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Alternative Dispute Resolution in Pakistan: Legal Framework, Judicial Support, and Practical Challenges

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ABSTRACT

ADR has been increasingly marketed in Pakistan to solve the long-term delays, case backlog, and access-to-justice issues in the formal judicial system. In the last twenty years, the legislative reforms and judicial programs have attempted to institutionalize ADR via statutes, procedural regulations, and court-related methods after acknowledging the possibility of ADR offering a quick, economical, and mutually agreeable settlement of disputes. Although this normative and institutional backing has increasingly been forthcoming, ADR, in Pakistan, is yet to fulfill its transformative potential. The article critically looks at the evolution and functioning of ADR in Pakistan by looking at the juridical framework that regulates arbitration, mediation, conciliation and other mechanisms of ADR, the role of judicial branch in facilitating ADR and the challenges that present practical limitations to the use of ADR. It claims that Pakistan has a fairly well-developed legal and judicial framework of ADR, but it is not realized because of low institutionalization, inadequate professional capacity, insufficient awareness of the populace, and enduring propensity to use the adversarial litigation. The article also illustrates that there has been disparity in judicial approval of ADR, which sometimes is not systemic but iconic, and implementation of ADR results is an issue of concern. The gap between the legislative intent and the culture of dispute resolution is brought out by the study by placing the ADR regime in Pakistan in the context of comparative and international practices of dispute resolution. It concludes that to achieve meaningful integration of ADR in the justice system in Pakistan, it needs better institutional support, regular judicial participation, professionalization of ADR services, and there should be a cultural change to consensual dispute resolution.

Keywords: Alternative Dispute Resolution; Pakistan; Arbitration; Mediation; Conciliation; Judicial Support; Access To Justice; Court Backlog; Enforcement; Legal Reform.

Introduction

Delays, huge backlog of cases, complexity of the procedures and a lack of judicial capacity have been chronic to the administration of justice in Pakistan. Such institutional barriers have eroded societal trust in the institutional court system and limited access to justice in a meaningful way, especially by common litigants and small business participants. In this regard, Alternative Dispute Resolution (ADR) has become a



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significant policy and legal reaction, which provides a system of disputes resolution beyond the traditional adversarial model. Various forms of ADR, including arbitration, mediation, conciliation, and negotiation, are now being considered to be the means that can provide timely, cost-efficient, and amicable results and at the same time take the burden off the courts.¹

The involvement of Pakistan in ADR is not completely new. Community-based and traditional dispute resolution systems have been traditionally involved in solving local disputes especially in rural regions. Nevertheless, modern ADR in Pakistan is based on institutional and legal endorsement and not informal practices. Law changes, judicial declarations and procedural innovations have been aimed at introducing ADR as part of the formal system of justice during the last twenty years. These are part of a larger trend internationally towards the encouragement of consensual dispute resolution as an accompaniment to adjudication and not its replacement.²

The law of ADR in Pakistan seeks to cover a series of laws and procedural regulations that offer arbitration, mediation, and settlement, through court proceedings. Arbitration has been given the longest legal consideration especially in commercial and investment disputes, others, such as mediation and conciliation have been encouraged by procedural reforms and pilot projects. Courts have been given more authority to make referrals to ADR at different stages of litigation, which is an indication of a qualified approval of alternative schemes. In theory, such a framework makes ADR a component of the dispute resolution framework in Pakistan.³

Nevertheless, this official acceptance is not accompanied by the real use of ADR. There is still a culture of litigation in the dispute resolution and ADR is seen as a secondary or auxiliary means of dispute resolution as opposed to a first port of call. To most litigants and lawyers, ADR is seen as unfamiliar, unreliable or not enforceable, whereas some see it as incompatible with adversarial legal training and practice. These images coupled with institutional flaws have limited the development and performance of ADR in Pakistan.⁴

The role of judicial support in defining the direction ADR has taken has been a significant factor. The need to use ADR in order to cut a backlog and improve access to justice has been repeatedly repeated by superior courts. Court-annexed mediation centers have been created as a result of judicial activism and ADR has been integrated into procedural regulations. Nevertheless, there has been less activity by courts, which has differed depending on jurisdiction and per judge. Referrals to ADR are also discretionary and underutilized in most cases which restrict their systemic effect.⁵

Another critical problem is enforcement of the ADR outcomes. It is the enforceability of the consequences of any dispute resolution mechanism that determines its credibility. Whereas arbitral awards can be more easily enforced using the current law, mediated settlement, and conciliated agreements usually have no effective execution processes. It

¹ Khan, M. J., & Bilal, M. Justice Delayed, Justice Denied: Examining the Causes of Delays in Pakistan's Criminal Justice System. *Journal of Law & Social Studies (JLSS)*, 7(1), 43-52.

