

Mediating in the Shadow of the Court: Building an ADR Ecosystem for Technology-Lagging Legal Systems

Syed Mudassir

Advocate, High Court of Punjab/Visiting Lecturer, Gillani Law College, Bahauddin Zakariya University, Multan

Email: shahmudassir0@gmail.com

Abstract

Court-connected and institutional Alternative Dispute Resolution (ADR) mechanisms have become a universal policy remedy for systemic adjudicative lag, but the academic literature on the design of ADR systems has been developed largely for well-developed and resource-stooled legal systems that are characterised by dense lawyer markets, reliable digital infrastructure, and strong enforcement systems. This paper challenges that gap by questioning how a viable mediation and arbitration system can be developed in "technology-lagging" jurisdictions—those jurisdictions with significant case backlogs, limited technology, inadequate professional ADR markets, and inconsistent enforcement of mediation and arbitration matters. The paper, using Pakistan as its main case study and contrasting with similar experience from India, Nigeria, Turkey, Malaysia, Bangladesh and international instruments developed under the UNCITRAL, documents the magnitude of the underlying problem: In Pakistan, as of 2025, the courts have pending cases in excess of 2.2 million, of which the district judiciary alone had pending cases of approximately 1.86 million (nearly two-thirds of which relate to civil cases). The paper traces the doctrinal history of judicial deference to ADR by way of comparative case law; compares the existing statute of the ADR Act 2017 and the provincial ADR acts with the UNCITRAL Model Law on International Commercial Mediation (2018) and the Singapore Convention on Mediation to which Pakistan is not yet a party; and provides an empirical study of the comparative success rates of court-annexed mediation centres existing in Punjab and Balochistan. Based on these findings, the paper proposes a four pillar approach to the building of the ADR ecosystem in resource and technology constrained settings: (1) low bandwidth, asynchronous digital infrastructure instead of capital-intensive e-court replication; (2) tiered and exit-able mandatory referral, in lieu of fully voluntary and fully compulsory mediation; (3) a credentialing and enforcement bridge between domestic mediator panels and international enforceability instruments; and (4) hybrid lay-professional mediator training pathways, which are suitable for jurisdictions with thin formal ADR labour markets. The paper argues that jurisdictions that are lagging in technology should not try to adopt all of the elements of a capital-intensive, fully digitised ADR system out of the blue because institutional trust and enforceability are more important than technological sophistication, and that this process should take place in a sequence rather than a wholesale approach.

Keywords: Alternative Dispute Resolution; mediation; arbitration; court backlog; access to justice; Pakistan; Singapore Convention on Mediation; UNCITRAL Model Law; developing legal systems; judicial reform

1. Introduction

In many parts of the Global South, the adage "justice delayed is justice denied" is no longer a rhetorical statement, but an actual state of the legal system. According to a tally of officials and journalists, the number of pending cases in all courts of Pakistan is more than 2.2 million, with almost 56,000 cases pending in the Supreme Court alone (The News International, 2025). The district judiciary, which is where the vast majority of ordinary litigants will have their dealings with the legal system, had some 1.86 million pending cases as of 2025, while the upper courts had some 390,000

pending cases, with civil cases being around 64% of the district-level backlog (Tahir, 2025; The Asian, 2026). The economic impact of this congestion is not theoretical: As of March 2025, over Rs 3 trillion worth of tax matters and Rs 1.1 trillion worth of non-performing loans were reported as stuck in ongoing litigation, effectively inhibiting the enforcement of contracts, recovery of debts and investor trust. (Howtests, 2025) But Pakistan's failure to perform well on indicators of contract enforcement, as measured by the World Bank, is not an isolated occurrence, it is, to a large extent, a direct reflection of this backlog.

In response to similar pressures, established common-law based systems have established dense, technologically advanced ADR ecosystems over the past 40 years: e-filing-integrated mediation referral, small claims mediation platforms available online, artificial intelligence (AI) to assist in case triage and treaty-based enforcement of settlement agreements across borders. The Supreme Court of Pakistan has started testing similar initiatives as part of Chief Justice Yahya Afridi's Judicial Reform Action Plan, which include a pilot program of using an AI-powered research tool dubbed "Judge-GPT" or "AI Judge" (The News International, 2025) has also seen a first drop in case pendency, from 60,446 cases in early 2024 to 56,169 in October 2025 (Dawn, 2025). But these improvements are limited to the tip of the judicial pyramid: the district judiciary, where the overwhelming majority of litigation takes place, and the overwhelming majority of ordinary citizens meets the law, has not enjoyed similar structural improvement.

This paper poses a more narrow and constructive question than "Why does litigation fail in developing systems": How can a credible ADR ecosystem be designed in a jurisdiction that lacks all the preconditions for ADR system design most common in the literature — a dense broadband penetration, large professional market of mediators, institutional funding that is stable, and ratified international enforcement instruments? Pakistan is a particularly instructive country because it already has the basic statutory framework for ADR (the Alternative Dispute Resolution Act 2017 and a family of provincial ADR statutes), there are existing benchmarks of piloting success (from court-annexed mediation centres), and an unusually robust judicial jurisprudence that favours the referral to ADR (even if it fails to send cases there), but still is not equipped with digital and institutional capacity to operate the scaffolding on the scale the backlog demands. The main thesis presented here is the idea of a "low bandwidth" technological ADR, that is one characterized by the building of a technological space around four levels: one based on digital tooling, one rooted in a phased and exitable compulsory referral, one based on an enforcement "bridge" with international instruments and one based on a hybrid lay-professional training for mediators.

