

**A Comparative Study of Mediation of Divorce Cases Through Litigation and Non-Litigation in Pakistan**

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**ABSTRACT**

*The number of divorce conflicts in Pakistan has risen in recent years, which makes dispute resolution mechanisms subject to critical re-assessment. The article carries out an overall account of the comparative evaluation of the litigation option of deciding the case of divorce in the family courts and the non-litigation option of family mediation in Pakistan. With the current statistics of 2022-2025, of reports of the judiciary, it traces unfolding patterns of divorce and the reaction of the legal system. The paper briefly examines the legal system in Pakistan, and specifically, the Family Courts Act 1964, the Muslim Family Laws Ordinance 1961, and the provisions of mediation enacted by superior courts in an attempt to ascertain how reconciliation and mediation are represented within the court system and the alternative places of proceedings. The recent couple of years of judicial rulings by the Supreme Court and High Courts are examined to demonstrate judicial intentions towards accepting mediation in family conflict cases, reinstating the right of women to obtain Khula (judicial divorce) and requiring genuine conciliatory attempts. The synthesis of empirical findings is performed in a comparison of speed, cost, confidentiality, outcomes, enforceability, autonomy of parties, and ability to preserve the relationships. Through a table of comparison, the findings show that non litigation mediation tend to have quicker, less hostile and more confidential settlements, and may save relationships and obtain mutually acceptable results, and litigation on the other hand may have verifiable judgmental detections but at the sometimes high and more costly price of waste of time, and emotional neglect. The negotiability of the currently existing mediation centers and arbitration councils is also discussed, and such difficulties as low awareness of the general population, erratic enforcement, and cultural resistance to this change are mentioned there. The article itself ends up with the recommendation on how the mediation can be entrenched into the family justice system in Pakistan more strongly via the legislative reform, capacity building, and public-private sector ventures to make sure that the divorce cases will be resolved as quickly and yet as amicably as possible and the rights as well as dignity of all parties involved be preserved.*

**Keywords:** Comparative Study, Mediation, Divorce Cases, Litigation and Non-Litigation in Pakistan

## **INTRODUCTION**

A relatively uncommon and culturally sensitive procedure in Pakistan, divorce had gained an upward trend in the last decade. Socio-economic pressures, shifting social values and increasing sensitivity towards legal rights have led to the breaking up of couples in larger numbers than ever before. Recently, the divorces have escalated to great levels in different localities. As an illustration, in the province of Punjab, the divorce rate went up by a figure of about 35 percent between the period of 2018 and 2023 with the highest figures being recorded in Lahore. Equally, family courts recorded more than 5,800 cases in Rawalpindi alone in the first half of this new year alone of which 2,393 ended up in divorce being granted. These tendencies highlight a dramatic decline of the family system mentioned by observers, and have touched thousands of children who fall victims to the repercussions of separation between their parents.

This dynamism has enhanced the examination of divorce cases as managed by the legal system of Pakistan. In Pakistan, traditionally, married couples could solve the marital dispute using litigation, i.e. presenting a case in the family court within the framework of the judicial system, a non-litigation option, including community mediation, intervention of elders, or local authority statutory arbitration councils. Formal mediation has become increasingly popular in recent years: judges have tried court-annexed mediation centers and the government has passed rules in the form of laws called ADR (Alternative Dispute Resolution) to prompt settlements away from the adversarial process in the courts. Accordingly, parties that proceed with a divorce have since had two options: contesting a decree by going to trials or amicably resolving it by going to mediations/ADR with largely divergent procedures and consequences.

Preliminary indicators have shown that the mediation and ADR facilities have a lot to gain in family disputes. The advantages associated with the concept of mediation include its ability to quickly and amicably solve problems and cause less damage to marital relationships and more preservation of children against the difficult effects of intense fighting. It contains the element of confidentiality and allows greater input by parties in developing mutually agreeable solutions. In comparison, family court litigation usually offers a conclusive legal result, but is time consuming, expensive, and antagonistic, adding frequently to the bitterness between spouses. The question comes, how effective are the two modes of litigation and non-litigation mediation in the Pakistani context and how do they vary in practice and their effect?

In this research paper, the researchers attempt to address that question on the basis of a detailed comparative study. It looks into new statistics of 2022-2025 of divorce and mediation in Pakistan, considers the legal context (including classical legislation, such as the Family Courts Act 1964 and Muslim family laws Ordinance 1961, to recent legislation on ADR and its court rules), and the case law that has formed, and is forming, the mediation environment. Comparing the speed and cost of the resolution, the confidentiality of proceedings, the enforceability of the results, the autonomy granted to sides, and support of family relationships, the present study is intended to offer a complex picture of the strong and weak qualities of each of the paths. A comparison table is provided to indicate these differences and similarities briefly.

## **METHODOLOGY**

The methodology of the research is a qualitative doctrinal approach with the support of empirical data. It is actually a type of desk research based on an analysis of legal documents, case law, statistical literature, and scholarly articles devoted to the issue of divorce mediation in Pakistan. It is an interdisciplinary approach integrating law, sociology and conflict resolution information to provide a balanced perspective of the topic of analysis.

**Data Collection:** The data used is updated and credible taking place in 2022 to 2025 and multi-sources were used to form the data. However, official records like that of judiciary annual reports and publications of Law & Justice Commission of Pakistan (LJCP) were some of the major sources of these. Though the judicial system in Pakistan does not issue specific annual statistics on the outcomes of mediation within the country, the news stories and the words of the official representatives gave the idea of recent tendencies. An example is the statistics of the number of divorce cases filed and disposed in courts that were taken off the reliable online sources (e.g., The Express Tribune and Dawn) which provided the official statistics. The statistics of the divorce cases registered were also cross-checked with the NADRA (National Database and Registration Authority) data, since it is through NADRA that divorce certificates are issued and hence records of the divorce cases registered are kept. Further, the proceedings of non-governmental organisations (NGO) dealing with legal assistance and women rights were also consulted in order to obtain a clue about the mediation services and divorce counselling.

**Literature Review:** An expert study of scientific literature on dispute resolution issues and family law was done. Articles about the practices of mediation, ADR, and family dispute resolutions in Pakistan, were browsed inside academic journals (local and international). Remarkably, the research published in the journal Islamabad Law review in 2022 concerning the efficacy of the existing mediation centers in resolving family disputes was reviewed to give qualitative information. Other literary works including the cultural dimension of mediation, gender dimension of mediation were taken into consideration to put the practical issues experienced by Pakistani women in the family courts into perspective. These sources gave us theoretical grounds in the field of ethics, advantages and challenges of mediation, but these were used as a part of a comparative analysis.

**Legal Analysis:** The legislative frameworks that control the process of divorce and mediation in Pakistan were analyzed. These works were done within the West Pakistan Family Courts Act 1964 (and its follow up amendments) and the Muslim Family Laws Ordinance 1961 - which were the baseline pieces that described how a judicial dissolution of marriage was conducted, and the arbitration councils played in its process. The paper further examined Mediation Rules and ADR laws that were enacted in the last few years: e.g. the Alternate Dispute Resolution Act 2017 (applicable to the Islamabad Capital Territory) and the Punjab Alternate Dispute Resolution Act 2019, which establish statutory frameworks of court referred mediation in some disputes (including family matters). They also discussed any rules or practice directions that could be issued by higher courts (Supreme Court of Pakistan or provincial High Courts) in regard to mediation, e.g. the Mediation Practice Direction 2023 issued by the Islamabad High Court; and the Sindh High Court establishing a Mediation Center.

