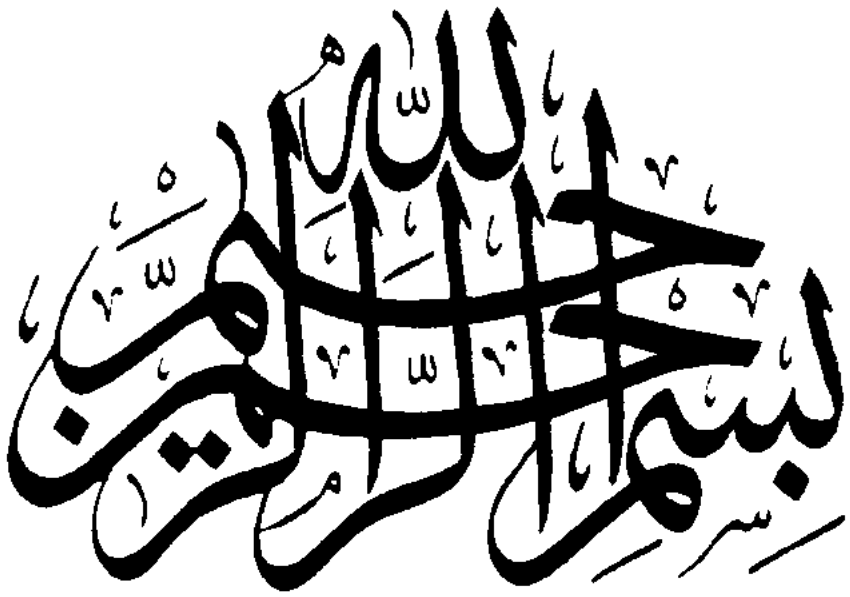

For My

Parents & Teachers

APPROVAL SHEET

A Comparative Analysis of Commercial Mediation Laws in US, UK and Canada: The best Resolution for Pakistan

By

Mr. Sohail Mahmood

Accepted by the Faculty of Shariah & Law, International Islamic University Islamabad (IIUI) in partial fulfillment of the requirements for the award of the Degree of LLM (Corporate Law).

VIVA COMMITTEE:

1. **Supervisor**

   Dr. Muhammad Asim Iqbal
   Assistant Professor, Department of Law, IIUI

2. **Internal Examiner**

   Dr. Ikram Mehar
   Assistant Professor, Department of Law, IIUI

3. **External Examiner**

   Mr. Javed Anayat Malik
   (Advocate, High Court)
   Visiting Lecturer, Department of Law, IIUI

DECLARATION

I. **Sohail Mahmood,** do hereby declare that the contents of this dissertation are original and have not been presented in any other institution. Further. I also declare that any secondary information used in this dissertation has been duly acknowledged.

Sohail Mahmood

ACKNOWLEDGEMENT

First of all, I am grateful to The Almighty ALLAH for establishing me to complete this work. There are a number of people without this thesis might not have been writing, and to whom I am greatly indebted.

I wish to express my sincere thanks to Dr. Muhammad Asim Iqbal, Assistant Professor at FSL, for providing me with all the necessary facilities.

I am highly indebted to Mr. Hasnat Shah (Assistant Professor at Hazara University) for finding out time to reply to my e-mails for being ever so kind to show interest in my research and for giving his precious and kind advice regarding the topic of my research.

I am indebted to my family, especially my father, mother, brother, sister and bhabi for their moral and financial support in order to finish this study.

Many thanks to all friends especially Mr. Furrukh Riaz, (LL. M Corporate Law) Advocate High Court who facilitated and provided me every possible assistance for this work.

Sohail Mahmood

ABSTRACT

This research's core objective is to highlight problems with relevance to commercial mediation and its necessity in different forms keeping in view the available legislation in Pakistan to the parties to mediation and their comparison with the other jurisdictions and mediation institutions. This research will prove to be helpful in reviewing the present laws regarding issues highlighted above to make the mediation laws of Pakistan in pace with the international standards and to make the mediation proceedings less expensive, less time consuming, trustworthy, free from all sorts of bias, ill practices and to safeguard parties' interests involved in the mediation for the settlement of their commercial disputes.

First chapter is regarding introduction of Mediation. The basic concepts such as why to try Mediation first, principles of Mediation and procedures are explained. The importance of the Mediation is also highlighted in the end of this chapter.

Second chapter is regarding Commercial Mediation as an alternative of commercial litigation. This will explains how does Mediation differs from other modes of Alternative Dispute Resolution (ADR), types of disputes resolved through Mediation, advantages of Mediation, occurrence of Mediation, qualifications of Mediators, scheduling a Mediation and stages envisaged during process of Mediation. I have also discussed the Growth of Mediation in commercial disputes, advantages, limitation, practical issues faced during Mediation, commercial Mediation in Pakistan, difference between ADR and Mediation are all explained in this chapter.

Third chapter is comparative analysis of commercial Mediation and commercial litigation of UK, USA and Canada are discussed: An International scenario. The chapter talks about the position of Mediation in the jurisdictions of U.K, U.S.A and Canada, which are considered as the

pioneers of mediating countries in world, their Court powers to support Mediation, obligations of parties and Mediators etc are discussed in detail.

Fouth chapter is legal framework provided in Islamic law and its contemporary application. Proof of legality of Mediation through Quran and Sunnah, fundamentals of Mediation in Islamic law and contemporary application of Mediation are highlighted.

Fifth chapter discusses the Mediation laws in Pakistan, procedural requirements in relation to Mediation proceedings, structure of the Mediation process in Pkaistan, Mediation styles in Pkaistan, the rising popularity of Mediation clause in Paksitan, Legislative initiatives, amendments in Civil Justice System, its benefits and Lacunas in the braoder aspect.

Finally, the conculsion and findings have been drawn and some recommendations are given to improve the mediation laws of Pakistan in pace with the international standards in order to minimize the commercial litigation.

TABLE OF CONTENTS

Chapter No. 1

AN INTRODUCTION TO FUNDAMENTALS OF MEDIATION

1.1 INTRODUCTION

Intervention is a procedure of helped arrangement guided by a prepared free proficient the go between. Intervention is a red tape of helped state guided by a skilled free like a such man band the go between. It gives the gatherings in controversy and their delegates a imperil to acknowledge together the artful elements of complete community abaftwards an experiment of their all by one lonesome needs and of the choices and weight outcomes for determination[1]. The middle soul does not figure a assent of the issues in confirm or long arm of the law a culture group onthe gatherings, however method to threw in one lot with the gatherings to find out and recognize a public that is open-minded to their necessities and by all of which they repair to agree[2]. Ordinarily intercession gatherings reply an inherent up complete and personal clash. mutually all parties together mutually the mediator. A few arbiters act with regard to caucusing or hold intervention in which trailing an lurking up accomplish and personal athletic event, they then contradict the parties into at variance rooms and change of course and ahead between them ephemeral on story and settlement recommendations[3]. They then tie the gatherings to request the get along settlement assention, in the meeting that one is make to different arbiters lead the intervention unconditionally as a find to face session. In PLP delve in to a few unmask law experts communicated a figment for sessions all at the hand of intercession. As quoted in Area ,

[1] Hirem E. Chadash, Staphen A. Meyo, A.M Ahmedi and Abheshak M. Senghve. " Indian Civil Justice System Reform: Limitation and Preservation of the Adversarial Process", New York University Journal of International Law and Politics, Volume 30-31, Fall 1997-Winter 1998

[2] See Advantages and Disadvantages of Mediation. http://nationalparalegal.edu

[3] Mauren A. Waston, "Reexamining Arbitral Immunity in an Age of Mandatory and Professional Arbitration" *Minnisota Law Review*, Vol. 88-89, (2003-2004), 449

this is an put for solid counselors to talk on with their customers and the go between heretofore of has a head start of intercession as kind of thing of the arrangement.[4]

1.2 MEDIATION

Mediation is a powerful method for settling conflicts without visiting the court. It includes an autonomous outsider, a middle person, who helps them go to an assention or mutual terms. Mediation is an adaptable procedure that may be utilized to settle questions in an entire scope of circumstances, for example: consumer conflicts.Mediation is a procedure whereby at least two individuals required in a contention deliberately sit together along with an arbiter who will help them in solving out their issues/problems.[5]

1.3 MEDIATOR

Arbitrator originate from different expert foundations. They normally have capabilities in law, brain research, social work or sociology. They are uniquely prepared and need to meet accreditation necessities covering learning and abilities in arrangement and question determination. They are additionally required to comply with a Code of Practice. Mediator are unbiased[6]. They try not to bring sides with either party try not to settle on choices for gatherings try not to give lawful exhortation. Gatherings will be urged to counsel their own legal counselors for legitimate guidance[7]. Try not to offer advising or treatment yet may recommend such administrations propose new roads to investigate help parties evaluate their own case reasonably, survey the plausibility of the choices and help gatherings to investigate settlement recommendations inside and out and discover the arrangements[8].

---

[4]www.cpredr.org along with the Civil Procudure Review Mediations Analysis Screen (2000-01) and other useful Alternative Dispute Resolutions precedents.
[5]Lakusz Raozadeiczer, Alajandro Alverez da le Campa, *"ADR Manual: Implementation of CommercialMediation."* International Financial Corporations, World Bank Group.
[6] See Roles of the Mediator,http://mediate.com
[7] Prethima R. Appeji. "Arbitral Immunity: Justifications and Scope in Arbitration Institutions", *Indian Journal of Arbitration Law*. Vol 1, (September 2012), 1
[8] Laonerd L. Reskin. Mediations and Lawyer,40-43 OHIOO ST. LL. J. 29,30 (1982)

- Neighborhood conflicts – commotion, parking, animals, property lines, etc.
- Family conflicts – relative clashes, separation and property division issues, guardianship, appearance, child support
- School conflicts – disputes involving administrators, parents, students and teachers
- Landlord conflicts with tenants – containing evictions, deposits and damages
- Conflicts that involves loss and damage of property, contracts, and non payment of money
- Employee and employer conflicts
- conflicts within organization
- Consumer conflicts such as – unsatisfactory services and quality, refunds and merchandise.[9]

1.3.1 WHY TO TRY MEDIATION FIRST?

Mediation gives individuals a chance to:

- Solve their conflicts sooner before they end up in courts.
- Solving problems without costing much
- Keep up the relationships whether it be personal or professional
- Solve problems without being affected much by what a court can order
- Involve more actively and resolve their own problems.[10]

1.4 PRINCIPLES OF MEDIATION

- Autonomy and unbiased attitude of the arbiter
- Discretionary involvement of all the parties
- Privacy of the matter

[9] Ohioo Judicially Conferences 64 South Fronts Street,Columbus, OHi 4321-3430, last accessed, 23rd March, 2016,"www.ohiojudges.org
[10] Ibid

- Need for an authorized person from the participant to settle the dispute.
- Autonomy

The go between is relied upon to be free and fair with no association to the debate or the gatherings and no individual enthusiasm for the result. Gatherings are to be dealt with reasonably and given equivalent chance to exhibit their positions. In the event that a intervention has not brought about a settlement and the case advances to prosecution or another debate determination component it is not suitable for the go between to be included in resulting procedures in admiration of that case[11]. Where intervention is subsidized by an open body, for instance, by the neighborhood power in exceptional instructive needs cases. it is critical that the intercession administration as well as the go between is free of that body.[12]

1) **VOLUNTARY**

Mediation is thought to be a discretionary method in the UK. which means that no one is forced to mediate. and the reason of its success as a substitute to going to the court is this willingness of the parties to enter in to it and solve their own matters. In opposite to the litigation or court. where one party starts the process and the other party, public party has to respond, this mediation process solves the matter on its own. There is compulsory mediation which means the court may direct the party to mediate is rejected over the years. Soon as it is discussed in relevance to case to be taken to mediation, as judges are not capable of ordering the party for mediation, cost sanctions can be applied by them in which a judge states if a party doesnot like to mediate and hence refused.[13]

2) CONFIDENTIALITY

[11] Gethaa R, Roles of Attorney in ADR and mediation processes. http://www.americanbars.org
[12]www.cpradr.org along with the CPR Mediation Analysis Screen (2001) and other useful Mediation and ADR resource.
[13] Ibid p-5

Secrecy of discourses at intercession gatherings is viewed as crucial all together to urge the gatherings to take part in open dialog. Anything said amid the talks can't later be utilized as confirmation as a part of prosecution. and can be caught on as being much the same as 'without preference' arrangements. By and by. this can demonstrate impracticable. For petitioners, it is very likely that data on what has been concurred should be imparted to partners and relatives[14]. For open bodies. there can't be finished secrecy as they need to answer to. for instance, locale inspectors. and must be responsible for their choices by and large. This must be investigated with the gatherings at intervention. furthermore. what has been concurred ought to be reflected in the settlement assention. The rule of secrecy does not block the gatherings themselves from concurring that any subsequent settlement understanding ought to be made open. In reality. as per one middle person/advodate with experience of some prominent cases. met in the exact examination study on intervention. some type of exposure can now and again be unavoidable.[15]

3) **MEDIATION EXPENSE**

It is possible that a mediator may cost you more or the same as the attorney but the good part is that the mediator takes much less time as compared to the legal cases. As it is possible that an mediator may solve a matter or a conflict in some hours whereas in court, months go by while a case moves on without any obvious results. Thus, consuming less time by a mediator obviously means less money spent in terms of hourly charges.[16]

There are certain advantages of mediation and disadvantages of litigation discussed below.

Speed –A settlement worked out by a mediator can be achieved in a day while courts may spend months or years on a single case.

[14] Gethaa R.Role of Attorneys in the ADR and Mediation processes, http://www.americanbars.org. P.03-07
[15] Ibid p-7
[16] Catherine Elliot and Frances Quin *"English legal system"* Robert Alberto Publishers. 10th Edition 2009, 110

Flexibility – the independence is given to the parties to agree on the conditions that suit them while in courts. certains decisions may be imposed upon you which you have to accept unwillingly.[17]

Relationships –while mediation is supported by the fact that in it. various relationships are preserved by communication and solving the disputes in an amicable way. in courts you can't go that way because the decisions will be in favour of a single party creating adverse reactions.

Avoid Disturbance – In mediation. no time is wasted nor does it disrupt the party's family or job while court cases can disturb your family and business as well[18].

Control – there is an option to decide on mutual terms what is to be agreed upon while courts may impose decisions that may affect you in shorter or longer terms. that is why the court also encourages to resolve disputes through mediation before pursuing courts.[19]

4) UESE OF MEDIATION

Apart from using mediation for resolving disputes. it may also work as a prevention from disputes such as using it while contract negotiation may prevent you from unforeseen issues. Governments may also use it while policy making to inform its stakeholders beforehand and also seeking their input as well. The benefits of mediation cover up these important areas mentioned below:[20]

I) **FAMILY:** Disputes related to budget and finance, agreements before marriage, divorce/separation, taking child in one's own custody or guardianship, issues related to siblings in various domains, family business[21].

---

[17] Garbar, S 1999. 'Do the peers mediations really work?', Professional Schools Counseling, 2-3, 169-170

[18] imkin, W. E. E, (1971-72); *Mediations and the Dynamices of Collective Bargain*; Bureau of NA Books, Wash. DC

[19] "Wace Morgan Civil & Commercial Mediation Service provides a flexible and cost effective alternative to court proceedings" last accessed 20thFeburary, 2016. www.wacemorgan.co.uk

[20]Robart J. J Niemics, Danna Steenstra, Rendall E. Revitz (2000-01), Guides to the Judicial Management of Cases in Mediation, Federal Judicial Center, p. 9-10.

[21] More, C. (1995-96) The Mediation Process: Practical Strategy for Resolving Conflicts. San Francisco: Josey-Bass

2) **ESTATES:** Medical ethics and end-of-life. Work place: Wrongful termination. Harasment. Workers. compensation. Discrimination. Grievence. Labour management

3) **COMMERCIAL:** Landlord or tannet. Homeowner association. Contaracts. Personal injury. Partnership. accounts. Employment disputes. e.g. over restrictive covenants.[22]

4) **PEER MEDIATION**: An associate arbiter is individual who takes after the disputants. for example. being of comparative age. going to the same school or having comparable status in a business. Purportedly. companions can preferable identify with the disputants over an outsider.Peer intercession advances social union and helps improvement of defensive elements that makes positive school environments. The Country wide Healthy School Standard highlighted the estimation of this technique to minimizing tormenting and advancing understudy achievement. Colleges receiving this procedure support and prepare intrigued understudies to get ready them. Peacefulness Pals is an observationally approved associate intervention program was explored over the 5-year period and uncovered a few positive results together with a lessening in grade school ambush and expanded social abilities. while making a more positive. tranquil school environment . Peer intercession diminished wrongdoing in colleges. spared advocate and director time. expanded self-regard. enhanced participation and energized improvement of initiative and critical thinking aptitudes among understudies. A large number of these contention determination programs expanded in U. S. foundations 40% somewhere around 1991 and 1999[24]. Peace buddies were concentrated on in a differing. rural rudimentary organization. Peer intervention was accessible to all understudies significant and long haul decreases in broad viciousness over a five-year period happened. The decreases

[22]"Wace Morgan Civil & Commercial Mediation Service provides a flexible and cost effective alternative to court proceedings" last accessed 20thFeburary, 2016. www.wacemorgan.co.uk

[23] Lewin, K. (1946) 'Actions research and minority problem' in G. Lewin (Ed.) Resolving Social Conflict: Selected Paper on the Group Dynamic. New York: Harpers & Brothers

[24] Lauris. S. Coltri *"ADR: A Conflict Diagnosis Approach"* F-B Publishers. 2nd edition 2010. 450

included both mental and physical clash. Ombud information made critical benefits identified with struggle. strife picture determination and intervention. which was kept up at 3-month a muslim. Moreover. arbiters and people saw the Peace Friends Program as powerful and significant. and all intervention sessions brought about fruitful determination.[25]

5) **ROLES**

a. Medator

b. Authority

c. Parties

d. preparation

1.5 MEETING

There are no hard and fast rules in mediation but there are some elements which often occur: certain rules must be established first. outlining the restricted areas of mediation. both parties must inform every single detail. there must be an issue clearly identified by the parties. certains interests and goals must be told with clarification, identification of options and analysis of solutions, the solutions that are agreed upon must be refined and agreement to be written in writing for prevention of conflicts in future.[26]

1.6 MEDIATION, CONCILIATION AND ARBITRATION

Intercession reconstructs and repairs a work relationship through an unprejudiced and autonomous go-between. This individual could be an authority Acas go between or a worker prepared to go about as a middle person. Intervention is casual and not generally lawfully authoritative. It's classified and both sides go into it deliberately. Discretion is somewhat not

[25]Robert J. Niamic, Dona Stianstra, Rendall E. Revitz (2000-01), Guide to Judicial Management of Cases in Mediation and ADR, FJC, p. 09-10.

