Fact-finding study

BEYOND THE COURTS

Analysing alternative dispute resolution in Khyber Pakhtunkhwa

Beyond the Courts

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in Khyber Pakhtunkhwa

Human Rights Commission of Pakistan

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ISBN 978-627-7602-67-3

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Acknowledgements
The Human Rights Commission of Pakistan (HRCP) is very grateful to Ali Arqam for carrying out this fact-finding study. We would like to thank Feroza Batool and Sunny Zia for managing the production of this study; and Farah Zia and Maheen Pracha for reviewing it. We are also grateful to Irfan Khan for editing the document and to Rida Fazal for designing the cover and layout.

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Executive summary

This fact-finding study critically examines the implementation, functionality, legal standing, and public perception of the Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020, particularly in the context of the newly merged districts (erstwhile FATA). The alternative dispute resolution (ADR) law was introduced after strong resistance to earlier proposed laws, such as the Rewaj Act 2017 and the FATA Interim Governance Regulation 2018, intended to fill the post-merger legal and institutional vacuum following the abolition of the Frontier Crimes Regulation (FCR). The Interim Governance Regulation was struck down by the judiciary for being unconstitutional, which ultimately led to the extension of the regular courts to the merged districts and province-wide enactment of the ADR Act.

Globally, ADR mechanisms are recognized as accessible, community-based alternatives to formal judicial processes, and this same rationale underpinned the law's extension to Khyber Pakhtunkhwa, including the merged districts, to provide a culturally compatible, low-cost, and efficient means of dispute resolution.

This study finds that while ADR committees have been effective in resolving civil and compoundable criminal matters, such as land, inheritance, and family disputes, the system continues to face critical structural challenges. The composition and functioning of ADR committees closely resemble the traditional jirga system, with little distinction in terms of membership criteria or processes of selection. As a result, the complete absence of women and members of religious minorities from these committees, coupled with the reluctance or failure of the ADR committees to engage in disputes involving women as aggrieved parties, emerges as a serious structural gap. This exclusion not only undermines constitutional guarantees of equality and non-discrimination but also contravenes key international human rights obligations.

Furthermore, the administrative control over committee formation, oversight, and validation of decisions compromises the neutrality and transparency of the ADR process. Although some members have received orientation and training, it remains insufficient for the full and responsible discharge of their roles. The lack of financial or institutional support further undermines the morale, effectiveness, and sustainability of the ADR system.

The study also highlights a significant lack of public awareness about the ADR system's existence, purpose, and scope. In many areas, traditional jirgas continue to operate in parallel, with local communities often placing greater trust in them than in the ADR mechanism.

The report underscores the urgent need for legal, institutional, and structural reforms if ADR is to evolve into a fair, inclusive, and effective model of alternative justice in the merged districts. Key recommendations include the meaningful inclusion of women and minorities, provision of honoraria and logistical support for ADR members, institutionalized training, targeted public awareness campaigns, a robust monitoring and review mechanism, and a clear and transparent appellate process.

These reforms will not only enhance the legal credibility of the ADR framework but also promote peaceful coexistence, social cohesion, and public trust in state institutions at the grassroots level.

Introduction

Constitutional and administrative history of the merger

In 2018, with broad political consensus and extensive consultation, Pakistan passed the 25th Constitutional Amendment. As a result, the Federally Administered Tribal Areas (FATA) were merged into Khyber Pakhtunkhwa, forming seven districts and six sub-divisions (former frontier regions). Following the bifurcation of South Waziristan into South Waziristan Upper and South Waziristan Lower, these now constitute eight districts and six subdivisions. The merger aimed to bring these regions into the political, administrative, and financial mainstream, ending their colonial legacy and extending equal constitutional rights, including the access to the formal justice system.

However, this transition was far from simple. Two decades of conflict, militancy, and administrative vacuum had deeply affected the region's social fabric. Hundreds of tribal elders, once central to the jirga-based justice system, were assassinated. Traditional leadership structures collapsed, weakening mechanisms of local dispute resolution. Meanwhile, large segments of the population migrated to settled areas, where they encountered political parties, state institutions, the court system, and civil society for the first time. These experiences gave rise to new expectations, particularly among the young people, for constitutional rights and access to justice.

Post-merger challenges and the legal vacuum

The pathway to reform, however, was complex. Before the merger, the Sartaj Aziz-led FATA Reforms Committee[1] (2016) proposed the Rewaj Act, a hybrid model combining tribal customs with formal law.[2] The proposal was withdrawn following strong public opposition. On the eve of the merger, the president promulgated the FATA Interim Governance Regulation, which granted quasi-judicial powers to the administration.[3] This was also struck down by the Peshawar

High Court and upheld by the Supreme Court, which directed the province to extend its formal judicial and administrative structures to the region.[4]

In response, Khyber Pakhtunkhwa introduced district courts, replaced the political agent system with the district administration, merged the levies and *khasadar* forces into the police, and established district-level government offices in the merged districts. But these new structures soon faced an overload of disputes related to land, boundaries, inheritance, and inter-tribal claims.