**Case Law Research:** The study of a targeted case law was done based on the recent Supreme Court and High Court rulings (2020-2025) on divorce and mediation. The cases were located using legal databases and law reports (e.g. SCMR for Supreme Court Monthly Review, PLD for Pakistan Law Digest, CLC for Civil Law Cases). The case of Sohail Ahmed v. Mst. Samreena Rasheed (2024) by the Supreme Court is notable that reiterated the Islamic and legal position of Khula and clarified the jurisdiction aspect of transnational divorce cases. They included High Court decisions interpreting Section 10 of the Family Court Act (duty of courts to make an effort to reconcile) and the operations of arbitration councils under the MFLO 1961, and a 1996 decision of the High Court dealing with the effects of the failure adequately to constitute an arbitration council. These cases were analyzed to find out principles and guidelines applicable to mediation and reconciliation in divorce cases.

**Comparative Analysis:** With the assistance of the gathered data and legal sources, a comparative framework was prepared in order to analyze litigation vs. non-litigation meditation in the aspects of key performance indicators: time of the case resolution, cost, confidentiality/privacy, type of results, enforceability of settlements, autonomy of the parties, and the relations. All factors were discussed

regarding empirical evidence (e.g. average durations of cases, anecdotal case results) and qualitative evaluations in the literature. As an example, the study examined anecdotal timelines, in order to compare speed, e.g. family court cases, which take months, more often than not years, in comparison to mediation, which can take days when it is successful, or weeks. In cost, information regarding court fee, lawyer fee and mediation center fee structure (in many places free or low fee) were contrasted and in case of litigant's economic burden in family cases, a survey was conducted. The benefits associated with mediation of families (which have been expressed in form of bullet points in the legal literature commentary) were also used during the analysis to gauge parameters such as secrecy and saving the relationship.

**Validity and Limitations:** The best effort was taken to refer up-to-date and verifiable sources. The citations were made on authoritative data and well-known publications. Nevertheless, the one negative point is that there were no nationwide statistics, available publicly, on the success rates of mediation or the average time that mediation takes in Pakistan. To deal with this, the study differed between regional data (e.g., Lahore, Rawalpindi, Quetta) to reflect larger trends, and presented consistent patterns in the countries as reported by several sources. The other constraint is the possible bias in the data projecting the information in the media; this was countered insofar as cross-reference of data was possible with various sources. Notably, as it is a qualitative analysis not all of the conclusions (particularly those made on the basis of the preservation of relationships or party satisfaction) are based on obtained reports and may not be applicable to every situation.

### **Legal Framework for Divorce and Mediation in Pakistan**

The legal system of Pakistan that regulates divorce and conflict settlement is a mix of the statute, Islamic principles, and the developing ADR (Alternative Dispute Resolution) practices. This framework is also important to pieces together the application of mediation both internally and externally in the courts. The most important aspects of this system are the Muslim Family Laws Ordinance 1961, the Family Courts Act 1964 and the new ADR procedures and court rules which promote mediation (Khan, 2024).

### **Muslim Family Laws Ordinance 1961 (MFLO) and Arbitration Councils**

The procedure regarding the effecting of a divorce (Talaq) by the husband is provided under the Muslim Family Laws Ordinance (MFLO) 1961 and contains an additional extra-judicial process of reconciliation through Arbitration Councils. According to the Section 7 in the MFLO, a husband who pronounces Talaq should furnish written notice to the Chairman to the Union Council (local government body) and also copy to the wife. When this notice is received, the Union Council Chair should set up an Arbitration Council that would represent the husband and the wife, whose express mandate would be to reconcile the spouses. The Act provides that there shall be a waiting period of 90 days after the notice and the divorce is not binding within this interval but during this period the Council sits (and holds sittings (it is advisable that there is more than one sitting) with this aim of patching things up. In case of reconciliation the divorce is avoided; otherwise, after passing of 90 days (or in the event of waiver by a wife of the outstanding days) the divorce takes effect and the Union Council is to enact an authentic certificate of divorce (Ansari, 2022).

This will introduce non-litigation aspect of mediation to husband-initiated divorces. It shows the Quranic directive (Surah An-Nisa 4:35) that in case a lapse between husband and wife is apprehended, mediators (Hakams) in both the parties should be called to status quo. The MFLO basically put in place the institutionalization of that religious principle into a statutory system of Arbitration Council. Remarkably, the reconciliation requirement in Section 7 has been controversial among the more conservative quarters- it has been held by some parties that notices and interventions by a council should not be imposed to reconcile the parties (as it would not be according to the traditional Islam law- a talaq would occur

without such steps). Pakistani jurisdiction has mostly recognized the MFLO process as being a legal formality required by law: a talaq that is not channeled through an Arbitration Council (i.e, without warning the Union Council) would not be corporately recognized (i.e. the husband would be legally punishable and the divorce would be legally in limbo). In a 1996 case (1996 CLC 673), it was pointed out that the “only intention of instituting arbitration council was to help in reuniting a married couple” and in case the arbitration council is not constitution and the procedures not followed, the divorce may be called in question.

In the case of divorce initiated by the wife, the role of MFLO becomes a little different. In case such wife has been given Talaq-e-Tafweez (Farooq, 2022), she can also give divorce to herself and shall also mention the matter to the Union Council leading to the same process of the Arbitration council to reconcile. In case the wife commences divorce in court (judicial divorce or Khula), it is not usually the case that the Arbitration Council of the MFLO is resorted to, but, rather, the procedure of the Family Courts Act (see below). As stated in Section 8 of MFLO, any divorce that is considered decreeable by the court or otherwise must be informed in the Union Council to be registered and this is the reason why even those divorces that are awarded in court tend to get registered and a NADRA divorce certificate is made available thereafter. Practically, the concurrent jurisdiction implies that once a dissolution of marriage has been issued by a Family Court, intimation is then communicated to the local Union Council so as to reflect the official list of marriages and divorces (Mehmood, 2023).

The presence of Arbitration Councils as mediators has not been very effective though. In a study, the Law and justice commission of Pakistan criticized that this process is usually shallow and unsatisfactory in effecting true reconciliation (Zeller, 2019). The first problem is that there is no standard of council membership a fixed standard Council tends to be headed by the Chairman of the Union Council (a political appointee) occasionally councilors or members of the community at large may sit on the council and these persons are often neither trained in mediation nor in law. They may be uninterested, or even unable to resolve close conflicts in their marriage. Additionally, the decisions/ recommendation made by the Arbitration Council are not binding to affect a solution as stated in the Courting the Law report, this is because, they either succeed in convincing the couple or, fail and the divorce process goes through. Women respondents have been found to express dissatisfaction especially because they believe that councils tend to ignore the rights of the wives or put pressure on them unduly because of which the results were one sided. Regardless of these inefficiencies, the Arbitration Council has been a mainstay to a non-litigation system of divorces in Pakistan by making mandatory mediation attempt prior to the finalizing of a talaq (Newman, 2014).

### **Family Courts Act 1964 and Court-Annexed Reconciliation/Mediation**

The Act that regulates the form of litigation to be pursued in case of family dispute (i.e. divorce, maintenance, custody, etc.) is the West Pakistan Family Courts Act 1964 (hereafter Family Courts Act). It is also noteworthy that the reconciliation mandate as described in this Act is incorporated in court proceedings as well. As established in the previous section 10 of the Act, in each and every suit involving a dissolution of marriage (among other marital differences), the family court should seek and effort to compromise or reconcile the parties to the marriage at the pre-trial phase. That is, once the statements are drawn, the judge ought to go out of his way and determine whether the marriage is salvageable or the disputes can be resolved in a friendly manner without moving into the evidence and trial phase (Namagga, 2018).

