

Exploring Commercial Mediation as an Effective Alternative to Court Litigation for Resolving Commercial Disputes

Khurram Baig

PhD Scholar Gillani Law College, Bahauddin Zakariya University, Multan
mkb5729@gmail.com

Abida Mumtaz

PhD Scholar, TIMES, Institute Multan, Advocate High Court,
abidaniazi1122@gmail.com

Ali Naeem

LLM scholar Advocate High Court, CEO Goreja Law Associates
ali.goreja9@gmail.com

Shahzad Manzoor Khan

Lecturer South Punjab Law College, ISP (Institute of Southern Punjab) Multan
shahzadmanzoor47@gmail.com

Abstract

This study explores commercial mediation as a viable alternative to traditional court litigation for resolving commercial disputes. In Pakistan, commercial disputes often suffer from prolonged litigation, leading to significant delays, increased costs, and uncertainty for businesses. Mediation offers a flexible, cost-effective, and efficient mechanism for dispute resolution, prioritizing mutual agreement and fostering long-term relationships. This research evaluates the legal framework governing mediation in Pakistan, comparing it with international standards to identify gaps and opportunities for improvement. It also analyzes the role of mediation centers, institutional support, and the enforcement of mediation agreements. Through a qualitative analysis of case studies and secondary data, the study highlights the potential of mediation to reduce the burden on courts while delivering timely and effective resolutions for businesses. Additionally, the research identifies challenges hindering the growth of mediation, such as lack of awareness, limited institutional infrastructure, and the need for legal reforms. Recommendations are offered to strengthen mediation practices, including the introduction of mandatory mediation clauses in commercial contracts, increased training for mediators, and enhanced public and business awareness. By promoting commercial mediation as an integral part of dispute resolution mechanisms, the study advocates for a shift towards a more collaborative, less adversarial approach to commercial disputes in Pakistan.

Keywords: Commercial Mediation, Alternative Dispute Resolution, Litigation, Dispute Resolution In Pakistan, Mediation Framework

© 2024 The Authors. This is an Open Access article distributed under the terms of the Creative Commons Attribution Non-Commercial License.

1. Background of this study

Commercial mediation is an important alternative to court proceedings in resolving commercial conflicts because it offers flexibility, reduced litigation costs and better maintained relations. In this study the researcher investigates the Pakistani landscape of commercial mediations in a

jurisdiction with a complicated legal system and growing demand for effective methods of settling disputes. The significance of adequate commercial conflict resolution cannot be exaggerated as Pakistan becomes more integrated into the global economic system (Shahzad, K., & Ali, A. 2023). Pakistan's business environment is becoming more complicated and interdependent. As interactions between businesses increase, so do conflicts among them. The conventional litigation process often proves to be an ineffective and time-consuming method for resolving these disagreements. This has resulted into increasing demand for better methods of dispute settlement that are also amicable in nature. Mediation, which stresses cooperation and consensus building, may be able to address issues arising from business conflicts (Zeesahn, M., Qureshi, T. W., Bashir, S., & Ahmed, U. 2020).

Somehow, mediation seems to be a relatively new issue in the country's formal legal system despite being one that is not alien to Pakistani culture. In Pakistan, dispute resolution has traditionally been dominated by litigation and somewhat by arbitration. This has however led to interest in alternative dispute resolution (ADR) methods particularly mediation due to congested courts, lengthy delays and high cost of litigation. When we come to the subject of Pakistan, then this can be traced back to jirgas and panchayats as traditional community-based mechanisms for resolving disputes. The latter are controversial but there exists within their cultural fabric an inclination towards reconciliation in conflict resolution. However, adoption of modern mediation practices by commercial actors has been slow (Tahir, M. I. 2023).

In Pakistan, there have been legislative developments on the legal framework for mediation over two decades now. Then came the Alternative Dispute Resolution Act passed in 2017, which added significantly to this framework (Rahman, S. U., Tanveer, M. S., & Hilal, A. 2022). Despite these achievements made through legislation, its practical implementation on wide scale and general acceptance is still a challenge. Commercial disputes frequently occur in business, and their resolution is vital to keep commercial relationships alive and maintain the operations of businesses. Litigation and arbitration are the traditional ways of dispute resolution widely used; however, they come with huge costs, time delays as well as adversarial tensions. There has been an emergence of mediation as a suitable option for settling commercial disputes, which is cheaper, faster and less adversarial in nature (Ramzan, M., & Mahmood, K. 2016).

The purpose of the research is to undertake a complete overview on Commercial Mediation in Pakistan including its legal framework, institutional support and real life implementation. It aims to will identify the main impediments that limit effective use of mediation in commercial conflict resolution. The study will examine how international best practices and norms may be leveraged to transform Pakistan's mediation using a comparative lens for Pakistani operational procedures, which in turn would contribute towards enhancing trade facilitation (in relation with the business growth) within the country. It therefore suggests recommendations for improving the use and efficiency of commercial mediation in Pakistan, thereby making dispute resolution more efficient. The research methodology employed for studying commercial mediation in Pakistan aimed to provide an inclusive and precise understanding of the issue, recognizing its complexity due to the interplay of legal, economic, and cultural factors. A qualitative approach was utilized to capture a comprehensive view of the mediation practices, challenges, and potential within the country. This method allowed for triangulated findings by using various data sources, which enhanced the validity and reliability of the results. The research followed a sequential explanatory design, with one primary phase focused on qualitative analysis.

