

Effectiveness of Current Mediation Centres in Family Disputes

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Abstract

This research aims to explore and study the effectiveness of Alternate Dispute Resolution (ADR) in resolving family disputes while observing the aspiration and implementation of mediation centres throughout Pakistan. The concept of mediation in family cases is comparatively analyzed with formal litigation procedures prevalent in Pakistan. The investigation sheds light on the hurdles faced by the litigants in the judicial system of Pakistan and its possible solutions under ADR system pertinent to women-centric issues. A significant portion of this study discusses the benefits of introducing mediation centres to encourage women from under-developed areas to bring forward their domestic issues at earliest possibilities. The prime issues investigated include what are the standard mediation ethics and rules, what obstacles female litigants in Pakistan face in the Family Courts and what is the role of mediation centres in this scenario. In a nutshell, this study contends that the feasibility and necessity of involving ADR in family cases is very high rather essential. Finally, it is suggested to improve and

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increase the mediation power play in family litigation of Pakistan.

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1. Introduction

“An ounce of mediation is worth a pound of arbitration and a ton of litigation!” — Joseph Grynbaum.² Mediation is assumed to be the most amicable way to resolve the disputes under the ambit of ADRs. It is “[a] flexible, voluntary, and confidential form of ADR, in which a neutral third party assists parties to work towards a negotiated settlement of their dispute, with the parties retaining control of the decision whether or not to settle and on what terms.”³ The legislature in Pakistan defines it as “a process in which a mediator facilitates dispute resolution by encouraging and negotiating communication between the parties in order for them to arrive at a mutually satisfactory agreement.”⁴ Thus taking into consideration its flexible nature, it must be the first choice in civilized and developed societies, particularly for adjudicating family disputes. It is because in family disputes, the consequences mostly affect the parties throughout their lives, either in the form of mental agony or domestic trauma or in the form of some physical abuse.⁵ Apart from these personal sufferings, women in most conservative areas and tribes of Pakistan are compelled to bear the social pressure while resolving their matters against their own families through courts.

²“Dispute Resolution Quotes,” ADR Toolbox, <http://www.adrtoolbox.com/library/adr-quotes/>, accessed June 07, 2021.

³‘Mediation’, *Practical Law*, accessed 1 March 2021, [http://uk.practicallaw.thomsonreuters.com/7-107-6830?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](http://uk.practicallaw.thomsonreuters.com/7-107-6830?transitionType=Default&contextData=(sc.Default)&firstPage=true).

⁴‘The Alternative Dispute Resolution Act’ (2017), sec. 2(i).

⁵Salman Ravala, ‘UPDATE: Alternative Dispute Resolution in Pakistan - GlobaLex’, *Hauser Global Law School Program*, June 2008, https://www.nyulawglobal.org/globalex/Pakistan_ADR1.html.

Particularly, women have concerns of infringement of their privacy rights during trial and after the disposal of matter due to general ignorance and backwardness of the community.

The mediation centres, established under the initiative taken by the higher judiciary to establish ADR centres in Punjab specifically,⁶ are a ray of hope, in terms of making accessibility to justice possible for the victims from far flung areas through these centres. As a matter of fact, such centres are designed not only to cater to the dispute, rather at the same time, they are supposed to ensure the protection of privacy rights while resolving the matter in an amicable way outside the courts. Yet unfortunately, ADR mediation centres are not able to function effectively in backward areas of the country where domestic abuse against women is barely reported. The mediation centres in Punjab that cater to resolve the family conflicts are highly encouraging for both partners particularly for females to settle the matter before jumping into the hectic litigation procedure. However, the limitations faced in the country for mediation are lack of well-equipped modern mediation centres in rural areas and lack of awareness regarding mediation to the ordinary person.

It is the need of the hour to make necessary legislations and amendments in family laws throughout the country with the provisions of mandatory mediation before entering the formal litigation like the legislation of family law in developed countries.⁷ For instance, in Australia, it is mandatory for the parties in family litigation to visit mediation centres

⁶Todd Walker, 'Mediation | ADR in Pakistan', *Weinstein International Foundation*, accessed 2 March 2021, <https://weinsteininternational.org/pakistan/>.

