

From Courts to Arbitration: Building a People-Centric Justice System in Pakistan

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Introduction

The justice system of the world has evolved from the emperor being the pinnacle of justice to the legal system distinguishing itself as a separate pillar of the state. It shifted from a feudal or monarchist to a meritocratic system. The core of this change stemmed from a demand for a more people-centric system that would be free from external influences and promise impartial outcomes. This meritocratic approach to dispute resolution was a self-call from within society amid the profound impacts of the justice system on our lives.

Now, the approach of modern society is quickly transitioning to demanding an 'advanced citizen-centric justice system', regulated by the disputants. The Organization for Economic Co-operation and Development's ('OECD') Framework for People-Centred Justice defines it as placing individuals and their legal needs at the centre of the justice system.¹ The litigation-oriented systems are mostly rigid, bureaucratic, and centred around institutions that are often designed to protect and promote colonial legacies, as is the case with Pakistan's legal framework. In contrast, a citizen-centric approach shifts some authority away from these institutions, prioritising accessibility, inclusivity, and empowering disputants.²

Alternative Dispute Resolution ('ADR') exactly fits such a definition and is a prime example of a citizen-centric justice system because it prioritises the autonomy, needs and interests of the individuals involved and limits the influence of the judiciary.

¹ OECD, *OECD Framework and Good Practice Principles for People-Centred Justice* (OECD Publishing 2021) <<https://doi.org/10.1787/cdc3bde7-en>> accessed 6 September 2025.

² Geoffrey Mulherin, 'Evolution to People-Centred Justice' (2023) 6 JMLJF-NSW.

The Origins of Litigation

The system of justice through litigation can be traced back to the Code of Hammurabi in 1754 BCE in ancient Mesopotamia, when King Hammurabi compiled a set of laws and principles that governed justice in Mesopotamian society.³ Through its development, litigation became the only officially recognised method of dispute resolution by the state and its institutions. This was based on the belief that justice could be dispensed by the existing power structure. For example, the King of England established the King's Courts, which eventually became one of the most advanced justice systems in the world. Over time, the justice system became deeply ingrained in a centralised structure, ensuring that legal matters were resolved in an organised and formalistic manner.

The modern era of litigation began in the 19th century, driven by the Industrial Revolution, which introduced new forms of commerce and trade. As business and industry expanded, the number of legal disputes grew, prompting the court system to adapt to these changes.⁴ Improved economic performance led to more complex transactions, resulting in an increased number of cases brought to courts, which in turn led to administrative congestion.⁵ Congestion occurs when the influx of new cases exceeds the capacity to resolve them, even under optimal efficiency.⁶ Therefore, the effectiveness of a judicial system calls for courts' ability to resolve cases in a timely manner.

A Shift Towards ADR

With the rise of democracy, there was felt a need for an inclusive and time-effective process of dispute resolution, which the traditional court system had failed to provide.⁷ ADR mirrors one of the key democratic principles, that is, 'decentralisation', which in legal terms suggests that the

³ Beny Saputra, Olivér Bene, and David Aprizon Putra, 'Analyzing the Code of Hammurabi: Exploring Ancient Legal Principles and Their Relevance in Modern Law' (2024) 4(1) NEGREI-AJoLG 1, 2–5.

⁴ 'The History of Litigation' (KPBL, 08 May 2023) <<https://kpbl.pl/en/the-history-of-litigation>> accessed 6 September 2025.

⁵ Gerhard Clemenz and Klaus Gugler, 'Macroeconomic development and civil litigation' (2000) 9(3) EJLE 215.

⁶ Marta Espasa, Moré Esteller, and Alejandro, 'Analyzing Judicial Courts Performance: Inefficiency vs Congestion' (2015) 13(69) REA 61.

⁷ Jerome T Barrett and Joseph P Barrett, *A History of Alternative Dispute Resolution: The Story of a Political, Social, and Cultural Movement* (Jossey-Bass 2004).

judicial authority and decision-making powers are shifted to local or regional levels rather than concentrated in a central authority. This grants people the authority to resolve disputes in ways that are in addition to those provided by the state. One reflection of this legal decentralisation is the tribal societies in Asia that continue to use their customs for dispute resolution in the forms of *jirgas* and *panchayats*.⁸

Replicating the rural dispute resolution models, ADR provides cost-effective and timely resolution of complex commercial activities in the urban sector.⁹ In the mid-19th and early 20th centuries, with the rise of capitalism, commercial activities became increasingly dominant and thus had a greater influence on the functioning of the judicial system. The state benefited from these changes as they helped foster a more business-friendly environment and promoted investments. One of the most instrumental features of ADR was that it decreased the burden on the congested, inefficient, and redundant judicial system. Among other merits, ADR frameworks came with greater informality and flexibility in proceedings, enhanced confidentiality, greater control over the process, and a higher likelihood of preserving amicable ties between the disputing parties.¹⁰

Although ADR mechanisms have mostly existed informally in one cultural form or the other, they were incorporated in the justice systems only through legislative enactments.¹¹ For instance, arbitration began to flourish in the United States with the enactment of the United States Arbitration Act in 1925. Similarly, in the Indian sub-continent, the Arbitration Act of 1940 provided a procedural mechanism for ADR. However, it took some time for ADR mechanisms to get their due recognition in Pakistan. It is only recently that arbitration is gaining ground in our system, and this slow progression can be attributed to the pace at which the commercial landscape is expanding in Pakistan.