This is very important research which has practical applications well beyond academia, especially in the financial and legal sectors within Pakistan. Looking at the practice of commercial mediation,

it seeks to answer this by considering what robust dispute resolution mechanisms are that needed would serve both Pakistan's business environment (which needs some trigger for foreign investment) and hence economic growth (Kaya, S., & Khan, M. D. 2022).

From a legal perspective it will be very beneficial for policy makers and legislators as well, if they seek to identify the limitations that exist in present law relating to mediation processes. This will also be educate Pakistani businesses about seriation of mediation and may result in the better conflict resolution strategies. The study further examines how mediation could provide relief to the judiciary by enabling quicker resolution of commercial disputes, thereby decreasing case pendency. Cultural and social aspects are also taken into account which underlines the relevance of creating mediation approaches that should be legal as well and culturally relevant. International comparisons also yield insights into global best practices and help to situate Pakistan's mediation efforts in a wider perspective (Jurgees, S. M. R., Suleman, S., & Shahid, A. 2024).

The study has academic significance due to the reason that it is adding new literature in commercial mediation realm of Pakistan, thus opening further avenues through this field for researches and also providing base ground advancements by legal analysts as well as corporate sectors. Lastly, the general awareness created as a result of this study could bring understanding to more businesses about available Alternative Dispute Resolution (ADR) methods such as commercial mediation and lead to a business community where everyone works together (Jillani, T. H. 2006).

2. Review of Literature

The literature review on commercial mediation globally and in Pakistan is well covered by this literature review. This part is aimed at establishing the theoretical background to the research and identifying gaps in knowledge which this research seeks to fill. Commercial mediation, as a kind of alternative dispute resolution (ADR), has its roots in ancient practices of conflict resolution but has changed significantly over time. According to Folberg and Taylor (1984), "Mediation is the process by which participants, with the assistance of a neutral person or persons systematically narrow down disputed issues with the intention of generating options, weighing alternatives and arriving at a consensual settlement that meets their needs."²⁰In recent decades, there has been an increasing interest in the idea of using mediation in commercial dispenses. Menkel-Meadow (2015) traces back the development of modern commercial mediation to the pound conference held in 1976 in America that called for alternate means for dealing with 'the variety of disputes that were clogging up courts.' From then on-wards commercial mediation became more than an alternative but also a complementary mode of resolving conflicts preferred by many legislations around the world.

Alexander (2006) that have resulted into the growth of commercial mediation identifies that there are various features that make commercial mediation an attractive option to traditional litigation. In this way, the process is naturally confidential and therefore enables a business to maintain privacy in its sensitive information and negotiations. Willingness of both parties to participate freely in mediation forms its second building block while working out for themselves a mutually agreeable solution. The availability of options for resolving issues through negotiation means more lasting ones can be found quite often that they would not have otherwise been arrived at. It's also crucially flexible as it allows customization of the mediation process so as to suit individual needs and circumstances related to each conflict.

This kind of versatility enables their parties to deal with intricate matters in the most suitable ways possible. Cost- effectiveness is one of the strengths of facilitation as compared to long lasting lawsuits which tend to be very expensive. For those companies that want efficient cost management on legal spending, this feature can be valuable. Mediation takes less time than

litigation in solving disputes; hence, parties can engage in their corporate activities earlier than if they had gone through trials. Perhaps most importantly, mediation places a strong emphasis on maintaining business relationships since it does not destroy them like adversarial court processes do; rather it attempts to preserve them even to enhance them at times.

The development of commercial mediation has witnessed its increasing institutionalization and professionalization. This includes the rise of such institutions like centers for mediations, training programs and professional associations which advance the practice of commercial mediation. In addition to this, the aspect also shows how some countries made a decision about including them within their system as a choice while others mandated them before litigation started. Nader (1993)²⁴ has discussed influences of overloaded courts and international development agencies on the adoption of commercial mediation by developing countries. These issues (in terms of overloaded court systems and external pressures from international development agencies) are especially relevant to the growth of commercial mediation in Pakistan.

Different jurisdictions across the globe have adopted different approaches, with the global landscape of commercial mediation characterized by different perspectives. Mediation practices analysis across Europe, North America and Asia is done by Hopt and Steffek (2013), this includes both similarities and differences between their regulatory frameworks as well as on how these are applied. One noticeable momentum is legislative support for commercial mediation. A good example is European Union's 2008 Mediation Directive that sets out rules for cross-border mediations concerning civil or commercial matters. Also, United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018)²⁷ has provided a basis for countries that wish to develop or refine their mediation laws.

It is important to note that commercial contracts are increasingly having multi-tiered dispute resolution clauses. Such a clause generally requires parties to attempt mediation prior to filing a case before an arbitrator or court of law. By and large, Sapideen (2011) declares this as significant towards making commercial mediation the norm in international business. The field of technology as applied in commercial mediation is a subject of emerging interest. The authors discuss how online dispute resolution (ODR) platforms could lead to transformation in the realm of commercial mediation, particularly in cross-border disputes. This trend has been expedited by the COVID-19 pandemic where much mediation had to go online.

Strong (2016) mentions that there has been an increasing reliance on mediation for complicated disputes involving various parties especially those relating to construction, intellectual property, and international trade. This is because such conflicts are considered sophisticated enough for intervention through mediation process. Additionally, cultural aspects also significantly influence worldwide commercial mediation trends. According to Abramson (2004) Cultural competence is crucial when engaging in international commerce negotiations; different cultures approach conflict resolution from different angles, which can be highly varied among different societies. Over the past twenty years, there has been substantial growth within Pakistan's legal framework for mediation, which shows that more and more people are acknowledging the value of alternative dispute resolution methods. However, according to some researchers, a complete legal framework specific to commercial mediation is still being developed.

