

# Kluwer Arbitration Blog

## Expeditious Dispensation of Justice: ADR The Way Forward? – Perspectives from Pakistan

Nudrat Piracha (Samdani & Qureshi), Sana Taha, and Kiran Nasir Gore (Associate Editor) (The George Washington University Law School) · Sunday, November 27th, 2022

“International Conference: Expeditious Dispensation of Justice – ADR The Way Forward” was held on 1 and 2 September, 2022 at Serena Hotel, Islamabad, Pakistan and in the Islamabad High Court respectively. The conference was dedicated to exploring the ways in which alternative dispute resolution (ADR) and arbitration can support the progressive development of the legal system in Pakistan. With a huge backlog of cases hindering the expeditious dispensation of justice in Pakistan at all fora, the [need for mechanisms](#) that run parallel to traditional litigation is felt at an unprecedentedly unanimous level among the local legal fraternity.

The conference was organized by [International Center for Appropriate Dispute Resolution and Prevention \(ICADRP\)](#) and celebrated ICADRP’s formal launch. The conference was held in collaboration with [Samdani & Qureshi](#), a law firm based in Islamabad, [Safer Communities Foundation](#), an organization working on improving the justice system in Pakistan, [Weinstein International Foundation](#), a US-based organization that focuses on mediation, and the [Islamabad High Court Bar Association](#). This post presents highlights drawn from the two-day conference that are of interest to international audiences.

### **The Need for Greater ADR and Arbitration Tools to Expedite the Progressive Development of Pakistan’s Justice System**

Dilating on the impacts of the Pakistani courts’ backlog of cases, a primary challenge is the slower dispensation of justice in these cases, which is problematic for litigants, courts, and lawyers alike; with the litigants suffering in misery owing to the delays, the lawyers overworked with never-ending cases, and the courts overburdened with a case load beyond their capacity to discharge. These concerns and challenges are also highlighted in a [press release](#) issued by the Law and Justice Commission of Pakistan on 24 November 2022.

Many countries around the world have adopted various modes of ADR and arbitration to facilitate a more expedient justice system and to ease the workload. ICADRP is one such organization playing its part in facilitating court-annexed ADR by providing various ADR services to litigants interested in the same in Pakistan and providing cost effective solutions for international users. [Dr. Shoab Suddle](#), Chief Executive Officer of Safer Communities Foundation in particular stressed the

need for a fast and expeditious justice system for maintaining rule of law, and cited the example of Japan, wherein ADR is often used to facilitate justice in the criminal context – a model that could be applied to Pakistan. This example demonstrates how ADR can help remove some burden from the national courts while facilitating justice.

**Judge Charles N. Brower**, a former judge of the International Court of Justice and the Iran-US Claims Tribunal, who is also the Patron-in-Chief of ICADRP, further explained how ADR and arbitration are efficient, efficacious and expeditious and that many countries are turning to ADR and arbitration to avoid the delays in the traditional justice system. Giving the example of Turkey where mediation centers have been set up annexed to private law firms, he explained stressed that Pakistan too can benefit by setting by ADR centers, which could be court-annexed or set up privately, which will help alleviate the burdens felt by national courts.

**Howard A. Herman** of JAMS further affirmed that ADR and arbitration has been effectively used by American courts and others around the world. He specified that aside from arbitration, other ADR mechanisms can be usefully employed, including mediations, conciliations and negotiations. Such tools can support the avoidance and prevention of disputes before they escalate to an adversarial point, where there can no longer be reconciliation.

### **Challenges in Implementation of Effective ADR Solutions**

The Honorable Mr. Justice Miangul Hassan Aurangzeb of the Islamabad High Court emphasized the necessity of lawyers being at the forefront of leading the initiative for supporting ADR and arbitration in Pakistan. In his view, the lack of support from the legal fraternity is a major hindrance to the widespread use of ADR and arbitration in Pakistan. He gave special focus to the model followed in Turkey. A useful feature employed in Turkey in support of ADR is that law firms have developed dedicated rooms within their office premises in which to conduct mediations. He proposed that this small feature could usefully be employed in Pakistan.

On this subject, the need for extensive trainings of mediators and arbitrators in Pakistan was emphasized, especially keeping in mind local socio-cultural dimensions. Some lawyers are fearful or apprehensive because, in their view, encouraging ADR and arbitration would reduce business opportunities. This notion is misplaced; widespread support for and use of ADR and arbitration would not only alleviate the backlog presently facing the courts but also, as ADR and arbitration gain traction, would create new and different opportunities, including for lawyers to maintain specialized practices in this field. For example, rather than allowing a matter to sit before the courts for three years before resolution, a few weeks could be spent in mediation to achieve expeditious resolution of the dispute.

