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Adopting a Structured Mandatory Pre-Trial Mediation System in Pakistan: A Comparative Proposal Based on Research Analysis on Victoria, Australia

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Abstract

The civil justice system in Pakistan is characterised by long-term inefficiency mainly because it is stuffed with a large number of pending cases in civil courts. Such procedural stagnation is devastating to access to justice and confidence in the judiciary. This doctrinal legal research will respond to the urgent need for reform on the use of successful integration of mediation as part of the civil justice approach in Victoria, Australia. Based on a comparative legal analysis, it examines the legislative and institutional systems which have facilitated the mainstreaming of mediation in Victoria and the reduction of congestion in the courts. Based on this model, the paper aims to adopt a context-specific design for Pakistan; it only touches on the civil courts, which constitute the primary source of judicial backlog. The suggested remedy will involve modification of specific sections of the Code of Civil Procedure (CPC) to furnish judges in Pakistan with the power to refer relevant civil cases to be put under mediation under the procedure at specified stages, which is to be mandatory. The suggestion is to institutionalise mediation as a mandatory element of civil litigation, not require mediation as an option and in the periphery. The adoption of the proposed framework will facilitate case management, minimise delays, and encourage the resolution of disputes by mandating the incorporation of mediation into the operations of the court.

Keywords: Pre-trial mediation, ADR, Pakistan legal system, Victoria mediation model, comparative law, legal reform

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1. INTRODUCTION

The system of justice in Pakistan is going through a severe problem of growing case backlogs at the moment. As of later half of 2023, the Law and Justice Commission of Pakistan reported that the overall number of cases pending increased by 3.9 percent to alarming 2.26 million cases. As indicated in the research, the district judiciary adjudicates 82% of the pending cases (1.86 million); the Supreme Court, the Federal Shariat Court and the High Courts adjudicate the other 18% (0.39 million cases). According to the report, from July through December 2023, 2.38 million new cases were reported, yet 2.30 million cases were resolved by the courts. This fact that new lawsuits were still being filed meant that despite this tremendous resolve, there remained a great number of cases that remained unresolved. The report further

highlighted, as compared to criminal cases (19% of the cases pending in the High Courts), civil suits (81% of the cases pending in the High Courts) constitute the majority. Conversely, at the district court, 36% of the outstanding cases are criminal in nature, while 64% of the cases are civil in nature. Delay in the disposal of cases damages the reputation of a justice system beyond repair. The stakeholders tend to believe that the system does not have the capacity to deliver; consequently, such a state is left behind in the comity of nations. This issue is not exclusive to Pakistan and can be found in many other jurisdictions. To address this issue, various Alternative Dispute Resolution methods have been imposed which have served as a potential solution throughout various jurisdictions in the world (Dawn, 2024).

This study aims to develop a structure for the incorporation of mandatory pre-trial mediation in the civil justice system of Pakistan. There has been a lot of emphasis on mandatory mediation in Europe with the issuance of Mediation Directives (Raffaelli, R, 2016).

Pakistan has introduced pre-trial mediation through incorporation of section 89-A into the Code of Civil Procedure 1908, where much is left at the discretion of the judge whether pre-trial mediation is necessary according to the circumstances of the case. However, mediation is not a novel idea in Pakistan, where the traditional Lokh Adalat and Jirgas already exist, but the introduction of mandatory pre-trial mediation as mandated by the state is a comparatively new concept.

2. OVERVIEW OF MANDATORY PRE-TRIAL MEDIATION

Mediation refers to informal negotiations between the contesting parties with the facilitation of a neutral third party called a mediator. The role of a mediator is to identify points of controversy between the parties, reflect on various solutions and bring the parties to a minimum acceptable terms. So far, mediation has been the most successful ADR technique and requires the involvement of a trained facilitator. This methodology is being successfully used in several countries to resolve commercial and family disputes, among others.

To understand the implications of mandatory pre-trial mediation, it is crucial to delve into the theoretical underpinnings of ADR, the legal framework in Pakistan, and the international experiences that have influenced its adoption. This review aims to contextualise the paper within the broader academic landscape and highlight the gaps.

Menkel-Meadow and Ury, in their work on “Foundations of Dispute Resolution”, have laid the foundations for mediation as an effective means of conflict resolution, emphasising its potential to preserve relationships and reduce adversarialism. Within Pakistan’s legal context, the Code of Civil Procedure has been incorporated with provisions for pre-trial alternative dispute resolution mechanisms. This legal framework draws inspiration from international models, such as the United States' court-annexed mediation programs (Meadow, 2012).

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further studies, "Perspectives on Mandatory Mediation" have explored along with various aspects of mandatory mediation that it can lead to quicker case disposition and decreased litigation costs. It is one of the primary arguments in favour of mandatory pre-trial mediation, as its potential to speed up case resolution and hence reduce the burden on overburdened judicial systems. In the context of Pakistan, where a backlog of cases is a pressing issue, examining effects impositions mandatory pre-trial mediation is essential (Hank, 2012).

