

## Towards the Establishment of Family Dispute Resolution Center in Pakistan

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**Abstract:** *The researchers have articulated the developments of family dispute resolution in Pakistan and highlighted issues pertaining to its legal framework and customary practices existing in the social and legal system. The library used as a tool for data collection, and internet sources consulted in this research. Doctrinal and qualitative methodologies used for this study and data analysis carried out through analytical and critical review along with the interpretation of laws. This article is very significant for the understanding of gaps to accommodate FDR methods and practices to expedite adjudication processes. Furthermore, the article is lightening on the issues of dispute resolution and interaction of local government systems to cater to customary mal-practices. Therefore, FDR is the most flexible, efficient, and preferred choice for family dispute resolution in the developed legal discourse. This article is advocating in favor of FDR, aiming to reconciliation in the matrimonial disputes, to prevent the dissolution of marriage cases.*

**Key Words:** Family Dispute Resolution, Family Mediation, Local Government, Panchayat, Amicable Settlement, Alternative Dispute Resolution, Customary Practices

### Introduction

Family disputes between spouses are very common; it may not happen only during wedlock; rather, it can also happen after the termination of a marital tie. However, it can be effectively resolved at the very outset stage by implementing an alternative dispute resolution (ADR) system without recourse to the traditional family courts. (Qu, 2019) ADR is a process of conflict resolution between two people or among a group of people or between institutions in which they can be able to negotiate on their differences to achieve a reasonable settlement by themselves or engage any third party to be as mediator and arbitrator between them to resolve this issue with an enforceable mutual agreement. (Umar A. Oseni, Barkat Raji, 2015) Furthermore, ADR is now developed as a tool for dispute resolution in an expeditious, cheaper, and secure way without the discourse of a lengthy litigation process. (Umar A. Oseni, Barkat Raji, 2015)

Family Dispute Resolution (FDR) is also a process like ADR; to resolve a conflict between the spouses within remaining in their matrimonial tie or after the dissolution of the marriage, it is a very

convenient process. (Cooper & Field, 2008) ADR and FDR methods have been used by the Muslims to resolve their disputes amicably, and these methods have also been mentioned and encouraged in Islamic Law. It is because Islam is a religion that adores peace, love, harmony and compromise instead of confrontation and disputes. (Shah, 2009)

In the last few years, the developed countries have adopted ADR methods for their family dispute resolution. These approaches have already been acknowledged as mediation, negotiation, arbitration, and reconciliation that it is feasible for any sort of dispute resolution. (Paresh R. Jani, 2014)

### Customary Practices of Family Dispute Resolution in Pakistan

The customary practices of dispute resolution are prevalent in rural and tribal areas of Pakistan without any legal aid. However, these practices are known as, e.g. *Jarga*, *Panchaiyt*, and *Vani*. (Pratiksha Baxi, Shirin M Rai, 2006) In such a

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manner of dispute resolution has no legal effect, proper procedure, rules, regulations and authority, but the majority of the population residing in rural areas of Pakistan have the most trust in the decisions of such customary practices rather than going into the courts because it is cheaper, expeditious and longlasting. Therefore, instead of these customary practices, it is an immense need to establish an institution to resolve disputes with conventional methods of ADR within the legal framework of Pakistan. (Tarar, 2018)

The customary practices of dispute resolution in Pakistan is rooted in the feudal system. In distant areas of Pakistan, the qualification of feudal lords is, who have power due to their land and authority, have the right to rule on the people of the village in their domestic and family matters. (Braja, 2012) Presently, customary FDR exists through the Panchayat justice system, and its composition is based on landlords and commanding elders of different caste and Biradiri. The selection of other few members for the representation of their tribes and enforcement of decisions is made by the feudals is based on malafide. (Braja, 2012) The landlords are the key hindrance is not reporting crimes due to the intervention of Panchayat, and therefore, many stories of human rights violations are not highlighted just because of the pressure of feudal lords. The woman is given into marriage with the other party and to save the culprits. It now becomes part of the Panchayat justice system. Hereafter small girls are also forfeited for family dignity and sent to strange houses, where they suppose to face humiliation for their remaining life; it is a violation of child rights and laws. (Maliha Gull Tarar, 2014)