This legislative requirement was enhanced in 2002 (with the Family Courts (Amendment) Ordinance) when reconciliation efforts were required, and this is particularly the requirement in Khula cases (where the wife deserts the husband without seeking his permission). Section 10(4) of the Act (inserted in 2002), the court accommodating a preliminary declaration by the wife that she has sued under Section 10(1) (An



irretrievable breakdown of marriage) shall make an attempt to reconcile between the parties with the help of two arbitrators (one by each side), or any other means and in the case of such an effort failing the court shall forthwith decree the dissolution of marriage. This has been understood by superior courts to imply that the attempt in reconciliation is not procedural as is the case in taking a formality. The attempt should be an authentic one. In fact, 2024 SCMR 634 (a 2024 decision of the Supreme Court) indicated the following in the Supreme Court of Pakistan, 2024: 10(3) and 10(4) place a legal liability upon Family Courts to make all reasonable efforts to ensure that reconciliation is achieved and that a mere statement indicating that efforts were made should not be sufficient but an attempt should be in good faith with substantial effort being put. In the same regard, High Courts have directed that a judge must, as part of an order to explore settlement, talk to parties, whether in-court or, perhaps, in chambers; or consult with court-appointed mediators; and only under that protocol failing should the judge move on to finalize the divorce (in Khula cases, it is sufficient to do so immediately after, under Section 10(4)) (Hadi, 2024).

The Family Courts Act therefore represents a very simple form of court-annexed mediation - the judge him/herself or representative of the judge (who may be another judge, or a professional mediator, where available) becomes a facilitator of discussion. In the past, judges usually used to get the spouses and the elders of the family to communicate so that some solution could be achieved. Because of high workloads of cases, such reconciliation sessions may be short. According to one civil society activist in Lahore, the “main intent of family courts was conciliation between the separated couples but because of the hundreds of cases pending on each of the judge’s docket, the courts usually do not spare much time on this process and go through ex-parte proceedings in haste when one of the parties is absent to contest the case. In fact, it was noted in Lahore that due to case backlog, one could get a dissolution decree reached within 15 days to a little over one month, where little practice of conciliation could be observed, where one party was absent (Ahmed, 2013).

Because of these limitations, the superior judiciary in Pakistan in the last decade or so has initiated steps in formal mediation as part of the litigation system:

**Mediation Centers and ADR Cells:** Family courts referral to a few High Courts has a mediation center or an ADR cell established. As an example, in Lahore High Court, there was a pilot project introduced approximately in 2017-18, in which family cases were referred to trained mediators, in certain districts, and could be solved there. Sindh The High Court of Sindh in Karachi has a Mediation Center, regularly training accredited mediators, and a set of rules regarding referral of pending matters to mediation upon the agreement of the parties or the direction of the court. These centers offer a more formal setting in which the mediation process is performed, and the mediation may be carried out with retired judges or qualified mediators with the sessions held in confidence. Although little data is available, it is reported that since 2022 the concept of mediation has been gaining some momentum in the context of such additions to courts. Examples include the Chief Justice of the Sindh High Court who declared in 2023 that an additional 35 ADR centers would be established in the province following good outcomes recorded so far (Khan, 2024).

**ADR Legislation:** The Alternative Dispute Resolution Act 2017 (applicable in Islamabad Capital Territory) offers a federal instrument authorizing court to direct certain civil cases over neutral parties (mediators, arbitrators, etc.) and have their resolutions documented. This Act (originally, a matter of civil/commercial disputes and not a family issue) established awareness and precedent to considering the use of mediation; in other words, its framework eventually made it a potential matter of dispute resolution in any field (including family matters). Punjab then passed the Punjab Alternate Dispute Resolution Act 2019 that includes specifically family disputes in the list of possible cases to be referred to ADR. Then, under this legislation a Punjab judge can delegate a family case (e.g., maintenance, custody, or even divide in case of agreement by both sides) to a notified mediator or panel, and in the event of settlement

the court can incorporate it into a rule of court (i.e. an official decree) which can be enforced. Similar legislation has also been under consideration in Khyber Pakhtunkhwa province (and in some districts ADR committees have already been put into practice). These statutory actions help strengthen a legal foundation of mediation - they prescribe processes, selection of mediators (panels of so-called Neutrals are given notice by government, in liaison with the High Court) and legal consequences of mediated settlements. As an example, an agreement reached by the parties and authenticated by the neutral under the ADR Acts can be attached to the court as a way of obtaining a decree on the terms of the settlement agreement so as to become binding and enforceable as a court order. These provisions do aim at a crucial issue of mediation that of the enforceability of the result that we shall touch upon in the comparison (Iftekhhar, 2022).

### **Mediation in Practice: Rules and Ethics**

In addition to formal law, mediation in Pakistani family disputes has been based not only on developing institutional norms but also on principles of dispute resolution in general. The practice directions started being issued in the superior courts to standardize mediation. As an example, the Islamabad High Court introduced Mediation (Civil) Rules in 2023 (Practice Direction) specifying the process of mediations to be followed in cases referred to by the court. Such regulations would probably include appointment of mediators, timings (in most cases, mediation should finish within a specified time, say 30 days, with additional 15 days as extensions), confidentiality agreements, and participation should be voluntary unless directed by the court. In family matters, both the partners consent is normally sought, since claims are sensitive hence, it is advisable to mention mediation (Jurgees, 2024).

Morally, judges, lawyers, and trained counselors in Pakistan should observe some form of neutrality, confidentiality, and impartiality as the mediators. Even the limited mediation training schemes (some of which are funded by agencies such as the Asia Foundation, or the International Finance Corporation, in the case of commercial mediation), merely make recommendations reiterating conventional mediation ethics: voluntariness (parties can choose whether to join the mediation or not), confidentiality (what is said in the mediation cannot be used as evidence should the litigation be recommenced), and self-determination (the outcome of the mediation is a matter that is decided by the parties and the mediator does not impose it). Family mediators are also mindful of the power differences that might prevail (such as in a culture where females might feel less ready to negotiate or where one of them has been on the receiving end of abuse). Some of the mediation centers also ensure that such sensitive cases as divorce subject to domestic violence should either be referred to mediators who also have expertise in psychology counseling or they should not be referred to such a mediation process since mediation may not be set up in a case where there has been a history of severe violence or coercion to global best considerations.

It is also important that the non-litigation environment also includes private and community-based mediation. Other than state centers, there are community hearings such as the Musalahat Anjuman (reconciliation committees) (Salma, 2016), which were also offered, including local government legislation in the 2000s, or faith based or community-based bodies (e.g., the Aga Khan Conciliation and Arbitration Boards of the Ismaili community) (Jamal, 2013). A case in point is the Aga Khan boards which have been reported to have a maximum success rate of 80 percent in settling matrimonial disputes in a win-win situation. These confidential mediation services tend to work according to their own principles, though more and more they are harmonized with formal ADR procedures. As an example, interest in establishing institutions that offer mediation services and training has developed at academic levels. As an example, the Riphah International University in Islamabad established a Riphah Mediation Centre to provide services of mediation and also train people on the process of such a mediation.