3. RESEARCH METHODOLOGY

This researcher adopts a qualitative doctrinal and comparative research methodology to analyse the feasibility of incorporating a structured mandatory pre-trial mediation system within the civil justice framework of Pakistan through a comparative analysis with the mediation model operating in Victoria, Australia. The study is primarily analytical and reform-oriented.

4. CASE STUDY: VICTORIA'S MANDATORY MEDIATION SYSTEM

As already discussed in the literature review, that pre-trail mediation in its mandatory form has not previously been enforced in Pakistan; yet there is a need to develop a system of mandatory pre-trial mediation. Developing an entirely new system would not be feasible in this paper; however, it is feasible that an already established system could be envisioned to suffice the needs of Pakistan's legal system. This study discusses the mandatory pre-trial mediation legal system of a country that is best suited to Pakistan. It will also attempt to justify the reason for selecting the proposed legal system and why it is best suited to Pakistan's legal system.

4.1 Mandatory Pre-Trial Mediation System of Australia: New Victoria

Australia is renowned for upholding one of the most established and effective mediation processes in the contemporary era. Mediation is the main form of civil dispute settlement in Australia and is carried out through initiatives that are referred by the courts. Followings are the reason which makes Australia suitable for this study.

Common law was brought to both Australia and Pakistan during British colonial control. The concepts and processes of Australia's mediation system can be more readily adapted to Pakistan's judicial framework because of this shared legal background.

There are serious issues with backlogs in the courts and delayed justice in both regions. The implementation of obligatory pre-trial mediation in Australia has been effective in alleviating the burden of court cases, resulting in expedited resolution of disputes. Such a strategy to accelerate civil proceedings can be beneficial to Pakistan, which is facing comparable challenges.

Pakistan's traditional emphasis on communal peace and informal dispute resolution is consistent with the social dynamics of conflict resolution

in Australia, which prioritises community involvement and reconciliation. The smoother adoption and acceptance of the mediation process in Pakistan can be facilitated by this cultural compatibility.

At this stage, it will be more feasible to single out a state of Australia for the purpose of efficiently understanding its system. For this study, the state of Victoria can serve the cause due to its similarities with Pakistan. Victoria also inherited an adversarial civil court system as a result of Australia's colonial past. Moreover, before court-mandated mediation was introduced, Victoria's judicial system also faced criticism from the legal community and civil disputants, much like Pakistan, among other issues. Among the things that drew criticism were the long backlog of cases in the courts, which caused aggravating postponements in court procedures, and the expensive, time-consuming, and anxious nature of litigation. (Silva, 2016)

Before delving into the mandatory pre-trial mediation system of Australia, it is necessary to understand its historical background, composition, and its legal system. Studying its historical background, composition, and its legal system will develop an understanding of how the system has developed over time and in what ways it is similar to Pakistan's systems.

4.2 Australia: Historical and Constitutional Overview

Australia was first colonised in the 1780s, which gave England the right to claim and govern the continent. Until 1901, the nation consisted of six independent British colonies that were ultimately governed by the British Parliament. Australia as a Commonwealth was formed in 1901 with the promulgation of the Australian Constitution Act of 1900. The six colonies then transformed into Australia's six states.

The six governments of Australia's states and two territories share power with the federal government of Australia, commonly known as the Australian government or Commonwealth government. The Commonwealth of Australia is the common name for Australia. Australia is made up of six states, including Victoria, Queensland, South Australia, Western Australia, Tasmania, and the Northern Territory, as well as two territories, the Australian Capital Territory and the Northern Territory.

Australia operates under a constitution. Consequently, the Constitution of Australia binds both the Parliament and the legislatures of every state and is the ultimate and fundamental legislation of the nation. If an act of the state legislature is against the Australian Constitution, it is considered unconstitutional. The Constitution of Australia defines the Commonwealth and state legal systems as consisting of three distinct government departments: legislature, executive branch, and judiciary.

This separation of authorities is rooted in the doctrine of "Separation of Powers." The legislative branches (parliaments) have the power to establish laws, the executive branches have the power to carry out governmental operations and implement laws, and the judiciary (court system) has the power to make legal decisions.

However, the Australian Parliament's power to legislate has been limited by the Constitution of Australia to specified subjects, including

business law, marriage and divorce, taxes, defense, and external affairs through its Section 51. On the other hand, every state has a constitution that gives its legislatures the ability to pass laws, its governments the ability to exercise power, and its courts the ability to decide any disputes that arise within the state. These constitutions are still governed by the Constitution of Australia, nevertheless.

4.3 The Court System in Australia

4.3.1 The High Court of Australia

According to section 71 of the Australian Constitution, the High Court of Australia is the highest court in the nation. Regarding its jurisdiction, the High Court has the authority to consider cases in specific categories, such as state concerns, as the court of first instance. Furthermore, with the consent of the aforementioned High Court, any appeal to the Supreme Court, the apex court in any state, may be filed with the High Court. All Australian courts and tribunals are required to follow the High Court, which is Australia's final court to appeal.

