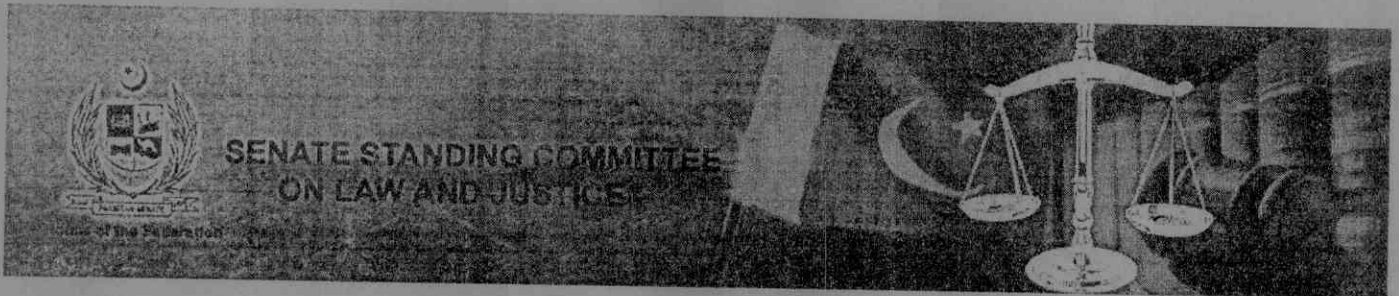


REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE



"THE ALTERNATE DISPUTE RESOLUTION BILL, 2017"

Report No. 45

PRESENTED BY

**SENATOR MUHAMMAD JAVED ABBASI
CHAIRMAN**

SENATE SECRETARIAT

REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON "THE ALTERNATE DISPUTE RESOLUTION BILL, 2017"

I, Chairman of the Standing Committee on Law and Justice, have the honour to present report on "The Alternate Dispute Resolution Bill, 2017" as passed by the National Assembly and introduced in the Senate on 16th February, 2017. The Bill, upon introduction, was referred to the Standing Committee for consideration and report.

2. The composition of the Standing Committee on Law and Justice is as under:-

1.	Senator Muhammad Javed Abbasi	Chairman
2.	Senator Aitzaz Ahsan	Member
3.	Senator Saleem Zia	Member
4.	Senator Farooq Hamid Naek	Member
5.	Senator Dr. Muhammad Ali Khan Saif	Member
6.	Senator Syed Muzafar Hussain Shah	Member
7.	Senator Nehal Hashmi	Member
8.	Senator Ms. Ayesha Raza Farooq	Member
9.	Senator Nawabzada Saifullah Magsi	Member
10.	Senator Saeed Ghani	Member
11.	Senator Zaheerud Din Babar Awan	Member
12.	Senator Mrs. Zahida Khan	Member
13.	Minister for Law and Justice	Ex-Officio Member

3. The Committee considered the Bill in its meetings held on 27th March 2017, 5th April 2017, 13th April 2017, 28th April 2017 and 2nd May, 2017 under the Chairmanship of Senator Muhammad Javed Abbasi.

Synopsis of deliberations of the meeting dated 27th March, 2017:

4. The Minister for Law and Justice briefed the Committee that the Alternate Dispute Resolution Bill, 2017, seeks to facilitate settlement of disputes without resort to formal litigation. There is huge backlog of cases in both subordinate and superior Courts of the country. It is, therefore, necessary to find simpler and faster alternates which can supplement the traditional legal system. As litigation is a very lengthy and expensive process there is a worldwide trend to adopt Alternative Dispute Resolution (ADR). Alternative Dispute

Resolution methods such as conciliation, arbitration and mediation can be used effectively for settlement of disputes to overcome delays, provide inexpensive justice and reduce tremendous burden on Courts.

5. He also explained the salient features of the Bill and apprised the Committee that due to observations of certain segments of society, especially the women organizations, amendments are being proposed in the Bill as passed by the National Assembly, in order to omit "Panchayat and Jirga" and to give due representation to women in the 'Panel of Neutrals'.

6. He concluded that in view of the internationally acknowledged term "alternative", it is proposed that the word "alternate" may be substituted with the same.

7. Senator Muzafar Hussain Shah stated that the legislation shall be reasonably enacted in order to referring providing any parallel forum of justice. He also made reference to clause 4 of the Bill and observed that in view of the existing social fabric, it will be difficult to choose a neutral. He also showed apprehension at the number of cases included in the 'Schedule to the Bill'. The Hon'ble Senator proposed that a public hearing may be held in the next meeting to seek view point of all the relevant stakeholders.

8. Senator Saeed Ghani stated that the Senate of Pakistan has also passed a Bill titled, "Arbitration and Conciliation Bill", which was drafted by the Senate's Committee of the Whole after consultation with all relevant stakeholders. Minister for Law and Justice apprised the Committee that the said Bill was also looked into while drafting the instant Bill.

Synopsis of deliberations of the meeting dated 5th April, 2017:

9. In view of amendments tabled by the Minister for Law and Justice in the meeting dated 27th March, 2017, Ministry of Law and Justice submitted revised draft of the Bill.

10. Pakistan Bar Council, Supreme Court Bar Association, Islamabad Bar Council, Islamabad High Court Bar Association and Islamabad Bar Association were invited to give input on the instant Bill.

11. Mr. Fiaz Ahmad Jandran, Chairman E.C, Islamabad Bar Council, principally supported the Bill, however, objected to Clause 4 and stated that alternative dispute resolution

involves quasi judicial role of the neutrals, therefore, it is proposed that only retired judges and lawyers be added in the 'Panel of Neutrals'. Minister for Law and Justice responded that the scope of 'Panel of Neutrals' has been widened deliberately in order to provide all possible options depending on the nature of the case. Furthermore, the neutrals will be notified in consultation with the High Court. Mr. Naveed Malik, President, Islamabad Bar Association, also endorsed the contentions raised by Mr. Fiaz Ahmad Jandran. Mr. Arif Chaudhry, President, Islamabad High Court Bar Association, also objected on the 'Panel of Neutrals' and suggested the inclusion of retired judges and lawyers only.

12. Senator Farooq H. Naek principally supported the Bill, however, raised certain contentions regarding the 'Panel of Neutrals' generally and "technocrats" and "experts" particularly, as it will be difficult to define the same in each and every case. He further stated that the "Schedule" needs to be amended and proposed that retired judges and senior lawyers with active practice at the Bar should be amongst the 'Neutrals'. Furthermore, procedure available to the 'Panel of Neutrals' is missing; the same should be clarified.

Synopsis of deliberations of the meeting dated 13th April, 2017

13. Representatives of Pakistan Bar Council, Supreme Court Bar Association, Islamabad Bar Council, Islamabad High Court Bar Association and Islamabad Bar Association were again invited for consultation.

14. Mr. Fiaz Ahmad Jandran, Chairman E.C, Islamabad Bar Council raised following issues:-

- (i) Clause 3 of the Bill makes it obligatory for the Court to refer every civil matter mentioned in the 'Schedule' for ADR, which is against the notion that this is a 'consent based' remedy;
- (ii) Persons without the law background will not be able to deliver properly as neutrals.
- (iii) Family disputes should be omitted from the 'Schedule'.

15. Ministry of Law and Justice, in response, apprised that family disputes were added due to the concerns of the women organizations. Jury systems are prevalent internationally wherein, jurors are mostly without law background.

16. Senator Muzafar Hussain Shah termed this Bill as historical move given the fact that comprehensive mechanism for ADR is need of the hour, however, he raised following issues:-

- i. Who is a neutral person? Given our existing realities this system might not work in Pakistan.
- ii. Persons with law background will help in more effective decisions as neutrals, therefore, lawyers and retired judges should be added.
- iii. The word "shall" used in clause 3 may be substituted with the word "may".
- iv. In clause 24 the words "Chief Justices of High Courts" may be substituted with the words "Chief Justice of High Court".

17. Senator Farooq H. Naek tabled following amendments in the said Bill:-

1. ***Amendment of the Preamble.—***

In paragraph 2 after the words "disputes" the words "expeditiously" be inserted and thereafter a comma "," be added.