The paper follows the flow below. Section 2 contextualizes the inquiry with the existing ADR and access to justice literature and pinpoints the gap the paper aims to fill. Section 3 proposes a theoretical framework that integrates what has been termed "vanishing trial" theory, court-capacity economics, and a critique of ADR transplant literature that is in a state of flux. In Section 4 the size of the underlying problem is quantified in a comparative way. Section 5 compares the statutory structure of ADR in Pakistan with that of UNCITRAL and the Singapore Convention, and with the ADR systems of India, Nigeria, Turkey, Malaysia and Bangladesh. In Section 6, the authors examine the most prominent case law and doctrine in comparative and Pakistani context that laid the foundation for judicial deference to ADR. Section 7 outlines the systemic issues that differentiate the experience of ecosystem building for ADR in technology-lagging systems from the views that are taken for granted in the dominant ADR scholarship. Section 8 provides details on the proposed four-pillar model. Section 9 concludes.

2. Literature Review

The modern literature on law and economics based on court-annexed ADR is grounded in the premise that litigational costs are a congestible public good: the marginal cost of adjudication to litigants and the state increases non-linearly as caseload increases relative to judicial capacity, and, even if not the first-best solution for any litigant, diversion to private or quasi-private resolution mechanisms

becomes socially efficient when the number of cases exceeds the capacity of the judicial system. (Galanter, 2004). Galanter's 'vanishing trial' thesis, which was originally observed in the United States, federal court system, where the rate of cases heard in trial dropped from about 11.5 percent in 1962 to less than 2 percent in the early 2000s, has since been extended as an international trend in which the number of cases aiming for trial is becoming a small minority of those that are capable of being settled, mediated, or arbitrated out of court.

An alternative school of thought, which tends to be linked to British and Commonwealth writers like Genn (2010), has questioned whether the redirection of disputes from courts to ADR actually has any impact on access to justice, and simply shifts the burden of delay from the state onto a litigant who is unable to meaningfully assess or reject a mediation referral. Genn's empirical research reminds us not to take settlement rates for granted as a positive indicator and that high rates could be an indicator of effective dispute resolution or pressure on the weaker party to give up on a meritorious claim. This critique is of particular relevance with regard to systems that lag behind with technology, as the skirmish of sophistication in the law between the litigants is often more marked than in the jurisdictions that were examined by Genn.

Finally, there is a growing body of scholarship on "legal transplants" in DR design, pertaining to the process of introducing statutes and court-annexed mediation models from common-law systems to developing jurisdictions that have far more constrained institutional settings (Won, 2013). There have been mixed results documented in this literature, with ADR statutes that are not accompanied by investments in training mediators, raising public awareness about the legal process, and providing effective enforcement mechanisms, leading to low utilisation rates even if they are formally sophisticated. This is vicariously confirmed by Pakistan's own experience directly: public awareness of the use of the ADR mechanisms and lack of trained mediators are cited as very common hindrances in the use of ADR (Pakistan Lawyer, 2024), even though Pakistan has had the Alternative Dispute Resolution act 2017 since mid-2017.

A fourth strand, which has come more recently, is the digitalisation of dispute resolution itself, namely Online Dispute Resolution (ODR), and AI-assisted case triage, written from the perspective of jurisdictions that have nearly ubiquitous broadband access and secure digital identity systems (Rabinovich-Einy & Katsh, 2014). This literature has tended to focus on other questions, such as what constitutes responsible ADR digitisation in a system where access to rural broadband, reliable electric power, and digital literacy of litigants and the lower judiciary cannot be taken for granted. The present paper falls right into this void and defines the experience of Pakistan in the context of ADR not as a missing case of a generic ADR model, but rather as a unique design challenge that demands a different set of theoretical and institutional terms.

3. Theoretical Framework

This paper has a three-branches theory approach. First, it draws on Galanter's congestion economics to shed light on why ADR connected to the courts is a structurally necessary, not just desirable, aspect of any court system that has the problem of the scale of backlog as the ones described in Section 4. Second, it introduces the access to justice critique as a normative criterion for system design: the ability to reduce pendency is not the only criterion for evaluating a proposed ADR ecosystem; it is also important to account for the important role of litigant choice and the lack of any party's willingness to be "forced" into an inequitable settlement by court-imposed urgency. Third, and most centrally, the paper proposes what it calls a "capacity-sequenced design" framework, which draws on the legal-transplant critique, and which suggests that an optimal institutional design in high-capacity systems (such as full digitisation, voluntary mediation based on dense private markets for mediators, and treaty-based cross-border enforcement as routine practice) may be actively counterproductive when transplanted into a low-capacity system; the system designers in technology-lagging jurisdictions should instead "sequence" the institutional investment according to the binding

constraint that is currently most limiting, in the case of Pakistan, public trust and enforceability, rather than technology sophistication.

