

**RESEARCH PAPER****Navigating Disputes: An In-Depth Analysis of Alternative Dispute Resolution within the Framework of Arbitration Law****¹Dr. Khurram Faizan*, ²Dr. Muhammad Tahir and ³Abdullah Jummani**

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***Corresponding Author:** dr.kfkhan@gmail.com**ABSTRACT**

The abstract aims to deal with valuable insights into the developing landscape of Alternative Dispute Resolution (ADR) in Pakistan and subsidize to the global discourse on actual dispute resolution process, from broad review of case studies and statutory provisions. Arbitration is an eminent, cost effective and expedite way of ADR. The significance of ADR are changing globally. So far as Pakistan is concerned, it is currently under the process of formulating legislation and regulations that would meritoriously backing the arbitration process. This study explores the ADR role with context of Pakistan's Arbitration law and an insight over its application and difficulties thereof. This study further delves into the nuance of the role of Arbitrator and its powers. Furthermore, the research demeanors a comparative analysis, juxtaposing the arbitration laws of Pakistan with foreign laws having similar jurisdictions. It is concluded that Pakistan has to revamp its ADR laws and bring uniformity in all provincial arbitration laws as it directly effects the country's socio-economic policy and access to justice. It is recommended that the arbitration laws be amended and latest technologies be introduced in its proceedings which will enable the inexpensive justice to the people. It is further recommended that empirical research be conducted and revisit the method of arbitral award.

KEYWORDS: Alternate Dispute Resolution (ADR), Applicable Laws, Arbitration Laws of Pakistan, Civil Dispute, Foreign Law**Introduction**

Alternative Dispute Resolution (ADR), particularly in the realm of arbitration law, has emerged as a cornerstone in modern legal systems, offering a pragmatic alternative to traditional litigation processes. This move towards ADR signifies a departure from protracted court battles, opting instead for a more efficient, flexible, and confidential means of resolving disputes. In the context of arbitration, parties voluntarily submit their disputes to an impartial third party, the Arbitrator(s), who renders a binding decision commonly known 'Award'. This method not only expedites the resolution process but also allows for a more tailored approach, often conducted in a less formal setting. As jurisdictions worldwide increasingly recognize the advantages of arbitration in fostering international commerce and domestic relations, a comprehensive study becomes imperative. This research seeks to dissect the intricate nuances of alternative dispute resolution within the framework of arbitration law, offering an in-depth analysis of its theoretical foundations, procedural intricacies, and practical implications. By scrutinizing key aspects such as the enforceability of arbitral awards, the autonomy of the parties, and the role of national and international legislation, this study endeavors to contribute to a nuanced understanding of the evolving landscape of arbitration as a pivotal component of the contemporary legal paradigm.

The ADR in the history of the Pakistan has gone through various phases. Among many mechanism of the ADR within the Pakistan is, extensively, arbitration. There are a

number of reasons for the selection of the arbitration with reference to ADR, for instance, the reconciliation or the mediation, the most prominent cause for this selection seems to be the laws that are applicable in the Pakistan. In respect to the arbitration the Pakistani laws are settled well which contains the arbitrator's appointment, arbitration conduct, arbitrator power, enforcement awards and the other content of awards but usually mix up the powers of Arbitrator with the Commissioner which cause an ambiguity. Consequently, the terms clarity allows the parties confidently to select the process of arbitration in the cases appropriately.

When we talk about the commercial activities we need to think about the consequences of any litigation. The widely practice form of the resolution of dispute globally is the litigation that is not financed publicly & administrated form of the disputes to the settlement but also conducted among the forum (publicly) which are curtailed with the compulsory evidence, process and various testimonies (Merchant, 2006). Primarily many efforts are made to fasten the process of litigation and to lower the cost. However, the litigation stays a time-consuming and expensive method to resolves the disputes. Later, the introduction of the arbitration was given to solve the issues that are faced in the litigation but this was similar to the litigation in terms to the time and the cost. Progressively, the system of judiciary globally begins to become familiar with the ADR among one of the widely accepted methods to solve and handle the situation.

In Pakistan usually the Courts, particularly the Sindh High Court, refers the civil matters wherein evidence is required to be recorded, to the Commissioner. Needless to mention here that the Commissioner for recording evidence has limited power but in general practice legal practitioners compare the Arbitrator with Commissioner despite the fact the Arbitrator has wide range of powers confronted upon him via The Arbitration Act, 1940. The whole proceeding before the Arbitrator is judicial coupled with recording evidence, inspection of documents, hearing of parties and announcement of award.

As stated above in such situation the ADR could be determined as the substitute among the two conservatively traditional and established techniques of resolution of the dispute; specifically arbitration and the litigation that is incorporated in respect to the alternative dispute resolution, it also comprises with a process that is regarded as the impose decision (Stone, 2004). Furthermore, the time is the essence of the contract and usually the commercial matters are referred to the Arbitrator, therefore, there must be some timelines to decide the matter effectively to secure the ends of justice and expeditious trial.

