What Goes Wrong with the Meaning, Legislation, and Functioning of Mediation in Pakistan? (Pointation and solutions)

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Abstract
The study probes the subject of Mediation in terms of meaning, legislation and function. At the outset, it analyses the relevant legal provisions in order to ascertain the meaning of mediation in Pakistani legal system. The study has explored that the reason behind the intra-similarity of mediation and conciliation is the fact that maintaining of the technical difference between the two is not humanly possible. At the second phase, the study focuses on Pakistani legislation on the subject from three dimensions, in general statutes, in special statutes, and in area-specific statutes. It has explored the effective cause behind the incorporation of ADR enabling provisions in Pakistani statutes as the inefficacy of the regular formal adjudication system. The study also determines the meanings and limits of regional phrases of *Salis* (Neutral Person) and *Musleh* (Peace Maker) as used in some Pakistani special statutes. It has also pointed out the basic stimulant for inclusion of informal techniques of dispute resolutions in Pakistani laws. At third stage, the study investigates the functioning of ADR techniques with special focus on mediation in Pakistani legal system. It digs out the causes of its poor functioning , counting major of them as four; the non-mandatory nature of ADR enabling provisions, the little awareness of the general public about ADR mechanism, the unfriendly attitude of practicing lawyers towards amicable settlements, and significantly, the non-proactive role of judges in convincing the disputing parties to non-adjudicatory resolutions of disputes. At the end, It also proposes suggestions for making up the deficiencies and further improvement.

1. Background:
The significance of resolution of disputes through informal amicable techniques has now obtained the status of a universal truth. This is due in part to the

effective role of various modes of Alternative Dispute Resolution (ADR) in resolving of interpersonal, regional, national and international conflicts and differences. The other and basic reason is the highly complicated nature of regular litigation which is deadly slow and lengthy, highly expensive and extremely cumbersome. Mediation is the most invoked amongst all modes of ADR. Having its legal legacy most of the Britain, Islamic Republic of Pakistan has, to a greater extent, followed the reforms introduced by Lord Woolf to the justice system of England in the last decade of twentieth century. Consequently, she has restored and incorporated ADR enabling provisions in the relevant general and special statutes as it has framed some separate enactments on the subject. Mediation has found a prominent place in all such provisions and enactments. The *Code of Civil Procedure 1908* has undergone ADR- related amendments with specific inclusion of mediation. As a whole, in more than 20 enactments like *Land Revenue Act 1967*, *Electricity Act 2003*, *Income Tax Ordinance 2001*, *Custom Rules 2001*, *Custom Act 1969*, *Sales Tax Act 1990*, *Federal Excise Act 2005*, *Family Courts Act 1964* and *Banking Act*, separate provisions are available for informal amicable settlements. Similarly, *Small Claims and Minor Offences Courts Ordinance 2002*, *Shari Nizam-e- Adl Regulation 2009* and *National Accountability Ordinance (NAB)* 1999 have separate provisions for peaceful settlements. The *Constitution of Pakistan* 1973, on the other hand, also provides for informal resolution of disputes between Federal and Provincial and intra-Provincial Governments. Despite all those legislations, no specific statute on mediation and conciliation has been enacted so far. This deficiency has on one hand resulted in less than sufficient details about mediation in terms of definition and procedure and has caused confusing ambiguity in ascertaining its boundaries from conciliation on the other. There is high expediency and need for framing a separate law on mediation and conciliation in order to ensure the productivity of the process.

By virtue of Article 247 of the *Constitution 1973*, in Pakistan, some laws are area-specific. It is for the reason that Acts of the parliament, including Presidential Ordinances and provincial laws, do not directly extend to those areas.[1] The areas have been specified in Article 246 of the Constitution.[2] In this regard, Provincially Administered tribal areas (PATA) have undergone so many special enactments. It includes the repealed Regulations; *PATA Regulation 1975, Nifaz-e-Nizam-e- Shariat Regulation 1994, and Sharai Nizam-e-Adl Regulation 1999.* The current law is *Shari Nizam-e-Adl Regulation 2009.* The law regulates seven districts of Malakand Division; Swat, Shangla, Buner, Dir Upper, Dir Lower and Chitral. Another regulation of the same kind governs District Kohistan of Hazara Division. These regulations have provided the concept of *Muslihin* (Peacemakers). Other general and special laws of Pakistan do have provisions for

amicable settlements through various modes of ADR including mediation. Family laws also contain special provisions in this regard. The role of mediation in family issues is comparatively more significant. Moreover, in Pakistan, the role of mediation could be studied in all three kinds of statutes i-e general, special and area-specific. This three-dimensional discussion, at the first instance, requires highlighting of the meaning and limits of mediation as interpreted by ADR experts and as generally understood in Pakistani legal system.

2. Need of Ascertaining the Meaning and Limits of Mediation in Pakistani Statutes:

Ascertaining the meaning of a mediation and determining of its limits and boundaries is highly necessary in any legal system. Pakistan could be no exception to it. What is mediation and what is not?, has confused the academia on one side and has placed the practitioners in a state of dilemma on the other. Mediation is, sometimes, defined by what it is actually not. Some researchers hold that mediation is something impossible to be fettered in a definition.[3] Unfortunately, various approaches towards mediation have disfigured it. Its division to facilitative and evaluative mediation is not unanimously acceptable and there are many who oppose the later as a kind of mediation.

Many writers and practitioners do not admit the difference between mediation and conciliation. While exposing the significance of mediation, they write"Mediation—also known as conciliation—
is the fastest growing ADR method."[4] *The Uncitral Model Law on International Commercial Conciliation 2002* has expressly washed out any distinction between mediation and conciliation. It provides,

> "For the purposes of this Law, "conciliation" means a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person or persons ("the conciliator") to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The conciliator does not have the authority to impose upon the parties a solution to the dispute".[5]

Interestingly, the world organizations and international community have begun to use the term mediation nearly in the meaning of arbitration. It is also quite astonishing to note that the Indian Arbitration and Conciliation Act clearly mentions that "International Commercial Conciliation shall have the same meaning as the expression International Commercial Arbitration".[6] So, boundaries between arbitration and mediation are blurring, inter alia, due to aggressive role of lawyers and their control over the process. By

this way, legal mediation has taken on many of the features; traditionally associated with arbitration. Some imminent researchers including Jacqueline Nolan-Haley have renamed mediation as "New Arbitration".[7] Moreover, an objection may also be taken to the separate existences of Mediation and Negotiation. It can be said that if mediation is an assisted negotiation, than it should be, of course, one of the species of the Negotiation. Consequently, a complex confusion almost in all mechanisms of ADR (arbitration, mediation, conciliation and negotiation) has been developed. At present, the situation in law is disturbing enough. Resultantly, no universal definition of mediation could be developed so far. In situation like this, ascertaining the meaning of mediation in Pakistani legal system becomes much needed.

Mediation has got two senses in terms of meaning; technical sense and commonly understood sense. In the former, it means an intervention between the disputants for mere facilitation. A mediator is not supposed, principally, to explore solutions. He is to supervise the process as a whole, to encourage the parties to communicate and negotiate, to protect the process from deadlocks, and to help out the disputants in case they reach to some impasse. He would be encroaching upon the powers of conciliator if he marches ahead of it. In the later sense, mediation refers to each and every non-adjudicatory effort of a third neutral for peaceful removal of differences between disputants. In other words, its commonly understood meaning is the aggregate of both technical and non-technical senses. This last meaning is reflective of the fact that, practically, maintaining the technical difference between mediation and conciliation is not possible and for this reason, even with the ADR experts, boundaries between mediation and conciliation are blurring day by day. This commonly understood meaning is quite the same as it appears under Islamic Law. The scheme ADR under *Sharī'ah* (Islamic Law) is twofold; the adjudicatory and non-adjudicatory. The former refers to *Tahkīm* (arbitration) and the later denotes *Sulh*(compromise) which may be the outcome of mediation, conciliation, negotiation or any other non-adjudicatory mode of ADR.

Though there is no prohibition on the technical sense of mediation in Pakistani legal system, it is, nonetheless, evident from the letter and spirit of the relevant provisions that the term "mediation" has been used almost in its commonly understood sense in Pakistani statutes. One may argue that the mentioning of both phrases "mediation and conciliation" in the same provision as in Section 89 (A) of *the Code of Civil Procedure 1908* is deliberate and conveys that the lawmakers have used them as intra-distinct processes. This argument may be rebutted by several ways. First, their collective mentioning may have been intended to cover a situation where the disputants themselves are highly qualified and skillful in terms of negotiation and communication, and necessarily wish to have a mere

facilitator for a general superintendence of the process. This may mostly occur in disputes between firms and companies. Secondly, phrases capable of interchangeable use may be used simultaneously both in common and legal parlances. It would not always require drawing of distinction between them. Thirdly, the basic stimulant in all informal modes is the consent of the parties. If they once agree on amicable settlement and are happy with the arrived resolution, the question about the mode of resolution remains of no value. The court shall accept the compromise in order to promote the very objective of the process and shall ignore the specified mode in the referral agreement; whether it was mediation or conciliation. Fourthly, if a legal provision mentions either of the phrases in isolation, what would a referee do then, particularly, in the situation when there is apparently no bar on the utilization of the other? Fifthly, there are many who oppose any difference between mediation and conciliation. According to them, the difference is in form only not in the content. To them, mediation is a non-statutory conciliation. There is a difference in form only. The essence and content are similar.[8] Sixthly, there is only one effective and substantial difference between all modes of Alternative Dispute Resolution that; keeps the arbitration to one side and all the remaining modes mediation, conciliation and negotiation to the other and it is the adjudicatory and non-adjudicatory nature of the mode. But, by this way, there should be no substantial difference between the last three modes; for all of them are non-adjudicatory and all are basically negotiations, either directly or indirectly, and either assisted or non-assisted.

