

Reluctance of People Using Alternative Dispute Resolution: A Critical Analysis in the Pakistani Context

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How to Cite this Article:

Usmani, M. B., Hassan, A., & Tahir, M. T. Reluctance of People Using Alternative Dispute Resolution: A Critical Analysis in the Pakistani Context. *Law Research Journal*, 3(1), 72–81.

Abstract

In Pakistan, the reluctance to use Alternate Dispute Resolution (ADR) reflects complex challenges and is ingrained in socio-cultural, economic, and institutional barriers. This article showcases and examines the critical issues in the historical evolution of alternate dispute resolution and its mechanism in Pakistan, analyzing and identifying the legal framework and key reasons behind public hesitancy. Under the presence of legal provisions and clauses such as the Arbitration Act of 1940 and ADR in the Civil Procedure Code, ADR remains limited due to a lack of awareness of trust issues and confrontation from legal experts. Comparative Analysis from neighboring countries like India and Bangladesh demonstrates the potential of ADR in court systems, cost-effective justice, and swift. Special Case studies of successful ADR interventions in Pakistan, such as Sindh's Women's Mediation Centers and Khyber Pakhtunkhwa Dispute Resolution Councils, effectively implemented and underscored the transformative potential of ADR. However, systemic reforms are needed to highlight the failures in high-profile cases. This Research Article proposes actionable recommendations, which include public awareness campaigns, capacity-building for ADR professionals, legal education of ADR inclusion, institutional establishment, and legislative reforms to enhance enforcement. Covering all these challenges is crucial for developing trust in ADR mechanisms and integrating them into Pakistan's justice system, eventually converting dispute resolution into an inclusive, accessible, and efficient progression. All the conclusions and recommendations outlined in this article serve as a CTA for policymakers, legal practitioners, and civil society to endorse ADR as a viable alternative to traditional lawsuits.

Keywords

Alternate Dispute Resolution, ADR, Pakistan, Arbitration Act, Comparative Analysis

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1. Introduction

Alternate Dispute Resolution (ADR) provides a problem-solving roadmap for resolving disputes outside conventional judicial systems. Despite its worldwide global adoption, Pakistan faces substantial reluctance to embrace ADR, stemming from socio-cultural, economic, and institutional barriers. The opening of this article explores the concept and significance of ADR, its global practices and implementation in Pakistan, and the fundamental reluctance to use ADR mechanisms.

1.1 Concept and Significance of Alternate Dispute Resolution (ADR)

The Group of approaches used to resolve clashes without resorting to a lawsuit is an Alternative Dispute Resolution (ADR) states. Core mechanisms include arbitration, settlement, conciliation, and negotiation. ADR is praised for its flexibility, cost-effectiveness, confidentiality, and time-saving nature. Generally, ADR has become a vital part of justice systems and helps improve the burden on courts while ensuring harmonious settlements. In disparate litigation, which often deteriorates conflicts, ADR adopts collaborative solutions, allowing parties to preserve relationships and achieve mutually agreeable consequences and results.

Here are some key features of ADR: Contract arbitration clauses ensure a smoother resolution process in commercial disputes. Cost-Effectiveness, which Reduces legal expenses. Time Efficiency, which helps Resolve disputes faster than traditional lawsuits. Confidentiality, which Protects sensitive information from



public exposure. Preservation of Relationships helps minimise argumentative conflict and, most of all, Flexibility, which Adapts to the cultural and technical needs of the parties. It also helps effectively in family disputes, labour discrepancies, and international commercial conflicts.

1.2 Global Perspective on ADR

Globally, judicial and legislative frameworks have seen widespread integration in ADR. Countries like the United States, the United Kingdom, India, and Singapore have developed strong ADR mechanisms to rationalise dispute resolution.

United States: The Federal Arbitration Act governs ADR practices, promoting arbitration as an alternative to civil litigation. Many industries, such as construction and finance, incorporate mandatory arbitration clauses in contracts to ensure efficient resolution.

United Kingdom: The Arbitration Act 1996 strengthens ADR practices, ensuring they align with international standards and affairs. **India:** The Settlement and Conciliation Act 1996 governs ADR, which provides accessible platforms for dispute resolution at the grassroots level in Lok Adalats, also known as Lok Sabah. **Singapore:** The Singapore International Arbitration Centre (SIAC) is a worldwide leader in commercial arbitration. Addressing cultural and social nuances. Read about ADR's global practices.