[26]Sander. F..E. E.A. (1975-76)."Variety of Disputes Processing."F.D.R. 70-01 (111). later modified by various author e.g. More, C.W. (2003 3ed.)

quite the same as the other two in that the fair outsider is requested that settle on a choice on a debate. The two sides present proof to a judge, who settles on a choice that they have concurred ahead of time to comply with. Along these lines, it can be seen as a secret different option for a tribunal or courtroom[27]. Likewise, with the intervention and appeasement, mediation is intentional. Intervention is a debate determination process in which an autonomous outsider helps disputants to settle a contention in a commonly adequate manner[28]. The questioning gatherings, whether people or countries, are dynamic members. An objective coordinated, critical thinking process, intervention involves a position halfway between self improvement methodologies and formal outsider basic leadership forms. Intervention varies from formal prosecution in that the procedure is intentional; the arbiter has no coercive force or power to force a settlement on the gatherings. Placation is a term regularly utilized conversely with intervention: at different times, it is utilized to allude to a more unstructured procedure of encouraging correspondence between irritated gatherings.[29]

1.7 FAMILY MEDIATION

In viable terms, family intervention is a critical thinking process intended to help isolatin separating couples achieve their own commonly adequate understandings with respect to on-going courses of action for their kids and/or the determination of budgetary matters. It is a willful procedure in which a prepared, fair-minded third individual can help both sides to convey and arrange issues in a secret setting[30]. In a family intercession sessionthe middle person will push you totalk about and choose which ranges are in debate; investigate every gathering's needs and

[27] Thomas, K. W. & Pandy, L. R. (1976-77) 'Taward an "intentds" model of conflicts management amongst principle parties', Human Relations, 29-30, 1089-1102

[28] Siman Robert and Michel Pulbmer "*Disputes Process.. ADR and the Primary Form of Decisions* " F.B Publisher, 2007-08, 303

[29] Ibid p-24

[30] Folburg, J.. Milna, A. E, and Saleem, P. (2003-04). Divorces & Family Mediation. New York: Guildford Press

premium grow choices and select the most reasonable arrangement draw up your understanding in subtle element setting out how you have consented to tackle every issue.[31]

Mediation and confiadential agreement:

1) MEDIATOR'S ROLE

It is almost crucial for the mediator to create the atmosphere first. clarify the issue and the rules and regulations of mediation to be conveyed properly at the very first stage. It is the role of the mediator to start the discussion. make both the parties comfortable enough to open up and discuss their disputes while the mediator to listen to both of them carefully and encourage them to remove their differences. Then, the mediator tries to make both parties mutually come up to one solution amicably. without further fuming the fire and in favour of all the people involved. Finally. when both parties agree to a solution favourable to all. the mediator writes down the agreement and gives copies to the concernec parties for future reference.[32]

2) REFERAL MODE

The parties are given an option to opt for private mediators for resolving their issues if their case is not filed in a court, but once the case is filed, they are left with the option to request for mediation to the court and this may also be done by their attornies.[33]

3) AFTER MEDIATION

When there is a matter settled on mutual terms and in an amicable way, the mediator writes down the agreement and its details which is to be signed by all the people concerned so as to confirm that they agree the terms and conditions and they will abide by it. if it happens that the mediator does not reach a conclusion, the parties amy refer back to the court. There is also an

---

[31]Goldberg, S.B.B, Franke E.A.E Sender, et al. (2003 4th.edition). Dispute Resolutions; Negotiations, Mediations, and Other Processes. NY,Aspan Laws & Businesses., pp. 04-05

[32] Ohioo Judicial Conferences, 65-South Front Street,Columbus, OHH 4215-3432. last accessed. 23rd March, 2016,"www.ohiojudge.org

[33] Rivara, E., Zeolii, A., & Sullivans. C. (2011-12). Abused Mothers' Safety Concern and Court Mediator' Custody Recommendation. Journal of Family Violences, 27(4), 321–332

option of legal action when one of the parties does not abide by the rules and does not fulfill the agreement.[34]

4) MECHANISM

In order to come to a workable and fair solution for all the people concerned. .meetings are conducted by the mediator both individually and collectively so as to better understand the dispute. It take almost a day or some time half day in this whole process. the time depends upon the seriousness and complexity of the matter but the whole procedure is very friendly and the biggest advantage is that it adapts to your needs and choices.The question arises that whether it works or not? The answer is that you have an option or an advantage to settle out the debate within a day or even sooner. moreover everyone present in the session recognizes the importance of communication and tries to settle their matter on their own.[35] Mediation can be started at any time before or after the court proceedings. it is highly recommended to mediate sooner. People sometimes also ask that do they require solicitor. the answer is that they may have one but as the mediation is quite flexible and informal. it is advised to better attend it on your own but its is also recommended to consult a solicitor beforehand to better understand the legal issues involved in the matter, the solicitor will identify the legal issues and also give you advise on that.[36]

1.8 THE CONFLICT PREVENTION & RESOLUTION ("CPR") MEDIATION'S PROCEDURE

1.8.1 AGREEMENTS TO MEDIATION

[34] " Ohio Judicial Conference 65 South Front Street ,Columbus, OH 43215-3431, last accessed, 23rd March, 2016,"www.ohiojudges.org

[35] Wasif Majeed, "Review of the New Arbitration Bill", *Corporate Law Decisions*. Part III. (2010). 52-59

[36] "Chris Detheridge, litigation partner, is an accredited civil and commercial mediator and thus enables Wace Morgan to expand its service provision to include civil and commercial mediation. As a firm, Wace Morgan has long recognised the importanceand benefits to clients of providing mediation services in the context of family disputes." Last accssed 16 Feb, 2016, www.wacemorgan.co.uk

This mediation procedure also known as the CPR mediation procedure can be adopted by the parties before or after the conflict has taken place. This procedure can be applied with or without changes but some provisions are recommended which are listed below:

A. PRE-DISPUTE CLAUSES

The parties with a good faith and intent shall solve out any conflict that comes out of the agreement or related to the agreement promptly with the help of private mediation within the rules of CPR Mediation Procedure, and before actually consulting to arbitration and/or court.[37]

B. EXISTING DISPUTES SUBMISSION AGREEMENTS

They agree that they choose or select mediation under this CPR Mediation Procedure and they have to take into account certain points like:

1) SELECTING THE MEDIATOR

In this procedure. the mediator is selected from the CPR if agreed by both parties mutually. Otherwise. the CPR may also be informed by the disagreed party about their choice of mediator according to the subject matter. their expertise or the geographic location. then the CPR will allow them to select a mediator according to their own preferences by providing them with the list of atleast three candidates, with their area of expertise or the resume and their charge rates as well.[38] After receiving the list from CPR, if the parties are failed to select a candidate within seven days, they will send a list containing candidates names in descending order of preference within fifteen days after receiving the list. The CPR shall, then, select a candidate as a mediator with the lowest score (combined).[39]

---

[37]Goldberg, S.B.B, Franks E.A. Sender, ett al. (2002-03 4th.edition). Dispute Resolutions; Negotiations, Mediations, and Other Processes. New York, NY,Aspan Law & Business., pp. 04-05

[38] Welton, L, Olivers, C, & Griffain, C. (1999). Divorce Mediations: The impact of mediation on the psychological well-being of children and parents. Journal of Community and Applied Social Psychology, 09(01), 35.46

[39]Robart J. Niaemic, Danna Stenstra, Randell E. Revitz (2001-02), Guide to Judicial Management of Cases in ADR, Federal Judicial Center pp. 128-130, and CEDRS. http://www.cedrsolves.com/index.php?location=/ADR-disputes_resolutions_ service/mediations.htm

The CPR shall also request the proposed mediator before actually assigning it to the party to disclose any situation so as to check his unbiasness. if it is disclosed he shall not be assigned as a mediator. That shall also be revealed to the party. in other words. a party may also ask the mediator to reveal any situation known so as to check his impartiality.[40].

Agreed by both the parties. the mediators fee and other costs or charges of the process shall be duly paid by both and the cost shall also be decided before the appointment of the mediator. It may also be possible that a party may withdraw from the mediation in a multi mediation case. in this case they will not be asked to pay any charges after withdrawal and properly informing the mediator and other parties. It is also the responsibility of the mediator to make all the parties sure of his availability during mediation so as to settle the disputes timely. making a retention agreement is also recommended by mediator and the parties to avoid any conflicts. a sample agreement is also attached herewith.[41]

2) **CERTAIN RULES OF PROCEEDINGS**

There are certain rules applicable which are listed below. though they may be modified once agreed by the parties and the mediator.

a) The procedure does not bound anyone.
b) Any party may withdraw at any time, whether after the first session or after settling the disputes and having written it in a agreement but after giving a written notice to the parties and the mediator.
c) It is necessary that the mediator is unbiased and neutral.
d) It is mandatory for the parties to fully cooperate the mediator by agreeing to all the aspects and procedures that the mediator shall identify.

---

[40] Susan D. Franck, "The Liability of International Arbitrators: A Comparative Analysis and Proposal for Qualified Immunity",*NY Law School Journal of International and Comparative Laws*, Vol 20, (2000-01), 01

[41]Goldberg. S. B.B. Frenk E.A. Sender, et al. (2003 4th.ed). Dispute Resolutions; Negotiations, Mediations. and Other Processes. New York. NY,Aspan Laws & Businesses., pp. 04-05

i. The mediator can also conduct separate or individual meetings with each of the parties. And it is also the role of the mediator to decide whether to meet separately or jointly and for that matter. he will decide and inform the time and place of the meetings and agendas to be discussed. There shall not be any procedural or formal rules and evidence required. nor there shall be any recording of the meetings.[42]

e) Each party is allowed to be represented by any person allotted by them or a business executive to settle the dispute, unless not asked by the mediator in any meeting session. Although the mediator is allowed to limit the number of representators of any party but generally, parties are allowed to be represented by more than one person.[43]

f) The counsel may also represent a party so as to advise them without even being present at the meeting or conferences.

g) It is mandatory for all the parties to be present in the meetings or make themselves available without wasting time of anyone[44].

h) It is not allowed to the mediator to transfer any information received by any of the parties without being ordered by the court or the competent authority or without being authorized by the party to transfer it. The parties are not allowed to pursue the court during the process of mediation and for a certain period of time unless agreed by both the parties.

i) The mediator is not allowed to participate in any court hearing, whether it be as a witness or an expert in any investigation or proceeding related to the mediation's subject, but it can be possible if both the parties and the mediator may agree to it in written.

---

[42] Herbom, Lota and Pater Wallansten. 2007-08. Armed Conflicts, 1988–2006. Journals of Peace Research 44-45 (5): 622–635

[43]Robart J. J.Niamic, Dona Stianstra, Randell E. Revitz (2001-02), Guide to the Judicial Management of Cases in ADR, Federal Judicial Center p. 127-131, and CEDR. http://www.cedrsolves.com/index.php?/location=/disputes_resolution_ services/mediation.htm

[44] Haree, Pauls. 1998- Angola's Last Best Chance for Peace, An Insider's Account of the Peace Processes. Washington: US Institute of Peace Press.

j) Similarly, unless both the mediator and parties agree in written, the mediator is also not allowed to be an arbitrator in any case of arbitration[45].

k) An advise may also be obtained from an expert by the mediator if it is needed, at the expense of the party but it is also required that the third party or the advise expert shall be asked of any situation he knows so as to check his unbiasness.

l) The CPR and the mediator are not responsible for any act in relevance with the mediation, unless a willfull misconduct is done by it/him/her.[46]

m) It is also possible that the mediator withdraws from mediation but under certain circumstances listed below and after giving a prior written notice to all parties concerned.

I. If personal and crucial reasons are there

II. If there is not any benevolent intent or good faith involved by any party and the mediator feels it so.

III. If , according to the mediator, further proceedings are fruitless. A mediator may also withdraw without considering it necessary to mention the reason for it.[47]

3) EXCHANGE OF INFORMATIONS

If a party considers it necessary to have some documents or discoveries in the custody of the other party for the settlement of disputes, they may agree to do so. If the parties do not agree to it, the mediators advise or consultation may be asked for by any party so as to assist them in reaching out a solution[48]. Parties may also ask individuals to attend joint sessions for evidence and documents and for that purpose they are required to send copies of those persons to the mediator with their names and designations clearly mentioned and also exchange a copy in

---

[45] Sweet & Maxwell "*Commercial Litigation: Jurisdictional Comparisons*"Hardcover Gover Publisher, 2011

[46]Goldbarg, S. B., Frenke E.A.A Sandar, et al. (2001-04 4th.ed). Disputes Resolutions; Negotiations, Mediations, and Other Processes. NY.Aspan Laws & Business., pp. 9-10

[47]Mediations Commentery as the part of the CPR Mediation Procedure at www.cpradrs.org/ along with the CPR Mediation Analysis Screens (2000-01) and other useful ADR resources/.

[48] Adkins, G.G, & Celdwall, D. (2000-04). Firms or sub-group culture: How does fittings are in the matter most. Journals of the Organizational Behavior, 20-25.

between the parties. After settling the disputes. those documents containing evidences shall not be retained by the parties but returned to the parties concerned.[49]

4) PRESENTATION TO THE MEDIATOR

Before actually coming to the conflict. certain preliminary matters will be discussed by the parties and the mediator for example. time and place at which meeting shall be held. procedural aspects and any modifications. documents and evidences to be kept in another's possession. A summary in written form shall be submitted by the parties. clearly identifying the disputes atleast 10 working days prior to the first session or if agreed otherwise, also mentioning the efforts that occurred during conflict phase or any other information or documents that may be considered by the parties to be helpful for settling out the issues. The summary must also include any legal risks of the matter and the party's interests. the mediator may also ask them to further clarify the matter if needed, the documents needed shall also be attached with the summary for reference.[50] Parties may also state about the documents that are exchanged between the party containing facts and figures to which the mediator shall confirm by asking both parties to send a joint statement containing facts. It is also the responsibility of the mediator to keep the documents submitted confidential unless being authorized by the parties to disclose[51]. Similarly. the other party shall not be allowed to have a look at the documents received by the party, not even to the representatives without being authorized to do so. The mediator shall also return all the documents to the parties concerned after settling the dispute successfully without retaining the copies of information.[52]

5) NEGOTIATIONS

---

[49]Robert J. J. Niamic, Donaa Stenstra. Ren-dall E. Revitz (2000-01). Judicial Management of Cases in the ADR, FJJ /Center pp. 127-131, and CEDR. http://www.cedrsolves.com/index.php-?location=/disputes_resolutions_ services/mediations.htm/

[50] Ibid

[51] Wiigh, K.K. (1996-97). Knowledge management. An introduction and perspectives. The Journal of Knowledge Management. 1(1), pp. 5-16

[52]"ADR – when it works, when it doesn't". PRAM note.WBB 2005, Richerd Mesick. with subsequent changes by L. L. Rozdeizer. and Alejendro Alverez de ea Campa.

It is the core role of the mediator to settle the disputes or come to the mutual terms by keeping in view the underlying interests of both the parties. without hurting anyone unnecessarily and for that purpose he may hold joint or individual sessions with the parties. as needed. Cooperation is required by both parties by actually providing proposals for settlement and the rationale behind those proposals.[53]If the parties failed to send any proposal and the reason behind it. the mediator, as a final option, may send a settlement proposal to the parties himself with the mutual consent of the parties or he/she may send an evaluation to the parties, if he/she is qualified to do so (may be in writing. if agreed) under any applicable rules of court[54]. After that, the mediator may conduct a session for further discussion whether his proposals may reach a resolution.[55]

Endeavors in reaching out a solution will be carried on until or unless:

(a) a written agreement is agreed upon. or

(b) it is considered to be fruitless by the mediator to further proceed. or

(c) if any party withdraws during the process. But if it's a multi mediation case, the other parties may continue the process until reaching a solution.[56].

6) **SETTLEMENT**

When both parties reach out a solution. a MOU shall be signed soon after it. The mediator shall prepare the document containing settlement terms , if not so, the representatives shall draft a written agreement which is to be duly signed by the parties before getting separated. That written document or draft will be send to all the parties involved, modified if necessary. If the case is

[53] Kalaus J.J Hapt, Felex Stafek "*Mediations: Principles and the Regulation in Comparative Perspectives*" Oxford University Press, 2011-12

[54] Zacks, M. (1997-98), "Developing an ADR knowledge strategy", Californias Management Review, 41(3), pp. 124-25-46

[55]Extracts from "ADR – when it works. when it doesn't". PREMs notes,WBB 2005.

[56] Christians Bühring-Uhlee, Larss Kirichhoff, Gabbriele Scherer "*Arbitrations and Mediations in International the Business*" Klawer Laws International. 2005-06

already pending in the court. the parties may ask the court to stop it by providing the agreement. the parties may also ask the court to act as a consent judgement in the agreement[57].

7) **FAILURE TO AGREE**

If the parties do not reach a conclusion. the mediator may have a discussion with the parties to agree on advisory or go into the arbitration or any other form of it whether "last offer" or any type of ADR. If they agree to it. the mediator may help them in building a process that results in more reasonable way and economical as well but the mediator shall not be an arbitrator unless agreed by all.[58]

8) **CONFIDENTIALITY**

The best part of the mediation process is that it is confidential. Any information provided by the parties. any text or content (oral) results or the agreement shall not be revealed to any person who is not related to the participants not even with the judicial officer. If court case is pending. parties. in order to manage the litigation process. may discuss the case of mediation to the court. A written agreement that results from the case of mediation can be disclosed by reasons of enforcement[59].

Under this CPR procedure. the whole procedure is considered as a negotiation subject all state and "Federal Rule of Evidence" alongwith all the statute that saves the privacy of this mediation process. Everything done during the process, all the conducts and promises, agreements, statements, documents made and produced by the parties or their representatives, whether it be attornies or executives are all private and confidential.[60] These promises and documents, agreements are not and must not be discoverable by the anyone for any puspose. But, the

[57] Brokmaire, D.D & Sistunk, F.F 1980-81. The Effects of Perceived Ability and Impartiality of Mediators and Time Pressure on Negotiation, Jornal of Conflicts Resolutions 5-6.2,23-24:247-327

[58] "ADR _ when it works, when it doesn't", PREM note,WBB 2004-05, Richerd Massick, with subsequent change by L.L Razdeizer, and Alajandro Alverez da le Campa.

[59] Felgar, J.J. & Bash, R. R 1993-94 The Promises of the Mediation: Responding to the Conflicts Through Empowerment and Recognition. Josey-Basse, Sane Franciscoo, USA.

[60] Hofmen, F. D. 1996-97. Tools of the Trade: A Manual for the Settlements Oriented Mediator. Harvard Laws Reviews. Spring.

evidence which can be regarded as discoverable cannot be considered as non discoverable just because of its presentation during the mediation process.[61]

It is the core duty of the mediator not to open the documents in any action. investigation or proceeding and the parties shall also discourage to open it. And if any party compels the mediator to do so, it is the duty of the mediator to advise the party and discourage them on this request.[62]

[61]Eribe,N.D.D (2005-06)."Appreciating Mediation's Global Role in Promoting Good Governances. ." Harvard egotiations Laws Review 11-12 (Spring).;Transparency International, http://www.transparency.org

[62]"Civil Procedure Rule, International Institute for Conflicts Preventions & Resolutions, Thomas J. J. Stepanawich. President." Last accessed, 18 January, 2016 www.cpradr.org/sdd/-

CHAPTER NO.2

COMMERCIAL MEDIATION AS AN ALTERNATIVE OF COMMERCIAL LITIGATION

2.1 INTRODUCTION: COMMERCIAL MEDIATION

In the routined commercial tasks. conflicts and disagreements are some times unavoidable. A technique which is utilized for solving out problems or conflicts related to commercial is known as Commercial mediation. related to contracts. rights. land. opportunities or materials. In this mediation process. generally there are six stages involved. Both parties involved in the settlement process must agree to mediation willingly and also to the agreement once it is signed. Since mediation is a voluntary process. the parties must agree that their dispute will be conducted under the rules set for mediation by the regulating authority such as the American Arbitration Association in the United States and Alternative Dispute Resolution in Pakistar..[63]

Mediation itself is a meeting held with the disputants. their representatives. and a mediator to discuss settlement. There is an important role played by the mediator who listens to the issues of the parties. assess their demands, give them options and finally settle down the issue. He gives different options and recommendations that others have not pointed out and the amicably solve the issues mutually agreed by all.[64] Mediation is a simple and easy process as the meeting can be convened according to the suitability of the parties moreover there is also short time needed for the preparation. Mostly the meeting starts by discussing the matter in presence of the parties, followed by the mediator engaging with the disputants both together and individually in order to reach a resolution. Many cases are resolved within a couple of hours.[65]

---

[63] A.A.A, 'Drafting of the Disputes-Resolution-Clauses' (Oct 2013)
[64] Cyril- Chern *"The Commercial Mediator's Handbook"* C.R.C Press/- 2014
[65] 'ibid'

A lawyer with expertise and training in mediation especially commercial relevant can act as a mediator most of the times who is well versed in legal issues and a positive attitude of reaching solutions by listening to the issues. This ADR process for resolving commercial issues is considered to be the best way not only due to its informal way of settling disputes. but also because it is less costly as compared to civil litigation.[66]

2.2 HOW DOES MEDIATION DIFFER FROM OTHER MODES OF ADR

Arbitration is a less formal process compared to litigation. Similarly. comparing it to arbitration. mediation is a more informal process because contrary to the arbitrator. a mediator cannot impose his decision over anyone. The other difference is that a mediator convene different informal sessions with the participants to listen to the issues. and reaching out a conclusion and for that purpose even separate meetings are conducted called as caucuses. An arbitrator on the other hand, hears testimonies in presence of all and announce a final decision based on evidences.[67]

A simple and straight result is the main objective of the mediator to attain as an outcome of different sessions.[68] The mediator can then selectively use the information received from each side to:

- Decrease the hostility between the parties and assist them in engaging in a meaningful discussion about some of the issues at hand;
- Open discussions into areas previously overlooked;
- Communicate the positions or proposals in an understandable manner or under more agreeable terms;
- Uncover additional facts along with the actual interests of the parties;

[66] Asharst, 'Commercial Mediations' Corpas under the Constitutional Laws' (June 2009-10)
[67] A.A.A. 'Drafting and the Dispute Resolution_Clauses' (Oct 2013)
[68] A. J. J. van den Barg *"New Horizons in the International Commercial Arbitration& Beyond"* Kluwer Law - International publishers, 2005

- Help each party have a better understanding of the other party's view and interpretation of the exact issue, without breaching the confidence of either party;
- Narrow down the issues and reduce unreasonable demands;
- Gauge the receptiveness of each party for a proposal or suggestion;
- Explore alternate solutions;
- Identify what is most important and what is expendable;
- Prevent regression; and lastly,
- Structure a settlement to resolve current issues along with the future needs of the parties.[69]

ADR stands for alternative dispute resolution and refers to alternatives to the established and traditional method of dispute resolution in the form of litigation. The need for an alternative to litigation is becoming increasingly popular, primarily because of time and cost considerations but also because it helps to avoid the adversarial process, which leaves wounds and destroys relationships. Mediation is the assisted negotiation, where the very presence of a professional mediator changes the underlying dynamic of the negotiating process. Its distinctive feature is that parties have ultimate control over settling their dispute. Mediation could therefore be defined as one of the ADR processes that assist the people in resolving problems in a non binding way.[70]

Looking back at mid-2005, when IFC PEP-MENA began to engage Pakistani authorities to introduce courtreferred mediation, the ongoing ADR project has come a long way: professional mediators have been trained and certified, a mediation center has been established in Karachi, a high-level Advisory Board is driving the process, pilot courts now apply case management to select mediation candidates, and – most important – private parties are beginning to use

[69] 'ibid'
[70]Model Rule for the Lawyers as the Third Neutral Party_International Institute- for the Conflict Prevention and the Resolution (Civil Procedre Rule) http://www.cpradrs.org..

mediation to settle their disputes. But getting there was not all that simple. Building partnerships and securing "alliances" A huge backlog of cases and inadequate resources within the judiciary to tackle the problem made the government and the judiciary look for innovative ways to find a solution. And when IFC PEP-MENA offered to introduce court referred mediation for commercial cases, it found willing partners. This started with an international conference, organized by IFC, in August 2005 that introduced the experience of similar initiatives in the UK, India, and Uganda. This unique interaction gave local judicial and government officers a first-hand account of the benefits of mediation and the steps required to introduce it in the local civil justice system. Some key champions were identified and were kept in the loop as the project was being designed.[71]

2.3. TYPES OF DIPUTES RESOLVED THROUGH MEDIATION

All sorts of civil disputes may be resolved through mediation. The types of conflicts brought to mediations have varied in terms of the kind of industries and businesses that have used this process. Just about any nature of dispute that parties want resolved quickly and inexpensively can be dealt through commercial mediation.[72]

2.4. OCCURANCE:

There are a number of way where mediation can come up. To start with, mediation can happen when question emerges at first and under the watchful eye of a claim is being documented. Mediation can also happen as an extra system to pending suit. Implying that when the gatherings have recorded a claim, they can utilize mediation trying to determine the question toward the start of suit or anytime from there on, yet before a trial being held. Third, intercession can happen amid or instantly after a trial, but this should be prior to a choice is declared by jury. The

