

PalArch's Journal of Archaeology of Egypt / Egyptology

REFORMING THE ALTERNATIVE MECHANISMS OF DISPUTE RESOLUTION IN PAKISTAN

Ahsan Iqbal¹, Muhammad Waqar², Saqib Shahbaz³, Syed Shiar Abbas⁴, Nafees Ahmed Khan⁵

¹Lecturer law department, Mirpur University of science and technology Must, Azad Jammu and Kashmir, Pakistan.

²Lecturer law department, Mirpur University of science and technology Must, Azad Jammu and Kashmir, Pakistan (corresponding Author)

³Assistant professor Law department, Mirpur University of science and technology Must, Azad Jammu and Kashmir, Pakistan.

^{4,5} Lecturer law department, Mirpur University of science and technology Must, Azad Jammu and Kashmir, Pakistan.

E.mail: ¹Ahsan.law@must.edu.pk, ²mwaqar.farooq@gmail.com, ³saqib.law@must.edu.pk,
⁴shairshahh@gmail.com, ⁵nafeesahmed.law@must.edu.pk ,

Ahsan Iqbal, Muhammad Waqar, Saqib Shahbaz, Syed Shiar Abbas, Nafees Ahmed Khan. Reforming The Alternative Mechanisms Of Dispute Resolution In Pakistan-- Palarch's Journal Of Archaeology Of Egypt/Egyptology 19(4), 310-322. ISSN 1567-214x

Keywords: Alternate Dispute Resolution Laws in Pakistan, The Alternate Dispute Resolution Act 2017, The Arbitration (The International Investment Dispute) Act, 2011, Alternate Dispute Resolution in Pakistan

ABSTRACT

Alternate Dispute Resolution (ADR) is paradigm method to settle disputes in cost efficient, time effective, and win-win manner beyond the traditional system. Pakistan has Alternate Dispute Resolution laws in place, which gives breathing space to resolve dispute outside the court room, however, lamentably its inept is due to multiple aspects such as unawareness at receiving end, absence of infrastructure and most importantly, in its comprehension, it is not a substitute to traditional judicial system but to support the judicial system. Pakistan is in developing phase in terms of implementation and acceptability to strengthen the process of Alternate Dispute Resolution in the Country. This study aims to analyze applicable laws in

Pakistan for ADR to resolve dispute at national and international level, further, which put forth various reforms, including, awareness, strengthen the mechanism of implementation, infrastructure development, research and role of judiciary to make ADR process worthwhile, effectual and user-friendly, and to build the user trust on ADR system in the genre of written discussion.

INTRODUCTION

“Justice for all” is a cardinal principle and strong social norms of society are entirely depends on the judicial system. Most devastating challenge to justice system is delaying in delivery of justice, which resulted frustration, lack of confidence and prohibitive cost of litigation (Hassan & Malik, 2020). As it has been well established principle of judicial system “Justice Delay is justice Denied”.

With the passage of time, it has been experienced and resulted in introduction of alternate ways to the conventional litigation for resolving the issues in question and provide satisfactory and amicable solutions of the conflict outside the courtroom with having legal bindings (Hussain, 2015). These ways are not alternate or substitute to conventional litigation but for sharing the burden and to support the judicial system.

True philosophical depiction of Alternate Dispute Resolution by Abraham Lincoln (Lincoln):

"Discourage litigation; persuade your neighbors to compromise whenever you can. Point-out to them how the normal winner is often a loser in fees, expenses, cost and time."

The concept of Alternate Dispute Resolution is not new and is deep rooted in our society in different forms such as “Panchayat” or “Jirgah”, however, decisions were no legal binding but had social and cultural bindings on the individuals to the dispute (Khan, 1990). With the development in local and international laws, resulted in formalization of rules for the alternative ways to resolve the disputes, formed a separate sphere of legal practice with having legal bindings, and enforced by the law of the country.

