“Making justice accessible for all through ADR”

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ALTERNATE DISPUTE RESOLUTION

CONTENTS

Chapter -1

Research Problem

Over the last two decades, the world is going through a new age of time, the Globalization. This new stage means that there are not any boundaries between the countries and the whole world is interdependent and interconnected among each other . The market has been expanded to all the countries through social media ,E-commerce and related technologies ,as a result the international trade is increasing day by day but creating some problems to take justice system . There are free movement and shipping of goods as to globalization and the multinational companies are selling to clients around the entire world , which the nations has to face the consequences if they fail to fulfill treaties and agreements according to the term and condition .world is looking forward , to adopt easy access of justice and remedy in case of that issues, which is going easy and comfortable for the countries as well as individual through ADR .As for as the countries , inner matter is concerned it would be more convenient and easily accessible for all.

Chapter -2

Introduction

The human beings, being living together on this earth since the early times , have interactions with each other for their interests and increases differences and conflicts in day-to-day life. Being social creatures and beast they have developed a variety of mechanisms for resolution of such differences and conflicts. Amongst it, the Alternative Dispute Resolution is the most significant and effective way which used to be adopted by almost all nations-to minimize their differences. History shows the effective use of ADR by the ancient Greece, Roman Empire, Chinese and Indian civilizations, Monotheistic Religions and the Islam and many more. However, the mechanism and structure approved by each nation, remained different from the others according to their cultures and customs.The present work aims to find out the the access able scenario of justice for all through ADR in various cultures and civilizations across the globe. World is going to adopt

Alternate dispute resolution as an easy and accessible justice system that has a sole object to provide justice in door step.

Chapter -3

History Of ADR

Ancient Greece and ADR

Western society was influenced by Greek philosophy, almost in every field of life. The roots of western ADR could be found in the ancient Greece. The ancient Greeks practiced arbitration for the cooperative resolution of disputes. In order to reduce the cumbersome pendency of Athenian courts, the government of city state created the post of arbitrator round about 400 B.C. According to Aristotle, any person above sixty years , bound to perform as an arbiter to hear all civil cases , specially that cases in which the parties preferred informal proceedings. The consent of the parties was a mandatory for referring a case to the arbitrator[1], nonetheless, to the arbiter had no choice to reject their willing and he had to arbitrate compulsorily. Any Arbitrator had to work out, in preliminary hearings, conciliation between the parties. In case of failure of initial hearing , he called for the parties witness to examine their version. This procedure is called med-arb proceedings [2] in the modern ADR. An appellate forum was also available, known as "College of Arbitrators" which could also refer the case to regular state courts.

Chapter -4

Literature Review

Jerome ,2004 [3] has given a detailed history of ADR over a period of about four millennium (1800-BC to 2000-AD), and Freyer traced the history of ADR in USA, starting from the year 1768 it has been identified that the first case where the Supreme Court upheld arbitration in 1853, thereafter, broad based advocacy

[1] Adrian, P. O. P. "Traditional Approaches in Alternative Dispute Resolution: A Brief Overview." *Conflict Studies Quarterly* 7 (2014): 34-48.
[2] Menkel-Meadow, Carrie. "Mediation, arbitration, and alternative dispute resolution (ADR)." *International Encyclopedia of the Social and Behavioral Sciences, Elsevier Ltd* (2015).
[3] Jerome T. Barrett with Joseph P. Barrett,. "A History of Alternative Dispute Resolution: The Story of a Political, Cultural and Social Movement." (2004).

started in 1970s,in 1988 Congress authorized 10 pilot courts for mandatory mediation and ADR increased progressively[4]

Aristotle (384-322 B.C.) [5] always preferred arbitration over formal litigation. According to him, arbitrators or mediators do not apply the law in its strict sense as the judges do. They rely on the principles of equity, preventing from the forceful application of legal rules on the parties Justice should be done in any manner preferably more just and informal . By this way, he distinguishes, very accurately, legal justice from equitable justice.