There are several Pakistani statutes that provide for informal resolution of disputes without mentioning either of the phrases; mediation or conciliation. For instance, Section 13 of *Shari Nizam-e-Adl Regulation 2009* carries the word "*musleh*" for the purpose. Subsection 5 of the Regulation expressly speaks that the intended resolution shall be obtained through *sulh*. The term *Sulh* means 'mediation' in its broad sense, not mere facilitation and intervention, because facilitation short of effective efforts for compromise, would house only one fourth of the meaning of *sulh*. Furthermore, a mere intervener, facilitator and supervisor of the process could not be called '*musleh*' as per rules of Arabic language and literature. Similarly, the word "*Salis*" occurs in the *Small Claims and Minor Offences Courts Ordinance 2002*, in connection with expeditious disposal. Of course, the Ordinance later on mentions all the three phrases; arbitration, mediation and conciliation, but the intended process would be collectively called *salisi* (the act of arbitrating, mediating and conciliating). Again, the technical sense of mediation shall fall short of the meaning of *salisi*. A '*sali's*' is always a third neutral who plays a proactive role in the process. Besides, Section 15 of the Ordinance bounds the Chief Justice of each provincial High Court to prepare a

list of persons to act as *salis*. Their appointment or selection on such a high level reveal that their job should not be confined to simple facilitation and making of administrative arrangements. Every mediator is required to possess some necessary traits, such as, listening skills, communication skills, skills required for understanding and reconstructing the conflict, agreement developing skills, options creating skills, and above all a good emotional intelligence and much more. If mediation is something confined to facilitation only, then there should have been no need of such skills and capabilities; under any circumstances. All these details lead to the conclusion that mediation in Pakistani legal system has been intended to mean active efforts including exploring of solutions for removal of differences between the disputants. Resultantly, both at the time of interpretation of a provision and in conducting of actual proceedings of mediation, and more particularly, in case of conflict, the general sense and commonly understood meaning of mediation, shall prevail. It is to be kept in mind that the unwarranted and unwanted technical differences shall adversely affect the productivity of the process, by one way or the other.

3. Mediation in Pakistani General Statutes:

Pakistani laws, general, special and area specific, have enabling provisions on almost all modes of amicable settlements, including mediation. The general laws mainly include the *Code of Civil Procedure 1908*: Special laws include the *Family courts Act 1964* and *Small Claims and Minor Offences Courts Ordinance, 2002* and many other minor Acts: and area specific refers to Shari *Nizam-e-Adl Regulation, 2009* of Malakand Division and District Kohistan of Hazara Division. The *Code of Criminal Procedure 1898* is a general law and has a provision for compounding of a number of offences and, as such, admits mediation. As explained above, the inclusion of mediation along with other modes of Alternative Dispute Resolution in Pakistani legal system is due in part to the reforms introduced by Lord Woolf to the justice system of England. The stimulant for this follow up is the Pakistan's century's old British legal legacy. In 2002, an amendment has been introduced to *Code of Civil Procedure, 1908*. Resultantly, Section 89 (A) was added to the Code. The section, while referring to Alternative Dispute Resolution, has particularly highlighted mediation by mentioning it in an extra-ordinary way. It reads as under:

> "The court may, where it considers it necessary, having regard to the fact and circumstances of the case, with object of securing the expeditious disposal of a case, in or in relation to a suit, adopt with the consent of the

> parties Alternate Dispute Resolution method including mediation and conciliation".

Accordingly, amendment in Order X, 1(a) (iii) of the same Code, was also made to the affect. "The Court may adopt, with the consent of the parties, any alternative method of dispute resolution, including mediation, conciliation or any such other means".

In Pakistan, there is no separate legislation for conducting mediation. So, in mediation proceedings, the literature of other jurisdictions may be *mutatis mutandis* (with appropriate changes) followed. It means that after referring of a case to mediation, the court will wait for a mutually agreed resolution. In case of such resolution, the court shall act accordingly. The court may accept the application of plaintiff for withdrawal.[9] If parties are not at variances any further, it may pass a judgment that will end the proceedings.[10] If the compromise bears some terms and conditions, it shall decree the suit under Order XXIII, Rule 3 of the *Code of Civil Procedure 1908*, which provides,

> "Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to the suit".

It may, nonetheless, be noted that, if no compromise on the date fixed is placed before the court, no adjournment shall be granted unless the court, for reasons to be recorded in writing, considers it highly probable that the compromise will be affected till next date of hearing.[11] A suit is said to be compromised when the parties adjust their respective claims by mutual concession. It may even include matters that do not relate to suit. The court is bound to accept such compromise and to pass a decree thereon. Giving effect to the compromise is so important that even a consent decree may be passed on its basis, otherwise, than merely in-accordance with the provisions of the above referred rule, under the inherent powers of the court.[12] No appeal is allowed against such decrees. What is necessary is that the court shall determine whether the agreement or compromise is lawful and genuine. For example, an agreement would be

unlawful if it defeats any provision of law or is against the public policy, disregarding a judgment of apex courts, or is unstamped.[13]Again, giving effect to a compromise is so necessary that if a part of an agreement is lawful, and the rest is unlawful, but the nature of the agreement allows severability, the court shall accept it to the extent of the lawful portion.[14] This principle of law resembles Islamic law for the later does not permit a compromise that carries unlawful conditions. In both laws, a compromise is a contract and is governed by the relevant rules.

The above compromise might have reached through the process of mediation. Sec 89 (A) of the *Code of Civil Procedure 1908*, referred to above, is an enabling provision and the court has been equipped with vast discretion to refer cases with the consent of the parties, for informal resolutions with special focus on mediation.[15] Now, Pakistani courts encourage referring of disputes to amicable settlements. In a case, Lahore High Court explained that resolution of disputes through peaceful settlements is a recognized mode, for it provides relief to the parties in terms of money and time. It saves the precious time of the court as well.[16] In another judgment, the same Court mentioned that settlements through mediation and other informal modes is now universally accepted method being followed as a less expensive, less time consuming, less cumbersome, beneficial and fruitful. Courts are also expected to encourage the parties to adopt such modes in view of provisions of section 89 (A) and Order X1(a) (iii), of the *Code of Civil Procedure 1908*.[17] Principally, the competent court has jurisdiction to record a compromise, but if a compromise has been recorded and the suit is decreed by an incompetent court, only the decree will be invalid, not the compromise.[18]

From the above, the significance of the compromise is quite evident in civil justice system of Pakistan. Mediation paves the way to such compromise. The mediation has, therefore, been specifically mentioned in Section 89 (A) of the *Code of Civil Procedure 1908,* by adding the word "including". One should keep in mind that cases, otherwise fit and ready for compromise remain unresolved just for lack of communication. The parties, due to one reason or the other, hesitate to contact and communicate. Actually, they are in dire need of intervention of a third neutral. Even an expert mediator shall face the same situation if he himself happens to be a party. A *Pashto* idiom speaks that a barber cannot shave his own head. Here is felt the tense need of an intervener; the mediator.

4. Mediation in Special Statutes:

In Pakistani Justice System (both criminal and civil), one can see the significance of peaceful solution via ADR techniques, including, mediation in Section 2 (A) of

Small Claims and Minor Offences Courts Ordinance, 2002, wherein definition clause begins with the definition of amicable settlement. It provides,

> "In this Ordinance, unless there is anything repugnant in the subject or context,- (a) "Amicable settlement" includes settlement through arbitration process, other than arbitration under the Arbitration Act, 1940 (X of 1940), mediation, conciliation or any other lawful means mutually agreed upon by the parties".

In this piece of legislation, a new phrase "*salis*" has been introduced. It has an Arabic origin and literally means "a third neutral or a person having no interest in the subject matter". Its right transliteration would be "*thalith*". For the purpose of this Ordinance, *salisi* is a threefold phenomenon that refers to both adjudicatory (arbitration) and non-adjudicatory processes (mediation and conciliation) and, as such, the phrase *salis* would encompass conciliator, mediator and arbitrator.[19] The findings of each of them is called award.[20] The jurisdiction of the court has been specified in section 5. Section 5(a) deals with the civil suits, and provides, that all claims appearing in part I of schedule attached to the Ordinance, which subject matter does not exceed one hundred thousand in value, shall be tried by Small Claims and Minor Offences Court. The High Court may, however, amend the value. Similarly, section 5 (b) provides that offences specified in Part II of the Schedule to this Ordinance shall be tried by Small Claims and Minor Offences Court.[21] Sections 14 to 25 deal with amicable settlement. Significant is the word "possibility" as used in section 14. It provides that if the court sees any possibility of a peaceful settlement, it may, subject to the consent of parties, conciliate, mediate and arbitrate the claim or offence, through *salis* or any other person. Since the word *salis* accommodates both arbitrator and mediator, the court, while asking for consent of the parties, ought to specify them the intended mode. If the parties consent for both, then the mode would be arb-mid or med-arb accordingly.[22] The court has been empowered to resolve the case through any other means besides above. Here, the word "through" conveys a clear message that the court itself shall not act as *Salis*.