3.1 Methodology

The paper uses a doctrinal and comparative method to analyze a selection of three sources of evidence. Doctrinal analysis of primary laws is conducted, i.e., the Alternative Dispute Resolution Act 2017, its provincial counterparts, Arbitration Act 1940, Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act 2011, and Supreme Court of Pakistan and High Courts of respective provinces' reported judgments are done to determine the existing legal framework and judicial interpretation. Third, comparative statutory analysis places the framework in the context of five jurisdictions that were chosen not for convenience but because they would be relevant for Pakistan: South Asian common law jurisdictions, such as India and Bangladesh, and Nigeria, a middle-income common law jurisdiction in Sub Saharan Africa, which has developed an independent model widely replicated in the court-connected resolution of cases known as the Multi Door Courthouse; and middle-income civil- and common-law hybrid jurisdictions, such as Turkey and Malaysia, which have adopted mandatory or quasi-mandatory mediation models from which Pakistan's tiered referral proposal in Section 8.2 directly borrows. Third, the paper relies on secondary empirical evidence — judicial pendency data, court-annexed mediation success rates and Singapore Convention ratification data — which have been sourced from government, judicial and reputable legal-commentary sources and triangulated from multiple independent sources, so far as possible. The paper is not based on novel primary empirical research, but rather on the synthesis of the doctrinal, statutory and statistical evidence into a design framework and the limitations of that synthesis should be interpreted accordingly. Future research building on this paper should focus on primary survey or interview data collection to test the coercion-risk hypothesis as proposed in Section 7.4 with litigants and accredited mediators that operate within the existing ADR centre networks in Punjab and Balochistan.

4. The Scale of the Problem: Comparative Backlog and Disposal Data

Table 1 places Pakistan's backlog in a comparative context of the South Asian and Sub-Saharan African context. The figures are, of course, only approximate because the figure for judicial statistics varies from one part of the world to another, and in the target comparison they are compiled on different bases and have different reporting time lags, but the order of magnitude is instructive: the vast majority of the backlog in technology-lagging systems is not at the top courts but at the trial and district levels.

Jurisdiction	Total Pending Cases (approx.)	Lower/District Court Share	Primary Source Year
Pakistan	~2.2 million (all tiers)	~1.86 million district-level (~64% civil)	2025
India	~51 million (all tiers)	~45 million in district courts (~87%)	2024
Pakistan Supreme Court	56,169 pending	n/a (apex court)	Oct. 2025
Pakistan Supreme Court (2024 baseline)	60,446 pending	n/a (apex court)	Early 2024

Table 1. *Comparative case pendency, Pakistan and India (Sources: Tahir, 2025; The Asian, 2026; The News International, 2024; Dawn, 2025).*

This data has 2 highlights that are analytically significant. The inequality in pendency between district and apex courts in both countries (in Pakistan, district courts have approximately 75% pendency of the total pendency, and in India, approximately 85% pendency is in district courts) clearly shows that strategies to improve the efficiency of Supreme Courts or High Courts do not sufficiently address the fundamental hurdles faced by ordinary litigants seeking access to justice. Second, the partial success achieved at the Supreme Court level (reduction of pendency from 60,446 cases to 56,169 cases in about eighteen months since the launch of a dedicated Judicial Reform Action Plan (Dawn 2025)) shows that targeted institutional reform has the potential to yield measurable results within Pakistan's existing resource envelope, suggesting that the binding constraint to the expansion of ADR at the district level is not an inherent impossibility, but is rather a matter of institutional design and political prioritisation.

A few existing court-annexed mediation pilots in Pakistan offer another piece of evidence. The judges, acting as mediators, are serving at the official ADR centres in all 36 districts of Punjab, and 30,688 civil cases had been referred for mediation since 2017, with 14,239 of the cases (around 46 percent) now having been successfully mediated by the year of January 2019 (data compiled by the Lahore High Court, 2021). Empirical studies conducted on court-annexed mediation centres in Balochistan more recently indicate a much greater success rate greater than 76 percent as regards conflicts that are actually referred to mediation (Minute Mirror, 2026). The difference between these figures is itself instructive, and is explored more deeply in Section 8 as evidence for a tiered referral model as a substitute for mandatory mediation, rather than just blanket mandatory mediation in Balochistan, which has been undertaken for a longer time and more specifically targeted.

5. Comparative Statutory and International Architecture

5.1 Pakistan's Domestic ADR Framework

With the consent of the parties, disputes of civil nature before any court of law in the Islamabad Capital Territory can be referred to an ADR Centre or a panel of the accredited “Neutrals” comprising of retired civil servants and ulema and jurists and other qualified persons, and a mediation proceeding shall be completed within a period of thirty (30) days or any extension thereto, whichever is earlier, (Alternative Dispute Resolution Act, 2017, ss. 4–12; Senate of Pakistan, 2017). The settlement that occurs in the ADR process is submitted to the court to be entered as a judgment of that court, not as a private contract. Since 2017, Order IX-B of the Code of Civil Procedure in Punjab has been in effect, which mandates a preliminary stage of mediation for specific types of cases, and the group of provincial legislation, including the Punjab Alternate Dispute Resolution Act 2019, the Khyber Pakhtunkhwa ADR Act 2020, and the Balochistan ADR Act 2022 (Courting the Law, 2026). The national training and certification standards for mediators are contained in the ADR Mediation Accreditation (Eligibility) Rules 2023 and the Mediation Practice Direction (Civil) Rules 2023 (Courting the Law, 2026).

The Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act 2011, which brings the 1958 New York Convention into domestic law, is the key legislation for the resolution of international commercial arbitration disputes in Pakistan, which is subject to the principle that a stay of arbitration proceedings is the exception to the general rule of arbitration (IBA Arbitration Committee, n.d.). Even in the presence of this relatively advanced legislative framework, there is a lack of domestic arbitral institutions in Pakistan, with the Centre for International Investment and Commercial Arbitration (Lahore) and the International Centre for Appropriate Dispute Resolution and Prevention (Islamabad) and the Musaliha International Centre and National Centre for Dispute Resolution (Karachi) covering the bulk of the domestic market in arbitration, while most domestic arbitrations are ad hoc and foreign investors continue to favour the LCIA or ICC as seat and administering institution (IBA Arbitration Committee, n.d.).