Alternative dispute resolution refers to a "procedure for settling a dispute by means other than litigation, such as arbitration or mediation"(Brian, 2014). Stephen J. Ware defined Alternate Dispute Resolution defined as “encompassing all legally permitted processes of dispute resolution other than litigation (Ware & Levinson, 2017). While this definition is widely used, ADR proponents may object to it on the ground that it privileges litigation by giving the impression that litigation is the normal or standard process of dispute resolution, while alternative processes are aberrant or deviant (Brian, 2014). The impression is false; litigation is a relatively rarely used process of dispute resolution.

Alternate Dispute Resolution is mainly governed by the “The Alternate Dispute Resolution Act, 2017”, which is procedural law on alternate dispute mechanism in the Pakistan. Further, there are certain provisions which support the enforcement of alternate dispute mechanism in Pakistan, such as, “The Family

law, 1961”, foresee arbitration process to resolve the matrimonial disputes before or during the suit and will ratify arbitration decision. Similarly, “Local Government Ordinance, 2001”, in which “Musaliyat Anjuman” (Conciliation Committee) was introduced at Union Council level to resolve the disputes by Arbitration in matters of Civil, Criminal, Family and Revenue nature. Furthermore, there are other amendments in different statutes, which empower Alternate Dispute Mechanism. It is pertained to mention here that before the Alternate Dispute Resolution Act, 2017, a pre partition act was in place known as “The Arbitration Act, 1940” and all the disputes was resolved by this act. Further, “The Alternate Dispute Resolution Act, 2017 is more or less similar to this pre partition act. For International Arbitration, National Assembly of Pakistan has passed “The Arbitration (The International Investment Dispute) Act” in 2011. This statute steps forward to empower International Arbitration and enforcement of foreign awards.

This paper discusses the Alternate Dispute Resolution regime in the Pakistan. First part of this paper discusses the historical background of Alternate Dispute Resolution in Pakistan, further; it highlights the existing and development in Alternate Dispute Resolution laws, which dealt with international and domestic Arbitration. Second part of this paper discusses about problem facing by the Alternate Dispute Resolution. Finally, the author concludes the paper with certain suggestions for betterment of Alternate Dispute Resolution regime in Pakistan.

Quest of Alternate Dispute Resolution in the Region

The concept of Alternate Dispute Resolution is not new in the territory of sub-continent. It is part and parcel of the culture and has rich heritage in the shape of different forums in different parts of this region. It is the tradition of this territory to resolve the dispute in different forums such as “Panchayat” or “Jirgah” by mutual understanding and agreement of the parties rather to approach the court (Khan, 1990). This concept might be new for rest of the world however it was the essential part of sub-continent and every dispute of life such as criminal matters, financial matters, civil disputes and family matters were resolved in such alternate dispute forums. It is worth mentioning that this system worked better in some particular cases in which witnesses were not forthcoming rather to the normal proceedings of court (Hussain, 2015).

After the arrival of British rule in sub-continent, practicing of alternative dispute forums was also acknowledged by the British legal system. First legal statute on Arbitration was introduced in the form of Indian Arbitration Act 1899 in British India. The scope and applicability of this statute was limited, however, it was the mile stone to recognize the alternative dispute resolution in British Raj. The applicability of this act was limited onto Presidency-towns of Madras, Bengal, Bombay and Calcutta only (Jillani). In 1908, a Code of Civil Procedure was introduced in which Arbitration was also recognized in its second Schedule with its limited scope. It was applicable only on such suits which were pending before the courts and was extended to whole of British India. This was the first written enactment which was introduced in the legal history of sub-continent law with broader extend, however, it was a piece meal approach. To remove

state of inconsistency, in 1925, the Civil Justice Committee made recommendations for providence of comprehensive statute on Arbitration. In the recommendations, the committee suggested for the Arbitration Act, with broader scope, to give expeditious relief, to consolidate the law of Arbitration, to curtail litigation in courts, enforces the Arbitration agreement and the applicability on whole of British India. It is worth mentioning that, in 1927, the Bombay High Court recognized that “to refer matters to a panchayat is one of the natural ways of deciding many a dispute in India”(Karim, 2006). In 1940, Indian Legislative Assembly passed Arbitration Act. This Act is remains enforce and applies as a whole to Pakistan till 2017 with minor amendments. In 2017, an act was passed by the parliament; however, it is more or less similar to the pre-partition arbitration act.