4.3.2 The Federal Court of Australia

Parliament may enact laws defining the jurisdiction of the Federal Court of Australia, as specified in section 77 of the Australian Constitution. However, the jurisdiction of the Court is limited to instances related to federal tribunal appeals, judicial review of presidential directives, taxation, and insolvency. Additionally, the decision of a single Federal Court judge may be appealed to the full Federal Court and, with permission, to the High Court.

4.3.3 *The Family Court of Australia*

A specialised subset of the Federal Court, the Family Court handles cases involving marital property and children. Additionally, there is the option to appeal to the three Family Court justices as a whole, and from there to the High Court, which was previously indicated.

4.3.4 The Federal Magistrates' Court of Australia

The Federal Magistrates Court (Federal Circuit Court of Australia) was established to ensure that there is a lower level of federal court to take the burden off the Federal Court and the Family Court. Consequently, it is not subordinate to either of the two courts mentioned above, but it is under its jurisdiction.

4.4 The Victorian Courts

The hierarchy of courts in Victoria is as follows:
The Supreme Court of Victoria
The County Court
The Magistrates' Court of Victoria

4.4.1. Highest court in Victoria

The Trial Division, also referred to as the Supreme Court, and the Supreme Court of Appeal comprise the two branches of Victoria's Supreme Court. The Supreme Court has unrestricted jurisdiction over whatever subject

matter it sits over, regardless of the amount of money that can be claimed. However, for filing an appeal from a lower court to the Supreme Court of Appeal, it may be on the grounds, including a legal question, a mistake, a lack of jurisdiction, or insufficient jurisdiction.

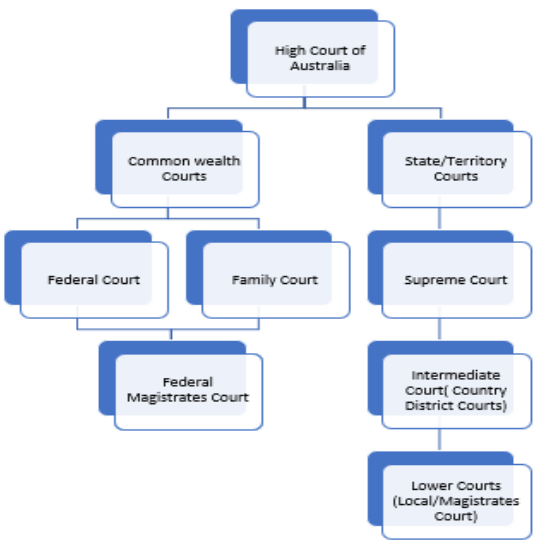
4.4.2 The intermediary court

The intermediary court is the County Court. All claims in any case where the County Court is expressly granted jurisdiction under Part 2 of the County Court Act are covered by the County Court's civil jurisdiction. Regarding civil cases, the Magistrates' Courts do not consider appeals.

4.4.3 The lowest court in Victoria

The lowest court in Victoria is the Magistrates' Court. Sections 4, 100, and 101 of the Magistrates' Court Act expressly prescribe the Court's jurisdiction in civil matters, and they are the primary source of jurisdiction for hearing matters. It handles most of the legal issues that Victoria encounters. In accordance with the Magistrates' Court Act section 101, the court may modify the complaint to bring the case under its purview or halt it while the request awaits it to be transferred to a court of a higher level.

Figure 1: Court System of Australia



4.5 Understanding the Implementation of Mandatory Mediation in the State of Victoria

In addition to the Victorian County Court's arbitration processes, mediation was first used in Victoria in 1983 as a means of settling building disputes. John Harber Phillips, the Chief Justice at the time, established a group of seasoned attorneys in 1992 to conduct pro bono mediation sessions in an effort to manage the caseload because the Supreme Court of Victoria had a significant backlog of cases that needed to be heard.

This campaign, known as the "Spring Offensive," was somewhat successful and was repeated two years later as the "Autumn Offensive in 1994.

This campaign resulted in a nearly 80% success rate in disputes that were successfully mediated. These mediation programs greatly decreased the backlog of cases, but more crucially, they made the process of mediation known to a larger segment of the legal community and the general public in Victoria.

In response to the publicity around the mediation system, the foundation of Standards of court-connected mediation in Victoria was developed in 1994 by the Victorian Law Foundation and the Law Reform Advisory Council of the Victorian State Attorney-General to guide mediation provision in this area. This was a noteworthy achievement because it demonstrated the support of the legal community for the establishment of mandatory court-referred mediation.

The above offensives and mentioned norms were successful, and in 1995 the Supreme Court of Victoria formulated the 'Portals Protocol' that enabled the creation of a more sophisticated mediation referral mechanism. This involved the Supreme, County, and Magistrates Courts, the three levels of the Victorian Courts. The Chief Justice of the Supreme Court at the time, Phillips CJ, endorsed this in 1995, stating that it was time for all Victorian courts to establish active mediation participation.

"It should be emphasised that mediation is not an inferior form of justice," he continued. It's a different kind of justice. Every study on conflict resolution reveals that people place a high value on prompt dispute settlement and the chance to present their argument to an impartial third party. Both of these conditions are met by mediation.