### **Case Law Analysis: Mediation and Divorce in Recent Judgments**

The judicial precedents in Pakistan are central to the interpretation of the statutes and, subsequently, to implement the practice of mediation as it applies in the context of divorce. There have been some important judgments of the past few years in superior courts, the High Courts and the Supreme Court that shed some light on all these matters; on reconciliation responsibilities, rights of women in divorce cases and the binding effect of the results harvested through a mediation tunnel. This part explores some of the very important cases in an effort to have some guiding principles which are applicable in our comparative studies (Solomon, 1982).

#### **Supreme Court: Sohail Ahmed v. Mst. Samreena Rasheed (2024 SCMR 634)**

The judgment on the case that could be regarded as one of the most topical ones is the judgment of the Supreme Court published in 2024 (SCMR 634) was widely discussed by the media. It was a case of a Pakistani-American wife (Samreena) and a Pakistani husband (Sohail) who was married under the law of Islam in New York. Relationship became worse and the wife filed suit of dissolution of marriage (Khula) at Karachi, Pakistan. The husband was objecting to the jurisdiction of Pakistani courts as the marriage occurred in the USA, but the family court went ahead, and tried to reconcile the parties, and when it did not work, it gave her the Khula in April 2021. The husband brought this before the Sindh High Court which he lost and appealed to the Supreme Court.

This decision of the Supreme court, which was presented by Justice Syed Hasan Azhar Rizvi in Jan 2024, is important in several ways:

**Affirmation of Khula Right:** The Court was categorical that Islam grants the right of Khula to a Muslim woman the right to seek a divorce/request to be released from marriage should she be incapable of staying within the constraints stipulated by Allah. It emphasized the forty-third injunction, that, Islam does not compel a marriage to remain in distress, but in case the spouses are not able to live together in harmony, then a separation is allowed both as religion and by the law. This nullifies righteously any misimpression that the capability of a woman to obtain divorce holds some extrajudicial nature or can be done at the goodwill or consent of the husband. The SC based its arguments on Islamic teachings as it quoted verses of the Quran (including Surah Al-Baqarah 2:229) stating how the Khula process works, i.e. that a wife can demand a reconciliation of her dower to get a divorce when both parties fail to respect each other (Rafi, 2021).

**Reconciliation Procedure:** The Supreme Court observed favorably that in the instant case, the Family Court had followed the procedure of reconciliation and had granted the Khula decree after attempting therein with no success. It emphasized that the initial decree to dissolve the marriage was properly in accordance with the Section 10(4) of the Family Courts Act 1964 that is; the court had completed the required legal obligation to seek a compromise before dissolving the marital union. It was observed that the wife had already been granted a preliminary decree and had soon remarried in the US (husband had also applied to the Pakistan makeshift authority to have a second marriage) which was evidence that the litigation did not need a prolonged process at the expense of the bride and the groom. By declaring that reconciliation was not desirable when already attempted and aborted, the SC clearly indicated that there was nothing pointless about prolonging divorce as after all what was there to gain but only to annoy a particular party in this case which was the husband who was necessarily making the wife go through unnecessary litigation when it was apparent that the marriage had ended (Farhad, 2024).

**Jurisdiction and Dual Nationality:** In the technical aspect, the Supreme Court reasserted that Pakistani Family Courts were competent since the wife (dual national staying in another country) had connections with Karachi (regular visits, her family was there, etc.), and above all, she was a citizen of Pakistan, and



she could obtain relief in Pakistan courts. Although, technically, it has nothing to do with mediation, it has guaranteed the women the right not to go remediless in case they relocate or marriages transpire in other countries - they can also get the Pakistani system of them, its reconciliation mechanism specifically, instead of having to bow down to completely foreign mechanisms.

The case of Sohail Ahmed therefore demonstrates the attitude of the Supreme Court to promote divorce in case of a marriage having broken down beyond repair but to guarantee the necessary trial of reconciliation. It is a quid pro quo set of rights, keeping right of an unhappy wife to move out of a marriage (and implicitly advising lower courts not to put obstacles or lots of time in Khula case), but also concluded that the court did not act out of process in this case (due process of mediation took place), thus decree was infallible. In our juxtaposition, it accentuates that a litigation path in which the mediation is selected by the court is able to end trials in a very quick manner, usually about a year (at maximum about two years) and the higher courts are stimulating that there is no necessity to postpone matters once the mediation reaches an impasse (Wolman, 2020).

### **Superior Courts on Reconciliation: Mst. Balqis Fatima v. Najm-ul-Ikram and Others**

Pakistan divorce case law cannot be discussed without alluding to the preceding landmark cases that had given women right to divorce in courts. In Mst. Balqis Fatima against. Najm-ul-Ikram (PLD 1959 West Pakistan Lahore 566) and Khurshid Bibi v. Muhammad Amin (PLD 1967 SC 97), the Supreme Court and the High Court respectively had confirmed the principle of Khula in holding that a female partner may seek the dissolution, even without any consent of the husband in the event she proves that she despises or is unable to co-exist with the husband (the classical Islamic condition of Khula). The Supreme Court in Khurshid Bibi also has famously said that it is preferable to set the parties free by Ihsan (kindness) than to give them a lifelong embitterment which is also referred to in the recent cases as the Quranic philosophy.

Although substantive rights were laid out in these cases, they also covered procedural aspects, since they imagined that courts, prior to granting Khula, should have seen to it that there is no chance of reconciliation and that the hatred of the wife is irresolvable. This principle was later formalized into part 10 (4) of the Family Courts Act.

A recent Supreme Court case (reported in 2022, usually called by the name of a petitioner, or topic, perhaps the Ibrahim Khan v. Observers noted that the Saima Khan case made it clear that the judge does not have an option initially to pronounce Khula divorce on his or her own without the express solicitation of the wife or his/her consent. This took place in a strange situation where in case a wife demands maintenance or recovery of conjugal rights and the husband requesting dissolution in response the court cannot rule contingently on dissolution by just declaring it Khula, in short Khula must be through the willing consent of the wife. The position that the Supreme Court has taken their preserved women against unwilling divorce in the name of mediation or judicial convenience and stressed the fact that Khula, though a right, belongs to the wife to waive.

The High Courts have also issued teachings on how the reconciliation should be conducted. An example would be the Lahore High Court in case of Mst. In Nazia Ammar vs Dr. Abdul Wahid (PLD 2016 Lahore 381), the Court held that when a Family Court does not even make a token effort to reconcile the couple (all it does is give a cursory notice), it may become a reason to send the matter back. On the contrary, in a 2021 decision, the Peshawar High Court applauded a Family Judge who himself provided counselling to a couple stating that without success such endeavors go a long way towards the ideals of Section 10 and are significant in family justice (Munir, 2021).

**Arbitration Council Efficacy: Allah Ditta v. Federation of Pakistan (Shariat Challenge to MFLO)**

The MFLO 1961 Arbitration Council system has been reviewed by the judiciary and even the Islamic ideological council of Pakistan. In Allah Ditta vs. Federation of Pakistan (2000) the Federal Shariat Court handled issues of scrutiny of the provisions of the MFLO (such as Talaq notice and arbitration council) on the grounds of its supposed repugnancy with the Islamic injunctions. The Shariat Court confirmed this law on the premise that the necessity of notice and reconciliation is not un-Islamic, but it complies with the Islamic provisions regarding amicable settlement and adequate record maintenance regarding divorce. It was also pointed out in this decision that the 90 days and arbitration council serve as a healthy counter-check to hasty/impulsive divorce and leave the couple with some breathing space to reconsider their divorce or gets their act together.

