

**ALTERNATIVE DISPUTE RESOLUTION
(ADR) PROJECT**

BACKGROUND PAPER

**LEGISLATION FRAMEWORK
OF ADR IN SINDH, PAKISTAN**



Background Paper: Legislation Framework of ADR in Sindh, Pakistan¹

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Background Paper: Legislation Framework of ADR in Sindh, Pakistan

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1 INTRODUCTION

Despite the ‘formal’ standards in the Constitution, Pakistan is currently placed at 106 out of 113 of the World Justice Project’s Rule of Law Index², with particularly low rankings in key areas that ensure equity i.e. Fundamental Rights, Regulatory Enforcement, Civil Justice and Criminal Justice. Pakistan’s ranking on Regulatory Enforcement on the Index is 109 out of 113 countries³. Its criminal justice ranking was 81 and civil justice ranking was 106 out of 113 countries.⁴ Within the access to justice paradigm, there are some clear reasons that are indicative of contributing to this embarrassingly low placement.

Some of the primary issues include:

- **Difficulties in accessing justice⁵:** Access to justice is understood to mean not just the ability to approach the legal system i.e. the procedural aspects of access to justice, but a more inclusive assessment⁶, including not just removing legal and financial barriers, but also social barriers such as language, lack of knowledge of legal rights and intimidation by the law and legal institutions. The term is recognized as having three aspects⁷:
 - I. Knowledge, as people must have information and knowledge about their rights and how to access them, and this extends to service providers as they are required to have appropriate knowledge and expertise for the provision of effective services;
 - II. The environment, as the state’s systems and infrastructure for service provision must be effective and easily accessible; and
 - III. The quality of services.
- **High numbers of pending cases⁸:** As of March 2016, the total number of pending cases before district judiciary in Sindh was 127,986.⁹

² World Justice Project (WJP) Rule of Law Index 2016

³ Ibid

⁴ Ibid

⁵ Khan, S., Saqib, H., Noor, T., & Bakhtiar, U. (2012). Voices of the unheard: Legal empowerment of the poor in Pakistan. UNDP. Pg. 72. Available at <http://bit.ly/2khF9H2>

⁶ “Justice Watchdogs: Promoting Women’s Access to Justice Through Community-Based Paralegal Programs”, Carley Robb-Jackson, Legal Working Paper Series on Legal Empowerment for Sustainable Development, Centre for International Sustainable Development Law, 2012,

⁷ The Open Society Initiative For West Africa (2007)

⁸ On the basis of the official statistics available up to Dec 31, 2014, there are 1,754,420 cases pending in the Supreme Court, Federal Shariat Court, high courts and the district courts in Pakistan. (Faisal Siddiqi, *Is Speedy Justice Possible?*, Dawn.com, May 03, 2016, Available at <http://www.dawn.com/news/1255917>)

⁹ Data retrieved from Consolidated Statement Showing Institutions, Disposal & Balance of All (Criminal, Civil, Family) Cases before the District Judiciary in Sindh, For the Month of March 2016. Available at http://www.sindhhighcourt.gov.pk/reports/District_March_16.pdf

- Insufficient number of judges: As of January 2017, there are 69 vacant courts at district level in Sindh alone.¹⁰
- High adjournment rate of cases: In a review of causes of delays in civil justice in lower courts of Pakistan, many researchers have agreed that unnecessary adjournments are one of the main causes of delays in the disposition of civil cases.¹¹

Alternative Dispute Resolution (ADR) has been recognized by many nations as a viable option to reduce the burden on courts that are unable to manage the large numbers of cases filling their dockets. Different mechanisms and methods of ADR have proven successful in other states in providing support to the courts and thus resulting in greater access to justice for the people.¹²

The primary objective of Legal Aid Society's project on ADR is to focus on encouraging the use of court annexed ADR and create spacing and support within the communities in the identified districts for resolving disputes through formal ADR mechanisms or trained ADR practitioners. The secondary objective is to reduce the burden of the courts to allow it to function more effectively. A focus is placed particularly on civil disputes, in which the problem of delays is severe. In Sindh High Court, a commercial dispute tends to take 10 years to complete and the period in property litigation is almost 7 years.¹³

The project is being implemented through a multi-pronged approach focusing on building consensus and ownership within the key stakeholders in the justice sector, as well as the public, thereby increasing demand. On the support side, it seeks to ensure effective technical and sensitization training of mediators nominated by the High Court of Sindh¹⁴ in Salis Committees and LAS lawyers, who will be able to provide pro bono mediation in the communities if needed. It will follow this training and cases with strict protocols for monitoring and evaluation framework to ensure quality and client satisfaction. It will also work towards completing the policy and legal framework for the effective and sustained functioning of the Salis Committees.

This paper was researched and written for the purposes of introducing the concept of ADR, its legislative structures and procedures. This paper identifies the different ADR mechanisms currently existing in the Pakistan laws, particularly laws applicable in Sindh into one paper. Moreover, it draws out the entire framework of ADR laws and processes to provide greater clarity on how to approach the ADR system, the structures of its functionality and to recognize any gaps

¹⁰ Number retrieved from District & Court Wise Postings List of Judicial Officers in Sindh, available at http://www.sindhhighcourt.gov.pk/district_courts_sindh/dw.pdf

¹¹ Shah, Raza Ullah, Shadi Ullah Khan, and Sumera Farid. "Causes for Delay in Civil Justice in Lower Courts of Pakistan: A Review." *Pakistan Journal of Criminology* 6.1 (2014): 47.

¹² Jillani, Tassaduq Hussain. "Delayed Justice and the Role of ADR." *Pakistan Law Journal* (2012), available at <http://supremecourt.gov.pk/ijc/Articles/7/1.pdf>

¹³ Armytage, L. "PAKISTAN JUDICIAL REFORM PROJECT." *AUSTRALIAN LAW JOURNAL* 75.7 (2001): 452-456. Available at <http://nasje.org/nasje-news-archive/2001%20NASJE%20News%20Summer%202001.pdf>

¹⁴ As per the notification of High Court of Sindh, GIZ/Misc. – 2004(8), 270 Salis Committee members were nominated for the Small Claims and Minor Offences Courts in Sindh.

and lacunas, particularly concerning the process. This will allow for a more in-depth policy and legislative analysis, as well as practical guidelines for anyone who wishes to approach and access the ADR process in Pakistan, with a focus in Sindh.

2 INTRODUCTION TO ADR

2.1 What are ADR and ADR Processes?

According to Black's law Dictionary,

"ADR (Alternative Dispute Resolution) is procedure for settling dispute by means other than litigation, such as Arbitration or mediation".¹⁵

ADR is a mechanism that operates side by side with litigation and the official court system and is often used as an alternative to full-scale court processes. ADR involves everything from facilitated settlement negotiations in which disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or mini-trials that look and feel very much like a courtroom process. Processes designed to manage community tension or facilitate community development issues can also be included within the rubric of community based ADR. Some of them most common ADR systems include negotiation, conciliation, mediation or arbitration systems.¹⁶ These are briefly described below.

2.1.1 Arbitration

In arbitration, a neutral person called an "arbitrator" is responsible for running the process and making the decisions necessary to resolve the dispute. Arbitration is much like a trial, in that the parties can call witnesses, present evidence, and argue the merits of their case to a neutral decision maker. However, unlike a judge, the arbitrator is typically a private person chosen by the parties.¹⁷ This process is less formal and the rules of evidence are often relaxed. Typically, an arbitration case is heard much faster than a court case would be heard and is less expensive than a formal litigation.

While arbitrations are technically voluntary, many people agree to participate in arbitrations before a dispute even arises. For example, many formal contracts require that any dispute arising out of the contract be arbitrated.

¹⁵ Bryan, A. Garner. "Black's Law Dictionary." St. Paul, MN: West Publishing Company 9 (2009): 1428.

¹⁶ Brown, Scott, Christine Cervenak, and David Fairman. Alternative dispute resolution practitioners guide. Centre for Democracy and Government, 1996.

¹⁷ Mnookin, Robert. "Alternative dispute resolution." (1998).

2.1.2 Mediation

The mediation process involves the appointment of a neutral, impartial third person called a 'mediator'. The mediator works with both the parties to try to reach a mutually acceptable resolution of the dispute. Mediation is typically a voluntary process where the parties themselves may choose the person who will act as the outside facilitator. It is private and confidential, and not open to the public.¹⁸

2.1.3 Conciliation

Conciliation is a form of ADR that involves a third party and is very similar to the mediation. In opposition to the mediation method, conciliation is based on right and rightfulness and the history of the dispute is taken into consideration. A conciliator clarifies issues and liaises between the parties. Conciliation efforts are more focus on relationships among disputant and less on achieving a specific agreement.¹⁹

2.1.4 Negotiation

Negotiation aims for the parties to settle the dispute between the same by direct bargaining and deliberating with each other with the attendance of their attorneys if needed, without intervention of any third party.²⁰

Apart from these basic ADR processes, more particular ADR processes available are early neutral evaluation, mini-trial, summary jury trial, and the judicial settlement conference.²¹

2.2 The Benefits and Risks of the ADR System

Almost all types of ADR share common features and have similar benefits and risks.

2.2.1 Benefits

Some of the strengths of the ADR system are the following.

- **Simpler and Flexible Procedure:** The ADR processes are much simpler than the formal legal proceedings. The proceedings are usually conducted in less formal and simple

¹⁸ Ibid

¹⁹ Mayer, Bernard. The dynamics of conflict resolution: A practitioner's guide. John Wiley & Sons, 2010.

²⁰ Stewart, Susan. Conflict Resolution: a foundation guide. Vol. 1. Waterside Press, 1998.

²¹ Sgubini, Alessandra, Mara Prieditis, and Andrea Marighetto. "Arbitration, Mediation and Conciliation: differences and similarities from an International and Italian business perspective." (2004), Available at <http://www.mediate.com/articles/sgubinia2.cfm>

settings, therefore people are less likely to be intimidated and overwhelmed by the process. For example, in countries that were colonized, customary laws and practices were subordinated to common law systems. Therefore, the majority of the population in such countries may see the formal justice system as overwhelming and incomprehensive.²²

- **Confidential:** The ADR proceedings are confidential and the right of privacy of both parties is maintained. Any statement, remark or opinion used in the ADR proceedings cannot be used in future legal trials.
- **Focus on Consensus, Reconciliation and Harmony:** The form of dispute resolution aims to reconcile the disputed parties along with resolution of dispute. The idea of these systems is to mitigate the issues of both the parties through consensus and settlement.
- **Swift Solution:** The process of ADR is usually much faster than the formal system, which is often characterized by delays and drawn-out procedures. In simple cases, resolution may be achieved on the spot, often within one to three days, and occasionally up to a week.²³
- **Cost Effective:** In cases which do not involve serious offences, informal justice systems can provide a very cost effective means by which people can voluntarily choose to settle their disputes, thereby reducing court congestion.
- **Accessibility:** Most of the ADR processes are easy to access and approachable to the common person. Since these systems require less resources and formal settings, they can be setup anywhere without any hindrance.

2.2.2 Risks

However, one must not ignore the risks also associated with to ensure that those approaching any form of dispute resolutions. Some of the risks of ADR include:

- **Power imbalances between Parties:** Power imbalances between parties may make face-to-face mediation unfair, placing one party at a disadvantage. ADR systems are not immune from the same political influence or elite domination evident in the courts of some countries. This imbalance could be due to age, relationship, social status, resources etc.²⁴ An ADR practitioner must be aware of such imbalances to ensure effective and equal dispute resolution.

²² International Council on Human Rights Policy (2004), Enhancing Access to Human Rights.

²³ UNDP Indonesia (2006), Justice for All? An Assessment of Access to Justice in Five Indonesian Provinces

²⁴ Justice, Doing. "How informal justice systems can contribute." Oslo, United Nations (2006).

- **Unsuitable for Certain Disputes:** ADR systems do not work well in some cases, such as dealing with violence, offences related to violence and other serious disputes between inter-communities.²⁵
- **Reluctant Opponent and Lack of Good Faith:** Mediation requires both parties to be willing to participate in the process, so if the other side is not willing to mediate, the case might need to go to court instead. The processes usually require good faith by the parties. If either does not participate in good faith, it may jeopardize the process and its outcome.
- **No precedent:** Agreements reached in mediation do not act as precedents in future cases. They are usually private and confidential. If there is a desire to establish a legal point or precedent, it will be necessary to go to court.
- **No ruling on legal rights and entitlements:** There is not any ruling or judgment on legal rights, including discrimination and human rights, in ADR processes. The dispute about these issues or any others will be resolved, but it will not result in a decision or declaration as to whether or not the law has been broken.
- **Can take a long time:** Some processes of ADR, such as the Ombudsmen investigations can be very slow – even up to a year or more for an investigation.
- **Lower compensation amounts:** There is no set standard of compensation, as may emerge from litigation cases and precedents.
- **Quality control:** There are no consistent quality standards or regulation for ADR providers, so it can be hard to know how to choose a good service provider for ADR.

2.3 ADR in the Context of Pakistan

There are two kinds of ADR systems practiced in Pakistan; Traditional/Informal and Formal ADR. The traditional or informal ADR refers to the centuries old tribal system of ADR including Panchayats²⁶ and Jirgas²⁷ by which male leaders in the community sit together to resolve disputes. The traditional ADR systems are rife with controversy with illegal decision-making, discriminatory set ups, unsupervised decisions often with adverse effects of vulnerable groups, particularly women and children.²⁸ On the contrary, the formal state-annexed ADR systems are legally established and attached to the State and public bodies and included Arbitration Councils, Union Councils and Courts.

²⁵ Ibid

²⁶ A local term used to describe Jirga in the Punjab.

²⁷ A local term used to define group of people/elders who sit together for resolving a dispute. It is normally used in Balochistan, NWFP, FATA, PATA.

²⁸ Brohi, Nazish. "Women, Violence and Jirgas."

2.3.1 Traditional & Informal ADR

The Jirga and Panchayat connote collective resolution of dispute through mediation, conciliation, arbitration, settlement, and compensation or punitive measures ranging from fine payment to banishment and death. These systems are composed of tribal chiefs as well as elite men of community who are deputed as judges. Members of these councils neither are elected nor have any legal training and due to their superior position in the community they often exercise political and economic control.²⁹

According to the constitution of Pakistan, Jirga and Panchayat are not the part of the formal structure of justice system³⁰, except for Federally Administrated Tribal Areas (FATA) and Provincially Administrated Tribal Areas (PATA).³¹ Since there is no substantive or procedural law followed in these ADR systems, except that of arbitrarily selected culture, religion, and precedent, these systems often act as supra-legal and violate fundamental rights, challenge national laws directly and promote patriarchal & misogynist practices. Vulnerable groups such as women, juvenile, minorities and poor & low-caste groups have no representation and very limited access to such systems.³²

While these traditional ADR systems are criticized by the vast majority due to its violation of human rights and rights of vulnerable groups, these systems are deeply rooted in the culture and are approached often due to their accessibility and less-formal structure. When effective

²⁹ Brohi, Nazish. National Commission on the Status of Women (NCSW), 2016. Women, Violence and Jirgas Islamabad, Pakistan.

³⁰ Chapter VII, Constitution of the Islamic Republic of Pakistan 1973, at http://www.na.gov.pk/uploads/documents/1333523681_951.pdf

³¹ Ibid, Article 247(7)

³² Shinwari, Naveed Ahmad. "Understanding the informal justice system." Community Appraisal & Motivation Program, 2005.

redressal in state judicial apparatus is inaccessible or beyond approach then aggrieved party has no option but to seek refuge in informal justice system. It is therefore imperative for the state, to reform the official judicial system to make it more effective, accessible and integrate informal justice systems.³³ State annexed ADR is one such attempt at bridging this gap between inaccessibility of ADR mechanisms and community needs.

2.3.2 Formal ADR

Formal or state annexed ADR processes are those that are established under the law, with legal sanction and protection. The state of Pakistan currently lacks any singular code or system for Formal or Court-Annexed ADR, these are several provisions available in different legislations.