Cicero (106-43 B.C.)12, [6] also advocated the significance of arbitration and said that „regular trial was explicit and rigid whereas arbitration was mild and moderate". Besides, as a result of regular litigation, the party would either win or lose, and in formal litigation for a judge would never try to find out a just middle point. On the other hand, arbitrator put his effort to take parties in one point through arbitration ,though does not expect full success; nonetheless, parties are not afraid of losing at all.

Stipanowich & Thomas (2004)[7] traced a 'quiet revolution' in the 20th century, in solving differences of opinions by using ADR in courts, he has described the development of ADR in detail. Menkel-Meadow & Carrie J(2014)[8]. et.al, opined that ADR originated in California, a state of USA as an alternative to crowded court processes, he explained further that ADR means different things subject to what it is supposed as an alternative, ADR generally includes all volunteer processes through which disputants may resolve their disputes without involvement of 3rd person's decision, which means that in ADR methods the decision and dispute both are relate to parties themselves

Sander (2004)[9] referred the US practice of ADR, by mentioning three types of major ADR processes:

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[4] Wilcocks, Tariene, and Jacques Laubscher. "Investigating alternative dispute resolution methods and the implementation thereof by architectural professionals in South Africa." *Acta Structilia* 24.2 (2017): 146-167.

[5] Jerome T. Barrett with Joseph T. Barrett, A History of Alternative Dispute resolution, 7 available at https://books.google.com.pk/books?id=JSyCDiwmF7kC&printsec=frontcover&source=gbs_vpt_buy#v=onepage&q&f=false

[6] Jerome T. Barrett with Joseph T. Barrett, A History of Alternative Dispute resolution, 8 available athttps://books.google.com.pk/books?id=JSyCDiwmF7kC&printsec=frontcover&source=gbs_vpt_buy#v=onepage&q&f=false

[7] Stipanowich, Thomas J. "ADR and the "Vanishing Trial": the growth and impact of "Alternative Dispute Resolution"." *Journal of Empirical Legal Studies* 1.3 (2004): 843-912.

[8] Menkel-Meadow, Carrie J., and Lela Porter-Love. *Mediation: Practice, policy, and ethics*. Wolters Kluwer Law & Business, 2014.

[9] Sander, F. "Dispute Resolution Within and Outside the Courts: an Overview of the US Experience." *Attorneys General and New Methods of Dispute Resolution. National Association of Attorneys General and ABA* (1990).

- Negotiation
- Mediation
- Arbitration
- Conciliation
- Adjudication

and four types of this processes to solve out the dispute or some matter :

- ✓ Early neutral evaluation
- ✓ Summary jury trial
- ✓ Neutral fact finding
- ✓ Med-arb.

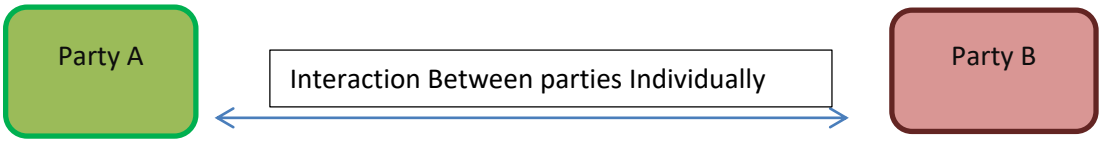
He states that there is need of support not only from legal fraternity but also from academia, political, social and public at large.

Negotiation

Its Basically a dialogue between two parties themselves to negotiate about the problem. According to Chong & Zin (2012) [10]Negotiation is one of the most commonly used ADR methods for resolving disputes, because it is an informal method used as a preventative measure to avoid grown up disputes between parties It is a process whereby parties tried to reach a settlement without involving an independent third party . Ramsden (2009)[11] said that Negotiation is favorable , unorganized and often protective in working relationships. The simplest way of settling disputes is by means of negotiation, because the parties are the best to know each other about the strengths and weaknesses of their own cases,which they initiated according to what term and conditions. Wang (2000) highlighted However, negotiation is not always guarantee to success when try to attempt to settle disputes between parties. According to Pretorius (1993) this may be caused by a common lack of knowledge, in co-existence with parties being too subjective and emotions are involved to make rational decisions.