4.5.1 Mediation at the Supreme Court Level

Court-approved mandatory referral mediation programs were developed as a result of the aforementioned changes and the widespread acceptance of the mediation process over time. At a civil justice conference in Melbourne in 2009, Marilyn Warren AC, the Chief Justice of the Supreme Court of Victoria at the time, declared that no civil case in the Supreme Court of Victoria should be permitted to go to trial without first passing the one round of minimum mediation, except appeals and judicial review involving the Magistrates' Court and the Civil Administrative Tribunal of Victoria (Warren, 2009).

The Victorian courts have permitted the use of mandatory mediation methods through various statutes and court regulations. Among these is rule 50.07(1) of the Supreme Court (General Civil Procedure) Rules of Victoria 2005, which states that the Court may, at any time during the proceeding, order that the entire or a portion of the proceeding be referred to a mediator, either with or without the consent of any party.

4.5.2 Mediation at County Court Level

Rule 34A.21 at the County Court level states that, in accordance with Rule 50.07 of the County Court Civil Procedure Rules of 2008, the Court may refer the proceedings to mediation in whole or in part during the directions hearing, with or without the consent of any party.

4.5.3 Mediation at Magistrates' Court Level

According to section 108 of the Magistrates Court Act 51 of 1989, which deals with the court's authority to refer cases to mediation, the court may, on its own initiative or at the request of one or both parties, refer all or a portion of a civil proceeding to mediation after following and in compliance with the Rules or the Civil Procedure Act of 2010.

All legal procedures in the state of Victoria are governed by the Legal Procedure Act of Victoria, which gives all Courts the authority to send parties to the dispute to mediation at any point throughout civil proceedings, with or without their agreement. The Act's main goal is to make it easier for all civil issues to be resolved in a fair, timely, and economical manner. This overriding goal may be accomplished by the court's decision-making on the proceedings, a consensus between parties to the dispute, or other suitable dispute resolution procedure that the disputant consents to or the court orders.

The Civil Procedure Act mandates that any party to the proceedings, any lawyer and law firm representing that party, and any party providing financial support to that party all serve the aforementioned overarching aim. Accordingly, any individual to whom the general duties apply owes the court to advance the execution of justice in any matter in which they are concerned, including, among other things, any suitably conducted dispute resolution procedure.

By forcing all parties personally to attest that they have not only read but also comprehended the above-mentioned obligations, the Act strengthens the enforcement of these overarching duties and main obligations. In the civil proceedings, this certification and the first substantive document are to be filed with the court.

A lawyer must attest that each factual allegation, including denial or non-admission in the court, has a valid basis in addition to the contesting party's filed certification. This certification must also be filed in court. The "Proper Basis Certification" is the name of this certification. With this certification, a lawyer has the responsibility of making sure their client is aware of the steps required in filing or defending a civil lawsuit.

Under the Civil Procedure Act, the aforementioned general requirements might result in penalties. The Act states that the court must evaluate whether to issue a cost order that suits the proceedings or a discretionary order that penalises the violation, if any of the parties to the dispute fail to submit the necessary certifications.

It is clear that, in addition to having provisions requiring the court to use mediation, the Civil Procedure Act requires the good faith participation of all parties to maintain the proper, timely, efficient, and cost-effective resolution of all civil disputes in Victoria. The Act further demonstrates its commitment to the efficacy of the mediation process by establishing repercussions for noncompliance. Therefore, the Act explores the theory and practice of mediation in court to ensure that it is a successful and efficient process.

4.6 The Impact of Mandatory Court-Referred Mediation in Victoria

Being among the most committed states in the promotion of alternative methods to formal dispute resolution in Australia, Victoria is a state that has the longest history in the practice of court-mandated mediation. None of the civil disputes can proceed to a hearing without undergoing at least one cycle of mediation, unless in the fields of judicial reviews and appeals, where it has been determined that mediation has become so popular over the past 20 years since its inception in Victoria.

The statistics of the success rates of the mediation referred to the court in Victoria are few, as follows. Almost 70 percent of the cases mediated in that court have been able to settle, as it is indicated by the 2005/2006 Annual Report of the Supreme Court over the years; this is as opposed to exposing both the parties involved, as well as the court, to the burden of a trial. The Annual Report of the County Court 2005/2006 states that the civil issues were addressed in a successful manner; almost 60 percent were solved successfully through the use of mediation. In a year-end annual report which was issued in 2007 by the Magistrates Court, it is stated that about 64.42 percent of civil cases were successfully mediated, and in a year-end report issued in 2005/2006, it is stated that about 70 percent of the cases were effectively mediated at the court.

The statistics success percentages shown above suggest that court-mandated mediation has been a successful and efficient addition to Victoria's civil justice system.

5. PAKISTAN: HISTORICAL AND CONSTITUTIONAL OVERVIEW

Pakistan was previously part of the undivided Indian subcontinent, which was colonised by the British. Pakistan gained its independence in 1947 from British rule. The country was composed of two regions, East Pakistan and West Pakistan, which were governed by the Parliament of Pakistan. In 1971, East Pakistan separated from Pakistan and is now a separate country, Bangladesh.