1.3 Overview of ADR in Pakistan

In Pakistan, ADR mechanisms are deep-rooted in both traditional and formal systems. Traditionally, community-based structures like Jirgas (tribal councils) and Panchayats (village councils) work as informal ADR bodies, resolving disputes through culturally accepted practices.

Formal ADR in Pakistan is supported by judicial mechanisms, including:

The Arbitration Act of 1940 Provides the legal framework for arbitration.

Civil Procedure Code (CPC), which Introduces mediation and reconciliation provisions to modernise civil case resolution.

Family Laws Ordinance Highlights ADR mechanisms for marital and family disputes. Despite these frameworks, formal ADR implementation in Pakistan remains limited. Numerous initiatives, like Dispute Resolution Councils (DRCs) in Khyber Pakhtunkhwa and Sindh Women's Mediation Centers, aim to institutionalise ADR practices. These efforts face numerous challenges due to cultural resistance and lack of awareness. Explore ADR provisions in Pakistan.

1.4 Reluctance to Use ADR in Pakistan

The implementation of ADR mechanisms has been delayed by Socio-Cultural Barriers to traditional justice mechanisms like Jirgas and Panchayats. Lack of Awareness and Trust Deficit and Institutional Challenges, which include numerous factors like General public unfamiliarity with formal ADR processes and Concerns about the independence and enforceability of ADR outcomes, which Limits infrastructure, insufficient training of ADR experts, and inconsistent implementation of decisions.

Addressing these barriers requires a holistic approach involving public awareness campaigns, legislative reforms, and capacity-building initiatives. Detailed insights on the reluctance towards ADR.

2. Historical Evolution of ADR Mechanisms

Pre-Islamic and Islamic Influences Pakistan have a rich history in ADR mechanisms, tracing back to the pre-Islamic era, where tribal councils played an essential role in many places, such as Panchayats and Jirgas, involved in sustaining order within communities. These systems performed under the principles of unanimity,

equity, and instant decision-making; informal, they catered to the particular needs of local societies, ensuring availability for persons unable to move towards the more complex systems of justice.

With the beginning of Islam, these traditional mechanisms were further refined under Sharia principles, emphasising settlement and forgiveness. Islamic traditions prioritised peaceful settlements and highly valued mediation and arbitration, especially in family and commercial disputes. This consolidation of Islamic norms laid the foundation for ADR practices in the region that would later become Pakistan. Efforts were made to formalise dispute resolution during British rule, which was processed by introducing organised laws. The British administration recognised the efficiency of incorporated elements of arbitration and local ADR systems in the legal framework. This integration of the legal framework often marginalised traditional systems favouring a centralised judicial structure.

Following Pakistan's independence in 1947, ADR mechanisms were further established to reduce the burden on the formal judicial system. Particularly in rural areas where formal courts were less accessible, the traditional systems like Jirgas and Panchayats retained their prominence. This mechanism leads to a dual justice system, with constitutional principles in traditional forums and critics highlighting issues such as gender bias and non-compliance.

3. Legal Provisions Supporting ADR in Pakistan

3.1 Arbitration Act of 1940

The Arbitration Act of 1940 was one of the earliest frameworks supporting the region's ADR. It was designed to formalise arbitration and conciliation, streamline dispute resolution, and reduce judicial workload. Its execution has faced frequent hurdles, including public awareness and insufficient institutional support. This has limited its potential to modernise Pakistan's ADR landscape.

3.2 ADR Provisions in the Civil Procedure Code (CPC)

In ADR, promoting the formal legal system marked a significant step in Section 89-A of the Civil Procedure Code (CPC). This section empowers judges to refer disputes to arbitration, mediation, or conciliation, encouraging out-of-court settlements. Reluctance among litigants to adopt ADR methods in which provision reflects a progressive approach, which hindered bureaucratic ambiguities by its practical solicitation and lack of trained mediators.