2. ***Amendment of Section 1.—***

a) *In Section 1(3) after the words "force" the words "at once" be added.*

b) *In Section 1(3) from the words "on" till the words "provision" be omitted.*

3. ***Amendment of Section 2.—***

(a) *In Section 2(a):*

(i) *after the words "resort to" the words "a method of" be omitted.*

(ii) *after the word "resolving" the word "the" be substituted with "a"*

(iii) *after the word "includes" a comma "," be added and thereafter the phrase "but is not limited to," be inserted.*

(iv) *after the comma "," occurring after the word "conciliation" the words "religious determination" be inserted.*

(v) *the words "and dispute resolution" be deleted and in its place a semi colon ";" be inserted.*

(b) *In Section 2(c) after the word "Statutory" the words "or contractual" be inserted.*

(c) *In Section 2(d) the words "an arbitration award" be substituted with the words "the final decision in arbitration".*

(d) *Section 2(e) be substituted with the following new subsection.*

"(e)" "Court" means a Court or adjudicatory forum of competent jurisdiction in relation to the dispute between parties;

(e) *Section 2(h) be substituted with the following:*

"(h) 'mediation' means a process in which a mediator facilitates dispute resolution by encouraging communication and negotiation between the parties in order for them to arrive at a mutually satisfactory agreement."

(f) (i) a new Section 2(m) be inserted as follows:

"(m) 'religious' authority means a Mufti, Pandit, Guru or Priest as the case may be."

(ii) Section 2(n), 2(o), 2(p) be renumbered as Section 2(n), 2(o), 2(p) respectively.

4. Amendment of Section 3.—

(a) In Section 3(1) after the words "The Court" a comma ',' shall be inserted and thereafter the phrase "on the first date after appearance of all parties," be inserted.

(b) Section 3(3) be renumbered as Section 3(4).

(i) A section 3(3) be added:-

"The Court, on application of any party to the dispute before it, with the consent of all parties, shall refer every civil matter to ADR at any stage of the proceedings."

(ii) After the newly proposed Section 3(3) the following proviso be inserted:-

"Provided that the matter falling under sub-section (3) of this Section has not been referred to ADR previously and if such a referral has occurred, the Court shall have absolute discretion in referring a matter to ADR."

5. Amendment of Section 4.—

(a) after the word "lawyers" the words "with at least 10 years practicing experience" be inserted.

(b) after the words retired Judges the words "of Superior & Subordinate Judiciary, retired Civil Servants, Social Workers, Ulama," be deleted.

(c) In Proviso to Section 4 after the words "Neutral" the words "having prescribed qualifications & experience" be inserted.

6. Amendment of Section 5.—

(a) After the word "Neutral" the words "or any other person agreed upon by the parties" be deleted.

(b) In the first proviso:-

(i) for the word 'neither' the word "do not" be substituted.

(ii) after the word 'Neutral' the words "or any other person" be deleted.

7. **Insertion of New Section 5-A:-** after Section 5 a new Section 5-A be inserted :-
 "5A- *Determination by Religious Authority:- Where the parties to the dispute are religiously aligned sharing the same religious school of thought and the dispute amongst them pertains to items enumerated in Schedule-II of this Act, the Court may, with the agreement of all the parties appoint a religious authority to determine the dispute.*"
8. **Amendment of Section 6:-** After the word "ADR Centre" a comma "," shall be inserted and thereafter the word "religious authority or conciliation forum" be inserted.
9. **Amendment in Section 7 (2):-** After the word 'neutral' the words 'all such other persons as may be agreed upon by the parties' be deleted.
10. **Amendment of Section 8:-**
 - a) The following proviso shall be inserted after Section 8 (1)
 "Provided that if the parties to the dispute take part in ADR proceedings in person they shall instruct a legal professional to appear alongside them and explain their legal rights and entitlements."
 - b) In section 8(2)(1):
 - (i) After the word "an ADR centre" the words "or religious authority" be inserted.
 - (ii) After the word "mediation" a comma "," be inserted and the following word "or" be deleted.
 - (iii) After the word "conciliation" the words 'or determination' be added.
11. **Amendment of Section 9.—**
 After the word 'Neutral' a comma ',' be inserted and thereafter the words religious authority or conciliation forum be inserted.
12. **Amendment in Section 10.—**
 After the word 'Neutral' wherever it occurs a comma "," be inserted and thereafter the words "religious authority or conciliation forum" be inserted.
13. **Amendment of Section 13.—**
 After the word 'Neutral' the words 'or such other person as may be agreed upon' by the parties' be deleted.
14. **Amendment of Section 18.—**
 After the word 'Neutral' wherever it occurs a comma "," be inserted and thereafter the words "religious authority or conciliation forum" be inserted.
15. **Amendment of Section 21.—**
 After the word 'Act' the words 'and the same shall be deemed to be a neutral' be inserted.
16. **Amendment of Section 23.—**

For the word 'government' the word 'Parliament' be substituted.

17. **Replacement of Schedule.—**

For the Schedule the following shall be substituted:

Schedule - I
[See section 3(1)]

1. *Disputes relating to professional negligence.*
2. *Companies and banking matters.*
3. *Insurance.*
4. *Negotiable instruments.*
5. *Patent, Trade mark and copyright.*
6. *Disputes under the Canal and Drainage Law.*
7. *Dispute for redemption of mortgaged property.*
8. *Dispute for rendition of accounts of joint property.*
9. *Dispute to restrain waste and remove nuisance.*
10. *Mesne profits of property.*
11. *Any other matter under the law not falling in the Schedule but agreed to by the parties for settlement under this Act.*

Schedule -II
[See Section 6]

1. *A dispute between a landlord and tenant.*
2. *Pre-emption cases.*
3. *Land and property disputes.*
4. *Civil matters under the Small Claims and Minor Offences Courts Ordinance, 2002.*
5. *Commercial dispute including but not limited to any claim, right or interest arising out of trade and commerce.*
6. *Contractual cases.*
7. *Suits for specific performance.*
8. *Personal injury.*
9. *Compensation and damages suits.*
10. *Dispute for recovery of movable property or value thereof.*
11. *Dispute for separate possession of joint immovable property through partition or otherwise.*
12. *Any other matter under the law not falling in the Schedule but agreed to by the parties for settlement under this Act.*

18. Ministry of Law and Justice sought time to examine the proposed amendments and assured that all amendments proposed to improvise the Bill will be duly reviewed and incorporated.

Synopsis of deliberations of the meeting dated 28th April, 2017

19. In the instant meeting the Ministry of Law and Justice submitted a revised draft of the Bill after incorporating maximum number of amendments proposed by Senator Farooq H. Naek, wherein, the Hon'ble Senator sought time to examine the revised draft.

Final consideration of the Bill in the meeting dated 2nd May, 2017

20. Final consideration of the Bill was held in the meeting dated 2nd April, 2017, which was attended by the following members:-

- i. Senator Muhammad Javed Abbasi
- ii. Senator Saleem Zia
- iii. Senator Dr. Muhammad Ali Khan Saif
- iv. Senator Saeed Ghani
- v. Senator Mrs. Zahida Khan
- vi. Senator Farooq Hamid Naek

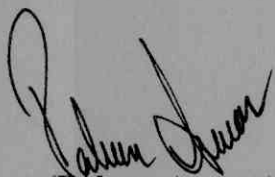
21. Senator Farooq H. Naek showed satisfaction on the revised draft of Bill, however, proposed as under:-

- i. Definition of Court, as provided in paragraph (e) of Clause (2) be simplified in the following terms:-


“‘Court’ means any court, tribunal or quasi-judicial fora having original jurisdiction;”
- ii. In clauses 6 and 7, the words “or other conciliation forum” wherever occurring may be omitted
- iii. Power to amend the scheduled shall be given to the Parliament.

22. Ministry of Law and Justice endorsed the amendments, therefore, after incorporating the above amendments the Bill was put to vote, wherein, all Members present voted in favour of the Bill.

23. In view of the above mentioned, the Committee recommends that “The Alternate Dispute Resolution Bill, 2017”, as reported by the Committee, may be passed by the Senate. (Copy of Bill as reported by the Committee is Annexed as “A”; Bill as passed by the National Assembly and introduced in the Senate is annexed as “B” and copy of Bill highlighting the amendments made by the Committee is annexed as “C”).