There exist or have existed several State annexed forms of ADR in Pakistan. Thus, even under the current law of Pakistan, different types of ADR and ADR mechanism are spread throughout a variety of different legislations, with different mechanisms and modalities. These have included in the past and currently:

- S.89-A of the Civil Procedure Code, 1908 (as amended in 2002) read with Order X Rule 1-A (deals with alternative dispute resolution methods).
- The Small Claims and Minor Offences Courts Ordinance, 2002.
- Sections 10 and 12 of the Family Courts Act, 1964.
- The Arbitration Act, 1940.
- Muslim Family Law Ordinance, 1961
- Articles 153–154 of the Constitution of Pakistan, 1973 (Council of Common Interest).
- Article 156 of the Constitution of Pakistan, 1973 (National Economic Council).
- Article 160 of the Constitution of Pakistan, 1973 (National Finance Commission)
- Article 184 of the Constitution of Pakistan, 1973 (Original Jurisdiction when Federal or Provincial governments are at dispute with one another).
- Finance Bill introduced following ADR Tax Laws:
- Sec. 134-A of I. T Ordinance. 2001 R/w Rule 231-C of the I. T Rules-02. Sec. 47 of the Sales Tax Act 1990 and Ch. X of the S.T Rules-04.
- Sec. 195-C of the Customs Act 1969, Ch. XVII of Customs. Rules 2001.
- Sec. 38 of the Federal Excise Act 2005 R/w Rule 53 of FE Rules 2005.

³³ See Supra Note 17

- Section 23 of Industrial Relation Ordinance.

Ad hoc measures have also taken place by civil society, the legal profession etc. which have aimed to provide ADR, particularly at the community level. This includes efforts in the Asian Development Bank's Access to Justice Project; a pilot project resulting in the Pakistan ADR Centre in Lahore to name a few.³⁴

ADR therefore does exist in some levels in Pakistan: in particular, in tax, corporate and commercial agreements, international agreements (under the New York Convention), tax, and even recently the Securities and Exchange Commission of Pakistan (SECP) announced its intention to work with Karachi Centre for Dispute Resolution (KCDR) to advocate ADR to its clientele.³⁵

The senior judiciary, civil society, donor agencies have long highlighted the advantages of ADR, especially in Pakistan. Despite the obvious buy in from all these actors, there has been a failure to institutionalize ADR as a commonly used alternative to litigation for a variety of reasons, which include lack of buy in from the lawyer's community, lack of awareness and access of ADR to communities and district level etc., lack of trained, monitored arbitrators/mediators etc.³⁶ There has been a failure to communicate to the community that formal ADR mechanisms can dramatically enhance the speed and quality of social justice, due to the speed, expertise and privacy that come with it.

2.4 Summary Overview of the ADR Legislative Framework in

Sindh

There are essentially four different types of ADR being used in and by the courts currently in Pakistan. These can be broken down as follows:

- **Arbitration:** Arbitration Act 1940
- **Mediation:** Section 89-A Civil Procedure Code 1908, Small Claims and Minor Offences Ordinance 2002
- **Conciliation:** Section 89-A Civil Procedure Code 1908, Family Courts Act 1964. Muslim Family Laws Ordinance 1961

³⁴ Available at, <http://www.brecorder.com/general-news/172/78737/>

³⁵ Available at, <https://www.secp.gov.pk/wp-content/uploads/2016/05/SECP-KCDR-signed-MoU-to-encourage-Alternative-Dispute-Resolution.pdf>

³⁶ See supra note 7

- **Other types of ADR (unspecified):** Section 89-A Civil Procedure Code 1908, Federal & Provincial Mohtasib (Ombudsman), Compounding of Offences under Code of Criminal Procedures 1898.

The procedural details of these legislations are available in Annex D.

In addition to these laws, the Constitution includes provisions of dispute resolution through the Council of Common Interests which resolves disputes between provinces and the federal level and in certain cases such as relating to water supply, individuals³⁷. The Constitution also allows for formation of special tribunals and administrative courts for certain types of cases³⁸. In Sindh, several recent laws have included the provision of ADR as a dispute resolution mechanism but have not elaborated on which form of ADR and processes and procedures etc³⁹. The National Assembly passed a recent heavily criticised⁴⁰ ADR law⁴¹, however it has yet to be signed into law and is only applicable for the Islamabad Capital Territory and not the rest of the country.

Laws related to Arbitration

2.4.1.1 Arbitration Act 1940

The Arbitration Act 1940 deals with the overall system of arbitration in the country. It is referred to in other laws and rules for the access and use of arbitration in civil cases. While ‘arbitration’ is not defined in the law, it has been recognized by the courts as distinct from other forms of ADR and as “a judicial determination of difference between the parties”, which involves “a controversy; presentation of cases from both sides; if necessary evidence be brought on record; and application of mind by the arbitrator and a reasoned award must follow”.⁴² The Arbitration Act 1940 is expanded with a few procedural details in the Sindh Chief Court Rules and the Sindh Civil Courts Rules. However, these procedural details are not sufficient to draw out a complete methodological and standardized framework as is necessary.

³⁷ Articles 153 – 157, Constitution of the Islamic Republic of Pakistan 1973

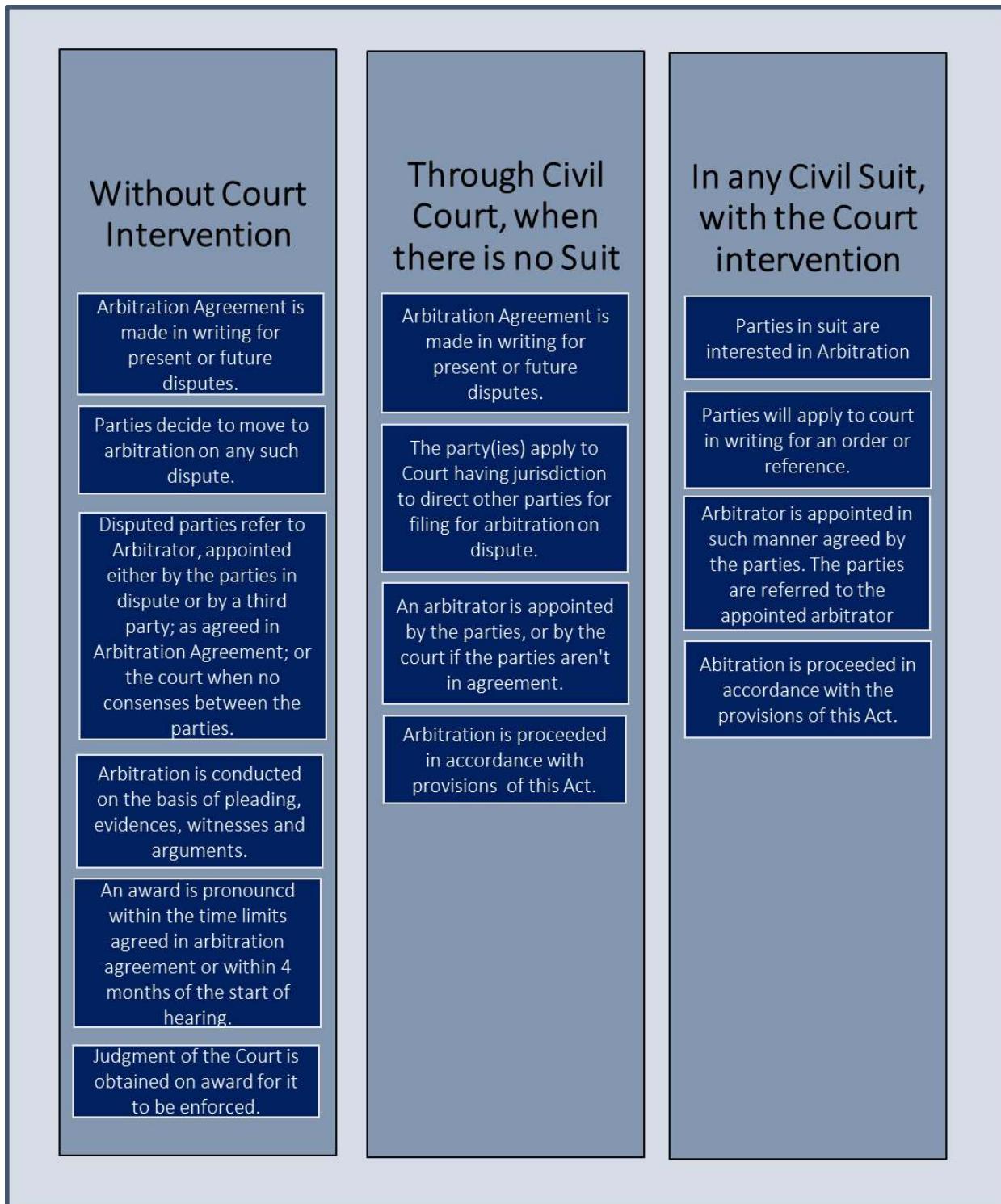
³⁸ Article 212, Constitution of the Islamic Republic of Pakistan 1973

³⁹ For example Sindh Public Prosecution Act 2009 and Sindh Revenue Board Act 2010;

⁴⁰ “Alternative Dispute Resolution: the Bill”, Benazir Jatoi, The Express Tribune, 06-03-2017

⁴¹ “Alternate Dispute Resolution Bill approved”, Dawn News, 19-01-2017

⁴² 1999 YLR 978

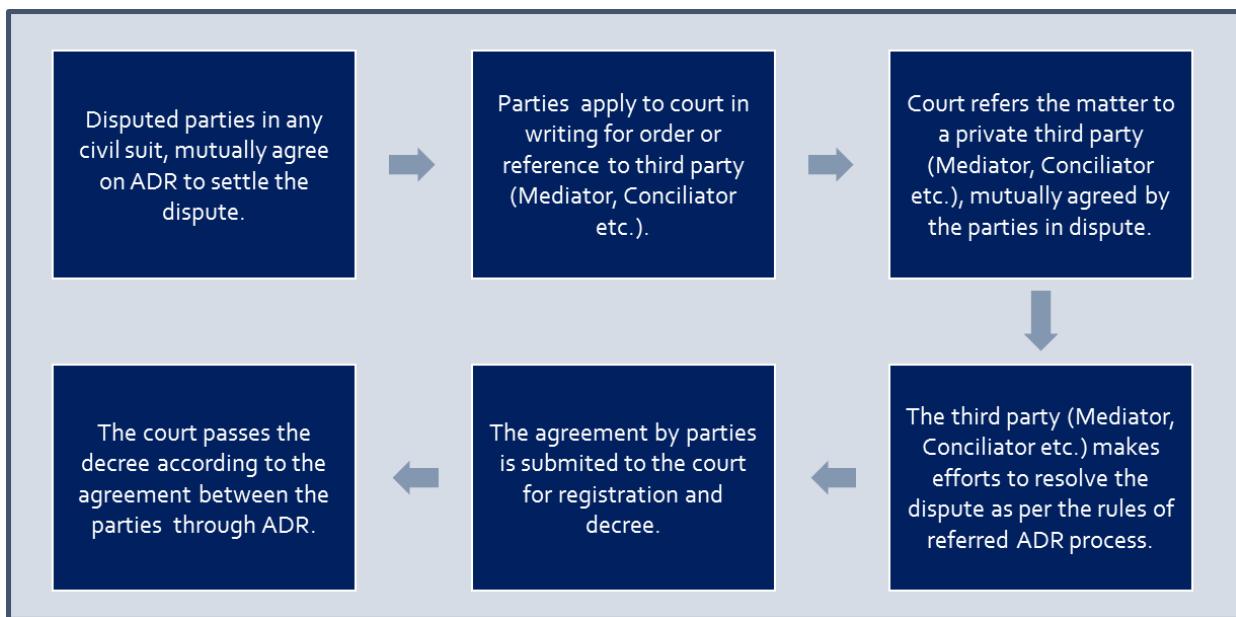
Figure 1: Arbitration Process under the Arbitration Act 1940

2.4.2 Law Related to Mediation

2.4.2.1 Civil Procedure Code 1908

The Civil Procedure Code 1908 under Section 89-A read jointly with Order X, allows the courts to adopt any alternate method of dispute resolution including mediation, conciliation or any other means including arbitration to end the controversy and expediting disposal of the case by the consent of the parties. Unfortunately, there is no further elaboration on the procedural mechanisms, oversight, standard setting, and quality assurances of ADR practitioners in any of the laws, rules or policies in Sindh. This gap needs to be addressed across all levels of court.

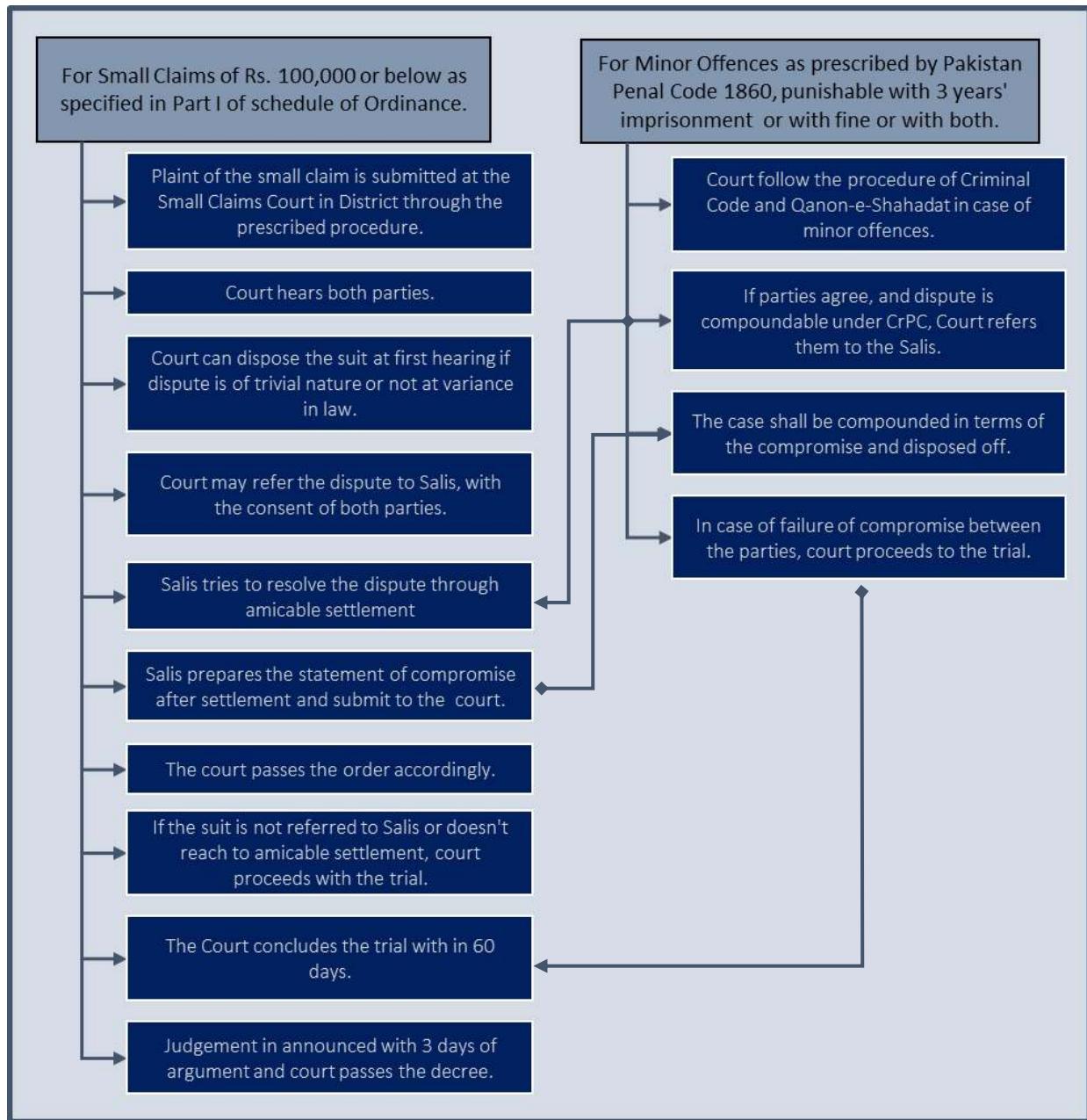
Figure 2: Mediation Process under Section 89-A, Code of Civil Procedures 1908



2.4.2.2 Small Claims and Minor Offences Ordinance 2002

The Small Claims and Minor Offences Ordinance 2002 introduced a detailed system of accessing mediation, including the appointment of mediators for small claims on civil and minor offences on criminal side. Mediators, also known as Salis, were appointed by the Sindh High Court in 2016. However, while providing details concerning the processes on the civil side, it fails to do so for the criminal side, referring it to the Criminal Procedure Code 1898, which does not have the necessary level of detail for effective and efficient implementation of laws.