[71] Model Law on ConciliationS and MediationS, from the United Nations- Commission on International Trade Law (UNCITRAL): http://www.uncitral..org/uncitral/en/uncitral_texts/arbitration.html

[72] AAA, 'Drafting Dispute_Resolution_Clauses of ADR' (Oct 2013)

last and Fourth point is. mediation can happen once a decision has been followed up on in case. There may be a contradiction over the significance or way of execution of decision. or worry about the likelihood of continuous court claims. The gatherings can look for the assistance of a mediator to help them settle their conflicts.[73]

2.5. QUALIFICATIONS OF A MEDIATOR

As far as the qualification of a mediator is concerned. they are professional experts. having expertise in their area or in business for example. judges and attorneys who have undergone an additional training program in commercial mediation skills. And only highly respected and experienced individuals are chosen to be mediators.[74]

2.6. SCHEDULING A MEDIATION

Once the parties to the dispute have agreed to the mediation process. it can begin on the first mutually available date. However. the parties may. depending upon the circumstances of their case, agree to have their mediation set for an earlier or later date.[75]

2.7. STAGES OF MEDIATION

2.7.1 Step one: An agreement to mediate

The rules for mediation are formed by the Alternative Dispute Resolution in Pakistan and the Association of American Arbitration so it is very much explicit for the parties that their conflict will be resolved in light of these rules. This may be accomplished through several ways[76].

a) Request for mediation through a mediation clause as part of a contract

Positively, the parties can also include a clause in their final agreement for future reference, if another dispute arises, which is:

---

[73] AAA, 'Drafting_Dispute_Resolution_Clauses' (Oct 2013)
[74] 'ibid'
[75] 'ibid'
[76] A. J. van den Berg *"New Horizons in International_Commercial_Arbitration and Beyond"*Kluwer Law International publishers, 2005

"If a dispute arises out of or relates to this contract or the breach thereof and if the dispute cannot be settled through negotiation. the parties agree first to try in good faith to settle the dispute by mediation administered under its Commercial Mediation Procedures before resorting to arbitration. litigation. or some other dispute resolution procedure".[77]

The mediation clause may also mention the qualifications of the mediator. the method of payment. the locale of meetings. and any area of concern to the parties. When the Request for Mediation is filed by a party. the clause apropos to which the conflict has taken place. its copy must be forwarded by the requesting party[78].

b) SUBMISSION TO MEDIATION

A form can be submitted by the parties related to the existing conflict which is carried forward by them or their representatives. in case when an advance have not been given.[79]

2.7.2 Step 2: **SELECTION OF THE MEDIATOR**

After the Request for Mediation or the Submission to Dispute Resolution has been received. a qualified mediator will be appointed to take a look at and handle the case. In addition to this. it is very much important that the parties have confidence on the selected mediator who can be replaced if any party does not agree.[80]

2.7.3 Step 3: **PREPARATION FOR THE MEDIATION SESSION**

To preparation required for setting up a mediation session will involve the following:

- To define and analyze the issues that lead to the dispute;

---

[77]AAA, 'A Guide to the Commercial_Mediation and Arbitration for the Intellectual Business People' (Oct 2013)
[78] A. J. J. van den Berg *"New Horizons in International_Commercia_ Arbitration and Beyond"*Kluwer Law International publishers. 2005
[79] AAA, 'Drafting _ Dispute_ Resolution_ Clauses' (Oct 2013)
[80]Erbea.N.D.D (2006)."Appreciating Mediation's_Global Role in Promoting. Good Governance. ." Harverd Negotiations Laws Review (Spring).;Transparency_International. http://www.trans-parency.org

- To recognize the parameters of the situation at hand. Such as what can be realistically expected, constraints on time, available resources, legal consequences and commercial practices etc.:
- To identify the needs and interests of the parties in settling the dispute;
- To prioritize the issues as per the party's needs;
- To determine the course of action, position, and tradeoffs and explore a variety scenarios for resolving the dispute;
- To seek to make the proposals made by the parties reasonable and legitimate;
- To identify the weak and strong points of the matter
- To come up with all the documents and facts necessary in support of the claim
- To recognize what other party needs and expects as a conclusion by keeping in mind the facts as well.
- To recognize each party's interests
- To build up a party's technique by listening to their issues carefully, meanwhile also evaluating the position of the other party .[81]

2.8. THE MEDIATION CONFERENCE

It is necessary that the parties participate in the mediation session with full preparation and necessary documents they expect will be required for supporting their claim.[82]

2.8.1 SETTLEMENT

If a case is settled peacefully and agreeably, that decision will be written down in a agreement duly signed by the parties. Otherwise, the parties may request for arbitration under Arbitration rules or any other method.[83]

---

[81] 'ibid'
[82]Erbee,N.D.D (2005-06)."Appreciating_Mediation's _Global Role in Promoting, Good Governance. ." Harvard Negotiation Law Review (Spring).;Transparency International. http://www.transparencys.org
[83] 'ibid'

2.8.2 COST OF THE MEDIATION

A mediator may charge the parties according to his/her hourly rate. Typically, the expenditure involved in mediation is borne equally by the parties. The parties may however, adjust this arrangement by agreement.[84]

Before the commencement of the mediation, an estimation of the anticipated total expenses will first be made. Then each party to the dispute will pay their portion of that amount as per the agreed upon arrangement. After the mediation has terminated, the accounts will be reviewed once more and any unexpended balance to the parties will be returned.[85]

2.9 Growth of Mediation in Commercial Disputes:

Mediation is considered to be the most favorable ADR process for resolution of all commercial conflicts including internal and worldwide affairs. In a span of 20 years. it has gained more popularity and its effective utilization has been increased. The development of mediation locally in different wards has regularly been driven by changes in justice system particularly civil. searching for less expensive and snappier contrasting options to suit. and has driven in a few occasions to presentation of court-added plans. While by far most of mediations that occur are yet internal,an expanding pattern to utilize the procedure to determine worldwide question is still there. This development is driven to some degree by the enactment of European Union, mentioned in EU Directive 2008/52/EC (the Directive). Preface (6) gives a valuable depiction with reference to mediation and its favorable circumstances, mentioned as below:

> *"Mediation can provide a cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and*

[84] Ashursts, 'Commercial_Mediation' Corpus. under -Constitutional Law' (June 2009-10)
[85] 'ibid'

are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements".[86]

Article 3(a) of the Directive provides a useful definition of mediation as follows:

"Mediation' means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State."[87]

While the Directive is said to apply to cross-outskirt question in common and business matters. a few EU part countries have taken a step forward and sanctioned enactment that additionally caters for residential mediations. Basically every EU nation has executed the Directive in an unexpected way. So in some EU nations mediation is absolutely intentional. but in Italy, for instance, the action is being taken towards obligatory mediation.legal counselors can only be the mediator in few countries.no such confinements apply in other states .These distinctions aside, the Directive has without a doubt given a help to mediation, however its improvement and the learning, particularly in Europe, stays sketchy and fluctuates from locale to ward. For instance, in Wales, England and Netherlands, the utilization of mediation is across the board and the procedure is broadly comprehended by legal counselors and business group, yet this is not the situation in nations, for example, Portugal and Greece and Portugal, where mediation's concept is still naive and ineffectively caught on.

---

[86]Otiss. L.L and E. H. H Reitr. (2005-06)."Mediation by the Judges: A new Phenomenon-in the Transformation of Justice." Pepperdine-Dispute Resolution-Law-Journal 5-6: 351

[87]Erebe.N.D.D (2006)."Appreciating Mediation's_Global Role in Promoting_Good Governance. ." Harvards Negotiation_Law Review (Spring).:Transparency- International, http://www.transparency.org//_123

In order to diminish this uniqueness in comprehension. the Union of International Asssociation (UIA) built up in 2001. the World Forum of Mediation Centers. that unites at general interims the most imperative business mediation and ADR bases from on the world to offer an open door for a trade of perspectives on the advancement of mediation. A standout amongst the most fascinating parts of the forum discussion is looking at the contrasts amongst internal and universal mediations. By their exceptionally nature. universal mediations pave the way for many-sided quality of culturally diverse and phonetic issues. which are normally missing in simply local mediations.

Sadly with a few mediations. especially those that are intensely managed. mediator frequently has no or little contact with the gatherings or their attorneys. before the whole mediation session. Along these lines there is much to be said for either having impromptu mediation or composing into the question settlement condition in the agreement. a mediation foundation or an arrangement of mediation decides that empower the mediation to be managed with a "light touch. for example. the International Chamber of Commerce (ICC) Amicable Dispute Resolution Rules. This gives him a chance to hold most extreme adaptability and tailor the procedure to the particular needs of the debate and the desires of concerned parties.[88]

It is likewise critical for the gatherings and their legal advisors to attempt and designate mediator of their decision, as opposed to having an mediator selected by a foundation of some depiction, as is now and again the case in universal interventions. By and by, this is simpler said than done on the grounds that when gatherings are in question they can once in a while concur on anything, at the same time, in any case, in view of the intrinsic advantages of doing as such, every exertion ought to be made. Systems can be utilized for decreasing antagonistic dispositions, for example, the gatherings planning, trading and positioning arrangements of potential mediators. Explore by

[88]Grilleo,T. e(1991-92)."The Mediation Alternatives: Process Dangers - for Women."Yalee L.J.j 100.

the UIA World Forum of Mediation Centers hosts exhibited that gatherings and their legal advisors feel more great in selecting mediator having mediation mastery and experience as well as has general topic ability.[89] This empowers the picked up mediator to talk and comprehend an indistinguishable specialized dialect from the gatherings. to help. if important. in the alternative era period of the mediation and empowers the middle person to reality test the different settlement choices being considered by the gatherings. It is infrequently important for a mediator to have particular ability on the issue that might be at the heart of the question however in the event that exceedingly specific information is required. this can simply be brought into the mediation procedure by gathering or mediator designated specialists.[90]

Without a doubt more difficulties to undergo in universal mediations are there. when contrasted with internal mediations. narrative proof will recommend that worldwide mediations. directed by an equipped and professional mediator appreciate roughly a similar settlement achievement rate of around 80 for every penny. Of course. there is no certainity of mediation solving all disputes but yet again. as there are high chances involved that the dispute will be resolved. this method is considered more appropriate. Mediation progressively shapes multi-layered question determination procedure and is regularly utilized before depending on global arbitration. Significantly, in mediation, parties are having full control over their decisions and the outcomes of the settlement. which caters their business and commercial needs while also keeping up business relationships.[91]

2.10 **Limitations**

There are some particular cases where mediation does not work, for instance:

[89] Prathimaa R. R Apaji, "Arbitral Immunity: Justifications and Scope in Arbitration- Institutions", *Indian Journal of Arbitration Laws*, Vol I-II (September 2012)
[90]UIA_World_Forum_of Mediation-Centres
[91] The growth of international mediation - in commercial disputes, Coline L.L Wall. September 2011, http://whos-wholegal.com//news/features/articles/292114/growths_international_mediation_commercial_disputes

- Where a quicker solution is required like court injunction;
- When parties wish their cases to be listened to infront of all;
- When parties can solve their problems on their own by communicating directly;
- When it is obvious that a party just wants to delay the matter.[92]

2.10 What are the practical issues?

Although mediation is an issue settlement procedure but in it, there are certain issues to be kept in mind by the parties when choosing it. It is better to make mediation a part of the contract when agreement is made so that mediation can be automatically preferred in solving out any issue and by the parties as well. But timing can be an obstacle while doing this agreement as it is too early for a deal in a conflict that just started.

Right time for mediation:

Once a conflict has taken place, one may choose to mediate any time , also if the case is already in litigation, then the judge can postpone it till a decision is taken through mediation. But it is recommended to take it earlier to mediation in the view that it saves time and money of the persons involved. However, those parties who come to mediation late, do know about the weaknesses and strengths of their case well as they have gone through the process and also the cost involved in litigation. But, procedural rules of Mediation with respect to Commercial issues suggest that it can be chosen at any time during the dispute.[93]

2.11.1 **Choosing the right mediator**

[92]Robert J.J Niamic, Dona Stiensstra, Rendall E. Revitz (2000-01), Guide to Judicial Management of Cases- in ADR, Federal-Judicial Centar pp. 128-130.
[93]Kerl Mackiee and Eilaen Caeroll,"International-Mediation: the Art of Business-Diplomacy", 2006.

This is very crucuial. as there are lawyers. retired judges and professional business executives who can give services because it is not mandatory to have legal training on their part. Mediators can be selected by the parties themselves or the service providers in mediation may give them the services of selecting one as they list of qualified and expert mediators. Contractual mediation clause can also assist in finding out a mediator. But somebody must not only be hired as a mediator as per his seniority only as some other areas and qualities must also be preferred like the ability to reach out a solution. undertaking different circumstances. indepth technical knowhow etc. It is however prefereable to choose someone with the other party's opinion as per any past experiences or if it doesn't work then taking services of a service provider may also be an option.[94]

Can a judge or arbitrator act as mediator?

There are some cases where the case is already been processed in litigation or arbitration. a judge/arbitrator can therefore be a mediator in this instance as being familiarized with the case. But this is not strongly recommended as in an example. where the parties have again got into the conflict even after the agreement, the judge's neutrality is possibly weakened. Therefore it is not recommended to appoint judge / arbitrator as mediator.[95]

2.11.2 Who should attend?

The conferences or the sessions in mediation is attended commonly by the parties and their representative. Experts and barristers mostly do not attend the sessions. That representative is required to have full authority to conciliate and make an agreement. Sometimes, the parties also. in order to get a more favorable decision, try to involve the representative. Apart from the

[94] Ibid
[95] Sussan D.D Franck, "The Liability of International- Arbitrators: A Comparative. Analysis and Proposal for the Qualified- Immunity", *NY - Laws-School- Journal of International and Comparative Laws*, Vol. 20, (2000-01)

individuals, group or parent companies can also attend on in support of their parties. An insurer company or its representative may also attend the session if requested by the party to get their issues resolved infront of them.[96]

2.11.3 **Preparation for Negotiation**

In order to have a successful conflict settlement, preparation for negotiation is very important as parties must know about their chances of success and also the risks involved. In this way, they will be able to realize their options better and how to negotiate for that. Knowing options is very crucial, as without it, you cannot reach a better conclusion or conciliate with anyone. Another area to be kept in mind is tax, a conflict resolution may have some tax consequences and for that a tax adviser may be consulted in advance.

2.12 Is it necessary to Mediate?

Its answer depends on the type of dispute and the conflict resolving clause in contract. As if there is a provision in the contract as in English Law, that the reason behind choosing mediation is only to reach a fair and peaceful conclusion before going to the court then it can be agreed.

Notwithstanding, taking after the English High Court judgment in Cable and Wireless Vs IBM UK, gave the statement is adequately clear regarding what the gatherings need to do, for instance, by naming a particular ADR system, it will be held to be adequately sure and in this manner enforceable. Different purviews have adopted a comparative strategy, despite the fact that there are contrasts and particular exhortation must be taken about individual locales with regards to the state of mind of the courts to mediation conditions. On the off chance that enforceable, the courts may arrange any procedures to be remained pending mediation. On the

[96]Scott-Browns, Christene Carvanak, and Devid Feirmen "Alternative -Dispute -Resolution -Practitioners Guide", March 1998-99

off chance that the question is to be refereed it might well be that a judge won't have ward to decide the debate until the mediation procedure is being experienced.

Where there is a break of mediation proviso. and a stay of procedures. gatherings might be qualified for particular execution and additionally harms. In the English courts. the court rules urge the gatherings to consider ADR at various phases of the prosecution procedure and a refusal to intercede or consider mediation could bring about costs sanctions. While the English courts can't urge gatherings to intervene, their demeanor towards mediation implies that gatherings ought to think deliberately before choosing not to intercede. In assertion there is no such "support" to intercede and the onus is on the gatherings to consider and construct mediation.[97] In Europe, the European Mediation Directive implies that those contesting in Member States' courts will never again have the capacity to overlook mediation. The Directive is a piece of an exertion at the European level to advance and control the improvement of mediation. The Directive identifies with cross fringe debate in common or business matters and Member States had until May 21, 2011 in which to execute its terms. While the Directive just applies to cross outskirt question some Member States have embraced its arrangements in connection to absolutely local debate. Important provisions are discussed below:

- It is necessary for the states to support for training programmes in area of mediation so that quality mediation is provided to all.

- Judges can also ask for mediation to the parties, as and when necessary.

- The solutions attained by mediation can have same legal authority as of the decisions of the court.

[97] Mauren -A. Waston, "Re-examining –Arbitral- Immunity in an Age of Mandatory and-Professional-Arbitration", *Minnisotas- Laws- Reviews*, vol.88-89, (2002-2004).

- The documents or evidences used in mediation by the parties cannot be produced in the court afterwards for any case nor the mediator will be forced to produce or present it.

- Mediation process is not time barred which means that it can be referred to whenever considered necessary.[98]

2.13 CONCLUSION

Over the last 10 years, mediation has become one of the most popular alternatives for resolving civil disputes in Pakistan through Alternative Dispute Resolution (ADR). Numerous lawyers, insurance companies, risk managers and legal departments now use mediation on a regular basis to help resolve claims and litigation as swiftly and efficiently as possible. Countless disputes are now successfully mediated each year in a wide variety of legal areas across Pakistan. Apart from commercial and business disputes, mediation has also been successfully used for tort claims, issues related to construction, employment, environment, products, insurance, partnership, real-estate, securities and internal matters. That said, mediation will continue to flourish as a promising and successful form of ADR.

[98]Asharst-Quick-guides, commercial, mediation, www.ashurst.com///123

CHAPTER NO. 3

COMPARATIVE ANALYSIS OF COMMERCIAL MEDIATION AND COMMERCIAL LITIGATION

I. England (UK)

II. United States of America (USA)

III. Canada

3.1 UK MEDIATION PRACTICES

3.1.1 MEDIATION IN UK

Mediation is well-recognised in the UK as an accepted form of ADR. Those people having their cases submitted for litigation are forced to think about the alternate ways for settling down the disputes and the courts also support them to mediate. When considering the implementation of the EU Directive, the Ministry of Justice considered that law and practice in England and Wales already complied in large part with the Directive's provision, but that additional legislation was needed to bring particular aspects into force[99]. The Cross-Border Mediation (EU Directive) Regulations 2011 had executed them, which came into effect on May 20, 2011, and amendmentsto Part 78 of the Civil Procedure Rules[100]. The provisions only apply to cross-border mediations as it has been decided by the Justice Ministry that the clauses of Directive must not be spread to UK internal mediations.[101]

[99] Case 2222/84 Johnstan-v. Chief Constables of the Royal- Ulster Constabularies 1986] ECRR-1651.
[100] Green-Paper on ADR (Alternative Dispute Resolution) in civil & commercial -matters COM/2002/016 Final at 1.2 (5). Available at http://eurlex-europa.eu//.
[101] Cross Border Mediation-EU Directives-Regulations 2010-11

3.1.2 MEDIATION CONDUCTANCE

Parties may appoint their mediator out of their own choice or he/she can be elected through an advisory service, like the ADR Group or Centre for Effective Dispute Resolution ("CEDR"). Direct party appointment is increasingly used. Parties do not need to be legally represented, although lawyers usually attend on commercial disputes to advise and assist with the presentation of their client's case[102]. While the mediation process is intended to be flxible, a format has developed which is often adopted in practice. Following an initial plenary session, the parties separate and the mediator will shuttle between them, assisting them, if possible, to reach a mutually acceptable position. Mediations are usually scheduled to last one day. There are no audited fiures but it is understood that the settlement rate is 50 – 75%.[103]

3.1.3 OBLIGATION ON LITIGANTS TO MEDIATE

Subject to any pre-existing contractual arrangement between parties to mediate a dispute, there is no obligation on litigants to mediate commercial disputes. However, under the Solicitors Code of Conductmlawyers are required to advise clients of the option to mediate and its applicability to the dispute in question. Moreover, courts also support the method of mediation: as there is a questionnaire to be duly filled by the parties before taking their case to the court containing confirmation that their attornies or the lawyers have given them all the other ADR options as well. Further, court may also stop processing the case giving some time to the parties to consider mediation, and where parties have not accepted to mediate without any solid reason then court may also put cost sanctions upon them. However, the Court of Appeal held in

[102] Reports by the- Access to Justice-Taskforce —A Strategic- Framework for Access to Justice- in the Federal Civil Justice System (Department of the - Attorney General of Australia, 2009). Available at www.ag.gov.au///-1246
[103]Centre for Effective-Dispute- Resolution ("CEDR") or the Alternative Diispute resolution (ADR) Groups

2004 also stated that the right of the parties for a just trial can be distorted as in Article 6 of European Convention on Human Rights, if they are forced to mediate.[104]

3.1.4 COURT POWERS TO SUPPORT A MEDIATION

Where the parties have previously agreed in a contract that they will mediate a dispute before commencing litigation, it is likey that the court postpones its proceedings with relevance to the case. But, in an instance where such agreement is not present, although the parties cannot be forced by the court to mediate a commercial dispute, they increasingly consider "orders to mediate" requiring the parties to attempt mediation. A party that ignores such an order will almost certainly face cost sanctions[105]. The basis for such orders is the overriding objective in the Civil Procedure Rules to deal with matters justly and proportionately. Specifi court guides and an increasing body of case law emphasise the need for ADR, particularly mediation to be considered as a method of resolving a dispute. All pre-action protocols, which are procedural rules setting out the obligations on parties before proceedings are formally commenced, include standard wording requiring the parties to consider whether ADR is appropriate. Civil Procedure Rules 1.4 also explicitly states that the courts should engage in active case management which will include "encouraging parties to use an alternative dispute procedure if the court considers that appropriate", whilst Civil Procedure Rules 26.4 allows parties, when completing the Allocation Questionnaire, to request a stay of proceedings to attempt to settle their dispute[106].