² Jurgees, S. M. R., Suleman, S., & Shahid, A. (2024). The Role of Alternative Dispute Resolution (ADR) in Pakistan's Legal System. *Quantic Journal of Social Sciences and Humanities*, 5(1), 194-202.

³ Akhter, S., Mahr, F., & Imtiaz, A. (2021). Exploring Restorative Justice: An Alternate Dispute Resolution Mechanism in Islamic Law and Customary Law. *Journal of Law & Social Studies (JLSS)*, 5(4), 625-636.

⁴ Ibid.

⁵ Jillani, T. H. (2006). Delayed justice and the role of ADR. In *International judicial conference*. Islamabad.



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is uncertain how it will be implemented which leaves parties unwilling to utilize ADR and supports the use of formal adjudication.⁶

The experience of international and comparative experience attests that effective systems of ADR must also have an institutional basis, professional competence, and cultural approval. The jurisdictions that have successfully incorporated ADR into their justice systems have put funds on training of mediators, accreditation, public awareness, and judicial incentives on referral. The experience of Pakistan indicates that although there are normative underpinnings of ADR, the supporting factors are not developed.⁷

The article discusses the Alternative Dispute Resolution in Pakistan by exploring its legal basis, the part played by the judicial system, as well as the practical issues that have been hindering its efficiency. It attempts to evaluate whether ADR is an effectively incorporated concept in the justice system of Pakistan or a marginal reform. The article seeks to determine the structural gaps and recommend reforms to help ensure that ADR is a viable and trusted tool of resolving disputes by considering legislation, judicial practice, and the capacity of the institutions. The following sections will provide a review of pertinent scholarly literature, a description of the methodological strategy that will be used in the given work, the analysis of ADR structure and use in Pakistan, and the recommendations regarding the ways of making ADR in Pakistan more effective and credible.

Literature Review

The academic sources on Alternative Dispute Resolution (ADR) in Pakistan have a rising trend in acknowledging ADR as a required solution to systemic inefficiencies in the formal justice system, on the one hand, and, on the other hand, being characterized by an ongoing emphasis on structural and cultural obstacles to its successful implementation. The early law academics place ADR in Pakistan in the context of crisis of judicial delay and backlog. According to Osama Siddique and other scholars, it was not the transformative nature of justice that prompted the introduction of ADR but rather a practical instrument to cope with the pressure on the caseload and this is one of the factors that contributed to its minimal institutionalization and unequal judicial endorsement. This instrumental approach has limited the evolution of ADR as a rights-based and a party-oriented dispute resolution mechanism.

Quite a body of literature is devoted to the legal framework of arbitration in Pakistan that is the most developed type of ADR. H Khan and others note that the Pakistani arbitration law, despite having an official orientation on the international standards, is characterized by excessive judicial interference and formalism in its procedures. The finality and efficiency that arbitration is meant to bring is often compromised by courts that listen to challenges to arbitral proceedings and awards. According to scholars, such judicial overreach is an indication of a larger hesitation to give up the dispute resolution power to non-judicial bodies and restrain arbitration as an alternative to the judiciary.⁸

There has been growing academic interest in mediation and conciliation, especially since procedural reforms promoted court-annexed mediation. IU Khan and others observe that institutional support is poor although statutory measures and court regulations empower mediation. Lack of standard mediation procedures, accredited mediators and specific

⁶ Deason, E. E., Green, M. Z., Shestowsky, D., Van Loo, R., & Waldman, E. (2018). ADR and Access to Justice: Current Perspectives. *Ohio St. J. on Disp. Resol.*, 33, 303.