Figure 3: Mediation Process under Small Claims & Minor Offences Ordinance 2002



2.4.3 Law Related to Conciliation

2.4.3.1 Muslim Family Law Ordinance 1961

The Muslim Family Law Ordinance 1961 allows for limited conciliation through an established Arbitration Council concerning Muslim family disputes, including second marriages, maintenance, dissolution of marriages etc.

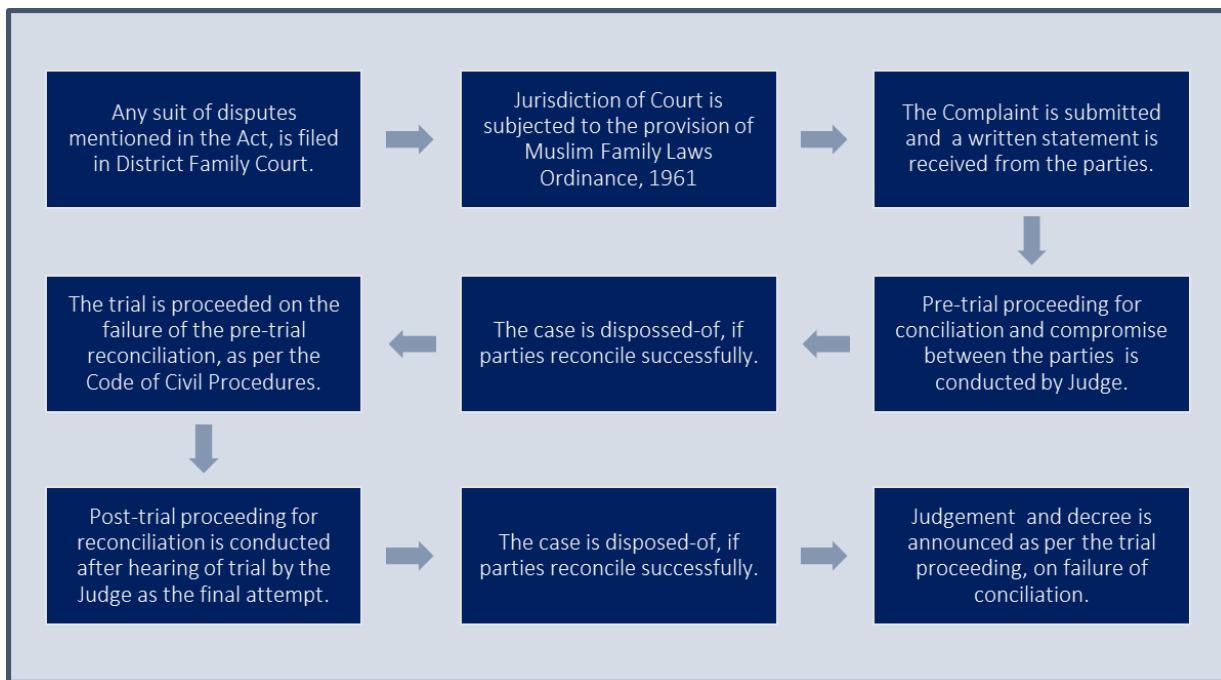
Figure 4: Conciliation Process under Muslim Family Law Ordinance 1961



2.4.3.2 Family Court Act, 1964

The Family Court Act, 1964 provides the way to conciliation or compromise between the parties at the pre-trial stage and post-trial to attempt to affect a compromise or reconciliation between the parties.

Figure 5: Conciliation Process under Family Court Act 1964



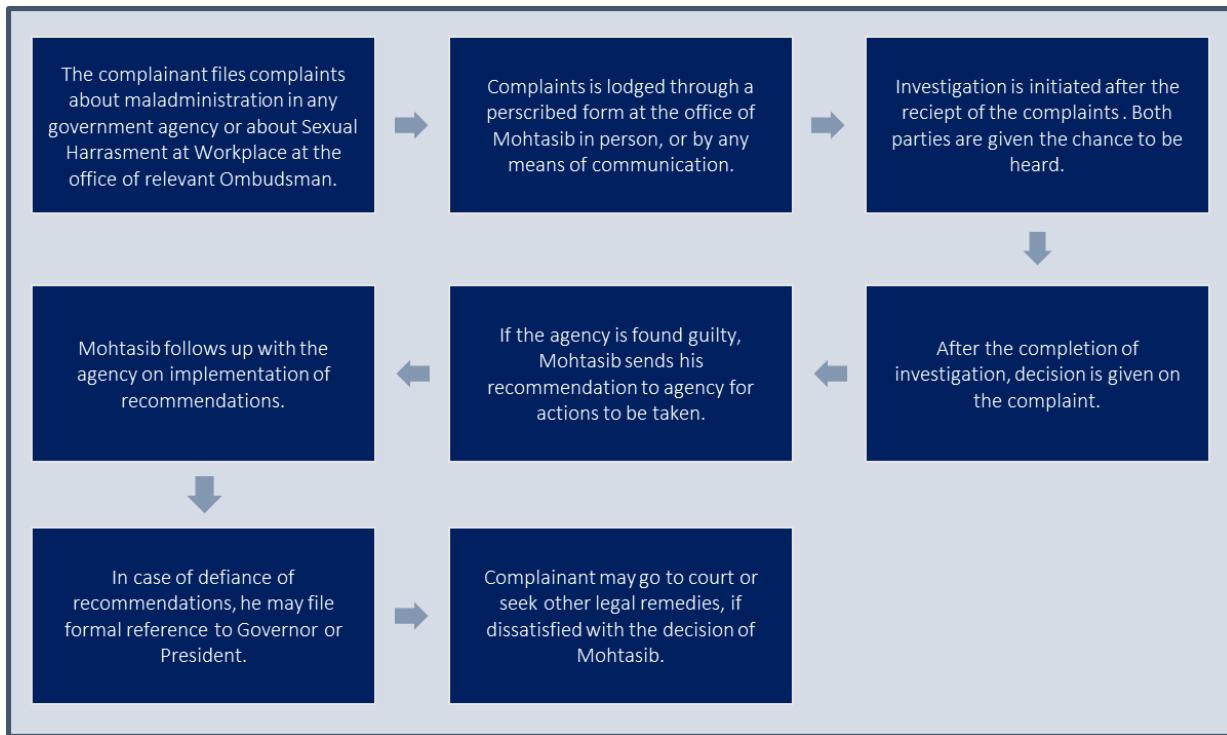
2.4.4 Other Types of ADR

2.4.4.1 *Ombudspersons*

Various Ombudspersons currently function across the country. While not considered to be falling under any of the regular categories of ADR, by nature of their functions, they are considered part of the ADR framework and thus, their functions and work should be recognized as such.⁴³

⁴³ Gill, Chris, et al. "Models of Alternative Dispute Resolution (ADR): A report for the Legal Ombudsman." (2014).

Figure 6: Dispute Resolution through Office of Ombudsman



2.4.4.2 Criminal Procedure Code 1898

The Criminal Procedure Code 1898 is only relevant concerning the process of compounding offences under Section 345 of the Code in relating to the Small Claims and Minor Offences Ordinance 2002.

2.5 Gaps and Lacunas

With the exception of the Arbitration Act 1940, there is no discussion in any of the laws relating to the quality, standards or monitoring of the arbitrators/mediators etc., thus leaving a huge gap related to the administration of justice in the country.

The lack of consistent, standard procedures is also problematic, leaving each institution/body free to constitute its own processes and procedures and standards, resulting in an ad hoc application of ADR as opposed a systematic and authentic process and procedures that are necessary.

Loopholes such as the lack on the clarity of mediation in criminal cases through the Small Claims and Minor Offences Ordinance 2002 also results in confusion. This is particularly important as a large number of cases fall within the ambit of the Small Claims and Minor Offences Courts. It must be clear what the process and procedures must be in such cases.

All the legislation related to ADR in Pakistan lacks the procedures or any SOPs regarding the ADR process itself. It is an essential need to establish basic standards for the appointment of any mediator, arbitrator or ADR practitioner. This is especially important for mediators, conciliators etc., who are not following the strict confines of the law as with arbitrators, but trying to remain an unbiased third party working to bring both sides of a dispute towards an agreement. The need for a basic level of training and certification is considered to be of utmost importance to ensure just and fair processes and outcomes.

The processes and procedures for accessing any of the ADR mechanisms must be clearer, which would thus make it more 'user-friendly' and more accessible to the public.

There must also be greater awareness of these processes and their uses and risks amongst all stakeholders, including those on the justice systems, as well as the public to allow for the use of ADR mechanisms in every day cases as opposed to commercial transactions etc.

3 LEGISLATIONS RELATED TO ARBITRATION

3.1 The Arbitration Act, 1940

The Arbitration Act, 1940 is the sole legislation for all arbitration in Pakistan. This Act is also binding on government for the process of arbitration. The Sindh High Court (O.S.) Rules and the Sindh Civil Court Rules provide some details about the procedures to be followed concerning case instituted under this law. Details of both Rules are also given below.

3.1.1 Jurisdiction

The court competent to exercise various powers under the Arbitration Act, 1940, is the civil court, which would be competent to entertain a civil suit, if a suit were to be filed on the cause of action, which forms the basis of the arbitration.⁴⁴

A Small Cause Court shall have no jurisdiction over any arbitration proceedings or over any application arising there out save on application made under section 21 of the Act, which allows parties to apply to the court for an order or reference for arbitration.⁴⁵ The provision of Code of Civil Procedures 1908 will apply to all the proceedings before the court and to appeals. The High Court has power to make any rules consistent with the Arbitration Act.⁴⁶

3.1.2 Procedure of Initiating Arbitration

This law provides three different processes and types of arbitration, each with different procedures. Under the Act, all three types of the arbitrations will be the result of an Arbitration Agreement. According to the Act, an arbitration Agreement is defined as

“Arbitration Agreement is a written agreement to submit present or future difference to arbitration, whether an arbitrator is named therein or not.”⁴⁷

The three ways to seek arbitration according to the Act, which are:

- Arbitration without court intervention
- Arbitration through court, when there is no suit pending

⁴⁴ Section 2(c), Arbitration Act 1940

⁴⁵ Section 40, Arbitration Act 1940

⁴⁶ Section 44, Arbitration Act 1940

⁴⁷ Section 2(a), Arbitration Act 1940

- Arbitration in suits through court

3.1.2.1 Arbitration without Intervention of Court⁴⁸

The parties will decide on their own to move towards arbitration through an arbitration agreement. The implied condition of this arbitration agreement will be as given in the first schedule of the Arbitration Act 1940.

3.1.2.2 Arbitration with the Intervention of Court without any Suit⁴⁹

The person will submit the application in writing before the court. The court, after scrutinizing the sufficient cause, will notify the other parties to the arbitration agreement and will ask them to show cause otherwise. When there is no sufficient cause is shown by the remaining parties to not file the arbitration agreement, the court will order the agreement to be filed and the arbitration process will proceed.

3.1.2.3 Arbitration with the Intervention of Court in a Suit⁵⁰

In any suit, if the parties agree to the arbitration, they may at any time before the judgment, can apply in writing to the court for the order of reference under Section 21 of the Act. During this type of arbitration, in case of any vacancy of the arbitrator(s) mention in Section 8, 10, 11 and 12, the court may suspend the arbitration and proceed with the suit instead of filling up the vacancy and making the appointments.⁵¹

3.1.3 Arbitrator

The court or parties can appoint the arbitrator.

3.1.3.1 Appointment by the Court

The court can appoint the arbitrator(s) with the consent of the parties⁵², or it can appoint the arbitrator(s) in case parties fail to appoint him.⁵³ The court may also appoint arbitrator(s) if any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or the arbitrators, as the case may be, do not supply the vacancy.⁵⁴

⁴⁸ Chapter II, Arbitration Act 1940

⁴⁹ Chapter III, Arbitration Act 1940

⁵⁰ Chapter IV, Arbitration Act 1940

⁵¹ Section 25, Arbitration Act 1940

⁵² Section 4, Section 22, Arbitration Act 1940

⁵³ Section 7, Section 12, Arbitration Act, 1940

⁵⁴ Section 8(b), Arbitration Act 1940

If the appointment is not made within fifteen clear days after the service of the said notice, the Court may, on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, the court may appoint an arbitrator(s).⁵⁵

3.1.3.2 Appointment by the Parties

When arbitration agreement provides the reference to appoint two arbitrators, each party can appoint one arbitrator.⁵⁶ When the arbitration agreement refers to the appointment of three arbitrators, one is to be appointed by each party and the third by the two appointed arbitrators.⁵⁷

3.1.3.3 Powers of Arbitrator⁵⁸

The arbitrator has certain statutory powers,

- (i) Administer oath to the parties and witnesses appearing;
- (ii) State a special case for the opinion of the Court on any question of law involved, or state the award, wholly or in part, in the form of a special case of such question for the opinion of the Court;
- (iii) Make the award conditional or in the alternative;
- (iv) Correct in an award any clerical mistake or error arising from any accidental slip or omission;
- (v) Administer to any party to arbitration such interrogatories as May, in the opinion of the arbitrators or umpire, be necessary.
- (vi) Make an interim award.⁵⁹

3.1.3.4 Misconduct by the Arbitrator

The court has the power to remove the Arbitrator or Umpire on the accounts of misconduct.⁶⁰ Whenever there has been an act of misconduct by the arbitrator or of the proceedings, the award will be set aside. No exhausted definition of misconduct has been given in the Act.⁶¹

⁵⁵ Section 6(2), Arbitration Act 1940

⁵⁶ Section 7, Arbitration Act 1940

⁵⁷ Section 8, Arbitration Act 1940

⁵⁸ Section 13, Arbitration Act 1940

⁵⁹ Section 27(1), Arbitration Act 1940

⁶⁰ Section 11(1), Arbitration Act, 1940

⁶¹ Section 30, Arbitration Act. 1940

3.1.3.5 Fees of the Arbitrator

The cost of the reference is in the discretion of the arbitrators or umpire. They may direct to, and by whom, and in what manner, such costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid etc.⁶²

3.1.4 Procedure of Arbitration

The Arbitration Act, 1940 does not provide detailed procedures about arbitration proceedings. The arbitrator must observe the essentials of natural justice, failing which; the arbitrator's award can be set aside for misconduct.⁶³

In practice, an arbitrator(s) has jurisdiction to start proceeding in accordance with the arbitration agreement or arbitration clause. All parties are required to be treated equally in arbitral proceeding. Parties have right to agree upon the procedure of an arbitration proceeding under arbitration agreement.⁶⁴ If the parties do not agree on any procedure of an arbitration proceeding, sub-section 3 of 1st Schedule of the act will apply.⁶⁵

It has been stated that service of notice by party or arbitrator shall be served as per the arbitration agreement. When it is not specified, it shall be served by delivering it to the person on whom it is to be served. It can also be served by sending it by the post in a letter addressed to that person at his usual or last known place of abode or business in Pakistan and registered under Chapter VI of the Post Officer Act, 1898 (VI of 1898)⁶⁶.

The Court shall issue processes for appearance of parties and witnesses whom the arbitrator desires to examine as the Court may issue in suits tried before it. Refusal to comply or give evidence etc., will incur penalties and punishments by order of the Court on the representation of the arbitrator or umpire⁶⁷.

3.1.4.1 The Award

The award must be pronounced within the time limits laid down in the arbitration agreement. In case of failing such agreement, it must be pronounced within 4 months of the commencement of hearing.⁶⁸ However, the time limit can be extended by the court in certain circumstances.⁶⁹

⁶² 1st Schedule, Arbitration Act 1940

⁶³ Section 30, Arbitration Act 1940

⁶⁴ Mukhtar, Sohaib. "Settlement of Disputes by Way of Arbitration in Pakistan." World Journal of Social Science Research 3.4 (2016): 518.

⁶⁵ Section 3, to be read with Schedule 1 of the Arbitration Act, 1940.

⁶⁶ Section 42, Arbitration Act 1940

⁶⁷ Section 43, Arbitration Act 1940

⁶⁸ 1st Schedule, Arbitration Act 1940

⁶⁹ Section 28, Arbitration Act 1940

If there is more than one arbitrator, the majority view prevails⁷⁰. The award must be in writing and signed by the arbitrator and notice shall be given to the parties of award etc.⁷¹. The award should have sufficient details to enable the Court to consider any question of law arising out of the award. If sufficient details are not provided, the Court shall remit the award to the arbitrators or umpires⁷². The award shall be final and binding on the parties and persons claiming under them respectively⁷³.