3.1.5 FAILURE TO MEDIATE ATTRACT ADVERSE COSTS CONSEQUENCES

Failure suffiiently to consider ADR may result in a court imposing adverse costs orders on one

[104]Article-6 of the European-Convention-on Human-Rights

[105] Intellectual Discussion Paper for the Inquiry into ADR (Alternative Dispute Resolution)/Victoria Parliament Law Reform Committee, September 2006-07). Available at: http://texs.parliament.vicc.gov.auu/lawreforms/enquiries/ADR-/Discussion_paper.pdf876.

[106]Scott Brawn, Christine-Carvanak, and David-Fairman "ADR (Alternative Dispute Resolution)-Practitioners Guide", March 1998.

or more of the parties to litigation. The burden will usually be on the unsuccessful party at trial to justify why a costs sanction should be imposed on the successful party for failure to consider ADR. In the UK, the successful party to litigation is usually entitled to claim reimbursement of a proportion of its costs from the unsuccessful party[107]. The courts have been willing to impose costs sanctions where refusal to engage in ADR was deemed unreasonable, taking into account factors such as the apparent strength of a party's case[108].

SYSTEM OF ACCREDITATION AND/OR REGULATORY BODY FOR MEDIATORS

At present there isnt any controlling body for mediation nor is there any statutory education necessary to go about as a mediator. Be that as it may, by and by most mediators have some type of accreditation taking after surveyed preparing by controlled bodies. While delegating a mediator, enrollment of a regarded mediation association is regularly considered, and in addition the mediator's experience in to the area of the pertinent question. The two driving mediation associations in the UK are CEDR and the ADR Group. Progressively their part is in the preparation of mediators and general instruction of the utilization of ADR, as opposed to as designating bodies[109].

3.1.6. COMMERCIAL DISPUTES & ADR:

AN ANALYSIS

I. The Commission has examined in the consultation paper, to which extent ADR, specifically, mediation and conciliation, can contribute to the resolution of commercial disputes. The Commission noted that while commercial disputes are inevitable, the way they are handled can have a profound impact on the profitability and viability of business[110]. Poorly managed conflict costs money, creates uncertainty and degrades decision quality. As one commentator

[107] Wede -Irish- Courts and ADR (Alternative Dispute Resolution): Current Issues and Future Possibilities for Mediation (2008-09) Trinity- College- Dublin -Journal of Postgraduate Research (Volume 8 at 23)
[108]Centre for Effective-Alternative Dispute Resolution (CEDR) http://www.cedr.co.uk//-231
[109] Ibid
[110] Alexender- Mobile Mediations: How _Technology is driving the globalization of A-D-R' (Australians Centres for Peace and Conflict Studies University of Queensland, 2006). Available at: www.apmec.unisa.edu.au//6786

stated that conflict is a fact of life even in the best-run organisation. It goes under many names disagreement, disharmony, dispute, difficulty or difference but the results of mismanaged conflict are the same. at best disturbance during work which is not appreciated or worse is the threat any organization has in terms of its future[111].

II. Swinging quickly to the particular sorts of suitable business question for ADR, as the Commission noted in its Consultation Paper. Ireland encountered a remarkable monetary extension amid the 1990s and the main years of this century, and it was not out of the ordinary that business question would likewise increment. Similarly, amid the current monetary down turn it has been recommended that such turbulent circumstances will mean debate and contrasts, a considerable lot of them prompting to the documenting of cases in the courts the world over. This is a period for business sound judgment. positional suit won't be approved by Board individuals or shareholders and protracted legal wars. In such a situation. legal counselors must respond suitably to customer needs through arranging prior settlements. diminished expenses and sound arrangements[112]

III. The Commission recognized in its Consultation Paper a settled favorable position that ADR procedures, for example, mediation and mollification, give a chance to parties in a business debate to consider and resolve all measurements of the question, including lawful, money related and enthusiastic viewpoints, in a private and secret environment. Business question regularly fixate on extremely touchy business points of interest which gatherings would lean toward not to have unveiled out in the open. The secrecy managed by mediation and appeasement is along these lines very appealing in settling business question. Besides, when business question emerge, the most ideal result for those included is to have the debate

[111] Lewis and Mc-Crimon "The Role of ADR Processes in the Criminal Justice System: A view from Australia'. Paper presented ALRAEESA Conferences, Tensia-Uganda, September 2004-05 at 2. Available at: http://www.justices.gov.za/12_123.

[112] Alexandars-The mediation meta models: Understanding practices around the world (Paper presented at the 4th Asia-Pacific Mediation Forums: Mediations in the Asia-Pacific: Constraints and the Challenges, Kuala-Lumpur, 16-18 June 2008) at 6-21.

settled rapidly and to keep up a working business association with the other party. Without a doubt disputes definitely emerge and when they do. business customers will need them settled and finished in a way that is speedy and as financially savvy as could reasonably be expected[113]. The fast determination of question is an immense impetus for business customers. never more intensely than lately. and mediation has been demonstrated useable in most by far of business debate, regardless of how complex a case may appear or what number of gatherings are included. In the UK. the Center for Effective Dispute Resolution (CEDR) reported that the estimation of cases interceded every year is presently roughly £5.1bn and that in 2010 the business mediation calling will have spared business around £1.4bn in squandered administration time, harmed connections, lost efficiency and lawful expenses. Besides. it reports that 89 % of business mediations are settling upon the arrival of mediation or soon after[114].

IV. In the current financial atmosphere. the potential part of ADR in the determination of corporate bankruptcies is of specific pertinence given that it has been accounted for that the quantity of bankruptcies rose by 25% in the initial three months of 2010 contrasted with a similar time a year ago. The mediation and mollification, might be suited to the determination of proper corporate bankruptcy situations where. for instance, cases may should be settled rapidly and where lenders. having officially lost cash, need to discover methods for achieving resolutions cost successfully and, indebted individuals wish to concur an adaptable reimbursement arrange for that meets their money related conditions . In the UK, the Chancery Court Guide 2009, which sets out principles by which bankruptcy cases before it are overseen, gives, for the general utilization of option debate determination, ADR, including, specifically, mediation. and makes it clear that it will allude cases to mediation

[113] Final Report for the Inquiry into ADR (Alternative Dispute Resolution) and Restorative -Justice (Victoria Parliament Law Formation-Reforms Committees, May 2009-10). Available at: www.parliaments.vic.gov.au//123
[114]Centres for the Effective Alternative Dispute Resolutions (ADR) (CEDR) http://www.cedr.co.uk/?34/

where suitable and that the gatherings' legal advisors ought to consider the utilization of ADR in all cases.[115]

V. Another developing zone for ADR in the business setting is in the determination of protected innovation question. Undoubtedly, in 1994 the World Intellectual Property Organization (WIPO) set up an assertion and mediation place for the determination of such debate. The WIPO affirms that Disputes meddle with the fruitful utilization and commercialization of IP rights. Giving intends to settling them as decently and proficiently as could reasonably be expected, without disturbing hidden business connections. is consequently an imperative test for universal IP approach. ADR has various attributes that can fill this need, and all things considered offers an imperative alternative for settling IP debate .[116]

VI. Now specifically the mediation and appeasement are look as effective ADR in the determination of business debate and how enterprises can advance the utilization of ADR inside their authoritative structure[117].

3.1.7 INTERNAL CORPORATE DISPUTE RESOLUTION STRATEGIES

The ideal time for organizations to execute systems to stay away from antagonistic impacts of a question is before any debate emerges. At the end of the day. it is great corporate administration to build up a structure to forestall and fathom developing debate that may influence an organization's notoriety and execution. As recommended by one observer, corporate administration concerns not just how a board controls or coordinates an organization and screens administration, however how chiefs oversee. Thus, a chief has an obligation of care to attempt to guarantee that there is a component to oversee question and if conflict emerges to determine it as

[115]UK, the Chancery-Court-Guides 2009-10

[116] UNCITRAL-Model Laws on the International Commercial Conciliations with Guide to the Enactment and Use 2000-02 (United Nations 2002). Available at www.uncitral.org//66he. See also Dobins —UNCITRALS Models Law on the International Commercial Conciliations: From a Topic of Possible Discussions to the Approval by the General Assemblyl (2000-02) 3 Peppip Disp Resolution L JJ 520-29.

[117]World Intellectual Property Organisation Forum of the Intellectual property Rights (WIPO)

adequately, quickly and effectively as could be allowed. Mediation. it is accepted, can turn into this administration tool[118].

In 2009, the Irish Commercial Mediation Association (ICMA) directed a study entitled. Commercial Mediation Awareness. This styudy was participated about 3.500 experts including specialists, counselors. book keepers. and development industry experts. Strikingly, 97% of those overviewed had an attention to business mediation. 71% expressed that the High Court's Commercial Court had added to their familiarity with mediation. Be that as it may, just 35% of the experts studied had prompted their customers to consider mediation and just 19% gave names of mediators to customers. This is in spite of the way that, when solicited. mediation was their favored frame from question determination over conciliation. intervention and case. Hence, it can be inferred that while there exists a wide mind fulness about business mediation in Ireland. this has not been reflected in the pragmatic take-up of business mediation preceding the beginning of business procedures. Apparently, if business elements alongside their counsels consolidated ADR procedures, for example. mediation and appeasement. into their corporate techniques the take-up of such procedures could likewise increment and could bring about an early, productive and organized determination of business question[119].

3.1.8 ADR CORPORATE PLEDGE

Progressively, worldwide organizations are holding onto ADR as a successful method for settling cross fringe contract question. The International Institute for Conflict Prevention and Resolution (IICPR) has created, the Pledge. and more than 4.000 organizations around the globe have focused on the Corporate Policy Statement on Alternatives to Litigation, including 400 of the 500 biggest firms in the United States. It is clear from this that business ADR is a wonder of

[118] Speech by Lord of the Judges_Lord Chief Justice of England and Wales_UK. at the 3rd & 4th Civil Mediation Council National Conference, London. 14 - May 2009. Available at:www.civil-mediation.org/12/hji/

[119] Keeane ADR Terminology Responses to NAD-RAC Discussion Paper (National ADR-Alternative Dispute Resolution - Advisory Council, 24th June 2005)

worldwide centrality. and is quickly turning into a quality of worldwide trade. The corporate promise expresses that for some debate there is a less costly. more powerful technique for determination than the conventional claim. Elective debate determination. ADR. methodology include community procedures which can frequently save business the high cost of suit. In acknowledgment of the previous. we subscribe to the accompanying articulations of guideline in the interest of an organization and its internal auxiliaries.[120]

In case of a business debate between our organization and another organization which has made or will then put forth a comparative expression. we are set up to investigate with that other gathering determination of the question through arrangement or ADR methods before seeking after full-scale prosecution. In the event that either party trusts that the debate is not reasonable for ADR procedures. or assuming such procedures don't deliver comes about attractive to the disputants. either gathering may continue with suit.

Moreover. more than 1.500 U.S law offices have marked the Civil Procedure Rules. Law Firm Policy Statement on Alternatives to Litigation. Law offices who subscribe to the Policy confer that to start with. fitting legal counselors in their firm will be educated about ADR. and, where proper. the mindful lawyer will talk about with the customer the accessibility of ADR systems so the customer can settle on an educated decision concerning determination of the question. In Singapore, a comparative promise called Mediate First was propelled in May 2009. There are presently a few hundred business elements in Singapore focused on this vow which obliges that to endeavor mediation to determine their business debate preceding beginning case. These vows and arrangements are models which could be joined by suitable business bodies in Ireland to

[120] Speechs by Justice Marvynn Kings at the launch of the South-African-Institute of Directors-Mediation-Centre, 28th March 2006. Available at: www.ifc.org/as-12/iu8.

urge their individuals to consider the utilization of ADR procedures. for example. mediation and mollification. to determine fitting business question[121].

3.1.9 COMMERCIAL COURT & ALTERNATIVE DISPUTE RESOLUTION (ADR)

The continuous advancement and consolation of mediation by the Commercial Court in the High Court. as critical parts of the mix of ADR into the common equity frame work. This Court has had a sensational effect on common and business debate determination hone in Ireland. specifically by lessening suit times for high-esteem question to a small amount of what might have been normal before the List was presented. In fact. this is apparent from the accompanying measurements distributed on the workings of the Commercial Court. Since it was built up in 2004. 1.231 cases had been gone into the run down. Since 2004. exactly 1.013 cases had been discarded (143 cases in the period from 1 January 2010 to 16 June 2010). This left 218 cases remarkable on 16 June 2010. By and large. 25% of cases finished up in under 4 weeks. half in under 15 weeks and 90% in under 50 weeks. Curiously. just 28% of cases went similarly as a full hearing. with the rest of settled outside the court[122].

In connection to the Commercial Court, the Commission in its Consultation Paper welcomed entries concerning whether mediation and pacification requests ought to be presented in the Court which would set out the essential proactive strides which parties must take after while considering mediation and assuagement. Such requests are utilized as a part of the English Commercial Courts. Under the 2006 English Commercial Court Guide, judges have the ability to suspend the case to support and empower the gatherings to utilize ADR or if considered suitable, may make an ADR Order in the terms set out in the Guide. The draft ADR Order added to the 2006 Guide accommodates the gatherings to trade arrangements of three impartial people accessible to direct ADR strategies i.e to try in compliance with common decency to concur a

[121]American Bar Association (ABA) http://www.aba-net.org/2dispute1/home/f.html
[122]American Arbitration Association(ABA). Alternative Dispute Resolution (ADR) Section http://www.adr.org/67/lk1/01

nonpartisan to lead the ADR system. to find a way to determine their question by ADR and if the case is not at long last settled. the gatherings are to educate the Court by letter what steps towards ADR have been made and why such strides have fizzled.

Such ADR orders. along these lines. put more weight on the gatherings to determine their question through ADR contrasted with the statutory necessity on gatherings in the Irish Commercial Court. The Commercial Court was built up in 2004 compliant with the Rules of the Superior Courts (Commercial Proceedings) 2004 . Its motivation is to speed up instances of a business nature esteemed at €1 at least million. The 2004 Rules express that the High Court judge practicing the ward presented. may of his own movement or on the utilization of any of the gatherings, dismiss the matter before it for a period not surpassing 28 days with the end goal of permitting the gatherings to consider regardless of whether the procedures should be alluded to mediation, appeasement or arbitration .[123]

By effectively selecting cases which are accepted to be proper for determination by ADR. the Commercial Court has. all alone activity. expanded the mindfulness and take-up of mediation in such cases. The 2004 Rules clarify that the judge does not have the ability to direct that the gatherings endeavor ADR, however its prudence is restricted to deferring the procedures, to permit the gatherings to consider whether ADR is suitable for them . This is reliable to the intentional way of ADR. The Commission considers that given the clear accomplishment of the coordination of mediation and appeasement into the Irish Commercial Court, it is not important to bring ADR orders into the Court . The level of legal activism in the Irish Commercial Court has been to a great degree viable in advancing the mindfulness and appropriateness of mediation and pacification for settling fitting business debate.

[123] Camp-bell. AA & Chang, A-2008, 'Achieving Justice in the Mediation: A Cross- Cultural- Perspective', paper presented to 4th -Asia Pacific Mediation Forum -Conference. Kuala Lumpur (KL). 15-19 June 2007-08

It is imperative to note that given the €1 million jurisdictional edge included. most business debate won't meet all requirements for incorporation on the Commercial Court's rundown. In this regard. the ADR ought to likewise be accessible for the determination of appropriate business question in little and medium-sized organizations. The joining of question determination frameworks and ADR conditions are medium measured business procedures, which may help with the determination of business debate at these levels in a cost and time productive way for the gatherings.

With respect to whether mediation and assuagement requests ought to be brought into the Commercial Court which would set out the essential proactive strides which parties must take after while considering mediation and pacification. this is not currently fundamental in light of the general structure for mollification[124].

3.2 USA PRACTICES REGARDING MEDIATION

3.2.1 POSITION OF MEDIATION IN USA

There is a strong public policy in the US favoring methods of alternative dispute resolution. including mediation. The mediation process is essentially a facilitated negotiation between the parties to a dispute in order to reach a mutually acceptable settlement[125]. Mediation can be a useful tool in complex commercial litigation to enable parties to manage risk, avoid litigation delay or reduce costs and can becommenced at any stage of litigation. even prior to a litigation beingfied[126]. Mediation is in many cases a voluntary form of dispute resolution. although parties may have contractual obligations to mediate due to contractual mediation clauses and in some cases a court may require litigants to submit their dispute to mediation.[127]

---

[124]Centre for Effective - Alternate Dispute Resolution-ADR (CEDR) http://www.cedr.co.uk/_78

[125] Clarke Bryen, Lawyers and Mediation-Springer Justine, New York, NY, USA, 2011-12, p. vi-vii

[126] Da-Meria, WW, 1991-92, 'Social Security Advocacy: Second Class Lawyers for the Second Class Citizens', Alternative Law Review, vol. 16-17, no. 5/6, pp. 266-70 and 73.

[127]American Bar Association (AMA) http://www.abanets.org/disputes/home.html/32?

3.2.2 MEDIATION CONDUCTED

Parties select a mediator by agreement, with the assistance of an organization such as JAMS, formerly known as Judicial Arbitration and Mediation Services or the American Arbitration Association ("AAA"), or, in some cases, from a roster of court-approved mediators where the mediation relates to a dispute being litigated in a court that requires or encourages parties to submit disputes to mediation. Parties may be, and typically are, represented by counsel. Parties also typically need to have someone present who is authorised to make decisions regarding resolution of the dispute[128].

Mediation is more informal than arbitration or litigation and does not use rules of evidence or procedure, other than those procedures agreed by the parties. A mediation may include a joint conference with the parties and their counsel to set the agenda and defie the issues, and then separate caucus sessions between the mediator and each party to discuss any specifi issues or concerns affecting a settlement. A mediation may include the submission of written legal briefs or documentary evidence regarding the relevant issues. The mediator does not rule on questions of fact or law, does not render a decision or award and does not have authority to impose a settlement. The end result for a successful mediation would be a settlement agreed on by the parties[129].

3.2.3 OBLIGATION ON LITIGANTS

As it is a voluntary process so both parties submit to it willingly. However, parties may have contractual obligations to mediate due to mediation clauses in a relevant contract and in some cases a court in which the parties are litigating may require the parties to submit to mediation[130].

---

[128] Dalgedoo, R, Daunn, C, Browne, P, Leeh, H & Hubert, D 1984-85, 'Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution (ADR).', Wisconsin Law Review (WLR), pp. 1359-404.
[129] Ibid
[130] Danzin, N.K & Lin-coln, YS 1993-94, 'Intro: Entering the Field of Qualitative Research', in NK Danzin & Y.S Lincoln (edss), Handbook of Qualitative Research, Sage Publications, Inc., Thousand Oaks, California

3.2.4. COURT POWERS TO SUPPORT A MEDIATION

Courts may resolve disputes about the enforceability of a mediation clause in a contract. In addition, judges may encourage parties to a litigation to pursue out-of-court settlement through the mediation process. In some cases, the court may even order parties to try to mediate their dispute e.g New York courts have procedural mechanisms in place for handling such mediations, although the court cannot force the parties to agree to a settlement. Court ordered mediations are usually conducted before a judge or magistrate judge or one of a number of court approved neutral mediators.

3.2.5 FAILURE TO MEDIATE ATTRACT ADVERSE COST CONSEQUENCES

In general, it is allowed for the parties to leave the process any time without adverse costs consequences other than any costs or fees associated with the mediation itself. As a general matter, parties to a dispute in the US bear their own legal costs with the exception of disputes involving certain federal statutes that contain fee shifting provisions or agreements to pay costs under a settlement agreement or other contract[131]. However, where the parties have been ordered by a court to submit to mediation, the court may impose sanctions including awarding costs, if any party does not participate in good faith[132].

3.2.6 MEDIATIONS CONFIDENTIAL

Parties to mediation typically agree to confientiality, and the model procedures set out by organisations such as the AAA provide that the mediator and parties shall treat as confiential any information disclosed during the process subject to applicable law. As a general matter, settlement discussions, including statements made during a mediation are inadmissible as

[131] Eric-kson, W.H & Sevage, CA 1998-99, 'Alternative Dispute Resolution (ADR) in Calorado', Dispute Resolution Journal (DRJ), vol. 53-54, no. 3-4, pp. 60-4.
[132]CDR-Associates for Resolutions http://www.mediate.org/start.htm/hg/76

evidence in a court proceeding[133]. This is due to the well-established and strong public policy in favour of settlement of disputes. Of course, facts and documents otherwise admissible in evidence in a court proceeding will not be rendered inadmissible simply by their use in mediation[134].

a. CASE ANALYSIS ("MICHIGAN MEDIATION")

Case assessment gives defendants in trial prepared cases with a composed, non-restricting appraisal of the case's esteem. The appraisal is made by a board of three lawyers after a short hearing. On the off chance that the board's appraisal is acknowledged by all gatherings, the case is settled for that sum. In the event that any gathering rejects the board's appraisal, the case continues to trial. This arbitration like process has been alluded to as "Michigan Mediation" since it was made by the Michigan state courts and along these lines utilized by the governmen: locale courts in Michigan also[135].

b. MED-ARB OR MEDIATION-ARBITRATION:

A case of multi step ADR, parties consent to intervene their question with the understanding that any issues not settled by mediation will be settled by arbitration, utilizing an indistinguishable individual to act from both mediator and referee. The gatherings may be that as it may be unwilling to talk truly amid the mediation when they know the impartial may eventually turn into a chief[136].They may trust that the authority won't have the capacity to set aside trouble some data learned amid the past mediation. Extra related techniques have advanced to address this issue. In Co-Med-Arb, diverse people serve as neutrals in the arbitration and mediation sessions, despite the fact that they both may take an interest in the gatherings' underlying trade of data. In Arb-Med, the impartial first goes about as judge, reviewing a honor and setting it in a fixed

[133] Fultan, M.J 1988-89, Commercial-Alternative Dispute Resolution (ADR) Law Book Company (LBC), Sdyney.
[134] American-Bar-Association (ABA) http://www.abanets.org/dispute/home.html_4r/12
[135] Genn, H 1998-99, Central London –County- Court Pilot -Mediation -Scheme: Evaluation Report. Lord Chancellor's Department London (LCDL)
[136] Genn- H.D.D, Fenn, P, Ma-son, M, Lene, A, Baechai Nadie, G, Lau-ren & Ven-cappa, D 2006-07, Twisting-Arms:Court Referred and Court Linked - Mediation under the Judicial Pressure. viewed 24-25 February 2011-12.

envelope[137].The unbiased then continues to a mediation arrange. and if the case is settled in mediation. the envelope is never opened. Truth finding. a procedure by which an outsider renders authoritative or consultative suppositions with respect to realities important to a debate. The outsider impartial might be a specialist on specialized or lawful inquiries might be delegates assigned by the gatherings to cooperate. or might be designated by court[138].

c. JUDGE-HOSTED SETTLEMENT CONFERENCE

In ADR procedure that is court based. the settlement judge or justice directs a meeting of the gatherings with an end goal to help them achieve a settlement. Judges have assumed an assortment of parts in such meetings, articulating feelings about the benefits of the case. encouraging the exchanging of settlement offers, and once in a while going about as a mediator. Cases: USA—This is the most widely recognized type of ADR utilized as a part of US government and state courts: Japan-judge as nonpartisan may actualize three ADR systems (Jardine 1996). Private Judging: A private or court-associated handle in which parties engage a private individual to hear and issue an official. principled choice for their situation. The procedure might be settled upon by contract between the gatherings. or approved by statute (in which case it is some of the time called Rent-a-Judge)[139].