Here the researchers want to point out a famous case of the *panchayat* justice system to address the issues pertaining to our previous discussion;

“There is a famous case of *Mukhtar Mai* that had unfolded the velvet curtain through which the world witnesses the true spirit of the traditional system of justice. New York Times wrote that ‘*Mukhtar*’ is the only window into a much larger problem.’ *Mukhtar*’s 11 years old brother *Shakoor* accused to have illicit relation with 23 years old girl of powerful and influential *Mastoi* tribe. *Mukhtar* called to make an apology for her brother’s Act on 2 July 2002, 21-year-old girl *Mukhtar Mai* gang-raped on the verdict of *Panchayat* at gunpoint in front of more than 200 village people, including her father. After this vicious Act, when she was half-naked, *mukhtar* was forced to walk through the crowd in Meerwala, a village in District Muzaffargarh of

south Punjab, Pakistan.”(Polymenopoulou & Rehman, 2010)

Pakistani people had some customary practices without any legal framework in the tribal and southern areas to resolve their disputes amicably, but these customary practices had no proper procedure and methods. Although FDR is a very cheap and easy method to get their dispute quickly resolved. (Adnan Nasir, Abid Ghafoor Chaudhry, Syeda Aimen Hadi, Hina Saleem, 2018) The customary practices of dispute resolution are without any methods, rules, regulations and legal framework for dispensation of justice. Furthermore, it is most important to mention that the decisions of “jarga, panchayat, Vani and satt” are not only violative of human rights; it is also not following injunctions of Islam. There are several other examples, including in the preceding paragraph of the *Mukhtar Mai* case. (Roy, 2005) Therefore, instead of these customary practices, it is the need of the hour to establish an FDR center for family dispute resolution with conventional approaches of ADR within the legal framework of Pakistan.

## Family Dispute Resolution in Pakistani Family Law

In Pakistan legal framework, in the marital conflicts of talaq and polygamy (second marriage of husband), the parties are bound to seek reconciliation through legal proceedings of the Arbitration Council under MFLO 1961 of Pakistan. (Ijaz, 2011) It is also a common fact that no one can foresee every potential conflict because no one knows the situation except the conflicting parties and can't compel the parties to adopt the process of litigation. However, the marriage contract (*nikkah*) is solemnized and terminated with the entire satisfaction of the couple. Moreover, it is impossible to consider that no dispute will arise between the spouses after the wedlock. Sometimes, some minor issues can happen due to differences and emotional attachments; in this situation, the spouses should try to prevent it even some someone has to sacrifice for the protection of their relationship. Although, the consequences of such minor disputes when it comes to public office will convert into severity, and it causes the dissolution of marriage. (Wadje, 2013)

FDR is a process in an informal way of negotiation between the parties to resolve the dispute with the help of a neutral third party who can provide them facilitation. As far as the modern world is concerned, the enhancement of family disputes and their pendency in the family institutions is a problem for all. Therefore, the legislature of modern countries has made

amendments to refer these disputes towards FDR (Cooper & Field, 2008) instead of the judicial process. But in Pakistan, the matter of *talaq* and polygyny under section 6 and 7 of MFLO 1961, the disputes are referred to the arbitration council (Chairman Union Council) for reconciliation. (Ijaz, 2011)

Moreover, the West Pakistan Family Court Act, 1964, has ADR provisions in its sections 10 and 12, and it is provided that the family judge will try to reconcile between litigants at the pre-trial stage but after registration of family suit but before the conclusion of trial stage. (Yilmaz, 2014) The court follows these provisions, and in the court, we can consider it as part of litigation because when a case filed, that means litigation initiated. However, it is an open option for a family court judge to use for conciliation in any means whatsoever, but it is also pertinent to mention that the court will hear the parties in the presence of their counsels. There are several other options that are also obtainable for an amicable settlement of disputes by using the best probable tools of ADR. The section-12 of WPFCA-1964 suggests that the final conciliation efforts are limited to 15 days maximum. (Hasan Awais, 2017) Furthermore, it is also pertinent to mention that there are several ambiguous reasons to follow section 10 and 12 in the WPFCA-1964 to bring the conflicted spouses on an amicable settlement or conciliation. However, in non-compliance thereof, the family court may issue decree/judgment for dissolution of marriage or to any other effect which cause separation among the spouses, whether it is due to any irregularity of family court judge because he/she has not properly tried for reconciliation. In another situation, if the family court declines to pass an order of dissolution of marriage, the any party has right to challenge the proceeding of family court through writ jurisdiction in the respective high court on the basis of irregularity may not be so grave. (Munir, 2014) It is fascinating to understand both stages of the procedural family law ordering the conciliation seems to be cold-hearted as to the real spirit of conciliation/FDR. It is the failure of procedure and scheme for boarding upon conciliation/FDR. It is the discretion of the family court to follow the procedure as per his will as it may vary from case to case. Follow this instance, in any case, decided that the words of conciliation/FDR would assume such methods, which can demonstrate as an element for harmonious union among the couple after negotiation between them, which can lead them to have the alternative of litigation. The goal served in a better way if the matter is referred to neutral conciliator/mediator. The presiding officer of the family court can not bring out amicable