⁷Helen Cleak, Margot Schofield, and Andrew Bickerdike, 'Efficacy of Family Mediation and the Role of Family Violence: Study Protocol', *BMC Public Health*, 14, no. 1 (21 January 2014): 57, doi:10.1186/1471-2458-14-57.

first and then go to court if mediation fails.⁸ It will be very convenient for women to get justice without threatening the prevailing system in their societies in case the legislators and mediation centres break this stereotype by their efforts. There are a number of family disputes where women are highly abused but reluctant to go to courts due to their conservative tribal and social taboos. In the prevailing situation, mediation centres can be helpful to resolve these issues and keep them confidential simultaneously. Currently, the mediation centres are out of reach for the marginalized group; therefore, establishing more mediation centres throughout the country can surely help out these victims to get out of distress.

The research methodology opted for this study is of qualitative nature. The data is collected through secondary sources by using the online resources including research papers, articles, books, and journals specific to ADR. Moreover, responses of practicing lawyers in ADR and currently operational mediation centres were recorded through live interviews. Further, different case studies have been relied upon for comparative analysis.

2. Mediation Centres in Family Disputes

Encouragement of mediation centres in family disputes became a popular institute by the end of the 19th-century. States around the world also recognized it by giving mediation centres statutory value, particularly in family disputes resolution. Some countries stipulated it mandatory before intervention of courts like Australia.⁵ This gives ample evidence for its preference for family disputes. From the very start, mediation centres

⁸“Family Mediation and Dispute Resolution” An Australian Government Initiative, Family Mediation and Dispute Resolution | Family Relationships Online, <https://www.familyrelationships.gov.au/separation/family-mediation-dispute-resolution>, accessed December 18th, 2020.

formally recognize the need for confidentiality and privacy which makes the process exceptionally suitable to resolve family matters amicably. Moreover, the mediation centres' feasibility for resolving family matters makes them a highly encouraging option in the modern era for disputes resolution. It not only covers the area of divorce or separation, but also deals with child custody, maintenance, dowry related conflicts, domestic trauma, abuses and other innovative family issues.⁹

In Pakistan, NGOs like The Asia Foundation and Riphah Mediation Centre Islamabad¹⁰ are offering outclass services that are regulated through state laws and international best practices encompassing modern era requisites. While non-regularized and orthodox-mediation methods are widespread throughout the country like *jirgas*, *panchayats*, local community heads, doing the same job with more adverse effects than relief from the curse. The state has also shown concern and involvement in this field by enacting a law on ADR that is 'The Alternate Dispute Resolution Act, 2017'. This statute has enhanced the scope and role of mediation centres, which will pave an easier and amicable path in resolving family disputes in future. After discussing the inspiration of mediation centres in the world and Pakistan, it is important to mention the problems faced in normal litigation which further supports the encouragement of mediation to resolve matters relating to family conflicts.

3. Challenges of Formal Court Litigation

The litigation process generally comprises four stages, which are society, police, lawyers, and courts. All of them play a vital role in the process and

⁹Marian Roberts, *Mediation in Family Disputes: Principles of Practice*, 3rd ed. (New York: Taylor & Francis, 2020), 67.

¹⁰Riphah International University, "Ripha Mediation Centre", <https://riphahmediationcentre.org/sample-page/about-rmc/riphah-mediation-centre/>, accessed June 18th, 2021.

dispensation of justice. Every litigant has to go through these four stages in a litigation process. Pakistan is struggling hard to uplift its judicial standards, while the main hurdle is the majority's ignorance regarding basic human rights in the first stage and a flawed mechanism in the last three stages. These hurdles linger on the dispute and make it extremely difficult to attain justice.¹¹ For the case of a woman litigant, these stages become even more cumbersome as the majority of the women in the rural areas are bound with unnecessary outdated customs and traditions alongside the technical and procedural loopholes in the justice system. In a society where a woman traditionally seemed to be confined in her house by remaining an ignorant symbol of pride and obedience, without relishing her due rights, it became nearly impossible for her to raise voice in order to seek justice. The one who breaks down the chains of these outdated customs faces strong backlashes from all the four stages. In such an extreme scenario, the ADR through the mediation system comes up with fine solutions and to help people by saving them from all these problems and hurdles.

Mediation always had a positive impact on resolving family disputes. A recent study has shown that mediation has been successful in resolving disputes related to divorce, child custody and other domestic abuses amicably.¹² It not only reduces the burden on courts, but in fact, it builds a bridge between parties of disputes to resolve their matters in a more dignified manner. Mostly in family disputes, there are two types of matters: divorce and child custody (in some cases also maintenance). These cases are of extreme personal nature and emotional aspects of parties cannot be

¹¹Ammaz Khan, and Rabia Manzoor, "Corridors of Knowledge for Peace and Development Report", *Sustainable Development Policy Institute*, (2020): 304-22, doi:10.2307/resrep24374.26.

