



Analyzing the efficiency of Alternative Dispute Resolution: A study of Dispute Resolution Council in Pakistan

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Abstract: In the 21st century, people are trying alternative methods for solving their disputes instead of the traditional legal system, these methods and systems are called Alternative dispute resolution methods. These alternative methods are known by various names such as mediation, arbitration, and conciliation. It has deep roots in Pakistan's history, it is known by the name of jirgas and panchayat, but such mechanisms had no legal status. To give legal status to it, new laws have been introduced by the parliament to establish a legal body for solving community-level disputes, and it is now known as the Dispute Resolution Council (DRC). DRCs have become a well-liked and practical method for settling disputes in the community. It has community representatives and leaders who offer quick and convenient ways to resolve disputes as compared to the traditional legal system. However, despite its recognition and acceptance in the community, It still faces several problems and challenges, that need to be addressed to increase the effectiveness of the DRCs. To find these challenges and issues, the researcher has used the qualitative method for finding the answers to the research questions. Among the difficulties that are identified are a lack of trained staff, proper funding, low awareness in the public and confidence, lack of expertise to deal with complex issues, and likeness in the appointment of the members. It is suggested in the research paper that the government should allocate proper funding to the DRCs, arrange proper training for the members of the members, enhance public awareness and confidence, better interaction with the formal judicial system, strong monitoring system, and proper legislation for the appointment of its members. These suggestions if put into practice will guarantee that DRCs in Pakistan offer the citizens easy, accessible, cheap, and effective justice.

Key words: Traditional legal system, Alternative Dispute Resolution, Mediation, Jirga, Conflict

1. Introduction

Dispute resolution council uses alternative methods for solving the community level dispute as compared to the traditional legal system and these methods are collectively called alternative dispute resolution. (Khan, 2018) DRCs offer a forum to solve their disagreement/dispute in a quick, economical, and fair manner without turning into litigation (Bingham, 2016). In order to reduce the caseload on the traditional legal system and provide quick and less costly remedies and justice to the people, DRC in Pakistan uses to advance the alternative dispute resolution techniques. Community Level dispute resolution methods such panchayat, jirgas, and councils have a long history in Pakistan. Because these local processes are easily accessible, reasonably priced, and well-known, residents of rural and isolated places frequently favor them over the formal legal system. Dispute Resolution Councils (DRCs) have been established at the district level by the Pakistani government as an alternative dispute resolution

mechanism in acknowledgment of the significance of these mechanisms (Zakir, 2023).

The Ministry of Law, Justice, and Human Rights first introduced the concept of Dispute Resolution Councils (DRCs) in Pakistan in 2002. (Ministry of Law, Justice, and Human Rights, 2002) The first DRC was established in 2004 in the city of Karachi, Sindh (Sindh Law Department, 2004). Initially, DRCs were established as a pilot project in five districts of Sindh, including Karachi, Hyderabad, Sukkur, Larkana, and Mirpurkhas. The success of the pilot project led to the expansion of DRCs to other provinces, including Punjab, Khyber Pakhtunkhwa, and Balochistan. As of 2022, over 100 DRCs are functioning in Pakistan, with at least one DRC in each district of the country (National Assembly of Pakistan, 2022). However, despite the establishment of DRC councils throughout the country to solve disputes speedily, there have been concerns regarding the effectiveness of the DRCs in resolving disputes. This article aims to assess the effectiveness of the DRCs as an alternative mechanism for resolving local disputes in Pakistan. The article will examine the strengths and weaknesses of the DRCs, their impact on access to justice, and the challenges they face.

1.1 Problem Statement

The Dispute Resolution Council establishment is a significant step in providing easy and accessible justice to the citizens of Pakistan. The main point of this article is to assess their effectiveness. What challenges do these councils face in achieving their objectives? What are the weaknesses and strengths of these bodies, and what is the way forward for the improvement in this system?

1.2 Research Objectives

- a) To highlight the effectiveness of the Dispute Resolution Council.
- b) To give a brief overview of the current legislation regarding the Dispute Resolution Council.
- c) To find out the weaknesses and strengths of the Dispute Resolution Council.
- d) To give recommendations for policy making for the implementation, and enactment of new laws.