settlement to glean the true outcomes. (Tarar, 2018)

In-lieu of legal framework there are a lot of shortcomings which are leading towards the increase of family disputes on the minor issues between the family which can solve at very utmost, but in the family court practices, the court/judges have to decide the matters on one pretext and other because the judicial system has no concern with the protection of family institutions. (Attaullah & Saqib, 2017) Here is an example that the family dispute is resolved amicably during the pendency of the family case in the court with the following summary at its website:

“A dispute filed for *khula* by the wife was referred for mediation without court intervention. The wife had serious complaints that the husband does not treat her well. The matter was grave, and the couple has made up their mind not to live together, the wife being most determined about her decision. Mediation is a process of dispute resolution between the husband and wife ended with both wanting to live together with each other and continue the marriage. Mediation proved to save a family from falling apart and mended the relationship between the married couple. If the suit withdraw, and the husband promised to overcome his shortcomings as a husband.”

Mediation is a preferred method of ADR and FDR without entering into judicial proceeding and following the default method of social ordering through an informal process for an amicable dispute resolution. (Armstrong, 2011) Many Countries have adopted mediation as a method of FDR because it is a cheap and informal way of maintaining long-term relationships upon which family institution depends. (Iqbal, 2016) In the modern world, we can follow the FDR model of Australia or Malaysia, as many other countries are taking benefit from them. Therefore, it's an immense need to establish the FDR Center in the legal framework of Pakistan because it necessitates family disputes resolution very efficiently, achieving a mutually acceptable settlement, and it will share the burden of family court as well. (Ahmad, 2012)

### **Interaction of Local Government Laws with Customary Practices of Dispute Resolution**

The Islamic Republic of Pakistan is federal, with three layers of government: national, provincial, and local. The Constitution of the Islamic Republic Pakistan-1973 provides shelter to local government in Articles 32 and 140-A. Every province has the right after the 18<sup>th</sup> amendment

in the constitution to enable local government system through provincial legislation, and provincial governments are responsible for its implementation. However, when we look into the matter of local government in the prevention of mal-practices of Panchayat justice system, there were several historical developments in the local government system in Pakistan. Firstly, during the Military Regime in the year 2001, had tried to handle the informal judicial forums (Panchayat and Satt) through an enactment, the Punjab Local Government Ordinance, 2001 in which proposed that the Musalihat Anjuman is comprising of three representatives elected through Insaf Committee from each Union Council. [\(Lyon, 2002\)](#) The enactment of local government law 2001 gives guidelines to resolve the dispute between the parties with their consent, or the court refers the matter to the committee. However, the secretary of the union council will attest to the final reports of the committee. The Punjab Local Government Ordinance 2001 had faced difficulties during its implementation and constitution of insaf committees in the union council because rules of business were not properly formulated. Therefore, the implementation of Musalihat Anjuman not enforced and established, but the military regime was ended, and the new democratic government come through the electoral process. [\(Ahmed, 2009\)](#)

Furthermore, the new democratic government enacted an act in 2013 to establish a local government in Punjab, but it was further amended with the Punjab Local Government (Amendment) Act 2017. Through this new enactment, only 20% of people can take benefit from the justice system because there were several lacunas in sections 96-99 of the Punjab Local Government Act 2013 and 2017 information of Panchayats (Musalihat Anjuman's). Further, no proper implementation and enforcement had been made for this enactment due to insufficient rules and regulations for Panchayats and Musalihat Anjumans in the dispensation of justice.

