Alternative Dispute Resolution (ADR) in Shariah and its Institutionalization in Pakistan, Reforms and legislation in Sindh and the way forward

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Abstract:

The judiciary being the independent and key tier of the state, plays paramount role in maintaining the peace, tranquility in the society and administration of justice. The Courts follow the procedural and long drawn evidence process to solve the disputes. Therefore, due to this mechanism the justice for the common people is expensive and time consuming[1]*. Further, there are millions of cases are subjudice before the Courts in Pakistan and for that the need of Alternative Dispute Resolution arises. The same concept of ADR is recognized not only in Pakistan but the Sindh province has also recognized the ADR through amendment in the Code of Civil Procedure (SINDH AMENDMENT) ACT, 2018. The current study examined the different ADR principals in Shariah and in Sindh province. Moreover, the study also critically examined the procedure laid down in the ADR Sindh amendment 2018 for adjudicating any dispute in nonconventional Court procedure.*

[1] Ramzan, Muhammad, and Kashif Mahmood. 2016. "Rationalizing Alternate Dispute Resolution in Pakistan." *International Journal of Research in Social Sciences* 6 (1): 88-95.

Keywords: *Alternative Dispute Resolution, ADR, Civil Procedure Code, Sindh Amendment, Act 2018.*

Introduction:

The word Alternative Dispute Resolution (ADR) is not new in Pakistan the same concept was used in the ancient times as well in the form of *panchayat*, council of elders and *jirga*. It is worth to note that the same concept was used just to resolve and adjudicate the family disputes and minor offences but now a days, its scope is wider and ADR is used to resolve the civil and commercial disputes. Moreover, in connection with this the saying of Justice Mansoor Ali Shah is very much relevant who said "Litigation is a scenario in which you go in like a bull but leave as a sausage"[2]. The term "alternative dispute resolution" (ADR) refers to a collection of procedures and methods designed to enable the settlement of legal issues outside of the courtroom[3,4,5]. The concept of Alternative Dispute Resolution (ADR) was not new for world since last two 2 decades but the same concept is incorporated in the form of legislation here in Pakistan. If we talk about Sindh province made amendment in the Code of Civil Procedure called as the Code of Civil Procedure (Sindh Amendment) Act, 2018. Whereas, Islamic society has always appreciated compromise and welcomed the amicably resolution of dispute/ difference arises between the parties. While, same principals of the Islam were governed and regulated by the Quran and Hadith. Therefore, Islamic laws considers the ADR as basic principle of Civil Justice.

Most of the times in our society, we knock the doors of the Courts in case of any problem. So whether it is a civil issue, a commercial or a family dispute, the court

[2] Syed Abbas Hussain. 2019. Alternative Dispute Resolution Gains Traction in Pakistan.
[3] Mnookin, Robert H. 1998. *Alternative dispute resolution*. Harvard Law School.
[4] Menkel-Meadow, Carrie. 2015. "Mediation, arbitration, and alternative dispute resolution (ADR)." *International Encyclopedia of the Social and Behavioral Sciences, Elsevier Ltd*.
[5] Blake, Susan, Julie Browne, and Stuart Sime. 2016. *A practical approach to alternative dispute resolution*. Oxford University Press.

is considered to be the best place for resolution of a dispute. Basically, ADR is a method of resolving a dispute in which two parties have to take their claim from the court to another place, in other words, a decision of any kind that The third amicable party determined between the two warring parties by their will should be taken out of the courts and the relevant parties should be bound to accept the decision. The source creates the situation and makes them laugh. The point of interest is that the voluntary consent of both parties is necessary and the perfection is that in this neutral reconciliation both parties win and no party loses.

Need for Alternative Dispute Resolution (ADR):

The necessity for Alternative Dispute Resolution (ADR) arises from the complexities ingrained in the conventional legal system[6],[7]. Traditional legal proceedings entail a convoluted procedure that requires a significant time and money commitment. The possibility of an appeal and modification continues the legal entanglements even after a decision is rendered. ADR, especially mediation, functions on the tenets of a win-win, non-adversarial policy, in contrast. ADR is voluntary for the parties involved, and it helps them settle their differences and mend strained relationships. This method provides a significant change from the adversarial style of court proceedings. Moreover, the concerning backlog of cases in the legal system emphasizes the urgent need for ADR. There are currently over 22 million cases outstanding in court, making the need for quick[8], and effective conflict resolution processes like ADR even more critical. In addition to providing a means of prompt and amicable solutions, alternative dispute resolution (ADR)

[6]Ali, Majid, and Li Lu Geng. 2019. "Alternative dispute resolution (Adr) in Pakistan: The role of lawyers in mediation procedure." *International Journal of Research* 6 (04): 421-430.
[7]Balzer, Benjamin, and Johannes Schneider. 2021. "Managing a conflict: optimal alternative dispute resolution." *The RAND Journal of Economics* 52 (2): 415-445.
[8]Javed, Saqib, Muhammad Ahsan Iqbal, and Hafiz Abdul Rehman Saleem. 2023. "A Critical Analysis on Causes and Effects of Baseless Adjournments in Pakistan." *Pakistan Journal of Humanities and Social Sciences* 11 (2): 2358-2364.

lessens the load on the already overworked courts and eventually results in a more equal legal system.