Indeed, the ideal of Alternate dispute Resolution is previously owned by our society. However, it is worth mentioning the words of Mohammad Yunus Khan, Joint Chief Economist that “It is an irony that we do not appreciate the achievements of our forefathers, or practices and customs which are our own, or are part of our religion unless someone from the West appreciates or acknowledges it”(Khan, M.Y).

Philosophical View of Alternate Dispute Resolution:

With the rapid growth in the commercial trading, parties are free to regulate the terms and conditions in commercial contracts. They agreed on the conditions which attracts them and thinks, will be fruitful for their future trading. To this extent, parties are willing to adopt such paths to adjudicate the future disputes which are speedy, effective and cost friendly, rather, to use traditional approach to waste more money and abnormal delay, hence, alternate dispute resolution chapter is batter option for commercial parties. Delay in traditional litigation is historical and universal, which is inherited in every judicial system. Legal system almost in every jurisdiction of the world, provides alternative options to adjudicate the dispute in the form of Alternate Dispute Resolution, so, parties have option to adopt other procedure for their dispute resolution. Purpose of arbitration (Alternate Dispute Resolution) proceedings is to provide expeditions, inexpensive and speedy justice to the parties (YLR, 2003).

It is established that the Alternate Dispute resolution is the fastest, speedy, efficient and confidential way to resolve disputes between the contracting parties (Totaro & Gianna, 2008). This approach is adopted worldwide mostly in the commercial sectors. The legal theory behind this concept is to resolve the dispute out of court, by the intervening of third authoritative party to settle down the dispute by mutual agreement and award in the light of evidences and best of his knowledge without involving of parties in technical complexity of procedural law (SCMR, 2002). Court orders should be in favor of one party and other party will not get anything from such orders, on the other hand, in arbitration both parties agrees on some certain conditions and resolve their dispute, which result in satisfying both parties (YLR, 2003). Nowadays, arbitration becomes mainstream method to resolve commercial disputes. This process minimizes the theory of “one size fits all” and also shortens litigation processes (473 U.S., 1985). Technical rules of procedure and evidence are not

applicable in Alternate Dispute Resolution (PLD, 1967). However, with the development of different community as well as international laws, this method attracts more and more complications.

It is not necessary for arbitration agreement to be in a formal way between the parties, it merely be a clause in the agreement of the contracting parties. This agreement come into enforce by written consent of either party or through its council and signature of parties are not necessary on such agreement (PLD, 2004). It is worth mentioning that arbitration clause will not revoke by the breaching of main contract between the parties. And it is well practiced that if one party would like to initiate the court proceedings and other would like to settle the dispute through arbitration, the court honors the arbitration clause and would give a chance to resolve the dispute before domestic forum (PLD, 1993). Further, when the contract having the arbitration clause, petitioner stopped to challenge same in writ jurisdiction (PLD, 2000). It is worth mentioning that senior judiciary favors Alternate Dispute Resolution in certain jurisdictions to resolve the disputes (Clift, 2010), the comments of Brooke LJ, in his judgment said “A Mediator may be able to provide solutions which are beyond the powers of the court to provide (Kelly, 2006)” further the role of Alternate dispute resolution was emphasized by Ward L. J. in his judgment that “the court has given its stamp of approval to mediation, and it is now the legal profession which must become fully aware of and acknowledge its value. The profession can no longer with impunity shrug aside reasonable request to mediate” (Kelly, 2006).

However, it is fiction to achieve theoretical ideal conditions of Alternate Dispute Resolution, the competent court must have intervene in due process, or, parties of dispute may approach the court to interfere in the said process to regulate it, or, to sanction the awards in accordance with law. So, Alternate Dispute Resolution is to support legal system and jurist encourages alternate dispute resolution; however, it is not substantive to formal legal system.

