

Recommendations for Improvement:

To enhance the effectiveness of court-annexed mediation centers in Balochistan, several key improvements are necessary. First, **capacity building and mediator training** should be expanded to ensure mediators are equipped to handle both civil and criminal cases, particularly complex disputes. Additionally, **resources and infrastructure** need to be increased, including more mediators and better facilities, to manage the high volume of cases and reduce the backlog. **Public awareness campaigns** should encourage more voluntary participation in mediation, especially for civil cases, which currently have lower resolution rates. Focusing on **complex cases**, particularly in commercial and property disputes, will allow mediation to offer more efficient resolutions compared to prolonged litigation. Implementing **digital tools** can streamline operations, improve tracking, and reduce administrative delays. Lastly, **strengthening the legal framework** to ensure the enforceability of mediated agreements will encourage broader adoption of mediation.

Overall, with these targeted improvements, the mediation centers can better contribute to the goal of providing accessible, efficient, and equitable justice in Balochistan.

Judicial Decision

Recently the Supreme Court of Pakistan, in case of M/s Mughuls' case¹⁰, has highlighted mediation as an essential component of the justice system. This shift emphasizes the importance of alternative dispute resolution (ADR) mechanisms in addressing systemic inefficiencies and providing justice in a timely and effective manner. While deciding the appeals involving M/s Mughals Pakistan (Pvt.) Limited, the court analyzed mediation's benefits and its role in alleviating the backlog of cases that burden the judiciary. The observations, which delve into philosophical underpinnings, practical advantages, legislative frameworks, and international perspectives, reflect a transformative approach to dispute resolution.

Philosophical and Conceptual Foundations of Mediation

The court began by situating mediation within the ***broader philosophy of justice, underscoring that justice is not solely about outcomes*** but also about fair and accessible processes. Traditional litigation, often adversarial and resource-intensive, contrasts sharply with mediation, which is collaborative and inclusive. The relational nature of mediation was emphasized as a core strength. Unlike litigation, which often damages relationships through confrontation, mediation seeks to restore and preserve them. This focus aligns with the cultural and social fabric of Pakistan, where community-led dispute resolution has historically played a pivotal role. By integrating these indigenous practices into formal mediation frameworks, the court suggested that justice could become more culturally relevant and harmonious. Mediation, the judgment noted, ***is not only about resolving disputes but also about empowering parties to engage actively in the process***. This participatory model fosters dignity and mutual respect, contributing to long-lasting and meaningful resolutions.

Mediation as a Right and Process

The Supreme Court framed mediation *as a right intrinsic to the broader concept of access to justice*. It observed that the ***right to justice is not limited to obtaining a judgment but extends to resolving disputes efficiently, fairly, and affordably. Mediation, therefore, is a vital tool for actualizing this right***. The court also highlighted the autonomy mediation offers to the parties. Unlike litigation, ***where outcomes are imposed by judges, mediation empowers individuals to retain control over the resolution process and its outcomes***. This autonomy reduces the adversarial consequences of traditional litigation, such as financial strain, emotional distress, and reputational harm, making it an inherently more humane process. Furthermore, mediation

guarantees procedural fairness by ensuring neutrality, respect, and participation. It provides a platform where all voices are heard, fostering a sense of justice even in cases where compromises are necessary.

Key Judicial Observations

The Supreme Court emphasized the need for a systemic "**pro-mediation bias**" within the judiciary. This bias, aimed at encouraging settlement over litigation, aligns with global trends and reflects a progressive approach to justice. The judgment concluded with a powerful call to action:

- ***"Mediation is not merely an alternative to litigation but a complementary and necessary component of the justice system."***
- ***"Courts must mediate more and litigate less."***
- ***"An ounce of mediation is worth a pound of arbitration and a ton of litigation."***

The Supreme Court's observations mark a pivotal moment in Pakistan's judicial history. By championing mediation as a cornerstone of the justice system, the court has laid the groundwork for a more accessible, efficient, and harmonious approach to dispute resolution. These insights provide a roadmap for integrating mediation into Pakistan's legal culture, ensuring justice for all in a system burdened by delays and inefficiencies.

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The End

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