



# Alternative Dispute Resolution

HANDBOOK FOR PUBLIC





# INTRODUCTION TO LEGAL AID SOCIETY

The legal Aid Society (LAS) is a not-for-profit organization that has been working on initiatives to increase legal awareness and enhance the quality of legal services in Sindh. It has been pursuing the promotion of access to justice through legal empowerment, specifically for vulnerable and marginalized citizens, women and religious minorities, pro bono legal services and capacity building of State actors.

This handbook has been published for the sole purpose of introducing the concepts of Alternative Dispute Resolution (ADR) to the public at large as well as the users of ADR. The objective of this handbook is to inform readers about the various ADR mechanisms and encourage people to use court-annexed methods of ADR for resolving their disputes.

# Disputes & You

Every person is in one way or another competing with others for rights, resources and entitlements. This leads to different views and disagreements about needs, goals, priorities, the way of doing things, beliefs etc. When this occurs and it stops you from being yourself or harms your relationships, you may have a dispute.

There are many ways a person can respond to a dispute. A person may ignore the dispute by keeping things the way they are. They may talk to the other people involved in the dispute to find a solution. They may also involve some other trustworthy institutions such as the Courts, District or Union Councils, the Police etc.



# Ways to Manage & Resolve Disputes

There are different ways of resolving disputes. Most people are familiar with filing a case in court. Often disputes escalate immediately when taken to courts and litigation. Litigation is very formal and an expensive process and a lot of us are unaware of the complex legal procedures and laws involved. The disputes are open to the public and conducted in an adversarial setting.



This handbook is meant to inform you about the variety of dispute resolution processes available for settling your disputes and to introduce to you the benefits and limitations of parallel forms of dispute resolution known commonly as ADR (Alternative Dispute Resolution).





# What is Alternative Dispute Resolution?



ADR (Alternative Dispute Resolution) is a process of resolving disputes through an independent person (an ADR practitioner, such as a Mediator) where the person helps the disputing parties sort out the issues between them without going to Court.

ADR can help people resolve a dispute before it becomes so big that going to Court or initiating litigation becomes necessary. ADR can be very flexible and can be used for almost any kind of dispute; even those that would never go to a Court or Tribunal.



There are many ADR processes that you can use including Negotiation, Mediation, Conciliation, Arbitration and Ombudsman Offices. These processes are described in this handbook. Each ADR process is different from another and the amount of time for each process changes depending on the type of process and the details of your dispute.

ADR practitioners are trained to facilitate you to work towards a solution or outcome that works for everyone involved in the dispute. These practitioners aim to provide a fair process where each party is actively involved in achieving a solution to the dispute.







## WHAT ARE SOME COMMON TYPES OF ADR?

Some of the most common ADR systems include :

**NEGOTIATION, CONCILIATION,  
MEDIATION, ARBITRATION  
OR ANY  
OMBUDSMAN PROCESS.**

# Negotiation

In negotiation, you and other parties in a dispute talk directly to each other, bargain and deliberate to obtain a mutually agreed solution. This can be done with or without the attendance of an Attorney. No third party is involved in the process of negotiation.



# Mediation

In Mediation, you and other people involved in a dispute may seek help from a third party (mediator) to reach an agreement. The mediator works with both the parties to try to reach a mutually acceptable resolution of the dispute. Mediation is a voluntary process where the parties themselves may choose the person who will act as a mediator.



# Conciliation

Conciliation is similar to mediation, but in conciliation a third party (conciliator) gives you and the other people involved in the dispute expert advice to help you reach an agreement. Conciliation may or may not be a voluntary process.



# Arbitration



Arbitration is quite similar to a court hearing, where you and the other people involved in a dispute present the dispute to a third party (Arbitrator). Both sides are commonly accompanied by their lawyers. An arbitrator listens to everyone and makes a decision on how the dispute will be resolved.





# Ombudsman

An Ombudsman Process involves a state appointed Ombudsman (Mohtasib) who investigate individuals' complaints against maladministration, especially by public authorities. An Ombudsman, after investigation and listening to both parties in dispute, makes a decision on how the dispute will be resolved.