[10] Chong, H. Y., & Zin, R. M. (2012). Selection of dispute resolution methods: factor analysis approach. *Engineering, Construction and Architectural Management*.

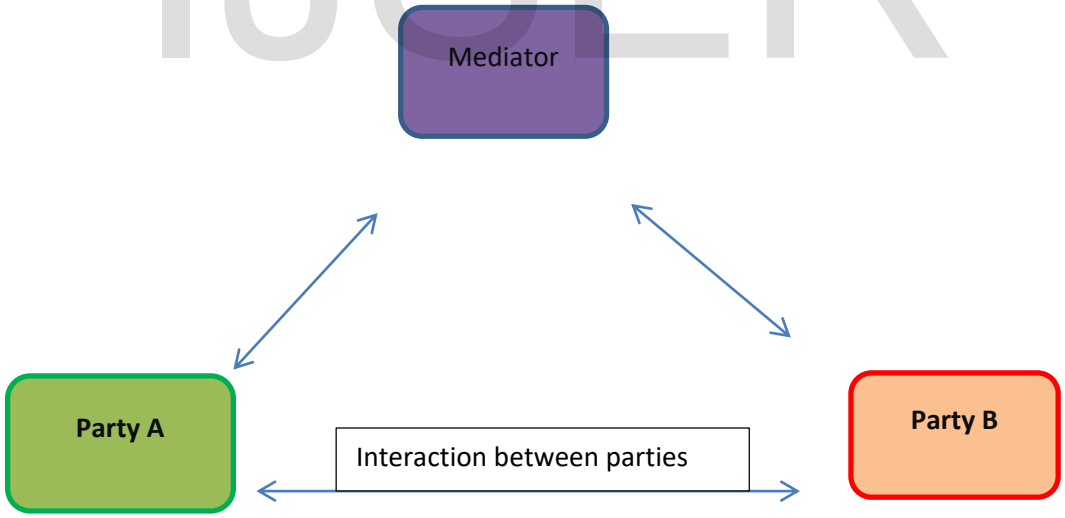
[11] Conti-Ramsden, G., Durkin, K., Simkin, Z., & Knox, E. (2009). Specific language impairment and school outcomes. I: Identifying and explaining variability at the end of compulsory education. *International Journal of Language & Communication Disorders*, *44*(1), 15-35.



Mediation

In Mediation there are three parties , two are the main aggrieved parties and third one is a neutral party, called the mediator, to resolve a dispute between the parties in conflict . According to Goldberg, Sander and Rogers (1992) [12], mediation is basically a facilitated negotiation put through by a third party. Mediation is often used in other sectors of the economy, mostly in commercial, civil, labour, family, interpersonal, community, public disputes, environmental cases and a broad range of other disputes .

Mediation proceedings can only be take place if the parties are in agreement and are ready to assist in reaching some settlement. If it is decided or settled between the parties , the mediator will facilitate the parties with a written agreement and it will become legally binding for both after signed by both parties . Chong and Zin (2012: 40) and Bollen, Euwema & Muller (2010)[13] argued that the success of mediation depends on its fairness, and with the cooperation of both parties during the mediation.



[12] Sander, F. E., & Goldberg, S. B. (1994). Fitting the forum to the fuss: A user-friendly guide to selecting an ADR procedure. *Negotiation Journal*, *10*(1), 49-68.
[13] Bollen, K., Euwema, M., & Müller, P. (2010). Why are subordinates less satisfied with mediation? The role of uncertainty. *Negotiation Journal*, *26*(4), 417-433.

Arbitration

Arbitration is almost formal way and considered one of the most common methods of ADR . Arbitration may be known as a judicial and more formal process where the disputing parties choose an independent arbitrator and present their cases to third party of their choice, known as the arbitrator According to Verster, J (2009)[14], this method was known to the Romans, used by the Dutch and English during the period of colonial expansion, and extensively used in the construction industry.