ADR is divided into four parts:

1. Negotiation
2. Mediation
3. Conciliation
4. Arbitration

The necessity of Alternative Dispute Resolution (ADR) in Pakistani law stems from Section No. (11A) 2 of the Code of Civil Procedure, 1908. In this section, the term "Mediator" is defined specifically as a completely secret process that is assisted by an impartial third party, the mediator. The mediator actively assists both parties to the disagreement, aiming for a conclusion that is similar to a prescient agreement. This is the essence of alternative dispute resolution (ADR). Although mediation principles require that the parties in dispute retain ultimate control over the terms and conditions of the settlement, it is crucial to stress that the mediator does not have the same decision-making authority as an arbitrator. Moreover, the mediator does not have the authority to decide or impose a decision on the parties concerned. The origins of alternative dispute resolution (ADR) are a complex matter that need careful investigation. The dominant adversarial system in the legal system is one of the main contributing causes. This adversarial aspect of litigation contributes to basic concerns about the efficacy and suitability of court-based dispute resolution mechanisms. Consequently, even if traditional courts still exist, it is crucial to explore the nuances of this transition towards alternative dispute resolution (ADR) and comprehend the reasons behind mediation's rise to prominence in Pakistan's modern legal system.

Alternative Dispute Resolution (ADR) and Shariah:

Alternative Dispute Resolution (ADR) is crucial as Muslims deeply hold the importance of the Quran in their lives and how it can be used to resolve disputes

that the Ummah faces[9]. The Quran is considered to be the whole moral code. Its verses were offered to the Ummah as a source of guidance not only in questions of faith but also in addressing the many issues that the community faced. The Islamic legal system known as shariah, which is based on the Quran, is a crucial source of knowledge when it comes to offering the most advanced and straightforward approach to resolving disputes. Recognizing why Alternative Dispute Resolution (ADR) is not only compatible but also extremely significant in the Ummah setting requires an understanding of the Quranic guidance and the role of Shariah in conflict resolution. There is an inherent harmony between contemporary dispute resolution methods and the ideals preserved by the Quran and Shariah when alternative dispute resolution (ADR) systems are in line with Islamic concepts of justice, negotiation, and consensus[10,11,12]. Hence, same is provide as under:

i. Sulah (Negotiation, mediation/conciliation, compromise of action);
ii. Tahkim (Arbitration);
iii. Med-Arb(Combination of Sulah and Tahkim);
iv. Muhtash(Ombudsman);
v. Informal justice by the Wali al-Mazalim or chancellor;
vi. Fatwa of Muftis (Expert Determination).

[9] Keshavjee, Mohamed M. 2016. "Alternative dispute resolution (ADR) and its potential for helping Muslims reclaim the higher ethical values (Maqasid) underpinning the Sharia." *The state of social progress of Islamic societies: Social, economic, political, and ideological challenges*: 607-621.
[10] Hassim, Mohamad Hafifi, Norazla Ab Wahab, Tuan Nurhafiza Raja Abdul Aziz, Roslinda Ramli, and Siti Noor Ahmad. 2019. "Alternative dispute resolution (adr) via sulh processes." *International Journal* 4 (17): 25-33.
[11] Singh, Vandana. 2017. "Alternative Dispute Resolution in Islam: An Analysis." *ILI Law Review* 1: 137-146.
[12] Islam, Md Zahidul. 2012. "Provision of Alternative Dispute Resolution Process in Islam." *Journal of Business and Management* 6 (3): 31-36.

The Holy Quran has also recognized the ADR in the following verses. Following are the verses of the Holy Quran which appreciates the amicably resolution of the dispute arising among the persons[13].

i. Sura "Al Nisa" Ayat 35: "And if you fear a breach between the two, bring forth an arbiter from his people and her people an arbiter if they desire to set things right."
ii. Sura "Al Nisa" Ayat 128: "Compromise is better".
iii. Sura "Hujurat" Ayat 09: "And if two parties of the believers argue, reconcile between them".
iv. Sura "Al-Shuʿarā" Ayat 118 "Judge Thou, then, between me and them openly, and deliver me and those of the Believers who are with me."