# advantages of (ADR)



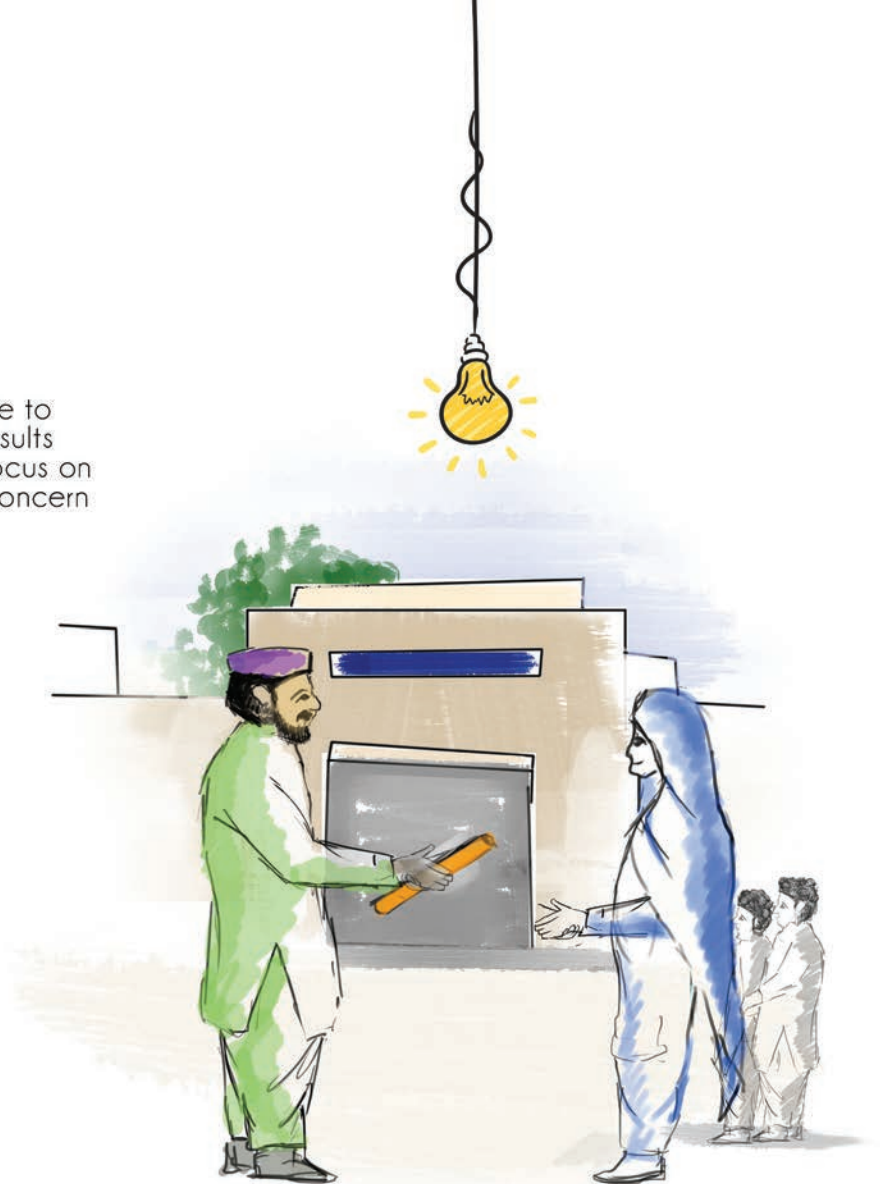
## Save Time:

A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.



# Confidentiality

ADR proceedings are private. Accordingly, the parties can agree to keep the proceedings and any results confidential. This allows them to focus on the merits of the dispute without concern about its public impact.