Three major challenges emerged:

- Local insistence on resolving disputes through tribal customs and jirgas.
- Public distrust of formal courts due to delays, complexity, and affordability.
- Lack of formal land records and reliance on oral testimony, informal agreements, and tribal norms.

Rationale for introducing ADR in the merged districts

To address the issues mentioned above, the provincial government passed the Khyber Pakhtunkhwa Alternate Dispute Resolution Act in 2020. It aimed to provide a culturally acceptable, accessible, and low-cost mechanism for resolving disputes outside the formal court system. Critics, however, questioned whether this would grant legal recognition to the traditional jirga system, which has long been criticized for deficiencies in due process and for rendering gender-biased decisions. Another objection pertained to the provincial assembly's authority to enact legislation specifically for the merged districts. The Peshawar High Court dismissed these concerns and asked the provincial government to ensure the Act's province-wide application.

Under this law, ADR committees were established across the province, including merged districts, and began functioning immediately. In some areas, committee members have completed their three-year term, and reconstitution of committees is underway.

Objectives and scope of the study

This report assesses the implementation of the ADR Act in the merged districts of Khyber Pakhtunkhwa, focusing on its effectiveness, public perception, legal standing, and compatibility with human rights standards. It explores key questions such as:

- How closely does the ADR system resemble the traditional jirga model?
- Have ADR members received training in law or mediation?
- To what extent are women, minorities, and vulnerable groups included in the ADR process?
- Are ADR decisions legally binding? Is there any appellate mechanism?
- How well does the ADR system align with international human rights frameworks?

Methodology

The study employed a qualitative methodology and drew on secondary sources, including legal documents and media reports. Semi-structured interviews were conducted with district administration officials, ADR members, lawyers, legal experts, tribal elders, academics, journalists, women's and minority rights activists, and individuals who used the ADR system to resolve disputes. Excerpts from these interviews are presented in the report without disclosing their names to protect their identities.

Legal framework and institutional landscape

Overview of the Khyber Pakhtunkhwa ADR Act 2020

The Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020 provides a legal framework for establishing ADR committees at the district and tehsil levels. The Act empowers these committees to settle civil and criminal cases that are compoundable through conciliation, mediation, or arbitration.

The Act is meant to help reduce the burden on courts, provide quicker relief to disputing parties, and offer culturally appropriate means of justice, especially in areas where customary practices, such as jirgas, have long held sway. The ADR committees, functioning much like institutionalized jirgas, operate under the administrative umbrella of the district administration, particularly the deputy commissioner's office, which is responsible for referring disputes and overseeing the process to ensure procedural conformity with the ADR Act.

Powers and composition of ADR committees

Referring authorities: Civil and criminal disputes (which are compoundable under law) may be referred to ADR committees by courts, deputy commissioners, or officers authorized by them. The referring authority may also frame the issues to be addressed and prescribe a timeframe for proceedings. In addition, dispute resolution councils, established in police stations under the Khyber Pakhtunkhwa Police Act to mediate petty disputes at the pre-FIR stage, can also refer unresolved cases to the ADR Committees

Saliseen: These are mediators or conciliators who facilitate dialogue between disputing parties and help them arrive at a mutually acceptable settlement. A panel of *saliseen* is constituted for each district and tehsil.

Saliseen selection committee: A division-level *saliseen* selection committee is responsible for reviewing and approving the pool of eligible *saliseen*. The committee comprises: commissioner of the division (chairperson), regional police officer, senior civil judge of the concerned district, representatives from law enforcement agencies, regional director prosecution, special branch representative, and deputy commissioner of the district.

ADR committees: These committees are notified by the deputy commissioner at the district and tehsil levels. Members may include retired judges, lawyers, tribal elders, religious scholars, social workers, and other respected individuals known for their integrity and impartiality. While women, members of religious minorities, and other vulnerable groups can be included, the law does not explicitly mandate their representation.

Case-handling process

Referral and selection: Upon referral by a competent authority (court, deputy commissioner, or designated body), the ADR committee selects a group of *saliseen* from its approved panel to mediate the dispute. The disputing parties may propose names from this list. In the absence of consensus, the committee has the authority to finalize the selection.

Proceedings and mediation: The *saliseen* may summon the parties involved, record their statements, hear both sides, and propose a mutually agreeable settlement in accordance with local customs and principles of equity.

Timeframe for resolution: The mediation process must be completed within three months from the date of referral. However, if progress is being made, the committee may, with the written consent of both parties and approval of the deputy commissioner, extend the proceedings by an additional three months. No further extensions are permitted thereafter.

Binding outcome: If both parties accept the proposed settlement in writing, the decision is documented, signed by the parties, and endorsed by a senior civil judge, making it legally binding and enforceable as a civil court decree under Section 18 of the ADR Act.

Rejection and right to legal recourse: If either party refuses to accept the proposed settlement, they retain the unrestricted right to pursue the matter through formal judicial channels.

Excluded matters: ADR committees cannot adjudicate non-compoundable criminal offences, cases involving serious bodily harm, terrorism, or offences against the state, public interest, or national security, nor can they override statutory rights or intervene in matters under exclusive judicial jurisdiction.