5.2 Comparative Statutory Models

Jurisdiction	Principal Statute(s)	ADR Referral Model	Notable Feature
Pakistan	ADR Act 2017 (ICT); Punjab/KP/Balochistan ADR Acts	Consent-based court referral; CPC Order IX-B preliminary mediation in Punjab	Settlement enforceable as court decree; accreditation rules introduced 2023
India	Mediation Act 2023; Arbitration & Conciliation Act 1996; CPC s.89	Mandatory pre-litigation mediation for specified civil/commercial suits	Statutory time limit (180 days) for mediation; Mediation Council of India established
Nigeria	Arbitration and Mediation Act 2023; Lagos Multi-Door Courthouse model	Court-connected, opt-in with judicial encouragement	Multi-Door Courthouse model widely replicated across states
Turkey	Mediation Law for Civil Disputes 2012 (amended)	Mandatory mediation precondition for labour, commercial, consumer claims	Mandatory mediation upheld as constitutional precondition to suit
Malaysia	Mediation Act 2012	Court-annexed and private; judge-led mediation track in High Court	Strong integration with Malaysian Mediation Centre
Bangladesh	Code of Civil Procedure (Amendment) 2012, s.89A–C	Mandatory court referral attempt before trial	Village Courts Act extends mediation to rural disputes

Table 2. Comparative ADR statutory frameworks (Sources: *Courting the Law*, 2026; *Journal of Law and Policy Review*, 2026; IBA Arbitration Committee, n.d.).

5.3 India and Nigeria: Two Contrasting Models

India and Nigeria are interesting cases, especially as they have been colonised and, like Pakistan, have both high courts and large backlogs of cases, but limited digital infrastructure at the trial level.

The Mediation Act 2023 is the most ambitious piece of legislation recently enacted in South Asia to formalise pre-litigation mediation, requiring that a mediation attempt be made for certain types of civil and commercial cases for 180 days prior to filing a suit, and the creation of a new Mediation Council of India to supervise accreditation, qualifications, and a national panel of registered mediators. The scale mismatch, however, persists: with over 51 million pending cases across the country, with 87 percent of these pending cases in Indian's district courts, the accreditation infrastructure of the Mediation Council is still in its infancy and commentators have pointed out that the stipulation of mandatory mediation may become a formality if mediators are unable to keep up with the number of cases now sought to be mediated as a prerequisite to suit.

The model of the Multi-Door Courthouse (MDC) adopted in Nigeria, which was initially implemented in Lagos in 2002 and subsequently replicated in over 12 Nigerian states, is a structurally different approach: In the MDC model, there are no requirements for the parties to attempt mediation before they can file a lawsuit; rather, the ADR "doors" (mediation, arbitration, early neutral evaluation, and negotiation) are built into the very structure of the court itself, and judges have discretion to refer cases to the appropriate door during the case-management stage. The Arbitration and Mediation Act 2023 united and modernized the aforementioned federal arbitration and mediation law in Nigeria, superseding the obsolete Arbitration and Conciliation Act 1988 and for the first time introduced the MDC model, which was previously only recognized in a limited capacity in parts of the country. The data provided by the Lagos MDC itself, which is often quoted in Nigerian legal commentary, is indicative of settlement rates of 70-80 percent for mediated dispute resolution proceedings, generally similar to the rates found in Balochistan as explained in Section 4. The similarities with the Pakistani context are that in Pakistan, the physical setting of ADR "doors" in existing district court buildings, not requiring litigants to travel to a separate ADR centre, can be a low-cost intervention that can enhance awareness and utilisation of ADR, without requiring any investment in digital technology.

5.4 The International Enforcement Gap: UNCITRAL and the Singapore Convention

Overall, the most significant shortfall in the Pakistani ADR system compared to the international system is the lack of cross-border enforceability of mediated settlements. The Singapore Convention on Mediation, 2018, was adopted by the United Nations Convention on International Settlement Agreements Resulting from Mediation, OUNCITRAL (n.d.) in order to establish a uniform and treaty-based process for direct execution of mediated settlements, much like the New York Convention does for arbitral decisions, without a re-litigation of the underlying matter. At the end of 2025, fifty-nine States had signed Convention and nineteen States had ratified Convention, including key trading partners and regional comparators like Saudi Arabia and Qatar; Japan and Brazil (which ratified Convention from February 2026) (Burgess Salmon, 2025). No Convention has been signed or ratified in Pakistan and Pakistan has not adopted the complementary UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018) in the absence of the Convention, which provides Member States with a means to achieve similar domestic effect (UNCITRAL, n.d.).

The bottom line is that an out-of-country commercial transaction whose terms are currently settled in Pakistan are not yet enforceable under the treaties of a third jurisdiction, but rather must be enforced, if enforceable, by ordinary contract litigation in the jurisdiction of the counterparty, in the same manner in which mediation sought to avoid such delay and expense. The gap is particularly pertinent to Pakistan's declared intention of becoming a more attractive forum for commercial dispute resolution in the region, and this is taken up head-on by the proposed model in Section 8.