Khan and Akhtar (2020) argue that although there have been legislative advancements, the legal framework for commercial mediation in Pakistan is still fragmented and lacks specificity. While a significant leap forward, this enactment does not provide comprehensive guidance on commercial mediation processes or the enforcement of mediated settlement agreements. Qureshi (2018) opines

that the enforcement of mediated settlements is notably important concerning Pakistani jurisdiction. The reason being, unlike arbitration awards which are enforceable under New York Convention, there is no mechanism for enforcing mediated settlements in Pakistan, especially international commercial disputes. This absence within the legal structure may hinder parties from selecting mediation as a means of resolving their disputes.

The literature also discusses about another part of the legal framework; how mediation is promoted by courts. Zahid (2021) considers how Pakistani courts have interpreted and applied parts concerning mediative issues good laws. He observes an overall positive attitude towards mediation amongst judges but calls for uniformity in reference to more consistent application of referrals to mediation and support for it. Scholars have been interested in the relationship between commercial mediation and existing arbitration laws in Pakistan. Mahmood (2018) examines the interaction between the Arbitration Act of 1940 and more recent ADR legislation, identifying areas of potential conflict that could be addressed through harmonization.

Apart from this, some researchers have also looked into the constitutional implications of ADR mechanisms in Pakistan. Ali (2016) highlights how Article 10A performance provisions may create a tension with out-of-court methods such as mediation. He suggests a middle ground where constitutional rights are maintained while speedy resolution of disputes is encouraged. On institutional support for commercial mediation, literature spots at different High Courts Constitution Establishment of Mediation Centers in Pakistan.

Noor (2020), on the other hand, gives the reader an account of Lahore High Court's mediation center indicating its working and influence it has had on trade dispute resolutions. However, she also observes that these centers do not cover much and therefore there should be widespread institutional support for commercial mediation. Moreover, the literature also gives attention to the participation of international organizations in the development of Pakistan's framework for mediation. In this regard, Hussain (2018) examines how projects by World Bank and Asian Development Bank have shaped ADR mechanisms in Pakistan particularly commercial mediation. He asserts that while global support has been essential; there is a need for more context-specific developments that consider Pakistani legal and cultural environment.

The lack of complete empirical studies on the efficacy of current legal structure governing commercial mediation remains one of the major gaps identified by several scholars. However, despite numerous researches regarding its theory and even case studies, large-scale research in relation to commercial mediation under existing statutory provisions is limited. Also, there are few comparative studies done on Pakistan's legal regime governing commercial mediation vis-à-vis other developing countries as well as international best practices. These kinds of comparison could be instrumental in refining Pakistan's approach to commercial mediation from a legal perspective.

3. A Historical Overview of Mediation in Pakistan

The roots of mediation in Pakistan lie deep within its complex cultural, religious and legal heritage. To understand how mediation developed within the country it is important to take into account the historical framework of the Indian subcontinent as Pakistan's modern legal system and alternative dispute resolution (ADR) methods draw roots from both pre-partition India as well as Islamic traditions (Shahid, U. 2012).

The Pakistan region before the partition of India in 1947 was part of British India. Prior to the partitioning of India in 1947, the Pakistan region was part of British India. During that time, there were indigenous systems developed by locals who were combined with British common law and these formed a legal system for them. Apart from the main court processes, there were different forms of mediation practiced. The colonial administration recognized how important the local

resolution mechanisms were and as such, they embedded them into their governance structures. The Village Panchayat system was for example given its formality under the rule of British through Village Courts Act 1888. This facilitated village elders to arbitrate and mediate on local issues having roots from ancient Indian cultures. In predominantly Muslim areas, informal mediation practices grounded on Islamic principles were common. “Sulh” meaning reconciliation and community leaders for dispute resolution formed integral parts of the social fabric (Shah, A., Hashmi, S. H., & Chishti, 1994)

After the creation of Pakistan in 1947, much remained the same regarding law since it was inherited from Britain. However, an increasing emphasis emerged on aligning the legal framework with Islamic principles. Thus, it led to tension between carrying on with legal structures that dated back to colonial times and building distinct Pakistani legal identity. During the same time, mediation, which is informal and settled by people without any firm regulation continued to play a significant role in this area of jurisdiction especially in rural areas where formal courts were not common. The traditional instruments such as jirgas and panchayats remained influential but were always in questionable legal positions (Shahid, U. 2012). In the sixties ADR initiatives were being institutionalized within the legal system. The Conciliation Courts Ordinance 1961 established small causes courts at the local level with an aim to give out quick and cheap justice. These courts had some elements of mediation but they were still part of formal judicial system.

Pakistan’s law underwent increased Islamization during the 1970s and 1980s. Mediation was significantly affected by this development. In 1979, Hudood Ordinances were introduced while Federal Shariat Court was established in 1980 which strengthened Islamic influence on the nation’s legal framework. During this period, an interest in Islamic sulh and tahkim (arbitration) as alternative modes of dispute resolution began to emerge. This was presented as an option to our adversarial court system inherited from western societies that is considered incongruent with Pakistani cultural norms or religious beliefs. The late 20th and early 21st century have seen an increasing acknowledgement of the significance of formal mediation in Pakistan’s legal system. There was a shift in favor of alternative dispute resolution mechanisms such as mediation because of; the high number of cases pending before courts, greater knowledge about international ADR practices as well as the support from international development agencies.

