



**Government of Khyber Pakhtunkhwa**

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# ALTERNATE DISPUTE RESOLUTION MANUAL

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**HOME & TRIBAL AFFAIRS DEPARTMENT**

## **Foreword**

The government of Khyber Pakhtunkhwa enacted the “Khyber Pakhtunkhwa Alternate Dispute Resolution Act, 2020” with a sole purpose to facilitate its people in speedy and cheap dispensation of justice in line with the local traditions. The Alternate Dispute Resolution (ADR) is a new concept in Khyber Pakhtunkhwa, which requires awareness. Therefore, this manual is prepared to create awareness about ADR among public on its silent features and the processes involved in it. Due effort has been made to address all the questions related to ADR that may arise in minds of general public and practitioners. It is expected that this manual will assist in smooth implementation of ADR in the province.

# Contents

Foreword .....	i
Part I: Overview and Context of ADR.....	1
Part II: ADR Process and Role of Saliseen.....	3
Part III: Settlement and Implementation.....	6

## **Part I: Overview and Context of ADR**

### **What is Alternate Dispute Resolution?**

Alternate Dispute Resolution (ADR) is modern version of an ancient set of practices. Traditional societies in all parts of the world have featured variations of third-party arbitration. However, this mediation was subsumed by the rise of formal justice system. The increased complexity of formal justice system, however, saw reduced satisfaction with legal outcomes among disputants, which led to a rediscovery of ADR in many parts of the world. In Khyber Pakhtunkhwa, we have a unique tradition of Jirga system which helps in settlement of disputes through a non-formal justice process. This private settlement of disputes was not formally regulated. Therefore, the government of Khyber Pakhtunkhwa introduced ADR regime to make the informal dispute settlement as part of formal justice system.

### **Why ADR system when formal judicial system exists?**

The formal justice is more concerned about due process of law and it involves complex and lengthy procedures that consume a lot of time and money. Moreover, formal justice system lacks the tendency to addressing the problem in line with local traditions. Therefore, a need was felt to provide relief to common man and also reduce case load on courts. ADR also provides for dispute settlement according to local traditions.

### **Is ADR a parallel system to the judicial process?**

No, the notion of a parallel judicial process through ADR is not true. ADR is a court annexed regime which upholds the supremacy of law through a judicial process. The government has taken due care in augmenting ADR regime in the current judicial system. It is hoped that ADR will compliment and assist judiciary in dispensation of justice.

### **What are advantages of ADR?**

- ADR increases access to justice for the disputants.
- It reduces costs of justice for all users.

- It preserves, improves or restores relationships among disputants as disputes are amicably resolved with mutual consent.
- It increases satisfaction of public because they don't have to wait for the outcome of lengthy litigation processes.
- It reduces workload on courts.

### **Who can apply for the ADR System?**

Any person who is aggrieved or wants settlement of dispute can avail himself of this opportunity.

### **Can a party/ person be forced for ADR?**

No, ADR is based on the principal of voluntariness and neither of the parties can be forced for ADR. The consent of all the parties for ADR is necessary for further proceeding. Even the officer or judge who wishes to refer a case for ADR is bound to make sure that all parties agree to dispute resolution through ADR.

### **Which kind of disputes can be settled through ADR?**

All civil cases mentioned in the schedule of ADR act and all compoundable criminal cases mentioned in section 345 of CrPC can be referred for ADR. A few of the cases mentioned in schedule that can be settled through ADR include family disputes, possession of immovable property, recovery of movable property, disputes between landlord and tenant, disputes involving recovery of money, cases relating to inheritance including declaration and succession etc.

### **Who can refer a dispute for ADR?**

- The parties themselves can opt for ADR.
- In criminal cases which are compoundable under section 345, the Deputy Commissioner or Dispute Resolution Council can refer for ADR before the proceedings of the court.
- In case court has taken cognizance of a criminal case, then only a court can refer the case for ADR.