6. Doctrinal Foundations: Comparative and Domestic Case Law

The Pakistani superior courts have, in the last decade, built up a consistent pro-ADR jurisprudence more akin to, and in some ways anticipating, similar developments in other common-law systems. In *Kauser Rana Resources (Pvt) Ltd v Qatar Lubricants Company WLL*, the Supreme Court of Pakistan,

in a judgement authored by Mr Justice Syed Mansoor Ali Shah, expressed a clear pro-ADR stance, whereby courts should have the posture of “not to interfere”, and actively promote the use of arbitration and mediation, thereby substantially reducing the economic and institutional burden associated with prolonged litigation on an already overburdened judicial system (Courting the Law, 2026). In the spirit of this reasoning, the Court in Kauser Rana rejects the notion of imposing mediation on any basis, but yet finds that a refusal to mediate that is unreasonable may be penalised in costs, which is the stance taken by the United Kingdom Court of Appeal in its earlier and influential case of *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576, where it held that there can be circumstances where it is appropriate for a Court to order a party to enter into a non-court based dispute resolution process without prejudice to the claimant's right of a judicial hearing.

Civil Petition for Leave to Appeal No. 3519 of 2021, *Muhammad Naseer Butt vs Additional District Judge and others*, Supreme Court of Pakistan referred a long pending family maintenance dispute to mediation under the provisions of the ADR Act 2017 which had been pending in court for several years and before the Supreme Court for over three and a half years, and resolved the matter within weeks of being placed under the mediation bench in March 2025 (Minute Mirror, 2026). The Court further held that the use of mediation should be encouraged at an early stage in litigation, especially in family disputes where it is likely that an adversarial process will exacerbate emotional and relational damage as well as simply delay its resolution (Minute Mirror, 2026; Courting the Law, 2026). This has since been reiterated in *Muhammad Ali v. Sadia Bibi*, PLD 2021 SC 455, when the Supreme Court approved mediation as an effective process for the resolution of child custody disputes, stating that the best way to determine what's good for the child is to have a negotiated parenting arrangement rather than a long, litigated process. The reasoning in the case is similar to that of the Supreme Court of India in *Afcons Infrastructure Ltd v. Cherian Varkey Construction Co.* (2010) 8 SCC 24 which interpreted section 89 of the Indian Code of Civil Procedure as having a positive obligation of the trial court to ensure that it considers ADR, and when appropriate, applies for an order to refer to it, as a matter of routine case management and not an exceptional indulgence.

On arbitration side, Pakistani courts have also curtailed the circumstances under which a domestic arbitral award can be set aside in accordance with the Arbitration Act 1940, and under the new domestication of the New York Convention in the 2011 Act, courts are prohibited from refusing to grant a stay of proceedings where parties are subject to a valid arbitration agreement (IBA Arbitration Committee, n.d.). The Lahore High Court has also clarified that enforcement proceedings ought not to involve a full trial on the merits of the enforcement, since the enforcement provisions of Article III of the New York Convention are broad and pro-enforcement, in line with decisions of international courts such as the United States Supreme Court's interpretation of the New York Convention in *GE Energy Power Conversion France SAS v Outokumpu Stainless USA, LLC*, 590 U.S. ____ (2020).

Put together, this mass of case law shows that the principal problem in the way of the growth of ADR in Pakistan is by no means doctrinal immaturity or judicial antipathy, as is sometimes claimed. The American position on jurisprudence, in comparison to the equivalent English position set forth in *Halsey*, is even more forthrightly pro-ADR. Instead, this paper argues, the binding constraint is the institutional and infrastructural capacity to operationalise that jurisprudence at the scale the backlog requires—namely, capacity to put in place procedures that are capable of effectively addressing the demands of the backlog (Section 7).

6.1 The Arbitration Jurisprudence: From Hitachi to Gerry's International

The history of arbitration is of a parallel and in some ways more stormy doctrinal development. In *Hitachi Limited v Rupali Polyester*, 1998 SCMR 1618, the Supreme Court of Pakistan struck a balance between the *lex arbitri* and proper law of the contract, in the process holding that an arbitration clause naming London as the seat, by itself, rendered the resulting award foreign, which was critiqued as having been decided under the now repealed Arbitration (Protocol and Convention) Act 1937 and

not under the regime of the New York Convention as it was later superseded (Khan & Co, n.d.; Kluwer Arbitration Blog, 2020). The most significant decision, which was heavily criticized internationally for being inconsistent with the doctrine of separability, that is, that an arbitration clause did not depend for its existence on the validity of the underlying commercial contract, and for causing serious harm to Pakistan's reputation for being a viable seat of international commercial and investment arbitration for the ensuing decade, was *Hub Power Company Ltd v. WAPDA*, PLD 2000 SC 841, decided by a divided Supreme Court of Pakistan (3:2). (Barrington, 2000; as cited in *Courting the Law*, 2015)

Since then, however, the Pakistani courts have taken a decidedly harder line against the enforcement. The Supreme Court in *Eckhardt & Co. Marine GmbH, West Germany v Mohammad Hanif*, PLD 1993 SC 42, had laid an early premise in favour of foreign arbitration clauses that predates Pakistan's ratification of the New York Convention in 2005, stating that under an arbitration clause, a foreign arbitral clause should ordinarily be respected, unless compliance would be unconscionable or would involve the litigant in a forum other than the one agreed upon. In *Taisei Corporation v. A.M. Construction Company*, PLD 2012 Lahore 455, the Lahore High Court controversially held that the award was not foreign but domestic because a contract was governed by Pakistani law, and the seat of the arbitration was Singapore, thus falling out of step with the reasoning of Article I of the New York Convention, which states that the foreign nature of an award depends on the governing law of the underlying contract, not the seat of the arbitration. The Lahore High Court in *Louis Dreyfus Commodities Suisse SA v. Acro Textile Mills Ltd*, PLD 2018 Lahore 597, also reiterated a pro-enforcement policy following international practice, by restricting the grounds for challenging enforcement under Article V of the Convention, and not permissible to be supplemented by the broader domestic set-aside grounds under the Arbitration Act 1940. Lastly, in *Gerry's International (Pvt) Ltd v Aeroflot Russian International Airlines*, 2018 SCMR 662, the Supreme Court reiterated that courts have limited powers to review domestic arbitral awards, and that the review can only be on the basis of errors apparent on the face of the award only and not on the merits of the arbitral tribunal's reasoning.