But in practice, the case law provided that lack of adherence to the notice provision by a husband meant that the wife (or relevant authorities) allowed a complaint to be proceeded against and he would be liable to be fined (or imprisoned under the penalty clause of the MFLO). But what of the situation of the marriage in such case? Historically, the superior courts provided rather conflicting signals since some of the previous decisions held that without the notice it would not apply at all, and others held only that it might be effective Islamically but not legally until confirmed. It is the common opinion nowadays that until the procedure is observed, the divorce does not take effect of the law. This, therefore, urges (indeed obligates) husbands to proceed to arbitration councils with the addition that the councils must, by law, do all they can to reconcile them (MFLO, Section 7). In 2018 a decision was restated at the Lahore High Court that the proceedings of an Arbitration Council are necessary and their due constitution is jurisdictional, in that a divorce certificate obtained without due consultation of a council meeting may be cancelled.

An example is that given in the Courting the Law article (1996 CLC 673) that involved a case in Lahore in 1996 where the Talaq was set aside because the Arbitration Council had not been constituted according to the rule hence indicating that rules concerning legal formalities in mediation cannot be disregarded. What is more, that case stated that when a husband had given the power to divorce to its wife and she had divested it under the council that the major duty of the council ought to have been the establishment of reconciliation and the circumvention of that duty undercuts effectiveness (Haider, 2000).

**Enforcement of Mediated Settlements: High Court Observations**

The growing tendency of mediation (externally and internally in court) gives rise to another question of what to do when there are agreements reached. An example that is related is Muhammad Aslam v. Such a case was rulings in Rubina Shaheen (2019 LMLR 305 Lahore) whereby the parties in a family suit resorted to a compromise (the husband accepting some conditions and the wife withdrawing her suit). Family court operated on this compromise and made an order. Afterwards when the husband failed to remain true under some of the clauses (transference of property), how could it be enforced, by the court order being executed, or by a fresh suit. The court of Lahore maintained that a settlement that is signed by the court is considered to be court order and thus enforceable within the same proceedings, which has brought some bite to the mediated settlement which are entered as a court order.

The other example that shows favoritism of the judiciary toward ADR is Shahida Shaheen v. Abdul Hameed (PLD 2020 Islamabad 85) the Islamabad High Court considered a family property dispute adjunct to divorce, commend the work done by mediation centers and encourage family judges to send appropriate cases to these centers set up under the ADR Act 2017.

Lastly, one more aspect on the same can be regarded as the wider support by the Supreme Court of ADR with the aim of clearing backlog. In 2022, the Chief Justice of Pakistan, Gulzar Ahmed, opened a national

conference on ADR, noting that family grievances are the most likely candidates to be brought to a mediation table regarding the need to preserve relations and minimize emotional harm to children (his remarks, that were not made in a judgment, followed the case law development in encouraging reconciliation at every level).

Generally, courts have a balancing act as shown in the case law; on the one hand, upholding justice and rights (in particular of women) through enforcing rights to Khula, not taking undue delay, warranting jurisdiction, by demanding that the husband facilitate the procedures, and on the other by necessitating amicable settlement, through demanding attempts at reconciliation, and the sanctity of mediation processes, such as arbitration councils. All these judgments enforce upon one another that mediation which can be performed in the form of a council, a judge, or a neutral mediator is not an added feature of the Pakistani divorce resolution system, but rather a significant component. They also lay unintentional assumptions to the shortcomings of these processes (e.g. by condemning half-baked reconciliation or erroneous councils) and thus point out their areas of weakness to be addressed.

After an analysis of the legislation and judicial interpretations, it is time to go straight to the point of comparison between litigation route and non-litigation route of mediation in divorce case and focus on how the two routes score on various practical scales (Koo, 2016).

### **Comparative Analysis: Litigation vs. Non-Litigation Mediation**

Divorce litigation in Pakistan can either be conducted through litigation in courts or any other type of litigation outside the court. There are different routes each with unique features that would influence the experience of parties and subsequent outcomes. In this section, we contrast litigation (Family court proceedings with judicial attempts to reconcile parties) and non-litigation mediation (including arbitration councils, and mediation within a community (Li, 2025), or between two or more private parties, and any other ADR mechanism that is not a court proceeding) on number of major variables:

- Speed of Resolution
- Cost and Financial Implications
- Confidentiality and Privacy
- Outcome and Enforceability
- Party Autonomy and Control
- Relationship Preservation and Emotional Impact

This comparison is summarized in the following table and discussed in more detail in the discussion below.

**Comparison Table: Litigation vs. Mediation in Divorce Cases**

<b>Factor</b>	<b>Litigation (Family Court Process)</b>	<b>Non-Litigation Mediation (ADR, Arbitration Councils)</b>
<b>Speed of Resolution</b>	Generally slower: formal procedures, multiple hearings, possible appeals. A contested divorce suit can take months or years (though Khula cases are sometimes decided in 1-2 hearings if uncontested). Backlogs (e.g., thousands of pending cases per court) can delay outcomes.	Generally faster: mediation sessions can conclude in days or weeks if successful. Arbitration Councils under MFLO conclude within 90 days by law. Private mediation often resolves issues in a few meetings. No lengthy evidence or procedural delays, but if mediation fails, parties

**Cost**

Higher costs: involves court fees (though nominal in family cases), and lawyer's fees if engaged. Extended litigation increases attorney fees and indirect costs (travel, work absence). Studies show many litigants face hardship affording repeated court visits.

**Confidentiality**

Limited: Court proceedings are on public record (though family cases are heard in camera, the fact of the case and orders are recorded). Strangers usually not present, but documents filed become part of record. Social stigma can be higher as a public divorce case becomes known in community.

**Outcomes**

Win/Lose formal judgment: Court either grants divorce (Khula decree or orders Union Council to issue certificate) or dismisses the suit. Ancillary reliefs (maintenance, custody) are decided by the judge based on law, not necessarily on mutual agreement. The outcome is enforceable by law (through execution proceedings if needed). But court orders may not address deeper issues (emotional closure, tailored arrangements) beyond legal scope.

may still end up in court afterward (adding to total time).

Lower costs: mediation through Arbitration Councils is essentially free (state function). Court-annexed or NGO mediation is often low cost or free (donor funded projects). Even if lawyers attend mediation, the quicker resolution means lower fees overall. However, if mediation fails and one proceeds to litigation, costs could duplicate.

High: Mediation sessions are private and confidential. Discussions cannot be used as evidence in court. This privacy allows parties to speak more openly. Arbitration Council meetings are somewhat confidential (held at Union Council office, not open court). Overall, mediation better protects reputations and sensitive personal details from public exposure.

Mutually agreed settlement: Mediation aims for a consensual solution – e.g., husband agrees to give Talaq with certain conditions (financial settlement, child arrangements) or spouses agree on separation terms. Outcomes can be creative and tailored (like phased separation, co-parenting plans) which a court might not order. However, agreements rely on goodwill; enforceability requires formalization (e.g., via a written settlement submitted to court or notarized contract). If done under ADR law or court referral, it can be turned into a court decree, giving it binding force. Purely private agreements have the status of a contract, enforceable through a suit if

**Enforceability**

Strong enforcement: A court decree (for dissolution, maintenance, etc.) is binding and can be executed with state power (e.g., attachment of salary for maintenance, arrest warrant for non-compliance). Parties have legal certainty once a judgment is final. Appeals are possible, which can delay finality but also ensure legal correctness.

breached.