Coverage and integration across provinces

In Khyber Pakhtunkhwa, the ADR Act has province-wide coverage and administrative integration, but excessive executive control and limited inclusivity remain its key weaknesses. The legal framework requires further reform to strengthen transparency, representation, and independence. In Punjab, the system is more inclusive in terms of community participation and judicial accountability. Punjab's ADR Act is comparatively stronger in procedural clarity, judicial oversight, and the inclusion of women mediators. In Sindh, although the law was enacted earlier, it remains largely underutilized due to a lack of institutional follow-up. In Balochistan, the ADR framework is still at a formative stage and lacks effective implementation structures.

Formation and functioning of ADR committees

ADR committees have been functioning in all merged tribal districts since 2021. While the names of committee members are not available on the official website of the home and tribal affairs department, the official Facebook pages of district administrations provide this information and offer regular updates on their activities. These include consultations with the deputy commissioner on law and order, coordination on district-level administrative issues, and mediation in community disputes. The table below gives the number of ADR committee members in the merged districts in 2025, but it is worth noting that there is no women's involvement in these committees at all.

ADR committee members in merged districts		
District	**Male members**	**Female members**
Bajaur	56	0
Mohmand	70	0
Khyber	50	0
Orakzai	50	0
Kurram	50	0
North Waziristan	50	0
Upper South Waziristan	44	0
Lower South Waziristan	48	0
Total	418	0

Interviews with the ADR members reveal that while the selection processes vary, there are some common factors behind their inclusion in the councils. They claimed that no one can become an ADR member solely through lobbying or recommendation, as the selection was based on their prior experience and social standing within the community.

Traditional jirga experience and social standing

Muhammad Yasir Hasan, Deputy Commissioner Mohmand, described ADR as "a very positive step because people here have deep faith in the jirga system. After the merger, it was expected that people would need time to adjust to new laws and procedures. That is why the government created ADR, to keep the spirit of the jirga alive in a formal way."

Most members were selected based on their prior involvement in local jirgas and their role in conflict resolution. Thus, they were seen as natural choices to carry this forward under the formal ADR framework.

Malik Shehryar Khan, a tribal elder of the Khojal Khel Wazir tribe from Tehsil Wana, South Waziristan Lower district, is a member of the ADR committee in the district. Regarding his selection to the committee, he stated that he was chosen because of his long-standing participation in jirgas and his knowledge of local customs. Similarly, two ADR committee members from district Mohmand were prominent community elders, known for their history of mediating disputes under the FCR-era jirgas.

An influential malik from Bajaur district and a member of the ADR committee mentioned that members were selected by the administration based on their ancestral records, rather than through a formal application process.

Administrative or political experience

Some members were selected through district administrations or relevant government departments based on their service record or administrative experience. One member of the ADR committee in Bajaur district, Chairman Malik Abdul Haseeb, who was appointed as an expert, attributes his selection to his 40 years of service in the administration across Bajaur, Mohmand, Dera Adam Khel, Khyber,

Waziristan, and other tribal areas, as well as his thorough knowledge of tribal customs and a spotless service record without any inquiries or complaints. Shah Khalid Shinwari is elected tehsil chairman from district Khyber, who also serves as a member of the ADR committee He bears the dual responsibility of addressing public issues and acting as a *salis* in disputes. He emphasized that more elected representatives should be included in the ADR framework, as they possess stronger public engagement experience and are key stakeholders in maintaining peace and harmony within their communities.

Diverse professional backgrounds

Some members were selected based on their professional backgrounds or community influence. In one of the tribal districts, two ADR members came from journalism backgrounds and had previously served as office bearers in the local press club. They attribute their selection to their active engagement with both the community and the administration in efforts to address public concerns and support dispute resolution.

Saliseen as mediators of the middle ground

The selection criteria for the ADR committees resemble those for traditional jirgas. Regarding membership eligibility, no formal legal education is required, and no formal appointment process has been established. Instead, tribal elders and maliks were nominated because of their familiarity with the *riwaj* (tribal customs), their social status within the community, and their hands-on experience in resolving local disputes. Those who had previously participated in jirgas or had established reputations for understanding and mediation were included in the ADR. This indicates that the system is rooted in the socially accepted structures at the local level, much like the traditional jirga.

The frequent consultation of ADR members by district officials on broader administrative matters suggests that their selection is influenced not only by their experience in dispute resolution but also

by their social influence and ties to the administration. This reinforces a prevailing perception that ADR committees are composed of hand-picked individuals, chosen for their alignment with official preferences. Such practices undermine the neutrality, autonomy, and representativeness of the ADR system.

Perceptions of ADR in comparison to the traditional jirga

The concept of ADR is essentially modern and aligned with internationally prevalent practices. In Pakistan, it is enshrined in law at both the federal and provincial levels, and the Supreme Court of Pakistan has also emphasized its importance. However, the prevailing perception among the general population of the tribal districts and the ADR members is that the ADR law is based on the concept of the traditional tribal jirga. This idea is not entirely incorrect because the selection of ADR members is influenced by the candidates' traditional jirga experience and knowledge of tribal customs. Several other similarities exist between the ADR practices and the traditional jirga, as mentioned by the interviewees. Professor Amir Raza, an academic and ADR trainer from the Department of Political Science at Peshawar University, noted:

> Due to its many similar aspects (such as the basic concept and purpose, profile of committee members, and reconciliation methods), people view ADR as a continuation of the traditional jirga. However, significant differences also exist, particularly regarding authority, enforcement mechanisms, and the partial inclusion of tribal customs, which distinguish it from the traditional jirga. Due to these differences, some members view it as less effective.