Upon the request of any party or any person claiming under such party or if directed by the Court, the award may be filed in the Court and the Court shall give notice to the parties⁷⁴. Court may also pronounce an opinion on the case and shall be added and form a part of the award in special cases under Section 13(b) of the Act⁷⁵.

The Court has powers to modify⁷⁶ or correct an award⁷⁷ or to remit the award⁷⁸ in certain circumstances identified in the law. The Court will give time allowance for the award to be reconsidered by the arbitrator or umpire⁷⁹. Failure to do so within the time limit will result in the award becoming void⁸⁰.

Upon conclusion of the time for making an application against the award, the Court shall pronounce judgment according to the award and a decree that shall follow⁸¹. No appeals may lie against a decree except on the ground, or not otherwise in accordance with the award. The Court may order interest in the decree in an award for payment of money⁸².

There are extremely limited grounds for setting aside the award⁸³. These are:

- that an arbitrator or umpire has misconducted himself or the proceedings;
- that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;
- that an award has been improperly procured or is otherwise invalid.

⁷⁰ Section 10(2), Arbitration Act 1940

⁷¹ Section 14, Arbitration Act 1940

⁷² Section 26A, Arbitration Act 194-

⁷³ 1st Schedule, Arbitration Act 1940

⁷⁴ Section 14(2), Arbitration Act 1940

⁷⁵ Section 14(3), Arbitration Act 1940

⁷⁶ Section 15, Arbitration Act 1940

⁷⁷ Ibid

⁷⁸ Section 16, Arbitration Act 1940

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Section 17, Arbitration Act 1940

⁸² Section 29, Arbitration Act 1940

⁸³ Section 30, Arbitration Act 1940

3.1.4.2 Appeal⁸⁴

The appeal will lie on the order passed under this act to the court authorize by law to hear the appeal. These orders can be,

- (i) superseding an arbitration;
- (ii) on an award stated in the form of a special cases;
- (iii) modifying or correcting an award;
- (iv) filing or refusing to file an arbitration agreement;
- (v) staying or refusing to stay legal proceedings where there is an arbitration agreement;
- (vi) setting aside or refusing to set aside an award.

The appeals will not apply to any order passed by a Small Cause Court. The Act does not allow any second appeal under the section 39 but also does not take away any right to appeal to Supreme Court.⁸⁵

3.1.5 Role of Court

If a party to an arbitration agreement refuses to go to arbitration, the other party can seek intervention of the court to compel a reference to arbitration.⁸⁶ After the completion of Arbitration procedure, an award cannot be enforced by itself. Judgment of the court has to be obtained in terms of the awards.⁸⁷

The powers of courts with respect to the Award, under the Act are:

- (i) Modification of Award⁸⁸
- (ii) Remitting the award⁸⁹
- (iii) And Setting aside the award⁹⁰

More details about these powers are discussed in section **2.1.4.1**. Additional powers of the Court include:

- (i) Power of the Court to pass interim orders to stop a party from attempting to defeat, delay or obstruct the execution of any decree that may be passed upon the award, or that speedy execution of the award is just and necessary, the Court may pass such interim orders as it deems necessary⁹¹.

⁸⁴ Section 39, Chapter VI, Arbitration Act 1940

⁸⁵ Section 39(2), Arbitration Act 1940

⁸⁶ Section 20, Arbitration Act 1940

⁸⁷ Section 17, Arbitration Act 1940

⁸⁸ Section 15, Arbitration Act 1940

⁸⁹ Section 16, Arbitration Act 1940

⁹⁰ Section 30, Arbitration Act 1940

⁹¹ Section 18, Arbitration Act 1940

- (ii) When an award becomes void under this law or is set aside, the Court may by order, supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred.⁹²
- (iii) Issue processes for appearance before the arbitrator⁹³.

3.2 Sindh Chief Court (Original Side) Rules⁹⁴

The Sindh Chief Court Rules do not provide any provision or mechanism for any form of ADR in its Original Side jurisdiction or its appellate side jurisdiction, but the rules under its original side jurisdiction provides the procedural provisions with regards to the role of courts under the Arbitration Act 1940.

The Arbitration Act 1940 under its chapter III and IV provides the provisions about the Arbitration with Court intervention. Where the parties in dispute either file an application to the court for an arbitration agreement without any suit or may apply for the process of arbitration in a suit.

3.2.1 Procedure to apply to the Court for Arbitration

Every application filed under section 20(1) under Chapter III of the Arbitration Act will be verified, numbered and registered as a suit.⁹⁵ All applications for Arbitration in a suit under Chapter IV of the Arbitration Act, 1940 will be entitled in the same suit in which they are filed.⁹⁶ Every special case⁹⁷ will be submitted to the court in the prescribed form⁹⁸ setting out clearly the question of law on which the legal opinion of the court is required.⁹⁹ The court will fix a day for hearing and issue a notice accordingly to the parties on the issues of the special case.¹⁰⁰

3.2.2 Procedure of Appointment of Arbitrator by Court

If the court is appointing any arbitrator under the Section 8(2), 12, 20 or 23 of the Arbitration Act 1940, a notice of the appointment shall be served to the arbitrator or umpire as per the prescribed form.¹⁰¹

⁹² Section 19, Arbitration Act 1940

⁹³ Section 43, Arbitration Act 1940

⁹⁴ These Rules apply to the High Court of Sindh

⁹⁵ Rule 278(1) The Sindh Civil Court Rules

⁹⁶ Rule 278(2), The Sindh Civil Court Rules

⁹⁷ Under the Section 13(b) of the Arbitration Act, 1940

⁹⁸ Form No. 12, Appendix A, Sindh Civil Court Rules

⁹⁹ Rule 279, The Sindh Civil Court Rules

¹⁰⁰ Rule 280, The Sindh Civil Court Rules

¹⁰¹ Form No. 12-D, Appendix A prescribed under Rule 290 of the Sindh Civil Court Rules

3.2.3 Procedure to file an Award to the Court

When the award is required to be filed in the court under the section 14 of the Arbitration Act, 1940 must be done in the prescribed form¹⁰²; awards of the special case¹⁰³ will be file under the prescribed form in Rule 279.¹⁰⁴ This award will be filed to the court in a sealed cover along with a petition requesting the court to file the award; a particular form¹⁰⁵ has been prescribed in the rules for the petition.¹⁰⁶ The court will issue the notice to all parties of filing of an award in the prescribed form.¹⁰⁷

3.2.4 Procedure to Modify, Correct or Set Aside an Award

If an award is to be modified, corrected, set aside or to be remitted, an application shall be filed as a verified petition stating all the grounds for aforesaid actions. Such petition will be entitle in the same suit under which the award has been filed.¹⁰⁸

3.2.5 Procedure for Interim Orders

The Arbitration Act 1940 gives power to the court to pass interim orders under Section 18 of the Act. All the applications made to the court to pass any interim order are regulated by the Rule 73 and 74 of the Sindh Chief Court Rules.¹⁰⁹ The service of notice of the interim order will be served to the opposite party as well. If the opposite party wishes to show cause, it would be regulated by Rule 75 of the Sindh Chief Court Rule.¹¹⁰

3.2.6 Other Applications

All the other applications under the Arbitration act are made in the form of petition annexed with the relevant documents. The Rule 67 to Rule 69 of the Civil Court Rules will regulate such applications.¹¹¹ Any application made under section 34 of the Arbitration Act 1940 to stay legal proceeding where there is an

¹⁰² Form No. 12-A, Appendix A prescribed under Rule 281(1) of the Sindh Civil Court Rules

¹⁰³ See Supra note 91

¹⁰⁴ Rule 281(2), The Sindh Civil Court Rules

¹⁰⁵ Form No. 12-B, Appendix A, The Sindh Civil Court Rules.

¹⁰⁶ Rule 282, The Sindh Civil Court Rules

¹⁰⁷ Form No. 12-C, Appendix A prescribed under Rule 283(1) of the Sindh Civil Court Rules

¹⁰⁸ Rule 284, The Sindh Civil Court Rules

¹⁰⁹ Rule 285, Sindh Civil Court Rules

¹¹⁰ Rule 514(2), Sindh Civil Court Rules

¹¹¹ Rule 286(3), Sindh Civil Court Rules

arbitration agreement will be entitled in the suit which applicant seeks to have stayed.¹¹² Notice to such application will be served to the opposite party.¹¹³

3.2.7 Provisions Related to Fee

All the rates of the fee related to the matters applied to court are laid down in Chapter VIII in Appendix C of Rules.

3.3 Sindh Civil Court Rules

Similar to the Sindh Chief Court Rules (Original Side), the Sindh Civil Court Rules also provides the procedural provisions concerning the role of courts under the Arbitration Act 1940 for all the cases which falls under subordinate courts' jurisdiction.

The Arbitration Act 1940 under its chapter III and IV provides the provisions about the Arbitration with Court intervention. Where the parties in dispute either file an application to the court for an arbitration agreement without any suit or may apply for the process of arbitration in a suit.

3.3.1 Procedure to apply to the Court for Arbitration

Every application filed under section 20(1) under Chapter III of the Arbitration Act will be verified, numbered and registered as a suit.¹¹⁴ All applications for Arbitration in a suit under Chapter IV of the Arbitration Act, 1940 will be entitled in the same suit in which they are filed.¹¹⁵ Every special case¹¹⁶ will be submitted to the court in the prescribe form¹¹⁷ setting out clearly the question of law on which the legal opinion of the court is required.¹¹⁸ The court will fix a day for hearing and issue a notice accordingly to the parties on the issues of the special case.¹¹⁹

¹¹² Rule 289(1), Sindh Civil Court Rules

¹¹³ Rule 289(2), Sindh Civil Court Rules

¹¹⁴ Rule 506(1), The Sindh Civil Court Rules

¹¹⁵ Rule 506(2), The Sindh Civil Court Rules

¹¹⁶ See supra note 91

¹¹⁷ Form No, 67, Sindh Civil Court Rules

¹¹⁸ Rule 507, The Sindh Civil Court Rules

¹¹⁹ Rule 508, The Sindh Civil Court Rules

3.3.2 Procedure of Appointment of Arbitrator by Court

If the court is appointing any arbitrator under the Section 8(2), 12, 20 or 23 of the Arbitration Act 1940, a notice of the appointment shall be served to the arbitrator or umpire as per the prescribed form.¹²⁰

3.3.3 Procedure to file an Award to the Court

When the award is required to be filed in the court under the section 14 of the Arbitration Act, 1940 must be done in the prescribed form¹²¹; awards of the special case¹²² will be file under the prescribed form in Rule 507.¹²³ This award will be filed to the court in a sealed cover along with a petition requesting the court to file the award; a particular form¹²⁴ has been prescribed in the rules for the petition.¹²⁵ The court will issue the notice to all parties of filing of an award in the prescribed form.¹²⁶

3.3.4 Procedure to Modify, Correct or Set Aside an Award

If an award is to be modified, corrected, set aside or to be remitted, an application shall be filed as a verified petition stating all the grounds for aforesaid actions. Such petition will be entitle in the same suit under which the award has been filed.¹²⁷

3.3.5 Procedure for Interim Orders

The Arbitration Act 1940 gives power to the court to pass interim orders under Section 18 of the Act. The Rule 66 and 67 of the Civil Court Rules regulate all the applications made to the court to pass any interim order.¹²⁸ The service of notice of the interim order will be served to the opposite party as well. If the opposite party wishes to show cause, Rule 68 of the Civil Court Rule would regulate it.¹²⁹

¹²⁰ Form No. 70-A, Appendix B prescribed under Rule 519 of the Sindh Civil Court Rules

¹²¹ Form No. 68, Appendix B prescribed under Rule 509(1) of the Sindh Civil Court Rules

¹²² See supra note 91

¹²³ Rule 509(2), The Sindh Civil Court Rules

¹²⁴ Form No. 69, Appendix B, The Sindh Civil Court Rules.

¹²⁵ Rule 510, The Sindh Civil Court Rules

¹²⁶ Form No. 70, Appendix B prescribed under Rule 511(1) of the Sindh Civil Court Rules

¹²⁷ Rule 512, The Sindh Civil Court Rules

¹²⁸ Rule 513, Sindh Civil Court Rules

¹²⁹ Rule 514(2), Sindh Civil Court Rules

3.3.6 Other Applications

All the other applications under the Arbitration act are made in the form of petition annexed with the relevant documents. The Rule 67 to Rule 69 of the Civil Court Rules will regulate such applications.¹³⁰

Any application made under section 34 of the Arbitration Act 1940 to stay legal proceeding where there is an arbitration agreement will be entitled in the suit which applicant seeks to have stayed.¹³¹ Notice to such application will be served to the opposite party.¹³²

3.3.7 Provisions Related to Fee

All the rates of the fee related to the matters applied to court are laid down in Chapter VI in Appendix D of the Rules.

¹³⁰ Rule 515(3), Sindh Civil Court Rules

¹³¹ Rule 517(1), Sindh Civil Court Rules

¹³² Rule 517(2), Sindh Civil Court Rules

4 LEGISLATIONS RELATED TO MEDIATION

4.1 Code of Civil Procedure

After the amendment of the Code of Civil Procedures, the Courts have power to seek ADR with consent of both parties to expedite the disposal of the case under Section 89A¹³³. The court can seek any mode of ADR including mediation and conciliation. The section states,

89-A. Alternate dispute resolution. - The Court may, where it considers necessary, having regard to the facts and circumstances of the case, with the object of securing expeditious disposal of a case, in or in relation to a suit, adopt with the consent of the parties alternate dispute resolution method, including mediation and conciliation.

The amendment also added a new rule 1A under Order X of the code. The rule says that the court may adopt any lawful procedure that is consistent with the code to adopt any ADR method. The Rule States,

Order X, Rule 1A -

The Court may adopt any lawful procedure consistent with the provisions of this code to,

- (i) Conduct preliminary proceedings and issue orders for expediting processing of the case;
- (ii) Issue, with the consent of parties, commission to examine witnesses, admit documents and take other steps for the purposes of trial;
- (iii) Adopt, with the consent of parties, any alternative method of dispute resolution including mediation, conciliation or any such other means. ".

Although, the Code of Civil Procedure does not define any specific procedure to access the mode of ADR, it has enabled the court to adopt ADR at its own discretion. The Sindhi Civil Court Rules, as well as Sindh Chief Court Rules (O.S.) are also completely silent on the procedural specifications of accessing ADR through the Code of Civil Procedures.

¹³³ Code of Civil Procedure (Amendment) Ordinance, 2002

4.2 Small Claims and Minor Offenses Ordinance, 2002

The Small Claims and Minor Offences Ordinance, 2002 (Ordinance XXVI of 2002) was promulgated by Federal Government. The purpose of this ordinance is to provide **summary procedure for trial** of small claims and minor offences, as well as procedure for **amicable settlement**¹³⁴ through different modes of **dispute resolution** between the parties with the **facilitation by court**. This statute aims to make access to justice expeditious, easy and cost effective. According to the ordinance, the provincial government¹³⁵, in consultation with High Courts, may establish one or more Small Claims and Minor Offences Courts on District level. Formation of such courts would make the access to justice easy and approachable at community level.

Although the Ordinance was enacted in 2002, the notification was issued in 2004 for the enforcement of the ordinance and formation of Small Claims and Minor Offences Courts at District or Tehsil level.¹³⁶

No rules have yet been formulated for this law.

4.2.1 Structure and Jurisdiction

The Courts of Small Claims and Minor Offences are presided by **Civil Judge-cum-Judicial Magistrate**.¹³⁷ The local limits of the jurisdiction of these courts are determined by the High Court through notification. These jurisdictions can be defined, determined or altered time to time.¹³⁸

Small Claims and Minor Offences Courts have the exclusive jurisdiction for the following.

4.2.1.1 Civil Jurisdiction ¹³⁹

The civil jurisdiction of the court is defined in Section 5(1)(a) and Part I of the Schedule of the ordinance. The courts can try all the suits, plaints and claims specified below; whose value does not exceed **one hundred-thousand rupees**.

- Suit for recovery of money due on contract in writing, receipt or any other documents.
- Claim for damages on account of contract in writing.