After considering the highlighted issue in the preceding paragraph, the Punjab government had formed a committee to look into the matter of framed rules and regulation after amendment in local government act 2013 and 2017. To evaluate the rules of Panchayats for appointment and procedure of Musalihat Anjuman's, how the disputes entrusted to them can be settled amicably at village or mohalla level through an informal process of justice. Earlier, the committee had proposed an amendment in 2013 and 2017 to decrease the number of Anjuman members from nine to five and several other

recommendations. [\(Rohdewohld, 2019\)](#) Thus the new amendments were under consideration; meanwhile, the new government of PTI has come into power at Federal, KPK, and Punjab. Moreover, the new PTI government has passed a new law, "the Punjab Village Panchayats and Neighborhood Councils Act 2019," to establish a new local government system in the Punjab local government instead of previous laws passed through the provincial assembly of Punjab. The 2019 legislation has two separate spheres regarding local government and Village Panchyat and Neighborhood Council. [\(Rohdewohld, 2019\)](#) The lowest level of the local government system, previously called Union Council, now called Village Panchayat for rural areas and Neighbourhood Council for urban areas, has been removed from previous local government acts, and now new codification is in two different pieces of legislation as the Punjab Village Panchayats, and Neighbourhood Councils Act 2019. New local government will work through allocated budget of local government alongwith multi-level governance system, and it will also work under the local government act 2019, village panchayat and neighborhood council. The main features of VP&NCA consist of a head called "chairperson," general members, and members representing women and religious minorities. The term of office of the VP&NC will be four years. Comparable to the PLGA, the VP&NC requires a chairperson or a member to observe the general policy or directions of the government when performing duties or to exercise powers. The Election Commission of Pakistan will conduct elections. Further, the candidates of general seats are depending on securing votes in the descending order, can be considered as elected till all seats earmarked for general members in the respective VP&NC are exhausted. The candidate who secured the highest votes will be the head of VP&NC. [\(Rohdewohld, 2019\)](#)

Moreover, several controversies are again making anxiety for enforcement of the new law, Punjab Village Panchayats and Neighborhood Councils Act of 2019 provides elections on a non-party affiliation, which is a disfavour to democracy at the grassroots level and the duties and functions of the village panchayats and neighborhood councils are also not appropriate for dispensation of justice. Further, the new law has decreased the ratio in youth and women representation, which is against the spirit of Article 140-A of the Constitution 1973. Another issue is that municipal corporations, municipal committees, and town committees were introduced in the urban system, while village councils and tehsil councils would establish in the rural LG system to handle the Panchayat.

Neighborhood councils have been established for the dispensation of justice, but it has no connection between local governments of urban and rural legally and administratively.

Stimulatingly, the criticism is not only from the social workers and other stakeholders; it is also from human rights and women rights activists. The ECP made it clear that the LG elections could not conduct in Punjab under this enactment because clauses of the new enactments are directly contradictory with the Representation of Peoples Act 2017. The government wants to merge the villages that have less than 2,000 people with others. It is unfounded and degradation of the Land Revenue Act of 1967. That is why ECP has filed a case in the LHC to seek guidance and justice. Furthermore, the ECP has advised the Punjab government to revise the law following the Elections Act, 2017. Now opposition leader and other stakeholders are saying that the instruction of the chief election commissioner must consider overcoming the lacunae in the new law.

Therefore, issues highlighted above are discussed that these laws are still contradictory to other laws of the state, inadequate for dispensation of justice through the Panchayat system without proper procedure and methods. Moreover, ECP is also not considering it for implementation of both PLGA and VP&NC laws. Therefore, there is an immense need to create room for the establishment of the FDR Center within the legal framework of Pakistan; for family disputes resolution very efficiently, achieving a mutually acceptable settlement, and it will also be helpful to prevent the mal-practices of informal Panchayat system.