It is worth noting that the emergence of ADR has not significantly reduced the role or practice of traditional jirgas. A politically influential respondent in Bajaur said that he continues to conduct jirgas to settle land and family disputes. This persistence is attributed to deep-rooted customary legitimacy and limited administrative enforcement rather

than any formal legal sanction. Traditional jirgas have survived informally at the community level, primarily through voluntary participation and social consensus. Their decisions, however, no longer carry any legal standing or enforceability.

Similarities between ADR and jirga

ADR as a continuation or alternative to jirga

One of the interviewees asserted that the ADR system was introduced based on the concept of the existing jirga system. He believed that it was not entirely the same, but the closest thing to it. Another respondent claimed that the government created a mechanism in the form of ADR, so that the jirga would remain alive. Similarly, a tribal malik and ADR member said, 'ADR is not a separate system. It has brought the tribal and Pashtun jirga system into a modern form. In our society, people have been resolving their problems through jirgas since the beginning. It has just now been named ADR.' A beneficiary of the ADR mediation stated that they considered this system to be equivalent to a jirga. According to him, ADR was beneficial because it dispensed justice quickly and without expense.

Involvement of traditional elders

A lawyer from district Khyber noted that the district administration often brings forward individuals who participate in jirga proceedings, reinforcing the continuity between ADR and customary dispute resolution systems. He mentioned the name of a *mashar* (local elder) in his village, who had been conducting jirgas before the FCR was abolished. Another respondent pointed out that ADR members are essentially the same local elders who have conducted jirgas and have a deep understanding of tribal customs and norms. Many ADR members still participate in informal jirgas outside the formal ADR framework. Local communities often trust these informal jirgas more than the state-backed ADR committees largely because they are more familiar and are perceived as free from administrative interference.

Tribal custom as a mediation mechanism

An ADR committee member from Mohmand district explained that his primary role within the ADR process is to reconcile the two parties, encourage dialogue between them, and ultimately deliver a decision based on shared tribal customs and traditions. Another respondent described ADR as a system where decisions are made outside the formal court structure by jirga members who bring the disputing parties together and arrive at a resolution through mutual understanding. One interviewee further observed that the introduction of the ADR law itself is essentially an endorsement of the jirga system, providing it with formal recognition under a modern legal framework.

Quick and inexpensive justice

An interviewee remarked that the ADR system is significantly faster than the formal judicial process, which, in their view, makes the former the best available option. Another respondent explained that the jirga system, unlike the formal courts, resolves issues quickly and at a much lower cost, which is why people prefer to settle disputes through it. Several respondents noted that public disillusionment with the slow speed of the formal judicial system has driven people to the jirga-style ADR. According to a beneficiary of ADR in Bajaur: 'People run away from the courts because of the hefty fees of lawyers, which poor people like us cannot afford.'

Exclusion of women

Another similarity with the tribal jirga system is the exclusion of women from the ADR committees. Although this is a concern for many respondents, those in favour of the FCR have expressed satisfaction with the exclusion of women. As one respondent pointed out, 'Due to strict tribal customs and traditions, women are not here [in ADR], just like our old system of jirgas in the tribal region.'

Differences between ADR and jirga

Lack of certain traditional enforcement instruments

The debate over the similarities and differences between ADR and the traditional jirga system carries different weight for its supporters and critics. While many in the community appreciated ADR's similarity to the traditional jirga system, several ADR members, particularly tribal elders and maliks, expressed frustration over its limited authority. A key concern raised by interviewees was the absence of traditional enforcement instruments: 'In the traditional jirga systems, we used to obtain *waaq* (authority), and there was power to impose *jurmana* (fines) on the parties for not accepting the decision. But ADR lacks both, which makes the system weak.'

Those who opposed the merger and associated reforms consider the FCR to be more in line with tribal customs. They argue that, instead of introducing ADR, the state should have codified local customs and formally acknowledged the region's distinct customs and norms. This group rejects the criminal and penal codes imposed under the new legal framework, seeing them as incompatible with the traditional justice system.

Acceptance of decisions

A significant difference between ADR and traditional jirga is that accepting the latter's decision is considered *farz* (obligatory), whereas in ADR, it is up to the parties to decide whether they accept the decision or not, so the problem may remain unresolved. A further concern was raised by a respondent about legal uncertainty: 'If ADR finds someone guilty and that person then goes to court, the dispute remains unresolved till the court announces a verdict.'

Legal standing and oversight

The semi-formal nature of ADR makes it heavily reliant on administrative and judicial structures. One respondent noted, 'Here all powers are with the deputy commissioner or assistant commissioner as they form a jirga and review their decision.' ADR committees, as described by respondents, cannot directly accept cases. Cases are referred to by the district administration, the senior civil judge, and the police when parties wish to resolve their case through a jirga. Further, decisions by ADR require judicial validation: 'The cases resolved by the ADR committee are reviewed by a judge who has the power to uphold or reject the decision.'