¹³⁴ Amicable Settlement includes settlement through arbitration (other than Arbitration Act 1940), mediation, conciliation or any other lawful means mutually agreed upon by the parties. [Section 2(1)(a) of Small Claims and Minor Offences Ordinance 2002]

¹³⁵ Section 2(1)(d) of Small Claims and Minor Offences Ordinance, 2002

¹³⁶ This Ordinance came into force w.e.f. 15-7-2004 vide S.R.O 601(I)/2004, dt. 15-7-2004

¹³⁷ Section 4(2) of Small Claims and Minor Offences Ordinance, 2002

¹³⁸ Section 4(3) of Small Claims and Minor Offences Ordinance, 2002

¹³⁹ Section 5(1)(a) of Small Claims and Minor Offences Ordinance, 2002

- Suit for the specific performance or rescission of a contract in writing
- Suit for recovery of movable property or value thereof.
- Suit for separate possession of joint immovable property through partition or otherwise
- Suit for compensation.
- Suit for redemption of mortgage property. Suit for enforcement of easement rights.
- Suit for rendition of accounts of joint property.
- Suit to restrain waste and remove nuisance.
- Disputes under the Canal and Drainage Laws.
- Mesne profits of property.
- Suit for compensation for wrongful taking or damaging movable or immovable property.
- Suit for damages by cattle trespass.
- Suit for damages and compensation arising out of traffic accidents.

Any other relief not falling under the Schedule but agreed to by the parties to be settled under this Ordinance.¹⁴⁰

4.2.1.2 *Criminal Jurisdiction*¹⁴¹

The criminal jurisdiction of the court is defined in Section 5(1)(b) and Part II of the schedule of the ordinance. The courts can try offences as prescribed by Pakistan Penal Code 1860, which are punishable with imprisonment not exceeding three years, with fine, or with both. The list of such offences is attached as **Annex C**.

4.2.2 Trial Procedure

4.2.2.1 *Civil Trial*¹⁴²

A verified plaint of every claim or suit is submitted before the court¹⁴³, containing all the facts of the dispute, details of witnesses intended to be produced in the court and all the evidentiary documents.¹⁴⁴

¹⁴⁰ Part I, Schedule, Small Claims and Minor Offences Court

¹⁴¹ Section 5(1)(b) of Small Claims and Minor Offences Ordinance, 2002

¹⁴² Section 6 of Small Claims and Minor Offences Ordinance, 2002

¹⁴³ Small Claims and Minor Offences Court

¹⁴⁴ Section 6 of Small Claims and Minor Offences Ordinance, 2002

The plaint is to be submitted with onetime **fee of R.s. 25.**¹⁴⁵ The Court has the right to reject the plaint if¹⁴⁶:

- the plaint is under-valued;
- does not fall in the jurisdiction of court;
- is time barred; or
- does not disclose any cause of action.

The court shall send summons to the defendants within two days of submission of the plaint.¹⁴⁷ The law provides details relating to the processes of issuing summons.¹⁴⁸ The court shall fix the time for the appearances of the defendant, which should not exceed fifteen days.¹⁴⁹ Any appearance, action or application in or to the court is to be done by the party in person or by his recognized agent or advocate on his behalf. The court has the right to precede ex-parte and pass the decree if the defendant fails to submit the written statement and appear before the court without sufficient cause. The court has the right to dispose the suit in the first hearing, if both the parties are not at a variance of law or if the dispute is of trivial nature.¹⁵⁰ The court may also refer the case for amicable settlement with a “Salis” (defined by the law as the person acting as the conciliator, arbitrator or mediator), which is discussed in detail below.

If the suit is not referred to amicable settlement, or if the settlement is not reached between the parties within the **45 days of reference**, the court will proceed with the trial.¹⁵¹ The Court shall conclude the trial within 60 days, by taking day-to-day hearing. After hearing the witness, the court must fix the hearing of argument of parties within 7 days. After the arguments of the parties, the court must announce the judgment in open court within 3 days. The copy of the decree and judgment should also be provided on the day on judgment.¹⁵²

¹⁴⁵ Section 8 of Small Claims and Minor Offences Ordinance, 2002

¹⁴⁶ Section 7 of Small Claims and Minor Offences Ordinance, 2002

¹⁴⁷Section 9(1) of Small Claims and Minor Offences Ordinance, 2002

¹⁴⁸ Section 9 of Small Claims and Minor Offences Ordinance, 2002

¹⁴⁹Section 9(6) of Small Claims and Minor Offences Ordinance, 2002

¹⁵⁰Section 13(1) of Small Claims and Minor Offences Ordinance, 2002

¹⁵¹ Section 26 of Small Claims and Minor Offences Ordinance, 2002

¹⁵² Section 32 of Small Claims and Minor Offences Ordinance, 2002

4.2.2.2 *Criminal Trial*

In case of criminal trial, the court will follow the procedure prescribed in the Code of Criminal Procedure 1908 and Qanun-e-Shahadat, 1984. The court will exercise the powers of Judicial Magistrate of First Class under Code of Criminal Procedure, 1989.¹⁵³

In criminal cases if the parties arrive at a settlement the case shall be compounded in terms of the compromise¹⁵⁴. In case of the failure of the court to dispose of the case at the preliminary stage or based on compromise between the parties, the court shall proceed with the matter under Cr.P.C. and Qanun-e-Shahadat Order. An appeal in accordance with procedure described under Cr.P.C. in criminal proceedings shall lie to the Court of Sessions within thirty days of conviction.¹⁵⁵

In a criminal trial under this court, the amicable settlement cannot be referred for offences, which are non-compoundable.¹⁵⁶

4.2.3 Amicable Settlement

The Court may at any stage of the proceedings, seek to resolve the claim or offence through an amicable settlement.¹⁵⁷

“Amicable settlement” has been defined under the law as including any settlement through arbitration process, other than arbitration under the Arbitration Act 1940 (X of 1940), mediation, conciliation or any other lawful means mutually agreed upon by the parties.

Thus, amicable settlement involves the matter to be resolved through conciliation, arbitration, mediation or resolution through other means through Salis or any other person.

In order to initiate this process, the Court must:

- Feel there exists a possibility of an amicable settlement;
- Receive an application by any party or otherwise; and
- Ensure consent of all parties to the amicable settlement.¹⁵⁸

The Court shall not proceed for amicable settlement in the following situations:

- The offence is non-compoundable; or

¹⁵³ Section 34 of Small Claims and Minor Offences Ordinance, 2002

¹⁵⁴ Section 345, Code of Criminal Procedure 1898

¹⁵⁵ Section 39 of Small Claims and Minor Offences Ordinance, 2002

¹⁵⁶ Section 14(1) of Small Claims and Minor Offences Ordinance, 2002

¹⁵⁷ Section 14(1) of Small Claims and Minor Offences Ordinance, 2002

¹⁵⁸ Section 14(1) of Small Claims and Minor Offences Ordinance, 2002

- The Court considers such settlement to be against the public policy or interest of the State. The Court must record such reason in writing.¹⁵⁹

In a claim or a suit (civil case), if a settlement is reached between the parties, a statement of compromise shall be prepared and the Court shall pass a decree accordingly.¹⁶⁰

In a case involving an offence (criminal case), if a settlement is reached between the parties the offence is deemed to have been compounded in the terms of the compromise, and the Court shall pass the order accordingly.¹⁶¹

4.2.3.1 Procedure of Amicable Settlement

- The Court shall refer the case to a particular Salis with a fixed time.¹⁶²
- If a dispute or claim is not referred for settlement or no settlement is reached within 5 days of the reference or such extended time as may be granted by the Court, on showing good cause, the Court shall proceed to record evidence.
- The Court shall determine the amount of fees, if any, to be paid by the party or parties to Salis, against a valid receipt.¹⁶³
- Upon the receipt of reference of a dispute by the court, The Salis will call the parties for settlement to the venue and on a day and time specified by him. He will call the parties through the following means¹⁶⁴:
 - Registered post;
 - Telegram;
 - Fax;
 - Telephone; or
 - Any other appropriate mode.
- The parties can appear either in person or through their representatives before Salis. They will state their claim or defence in writing.¹⁶⁵
- They will supply copies of their pleadings or complaint and all other necessary documents as required by the Salis.¹⁶⁶

¹⁵⁹ Ibid

¹⁶⁰ Section 14(2) of Small Claims and Minor Offences Ordinance, 2002

¹⁶¹ Section 14(3) of Small Claims and Minor Offences Ordinance, 2002

¹⁶² Section 16(1) of Small Claims and Minor Offences Ordinance, 2002

¹⁶³ Section 20 of Small Claims and Minor Offences Ordinance, 2002

¹⁶⁴ Section 16(1) and 16(2) of Small Claims and Minor Offences Ordinance, 2002

¹⁶⁵ Section 16(3) of Small Claims and Minor Offences Ordinance, 2002

¹⁶⁶ Ibid

- The Salis shall make efforts for amicable settlement of the claim or complaint and will prepare a report to submit in the court within the time fixed by the court.¹⁶⁷

4.2.3.2 Settlement reached

If the parties reach a settlement of a suit or complaint, the Salis will prepare a deed of settlement containing all the terms of the settlement. This deed will be signed by both parties and will be submitted to the Court on the day fixed by the Court. The deed of settlement should always accompany the certificate that the settlement between the parties was voluntary.¹⁶⁸ This Salis will make an **award** and submit it in the Court on or before the date is fixed.

4.2.3.3 Objections on Award¹⁶⁹

- Before passing a decree based on award, the court will call the parties for any objection on the deed of settlement and settlement of that objection within fifteen days of the receipt of the award. Any objections must be settled within fifteen days of submission of the objections.¹⁷⁰
- If there is no objection from the parties on the settlement deed, the court passes the decree based on that settlement.
- No party can apply to any other Court to challenge the validity of the award on the plea of fraudulent misrepresentation on involuntary nature of the settlement of any other ground whatsoever.¹⁷¹
- If a person does wish to challenge the validity of the decree of the plea of fraud, misrepresentation or want to justice, he has to apply to the Court within 30 days of passing of the decree. It shall not be a separate suit.¹⁷²

4.2.3.4 Non-commencement of Settlement

If parties fail to appear before the Salis or pay fees as determined by the Court, the Salis may not proceed for settlement and inform the Court accordingly.¹⁷³

¹⁶⁷ Section 18 of Small Claims and Minor Offences Ordinance, 2002

¹⁶⁸ Ibid

¹⁶⁹ Section 19 of Small Claims and Minor Offences Ordinance, 2002

¹⁷⁰ Section 19(1) of Small Claims and Minor Offences Ordinance, 2002

¹⁷¹ Section 38 of Small Claims and Minor Offences Ordinance, 2002

¹⁷² Section 19(3) of Small Claims and Minor Offences Ordinance, 2002

¹⁷³ Section 21 of Small Claims and Minor Offences Ordinance, 2002

4.2.3.5 Failure of Settlement

If the parties cannot reach a settlement, the Salis will record the facts, which will be signed by the parties and will submit the report to the Court on or before the date is fixed.¹⁷⁴

The parties have to reach upon an agreement within the 45 days of reference to the Salis.¹⁷⁵

4.2.4 The Salis

4.2.4.1 Appointment of "Salis"

Nomination of the person for Amicable Settlement¹⁷⁶:

- The Chief Justice of the High Court with the consultation with District Judges, the President, or Bar Association may prepare the list of Salis¹⁷⁷ for effecting amicable settlement. This list may include retired Judges or Lawyers.
- The parties may also nominate the Salis other than the person in the list maintained by the court.
- The Court may refer the suit or complaint to such person.
- The High Court of Sindh has nominated 268 numbers of people as Salis in 2015 as per the notification of High Court of Sindh.¹⁷⁸ The list is attached as Annex D.

4.2.4.2 Fees of the Salis

The court will determine the fees of the Salis, if any, to be paid by the party or parties against a valid receipt.¹⁷⁹

4.2.4.3 Responsibilities of the Salis¹⁸⁰

The law identifies 3 responsibilities of the Salis:

- a) Before proceeding in the matter, disclose to the Court any circumstances that may likely create an impression of a bias or which may prevent him from acting promptly. In such a scenario, the Court shall direct the parties to nominate another Salis.

¹⁷⁴ Section 22 of Small Claims and Minor Offences Ordinance, 2002

¹⁷⁵ Section 26 of Small Claims and Minor Offences Ordinance 2002

¹⁷⁶ Section 15 of the Small Claims and Minor Offences Ordinance 2002

¹⁷⁷"Salis" means the person acting as conciliator, mediator or arbitrator. [Section 2(1)(g) of the Small Claims and Minor Offences Ordinance 2002]

¹⁷⁸ Notification of Sindh High Court No. GIZ/Misc. – 2004(8)

¹⁷⁹ Section 20 of Small Claims and Minor Offences Ordinance, 2002

¹⁸⁰ Section 17 of Small Claims and Minor Offences Ordinance, 2002

- b) Facilitate negotiations between the parties and steer the direction of discussion, with the aim of finding a mutually acceptable solution; and
- c) Assist the parties in reaching an agreement.

4.2.4.4 *Prohibition on Salis*

- The Salis conducting proceedings for an amicable settlement shall not act in any capacity for any of the parties in connection with the matter in the suit or complaint in other proceedings.¹⁸¹
- The Salis conducting proceedings for an amicable settlement cannot appear as a witness in any capacity for any of the parties in connection with the matter in the suit or complaint in other proceedings.¹⁸²
- The Salis cannot disclose any information, statement, document and anything disclosed to the Salis during settlement proceedings and such shall be kept confidential.¹⁸³
- No document including any transcript, formal record or audio-visual recording can be made of the proceedings without the approval of the Salis and consent of the parties.¹⁸⁴
- No communication made in the settlement proceedings including information disclosed and views expressed can be used in any other proceedings whatsoever.¹⁸⁵

¹⁸¹ Section 23 of Small Claims and Minor Offences Ordinance, 2002

¹⁸² Ibid

¹⁸³ Section 24 of Small Claims and Minor Offences Ordinance, 2002

¹⁸⁴ Ibid

¹⁸⁵ Section 25 of Small Claims and Minor Offences Ordinance, 2002

5 LEGISLATIONS RELATING TO CONCILIATION

5.1 CODE OF CIVIL PROCEDURES, 1908

Section 89A and Order X Rule 1A can be used for accessing conciliation as a mode of ADR. The details of the legislation are discussed under Chapter 3, Heading 3.1.

5.2 MUSLIM FAMILY LAW ORDINANCE, 1961

5.2.1 Establishment of an Arbitration Council

Disputes related to family and matrimonial matters are under Muslim Family Ordinance are referred to an arbitration/conciliation council. This arbitration Council is not regulated by Arbitration Act, 1940; the Code of Civil Procedure, 1908; or any other law regulating the procedures of the court.¹⁸⁶

According to the law, this arbitration council will be a body consisting of the Chairman and representative from each party. The Chairman¹⁸⁷ of the council is the either the Union Council (UC) ¹⁸⁸Chairman or a person appointed by the government in the same capacity¹⁸⁹ or by any official in that behalf by any such government to act as the Chairman of this arbitration council. A Chairman of the UC cannot act as the Chairman of the arbitration in the following cases.

- If he is a non-Muslim.
- If the arbitration Council is requested to be made of the application of the UC Chairman.
- If he is due to illness or any other reason, unable to act as the chairman of the arbitration council.

If the party fails to nominate any representative within the prescribed time by the Chairman, the arbitration council will be formed without any representative.¹⁹⁰

¹⁸⁶ Section 3(2), The Muslim Family Laws Ordinance, 1961

¹⁸⁷ Section 2(b), The Muslim Family Laws Ordinance, 1961

¹⁸⁸ Union Council or the Town or Union Committee constituted under the Basic Democracies Order, 1959

¹⁸⁹ Federal Government in Cantonment Areas and Provincial Government in other areas.

¹⁹⁰Section 2(a), The Muslim Family Laws Ordinance, 1961

5.2.2 Nature of Disputes Resolved under MFLO

5.2.2.1 *Polygamy*

Whenever a man wishes to marry during the subsistence of an existing marriage, he must apply for the permission in writing of the Chairman.¹⁹¹ He shall apply for the permission through a prescribed manner along with the prescribed fee and shall also state the reasons for the proposed marriage. He must also state whether he has taken the consent from the existing wife/wives. The Chairman of the Union Council forms an Arbitration Council with representatives of the existing wife or wives and the applicant in order to determine the necessity of the proposed marriage. The arbitration council will determine if the proposed marriage is just and necessary and will grant the permission for new marriage.¹⁹²

The Arbitration Council will have to record its reason for the decision. Any party can apply for the revision in the decision within the prescribed time, on the payment of the prescribed fee. If any party does not apply for the revision in the prescribed time, such decision of the council will be final and not be questioned in any court.¹⁹³

Any man who contracts another marriage without following the prescribed procedure in the ordinance will,

- Pay the entire amount of dower (whether prompt or deferred) immediately to the existing wife/wives.¹⁹⁴
- If he fails to pay the dower amount, it will be recovered from the arrears of the land revenue.¹⁹⁵
- If the existing wife complains and the man is convicted, he may be punishable with simple imprisonment, which may extent to one year or five thousand rupees fine or both.¹⁹⁶

Any polygamous marriage contracted without the Union Council's approval cannot be registered under the Ordinance. Nevertheless, if a man does not seek the permission of his existing wife or the Union Council, his subsequent marriage remains valid.