Literature Review

Presently the ADR will gain the significant place globally. While in some of the jurisdictions likewise the America where more than ninety percent of the disputes are resolved through arbitration. Many forms of the ADR's mechanism, an extensively utilized, likewise the mediation, arbitration, fact-finding, small claim court, mini trial, and renting of the judge (Khan et al., 2022). The utilization of the ADR mechanism is huge because of its less consumption of time and the cost. In case of the disputes that are commercial, arbitration that is a widely popular form of the ADR gives a way to the parties to have their reputation secured and relations of the business and to solve the disputes privately (Hussain, 2011).

The foundations of the current judicial system in Pakistan can be traced back to the medieval period. The judiciary system which is in the practice presently has gone via number of epochs that covers the era of Hindus, the period of the British colonial, the period of Muslim that comprises of the dynasty of the Mughal, the post-independence period (Hussain, 2011). Whereas, in the Pakistan, citizens commonly resort towards the Courts for the solution of their disputes or conflicts that consciously shows the litigation

that is used form of the dispute resolution also. Moreover, it's a wrong perception that present increased trend of the ADR adaptation in the Pakistan, is the project, which is imported on the request of the west. The conflict settlement via mechanism of ADR likewise the Jirga system and the Panchayats is having a significant role in the culture of the Pakistan since centuries (Hamaish Khan, 2022).

In many diverse practices of the alternative dispute resolution, the arbitration is among the commonly utilized and renowned form. It is debated that the alternative dispute resolution in the twenty-first century mean getting globally and locally a faster, effective and cost saving system alternative to the litigation that is presently expensive and consumes lengthier time (Muhammad, 2009). A number of the developments were conducted to make the arbitration laws stronger not only in Pakistan but globally; moreover, the United States of America has made good determinations to attain maximum advantages from the arbitration process. The Arbitration Act of the 1940, in Pakistan, is one of the enactments in this regard. Prior and after to the British rule advent the system of panchayat was widely utilized in the British occupied India for the purpose to solve the conflicts that are out of the Court. In Pakistan, the Act of Arbitration, 1940 is presently applicable and going through the history of the arbitration in the Pakistan, it could be linked back from the period of the Pakistan independence year that is 1947, at that time the Pakistan was a British India colony that is popularly regarded as the sub-continent.

The Arbitration Act, 1940 is commonly used for solving the conflicts and the disputes to curtail the litigation within the court and to enhance the dispute settlement amicably via the persons in which the conflict among both parties could be solved and they have confidence on such person (Nisar, 2006). The Statute on March 11, 1940, by the sanctioning of Act No. X of 1940, an Act was passed by the Governor-General of the Indian Council, which was later on embraced by the recently autonomous territory of Pakistan in its letter to unite and revise the law identifying with discretion. The Act was called as The Arbitration Act, 1940, which came into power on the main day of July 1940. The Act accommodates three classes of discretion which are '*(a) assertion without court mediation (Chapter II, Sections 3-19) (b) intervention where no suit is forthcoming except for through court (Chapter III, Section 20) and (c) mediation in suits through court (Chapter IV, Sections 21- 25)*'. The Act likewise contains further arrangements normal to every one of the three sorts of intervention (Chapter V, Sections 26-38). Agreement of the Arbitration; as per the section 2(a) the clause in respect towards the arbitration agreement by which among all sort of the arbitration, there should be an agreement of arbitration, while the arbitrators; there could be any number of the arbitrators. With regards to the arbitration agreement is quiet in certain numbers; the arbitration could also be completed by the sole arbitrator. However mostly the arbitrator's name is mentioned in the agreement of arbitration but it could also be appointed as an authority designation. As per the section 20 of the Arbitration Act, 1940, Court intervenes, if one of the parties declines the agreement of arbitration by other party could pursue it directly from the court with regard to constrain of the arbitration reference. The section of award, as with the enactment deals of the early schedule, the award should be marked within the duration mentioned in the agreement of arbitration, in terms of failing of the agreement in four months of the hearing commenced. Moreover, the duration could be increased based on the situations. The foreign approach or the international conventional approaches are also applicable in the nation; more than 135 nations have ratified the convention of New York, countries such as India and Pakistan have also ratified (van den Berg, 2008). The India and Pakistan have inked the convention in the year 1958 however the Pakistan didn't convey any relevant legislation domestically as the India did pass in the year 1961 (Tracy S. Work, 1997). Many nations that were the participant in the enforced convention of the Geneva Protocol via the 1937 Act were also the party of the convention of New York. Due to lack of interest of the legislature, the convention was not integrated in the municipal law of the Pakistan for long time and this absence is felt