¹²JB Kelly, "Family Mediation Research: Is There Empirical Support for the Field," *Conflict Resol. Q.* 22 (2004): 4.

ignored in civilized cultures. Mediation manages to properly handle these issues by removing the hard and fast procedures, protocols that hurt the privacy and sentiments of the parties that are found in litigation otherwise.¹³ The ADR has a strong impact in resolving family matters as it adheres to its set rules and ethics that make it the most desirable option to avail at the first instant in order to resolve the conflicts. The ethics and settled rules of ADR have been examined below.

4. Code of Conduct in Mediation

The mediation centres work with their set of rules and principles and strongly believe in the protection of every right which could be mishandled during the normal litigation process. These rights include the right to privacy, confidentiality, and protection from abusive encounters.

First and foremost, mediation ensures rights to privacy in personal disputes and provides a comfortable environment to resolve family conflicts. Parties to the dispute avail this option to keep their information confidential and to curb privacy infringements. Whereas, during court litigation, parties could hardly avail such an option, where the disputes are resolved in open courts without having much control upon media reporting. By keeping privacy as top priority, while conducting private mediation process, confidence of families to resolve their personal matters in the mediation process has boosted.¹⁴ It is not only that the parties are usually entitled to end-to-end encrypted conversations, in fact, they enjoy actual authority and control over the disputed affairs. In this way, privacy related

¹³Linda Sileberman, and Andrew Schepard, "Court-Ordered Mediation in Family Disputes: The New York Proposal," *NYU Rev. L. & Soc. Change* 14 (1986): 741.

¹⁴Connie Atkinson, "Kingsley Napley," The Advantages of Mediation in Resolving Family Disputes, <https://www.kingsleynapley.co.uk/insights/blogs/family-law-blog/the-advantages-of-mediation-in-resolving-family-disputes>, accessed March 2, 2021.

concerns of females are curtailed to a great extent.¹⁵ Moreover, the privacy related concerns of females are directly linked to the participation of females in the mediation process as mediators. Though, privacy of parties is one of the main principles of mediation still, battered women prefer female mediators over male mediators. They hold this opinion that their privacy and information will be at stake, if male mediators conduct the whole procedure other than female mediators.¹⁶ The subject of privacy cannot be complete unless the parties' matters remain confidential throughout the process after the disposal of the matter and mediation has set rules for it.

With reference to the confidentiality of the parties, it is subjected to a unique rule. The information of the parties is kept confidential at the very first place. Also, the mediator is separately obliged to enforce the confidentiality related provisions. However, the parties can themselves relinquish this right after the disposal of the matter at hand. Such steps are highly welcoming for those battered females who come from backward areas.¹⁷ In 2014, a guide was issued for mediators in England, which stated that mediation is a 'Confidential meeting', in which, parties to the dispute agree that all the communications are just for the purpose of settlement. No conversation will be leaked as long as it is prejudicial against any of the parties. For instance, in family disputes, if the communication reveals that life, health or safety of children is at risk then the conversation can be made public. Otherwise, it would be counted as breach of the confidentiality right of the parties. Above all, neither a court can compel the mediator nor the parties can make the conversation public. This privilege can be waived off

¹⁵Roberts, "Mediation in Family Disputes", 71.

¹⁶Ramani Jayasundere, "Mediating Domestic Violence Disputes in the Community Mediation Programme in Sri Lanka: Issues of Women's Equality and Equity," *Academia.edu* (2011).

¹⁷Roberts, "Mediation in Family Disputes", 73.

only with the consent of parties to dispute and the mediator itself.¹⁸ Hence, privacy and confidentiality rights have been guarded very well in mediation procedures.

Beside privacy and confidentiality, mediation works to curb other abuses through its own procedure. It could thus be capable to cater neglected serious issues in Pakistan like in advanced countries, for instance domestic abuse and mental torture. The importance of these mediation centres is their way of working which can be more elaborated after the investigation of family law scenarios in Pakistan Family Courts.

5. Obstacles Faced by Female Litigants: Pakistan Perspective

Women in Pakistan have heterogeneous status according to the country's heterogeneous ethnic and cultural diversity. However, the common misery present in each of them is the presence of a division, large or small, of women who are oppressed and considered to be fragile creatures. They face social taboos, unnecessary restrictions, and above all to speak up against the family dispute is deemed unacceptable. Women face double cruelty in family disputes; firstly, through the original culprit and secondly, at the hands of outdated customs.¹⁹ This oppression by society was further intensified through the problematic court procedure.