The process of arbitration is near to court procedure and almost considered like a formal trial. However, it can be more informal or relaxed if the parties agreed on it . Arbitration is too much important in ADR, because of a neutral third party having highly specialized knowledge and experienced on the matter of disputed subject , makes a final and binding award, which cant be seen in other ADR methods.

Indian Panchayat

Panchayat is a name made by two words In Sansacrat, Yat means assembly and panch means five which corresponds to panch of Urdu, Punj of Persian, Penzah of Pashto, and Penta of Latin. According to some writers, panch means arbitrator. Panchayat is basically an idea of village self-governing system based on grassroots and doorstep justice and governance. In modern days, it is known as devolution of powers to grassroots level . Panchayat is a village informal council for settling civil as well as criminal disputes, but mostly it referred for civil and family disputes.

The evidence suggests that in the era of Rig-Veda (1700 B.C.) [15] village committees “sabhas” existed. These bodies, in with the passage of , called panchayats. It has been observed panchayat of India go back since twenty five

[14] Verster, J. J. P. "Real-time integrated cost planning and control: Mitigation and resolution of claims." *Project Control Professional* 47.1 (2009): 15.
[15] Mishra, Garima. "Chronological Study of Local Government in Pre Independent India." Google Scholar

hundred years old. It was so effective that it was remained in force, even during eight hundred years of Muslim Rule in the United India. In 1765, the Panchyat institution was completely abolished by East India Company [16] and it was substituted by the office of Patwari; the record keeper of the village. Since then, he has been holding this office and there is no change in his position up till now.

According to Alok & Vishwa (2011).[17] Worthy to mention is that both criminal and civil cases could be referred to Panchayat and that its decisions were final and irreversible. Panchayat Raj means self-governance at the village level. It is a decentralized form of government where affairs of village are run by village itself. According to Behar & Yogesh, 2002 [18] Mahathma Gandi advocated this idea under the nomenclature of "Gram Swaraj". The idea was enacted by the state governments in the decades of 1950"s and 60"s. Keeping in view the significance of the idea, the constitution of India recognized its importance and protected it by 73rd amendment in 1992 [19] [20].

Dr Ujwala Shinde [21] that India developed a very good system of Lok Adalats (People's Courts) for utility service and the Gram Nayayaalays Act, 2008, which caters for mobile village courts for resolving the disputes relating to common areas of interest of ordinary people. He has highlighted that mediation, conciliation, arbitration, med-arb, Lok Adalat, early neutral evaluation and mini trial are different ADR procedures mostly being practiced in India and has been indicated that a cautious approach has been adopted in introducing the use of alternative dispute resolution techniques relating to administrative disputes in India.

The History and Concept of ADR in Quran & Sharī'ah

Islam, since its emergence, promoted arbitration. Actually the customs prevailing in the pre-Islamic Arab society were recognized by Islam provided they

[16] Misra, Bankey Bihari. *The Central Administration of the East India Company, 1773-1834*. Manchester University Press, 1959.
[17] Alok, Vishwa N. "Role of panchayat bodies in rural development since 1959." (2011).
[18] Behar, Amitabh, and Yogesh Kumar. *Decentralisation in Madhya Pradesh, India: from Panchayati Raj to Gram Swaraj (1995 to 2001)*. London: Overseas Development Institute, 2002.
[19] Singh, Hoshiar. "Constitutional Base for Panchayati Raj in India: The 73rd Amendment Act." *Asian Survey* 34.9 (1994): 818-827.
[20] The Constitution (Seventy Third Amendment) Act, 1992, Part 1X, Articles 40, 243, 243a-243n, The Gazette of India, Ministry of Law, Justice and Company Affairs, New Delhi, 1993, also available at http://www.orissa.gov.in/panchayat/73rd%20Amendment.pdf visited on 1 may 2021
[21] Dr. Ujwala Shinde Principal I/C Shri. Shivaji Maratha Society's Law College Pune University Maharashtra, Conciliation as an Effective Mode of Alternative Dispute Resolving System, India, vol. 4, No. 3