3.3 Family Laws and ADR

ADR is vital in resolving family disputes, frequently involving sensitive issues like divorce, custody (Like Children's), and inheritance. Under Islamic law, mediation and reconciliation are emphasised to stand in harmonious resolutions. The absence of standardised practices has hindered their widespread acceptance of provisions, societal biases, and lack of awareness. Women, particularly, often face many challenges in accessing impartial mediators, leading to concerns about the fairness of ADR in family disputes.

3.4 ADR in Commercial Disputes

Gaining traction as a cost-effective and time-efficient solution to litigation in the commercial sector. Leading efforts to institutionalise commercial Arbitration clauses are increasingly included in contracts and organisations such as the Karachi Centre for Dispute Resolution (KCDR). However, inconsistent execution of arbitration awards remains a critical challenge.

3.5 Jurisdictional and Government Initiatives to Endorse ADR

Pakistan's judiciary has taken steps to integrate ADR into the legal system, recognising the growing backlog of cases. The institutional establishment of ADR centres in major cities, such as Karachi and Lahore, reflects

reducing reliance on conventional litigation and commitment. Judges are progressively encouraged to refer cases to ADR, primarily civil and family matters, to enhance their understanding of ADR methodologies. Training programs for judges and legal practitioners play an essential role.

3.6 Government Support and Legislation

The Pakistani government has launched various initiatives to endorse ADR, including modifying existing laws and introducing new lawmaking. Non-governmental organisations also support public awareness campaigns to educate citizens about the benefits of ADR. The National Centre for Dispute Resolution (NCDR) is a model and plays a significant role in ADR implementation, offering mediation and arbitration services to all businesses. The potential of ADR to complement traditional judicial systems is demonstrated by these Countries. For instance, India's Lok Adalats resolves millions of cases yearly, reducing the courts' burden.

3.7 Community-Based ADR

Jirgas and Panchayats play a significant role in rural areas and community-based ADR systems. Training community leaders and ensuring compliance with constitutional standards to modernise these traditional forums.

4. Challenges and Recommendations for ADR in Pakistan

Despite its potential, ADR in Pakistan faces several challenges, including the lack of public awareness. As discussed above, many individuals remain unaware of ADR as an alternative to litigation. Mediators and arbitrators often lack the expertise because of insufficient training, which is required to handle complex disputes effectively. Resistance to change in traditional mindsets and mistrust of ADR systems hinder their adoption. Inconsistent Enforcement Mediation awards and ADR results are not constantly enforced, undermining their credibility.

1. Public Awareness Campaigns Inform citizens about the benefits and proceedings of ADR step by step through media and community outreach programs.
2. Capacity Building that Deliver training and certification programs for arbitrators and legal experts.
3. Legislative Reforms that Amend existing laws to address ambiguities and enhance the enforceability of ADR decisions.
4. Integration of Technology, which Utilizes online dispute resolution (ODR) platforms to increase accessibility and efficiency.

ADR can potentially alter Pakistan's justice system by providing a reachable, efficient, and traditionally sensitive alternative to formal lawsuits. While substantial progress has been made, implementation challenges and public approval require continued efforts from the government, judiciary, and civil society. By addressing all these issues, Pakistan can ensure justice through ADR.

5. Reasons Behind Reluctance to Use ADR in Pakistan

At lower costs and reduced judicial accumulations, alternative Dispute Resolution (ADR) mechanisms offer many benefits, such as quick resolutions such as arbitration, adjudication, and conciliation. Despite these benefits, ADR has not been widely involved in Pakistan. This article describes the key reasons behind the averseness to use ADR, including socio-cultural barriers and economic concerns, lack of awareness and trust issues.

- I. Public Awareness About ADR and Its Benefits in Dispute Resolution

Efforts to increase public awareness have included campaigns and education initiatives. However, many remain unaware of ADR's cost-effectiveness.

II. Institutional Challenges and Procedural Deficiencies in ADR Adoption

Pakistan faces challenges in the form of inconsistent Adequate capacity-building efforts for ADR professionals. Judicial and administrative processes also need streamlining to support ADR. Details are available here.

