

ALTERNATE DISPUTE RESOLUTION (ADR) JURISPRUDENCE

Justice Syed Mansoor Ali Shah

Senior Puisne Judge

Supreme Court of Pakistan

In ***Kauser***¹, a dispute concerned rectification of shares in the company's register and alleged fraudulent transfer of shares. Petitioners sought stay of Company Bench proceedings in the High Court in order to proceed with arbitration. The High Court rejected this application; matter reached the Supreme Court.

Held: Courts should encourage and facilitate a pro-arbitration environment by not pre-empting the jurisdiction of arbitrators but supporting the arbitral process. The role of the courts is to adopt a resolute stance of non-interference, ensuring parties adhere to their agreement.

Court's Observations:

"Courts should adopt a resolute stance of non-interference, encouraging arbitration and other forms of ADR, such as mediation, as the preferred modes of resolving disputes."

"By respecting arbitration agreements and fostering an environment conducive to swift dispute resolution, courts can play a pivotal role in alleviating case backlogs.

"In enforcing an arbitration agreement, the courts' role is not to pre-empt the jurisdiction of the arbitrators but to support the arbitral process."

"Promoting arbitration is not merely a legal necessity but also an economic and commercial imperative for ensuring the country's progress and prosperity."

¹ *Kausar Rana Resources (Pvt) Ltd v. Qatar Lubricants Co. W.L.L.* 2025 SCMR 517

In [Taisei](#)², a Japanese company subcontracted a highway project to a Pakistani company. The subcontract provided for International Chamber of Commerce (ICC) arbitration in Singapore under Pakistani law. The ICC tribunal rendered award in 2011. The Pakistani company challenged enforcement while the Japanese company sought recognition in two different High Courts. Conflicting High Court rulings led to an appeal before Supreme Court.

Held: Supreme Court reinforced pro-enforcement bias consistent with the New York Convention, limiting refusal grounds and placing burden on the resisting party. Courts must avoid interfering with international arbitral awards.

Court's Observations:

“Arbitration embodies autonomy and voluntariness, respecting parties’ freedom to design a process that best suits their needs.”

“Courts are no longer competitors to arbitration but essential partners in ensuring the effectiveness and integrity of the process.”

“The role of courts in arbitration has evolved with a trend towards minimal interference - supporting, not supplanting, the arbitral process.”

“International commercial arbitration plays a crucial role ... neutrality, expeditiousness, and efficiency make it the preferred alternative to litigation.”

² *Taisei Corporation v. A.M. Construction Company (Pvt.) Ltd.* 2024 SCMR 640

In RYK Mills³, show cause notices were issued for alleged tax violations but did not clearly specify charges. The Respondent company challenged those on grounds of violation of fair trial and due process. The matter reached the Supreme Court of Pakistan, which examined the nature and purpose of show cause notices.

Held: Show cause notices serve as pre-adjudication ADR tools, providing an opportunity to resolve disputes before escalating into litigation.

Court's Observations:

“Issuance of a show cause notice also acts as a tool to resolve the issue in the pre-litigation stage, similar to the objective of ADR.”

“By doing so, the matter can potentially be resolved before adjudication, saving time and resources, and encouraging efficient resolution outside the traditional legal framework.”

“Such practice prevents wastage of time and effort, curbs unnecessary litigation, and allows many cases to be resolved at the initial stage without burdening the public exchequer.”

³ *Commissioner Inland Revenue v. RYK Mills* (2023 SCMR 1856)

In Sambu⁴, in a highway rehabilitation contract, the Respondent company was directed by the Petitioner authority to build additional works not in the tender scope. The Respondent claimed PKR 65.4 million as additional payment. Arbitration ruled in the Respondent's favor; award was decreed and partially executed. The Petitioner challenged the award in litigation which came before the Supreme Court.

Held: Once parties choose arbitration, they must respect its outcome. Courts should avoid over-intrusive review of arbitral awards.

Court's Observations:

“Arbitration is a forum of the parties' own choice; its decision should not be lightly interfered with by the court.”

“The arbitrator alone is the judge of the quality as well as the quantity of the evidence ... the court is not supposed to sit as a court of appeal and make a roving inquiry.”

“...interference is only possible if there exists any breach of duty or irregularity inconsistent with equity and good conscience.”

“An over-intrusive approach by courts in examination of arbitral Awards must be avoided.”

⁴ *National Highway Authority v. Sambu Construction* 2023 SCMR 1103

In *Haroon Construction*⁵, the Punjab provincial government required contractors to deposit additional performance security beyond procurement rules. Contractors challenged this as unlawful and discriminatory. The controversy was litigated and reached up to the Supreme Court.

Held: Procurement-related disputes are better suited for ADR, especially mediation, rather than adversarial litigation. A significant shift was seen as the Court urged a pro-mediation and pro-settlement bias, even in cases involving public procurement, extolling mediation's ability to produce creative, non-adversarial outcomes.

Court's Observations:

“Courts must encourage out of court settlements through ADR, in particular mediation, which thrives on win-win solutions and preserves relationships.”

“Courts should not only encourage mediation but also exhibit a pro-settlement and pro-mediation bias.”

“By fostering a pro-settlement bias, courts contribute to a more harmonious and efficient dispute resolution landscape.”

“Mediation, as a form of ADR, has garnered widespread acclaim for its efficiency, cost-effectiveness, and ability to facilitate amicable settlements”

⁵ *Province of Punjab v. Haroon Construction* 2024 SCMR 947

In *Mughals*⁶, the dispute related to the Appellant's liability for contributions under the Employees Old Age Benefits Institution (EOBI) scheme for employee-based contributions, leading to prolonged litigation.

Held: Employment and benefits disputes are more effectively resolved through ADR, particularly mediation, to ensure timely and cost-effective outcomes. Mediation was recognized as a fundamental right within the framework of access to justice.

Court's Observations:

"Mediation is not merely an alternative to litigation but a complementary and necessary component of the justice system."

"Access to justice includes the right to have disputes resolved in a timely and efficient manner; mediation, as a faster and cost-effective alternative, satisfies this fundamental aspect of justice."

"Mediation is evolving as a powerful mechanism for conflict resolution, bridging divides with creativity and fostering harmonious solutions."

"Courts should not only encourage mediating more and litigating less but also exhibit a pro-mediation bias, prioritizing mediation as the preferred method of dispute resolution."

⁶ *Mughals Pakistan v. EOBI* PLD 2025 SC 1

In FHL⁷, a dispute over oilfield interests was resolved through ICC arbitration in London, resulting in foreign awards whose enforcement in Pakistan was obstructed by interim judicial interference. A Single Judge granted interim relief to protect assets, but a Division Bench suspended this relief. The matter came before the Supreme Court, raising the question that whether such interference undermines Pakistan's pro-enforcement obligations under the Convention.

Held: The Supreme Court reaffirmed Pakistan's pro-enforcement bias under the New York Convention, stressing that courts must support, not obstruct, foreign arbitral awards

Court Observations:

"Premature judicial interference sends an adverse signal to the international community, undermines arbitral sanctity, erodes investor confidence, and undermines Pakistan's international obligations."

"Denial of such protection would defeat the very purpose of the Act and the New York Convention ... courts must maintain a pro-enforcement bias while dealing with foreign arbitral awards."

"Foreign arbitral awards are not to be treated as ordinary civil decrees; rather, they possess a binding character under international law, to which Pakistan has expressly committed itself."

⁷ *Frontier Holdings Limited v Petroleum Exploration Pvt. Limited* 2025 SCP 203