were not found inconsistent with the express provisions of Sharī,,ah . These customs included Qisās (retaliation), Qasāmah , Mudārabah , Salam, Rahan (mortgage) and much more. Tahkīm was also one of such customs. It should be noted here that Arab civilization is older than any other ancient civilization of Europe. The state of Yemen existed long before Athens and Rome[22] The famous battle al-basus, began with the death of a camel and continued for forty (494-534 CE) years[23] It claimed hundreds of lives. The dispute was eventually settled by the process of Tahkīm. Similarly, another famous war "Dahis and Ghabra" come to an end as a result of Tahkīm [24]In the north of Kaaba, a town hall was built and named as Dar al-Nadwah The grand-grandfather of Quraish, Qussai has been reported to be its founder. It was a community center where the decision-makers used to hold consultations, dialogues and to conduct meditation.Only matters of serious concern could find a place on agenda of the meeting.The unsacred and unsuccessful plan of assassination of Muḥammad (SAW) was also approved in this city parliament[25].

In the Charter of Medina: the first ever written constitution of the world, the Prophet Muhammad (SWA) was unanimously admitted as final authority in arbitration cases. Prophet Mohamed SAW also recognized and practiced arbitration. He appointed arbitrators and accepted their decisions. He personally acted his role as arbitrator in several occasions to resolve disputes arising between individuals and tribes. He acted as an arbitrator in many disputes between several Arab tribes regarding which one of them, during the reconstruction of Kaaba, dispute arose between the leaders of local tribes of Makkah on the point that who would have the honor to reinstall the sacred black stone (al-Hajr al-Aswad)[26] Just before a battle was likely to happen, Muḥammad (SAW) was requested to arbitrate.

The Prophet explored a wonderful phenomenon by keeping the stone in a small piece of cloth. He, then, directed the chief of every clan to hold the cloth from specified area and to left it to him. When they did so, the Prophet (SAW) himself placed the Stone [27] He put the Black Stone in his outer Shawl and decided that every tribe chooses a representative and that all representatives carry the

[22] Muḥammad Hamidullah ,The Emergence of Islam (Islamabad: IRI Press, 2004), 187
[23] Kamal Sulieman Salibi, A History of Arabia (New York & Michigan: Caravan Books, 1980), 68.`
[24] T. Barrett with Joseph T. Barrett, A History of Alternative Dispute Resolution, 13 [Google Scholar]
[25] Abul Aala Maududi , Seerat Sarwar-e- Aalam, (Lahore: H. Faruq Associate Limited Press, 1980), 2: 720-721.
[26] Muneeza, Aishath. "Is conventional alternative dispute resolution to Islamic law?." (2010).
[27] T. Barrett with Joseph T. Barrett, A History of Alternative Dispute Resolution, 13

Shawl together to the place of the stone. He also chose arbitration to settle the dispute between himself and Bani Anbar. As for as amicable settlement (sulh) is concerned, numerous verses of the Qur‟ān and a large number of the Sunnah speak for it Sulh, its cognates and collocations can be found in more than 100 verses of the Holy Qur‟ān. Some of the examples of Translations of verses of Holy Quran are given below:

> *"And there were in the city nine persons who made mischief in the land and reformed not"*[28].
>
> *"And obey not the command of the prodigal, Who spread corruption in earth, and reform not"*[29].
>
> *"So give full measure and full weight and wrong not mankind in their goods, and work not confusion in the earth after the fair ordering thereof"*[30].
>
> *"And if a woman fears cruelty or desertion on her husband's part, there is no sin on them both if they make terms of peace between themselves; and making peace is better……* [31]

Hudabiya Pact

Hudabia Pact [32] was the outcome of peaceful settlement. Actually, a great deal of conversations, negotiations, information sharing, exchanging of promises and other diplomatic efforts preceded the Pact. Similarly composite dialogues, comprehensive deliberations and a package of binding promises regarding liabilities of each side contributed towards framing of Charter of Madina which clearly shows its importance .