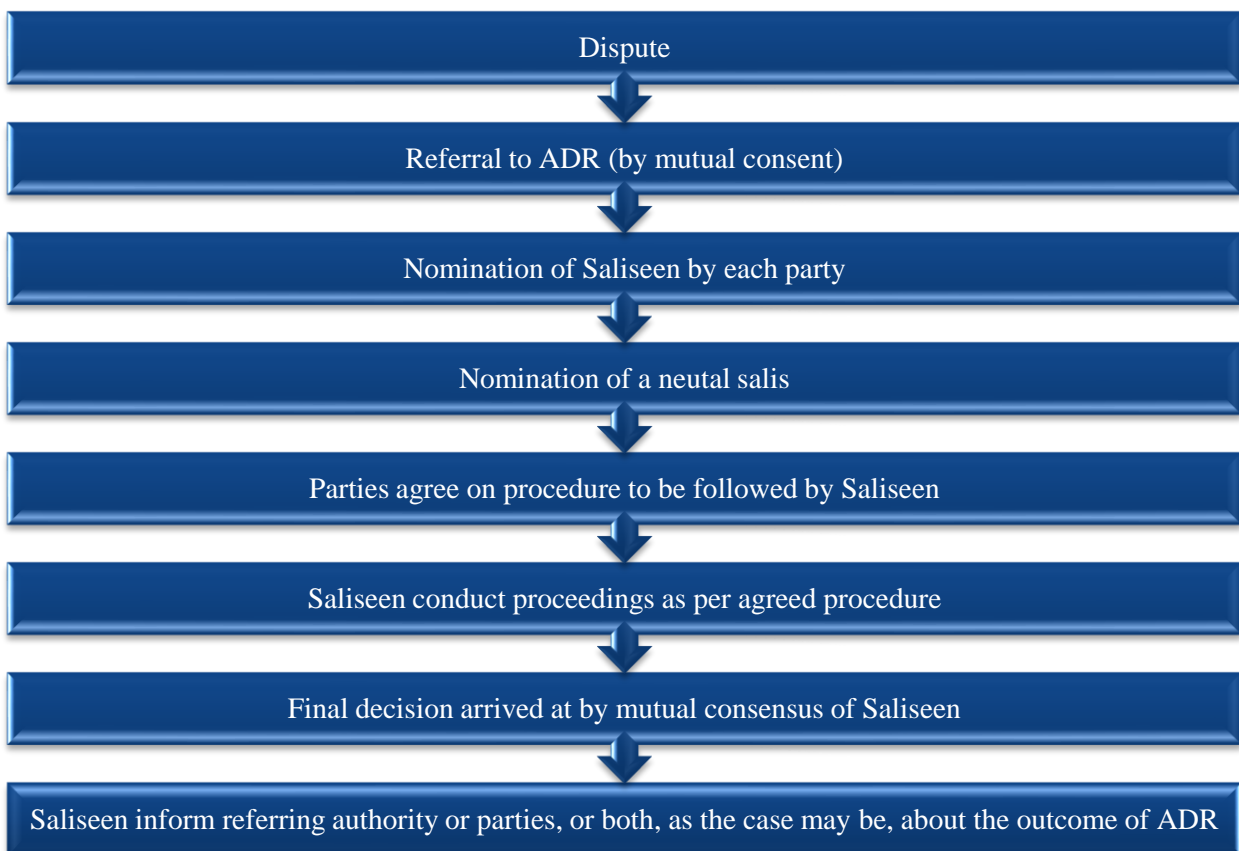
- In civil disputes, the Deputy Commissioner, Additional Deputy Commissioner or Assistant Commissioner can refer a dispute for ADR provided that the matter is not sub-judice.
- In case a civil dispute is sub-judice, then the court can refer a case for ADR.

### **Where can I find ADR Act and Rules?**

ADR Act and Rules can be downloaded from the Home department's website ([www.hd.kp.gov.pk](http://www.hd.kp.gov.pk)).

## **Part II: ADR Process and Role of Saliseen**

### **What steps are involved in ADR?**



## **Can parties directly approach Saliseen for ADR?**

There is no bar under the rules on the parties on their directly approaching Saliseen for ADR. However, it is appreciated that parties approach Saliseen through a referring authority because there may be administrative complications regarding selection of Saliseen, Neutral Salis, payment to Saliseen, or any other complications that may arise during the proceedings, and, the parties may lack the knowledge about the processes.

## **Who are Saliseen?**

Saliseen are the panel of persons who are capable of arbitration, mediation and conciliation. They are selected carefully for the purpose of ADR. A panel of Saliseen is notified for each district.

## **How are Saliseen selected?**

Saliseen are selected through a transparent process. Their eligibility criteria is already prescribed under the rules and their credentials are verified by the Deputy Commissioner concerned through District Intelligence Coordination Committee. After then, their names are forwarded to Saliseen Selection Committee which is headed by the Commissioner, and participated by Regional Police Officer, concerned Deputy Commissioner, Regional Director (Prosecution), Senior Civil Judge (Admin) of concerned district, and representatives of Special Branch and law enforcement agencies. The composition of Saliseen Selection Committee is kept diverse so that competent and upright Saliseen are selected for all types of ADR cases. The Saliseen are then trained for the ADR proceedings. Their conduct is regularly monitored and if any Salis violates his conduct, he is removed from the panel of Saliseen.