The idea is quite good and is more agreeable to justice and reason, for the reason that if the court itself mediates or conciliates as *salis* and does not succeed, regular hearing of the case becomes unjust for it. In the processes of amicable settlements, an intervener has to express opinions, advices and probabilities that could be very much fatal to a subsequent adjudicatory process by the same

intervener. The court should keep itself confined to the status of a referrer and ought not to go beyond the limits of general superintendence. Even this limited performance shall require enough keenness and none of the parties shall take the impression, by any means, that the court's persistent avoidance of litigation is insincere and suspicious in nature. Further, the court is to check the fitness of a case for amicable resolutions. The provision of amicable settlement cannot be utilized in non-compoundable offences. Similarly, the cases that involve the element of public policy or its amicable settlement is injurious to State affairs, cannot be referred to *salis*.

The significance of ADR techniques, particularly mediation, is also evident from the fact that the *Small Claims and Minor Offences Courts Ordinance, 2002*, contain forty two sections in all. As much as eleven sections provide for amicable settlements through arbitration, mediation and conciliation. In case of settlement in respect of the claim or offence, the court shall pass a decree or order as the case may be. In offence settlement, the offence shall be deemed to have been compounded.[23] Now, a formal Mediation Center has been established at Khaybar Pukhtunkhwa Judicial Academy Peshawar. The Academy has, during 2014, trained more than 70 advocates and judges on mediation skills.[24] According to section 15 of the Small Claims and Minor Offences Courts Ordinance, 2002, the Chief Justice of each High Court is supposed to prepare a list of persons to act as *salis.* The trainees of the Academy are of great help in this regard. Pertinent to note is that the District courts are sending cases to Mediation Center of the Academy. The in-charge of the center is responsible for all arrangements. A considerable number of Family cases have been successfully mediated so far, including, a case referred by the Supreme Court.

The *Local Government Ordinance 2002* also provided for mediation under the heading of amicable settlements. By mentioning mediation at the very outset, the Ordinance placed great emphasis on mediation in civil as well as criminal disputes.[25] Having regard to the attached provisos, cases may be resolved by the members of *Musalihat Anjuman* (Mediation Board) , through mediation and conciliation. Interestingly and astonishingly, at the same time, the pendency of the dispute in a court of law shall not preclude the conciliators and mediators from their enterprise. The court has also been empowered to refer cases to these *anjumans* and to make the settlement of *anjuman* rule of the court.[26]hudood laws and non compoundable offences were exempted through a proviso. Most relevant to the subject is Section 103 that reads:

> "Encouragement for amicable settlement of disputes.-
> (1) The Union Nazim, members of the Insaf Committee and Musaleheen (Mediators) shall use

> their good offices to achieve the amicable settlement of disputes amongst the people in the Union through mediation, conciliation and arbitration, whether or not any proceedings have been instituted in a court of law in respect of such disputes……. "

The Punjab Government has, nonetheless, introduced a curing amendment, by virtue of which, a settlement of *musalihat anjumani* in a pending case has been subjected to the approval of the trial court.[27] The situation is, nonetheless, quite different by now. The Ordinance referred to above has been repealed. Now, all the four provinces have their own Local Government Acts. All the four LG Acts, in one shape or the other, provide for amicable resolution of conflicts. The province of Punjab has the concept of *Musalihat Anjuman* and *Panchayat*. It provides a detailed procedure for dispute resolution; including the cases referred by courts.[28] The province of Sindh empowers the local bodies for adoption of arbitration and conciliation as dispute resolution tools.[29] Here, conciliation also includes mediation. The .Baluchistan has a three-member *Musalehati Anjumans* both in rural and urban areas. The Khyber Pukhtunkhwa *Local Government Act 2013* requires the constitution of a complaint cell for redressing of citizens' grievances. The Village Council and Neighborhood Council are bound to provide an effective forum for out of court amicable settlements of disputes and to constitute a panel of conciliators for the purpose.[30]

By virtue of the Finance Act, 2006 the word "Alternate" was introduced to the *Customs Act 1969*. Similarly, dispute resolution mechanism was provided by the *Finance Act, 2007*. Now, the law permits resolution of disputes through consensual agreements. No mode of ADR, including mediation, has been specifically mentioned. It means that an amicable settlement may be worked out through any mode of ADR, including mediation.[31] According to this law, a committee shall be constituted for the purpose of dispute resolution. The Board has been authorized to pass appropriate orders on the recommendations of the committee. Relevant portion of Section 195 runs as under:

> "[Alternative] Dispute Resolution.- 36b[(1) Notwithstanding anything in this Act, or the rules made there under, any aggrieved person, ……. may apply to the Board for the appointment of a Committee for the resolution of dispute in appeal.
>
> (2) Subject to the provision of sub-section (1), the Board, after examination of the application of an aggrieved person, may appoint a committee,

> ..... for the resolution of the hardship or dispute".

A similar amendment was introduced to *Income Tax Ordinance 2001*, through *Finance Acts of 2004*, *2005* and *2006*. On application of the aggrieved person, a committee shall be constituted for removal of hardships and dispute resolution. The relevant Board has been empowered to pass appropriate orders on the recommendations of the committee. No mode of ADR has been specified, and it means, that dispute may be resolved through any mode including mediation. Relevant portion of Section 134 (A) of the Income Tax Ordinance reads as:

> "[Alternative] Dispute Resolution.-[(1) Notwithstanding any other provision of this Ordinance, or the rules made thereunder an aggrieved person, ... may apply to Board for the appointment of a committee for the resolution of any hardship or dispute mentioned ..... (2)[Board] after examination of the application of an aggrieved person, shall.....appoint a committee ..... for the resolution of the hardship or dispute".

The Sales Tax Act 1990, the *Federal Excise Act 2005*, and the Industrial Relation Ordinance,2002 have undergone the same amendments.[32] Most of these amendments have been introduced in the past two decades. The reason is the recognition of role of ADR, particularly that of mediation, nationally and internationally, in resolution of disputes. Ironically, the *Constitution of Pakistan 1973* does not mention the generic phrase of "ADR" nor does it mention mediation or conciliation. It talks about arbitration only in some federal and provincial disputes.[33]

Recently an amendment has been made in the *Police Order (Amendment) Act, 2015* which provides for constitution of a Dispute Resolution Council at District, Sub-Division and Police Station levels for out of court amicable settlement of cases, having petty nature.[34] This out of court amicable settlement is aimed to be less adjudicatory and more non-adjudicatory. The later refers either to mediation in its broad sense or conciliation. By now, round about fifty councils are functioning across the KP province. It has been claimed that over 6,000 cases have been successfully resolved through those councils. According to the data shared by KP Police, , 5,753 cases have been resolved through DRCs, out of which 5,404 cases terminated in compromise, while 313 cases were referred to other relevant quarters..[35] Because of the amendment in the Police Order, the Peshawar High Court

has left the stay order against these councils and has disposed of the petition against it as redundant. There is a strong probability of challenging it in the higher forums on the basis of its repugnance with the principles of fair trial and fundamental rights. The required details could not be discussed under the current study, it may, nonetheless, be signalized here that civilian enterprises under the canopy of criminal investigators is quite stunning.

The *Family Courts Act 1964* contains both kinds of mediation; Facilitative and Evaluative.

(a) Facilitative Mediation (Pre-trial Proceedings u/s 10).

Leaving the discussion on the point whether *Hakam* (arbitrator) as appears in the relevant verse of the Holy *Qur'ān* means a mediator, conciliator or arbitrator, here the discussion is confined to the extent of role of mediation in the relevant sections of the *West Pakistan Family Courts Act 1964*, without touching its consonance with *Sharī'ah*. The role of Judge Family Court as mediator shall also come under discussion. It should be kept in mind that the very objective of *the West Pakistan Family Courts Act* is the expeditious settlement[36] and in time disposal of family issues. This is because of two reasons; (a) time factors in such cases matters a lot, and (b) protection of the interests of the children. To achieve this two-fold objective, the *stricto senso* (rigid and inflexible) application of provisions of the *Code of Civil Procedure 1908* and the articles of *Qanun-e-Shahadat 1984* have been done away with.[37] Appeal, Revision and even Constitutional Petition against interlocutory orders of Family Court are not competent merely because it would defeat the above objectives of the Act.[38] Similarly, to promote the purpose of the Act, Sections 8 to11 of *the Oath Act, 1873* have been made applicable to all proceedings before the *Family Court,*[39] On the same analogy, though proceedings of Family Court have been exempted from the provisions of *Qanun-e- Shahadat Order 1984*, it seems appropriate that Article 163 of the said Order should be applied to such proceedings.[40] For the said objective, the court has been empowered to adapt any procedure of its own choice.[41] Upon this generality, all alternative mechanisms including mediation, step in. The text of the Family Court Act 1964 carries two phrases, "compromise" and "reconciliation".[42] It is an accepted rule of interpretation that when different words are used in relation to the same subject, it shall be presumed that they have been used to convey different senses to cover different situations.[43] So, we are to clothe both the phrases with distinct meanings, despite the non-availability of any judgment of the apex courts in this connection. "Reconciliation" denotes the restoration of peace with the continuation of marriage tie. For reconciliation the subsistence of a valid marriage is necessary. This reconciliation may be obtained through any mode of ADR including mediation. The reconciliation under Section 10 of the

Act should not be confused with Conciliation; a separate mechanism of ADR. Reconciliation is a product whereas conciliation is a mean like other modes of ADR. According to the interpretation of Baluchistan High Court, reconciliation postulates adoption of such measures that may lead to harmonious union between the spouses by redressing the grievances which compelled them to litigate.[44] Here, the phrase "adoption of such measures" would cover all alternative options including mediation. On the other hand, the court is duty bound to make efforts for reconciliation and, if it fails to do so, the proceedings would turn into nullity. Consequently, it would be acting without lawful authority, and any judgment passed by it, would be illegal and void.[45] Compromise, on the other hand, is a generic term. It does not necessarily require the subsistence of marriage. A compromise may be affected without going for reconciliation and such a compromise may be obtained through arbitration, mediation, conciliation and negotiation. So, under the concept of this compromise, mediation may be used for all family issues such as maintenance, custody of children, issues pertaining to dower and bridal gifts and the like. The relevant portion of Section 10 (Pre-trial proceedings) is reproduced below;

> (1) When the written statement is filed, the Court shall fix an early date for a pre-trial hearing of the case.]
> (3) At the pre-trial, the Court shall ascertain the points at issue between the parties and attempt to affect a compromise or reconciliation between the parties if this be possible.