The leading case where arbitration was used by the companions of the Prophet (peace be up on him) was the famous political case between the Caliph „Ali bin Abi Taleb‟ (the fourth rightly guided Caliph) and „Muawya bin Abi

[28] Al-Qur‟ān, An-Naml:48
[29] Al-Qur‟ān, Ash-Shu‟araa:151-152
[30] Al-Qur‟ān, Al-A‟raf:85
[31] Al-Qur‟ān, An-Nisa:128
[32] Ali, Moazzam, and Shabbir Ahmad. "THE CONCEPT OF RELIGIOUS PLURALISM IN THE LIGHT OF QURAN & SUNNAH." [Google Scholar]

Sofian‟ (the governor of Assham which is Syria, Lebanon, Palestine and Jordan). Muawya had refused to recognise Ali bin Abi Taleb‟s right to the Caliphate. The dispute led to a civil war between the two parties. During the fighting, Muawya bin Abi Sofian demanded the settlement of their dispute through arbitration. Ali bin Abi Taleb accepted that and each party appointed his arbitrator. The two arbitrators were to decide on who would be the Caliph. The two arbitrators were nominated in the arbitration agreement document and drafted an arbitration agreement specifying the dispute. The procedure, duration of the arbitration, place of arbitration and the applicable law were fixed in the arbitration document [33] .The second view is that Shariah knew arbitration in its modern sense. This view is based on the following verse from the Quran:

> *"Verily! Allah commands that you should render back the trusts to those, to whom they are due; and that when you judge between men, you judge with justice".*[34]

Chapter -5

Scope of ADR in Pakistan

In Pakistan, The Honorable Judges of the Supreme Court have explained the use of ADR to relieve the courts from their heavy backlog. Mr. Justice Tassaduq Jilani, Mr. Justice Zahid Hussain and Mr. Justice (R) Fazal Karim have written on the subject with convincing logic. Zafar Kalanuri also contributed some articles on the subject of ADR. He suggests designing and implementation of ADR methods in Pakistan and states that mediation is formerly entrenched in procedural rules for most of the common law in countries. He further explained that ADR is not new in sub-continent as panchayats were common in medieval and ancient India, and that arbitration was introduced by Lord William Bentick in (1828-1835) which was subsequently formally enacted under Arbitration Act 1940[35], which has too many grounds of judicial intervention and defeated the whole object of speedy and cost

[33] Muneeza, Aishath. "Is conventional alternative dispute resolution to Islamic law?." (2010). [Google Scholar]
[34] Surah al-Nisa (4):58
[35] https://www.ma-law.org.pk/pdflaw/Arbitration%20Act,%201940.pdf

effective dispute resolution. According to Kalanauri [36], there are four factors for the revival of ADR which are:

- drawbacks of litigation,
- changing business scenario,
- legislative responses
- judicial sponsorship

Among drawbacks of litigation, he highlights the huge backlog of cases. Unlike many other writers on ADR in Pakistan, he has dealt with ADR in administrative disputes in public domain under :

- ✓ Income Tax Ordinance 2001 (Section-134-A),
- ✓ Sales Tax Act (Section-97),
- ✓ Customs Act 1969 (Section-195-C)
- ✓ and Federal Excise Act, 2005 (Section-38)

Saad Mir [37] also explains arbitration and mentions the advantages of arbitration, such as, economical, flexible, speedy and time saving. He links arbitration to pre-Islamic period which was continued during Islamic era. In the present day context, he identifies laws such as promoter of ADR:

- ✓ Cooperative Societies Act 1925,
- ✓ Income Tax Ordinance 2001
- ✓ Customs Act and Sales Tax Act 1990,
- ✓ section 89-A of Civil Procedure Code 1908
- ✓ Electricity Act 1910.
- ✓ Arbitration Act, 1979
- ✓ Constitution of Pakistan, 1973. Article 2
- ✓ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958,
- ✓ Cooperative Society Act, 1925
- ✓ Electricity Act, 1910
- ✓ Family Courts Act, 1964
- ✓ Industrial Relations Ordinance 2008

