**Pakistan’s Mediation Movement**

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A father plays with his two children in one of the two freshly mowed lawns between the grey structures of the main building and the Chief Justice Complex of the Old Islamabad High Court. Sitting at a nearby bench is the father’s lawyer overseeing the meeting scheduled today granted by the family judge. The children’s mother, waiting in the adjacent lawn, is intimated by her lawyer that time is up. The two proceed to collect the children. The father hands them over after tight hugs and moist eyes. The mother looks visibly distraught as she walks away while the children wave goodbyes to their father until they meet him again next month. The case for the custody of children continues, with only guestimates in terms of when it shall end. The family judge, after all, faces a cause list of more than eighty cases a day.
Pakistan faces backlog of 2.3 million cases with only 4300 judges to adjudicate them. Roughly 60,000 cases are pending before the Supreme Court of Pakistan. According to the Law and Justice Commission of Pakistan, it takes around 15 years for a civil case to conclude. To make matters worse, Pakistan’s judiciary currently operates with 20-25% vacant positions. The highly litigious nature of our society, lack of alternative mechanisms to resolve disputes and dearth of an effective case management system to filter frivolous suits and FIRs are primarily to be blamed for the enormous case backlog, along with an adversarial, centralised and overly regulated judicial system inherited. Countries faced with similar challenges have tried various methods to rid themselves of their case backlogs; however, only one mechanism seems to stand out in terms of its efficiency and effectiveness: Alternative Dispute Resolution (ADR).
Coined at the Global Pound Conference series held in the late 1970s in the US, the term ADR refers to legally and constitutionally recognised mechanisms and methods of settling disputes outside courts. Negotiation, mediation, settlement conferences and arbitrations are all forms of ADR. Mediation takes the center stage in the ADR framework as one of the most successful, globally-tested dispute resolution mechanism being practiced around the world. Mediation is a process where a negotiated settlement between disputing parties is facilitated by a trained facilitator known as the Mediator. Since its formal incorporation into the English Justice system following the Woolfe Reforms (1998), cases worth £190 billion have been successfully resolved through mediation in the UK. Turkiye has resolved more than 3 million cases since the enactment of the Turkish Mediation Law in 2012 and Chinese courts referred 5.1 million cases in 2020 alone to court-annexed mediation centres. 56 nations are now signatory to the Singapore Convention on Mediation that allows cross-border settlements to be effectively enforced in member states. What is most encouraging is that Pakistan has formally welcomed mediation and, so far, with open arms.
The national and provincial legislatures have formally introduced mediation into Pakistan’s legal system. The ADR Act 2017, Sindh’s 2018 Amendment to the Code of Civil Procedure 1908, the Punjab ADR Act 2019, the KPK ADR Act 2020, the Balochistan ADR Act 2022 and the Gilgit Baltistan Mediation Bill 2023 (approved by the GB Cabinet and awaiting to be passed by the GBA) lay down a robust mechanism of mediation across the country that allow for all civil, family, commercial and similar disputes, along with compoundable criminal offences with punishments up to three years to be mediated by accredited and notified mediators.
The Supreme Court ADR Task Force headed by Justice Ijaz ul Ahsan is making strides in institutionalising a robust mediation ecosystem across Pakistan. More than 250 internationally-accredited mediators and 1000 mediation advocates have been trained and notified across Sindh, Islamabad and Gilgit Baltistan; various ADR Centres offering domestic and international mediation services have been notified by the Federal Government and respective provincial High Courts. Musaliha International Centre for Arbitration and Dispute Resolution, a notified ADR centre, has received over 60 court-referred cases for mediation in the last three months alone and maintains a resounding success rate of 83% and an average resolution time of 4-5 days. Most recently, the Islamabad High Court launched a Court-Annexed Mediation Centre making it easy for the district judiciary to refer matters to a court-managed mediation facility. The presence of Internationally Accredited Mediators in benches across higher judiciary such as Justice Jawad Sarwana, Justice Sardar Ejaz Ishaq Khan and Justice Mansoor Ali Shah, has added the much-needed momentum to Pakistan’s Mediation Movement.
Pilot interventions led by the provincial governments, High Courts and civil society organisations such as the Legal Aid Society (LAS) have demonstrated incredible results. What is critically needed is for the government to create a mass awareness campaign, informing the general public of existing mediation ecosystems. LAS, for instance, has held community awareness sessions with more than 30,000 citizens across 8 districts of Sindh, leading to more than 2000 cases being diverted towards formal ADR channels. In addition, a devolution of mediation systems to district and tehsil levels is cardinal to ensure ease-of-access. Police Dispute Resolution Centres, District Administration offices and Local Governments are only some of the many formal structures that need to be capacitated and linked to existing mediation ecosystems in order to provide expeditious and expedient dispute resolution services to individuals, families and entities alike.
More importantly, given that investors are always more likely to invest in jurisdictions with robust ADR ecosystems Pakistan must prioritise building of an effective ‘Investor-State Mediation’ ecosystem whereby time & cost-effective mediation platforms are exhausted in international investment disputes before the investors are taken to arbitration or the courts. This perhaps needs to be adopted by the Special Investment Facilitation Council (SIFC) as a foremost agenda for improving Pakistan’s investment climate.