Why has ADR not replaced traditional jirga?

In the broader debate on the similarities and differences between the ADR system and the traditional jirga, it is worth noting that the emergence of ADR has not significantly diminished the role or practice of traditional jirgas. A considerable number of people still prefer to approach traditional jirgas for resolving their disputes.

For instance, a politically influential figure from Bajaur, who belongs to a prominent political family, proudly shared that he continues to conduct traditional jirgas to resolve issues such as land ownership disputes, longstanding family feuds, and domestic conflicts. He boasted about a recent case where he successfully mediated a settlement in a decades-old tribal feud that had resulted in multiple deaths on both sides. In his view, ADR members rarely act as direct mediators in disputes unless a case is formally referred to them by the district administration. As a result, many ADR members, who are also influential tribal elders, continue to participate in or collaborate with informal jirgas outside the ADR framework. He also claimed that the ADR law permits members to charge parties for mediation services or expenses, which discourages people from approaching ADR forums. 'People prefer [the traditional jirga] because we do the same work without charging any fee,' he remarked.

Another thorny issue is the persistence of customary laws in ADR proceedings. An academic involved in ADR training explained that the ADR committee cannot uphold any aspect of local custom that contradicts formal law. He mentioned a case involving the *diyat* (blood money) for a murdered woman, where the amount was set at half of that for a man. When objections were raised, ADR members tried to justify it by referring to shariah-based inheritance laws, where women receive half the share of men. 'I told them that applying this reasoning to *diyat* is legally incorrect,' he explained. However, many ADR members disagree with this idea. An ADR member frustratingly expressed, 'If we cannot decide according to our riwaj, then people will not bring their cases to us. It's better that we continue resolving such matters informally, rather than under ADR.'

Nature of ADR cases

The nature of cases brought to ADR reflects both the strengths and limitations of this alternative justice mechanism. The types of disputes, the treatment of women and minority issues, and the scope of jurisdiction reveal not only strict conformity to local customs but also the socio-cultural barriers that restrict ADR's inclusivity.

Predominantly civil and compoundable criminal cases

Most cases handled by ADR committees involve land disputes, inheritance claims, domestic disagreements, financial settlements, and minor, compoundable criminal matters such as thefts or assaults. These cases are often resolved through traditional methods of reconciliation.

A member from Bajaur explained, 'People bring land and family disputes to us. We try to resolve the cases amicably without involving the courts.' Similarly, a member from Mohmand noted, 'Land demarcation and irrigation-related disputes are common here. ADR has helped us reduce the burden on the police and courts by resolving these locally.'

Women's issues and gender-based disputes

Several respondents acknowledged that issues specific to women are often not brought to ADR. In instances where such cases are heard, women typically do not appear in person; instead, their male relatives represent them. Another ADR member pointed out that they do not receive cases like divorce or domestic violence because families prefer to deal with such issues privately.

It was reported that women social workers in Kurram have voluntarily assisted ADR members in resolving family disputes, domestic violence cases, and even sectarian conflicts. Elected women representatives at

the local level have also played supportive roles by helping women obtain computerized national identity cards and enrol in welfare schemes, such as the Benazir Income Support Programme. However, due to cultural constraints and the absence of formal inclusion, women continue to be excluded from direct participation in legal or quasi-legal dispute resolution processes.

Issues faced by minorities

Respondents admitted that issues related to minorities are virtually absent from the ADR agenda, largely because of their social marginalization and minimal representation. One elder from Bajaur remarked, 'To be honest, we haven't had a single case involving a religious or ethnic minority. Maybe they feel this isn't their space.' A lawyer familiar with the system suggested, 'If ADR is to be inclusive, there should be a mechanism to ensure representation of minorities and marginalized groups. At the moment, it is silent on that.'

Exclusion of women and religious minorities

Women and ADR

Despite the growing number of disputes involving women in the merged districts, not a single woman has been officially appointed to any ADR committee across the eight former tribal agencies. This exclusion is both structural and cultural, rooted in patriarchal norms and reinforced by traditional gender roles. A female teacher from Bajaur shared her frustration: 'We are not part of ADR. Even when the issue is ours, others decide on our behalf. We never see any women in such gatherings.'

ADR committee members attributed this absence to strict tribal customs, which make women remain invisible. An ADR trainer and academic clarified that there is no legal barrier to having women on ADR committees. He stressed that their inclusion is essential despite cultural resistance. A women's rights activist urged that every district commissioner must ensure that at least one woman is part of the ADR committee in their area. She rightly asked, 'How can this system deliver justice when half the population has no representation?'

Women who seek justice face multiple institutional and social hurdles. The absence of female officers in police stations, uneasiness about formal court procedures, and male-dominated ADR spaces leave many women with no safe or accessible avenue for justice. A woman from Kurram, who faced domestic violence, recounted her struggle: 'There was a women's police desk and court in the area, but due to cultural restrictions, I couldn't go there. Eventually, I got help through a woman social activist who connected me with a police station-based dispute resolution council.'