Institutional learning, as observed in the superior judiciary of Pakistan, closely mirrors, albeit on a shortened time scale, the doctrinal developments that can be found in the comparative mediation case law discussed above as seen in the trajectory from *HUBCO v. WAPDA* to *Orient Power* and *Gerry's International*. It also reiterates the main argument of the paper that, Pakistan's judiciary is clearly able to absorb and apply 4th generation doctrine of ADR as per the international standards and the lack of capacity and sequencing is the only problem that needs to be addressed to expand the ADR ecosystem in Pakistan.

7. Systemic Challenges Distinctive to Technology-Lagging Systems

7.1 Thin Professional Mediator and Arbitrator Markets

The domestic market of ADR in Pakistan is still dependent on the judges operating as mediators in court-annexed centres, instead of an independent professional mediator class like in places like Singapore and England and Wales. One of the most recurring challenges faced in the utilization of ADR, highlighted by commentators, is the lack of access to trained, accredited mediators and arbitrators within the country and the general public's unfamiliarity with ADR mechanisms (Pakistan Lawyer, 2024; Javed, 2025). It is important to highlight that the IBA's own country guide states that many Pakistani lawyers are not well equipped to handle arbitration cases, and do not understand the importance of arbitral proceedings to achieve the efficiency that arbitration aims to provide, as they are not well versed in the arbitration procedure, and are more inclined towards practicing the adversarial litigation style (IBA Arbitration Committee, n.d.).

7.2 Digital Infrastructure Constraints

Whereas jurisdictions with widespread broadband and robust digital identity systems have been able to integrate ODR on top of these existing technology bases, it may be difficult to assume that the rural and peri-urban litigant population, which is most impacted by district-level backlog, has access to reliable broadband, smartphones, and comfort with asynchronous digital case management. A full e-court or ODR implementation based on Singapore's or Australia's model, however, may end up excluding the very litigants that the reform aims to benefit, thereby recreating within the ADR system similar access asymmetries as are found in formal litigation.

7.3 Enforcement and Cross-Border Recognition Gaps

The non-binding nature of cross-border mediated settlements under the Singapore Convention on Mediation and the absence of the UNCITRAL Model Law on International Commercial Mediation in Pakistan has economic repercussions for the competitiveness of Pakistan as a centre for regional commercial mediations as discussed in section 5.3.

7.4 Coercion Risk in Mandatory Referral Models

As highlighted by Genn (2010) in his access-to-justice critique, differences between the success rate of mediations in Punjab's wide-ranging pilot programme (approximately 46 per cent) and Balochistan's more targeted programme (76 per cent) – which was in operation in the province later – indicate that a mandatory mediation without proper targeting could result in mediations that are not appropriate for settlement and in weaker parties accepting unsatisfactory resolutions in order to avoid further delays.

7.5 Informal and Customary Forums

Another unique aspect in the Pakistani context is the presence of traditional dispute resolution fora, such as panchayats in Punjab and Sindh, and jirgas in KP and Balochistan, which are accessible, familiar and in practice may be ad hoc, but have been documented as a source of human rights violations by HRCP, with a special focus on women (2017, cited in Javed, 2025). Any formal ADR ecosystem-building strategy, therefore, cannot ignore or overlook the link between state-sanctioned mediation and these existing informal forums, as efforts to ban customary forums have been unsuccessful, and efforts to formalise and rights-restrict customary forums have been only partly successful.

8. A Five-Pillar Model for ADR Ecosystem-Building in Technology-Lagging Systems

Based on the comparative and empirical evidence set out above, the paper suggests a four-pillar approach for designing an ADR system in jurisdictions with Pakistan's unique features of high caseload, weak professional ADR markets, and inadequate digital infrastructure. The model is intentionally sequenced: it is structured so that each pillar can be implemented without the other having been reached, that is, without assuming any pre-requisites of digital or institutional maturity that are assumed in the mainstream design literature on ADR.

8.1 Pillar One: Low-Bandwidth, Asynchronous Digital Tooling

Technology-leagging systems should opt for case intake and scheduling platforms that are not dependent on stable broadband access on both ends, but rather for platforms that are asynchronous and SMS and low-bandwidth compatible, and build on top of the existing notified ADR centre network – which already operates across all 36 districts of Punjab (Lexology, 2021) – rather than creating parallel digital systems from scratch.

Tiered, Exit-Able Mandatory Referral (8.2)

8.2 Pillar Two: Tiered, Exit-Able Mandatory Referral

The proposed model is, however, neither compulsory (or mandatory) referral, as the pilot data from Punjab indicates underutilises the ADR capacity, nor blanket mandatory referral, as this risks the issues of coercion and mismatch that were raised in Section 7.4, but instead is a tiered approach:

presumptive mandatory referral where there is empirical evidence that the dispute is likely to be suitable for resolution through ADR (low-value commercial debt, landlord tenant, consumer disputes and family maintenance, taking inspiration from the mandatory mediation categories in Turkey); and a structured but genuine opt-out on judicial review, with inspiration from the safeguard that was subsequently articulated by the Court of Appeal in England and Wales in *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416.