5.1 Socio-Cultural Barriers

5.1.1 Preference for Traditional Justice Mechanisms

In many places in Pakistan, traditional justice systems such as Jirgas and Panchayats remain deeply ingrained in the culture. These are more favoured over formal ADR processes due to their familiarity, accessibility, perceived efficiency, and community-based systems. Jirgas are particularly popular in rural areas and tribal regions, for instance. Because these traditional systems provide quicker resolutions, they often perpetuate male-controlled and inequitable consequences and results, especially concerning women's rights and justice. Despite all of these flaws, the deep cultural roots of these systems make it more challenging to transition to more formal ADR processes.

5.1.2 Influence of Social Norms on Conflict Resolution

Social norms significantly impact the conflict resolution process in Pakistan. In rural areas, informal dispute resolution mechanisms, such as those based on family or community elders, are often preferred. These social norms encourage individuals to resolve community disputes without involving formal ADR systems. This lack of integration with formal justice practices leads to minimal exposure and adoption of ADR. Additionally, social expectations discourage engaging with systems perceived as foreign or complicated.

5.1.3 Lack of Awareness Among the Public

ADR acceptance is lacking because of public awareness, which is the primary barrier because the majority of Pakistan's population, particularly in rural areas, is unaware of ADR mechanisms and their benefits. This public continues to rely on formal judicial systems or traditional dispute resolution methods. The uptake will remain low without targeted awareness campaigns for ADR. More efforts need to be made to inform the CITIZENZ about ADR's advantages, such as lower costs, faster resolutions, and Problem-solving compared to traditional litigation.

5.2 Trust Deficit in ADR Mechanisms

5.2.1 Perceptions of Impartiality and Fairness

One of the significant and primary concerns regarding ADR in Pakistan is the lack of impartiality and fairness. Many people view ADR as biased or influenced by influential individuals, especially in rural communities and areas. These perceptions demoralise public confidence in ADR's ability to provide fair justice. Individuals who believe that ADR mechanisms are persuaded by social, political, or economic influence are less likely to engage with them. This lack of trust erodes the efficiency of ADR as another alternative source to traditional litigation.

5.2.2 Lack of Enforcement of ADR Outcomes

ADR in Pakistan faces a lack of enforceability in its decisions, another significant challenge. However, ADR offers faster and less expensive resolutions, and the absence of mechanisms to ensure the outcomes are followed weakens its credibility. Without enforcement, the success of ADR is uncertain, especially in cases

where one party refuses to comply with the resolution. Strengthening enforcement protocols is critical for increasing public confidence and participation in ADR processes.

6. Economic and Accessibility Concerns

6.1 Misconceptions About Costs

ADR is often more cost-effective than a court case. However, a significant delusion exists that ADR processes are just as expensive, if not more so, than going through the outdated court system. This is the primary reason that discourages people from using ADR, as they recognise it as a costly option. Compared to lengthy court procedures, ADR can be far cheaper, especially considering the time and legal fees saved.

6.2 Geographical Limitations and Limited Access to ADR Centers

Access to ADR centres is significantly challenging, particularly in remote or underserved areas of Pakistan. Especially in rural or tribal regions, many individuals lack access to ADR facilities and services, making it difficult to use these alternative methods. The physical distance to ADR centres is the primary reason, which, coupled with a shortage of trained mediators or arbitrators in some regions, further limits the effectiveness of ADR. Establishing digital platforms for ADR could be a viable solution, allowing individuals to resolve disputes remotely, regardless of location.

7. Case Studies and Practical Insights

7.1 Successful ADR Interventions in Pakistan

7.1.1 Sindh's Women's Mediation Centers

Arbitration centres in Sindh have proven successful in resolving family and property disputes. These centres have empowered women by offering and providing an alternative to the male-controlled structures of traditional dispute resolution mechanisms, and they have significantly reduced case backlogs from courts.

7.1.2 Community-Based ADR in KP and Balochistan

In tribal areas of Khyber Pakhtunkhwa (KP) and Balochistan, ADR systems like Dispute Resolution Councils (DRCs) have successfully provided legal alternatives to Jirgas. These councils provide a formal and fair resolution process by solving problems and addressing community concerns about traditional systems' lack of legal safeguards.

7.1.3 Failures and Challenges in High-Profile ADR Cases

Numerous high-profile ADR efforts in Pakistan have failed due to political interference, bias, and weak implementation mechanisms. These failures highlight the need for systemic reforms to reinforce ADR procedures. ADR will struggle to gain extensive acceptance and trust without giving a talk on these issues.