Here, the word 'shall' makes the pre-trial hearing mandatory and its non-compliance would invalidate the whole trial even in case of no objection by the parties. The wording 'attempt to affect a compromise' gives ample powers to the judge of Family Court to adopt any mode of his choice for the prime objective of the provision. The additional mentioning of word 'reconciliation' just after 'compromise' through disjunctive 'or' conveys that compromise may be affected even on some other terms than reconciliation.

(b) Evaluative Mediation (Post-trial Proceedings u/s 12)

Evaluative Mediation refers to the opinion of an expert that is based on the legal positions of the parties, not on the dimensions of their interests. It explains what are the pros and cons of a case in respect of each party. It is a sort of prediction that what can be the expected verdict of the court if dispute is taken to it. Mediation in such a manner and circumstances is called evaluative mediation."

Section 12 of the Act is very much analogous to the above procedure. In the post-trial proceedings, the Family Court plays almost the role of evaluative mediator. His efforts to affect a compromise or reconciliation at this stage are naturally different from his efforts at the pre-trial stage. At this stage, recorded evidence is lying before the court. The court is now more in picture as to the demeanors of the disputant spouses. The frustration of the parties is now lesser due to considerably lengthy litigation and deposing of evidences. The outlines of the expected judgment have turned blinking. In such a situation, the efforts of the judge of the Family Court, to affect a compromise or reconciliation, would within the meaning of evaluative mediation. It may be rightly claimed that the difference remains in nomenclature only. There is no difference in the essence of procedures of the both; the Pre-trial proceedings and the Evaluative Mediation in post trial stage. For post-trial proceedings, the word "shall" has been used in Section 12 of the Act as it has been used in section 10. According to the apex courts, efforts for compromise and reconciliation, nonetheless, would be mandatory in appropriate cases. Where litigation has already struck off the possibility of amicable solution, compliance with Section 12 would remain directory.[46] Section 12(1) runs as under:

> "Conclusion of trial: (1) After the close of evidence of both sides, the Family Court shall make another effort to effect a compromise or reconciliation between the parties within a period not exceeding fifteen day

The Conciliation Courts Ordinance 1961 is still in field. Really speaking, it is a dead piece of legislation and is poor as well. It even does not provide for the definition of conciliation. Almost all its contents carry the features of compulsory arbitration, such as the mandatory entertainment of the scheduled civil and criminal cases by the conciliation courts, recording of evidence, the issuance of decree and then its execution and the provisions of judicial review. [47]

The Establishment of Civil Mobile Courts Act 2015 is the latest legislation on the subject.[48] The prime objective of the Act is to provide inexpensive and expeditious disposal of certain claims and disputes. The Act provides for amicable settlement through alternative dispute resolution technique and has also been empowered to exercise its unlimited inherent powers while resolving disputes.[49] It is the only law which has attached value to the process on mandatory basis.[50] It has repealed the Small Claims and Minor Offenses Ordinance 2002 to the extent of small claims.[51]

It is evident from the above details that Pakistani legal system has, directly or indirectly, accommodated mediation, with both its famous kinds. Pakistani legal

system has also introduced the concept of hybrid mediation. It has also housed mediation in a particular area of criminal cases. Mediation has been mentioned in Section 89 (A) of the *Code of Civil Procedure 1908*. The provisions of this Code are applicable to almost all civil causes unless expressly barred.

5. Mediation in Area-specific Pakistani Laws:

Several causes could be attached to the insurgency in Malakand Division in general, and in District Swat in particular, during (1994-2009). What actually compelled the Government to promulgate *Shari Nizam-e-Adal Regulation 2009*, is could not be ascertained for so many reasons. It would be, nonetheless, enough for the purpose of this study to admit that the unrest in the area was the apparent cause of this special and haste-hit piece of legislation. Instead of the Governor of the Province of Khayber Pukhtunkhaw, the then President, unusually, assented to it on April 13, 2009. The preamble states its objective as "To provide for Nifaz-e-Nizam-e-Sharia'h through Courts in the provincially Administered Tribal Areas of the North-West Frontier Province" (later on renamed as Khyber Pakhtunkhwa through eighteenth constitutional amendment).[52]

The Regulation provides for appointment of *Muslih*. The phrase has an Arabic origin and literally means "peace-maker or reformer".[53] *Muslihin* is its plural. The term has not been defined in the definition clause of the regulation. It is also quite astonishing that no rules have been framed so far, despite a special provision for it.[54] No other law has used this word nor has some law attached any meaning to it. Had the framers of the Regulation been able to give some explanation to the term as the framers of *Small Claims and Minor Offences Courts Ordinance, 2002*, have given to the term *salis* no ambiguity would have arisen! Unfortunately, no judgment of the apex courts or even of the trial courts, has ever surfaced to cloth this word with appropriate meaning. There are so many reasons for this treatment with the Regulation. The Khyber Pakhtunkhwa Judicial Academy Peshawar has conducted three seminars on the success and failures of the Regulation during 2012 and 2014. The reasons could be found in the relevant reports.[55] The reports have been shared with the Provincial Government. A copy of the last report has been submitted to honorable Chief Justice Peshawar High Court. The participants of the seminar have shown great concern over the lethargic observance of the relevant provision of the Regulation which calls for resolution of disputes through ADR techniques.[56] The recommendations of the seminar have been added to this work as Annexure 'B'.

In the situation like above, the term '*musleh*' should be interpreted with reference to the context. By this way, one would be able to explore whether it means a mere peace-maker or arbitrator only or covers almost all the three modes of ADR; arbitration, mediation and conciliation. A literalist approach would reveal

that a *musleh* will perform as a mere reformer only. He can only make efforts for *sulh*/compromise. The *sulh* may be the outcome either of mediation or conciliation, meaning thereby, the referee may act as mediator or conciliator. This approach gets support for the following reasons;

First, it is corroborated by the rules of Arabic language and literature. The rule prescribes that a word cannot admit its metaphoric and literal meanings simultaneously. The literal meaning of *muslih* is the person who tries to restore peace by affecting a compromise. Thus, he can be either a mediator or conciliator. Its use in the meaning of arbitrator is metaphoric. Recourse to metaphoric meaning could be made only at the time when, with reference to the context, the use of literal meaning becomes impracticable. Secondly, the above stance is also supported by the proviso attached to the provision where the phrase *sulh* is appearing at the end. Thirdly, the word *sulh* has been used in the context of *hudūd*. The intention of the framers is evident. They intend to extend the application of the provision to criminal cases with the exemption of *hudūd*. So they used *Sulh*. *Sulh* is the factor that differentiates *hadd* from *Ta'zīr*. Fourthly, the word is again appearing in the end of subsection 3 and subsection 5, which directly and expressly conveys that the reference was only for *sulh*; the outcome of mediation or conciliation.

In the following, the relevant part of the provision.could be observed

> "Power to appoint musleh.-(1) Any civil or criminal case, subject to mutual consent of the parties, may be. referred by a court to Musleh or, as the case may be, musleheen before recording of evidence, either on the agreement of the parties regarding the names of such musleh or musleheen, or in case of their disagreement, to such musleh or musleheen whose names appear on the list maintained by the court for such purpose……[57]

On the other hand, the section gives mandate to the *muslihin* to hear the parties, to record the statements of the witnesses, to examine the documents if any and to inspect the spot if needed. They are to submit their findings to the referring court on the basis of the above proceedings. Even the dissenting *muslihin* shall form their opinion and submit it to the court. The court shall, then, give an opportunity to the parties for filing of objections and shall resolve such objections. If the report is found in consonance with *Sharī'ah*, the court shall make it its rule.[58] These details take the process to the ambit of arbitration. The only difference is the non-mentioning of word "award" expressly.

It can be concluded here that the basic aim of the section is to arrive to a mutually accepted agreement within the limits of *Sharī'ah*. Such an agreement

may be arrived at via mediation or conciliation. The *muslih* is, nevertheless, empowered to also form in opinion on the basis of available evidence, if mediation or conciliation could not succeed. So, a *muslih* is to perform as mediator, conciliator and also as arbitrator. This arbitration would be arbitration other than that of *Arbitration Act 1940*, rather it would be a court-related *tahkim*. It would be appropriate to suggest that the Section above-referred may be re-headed as "med-con-arb". If not possible, then at least an explanation to this effect may be attached to the Section.