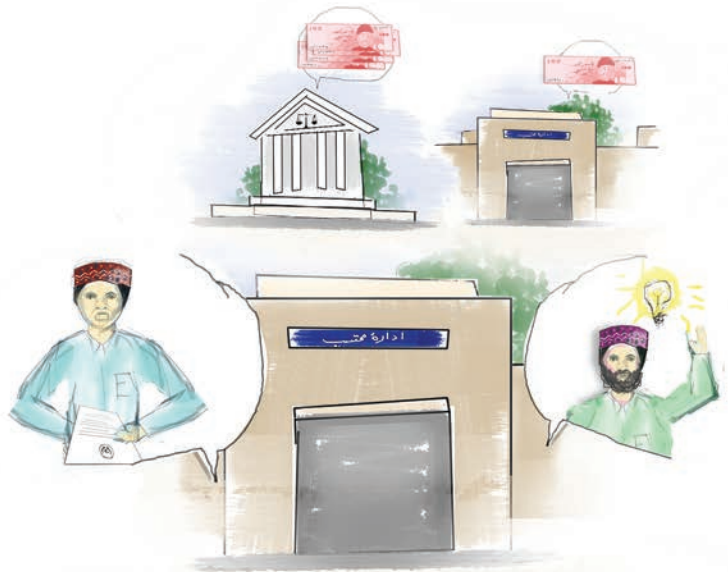
## Cost Effective:

When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, experts' fees, and other litigation expenses.



## Flexibility:

ADR processes are usually more flexible than the court process. There is a much wider range of possible outcomes with ADR than with courts because the process can be made to suit your particular dispute..



## Satisfaction:

ADR gives high degree of satisfaction to the parties as ADR can help the parties find win-win solutions and achieve their real goals.



## Preserve Relationships:

ADR processes and outcomes focus on what is important to you and the other people involved. ADR processes may help you and the other people involved to maintain relationships.





## Control over the Process:

ADR enhances the role of the participants by allowing them a relatively high degree of control over the process and outcomes suitable to their needs. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial.



## Access to Justice:

ADR gives more people access to justice because people who cannot afford court or legal fees can still access a dispute resolution mechanism. ADR is also less formal and easier to understand for most people as compared to formal litigation processes.



# Risks with (ADR)

Unsuitable for  
Certain Disputes:

ADR systems do not work well in some cases, such as dealing with violence, offences related to serious crimes and other serious disputes. One should always report any criminal offence or violence to the Police or other relevant authority.



## Reluctant Opponent:

ADR systems require both parties to be willing to participate in the process. So if the other side is not willing to mediate, the dispute might need to go to court instead.



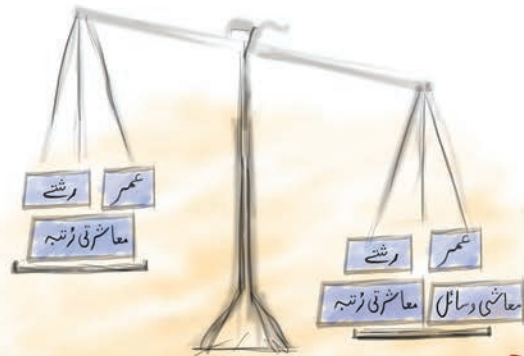
## No Precedent:

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.



# 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. This imbalance could be due to age, relationship, social status, financial resources etc.



# Legal Framework for "Mediation"



## What is Mediation?

Mediation is a process where the participants, with the assistance of a mediator work out the issues related to the dispute and aim to reach a workable agreement.

Mediation cases often involve conflicts arising in business and money matters and in disputes between family members, neighbors, business partners, landlords and tenants, and labor unions and management.