[36] Zafar. K, Designing ADR/Mediation Program for Judges Content, PLD 2014, J. 23

[37] Mir. Court Intervention in Arbitration, Pakistan Perspectives, PLJ 2016, J. 8 Available at https://www.pljlawsite.com/2016art8.htm

- ✓ National Judicial Policy, 2009, revised edition 2011
- ✓ The Income Tax Ordinance, 2001, as amended by the Finance Act, 2004

He also stated that an Arbitration Center was opened in Lahore in 2009 but it was shut down due to poor response for lack of developed procedural law under Arbitration Act, 1940, and also linked that intervention of national courts is inevitable in international arbitration.

Ghani [38]highlights ADR processes of negotiations, conciliation, arbitration along with means of resolving industrial workmen disputes and brings out advantages of those processes which, include cost effectiveness, reduced court work and, mutuality etc., and also highlights problems with these ADR processes and suggests awareness among people and structured training of lawyers and judges.

Rafique,[39] states that backlog of cases and shortage of judges is not the only factor, but it is a lengthy process and takes about 25 years' time frame for civil cases. He presented a case study of ADR in Vehari, district of Punjab Province, where 364 out of 389 cases were settled through ADR center.

Mobile Courts In KPK , A step toward justice make easy

Under THE ESTABLISHMENT OF CIVIL MOBILE COURTS ACT, 2015.
(KHYBER PAKHTUNKHWA ACT NO. XXV OF 2015)

A new initiative in KBK Pakistan has taken initiative towards justice make easy and accessible and that is quite literally keep resemblance of Alternate dispute resolution. Government made long green buses , like a mobile homes ,with printing Pakistan's flag and Mobile Courts , going to serve as mobile courts and extensions of the official Pakistani legal system.Its object is to target the rural and poorer areas of the province . It was Founded in 2013 with the cooperation of UNDP , to provide justice and conflict resolution at doorstep. After the introduction of mobile courts it became a breath of fresh air for many Pakistanis frustrated by a latest judicial system and legal services. Rural residents had to travel to cities for justice to travel dozens of kilometers and with heavy cost to pay in the form of fare. Soon, they will find it in their own doorstep.

[38] Ghani, F. M, Conciliation and Arbitration Procedure; Prospects and Problems, PLJ 2017, J. 10
[39] PLD 2006 Journal, Khurshid, M.N and Rafique, W, Strategy for Delay, Reduction and Expeditious disposed of Backlog of Cases. Available at: www.academia.edu

Integrity Of mobile Courts

In the case of , two brothers, Sahar and Badam Gul [40], presented their 10-year old legal dispute in a mobile court, which is about the deaths of two relatives, the local Jirga who had already failed to mediate the settlement of dispute between themselves, the court settled this case in the matter of a day.And some oth 31 out of 37 cases including land disputes and criminal trial been decided by Magistrate Fazl e wadood which shows the integrity of this system and welcoming response of the public. In a short More mobile buses means more accessible justice will make the country more peaceful .

Problems of Legal system and proceeding in Pakistan and the Role of Bar Associations

A lawyer is the first one who visited by the peoples, litigants and other clients to take their matters but feel sorry for their response due to unawareness about ADR,in countries like ours, where legal ethics are confined in the books and professional dishonesty has become wider , the performance of the advocates and Bar Associations in Pakistan is too poor to be described. No doubt the situation in the Supreme Court may comparatively better, nevertheless, majority of the clients are unhappy with the behaviour of their counsels regarding their nonappearance in the courts and because of lengthy and time bard litigants.