The multiplicity of legislation on the subject has worsened the situation. Though the purpose behind it was the promotion of amicable settlements, it has, to some extent, travelled in the opposite direction. The various terminologies like *Musleh, Salis*, Mediator, and Conciliator. Reconciliation and *Sulh* have caused confusions as regard to ascertain the intended meanings of them. Non-attaching of the value to the process by the relevant laws, usually lead to the lack of interest of mediators and conciliators in the process. Their lethargic attitude becomes a headache for the judge, as well as, for the parties. The issue whether a judge could himself play the role of a mediator, still needs a clear answer. There could be no problem if a judge mediates in a case and succeeds, but there would be a legal dilemma if he fails. Whether in case of failure, he would be justified to hear the case and pass a judgment on the merits despite all that had surfaced about the fate of the case during mediation? Whether the knowledge of the judge, so gained, could influence the later regular adjudication? Whether this influence would not be *ultra vires* of the natural principles of justice? Another immense question, which needs a thorough study and research, is whether the whole issue of amicable settlements is not in conflict with the very nature of the job of a judge? There are people who argue that what the judge is to do with the non-adjudicatory practices. They further argue that indulgence of a person called 'judge' in a non-judging Phenomenon is itself highly an unjustified act.
All the above mentioned questions and, many others like them, of course, call for a unified comprehensive law on the subject. For this purpose, the *Arbitration Act 1940* should be revisited; necessary amendments should be incorporated therein and most importantly, a separate part about mediation and conciliation should be added thereto through need-based legislation. The Act must also be renamed accordingly.

6. What is Going Wrong with Functioning and Productivity of Mediation and Why?
Despite incorporation of ADR enabling provisions almost in all categories of law; general, special, area-specific, civil, criminal, commercial, family, accountability and others, the productivity of informal techniques, including mediation is not

up to the mark.[59] Mediation under section 13 of *Sharai Nizam-e-Adl Regulation 2009* is, exceptionally, commendable. Referral of cases to *Salis* under *Small Claims and Minor Offenses Courts Ordinance 2002* is almost Zero. Though the law is still in field, but sad to say that majority of the members of both, Bar and Bench, have no actual orientation on this law. One stuns to note that, by the time, only two separate courts are functioning in the entire country i.e. one at Lahore and the other at Karachi. In the rest of Pakistan, powers of these courts have been conferred on the presiding officers of the ordinary courts. The judges decide all sorts of cases under their ordinary powers and do not bifurcate the cases falling within the ambit of small claims and minor offenses. No judge of these courts has ever inked a judgment as a judge of court established under Section 4 of the Ordinance! Even the two courts, referred to above, are as no courts in term of institution and disposal. According to the available data, the average institution in both courts is 15 per month, average disposal is 3 per month and their average pendency is less than 200.[60] Resultantly, the Small Claims and Minor Offenses Courts Ordinance has practically ceased to function and, hence, has disappeared from the scene. The Statute has become redundant. The non-existence of separate courts under the Ordinance and conferring of their powers on the ordinary courts have resulted in the situation that neither the judges nor the general public ever talk about it. This could be termed a journey in the opposite direction; because the history of this law reveals that its first ever promulgation in 1887 was aimed to get rid of the complicated and lengthy procedure of ordinary courts.

The ratio of cases resolved under Section 89(A) of the *Code of Civil Procedure 1908* is highly unsatisfactory. Under this section, referral of a case to mediators is not mandatory. [61] The above provision is also not a part of trial procedure. Taking the benefit of this discretion, the judges usually avoid referral of cases to mediators and remain inclined to adopt the regular trial procedure. They strongly believe that regular hearing is a safe way and that there are chances of their exposition to non-confidence, and even their degradation, if they indulge in or keep stress on amicable settlements. The party particularly that having apparently a good case, will blame the court and will take exception to the impartiality of the court. The opposition of advocates towards amicable settlement is common. Gentle amongst them could be counted those who are not aggressive at least though they are also not encouraging ADR processes. In country like ours, Presiding officers of the courts hardly go against the interests of members of the Bar and their collective voice. The situation has worsened, particularly, after the countrywide movement of advocates for the restoration of judges of the Supreme Court after their expulsion from offices by the then President during 2007-2009. The following statistics, obtained from the

prescribed registers of the various courts (random selection) speak for the extremely poor utilization of the above section:

Table No.1[62]

S,No	Designation and Address of the court	Institution (March to June 2016	Disposal under section 89(A) CPC	Percentage
1	Senior Civil Judge District Noshehra	194	Zero	0%
2	Civil Judge II District Noshehra	383	07	1.82[63]
3	Civil Judge VI District Noshehra	283	Zero	0%
4	Civil Judge VII District Noshehra	273	Zero	0%
5	Senior Civil Judge District Peshawar	619	Zero	0%
6	All Civil Judges District Peshawar	1985	Zero	0%
7	Senior Civil Judge District Mardan	71	Zero	0%
8	Senior Civil Judge District Charsaddah	306	Zero	0%
9	Senior Civil Judge District Abbotabad	07	Zero	0%
10	Senior Civil Judge Islamabad Capital Territory[64]	545	19	3.28%
11	A'ala Allaqa Qazi District Swat[65]	23	Zero	0%
12	Allaqa Qazi Darosh District Chatral	72	06	8.33%, [66]
13	Allaqa Qazi I District Batkhela	83	01	1%
14	Allaqa Qazi II District Batkhela	77	Zero	0%
15	Allaqa Qazi Totalai District Buner	36	Zero	0%

Writing of a speaking judgment is considered a symbol of competency in Pakistani judicial hierarchy. This trend has turned the judges to a permanent habit of authoring adjudicatory judgments, instead of compromise-based judgments. The appellate forums also appreciate issues-determining judgments as compared to judgments based on amicable settlements. In situation like this, recourse to Section 89 (A) of the Code of Civil Procedure will always remain a half-hearted enterprise for judges.

The concept of *musleh* in the relevant provision of *Sharai Nizam-e-Adl 2009* is doing the best, particularly in criminal cases, more particularly, in cases where punishment is less than death. The best result is in the cases of hurt offenses, especially, those falling under sections 337, 337 (A)-333(L) of the *Pakistan Penal Code 1860*. No punishment under sections 334 and 336 of the Code (awarding and execution of *Qisās* (in hurts not causing death) has been awarded so far. Of course, there are other reasons for it, the major reason, nonetheless, is the successful mediation between victim and offender. Mediations (compromises), in hurt and other compoundable cases, are highly valued in Pakistani legal system. The courts in Pakistan have been confirming the Pre-arrest bails on the basis of successful mediations: despite the fact that the sole legal ground for such confirmation is the *melafide* on part of the prosecution and such mediations do negate that. The efficacy of the Regulation on this end is quite good despite the fact that it has not been expressly clarified in the Regulation whether a *Musleh* is a conciliator or mediator or arbitrator. It could only be gathered from the wording of section 13 of the Regulation that the word '*Musleh*' accommodates all the three. It is worth mentioning that only mediation under the above section is effectively functioning. As far as arbitration is concerned, the productivity is almost zero and a few cases resolved through arbitration, under the above section, could be found. It is, therefore, highly desirable that an Explanation should be added to the Section and the meaning of *Musleh* should be confined to non-adjudicatory modes of ADR. Unlike previous repealed Regulations of 1994 and 1995, the referring of cases to informal amicable processes is directory and discretionary in nature. If it is made mandatory, the efficiency of the provision shall improve further. An amendment to this effect would be of great significance. The presiding officer of the court or judge plays, indeed, an important role in resolution of disputes through amicable means. Such officer or judge is designated as *Qāzi* under the Regulation. As regard to the area of Regulation, and even the areas falling outside of it (the remaining country), those *Qāzis* or judges could be divided into three categories (a) those who possess natural attitude towards ADR and have the courage to refer the cases for peaceful resolution, (b) those who possess natural attitude towards ADR but have no

courage to refer the cases for peaceful resolution due to self-imposed apperceptions, as explained above, and (c) those who do not possess such capability. The number of the *Qāzis* of the first category is quite less. The number of *Qāzis* of second category is considerably high. The number of *Qāzis* of the last category is less than the second, but is high enough as compared to the first category. The *Qāzis* or judges of the last category should not be posted in the Regulation area.[67] Cases fit for ADR mechanism under the law should not be entrusted them even in the areas other than that of the Regulation. *Qāzis* of the first category should be posted in the said area on priority basis. *Qāzis* of the second category should be properly trained, on judicial conduct and ethics, before their posting in the said area. This shall improve the efficiency of ADR provision of the Regulation to the expected level.

Section 10 of the *Family Courts Act 1964* is an ADR enabling provision that provides for a peaceful settlement between the disputing spouses through any informal technique. The praise "to affect a compromise", nevertheless, denotes that the prime objective of the section is mediation; that would lead to reconciliation and not the arbitration that mostly amounts to separation of spouses. In Pakistani courts, there is hundred percent compliance of this section due to its mandatory nature. But sad to say that its outcome may hardly be twenty percent (15%) or even less. The empirical research reveals, surprisingly, that the figure is approximately four and a half percent (4.3%).[68] Litigation in family cases continues for long time which further evaporates the possible chance of restoration of peace. The institutions in the Family Courts are more than the disposals! There are several reasons for this situation. First, the attitude of the family Judge and his/her inclination towards amicable settlements matters a lot in family disputes. Unfortunately, a number of the learned judges lack this capability. Most of them are civil judges: the lowest rank in the judicial hierarchy, the youngest of the whole lot, hardly crossing 30 years of their age, and even, sometimes, himself/herself has not experienced the sensitivities of family life and future care of children, being not yet married. So, what and how much could be expected from such practically inexperienced young lot.[69] The significance of restoration of peace between the spouses and the need reconciliation could not be assessed by such persons. Secondly, the aggressive attitude of lawyers, in opposing peaceful settlements in all cases in general and in family cases in particular, also creates hardships for courts in referring of cases to mediators. Regrettably, they wrongly presume that ADR techniques are countering their profession. Instead of representing their clients in the regular adjudicatory process, they may prove themselves to be effective mediators for them. They should understand that mediation process does not preclude adding of value to it. Mediation skills should be a part of their professional skills.