A religious cleric and ADR member from Kurram acknowledged the issue and stated, 'Women face issues—domestic violence, denial of

inheritance, dowry disputes—but they're not comfortable coming to male members. Without women on the committees, we have no choice but to send them back.'

Exclusion of minorities

Religious minorities are structurally excluded from the ADR system as no formal representation was reported in any of the committees. A Christian community elder from district Khyber pointed out the lack of inclusion, 'No, we are never called. These committees are for tribal elders, and we are not part of those circles.'

A minority rights advocate based in Peshawar critiqued the system, saying, 'The ADR structure reflects the same majoritarian tribal mindset as the jirga. Minorities are invisible in this framework—not a single seat, not even symbolic inclusion.'

Implementation challenges

Weak enforcement and lack of official support

Multiple respondents expressed frustration with administrative inaction. According to an interviewee, 'The administration here is the biggest obstacle. If the administration is weak, then implementing these decisions becomes difficult.' One interviewee emphasized that the ADR process requires strong support from the local administration so that its decisions are effectively implemented. Another added, 'Lack of cooperation from the police and the judicial system is a major obstacle in the success of ADR.'

A member from Bajaur district referred to a letter issued by the district police officer instructing all police stations to forward cases to ADR. It was alleged that this directive has largely been ignored. 'In fact, some police officials have set up "courts" in police stations as they believe that keeping certain cases under their control can be a source of income for them.'

There are also reservations about the judiciary's lack of interest in referring appropriate cases to ADR committees or considering the decisions made by ADR members in disputes that eventually reach the courts.

Muhammad Yasir Hasan, Deputy Commissioner Mohmand noted, "If courts formally recognize ADR decisions, it will greatly reduce the burden on the judiciary. I believe that if jirgas can resolve around 70 percent of disputes, this would lessen the courts' workload by nearly 50 percent."

Training of ADR members

Most of the members have participated in various training sessions provided by the district administration in collaboration with donor agencies. Two members of the ADR committee from Bajaur and

Orakzai districts, selected as experts due to their administrative experience and legal background, separately stated that they had attended a training session on ADR mechanisms and practices in Peshawar. 'Experts from ADR committees across the province were part of the training,' one of them said. 'The knowledge acquired through the training has contributed to enhancing the effectiveness and credibility of the ADR system.'

On the other hand, an ADR member from South Waziristan Lower did not attend any such training. He insisted that he was not invited to any training session. He maintained, 'There is no book, school, or university to teach customary laws; there is no formal training for it. Understanding the *riwaj* is a gift from God. I have neither participated in any training program nor am I aware of one.'

However, most interviewees emphasized that they need more training because they face considerable difficulties in procedural matters and proper documentation.

Need for public awareness

The lack of public awareness significantly hinders the effectiveness of ADR. As highlighted by an ADR member from Bajaur district, 'Most people are unaware of this system and avoid coming to us. However, those who do learn about it never go anywhere else for dispute resolution.' He emphasized that trust in ADR can grow, but only if people are adequately informed through public campaigns, local seminars, and engagement of elected community representatives. Some respondents have emphasized the importance of radio programs, village-level meetings, and educational materials in disseminating information effectively.

Fawzi Khan is an elected member of the Mahmand Press Club and has been closely monitoring the ADR system. He said, "Radio is the most effective medium for raising awareness. Programs can be broadcast to inform people about ADR and its benefits. Additionally, elected

representatives can hold seminars and meetings at the village and hujra level to educate people."

According to an expert ADR practitioner:

> The ADR system plays an important role in promoting social harmony at the local level, but people cannot benefit from it if they remain unaware of its existence. Therefore, increasing public awareness is not just about introducing an alternative — it is about empowering communities to access justice that aligns with their cultural values while respecting constitutional rights.

Preserving financial integrity

An ADR committee member lamented that they were doing the work voluntarily, so the government should provide an honorarium for the members and arrange operational costs, office space, furniture, and human resources, such as clerks and peons. Another respondent echoed this concern, noting that ADR members are currently working without any financial compensation. He emphasized that there should be some form of support or stipend for those who dedicate their time and services to resolving disputes with commitment and integrity.

A respondent expressed concern that allowing ADR members to collect fees from disputing parties, although permitted under the law, could reinforce the negative perception associated with traditional jirgas, where members were believed to accept large sums from the parties, potentially influencing their decisions. To avoid such criticism and protect the integrity of the ADR system, he suggested that members should not be involved in direct financial transactions with parties. Instead, he recommended that the government allocate a fixed honorarium or stipend for ADR members. This, he argued, would help sustain the system of affordable and timely justice while preserving the dignity and credibility of the forum.

Impact on justice and social harmony

Conflict resolution in land and family matters

ADR committees have played a significant role in resolving local disputes related to land ownership, inheritance, and family disagreements, issues that often escalate in tribal societies. An ADR member from Bajaur claimed, 'We have resolved many inheritance and land demarcation issues that were pending for years. The parties were thankful to avoid the courts.' These cases are often handled quickly and through customary understanding, helping maintain community relationships and avoid long-term conflicts.