5.2.2.2 *Dissolution of Marriage by Talaq*

Under this ordinance, the divorcing husband shall, as soon as possible after a *Talaq* (Divorce) pronounced "in any form whatsoever", give the Chairman of the Union Council notice in writing. The Chairman has to

¹⁹¹Section 6(1), The Muslim Family Laws Ordinance, 1961

¹⁹²Section 6(3), The Muslim Family Laws Ordinance, 1961

¹⁹³Section 6(4), The Muslim Family Laws Ordinance, 1961

¹⁹⁴Section 6(5)(a), The Muslim Family Laws Ordinance, 1961

¹⁹⁵Ibid

¹⁹⁶Section 6(5)(b), The Muslim Family Laws Ordinance, 1961

supply the copy of this notice to the wife.¹⁹⁷ Failure to act in accordance with this procedure will be punishable by simple imprisonment of one year or fine of five thousand rupees or both.¹⁹⁸ The Chairman has to form an arbitration council with the 30 days of this receipt of the notice of *Talaq* in order to reconcile the both parties; the Arbitration Council shall take all steps necessary to bring about such reconciliation. If this reconciliation fails, a talaq that is not revoked, either expressly or implicitly, takes effect after the expiry of ninety days from the day on which the notice of repudiation was delivered to the chairman.¹⁹⁹

If the case of pregnancy of the wife at the time of the pronouncement of the *Talaq*, the *talaq* does not take effect until ninety days have elapsed or the end of the pregnancy, whichever is later.²⁰⁰

5.2.2.3 Dissolution of Marriage by other means than Talaq

When the wife has the right of delegated divorce, she must also notify the husband for the repudiation of the marriage by the similar prescribed procedure as mention in section 7 of the Ordinance.²⁰¹

5.2.2.4 Dispute related to Maintenance

If a husband is failed to maintain a wife, or if he is not maintaining his wives equitably, the wife/wives may apply to the chairman of the UC. The Chairman has the authority to establish the Arbitration Council to determine the matter and he may issue the certificate specifying the amount to be paid by husband as maintenance.²⁰²

The decision by the Chairman through arbitration council may be prefer for a revision in a prescribed manner under the prescribed time. If the parties fail to do so, the decision will be final and cannot be challenged in any court.²⁰³

5.2.2.5 Dispute related to Dower Amount

When there is no specific amount is set for the dower in the *Nikkahnama* (Marriage Contract), the chairman has the authority to prescribe the entire amount of dower payable to the wife on demand.²⁰⁴

¹⁹⁷ Section 7(1), The Muslim Family Laws Ordinance, 1961

¹⁹⁸Section 7(2), The Muslim Family Laws Ordinance, 1961

¹⁹⁹Section 7(3), The Muslim Family Laws Ordinance, 1961

²⁰⁰Section 7(5), The Muslim Family Laws Ordinance, 1961

²⁰¹Section 8, The Muslim Family Laws Ordinance, 1961

²⁰²Section 9(1), The Muslim Family Laws Ordinance, 1961

²⁰³Section 9(2), The Muslim Family Laws Ordinance, 1961

²⁰⁴Section 10, The Muslim Family Laws Ordinance, 1961

5.3 THE FAMILY COURT ACT, 1964²⁰⁵

The Family Court Act 1964 provision for the establishment of Family Courts for the expeditious settlement and disposal of disputes relating to marriage, family affairs and all matters connected with that.

5.3.1 Jurisdiction

The Family Court Act, 1964 have an exclusive jurisdiction to entertain, hear and adjudicate the following matters.²⁰⁶

- Dissolution of Marriage
- Dower
- Maintenance
- Restitution of Conjugal Rights
- Custody of Children
- Guardianship
- Jactitation of Marriage
- Dowry

This jurisdiction is subjected to the provision of Muslim Family Laws Ordinance, 1961 and the Conciliation Courts Ordinance, 1961.²⁰⁷

5.3.2 Provision Related to ADR

The Family Court Act, 1964 provides the way to conciliation or compromise between the parties on two stages of the trial.

5.3.2.1 Pre-Trial Conciliation

On the receipt of the written statement by the defendant in any family suit, the court shall fix the pre-trial date prior to the hearing on the case.²⁰⁸ The court shall attempt effect a compromise or reconciliation between the parties, if possible.²⁰⁹ If the court fails to reconcile the parties, it shall frame the issues in the case and proceed to the trial.²¹⁰

²⁰⁵The words “West Pakistan” is omitted by the Family Court (Amendment) Act, 1996

²⁰⁶Schedule [to be read with Section 5], The Family Court Act, 1964

²⁰⁷Ibid

²⁰⁸Section 10 (1)

²⁰⁹Section 10 (3)

²¹⁰Section 10 (4)

5.3.2.2 Post-Trial Conciliation

After the hearing of evidences and arguments from the both parties, the court shall attempt one more time to reconcile or make compromise between the parties.²¹¹ If the court fails to do so, it shall announce the final judgment and pass the decree.

5.3.3 Bar on the injunctions issued by Family Court.

A Family Court cannot issue any injunction, stay or order on the proceedings that are pending before a Chairman or an Arbitration Council. The Chairman and Arbitration Council in this Act have the same meaning as under the Muslim Family Law Ordinance, 1961.²¹²

²¹¹ Section 12 (1)

²¹² Section 2(a), The Family Court Act, 1964

6 LEGISLATIONS RELATED TO OTHER MODES OF ADR

6.1 CODE OF CIVIL PROCEDURES, 1908

Section 89A and Order X Rule 1A can be used for accessing other modes of ADR. The details of the legislation are discussed under Chapter 3, Heading 3.1.

6.2 CODE OF CRIMINAL PROCEDURE, 1898

The Code of Criminal Procedure has no reference or mention of any alternative dispute resolutions in specific. Only one area of relevance in connection to the Small Claims and Minor Offences Ordinance 2002 has been identified i.e. compounding offences under Section 345 of the Code.

6.2.1 Compounding of a Criminal Offence

The offences punishable under the Pakistan Penal Code may be compounded by the person prescribed under the section 345 of the Code of Criminal Procedure. This means the case can be compromised in an out of court settlement or agreement.

6.2.2 Who may compound the offence?

Any person who fits the criteria mentioned in section 345 of Code of Criminal Procedure can compound the offence. If the person who fits the criteria to compound the offence mentioned in Annexes (A) and (B) is minor, or of unsound mind, any other person who is competent may compound the offence on his behalf.²¹³

6.2.3 Procedure of Composition

The compounding of any offence can be done in two different modes according to the nature of offence.

- With the permission of court in some offences²¹⁴

²¹³ Section 345(4), Code of Criminal Procedures 1898

²¹⁴ Section 345(2), Code of Criminal Procedures 1898

- Without any intervention and permission of the court in some offences.²¹⁵

The description of these offences is provided in Annexes (A) and (B) respectively.

Any offence related to the abetment of any of the offences in Annexes (A) and (B) can be compounded in the likewise manner.²¹⁶ If the case has been applied for the revision to the High Court or any Court in similar power on any decision taken by its sub-ordinate court, such offence is also compoundable by the competent person with the permission of the High Court or the Court acting in the similar power.

6.2.4 Limitation to the composition of Offences

Any offence under the chapter XVI of the Pakistan Penal Code (Section 299 to Section 377) which is eligible for waiver or composition and the offence is committed in the name and pretext of the Karo Kari, siyahkari, honour killing, or any similar custom or practice is subject to the conditions the court deems fits to impose for composition or waiver.²¹⁷

In case of conviction of the accused person and if the appeal is pending, no composition is allowed without the permission of the court before which the appeal is to be proceeded.²¹⁸

Any other offence not mention in Annexes (A) and (B) cannot be compounded under the Code of Criminal Procedure.²¹⁹

6.3 OFFICES OF OMBUDSMAN IN PAKISTAN

The Ombudsman Agencies also knowns as “Idara-e- Mohtasib” in Pakistan includes

- Federal Ombudsman of Pakistan
- Provincial Ombudsman (Mohtasib-E-Aala) Offices in Punjab, Khyber Pakhtunkhwa, Baluchistan and Sindh
- Banking Mohtasib;
- Federal Insurance Ombudsman
- Federal Tax Ombudsman

²¹⁵Section 345(1), Code of Criminal Procedures 1898

²¹⁶ Section 345(3), Code of Criminal Procedures 1898

²¹⁷ Section 345(2A), Code of Criminal Procedures 1898

²¹⁸ Section 345(5), Code of Criminal Procedure 1898

²¹⁹Section 345(7), Code of Criminal Procedure 1898

These Ombudsman agencies are quasi-judicial agencies, which work independently to carry out investigations into complaints about maladministration in any government agency in order to provide relief to public.

6.3.1 Federal Ombudsman of Pakistan

The office of Federal Ombudsman was established in 1983 under the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983. The Wafaqi Mohtasib looks into the complaints about maladministration in any Federal Government Agency. It also entertains the complaints of Federally Administrated Tribal Areas (FATA).

6.3.2 Mohtasib, Sindh

The Establishment of the Office of Ombudsman for the Province of Sindh Act 1991 was passed in 1992²²⁰ but the first appointment of the first Ombudsperson of Sindh was made in 2012 on the notification of Government of Sindh.²²¹ The office of Mohtasib of Sindh has jurisdiction in any Government of Sindh agency.

6.3.3 Limitations to Office of Ombudsman

The matters, which do not fall within the jurisdiction of the offices of any Ombudsman are,

- Matters that are Sub-judice
- Matters relating to External Affairs
- Matters relating to Defence
- Service Matters (relating to the public agency in which the complainant is currently employed; however, they can take up complaints against delay or mis-interpretation in payment of retirement benefits or discrimination meted out to the employees)
- Federal Public Service Commission

²²⁰ Sindh Act No. I of 1992

²²¹<<http://sindh.gov.pk/dpt/PROVINCIAL-OMBUDSMAN/intro.htm>>

6.3.4 Procedure to access the Office of Mohtasib, Sindh

Each mohtasib or Ombudsperson may have its own specific procedures concerning accessing the office. It is essential that the specific law and process be looked at for the particular Mohtasib or Ombudsperson a complainant wishes to apply to. These provide a general outline of the process.

6.3.4.1 Who can Lodge a Complaint?

Any person aggrieved by the actions of any functionary of the Department / Commission / Corporation of the Government of Sindh or Institution established or controlled by the Government of Sindh can lodge a complaint.

6.3.4.2 Matters that can be complained

A complaint can be lodge to the office of Mohtasib on any decision, process, recommendation, or act of omission or commission which,

- is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons; or
- is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or
- is based on irrelevant grounds; or
- involves the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery jobbery, favouritism, nepotism and administrative excesses; and
- neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities

Although it is not mandatory to do so, it is advised that complaint should be made to the agency that is responsible. This may lead to an early resolution at the level of the agency itself.

6.3.4.3 How to Lodge a Complaint?

A complaint can be lodge to the head office or any regional office of Mohtasib, Sindh on the prescribed form in person, by hand, by post, by fax or email or by any other means of communication.

The office of Mohtasib, Sindh on the presentation of the complaint issues a receipt immediately.

6.3.4.4 Redress of Complaint

If the Mohtasib Sindh admits the complaint,

- An investigation is initiated. Complainant and the agency complained against will both be given equal opportunities to present their side of the story.
- After this investigation is completed, the Mohtasib Sindh gives his decision on the complaint. If he finds the agency has treated the complainant fairly and in accordance with law, he will deny complaint.
- In case he finds the agency guilty of maladministration, he will send his recommendations to the agency, specifying action to be taken within a defined time.
- The Mohtasib Sindh then follows up with the agency on implementation of the recommendations. If the Mohtasib Sindh concludes that the agency is acting in defiance of the recommendations and wilfully not implementing them, he will file a formal reference to the Governor Sindh, who may at his discretion, give further directions to the agency directly.

The Mohtasib aims to resolve any complaint within 3 to 6 months.

6.3.5 Appeal

Once the Mohtasib Sindh has given a decision on a complaint, complainant can make a representation to the Governor Sindh within 30 days of receipt of the decision, if complainant is dissatisfied with it. The agency against which complainant had complained also has the right to make representation to the President within the same time. The Mohtasib's decision does not affect complainant's legal rights and they are still free to seek other legal remedies available in relation to the complaint, including going to court.

7 ANNEX A

All Offences in CrPC²²² Compoundable with the intervention of Court.

S. No	Offence	Applicable Section of PPC ²²³	Competent Person for Composition
1	Rioting	147	The person against whom the offence was committed or the heirs of such persons, as the case may be, if the offence was committed along with another compoundable offence.
2	Rioting armed with deadly weapon	148	Ditto
3	Qatl-i-amd	302	By the heirs of the victim other than the accused or the convict if the offence has been committed by him in the name or on the pretext of <i>kaorkari</i> , <i>siyahkari</i> or similar other customs or practices.
4	Qatl under ikrah-i-tam	303	Ditto
5	Qatl-i-amd not liable to qisas	308	Ditto
6	Qatl-i-Shibh-i-amd	316	Ditto
7	Qatl-e-Khata	319	Ditto
8	Qatl-e-Khata by rash or negligent driving	320	Ditto
9	Qatl-bis-sabab	322	Ditto
10	Attempt to commit qati-i-amd	324	The person against whom the offence was committed.
11	Itlaf-i-udw	334	Ditto
12	Itlaf-i-Salahiyat-i-udw	336	Ditto
13	Shajjah of any kind	337A	Ditto
14	Jaifah	337D	Ditto
15	Ghayrjaifah of any kind	337F	Ditto
16	Hurt by rash or negligent driving	337G	Ditto
17	Hurt by rash or negligent act	337H	Ditto
18	Hurt by mistake	337I	Ditto
19	Hurt by means of a poison	337J	Ditto
20	Hurt to extort confession or to compel restoration of property	337K	Ditto

²²² The Code of Criminal Procedure, 1898

²²³ Pakistan Penal Code, 1860

S. No	Offence	Applicable Section of PPC ²²³	Competent Person for Composition
21	Other hurts	337L	Ditto
22	Hurt not liable to qisas	337M	Ditto
23	Cases in which qisas for hurt cannot be enforced	337N	Ditto
24	Isqat-i-haml	338A	The victim or the heirs of the victim, as the case may be.
25	Isqat-janin	338C	Ditto
26	Wrongfully confining a person for three days or more	343	The person confined.
27	Wrongfully confining a person in secret.	346	Ditto
28	Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
29	Dishonest misappropriation of property	403	The owner of the property Misappropriated.
30	Cheating	417	The person cheated.
31	Cheating a person whose interest the offender was bound, by law or by legal contract, to protect	418	Ditto
32	Cheating by personation	419	Ditto
33	Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	Ditto
34	Mischief by injury to work of (e.s) irrigation (e.s) by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person	430	The person to whom loss or damage is caused.
35	House trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
36	Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.
37	Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.
38	Knowingly selling, or exposing or possessing for sale or for trade or manufacturing purpose, goods marked with a counterfeit trade or property mark.	486	Ditto
39	Marrying again during the lifetime of a husband or wife.	494	The husband or wife of the person so marrying.
40	Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it is intended to insult or whose privacy is intruded upon.

8 ANNEX B

All the offences Compoundable under CrPC²²⁴.

S. No	Offence	Applicable Section of PPC ²²⁵	Competent Person for Composition
1	Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
2	Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
3	Assault or use of criminal force.	332, 355, 358	The person assaulted or to whom criminal force is used.
4	Mischief, when the only loss or damage caused is loss or damage to a private person	426, 427	The person to whom the loss or damage is caused.
5	Criminal trespass; House trespass.	447 448	The person in possession of the property trespassed upon.
6	Dishonestly issuing a cheque for repayment of loan or fulfilment of an obligation.	489F	The person in whose favour cheque issued.
7	Criminal breach of contract of service.	490, 491, 492	The person with whom the offender has contracted.
8	Adultery; Enticing or taking away or Detaining with criminal intent a married woman.	497 498	The husband of the woman.
9	Defamation	500	The person defamed.
10	Printing or engraving matter, knowing it to be defamatory.	501	The person defamed.
11	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	The person defamed.
12	Insult intended to provoke a breach of the peace.	504	The person insulted.
13	Criminal intimidation except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.
14	Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.