### **Family Dispute Resolution through FDR Centers**

FDR centers follow “mediation” as the basic dispute resolution methods in family disputes, as some conflicts are inappropriate for the courts because they lack technical legal merits. Firstly, this concept was expressed by the Supreme Court Committee for Matrimonial litigation in June 1981 in New Jersey; it was headed by Justice *Morris Pashman* with remarks; ([Sa'odah Ahmad, 2015](#))

“No area of matrimonial litigation better lends itself to fashioning ways to create a cooperative and agreeable environment for the benefit of parents and children. Court administrators and personnel throughout the country have questioned whether the courtroom is the best forum for the resolution of child custody issues and whether the traditional adversarial system is the most appropriate means for presenting the

issues. The use of professionally trained to assist family members in resolving their problems are, in the committee's opinion, an idea whose time has come.”([Sa'odah Ahmad, 2015](#))

Accurate philosophical depiction of Alternative Dispute Resolution given by Abraham Lincoln: *“Discourage litigation; encourage your neighbors to compromise whenever you can. Point-out to them how the normal winner is often a loser in fees, expenses, cost, and time”*.([Bano, 2007](#))

“Justice for all” is the fundamental principle for the dispensation of justice in any society. Pakistani judicial system is based on the principle of natural justice. Delayed delivering justice system to conflicting parties is existing in our judicial system, which creates frustration among the litigants, reason for lack of confidence in the judicial system, and it is the very costly and lengthy process of litigation. It's well established through “Justice Delay is Justice Denied.” After the experience of the Pakistani legal system and social norms of the Panchayat justice system in family disputes resolution. It is in need of the hour to introduce alternative ways of dispute resolution instead of conventional methods of dispute resolution through which we can obtain satisfaction and amicable solutions outside the courtroom and Panchayat. These alternative ways of family dispute resolution are not substituting to traditional litigation system; rather, it is for sharing of the burden judicial system and to prevent the human rights and Islamic injunctions violations through the Panchayat system. ([Attaullah & Saqib, 2017](#))

Therefore, it is vital for the Pakistani legal framework and the legislature to create space to accommodate the FDR system with proper rules and regulations as many other developed countries are taking benefit from it. In Pakistan, if husband and wife face any difference or disagreement, they can have a forum to resolve their dispute amicably without damage to their dignity and prestige. ([Zaidi, 2016](#)) However, family courts are not considered as a reasonable place for dispute resolution in many families, as we discussed in detail issue wise in the above details.

Hence, the FDR system is the future of family dispute resolution; speedy, practical, and cost-friendly, instead, to use a traditional approach to waste more money and abnormal delay. Therefore, FDR is the best option for civilized societies. The purpose of the FDR proceeding is to provide expeditious, inexpensive, and speedy justice respectably and to protect the family institution.

## **Conclusion and Recommendations**

In Pakistan, family law statutes give a broader spectrum to family courts to intervene in conciliation, but it is a restriction for the parties to go for the out of court settlement. Similarly, the panchayat justice system is prevailing in the rural areas of Pakistan due to the complexities of the legal framework, and its decisions are merely violative of human rights and injunctions of Islam. Therefore, amendments are required to cater to judicial intervention in family disputes and address the matter adequately. There are several provisions for conciliation already available in the legal framework of MFLO 1961 and WPFCA 1964, through which we can accommodate FDR without the intervention of a family court judge. Mandatory FDR may be the right possible solution for the improvement of prompt delivery of justice and amicable settlement between the spouses. Through compulsory FDR, the family institutions will remain protected in their real spirit, and no damage will cause either party instead of invoking family court. The successful model and implementation of mandatory reconciliation should be safeguarded and acknowledged by the

family system of Pakistan. Every family dispute should be referred first to out of court settlement by the family courts, or the family court can accept the case after having a certificate that both parties have undergone through reconciliation if it is not concluded into the amicable settlement.

FDR center or institution should be established, which regulates practice guidelines, protocols and FDR system in Pakistan, and it may offer and conduct postgraduate diplomas for lawyers to become qualified family dispute resolution mediators and after completion, of course, the institute may issue a license of practising individual as a family mediator. The main objective of FDR is a speedy, effective, confidential, and cost-efficient system of dispute resolution, so it emerges the shortest route to settle down family disputes. Spouses in conflict prefer to adopt this FDR model instead go for conventional litigation because of such benefits, so it becomes a necessity and emerges as a fundamental part of modern practices.

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