(Rabeeha Anwar)
J.S / Secretary Committee


(Senator Muhammad Javed Abbasi)
Chairman

[AS REPORTED BY THE COMMITTEE]

A

BILL

to provide for alternative dispute resolution

WHEREAS the State is required to ensure inexpensive and expeditious justice;

AND WHEREAS an alternative dispute resolution system can facilitate settlement of disputes expeditiously without resort to formal litigation;

It is hereby enacted as follows:—

1. Short title, extent and commencement.— (1) This Act may be called the Alternative Dispute Resolution Act, 2017.

(2) It shall extend to the Islamabad Capital Territory.

(3) It shall come into force at once.

2. Definitions.— In this Act, unless there is anything repugnant in the subject or context,—

(a) 'Alternative Dispute Resolution (ADR)' means a process in which parties resort to resolving a dispute other than by adjudication by Courts and includes, but is not limited to, arbitration, mediation, conciliation and neutral evaluation;

(b) 'ADR Centre' means the ADR Centre notified by the Federal Government for the purposes of this Act;

- (c) 'arbitration' means a process by which parties submit a dispute to the decision of a Neutral person or persons appointed by mutual consent or under a statutory or contractual provision;
- (d) 'award' means an arbitration award;
- (e) 'conciliation' means a process in which a neutral person encourages the parties to resolve their civil or commercial disputes voluntarily including by advising on possible solutions and terms of settlement;
- (f) 'Court' means any court, tribunal or quasi-judicial fora having original jurisdiction;
- (g) 'Government' means the Federal Government;
- (h) 'High Court' means the High Court concerned;
- (i) 'mediation' means a process in which a Mediator facilitates dispute resolution by encouraging communication and negotiation between the parties, in order for them to arrive at a mutually satisfactory agreement;
- (j) 'Neutral' includes an arbitrator, conciliator, evaluator and mediator or any other impartial person who is included in the panel;
- (k) 'panel' means the panel of Neutrals notified under section 4;
- (l) 'prescribed' means prescribed by rules made under this Act;
- (m) 'rules' means the rules made under this Act;
- (n) 'Schedule' means a Schedule annexed to this Act; and
- (o) 'settlement' means the agreement reached between the parties as a result of successful ADR, other than an award.

CHAPTER I CIVIL MATTERS

3. Reference to ADR.— (1) The Court, on the first date after appearance of all parties, shall refer every civil matter mentioned in the Schedule for ADR except where—

- (a) any of the parties to the dispute do not agree for ADR ;
- (b) the Court, having regard to the facts and circumstances of the case, is satisfied that there is no possibility of resolution of the dispute through ADR; or
- (c) an intricate question of law or fact is involved.

(2) Before referral to ADR, the Court may frame issues with the consent of the parties for facilitating the settlement of the dispute:

Provided that the Neutral may frame additional issues if so required during the course of ADR proceedings, with the consent of the parties.

(3) The Court, on application of any party to the dispute before it, with the consent of all parties, may refer any civil matter mentioned in the Schedule to ADR at any stage of the proceedings.

(4) This section shall not apply where *ex parte* proceedings are subsisting against the defendant or the respondent:

Provided that even if such proceedings are set aside, the case shall not be referred to ADR unless the Court, keeping in view the stage of the proceedings of the case or any agreement of the parties, decides otherwise.

4. Panel of Neutrals.— (1) The Government, after consultation with the High Court, shall notify in the official Gazette a panel of Neutrals for each district from amongst lawyers with at least seven years practising experience, retired Judges, retired civil servants, , *ulema*, jurists, technocrats and experts and such other persons of repute and integrity having such qualifications and experience as may be prescribed:

Provided that due representation shall be given to women, having prescribed qualifications and experience, in the panel of neutrals.

(2) The Government may arrange such training courses for Neutrals as may be prescribed.

(3) The Government may, in the like manner as provided in subsection (1), amend the panel by adding or modifying any entry therein or omitting any entry therefrom.

(4) The Government may not remove a Neutral once he is seized of the matter referred to him unless both parties agree on his replacement.

5. Appointment of Neutrals.— While referring the matter for ADR, the Court shall appoint a Neutral or any other person agreed upon by the parties or refer the matter to an ADR Centre:

Provided that where the parties neither agree on a Neutral nor any other person, the Court shall appoint a Neutral in its discretion:

Provided further that where one or both of the parties to the dispute are women, the Neutral shall preferably be a woman.

6. Referral to ADR Centre.— The Court may, with the consent of the parties, refer the matter to an ADR Centre:

Provided that if the case is referred to an ADR Centre and one or both of the parties to the dispute are women, the case shall preferably be dealt with by a team including a woman.

7. Appearance of parties.— Upon referring the matter for ADR, the Court shall direct the parties to appear before the Neutral or ADR Centre, as the case may be, on the date and time fixed by the Court.

8. Reference to ADR before legal proceedings.— (1) If the parties agree on ADR before initiating the proceedings in the Court, they may make an application to the Court or an ADR Centre for resolution of their dispute through ADR.

(2) On receipt of an application under sub—section (1), the Court or ADR Centre, as the case may be, shall refer the matter to a Neutral or such other person as may be agreed upon by the parties.

(3) The provisions of this Act shall *mutatis mutandis* apply to the proceedings under this section.

9. ADR proceedings.— (1) The parties to the dispute shall take part in the ADR proceedings in person or through duly authorized representatives or attorneys.

(2) A Neutral appointed by the Court or an ADR Centre to whom the matter is referred for mediation, conciliation or other mode of ADR shall dispose of the matter within a period of thirty days:

Provided that the Court or the ADR Centre, as the case may be, may for sufficient cause extend this period for further fifteen days on a request made by the Neutral.

(3) If the matter is referred to an Arbitrator, he shall complete the process within sixty days:

Provided that the Court may for sufficient cause extend this period for further thirty days on a request made by the Arbitrator.

(4) The Court may, from time to time, give such directions as it deems fit regarding the conduct of the ADR and the same shall be binding on the parties and the Neutral.

(5) Any party who fails to attend or who requests an adjournment in any ADR proceedings or fails to comply with a deadline stipulated either by the Court or by the Neutral or does any other act which has the effect of delaying the ADR proceedings, shall be liable to pay costs to the other party as may be determined by the Neutral.

10. Settlement and award.— (1) If as a result of the mediation or conciliation a settlement is reached between the parties, the Neutral shall record such settlement, duly witnessed and signed by him and by the parties or their duly authorized representatives or attorneys and submit it to the Court which shall pronounce judgment and pass decree in terms of the settlement.

(2) If the settlement relates only to part of the dispute, the Court shall pass order in terms of such settlement, while adjudicating upon the remaining part.

(3) The Arbitrator on determination of the dispute shall render a written award, duly signed by him and by the parties or their duly authorized representatives or attorneys and submit it to the Court which shall pronounce judgment and pass decree in terms of the award.

(4) If the Neutral was appointed by an ADR Centre before initiation of legal proceedings, he shall submit the settlement or award, duly witnessed and signed by him and by the parties or their duly authorized representatives or attorneys, to the said Centre which shall submit the same to the Court and the Court shall pronounce judgment and pass decree in terms of the settlement or award.

(5) If the parties have themselves resorted to ADR and a settlement is reached between them, they may make application to the Court to make the same Rule of the Court. The Court, if satisfied that the matter has been voluntarily settled and the document recording the settlement has been duly witnessed and signed by the parties, shall pronounce judgment and pass decree in terms of the settlement.

11. Failure of ADR.— If the efforts of the Neutral fail to bring about a settlement between the parties or does not result in an award, the Neutral shall submit a report to the Court which shall proceed with the case from the stage it was referred for the ADR.

12. Failure of ADR Centre etc.— Where the parties have directly approached an ADR Centre or before initiating the proceedings in the Court and the ADR Centre has failed to bring about a settlement or result in an award, no legal proceedings shall be initiated thereafter by either party without intimating the Court about the failure of the ADR.

13. Execution of an order or a decree.— Where an order or a decree is passed by a Court following ADR, it shall be executed in the manner as

prescribed and if no such manner is prescribed under this Act, it shall be executable in accordance with the procedure provided for in the relevant law.