²²⁴ The Code of Criminal Procedure, 1898

²²⁵ Pakistan Penal Code, 1860

9 ANNEX C

All offences in the Pakistan Penal Code (Act XLV of 1860), punishable with imprisonment not exceeding three years or with fine or with both. These offences can be mediated under Small Claims and Minor Offences Ordinance, 2002.

Section No.	Offence	Punishment/ Imprisonment	Fine
117	Abetment commission of offence by the public or by more than ten person:	Imprisonment for 3 years	Or fine, or both
123B	Defiling or unauthorized removing the national flag of Pakistan from Government building etc.,:	Imprisonment for 3 years	Or fine, or both
129	Public servant negligently suffering such prisoner to escape	SI ²²⁶ for a term 3 years	And fine
133	Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of his office:	Imprisonment for 3 years	And fine
135	Abetment of desertion of soldier, sailor or airman:	Imprisonment for 2 years	Or fine or both
136	Harbouring deserter	Imprisonment for 2 years	Or fine or both
137	Deserter concealed on board merchant vessel through negligence of master:	No imprisonment	Penalty not exceeding 1500Rs
138	Abetment of act of insubordination by soldier, sailor or airman:	Imprisonment for 6 months	Or fine or both
140	Wearing grab or carrying token used by a soldier, sailor or airman:	Imprisonment for 3 months	Or fine of 1500RS or both
143	Punishment of unlawful assembly	Imprisonment for 6 months	Or fine or both
144	Joining unlawful assembly armed with deadly weapon:	Imprisonment for 2 years	Or fine or both
145	Joining or continuing in assembly of five or more persons after it has commanded to disperse:	Imprisonment of 2 months	Or fine, or both
147	Punishment for rioting	Imprisonment for 2 years	Or fine, or both
148	Rioting armed with deadly weapons:	Imprisonment for 3 years	Or fine, or both
151	Knowingly joining or continuing in assembly of five or more persons after it has commanded to disperse	Imprisonment for 2 months	Or fine, or both
152	Assaulting to obstructing public servant when suppressing riot, etc.:	Imprisonment for 3 years	Or fine, or both

²²⁶ Simple imprisonment

Section No.	Offence	Punishment/Imprisonment	Fine
153	Wantonly giving provocation with intent to cause riot: If committed; If not committed;	Imprisonment for one year Imprisonment for 6 months	Or fine or both Or fine, or both
153B	Inducing students, etc., take part in political activity:	Imprisonment for 2 years	And fine
154	Owner or occupier of land on which an unlawful assembly is held:	No imprisonment	Fine not exceeding 3000Rs
155	Liability of person for whose benefit riot is committed:	No imprisonment	Only fine
157	Harbouring persons hired for an unlawful assembly:	Imprisonment for 6 months	Or fine, or both
158	Being hired to take part in an unlawful assembly: When not armed; When armed;	Imprisonment for 6 months Imprisonment for 2 years	Or fine, or both. Or fine, or both.
160	Punishment for affray	Imprisonment for one month	Or fine of Rs. 3000, or both.
161	Public servant taking gratification other than legal remuneration in respect of an official act:	Imprisonment for 3 years	Or fine, or both.
162	Taking gratification, in order by corrupt or illegal means to influence public servant:	Imprisonment for 3 year	Or fine, or both
163	Taking gratification, for exercise of personal influence with public servant:	SI for 1 year	Or fine, or both
164	Punishment for abetment by public servant of offences defined in sections 162 or 163:	Imprisonment for 3 years	Or fine, or both
165	Public servant obtaining valuable thing without consideration from person concerned in proceedings or business transacted by such public servant:	Imprisonment for 3 years	Or fine, or both
165A	Punishment for abetment in offences defined in sections 161 and 165:	Imprisonment for 3 years	Or fine, or both
166	Public servant disobeying law, with intent to cause injury to any person:	SI of one year	Or fine, or both
167	Public servant framing an incorrect document with intent to cause injury:	Imprisonment for 3 years	Or fine, or both
168	Public servant unlawfully engaging in trade:	SI for 1 year	Or fine, or both
169	Public servant unlawfully buying or bidding for property:	SI for 2 years	Or fine, or both
170	Personating public servant	Imprisonment for years	Or fine, or both
171	Wearing grab or carrying token used by public servant with fraudulent intent:	Imprisonment for 6 months	Or fine of Rs600, or both
171E	Punishment for bribery: When caused by threat;	Imprisonment for 1 year	Or fine, or both. Fine only.

Section No.	Offence	Punishment/Imprisonment	Fine
		No imprisonment	
171F	Punishment for undue influence or personating at election:	Imprisonment for 1 year Or fine, or both	
171G	False statement in connection with an election:	No imprisonment	Fine only
171H	Illegal payment in connection with an election:	No imprisonment	Fine of Rs1500
171I	Failure to keep election accounts:	No imprisonment	Fine of Rs500
171J	Inducing any person not to participate in any election or referendum:	Imprisonment for 3 years Or fine of Rs. 5lac or both.	
172	Absconding to avoid service of summons or other proceeding. If the order or summon is such that to attend in person or by agent or to produce a document in a court	Imprisonment for 1 month SI for 6 months Or fine of 1500rs or both Or fine of Rs3000 or both	
173	Preventing service of summons or other proceeding preventing publication thereof: If the order or summon is such that to attend in person or by agent or to produce a document in a court	Imprisonment for 1 month SI for 6 months Or fine of Rs1500 or both Or fine of Rs3000 or both	
174	Non-attendance in obedience to an order from public servant. If the order or summon is such that to attend in person or by agent or to produce a document in a court	Imprisonment for 1 month SI for 6 months Or fine of Rs1500 or both Or fine of Rs3000 or both	
175	Omission to produce document to public servant by person legally bound to produce it. If the order or summon is such that to attend in person or by agent or to produce a document in a court	Imprisonment for 1 month SI for 6 months Or fine of Rs1500 or both Or fine of Rs3000 or both	
176	Omission to give notice or information to public servant by person legally bound to give it: If the notice or information required to be given respects the commission of an offence, or prevent the commission of an offence, or apprehension of an offender: If the notice or information required to be given is passed under sub section (1) of section 565 of CrPC:	Imprisonment for 1 month SI for 3 months SI for 3 months Or Fine of Rs1500 or both Or fine of Rs3000, or both Or fine of Rs3000, or both	
177	Furnishing false information. If the information which he is bound to give respects the commission of an offence, or for the purpose of prevention of an offence, or apprehension of an offender:	SI for 6 months Imprisonment for 2 years Or fine of Rs3000, or both Or fine, or both.	
178	Refusing oath or affirmation when duly required by public servant to make it.	SI for 6 months Or fine of Rs3000, or both	
179	Refusing to answer public servant authorized to question.	SI for 6 months Or fine of Rs3000, or both	
180	Refusing to sign statement.	SI for 3 months Or fine of Rs1000, or both	
181	False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation.	Imprisonment for 3 years And fine	
182	False information with intent to cause public servant to use his lawful power to the injury of another person.	Imprisonment for 6 months Or fine of Rs3000, or both	

Section No.	Offence	Punishment/Imprisonment	Fine
183	Resistance to the taking of property by the lawful authority of a public servant.	Imprisonment for 6 months	Or fine of Rs3000, or both.
184	Obstructing sale of property offered for sale by authority of public servant.	Imprisonment for 1 month	Or fine of Rs1500, or both
185	Illegal purchases or bid for property offered for sale by authority of public servant.	Imprisonment for 1 month	Or fine of Rs600, or both.
186	Obstructing public servant in discharge of public functions.	Imprisonment for 3 months	Or fine of Rs1500, or both.
187	Omission to assist public servant when bound by law to give assistance: If such assistance is demanded from him by a public servant who is legally competent to make such demands for executing any process issued by court, or to prevent the commission of an offence, or suppressing a riot or affray or apprehending a person who is charged with an offence or guilty of one, or having escaped from a lawful custody:	SI of 1 month Imprisonment for 6 months	Or fine of Rs600, or both. Or fine of Rs1500, or both
188	Disobedience to order duly promulgated by public servant: If Disobedience caused or tend to cause by, obstruction, annoyance, injury, or risk of all these; If disobedience caused or tend to cause by, damage to human life, health safety or riot, affray;	SI of 1 month Imprisonment for 6 months	Or fine of Rs600, or both. Or fine of Rs3000, or both.
189	Threat of injury of public servant.	Imprisonment for 2 years	Or fine, or both.
190	Threat of injury to induce person to refrain from applying for protection to public servant.	Imprisonment for 1 year	Or fine, or both.
202	Intentional omission to give information of offence by person bound to inform.	Imprisonment for 6 months	Or fine, or both.
203	Giving false information respecting an offence committed.	Imprisonment for 2 years	Or fine, or both.
204	Destruction of document to prevent its production as evidence.	Imprisonment for 2 years	Or fine, or both.
205	False personation for purpose of act or proceeding in suit or prosecution.	Imprisonment for 3 years	Or fine, or both.
206	Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution	Imprisonment for 2 years	Or fine, or both.
207	Fraudulent claim to property to prevent its seizure as forfeited or in execution.	Imprisonment for 2 years	Or fine, or both.
208	Fraudulently suffering decree for sum not due.	Imprisonment for 2 years	Or fine, or both.
209	Dishonestly making false claim in Court.	Imprisonment for 2 years	And fine
210	Fraudulently obtaining decree for sum not due.	Imprisonment for 2 years	Or fine, or both.

Section No.	Offence	Punishment/ Imprisonment	Fine
215	Taking gift to help to recover property, etc.:	Imprisonment for 2 years	Or fine, or both
217	Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture	Imprisonment for 2 years	Or fine, or both.
218	Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture	Imprisonment for 3 years	Or fine, or both
223	Escape from confinement or custody negligently suffered by public servant	SI for 2 years	Or fine, or both.
224	Resistance or obstruction by a person to his lawful apprehension	Imprisonment for 2 years	Or fine, or both.
225A	Omission to apprehend, or sufferance of escape, on party of public servant, in cases otherwise provided for: If done intentionally; If done negligently;	Imprisonment for 3 years SI for 2 years	Or fine, or both Or fine, or both
225B	Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for	Imprisonment for 6 months	Or fine, or both
228	Intentional insult or intervention to public servant sitting in judicial proceeding	Imprisonment for 6 months	Or fine of Rs3000, or both
229	Personation of a juror or assessor	Imprisonment for 2 years	Or fine, or both.
231	Counterfeiting coin	Imprisonment for 7 years	And fine
233	Making or selling instrument for counterfeiting coin	Imprisonment for 3 years	And fine
237	Import or export of counterfeit coin	Imprisonment for 3 years	And fine
241	Delivery of coin as genuine, which when first possessed the deliverer did not know to be counterfeit	Imprisonment for 2 years	Or fine of 10times value of the coin counterfeited, or both.
242	Possession of counterfeit coin by person who know it to be counterfeit when he became possessed thereof	Imprisonment for 3 years	And fine
246	Fraudulently or dishonestly diminishing weight or altering composition of coin	Imprisonment for 3 years	And fine
248	Altering appearance of coin with intent that it shall pass as coin of different description	Imprisonment for 3 years	And fine
252	Possession of coin by person who knew it to be altered when he became possessed thereof	Imprisonment for 3 years	And fine
254	Delivery of coin s genuine which, when first possessed, the deliverer did not know to be altered	Imprisonment for 2 years	Or fine of 10time value of the coin for which the altered coin was passed, or both.

Section No.	Offence	Punishment/Imprisonment	Fine
261	Effacing writing from substance bearing government stamp, or removing from document stamp used for it, with intent to cause loss to government	Imprisonment for 3 years	With or without fine
262	Using government stamp known to have been before used	Imprisonment for 2 years	With or without fine
263	Erasure of mark denoting that has been used	Imprisonment for 3 years	With or without fine
263A	Prohibition of fictitious stamp	No imprisonment	Fine of Rs600
264	Fraudulent use of false instrument for weighing	Imprisonment for 1 year	With or without fine
265	Fraudulent use of false weight or measure	Imprisonment for 1 year	With or without fine
266	Being in possession of false weight or measure	Imprisonment for 1 year	With or without fine
267	Making or selling false weight or measure	Imprisonment for 1 year	With or without fine.
269	Negligent act likely to spread infection of disease dangerous to life	Imprisonment for 6 months	Or fine, or both
270	Malignant act likely to spread infection of disease dangerous to life	Imprisonment for 2 years	Or fine, or both
271	Disobedience to quarantine rule	Imprisonment for 6 months	Or fine, or both
272	Adulteration of food or drink intended for sale	Imprisonment for 6 months	Or fine of 3000Rs or both
273	Sale of noxious food or drink	Imprisonment for 6 months	Or fine of 3000Rs or both
274	Adulteration of drugs	Imprisonment for 6 months	Or fine of 3000Rs, or both
275	Sale of adulteration	Imprisonment for 6 months	Or fine of 3000Rs, or both
276	Sale of drug as different drug or preparation	Imprisonment for 6 months	Or fine of 3000Rs, or both
277	Fouling water of public spring or reservoir	Imprisonment for 3 months	Or fine of 1500Rs or both
278	Making atmosphere noxious to health	No imprisonment	Punishable with fine of 1500Rs
279	Rash driving or riding on a public way	Imprisonment for 2 year	Or fine of 3000Rs or both
280	Rash navigation of vessel	Imprisonment of 6 months	Or fine or 3000Rs or both
282	Conveying person by water for hire in unsafe or overload vessel	Imprisonment for 6 months	Or fine of 3000Rs, or both

Section No.	Offence	Punishment/ Imprisonment	Fine
283	Danger or obstruction in public way or line of navigation	No imprisonment	Fine of Rs600
284	Negligent conduct with respect to poisonous substance	Imprisonment for 6 months	Or fine of Rs3000,or both
285	Negligent conduct with respect to fire or combustible	Imprisonment for 6 months	Or fine of 3000Rs or both
286	Negligent conduct with respect to explosive substance	Imprisonment for 6 months	Or fine of 3000Rs, or both
287	Negligent conduct with respect to machinery	Imprisonment for 6 months	Or fine of 3000Rs, or both
288	Negligent conduct with respect to pulling down or repairing building	Imprisonment for 6 months	Or fine of 3000Rs, or both
290	Punishment for public nuisance in cases not otherwise provided for	No imprisonment	Fine of 600Rs
291	Continuance of nuisance after injection to discontinue	SI for 6 months	Or fine, or both
292	Sale, etc., of obscene books, etc.	Imprisonment for 3 months	Or fine, or both
293	Sale. Etc., obscene objects to young person	Imprisonment for 3 months	Or fine, or fine
294	Obscene acts and songs	Imprisonment for 3 months	Or fine, or both
294A	Keeping lottery office	Imprisonment for 6 months	Or fine, or both
294B	Offering of prize in connection with trade, etc.	Imprisonment for 6 months	Or fine, or both
295	Injuring or defiling place of worship, with intent to insult the religion of any class	Imprisonment for 2 years	Or fine, or both
296	Disturbing religious assembly	Imprisonment for 1 year	Or fine, or both
297	Trespassing on burial places, etc.	Imprisonment for 1 years	Or fine, or both
298	Uttering words, etc., with deliberate intent to wound religious feeling	Imprisonment for 1 year	Or fine, or both
298A	Use of derogatory remarks, etc. in respect of Holy personages	Imprisonment for 3 years	Or fine, or fine
298B	Misuse of epithets, descriptions and titles, etc. reserved for certain holy personage or place: If recite Azaan;	Imprisonment for 3 years	And fine
298C	Person of Quadiani group, etc., calling himself a Muslim or preaching or propagating his faith	Imprisonment for 3 years	And fine
325	Attempt to commit suicide	Imprisonment for 1 year	Or fine, or both