Thirdly, it has also been experienced in the courts that the relatives and closer members of the families of the spouses, in a considerable number of cases, try to spoil the possibilities of reconciliation between them by one way or the other. Fourthly, the general features of an area affect the process of amicable settlements and the ratio, therefore, varies from area to area. The inhabitants of an area may be more inclined to informal modes as compared to the people of some other area. For instance, the Pathans (Pushto speakers) usually avoid bringing their family disputes to courts. They prefer reticence as against publicity in this regard even, sometimes, at the actual risk of their irreparable loss. But, if a family dispute is once instituted, it becomes extremely hard to be resolved through informal techniques. Fifthly, and importantly, the Family Act prescribes six months period for the disposal of the case.[70] One can imagine the elegance of the law that this duration is reckoned from the date of institution of the suit, not from the date of commencement of trial. The relevant provision specifically mentions that either of the parties shall have the right to make an application to the High Court in case the hearing continues ahead of the period. Efforts for reconciliation in a single setting could not prove fruitful. It requires several settings to pacify the situation and to help the spouses in understanding the miseries of a disturbed, isolated life and the troubles resulted from broken relations.

Mediators and conciliators often delay the process due to one reason or the other. Sometimes, the courts have to issue, reminder after reminder, for submission of their reports. For the reason that the process is conducted as *Publico Probono* (gratis), the courts cannot use compelling procedures against mediators. It may be noted here that judges of the Family courts work under the direct judicial supervision and administrative control of the concerned High Courts. The administrative control matters a lot. Whenever a section specifically provides for intervention of the High Court, the judges become extraordinarily careful. On asking the unsatisfactory results of Section 10 regarding reconciliation (as shown in the table below), the learned judges told to one of the co-authors that why should the judges waste the prescribed period in lengthy efforts for reconciliation and why should they expose themselves to the inquiries of their high-ups. This situation has paralyzed the learned judges though they have lengthy service periods, rich experience and attitude and will for amicable settlements. The details of the following table have been taken from the record of the different courts of KP which reflect the disposal of cases on reconciliations under Section 10 of the Act, from March to June 2016.

Table No.2[71]

S.	Name and place of the	Institution of	Disposal under	Percentage

No	court	Cases	Sec.10 on compromise	
1	Allaqa Qazi (Family Court) District Batkhela	21	Zero	0%
2	Allaqa Qazi (Family Court)Totalai District Buner	09	Zero	0%
3	Family Court District Charsadda	65	Zero	0%
4	Three Family courts District Abbotabad	325	40	12.3
5	Allaqa Qazi (Family Court)District Chitral	67	15	22.3
6	Family Courts I, II and III District Peshawar	418	47	11.2
7	Family Court District Bannu	57	16	28.07
8	Allaqa Qazi (Family Court I)Matta District Swat	47	1	2.1
9	Allaqa Qazi (Family Court II) Matta District Swat	47	Zero	0%
10	Allaqa Qazi (Family CourtIII) Matta District Swat	27	Zero	0%
11	Family Court District Noshehra	172	Zero	0%

In this table, the selection of the courts is random and the statistics have been obtained from relevant registers of the courts, with the kind permission of the learned judges. The reasons given above could be observed from the rise and fall of institution and disposal, shown above. The columns indicating 'Zero' reflect the rigidity of Pashto speaking areas of the province in respect of reconciliation in family cases. The rise in disposal points to the natural tendency rich experience and required maturity of the concerned presiding officers and judges. The fall in disposal in some columns reveals the careful nature of judges who feel safe to pass issue-determining judgments

Section 12 of the *Family Court Act* reflects evaluative mediation. By now, the trial has almost been concluded. At this post trial stage also, there is an obligation upon the court to make efforts for reconciliation and try to affect a compromise between the spouses. His efforts to affect a compromise or reconciliation are naturally different from his efforts under Section 10 of the Act. Now, recorded evidence is lying before the court. The learned judge is now more in picture as to the demeanors of the disputant spouses. The frustration of the parties is now lesser due to considerably lengthy litigation and deposing of evidences. The outlines of the expected judgment have turned blinking. In such a situation, the efforts of the judge of the Family Court to affect a compromise or reconciliation would be within the meaning of evaluative mediation. The outcome of this Section is the same as that of Section 10. It has, rather, become less efficient due to the judgments of apex courts that have rendered proceedings under it as directory in nature: despite the fact that the word "shall" has been used in Section 12 of the Act as it has been used in section 10.[72] The word "another" in the phrase "another effort to affect a compromise" clearly reflects that post trial reconciliation is as mandatory as it is in the pretrial stage. Section 12(1) of the Act provides, "After the close of evidence of both sides, the Family Court shall make another effort to effect a compromise or reconciliation between the parties within a period not exceeding fifteen days."

The *KP Local Government Act 2013* binds the Village Councils and Neighborhood Councils to provide forums for amicable settlement of disputes. The penal of conciliators under the Act is yet to be constituted. It has been learnt that rules are being framed with the support of United Nations Development Programme (UNDP) for the procedure of conciliation proceedings, appointment of conciliators and other ancillary matters in this regard. Though nothing could be predicted about mediation by these forums at this stage, the apprehension of political influence and affiliations upon the process could not be ruled out. The experience of *Insaf* Committees under the repealed Ordinance is still punching.

7. What ought to be done for Improving the Situation?

Now, it is evident from the above facts that all the three aspects of mediation; its meaning and limits, its legislation, and its functioning suffer from various defects. To cope with the situation, it will require certain steps. First, its meaning should be ascertained; a sub-clause in the definition clause should be specified for this purpose. A definition in consonance of the general sense of mediation (not technical sense), should be developed and incorporated therein. In addition, the term conciliation should be gradually done away with. Secondly, multiplicity of laws on the subject should be removed. A unified comprehensive law, therefore, should be framed; covering necessary details of all modes of ADR. In this

connection, the Arbitration Act 1940 should be revisited, amended on need-based assessments, enriched by a specified part of mediation and renamed accordingly. Thirdly, various phrases of the like nature do create confusions in determination of their meanings and limits. Unanimity in this regard is highly necessary. Phrases like *salis, muslih*, *committee*, conciliator, mediator, conciliation, reconciliation, *sulh,* opinion and award ought to be expurgated, minimized, clarified and simplified. Fourthly, all ADR enabling provisions should be made mandatory and also be made a step in the trial procedure. Some people would oppose this idea on the plea that going for amicable settlement should not be made compulsory and be kept optional. This stance and apprehension is not correct. Mandatory nature of the provision does not mean compulsory referral; it would simply mean that asking the parties for such referral should be a rule. The option shall still remain at the hands of the parties. Fifthly, specialized trainings should be arranged in the judicial academies of the country not only for judges, but also for lawyers, prosecutors, social workers and all concerned with the justice sector. Courses for such trainings are to be properly prepared with main and leading input from the ADR experts. Topics for delivering of lectures ought to be given to ADR experts and practitioners instead of judges, howsoever senior they may be, and mere academicians, howsoever experienced they may happen to be. In training institutes, evaluation of the resource persons as well as of the trainees is carried out as a completion of a mere formality. Stereotype mechanism is applied, relevant columns and forms are blindly filled in, and feedbacks are not properly followed up. There is a twofold result of this practice; the non-serious attitude of trainers and participants in the training and the extremely poor quality of trainings. This area needs special attention of the directors of the academies. Sixthly, following the idiom that 'money makes the mare go', value must be attached to the process. The age of working under the concept of *Publico Probono* (gratis) and Eternal rewards has already passed. In this material world, nothing could be achieved from a process short of worldly incentives. Seventhly, incentives for utilization of ADR techniques should be announced for judges. The Judicature must own ADR mechanism and the high ups should encourage the members of the subordinate judiciary in this regard. Time consumed in amicable settlements should be excluded from the prescribed period for the disposal of a case. Eighthly, the establishment of civil mobile courts should be actualized and notification for the commencement of KP Civil Mobile Courts should be issued on urgent basis. The other three Provinces and the Islamabad Capital Territory should follow suit. Ninethly, if the concept of court annexed ADR is abolished by establishing separate institution for the amicable settlements, major hardships in the way would automatically cease. Lastly and importantly, amicable settlements require high standards of ethics.

They are more moral and less procedural in nature. In judicial trainings, proper space should be allocated to lectures on ethics and good behaviors. In this connection, services of renowned scholars should be hired on priority basis. It may be besides the sermon class that is usually arranged by some academies of good repute. The learned judges should be taught the significance of a proper course of behavior and conduct, the preponderance of principles of equity over ordinary legal provisions, and the faith that the keynote is the justice not the law. They should be helped realize that resolution (uprooting a dispute through peaceful ways) is far better than dry adjudication (adversarial determination of issues).