CHAPTER—II

COMPOUNDABLE OFFENCES

14. ADR in compoundable offences.— (1) Where the Court takes cognizance of a compoundable offence specified in section 345 of the Code of Criminal Procedure, 1898 (Act V of 1898) or under any other law for the time being in force, the Court may appoint a Neutral or such other person as may be agreed upon by the parties to facilitate compounding of the offence:

Provided that the Court shall not refer a case for compounding of an offence without consent of the parties.

(2) The Neutral appointed under sub-section (1) shall try to facilitate compounding of the offence within thirty days.

(3) If the offence is compounded, the neutral shall submit a report in this respect in the Court duly witnessed and signed by him and by the persons authorized to compound the offence under any law for time being in force and the Court shall pass order and the accused shall be discharged.

(4) If the efforts of the Neutral for compounding the offence fail, the Court shall proceed with the trial from the stage it was referred to the Neutral.

(5) If the parties have themselves resorted to ADR and the offence is compounded in terms of section 345 of the Code of Criminal Procedure, 1898 (Act V of 1898) or any other law for the time being in force, they may make application to the Court in terms thereof. If the Court is satisfied that the parties have voluntarily compounded the offence and the document recording

their agreement has been duly witnessed and signed by them, the Court shall pass order accordingly and the accused shall be discharged.

(6) Section 345 of the Code of Criminal Procedure, 1898 (Act V of 1898) or any other law under which the offence is compoundable shall *mutatis mutandis* apply to the proceedings under this Chapter.

CHAPTER III MISCELLANEOUS

15. Costs and fees of ADR.— The costs and fees of ADR process shall be borne by the parties in such proportion as may be mutually agreed upon by them, failing which it shall be determined by the Court .

16. Utilization of services of an Evaluator.— The Court or the Neutral or ADR Centre may utilize the services of an Evaluator to determine any matter of financial or any other nature in respect of any proceedings before it or him. The Evaluator shall render such assistance as may be required by the Court or the Neutral or ADR Centre. After completion of the evaluation process, the Evaluator shall submit a report to the Court or the Neutral or ADR Centre, as the case may be. The parties shall pay costs of the evaluation and fee of the Evaluator as may be determined by the Court.

17. Penal costs.— Any person who willfully violates any provision of this Act, rules or any order of the Court with which he is required to comply shall be liable to penal costs which may extend to one hundred thousand rupees, in addition to any other costs or penalty to which he may be liable under the relevant law.

18. Appeal and revision barred.— No appeal or revision shall lie from the decree or any order of the Court under this Act.

19. Savings.—(1) Save as provided in this Act, the proceedings before the Neutral shall be privileged and shall not be admissible in evidence before any Court without consent of the parties and the Neutral shall not be required to appear as a witness or otherwise in any arbitral or judicial proceedings with respect to a dispute that is or was the subject-matter of an ADR:

Provided that the final settlement, award or agreement between the parties, as the case may be, under Chapter I or Chapter II shall be admissible in evidence in any subsequent proceedings between them relating to the same subject-matter, wholly or partly.

(2) The Neutral shall not act as a representative or attorney of any party to the ADR, in any subsequent proceedings with respect to a dispute that is or was the subject-matter of an ADR.

(3) No legal proceedings shall lie against a Neutral or any other person or official associated in the ADR process for any act done or omitted to be done in good faith in the course of the performance of his functions, in reference to such ADR.

20. Application, etc., of certain laws.— (1) Subject to the provisions of this Act, the following laws and the rules made thereunder shall *mutatis mutandis* apply to proceedings under this Act;

- (a) the Oaths Act, 1873(X of 1873);
- (b) the Limitation Act, 1908 (IX of 1908); and
- (c) the Arbitration Act, 1940 (X of 1940):

Provided that notwithstanding anything contained in the Arbitration Act, 1940 (X of 1940), in case of an arbitration under this Act, the arbitrator shall be appointed by mutual agreement of the parties.

(2) Save as provided in this Act, the Code of Criminal Procedure, 1898 (Act V of 1898), the Code of Civil Procedure, 1908 (Act V of 1908) and the *Qanun-e-Shahadat*, 1984 (P.O.No. 10 of 1984) shall not apply to the ADR proceedings under this Act.

(3) Provisions of this Act shall apply to a matter pending in the Court immediately before the commencement of this Act, unless the parties agree otherwise.

(4) Subject to the provisions of this Act and the rules made thereunder, Rules of Chamber of Commerce and other relevant bodies, where applicable, shall *mutatis mutandis* apply to proceedings under this Act.

21. Overriding effect.— Subject to section 20, the provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

22. Transitory provision.— Until a panel is notified, the Court shall nominate a person agreed upon by the parties to carry out ADR under this Act who shall be deemed to be a neutral.

23. Cases pending in appeal or revision.— The provisions of this Act shall, with the consent of the parties *mutatis mutandis* apply to matters pending in appeal or revision.

24. Code of Conduct.— The Government shall notify Code of Conduct for Neutral (Arbitrator, Conciliator, Evaluator and Mediator) in consultation with Chief Justice of Islamabad High Court.

25. Power to make rules.— (1) The Government, may, by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) The rules made under sub-section (1) shall have effect notwithstanding anything to the contrary contained in any rules made under any other law for the time being in force.

26. Removal of difficulty.— If any difficulty arises in giving effect to any provision of this Act, the Government may make such order not inconsistent with the provisions of this Act as may be necessary to remove the difficulty.

27. Repeal.— Subject to the provisions of sub-section (3) of section 20, section 89A of the Code of Civil Procedure, 1908 (Act V of 1908) to the extent of area or areas to which this Act is extended shall stand repealed.

Schedule

[See section 3(1)]

1. A dispute between a landlord and tenant.
2. Pre-emption cases.
3. Land and property disputes.
4. Civil matters under the Small Claims and Minor Offences Courts Ordinance, 2002.
5. Commercial dispute including but not limited to any claim, right or interest arising out of trade and commerce.
6. Contractual cases.
7. Disputes relating to professional negligence.
8. Suits for specific performance.
9. Companies and banking matters.
10. Insurance.
11. Negotiable instruments.
12. Personal injury.
13. Compensation and damages suits.
14. Patent, Trade mark and copyright.
15. Disputes under the Canal and Drainage Law.
16. Dispute for recovery of movable property or value thereof.
17. Dispute for separate possession of joint immovable property through partition or otherwise.
18. Dispute for redemption of mortgaged property.
19. Dispute for rendition of accounts of joint property.
20. Dispute to restrain waste and remove nuisance.
21. Mesne profits of property.
22. Any other matter under the law not falling in the Schedule but agreed to by the parties for settlement under this Act.

STATEMENT OF OBJECTS AND REASONS

There is a maxim of law that "justice delayed is justice denied". This maxim holds good both in civil and criminal cases. In every civilized society there have been constant efforts to evolve ways and means for speedy dispensation of justice.

2. There is huge backlog of cases in both subordinate and superior Courts of the country. It is, therefore, necessary to find simpler and faster alternates which can supplement the traditional legal system. As litigation is a very lengthy and expansive process there is a worldwide trend to adopt Alternative Dispute Resolution (ADR). Alternative Dispute Resolution methods such as conciliation, arbitration and mediation can be used effectively for settlement of disputes to overcome delays, provide inexpensive justice and reduce tremendous burden on Courts.

3. The Bill is designed to achieve the aforesaid object.

MINISTER-IN-CHARGE

[AS PASSED BY THE NATIONAL ASSEMBLY]

A

BILL

to provide for alternate dispute resolution

WHEREAS the State is required to ensure inexpensive and expeditious justice;

AND WHEREAS an alternate dispute resolution system can facilitate settlement of disputes without resort to formal litigation;

It is hereby enacted as follows:—

1. Short title, extent and commencement.— (1) This Act may be called the Alternate Dispute Resolution Act, 2017.

(2) It shall extend to the Islamabad Capital Territory.