8.3 Pillar Three: An Enforcement Bridge to International Instruments

Pakistan should join the Singapore Convention on Mediation and use the UNCITRAL Model Law on International Commercial Mediation as a domestic law in Pakistan without the requirement of ratification of the Convention itself (UNCITRAL, n.d.). This one legislative measure would directly address the enforcement issue in cross border disputes identified in section 5.3 and at relatively low fiscal and institutional cost in comparison to the economic cost of boosting investor confidence in the commercial dispute resolution infrastructure of Pakistan.

8.4 Pillar Four: Hybrid Lay-Professional Mediator Training Pathways

Instead of a limited number of trained lawyers who can be reasonably qualified to serve as mediators in an expanding number of community-based forums, particularly panchayat and jirga, the model proposes a pathway to formally accrediting non-lawyer members of the community who can be suitably qualified to serve as mediators, and who are already involved in such forums as community members, retired civil servants, ulema, and respected community members, through the framework of the ADR Mediation Accreditation (Eligibility) Rules 2023, with the caveat that these individuals are required to complete training that encompasses the rights-based considerations documented in Section 7.5 which have been identified as concerns in ADR proceedings.

Pillar	Core Mechanism	Addresses
1. Low-bandwidth digital tooling	SMS/asynchronous case intake built on existing 36-district ADR centre network	Digital infrastructure constraint (§7.2)
2. Tiered exit-able referral	Presumptive mandatory referral for defined dispute categories, with judicially reviewable opt-out	Coercion risk in mandatory models (§7.4)
3. International enforcement bridge	Domestic enactment of UNCITRAL Model Law; accession to Singapore Convention	Cross-border enforcement gap (§5.3, §7.3)
4. Hybrid mediator credentialing	Formal accreditation of community mediators under existing 2023 Rules, with rights-based training	Thin professional mediator market (§7.1, §7.5)
5. Gender and rights safeguard layer	Mandatory judicial screening of customary-forum referrals; minimum due-process floor for accredited community mediators	Customary forum due-process gap (§7.5)

Table 3. Summary of the proposed five-pillar ADR ecosystem model.

8.5 Pillar Five: A Gender and Rights Safeguard Layer

The proposed Pillar Four hybrid pathway of credentialing will, by design, rely on people already in the panchayat and jirga system, and this needs a counterweight in the formal pathway to ensure that the due-process and gender-equity breaches that have been recorded in the informal pathway do not gain formal legitimacy. The pillar suggests two specific mechanisms. Before any dispute referred to a community-accredited mediator for a family law case, inheritance case, or domestic case is referred, a judge should conduct a mandatory screening step, on the record, to ensure that all parties are informed and uncoerced and that no party is a minor or otherwise legally incapacitated. Second, there should be a compulsory rights-based training component focused on gender equity and constitutional due process minimums, which is included in the accreditation curriculum, as part of the requirements for continued accreditation under the ADR Mediation Accreditation (Eligibility) Rules 2023, based on the welfare of the child test set forth by the Supreme Court of Pakistan in the case of *Muhammad Ali v. Sadia Bibi*, PLD 2021 SC 455. It does not merely talk about the reduction of case pendency, but rather, implements the normative constraint that was expressed in Section 3 in the context of Genn: a reduction in case pendency that comes at the cost of the most vulnerable litigants is not, on the framework used in this paper, a successful ADR ecosystem.

9. Conclusion

In Pakistan, as in other developing countries, a typical design sequence is to first develop digital infrastructure, then establish a mediator market, and only then provide international enforceability; this sequence is not necessary — and not even advisable in resource-constrained systems. Pakistan already has a robust pro-ADR judicial jurisprudence, in mediation (*Kauser Rana Resources* 2025 SCMR 517; *Muhammad Naseer Butt CPLA* 3519/2021; *Muhammad Ali v Sadia Bibi* PLD 2021 SC 455) and in its much newer disciplined arbitration enforcement case law (*Gerry's International* 2018 SCMR 662; *Orient Power* 2019 CLD 1082), and it has a network of district level ADR centres and rules of statutory accreditation. What it doesn't have is a deliberate push for the constraints that are limiting and binding now: a scarcity of professional mediators, lack of cross-border enforcement, a referral model that, due to the coercion risk posed by the disparity between the success rates of formally accredited mediation and the informal customary forum that it coexists with, has not yet been calibrated to avoid it, and a due process gap between formally accredited mediation and the informal customary forum that coexists with it.

The five-pillar approach suggested in this paper is provided as a template not just for Pakistan, but also for technology-lagging jurisdictions, where the institutional trust, targeted referral design, international enforceability, and rights-based safeguarding are real prerequisites for a credible ADR ecosystem, not digital sophistication. The case studies of Multi-Door Court in Nigeria, in particular, indicate that integrating ADR into the mainstream of the court infrastructure — not constructing parallel structures — can be one of the least-expensive and, at the same time, most-effective interventions a court system in Pakistan can make.

The analysis above leads to three obvious avenues for future research. First, systematic tracking of the district-level success and referral rates for mediation after implementation of the district-level accreditation and gender-safeguard reforms in Pillars Four and Five should be conducted to test the coercion-risk hypothesis, which was implied but not tested with aggregate comparative data in Section 7.4. Second, in terms of fiscal, diplomatic and reciprocal trade consequences of Pakistan's accession to Singapore Convention on Mediation, there is a need to do in-depth study as a standalone policy intervention in its own right on which to evaluate. Third, comparative empirical research investigating the difference in the levels of awareness and utilization that are achieved under court-embedded Multi-Door Courthouse (MDC) as opposed to physically separate ADR centre models would directly test this paper's proposition that institutional embedding is the more cost-effective near-term lever for technology-lagging legal systems.