Section No.	Offence	Punishment/Imprisonment	Fine
329	Concealment of birth by secret disposal of dead body	Imprisonment for 2 years	Or fine or both
341	Punishment for wrongful restraint	Imprisonment for 1 month	Or fine of 1500Rs or both
342	Punishment for wrongful confinement	Imprisonment for 1 year	Or fine of 3000Rs or both
343	Wrongful confinement for three or more days	Imprisonment 2 years	Or fine or both
344	Wrongful confinement for ten or more days	Imprisonment for 3 years	And fine
345	Wrongful confinement of person for whose liberation writ has been issued	Imprisonment for 2 years. And any other term imprisonment for which he may be liable	
346	Wrongful confinement in secret	Imprisonment for 2 years. And any other term imprisonment for which he may be liable	
347	Wrongful confinement to extort property or constraint to illegal act	Imprisonment for 3 years	And fine
348	Wrongful confinement to extort confession or compel restoration of property	Imprisonment for 3 years	And fine
352	Punishment for assault or criminal force otherwise than on grave provocation	Imprisonment for 3 months	Or fine of 1500Rs or both
353	Assault or criminal force to deter the public servant from discharge of his duty	Imprisonment 2 years	Or fine or both
354	Assault or criminal force to woman with intent to outrage her modesty	Imprisonment for 2 years	Or fine or both
354A	Assault or use of criminal force to woman and stripping her of her cloths	Imprisonment for life	And fine
355	Assault or criminal force with intent to dishonor person, otherwise than on grave provocation	Imprisonment for 2 years	Or fine or both
356	Assault or criminal force in attempt to commit theft of property carried by a person	Imprisonment for 2 years	Or fine, or both
357	Assault or criminal force in attempting wrongfully to confine person	Imprisonment for 1 year	Or fine or 3000Rs, or both
358	Assault or criminal force on grave provocation	Imprisonment for 1 month	Or fine or 600Rs, or both
379	Punishment for theft	Imprisonment for 3 years,	Or fine, or both

Section No.	Offence	Punishment/ Imprisonment	Fine
384	Punishment for extortion	Imprisonment for 3 years	Or fine, or both
385	Putting person in fear of injury in order to commit extortion	Imprisonment for 2 years	Or fine, or both
399	Making preparing to commit dacoity	Imprisonment for 1 years	And fine
403	Dishonest misappropriation of property	Imprisonment for 2 years	Or fine, or both
411	Dishonestly receiving stolen property	Imprisonment for 3 years	Or fine, or both
414	Assisting in concealment of stolen property	Imprisonment for 3 years	Or fine, or both
417	Punishment for cheating	Imprisonment for 1 year	Or fine, or both
418	Cheating with knowledge that wrongful loss may ensue to person whose interest is bound to protect	Imprisonment for 3 years	Or fine, or both
421	Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors	Imprisonment for 2 years	Or fine, or both
422	Dishonestly or fraudulently preventing debt being available for creditors	Imprisonment for 2 years	Or fine, or both
423	Dishonest or fraudulent execution of deed of transfer containing false statement of consideration	Imprisonment for 2 years	Or fine, or both
424	Dishonest or fraudulent removal or concealment of property	Imprisonment for 2 years	Or fine or both
426	Punishment for mischief	Imprisonment for 3 months	Or fine, or both
434	Mischief by destroying or moving, etc., a land mark fixed by public authority	Imprisonment for 1 year	Or fine, or both
447	Punishment for criminal trespass	Imprisonment for 3 months	Or fine of 1500Rs, or both
448	Punishment for house trespass	Imprisonment for 1 year	Or fine of 3000Rs, or both
453	Punishment for lurking, house trespass or house breaking	Imprisonment for 2 years	And fine
456	Punishment for lurking house trespass or house breaking by night	Imprisonment for 3 years	And fine
461	Dishonestly breaking one receptacle containing property	Imprisonment for 2 years	Or fine, or both
462	Punishment for same offence when committed by person entrusted with custody	Imprisonment for 3 years	Or fine, or both
465	Punishment for forgery	Imprisonment for 2 years	Or fine, or both

Section No.	Offence	Punishment/Imprisonment	Fine
469	Forgery for purpose of harming reputation	Imprisonment for 3 years	And fine
482	Punishment for using a false trade mark or property mark	Imprisonment for 1 year	Or fine or both
483	Counterfeiting a property mark or trade mark used by another	Imprisonment for 2 years	Or fine, or both
484	Counterfeiting a mark used by a public servant	Imprisonment for 3 years	And fine
485	Making or possession or any instrument for counterfeiting a trade mark or property mark	Imprisonment for 3 years	Or fine, or both
486	Selling goods marked with a counterfeit trade mark or property mark	Imprisonment for 1 year	Or fine, or both
487	Making a false mark upon any receptacle containing goods	Imprisonment for 3 years	Or fine, or both
488	Punishment for making use of any such false mark		
489	Tempering with property mark with intent to cause injury	Imprisonment for 1 year	Or fine, or both
489E	Making or using documents resembling currency notes or bank notes	Imprisonment for 1 year	Or fine, or both
489F	Dishonestly issuing a cheque	Imprisonment for 3 years	Or fine, or both
491	Breach of contract to attend on any supply wants of helpless person	Imprisonment for 3 months	Or fine of 600Rs, or both
501	Printing or engraving matter known to be defamatory	Imprisonment for 2 years	Or fine, or both
502	Sale of printed or engraved substance containing defamatory matter	Imprisonment for 2 years	Or fine, or both
504	Intentional insult with intent to provoke breach of the peace	Imprisonment for 2 years	Or fine, or both
508	Acts caused by inducing person to believe that he will be rendered an object to divine displeasure	Imprisonment for 1 year	Or fine, or both
509	Insulting modesty or sexual harassment	Imprisonment for 3 years	And fine of 5 hundred thousand
510	Misconduct in public by a drunken person	SI for 24 hours	Or fine of 30Rs, or both

10 ANNEX D

List of Nominated Salis Member in Sindh by Sindh High Court in 2015

Karachi (West, South, East & Central)

Mr. Abdul Raheem Khan Jadoon	Ms. Hina Pirzada	Mr. Muhammad Manzoor Khan
Ms. Adeelah Mazhar	Ms. Rubina Qadir Jatoi	Mr. Abdul Rub Babar Khan
Mr. Jameel Ahmed Channa	M. Naimatullah Shah	Mr. Javed Iqbal
Mr. Tauqeer Fatima	Mr. Zakir Hussain	

Karachi (Malir)

Mr. Javed Iqbal	Mr. Shamim Iqbal Soomro	Mr. Abdul Hafeez Baloch
Mr. Nasir Raza Rind	Mr. Sarfraz Ali Sindhu	Mr. Rao Zahid Ali

Hyderabad

Mr. Ayaz Ali Rajpar	Mr. Moula Bux Narejo	Ms. Rozina Qambrani
Mr. K. B. Laghari	Mr. Muhammad Saleem Laghari	Ms. Humaira
Mr. Abdullah Qazi	Mr. Sadiq Ahmed	Ms. Shazia Channa
Mr. Inder Jeet Lohano	Mr. Muhammad Jamil Khan	Ms. Urooj Fatima
Mr. Wahid Bux Ajiaz Laghari	Mr. Rajab Ali Chang	Mr. Kashif Faraz Bhutto
Mr. Ali Asghar Laghari	Mr. Nasarullah Unar	Mr. Waseem Ali Rajpar
Mr. Shah Nawaz	Mr. Aftab Ali Katiyar	Mr. Bashir A. Buledi
Mr. Ahmed Ali Nagar	Ms. Asma Mughal	Mr. Manzoor Ahmed Subhupoto
Mr. Shamshad Ahmed Narejo	Ms. Zakia Baloch	

Thatta

Mr. Ghulam Akber Punhoon Uqaili	Mr. Subah Ali Shah	Mr. Ahmed Ali Halo
Mr. Ajiaz Hussain Shah	Mr. Abdul Qadir Khaskheli	Mr. Abdul Rahim Memon
Mr. Muhammad Shoaib A. Memon	Mr. Liaquat Ali Jamari	
Mr. Abdul Hafeez Anwar Uqaili	Mr. Qadir Bux Jarwar	

Sukkur

Mr. Ali Bakhsh Khan Maher	Mr. Sabir Bhaya	Mr. Ajiaz Hussain
Mr. Mufti Abdul Bari	Mr. Javeed Ahmed	Syed Naveed Ahmed Hashmi
Mr. Din Muhammad	Mr. Eshwar Lal	Mr. Rafique Ahmed Chachar
Mr. Gulzar Ahmed Bhutto	Mr. LalaAsad	

Shikarpur

Mr. Abdul Qadir Abro	Mr. Sain Dino Shaikh	Mr. Ghulam Mustafa Junejo
Mr. Raz Muhammad Hakro	Mr. Saeed Ahmed Shaikh	Mr. Toufique Anjum Ansari
Mr. Shakeel Ahmed Channa	Syed Muhammad Ali Shah	Mr. Ali Asghar Pahore

Mr. Muhammad Ali Baloch

Jacobabad

Ms. Asiya Agha Pathan	Mr. Misri Khan Jakhrani	Mr. Zahid Hussain Buriro
Mr. Zahid Hussain Soomro	Mr. Abdul Latif Buriro	Mr. Ajiaz Ali
Mr. Sharafuddin Soomro	Mr. Muhammaf Haneef Noorani	Mr. Zahid Hussain Thaheem

Dadu

Mr. Subhag Chand	Mr. Ashfaq Ali Abasi
Mr. Sahobat Baloach	Mr. Shafi Muhammad Memon

Badin

Mr. Allah JurioParhyar	Ms. Olga Wyle	Mr. Abdul HafeezMemon
Mir Hussain BuxTalpur	Mr. Riaz Mustafa Arain	Mr. Manzoor Ahmed Chandio

Sanghar

Mr. Ameer Hussain Panhwar	Mr. Tahmasib Saeed Jat	Mr. Muhammad Hakim Khaskheli
Mr. Rizwan Ali Jat	Mr. Abdul Ghaffar Laghari	Mr. Zain ul Abdin
Mr. Ghulam Hussain Land	Haji Sahib Dino Rajar	

Ghotki

Syed Abdul Latif Jilani	Mr. Abdul Majeed Leghari	Mr. Abdul Majeed Memon
Mr. Mushtaque Ahmed Abbasi	Mr. Yar Muhammad Jalbani	Mr. Mushtaque Ahmed Kolachi
Mr. Ali Ashgar Panhyar	Mr. Saleem Akhtar Malik	
Mr. Muhammad BuxShar	Mr. Nawab Ali Pitafi	

Jamshoro at Kotri

Mr. Ishaque H. Qureshi	Mrs. Talat Agha	Mr. Manzoor Ahmed Channa
Mr. Shahzad Ali Narejo	Mr. Zulfiqar Ali Chandio	Mr. Mumtaz Ahmed Soomro
Mr. Ayaz Ghuryani	Mr. Muhammad Rafique Kalhoro	Mr. Zameer Hussain
Mr. Zafar Chandio	Mr. Sher Otho	Mr. Muhammad Mudsir
Mr. M. M. Larik	Mr. Ganhwar Khan	Mr. Shahid Memor
Mr. Faheem Ahmed Unar	Mr. Shabeer Khero	Mr. Shahid Sahito
Ms. Sameena Arain	Mr. Asif Ali Solangi	

Umerkot

Mr. Muhammad Azhar Arain	Mr. Vasdev	Mr. Heeralal
Mr. Muhammad Ismail Kunbher	Mr. Arjun Das	Mr. Ayaz Ali Jokhio
Mr. Kilpardas	Mr. Islamuddin Rahimmon	
Mr. Jaidev S. Sharma	Mr. Zulfiqar Ali Gajju	

TharparkarMithi

Mr. Allah dino Bajeer
 Mr. KhatauJani
 Mr. Faqir Sabir
 Mr. Khilu Mal

Mr. Muhammad Meean Bajeer
 Mr. Usman Nohri
 Molvi Shakar Uddin Samejo
 Mr. Aban Ali Rahimoon

Mr. Muhammad Jameel Rajar
 Mr. Ali Muhammad Khoso

Mirpurkhas

Mr. Manzoor Ahmed Khan
 Mr. Abdul Aziz Memon
 Mr. Nawab Ali Kaka
 Mr. Abdul Qadeer Chohan

Mir Parvaiz Talpur
 Mr. Sikandar Ali Kolachi
 Mr. Abdul Ghaffar Narejo
 Mr. Nazeer Ahmed Jarwar

Ms. Nousheen Pahore
 Mr. Zahid Khalil Ansari

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 Mr. Mujahid Hussain Rajput
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Kashmore Kandkhot

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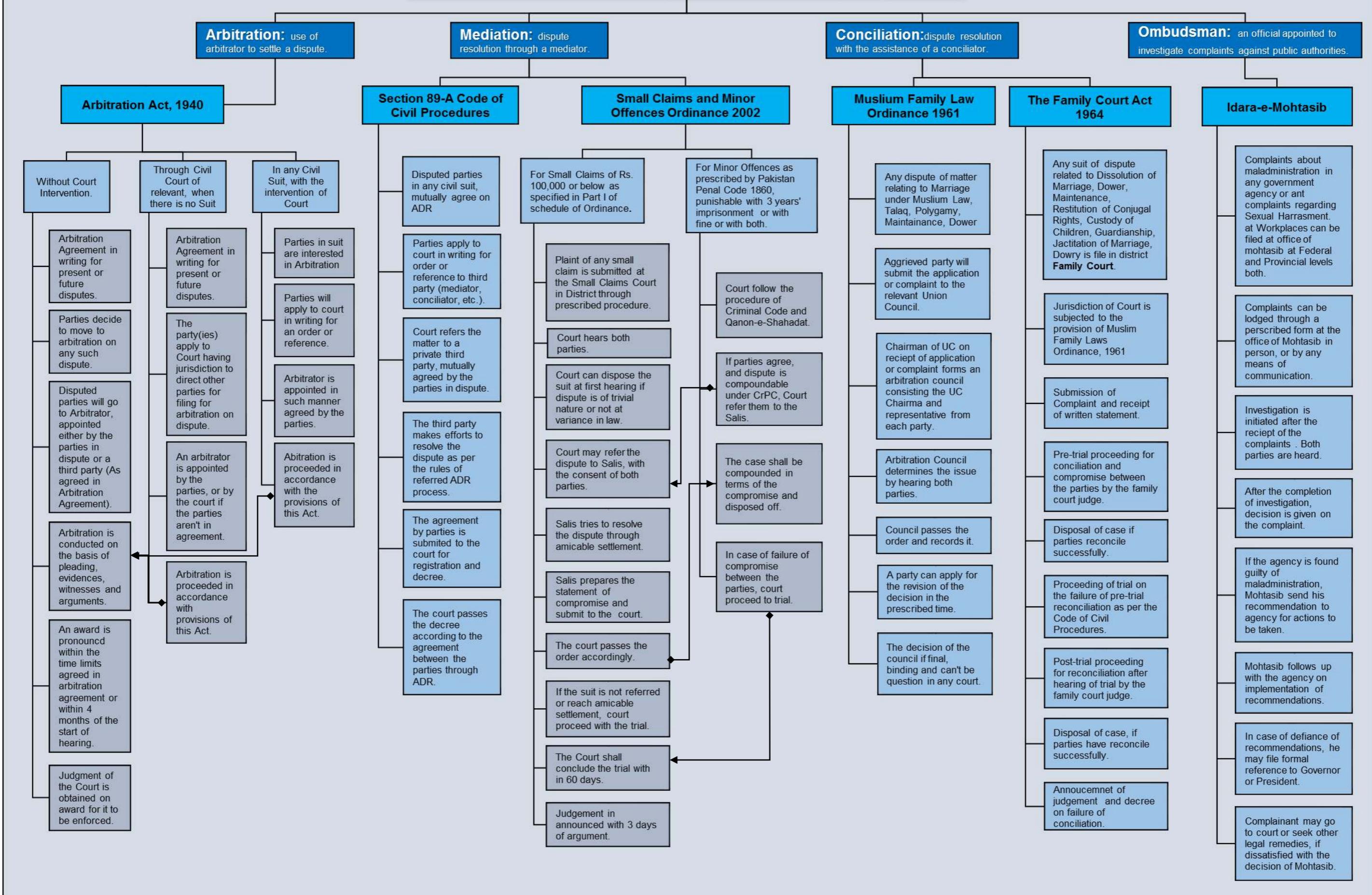
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Legislative Framework of ADR in Pakistan



**ALTERNATIVE DISPUTE RESOLUTION
(ADR) PROJECT**

BACKGROUND PAPER



**LEGISLATION FRAMEWORK
OF ADR IN SINDH, PAKISTAN**



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