1.3 Research Methodology

This paper is written in an academic style. The method used in this research article is qualitative, data has been collected by reviewing the existing legislation, policies, and rules, along this previous literature has also been examined to find the main issues of this research. For getting in-depth data, the help of online websites and research papers has also been taken. The paper aims to gather valuable information about the challenges and strengths of DRC by combining existing research.

1.4 Significance of the Research

This research article accessed the DRC in Pakistan to understand its role as an alternative dispute resolution mechanism. This study is significant as it evaluates its effectiveness, role, challenges, and impact in dispute resolution. By analyzing their strengths and weaknesses, this article aims to give an insight that could lead to improved access to justice and inform policymaking. The recommendation given in this article will help the legislative bodies in making amendments and taking steps for the betterment of this dispute resolution mechanism.

2. Literature Review

Alternative Dispute Resolution is the term used to describe the procedure used to resolve conflicts and disputes outside of the conventional judicial system. In the twenty-first century, ADRs identify quicker, simpler, less expensive, and more efficient ways to achieve justice. It is a useful procedure for every society to run smoothly. It is a system that ensures that the final resort for justice should be a court trial (Tanveer, 2017).

The efficacy of Pakistani Dispute settlement Councils (DRCs) as an alternate dispute settlement method has been investigated (Khan, 2023). Manzoor, Ahmed and Ahmed (2020) concentrated their investigation on a few districts in Khyber Pakhtunkhwa. The beneficiary's trust, as well as the accessibility and promptness of the administration of justice, were used to assess the efficacy of these councils. According to the study, DRCs have gained an important position in providing peace and justice to the people of the community because it has an unbiased structure and can give equal opportunity and chances to all the parties involved. However, despite their effectiveness, it has many weaknesses. These are the lack of trained and professional expert, inadequate infrastructure, paperwork, and most importantly the lack of enforcement of its decisions. The paper put forwarded several recommendations such as allocating funds, standardizing documentation, and infrastructure (Manzoor, 2020).

In another study, the variables that influence the efficiency of the dispute resolution council in Khyber Pakhtunkhwa have been investigated. The lack of research studies on the issue served as the impetus for the study. Data has been gathered from 95 DRC recipients via surveys and 20 DRC members through focus groups. The result showed that the DRC is doing a great job of dealing with the issues of borrowing money and property. The research determined that the main contributing factors were financial allocation, official enforcement, training, and public awareness. The paper concluded that considering these aspects could improve the DRC efficiency in the research domain. Thus, to further enhance DRC's efficacy, the police department needs to consider the study's conclusions. (Afridi, Zada & Younas, 2022)

2.1 Dispute Resolution Council

A public service project called the Dispute Resolution Council was started by the KPK cops in 2014 to settle issues without going to the courtroom. The DRC system uses the Pakhtunwali ideals to facilitate reconciliation. (Zakir et al., 2024) The primary goal of the DRC's founding was to give the populace swift justice at a reasonable cost. Although the DRC lacked formal legality at first, the law was eventually passed to address this issue. The police order from 2002 was changed and section 168-A was added by the Police Order (Amendment) Act, which was passed in 2015. The change provided legal validity for the DRC's formation (Tanveer, 2017).

2.2 Legislation for DRCs in Pakistan

Alternate dispute resolution (ADR) is a legal mechanism for resolving disputes outside the court system, which has been granted statutory coverage by several Pakistani legislation. ADR-related laws have also just been passed in Pakistan, which include the Punjab ADR Act of 2019 and the KPK ADR Act of 2020 (Javed, 2020). The Khyber Pakhtunkhwa Legislative House passed the KP Police Order (Amendment) Act in 2015 to give the Dispute Resolution Council (DRC), which had already functioning throughout the region since the beginning of 2014 lacking any legislative authorization, or statutory safeguards. With this change, provincial police officials are now permitted to create Dispute Resolution Councils at the district, subdivision, or police station levels to handle minor disputes. These councils are made up of at minimum one female belonging to the community (KPK Assembly, 2015).

2.3 Khyber Pakhtunkhwa Alternative Dispute Resolution Act, 2020

The Khyber Pakhtunkhwa Alternative Dispute Resolution Act, 2020 is a legislative act enacted by the Provincial Assembly of Khyber Pakhtunkhwa. The Act aims to provide a system of alternative dispute resolution in the province of Khyber Pakhtunkhwa. It facilitates the settlement of disputes without resorting to formal litigation, thereby ensuring inexpensive and expeditious justice. The Act covers various aspects of dispute resolution, including civil and criminal disputes, the power to record evidence during postponement, the composition of the Saliseen Selection Committee, confidentiality, and the execution of an order or a decree (The KP Act, 2020).