Role in de-escalating tribal conflicts

In areas historically marred by tribal rivalries and violence, ADR is emerging as a neutral and respected platform for mediation. A committee member from Mohmand noted, 'In a recent case, two sub-tribes were on the brink of armed conflict over irrigation water. We intervened through ADR and brought them to a peaceful settlement.' Another respondent from Orakzai mentioned the case of an old blood feud between two families. A productive meeting under the ADR mechanism was facilitated between both sides to resolve the issue. These experiences show that ADR, when supported by concerned parties, can help de-escalate tribal conflicts before they spiral into widespread violence.

Contribution to stability and inclusion

While ADR has offered immediate relief in local civil disputes, its long-term contribution to stability and inclusion remains a question. A legal academic in Peshawar cautioned that without including women and minorities, and incorporating adequate legal safeguards, ADR risks reinforcing the same social hierarchies that caused exclusion in the first place. Syeda Fauzia Sartaj, a civil society activist in Kurram

suggested, 'If local women and minority representatives are formally included, ADR can evolve into a truly inclusive model of community justice.'

Sidra, a political science student at Peshawar University from district Kurram, emphasized that representation is a fundamental right for women and essential for their empowerment. She highlighted that it helps address women's issues such as domestic violence and economic rights (maintenance, dower), which are often difficult to raise in front of men. Given the challenges women face in accessing justice or police, ADR with female representation could be particularly beneficial.

Conclusion

Strengths of the ADR system

The Khyber Pakhtunkhwa ADR system offers practical advantages, including speed, affordability, and accessibility, which make it an effective tool for mitigating disputes and reducing violence, particularly in areas where the formal justice system is slow or inaccessible. As one member noted, 'We are resolving land and water disputes. People now come to ADR before picking up weapons.' This illustrates ADR's preventive capacity and potential to contribute to the right to peace and security, a key component of the human rights framework. However, despite these benefits, the current system falls short in several critical areas, thereby undermining its compatibility with constitutional guarantees and international human rights standards.

While proponents of the ADR mechanism, particularly traditional tribal elders, advocate for the binding and conclusive nature of ADR decisions, another recurring concern among them is the lack of enforceability of the decision. Under the current legal framework, disputing parties retain the right to withdraw from the ADR process at any stage and pursue their case through the formal judicial system. Although perceived by ADR members as undermining their authority, this right is, in fact, a constitutional safeguard, rooted in the fundamental rights to due process, access to justice, and freedom of choice in legal recourse, as enshrined in the Constitution of Pakistan.

Executive control and oversight concerns

While the ADR Act provides that decisions become final upon documentation, mutual signatures, and endorsement by the senior civil judge, the absence of an explicit appellate or review mechanism for these decisions raises serious concerns regarding compliance with international human rights standards, particularly the right to an effective remedy as guaranteed under Article 14 of the International Covenant on Civil and Political Rights (ICCPR).

The procedural authority vested in district administration officials, particularly deputy and assistant commissioners, who constitute committees, oversee proceedings, and may order re-hearings, centralizes control within the executive branch. This blurs the line between administrative and quasi-judicial functions, raising valid concerns over political influence and conflict of interest, thus reaffirming the pressing need for an independent oversight mechanism to ensure procedural fairness, impartiality, and broader public trust in the system.

Constituting a statutory appellate or review forum to address grievances arising from ADR proceedings would provide the parties with the right to challenge decisions. It would also enhance procedural fairness, legal accountability, and alignment with both constitutional and international legal norms.

Gender and minority exclusion: A violation of equality

The complete absence of women and religious minorities from ADR committees across the merged districts starkly violates the principles of equality and non-discrimination enshrined in Pakistan's Constitution, as well as in key international treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR).

Baseerat Shinwari, Former MPA, Khyber Pakhtunkhwa, highlighted the unfortunate absence of women members in ADR committees. She points out that many women have served as MPAs from tribal districts and hold positions in local councils, so there is no reason they cannot be ADR members. Since women are often the affected party in disputes, their exclusion raises serious questions about the fairness and inclusiveness of the process.

A woman councillor elected in district Mohmand said, "I take part in meetings with male councillors, but it is not likely that our families

would allow us to take part in ADR-like jirgas. I am disappointed that even if an opportunity arises in the future for women to participate in ADR, our families will probably not allow it."

The lack of female representation leads to the systemic marginalization of women's issues, which are often sidelined or dealt with informally. As revealed through interviews, women are typically represented through male relatives within the ADR process, which significantly limits their agency and meaningful participation.

Professor Amir Raza noted:

> The Constitution requires equal representation for women. The ADR law itself does not prevent women from becoming members; the real barrier is local tradition. Male members have recognized the need for female representation during training. The law should be amended to mandate a specific quota for women, similar to Parliament or bureaucratic positions. Female members would make it easier to handle cases where women are the parties involved.

He further stated, During ADR training sessions, some male members also highlighted the need for women members. Therefore, the law could be amended to mandate a specific number of women members, similar to how reserved seats are allocated for women in Parliament or in bureaucratic positions. This would provide facilitation in many cases where women are the parties involved.