7.2 The Reko Diq case

It is a legal dispute between the Government of Pakistan and the Tethyan Copper Company (TCC). The Reko Diq case is over the mining privileges at the Reko Diq Mine in Balochistan. Several key points are involved in this case. The (CHEJVA) which is also known as the Chagai Hills Exploration Joint Venture Agreement In 1993, Balochistan Development Authority (BDA) and Broken Hill Properties Minerals Intermediate Exploration Inc (BHP)

signed CHEJVA, which granted BHP search and mining licenses in the Reko Diq area. 1 The Tethyan Copper Company In 2006, TCC signed an agreement to recover the Reko Diq mining project. But, in 2011, the local government refused to renew TCC's tenancy. In 2013, the SC declared the contract invalid. The Reko Diq Mine is believed to have the world's fifth-largest gold.

This case includes multiple legal actions, mentioned as follows: Petitioners challenged the agreements in the Balochistan High Court and Supreme Court, and TCC filed an objection or a case, you can say, with the International Centre for Settlement of Investment Disputes (ICSID) and International Chamber of Commerce (ICC). The ICSID tribunal ruled that it had the right over TCC's claims and that Pakistan violated its duties under the Australia-Pakistan Bilateral Investment Treaty.

Pakistan has an extensive history of using Alternative Dispute Resolution systems, but the lack of enthusiasm toward their use remains major due to various socio-cultural, legal, and logistical challenges. The following recommendations provide actionable steps to help us overcome these obstacles and promote ADR as an efficient and accessible dispute-resolution tool. These strategies include public awareness, building expert capacity, participating in ADR in legal education, strengthening institutional support, and implementing necessary legislative reforms.

8. Recommendations for ADR

8.1 Public Awareness Campaigns and Education

A primary reason for the low adoption of ADR in Pakistan is the lack of public awareness about its benefits and mechanism. Many individuals and societies still prefer traditional justice systems, such as Jirga's and Panchayats, because they are more familiar with and comfortable with them. To overcome this barrier, comprehensive public awareness campaigns should be launched, focusing on cultivating and educating the public about the advantages of ADR. These campaigns can highlight the cost-effectiveness, time-saving, and accessible nature of ADR compared to formal court proceedings, which will be the best part of our Pakistani justice system.

Furthermore, leveraging social media platforms like Facebook, Twitter, and Instagram, in addition to traditional media channels such as television and radio, can meaningfully broaden the reach of these campaigns. Public leaders, religious figures, and social influencers can be enlisted to spread information about ADR, thereby reducing delusions and encouraging trust in these alternative mechanisms. Encouraging the public to view ADR as a genuine, effective alternative to lawsuits could help overcome long-standing biases against these practices.

8.2 Capacity-Building for ADR Professionals

Pakistan's ADR system is facing a lack of qualified professionals with the necessary skills to arbitrate and settle disputes efficiently, which is one of the significant problems. Building an ADR expert's armed force is essential to guarantee ADR mechanisms' success, credibility, and trustworthiness.

Training programs for mediators, arbitrators, legal specialists and experts should be significant. These Training programs should focus on key areas such as conflict resolution, arbitration techniques, cultural sensitivity, and legal frameworks surrounding ADR. By standardising authorisation and documentation and developing specialised training modules, Pakistan can guarantee that ADR specialists meet the highest international standards, making ADR more trustworthy, effective and reliable. Moreover, constant expert development opportunities should be made available to keep ADR practitioners updated with the latest developments in dispute resolution methods. This capacity-building effort will improve the quality of ADR and help build public confidence in the structure and system.

8.3 Inclusion of ADR in Legal Education

ADR is also deeply rooted in the legal community. Many lawyers and judges are unaware of ADR approaches or resistant to embracing them because they are not extensively fused into legal edification. To address these issues, ADR should be included as a main subject in law schools and universities all over Pakistan.

By introducing ADR concepts in the education of legal specialists, future lawyers, judges, and legal scholars will be well prepared to advocate for and use ADR methodology in their careers. Law schools must offer specialised courses on mediation, arbitration, and negotiation, giving students hands-on learning and practising experience in ADR processes and techniques. Also, including ADR in legal education would allow future practitioners and learners to understand its role in dropping case backlogs from the court and improving the efficiency of the judicial system. This could go a long way in creating a peer group of lawyers who actively endorse ADR as an alternative to traditional lawsuits.