⁷ Khan, B. K. B., & Javed, J. I. (2023). Critical Analysis on Existing Framework of ADR in Pakistan. *Indus Journal of Law and Social Sciences*, 2(2), 1-9.

⁸ Khan, H., Afzal, U., & Iqbal, S. (2022). Comparative analysis of alternative dispute resolution laws in Pakistan: Its adaptation, procedure and compatibility. *Annals of Human and Social Sciences*, 3(3), 21-26.



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mediation centers has led to the inconsistent practice. The literature highlights the fact that in Pakistan, mediation can tend to be ad hoc based on the initiative of individual judges as opposed to forming part of an institutionalized system.⁹

The use of judicial support of ADR is one of the main themes of the literature. Researchers recognize the fact that higher courts have been instrumental in the legitimization of ADR by making decisions that highlight the significance of the ADR in regard to access to justice. Farrukh Irfan and Justice (R) Nasir Aslam Zahid suggest, however, that judicial approval has not been very substantive, and that it has not been followed up at the court of trial. Lack of incentives to refer and variations in judicial attitudes have limited the systemic effect of ADR, which promotes the use of adversarial litigation.¹⁰

ADR outcomes enforcement is largely considered to be a weakness. Researchers observe that arbitral awards are positively characterized by the existence of the statutory enforcement mechanisms whereas mediated settlement does not always have clear execution channels. According to Nadia Tahir, the uncertainty about the enforceability will keep the parties out of the mediation especially in business disputes. In the literature, it is emphasized that ADR cannot be effective without credible enforcement since it cannot win the trust of disputants and compete with judicial adjudication.¹¹

The ADR experience in Pakistan has a lot of context to be learned using comparative and international literature. Improved ADR systems must be institutionally integrated, professionally, and culturally accommodating as noted by studies by Carrie Menkel-Meadow and Frank Sander. Using these lessons in relation to Pakistan, scholars maintain that the impact of ADR has been restrained by the piecemeal legal reforms without investing in training, accreditation, and popularization of the concept in a country. There is a comparative analysis that ADR infrastructure must be developed in parallel with judicial referral.¹²

In general, all the reviewed literature leads to the same conclusion that ADR in Pakistan is facilitated by a favorable legal system and ad hoc judicial support, yet is limited by the lack of institutionalization, professional opposition, and the lack of enforcement. There is always a debate among scholars that ADR can never purport to increase access to justice unless reforms go beyond formal recognition and integrating it into the system and changing the culture. This literature forms the analytical basis of the methodological approach to analyse ADR in the following section, which investigates ADR in Pakistan in terms of a systematic evaluation of the legal sources, judicial activity, and practical dilemma.

Methodology

The research approach taken in this article is doctrinal, and institutional research to discuss the issue of Alternative Dispute Resolution (ADR) in Pakistan in terms of legal framework, judicial support, and practical issues that challenge its effectiveness. The methodological view has its basis on the fact that the results of ADRs are not only

⁹ Khan, I. U., Sabahiah, N., & Omoola, S. (2024). Legal Status and Future of Mediation in Pakistan: A Critical Exploration of ADR Frameworks. *JL & Soc. Pol'y*, 1.

¹⁰ Khan, S. O. H., & Abbasi, M. S. (2023). Legal framework of alternative dispute resolution (ADR) mechanisms in Pakistan: A comparative study with Turkey, Malaysia, and Bangladesh. *Law and Policy Review*, 2(2), 37-57.

¹¹ Ali, M., & Geng, L. L. (2019). Alternative dispute resolution (Adr) in Pakistan: The role of lawyers in mediation procedure. *International Journal of Research*, 6(04), 421-430.

¹² Menkel-Meadow, C. (2000). Mothers and fathers of invention: The intellectual founders of ADR. *Ohio St. J. Disp. Resol.*, 16, 1.



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subject to the legal authorization but also the judicial attitudes, institutional capability, practices of professionals, and the enforcement measures. In line with this the research combines the study of statutory provisions, judicial practice and institutional performance to determine the actual operation of ADR in Pakistan.