Legitimization of Alternate Dispute Resolution in Pakistan:

It is human instinct to combat or to conciliation, in modern society, combat to resolve clashes will leads toward litigation, while, conciliation on the other hand, will lead toward negotiation, compromise and settlement. Jurists encourage the conciliation process and regulate to settle disputes in the society. It is important limb of judicial system and gives significant relief to ordinary judicial process (Clift, 2010). This process have strong historical bounds without culture in the form of different institutions such as “Panchyat system” or “Jirga system” or through interference of elders, which gives wide range of remedies to resolve the disputes (Jillini). With the passage of time, advancement in national and international businesses and delay by ordinary judicial system to resolve the problems, resulted in, to explore other ways to adjudicate disputes outside the court room and become a specified field in developed countries. However, unfortunately, Alternate Dispute Resolution have not flourished accordingly in our legal system and not become field of specialization in Pakistan. It is important to mention the statutes and amendments in statutes by legislatures and jurists to upraise this process in Pakistan.

Domestic Level

In the canvas on Pakistan, there are various statutes which give breathing space to resolve dispute outside the court room. Mainly, these kinds of proceedings are governed by The Alternate Dispute Resolution Act 2017, is the main law applicable to enforce the dispute mechanism outside the courts. This statute dealt with three different situations for the Alternate Dispute Resolution (ADR) i.e. ADR without court intervention, ADR after framing of suit and ADR through court (the Alternate Dispute Resolution Act, 2017. s.3). However, spectrum of court's powers is very vast in this statute to intervene in all three stages of ADR process i.e. before referring dispute to arbitrator, during proceedings of arbitrator and after the awards pronounce. For instance, in arbitration agreement, if appointment of arbitrator is not specified and parties are failed to choose or appoint the arbitrator then this statute empowers the courts to appoint the arbitrator. Further, if arbitrator is found guilty of misconduct, after enquiry, the court can remove the arbitrator. Furthermore, time limit for pronouncing the awards can be extended by permission of court in certain circumstances (the Alternate Dispute Resolution Act, 2017. s.3). Moreover, when either party of the agreement is reluctant for ADR process, other party may pursue court involvement by making an application to start arbitration process (the Dispute Resolution Act, 2017. s.8). The judgment is needed to give legal strength to the awards pronounced by arbitrator or arbitrators (the Alternate Dispute Resolution Act, 2017. s.9). It is power of court to totally accept awards and pass the judgment, discard the awards, make reference for re-consideration or amend the awards.

However, this statute gives multiple opportunities to litigants to approach courts for intervention which leads the process to unwanted delay, rendered Arbitration unattractive and fruitless. It is pertinent to mention that this enactment was also enforceable in India till 1996, the jurist and legal theories have observed the same, intervention of courts and resulting in unwanted delay. In 1981, very bold comments of Justice D.A. Desai of Supreme Court of India that "the way in which the proceedings under the 1940 Act are conducted and without an exception challenged in Courts, has made lawyers laugh and legal philosophers weep". In fact, the Alternate Dispute Resolution is the process to support and share the burden of courts, however, with such complications; it seems this statute gives strength to courts rather to address arbitration process. As a result, true spirit of this process to give speedy and cost efficient justice is vanished.

However, The Arbitration Act, 2017, does not elaborate principle grounds on which court shall set aside the award. For instance, if Neutral misconduct or ADR proceedings. This statute does not define or elaborates "misconduct". It seems that legislatures intentionally or un-intentionally do not address or elaborate this term in the statute. But it has been explained in judicial decision that "misconduct of an arbitrator means his failure to perform his essential duties resulting in substantial miscarriage of justice between the parties" (PLD, 2014) but, this can obscurity the essential duties of arbitrator. It will be more useful if legislators define this term in the statute. Further, this act does not spot

out different stages of arbitration or give any procedure for arbitration process. So, misconduct of proceedings is not explained as well.