(3) It shall come into force on such date or dates as the Federal Government may, by notification in the official Gazette, appoint and different dates may be appointed for different provisions and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. Definitions.— In this Act, unless there is anything repugnant in the subject or context,—

- (a) 'Alternate Dispute Resolution (ADR)' means a process in which parties resort to a method of resolving the dispute other than by adjudication by Courts and includes arbitration, mediation, conciliation, neutral evaluation and dispute resolution through *Panchayat*;
- (b) 'ADR Centre' means the ADR Centre notified by the Federal Government for the purposes of this Act;
- (c) 'arbitration' means a process by which parties submit a dispute to the decision of a Neutral person or persons appointed by mutual consent or under a statutory provision;
- (d) 'award' means an arbitration award;
- (e) 'Court' means a Court of original jurisdiction and includes a Civil Court, Family Court and such other Courts and Tribunals and

quasi-judicial fora as may be notified by the Government for the purposes of this Act;

- (f) 'Government' means the Federal Government;
- (g) 'High Court' means the High Court concerned;
- (h) 'mediation' means a structured process in which a Mediator facilitates and encourages communication and negotiation between the parties, and seeks to assist them in arriving at a voluntary mutually satisfactory agreement;
- (i) 'Conciliation' means a process in which a neutral person encourages the parties to resolve their civil or commercial disputes voluntarily including by advising on possible solutions and terms of settlement;
- (j) 'Neutral' includes an arbitrator, conciliator, evaluator and mediator or any other impartial person who is included in the panel or *Panchayat*;
- (k) '*Panchayat or Jirga*' means the conciliatory body by whatever name called including *Musaliha Anjuman* constituted by any law for the time being in force;
- (l) 'panel' means the panel of Neutrals notified under section 4;
- (m) 'prescribed' means prescribed by rules made under this Act;
- (n) 'rules' means the rules made under this Act;
- (o) 'Schedule' means a Schedule annexed to this Act; and
- (p) 'Settlement' means the agreement reached between the parties as a result of successful ADR, other than an award.

CHAPTER I CIVIL MATTERS

3. Reference to ADR.— (1) The Court shall refer every civil matter mentioned in the Schedule for ADR except where—

- (a) any of the parties to the dispute do not agree for ADR:

Provided that if the Court is of the view that the disagreement is unfounded, it may, after recording reasons thereof, order the party or parties responsible for the disagreement to pay double the amount of court fee paid;

- (b) the Court, having regard to the facts and circumstances of the case, is satisfied that there is no possibility of resolution of the dispute through ADR; or
- (c) an intricate question of law or fact is involved.

(2) Before referral to ADR, the Court may frame issues with the consent of the parties for facilitating the settlement of the dispute:

Provided that the Neutral may frame additional issues if so required during the course of ADR proceedings, with the consent of the parties.

(3) This section shall not apply where *ex-parte* proceedings are subsisting against the defendant or the respondent:

Provided that even if such proceedings are set aside, the case shall not be referred to ADR unless the Court, keeping in view the stage of the proceedings of the case or any agreement of the parties, decides otherwise.

4. Panel of Neutrals.— (1) The Government, after consultation with the High Court, shall notify in the official Gazette a panel of Neutrals for each district from amongst lawyers, retired Judges of superior and subordinate judiciary, retired civil servants, social workers, *ulema*, jurists, technocrats and experts and such other persons of repute and integrity having such qualifications and experience as may be prescribed.

(2) The Government may arrange such training courses for Neutrals as may be prescribed.

(3) The Government may, in the like manner as provided in sub-section (1), amend the panel by adding or modifying any entry therein or omitting any entry therefrom.

(4) The Government may not remove a Neutral once he is seized of the matter referred to him unless both parties agree on his replacement.

5. Appointment of Neutrals.— While referring the matter for ADR, the Court shall appoint a Neutral or any other person agreed upon by the parties or refer the matter to an ADR Centre:

Provided that where the parties neither agree on a Neutral nor any other person, the Court shall appoint a Neutral in its discretion.

6. Appearance of parties.— Upon referring the matter for ADR, the Court shall direct the parties to appear before the Neutral or ADR Centre, as the case may be, on the date and time fixed by the Court.

7. Reference to ADR before legal proceedings.— (1) If the parties agree on ADR before initiating the proceedings in the Court, they may make an application to the Court or an ADR Centre or a *Panchayat* for resolution of their dispute through ADR.

(2) On receipt of an application under sub-section (1), the Court or ADR Centre, as the case may be, shall refer the matter to a Neutral or such other person as may be agreed upon by the parties. In case application is made to a *Panchayat*, the *Panchayat* shall entertain the matter for resolution of the dispute.

(3) The provisions of this Act shall *mutatis mutandis* apply to the proceedings under this section.

8. ADR proceedings.— (1) The parties to the dispute shall take part in the ADR proceedings in person or through duly authorized representatives or attorneys.

(2) A Neutral appointed by the Court or an ADR Centre to whom the matter is referred for mediation or conciliation shall dispose of the matter within a period of thirty days:

Provided that the Court or the ADR Centre, as the case may be, may for sufficient cause extend this period for further fifteen days on a request made by the Neutral.

(3) If the matter is referred to an Arbitrator, he shall complete the process within sixty days:

Provided that the Court may for sufficient cause extend this period for further thirty days on a request made by the Arbitrator.

(4) The Court may, from time to time, give such directions as it deems fit regarding the conduct of the ADR and the same shall be binding on the parties and the Neutral.

(5) Any party who fails to attend or who requests an adjournment in any ADR proceedings or fails to comply with a deadline stipulated either by the Court or by the Neutral or does any other act which has the effect of delaying the ADR proceedings, shall be liable to pay costs to the other party as may be determined by the Neutral.

9. Settlement and award.— (1) If as a result of the mediation or conciliation a settlement is reached between the parties, the Neutral shall record such settlement, duly witnessed and signed by him and by the parties or their duly authorized representatives or attorneys and submit it to the Court which shall pronounce judgment and pass decree in terms of the settlement.

(2) If the settlement relates only to part of the dispute, the Court shall pass order in terms of such settlement, while adjudicating upon the remaining part.

(3) The Arbitrator on determination of the dispute shall render a written award, duly signed by him and by the parties or their duly authorized representatives or attorneys and submit it to the Court which shall pronounce judgment and pass decree in terms of the award.

(4) If the Neutral was appointed by an ADR Centre before initiation of legal proceedings, he shall submit the settlement or award, duly witnessed and signed by him and by the parties or their duly authorized representatives or attorneys, to the said Centre which shall submit the same to the Court and the Court shall pronounce judgment and pass decree in terms of the settlement or award.

(5) If the parties have themselves resorted to ADR and a settlement is reached between them, they may make application to the Court to make the same Rule of the Court. The Court, if satisfied that the matter has been voluntarily settled and the document recording the settlement has been duly witnessed and signed by the parties, shall pronounce judgment and pass decree in terms of the settlement.

10. Failure of ADR.— If the efforts of the Neutral fail to bring about a settlement between the parties or does not result in an award, the Neutral shall submit a report to the Court which shall proceed with the case from the stage it was referred for the ADR.

11. Failure of ADR Centre etc.— Where the parties have directly approached an ADR Centre or a *Panchayat* before initiating the proceedings in the Court and the ADR Centre or the *Panchayat*, as the case may be, has failed to bring about a settlement or result in an award, no legal proceedings shall be initiated thereafter by either party without intimating the Court about the failure of the ADR.

12. Execution of an order or a decree.— Where an order or a decree is passed by a Court following ADR, it shall be executed in the manner as prescribed and if no such manner is prescribed under this Act, it shall be executable in accordance with the procedure provided for in the relevant law.

CHAPTER—II COMPOUNDABLE OFFENCES

13. ADR in compoundable offences.— (1) Where the Court takes cognizance of a compoundable offence specified in section 345 of the Code of Criminal Procedure, 1898 (Act V of 1898) or under any other law for the time being in force, the Court may appoint a Neutral or such other person as may be agreed upon by the parties to facilitate compounding of the offence:

Provided that the Court shall not refer a case for compounding of an offence without consent of the parties.

(2) The Neutral appointed under sub-section (1) shall try to facilitate compounding of the offence within thirty days.

(3) If the offence is compounded, the neutral shall submit a report in this respect in the Court duly witnessed and signed by him and by the persons authorized to compound the offence under any law for time being in force and the Court shall pass order and the accused shall be discharged.

(4) If the efforts of the Neutral for compounding the offence fail, the Court shall proceed with the trial from the stage it was referred to the Neutral.

(5) If the parties have themselves resorted to ADR and the offence is compounded in terms of section 345 of the Code of Criminal Procedure, 1898 (Act V of 1898) or any other law for the time being in force, they may make application to the Court in terms thereof. If the Court is satisfied that the parties have voluntarily compounded the offence and the document recording their agreement has been duly witnessed and signed by them, the Court shall pass order accordingly and the accused shall be discharged.