Settlement Week: Usually. a court suspends typical trial movement for the week furthermore. with the assistance of volunteer attorneys, intercedes long-pending common cases. Mediation sessions may most recent a hour or two. Uncertain cases about-face on the court's docket. Cases: USA—utilized more broadly as a part of state than government courts[140].

---

[137] Banson B.B (1994-95) An exploration of the impact of modern, arbitration -statutes on the development of arbitration. in the United States (US). J.J Law Econ-Organ 11(1-2):479–501

[138]Federal-Mediation and Conciliation-Service http://www.fmcs.gov/internet/ADR-34/

[139] Burrage-M (1987-88) Revolutions in the collective actions of the French, Americans and English- legal professions. Law Soc Inq 13:225–277

[140] Chaung-O (1998-99) Critical Factors affecting the uses of alternative-dispute-resolution (ADR) processes in construction". Int. J.JConflicts-Manage 17(2-3):188–194

Summary Jury Trial: An adaptable, willful or automatic non-restricting procedure utilized basically to advance settlement as a part of request to maintain a strategic distance from extended jury trials. After a short hearing in which the proof is given by insight in truncated frame yet typically taking after settled procedural standards, the deride jury gives a non-restricting decision, which may then be utilized as a reason for resulting settlement conciliatios[141].

d. **NEGOTIATED RULE-MAKING, REGULATORY NEGOTIATION OR "REG-NEG":**

Utilized by administrative offices as a contrasting option to the more conventional approach of issuing directions after a long notice and remark period. Rather, office authorities and influenced private gatherings meet under the direction of an unbiased facilitator to take part in joint arrangement and drafting of the run the show. People in general is then requested that remark on the subsequent, proposed run the show. By empowering support by intrigued partners, the procedure makes utilization of private gatherings' points of view and ability, and can keep away from ensuing case over the subsequent rule[142].

3.2.7. INTERNATIONAL COMMERCIAL DISPUTE RESOLUTION

Likewise with local business debate, worldwide business question are unavoidable. As noted by one commentator—One of the obstructions that impede exchange and speculation is an absence of components to bargain quickly and reasonably with business question. Debate are inherented in exchange and business connections. Organizations will falter to take part in business relations in an outside nation on the off chance that they are not certain that there is a suitable method for unraveling them[143].To reduce this worry, numerous wards advance themselves as habitats for worldwide business question determination. Without a doubt, as noted in the Consultation Paper,

[141]United Nations, Commission on International, Trade Law (UNCITRAL) www.uncitral.org/ADR/67
[142] Ibid
[143] Coll-ings-O (2008-09) Depression strikes as lawyers-struggle in down-turn. The New Lawyers, 6th May. http://www.thenew-lawyer.com.auu/articles/Depression/spikes/as/lawyers/struggle-in-downturn/4789923.aspx

in 2001 the International Center for Dispute Resolution (ICDR) which is the global division of the American Arbitration Association (AAA), the world's biggest supplier of business refereeing and question determination administrations opened its first European office in Dublin. This office has, be that as it may, since shut and works as an online office.[144]

3.3 CANADIAN MEDIATION PRACTICES

3.3.1 One of the leading examples of victorious mediation projects are Civil Courts of Ontario in Canada. In these programs, all civil cases except for family cases were directed to mandatory mediation. A thorough evaluation of all the civil cases during a 23 months period provided strong evidence that mandatory mediation has resulted in significant reductions in the time taken to dispose of cases. Decreased costs to the litigants and a high proportion of cases roughly 40 percent overall being completely settled earlier in the litigation process with other benefits being noted in many of the other cases that do not completely settle[145]. Additionally, both litigants and lawyers have expressed considerable satisfaction with the mediation process. Research results show that the settlement rates of mandatory and voluntary mediations are similar, even though the cases that are voluntarily referred to mediation parties expect the settlement and in mandatory ones not. There are also some results that show a lower rate for mandatory settlement. In one recent survey, the settlement rate for voluntary mediation was 71 percent and for mandatory mediation, it was 50 percent[146]. However, even assuming a lower settlement rate in mandatory mediation, this does not have to decrease the overall number of settlements. On the contrary, in many cases mandatory mediation will increase the number of

[144]Consultation Papers, in 2000-01 the International-Centre for Dispute-Resolution (ICDR)

[145] Ernst & Young (E&Y), Tax-Dispute-Resolution: A New Chapter-Emerges: Tax Administration Without Borders (np: EYGM Limited, 2009-10).

[146] Richerd Abal, The Politics of-Informal Justice, 1982; Richard Hof-richter, Neighbour-hood Justice in Capita-list Society: The Expansion of the In-formal State. 1982-83; Roger-Mathaws, In-formal Justice, 1988; and, Lura Nadar, "Harmony -Models and the Construction of Law", 1991:41-59.

settlements[147]. The table below shows the settlement in the IFC's mediation pilot project in Bosnia and Herzegovina. Although as many as 62 percent of mediation cases were settled. this constituted only 8 percent of the number of all the cases that were referred to mediation[148].

3.3.2 MODEL CODE OF ETHICS, CONFLICT RESOLUTIONNETWORK CANADA

This Code of Ethics is from Conflict Resolution Network Canada. The activity initially originated from three expert gatherings: the American Arbitration Association. the American Bar Association (Section of Dispute Resolution), and the Society of Professionals in Dispute Resolution. The norms set out in this Model Code of Ethics for Mediators are planned to perform three noteworthy capacities: to serve as a guide for the lead of mediators; to illuminate the intervening gatherings: and to advance open trust in mediation as a procedure for settling debate. The principles are proposed to apply to a wide range of mediation. It is perceived. in any case. that now and again their application might be influenced by laws or legally binding assentions[149].

3.3.3 SELF-DETERMINATION:

Self-assurance is the basic guideline of mediation. It requires that the mediation handle depend upon the capacity of the gatherings to achieve a deliberate, uncoerced assention. Any gathering may pull back from mediation whenever. The mediator may give data about the procedure, raise issues, and help parties investigate choices. The essential part of the mediator is to encourage an intentional determination of a question[150]. Parties should be given the chance to consider all proposed choices. A mediator can't by and by guarantee that every gathering has settled on a completely educated decision to achieve a specific understanding, yet it is a decent practice for

---

[147] The SPIDR-report, Qualifying-Neutrals: The Basic Principles: Report of the SPIDR Commission on Qualifications, 1988-89.

[148]Canadian-Institute for Conflict Resolution http://www.cicricrc. ca/english/index/d/ADR_e.htm

[149]Model-Code of Ethics is from the Alternative-Conflict-Resolution, Network Canada

[150] Daboreh-Kolbe, "To Be a Mediators: Expressive, Tactics in Mediation," 1984-85:11-26; "Strategy, and the Tactics of Mediation," 1983:247-1268; "Roles- Mediators- Play: State and Federal Practices," 1981:1-17; The Mediators, 1983.

the mediator to make the gatherings mindful of the significance of counseling different experts, where fitting. to help them settle on educated choices[151].

IMPARTIALITY:

The idea of mediator unbiasness is key to the mediation procedure. A mediator might intervene just those matters in which she or he can stay fair-minded and impartial. In the event that whenever the mediator can't lead the procedure in a fair way, the mediator is committed to withdraw. A mediator should maintain a strategic distance from direct that gives the presence of inclination toward any party[152]. The nature of the mediation procedure is improved when the gatherings have trust in the fairness of the mediator. At the point when mediators are selected by a court or foundation, the naming office might try sensible endeavors to guarantee that mediators serve fairly. A mediator ought to make preparations for favoritism or partiality in view of the gatherings' close to home qualities. foundation or execution of mediation.[153]

3.3.4 CONFLICTS OF INTEREST:

After revealing it. the Mediator might decrease to intercede unless all gatherings hold the Mediator. The need to ensure against conflicts of interest likewise represents direct that happens amid and after the Mediation. An irreconcilable situation is a managing or relationship that may make an impression of conceivable inclination. The essential way to deal with inquiries of irreconcilable circumstance is predictable with the idea of self-assurance[154].The mediator has a duty to reveal all genuine and potential clashes that are sensibly known to the mediator and could sensibly be viewed as bringing up an issue about unprejudiced nature. In the event that all gatherings consent to intercede in the wake of being educated of contentions. the mediator may

---

[151]Con-flict, Research-Consortium of the University of Colorado http://www.coloredoS.edu/conflicts/ADR/12

[152] Richerd Abal, The Politics of Informal Justice, 1982; Richerd Hof-richter, Neighbour-hood Justice in Capitalist - Society: The Expansion of the Informal State. 1983; Roger Metthaws. Informal Justice, 1987-88; and. Lura Nadar. "Harmoney- Models- and the Construction of Laws", 1990-91:41-59.

[153]CDR Associates http://www.mediate.org/start.htm/ADR/98

[154] SPIDR-reports. Qualifying. Nautrals: The Basic Principles: Report of the SPIDR Commission, on Qualifications, 1988-89.

continue with the mediation. Assuming be that as it may, the irreconcilable situation provides reason to feel ambiguous about genuine the respectability of the procedure. the mediator should decay to continue. A mediator must evade the presence of irreconcilable situation both amid and after the mediation[155].Without the assent of all gatherings a mediator should not in this manner set up an expert association with one of the gatherings in a related matter, or in a random matter under conditions which would bring up honest to goodness issues about the honesty of the mediation procedure.[156]

A mediator should stay away from irreconcilable circumstances in suggesting the administrations of different experts. A mediator may make reference to proficient referral administrations or affiliations which keep up lists of qualified experts[157]. Potential irreconcilable situations may emerge between the heads of mediation projects and mediators and there might be solid weights on the mediator to settle a specific case or cases. The mediator's dedication must be to the gatherings and the procedure. Weights from outside of the mediation procedure ought to never impact the mediator to pressure parties to conciliate[158].

3.3.5 COMPETENCE:

Any individual might be chosen as a mediator, gave that the gatherings are fulfilled with the mediator capabilities. Preparing and involvement in mediation, be that as it may, are frequently vital for powerful mediation. A man who offers herself or himself as accessible to serve as a mediator gives parties and the general population the desire that she or he has the competency to intercede adequately. In court associated or different types of commanded mediation, it is basic

[155] Bringing Peace into the Room for Resoltion: How the Personal Qualities of the Mediator can Impact the Process of Conflict Resolution (ADR) edited by the Daniel Bowling and David A. Hoffman. San Francisco, CA: Jossey-Bass

[156]Centre for Effective-Dispute-Resolution (CEDR) http://www.cedr.co.uk/ADR-873

[157] Complaints- Mediation, in Ontario's Self-Governing Pr-ofessions by Lisa Feld and Pe-ter A. Simm, Water-loo, ON: Fund for Dispute-Resolution.

[158] Challenging-Conflicts: Mediation through Understanding, by Gery Friedmen and Jeck Himalstain. Chicaagoo, IL: American Bar Association (ABA).

that mediators doled out to the gatherings have the imperative preparing and experience[159]. Mediators ought to host accessible for the gatherings data applicable to preparing, instruction and experience. The necessities for showing up on a rundown of mediators must be made open and accessible to intrigued persons.When mediators are named by a court or foundation, the delegating organization should endeavor sensible endeavors to guarantee that every mediator is fit the bill for the specific mediation[160].

3.3.6. CONFIDENTIALITY:

The sensible desires of the gatherings as to classification might be met by the mediator. The gatherings' desires of classification rely on upon the conditions of the mediation and any understandings they may make. The mediator should not reveal any matter that a gathering hopes to be classified unless given authorization by all gatherings or unless required by law or other open approach[161]. People may make their own principles as for privacy, or the acknowledged routine of an individual mediator or establishment may manage a specific arrangement of desires. Since the gatherings' assumptions in regards to privacy are critical, the mediator ought to talk about these desires with the gatherings. In the event that the mediator holds private sessions with a gathering, the nature of these sessions as to classification ought to be talked about before undertaking such sessions. With a specific end goal to ensure the uprightness of the mediation, a mediator ought to abstain from conveying data about how the gatherings acted in the mediation procedure, the benefits of the case, or settlement offers. The mediator may report, if required, whether parties showed up at a planned mediation. Where the gatherings have concurred that all or a bit of the data unveiled amid a mediation is classified, the gatherings' understanding ought to

[159] Defensive-ness in the Mediation Process: Perceptions: of Experienced Mediators (Thesis) by Donna Merie Soles. Yellow Springs, OHH: Antiach University.
[160]Carnel-Law-School http://www.law.cornell.edu/wexx/index.php/ADR_12/Medation
[161] Developing;the Craft of Mediation: Reflections on Theory and Practice: by Marian Roberts. Philadalphia, PA: Jassica Kings-ley Publishers/ADR

be regarded by the mediator[162]. Secrecy ought not be translated to restrain or disallow the successful observing, research, or assessment, of mediation projects by dependable people. Under fitting conditions, scientists might be allowed to acquire access to measurable information and, with the authorization of the gatherings, to individual case documents, perceptions of live mediations, and meetings with members[163].

3.3.7 QUALITY OF THE PROCESS:

A mediator should work to guarantee a quality procedure and to empower common regard among the gatherings. A quality procedure requires a promise by the mediator to constancy and procedural rationality. There ought to be satisfactory open door for every gathering in the mediation to take part in the dialogs. Parties choose when and under what conditions they will achieve an understanding or end a mediation[164]. A mediator may consent to intervene just when he or she is set up to submit the consideration basic to a powerful mediation. Mediators ought to just acknowledge situations when they can fulfill the sensible desires of the gatherings concerning the planning of the procedure. A mediator ought not permit a mediation to be unduly deferred by the gatherings or their agents. The nearness or non appearance of people at a mediation relies on upon the assention of parties and mediator[165]. Parties and mediator may concur that others might be rejected from specific sessions or from the whole mediation prepare[166]. The basic role of a mediator is to encourage the gatherings' intentional understanding. This part contrasts generously from other expert customer connections. Blending the part of a mediator and the part of an expert prompting a customer is tricky, and mediators must endeavor

---

[162] Harding-Catts: Multi-party Mediation in a Complex World, edited by the Chester A. Crocker, Fen Os-ler Hampson, and Pamela Aall. Was-hington, DC: United States (US) Institute of Peace Press.
[163] Ibid
[164] How to Make Money, As a Mediator: (And Create-Value for Everyone): 30- Top Mediators Share Secrets to Building a Success-ful Practice by Jaffrey Kri-vis and Nao-mi Lacks. San-Francisco, CA: Josey-Bass.
[165] In the Mind's Eye? Con-sistency and Variation in Evaluating Mediators: by Christop-her Honey-man, Kath-leen Mie-zio, and William C. Hou-lihan. Cam-bridge, MA: Har-vard Law_School.
[166] Mediation Advocacy Tactics: Effective Clients; Representation in Mediation Proceedings, by Cinnie Noble, L. Leslie Dizgun, and D. D Paul Emond. Toronto, Ont.: Emand Mont-gomary Publications.

to recognize the parts. A mediator ought to in this way forgo giving proficient guidance. Where fitting, a mediator ought to prescribe that gatherings look for outside expert exhortation, or consider settling their question through arbitration, guiding, impartial assessment, or different procedures. A mediator who embraces, at the demand of the gatherings, an extra question determination part in a similar matter accepts expanded obligations and commitments that might be administered by the models of different callings. A mediator should pull back from a mediation when unequipped for serving or when not able to stay fair-minded. A mediator might pull back from the mediation or delay a session if the mediation is being utilized to facilitate unlawful lead or if a gathering can't take an interest because of medication, liquor, or other physical or mental insufficiency. Mediators ought not allow their conduct in the mediation procedure to be guided by a craving for a high settlement rate[167].

3.3.8 ADVERTISING AND SOLICITATION:

Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the mediator shall be truthful. Mediators shall refrain from promises and guarantees of results. It is imperative that communication with the public educate and implant confidence in the process[168]. In an advertisement or other communication to the public, a mediator may make reference to meeting state, national, or private organization qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status[169].

3.3.9 FEES:

Parties ought to be given adequate data about expenses at the beginning of a mediation to figure out whether they wish to hold the administrations of a mediator. In the event that a mediator

[167]CDR Associates for Reslоution of Mediation_http://www.mediates.org/start.htm/ADR

[168] Mediation and Reconciliation of Interests in Public-Disputes, by Jean Potras and PiAerre Re-naud. Scar-borough, Cars-well

[169] Mediation- in the Justice System: Conference-Proceedings, May 20-21, 1982, John-Jay College of Criminal Justice-edited by Meria R. Valpe. Was-hington, DC: American Bar Association (ABA). Special Committee on Dispute Resolution (ADR)

charges expenses. the charges should be sensible. considering. in addition to other things. the mediation benefit. the sort and unpredictability of the matter. the aptitude of the mediator. the time required. and the rates standard in the group. The better practice in achieving a comprehension about expenses is to set down the courses of action in a composed agreement. A mediator who pulls back from a mediation ought to give back any unwarranted charge to the gatherings. A mediator ought not go into a charge assention which is dependent upon the consequence of the mediation or measure of the settlement. Co-mediators who share a charge ought to hold to principles of sensibility in deciding the portion of expenses. A mediator ought not acknowledge an expense for referral of a matter to another mediator or to some other individual[170].

3.3.10 OBLIGATIONS TO THE MEDIATION PROCESS:

Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation: enabling them to use it whenever a need for it arises. so that many issues can be resolved and professional or personal skills could also be improved.[171]

[170] Mediation-of Criminal-Conflict: An Assess-ment of Programmes, in 4 (four) Canadian Provinces: Executive Summary Report, by Marks S. Umbrit. Winipegg, MB: John Howerd Society of Mani-toba

[171] Court-Mediation-Program at the Alternative Dispute Resolution (ADR) http://www.cadc.uscourts.gov/internet/internet. nsff/Content/1/ADR/Mediation/+Program/

CHAPTER NO. 4

STATUS OF MEDIATION IN ISLAM AND ITS APPLICATION IN THE CONTEMPORARY WORLD

4.1 Introduction

For our convenience in our worldly affairs and conflict free society. Islam has come up with laws and its rules and moreover it has supported peaceful solution to the conflicts and disputes. Muslim jurist have also continuously encouraged solving a conflict and settling down the matters peacefully in light of the Holy Qur'an and the Sunnah of Rasullulah (SAW), this peaceful conflict settlement has been encouraged within all, whether it be the conflict within the Muslim society, between Muslims and non Muslims, and within non Muslims.[172]

4.2 Definitions:

Three ways are to be adopted in Islam for the dispute settlement with peace. 1) Conciliation (Sulh) or 2)Arbitration (Tahkim) or 3)Mediation (Wasaata). These concepts have been clearly defined below for a clear understanding[173].

4.2.1 Conciliation *(Sulh)*: Al-Jurjani in his "*Taarifat*" defines Sulh as: "An accord to end a dispute[174]".

The Ottoman Code, "Majalla" defines "Sulh" in Article 1531 as: "A contract removing a dispute by consent. And it becomes a concluded contract by offer and acceptance[175]". Sulh is also defined as: "An accord between two parties or more to resolve a specific dispute by ending its causes[176]"

---

[172] Majeed, Wasif. "Review of the New Arbitration Bill". *Corporate Law Decisions*, Part III, Journal Section, (2010)
[173] Bernard Weiss, *Interpretations in Islamic Law: The Theory of Ijtihad*, American Journal of Comparative Law v. 26 199, 199-206 (1978)
[174] Al-jurjani. Al-Taarifaat, pg174
[175] The Mejelle, p255
[176] Ahmad Abu Al-Wafa. Kitab Al-I'laam Bi-qawa'id Al-Qanun Al-Dawli Wa Al-Alaaqat Al-Dawliyah Fi Shari'at

4.2.2 Arbitration *(Tahkim)*: For the settlement of a problem, a judge or judges are appointed by the parties for reaching out a solution.

4.2.3 Mediation *(Wasaatah)*: the term 'Wassatah' is used in the law of Islam which stands for "mediation". In the book titled as "Kitab al-wuzaraa" Al-Jahshiary (331A.H-943 A.D) for the sake of stopping the problems of the kharaaj payers i.e. land tax, has utilized "tawasut" as far as the case of mediation of Muhammad Ibn Muslim was concerned. He has also used the same mediation of Yahya where aAbbasside Khalifah Harun al-Rashid (198 A.H-814 A.D) and a man was involved[177]. Some common names used for mediation in Islamic law are as below:

1) Al-jaryu

2) Al-Mashyu Bayna Al-Mutanaziinah which means 'walking between the disputants'.

3) Husnu Al-Sifara and.