There are some other statutes which deal with the arbitration processes in other fields of life. For instance, in family matters, The Family law 1961, foresee arbitration process to resolve the matrimonial disputes before or during the suit and will ratify arbitration decision. Similarly, The Small Claims and Minor Offence Ordinance 2002, also deals with out of court settlement and summary procedure trial for minor offences and small claims. Further, in Order X of the Code of Civil Procedure, 1898 Rule 1-A was introduced which deals with the Alternate Dispute Resolution. Moreover, Local Government Ordinance 2001, also deal with arbitration process. According to section 102 of this ordinance, “Musalihat Anjuman” (Conciliation Committee) was introduced at Union Council level to resolve the disputes by Arbitration in matters of Civil, Criminal, Family and Revenue nature. Other relevant laws dealing with Alternate Dispute Resolution are as under:

1. Chapter XXII of the Code of Criminal Procedure, 1898 (summary trial provisions)
2. Articles 153 and 154 of the Constitution of Pakistan, 1973 (Council of Common Interest)
3. Article 156 of the Constitution of Pakistan, 1973 (National Economic Council)
4. Article 160 of the Constitution of Pakistan, 1973 (National Finance Commission)
5. Article 184 of the Constitution of Pakistan, 1973 (Original Jurisdiction when federal or provincial governments are at dispute with one another)

International Level

Before 2005, there were no formulated framework or procedures implemented to govern International Arbitration in Pakistan, except, The Arbitration (Protocol and Convention) Act, 1937, which execute foreign awards. There are courts judgments which framed some rules for international arbitration in Pakistan. It is pertinent to mentioned that the judges of different courts are well aware of the importance of Alternate dispute resolution, which, are highlighted in different case laws especially with international dimension. There are numerous case decisions of honorable judges which declined towards arbitration process, in the cases where international dimensions are involved. It is important to mention the comments of Justice Ajmal Mian of Supreme Court that “We should not overlook the fact that any breach of a term of such a contract to which a foreign company or person is a party, will tarnish the image of Pakistan in the comity of nation”(PLD, 1993), further, it is worth mentioning the decision of Sindh High court in case of A. Meredith Janes Co. Ltd v Crescent Board Ltd that “if Pakistan is to attain some respectability in the commercial world, it is necessary that trans national commercial agreements must be honored and judicial process must not be used merely to delay the implementation of such agreements or judicial or quasi-judicial decisions passed in disputes arising from such agreements”(CLC, 1999).Moreover, there are other case decisions in which the Judges of Pakistani Courts favor the

Arbitration process such as in case of *Conticotton S.A. v Farooq Corporation and others* (CLC, 1999) and *Hub Power Company Ltd Vs WAPDA* (PLD, 2000).

Enforceable statute for arbitration in Pakistan, was only addresses domestic disputes, however, it was totally silent regarding international arbitration. It was timely need for Government of Pakistan to step forward and adopt some investor-friendly legislation to resolve the international disputes in commercial matters, and to attract foreigner invertors in the country. Pakistan is a signatory of New York Convention on Recognition and Enforcement of Foreign Awards, 1958, however, it was not implemented in Pakistan up till 2005. It was come into enforced through the “Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance, 2005. To restore the interest and attract the foreign investors in Pakistan, National Assembly of Pakistan has passed “The Arbitration (The International Investment Dispute) Act” in 2011. This statute steps forward to empower International Arbitration and enforcement of foreign awards.

This Act gives the jurisdiction to High court to for recognition or enforcement of awards (the Arbitration (The International Investment Dispute) Act, 2011. s.3(2)) and “the High Court shall have the same control over the execution of the awards, as if the award had been a judgment of the High Court” (the Arbitration (The International Investment Dispute) Act, 2011. s.4c). Further, The Arbitration Act, 1940, shall not apply in International Arbitration (the Arbitration (The International Investment Dispute) Act, 2011. s.7). Whole of International Convention on the Settlement of Investment Disputes between States and Nationals of the other states in implemented except Article 24(1) (the Arbitration (The International Investment Dispute) Act, 2011.s.8). According to this statute an International Centre for settlement of investment disputes has to be establish to facilitate international investors (Convention on the Settlement of Investment Disputes Between States and Nationals of the other states), however, no such institute is established in this regards which govern Alternate Dispute Resolution practical guideline, protocols and rules. In 2009, an arbitration institute was established in Lahore, with the name “Alternate Dispute Resolution Centre(ADRC)” but unfortunately this centre was closed due to extremely poor response(Bhandhri, Naqvi, Riaz, 2010).