Pakistan has a federal form of government known as the "Pakistani Government" or "Federal Government,". It consists of four provinces: Punjab, Sindh, Khyber Pakhtunkhwa, and Balochistan and two territories: Islamabad Capital Territory and Gilgit-Baltistan.

The legislative, executive, and judicial branches are the three separate departments of government that make up Pakistan's federal and provincial legal systems, according to the constitution. This phenomenon is called "Separation of Powers." Thus, the legislative branch (parliament), executive branch (executive branch) and judiciary (court system) are the three bodies of government that have the power to create laws, carry out legislative duties, and decide legal matters.

Pakistan operates under a constitution known as the Constitution of Pakistan, which binds both the National Assembly (parliament) and the legislative assembly of each province and is the ultimate and fundamental legislative assembly of the nation. If an act of any provincial assembly is

repugnant to the Constitution of the country, the Act or Law is considered null and void.

The 1973 Constitution divides legislative authority among three branches:

a. Parliamentary (or Federal), which includes Defense, Foreign Affairs, Nationality and Citizenship, Posts, Telecoms, and Electronic Media, Currency, Federal Libraries and Museums, Federal Research and Training Centres, Nuclear Energy, etc.

b. Concurrent includes criminal law, criminal procedure, evidence, and

c. Residuary (or provincial) includes matters other than those included in the parliamentary and concurrent lists.

Since its establishment in 1947, Pakistan has incorporated several laws from British India, also known as the Subcontinent, where litigation was deemed the most effective method of resolving disputes. Consequently, all of the country's procedural laws have been oriented towards either protracted trials involving testimony and evidence or summary trials, with no mention of alternative dispute resolution (ADR) in the laws that were adopted from that region.

It is also important to note that two distinct sets of laws govern Pakistan's legal system: statutory laws and Islamic law (Sharia). Statutory laws, which control the domains of criminal, civil, administrative, and constitutional law, are made by the Parliament and provincial assemblies, while Islamic laws are enacted through laws such as the Muslim Personal Law (Baig, 2024).

5.1 Court System in Pakistan

Pakistan's judicial system is currently regulated by Article 175 of the Constitution, which calls for the creation of the Federal Constitutional Court, Supreme Court and High Courts in each of the four provinces—Punjab, Sindh, Balochistan, and Khyber Pakhtunkhwa. A High Court for the capital territory of Islamabad was recently established by amendment. The Civil Courts Ordinance of 1962 and the Code of Criminal Procedure of 1898 established the Civil Courts and the Criminal Courts, respectively, because Article 175 permits the establishment of new courts by legislation. The Federal Shariat Court, a supplementary court established under Article 227 of the Constitution, has the following jurisdiction.

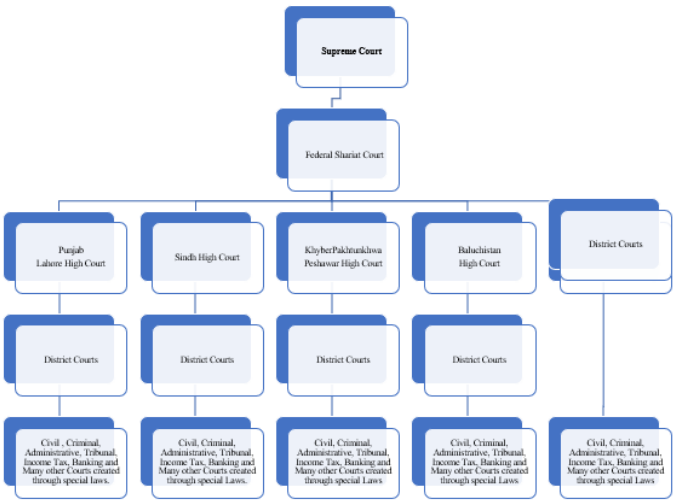
> "No law shall be enacted which is repugnant to such Injunctions, and all existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, here referred to as the Injunctions of Islam."

The district judiciary, which includes both criminal and civil courts created by acts that are overseen and managed by the corresponding High Courts in accordance with Article 203 of the Constitution. The Tribunals, Special Courts, and Administrative Courts are created by other statutes.

Before the Constitution (Twenty-seventh Amendment) Act, 2025, the

Pakistani judicial system could be broadly classified into three classes, or the trichotomy of the judicial system as shown by Figure 2. However, after the Twenty-seventh Amendment, the Federal Constitutional Court (FCC) holds a position of higher legal authority than the Supreme Court in terms of binding decisions and specific jurisdictions.

Figure 2: Court System in Pakistan



Constitution's Article 175 E (3) and Article 199 of the Constitution grant the Federal Constitutional Court and High Courts, respectively, the authority and jurisdiction of judicial review. When compared to the jurisdiction of High Courts, the jurisdiction of the Federal Constitutional Court to judicial review is far more significant. When there is an infringement of fundamental rights and the issue is significant to the public, the former has the authority to investigate. However, only after a few requirements are met may the High Court exercise its jurisdiction over judicial review.