(6) Section 345 of the Code of Criminal Procedure, 1898 (Act V of 1898) or any other law under which the offence is compoundable shall *mutatis mutandis* apply to the proceedings under this Chapter.

CHAPTER III PANCHAYAT SYSTEM

14. Panchayat system.—(1) Where a *Panchayat* or *Jirga* system has been established under any law, it shall facilitate amicable settlement of civil disputes and compounding of offences as provided for in this Act.

(2) The provisions of this Act shall, *mutatis mutandis*, apply to the settlement of the disputes by the *Panchayat*.

CHAPTER IV MISCELLANEOUS

15. Costs and fees of ADR.— The costs and fees of ADR process shall be borne by the parties in such proportion as may be mutually agreed upon by them, failing which it shall be determined by the Court .

16. Utilization of services of an Evaluator.— The Court or the Neutral or ADR Centre may utilize the services of an Evaluator to determine any matter of financial or any other nature in respect of any proceedings before it or him. The Evaluator shall render such assistance as may be required by the Court or the Neutral or ADR Centre. After completion of the evaluation process, the Evaluator shall submit a report to the Court or the Neutral or ADR Centre, as the case may be. The parties shall pay costs of the evaluation and fee of the Evaluator as may be determined by the Court.

17. Penal costs.— Any person who willfully violates any provision of this Act, rules or any order of the Court with which he is required to comply shall be liable to penal costs which may extend to one hundred thousand Rupees, in addition to any other costs or penalty to which he may be liable under the relevant law.

18. Appeal and revision barred.— No appeal or revision shall lie from the decree or any order of the Court under this Act.

19. Savings.—(1) Save as provided in this Act, the proceedings before the Neutral or the *Panchayat* shall be privileged and shall not be admissible in evidence before any Court without consent of the parties and the Neutral shall not be required to appear as a witness or otherwise in any arbitral or judicial proceedings with respect to a dispute that is or was the subject-matter of an ADR:

Provided that the final settlement, award or agreement between the parties, as the case may be, under Chapter I, Chapter II or Chapter III shall be admissible in evidence in any subsequent proceedings between them relating to the same subject-matter, wholly or partly.

(2) The Neutral or a member of the *Panchayat* concerned shall not act as a representative or attorney of any party to the ADR, in any subsequent proceedings with respect to a dispute that is or was the subject-matter of an ADR.

(3) No legal proceedings shall lie against a Neutral or any other person or official associated in the ADR process for any act done or omitted to be done in good faith in the course of the performance of his functions, in reference to such ADR.

20. Application, etc., of certain laws.— (1) Subject to the provisions of this Act, the following laws and the rules made thereunder shall *mutatis mutandis* apply to proceedings under this Act;

- (a) the Oaths Act, 1873(X of 1873);
- (b) the Limitation Act, 1908 (IX of 1908); and
- (c) the Arbitration Act, 1940 (X of 1940);

Provided that notwithstanding anything contained in the Arbitration Act, 1940 (X of 1940) in case of an arbitration under this Act, the arbitrator(s) shall be appointed by mutual agreement of the parties.

(2) The Code of Criminal Procedure, 1898 (Act V of 1898), the Code of Civil Procedure, 1908 (Act V of 1908) and the Qanun-e-Shahadat, 1984 (P.O.No. 10 of 1984) shall not apply to the ADR proceedings under this Act.

(3) Provisions of this Act shall apply to a matter pending in the Court immediately before the commencement of this Act, unless the parties agree otherwise.

(4) Subject to the provisions of this Act, Rules of Chamber of Commerce and other relevant bodies, where applicable, shall *mutatis mutandis* apply to proceedings under this Act.

21. Overriding effect.— Subject to section 20, the provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

22. Transitory provision.— Until a panel is notified, the Court shall nominate a person agreed upon by the parties to carry out ADR under this Act.

23. Cases pending in appeal or revision.— The provisions of this Act shall, with the consent of the parties, *mutatis mutandis*, apply to matters pending in appeal or revision.

24. Power to amend Schedule.— The Government may amend the Schedule by adding or amending any entry therein or omitting any entry therefrom.

25. Code of Conduct.— The Government shall notify Code of Conduct for Neutral (Arbitrator, Conciliator, Evaluator and Mediator) in consultation with Chief Justices of High Courts.

26. Power to make rules.— (1) The Government, may, by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) The rules made under sub-section (1) shall have effect notwithstanding anything to the contrary contained in any rules made under any other law for the time being in force.

27. Removal of difficulty.— If any difficulty arises in giving effect to any provision of this Act, the Government may make such order not inconsistent with the provisions of this Act as may be necessary to remove the difficulty.

28. Repeal.— Subject to the provisions of sub-section (3) of section 20, section 89A of the Code of Civil Procedure, 1908 (Act V of 1908) to the extent of area or areas to which this Act is extended shall stand repealed.

Schedule

[See section 3(1)]

1. A dispute between a landlord and tenant.
2. Pre-emption cases.
3. Land and property disputes.
4. Civil matters under the Small Claims and Minor Offences Courts Ordinance, 2002.
5. Commercial dispute including but not limited to any claim, right or interest arising out of trade and commerce.
6. Contractual cases.
7. Disputes relating to professional negligence.
8. Family disputes such as dissolution of marriage and maintenance etc.
9. Suits for specific performance.
10. Companies and banking matters.
11. Insurance.
12. Negotiable instruments.
13. Personal injury.
14. Compensation and damages suits.
15. Patent, Trade mark and copyright.
16. Disputes under the Canal and Drainage Law.
17. Dispute for recovery of movable property or value thereof.
18. Dispute for separate possession of joint immovable property through partition or otherwise.
19. Dispute for redemption of mortgaged property.

20. Dispute for rendition of accounts of joint property.
21. Dispute to restrain waste and remove nuisance.
22. Mesne profits of property.
23. Any other matter under the law not falling in the Schedule but agreed to by the parties for settlement under this Act.

STATEMENT OF OBJECTS AND REASONS

There is a maxim of law that "justice delayed is justice denied". This maxim holds good both in civil and criminal cases. In every civilized society there have been constant efforts to evolve ways and means for speedy dispensation of justice.

2. There is huge backlog of cases in both subordinate and superior Courts of the country. It is, therefore, necessary to find simpler and faster alternates which can supplement the traditional legal system. As litigation is a very lengthy and expensive process there is a worldwide trend to adopt Alternate Dispute Resolution (ADR). Alternate Dispute Resolution methods such as conciliation, arbitration, mediation and *Panchayat* can be used effectively for settlement of disputes to overcome delays, provide inexpensive justice and reduce tremendous burden on Courts.

3. The Bill is designed to achieve the aforesaid object.

MINISTER-IN-CHARGE

After incorporation of accepted amendments of Senator Farooq H. Naek
and the amendments suggested by Government

[As To Be Reported by Senate Standing Committee]

A

BILL

*to provide for alternate **alternative** dispute resolution*

WHEREAS the State is required to ensure inexpensive and expeditious justice;

AND WHEREAS an alternate **alternative** dispute resolution system can facilitate settlement of disputes **expeditiously** without resort to formal litigation;

It is hereby enacted as follows:—

1. **Short title, extent and commencement.**— (1) This Act may be called the Alternate **Alternative** Dispute Resolution Act, 2017.

(2) It shall extend to the Islamabad Capital Territory.