Proceedings of Arbitration in Pakistan

ADR is the amicably resolution of the dispute outside the court with having legal binding. Parties on the dispute opts alternative system to resolve their dispute and submit their case to the neutral third party known as Neutral or arbitrator. It has some pros on conventional litigation such as fast, more informal, less expensive, most importantly, private and confidential. Within the limits acceptable by law, parties are free to negotiate the ground rules under which they want the arbitration or ADR to take place, such as the number of arbitrators or whether formal rules of evidence will be applicable. Binding arbitration clauses can be written into most kinds of contracts, requiring that in the event a dispute arises in conjunction with the contract, the parties will go to binding arbitration instead of to court (Hassan & Malik, 2020).

In this process, Neutral or arbitrator conducts an evidentiary hearing and/or reviews written submissions from the parties. ADR hearings are attended by the parties involved, their attorneys, the arbitrator, and the parties' witnesses. Each party makes an opening statement, presents evidence, questions and cross examines witnesses, and makes a closing statement. During this presentation, formal rules of evidence generally do not apply. Alternatively, ADR can be conducted with written submissions only in appropriate cases.

Upon consideration of the evidence, the neutral or arbitrator makes a legally binding decision which can be enforced in the same manner as a court judgment, and it can be enforced by the courts, if necessary. The cost of arbitration is generally shared by the parties.

High –Low Arbitration

In case of commercial disputes, parties in dispute jointly set up higher and lower breaking points of the awards before the starting of the proceedings. After the conclusion of the proceedings, the decision is within the breaking points, the award valued to be final. However, if the award is over the pre-set most extreme, it mechanically moves down to the high figure of the breaking point. On the other hand, if the prescribed decision is underneath the breaking point, it moves to the settled low figure, so it will be win-win situation for both of the parties. In most of the cases, the parties in dispute agree to not inform the arbitrator or neutral of the scope of their High-Low agreement.

Arbitration Agreement

To proceed for ADR, an agreement is required. As defined by the Arbitration Act, 1940, it means “a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not”(the Arbitration Act, 1940.s.2a). It is not necessary for arbitration agreement to be in a formal way between the parties, it merely be a clause in the agreement of the contracting parties. This agreement come into enforce by written consent of either party or through its council and signature of parties are not necessary on such agreement (PLD, 2004).The number of arbitrators or neutrals can be one, two, three or even more. In the case of an even number of arbitrators, an umpire is to be appointed according to the procedure given in the Act and where the arbitration agreement does not specify the number, the ADR shall be by a sole arbitrator or neutral. Where the arbitration agreement is silent about the mode of appointment of arbitrators or neutrals and the parties cannot agree about the choice of the arbitrator, the Act gives power to the court to make the appointment, after following the prescribed procedure (the Alternate Dispute Resolution Act, 2017. s.5). An arbitrator who does not diligently conduct the proceedings, or who is guilty of misconduct, can be removed by the court after due inquiry.