increasingly as well. In the year 2005 the Ordinance was issued to integrate the convention. In Pakistan's Constitution, the Ordinance is having the similar impact as the parliament act, but lapse after 16 weeks. The legislation proposed in the Pakistan in the credit to the New York convention. The Enforcement & Recognition (Foreign Arbitral Award and the Agreement of the Arbitration) 2011 Act was approved by the National Assembly, the 2009's Arbitration Bill was announced in the National Assembly of the Pakistan on the 24th April, 2009. The ADR is not a new phenomenon, it could be tracked from the past primitive societies in the form of the Qazi's, Panchayats, Jirgas and Puncts. Although having no legal back support the decisions made therein are obeyed and respected. This is the new era in respect to the law, rules, regulations and order such mechanism is attracting popularity and the significance because of the costly, prolonged and the process that is nerve-racking of litigation (Irum Ahsan, 2008). The ADR is having many ways for the disposal of expeditious conflicts and the disputes likewise the mediation, negotiation, arbitration and conciliation side by side with other related modes.

Material and Methods

Qualitative research methodology was applied in this study. Following observation, comparison, and textual analysis, all pertinent national and international laws and regulations were examined, with findings presented. Additionally, the precedents of both local and foreign superior courts are examined, and when appropriate, the pertinent case laws are applied. Suggestions for a workable solution to the research problem are provided. A conclusion is reached when the research's facts, figures, and information have been evaluated. The jurists' prior writings as well as pertinent research are examined.

Results and Discussion

The judicial system of Pakistan is prevailing from various difficulties and one of them is long and expensive trials (Ali Aslam, Syeda Fakhar-e-Zahra, 2023). The people used to opt for out of the Court settlements, including but not limited to, in murder and rape cases. So far as the civil litigation is concerned, the ADR is one of the fastest way to resolve any controversy between the parties (Khan, A., & Mumtaz, 2020). It has been observed that in last few years the Apex Courts have encouraged the ADR in various civil litigation (Mohsin Akhter Kayani, 2023). It is general practice in Pakistan that cases are being adjourned from one date to another and this practice remains in field for years which gives frustration to the aggrieved party. Another view of the financial issues which are involved in litigation and the national exchequer used to suffer. The individuals obtain stay orders from Court on any action of the government functionary and the case remains pending for years due to which the national exchequer bear the loss. Section 195-C of the Customs Act, 1969 provides the ADR and formation of an ADR Committee to resolve the dispute within 90 days. However, after 90 days if the ADR committee fails to adjudicate the dispute amicably it would be dissolved (Yousuf Ali Syed & Adnan Iqbal Ch., 2023). The apex Courts also observed that the consent of the parties must be coercion free to invoke the ADR, for example, section 47 of the Sales Tax Act, 1990 does not confer an inalienable right to a party to pick and choose a fora and after invoking the jurisdiction of the court it is the vested right of a party to compel another to enter into the ADR proceedings (M. Junaid Ghaffar & Agha Faisal, 2021).

The Courts usually refer the ADR proceedings to the Arbitrator who is retired Judge of a High Court where no specific name of Arbitrator is mentioned in the agreement (Blackham, 2016). The ADR is considered to be an inexpensive and fast way of resolution but the Court used to fix the Arbitration fees to each party in millions of rupees which creates an extraordinary burden upon aggrieved party. The party who is not aggrieved may also use the delay tactics which prolong the arbitration proceedings. However, a sole Arbitrator may exercise the same powers which a Judge can exercise in Court in ordinary

jurisdiction. The Arbitrator used to announce award to the parties prior to refer it to the Court for their objection and if the parties are not agreed to the Award the Court will decide the case on its own merits which will again take a considerable time (Kirby, 2017).

The foreign countries encourage the negotiations which curtail the litigation process and save the precious time of the Court and resources of the parties (Goodpaster, 1992). Unfortunately, in Pakistan there is no such concept of negotiation and people are egoistic who think 'negotiation' is an attack on their honor. After 18th Amendment in the Constitution of Pakistan, 1973 the provinces are free and have autonomy to take all legislative manners in light of their financial resources (Akram & Alvi, 2022). The province of KPK introduced KP ADR Act, 2020, and the role of Salasin has been entrusted to the DRC (committee comprising upon government officials) as the Pakhtoon culture prefers the Jirgah system for negotiation (Shahzad & Ali, 2023). This act provides the resolution through ADR to both, civil and criminal, disputes. The province of Punjab introduced Punjab ADR Act, 2019 whereby the civil and criminal both disputes can be referred for ADR proceedings. The civil dispute with the consent of both parties and criminal dispute with the consent of complainant, by the Public Prosecutor (Umer Bhatti & Shahid Rizwan, 2023a). The capital of Pakistan, Islamabad introduced ADR Act, 2017 (Islamabad) which is confined with the civil dispute and matters may be referred to the Neutral. However, only compoundable offences may also refer to the Neutral (Iftekhhar, 2017). Despite issuance of new legislative act, the Province of Sindh promulgated the Code of Civil Procedure (Sindh Amendment) Act, 2018 whereby the Sections 2, 89-A, 89-B, Order X Rule 1A and Order X Rule 1B, 1C and 1D were amended or inserted. However, the aim to this amendment to facilitate the people and attract them towards ADR. Besides this, the Province of Sindh confined itself with ADR to the extent of Civil matters only and no amendments were made for ADR in criminal cases.