In its program to introduce court-annexed mediation in Pakistan, The Asian Development Bank started in 2002. This was when mediation centers were established in Karachi and Lahore leading to institutionalization of mediation. Also, through Small Claims and Minor Offenses Courts Ordinance that was made law in the same year, mediation became part and parcel of formal justice machinery. It granted authority to magistrates to send cases for mediation and recognized settlement through this way (Government of Pakistan, 2002). This was a major step forward when Alternative Dispute Resolution Act was adopted in 2017. Among other types of ADR methods, this legislation provided a comprehensive framework for different forms including conciliation. It conferred power on judges to refer matters to mediators and detailed how they should be appointed by courts themselves (Government of Pakistan, 2017). In conclusion, professionalization has been a key happening with respect to mediation within Pakistan during the recent years. Organizations such as the Pakistan Mediators Association have emerged with a view to promoting mediation and training mediators on the same. Law schools see this importance of mediation in law and hence started incorporating ADR within their curricula.

Nevertheless, difficulties persist. In some cases, traditional dispute resolution methods exist

alongside formal mediation mechanisms as leading to conflicts. This prompts discussions as to how people could come up with a compromise between the efficacy of mediation and concerns over power disparities and safeguarding vulnerable party. In sum, the history of conflict resolution strategies in Pakistan involves ongoing negotiations among colonial heritages, Islamic doctrines and contemporary jurisprudence innovations. Nevertheless, informal mediation has always been there in Pakistani society; however, mediations recognition within Pakistani jurisdiction is quite recent. As for Pakistan grappling with access to justice issues and judicial efficiency are concerned it may be safe to say that they will increasingly incorporate more forms of mediation into their legal system.

4. Laws and Rules on Mediation

Mediation has transformed over time and can also be attributed to both domestic as well as international stimuli in Pakistan. The Small Claims and Minor Offences Courts Ordinance, 2002 was amongst the first formal acknowledgements of mediation. The statute gave judges the power to order non-binding mediation on various grounds and made settlements reached through this process enforceable, keeping a norm of including ADR in the mainstream. The second important legislative development was the Alternative Dispute Resolution (ADR) Act of 2017, which in addition to an arbitration provision laid down a comprehensive legal framework on mediation and other ADR mechanisms. The Act provided a general framework for mediation, enhanced the ability of courts to refer cases to mediation and formalized mediated settlements. Moreover, various provincial laws have fostered mediation and The Sindh Alternative Dispute Resolution Act 2013 is one such law which works to promote the use of alternate dispute resolution mechanisms especially in civil and commercial matters. Nonetheless, the situation seems unclarity concerning traditional systems like jirgas and panchayats in this legal framework; with ongoing debates on whether they are legally recognized or not (Ahmad, M. H., Khan, I. U., Masum, A., & Nafees, S. M. M. 2019).

5. Mediation Ordinance in Pakistan

Pakistan's mediation structure evolved in the last two decades. One of the first legislative steps to give some recognition in formal judicial system was amendment brought about Section 89-A of Code of Civil Procedure, 2002. This amendment enabled courts to refer cases to mediation at any point; however the provision was limited by no guidelines on how mediations could be conducted, and qualifications for mediators or enforceability of settlements. The introduction of the Small Claims and Minor Offences Courts Ordinance (2002) then served to entrench mediation with small claims courts even being given power to refer cases for mandatory or voluntary mediations. The ordinance did not have much of an effect because there was limited public awareness and resources fulfilled. The same trend of democratization is apparent in many other laws and regulations (e.g. if Local Government Ordinance 2001, introduced Muslahathi Committees for the purpose to incorporate traditional dispute resolution within the formal legal system). While these committees were useful in resolving disputes of a relatively small nature, they faced problems with maintaining consistency to rulings made both between themselves and the courts as well as concerns regarding their legal authority (in terms of being an arbitration not state body), impartiality from one another and enforcement.

5.1. Small Claims and Minor Offences Courts Ordinance 2002

One of the major legislative changes in relation to mediation was introduced through The Small Claims and Minor Offences Courts Ordinance, 2002. And it created small claims courts to handle cases that did not involve large amounts of money and minor criminal offenses. One of the key features of this Ordinance was that it permitted these Courts to refer matters for mediation and

further recognise mediated settlements. They wanted to offer inexpensive, prompt adjudications but save time and often money for people who were short of it themselves. Nevertheless, there were issues related to the implementation of the ordinance in terms of resources, human capital and mass awareness as a result this had restricted effectiveness towards mediation within Pakistan that is why it was never considered when studying about ADR.

5.2. Local Government Ordinance (2001)

The introduction of community disputes resolution mechanisms was influenced by the Local Government Ordinance (2001) The Muslahathi Committees, set up to mediate minor disputes and petty crimes of traditional jirgas/panchayats as well as providing connectivity with the formal judicial system. Made up of community volunteers and police officers, these committees intended to provide a culturally appropriate - as well as accessible – process for conflict resolution. But Muslahathi Committees encountered numerous problems such as the absence of legal standing, decision-making inconsistencies and a lack of clarity in regards to enforcement remedies all compromising their effectiveness.

5.3. Statute of the Alternative Dispute Resolution Act (2017)

The Alternative Dispute Resolution Act was a ground breaking law of 2017 which gave an elaborate structure for mediation and other ADR mechanism in Pakistan. This Act had a wide definition of mediation covering both modern and traditional mediations, and enabled courts to refer cases for mediator. The Act identified mediated settlements as being binding and enforceable, establishing procedures governing the appointment of mediators and conduct of mediation. But even those grew outdated eventually and the Act also came in for criticism for its isolation from age old mechanisms of dispute resolution like jirgas (tribal councils) or panchayats, continuing to this day with challenges still brewing about melding customary practices into formal standards.