ADR in Pakistan:

Alternative Dispute Resolution (ADR) in Pakistan has its historical roots in indigenous practices including panchayats, Jirga, and elder councils[14,15]. The growth of Pakistan's judicial environment has been significantly influenced by these ancient procedures that are firmly embedded in the country's social fabric. In the past, the society has primarily used these procedures to settle family conflicts and small infractions. The growth and institutionalization of ADR within Pakistan's legal framework has been greatly aided by this historical legacy. In Pakistan, Jirga—consisting of esteemed community leaders, panchayats, and elder councils—have been crucial organizations for resolving disputes. These native systems demonstrate a strong dedication to peacefully settling conflicts and

[13] Rashid, Syed Khalid. 2004. "Alternative dispute resolution in the context of Islamic law." *The Vindobona Journal of International Commercial Law and Arbitration* 8 (1): 95-118.
[14] Ahsan, Irum. 2008. "Panchayats and jirgas (lok adalats): Alternative dispute resolution system in Pakistan." *Strengthening governance through access to justice* 27.
[15] Ahmed, Jamil, and Hafiz Shuaib Farooq. 2022. "Indigenous Dispute Resolution Mechanism (IDRM) in Sindh: A Case Study of Sindhi Village." *UW Journal of Social Sciences* 5 (1): 205-222.

upholding societal harmony. These customs' continued relevance is demonstrated by the way they are applied in local communities to resolve family conflicts[16]. The establishment of institutionalized alternative dispute resolution (ADR) inside the Pakistani legal system has been made possible by the lasting legacy of these conventional conflict resolution techniques. ADR ideas were incorporated into the nation's legal system through the evolution of these practices to handle a wider range of conflicts. The range of conflict resolution choices open to Pakistani nationals has been greatly enhanced by these instruments. These conventional methods of resolving disputes have an impact that goes beyond just resolving disputes. It is impossible to overestimate their historical significance in fostering neighborhood harmony, upholding law and order, and resolving conflicts in a customized and culturally appropriate way. The judicial development in Pakistan has been significantly shaped by these practices, which have ingrained the principles of conciliation, compromise, and community involvement in the legal process.

Institutionalization of the ADR in Pakistani laws:

Legislative efforts to improve the civil and commercial judicial systems define the past development of Alternative Dispute Resolution (ADR) in Pakistan[1] (Ramzan and Mahmood 2016). Recognizing the necessity for judicial reform, the Pakistani Parliament discussed an amendment that would update the Code of Civil Procedure. One important aspect of this measure required the incorporation of ADR mechanisms. This provision's primary goals were to reduce the growing backlog of cases and improve the effectiveness of the legal system. Still, a lot of people in Pakistan agree that ADR is still far from its fullest potential despite this crucial legislative breakthrough. This is mainly because people think it lacks "teeth" when

[16] Pandya, Ayushi. 2022. "Grassroot Governance and Its Role in Mediation: The Role and Contribution of Panchayat Raj in Amplification of Alternative Dispute Resolution in India." *Issue 1 Indian JL & Legal Rsch.* 4: 1.

it comes to institutionalization and execution. This shortcoming is the result of multiple major obstacles. Interestingly, the High Courts' guidelines do not fully incorporate alternative dispute resolution (ADR) practices, which results in uneven application. In addition, most Pakistani judges do not have training as mediators; as a consequence, mediation recommendations for cases are infrequent. Due to this, Pakistan's courts continue to be overloaded with a frightening backlog of over a million cases.

The proposed modifications to the Civil Justice system, which have been the focus of a great deal of debate over the years, highlight the groundbreaking impact that alternative dispute resolution (ADR) has had on Pakistan's legal system. As a result, courts have either actively anticipated these developments or have worked to interpret the current legal system in a way that is consistent with the ADR tenets. Since new legislation was passed, however, a paradigm change in the workings of the legal system and attorneys is necessary. As a result of Legislative initiatives, amendments in Civil Justice System have taken place and relevant laws (or particular provisions) dealing with the ADR are summarized as under[17]:--

i. Section 89-A & B of the Civil Procedure Code, 1908 (Sindh amendment 2018) read with Order X, Rule 1-A (deals with alternative dispute resolution methods).
ii. The Small Claims and Minor Offences Courts Ordinance, 2002
iii. Sections 102-106 of the Local Government Ordinance, 2001
iv. Sections 10 and 12 of the Family Courts Act, 1964
v. Chapter XXII of the Code of Criminal Procedure, 1898 (summary trial provisions)
vi. The Arbitration Act, 1940

[17] Awais, Hasan, and Muhammad Amir Munir. 2018. "Alternative Dispute Resolution (ADR) in Trial Courts of Pakistan: A Practical Approach Towards New Era of Timely Justice as a Means of 'Justice for All'." Report of 8th Judicial Conference, Law and Justice Commission of Pakistan (2018), Forthcoming.