5.2 Current System of Mediation in Pakistan:

The foundation of mediation in Pakistan has not been fully developed yet. However, in Pakistan, various Alternative Dispute Mechanisms are being considered. There has been a lot of discussion and debate going on in Pakistan regarding its development and enforcement. Pakistan is considering various alternative dispute resolution methods. The retired Honorable Chief Justice of the Islamabad High Court, Mr. CJ Athar Minallah, had also underlined the need for increased awareness and implementation of alternative dispute resolution (ADR) during an event. He had emphasised the role of ADR in Pakistan for reducing Pakistan's overloaded courts and case backlog. He underlined that the Pakistani judiciary must back the intervention of the introduction of ADR in Pakistan Judicial System. He also promised that the Islamabad High Court under his supervision specifically would advance this endeavor to promote and facilitate alternative dispute resolution (Piracha et al, 2022).

In Pakistan, although no formal system of mandatory pre-trial Mediation exists, various form of other alternative dispute mechanisms exists in Pakistan. ADR may be observed in several legislations of Pakistan, including Code of Civil Procedure 1908, Code of Criminal Procedure 1898, Small Claims and Minor Offences 2002, Local Government Ordinance 2001, Local Government Act 2013, Arbitration Act 1940, Constitution of Pakistan 1973, National Accountability Bureau Ordinance 1999, Probation of Offenders Ordinance 1960 and Muslim Family Courts Act 1964 among others to have a deeper insight on Alternative Dispute Resolution that already exists in Pakistan one needs to examine some of the alternative dispute resolution mechanisms entrenched in the Pakistani Laws.

5.2.1 The Reference in Constitution of Pakistan

The Pakistani Constitution does not specifically address alternative dispute resolution (ADR); however, it does include reference to business and financial operations, which could imply that Pakistan uses some form of ADR. Upon cursory examination of the Constitution, it can be observed that Articles 153–154 address the Council of Common Interest, Article 156 addresses the National Economic Council, Article 160 addresses the National Finance Commission, and Article 175E grants the Federal Constitutional Court of Pakistan original jurisdiction over "any dispute between two or more Governments."

5.2.2 Current Domestic Laws of ADR in Pakistan

The concept of Pre-trial Mediation is relatively new; however, various places can be traced where alternative dispute mechanisms have been introduced. Some of the relevant laws are as follows: Arbitration Act, 1940; Conciliation Courts Ordinance, 1961; Muslim Family Laws Ordinance, 1961; Family Courts Act, 1964; Section 89-A of the Code of Civil Procedure, 1908 read with Order X Rule 1-A; The Small Claims and Minor Offences Courts Ordinance, 2002; Punjab Local Government Act, 2012; Khyber Pakhtunkhwa Local Government Act, 2012; Punjab Consumer Protection Act 2005; The Punjab Alternate Dispute Resolution Act 2019.

An account of how some of the laws mention alternative dispute resolution mechanisms is given in the following:

The Code of Civil Procedure, 1908: According to section 89-A of the CPC, the court may use any form of alternate dispute resolution, including conciliation and mediation, depending on the specific facts and circumstances of the case and with an eye towards quickly resolving civil lawsuits. The purpose of the section's insertion is to minimise costs, expedite the resolution of disputes between parties, and lessen the court's workload.

The Small Claims & Minor Offences Courts Ordinance 2001: According to Section 14 of the 2001 Ordinance, the court would try to reach an out-of-court settlement in civil matters valued less than Rs. 100,000 and, should the settlement be successful, will implement it as a decision or order of the court. In the event that ADR is unsuccessful, the court will resolve the dispute through the specified summary procedure.

The Customs Act 1969: According to Section 195-C of the Customs Act, any party who feels wronged regarding a dispute that is pending before a court or appellate authority and involves the payment of customs duty, refunds or rebates, the seizure of goods, etc., may apply to the Board to form a Committee to resolve the dispute in appeal. The Committee, once established, will carry out an investigation, get professional advice, or mandate an audit from a customs officer. The Board may make any necessary orders based on the Committee's report. Following that, on the Board's instructions based on the Committee's proposal, the harmed party may pay duty, taxes, or fines, as applicable. If the Board has issued an order in a matter that is now before a court or tribunal, the Board must submit the agreement reached with the harmed party in light of the Committee's report for the court or tribunal, as applicable, to approve.

The Punjab Alternate Dispute Resolution Act 2019: A court must refer a case included in Schedule I of the Act to ADR within 30 days of the written statement being filed, per section 3 of the Act. The court will first seek the parties' opinion on the referral ruling and a decree that reflects the conditions of the settlement. An appeal under the Act cannot be based on a decree or order.

The Punjab Consumers Protection Act, 2005: ADR must be used to resolve consumer complaints that are brought before it, according to a requirement outlined in the Punjab Consumers Protection Act, 2005. The Act gives the Consumer Tribunal the authority to use any kind of ADR to resolve the dispute before it.

The parties will choose the ADR person with mutual permission. The parties and the ADR service provider agree to maintain the confidentiality of all proceedings, and the service provider shall retain a copy of any written correspondence, settlement, agreement, or award. A party who makes a meaningful offer and the other party rejects it will not be entitled to reimbursement for costs. The parties themselves, the parties' solicitors, accredited ADR service providers, and approved ADR centres registered under the Companies Act 2017 may conduct the ADR.