It has been observed in so many cases that a counsel is sitting in his chamber or in bar-room but does not attend the court. Sometimes, he pays no proper attention to his client and ignores his request to appear before the court. In this situation, the poor litigant turns into a shuttle cock between the judge and the advocate. With great difficulty, and after waiting for a long time, when this counsel appears, the counsel of the other party disappears either surreptitiously or under the pretext of appearance in some other court. If the advocate apprehends

[40] https://www.thenews.com.pk/archive/print/455922-mobile-court-decides-years-long-cases-within-hours

loosing of case, he tries to adjourn the case by hook or crook. This often happens during the stage of recording evidence or when the case is fixed for final arguments. To achieve their goal, they even don't hesitate to file unwanted petitions of revision. Its all about the unawareness and personal ability and interest to take the matter and dispute in a very professional way. Bar Associations not playing their role to make ADR effective , to get easy and accessible justice system.

Why ADR need to be promoted to get easy justice System

(Failures of Legal System)

The appearance of the parties consumes extra-ordinary time. Sometime the plaintiff fails to provide true and complete address of the defendants or fails to the process fees in time and sometimes the defendant or a witness intentionally conceals himself. Most of the process servers are untrained. Their emoluments are small and cannot meet their basic needs. Their strength also is usually insufficient for the area they are supposed to cover.

Hence an effective service of summons and notices cannot be expected. In cases where the defendant's house can be traced by some additional efforts, he would report that the house of the defendant could not be traced due to its location in thickly populated area and the non-mentioning of the number of the house by the plaintiff. He, sometimes writes that the summons could not be served due to the rush of work and shortage of time. If a summon is served, it suffers from injurious mistakes and the court is to issue summons afresh. Interestingly, at times, he requests the court that no one in the area knows the defendant, therefore, the plaintiff be directed to make the defendant shown, on spot, to the process server. In these circumstances, the plaintiff waits that when his next door neighbour defendant would appear in the court. Often too late, he comes to know that it is the money which makes the mare go.

There may be adjournments on reasonable grounds. The Civil Procedure Code 1908 itself carry provisions for it such as power of the court to enlarge a fixed date for some act under section 148. Adjournments may be on grounds of emergencies but frequent adjournments on frivolous grounds are really bad. Delay in submission of written statements, list of

witnesses, replications, depositing of various fees, production of witnesses and documents and above all non-appearance of the counsel under the excuse of being busy in some other forum, are very common. Granting for hormonal relations between the bench and the Bar, judges accept requests of advocates for adjournments. It is nothing else but a compromise at the cost of clients. In the process, the interest of the litigants is crushed and the judiciary fails to provide speedy justice to the aggrieved. It is quite clear that adjournments always go in favour of the aggressor. Imagine that whom the bar and bench help? Again imagine whom they harm?

Conclusion

From Literature Review, it is founded that ADR is not a new process to make justice easy .In fact,the termed as ADR was the normal method of dispute resolution in ancient times. The use of informal dispute resolution started in USA in 1970s in order to avoid heavy cost of litigation, time factor, non-confidentiality, rigid processes, and inconvenience to parties. A variety of informal dispute resolution methods for example, negotiation, mediation, conciliation, facilitation, mini-trial and informal arbitration are in practice in the developed legal systems such as USA, Australia and these processes are applicable in civil, family, banking, labor, education, environmental, employment and administrative disputes. it is also realized that there is an extreme deficiency towards its importance on ADR in Pakistan. So, there is an ominous requirement of a comprehensive research work which can provide frame work for informal resolution of disputes in general as well as in particular (administrative disputes) in Pakistan.

According to the above discussion it is clear that, western ADR is the transcript of Islamic ADR. The emergence of ADR was a reaction against and response to the inadequacies of the litigation process and the resultant heavy backlog of case that chocked the courts from the lowest to the highest levels. Everyone can see the glaring demerits of litigation, it paralyses productive activities; it corrupt the litigants by tempting them to harass each other and to twist, stretch and hides facts; it is costly and wasteful. So the only way to make justice accessible for all is only possible through ADR . Need to highlight the importance and awareness to the public and also need to arrange seminars in Bar Association

throughout the Pakistan. After government , a lawyers or ADR practitioner may be the second step to initiate this system .

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