vii. The Sales Tax Act 1990 (section 47-A)
viii. The Federal Excise Act, 2005 (section 38)
ix. Customs Act 1969, (section 195-C)
x. Income Tax Ordinance, 2001 (section 134-A)
xi. Arbitration (International Investment Disputes) Act, 2011
xii. Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011
xiii. Khyber Pakhtunkhwa Shariah Nizam-e-Adl Regulation, 2009 (section 13)
xiv. Frontier Crimes Regulation, 1901 (sections 8 to 12)
xv. Articles 153-154 of the Constitution of Pakistan, 1973 (Council of Common Interest)
xvi. Article 156 of the Constitution of Pakistan, 1973 (National Economic Council)
xvii. Article 160 of the Constitution of Pakistan, 1973 (National Finance Commission)
xviii. Article 184 of the Constitution of Pakistan, 1973 (Original Jurisdiction when Federal or Provincial governments are at dispute with one another).
xix. Ombudsman Laws (as enforced by Federal and Provincial Governments)

ADR offers litigants a substitute for drawn-out, expensive court cases. These are the most effective ways to settle disagreements. Therefore, in accordance with the aforementioned laws, the Bench and the Bar should make an attempt to refer the subject to ADR.

The right to a speedy trial:

The Alternative Dispute Resolution (ADR) is designed to speedily and expeditiously dispose of the matter or controversy of the litigants. In case of controversy between the parties they approach the Courts for their dispute but the

Courts take a lot of time in deciding the cases i.e. controversy between the parties. Therefore, that give birth to the "justice delayed is justice denied". Hence, for dispensation of the justice between the parties this fact is very discouraging and common people lose faith in the judiciary. The expression has gained a lot of traction among legal reformers who believe that governments and courts are moving inadequately to settle cases because they are overworked, the current system is too complicated, or the party involved is not politically favored. This is a result of the overcrowded judicial system, which has made the litigation process frightening, sluggish, costly, time-consuming, and damaging to relationships because of the lose/win possibility at the end of the process[18].

The famous quote of Abraham Lincoln's meticulously exemplifies the idea of ADR. The quote says: "Discourage Litigation. Persuade neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser — in fees, expenses and a waste of time. As a peacemaker the lawyer has a superior opportunity of becoming a good man"[19].

Cases Prime for the Alternative Dispute Resolution (ADR):

Following are the cases which may be considered as a key and crucial for deciding the conflict through the ADR, the list is provided here under[20]:

1. Compensation and damages cases
2. Copy right and patent cases
3. Landlord and Tenant disputes
4. Commercial Disputes

[18] Fatima, Samza. 2022. "ALTERNATIVE DISPUTE RESOLUTION IN THE LIGHT OF ARBITRATION LAWS." *Pakistan Journal of Social Research* 4 (03): 831-838.
[19] Imam, Syed Kaleem. 2020. "Alternative Dispute Resolution (ADR) For Prompt Disposal of Cases." *Pakistan Journal of Criminology* 12 (3/4): 30-47.
[20] Rahman, Sami Ur, Ms Sadia Tanveer, and Amjad Hilal. 2022. "THE CRITICAL ANALYSIS OF PROCEDURAL ASPECTS IN APPLICABILITY OF ALTERNATE DISPUTE RESOLUTION ACT-2017." *Pakistan Journal of International Affairs* 5 (2).

5. Contractual violation cases
6. Consumer Cases
7. Professional Negligence
8. Family Disputes
9. Companies and banking matters
10. Insurance disputes
11. Dispute on possession of immovable property
12. Dispute on recovery of money
13. Labor disputes
14. Land and property cases
15. Preemption cases
16. Succession cases except those where there is no factual controversy and legal heir are minors.
17. Those criminal offences which are defined compoundable under the second schedule of the Criminal Procedure Code 1898.

Cases Not Prime for the Alternative Dispute Resolution (ADR):

Following cases may not be considered good for the ADR because of nature of dispute and factual controversy or in which balance of probability can only be determined through leading the evidence.

1. Declaration of Right
2. Interpretation of the Constitution
3. Dispute over the Documents of the property.
4. Conflict between the Shariah and local law (This issue can only be resolved by the Federal Shariah Court of Pakistan).
5. Where parties have previous hostility.

It is admitted position that the Courts rely on the adversarial system on the other hand Alternative Dispute Resolution (ADR) is totally non-adversarial process and it is voluntarily. The consent of both parties in ADR is primary condition even after

having sitting in ADR meeting both parties are at liberty to accept the outcome of sitting if they don't want to accept the decision through ADR, they are at liberty to choose the available remedy. Moreover, the quality of being voluntariness has differed the ADR from Court proceedings and other local practicable mechanism for dispute resolution[21].