Relies on voluntary compliance unless formalized: The success of mediation is often that parties voluntarily comply with the agreement they crafted. If one reneges, the other may need to seek enforcement by converting the agreement into a court order. New ADR laws (e.g., 2017, 2019 Acts) allow mediated settlement agreements to be submitted for court sanction, making them as enforceable as a judgment. Without that, a breached mediation agreement might lead to litigation anew, undermining the quick resolution benefit.

**Party  
Autonomy**

Limited: The judge and law drive the outcome based on rights and evidence. While the wife's initiation of Khula or the husband's defense are considered, ultimately the court's decision may not fully satisfy either (e.g., maintenance amount might be what law deems fit, not what either party wanted). Court procedure is adversarial, so parties communicate through lawyers and court, not directly with each other.

High: Parties maintain control over the outcome in mediation. They can propose solutions, make trade-offs, and decide on terms acceptable to both. The mediator facilitates but does not impose. This autonomy often leads to higher satisfaction, as each side feels their voice was heard in crafting the agreement. It transforms the process from confrontational to collaborative, at least in theory. However, autonomy could be illusory if power imbalances exist (one party coercing the other) – skilled mediators are needed to manage that.

**Relationship  
Preservation**

Minimal/negative: Litigation is by nature adversarial – allegations and blame are formally exchanged (grounds for divorce, claims of cruelty, etc.). This often escalates conflict and bitterness. After a court fight, ex-spouses may find it harder to maintain a civil relationship post-divorce, which is especially problematic if children are involved. The process can be traumatic, leaving emotional scars. Even though family courts encourage reconciliation, once that fails, the adversarial process resumes.

Promotes amicability: A core goal of mediation is to resolve disputes without destroying relationships. By encouraging communication and understanding, mediation can reduce misunderstandings and help parties part on better terms or even reconsider separation in some cases. Even if a divorce occurs, a mediated settlement (achieved through respectful



negotiation) is more likely to preserve civility – important for co-parenting or extended family harmony. Mediation sessions can be therapeutic, allowing venting in a controlled environment and focusing on problem-solving rather than fault-finding.

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## Sources

### Discussion of Comparison

**Speed:** Many couples have time as a factor of the equation a long divorce proceedings can lead to long term stress and even uncertainty. Although litigation in family courts is supposed to be quick (family litigation is ideally supposed to take place within months), in Pakistan family court litigation can take longer than expected. The hearings can be weeks apart, procedural matters (notice, recording of evidence) and delays such as adjournment can be used. In 2023 Rawalpindi courts reported news of the number of cases daily processed by the judges (50-70 a day) up to 9,500 backlogged hence bound to cause adjournment of many cases. Conversely, Mediation (Non- litigation) tends to greatly reduces the time taken to resolve a case since it avoids the formality involved in being formal. Case in point a council (Arbitration Council) under MFLO should conclude within 90 days, many councils have met a couple of times in the time frame and settled the case or allowed the talaq to take effect. When they are likely to reconcile, they are likely to reconcile soon during such meetings or not anymore. Likewise, a handy negotiator at a privately or court-adjointed center could deal with a disagreement in just a few gatherings in a couple of weeks. With that said, in the case that mediation fails and the parties end up in court, the time actually spent in mediation is part of the accumulated total (a risk in case the attempts of mediation are not initiated as early as possible, or managed effectively).

**Cost:** Divorce lawsuits may be of great financial burden particularly to wives that may not have an independent income. There are low court fees (usually a few hundred rupees) in family suit based on pro-women provisions, but fees of lawyers and other indirect expenses mount. One of the studies found that 55 per cent of litigants in family courts had to travel by using a public transport and many of them earned less than Rs. 20,000/month and fought with the issue of cost of travelling to courts repeatedly. Mediation on the other hand is usually economical. Arbitration by the Union Council is without cost; court-annexed mediations have been free in pilot projects because they were donor-financed or they were conducted by judges. Private mediators can be paid to do it, but since this is a new phenomenon in Pakistan, a lot of mediation organizations (such as those NGOs) do it at low costs or subsidize it. In general, addressing a case within several hours of mediation will prevent the endless fees that an attorney will charge over litigation. The primary cost implication as far as mediation is concerned is that in case mediation fails the parties may fall in the dilemma of bearing both the cost of mediation and litigation hence a double burden. This means that a mediated settlement that leads to final determination is the most economical.

**Confidentiality:** Family issues are important as the privacy is always on the first priority because of the fear of social stigma and personal disgrace. Privacy- usually the Family court hearings in Pakistan are conducted in camera (not open). However, filing a case makes it become a matter of record within the society and at most instances, relatives or the society itself learns about it. Court files, which are not published, are usually available to the parties and the lawyers and occasionally used to sling mud (e.g. allegations in the pleadings may be circulated). The sessions of mediation on the other hand, are quite

confidential; whatever is said cannot be reported or used in any court of law outside the sessions. This discretion will stimulate truthfulness this confidentiality will make spouses more honest with regard to their opinions or money because they are not so sure that they will leak. It does not violate airing dirty laundry either, in case a settlement will be reached, the specifics of the divorce would not have to be laid out in public- the two can peacefully separate through a Union Council certificate or a court decree upon an agreement that has no contention to it. Culturally, this discretion meets with the liking of the society that family matters remain among the family and, therefore, mediation provides a pleasing prospect to those who consider issues of reputation in mind.

**Outcome and Enforceability:** One of the most obvious differences is the kind of results. The litigation results are binary (marriage will be terminated or not) and lawful - in example, when woman is requesting Khula, the court will usually decide that she can receive Khula (her refusal to continue living with his husband is enough) unless she is obliged to repay Haq Mehr (dower) to the husband as prerequisite according to precedent. The results in mediation may be more subtle: perhaps the husband is willing to grant Khula without having to give the dower back in exchange of some property, or they will have an agreement describing when they see the child that would not be specified in court as clearly. Custom made solutions may be more satisfactory and practical. but, they are not orders, they are agreements. The positive thing is that parties are more likely to respect a self-made contract there-fore enforcement problems are less. Enforcement however becomes tricky when one defaults. This got better with the introduction of ADR laws: under the Islamabad ADR Act 2017 or Punjab ADR Act 2019, an agreement made through mediation may be presented to the court, and the court will issue a decree in accordance to which the agreement may be enforced just like any other decree. This combines the freedom of mediation and enforceability of litigation. In 2023, Pakistan also joined the Singapore Convention on Mediation, which will (in case of international mediated settlements) constitute a mechanism of direct foreign enforcement. The same inside the country applies, it is better to integrate a mediation agreement with another court process at the last end so that it is not just a paper agreement.

**Party Autonomy:** One of the features of mediation is that it is party-centered. The fate of their dispute is decided by the spouses but not the judge or a cleric. This is highly empowering to the women, who usually feel marginalized in the traditional dispute processes. The wife may be able to say what her needs are (I need a lump sum to pay my way in future and I am prepared to go without monthly maintenance in the bargain”) and the husband can state his objections (I cannot afford a large sum, but I can give the car etc.) and the two can mutually invent a solution in mediation. This type of bargaining and making decisions is not available in the court where legal entitlements (e.g. set guidelines of child support, etc.) prevail. Studies have shown that outcome autonomy results in increased adherence and happiness, when people commit to an arrangement in which they were given a say, there is increased adherence-obedience to it. It also lessens resentment felt over a third party solution being imposed. But on the downside, when a party is much less powerful (in terms of economy or society) there is the risk that they be coerced, into an agreement that suits the other, and this is the case when the mediators are not on their toes. At the least, the courts are expected to come to the weaker side of the battle (family judges are extra cautious to ascertain that a Khula is not forced on a woman by her husband). The training of mediators and possibly the participation of special counsels in the mediation can, therefore, keep the negotiations among parties fair.