Draft Arbitration Bill 2024: Pakistan is currently taking a step forward towards Alternative Dispute Resolution by drafting the Arbitration Bill 2024. The bill is being discussed as a landmark in the area of Arbitration. The bill has been transferred to the Federal Law Minister, and he has declared that the government will take the bill to both houses of parliament, and after being subjected to the legislative process, it will be made into law later this year. The bill discusses various issues like the Arbitrators, their impartiality and the numbers. This bill also contains the provisions of interim measures granted by the court (Section 10) and the arbitral tribunal (Section 19). Interim measures of a court cannot be sought where the arbitral tribunal has been constituted unless it cannot provide a sufficient measure of redress. The Bill also provides that where parties have sought and been granted a court-ordered interim measure before the start of the arbitration, an arbitration must be commenced within 90 days from the date of the order of the court, and also, the arbitral

tribunal can make orders that are in excess of the court's orders. This is provided in order to prevent parties from deriving undue benefits from the awards of interim orders of the court.

The bill is a commendable step towards the promotion of Alternative Dispute Mechanisms and will pave the way for awareness of the general public and legal fraternity towards Alternative Dispute Resolution Mechanisms.

5.3 What needs to be done in case of Pakistan

In Pakistan, as discussed and seen in this study, mandatory pre-trial mediation is nonexistent. What can be seen is that many laws and provisions allow parties to adopt various alternative dispute mechanisms if they are willing and the circumstances and facts of the case warrant it. For the imposition of mandatory pre-trial mediation, there is a lot that needs to be done from grass root level. The following are the various measures that can be taken by drawing inferences from New Victoria.

5.3.1 Mandatory pre-trial Mediation at the Federal Constitutional Court and Supreme Court

Mandatory pre-trial mediation should be enforced at the level of the Federal Constitutional Court and Supreme Court. The judges ought to have authority to impose mandatory mediation whereby they can order or order without the consent of any party, that the proceedings or any aspect of the proceedings be referred to a mediator in civil matters specifically.

5.3.2 Mandatory pre-trial Mediation at High Court

High Courts in all four provinces and the Capital Territory should also be empowered either with or without the consent of any party, to refer the entire or any part of the proceedings to mediation in Civil matters, especially.

5.3.3 Mandatory pre-trial Mediation at District Court

All the District Courts in Pakistan should also be empowered, either with or without the consent of any party, to refer the entire or any part of the proceedings to mediation in civil matters, especially.

5.3.4 Legislation by Amending the Court of Civil Procedure 1908

As the concept of Mandatory Pre-trial Mediation is foreign to Pakistan, there is no provision available for enforcing it. So, the first and foremost inevitable step that needs to be taken in this regard is legislation in this regard. There should be a state law enforcing Mandatory Pre-trial Mediation. This law should be added by amending the Code of Civil Procedure of Pakistan, as it governs the rules of Civil Procedure in Pakistan. The law should confer the power to order parties to mediation at any stage of the legal process, with or without their consent, in the Supreme Court, High Courts, and District Courts. Facilitating the prompt, equitable, and cost-effective resolution of all civil disputes ought to be the primary objective of the amendment. This main objective may be achieved by the court making decisions regarding the proceedings, the disputing parties coming to an agreement, the court issuing an order, or another appropriate dispute resolution mechanism that the

disputants agree to.

The Code of Civil Procedure should also mandate that all parties to the proceedings, including those represented by counsel and law firms, and those providing financial assistance to such parties, serve the aforementioned objective.

Furthermore, similarly to New Victoria, there should also be a compulsion on lawyers to provide a Proper Certification Certificate in which the lawyer and the parties to the case should certify that the lawyer has explained and the parties have understood their obligation under Mandatory Pre- Trial Mediation Procedures and they will perform their obligation in good faith.

The Code of Civil Procedure should also penalise the previously indicated amendment. Therefore, if any relevant parties neglect to provide the necessary certifications or their duties, the court will have to take this into account and determine whether to sanction the breach with a discretionary order or to make a cost order appropriate for the proceedings.

6. WHERE TO BEGIN?

In Pakistan, the district judiciary has 82% of pending cases (1.86 million), with the highest tier comprising the Supreme Court, Federal Shariat Court, and High Courts handling the remaining 18% (0.39 million cases). It is pertinent to mention that following the incorporation of the Constitution (Twenty-seventh Amendment) Act, 2025, many disputes that were pending or filed before the Supreme Court or its Constitutional Benches were forthwith transferred to the Federal Constitutional Court to be heard and decided exclusively by it, which will also result in pendency of cases at the Supreme Court being transferred to the Federal Constitutional Court. A thorough examination of the cases that are pending in the District Judiciary and High Courts reveals that 81% of the cases in the High Courts are civil matters, while 19% are criminal cases. If one were to examine the district judiciary in more detail, 36% of the pending cases are criminal in nature, while 64% of the cases are civil in nature.