Judicial Intervene in Alternate Dispute Resolution

Alternate Dispute Resolution is important limb of judicial system and gives significant relief to ordinary judicial process. It is not alternate or substitute to formal legal system but this system is to share burden and to support the judicial system. However, governing law (The Alternate Dispute Resolution Act, 2017) at domestic level empowers courts to intervene in this process. This statute dealt with three different situations for the ADR without court intervention, ADR after framing of suit and ADR through court (the Alternate Dispute Resolution Act, 2017.s.3). However, spectrum of court's powers is very vast in this statute to intervene in all three stages of ADR process i.e. before referring dispute to ADR Centre, during proceedings of ADR and after the awards pronounce. For instance, in arbitration agreement, if appointment of arbitrator or neutral is not specified and parties are failed to choose or appoint the arbitrator then this statute empowers the courts to appoint the arbitrator. Further, time limit for pronouncing the awards can be extended by permission of court in certain circumstances (the Alternate Dispute Resolution Act, 2017.s.3). Moreover, when either party of arbitration agreement is reluctant for ADR process, other party may pursue court involvement by making an application to start ADR process. The judgment is needed to give legal strength to the awards pronounced by arbitrator or neutral. It is power of court to totally accept awards and pass the judgment, discard the awards, make reference for re-consideration or amend the awards (Hussain & Malik, 2020).

The main objective of the Alternate Dispute Resolution statutes is to minimize the supervisory role of courts in the arbitral process and to provide that every final arbitral award is enforced in the same manner as if it were a decree of the Court. Unfortunately, Alternate Dispute Resolution have not flourished accordingly in our legal system and not become field of specialization in Pakistan.

Reform Proposal:

The concept of ADR is not new in our society, such kind of dispute resolving practices has long history in this region. With the passage of time, modern laws have developed to regulate and resolve disputes, and courts system was established to address disputes. With the increase in interpretation and complexity of law, the courts systems become more and more complicated, resulted in time consuming, costly and less effective. Therefore, delay in justice undermines faith on judicial system, which resulted innovation of effectively, speedy and cost efficient systems to address the disputes. Alternative Dispute resolution are now become more and more encouraging process to resolve all kinds of issues, especially financial and commercial matters in developed countries.

There are few statutes which governed Alternate dispute resolution in Pakistan; however, they were not addressed adequately foreign Arbitration. In past few years government seems interested in promoting alternate methods to resolve

disputes, and have no stone unturned to attract foreign investors in the country. In 2011, National Assembly of Pakistan has passed a statute to empowers foreign arbitration and enforce foreign awards, which is a positive step towards investor-friendly environment, further, in 2017, a domestic law has also be passed by the parliament, however, the law does not address all the parameters of the mechanism, which were expected to be addressed. However, this alternate method to resolving disputes is not flourished sufficiently due to various factors.

Awareness

Development of laws and provide friendly environment to flourish some system in the society. However, lack of awareness to the system on both ends makes it alien; hence, awareness is incredibly significant to implement such system in the society. However, unfortunately, awareness of importance of Alternate Dispute Resolution on both ends, especially on receiving end is unfamiliar and hence growth is inadequate. It is duty of administration provide feasible grounds for accepting and understanding such system on receiving end. Further, it is important to educate advocates regarding this process by introducing such educational courses in graduation level and also arrange such seminars and training workshops for lawyers to enhance their knowledge.

Implementation

After the development of any system, it is important to implementation such system for the growth of such system in the society. And it is duty of administration and especially judiciary to provide such conditions which are favourable for such system. For instance, in any contract, if there is any clause which bound the parties to resolve their disputes on any other forum prior to litigation, then it is be duty of judges that parties must avail that opportunity prior turning to the courts. It is important to regulate arbitration in the process. However, domestic arbitration statute of Pakistan gives multiple opportunities to the courts to intervene in due process, which resulting in unwanted delay in said process. Further, the disputes between government agencies and the citizens shall be resolved by such methods for batter awareness and understanding to the receiving ends, which will result in better implementation, and growth of such system and also split the burden on the courts.

Infrastructure Development

An official Alternate Dispute Resolution instruction is needed to be established, which regulates practice guidelines, protocol and rules of alternate dispute resolution system in the country. And such institution will offer and conduct post graduate diplomas for lawyers to become qualified neutral or arbitrator and after successful completion of such course the institute issue practicing license to the individual to practice as an arbitrator or mediator. A qualified arbitrator or neutral will only act as an arbitrator in any dispute, which will establish separate profession of arbitration from litigation. This will also help to reduce super saturation condition in the field of litigation.