**Relationship Preservation:** Aside from the stated benefits, perhaps the best case that can be made to support non-litigation mediation in divorce is the possibility of being able to maintain a working relationship after divorce. This is important when dealing with kids: ex-husbands who understand how to converse in a civil manner would ensure that co-parenting is much more efficient, which would help offset the negative effects of divorce on kids. Bitterness can be minimized through mediation which is a cooperative process. Parties usually end up understanding the point of view of others, not necessarily to

reconcile, though at least on respectful terms. One actual case of mediation (as reported by an ADR center) involved a couple with one small child; they chose mediation; they ended up divorcing, but reached an amicable agreement in child custody without having to go to court; in fact agreed that they could freely share holidays without a court order coming anywhere close to capturing it. They explained this to the freedom they had to express themselves freely and be listened to and this took the steam off their anger. On the contrary, what court litigation produces in the face of reconciliation failure is a deepening of animosity (he lied about me in court, or she dragged my family name in the mud, etc.). According to the Courting the Law article, clear issues are that, mediation deals with the issues peacefully without destructing the problems that would occur between the spouses as well as the children are being saved of the emotional injury that would be caused by the child whenever the conflict takes too long.

### **Discussion**

The comparative results indicate that mediation (non-litigation) has a big future in enhancing resolution of divorce disputes in Pakistan. However, the administrative use of mediation (both in terms of court-annexed programs and community forums) is associated with numerous issues and restrictions that should be overcome in order to enjoy its positive aspects in their full extent. This area shall talk about such problems and situational factors, as well as propose a way of improvement, talking, in general, about the impact that such an issue has in the system of family justice in Pakistan.

### **Challenges in Mediation Practice**

**Awareness and Cultural Acceptance:** The most basic problem is that few people know about formal mediation as an alternative. Most couples automatically get involved in the court procedure or on the other hand take up unofficial advice of the panchayats and clergies without thinking of professional mediation. Sitting in front of an impartial mediator is also a relatively new idea. Culturally, certain families will view the engagement of a third party mediator as airing of dirty laundry, unless the third party is an elder or religious figure that is known to them. To reach out and educate people on the need to change perceptions that are against the mediated dialog, there is need to reach the older and more conservative people who tend to have a say on such decisions. The non-governmental organizations and the courts can contribute to this: say, organizing the community workshops or publishing the success stories in the media about the mediation are some of the ideas to contribute here. It was observed that in the rural or backward areas, there is minimal report of domestic abuse against women and mediation centers cannot operate well there as there is no social awareness and facilities available to them. Therefore, mediation must be scaled up in a way that is sensitive to local standards and maybe by involving trusted community leaders (who must be trained in the use of mediation) in the niche using them in order to earn trust (Bagshaw, 2015).

**Training and Quality of Mediators:** The success of mediation depends on how well the mediator does. This is an emerging area in Pakistan. The judges who are entrusted with the reconciliation component have never been trained in terms of mediation strategies before, and all they could perhaps do is encourage them to reconcile or even place patience at the forefront, which is not tantamount to guided mediation. The new mediation centers and ADR programs are dealing with it by training the judges and attorneys in mediation skills. Nevertheless, there are few numbers of family mediators who are accredited. It is important to have mediators that are aware of family interactions, mental factors (such as trauma due to abuse), and power relations. Gender aspect is also present: most women will feel better when a female mediator/counselor is in the picture, especially when sensitive material is to be addressed. The number of women mediators and counselors in the system may be increased to improve the outcomes. In 2022, one study noted that mediation centers in Punjab are a "ray of hope" yet mentioned the absence of awareness about mediation to the lay population and the creation of standardized ethics and guidelines of mediation. The idea of a well spelt out code of conduct and appropriate accreditation (this can be done under the

Pakistan Bar Council or under a Mediators Council) can professionalize services offered by mediators (Barkai, 2009).

**Power Imbalances and Women's Rights:** A mediation process does not automatically become a neutral space when one side of the process has a much greater power, whether that be financial, physical, or social. In most divorce cases in Pakistan a woman might have been the one lower down the chain, perhaps even the victim of a domestic abuse. Mediating in these circumstances should be made without being too cautious. Opponents of this have claimed that insisting on mediation to settle domestic violence is likely to expose the victim to the risk of being coerced into reconciling or agreeing to receive less than what she is entitled to. Key features of the Pakistani system The country in question does not provide a clear system of safeguards (where cases need a certain screening regarding domestic violence prior to conducting a mediation process, as is the case in other countries). It ought to have rules: so, in cases where there are claims of serious abuse, mediation should not be done unless there is the consent of the victim and possibly with a greater presence (such as shuttle mediation so there is not face-to-face interaction, or even a helper present). The fact that women felt that everything was misbalanced and that councils have failed to act in capacity is in part because the Law & Justice Commission report labeled the current court mediation as being unsatisfactory. Some of the possible empowerments to women in mediation may be making legal counsel available to them. Maybe we can be allowed to use a model where any party involved is allowed time to consult a lawyer over matters that are being offered at the end of it all so that it can be balanced off both in the area of negotiating and defending in a legal sense (Andreeff, 2001).

**Integration with Legal Process:** One more issue is skillful integration between the results of mediation and the legal framework. As argued, an agreement that is arrived at privately should not fail to find a way of formal recognition. It is not clear from the foregoing that all judges are in any case now disposed merely to rubber-stamp a mediated agreement, still less that they are equally disposed to rubber-stamp an agreement that may be outside normal legal entitlements (e.g. a waiver of past maintenance by a wife). It may be unfair or illegal in some terms. This is an attempt which the ADR Acts attempts to do by providing legal protection to mediated settlements. Nonetheless, implementation is the most important aspect of it as the judges and lawyers must retain faith in the process and it must not be viewed as rival to the process but rather a supplement to the process. Anecdotally, some lawyers tend to block ADR either because this may cause a reduction of their billable hours or the fear of losing their ability to control the outcome. The only way out of this is to show that the role of lawyers might be helpful in the mediation (as counselors or even mediators), and a lickety-split dispute processing may result in satisfaction of clients and an increase in referral in the long term. This is aided by the endorsements provided by the superior courts, as when Supreme Court calls upon mediation, then as a trickling down effect it sends the message to the Bar and Bench it is now policy to do so. An example is the observation of the Supreme Court that few of divorce cases are reconciled nowadays, however the 90-days period of council is obligatory, and this is both a complaint and a statement that such procedures are to be used (Scheingold, 2014).

**Structural and Resource Constraints:** Arbitration councils and the centers of mediation require resources to be able to operate successfully. Most of the Union Councils (particularly in small towns) do not have proper offices or staff that would take care of Arbitration Council timely meetings, sometimes the notice of the talaq itself is not delivered to the wife, the address can be either incorrect or not well communicated. It is also necessary to invest into having better record systems (NADRA is just doing this with its e-registration) and training Union Council officials to deal with them sensitively. Similarly, court-annexed mediation centers require space, timetabling, and maybe technologic facilitation (e.g., the possibility of undertaking online mediations sessions e.g. what was tried during COVID-19 in certain jurisdictions). The study by the Islamabad Law Review recommended that parties be required to attend

the mediation centers before approaching court in the event of any failure by the mediation program, a policy which would require increasing the infrastructure of the mediation program to accommodate the numbers of various cases. Forcing the cases to mediate would end in back fire without appropriate resources, instead of accelerating.