Gaps in legal framework:

The concept of Alternative Dispute Resolution (ADR) is incorporated though amendment in the Code of Civil Procedure (SINDH AMENDMENT) ACT, 2018 but still same is not fully implemented in the Sindh. Therefore, for fully operationalization there must the proper rules and amendment may be made in the Sindh High Court Rules and Civil Court rules so that the effective operationalization may be secured.

Need and importance for operationalization:

One may consider the need and importance for operationalization, effective enforcement and implementation of the ADR from the principle laid down by the Honorable Lahore High Court in August judgement. Hence, the operative para of the said judgement is reproduced hereunder for ready reference and understanding the need and importance of the ADR. A major historical development, the institutionalization of Alternative Dispute Resolution (ADR) within Pakistan's legal system is characterized by important legislative provisions and the incorporation of ADR elements into the corporate and economic spheres. In this regard, the Civil Procedure Code (C.P.C.)'s Section 89-A and Order X, Rule 1(1-A) have been essential in promoting a culture of peaceful conflict resolution. The discussion here clarifies how ADR procedures have been incorporated into Pakistani law and how

[21] Bhatti, Muhammad Umer, and Mirza Shahid Rizwan. 2023. "ALTERNATIVE DISPUTE RESOLUTION IN CRIMINAL JUSTICE SYSTEM: A CASE STUDY OF THE PUNJAB ADR ACT 2019." *Pakistan Journal of Social Research* 5 (01): 181-195.

parties are increasingly choosing to employ these processes when dealing with business disputes. The legal foundation for alternative dispute resolution (ADR) in Pakistan is provided by Section 89-A and Order X, Rule 1(1-A) of the Civil Procedure Code (C.P.C.). These clauses give parties the option to choose alternative dispute resolution (ADR) over traditional litigation, especially in cases involving corporations. The legal structure, which reflects a progressive approach to dispute settlement, not only permits ADR but also promotes its use by the courts. Courts in Pakistan are proactively urging parties to consider alternative dispute resolution (ADR) techniques as a first step in resolving disputes, keeping in mind the provisions outlined in Section 89-A and Order X, Rule 1(1-A) of the C.P.C. This court's support for alternative dispute resolution (ADR) indicates that it is a widely recognized dispute resolution process. It also conforms to the expediency, cost-effectiveness, and efficiency standards, which in the end improve access to justice and provide a peaceful atmosphere for resolving disputes.

Shift towards the mandatory nature:

There must be development (amendment) in the Civil Justice System that the prior approaching the Courts parties must strive and attain the Alternative Dispute Resolution mechanism for their dispute resolution. This can be possible when the relevant laws may be amended for mandatory compliance of the ADR before approaching the Courts. In connection with this Islamabad High Court has appreciated that the newly inserted provision of S.16A of the Islamabad Rent Restriction Ordinance, 2001, provides an Alternative Dispute Resolution (ADR) mechanism which is mandatory in nature, reliance in this regard may be placed on the judgement such as:

Citation Name : 2023 CLC 207 ISLAMABAD
Side Appellant : Miss MEMOONA ZAINAB KAZMI
Side Opponent : ADDITIONAL DISTRICT JUDGE (MCAC) ISLAMABAD WEST, ISLAMABAD

Preamble---Constitution of Pakistan, Art. 38(A)---Alternate **Dispute Resolution** , mandatory nature of---Scope---Newly inserted provision of S.16A of the Islamabad Rent Restriction Ordinance, 2001, provides an **Alternative** concept of mediation---Legislative intent had been expressed by using the word "shall", which conveyed a mandatory meaning in a specific direction to the Rent Controller to refer every case to the Mediation Council by all means in terms of S.16A---Statement of Objects/Reasons disclosed the emphasis upon Art.38(A) of the Constitution, which dealt with the principle of the State Policy , as to ensure equitable adjustment of rights between landlord and tenant.

Miss Memoona Zainab Kazmi was the appellant in this case, and she faced up against Additional District Judge (MCAC) Islamabad West, Islamabad. The issue concerned the requirements of Alternate Dispute Resolution (ADR) under Pakistan's Constitution, specifically Article 38(A). The lawsuit pertained primarily to the recently added Section 16A of the 2001 Islamabad Rent Restriction Ordinance. The word "shall," which meant that the Rent Controller had to send each and every case to the Mediation Council, made clear the legislative objective. This is consistent with the goals of Article 38(A) and ADR, which aim to guarantee the fair distribution of rights between landlords and tenants inside the framework of State policy. ADR is the practice of settling conflicts outside of the conventional judicial system, frequently via arbitration or mediation. The Pakistani Constitution's Article 38(A) states that the State must protect a social order that upholds justice in order to advance the welfare of the populace. In accordance with Article 38(A) and the principles of alternative dispute resolution (ADR), the Islamabad Rent Restriction Ordinance, 2001 has included Section 16A, which requires that every matter be referred to the Mediation Council. ADR was considered as a means of ensuring a just and equitable conclusion in the case, which most likely entailed a disagreement between a landlord and a renter.