To settle local problems, the DRC has been included in the Khyber Pakhtunkhwa (KPK) police force. In every district of KPK, DRC panels, and centers have been set up, wherein they operate to find solutions before going to the courtroom. Under the direction of local police, these bodies operate according to the ideals of peace. (KPK Police, 2013)

2.4 Code of Civil Procedure (Sindh Amendment) Act, 2018

A legislative act to amend the original Code of Civil Procedure Act of 1908 to introduce Alternative Dispute Resolution (ADR) methods such as arbitration, mediation, conciliation, or negotiation for settling disputes without a court trial. It outlines the procedures for referring cases to ADR, including the appointment of mediators/conciliators, setting timelines for resolution, determining fees, and ensuring the parties' participation. The statute also outlines the procedure for resolving conflicts, creating settlement agreements, and having the court make decisions based on such agreements. If a solution cannot be achieved, the subject is brought back before the court daily, as noted by the conciliator or mediator. ADR proceedings are exempt from the Original CPC and QSO as per section 889A of the CPC (Sindh Provincial Assembly, 2019).

2.5 Punjab Alternative Dispute Resolution Act, 2019

The Punjab Provincial Assembly passed a law that creates a Dispute Resolution (ADR) framework that is for both civil and criminal cases. Its purpose is to make a substitute for conventional adjudication procedure that is more

reasonable, quick, and reachable (Provincial Assembly of Punjab, 2019).

2.6 Alternative Dispute Resolution Act, 2017

It was enacted to present the Islamabad capital territory with a framework to resolve disputes that are forbidden in the legal system. ADR is defined as arbitration, mediation, conciliation, and neutral evaluation. In some particular circumstances, the act demands courts to send civil cases to the ADR center, a panel of neutral that describes the steps involved in ADR proceedings, and how settlements and awards are reached. The act makes dispute resolution easier and guarantees quick and affordable justice (National Assembly of Pakistan, 2017).

2.7 Strengths of the Dispute Resolution Council

DRCs are another way to solve regional and community-level problems because it has many advantages. A study found that in the field of investigation, Dispute Resolution Council committees completed a significant proportion of cases with an average resolution rate of 75%. First, people living in rural areas and other areas without access to the law can easily and affordably enter the council and solve their issues because DRCs provide a forum for quick and effective resolution of the problem (Afzal, and Zia, 2015).

The strength of the DRCs to provide alternative platforms for dispute resolution reduces the legal burden and promotes quick and cheaper justice. There have been 1436 council members and 146 DRCs in Pakistan till 2020, and these councils have solved around 12417 disputes with a 76.5% success rate between 2018 and 2020. In addition to this, it took less time as compared to the traditional legal system to solve the dispute (Manzoor and Ahmad, 2020)

DRCs help to settle disputes regarding personal and other matters. The involvement and support of the community is one of its key to success. It gives a comfortable environment for problem-solving. The traditional methods of solving conflict and disputes have been widely recognized by the council and the members often try to use them for solving the issue. DRCs offer a neutral and acceptable solution to all the parties involved in the issue, and due to this reason, it has a high record of successful resolution of disputes (Agha and Ashfaq, 2015).

The effectiveness of the Khyber Pakhtunkhwa Dispute Resolution Councils has been analyzed in another study and it was found that it is successful in solving disputes. The study also emphasized the importance of the capacity building and training of the members (Ali, 2017). In another study, it was highlighted how these councils can help the local people in access to justice. The study also showed how important it is to educate the members of the council on the needs and rights of the people, including children and women (Mahmood, Hassan, 2018).

2.8 Weakness of the Dispute Resolution Council

In Pakistan, there are special councils called the Dispute Resolution Council that help in solving local disputes. However, they are facing some challenges due to which they are unable to work well. One major challenge is the legal experience and the other is the lack of knowledge of the members of the council regarding the function of the system. This means that they might not be able to solve complex legal issues and their decision might be unfair and biased. Along with this, women and minorities might not get the protection they need (Zakir, 2024).