Conclusion

In the light of the facts and circumstances discussed hereinabove, it is indicated that the ADR through Arbitration has a brilliant destiny in Pakistan. With robust arbitration devices in Pakistan, overseas and domestic investments in the country can increase as the traders are discouraged by way of prolonged and steeply-priced litigation strategies. The judiciary can play a critical function in practically executing the arbitration process and in encouraging the litigants to adopt the technique of arbitration in a fast and cost-effective way. The criminal career has to simply accept enterprise and marketplace wishes, equip themselves with the know-how and abilities of mediation, and increase expert potential within the discipline of ADR as that is a principal requirement for current-day clients. The National Judicial Conferences are giving a vital vicinity to ADR mechanism to talk about its benefits, troubles, and future improvement together with its guidelines. The Constitution of the Islamic Republic of Pakistan underneath Article 37 which mandated to make sure less expensive and expeditious justice. The ADR is also in line with Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. The use of ADR is defiantly one of the excellent feasible options to remedy disputes expeditiously and restore the confidence of the humans inside the judicial system. ADR offers an opportunity to litigants to settle their disputes by avoiding prolonged, multiple, and fee-oriented complaints. ADR has verified to be the first-rate approach for resolving disputes so efforts must be made via the Bench and the Bar for referring the problem to ADR as enunciated in the above laws. It is a positive sign to introduce ADR in criminal cases (Umer Bhatti & Shahid Rizwan, 2023b). An opportunity in Pakistan is yet to take a meaningful uplift but the present-day efforts of establishing ADR Centers, among others, in an effort to help the system of alternative dispute resolution in Pakistan's justice transport system is tremendously considerable and will open a brand-new horizon in our felony firmament. A meaningful growth of ADR in Pakistan is the first step to bringing exchange. A second crucial milestone to gain within the exercise of this device is its implementation on the grass roots degree. Another essential component to be stored in

mind even as exploiting our sources within the growth of this device of alternative dispute resolution as discussed above is that by way of strengthening our local, current, and especially respected and broadly wide-spread alternative dispute resolution system, Jirgas and Panchayats need not be discarded but strengthened so that maximum benefits can be finished. National and global arbitration performed are small in wide variety but a high-quality method may be assumed for Pakistan to gain a higher role inside the subject of arbitration law in the coming few years.

Recommendations

Demeanor a comprehensive comparative analysis of arbitration laws crosswise diverse jurisdictions. This research would explore the disparities in legal frameworks prevailing arbitration, highlighting the impact of economic, diverse cultural and legal issues. Evaluating resemblances and differences in lawmaking which will provide esteemed insights into the effectiveness of arbitration laws in promoting dispute determination.

Study the methods for applying arbitral awards and their transnational acceptance. Evaluate the process that arbitral awards in different jurisdictions are managed and analyze the accomplishment of global treaties like the New York Convention. By highlighting the actual difficulties involved in administering arbitral decisions internationally, this proposal requests to advance acquaintance of the benefits and disadvantages of arbitration as a technique of determining disputes.

Discover the beneficial role of advance technology in arbitration developments. Explore how improvements in technology, for example virtual trials and online podiums, impact the efficacy, accessibility, and impartiality of arbitration proceedings. Evaluate the embracing of technological tools in diverse jurisdictions and their effects for upholding the reliability of the arbitration process.

The empirical research is important to provide insights within the purview of stakeholders who are involved in arbitration proceedings. To obtain the meaningful results, it is necessary to take talk with arbitrators, parties and their legal representatives who are defending their stances to comprehend their skills, challenges, and observations. This qualitative methodology will deliver a more all-inclusive view that how arbitration purposes in practice, proposing valuable data for improving the technical aspects of arbitration laws.

Carry out the socio-economic influence of arbitration on trades, entities, and the legal system. Calculate the cost-effectiveness, time proficiency, and general economic consequences of selecting arbitration over traditional litigation. This endorsement targets to provide legal practitioners and policymakers with a nuanced understanding of the larger associations of arbitration, facilitating to tailor mediation laws to superior work the requirements of the miscellaneous shareholders involved in the ADR process.

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