Exclusion of the jurisdiction of the Courts:

There are certain cases where Courts have no jurisdiction to entertain the cases brought by the parties like Arbitration award as provided in the section 30 of Arbitration Act (X of 1940). Moreover, the arbitration award of the Arbitrator was

challenged before the Supreme Court of Pakistan and Supreme Court of Pakistan held in the August judgement [**2023 S C M R 1103]** that the Arbitrator pronouncement is entitled to paramount reverence and weight. The Court shall not serve as an appellate court, conducting independent investigations and searching the Award for potential legal and factual errors. The arbitration is a venue of the parties' choosing, and the court should not arbitrarily intervene with its conclusion unless a specific and well-established case that falls inside the ambit of Section 30 of the Arbitration Act, 1940 is established. Hence, the operative para of the Judgement is reproduced here under for ready reference:

"In light of the circumstances before this Court and the petitioner's inability to provide evidence supporting claims of misconduct on the part of the arbitrators at both the trial and High Court levels, we are hesitant to consider the factual disputes raised by Article 185(3) of the Constitution of the Islamic Republic of Pakistan. We therefore dismiss this petition and reject the request for leave. However, it is crucial to emphasize that arbitration is a fundamental component of alternative dispute resolution (ADR) and that, once parties choose to use out-of-court dispute resolution mechanisms, they must respect the arbitrators' rulings instead of bringing legal challenges against them, as this goes against the fundamental intent of ADR. The petitioner in this matter is requesting our intervention after contesting the Award in both civil and high courts. The primary goal of ADR is undermined by the fact that the petitioner is still involved in legal proceedings in 2023, even if the Award was first granted in 2010. It is imperative to strongly discourage such behavior. Prior to drawing a conclusion, we note that the petitioner has drawn out this case for more than ten years in court, engaging in vexatious litigation that has unnecessarily used up the time of the judiciary at all levels, including this Court. Frivolous litigation slows down the administration of justice and prolongs the time it takes to resolve legitimate claims. We must strongly discourage such petty and harassing petitions. As a result, we determine that the petitioner should pay the respondent Rs. 300,000/- in expenses within a month. If the costs listed above are not paid, they will be recoverable as a financial decree."

Confidentiality and Privacy in the ADR process:

Courts are open for everyone and the proceedings are conducted openly. Therefore, this process is very shameful for the commercial and business man but this thing is encountered by the ADR. One cannot deny that the whole process or mechanism of ADR remains fully confidential and nothing is disclosed to the third person except with the permission of the parties. So ADR is encouraged by the persons because of the privacy protection.

Sindh Law relating to Alternative Dispute Resolution (ADR):

There is no any independent enactment on the Alternative Dispute Resolution (ADR) in Sindh as exists in other parts of the Pakistan. As there already exists the Civil Procedure Code which is the complete law means its sections are substantive law while orders and rules are procedural in nature i.e. procedural law. Therefore, making arrangement of amendment in the Section 89 A & B and Oxer X CPC, 1908, the only reason was ADR dispute resolution mechanism adopts its entire procedure from the Civil Procedure Code, 1908, that why the Legislature has amendment the Civil Procedure Code in the name of Sindh amendment 2018 for the Sindh province so the consistency may be secured and another piece of legislation may not be made for the Sindh Province.

Sindh Amendment has provided the definition for ADR as follows "(A) "Alternative Dispute Resolution" means procedure for settling disputes without court trial, namely arbitration, mediation, conciliation or negotiation."

According to Sindh amendment 2018, ADR refers to mediation, conciliation and negotiation, the definition of each is provided here under:

- "(11A) "Mediation" means a process which is conducted confidentially in which a neutral person (mediator) actively assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle the terms of resolution, the

mediator having no decision-making power or authority to impose solutions on the parties or force settlement between the parties."