The initial part of the methodology is the doctrinal legal examination of the law and procedure system that regulates ADR. This includes analysis of legislation governing arbitration, mediation and conciliation and procedure guidelines allowing courts to make referrals to ADR. The review measures the extent of legal jurisdiction over ADR, the predictability of procedural policies and how much ADR mechanisms have penetrated into the formal justice system. Special emphasis is given to the distinction of legal treatment amid arbitration and non-binding ADR practices including mediation and conciliation.

The second methodological aspect dwells on judicial support and practice. Courts have a significant role to ensure or limit ADR, by decisions on referral, interpretation of ADR-related clauses, and by enforcing results. This aspect considers the judicial trends in case referrals to ADR, adjudicial approval uniformity, and the extent of judicial intervention in ADR matters. The discussion takes into account the role played by judicial approaches to ADR on its perceived legitimacy and effectiveness.

The third methodology element is the analysis of institutional and professional capacity. Best ADR involves the competent mediators and arbitrators, institutional institutions, and professional acknowledgment. This element determines the access to ADR centers and accreditation systems and training programs, and the legal attitude towards ADR. The analysis of institutional weaknesses and professional opposition is made on the essential limitations to the use of ADR.

As per the strategy followed in this set of articles, to add clarity and rigor, structured and analytical tools are used. To map various ADR mechanisms into legal authority, judicial support and outcomes of enforcement later on, comparative tables can be used, and conceptual diagrams can be used to show how the process of ADR works and where the institutional weaknesses lie. Such tools aid a systematic analysis without simplifying law and institutional interactions which are complex.

A comparative approach is also added to the methodology through making references to ADR practices in other jurisdictions where integration of alternative mechanisms into formal justice systems is successful. Best practices in judicial referral, mediator accreditation and enforcement are identified using comparative insights which could be applied to the situation in Pakistan.

Lastly, the framework of evaluation used in this research establishes effective ADR in substantive terms. The study measures success in terms of the presence of ADR laws or pilot projects, but rather in terms of whether ADR mechanisms produce timely, enforceable, and consensual results of improving access to justice and limiting the use of adversarial litigation. Such an outcome-based methodology is used to make sure that the analysis is focused on the practical contribution of ADR to the justice system in Pakistan. The research findings on the working and problem of ADR in Pakistan are based on the methodological grounds established herein.

Research Findings

The study results show that the Alternative Dispute Resolution in Pakistan is backed by rather extensive legal framework and ad hoc judicial approval, but its practical application and effectiveness are not widespread. Among the most notable conclusions, there is the disproportional evolution of the ADR mechanisms. Arbitration has become



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the most institutionalized ADR especially in business and investment disputes, and mediation and conciliation are not well developed and are not applied uniformly. Such an imbalance is a bias between legal design and institutional preference, where binding mechanisms are viewed in a more favorable way than consensual procedures.¹³

One of these key discoveries is judicial referral practices. Courts have statutory and procedural power to make referrals to ADR, such referrals are quite rare and rely mostly on the discretion of individual judges. A significant number of judges still choose adjudication, which is connected to the lack of their knowledge about ADR or doubts like its effectiveness. Consequently, ADR has been not incorporated into the case management practices in a systematic way and has not been able to offer its potential in alleviating judicial backlog. The aspect of judicial assistance, which can be seen at the appellate stage in the form of policy-oriented decision-making, has failed to translate into the implementation at the trial stage.¹⁴

The limitation of institutional capacity arises. The results show that there is a lack of mediation and arbitration trained and accredited personnel especially in non-urban areas. Current ADR centers are usually run on an ad hoc platform with scarce resources and undefined standards of procedures. Lack of standard accreditation and training systems compromises the quality and credibility of ADR services, and thus the litigants are not encouraged to choose other mechanisms.¹⁵

Table 1: ADR Mechanisms in Pakistan and Operational Challenges

ADR Mechanism	Legal Recognition	Practical Challenge
Arbitration	Strong statutory basis	Excessive judicial intervention
Mediation	Procedurally recognized	Weak institutional support
Conciliation	Legally permissible	Low awareness and uptake
Court-annexed ADR	Authorized by rules	Inconsistent referrals