Justice Aurangzeb also identified the challenges for ADR and arbitration as reflected in Pakistan's legal system itself. The **Arbitration Act 1940** ("1940 Act"), as applicable in Pakistan, is an archaic law that requires modification, if not complete revision. As it stands, the 1940 Act requires significant court intervention, which results in arbitration processes becoming as cumbersome as litigation itself. For example, litigants who have opted for arbitration may find themselves approaching the court for administrative and procedural requests that perhaps could be avoided, such as for the appointment of arbitrators, injunctive orders, and claims of misconduct against the arbitrators. This results in formal or informal long periods of inactivity in or stays of the

arbitrations. Therefore, even though the 1940 Act, the Section 89-A of the Civil Procedure Code 1908, and various other family and personal laws in Pakistan provide for out of court settlement mechanisms, these are not effectively implemented due to cumbersome procedures, lack of awareness, the scattered nature of the laws (which are not compiled comprehensively in one place) and interference by the court when it should refrain from doing so. Justice Aurangzeb referred to the Arbitration and Conciliation Act 1996, as adopted in India, as an example for Pakistan as well as the UNCITRAL Model Law on International Commercial Arbitration which could be used by Pakistan to develop a more modernized law to replace the 1940 Act.

The Honorable Mr. Justice Sardar Ejaz Ishaq Khan of the Islamabad High Court further discussed the judges' perspective on the various challenges that hinder the adopting of ADR mechanisms in Pakistan. He narrowed them to seven specific "fallacies" and proposed solutions to the same:

1. The **one-size-fits-all fallacy**, that the same ecosystem is sufficient for all kinds of ADR, without differentiating between the different modes of ADR and the methods of their enforcement, such as using mediation and arbitration interchangeably, whereas they are not.
2. The **patriarchal fallacy**, that the government must be the all-encompassing regulator of ADR systems.
3. The **statutory fallacy**, focusing on varying contradictions and absurdities present in the law that hinder the enforcement of ADR.
4. The **silos fallacy**, that ADR and arbitration can effectively be implemented without permanent partners.
5. The **costs fallacy**, that ADR and arbitration increase the overall cost for dispensation of justice.
6. The **arbitration law reform fallacy**, that the status of the arbitration law in Pakistan is solely responsible for the challenges associated with implementation and use of ADR and arbitration.
7. The **panacea fallacy**, that that ADR is the panacea to all our ills, whereas effective rule of law and dispensation of justice needs to be considered at all stages, namely, including the prevention, management, resolution, and enforcement of dispute resolution processes. ADR is a toolkit that needs to be used to manage conflicts at various stages, and there is rising global usage of these tools. However, these tools are admittedly in short supply in Pakistan.

Despite the proven utility of ADR and arbitration in other countries in strengthening the judicial system, it has been largely ignored in Pakistan owing to several challenges, and there needs to be reform at every level, be it judicial, legal or coming from litigants and lawyers themselves.

### **Role of the Courts in Facilitating ADR and Arbitration**

The Honorable Chief Justice of the Islamabad High Court, Mr. CJ Athar Minallah, who also presided the event as Chief Guest, emphasized that the backlog of cases and the overburdened courts in Pakistan required greater understanding and use of ADR and arbitration. He emphasized that this intervention must be supported by the Pakistani judiciary, The Islamabad High Court, he assured, would further this initiative towards encouraging and facilitating ADR.

Dr. Nudrat Piracha, Chief Executive Officer of ICADRP, also pointed out that the unnecessary cases pending in courts come from the parties' understanding that litigation is the only way forward for the resolution of disputes. Court-annexed ADR, she said, is a winning formula that would help take the burden off of the local courts while creating great access to justice. She talked

about mediation, conciliation, arbitration and negotiations as the varying methods of ADR. The system currently suffers from various challenges, including lack of: capacity of stakeholders, centralized efforts, and trained mediators, conciliators and arbitrators. There is need for training, system design, government and other institutional support, building appropriate legal and social structure, social support, setting up online dispute resolution systems and public-private partnerships along the models implemented in recent years in Turkey, Italy and some African states.

### **Investment Arbitrations and Pakistan**

**Meg Kinnear**, the Secretary-General of the International Center for Settlement of Investment Disputes (ICSID), speaking on international arbitrations and investor -state dispute settlement, pointed out the problems associated with approaching domestic courts for the resolution of investor-state disputes. She recalled that the first international investment agreement in history was signed between Pakistan and Germany in 1959 and entered into force in 1962. Despite this early interest, expertise and specialization in the area remains lacking within the country. Furthermore, domestic ownership of foreign arbitral awards and agreements remains a challenge for Pakistan.

### **Concluding Remarks**

The conference featured many more international and domestic speakers, including those who drew upon innovative technologies and other models to explain how ADR and arbitration can be effectively introduced in Pakistan to facilitate greater access to justice and the progressive development of law within the country. The conference ended on the note that the ICADRP, under the able leadership of Dr Nudrat Piracha, will accelerate its efforts to propagate the importance of ADR in Pakistan in order to facilitate expeditious dispensation of justice in Pakistan, and will further look into online dispute resolution (ODR) as a way forward for efficacious and expeditious settlement of disputes outside of the court rooms. It was further resolved that the Islamabad High Court and the Islamabad High Court Bar Association would both take the initiative of supporting ICADRP and would further facilitate the adoption and use of ADR and arbitration in Pakistan.

*Recordings of the program's sessions are available online [here](#).*

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