Research

Research and development is exceptionally significant in every field to explore different ways for betterment of individuals. Research is needed to address gray areas and upgrade the law in the field of Alternative Dispute Resolution. Government and chartered universities must have to start higher degrees in the field of law to meet recent prospectus of life.

Role of Judiciary

The significance of Alternate Dispute Resolution is important to understand on both ends of judiciary system. Alternate dispute resolution is not alternate or substitute to formal legal system but this system is to share burden and to support the judicial system.

CONCLUSION

Main objectives of Alternate Dispute Resolution are speedy, effective, confidential and cost efficient mechanism to resolve the disputes, so, it emerge as shortest route to settle down issues. Parties in conflict prefer to opt this route rather to go for conventional litigation because of such benefits, so, it becomes necessity and emerged as a fundamental part in modern practice.

However, in Pakistan, statutes in force gives wider spectrum to the courts for intervene, which cease the sole purpose of this mechanism. New legislations are required to cater down the judicial intervene and address the matter adequately. Further, it is important to aware both ends that it is a supplement to the judicial system and not alternate to the existing judicial system. If this system will flourish in our society, it will give significant reforms in judicial system and will share the huge burden of the courts and ultimately, it will be beneficial at receiving end of the justice.

The main objective of the Alternate Dispute Resolution statutes is to *minimize the supervisory role of courts* in the arbitral process and to provide that every final award is enforced in the same manner as if it is a decree of the Court. Unfortunately, Alternate Dispute Resolution have not flourished accordingly in our legal system and not become field of specialization in Pakistan.

REFERENCES

- Brian A. Garner, editor in chief. (2014). Black's law dictionary. St. Paul, MN :Thomson Reuters.
- Bhandari, U.K., Naqvi, F.H. and Riaz. I.(2011) Pakistan; Asia Arbitration Handbook, Michael J. Moser and John Choong (ed.). Pakistan: Oxford University Press
- Clift, N.R.(2010) The Phenomenon of Mediation: Judicial Perspectives and an Eye on the Future. <http://dx.doi.org/10.2139/ssrn.1599420>
- Convention on the Settlement of Investment Disputes Between States and Nationals of the other states, Chapter 1
- CLC (1999) 437, 441
- CLC (1999) 1018, 1022-23

- Hassan, A., & Malik, D. M. (2020). Status of ADR in Existing Laws of Pakistan: A Brief Study. *Global Regional Review*, V(III), 263-269. [https://doi.org/10.31703/grr.2020\(V-III\).27](https://doi.org/10.31703/grr.2020(V-III).27)
- Hussain, F. (2015), *Judicial System of Pakistan*, 4th edition, Federal Judicial Academy, Islamabad, p. 18.
- Jillani, T. H, Delayed justice and the Role of ADR, www.supremecourt.gov.pk
- Karim, F. (2006), *Judicial Review of Public Actions*, vol-1, Pp. 597-598
- Kelly. D. (2020), *Slapper & Kelly The English Legal System* (19th Ed.). England: Routledge.
- Khan, H. (1990), *Administrative tribunals for civil servants in Pakistan: Comparative study with India, Bangladesh, Britain, France & Germany*, Unknown Binding, Progressive Publishers, Lahore, 1st Edition.
- Mitsubishi Motors Corp. v. SolerChryslerPlymouth, Inc.*(1985), 473 U.S. 614, 633.
- PLD 2004 Lah. 404
- PLD 2014 Lah 424
- PLD 1993 SC 42, 52
- PLD 2000 SC 841
- PTD 2000 478
- SCMR (2000) 366
- The Arbitration Act, 1940
- The Alternate Dispute Resolution Act, 2017
- Totaro, G.(2010), *Avoid court at all costs*.The Australian Financial Review.
- Ware, S.J. and Levinson, A.R.(2017). *Principles of Arbitration Law*. Saint Paul, USA: West Academic Publishing.
- YLR (2003) 461