The interviewees, most of whom were ADR members, noted that the minority community is very small, which limits their interaction with ADR. However, Pervaiz Masih, a member of the Christian community in Bajaur, highlighted issues faced by minorities—such as housing shortages, graveyard disputes, and lack of quota implementation—but observed that ADR members are generally understanding due to

long-standing relationships. He appealed to ADR members (Maliks) to give special consideration to the minority community.

On the lack of representation of the minority community, the interviewees, most of whom were ADR members, noted that the minority community is very small, which limits their interaction with ADR. Pervaiz Masih, president of the Bajaur Minority Association, noted:

> Although our community does not have direct representation, I consider ADR a good system because its members are the respected elders and Jirga members of Bajaur. We have longstanding relationships with them; they know us and understand our problems. For instance, one of our community members had a financial dispute. I contacted a Malik, a member of this committee, for assistance. He said that whether I came to the office or not, they would resolve the issue. A few days later, our matter was resolved.

Need for monitoring, data and impact evaluation

Finally, the absence of a centralized system to monitor ADR case outcomes or assess rights-based impacts represents a critical gap, as the lack of a public database or performance reporting framework hinders transparency, accountability, and the ability to systematically evaluate the ADR mechanism's overall effectiveness and equity in the long term.

Recommendations

This study of the Khyber Pakhtunkhwa ADR Act, based on extensive interviews, legal reviews, and community engagement, demonstrates that while the ADR system holds significant promise as a fast, cost-effective, culturally attuned, and accessible mechanism for dispute resolution, it is hindered by several foundational challenges. These include legal ambiguities, institutional weaknesses, and gaps in inclusive representation. Addressing these limitations is crucial to strengthening the legitimacy of the ADR system and aligning it with constitutional guarantees and international human rights principles.

The following recommendations, if implemented, can enhance the fairness, inclusivity, and credibility of the ADR framework, aligning it with constitutional protections, international human rights norms, and the lived realities of the communities it aims to serve.

Inclusion of women and minorities: Every district-level ADR committee must include female members and ensure appropriate representation of religious minorities. Local women who are socially active or part of local government institutions should be nominated, and dedicated seats for minority communities should be reserved proportionate to their population. These members should also receive tailored training in mediation and dispute resolution.

Financial and administrative support: The government should allocate an official honorarium for ADR members and ensure they are provided with proper offices, furniture, support staff, and a case documentation system. Alternatively, costs associated with the mediation process should be compensated by the state to prevent any need to collect money from disputing parties.

Capacity building: Structured and ongoing training programs should be introduced for ADR members, covering legal frameworks, mediation techniques, human rights, gender justice, and minority protection. The

Judicial Academy and civil society organizations should collaborate to develop a standardized curriculum for ADR members.

Clear legal jurisdiction: The law should clearly define that ADR is limited to civil and compoundable offences. Serious crimes such as murder, sexual violence, and honour-based killings should be excluded from ADR's jurisdiction and referred to the formal judiciary and law enforcement. The government must also clarify the legal boundary between ADR and informal jirgas. Moreover, public awareness and oversight mechanisms should ensure that dispute resolution takes place only under legally recognized frameworks consistent with the 2019 Supreme Court ruling.

Transparency and oversight: A dedicated monitoring cell should be established at the district level to track ADR performance. All decisions should be recorded in writing and published in annual reports to ensure public accountability and enable performance evaluation.

Availability of data. Currently, there appears to be no publicly available data on the number or types of cases being heard and resolved under the existing ADR mechanism. HRCP recommends that the district administration and ADR committee members systematically document all disputes handled under the ADR framework. Maintaining and periodically publishing this data as a public record—such as in district-level reports or through online dashboards—would not only enhance transparency and accountability but also help build public confidence in the ADR process. Such visibility would encourage more people to approach the mechanism to resolve their disputes.

Public awareness: There is a widespread misconception, even among legal and rights-based actors, that ADR is synonymous with the traditional jirga. While the ADR mechanism borrows culturally from jirga traditions, it operates under a statutory framework with judicial validation and constitutional safeguards. The provincial government, therefore, should undertake awareness campaigns and targeted

engagement with civil society, bar associations, and human rights networks to clarify this distinction and promote informed advocacy rather than wholesale dismissal. Additionally, comprehensive awareness campaigns should be launched particularly targeting women and minority communities to inform citizens about the scope, procedures, and rights within the ADR system. Information should be disseminated through local languages, radio shows, religious leaders, and places of community gatherings such as *hujras* and *deras*.

Review mechanism: A statutory review or appellate body should be created to address complaints and ensure that parties have the right to challenge ADR decisions. This is critical to maintaining the constitutional guarantee of access to justice and effective remedies.

Reducing administrative influence: To safeguard the neutrality and transparency of ADR, the roles of deputy commissioners, assistant commissioners, and other executive officials must be clearly defined and limited.

Endnotes

1 Government of Pakistan. (2016). *Report of the Committee on FATA Reforms 2016.*

2 https://na.gov.pk/uploads/documents/1494867522_611.pdf

3 I. Khan. (2018, May 31). Mainstreaming Fata with interim governance law. *Dawn*.

4 W. A. Shah. (2019, January 21). Govt bound to set up regular courts in ex-Fata in six months. *Dawn*.