6. Incorporation of Traditional Dispute Resolution Mechanisms with Formal Legal Regimes

Attempts to incorporate jirgas and panchayats into Pakistan's formal legal framework have faced myriad challenges, many of them contentious. Muslahathi Committees that were introduced in Khyber Pakhtunkhwa, was an attempt to hybridise traditional dispute resolution with the formal system. Observation has proved that these committees have had the positive impact of reducing workloads for formal courts and increasing cooperation with law enforcement in communities. Yet they have been constrained in their overall influence by issues of legal legitimacy and decisional consistency. Furthermore, the Action (in Aid of Civil Power) Regulation 2011 maintained that jirgas in tribal areas had a part to play as long they stayed within defined legal limits. Later, in 2019 the Punjab Alternative Dispute Resolution Act listed down some ADR forms including mediation however the traditional mechanisms have not been amalgamated within a framework formally as such. The absence of a common body to integrate traditional work methods continued hiccup resolution across Pakistan.

7. Harmonizing Traditional and Modern Mediation Practices: Challenges and Opportunities

In spite of legal standing, mediation in Pakistan faces typical challenges before it can be fully integrated with traditional dispute resolution mechanisms such as jirgas and panchayats. While these are traditional bodies, they ran a bit contrary to modern understandings of human rights however much the culture might have accepted them --especially when it came to what we in rich countries call women and minorities. In another example, the Peshawar High Court declared some jirga practices unconstitutional in Samar Minallah v Federation of Pakistan (2012). Another complication is the fact that traditional methods lack procedural protections, fairness and

consistency. Yet, bridging old & new mediation techniques makes justice more culturally adapted and reachable in rural areas. To this end, proposals such as Hameed (2020) hybrid ADR model and technological solutions like online dispute resolution (ODR) platforms have been introduced to reconcile traditional with contemporary approaches.

8. Greatest Legal and Regulatory Hurdles

Unfortunately the inadequate framework of mediation is still incomplete until enactment of this final legislation which has already been passed called as Arbitration Act 2017. The draft provisions of the law on mediation are inadequate, both in terms of procedure and process, which is why they do not provide adequate guidance for conducting mediations under any quality standards that casts a shadow over whether mediation can be considered credible at all (Siddique, 2017).

This is further complicated by the manner in which mediation relates to formal court processes. Even though case referrals from courts to mediation are mandatory in some jurisdictions, there is no common rule drafted with respect to this referral taking and such drafting should not apply due to the situations of cases so you have seek sequence as how they may be tackled if they do even go through the procedure. This uncertainty causes periods of delay that would erode the savings in time achieved by considering mediation (Ahmed, 2021).

In many societies with a tendency to adversarial conflict resolution, cultural and social factors further limit the impact of mediation. Gender disparity and patriarchal society, on the other hand, limit women's leadership involvement in decision-making process and reinforce unhealthy norm that compromise is a loss of power (Yousaf & Farooq, 2018). Finally, poor public awareness and confidence in mediation as a legitimate form of dispute resolution can often be equally daunting. The unfortunate fact is that mediation remains an unknown to most people or else they have experienced it without experiencing any benefits (Jameel 2019). Enforceable mediation agreements are another legal issue. While the 2017 Act empowers courts to also record settlements through mediation, it does not lay down a regime for their enforcement like arbitration awards under the earlier law from 2011. This lack of clarity can discourage some parties from choosing mediation (Tahir 2023) Mediators, on the other hands are not standardised in their qualifications or even training and as a result service quality is variable which does nothing for trust. The criteria for mediator accreditation and training are not set in a clear manner, requiring practices to differ from one territory or region to another (Yousaf 2016)

9. Issues regarding mediation in Pakistan

There is a lack of professional mediation notes in place, particularly those available within the private sector or rural settings. This is due, in part to the absence of financial backing for mediation services that molds itself into lack of fairness both in access and quality. Pakistan lacks the number of mediators required and that too in distinct areas such as commercial mediation, family disputes etc. Without a formal certification process, many potential mediators are discouraged and this contributes to the deficit of competent professionals (Abdullah 2021). But mediation is no longer a probability theory and integrating it in the formal legal system practically still holds many challenges. While the ADR Act 2017 allows court referred mediation, many judges and lawyers are not familiar with mediations practices resulting in inconsistent referral to alternative dispute resolution. There are no systematic tracking, quality control mechanisms that can help provide efficiency and credibility to mediation processes. Poor oversight may foster inconsistent standards of service which tarnish public perception of mediation and further sully its acceptance/usage levels.

10. Conclusion

In the conclusion, the historical analysis of mediation in Pakistan revealed that traditional dispute resolution systems, such as *jirgas* and *panchayats*, played a key role in maintaining social order, especially in rural areas. The integration of these indigenous systems into the modern legal framework has been a challenge, as their cultural legitimacy persists despite concerns over human rights and fairness. The study noted that while the 2017 Alternative Dispute Resolution Act marked progress, significant gaps between legislation and practical implementation, particularly in rural and tribal areas, remain evident. Key challenges were identified, including legal issues such as incomplete legislation and lack of enforceability of mediated agreements, cultural barriers like gender inequality, and practical implementation issues such as insufficient resources and trained mediators. However, the research also found that mediation has potential for innovation, particularly through integrating technology and hybrid models combining traditional and modern practices. Recommendations included comprehensive legal reforms, capacity building through training and awareness programs, and institutional strengthening, such as the establishment of a National Mediation Centre. The research emphasized the importance of adapting global mediation practices to Pakistan's cultural context, while also addressing the need for enforcement of mediated agreements and ensuring gender equality within these processes. Future research directions were suggested to explore hybrid mediation models, the impact of technology, and the economic benefits of mediation. The study concluded that while the path to effective mediation in Pakistan is challenging, it offers significant opportunities for improving access to justice and delivering more culturally relevant dispute resolution methods.