⁸ Aiswarya Murali and Vivek Krishnani, 'Minority Awards in India: A Low-Hanging Fruit for Judicial Interference?' (2020) 37(6) JIA 731.

⁹ Bill Maurer, 'The Disunity of Finance: Alternative Practices to Western Finance' in Karin Knorr Cetina and Alex Preda (eds), *The Oxford Handbook of the Sociology of Finance* (OUP 2012) 413.

¹⁰ Brian Lucas, 'Alternative Dispute Resolution for Businesses in Developing Countries' (GSDRC, 13 October 2014) <<https://assets.publishing.service.gov.uk/media/57a089a440f0b652dd000328/hdq1148.pdf>> accessed 30 September 2025.

¹¹ Frank D Emerson, 'History of Arbitration Practice and Law' (1970) 19 CSLR 155, 158–59.

The Rise of ADR Worldwide

A global shift towards ADR is underway as most developed states are embracing these alternative channels as the norm in their justice systems. The mechanisms of ADR are significantly strengthened by prompt demand and the presence of effective implementation frameworks in the developed world. Furthermore, these societies are economically and politically well-established, so their ADR frameworks face few challenges. For instance, China has witnessed a significant growth in mediation since the post-Mao economic reforms of 1978. The first official survey conducted after these reforms reported that in 2003 alone, People's Mediation Committees handled approximately 5.7 million disputes in debt (21.9%), family planning (12.6%), and neighbour conflicts (12.2%).¹² Over the years, this state-sponsored mediation network has expanded considerably, reaching nearly 14.94 million disputes mediated in 2022.¹³ Notably, these figures reflect only one kind of ADR mediation, excluding private or institutional disputes.

As justice systems around the world are shifting from litigation to ADR, it is crucial to analyse the latter's impact, benefits, drawbacks, and sociological aspects. Justice systems reflect the societies that they serve and are tailored accordingly to meet the public demand. It is important to assess whether ADR will effectively cater to the needs of developing societies such as Pakistan.

Dilemmas of ADR: Pakistan and the Developing World

In Pakistan, the shift towards ADR is driven by legal reforms, judicial recognition, government initiatives, and, most crucially, the deteriorating state of the litigation system. In its recent judgment in the *Taisei Corporation* case, the Supreme Court of Pakistan held that if there are two divergent interpretations of a matter already settled through ADR, courts should disregard the alternative interpretation and always uphold the interpretation agreed upon in the ADR process.¹⁴ The judgment constitutes a categorical endorsement of empowered and autonomous arbitral fora

¹² W Tang, 'Rule of Law and Dispute Resolution in China: Evidence from Survey Data' (2009) 9 China Review 73 <<https://www.researchgate.net/publication/292478148>> accessed 30 September 2025.

¹³ 'China Has Built Mediation Organizations Network Covering Urban, Rural Areas' (*Ministry of Justice of the People's Republic of China*, 08 October 2023) <http://en.moj.gov.cn/2023-10/08/c_926995.htm> accessed 30 September 2025.

¹⁴ *Taisei Corporation v. A.M. Constructions* 2024 SCMR 640.

in Pakistan, insulated from undue judicial interference. It seeks to correct the biases of the deeply entrenched litigation cultures, where courts often feel reluctant to cede jurisdiction in favour of the smooth and autonomous functioning of arbitral proceedings.

However, various other challenges remain that continue to thwart the progression of ADR in strained economies like Pakistan. Unlike litigation, ADR does not provide legal aid mechanisms to parties unable to bear the financial costs of the proceedings, which obstructs their access to justice through this channel of dispute resolution. As a result, ADR runs the risk of becoming a privilege accessible only to those who can afford it. This factor diminishes the possibilities for ADR to emerge as a universally accessible mode of dispute resolution. Furthermore, the lack of public recognition regarding the availability of various ADR mechanisms is also a significant barrier to their widespread use. Without general awareness about the program, people may be hesitant to explore arbitral fora due to misconceptions, fears of inefficiency, or simply a lack of understanding about how these processes work.¹⁵

Conclusion

The evolution from litigation to ADR is neither abrupt nor coincidental; it reflects society's broader pursuit of justice systems that are more accessible, inclusive, and responsive to citizens' needs. As legal systems move away from rigid, state-centric frameworks, ADR offers a flexible, efficient, and inclusive approach that aligns with the principles of a citizen-centric justice system. Developed nations have already embraced this shift, while developing countries are gradually recognising its necessity. Yet, ADR faces unique challenges in Pakistan and the wider developing world. A deeply entrenched litigation culture, lack of awareness, absence of legal aid in ADR mechanisms, and financial barriers risk confining ADR to the privileged few. Without effective reforms and broader public sensitisation, ADR may not fulfil its promise of universal access to justice.

¹⁵ Muhammad Azeem Farooqi and Aatir Rizvi, 'Alternative Dispute Resolution (ADR) in Pakistan: Bridging Gaps to Ensure Justice' (2024) 3(4) SSS 8.

The challenge, therefore, lies not merely in legal recognition but in building cultural legitimacy, institutional capacity, and financial inclusivity. If accompanied with genuine reform and societal endorsement, ADR can emerge as a powerful complement to litigation—transforming justice from a rigid, state-dominated process into a citizen-centric system that reflects and serves the diverse realities of modern societies.