(3) It shall come into force **at once**. ~~on such date or dates as the Federal Government may, by notification in the official Gazette, appoint and different dates may be appointed for different provisions and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.~~

2. Definitions.— In this Act, unless there is anything repugnant in the subject or context,—

- (a) 'Alternate **Alternative** Dispute Resolution (ADR)' means a process in which parties resort to ~~a method of resolving the a~~ dispute other than by adjudication by Courts and includes, **but is not limited to**, arbitration, mediation, conciliation **and** neutral evaluation and ~~dispute resolution through Panchayat;~~
- (b) 'ADR Centre' means the ADR Centre notified by the Federal Government for the purposes of this Act;
- (c) 'arbitration' means a process by which parties submit a dispute to the decision of a Neutral person or persons appointed by mutual consent or under a statutory **or contractual** provision;
- (d) 'award' means an arbitration award;
- (e) 'Court' means ~~a Court of original jurisdiction and includes a Civil Court Family Court and such other Courts and Tribunals~~ **and any court, tribunal or** quasi-judicial fora **having original jurisdiction; as may be notified by the Government for the purposes of this Act;**
- (f) 'Government' means the Federal Government;
- (g) 'High Court' means the High Court concerned;
- (h) 'mediation' means a structured process in which a Mediator facilitates **dispute resolution by encouraging** and ~~encourages~~ communication and negotiation between the parties, and ~~seeks to assist~~ **in order for** them ~~in arriving to arrive~~ at a voluntary mutually satisfactory agreement;
- (i) 'conciliation' means a process in which a neutral person encourages the parties to resolve their civil or commercial disputes

voluntarily including by advising on possible solutions and terms of settlement;

- (j) 'Neutral' includes an arbitrator, conciliator, evaluator and mediator or any other impartial person who is included in the panel or *Panehayat* ;
- ~~(k) — 'Panehayat or Jirga' means the conciliatory body by whatever name called including *Musalihat Anjuman* constituted by any law for the time being in force;~~
- (k) 'panel' means the panel of Neutrals notified under section 4;
- (l) 'prescribed' means prescribed by rules made under this Act;
- (m) 'rules' means the rules made under this Act;
- (n) 'Schedule' means a Schedule annexed to this Act; and
- (o) 'settlement' means the agreement reached between the parties as a result of successful ADR, other than an award.

CHAPTER I CIVIL MATTERS

3. Reference to ADR.— (1) The Court, **on the first date after appearance of all parties**, shall refer every civil matter mentioned in the Schedule for ADR except where—

- (a) any of the parties to the dispute do not agree for ADR ;

~~Provided that if the Court is of the view that the disagreement is unfounded, it may, after recording reasons thereof, order the party or parties responsible for the disagreement to pay double the amount of court fee paid;~~

- (b) the Court, having regard to the facts and circumstances of the case, is satisfied that there is no possibility of resolution of the dispute through ADR; or
- (c) an intricate question of law or fact is involved.

(2) Before referral to ADR, the Court may frame issues with the consent of the parties for facilitating the settlement of the dispute:

Provided that the Neutral may frame additional issues if so required during the course of ADR proceedings, with the consent of the parties.

(3) The Court, on application of any party to the dispute before it, with the consent of all parties, may refer any civil matter mentioned in the Schedule to ADR at any stage of the proceedings.

(3) (4) This section shall not apply where *ex parte* proceedings are subsisting against the defendant or the respondent:

Provided that even if such proceedings are set aside, the case shall not be referred to ADR unless the Court, keeping in view the stage of the proceedings of the case or any agreement of the parties, decides otherwise.

4. Panel of Neutrals.— (1) The Government, after consultation with the High Court, shall notify in the official Gazette a panel of Neutrals for each district from amongst lawyers **with at least seven years practising experience**, retired Judges of superior and subordinate judiciary, retired civil servants, ~~social workers~~, *ulema*, jurists, technocrats and experts and such

other persons of repute and integrity having such qualifications and experience as may be prescribed:

Provided that due representation shall be given to women, having prescribed qualifications and experience, in the panel of neutrals.

(2) The Government may arrange such training courses for Neutrals as may be prescribed.

(3) The Government may, in the like manner as provided in sub-section (1), amend the panel by adding or modifying any entry therein or omitting any entry therefrom.

(4) The Government may not remove a Neutral once he is seized of the matter referred to him unless both parties agree on his replacement.

5. Appointment of Neutrals.— While referring the matter for ADR, the Court shall appoint a Neutral or any other person agreed upon by the parties or refer the matter to an ADR Centre:

Provided that where the parties neither agree on a Neutral nor any other person, the Court shall appoint a Neutral in its discretion:

Provided further that where one or both of the parties to the dispute are women, the Neutral shall preferably be a woman.

5A. Referral to ADR Centre~~(or other conciliation forum)~~**.-** The Court may, with the consent of the parties, refer the matter to an ADR Centre: ~~or any other conciliation forum by whatever name called established under the law for the time being in force and where the matter is referred~~

~~to such conciliation forum, the provisions of this Act shall *mutatis mutandis* apply:~~

Provided that if the case is referred to an ADR Centre ~~or any conciliation forum~~ and one or both of the parties to the dispute are women, the case shall preferably be dealt with by a team including a woman.

6. Appearance of parties.— Upon referring the matter for ADR, the Court shall direct the parties to appear before the Neutral or ADR Centre ~~or conciliation forum~~, as the case may be, on the date and time fixed by the Court.

7. Reference to ADR before legal proceedings.— (1) If the parties agree on ADR before initiating the proceedings in the Court, they may make an application to the Court or an ADR Centre ~~or a Panchayat~~ for resolution of their dispute through ADR.

(2) On receipt of an application under sub-section (1), the Court or ADR Centre, as the case may be, shall refer the matter to a Neutral or such other person as may be agreed upon by the parties. ~~In case application is made to a Panchayat, the Panchayat shall entertain the matter for resolution of the dispute.~~

(3) The provisions of this Act shall *mutatis mutandis* apply to the proceedings under this section.

8. ADR proceedings.— (1) The parties to the dispute shall take part in the ADR proceedings in person or through duly authorized representatives or attorneys.

(2) A Neutral appointed by the Court or an ADR Centre to whom the matter is referred for mediation, ~~or conciliation~~ **or other mode of ADR** shall dispose of the matter within a period of thirty days:

Provided that the Court or the ADR Centre, as the case may be, may for sufficient cause extend this period for further fifteen days on a request made by the Neutral.

(3) If the matter is referred to an Arbitrator, he shall complete the process within sixty days:

Provided that the Court may for sufficient cause extend this period for further thirty days on a request made by the Arbitrator.

(4) The Court may, from time to time, give such directions as it deems fit regarding the conduct of the ADR and the same shall be binding on the parties and the Neutral.

(5) Any party who fails to attend or who requests an adjournment in any ADR proceedings or fails to comply with a deadline stipulated either by the Court or by the Neutral or does any other act which has the effect of delaying the ADR proceedings, shall be liable to pay costs to the other party as may be determined by the Neutral.

9. Settlement and award.— (1) If as a result of the mediation or conciliation a settlement is reached between the parties, the Neutral shall record such settlement, duly witnessed and signed by him and by the parties or their duly authorized representatives or attorneys and submit it to the Court which shall pronounce judgment and pass decree in terms of the settlement.

(2) If the settlement relates only to part of the dispute, the Court shall pass order in terms of such settlement, while adjudicating upon the remaining part.

(3) The Arbitrator on determination of the dispute shall render a written award, duly signed by him and by the parties or their duly authorized representatives or attorneys and submit it to the Court which shall pronounce judgment and pass decree in terms of the award.

(4) If the Neutral was appointed by an ADR Centre before initiation of legal proceedings, he shall submit the settlement or award, duly witnessed and signed by him and by the parties or their duly authorized representatives or attorneys, to the said Centre which shall submit the same to the Court and the Court shall pronounce judgment and pass decree in terms of the settlement or award.

(5) If the parties have themselves resorted to ADR and a settlement is reached between them, they may make application to the Court to make the same Rule of the Court. The Court, if satisfied that the matter has been voluntarily settled and the document recording the settlement has been duly witnessed and signed by the parties, shall pronounce judgment and pass decree in terms of the settlement.

10. Failure of ADR.— If the efforts of the Neutral fail to bring about a settlement between the parties or does not result in an award, the Neutral shall submit a report to the Court which shall proceed with the case from the stage it was referred for the ADR.

11. Failure of ADR Centre etc.— Where the parties have directly approached an ADR Centre or a ~~Panchayat~~ before initiating the proceedings in the Court and the ADR Centre or the ~~Panchayat~~, as the case may be, has failed to bring about a settlement or result in an award, no legal proceedings shall be

initiated thereafter by either party without intimating the Court about the failure of the ADR.

12. Execution of an order or a decree.— Where an order or a decree is passed by a Court following ADR, it shall be executed in the manner as prescribed and if no such manner is prescribed under this Act, it shall be executable in accordance with the procedure provided for in the relevant law.