Before 1964, family cases in Pakistan were dealt with in civil courts along with civil cases. However, with the enactment of the Family Courts Act, 1964, separate courts were created. They are meant to deal with family cases specifically and to bring some fundamental changes in the law related

¹⁸James Munby, "Family Mediation in England and Wales: A Guide for Judges, Magistrates and Legal Advisor", (2018): 04.

¹⁹Filomena M Critelli, "Between Law and Custom: Women, Family Law and Marriage in Pakistan", *Kornblu Journal of Comparative Family Studies* 43, no. 5 (2012): 678, <http://www.jstor.org/stable/23267840>, accessed March 28th, 2021.

to litigation in family disputes by providing speedy justice to women and children.²⁰ Although the provisions of the Qanoon-e-Shahadat Order, 1984 and other technicalities of the Code of Civil Procedure, 1908 and the Code of Criminal Procedures, 1898 have been removed, but there are still many flaws in their procedure, which make family litigation also a problematic court procedure in Pakistani case scenario. When it comes to court procedures, many factors get involved in it like time, money, social pressure, oppression by opponent parties, false allegations, lack of knowledge and education, threats on out of court settlement, etc.²¹ These factors make a procedure more complex in family courts where the litigant parties are women and children.

In family disputes, women and children are involved as primary litigants. In Pakistan, during litigation in family courts, the parties mostly use tactics of character assassination of the opponent party to win the case. Therefore, in front of children, their parents alleging each other make the matter more sensitive which is also a serious nature of drawback of court procedure.²² Problematic court procedure and ever-lasting court litigations have proved the paramount importance of alternative dispute resolution methods. Though family cases are supposed to be handed down in an expeditious manner, in contrast to other civil matters, however, many other hurdles stand in the way of family disputes to get resolved by the formal court system. The other main problem is less awareness of complex legal procedures. The reason behind this is the lack of awareness among females about the support system they can receive after reporting cases. Moreover,

²⁰Hafiz Muhammad Siddique, and Syed Naeem Badshah, "Family Courts in Pakistan", *Al-Idah* 38, no. 2 (2020): 56.

²¹Osama Siddique, "Law in Practice—The Lahore District Courts Litigants Survey", (2010): 46.

²²Lori S. Kornblum, and Daniel Pollack, "Family Court or Not? Raising Child Abuse Allegations Against a Parent", (2020).

there is a smaller number of female staff in courts, prosecution, and police in small towns. Likewise, in legal institutions a very little number of administrative positions are headed by females which directly affect the number of female litigants.²³

Importantly, courts, police, defense counsels and other court administrative staff are rarely accessible to females. A woman in a court still stands as a taboo in many underprivileged areas and the patriarchal affected court system has failed to mitigate this taboo. The only remedy for these problems is mediation, which is speedy in nature, cost effective and free of societal taboos. As a matter of fact, female mediators are also not present in mediation procedure, but this issue is being answered currently by ADR methods. This follows the financial restraints of women on a larger scale.

Furthermore, when it comes to litigation, it is not just social pressure or problematic court procedure, which makes it so complex that a layman would think a thousand times before entering into it. Besides all these, financial restraints faced during litigation are also one of the hurdles that make it more difficult. The financial restraints are perceived even in the developed countries like United States of America, United Kingdom because litigation is so expensive while for a developing country like Pakistan where millions of people are living beneath the poverty line, going through such an expensive process is just a horrible experience if we look at some statistics of a survey, it shows that nearly 38% of the litigants have a monthly income of less than 10 thousand and nearly 24% of the litigants have a monthly income which is less than 20 thousand which means 62%

²³Khan, and Manzoor, "Corridors of Knowledge for Peace and Development", 318.

of the litigants earn less than 20 thousand per month.²⁴ Moreover, 55% of the litigants use public transport; from which surely there are some persons with a lower income and cannot afford their conveyance.²⁵ Other than that, the legal representatives do not just charge an expensive fee but also demand a sum apart from their fee as procedural charges, and court fee, etc.

For a society where people are facing poverty, illiteracy, unemployment, and along with it, they also have to bear a strong financial bill to go for litigation, it is backbreaking for them. Alternative dispute resolution provides an ease to persons for whom bearing such an expensive litigation is difficult. Even in countries like the USA, UK people prefer going for arbitration and mediation to solve their disputes unless there is no way except going to court.