4) Alshafaa

The true definition of wassatan or mediation is that it is used in good faith and most importantly it ends the dispute peacefully without binding anyone. It usually involves one or more than one persons involved in a dispute either going for mediation willfully or as suggested by one of the parties. Ththe the person who acts as a mediator, tries his best to settle down the issues between the parties in a peaceful way by giving favourable solutions to all of them [178].

4.3 Validity of Mediation

Two major types of proof are mentioned below:

Syariah evidence for assistance is the first proof: In Surah Al-Maidah, it is said by Allah SWT in Verse no.2:

Al-Islam, p39.

[177]Al-Jahshiyari, Kitab al-wuzaraa, p142& 187.

[178]See Fathi Kemicha.The Approach to Mediation in the Arab World, paper presented in the international conference of Mediation Geneva Switzerland 1996

"Help ye one another in righteousness and piety. But help ye not one another in sin and rancour" (Al-Maidah: 2)

His Messenger (SAWS) said: "The best of you in Allah's eyes are those who are more beneficial to others and amongst the best deeds in Allah's eyes are: creating happiness in the heart of a Muslim, or paying his dept, or satisfying his hunger".

He added: "Attending my brother's need is dearer to me than retreat "Ikaaf" in this mosque (Madinah Mosque) for one month"[179]. The second category consists of Syariah evidences recommending peaceful settlement of conflict in general and mediation in particular. With regards to the evidences recommending peaceful settlement of conflict, we can find numerous verses of the Holy Qur'an and many Hadith.

"In most of their secret talks there is no good: but if one exhorts to a deed of charity or justice or conciliation between men, (secrecy is permissible): to him who does this, seeking the pleasure of Allah, We shall soon give a reward of the highest (value)" (An-Nisaa:114).

"If you fear a breach between a man and his wife, appoint an arbiter from his people and another from hers. If they wish to be reconciled God will bring them together again. God is all-knowing and wise." (An-Nisaa: 35)

"If a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best; even though human inner-selves are swayed by greed. But if ye do good and practise selfrestraint, Allah is well-acquainted with all that ye do" (An-Nisaa:128)

"And if two parties among the Believers fall into a quarrel, make ye peace between them: but if one of them transgresses beyond bounds against the other, then fight ye (all) against the one that transgresses until it complies with the Command of Allah; but if it complies, then make peace

[179]See Al-Tabarni . Al-Mujam al-kabir, Ibn Asakin, Al-taarikh and Al-Albani, Al-silsilah Al-sahihah.

between them with justice, and be fair: for Allah loves those who are fair (and just). (Al-Hujuraat: (Al-Hujurat: 9).

In Sunnah, the mediation or the "wasaata" and the evidence for its being legal is described below:

It is said by the The Prophet (SAAS) with regards to the prisoners detained in the battle of Badr: "If "Mutaam Ibn Adii" was alive and intercedes to free these prisoners. I'll do it for him". The prophet SAW has supported mediation and it can be seen in his favour of "Mutaam Ibn Adii", although he was a "Mushrik" but when the Prophet SAW was rejected to be entered into Mecca by the tribes, he was the person who mediated or negotiated with them to let him enter. Moreover actually he was in between those who tried to mediate in an effort to stop the economic expulsion which was forcefully imposed upon the Bani Hashims and Muslims in particular in year 4 (BH)[180].

When the first Muslim military detachment was sent by Rasulullah SAW (Sariyah Sayf al-Bahr under the command of Hamzah Ibn Abd Al-mutalib) in the first year (Hijrah), a convoy under the leader ship of Abu Jahl stopped them on the way which had given a way to the fighting but it was successfully mediated by a mutual friend of both the parties, Majdi Ibn Amr.[181]

Another example took place after Khaibar battle happened in 7 A.H. involving the settlement between the fadk tribe and the Prophet SAW where the brother of Abu al-Harith named Masoud was one of the mediators; and moreover another big instance of mediation in the 6th A.H. is the Hudaybiyah in which the conciliation was made between the monotheists of Mecca and Rasulullah SAW in which the mediator was Badil ibn Waqaa.

[180] The Influence of Sharia Norms of Dispute Settlement and International Law: The International Court of Justice. Room for Accomadation? *v. 75 309 The International Journal of Arbitration, Mediation and Dispute Management 317-319 (August 2009)*

[181] Ibn Al-Qayim. Zaad Al-Maad. V3, p163

4.4 Essentials of Mediation in Islamic Law:

Muslim jurists have recommended the peaceful dispute settlement as it has already been proved above that it is suggested in the Islamic law. There are certain basic principles of wassata or mediation deduced from these texts and evidences. These principles are stated below:

1. The religion, sect or belief of the people involved in the conflict does not matter, the only endeavor is to reach out a solution with peace. Conflict settlement with peace via any way is supported by Islam as far as it does not contradict the teachings of Islam. The Prophet also supported mediation in all conflicts, whether it be amongst Muslims or Muslims and non Muslims and also taught it to his Companions which was acted upon by them in their ruling times.[182]
2. Another point is to be noted that in those cases, where the rules and law is clear, mediation cannot be provided for instance, Rasullulah SAW rejected it in the case of a Makhzumi women, mediation request by Usamah Ibn Zaid, who was even closer to the Prophet SAW, the mediation was requested in case of theft and its punishment was requested to be avoided. But here, the law was explicit so the reply by Rasulullah SAW was clear: "Do you intercede regarding one of the punishments prescribed by Allah? He then stood up and addressed the people: "O people, those who have gone before you were destroyed, because if any one of high rank committed theft amongst them, they spared him; and if anyone of low rank committed theft, they inflicted the prescribed punishment upon him...."
3. Mediation as a process of peaceful conflict settlement falls under the scope of Siyasah Shar'iah which "includes all measures which bring the people closer to beneficence, and

[182] The International Journal of Arbitration, Mediation and Dispute Management at 317.

furthest away from corruption. even if it has not been introduced by the Prophet (SAAS) nor regulated by divine revelation"[183]. so the point is that all procedures of mediation are legal, valid and recommended but done in a good faith, with benevolent intent and free from corruption, moreover it must not also contradict the Islamic rules and principles.

4. Islam also allows mediation for solving the disputes that occur between Muslims and non Muslims. whether the conflict is internal or at international level as clear examples with names have been mentioned above. For example. Mutaam Ibn Adi. Muhaysah Ibn Masood, Badil Ibn Warqaa, and Majdi Ibn Umar. As far as conflicts between Muslim countries or between Muslims are concerned, mediation by a non Muslim is not encouraged by certain religious scholars but yet, some scholars do support and permit it by stating certain conditions like if the matter is not totally or purely religious. or if it is done in a good faith in order to end the dispute or if it is in public interest.[184]
5. The authorities are supposed to help mediators in financial matters whether they are individuals or working in organizations. despite of the fact that it is done with a benevolent intent. If we find the evidence in Islam. we will see that the Prophet (SAAS) helped Majdi Bin Amr financially who acted as a mediator for the sake of settling the disputes between the trade caravan which was under the leadership of Abu Jahl and the Islamic military as it happened in the first year of Hijrah. Books of Sirah has also pointed out that the prophet greeted the group of Majdi very well and had also given them reward.

4.5 Application of Mediation in the Contemporary World

Islam has two very basic and important qualities as religion suitable to all times and benefitting all the human kind, these two traits help every human being solving their problems, those

[183] This definition of Siyasah Shar'iyah was introduced by Ibn Aqil Al-Hanbali and adopted by Ibn Qayim Aljuziah and later adopted by the majority of contemporary scholars.
[184] A. Sirajuddin, "Concept of Mediation in Islamic Jurisprudence." Mediation in Islamic Jurisprudence

characteristics are: 1) flexibility ; and 2) comprehensiveness. As mentioned before, in order to reach a fair and peaceful settlement amongst people, all types and processes of mediation are allowed and supported but the main thing is that they must not contradict the laws in Islamic teaching. so, the fundamentals and principles must be kept in mind as they are the basic principles and still very much useful in all the situations where peaceful settlement is required. But additionally the traditions of every Islamic country are also of high importance and sensitivity as a Islamic legal proverb says:"A matter recognized by custom is regarded as if stipulated by agreement"[185].

4.6 Conclusion

In a nutshell, it is stated that Islam doesnot only support quiet clash settlement but rather it also presents a deliberate also time-space thought way to deal with the issues. Islam while saving the openness of Shari'ah law to the effect of time and space dimension, additionally shields it as well from the impact of conflicting standards and those laws that are having non Islamic origin, or by abandonment of fundamental of Islamic Law under the support of time and space factor, or the globalization's and international laws pressure.

[185] Su'aida Bt Safel, "Majlis Sulh (Islamic Mediation) in the Selangor Syariah Court and Malaysian Mediation Centre of the Bar Council: A Comparative Study,"

CHAPTER NO. 5

MEDIATION LAWS IN PAKISTAN

5.1 Introduction

Pakistan is not a signatory on any international treaties pertaining to mediation. The mediation law in our country is not based on any of these treaties either. Pakistan, a country which is developing rapidly especially in terms of economy, an endeavor to adopt ADR processes like arbitration, conciliation and mediation can provide a greater mean for resolving conflicts so that the parties can reach a better conclusion expeditiously and peacefully, moreover it can also lessen the burden of courts[186]. It is also a great need for solving internal and international conflicts in industry and trade quickly and in an amicable way and that's why certain changes were asked to be made by the industry in the Arbitration Act (1940).[187]

As the economic changes and policies have been taking place quickly in Pakistan and the law reforms have also been accepted worldwide, most of the legal experts are of the opinion to have alternate methods of conflict settlement especially in place of civil and commercial litigation, as it can provide a lot of solutions to so many cases and disputes in the Civil Courts[188]. Although the step has been taken by Pakistan Parliament by taking into account the bill for changes or improvements in civil procedure which involves and appreciated ADR for settling conflicts and in this way, improving the justice system especially that of commercial. But yet, it is also acclaimed that the ADR does not have strong grounds yet as it is not implemented in our syetem

---

[186] Dekolias, Meria, " A Comparative-Perspective of the Court Performance-around the World", *World Bank Technical Papers* 430-31 (1998-99)

[187] *Sheikh Jamill Ahmed vs Raja Khaeed Hussein*, 2009-10 CLD 571 Lhr. LHC

[188] Dekolias, Meria, " A Comparative-Perspective of the Court Performance-around the World", *World Bank Technical Papers* 430-31 (1998-99)

because of certain factors. that our judges are not well versed in this area that's why mostly people are not referred for mediation. therefore the situation remains the same over the years resulting million of cases log jammed in courts[189].

5.2 Mediation Law in Pakistan: Mediation and Arbitration

Mediation can be combined with Arbitration proceedings: med/arb. arb/med etc. Arbitrators are fully aware of mediation and could be willing to transfer cases from arbitration to mediation o all parties agree. ADR. Alternative Dispute Resoltion. are still at the fledging stage in Pakistan. Although the Industrial Relations Act offers conciliation as a tool for ADR in labour related disputes it is a route that is rarely used[190].

5.3 Procedural requiremens relating to Mediation Proceedings

Parties typically follow the best international practices. Theses include the likes of site visits. prepation of summaries to be submitted to the mediator. drafting the opeing statements. phone calls of both a solo and conference nature. the finding and accessing of the best and the worst alternatives to negotiating agreements etc[191].

5.4 Structure of the Mediation process in Pakistan

The typical steps a Mediator will take in preparing for a proceeding includes the initial contacts, the signing of the mediation agreements, briefing and assisting the parties in their preparation and scheduling the time and the date for the mediation session[192]. The structure of mediation proceeding is as follows:

a) Preparatory stage

b) The joint meeting at the opeing stage

---

[189] Ercalawn and Naumann, "Asian Development Bank (ADB) in Pakistan, A Case Study of Access to Justice-Program", *Economic and Political Weekly* Vol. 37 No.44/45 (2002), 4561-4564; Army-tage Living-ston, "Access to Justice Program," *Centre for Judicial Studies: Asian Development Bank (ADB)* (2002) ; Silenes Flarencio,"The Politics of Legal Re-form", *G-24 Discussion Paper Series, United Nations (UN) Publication* (2002)

[190] Ibid

[191] Ibid

[192] Ibid

c) Private or caucus meeting during the exploration phase

d) Joint meeting during the barganinbg phase

e) Joint meeting during the concluding phase

Typical day of mediation will last between eight-nine hours including breaks for prayers. may well involve more than one sitting and colud take up to three or four days. Off sitting in order to reach the conclusion[193].

5.5 Mediation Styles in Pakistan

The styles of mediation can range from facilitative and process focused to the content focuses and evaluative. In other words, mediation style differs greatly between mediators. Most however, due to their training are very aware that these are not separate camps so to speak but are at different ends of the spectrum that is made up of possible mediation interventions that are dependant on the circumstances and facts of each case as well as depending on the choices made by the mediator during the different stages of the mediation process[194].

Mediators will use a combination of caucus or private and joint sessions during the mediation process. The choice of the joint or private sessions very much depends or how far the parties or from the potential zone of agreement[195]. As per a business report titles Doing (2007), in Pakistan, for fixing a conflict or an issue, at least 55 processes or methods are adopted which costs relatively high, other findings also confirm this conception stating that for settling down disputes in Pakistan system. it takes about 5 to 10 years approximately.That's the reason, courts are log jammed with roughly 1.5 million cases including one third of commercial ones. SMEs, constituting 90 percent of all businesses, are hit the hardest. Pakistan has some experience with alternative means of dispute resolution (ADR) in the form of so-called "panchayats. " However,

[193] Ibid

[194] Justice Sermad Jalal Usmani. "Role of Judges in the-Alternate Dispute Resolution (ADR)"; Justice Tassaduq Hussain-Jeilani. "Delayed Justice and the Role of Alternative Dispute Resolution (ADR)," *National Judicial Conference (NJC). Law and Justice (L&J) Commission of Pakistan* (2011)

[195] Ibid

these judgments are legally nonbinding and are typically applied to personal or family disputes. In short. there are no effective alternatives to lengthy and costly judicial procedures for Pakistani enterprises to settle any commercial disputes. In principle then. Pakistan seemed a perfect candidate for introducing commercial mediation along the lines of IFC`s recent experiences in the Balkan countries.[196]

5.6 The rising popularity of Mediation Clause in Pakistan

The popularity of mediation clauses is rising all the time in regards to the drfaing of contracts. At present there is no special requirement for an mediation clauses nor any court decisions which refer to any escalation clauses[197]. There is no legal requirements pertaining to the contents of settlement agreement between parties and mediator, the only restriction being that the parties can't interfere with third party rights. The parties under no obligation to conclude the agreement between the parties and the mediator or between the parties involved and they are free to finish the mediation with or without a settlement.

5.7 Legislative Initiatives, amendments in Civil Justice System

There have been some reforms in the Civil Justice System. as courts have hoped to have some changes in litigation and to bring forth and support those rules that are in terms with the ADR methods, the credit goes to the significant impact ADR has in proposing solutions. Therefore, we may expect some drastic reforms in operations related to court and lawyers as the new legislation is taking place.[198].

There are some provisions and changes or improvements in the justice system with relevance to Civil as a result of adopting ADR techniques which are as follows[199]:

---

[196]Mediation Procedures, London Court of International Arbitration and Mediation (IAM) http://www.ju-risint.org/ens/ctr/63-html

[197] Ibid

[198] Declaration of International Judicial Conference (IJC) held in 12-16 April, 2012 in Supreme Court (SC) of Pakistan. Islamabad

[199] Ibid

1. S.89-A of the Civil Procedure Code (CPC), 1908 (as amended in 2002) read with Order X Rule 1-A (deals with Alternative Dispute Resolution (ADR) Methods).
2. The Small Claims & Minor Offences, Courts Ordinance, 2002.
3. Sections 102–106 of the Local Government Ordinance (LGO), 2001.
4. Sections 10 and 12 of the Family Courts Act, 1964.
5. Chapter XXII of the Code of Criminal Procedure (Cr.PC), 1898 (Chapter 22 pertaining to the Summary Trial Provisions).
6. The Arbitration Act, 1940.
7. Articles 153–154 of the Constitution of Islamic Republic of Pakistan, 1973 (Council of Common-Interest).
8. Article 156 of the Constitution of Islamic Republic Pakistan, 1973 (National Economic-Council).
9. Article 160 of the Constitution of Islamic Republic of Pakistan, 1973 (National Finance Commission (NFC))
10. Article 184 of the Constitution of Islamic Republic of Pakistan, 1973 (Original Jurisdiction, when Federal or Provincial governments are at dispute with one another).
11. These ADR Tax Laws have been presented by the Finance Bill:
    a. Section No. 134-A of Information Technology (I T) Ordinance, 2001 R/w Rule 231-C of the Information Technology (IT) Rules No. 02. Section No. 47 of the Sales Tax
    b. Act 1990 and Ch. X of the Sales Tax (S.T) Rules-04.
    c. Section No. 195-C of the Customs Act 1969, Chapter, XVII of Customs Rules 2001.
    d. Section No. 38 of the Federal Excise Act, 2005 Read With Rule 53 of Federal Excise Rules, 2005.

e. Section No. 23 of Industrial Relation Ordinance (IRO).

f.

5.8 Benefits of Mediation

Mediation is acclaimed worldwide as one of the most chosen way of conflict settlement. The reason behind its favour are the advantages that it carries over litigation, mentioned as below[200]:

a) **Expenditure saving:**

One of the important benefits of mediation is that it is a cheaper way of conflict resolution than other procedures.

b) **Saving of Time:**

Another benefit of mediation is that it saves time as well. Being an informal procedure, it does not involve a long process like other methods and its results turned out to be quick and positive as it takes usually a day or sometimes half for solving problems, moreover it does not have court dates as in litigation. In this way, it provides conflict resolution in less time without disrupting business or family.

c) **Relation-ships saved:**

Another quality of mediation is that it actively supports and saves relationships, whether it be personal or business. It encourages the parties involved to sit together and work out a solution amicably which suits the needs of the parties involved as opposed to other methods like Litigation where the long and tense procedure increases the distance and tension in the parties.

d) **Control:**

It provides control to the parties involved as people can decide on their own on which terms and conditions the matter is to be settled.

---

[200] Centre for Justice and Re-conciliation, " Res-torative Justice" *Summary papers –1- 1 centre for justice and re-conciliation. Was-hington, dc* (2007)

e) **Privacy**:

Another advantage of mediation is its process involving privacy of the matter and the people involved.

5.9 Lacunas in Mediation of Pakistan

(a) It is undeniable that judiciary plays a very crucial role in keeping up the balance of society, yet it is compelled to follow the system and its procedures which take more than enough time in settling out the disputes. In this practice, the people involved in the case suffer a lot in terms of time and money in an effort to expedite the case. ADR processes like mediation can help find a solution earlier on without wasting money or time so that people get justice quickly. As far as the decisions taken under the processes of ADR, it has a full legal power and in some cases when a person is not satisfied with it, he can challenge it or appeal for it in the court but nobody will decide the cases on his own.[201]

(b) Lack of contemporary legislations for consensual adjudication and administrative discretions has created such a vacuum in the administration of justice. It is creating a distress among common men to consult courts as a last resort to their disputes. The common law system with a winning or losing concept is counter productive to pragmatic and sustainable social cohesion, which is an ultimate objective of the law. Consequently, for a vibrant concept of justice, non-conventional means for adjudication is a prerequisite of the time in a society like ours, which is already fragmented and polarized[202].

(c) Dispensation of justice is a crux of any judicial system. Pakistan"s overburdened judiciary is facing multidimensional problems which make it inefficient; it further leads to the incapacity of courts to adjudicate complex issues at a proper pace of time. As a

[201] National Judicial Policy (NJP) of Pakistan, 2009-10
[202] Ibid

consequence undue burden of litigations leaves behind the menace of delays and backlogs causing inefficiency of the judicial system.

(d) The mediation which has not been exclusively provided by some legislation, however, section 89-A of the Civil Procedure Code 1908, inserted through an amendment in 2002, substantively provides to avail such a tool for an expeditious disposal. This is a fact that due to arguable reasons mediation still needs to be realized and promoted the judges and lawyers equally[203].

(e) It must be said that the insertion of Alternative Dispute Resolution clauses in fiscal statutes is a welcome sign. Many types of situations can arise in which the assessee is simply not able to pay the tax within the period prescribed, due to no fault of his own. One cynical view is that such ADR clauses allow and propagate tax-evasion. In this context one may consider Chapter XIIIA Settlement of Cases of the Income Tax Ordinance, 1979, which was a copy of Chapter XIXA of the Indian Income Tax Act, 1961. The background to the Indian amendment was to facilitate settlement of huge tax disputes, while providing immunity from criminal proceedings. The Supreme Court of India in CIT v. B.N. Bhattachargee and others (1979) 118 ITR 461 (SC) noted that it was a debatable policy to collect public money from tycoons, rather prosecute them and gain total recovery of unpaid tax. The Supreme Court even went so far as to say that social working audit of the relevant provisions of law may be carried out to ascertain as to who are the real beneficiaries of this legislation. It is thus imperative that a committee be constituted of the highest degree of integrity, and sense of justice and fair play. This will

[203] "The Devil, and the Deep Blue Sea? A critique of the Ability of Community, Mediation to Suppress and Facilitate the Partici-pation in Civil Life, Journal of Law and the Society, Volume-26-27, Number-1, March 2000-01, at page-136-37

be the only safeguard against tax evaders, taking an escape route through such ADR clauses[204].

(f) We have Arbitration Act in force, and there is a need to have it reformed and improved and for that purpose, many efforts can be done, many steps can be taken that may help to make certain ADR rules separately, for administrative departments and then further spreading them to other departments like hospitals, universities etc. Alternatively, the ADR should be required to be based on the Panchayati Nizam or Jirgah System, where the qualification of Saalis are primarily integrity, common sense and knowledge of the issue to be resolved, and where there could be only one Saalis, appointed with the consent of both the parties, or two-one each by both parties and both the saalis may or may not appoint a third Saalis above them.