CHAPTER—II

COMPOUNDABLE OFFENCES

13. ADR in compoundable offences.— (1) Where the Court takes cognizance of a compoundable offence specified in section 345 of the Code of Criminal Procedure, 1898 (Act V of 1898) or under any other law for the time being in force, the Court may appoint a Neutral or such other person as may be agreed upon by the parties to facilitate compounding of the offence:

Provided that the Court shall not refer a case for compounding of an offence without consent of the parties.

(2) The Neutral appointed under sub-section (1) shall try to facilitate compounding of the offence within thirty days.

(3) If the offence is compounded, the neutral shall submit a report in this respect in the Court duly witnessed and signed by him and by the persons authorized to compound the offence under any law for time being in force and the Court shall pass order and the accused shall be discharged.

(4) If the efforts of the Neutral for compounding the offence fail, the Court shall proceed with the trial from the stage it was referred to the Neutral.

(5) If the parties have themselves resorted to ADR and the offence is compounded in terms of section 345 of the Code of Criminal Procedure, 1898 (Act V of 1898) or any other law for the time being in force, they may make application to the Court in terms thereof. If the Court is satisfied that the parties have voluntarily compounded the offence and the document recording their agreement has been duly witnessed and signed by them, the Court shall pass order accordingly and the accused shall be discharged.

(6) Section 345 of the Code of Criminal Procedure, 1898 (Act V of 1898) or any other law under which the offence is compoundable shall *mutatis mutandis* apply to the proceedings under this Chapter.

CHAPTER III PANCHAYAT SYSTEM

~~14.— Panchayat system.— (1) Where a Panchayat or Jirga system has been established under any law, it shall facilitate amicable settlement of civil disputes and compounding of offences as provided for in this Act.~~

~~(2) —The provisions of this Act shall, *mutatis mutandis*, apply to the settlement of the disputes by the Panchayat.~~

CHAPTER III MISCELLANEOUS

14. Costs and fees of ADR.— The costs and fees of ADR process shall be borne by the parties in such proportion as may be mutually agreed upon by them, failing which it shall be determined by the Court .

15. Utilization of services of an Evaluator.— The Court or the Neutral or ADR Centre may utilize the services of an Evaluator to determine any matter of financial or any other nature in respect of any proceedings before it or him. The Evaluator shall render such assistance as may be required by the Court or the Neutral or ADR Centre. After completion of the evaluation process, the Evaluator shall submit a report to the Court or the Neutral or ADR Centre, as the case may be. The parties shall pay costs of the evaluation and fee of the Evaluator as may be determined by the Court.

16. Penal costs.— Any person who willfully violates any provision of this Act, rules or any order of the Court with which he is required to comply shall be liable to penal costs which may extend to one hundred thousand rupees, in addition to any other costs or penalty to which he may be liable under the relevant law.

17. Appeal and revision barred.— No appeal or revision shall lie from the decree or any order of the Court under this Act.

18. Savings.—(1) Save as provided in this Act, the proceedings before the Neutral or ~~the Panchayat~~ shall be privileged and shall not be admissible in evidence before any Court without consent of the parties and the Neutral shall not be required to appear as a witness or otherwise in any arbitral or judicial proceedings with respect to a dispute that is or was the subject-matter of an ADR:

Provided that the final settlement, award or agreement between the parties, as the case may be, under ~~Chapter I, Chapter II or Chapter III~~ **Chapter I or Chapter II** shall be admissible in evidence in any subsequent proceedings between them relating to the same subject-matter, wholly or partly.

(2) The Neutral ~~or a member of the Panchayat~~ concerned shall not act as a representative or attorney of any party to the ADR, in any subsequent proceedings with respect to a dispute that is or was the subject-matter of an ADR.

(3) No legal proceedings shall lie against a Neutral or any other person or official associated in the ADR process for any act done or omitted to be done in good faith in the course of the performance of his functions, in reference to such ADR.

19. Application, etc., of certain laws.— (1) Subject to the provisions of this Act, the following laws and the rules made thereunder shall *mutatis mutandis* apply to proceedings under this Act;

- (a) the Oaths Act, 1873(X of 1873);
- (b) the Limitation Act, 1908 (IX of 1908); and
- (c) the Arbitration Act, 1940 (X of 1940):

Provided that notwithstanding anything contained in the Arbitration Act, 1940 (X of 1940), in case of an arbitration under this Act, the arbitrator(s) shall be appointed by mutual agreement of the parties.

(2) **Save as provided in this Act,** ~~The~~ the Code of Criminal Procedure, 1898 (Act V of 1898), the Code of Civil Procedure, 1908 (Act V of 1908) and the *Qanun-e-Shahadat*, 1984 (P.O.No. 10 of 1984) shall not apply to the ADR proceedings under this Act.

(3) Provisions of this Act shall apply to a matter pending in the Court immediately before the commencement of this Act, unless the parties agree otherwise.

(4) Subject to the provisions of this Act **and the rules made thereunder**, Rules of Chamber of Commerce and other relevant bodies, where applicable, shall *mutatis mutandis* apply to proceedings under this Act.

20. Overriding effect.— Subject to section 20 **19**, the provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

21. Transitory provision.— Until a panel is notified, the Court shall nominate a person agreed upon by the parties to carry out ADR under this Act **who shall be deemed to be a neutral.**

22. Cases pending in appeal or revision.— The provisions of this Act shall, with the consent of the parties *mutatis mutandis* apply to matters pending in appeal or revision.

~~**23. Power to amend Schedule.**— The Government may amend the Schedule by adding or amending any entry therein or omitting any entry therefrom.~~

24 23. Code of Conduct.— The Government shall notify Code of Conduct for Neutral (Arbitrator, Conciliator, Evaluator and Mediator) in consultation with Chief Justices of High Courts **Justice of Islamabad High Court.**

25 24. Power to make rules.— (1) The Government, may, by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) The rules made under sub-section (1) shall have effect notwithstanding anything to the contrary contained in any rules made under any other law for the time being in force.

26 25. Removal of difficulty.— If any difficulty arises in giving effect to any provision of this Act, the Government may make such order not inconsistent with the provisions of this Act as may be necessary to remove the difficulty.

27 26. Repeal.— Subject to the provisions of sub-section (3) of section 20-19, section 89A of the Code of Civil Procedure, 1908 (Act V of 1908) to the extent of area or areas to which this Act is extended shall stand repealed.

Schedule

[See section 3(1)]

1. A dispute between a landlord and tenant.
2. Pre-emption cases.
3. Land and property disputes.
4. Civil matters under the Small Claims and Minor Offences Courts Ordinance, 2002.
5. Commercial dispute including but not limited to any claim, right or interest arising out of trade and commerce.
6. Contractual cases.
7. Disputes relating to professional negligence.
8. ~~Family disputes such as dissolution of marriage and maintenance etc.~~
8. Suits for specific performance.
9. Companies and banking matters.
10. Insurance.

11. Negotiable instruments.
12. Personal injury.
13. Compensation and damages suits.
14. Patent, Trade mark and copyright.
15. Disputes under the Canal and Drainage Law.
16. Dispute for recovery of movable property or value thereof.
17. Dispute for separate possession of joint immovable property through partition or otherwise.
18. Dispute for redemption of mortgaged property.
19. Dispute for rendition of accounts of joint property.
20. Dispute to restrain waste and remove nuisance.
21. Mesne profits of property.
22. Any other matter under the law not falling in the Schedule but agreed to by the parties for settlement under this Act.

STATEMENT OF OBJECTS AND REASONS

There is a maxim of law that "justice delayed is justice denied". This maxim holds good both in civil and criminal cases. In every civilized society there have been constant efforts to evolve ways and means for speedy dispensation of justice.

2. There is huge backlog of cases in both subordinate and superior Courts of the country. It is, therefore, necessary to find simpler and faster alternates which can supplement the traditional legal system. As litigation is a very lengthy and expansive process there is a worldwide trend to adopt Alternate **Alternative** Dispute Resolution (ADR). Alternate **Alternative** Dispute Resolution methods such as conciliation, arbitration **and** mediation **and** *Panchayat* can be used effectively for settlement of disputes to overcome delays, provide inexpensive justice and reduce tremendous burden on Courts.

3. The Bill is designed to achieve the aforesaid object.

MINISTER-IN-CHARGE