6. Operational Mediation Centres and State of Affairs

Private mediation centres exist in the country which provide services up to the international standards. The case study of ‘The Asia Foundation and Aga Khan Reconciliation Centres’ and other private mediation centres are covered in this section. These mediation centres are providing private mediation in Pakistan; the former covers the Punjab region, while the latter covers their community around the world. Aga Khan National Conciliation and Arbitration successrate is 80%.²⁶ The overall study of mediation centres in the country shows a small number of female participations as mediators. The mediation centres in far flung areas usually receive inheritance cases. Also, these boards decide maintenance with mutual agreement of the parties and as per their status. In few mediation centres,

²⁴Osama Siddique, “Law in Practice–The Lahore District Courts Litigants Survey”, (2010): 13.

²⁵Ibid., 11.

²⁶Abdul Wali, Interview by Ms. Zoya Chaudary, Islamabad May 22, 2021.

mediators work as volunteers. Basic motive of mediation is a journey from dispute resolution towards dispute prevention. The Asia Foundation collaborates in the Punjab region mediation centres where the family disputes are amicably resolved and particularly women show high level of satisfaction from their procedure of resolving disputes.²⁷ These mediation centres and other private mediation centres work within their own capacity and have limitations as well. Let us look at the gray areas now.

Mediation centres have their limitations to cater to the level and intensity of family disputes. Most of the mediation centres are not extended to far flung areas of the country where they are desperately needed to dispense justice to the miserable ones. Most of the people in the country do not even know about the concept of ADR and mediation as an alternative to the formal litigation process. Also, the number of mediators is very low and usually provides services as volunteers or they are funded by the NGOs. Moreover, the law colleges and universities are lacking in resources to provide necessary education and training for the future counsels and mediators. Furthermore, more efforts on the part of the state are required. There is no existing uniform procedure and network of state-owned mediation centres throughout the country.

7. Proposed Mechanism and Legislative Reforms

To overcome this lacuna, there should be some special enactments. For instance, in *nikah nama* (marriage contract), there may be a clause compelling to mediate in case of any conflict. Pakistan has a district level council system, so to avoid delay; the government may make mediation or ADR committees on the union council level as a quasi-judicial authority to

²⁷Justice M. Anwar ul Haqq, "Pakistan- Alternative Dispute Resolution", The Asia Foundation, April 8, 2021.

assist people in more effective manner.²⁸ Family laws should contain a provision of ADR as a dispute settling method. Mediation centres should be established everywhere in the country, so that it can become more reliable. It should be added in the curriculum and law students shall be educated about why mediation is not flourishing at a pace, which it deserves the most. Lawyers should also ask parties to opt for ADR before going to the courts and encourage them to choose mediation. As people are more reluctant, in that scenario, mediation through court shall be practiced more. This will help to reinstate the trust and awareness of the general public and it will also help private mediation flourish.²⁹ Mediation and ADR subjects must be taught at university level. Lawyers and judges must be trained to be mediators in Pakistan. Infrastructure and framework for it is also required. An appropriate enactment on this subject is the need of hour. The family courts itself order mediation proceedings for reconciliation, which proves its significance.³⁰

8. Conclusion

It is concluded that mediation centres that are currently operational across the country are highly effective in resolving family disputes. As the data collected suggests its success ratio of disposing of the matter is efficient in comparison to normal court proceedings. Moreover, it gives a sense of privacy and confidentiality to women belonging to under-developed and far-flung areas of Pakistan while being a party to family disputes. Along with addressing different social and cultural issues, ADR also provides remedy against financial restraints by providing much cheaper means to the justice system. It is thus highly recommended in Pakistani society to boost

²⁸Ahmed Sami, Interview by Halima Sadia, May 24, 2021.

²⁹Khan Suleman, Interview by Iqra Mushtaq, May 30, 2021.

³⁰Barrister Ali Sheikh, "Law of Divorce & Khula in Pakistan", DOCPLAYER, accessed March 17, 2021.

up the dispensation of justice by introducing the mediation centres at local level. Even though family laws of Pakistan have their own procedure of filing and proving claims still the process is complex in nature. On the other hand, mediation centres happen to be a human friendly dispute resolving medium in different foreign jurisdictions that stands as a best practice for Pakistan's judicial system pertaining to family cases. Efforts of federal legislative bodies by passing The Alternate Dispute Resolution Act, 2017 – to resolve civil disputes through the help of ADR can certainly be another example to introduce a parallel system for family disputes as well. It would not only lessen the burden of courts, but also, it will bring a relief to women in distress to resolve their family matters efficiently amicably. Interactive sessions with private mediation centres in Pakistan highlighted different operational limitations e.g., reach & accessibility to remote areas and awareness related to ADR system – can possibly be catered by legislators and policy makers through active involvement of judicial bodies in order to introduce state-owned mediation centres throughout the country.