### **Toward an Integrated Family Dispute Resolution System**

The analysis shows that the hybrid strategy is the most useful as it integrates the benefits of each of the litigation and mediation techniques. What can help Pakistan to achieve that? Some hints and implications:

**Pre-litigation Mediation Requirement:** A possible option is instituting a rule (probably by means of an amendment of the Family Courts Act, or under High Court rules) that in some family disputes, parties must have a mediation first before a case can move to trial. This is done in certain nations where mediation information session or initial meeting is compulsory. Due to issues concerning domestic violence, the requirement may be liberal (it is subject to requirement of a judge). Punjab ADR Act 2019 is already there which implies that there is a legal support to refer cases out. As it is, we can find the data to indicate that a percentage of cases is curtailed at the Union Council stage: in Lahore, with 24,157 divorces in 2019--2022, 831 cases were settled through reconciliation at the union council level. Although such small number is still small (~3.4%) it proves that even minor actions rescued those marriages or caused one party or another to retract the bottoms of divorce. That figure can be better when a more weight is given to mediation (Guthrie, 2024s).

**Empower and Reform Arbitration Councils:** In most divorces, the Arbitration Council is the first line of non-court mediation (all Talaq cases under the law go through the Arbitration Council). Reforms may involve creation of some panels of mediators or conciliators at every Union council that would help the chairman. It may be that making the councils friendly to wives by using local leading women (such as women protection committees or women councilors who have had educations) will work. In addition, there should be better clarity over the legal repercussions of the council process (e.g. when the council process is not taken correctly, perhaps the solution is to make it repeat itself and not to invalidate years later a divorce that was made that way) and this introduces uncertainty. The law may put the requirement that the council members must be, in an ideal sense, trained or oriented in the area of family dispute resolution. The Courting The Law article critic which states that there is lack of adoption of an appropriate framework to the arbitration council and heads tend to have little or no interest as stated should be incorporated into their performance indicators during local governance (Malin, 2016).

**Legal Aid and Counseling Services:** Numerous conflicts that find their way into court would have been sorted out had the respective parties been counseled or mediated earlier. NGOs may be involved in counseling the folks on site where family courts are. As an example, one can establish a Family Dispute Resolution Center outside the courts and the collaboration of psychologists and mediators. A study in 2019 suggested the creation of such FDR centers and concluded that they could ease the load that courts experience and allow addressing the issue in a more comprehensive manner. The importance of counseling is especially evident due to the fact that, in certain instances, reconciliation turns out to be genuinely possible in case of coverage with the help of issues (such as misunderstanding or even minor conflict) are tackled. In some other instances, though divorce is unavoidable, a counseling session would help the concerned parties address the situation in a mature manner (particularly as relates to children). Counseling can be fused with mediation to better the results.

**Judicial Oversight and Support:** It depends on the attitude of judges. The family court judges must not feel that sentencing a case to mediation weakens their powers; it is just an extension of their mandate regarding reconciling. Guidelines can be issued by the High Courts: e.g., The family judge must in the first case management hearings explore the possibility of mediation and advise the parties on the ADR



options available to them. Mediated agreement should also be subject to review by the judges (a rapid check that a wife is not giving up all maintenance thinking that she does not understand, etc.). The examples should be continued by the superior courts who have begun to do it. Admittedly, the case law developed by the Supreme Court in 2024 (in which the concept of wrong attempts to delay the divorce process is considered, and thus indirectly contributing to the expediency of a divorce following unsuccessful mediation) is a positive sign. This could be speeded up simply by a statement by the Supreme Court to the effect that it ultimately approved something like mandatory mediation by way of obiter or a court policy.

**Monitoring and Evaluation:** It would be good to begin accumulating quantitative data on mediation results. As an example, you can track the number of cases referred to mediation in pilot districts, the number of cases that settle, the number of cases that go back to court, and parties' satisfaction. Policy can be based on this data. When, as an example, 50 percent of the mediated cases result in full or partial agreement, that is a tremendous success rate to be extended. On the other hand, when some variations of cases seem to fail regularly during mediation, then they can be sifted or addressed in different ways. The fact that Asia Foundation is involved in the work of mediation centers in Punjab regions where families solve problems amicably and women are highly satisfied speaks of the possibility that NGOs already have some figures on successful experiences. The publication of those can help develop trust in ADR.

### **Implications for Women and Children**

Possibility of providing women and children with better results is one of the key reasons why mediation should be encouraged in divorce proceedings. The female individuals, who divorce (Khula), usually draw negative attention and an uphill burden; then a delicate mediation can give them a platform, which they can consider negotiating their rights without experiencing the wrath of adversarial trials. Matter such as Haq Mehr, alimony or custody can be determined in a manner that does not belittle the opinion of a woman, though a Judge may possibly get stricter on the law that may not be considerate of all forms of contributions (where our courts have so far not divided salary, a settlement may provide the wife with a share of assets that she might not otherwise receive under the law).

Children also gain when their parents are not engaged in severe court battles. Domain Research Evidence has revealed that children whose parents cooperate adjust better as compared to children whose parents do not cooperate especially in case of divorce. When mediated settlement has the chance of creating a good relationship of cooperation of co-parenting, then it directly benefits the child. Pakistan as a signatory to the Convention on the Rights of the Child, is in a position to provide protection to children against ill effects of fighting between parents. One of the ways of doing that is by means of efficient and friendly resolution of disputes.

But this should be observed with care that the settlement motive of mediation does not take precedence over protection- say inviting a woman to remain in an abusive marriage in the name of the children. Reconciliation of families and individual rights should have a striking balance. In recent judgments the Supreme Court has explicitly placed weight of priority that a woman should not be compelled to live in the marriage against her will considering the Islamic teachings of freedom and what is called as kindness (Ihsan). Mediation is not supposed to transform into social pressure to save the marriage at any costs. As opposed, it needs to be put in terms of, say, the best thing we can do is to resolve this in the best possible way to all parties involved which may be reconciliation or an amicable divorce.

### **The Road Ahead**

Pakistan is still on the path of the incorporation of mediation in its family law. The development that breaks out almost no ADR two decades ago to numerous ADR laws, mediation centers in the court, and

the expanding level of the conversation on the topic is respectable. When applied successfully, Pakistan may be a national pioneer in the innovation of family dispute resolution where the model of the integration of the Islamic legal traditions (amicable settlement) and contemporary ADR may be presented.

## CONCLUSION

Comparative analysis of divorce case mediation via litigation and non-litigation channels in Pakistan yields a few definite conclusions as well as actionable recourses. With the mounting tsunami of divorce settlements sprouting up in the country as a result of newer social-economic circumstances and the readiness of people (women, in particular) to demand a separation to irreconcilable matrimonial unions, the Pakistani judicial system is responding in its own way and revisiting and refurbishing the time-honored principle of friendly resolution of conflicts.

To sum up, mediation (both in litigation and out of it) leaves a valuable imprint in the Pakistani landscape of divorce. With appropriate application, it changes the divorce into a problem solving session instead of a win-lose struggle, which fits both the Islamic spirit of reconciliation, and the spirit of the times with therapeutic justice. The litigation on its part offers the required authority and finality to enforce agreements and defend rights. It is possible that a marriage will or will not be saved, but the dignity and well-being of the affected people can be saved. The greater the mediation, like judiciary, legislators and the civil society continue, the better will be the relief of the courts, not just in Pakistan, but also in general. In Perspective, a more friendly and fair society can be created, where even the conclusion of the marriages like a divorce can be brought with the caring, respect and the justice to everyone.

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