Figure 3: Percentage of Pending Cases

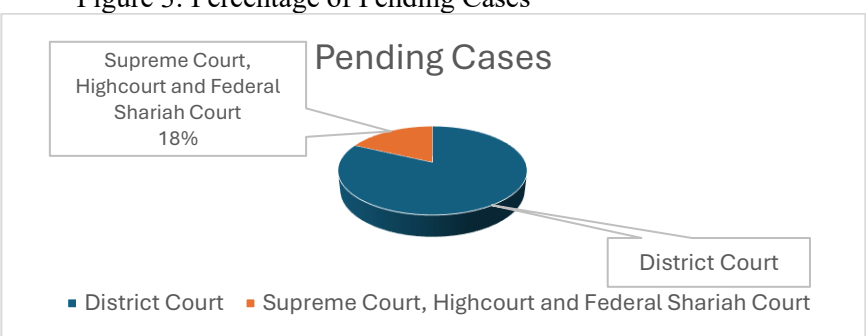
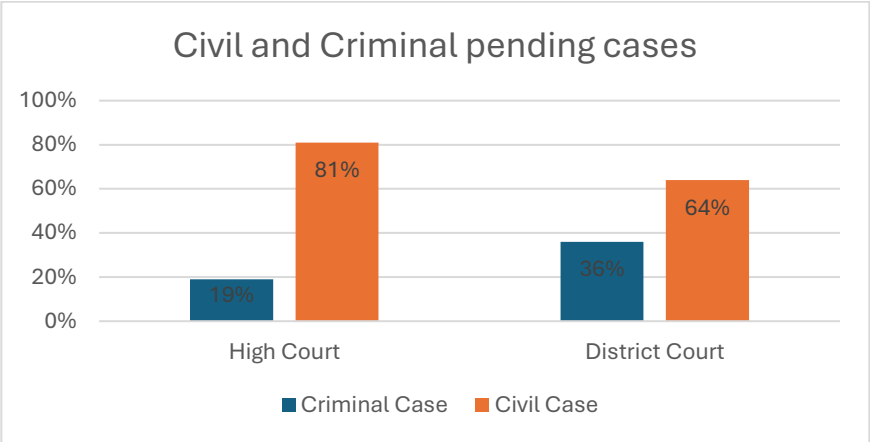


Figure 4: Civil and Criminal Pending Cases



So, according to the above data, the most pending cases are the civil matters and are at the district courts' level, so this is where Mandatory pre-trial Mediation should be enforced at the beginning levels. After which, the processes should be steadily moved to higher tiers afterwards. This helps to analyse the system in detail after its first phase implementation, and then, after completion of the first phase, a thorough examination can be done of the progress and lacunae, if any, takes place. This will help to increase the efficiency of the entire process before its introduction in the second phase.

Resistance is often seen in Pakistan to the imposition of a foreign pre-trial mediation system. This psychological resistance can be based on multiple factors, such as an individual may perceive this culture as unfamiliar or not aligning with their cultural norms. According to Psychological Reactance Theory, people generally resist those ideas and concepts that limit their freedom of choice (The Decision Lab, n.d.). When mediation centres are set up in Pakistan, frustration has been seen in people. For example, a mediation centre in Karachi was set on fire. This shows how strongly people react when they think someone is forcing a system on them. If Western-style mediation is used in Pakistan without considering the culture, people will not trust it. People in Pakistan like things that are part of their own culture and rely on them more.

The social identity theory further explains this resistance, as individuals tend to protect systems that reflect their cultural identity and reject those associated with external groups (McLeod, 2025). Pakistan being a collectivist society, the conflict is not considered as an individual problem like in the West; it is more linked to family honour and community relations. This mediation process may not be seen as socially and psychologically aligning with the people. However, formal mediation can still help people who are marginalised, like women. It can provide a way of resolving conflicts. If people are forced to change their culture, they will resist. If a new system is combined with the existing culture, people will adapt more easily. A mediation system that combines methods with formal practices will work better in Pakistan. This is why a combined approach that uses Islamic

principles, like Sulh and structured mediation techniques, will be more effective and widely accepted in Pakistan.

7. CONCLUSION AND RECOMMENDATIONS

Pakistan is facing a huge backlog of cases which needs to cope with through appropriate Alternative Dispute Resolution mechanisms. Adopting New Victoria's mandatory pre-trial mediation system presents a practical and culturally compatible solution to address the inefficiencies in Pakistan's civil justice system. The similarities in legal frameworks, judicial challenges, and social dynamics between the two regions make this system a suitable candidate for implementation in Pakistan. Pakistan can adopt various reforms in its current justice system for the incorporation of mandatory pre-trial mediation, effectively including amendments to the Code of Civil Procedure, where judges of the Supreme Court, High Court and District Court should have discretion to move the case for one or more rounds of mediation with or without the consent of the parties. Pakistan also needs to introduce procedural safeguards like the Proper Basis Certification for proper understanding of the mediation process to the Litigants. By prioritising mediation with the measures proposed, Pakistan can, similarly to Australia, enhance its judicial efficiency, reduce costs, and improve access to justice.

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