## **Where can I find panel of Saliseen?**

The notified panel of Saliseen can be downloaded from the Home department's website, or obtained from the office of concerned Deputy Commissioner or his website, or from the office of referring authority.

### **How many Saliseen can participate in an ADR?**

The number of Saliseen for an ADR vary based on the nature and complexity of the dispute. The number of Saliseen for the ADR are decided by the referring authority.

### **How can a party select Salis/ Saliseen?**

Each party can select a Salis/Saliseen from amongst the panel of notified Saliseen according to their choice. Furthermore, all parties are required to agree on a neutral Salis by mutual consensus. In case, the parties fail to agree on a neutral Salis, then the referring authority will nominate a neutral Salis.

### **What are ADR proceedings?**

The Saliseen once selected for the ADR shall decide the procedure of ADR in consultation with the parties regarding, the date, venue and time of the proceedings and the manner in which settlement is to be reached such as meeting with persons, or examining any record, or visiting the place for reaching at a decision etc. In case either of the parties does not agree on the procedure, then Saliseen will conduct proceedings according to the rules.

### **Are lawyers/attorneys required to appear in ADR?**

The parties may wish to appear in ADR proceedings either in-person, or through their attorneys which may include their lawyer or other trusted person.

### **What is maximum time allowed for ADR?**

The referring authority will provide a time for completion of ADR which cannot be more than three months. However, if the dispute is not resolved in a given timeframe and the parties wish to proceed further, the referring authority on the written application of parties may extend the time for dispute resolution. However, the maximum time for any ADR cannot exceed more than six months in any case.



**What if a party tries to delay ADR proceedings?**

If a party deploys delaying tactics, or is found willfully absent from the proceedings without any cogent reason, or fails to meet any deadline, Saliseen may impose financial penalty which shall be payable to the other party. Also, Saliseen will inform the referring authority and proceed further with the matter.

**What if a case is already under trial in court?**

In case a dispute matter is sub-judice, then the court may refer it for ADR after obtaining consent of all parties and the proceedings of the case are halted till the outcome of ADR under the ADR Act.

**What if a Salis violates code of conduct?**

The Saliseen are bound by the code of conduct to avoid conflict of interest, and ensure fair and equal right of parties, and their privacy. In case a party/person finds that any of the Saliseen is violating his code of conduct, then he/she may file a complaint against the Salis to the Deputy Commissioner. The Salis, if found violative of his code of conduct, can be removed from the panel of Saliseen.

**Part III: Settlement and Implementation****What is settlement?**

The decision of saliseen in ADR is called settlement. The settlement is printed on format appended with the ADR rules and it is to be signed by all saliseen, all parties or their attorneys and witnesses of the parties.

**Is consensus of saliseen mandatory for settlement?**

Yes, saliseen are supposed to make settlement with mutual consensus to ensure democratic spirit.

**Is settlement signed by all parties?**

As explained earlier, the settlement is to be signed by all the parties or their authorized representatives.

**How can the settlement attain finality?**

If the parties wish to give finality to the settlement, then they may approach the court. Or the court itself will decide on the fate of settlement when ADR is referred by itself. The court shall pronounce the judgment and pass decree in terms of the settlement after satisfying itself that settlement was made according to the legal procedure under ADR Act.

**Can appeal be filed against the settlement pronounced by the court?**

The essence of ADR is to avoid lengthy litigation and it is based on the principal of voluntariness. Therefore, if ADR is voluntarily done and the court has satisfied itself that the procedure of ADR is followed in letter and spirit, then the window of appeal is closed for the disputants.

**How can settlement under ADR be enforced?**

The settlement under ADR, if pronounced by the court, can be enforced and executed like any other order of the court.

**What if ADR fails and no settlement is made by saliseen?**

If saliseen fail to make any settlement, then the ADR is said to have failed and the parties may approach court for the resolution of their dispute.

**How much is the cost of settlement cost under ADR?**

Though ADR is introduced to reduce cost of litigation, yet it is necessary to compensate saliseen for their efforts and valuable time. Therefore, saliseen are entitled for honoraria only in case of successful ADR and settlement is made. The total amount of honoraria to all saliseen may range from Rs. 20,000 to Rs. 200,000 depending on the nature of the case. The honoraria amount

shall be decided by the referring authority and shall be equally borne by all the parties. This total amount of honoraria shall be equally dived among the saliseen.

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