- "(1A). "Conciliation" means a process which is conducted confidentially in which a neutral person (conciliator) actively assists parties in working towards a negotiated agreement of a dispute or difference, putting forward proposals for the settlement with the parties in ultimate control of the decision to settle the terms of resolution, the conciliator having no decision-making power or authority to impose solutions on the parties or force settlement between the parties."
- It is worth to note here that all the cases of arbitration shall be dealt with the Arbitration Act, 1940, not otherwise. The Court may use Alternative Dispute Resolution (ADR) methods to resolve cases of civil or commercial matters:
- The Sindh amendment in the Civil Procedure Code, has empowered the Courts (having jurisdiction) under Section 89-A to resolve the matter through ADR with the mutual consent of both parties, then Court may order for speedy and expeditious disposal of the case.

89-A, Alternative Dispute Resolution:

- (1) notwithstanding any other laws for the time being in force, the Court may use Alternative Dispute Resolution (ADR) methods to resolve cases of civil or commercial matters: Provided that for the purposes of this section, ADR refers to mediation, conciliation and negotiation. Provided that in all cases of arbitration, the Arbitration Act 1940 shall apply.
- (2) That by submitting to the jurisdiction of the Court, the court shall presume that parties by mutual consent agree to refer the dispute for ADR if so ordered by the Court for securing expeditious disposal.

- (3) That a case may be forwarded for ADR by referral of the cases to a mediator/conciliator as identified under Order X, Rule 1C of this Code, in the following circumstances: -
    - Upon presentation of a plaint, the court shall at the first instance, examine and assess the possibility of resolving the case in a way which is to the advantage of all parties under one of the methods of ADR;
    - (ii) If at any stage of the case, before or after the recording of admissions and denials, the court considers there is a possibility of resolving the case in a way which is to the advantage of all parties under one of the methods of ADR;
    - (iii) Upon consent of all the parties.
- (4) The court shall employ the following process in the circumstances identified under sub-section (3)(i) and (ii):-
    - Upon the conclusion of the Court to refer the case to ADR, the court shall issue notice to the parties to make submissions upon the next date of hearing as to why their case should not be referred to ADR;
    - (ii) Where no sufficient cause is shown, the Court shall refer the case for ADR to a mediator/conciliator identified in Order X Rule 1C; and
    - (iii) If any of the parties fails to make a submission as under sub-section4(i), the court shall proceed to refer the case to ADR."
    - Provided, that the entire process as stated in sub-section (4) shall be completed within fifteen days by the Court.

89-B Reference by Parties:

Parties who have resolved any dispute of civil or commercial nature through the use of an ADR method before initiating any legal proceeding may file an application along with settlement duly signed by the parties and other relevant

documents in the court having jurisdiction which shall be registered as a "Judicial Miscellaneous" matter. The court after hearing the parties shall pass judgment and decree as under this Code."

Procedure Adopted by the Courts for resolution of conflict through ADR in Sindh:

Courts have to follow the procedure for referring the case to the ADR as laid down under the Order X of the Civil Procedure Code.

a) Appointment of Mediator/Conciliator: The Court shall nominate a mediator/conciliator as provided in order x rule 1C, of civil procedure code, 1908.
b) Fixation of date and time: When the Courts make reference of any case for ADR then court shall direct the parties to appear before the nominated mediator/conciliator on the day and time fixed by the court. Provided, such reference, should be decided with in sixty days, in case such reference is not decided with in the stipulated time then mediator/conciliator may request for extension of time but he has to show good cause (sufficient cause) for extension of time then Court may be extending the time not more than thirty days.
c) Fees of the Mediator/conciliator: after deciding the reference of case to ADR, then Court may direct the parties the pay the professional fees of the mediator/conciliator.
d) Who will take part in the ADR proceedings: parties may in person take part in the ADR proceedings and they may authorize any representative to settle the conflict on their behalf.
e) Procedure of the ADR: mediator/conciliator may follow any procedure for arriving at the just and equitable conclusion between the parties.

f) Settlement deed: if the mediator/conciliator successfully settle down the conflict of the parties then he shall prepare the settlement deed and duly signed by the parties and submit the said deed to the Court on the day fixed. Moreover, mediator/conciliator shall also submit the certificate that the entire procedure was voluntarily.

g) Preparation of decree: when the Court receive the settlement deed then after hearing the parties Court may pass a judgment and decree in terms of settlement.

h) Failure of settlement: if no settlement is reached out among the parties then mediator/conciliator record the facts, including any person or party does not join the ADR process, and such statement submitted to the Court before or on the day fixed.

i) Commencement of trial. In case no settlement is reached among the parties then Court shall proceed with the case on day to day basis.

Exclusion of Qanun-e-Shahdat Order 1984 in the ADR proceedings:

The provisions of the Qanun-e-Shahdat order, 1984 shall not apply to the ADR proceedings.