The other significant finding is associated with enforcement of ADR outcomes. Although the enforcement of arbitral awards has a successful enforcement mechanism, mediation and conciliated settlements are prone to uncertainty in terms of execution. The courts can make such settlements as an agreement but not as an enforceable order to enforce them. Such enforcement deficiency is a big step backward to the trust of non-binding ADR mechanisms and promotes dependence on adjudication.¹⁶

Another parameter of ADR is professional resistance of the legal community. Most lawyers view ADR as a challenge to their conventional practice of litigation, because of diminished fee money and loss of process. This opposition affects client consultation and leads to lack of demand of ADR services. The results indicate that the resistance may be observed without any meaningful inclusion of ADR in the legal education and professional incentives.¹⁷

¹³ Menkel-Meadow, C. (2015). Mediation, arbitration, and alternative dispute resolution (ADR). *International Encyclopedia of the Social and Behavioral Sciences*, Elsevier Ltd.

¹⁴ Nga, P. T. (2022). Alternative Dispute Resolution (ADR): A new trend of economic conflicts settlement. *ADR Strategies: Navigating Conflict Resolution in the Modern Legal World*, 70.

¹⁵ Begum, M., Khan, S. A., & Khan, M. Z. (2022). Alternative dispute resolution in the contemporary world. *Global International Relations Review*, 2022, 11-16.

¹⁶ Faizan, K., Tahir, M., & Jummani, A. (2024). Navigating disputes: An in-depth analysis of alternative dispute resolution within the framework of arbitration law. *Journal of Development and Social Sciences*, 5(1), 429-436.

¹⁷ Ibid.



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There is limited knowledge of ADR in the public. There are numerous litigants who are not aware of ADR or do not have trust in their impartiality and unbiasedness. Without a continued awareness initiative and institutional outreach, ADR is marginal to the normal dispute resolution practice. In general, the results of the research indicate that there is a large disconnect between the law and practice of ADR in Pakistan. The institutionalization is weak, the judicial support patchy, the enforcement ambiguous, and the profession has opposed ADR to put in its place, limiting its potential to make good on its claim of efficient and accessible justice. The findings form the basis of the discussion that follows the paper and analyses the interaction of legal framework and judicial behavior and institutional capacity in the development of ADR outcomes in Pakistan.

Discussion

As the results of this paper show, Alternative Dispute Resolution in Pakistan is in a state of transition and incompleteness in the justice system. Although the legal framework is officially affirming ADR and judicial rhetoric is usually affirming of its worth, neither of these attributes has yet been transformed into a coherent and institutionalized culture of dispute resolution. The discussion highlights that ADR in Pakistan still is mostly peripheral as it is a supplement system to litigation instead of being a part and parcel of case management and access-to-justice strategies.¹⁸

One of the key problems that arise out of the discussion is the adversarial legal culture hegemony. Pakistan Legal education, professional training, and judicial practice are highly entrenched in approaches based on litigation. This cultural disposition influences the judges, lawyers, and litigants in terms of attitude towards ADRs and the uncertainty they have towards non-adjudicatory processes. In the absence of intentional actions to change professional norms and incentives, ADR will not succeed in acquiring the legitimacy and habitual acceptance by the legal community.

Judicial support though important, has not been adequate as it is. In limited decisions, superior courts have expressed firm policy level approval of ADR, which they believe will help decrease backlog and increase access to justice. The discussion however points out that the system has not been correspondingly implemented by judicial activism. Trial courts are usually not guided, motivated and institutionally encouraged to refer cases to ADR on a regular basis. Such skewed involvement of the judiciary restricts the scope of ADR and creates a sense that ADR is an optional process and not part of the justice process.¹⁹

The weaknesses within institutions also limit the effectiveness of ADRs. Lack of standardized procedures, accreditation systems and monitoring mechanisms is a weakness in ADR processes. In a case where there are no strong quality assurance and accountability systems, parties might lose confidence in the effectiveness and impartiality of the mediators and arbitrators. Such an absence of institutionalization contrasts with the experience of ADR in jurisdictions where ADR has gained a reputation as a professional and reliable part of a dispute resolution mechanism.