Using DRCs as a substitute for the resolution of local disputes has many advantages but still, it has many flaws. DRCs lack experience and training which is essential for its proper functions, due to which the members of DRC may not solve complicated legal cases properly. Agha & Ashfaq (2015) observed that this dispute resolution committee resolves the clash/conflict between two people or neighborhoods successfully but they often fail to solve cases related to criminal offences or those requiring legal knowledge (Agha, Ashfaq, 2015).

Dispute Resolution Committees may not be qualified enough to protect the powerless group such as women and children, and may often not have the understanding and means required to handle or manage complex legal matters (Mahmood, Hassan, 2018).

The decision of DRCs does not have binding power. Their ability to sort out the dispute is also hindered by their inability to impose their decisions. The absence of the authority to enforce its own decision is one of the major challenges. DRCs are helpers who try to solve the problems between the people. However, they cannot force people to do what they say. Therefore, people might not listen to them and that makes it hard for DRCs to help. If people do not follow their ruling, it makes DRCs look powerless (Khan, 2024).

There is a lack of responsibility and sincerity in the decisions of DRCs, due to the absence of a systematic record-keeping system. The decisions of DRCs are mostly influenced one-sided and prejudiced.

In another study, it was highlighted that the necessity of giving/ providing DRCs proper training, developing and

strengthening their skills are necessary for systematic observation and recording of situations and then using that data for decision-making (Ali, 2017).

After two years Zaman (2019) focuses on the necessity of better/improved cooperation and combination of DRCs with a formal legal system and also its (DRCs) knowledge by everyone (Common People) and their (public) trust in Dispute Resolution bodies (Zaman, 2019). DRCs also face the challenge of transparency and accountability. They failed to attract skilled and qualified people to work for the council, and due to this reason the function of the DRCs has been seriously affected, and the confidence of the people is not as expected by the framers. They do not have a good system for keeping a record of their decisions. Therefore, their choices might be unfair and different each time. Due to these issues, people often do not trust the DRCs, and go for the long traditional legal system (Zakir, 2023).

5. Conclusion

Dispute resolution council in Pakistan serves as an important substitute for solving the community dispute in an easy and timely manner. The trust of the people in this system is increasing day by day. Although the council has advantages that help the formal judicial system in lowering its burden, they have some disadvantages that hinder it. It is the responsibility of the government to remove the problems in the DRCs, increase the council's efficiency, and make it accessible to everyone. Proper funding, training, and official protocols give them enforcement authority for their decision and increase the transparency in the appointment.

5.1 Recommendations

1. One of the major drawbacks of the Dispute Resolution Council is the lack of trained staff, so it is the needs for time to appoint the necessary staff and give them proper training and capacity-building initiatives. If this suggestion is implemented, the members of the council will easily handle the complex situation and it will increase the performance of the council. It is also the responsibility of the government to give proper funds for such activities.
2. Another major issue in the mechanism of the DRCs is the lack of enforcement authority of the council decisions. The concerned legislative bodies need to introduce new amendments to the existing laws to give this mandate to the council. It will not only boost the function and legitimacy of the council but will also guarantee that its decisions are being followed.
3. The appointment to the council is often questioned by the local community and raises serious concerns, so the government should make rules regarding the appointment to the councils and it should be made through a commission just like appointment to any other body of the government. However, the government should also make sure that the residents of the area are appointed to the council, as this council is made as an alternative to the jirgas, and panchayat, so a proper quota should be given to them. It will increase the trust of the common in it.
4. The government should create a proper channel for the record of the decisions, and the proceeding made during cases. It should be made a public document. As there is no uniform mechanism for maintaining the record of the cases. So, by adopting this suggestion, the sense of accountability and transparency will be increased.
5. Another problem that people and the council are fighting is the lack of money and office space. The majority of the council is in the police stations, and the local people are facing problems, and are afraid to approach there to the council. The government should transfer these councils from police stations to a neutral space such as a judicial complex inside the Tehsil, and a proper fund should be allocated in the budget for the council so that they can meet its needs.
6. The majority of the local community is unaware of this process. A proper awareness campaign should be launched in the community and the members should take a leading role. The council should also collaborate with various organizations working in the community, and the local leader for spreading the message of the council.
7. The council must be better coordinated with legal organizations and courts, and it should be integrated into the justice system. It will increase the confidence of the people in its decisions and that the courts would accept and uphold its rulings.
8. A proper check and balance system should be introduced because it will guarantee efficiency and improve the performance of the council.

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