8. Conclusion:

Mediation has become the most important and popular mode of Alternative Dispute Resolution (ADR). Its technical meaning is intervening facilitation i-e to help the disputing parties to resolve their differences peacefully through negotiation and mutual understanding. In the context of ADR, mediation differs from conciliation for the only reason that the role of a conciliator is more proactive than that of a mediator, for conciliator may himself explore possible resolutions. In some jurisdictions, mediation has been clothed with main features of arbitration. Because of this expansion, some researchers have rightly said that the boundaries between various modes of ADR are distorting. The present study has, however, proved that Pakistani legal system does not accept such expansion as it, on the other hand, does not admit the technical meaning of mediation. Pakistani statutes have used mediation and conciliation as one and the same processes. Their separate mentioning does not, necessarily, mean their intra-distinction. Mediators in Pakistan, as compared to the mediators of other jurisdictions, are not facing any difficulty in determination of limits of their job. The history of amicable settlements in Pakistan is centuries old: as she remained a part of the Indian civilization wherein the alternative modes had been utilized for more than twenty five years. The history of the modern concept of ADR in Pakistan, particularly mediation traces back to the past two and a half decades when effective reforms were introduced to the justice system of England by the Lord Woolf. The reason and stimulant for this follow up is the fact that Pakistan has inherited its legal system from Britain, and any major amendment in the English legal system naturally affects the legal system of countries which remained under British rule for centuries including Pakistan.

For the reasons above and giving effect to popularity of informal techniques of dispute resolution, particularly mediation, across the world, Pakistan has incorporated ADR enabling provisions, through various amendments, in its several statutes. The important amongst them is the *Code of Civil Procedure 1908*.

Some statutes have such provisions right from its inception, such as, the *Family Courts Act 1964, Small Claims* and *Minor Offences Ordinance 2002 and Shari Nizam-e-Adl Regulation 2009*. Recourse to ADR provisions is discretionary except that of the family laws which is mandatory. The major defect in these statutes is the use of similar nature of phrases like mediation, conciliation, *sulh*, *salis* and *musleh*. The multiplicity of laws on the subject is itself a fatigue. The functioning of ADR techniques, particularly the mediation, is poor to the last extent. The empirical studies have pointed out the worst inefficacy of Pakistani Legal System in this regard. The causes for this highly reduced and unsatisfactory performance, inter alia, includes the unawareness of the general public, especially, the litigants about the advantages of informal techniques of dispute resolution, the unwanted, needless and rather wanton opposition of practicing lawyers, and the excessively cold response of the judges to the utilization of these techniques.

This study has, besides ascertaining the meaning of mediation in Pakistani legal system, discovered the causes of poor functioning of informal techniques in Pakistan, dug out the grounds that gave birth to these causes, and proposed solutions for improving the situation. Some major causes have been discussed above. The grounds of the unawareness of the general public and litigants are due to the non-attention and distant attitude of the State. Practically speaking, the State has not owned the system so far. Had it own the system, there would have emerged so many permanent state-run institutions across the country, and exhausting of such institutions would have been made a condition precedent for a lawsuit. Even today, a single program or documentary could not find place in electronic media of the country. As far as the reluctance of the judges is concerned, its main reason is their feeling of not being secured if they opt for amicable settlements. They mainly remain afraid of the reaction of their high ups and also their exposition, at the same time, before the litigants if they show deep indulgence in informal techniques. The main element of the opposition of the lawyers is the apprehension of damaging their profession: the sole source of their livelihood. The solutions and ways for improving the situation include, the proper attention of the State towards the system, the purpose-based training of judges and lawyers on the subject with special focus on Ethics, encouragement of judges by their seniors in the shape of various incentives as appreciating entries in their personal evaluation reports (PER's), postings, promotions, awards and selection for trainings inside and abroad. Incentives for lawyer include confining of mediation to trained and certified mediators of the academies, the selection of only trained mediators in the various committees in district and provincial levels, preference for such trained lawyers while their selection in the district judiciary as judges and also in considering their names for evaluation in the High Courts and the Supreme Court of the country. Moreover, the multiplicity of laws

should be removed by enacting a unified law on the subject. There is high need to pass all the existing laws on the subject through the process of sharp expurgation and clarity should be ensured by removing confusing words and phrases of similar nature.

Notes and References

1 Relevant portion is Article 247 (3) that read as under:

"No Act of *Majlis-e-Shoora* (Parliament) shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs, and no Act of *Majlis-e-Shoora* (Parliament) or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any part thereof, unless the Governor of the Province in which the Tribal Area is situate, with the approval of the President, so directs; and in giving such a direction with respect to any law, the President or, as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effect subject to such exceptions and modifications as may be specified in the direction".

2 Relevant portion is Article 246 that flows as following; ""Provincially Administered Tribal Areas" means- The districts of Chitral, Dir and Swat (which includes Kalam), the Tribal Area in Kohistan district, Malakand Protected Area, the Tribal Area adjoining Mansehra district and the former State of Amb;

3 *Constantin-Adi Gavrila* & *Christian Radu Chereji*, What Went Wrong with Mediation, *available at, http://www.mediate.com/articles/GavrilaAbl20140207.cfm, last accessed on July 14, 2016.*

4 *The Free Dictionary* by *Farlex,* Newton Arbitration, available at, http://legal-dictionary.thefreedictionary.com/Mediation-Arbitration, last accessed on June 5, 2016

5 See Article 1 (3) of the UNCITRAL Model Law on International Commercial Conciliation 2002. The text is available athttp://www.sccinstitute.com/filearchive/2/21748/ml-conc-e.pdf (last accessed on Feb. 26, 2015).

6 See the Explanation attached to Section 1 (2) of the *Indian Arbitration and Conciliation Act 1996*.

7 Jacqueline Nolan-Haley, "Mediation: The New Arbitration." *Harv. Negot. L. Rev.* 17 (2012): 61.

8 Madabhushi Sridhar, *Alternative Dispute Resolution, Negotiation and Mediation*, (2006) (Reprint 2010), 270.

9 See Order XXIII, Rule 1 of *Code of Civil Procedure 1908*.

10 See Order XV, Rule 1 of *Code of Civil Procedure 1908*.

11 AAmer Raza, *Code of Civil Procedure*, 779. Also see, *Messrs U.I.G. (pvt) Limited through Director and 3 others v. Muhammad Imran Quraishi*, CLC, 2011, Karachi, 758. See also *Dr. Mrcs. Yasmin Abbas v. Rana Muhammad Hanif and others* , PLD Lahore, 2005, 742.

12 *Sheikh Dawud Ahmad v. District Judge Lahore and others*, CLC, 1985, Lahore, 2660. See also *Usman Ghani v. Muhammad Amin Khan*, PLD 1975 Lahore 299.

13 *Hakim Ali v. Safia Bibi*, CLC 1989, Lahore 2478. See also *Malik Muhammad alias malkoo and other v. Jan Muhammad* CLC 1989, Lahore 776.

14 *Sree Nalini Kanta Sen v. Babu Monaranjan Prasad Barman*, PLD 1967, Dacca 155.

15 *Messrs U.I.G. (pvt) Limited through Director and 3 others v. Muhammad Imran Quraishi*, CLC, 2011, Karachi, 758.

16 *Dr. Mrs. Yasmin Abbas v. Rana Muhammad Hanif and others* ,PLD Lahore, 2005, 742.

17 *Messrs Alstom Power Generation through Ishfaq Ahmad v. Water and Power Development Authority through chairman and another*, PLD, 2007, Lahore, 581.

18 AAmer Raza, *Code of Civil Procedure*, 782.

19 See section 2 (g) of the *Small Claims and Minor Offences Ordinance 2002*.

20 See section 2 (b) of the *Small Causes and Minor Offences Ordinance 2002*.

21 Part II contains all fine offences in the Pakistan penal Code (Act XLV of 1860), punishable with imprisonment not exceeding three years or with or with both.

22 If the process of settlement begins with arbitral proceedings and ends with that of mediation, it will be called arb-med. The vice versa will be med-arb.

23 See section 14(2) &(3) of the *Small Claims and Minor Offences Ordinance 2002*.

24 Reports of the trainings have been authored by the first co-author and are available at; http://kpja.edu.pk/search/node/mediation%20report

25 See Explanation attached to Section 103 of *Local government Ordinance 2002*.

26 Section 104, *Local government Ordinance 2002*

27 While this work was under progress, the LGO, 2002 was repealed by *KP Local Government Act 2012*. The repealing Act was also, later on, repealed by *KP Local Government Act 2013*.

28 See Chapter VII (ss.96-99) of the *Punjab Local Government Act, 2013.*

29 See Section 72 and Schedule III, item 32, of the *Sindh Local Government Act, 2013.*

30 See section 29(b) and 109 of the *KP Local Government Act 2013*.

31 See Section 195(c) of the *Customs Act 1969.*

32 See Section 47 of the *Sales Tax Act*, Section 38 of the *Federal Excise Act*, and Section 23 of the *Industrial Relations Ordinance*.

33 See Articles 153, 154, 156 and 160 of the *Constitution 1973*.

34 See Section 186 (A) of the *Khyber Pakhtunkhwa Police Order (Amendment) Act, 2015*.

35 See for further details, http://dailycapital.pk/kps-drcs-resolves-over-6000-cases-in-the-past-six-months/, last accessed on June 22, 2016.

36 The phrase "Settlement "as used by the honorable judges of the apex courts has its own significance. It denotes a resolution more than a regular adjudication.