Credibility of ADR is also a major problem with its enforcement. To resolve disputes effectively, however, they must be consensual, as well as have good enforcement mechanisms. The paper highlights that unpredictability about the enforceability of mediated settlements throws parties off ADR, especially in commercial disputes where a

¹⁸ Mooij, H. (Ed.). (2024). *International Tax Disputes: Arbitration, Mediation, and Dispute Management*. Edward Elgar Publishing.

¹⁹ Baig, K. (2024). Comparative Analysis of Scope and Implications of Alternative Dispute Resolution in Pakistan and the UK. *Journal of Law & Social Studies (JLSS)*, 6(3), 285-294.



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strong level of obedience is paramount. This enforcement loophole undermines the comparative advantage of ADR over litigation and strengthens the need to rely on court decisions.

Comparative views emphasize the need to develop ADR integration in a coordinated way, including legal, institutional and cultural levels. Some of the jurisdictions that have successfully mainstreamed ADR have supported training of mediators, compulsory referral systems, performance appraisal and public education. The experience of Pakistan implies that gradual legal reforms, which lack institutional investments, cannot be used to change the practice of dispute resolution.²⁰

Overall, it is possible to conclude that ADR is not at the stage of implementation in Pakistan as an alternative or complementary method to litigation. The disparity between what is legally acknowledged and what is actually used represents more systematic and cultural issues that cannot be solved by legislation only. This gap cannot be closed without a long-term institutional investment and cultural transformation.

Recommendations

To reinforce ADR in Pakistan, a coherent and integrated approach involving legal, institutional and cultural obstacles needs to take place. The systematic incorporation of ADR into case management of courts is one of the most valuable recommendations. There should be effective referral rules, performance standards and incentives to promote uniform use of ADR especially in civil and commercial cases that can be resolved through a consensual approach.

The ADR services have to be institutionalized. Creating separate ADR institutions that have common procedures, accreditation programs, and quality management tools would promote credibility and fidelity. Mediators and arbitrators should be provided with professional training and certification in order to be competent and ethical.

Legislations must be made to explain the enforcement of ADR results. Mediated settlements must receive a proper legal status and enforceability, which will minimize the necessity of further litigation. Shortening the enforcement processes would increase trust in ADR and facilitate their increases.

The legal education and professional incentives should also be reformed. Law training programs and continuing legal education programs should include ADR training. To change the culture in the profession, incentives encouraging lawyers to consult clients on the use of ADR instead of discouraging it would be beneficial.

There should be public awareness and outreach programs that will enable acceptance and understanding of ADR. ADR can be demystified by information campaigns, friendly instructions, and involvement of the community and can attract more people.

Lastly, reform in ADR must be in line with other reforms in justice sector. The improvement of judicial effectiveness, lessening of the backlog, and expansion of access to justice are mutually reinforcing objectives. Incorporating ADR into a comprehensive justice reform agenda will make the most out of it and its sustainability.

Conclusion

The article has critically discussed the Alternative Dispute Resolution in Pakistan by looking at its legal support, judicial support, and work-around issues. As the paper shows, Pakistan has already developed an institutional legal framework of ADR and courts have shown normative approval towards it. Nonetheless, these changes have not

²⁰ Khan, H., Afzal, U., & Iqbal, S. (2022). Comparative analysis of alternative dispute resolution laws in Pakistan: Its adaptation, procedure and compatibility. *Annals of Human and Social Sciences*, 3(3), 21-26.



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been yet translated to broad and viable application of ADR mechanisms.

The main finding of this discussion is that, in Pakistan, ADR is limited due to poor institutionalization, ad hoc judicial involvement, lack of enforcement and deeply rooted adversarial legal culture. Legal sanctioning will not be enough to change the way disputes are resolved, a long term institutional investment and culture will be necessary.

In the article, it is also pointed out that effective ADR is not a panacea but an important element of a balanced justice system. Whether this is successfully incorporated, ADR can complement access to justice, decrease court backlog, and offer timely and consensual decisions. To achieve this potential in Pakistan, it is necessary to go beyond symbolic support of the integration of the systems.

Summing up, enhancing ADR in Pakistan would require focusing on moving towards disjointed reform towards coordinated reform. Through institutionalization of ADR services, elucidation of enforcement process and the establishment of a culture of consensual dispute resolution, Pakistan can turn ADR, which is a marginal reform, into a pillar of justice system.

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