References

- Abbas, R., Ahmad, M., & Qasim, M. (2022). The Role of CPEC in Pakistan's progression. Pakistan's mechanism to resolve the disputes under the ADR system. *International Research Journal of Education and Innovation*, 3(1), 13-26.
- Abdullah, M., SHOUKAT, A., & MAHMOOD, H. (2021). CPEC: Analyzing the Mediating Role of Infrastructure for Regional Economic Integration. *Bulletin of Business and Economics (BBE)*, 10(3), 8-16.
- Abramson, H. I. (2004). *Mediation representation: Advocating in a problem-solving process*. Ntl Inst for Trial Advocacy.
- Ahmad, M. H., Khan, I. U., Masum, A., & Nafees, S. M. M. (2019). A Legal Framework for the Jirga Community Mediation in Khyber Pakhtunkhwa. *Islamabad Law Review*, 3(3/4), 1-0_8.
- Ahmed, B., Xie, H., Zia-Ud-Din, M., Zaheer, M., Ahmad, N., & Guo, M. (2022).
- Alexander, N. M. (2006). *Mediation in Civil Procedure-A Comparative Perspective*.
- Ali, M., & Geng, L. L. (2019). Alternative dispute resolution (Adr) in Pakistan: The role of lawyers in mediation procedure. *International Journal of Research*, 6(04), 421-430.
- Ashraf, Z., Hussain, M. A., & Arshad, A. H. M. (2023). Jirga and Panchayat for the Resolution of Family Disputes in Pakistan: An Analytical Prospects. *Pakistan Journal of Criminology*, 15(3).
- Attallah, Q., & Saqib, L. (2017). What Goes Wrong with the Meaning, Legislation, and Functioning of Mediation in Pakistan?(Pointation and solutions). *Pakistan Vision*, 18(2), 51-85.
- Barkatov, W. S., & Noor, S. (2023). Informal Justice Mechanisms: Their Significance for Muslim Communities in Pakistan, Afghanistan, China and Central Asia. *Insights of Mystical, Spiritual and Theological Studies*, 2(10), 30-44.

- Barnes, B. E. (2007). *Culture, conflict, and mediation in the Asian Pacific*. University Press of America.
- Barrett LF, Quigley KS, Bliss-Moreau E, Aronson KR. Interoceptive sensitivity and self-reports of emotional experience. *J Pers Soc Psychol*. 2004
- Barsky, A., Este, D., & Collins, D. (1995). Cultural competence in family mediation.
- Braithwaite, J. (2002). Setting standards for restorative justice. *British Journal of Criminology*, 42(3), 563-577.
- Callister, R. R., & Wall Jr, J. A. (1997). Japanese community and organizational mediation. *Journal of Conflict Resolution*, 41(2), 311-328.
- Carnevale, P. J., & Choi, D. W. (2000). Culture in the mediation of international disputes.
- Chawla, J., & Malhotra, M. S. (2020). Emerging Issues pertaining to Alternative Dispute Resolution. Issue 3 *Int'l JL Mgmt. & Human.*, 3, 1261.
- Chereji, C. R. (2016). Mediation in the European Union: The Directive 2008/52/EC and its Effects on National Legislations. *Conflict Studies Quarterly*, (15).
- Chowdhury, J. A. (2015). Cultural repercussion on mediation: Exploring a culturally resonant mediation approach germane to Asia. *JMCL*, 42, 43.
- Davidheiser, M. (2006). Joking for peace. Social organization, tradition, and change in Gambian conflict management. *Cahiers d'études africaines*, 184(4), 835-859.
- Faizan, K., Tahir, M., & Jummani, A. (2024). Navigating Disputes: An In-Depth Analysis of Alternative Dispute Resolution within the Framework of Arbitration Law. *Journal of Development and Social Sciences*, 5(1), 429-436.
- Fasihuddin. (2012). Criminology and criminal justice system in Pakistan. In *Handbook of Asian criminology* (pp. 247-281). New York, NY: Springer New York.
- Fatima, S. (2022). Alternative dispute resolution in the light of arbitration laws. *Pakistan Journal of Social Research*, 4(03), 831-838.
- Folberg, J. (1983). A mediation overview: History and dimensions of practice. *Mediation Q.*, 3.
- Fostering the environmental performance of hotels in Pakistan: A moderated mediation approach from the perspective of corporate social responsibility. *Frontiers in Psychology*, 13, 857906.
- Hameed, U., & Khan, N. A. (2020). Community Participation, the Missing Link in Pakistan's ADR System-The Way Forward. *RSIL L. Rev.*, 156.
- Haq, B. U., Badshah, I., Rehman, A., Ullah, S., & Khan, U. (2023). Dareemat: a mechanism of arbitration and dispute resolution among Pashtuns in Zhob, Pakistan. *Legal Pluralism and Critical Social Analysis*, 55(1), 97-116.
- Helmholz, R. H. (2003). Canonical Remedies in Medieval Marriage Law: The Contributions of Legal Practice. *U. St. Thomas LJ*, 1, 647.
- Hopt, K. J., & Steffek, F. (Eds.). (2013). *Mediation: Principles and regulation in comparative perspective*. OUP Oxford.
- <https://micadr.com/about-us/>
- https://uncitral.un.org/en/texts/mediation/modellaw/commercial_conciliation
- <https://www.linkedin.com/pulse/mediation-centres-pakistan-purpose-legal-framework-impact-faiza-noor-i6rae>
- <https://www.pakistancode.gov.pk/english/UY2FqaJw2-apaUY2Fqa-apaUY2Frpbw=-sg-ijijijijijij-con-9996>
- Hussain, F., & Ahmed, I. (2018). *Complication of Rural Development & Panchayati Raj System of Jammu and Kashmir*.