(g) The offices of federal and provincial ombudsmen, Nazims, panchayats and justice of peace, though all statutory in nature, are different modes of arbitration. These modes of early and cheaper litigation help resolve matters sooner than the normal channels, and major clashes are also averted due to guarantees involved. We all are well-aware of the fact that in feudal matters, where things cannot be put right through a court or tribunal, such fragile matters are referred to jirgahs, and their decisions and awards are respected by the civil administration as well[205].

(h) ADR encompasses all the alternatives used in place of the conventional and established ways of conflict settlement known as litigation and also arbitration even if it contains some methods that are imposing in nature. Although the main ADR method is mediation, but in specific circumstances it is considered to be inappropriate, where the use of others appears to be more practicable and meaningful. It is widely accepted that there is an urge

[204] Ibid
[205] Ibid

for the alternative solutions to dispute resolution not solely for saving time and money, but also for saving relationships because other tense and adversarial procedures may destroy the relations. Another positive aspect of ADR is that it focuses on the interests of the people that are involved. moreover its prime concern is for future of the participants while history is being looked upon when a case in taken into litigation.[206]

(i) There is a great possibility of resolving the dispute: however. we cannot discount the failure of such a mode of dispute resolution. The danger lies not in his acting as a mediator of the case which is pending in his own court. but it lies in not getting exposed to the parties. interests. goals. strengths and weaknesses. In case of failure. the information will definitely influence his judgment as an adjudicator of the case. To mitigate this risk. it is my humble suggestion that if the judge feels that there is a possibility of compromise in a case. then for the purpose of mediation. the case should be referred to one of his brother judges. This would not only create trust and confidence in the litigants but would guard against any adverse impression. such as judge being partial etc[207].

(j) By now in many counties of the world. mediation has been introduced as a mandatory requirement of Law. Alternative Dispute Resolution today is a buzz word.may it be a disagreement in Corporate or Government sector or Commercial and Family disputes. In Pakistan, the term ADR has been introduced in many laws through different amendments, but so far it has remained ineffective. due to its non-mandatory nature as far as the courts are concerned[208].

---

[206] Ibid

[207] "Mediation, How to Win, Clients and Influence the People "by Jonet-han Din-gle, New Law Journal, (NLJ) - September, 2003

[208] Ibid

(k) The ADR approach to resolve income tax issues in Pakistan needs improvement. The limited number of committees constituted for different areas are not enough to handle large number of applications within the specified time. As such, the number of committees should be increased. Besides, in order to eliminate chances of conflict of interests, conduct of meetings in the office of Income Tax Commissioner should be discouraged.

(l) In the past, Pakistan experienced such arbitration mechanism under the Indirect Taxes Settlement Commission System (ITSCS). But the system failed mainly because of the weakness of Governments resolve to make the system succeed, low level of participation of the business community in the decision-making processes, collateral success of the Appellate Tribunal System at initial stages, and tax-payers tendency to prefer judicial options over quasi-judicial or executive remedies.

(m) Failure of the Settlement Commission System certainly means that any system providing remedy out of the regular appeal regime should be carefully evolved ensuring that the errors and weaknesses responsible for such failure would not be repeated. Theoretically, the need for efficient and effective ADR system is a result of the realisation that the existing departmental adjudication/appeal system including the Appellate Tribunal System and judicial remedies are not satisfactorily providing true justice in fiscal matters. Thus, any effort to introduce and regulate a good ADR system will not fructify, unless the bottle-necks and deficiencies of the departmental adjudication/appeal system including judicial fora are removed to the extent possible.

(n) Although the step has been taken by Pakistan Parliament by taking into account the bill for changes or improvements in civil procedure which involves and appreciated ADR for settling conflicts and in this way, improving the justice system especially that of commercial. But yet, it is also acclaimed that the ADR does not have strong grounds yet

as it is not implemented in our syetem because of certain factors that our judges are not well versed in this area that's why mostly people are not referred for mediation. therefore the situation remains the same over the years resulting million of cases log jammed in courts[209].

[209] Ibid

CHAPTER NO. 6

CONCLUSION AND RECOMMENDATIONS

6.1 CONCLUSION

The main object of this research is to highlight prospects of commercial mediation and its necessity in different forms keeping in view the available legislation in Pakistan to the parties to mediation and their comparison with the other jurisdictions and mediation institutions. As highlighted in the aforementioned chapters that mediation is helpful in solving the disputes mainly the commercial conflicts whether it be internal or external. Now there is an urge for mediation to be adopted as an alternative method for almost every case.

Most importantly in commercial disputes, it is considered necessary but it has also been recommended to mediate earlier in a conflict so as to save and manage time and money and to choose something better at an earlier stage, which cause little or no damage to the persons involved. Nowadays, despite of using traditional and really popular methods of settling commercial conflicts; like arbitration and litigation etc, commercial parties have changed their perspective of using these conventional approaches by switching to alternative methods ADR. This is because of the reason that they are looking for those methods that provides them with effective solutions that also suit their needs and benefit them in the long term.

It needs to be mentioned here that over 90 per cent of commercial disputes are settled prior to a court or arbitration hearing due to mediation. Critics of mediation therefore often question what mediation adds to the dispute compromise process that cannot be achieved through direct negotiations. However, mediation is more than simple negotiation, it is a technique for

enhancing negotiation which shifts the focus from the parties' respective positions to settlement itself. Whereas negotiations usually take place between the lawyers and are part of the adversarial process, mediation is a process in itself into which all the parties – the commercial parties and their lawyers – invest time and effort. At least a day will be set aside with all key players physically present and the presence of the mediator – the independent third party – creates a sense of formality and a "day in court". This provides a structure and discipline to the negotiation, encourages negotiation and enhances the seriousness of the intention to settle. The parties are able to agree on solutions that would be beyond the scope of a judge or an arbitrator, for example, finding a "win/win" solution by introducing commercial issues not the subject of an existing dispute.

The main characteristics and advantages of mediation includes flexibility, the identity of the mediator and the procedure and format are agreed by the parties in accordance with their commercial needs. As such, there is no universal procedure but typically, commercial mediations go through at least four main phases. Having agreed to mediate, the parties will need to appoint a mediator and draw up the mediation agreement. This agreement will evidence the fact that the parties have agreed to resolve their differences by mediation, and record the date and venue of the mediation, the choice of mediator and who will attend.

Other issues it should cover include costs of the mediation and how these will be split between the parties, and the fact that the mediation is confidential and without prejudice. In terms of preparing for the mediation itself, the parties exchange written submissions together with any supporting documents in advance. These are usually summaries of the parties' respective legal cases and commercial positions. The mediation usually begins with a joint session, with the mediator and all parties in the same room. The mediator introduces himself and asks everyone else to do the same and explains the mediation process. Each party then

makes a short opening statement describing their position on the dispute. If this still proves unsuccessful then one party to the mediation agreement will give notice to terminate the mediation.

Lawyers have also started looking at it as an additional income-generating avenue. Some of them who were trained as mediators are even more comfortable with the process. The users love it but potential customers need to be persuaded to buy it. The promotion/communication campaign should be aggressive.

A market mechanism was adopted to identify and select suitably qualified and motivated participants for the mediators' training. This helped in ensuring the commitment of the trainees to the training activities and also created sufficient eagerness for them to work at the Center to make use of newly acquired skills. The initial skills training course was followed by an advanced course to train 18 world-class mediators and 6 master trainers. This has helped and will continue to help institutionalize and sustain the training capacity within the country in general, and at the Mediation Center in particular.

There is need to bring its diverse professional experience to bear on improving the operations and future strategy of the Center.The Pakistan ADR project has started with an eye on securing the financial sustainability of the initiative even in the post-IFC period. This started with the charging of fees from the training participants, despite the fact that the concept of mediation was almost unknown in Pakistan. Later on, when the Center opened its doors for mediation services, a fee schedule was chalked out, with 75 percent of the fee going to the mediators and 25 percent being retained by the Center, preserving the continual professional interest of the former and covering the overhead expenses of the latter.

A corporate membership scheme has also been designed. inviting businesses to become members and have access to discounted services at the Center. For the broader institutionalization of ADR/Mediation. the project plans to engage with existing local training institutes and law schools to develop training programs and curricula on ADR/ Mediation. This would support initial training and capacity building among lawyers and judges who play a key role in promoting ADR/Mediation. However. in Pakistan process to mediation has been started but there is still a need to make the mediation laws of Pakistan in pace with the international standards, as the mediation proceedings are less expensive, less time consuming, trustworthy, free from all sorts of bias and ill practices, in order to safeguard parties' interests involved in the mediation for the settlement of their commercial disputes.

6.2 RECOMMENDATIONS

The recommendations of this research are mentioned below:

1. There is a dire need in the laws of Pakistan that a framework through legislation must be formulated, which should not only include a prescriptive definition of mediation as an ADR but enunciate a proper mechanism for resolution of disputes of individuals, partnerships, corporate bodies and state bodies as pre-litigation mode like in UK, USA and Canada which involve the assistance of a neutral third party for resolution of potential or actual disputes.
2. Mediation isn't obligatory in Pakistan, court can refer a dispute to mediation but can't impose or compel mediation provisions on anyone. It is recommended that the courts can stipulate a time frame for the mediation to be compoleted within which the result is to be reported back to the court.
3. There is no mechanism for online disputes resolutions in Pakistan, it is also recommended that online mediation services must be introduced for early and effective resolution of the issues.
4. A medition proceeding doesn't stop or suspend the period of limitation in place for a court claim, therefore it is recommended when the matter is referred to mediation the parties and court must consent for waiver of limitation.
5. After mediation,when the settlement agreement has been signed by the parties, it must not be possible for the parties to deviate through revision, withdraw or challenge the same unless the opposing party can show coercion, fraud, misrepresentation or undue influence.

6. There is need of formal rules relating to duties of meditors within the mediation procedure. mediators are not obligated to have professional indemnity insurance as it isn't acutually available in pkaistan.
7. There is need for formulation of rules for appointment of mediators. threrefore. a conflict of interst can't be ascertained and normally mediators are given cases which have been referred by the courts.
8. That all processes of ADR like mediation must be included into law courses/degrees as a compulsory subject and the professional programmes/tarinings should be conducted by the Bar Councils for the lawyers.
9. It is also highly recommended that whenever a person starts a proceeding or gets involved in that even as a party. he or she shall. when the first document commencing the proceedings is filed with the court. sign a certificate called a Mediation and Conciliation Certificate stating that mediation or conciliation (or both). has been considered as processes for settling the dispute and where the subject-matter of a mediation or conciliation involves a dispute to which any limitation period (within the meaning of the Statutes of Limitations) may apply. the parties to the mediation or conciliation may agree in writing to suspend the running of any relevant limitation period from the commencement of the mediation or conciliation to the termination of the mediation or conciliation.
10. The entire system of administration of justice is based upon the philosophy of justice tempered with mercy. Therefore it is recommened that a conciliatory approach should be adopted in tax matters, which is that if an assessee in a view of a situational hazard is caught in the flux of harsh laws or under some personal greed has suppressed true transactions, on a subsequent change of mind he may want to rectify his own doing. In such an event, the doors of mercy and compassion should not be closed. It is with this

philosophy that the entire ADR process should be perused with minimal or there must not be any technical bottlenecks.

11. Another strong recommendation in this research is that for making mediation more convenient and suitable for people. decreasing or removing court fees in certain cases can be considered by the court if the issue is taken to mediation either before or during the court procession.

12. It is strongly believed that there is a crucial role played by the judges in bringing forth an environment where peaceful conflict settlement takes place. It is essential therefore that they have a full knowledge and understanding of the process and benefits of mediation. This may be achieved through information sessions as well as initial and in-service training programmes which include specific elements of mediation useful in day-to-day work of courts in particular jurisdictions. It is important to foster both institutional and individual links between mediators and judges. This can be done in particular by conferences and seminars.

13. There is a great urge for Mediation to be added in the syllabus of the training programmes attended by the lawyers, moreover, a list should be provided to the lawyers and Bar associations containing programs of mediation so that they could further distribute them to the lawyers.

14. It is also recommended that the party which refuses to go for mediation and directly approached to court and get favorable decision even at appellant stage but the court should refuse to grant cost as like in the U.K, where, adopting ADR methods are strongly encouraged and in Dunnett's case, the Court did not grant costs to the party, which won in appeal merely because it had refused mediation at the trial stage. It is recommened that this should be adopted in Pakistan as well.

15. The most progress in the promotion of ADR was made in U.S.A. This country also inherited an adversarial system. It had acute problems of backlog and court delays. This led to the promulgation of the Justice Reforms Act. 1990 through which amendments were made in the procedural law to introduce ADR techniques and case management. The ADR Act 1998 was also promulgated to further promote these techniques. According to an estimate. 90% of the cases filed in the U.S.A are decided without regular trial and through ADR. This approach should be helpful in Pakistan and procedural law needs to be amended with the techniques of Mediation.

16. Summary procedure should be adopted for quick understanding and resolution of the issues. when the court takes decision of a case summarily upon the request of any party. this process is called "Summary judgment". "Demurrer" is an american terminology for a process which signifies an act to reject an action when that action doesnot have a cause or does not define the cause properly. A final objective of the law is taken by the defendant in most suitable cases in less or no time and less costly as well. We similarly have a Rule 11 Order 7 in the Civil Procedure Code as Americans have "demurrer". Although there are other ways or methods used through which a case is decided summarily and these methods are mentioned in the Civil Procedure Code. For example. the court can announce its decision or judgement when the facts are acknowledged under Order 12(6) CPC. Moreover, the court can also pronounce judgement in a case where no further argument is required under Order XV Rule 3.

LIST OF ABBREVIATIONS

AAA	American Arbitration Association
ADR	Alternative Dispute Resolution
CEDR	Centre for Effective Dispute Resolution
CPR	Conflict Prevention and Resolution
EU Directives	Cross Border Mediation Regulation. 2011
ICC	International Chamber of Conference
ICMA	Irish Commercial Mediation Association
ICDR	International Center for Dispute Resolution
IFC PEP MENA	International Finance Corporation. Private Enterprize Partnership. Middle East & North Africa
IICPR	International Institute for Conflict Prevention and Resolution
ITSCS	Indirect Taxes Settlmement Commission System
JAMS	Judicial Arbitration and Mediation Services
Med-Arb	Mediation and Arbitration
PLP	Push up Lunge and Pull up Program
Reg-Neg	Regulatory Negotiation
UIA	Union of International Association
WIPO	World Intellectual Property Organization

BIBLIOGRAPHY

BOOKS

1. Lukasz Rozdeiczer. Alejandro Alvarez de la Campa. *"Alternative Dispute Resolution Manual: Implementing CommercialMediation,"* International Finance Corporation, World Bank Group
2. Leonard L. Riskin. Mediation and Lawyers. 43 OHIO ST. L. J. 29. 30 (1982)
3. Catherine Elliot and Frances Quin *"English legal system"* Robert Alberto Publishers. 10th Edition 2009. 110
4. Gerber. S 1999. 'Does peer mediation really work?'. Professional School Counseling. 2. 3. 169
5. imkin. W. E.. (1971): *Mediation and the Dynamics of Collective Bargaining*: Bureau of National Affairs Books. Washington DC
6. Robert J. Niemic, Donna Stienstra. Randall E. Ravitz (2001). Guide to Judicial Management of Cases in ADR. Federal Judicial Center, p. 9-10.
7. Moore, C. (1996) The Mediation Process: Practical Strategies for Resolving Conflict. San Francisco: Jossey-Bass
8. Lewin, K. (1946) 'Action research and minority problems' in G. Lewin (Ed.) Resolving Social Conflicts: Selected Papers on Group Dynamics, New York: Harper & Brothers
9. Lauris. S. Coltri *"ADR: A Conflict Diagnosis Approach"* F-B Publishers, 2nd edition 2010. 450

10. Sander. F. E.A. (1976) "Varieties of Dispute Processing"F.D.R. 70 (111) later modified by various authors e.g. Moore. C.W. (2003 3ed.).

11. Thomas. K. W. & Pondy. L. R. (1977) 'Toward an "intent" model of conflict management among principle parties'. Human Relations. 30. 1089-1102

12. Simon Roberts and Michael Pulmer *"Disputes Process,. ADR and the Primary Forms of Decisions"* F.B Publishers. 2008. 303

13. Lauris. S. Coltri *"ADR: A Conflict Diagnosis Approach"* F-B Publishers. 2nd edition 2010, 450

14. Folburg, J.. Milne, A.. and Salem. P. (2004). Divorce and Family Mediation. New York: Guilford Press

15. Goldberg. S. B.. Frank E.A. Sander. et al. (2003 4th.ed). Dispute Resolution: Negotiation. Mediation. and Other Processes. New York. NY.Aspen Law & Business.. pp. 4-5

16. Wasif Majeed. "Review of the New Arbitration Bill". *Corporate Law Decisions*. Part III. (2010). 52-59

17. Goldberg, S. B., Frank E.A. Sander. et al. (2003 4th.ed). Dispute Resolution: Negotiation. Mediation, and Other Processes. New York. NY,Aspen Law & Business.. pp. 4-5

18. Susan D. Franck, "The Liability of International Arbitrators: A Comparative Analysis and Proposal for Qualified Immunity"*New York Law School Journal of International and Comparative Law*, Vol 20, (2000), 1

19. Goldberg, S. B., Frank E.A. Sander. et al. (2003 4th.ed). Dispute Resolution: Negotiation, Mediation, and Other Processes. New York. NY. Aspen Law & Business., pp. 4-9

20. Hare, Paul. 1998. Angola's Last Best Chance for Peace: An Insider's Account of the Peace Process. Washington: United States Institute of Peace Press.

21. Sweet & Maxwell *"Commercial Litigation: Jurisdictional Comparisons"*Hardcover Gover Publisher, 2011

22. Klaus J. Hopt, Felix Steffek "*Mediation: Principles and Regulation in Comparative Perspective*" Oxford University Press. 2012

23. Zack, M. (1999). "Developing a knowledge strategy". California Management Review. 41(3). pp. 125-46

24. Christian Bühring-Uhle, Lars Kirchhoff, Gabriele Scherer "*Arbitration and Mediation in International Business*" Kluwer Law International. 2006

25. Folger, J. & Bush, R. 1994, The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition. Jossey-Bass, San Francisco, USA.

26. Hoffman, D. 1997. Tools of the Trade: A Manual for the Settlement-Oriented Mediator. Harvard Law Review, Spring

27. Cyril Chern "*The Commercial Mediator's Handbook*" CRC Press. 2014

28. Ashurst, 'Commercial Mediation' Corpus under Constitutional Law' (June 2009)

29. A. J. van den Berg "*New Horizons in International Commercial Arbitration and Beyond*" Kluwer Law International publishers. 2005

30. Ashurst, 'Commercial Mediation' Corpus under Constitutional Law' (June 2009)

31. Erbe, N.D (2006)."Appreciating Mediation's Global Role in Promoting Good Governance. ." Harvard Negotiation Law Review 11(Spring)

32. Otis, L. and E. H. Reiter. (2006) "Mediation by Judges: A new Phenomenon in the Transformation of Justice." Pepperdine Dispute Resolution Law Journal 6: 351

33. Latimer, J., Dowden, C., and Muise, D. *The effectiveness of restorative justice practices: A meta-analysis*. Department of Justice Canada: Research and Statistics Division, 2001

34. Messick, R. E. (2005).Alternative Dipute Resolution: When It Works,When It Doesn't.Washington, DC,The World Bank, Public Sector Group: 1-4.

35. The growth of international mediation in commercial disputes, Colin L Wall, September 2011

36. Moyer, T. J. and Emily Stewart Haynes (2003)."Mediation as a Catalyst for Judicial Reform in Latin America." Ohio St. J. on Disp. Resol 18

37. Messick, R. E. (2005).Alternative Dipute Resolution:When It Works,When It Doesn't.Washington, DC,The World Bank, Public Sector Group: p-16

38. Boettger, D. I. U. (2004). "Efficiency versus Party Empowerment - Against a Good-Faith Requirement in Mandatory Mediation." Review of Litigation 23(1)

39. Boettger, D. I. U. (2004). "Efficiency versus Party Empowerment - Against a Good-Faith Requirement in Mandatory Mediation." Review of Litigation 23(1)

40. Erbe, N.D. (2006) "Appreciating Mediation's Global Role in Promoting Good Governance." Harvard Negotiation Law Review 11(Spring)

41. Karl Mackie and Eileen Carroll."International Mediation: the Art of Business Diplomacy". 2006

42. Susan D. Franck, "The Liability of Internationa. Arbitrators: A Comparative Analysis and Proposal for Qualified Immunity", *New York Law School Journal of International and Comparative Law*, Vol. 20, (2000)

43. Scott Brown, Christine Cervenak, and David Fairman "Alternative Dispute Resolution Practitioners Guide", March 1998

44. Maureen A. Weston, "Reexamining Arbitral Immunity in an Age of Mandatory and Professional Arbitration", *Minnisota Law Review*, vol.88, (2003-2004)

45. Bernard Weiss, *Interpretations in Islamic Law: The Theory of Ijtihad*, American Journal of Comparative Law v. 26 199, 199-206 (1978)

46. A. Sirajuddin, "Concept of Mediation in Islamic Jurisprudence," Mediation in Islamic Jurisprudence

47. Cross-Border Mediation (EU Directive) Regulations 2011

48. Cairns, H 1942. 'Book Reviews: The Cheyenne Way. Conflict and Case Law in Primitive Jurisprudence'. Harvard Law Review, vol. 55, pp. 707-11

49. Denzin, NK & Lincoln, YS 1994, 'Introduction:Entering the Field of Qualitative Research', in NK Denzin & YS Lincoln (eds), Handbook of Qualitative Research. Sage Publications. Inc., Thousand Oaks. California.

50. Burrage M (1988) Revolution in the collective action of the French. American and English legal professions. Law Soc Inq 13:225–277

51. Cheung O (1999) Critical factors affecting the use of alternative dispute resolution processes in construction. Int J Conflict Manag 17(3):189–194

52. See Richard Abel. The Politics of Informal Justice. 1982: Richard Hofrichter. Neighbourhood Justice in Capitalist Society: The Expansion of the Informal State. 1983: Roger Matthews. Informal Justice. 1988: and. Laura Nader. "Harmony Models and the Construction of Law". 1991:41-59.