37 See Section 17 (2) of the *Family Court Act, 1964*. Also see *Muhammad Ashraf v. Mst. Shamo Mai and two others*, 1999 YLR 670 [Lahore]. *Muhammad Ali Haider v. Sayyed Nasir Abbass naqvi judge Family Court Lahore and another*, 2011 YLR 1240 [Lahore]. *Mst. Naheed v. Additional District Judge Sargodha*, 2011 MLD 599 [Lahore]. *Muhammad Din v. Mst. Aliya Bibi*, PLD 2007 Lahore 425.

38 See Section 14 (3) of the *Family Court Act, 1964*. Also see *Tahira Perveen v. Sayyed Hasanain Raza Gillani,* 2011 YLR 266 [Lahore]. *Mian Shuaib Akram v. Judge Family Court* (Lahore), 2012 CLC 1900 [Lahore].

40 Article 163 provides for decision of case on the basis of oath. This provision can be invoked where no other modes of proof except the oath is available to support the claim of plaintiff. So, after the plaintiff's oath, if the defendant takes oath, the suit shall fail. If defendant refuses, the suit shall succeed. The court should decide the case one way or the other. *Khan sher v. Mst. Kabla and another*, PLD 1988 Peshawar 65. Also see Dr Justice

Tanzil-ur-Rahman, *Islami Qanun-e-Shahadat* (Lahore: PLD Publishers, n.d.), 366.

The use of this section in family issues is more beneficial because most of the events, altercations usually take place between the spouses in retirement/privacy. One thing must be kept in mind that the application of this provision should be applied to family issues with the exception of nikah/marriage, *Talaq*/divorce because, in *Shariah,* particularly according to Imam Abu Hanifa , nikah, divorce, *Hudūd* and Lia'an have been exempted from application of oath/yamin. In such cases, Presumption of Continuance will take the lead. Justice Tanzil-ur-Rahman, *Islami Qanun-e-Shahadat* (Lahore: PLD Publishers, n.d.), 364, 365. Also see *Khan sher v. Mst. Kabla and another*, PLD 1988 Peshawar 65. See also Dr Ikramah Saeed Sabri, *al-amīn fī al-qadā al-islamī* (Jordan, Amman: Dar al-nafais, 2008), 322,323.

41 Section 10 (3), (4) and Section 12 of the Family Court Act 1964.

42 Section 10 (3), (4) and Section 12 of the Family Court Act 1964.

43 S.M. Zafar, *Understanding Statutes, Canons of Construction* (Lahore: PLD Publishers, 2008), 787.

44 See *Mst. Dilshad Sultana v. Noor Muhammad and another*, PLD 1993 Quetta 1.

45 See *Mst. Basra v. Abd-ul-Hakim and 2 others*, PLD 1986 Quetta 298. See also *Muhammad Ishaque v. Ch. Ahsan Ahmad Judge Family Court Lyallpur and another*, PLD 1975 Lahore 1118. Also see *Mst. Zohran Bibi v. Manzoor Ahmad and 2 others,* PLD 1976 Lahore 318.

46 See *Muhammad Bakhsh Masood v. Mst. Ayesha Mai*, 2009 CLC 905 [Lahore]. See also *Muhammad Khalid Siddiqui v. Mst. Samina Yasmin and another*, 2002 YLR 2699 [Lahore]. Also see *Muhammad Jalil v. Salma Rani and another,* 1999 MLD 2192.

47 See sections 3, 8 and 11 of the *Conciliation Courts Ordinance 1961*

48 The Act shall commence on the date as the Provincial Government of Khayber pukhtunkhaw may, by notification in the official Gazette, notify in this behalf. The notification is awaited till date. See section 1(3) of the *Civil Mobile Courts Act 2015*.

49 See sections 7 and 9 of the *Civil Mobile Courts Act 2015*.

50 ibid

51 See section 15 of the *Civil Mobile Courts Act 2015*.

52 See the first paragraph of the *Shari Nizam-e-Adal Regulation 2009*. Text is available at http://archives.dailytimes.com.pk/national/15-Apr-2009/text-of-the-nizam-e-adl-regulation-2009.

53 Adibah Farh and Riadh Karim, *al-Qāmūs* (Beirut: Dar al Kutub al Ilmiah, 2006), 653.

54 See Section 17 of the *Shari Nizam-e-Adal Regulation 2009,* It says, "The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Regulation".

55 Reports are available at: http://kpja.edu.pk/search/node/mediation%20report. The first co-author has himself participated in all the three seminars and has also written the Concept Note for the last one held in Swat in November 2014.

56 Zsia-ul- Hassan, *Success and Failures of Shari'ī Nizam-e-Adl Regulation 2009*, p.14. Text is available at http://kpja.edu.pk/reports., last accessed on June 22, 2016

57 Section 13 (1) of the *Shari Nizam-e-Adal Regulation 2009*.

58 See Section 13, subsections 9-12 of the *Shari Nizam-e-Adal Regulation 2009*.

59 The poor utilization of ADR modes including mediation in Pakistan was also pointed out in the report of first workshop named as "02-DAY (30th Nov- 1st Dec, 2015) WORKSHOP & CONSULTATION TO ESTABLISH JUDICIAL GUIDANCE ON ADR" held in Pearl Continental Peshawar by KP Judicial Academy. The first co-author was the focal person of the workshop. The report said, "Despite all the above steps and efforts, pendency in courts is rising day by day. Inordinate delays and uncertainties have dominated the field. Miseries of the litigants are increasing. Majority of the litigants feel themselves at no-where. Response to the application of informal techniques is highly poor both on the part of bench and bar. This situation, on one side adversely affects the justice system and weakens the public confidence on the courts on the other. Inclination towards resolution of disputes through violence gets encouraged which further paves way to the rule of might. Obviously, such a situation could not be left unnoticed. To cope with the above situation and to give an answer to the question that why ADR mechanism is not properly functioning in this country, the KP Judicial Academy in collaboration with the UNDP has arranged this workshop to dig out the factors responsible and to explore effective and efficient procedure for the purpose.[see pp.7-8 of the Report, available at KPJA library, Peshawar]

60 See report no. 3 of Law and Justice Commission of Pakistan, available at http://www.ljcp.gov.pk/Menu%20Items/Publications/Reports%20of%20the%20LJCP/reports/report32.htm, last accessed on June 24, 2016.

61 A Research Study conducted by the KP Judicial Academy revealed that non-existence of mandatory provision regarding ADR "does make a difference."According to the statistics, only 1% cases were disposed of amicably under Section 89(A) of the Code of Civil Procedure. In criminal cases, the ratio was 0%. In family disputes, the ratio remained 4.3%. The main reason for this difference was found as mandatory nature of the relevant provision of the Family Courts Act 1964. See Barrister Dr Adnan Khan, *ADR: Gaps between Formal and Informal Justice Systems*, p.54.

62 The statistics, obtained from the prescribed registers of the various courts (random selection).

63 This comparatively better situation reveals that the learned judge has some capacity and tendency as well for utilization of ADR mechanisms.

64 This is the collective data of two senior civil judges of Islamabad East and Islamabad West.

65 In six districts of Malakand Division and in Kohistan District of Hazara Division, Civil Judges, Senior Civil Judges are designated and posted as Allaqa Qazis and A'ala Allaqa Qazis respectively, due to the mandatory requirement of the *Shari Nizam-e-Ad'l Regulation 2009*.

66 This comparatively better ratio, according to the learned presiding officer, is due in part to the utilization of the relevant provision of ADR in Sharai Nizam-e-Adl Regulation 2009. It also speaks for the capacity of the learned judge in making efforts for amicable settlements.

67 The Khyber Pakhtunkhawa Judicial Academy Peshawar has conducted three workshops on the success and failures of the Sharai Nizam-e-Adl Regulation during 2012 and 2014. The participants included *Qazis* working under the Regulation, members of the various Bars of Malakand Division including Bar of Dar-ul-Qaza (High Court Bench at Divisional headquarters), heads of the private organizations and representatives of the general public. The reasons for failures could be found in the relevant reports which are available at: http://kpja.edu.pk/search/node/mediation%20report. The first co-author has himself participated in all the three workshops and has also written the Concept Note for the last one held in Swat in November 2014. The reports have been shared with the Provincial Government. A copy of the last report has been submitted to honorable Chief Justice Peshawar High Court. Important in these workshops is the fact that the participants

have shown great concern over the lethargic observance of the relevant provision of the Regulation which calls for resolution of disputes through ADR techniques. This "lethargic observance" points to the purpose-repelling performance of *Qazis* of the second and last categories. [See, Zia-ul- Hassan, Success and Failures of *Shari Nizam-e-Adal Regulation 2009*, p.14.]

68 See Adnan Khan, *ADR: Gaps between Formal and Informal Justice Systems*, Khyber Pakhtunkhawa Judicial Academy, p.54.

69 It is quite interesting that today (1st July 2015), the Provincial Public Service Commission has announced the result of test held for the recruitment of more than hundred civil judges. Almost all of them are the graduates of the past 3-7 years. After a Short training process, they would be presiding courts including Family Courts within a couple of months.

70 See Section 12(A) of *the Family Courts Act* that was incorporated through the Family Courts (Amendment) Ordinance, LV of 2002, dated 1st October, 2002.

71 The statistics, obtained from the prescribed registers of the various courts (random selection).

72 See *Muhammad Bakhsh Masood v. Mst. Ayesha Mai*, 2009 CLC 905 [Lahore]. See also *Muhammad Khalid Siddiqui v. Mst. Samina Yasmin and another*, 2002 YLR 2699 [Lahore]. Also see *Muhammad Jalil v. Salma Rani and another,* 1999 MLD 2192.