Benefits of the Alternative Dispute Resolution (ADR):

We need to do a brief comparison of the components of both the mechanisms, i.e., ADR and court litigation, in order to answer the question of whether ADR can effectively share the load of the courts. ADR is recognized by law, so it can be used to share the burden of judiciary as there are millions of cases pending in the Pakistani Courts. In an era of digitalization and characterized as a new trends and mechanism for conflict resolutions among the individuals, nations, organization (Legal persons) and public administrative bodies has become the standard in both

formal disputing systems such as Court proceedings and other legal procedures and other informal like private wrongs, contract violations, misconduct and other related issues arise in public bodies. In nutshell ADR can be very effective and useful for the conflict resolution in the public administration as well[4]. Following are the some benefits which encourages the bench and bar for promoting the conflict resolution through the ADR[16],[22].

- Consent of both the parties is necessary.
- Voluntarily process.
- Parties has to represent themselves.
- Less costly
- Win-win outcomes.
- Speedy and expeditious disposal.
- Relations between the parties can be maintained.
- Confidential and privacy is maintained.
- Can be enforceable after settlement between the parties.
- Both parties are happy and satisfied regarding the final outcome.

Obstacles towards Alternative Dispute Resolution (ADR):

Following are the some obstacles towards the non-functional and lack of operationalization of the Alternative Dispute Resolution (ADR) in Pakistan, particularly Sindh province[23] (Iftekhar, Khan, and Wattoo 2022):

[22] binti Mansor, Nor Azida. 2023. "ALTERNATIVE DISPUTE RESOLUTION (ADR) IN MALAYSIA: A WAY FORWARD." LIS International Conference.
[23] Iftekhar, Ramsha, Dua Wajid Khan, and Fatima Wattoo. 2022. "Critical Analysis of Mediation Law of Islamabad (Alternative Dispute Resolution Act, 2017)." *Islamabad Law Review* 6 (1): 40-56.

- Lack of political will.
- Ignorance by the lawyers and judicial officers.
- Lack of arbitration and mediation centers.
- Lack of training to the lawyers and judicial officers.
- Lack of public awareness.

Limitations:

The only limitations which is considered as crucial regarding the Alternative Dispute Resolution (ADR) process that is the final settlement of the parties must not be inconsistent with the Constitutional provisions, public policy, natural justice and any provision of the law of land[24].

Recommendations:

- Enactment of the proper rules and regulations for proper operationalization of the ADR process.
- Making mandatory ADR process in Civil and Commercials conflicts prior approaching the Civil Courts.
- Courts Annexed ADR centers.
- Proper training of the judicial officers.
- Proper training of the Lawyers.
- Improving communication between the bar and bench for fully institutionalization of the ADR.
- Subject/ course of ADR may be added in the law schools Syllabus.
- Public awareness
- Encouraging NGO's.

[24] Hussain, Rizwan. 2022. "Autonomous Nature of Alternative Dispute Resolution (ADR) and its Role as Court Assistant in Pakistan." *Available at SSRN 4219096*.

- Public awareness activities like seminars and conferences.

Conclusion:

Pakistan has achieved great progress towards the notion of Alternative Dispute Resolution (ADR). ADR techniques, such as arbitration, mediation, conciliation, and negotiation, offer a useful way to settle conflicts outside of court. This strategy adheres to the tenets of Islamic law and has historical origins in Pakistan's customary conflict settlement procedures. Given that there are currently over 22 million cases pending in the nation's courts, alternative dispute resolution (ADR) is clearly necessary. Rapid access to justice is frequently hampered by the traditional litigation process's combative, expensive, and time-consuming nature. Lincoln said it best when he said, "Discourage Litigation. When you can, convince neighbors to make concessions. Inform them that, more often than not, the apparent victor is actually the loser in terms of costs, fees, and wasted time." ADR is embodied in this, with a focus on cooperative solutions that are advantageous to all sides. A positive step has been taken with the introduction of ADR into the legal system through the Code of Civil Procedure (Sindh Amendment) Act, 2018, among other legislative revisions. The absence of political will, the ignorance of legal practitioners, and the scarcity of specialized ADR centers, among other obstacles, have prevented ADR from reaching its full potential. Establishing court-annexed ADR centers, giving judges and attorneys thorough training, and increasing public knowledge of the advantages of alternative dispute resolution are all necessary to fully realize the benefits of ADR. ADR usage can be further encouraged by include courses on ADR in law school curricula and by promoting the participation of non-governmental organizations (NGOs). ADR provides a confidential and voluntary method in the pursuit of justice that not only relieves the overburdened judicial system but also promotes mutual understanding and cooperation between conflicting parties. This strategy is in line with the Holy Quran and the customs of Islamic law, which uphold the values of justice, equity, and effective dispute settlement. In order to fully utilize alternative dispute resolution, stakeholders in

Pakistan must cooperate to resolve current issues and make sure that ADR procedures are properly implemented.