- Iftekhhar, R., Khan, D. W., & Wattoo, F. (2022). Critical Analysis of Mediation Law of Islamabad (Alternative Dispute Resolution Act, 2017). *Islamabad Law Review*, 6(1), 40- 56.
- Jameel, A., Asif, M., & Hussain, A. (2019). Good governance and public trust: Assessing the mediating effect of E-government in Pakistan. *Lex Localis*, 17(2), 299-320.
- Jewett, G. (2019). Necessary but insufficient: Civil society in international mediation.
- Jillani, T. H. (2006). Delayed justice and the role of ADR. In *International judicial conference*. Islamabad.
- Jurgees, S. M. R., Suleman, S., & Shahid, A. (2024). The Role of Alternative Dispute Resolution (ADR) in Pakistan's Legal System. *Qlantic Journal of Social Sciences and Humanities*, 5(1), 194-202.
- Kaya, S., & Khan, M. D. (2022). Online dispute resolution in Pakistan: Challenges and opportunities. *Journal of Nusantara Studies (JONUS)*, 7(2), 103-119.
- Kaya, S., & Khan, M. D. (2022). Online dispute resolution in Pakistan: Challenges and opportunities. *Journal of Nusantara Studies (JONUS)*, 7(2), 103-119.
- Khan, B. K. B. (2023). Critical Analysis on Existing Framework of ADR in Pakistan. *Indus Journal of Law and Social Sciences*, 2(2), 1-9.
- Khan, M. S., & Khan, M. Z. (2023). Comparative Study of Alternate Dispute Resolution in Islamabad, Khyber Pakhtunkhwa and Punjab. *Journal of Asian Development Studies*, 12(4), 935-943.
- Khan, S. O. H., & Abbasi, M. S. (2023). Legal Framework of Alternative Dispute Resolution (ADR) Mechanisms in Pakistan: A Comparative Study with Turkey, Malaysia, and Bangladesh. *Law and Policy Review*, 2(2), 37-57.
- Khan, T. I., Nisar, H. G., Bashir, T., & Ahmed, B. (2018). Impact of aversive leadership on job outcomes: Moderation and mediation model. *NICE Research Journal*, 56-73.
- Kite, J., Gale, J., Grunseit, A., Li, V., Bellew, W., & Bauman, A. (2018). From awareness to behaviour: Testing a hierarchy of effects model on the Australian Make Healthy Normal campaign using mediation analysis. *Preventive medicine reports*, 12, 140-147.
- Kolb, D. M. (1985). To be a mediator: Expressive tactics in mediation. *Journal of Social Issues*, 41(2), 11-26.
- LeResche, D. (1993, November). The significance of procedural justice for peacemaking processes. In *United Nations Expert Group Meeting entitled "Integration Process: Building Peaceful Social Relations—By, For, and With People"* (pp. 21-23).
- Majeed, N., Hilal, A., & Rani, T. (2023). Alternative Dispute Resolution in Criminal Cases: Challenges and Possibilities in Pakistani Legal framework. *Bulletin of Business and Economics (BBE)*, 12(4), 577-585.
- Mediation Q., 13, 167.
- Menkel-Meadow, C. (2015). Mediation, arbitration, and alternative dispute resolution (ADR). *International Encyclopedia of the Social and Behavioral Sciences*, Elsevier Ltd.
- Nader, L. (1993). Controlling processes in the practice of law: hierarchy and pacification in the movement to re-form dispute ideology. *Ohio St. J. on Disp. Resol.*, 9, 1.
- Othman, A. (2007). "And Amicable Settlement Is Best": Sulh and Dispute Resolution in Islamic Law. *Arab Law Quarterly*, 21(1), 64-90.
- Rahman, S. U., Tanveer, M. S., & Hilal, A. (2022). The critical analysis of procedural aspects in applicability of alternate dispute resolution ACT-2017. *Pakistan Journal of International Affairs*, 5(2).