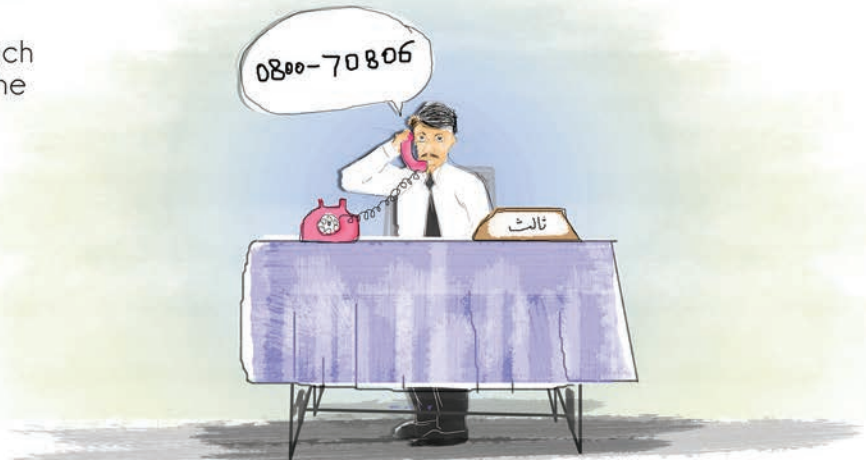


# What is the role of Mediator?



A mediator is a neutral third party who facilitates the parties in a dispute to work out the issues and to reach an amicable settlement.

A mediator can be a private person or can be appointed by the Court/State. The High Court of Sindh has also nominated a pool of mediators in each District. These mediators are called the "Saalis Committee".



# How can you approach mediation?



Mediation can be approached in two ways, privately or through the court. In private mediation, both parties in dispute may go to a private mediator to seek out an agreement for their dispute.

In court annexed mediation, disputing parties who have already filed a case can request the court to refer them to a mediator. These mediations are court-annexed and the mediators are nominated by the High Court of Sindh.

Court-annexed Mediation is regulated by Section 89-A of Code of Civil Procedure or by the Small Claims and Minor Offences Ordinance 2002.

For more information, you may talk to our free legal advisors by calling 0800-70806.



# Legal Framework for "Conciliation"



## What is Conciliation?

Conciliation is a process where the participants, with the assistance of a conciliator work out the issues and reach a settlement through expert advice and legal information.

Conciliation cases often involve conflicts arising in divorce and child custody issues and in disputes between family members for inheritance, maintenance and property. Other civil disputes can also be resolved through conciliation.



# What is the role of Conciliator?

The role of a conciliator is similar to the role of a mediator but conciliators usually have specialist knowledge and can provide some legal information. Since conciliation is often part of a court, tribunal or government agency process, a conciliator is usually a state authorized person; for example a Union Councilor or a Judge of any Court.



# How can you approach Conciliation?



Conciliation may be voluntary, court ordered, or required as part of a contract. You can approach conciliation voluntarily if you want to reach an agreement on some technical or legal issue and you want to seek advice on the facts in your dispute.

Under the Muslim Family Ordinance 1961, some disputes require mandatory conciliation, through the Chairman of the Union Council, such as Divorce, Maintenance issues, disputes related to Dower amount, and polygamy.





Similarly, Family Court Act 1964 requires mandatory conciliation through a family court judge in any disputes relating to marriage, family affairs and all matters connected with that.

You may also request the court to refer any pending cases for conciliation under Section 89-A of Code of Civil Procedures.

To know more about these law, you may call and talk to our free legal advisors at 0800-70806.



0800-70806



# Legal Framework from "Ombudsman Offices"



## Offices of Ombudsman

The Ombudsman Agencies are also known as "Idara-e- Mohtasib" in Pakistan. These includes Federal Ombudsman of Pakistan, Provincial Ombudsman Office, Banking Mohtasib, Federal Insurance Ombudsman office and Federal Tax Ombudsman office.



# How does Ombudsman Offices work?



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.



# How can you approach an Office of Ombudsman?



Every Ombudsman Office is regulated through a different law particular to the nature of dispute. But any person with a complaint against of any functionary of the Department / Commission / Corporation of the Government can lodge a complaint to an Ombudsman office.

This complaint is investigated by the Ombudsman Office and if the governmental agency is found to be guilty of maladministration, the ombudsman office sends their recommendations to the agency, specifying action to be taken within a defined time.

The office of ombudsman then follows up with the agency on implementation of the recommendations. This process aims to resolve any such complaint within 3 to 6 months.









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**CALL OUR TOLL FREE NUMBER:**

**0800-70806**

for free legal advice