8.4 Strengthening Institutional Support for ADR

For ADR to succeed on a large scale in Pakistan, there must be more substantial institutional support. This involves establishing enthusiastic ADR courts and mediation centres that operate under clear guidelines and are sufficiently funded. These institutions should offer ADR services and endorse public trust in ADR by ensuring transparency and justice in all proceedings.

Organisations like the National Centre for Dispute Resolution (NCDR) in Pakistan can lead efforts to institutionalise ADR by setting up particular courts and mediation centres in key cities. This would make ADR more reachable to people who might otherwise resort to traditional court systems due to the lack of consciousness or organisation for ADR. Furthermore, ADR centres should be adequately equipped with trained staff and suitable resources to handle a variety of clashes, from family matters to commercial discrepancies. By making ADR more established and systematic, Pakistan can substitute a culture where ADR is seen as a genuine and viable alternative to the formal judicial system.

8.5 Legislative Reforms to Enhance ADR Enforcement

When ADR mechanisms are utilised, there is often a lack of legal backing to ensure that ADR outcomes are enforced effectively. Where court rulings are legally required, this creates a perception that ADR is not as reliable as litigation.

To address these challenges, the government must endorse laws that assure the enforceability of ADR decisions, whether they result from mediation, arbitration, or other substitute methods. These laws should clearly define the legal rank of ADR consequences to ensure they can be implemented as effectively as formal court decisions.

Moreover, the Civil Procedure Code (CPC) must be modified to streamline ADR processes and remove doubts that hinder its application. Reforms should also address practical hurdles that can delay the ADR process or demoralise its credibility. With the proper legal framework in place, ADR will be seen as a genuine and enforceable method of dispute resolution.

9. The Role of ADR in Transforming Pakistan's Justice System

ADR can expressively alleviate Pakistan's judicial burden, where courts are overwhelmed with excess cases. By providing an inclusive, accessible, and efficient system, ADR mechanisms:

9.1 Reduce judicial overload by Directing minor and civil arguments to ADR platforms

It can help clear case logjams in courts. Encourage Community Participation Arbitration and negotiation processes involve community depiction, ensuring resolutions resonate with local norms while upholding

legal principles. Offer Flexibility and Confidentiality Unlike formal courts, ADR allows disputants greater control over processes and preserves secrecy. However, realising ADR's full potential requires systemic reforms, including:

9.2 Capacity-Building for ADR Professionals

Training mediators, arbitrators, and conciliators is essential Legislative Reforms Strengthening ADR laws, such as the Arbitrary Act 1940, and ensuring enforceability of decisions. Institutional Support in ADR centres across Pakistan, especially in rural areas, will enhance approachability. The success of ADR in Pakistan to overcome reluctance and trust: The government launched awareness campaigns to educate citizens on the benefits of ADR. Implement obligatory pre-litigation ADR for civil arguments. Legal Community's Roles Encourage lawyers to embrace ADR. Public and Civil Society Engagement NGOs and community leaders must advocate for ADR. Building a strong ADR framework is not only a legal challenge but a social one, requiring collaboration among all sectors.

10. Conclusion

This article analytically explores the averseness of persons and institutions to embrace Alternate Dispute Resolution (ADR) in Pakistan. Key findings reveal: Socio-Cultural Resistance: ADR is often put on the back burner due to societal preferences for traditional justice systems, such as Jirgas and Panchayats, which align with cultural norms but lack formal legality. Lack of Public Awareness: Many individuals remain unaware that ADR can resolve disputes efficiently and cost-effectively. Institutional Challenges: Lack of consistent procedures and delays in execution undermine ADR's credibility. Trust Deficit: Insights of bias and concerns over enforceability of decisions lead to public hesitancy. Economic and Accessibility Barriers: While ADR is observed as costly, geographical inaccessibility and limited ADR centres intensify this challenge. Despite these challenges, if utilised adequately, ADR mechanisms can potentially and significantly transform Pakistan's overstressed judicial system by providing a time-efficient and cost-effective alternative.

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