- Ramzan, M., & Mahmood, K. (2016). Rationalizing Alternate Dispute Resolution in Pakistan. *International Journal of Research in Social Sciences*, 6(1), 88-95.
- Roebuck, D. (2007). The myth of modern mediation. *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*, 73(1).
- Saleem, M., & Mahmood, F. (2018). Transformational leadership and employees' creativity: A multi-mediation model. *Journal of Management and Research*, 5(1), 1-21.
- Sappideen, R., & He, L. L. (2011). Dispute settlement under free trade agreements: the proposed Australia-China free trade agreement. *The Journal of World Investment & Trade*, 12(4), 581-601.
- Sarmad, M. (2019). Legal Education in Pakistan: Problems & Prospects in the Context of 21st Century. *Islamabad Law Review*, 3(1/2), 64-0_6.
- Shafqat, U. U. R., Deeba, F., & Akhter, S. (2022). Access to Justice through Mediation in Tax Disputes: A Case Study of Pakistan. *Pakistan Vision*, 23(2).
- Shah, A. S., & Tariq, S. (2013). Implications of parallel justice system (Panchyat and Jirga) on society. *people*, 2, 200-209.
- Shah, A., Hashmi, S. H., & Chishti, A. F. Much has changed since Baron and Kenny's (1994) classic paper
- Shahid, U. (2012). Inquest into justice of the Pakistani customary "Panchayat Justice System" in context of International Human Rights Law (Doctoral dissertation, School of Advanced Study).
- Shahzad, K., & Ali, A. (2023). Access to Justice: A Critical Analysis of Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020. *Pakistan Journal of Social Research*, 5 (2), 1288, 1295
- Shaw, M., Singer, L. R., & Povich, E. A. (1993). National standards for court-connected mediation programs. *Fam. & Concil. Cts. Rev.*, 31, 156.
- Siddique, M., & Rasheed, A. (2017). Mediating Role Of Corporate Social Performance Between Ownership Structure And Investment Efficiency. *Journal of Positive School Psychology*, 698-714.
- Siddiqui, A. A. (2003). Mediation as a method of parent intervention in sibling disputes (pp. 3939-3939). National Library of Canada= Bibliothèque nationale du Canada, Ottawa.
- Stipanowich, T. J. (2004). ADR and the "Vanishing Trial": the growth and impact of "Alternative Dispute Resolution". *Journal of Empirical Legal Studies*, 1(3), 843-912.
- Stokoe, E. (2013). Overcoming barriers to mediation in intake calls to services: Research-based strategies for mediators. *Negotiation Journal*, 29(3), 289-314.
- Strong, S. I. (2016). Realizing rationality: An empirical assessment of international commercial mediation. *Wash. & Lee L. Rev.*, 73, 1973.
- STRUCTURAL POWER IN SOCIAL ANTIQUITY. *Pakistan Journal of Women's Studies: Alam-e-Niswan*, 15(2).
- Tahir, M. I. (2023). Arbitration System in Commercial Disputes in Pakistan and Enforcement of Foreign Awards. *Al-NASR*, 73-92.
- Tahir, M. I. (2023). Arbitration System in Commercial Disputes in Pakistan and Enforcement of Foreign Awards. *Al-NASR*, 73-92.
- Taizi, S. (2007). Jirga system in tribal life. Area Study Center (Russia, China and Central Asia). University of Peshawar.

- Tamim, T. (2014). The politics of languages in education: Issues of access, social participation and inequality in the multilingual context of Pakistan. *British Educational Research Journal*, 40(2), 280-299.
- Tian, H., Iqbal, S., Akhtar, S., Qalati, S. A., Anwar, F., & Khan, M. A. S. (2020). The impact of transformational leadership on employee retention: mediation and moderation through organizational citizenship behavior and communication. *Frontiers in psychology*, 11, 314.
- Varma, A., & Stallworth, L. E. (2000). Barriers to mediation. *Dispute Resolution Journal*, 55(1), 32.
- Volpe, M. R., & Bahn, C. (1987). Resistance to mediation: Understanding and handling it. *Negotiation Journal*, 3(3), 297-305.
- Wall Jr, J. A., & Blum, M. (1991). Community mediation in the People's Republic of China. *Journal of Conflict Resolution*, 35(1), 3-20.
- Wardak, A. (2003). Jirga—A traditional mechanism of conflict resolution in Afghanistan (pp. 1-20). Pontypridd, UK: University of Glamorgan, Centre for Criminology.
- Waseem, M., Kamran, T., Ali, M. A., & Riikonen, K. (2010). Dilemmas of pride and pain: sectarian conflict and conflict transformation in Pakistan.
- Won, S. K. (2013). Overview of alternate dispute resolution with special reference to arbitration laws in Pakistan. *J. Arb. Stud.*, 23, 149.
- Yilmaz, C., Sezen, B., & Ozdemir, O. (2005). Joint and interactive effects of trust and (inter) dependence on relational behaviors in long-term channel dyads. *Industrial Marketing Management*, 34(3), 235-248.
- Yousaf, F., & FurrukhZad, S. (2020). Pashtun Jirga and prospects of peace and conflict resolution in Pakistan's 'tribal' frontier. *Third World Quarterly*, 41(7), 1200-1217.
- Yousaf, F., & Poncian, J. (2018). Detriments of colonialism on indigenous conflict resolution: an analysis of Pakistan and Tanzania. *Contemporary Justice Review*, 21(4), 455-473.
- Yousaf, M., Ihsan, F., & Ellahi, A. (2016). Exploring the impact of good governance on citizens' trust in Pakistan. *Government Information Quarterly*, 33(1), 200-209.
- Yousufzai, H. M., & Gohar, A. (2005). Towards Understanding Pukhtoon Jirga: An Indigenous Way of Peacebuilding and More... Just Peace International.
- Zahid, M., Martins, J. M., Rahman, H. U., Mata, M. N., Shah, S. A., & Mata, P. N. (2021). The interconnection between decent workplace and firm financial performance through the mediation of environmental sustainability: Lessons from an emerging economy. *Sustainability*, 13(8), 4570.
- Zeesahn, M., Qureshi, T. W., Bashir, S., & Ahmed, U. (2020). Transformational Leadership and Corporate Reputation: Mediation Effects of Employer Branding. *Journal of Management and Research*, 7(1), 184-211.