53. Deborah Kolb. "To Be a Mediator: Expressive Tactics in Mediation." 1985:11-26: "Strategy and The Tactics of Mediation," 1983:247-268: "Roles Mediators Play: State and Federal Practice," 1981:1-17; The Mediators, 1983.

54. Richard Abel. The Politics of Informal Justice, 1982; Richard Hofrichter. Neighbourhood Justice in Capitalist Society: The Expansion of the Informal State. 1983; Roger Matthews, Informal Justice, 1988; and, Laura Nader, "Harmony Models and the Construction of Law", 1991:41-59.

55. Bringing Peace into the Room: How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution edited by Daniel Bowling and David A. Hoffman. San Francisco, CA: Jossey-Bass

56. Complaint Mediation in Ontario's Self-Governing Professions by Lisa Feld and Peter A. Simm. Waterloo, ON: Fund for Dispute Resolution.

57. Challenging Conflict: Mediation through Understanding by Gary Friedman and Jack Himmelstein. Chicago. IL: American Bar Association.

58. Defensiveness in Mediation: Perceptions of Experienced Mediators (Thesis) by Donna Marie Soules. Yellow Springs. OH: Antioch University.

59. Developing the Craft of Mediation: Reflections on Theory and Practice by Marian Roberts. Philadelphia. PA: Jessica Kingsley Publishers

60. Herding Cats: Multiparty Mediation in a Complex World edited by Chester A. Crocker. Fen Osler Hampson. and Pamela Aall. Washington. DC: United States Institute of Peace Press

61. How to Make Money As a Mediator (And Create Value for Everyone): 30 Top Mediators Share Secrets to Building a Successful Practice by Jeffrey Krivis and Naomi Lucks. San Francisco. CA: Jossey-Bass

62. In the Mind's Eye? Consistency and Variation in Evaluating Mediators by Christopher Honeyman. Kathleen Miezio. and William C. Houlihan. Cambridge. MA: Harvard Law School

63. Mediation Advocacy: Effective Client Representation in Mediation Proceedings by Cinnie Noble, L. Leslie Dizgun, and D. Paul Emond. Toronto, Ont.: Emond Montgomery Publications

64. Mediation and Reconciliation of Interests in Public Disputes by Jean Poitras and Pierre Renaud. Scarborough, ON: Carswell. (HM 136 P644 1996)

65. Mediation in the Justice System: Conference Proceedings, May 20-21, 1982. John Jay College of Criminal Justice edited by Maria R. Volpe. Washington, DC: American Bar Association, Special Committee on Dispute Resolution. (KF 9084 M434 1983)

66. Mediation of Criminal Conflict: An Assessment of Programs in four Canadian Provinces: Executive Summary Report by Mark S. Umbreit. Winnipeg. MB: John Howard Society of Manitoba. (KE 484 A4 U437 1995)

67. Dakolias. Maria. " A Comparative Perspective of the Court Performance around the World", *World Bank Technical Papers* 430 (1999)

68. Dakolias. Maria. " A Comparative Perspective of the Court Performance around the World", *World Bank Technical Papers* 430 (1999)

JOURNALS

1. Hiram E. Chodosh. Stephen A. Mayo. A.M Ahmadi & Abhishek M. Singhvi. " Indian Civil Justice System Reform: Limitation and Preservation of the Adversarial Process". New York university Journal of International Law and Politics. Volume 30. Fall 1997-Winter 1998.

2. Maureen A. Weston. "Reexamining Arbitral Immunity in an Age of Mandatory and Professional Arbitration".*Minnisota Law Review*. Vol. 88. (2003-2004). 449

3. Prathima R. Appaji, "Arbitral Immunity: Justifications and Scope in Arbitration Institutions", *Indian Journal of Arbitration Law*, Vol 1, (September 2012). 1

4. Lewin, K. (1946) 'Action research and minority problems' in G. Lewin (Ed.) Resolving Social Conflicts: Selected Papers on Group Dynamics, New York: Harper & Brothers

5. Robert J. Niemic, Donna Stienstra, Randall E. Ravitz (2001), Guide to Judicial Management of Cases in ADR, Federal Judicial Center, p. 9-10

6. Rivera, E., Zeoli, A., & Sullivan, C. (2012). Abused Mothers' Safety Concerns and Court Mediators' Custody Recommendations. Journal of Family Violence, 27(4), 321– 332

7. Robert J. Niemic, Donna Stienstra, Randall E. Ravitz (2001), Guide to Judicial Management of Cases in ADR, Federal Judicial Center pp. 128-130, and CEDR.

8. Walton. L. Oliver. C. & Griffin. C. (1999). Divorce mediation: The impact of mediation on the psychological well-being of children and parents. Journal of Community & Applied Social Psychology, 9(1). 35-46
9. Harbom, Lotta and Peter Wallensteen. 2007. Armed Conflict. 1989–2006. Journal of Peace Research 44 (5): 623–634
10. Hare, Paul. 1998. Angola's Last Best Chance for Peace: An Insider's Account of the Peace Process. Washington: United States Institute of Peace Press
11. Adkins, G. & Caldwell. D. (2004). Firm or subgroup culture: Where does fitting in matter most. Journal of Organizational Behavior. 25. 969–978
12. Wiig. K., (1997). Knowledge management: An introduction and perspective. The Journal of Knowledge Management. 1(1). pp. 6-14
13. Alternative Dispute Resolution – when it works. when it doesn't". PREM notes.WB 2005. Richard Messick. with subsequent changes by L. Rozdeiczer. and Alejandro Alvarez de la Campa
14. Extract from "Alternative Dispute Resolution – when it works, when it doesn't", PREM notes,WB 2005.
15. Brookmire, D. & Sistrunk, F 1980. The Effects of Perceived Ability and Impartiality of Mediator and Time Pressure on Negotiation, Journal of Conflict Resolution 6,24:247-327
16. Alternative Dispute Resolution – when it works, when it doesn't", PREM notes,WB 2005. Richard Messick, with subsequent changes by L. Rozdeiczer, and Alejandro Alvarez de la Campa.
17. AAA, 'Drafting Dispute Resolution Clauses' (Oct 2013)
18. AAA, 'A Guide to Commercial Mediation and Arbitration for Business People' (Oct 2013)

19. Otis. L. and E. H. Reiter. (2006)."Mediation by Judges: A new Phenomenon in the Transformation of Justice." Pepperdine Dispute Resolution Law Journal 6: 351

20. Moyer,T. J. and Emily Stewart Haynes (2003)."Mediation as a Catalyst for Judicial Reform in Latin America." Ohio St. J. on Disp. Resol 18. Part IV of this paper provides descriptions of actual mediation programs in place in Argentina, Bolivia, Ecuador, Nicaragua, and Peru

21. Susan D. Franck. "The Liability of International Arbitrators: A Comparative Analysis and Proposal for Qualified Immunity", New York Law School Journal of International and Comparative Law, Vol. 20, (2000), 1.

22. Grillo.T. (1991)."The Mediation Alternative: Process Dangers for Women."Yale L.J. 100.

23. Prathima R. Appaji. "Arbitral Immunity: Justifications and Scope in Arbitration Institutions", *Indian Journal of Arbitration Law*, Vol I. (September 2012), 2

24. UIA World Forum of Mediation Centres

25. Prathima R. Appaji. "Arbitral Immunity: Justifications and Scope in Arbitration Institutions", *Indian Journal of Arbitration Law*, Vol I, (September 2012)

26. Moyer,T. J. and Emily Stewart Haynes (2003)."Mediation as a Catalyst for Judicial Reform in Latin America." Ohio St. J. on Disp. Resol 18. Part IV of this paper provides descriptions of actual mediation programs in place in Argentina, Bolivia, Ecuador, Nicaragua, and Peru

27. Michael D. Moberly, "*Immunizing Arbitrators from Claims for Equitable* Relief", Pepperdine Dispute Resolution Law Journal, Vol.5, (2005), 328.

28. Robert J. Niemic, Donna Stienstra. Randall E. Ravitz (2001), Guide to Judicial Management of Cases in ADR, Federal Judicial Center pp. 128-130.

29. Miles B. Farmer. "Mandatory and Fair? A Better System for Mandatory Arbitration", *The Yale Law Journal*. Vol. 121. (June 2012).

30. Jenny Brown. "The Expansion of Arbitral Immunity: Is Absolute Immunity Forgone Conclusion?", *Journal of Dispute Resolution*. Vol. 2009, Issue I.

31. Mediation Procedures. London Court of International Arbitration and Mediation

32. Model Rule for the Lawyer as Third Neutral Party. International Institute for Conflict Prevention & Resolution (CPR)

33. Model Law on Conciliation and Mediation, from the United Nations Commission on International Trade Law (UNCITRAL)

34. Hazem Hebaishi. "Should Arbitrator Immunity Be Preserved Under English Law?*"North East Law Review*

35. From a presentation by IFC – PEP SE's public awareness campaign in Bosnia Herzegovina.Ajla Dizdarevic

36. IFC – PEP MENA ADR project in Pakistan

37. Ministry of Law, High Court of Sindh/District & Sessions Court. Bar Association, Federal Judicial Academy, Small and Medium Enterprise Development Authority (SMEDA) & the Karachi Chamber of Commerce and Industry (KCCI) IFC – PEP MENA ADR project in Pakistan p-54

38. A business world without trial introducing alternative dispute resolution in Pakistan,Navin Merchant and Muhammad Zzhar Rauf

39. Majeed, Wasif. "Review of the New Arbitration Bill". *Corporate Law Decisions*, Part III, Journal Section, (2010)

40. Ahmad Abu Al-Wafa. Kitab Al-I'laam Bi-qawa'id Al-Qanun Al-Dawli Wa Al-Alaaqat Al-Dawliyah Fi Shari'at

41. Al-Islam, p39.

42. Al-Jahshiyari. Kitab al-wuzaraa. p142& 187.

43. See Fathi Kemicha.The Approach to Mediation in the Arab World, paper presented in the international conference of Mediation Geneva Switzerland 1996

44. Al-jurjani. Al-Taarifaat, pg174

45. The Mejelle, p255

46. See Al-Tabarni . Al-Mujam al-kabir, Ibn Asakin. Al-taarikh and Al-Albani. Al-silsilah Al-sahihah

47. The Influence of Sharia Norms of Dispute Settlement and International Law: The International Court of Justice. Room for Accomadation? v. *75 309 The International Journal of Arbitration, Mediation and Dispute Management 317-319 (August 2009)*

48. Ibn Al-Qayim. Zaad Al-Maad. V3. p163

49. The International Journal of Arbitration. Mediation and Dispute Management at 317.

50. This definition of Siyasah Shar'iyah was introduced by Ibn Aqil Al-Hanbali and adopted by Ibn Qayim Aljuziah and later adopted by the majority of contemporary scholars

51. Su'aida Bt Safel. "Majlis Sulh (Islamic Mediation) in the Selangor Syariah Court and Malaysian Mediation Centre of the Bar Council: A Comparative Study

52. Case 222/84 Johnston v Chief Constable of the Royal Ulster Constabulary [1986] ECR 1651

53. Green Paper on alternative dispute resolution in civil and commercial matters COM/2002/0196 Final at 1.2(5)

54. Report by the Access to Justice Taskforce —A Strategic Framework for Access to Justice in the Federal Civil Justice Systeml (Department of the Attorney General of Australia, 2009). Centre for Effective Dispute Resolution ("CEDR") or the ADR Group

55. Article 6 of the European Convention on Human Rights

56. Lewis and McCrimmon _The Role of ADR Processes in the Criminal Justice System: A view from Australia'. Paper presented ALRAESA Conference. Uganda. September 2005 at 2.

57. Alexander —The mediation meta model: Understanding practice around the worldl (Paper presented at the 4th Asia-Pacific Mediation Forum: Mediation in the Asia-Pacific: Constraints and Challenges. Kuala Lumpur. 16- 18 June 2008) at 8-20.

58. Final Report for the Inquiry into Alternative Dispute Resolution and Restorative Justice (Victoria Parliament Law Reform Committee. May 2009).

59. Law Institute of Victoria ADR Terminology Responses to NADRAC Discussion Paper (National Alternative Dispute Resolution Advisory Council. 24 June 2005).

60. UK. the Chancery Court Guide 2009

61. UNCITRAL Model Law on International Commercial Conciliation with Guide to Enactment and Use 2002 (United Nations 2002). Available at www.uncitral.org. See also Dobbins —UNCITRAL Model Law on International Commercial Conciliation: From a Topic of Possible Discussion to Approval by the General Assemblyl (2002) 3 Pepp Disp Resol L J 529

62. World Intellectual Property Organisation (WIPO)

63. Bunni The FIDIC Forms of Contract (Blackwell Publishing 3rd ed., 2008) at 445

64. Speech by Lord Judge, Lord Chief Justice of England and Wales, at the Third Civil Mediation Council National Conference, London, 14 May 2009.

65. In 2009, the Irish Commercial Mediation Association (ICMA)

66. Keane ADR Terminology Responses to NADRAC Discussion Paper (National Alternative Dispute Resolution Advisory Council, 24 June 2005).

67. Speech by Justice Mervyn King at the launch of the South African Institute of Directors Mediation Centre, 28th March 2006

68. The 2006 English *Commercial Court Guide*

69. Callinan. IDF 2006. 'Alternative Dispute Resolution and Adjudication: Reconciling Power with Principle'. The Journal of The Institute of Arbitrator & Mediators. vol. 25, no. 2, pp. 1-8

70. Campbell. A & Chong. A 2008. 'Achieving Justice in Mediation: A Cross Cultural Perspective'. paper presented to 4th Asia Pacific Mediation Forum Conference. Kuala Lumpur. 16-18 June 2008.

71. Chaykin. AA 1994. 'Selecting the Right Mediator'. Dispute Resolution Journal, vol. 49, no. 3, pp. 58-65.

72. Coghlan. D & Brannick. T 2003. 'Kurt Lewin: The Practical Theorist for the 21st Century'. The Irish Journal of Management. vol. 24. no. 2. pp. 31-7

73. Cukier. N 2010. 'Lawyers Acting as Mediators: Ethical Dilemmas in the Shift from Advocacy to Impartiality'. Australasian Dispute Resolution Journal. vol. 21. pp. 59-65

74. Clark Bryan. Lawyers and Mediation. Springer. New York. NY. USA. 2012. p. vi

75. Erickson. WH & Savage. CA 1999. 'ADR in Colorado'. Dispute Resolution Journal, vol. 54, no. 3, pp. 60-4.

76. Fulton, MJ 1989, Commercial Alternative Dispute Resolution Law Book Company, Sdyney.

77. Genn. H 1998, Central London County Court Pilot Mediation Scheme: Evaluation Report, Lord Chancellor's Department London.

78. Genn, HD, Fenn, P, Mason, M, Lane. A, Bechai Nadia. G, Lauren & Vencappa. D 2007, Twisting Arms:Court Referred and Court Linked Mediation under Judicial Pressure, viewed 25 February 2012

79. Benson B (1995) An exploration of the impact of modern arbitration statutes on the development of arbitration in the United States. J Law Econ Organ 11(2):479–501

80. Consultation Paper. in 2001 the International Centre for Dispute Resolution (ICDR)

81. Ernst & Young. Tax Dispute Resolution: A New Chapter Emerges: Tax Administration without Borders (np: EYGM Limited. 2010)

82. See the SPIDR report. Qualifying Neutrals: The Basic Principles: Report of the SPIDR Commission on Qualifications. 1989.

83. Model Code of Ethics is from Conflict Resolution Network Canada

84. SPIDR report, Qualifying Neutrals: The Basic Principles: Report of the SPIDR Commission on Qualifications. 1989

85. Ercelawn.and Nauman. "Asian Development Bank in Pakistan. A Case Study of Access to Justice Program". *Economic and Political Weekly* Vol. 37 No.44/45 (2002). 4561-4564: Armytage Livingston. "Access to Justice Program." *Centre for Judicial Studies· Asian Development Bank* (2002) : Silanes Florencio."The Politics of Legal Reform". *G-24 Discussion Paper Series, United Nations Publication* (2002)

86. Justice Sarmad Jalal Osmani, "Role of Judge in Alternate Dispute Resolution": Justice Tassadaq Hussain Jeilani. "Delayed Justice and the Role of ADR." *National Judicial Conference, Law and Justice Commission of Pakistan*

87. Declaration of International Judicial Conference held in 13-15 April. 2012 in Supreme Court of Pakistan, Islamabad

88. Centre for Justice &Rreconciliation, " Restorative Justice" *briefing paper – 1 centre for justice & reconciliation ,washington, dc* (2007)

89. "The Devil and the Deep Blue Sea? A critique of the Ability of Community Mediation to Suppress and Facilitate Participation in Civil Life. Journal of Law & Society, Volume 27, Number 1, March 2000, at page 137

90. "Mediation—How to Win Clients and Influence People "by Jonathan Dingle, New Law Journal Friday 26, September. 2003

JUDGMENTS

1. *Sheikh Jameel Ahmad vs Raja Khalid Hussain,* 2010 CLD 571 Lhr. LHC
2. National Judicial Policy of Pakistan. 2009/10

WEBSITES

1. See Advantages and Disadvantages of Mediation. http://nationalparalegal.edu
2. www.cpradr.org along with the CPR Mediation Analysis Screen (2001) and other useful ADR resources
3. See Roles of the Mediator. http://mediate.com
4. Geetha R., Role of attorneys in mediation process, http://www.americanbar.org
5. Ohio Judicial Conference 65 South Front Street . Columbus. OH 43215-3431, last accessed. 23rd March. 2016. www.ohiojudges.org
6. "Wace Morgan Civil & Commercial Mediation Service provides a flexible and cost effective alternative to court proceedings" last accessed 20thFeburary. 2016. www.wacemorgan.co.uk
7. Ohio Judicial Conference 65 South Front Street ,Columbus. OH 43215-3431, last accessed, 23rd March, 2016, www.ohiojudges.org
8. "Chris Detheridge, litigation partner, is an accredited civil and commercial mediator and thus enables Wace Morgan to expand its service provision to include civil and commercial mediation. As a firm, Wace Morgan has long recognised the importanceand benefits to clients of providing mediation services in the context of family disputes." Last accssed 16 Feb, 2016, www.wacemorgan.co.uk
9. http://www.cedrsolve.com/index.php?location=/dispute_resolution_services/mediation.htm

10. Mediation Commentary is an integral part of the CPR Mediation Procedure. The *CPRMediation Procedure and Commentary* is available at www.cpradr.org along with the CPR Mediation Analysis Screen (2001) and other useful ADR resources.
11. Erbe, N.D. (2006) "Appreciating Mediation's Global Role in Promoting Good Governance" Harvard Negotiation Law Review 11(Spring) Transparency International, http://www.transparency.org
12. CPR.International Institute for Conflict Prevention & Resolution. Thomas J. Stipanowich, President," Last accessed. 18 January. 2016 www.cpradr.org
13. Transparency International, http://www.transparency.org
14. http://whoswholegal.com/news/features/article/29214/growth-international-mediation-commercial-disputes
15. http://digitalcommons.pepperdine.edu/drlj/vol5/iss2/5
16. http://www.yalelawjournal.org/note/mandatory-and-fair-a-better-system-of-mandatory arbitration
17. http://scholarship.law.missouri.edu/jdr/vol2009/iss1/10
18. Ashurst Quickguides, commercial mediation, www.ashurst.com
19. http://www.jurisint.org/en/ctr/63.html
20. http://www.cpradr.org/
21. http://www.uncitral org/uncitral/en/uncitral_texts/arbitration.html
22. https://research.ncl.ac.uk/media/sites/researchwebsites/northeastlawreview/Hazem%20Hebaishi.pdf
23. https://www.wbginvestmentclimate.org/uploads/Smart%20Lesson%20Pakistan.pdf
24. http://eurlex.europa.eu/.
25. www.ag.gov.au.
26. Centre for Effective Dispute Resolution (CEDR) http://www.cedr.co.uk/

27. Alexander, _Mobile Mediation: How technology is driving the globalization of ADR (Australian Centre for Peace and Conflict Studies University of Queensland, 2006). Available at: www.apmec.unisa.edu.au

28. http://www.justice.gov.za

29. www.parliament.vic.gov.au

30. Centre for Effective Dispute Resolution (CEDR) http://www.cedr.co.uk/

31. www.civilmediation.org

32. www.ifc.org.

33. Canadian Bar Association ADR section http://www.cba.org/CBA/Sections/Adre/

34. American Bar Association http://www.abanet.org/dispute/home.html

35. American Arbitration Association. Dispute Resolution Section http://www.adr.org/

36. CDR Associates http://www.mediate.org/start.htm

37. American Bar Association http://www.abanet.org/dispute/home.html

38. Federal Mediation and Conciliation Service http://www.fmcs.gov/internet

39. United Nations Commission on International Trade Law (UNCITRAL) www.uncitral.org

40. Collings O (2009) Depression strikes as lawyers struggle in downturn. The New Lawyer, 6th May. http://www.thenewlawyer.com.au/article/Depression-spikes-as-lawyers-struggle-in-downturn/479923.aspx

41. Canadian Institute for Conflict Resolution http://www.cicricrc.ca/english/index_e.htm

42. Conflict Research Consortium of the University of Colorado http://www.colorado.edu/conflict

43. CDR Associates http://www.mediate.org/start.htm

44. Centre for Effective Dispute Resolution (CEDR) http://www.cedr.co.uk/

45. Cornell Law School http://www.law.cornell.edu/wex/index.php/ADR

46. CDR Associates http://www.mediate.org/start.htm

47. Court Mediation Program (DC) http://www.cadc.uscourts.gov/internet/internet nsf/Content/Mediation+Program

48. Department of Justice. Canada - Project on Dispute Resolution http://canada.justice.gc.ca/Orientations/Methodes/index_en.html