References

- Afcons Infrastructure Ltd v. Cherian Varkey Construction Co. (2010) 8 SCC 24 (India).
- Alternative Dispute Resolution Act, 2017 (Pakistan).
- Burges Salmon. (2025, November 26). Global momentum builds behind the Singapore Convention on Mediation. <https://www.burges-salmon.com/articles/10216ib/global-momentum-builds-behind-the-singapore-convention-on-mediation/>
- Churchill v Merthyr Tydfil County Borough Council [2023] EWCA Civ 1416.
- Courting the Law. (2026, March 14). Mediation as an alternative dispute resolution mechanism in Pakistan. <https://courtingthelaw.com/2026/03/14/commentary/guest-columnists/mediation-as-an-alternative-dispute-resolution-mechanism-in-pakistan/>
- Dawn. (2025, October 25). Supreme Court sees drop in pending cases. <https://www.dawn.com/news/1951112>
- Eckhardt & Co. Marine GmbH, West Germany v. Mohammad Hanif, PLD 1993 SC 42.
- Galanter, M. (2004). The vanishing trial: An examination of trials and related matters in federal and state courts. *Journal of Empirical Legal Studies*, 1(3), 459–570.
- GE Energy Power Conversion France SAS v Outokumpu Stainless USA, LLC, 590 U.S. ____ (2020).
- Genn, H. (2010). *Judging civil justice*. Cambridge University Press.
- Gerry's International (Pvt) Ltd v. Aeroflot Russian International Airlines, 2018 SCMR 662.
- Halsey v Milton Keynes General NHS Trust [2004] EWCA Civ 576.
- Hitachi Limited v. Rupali Polyester and others, 1998 SCMR 1618.
- Howtests. (2025, November 17). Justice delayed, democracy denied: Pakistan's legal backlog crisis. <https://howtests.com/articles/justice-delayed-democracy-denied-pakistans-legal-backlog-crisis>
- Hub Power Company Ltd v. Pakistan WAPDA, PLD 2000 SC 841.
- International Bar Association Arbitration Committee. (n.d.). Arbitration guide: Pakistan. <https://www.ibanet.org/document?id=Pakistan-country-guide-arbitration>
- Javed, R. (2025). Alternative dispute resolution in Pakistan: An implementation perspective. *Law and Policy Review*, 4(1), 69–84.
- Kauser Rana Resources (Pvt) Ltd v. Qatar Lubricants Company WLL, 2025 SCMR 517.
- Khan & Co. (n.d.). Arbitration and disputes. <https://khanandco.org/arbitration-and-disputes/>

- Kluwer Arbitration Blog. (2020, January 31). International arbitration: Is Pakistan finding new avenues? <https://arbitrationblog.kluwerarbitration.com/2020/01/31/international-arbitration-is-pakistan-finding-new-avenues/>
- Lexology. (2021, March 22). Spotlight: Alternatives to litigation in Pakistan. <https://www.lexology.com/library/detail.aspx?g=2223f0b4-e918-417f-8d5c-8baacd493888>
- Louis Dreyfus Commodities Suisse SA v. Acro Textile Mills Ltd, PLD 2018 Lahore 597.
- Ministry of Law and Justice, Pakistan. (2024). Alternative dispute resolution through mediation: Notified ADR centres in ICT. <https://molaw.gov.pk/Detail/MzUwMzMzMmItYmQ2MS00YWM4LWEzYzYtODU0M2I2ZjQwZjMx>
- Minute Mirror. (2026, April 2). Mediation as a pathway to justice reform in Pakistan. <https://minutemirror.com.pk/mediation-as-a-pathway-to-justice-reform-in-pakistan-530312/>
- Muhammad Ali v. Sadia Bibi, PLD 2021 SC 455.
- Muhammad Naseer Butt v. Additional District Judge and others, Civil Petition for Leave to Appeal No. 3519 of 2021 (Supreme Court of Pakistan, Order, 2022).
- Orient Power Company v. SNGPL, 2019 CLD 1082.
- Pakistan Lawyer. (2024, March 6). Role of Pakistani courts in alternative dispute resolution and mediation. <https://pakistanlawyer.com/articles/story/role-of-pakistani-courts-in-alternative-dispute-resolution-and-mediation>
- Rabinovich-Einy, O., & Katsh, E. (2014). Technology and the future of dispute systems design. *Harvard Negotiation Law Review*, 19, 151–199.
- Tahir, N. U. A. (2025, November 25). The endless wait: Crisis of backlog in Pakistan's district judiciary. *ISSRA Insight / Daily Pakistan*. <https://issra.pk/insight/2025/the-endless-wait-crisis-of-backlog-in-pakistans-district-judiciary/insight.php>
- Taisei Corporation v. A.M. Construction Company (Private) Limited, PLD 2012 Lahore 455.
- The Asian. (2026, June). Pakistan: The crisis of delayed justice, how pendency is eroding the legal system. <https://theasian.asia/archives/204564>
- The News International. (2025, August 18). Litigants in limbo. <https://www.thenews.com.pk/print/1368943-litigants-in-limbo>
- The News International. (2025, September 25). Cases' backlog worries judiciaries of Pakistan, India. <https://www.thenews.com.pk/print/1233610-cases-backlog-worries-judiciaries-of-pakistan-india>
- United Nations Commission on International Trade Law. (n.d.). United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (the "Singapore Convention on Mediation"). https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements

Won, S. (2013). Legal transplants and alternative dispute resolution in developing legal systems. *Asian Journal of Comparative Law*, 8(1), 1–28.