

Effective Methods For Alternate Dispute Resolution: A Study For Adopting Prompt Practices In Courts Of Quetta

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Abstract

Present judicial system in Pakistan is causing delay in disposal of cases which is compelling not only parties but also the courts to find a way through which technicalities and lengthy process be avoided and justice could be provided at door steps to the aggrieved parties. Arbitration, mediation, conciliation and negotiation are mostly adopted methods in today's modern world with modern laws and procedure. Parties in court proceedings, go through very lengthy and technical procedure which causes delay in justice. In such complex situation Alternate dispute resolution plays worth mentioning role in order to resolve disputes promptly without adopting a technical procedure.

Rapid growth in Modern legislations and methods of ADR has certainly shown the significance of ADR that has definitely saved a lot of time and allowed the parties to resolve their dispute in weeks or months unlikely in courts where it takes years to resolve the issue. This study is toiled to make people of Quetta city to be aware of the contemporary developments of ADR methods and newly enacted laws and rules related to ADR. The ways of adjudication were restructured and people were set at liberty to adopt their own methods for resolution of dispute with procedure suiting them for disposal of same therefore the integration of qualitative and quantitative data as the centerpiece mixed methods is preferably paramount approach to conduct this study. Mixed method approach significantly essential in understanding ADR system and social phenomena in its natural settings.

Keywords: *ADR, Alternate Dispute Resolution, Judicial System, Mediation, Conciliation, Aggrieved parties,*

Introduction:

The term ADR (Alternative Dispute Resolution) emerged in the 1970s and gained prominence in the 1990s, particularly with Lord Wolf's reforms to the civil justice system in England. Following the British legal legacy, both India and Pakistan subsequently embraced ADR.

After all the lengthy and time-consuming processes in late years parties to the disputes decided to resort their differences through amicable means, may be by adopting through some informal methods which would be quick in disposal of matters and inexpensive in deciding the conflicts.

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As parties to disputes increasingly sought expeditious and cost-effective resolutions, informal methods such as negotiation, mediation, arbitration, and conciliation gained prevalence. Collectively, these methods are referred to as Alternative Dispute Resolution, or ADR, as defined under Section 2(a) of the Alternative Dispute Resolution Act 2017 (ADR Act, 2017). "Alternative Dispute Resolution (ADR) means a process in which parties' resort to resolving a dispute other than by adjudication by courts and includes, but not limited to, arbitration, mediation, conciliation and neutral evaluation." (Reference: Alternative Dispute Resolution Act, 2017).

Courts have increasingly encouraged parties to adopt ADR methods for the swift resolution of cases. Various legislative measures have been implemented to familiarize the legal system with different ADR modes, including the Civil Procedure Code 1908, Arbitration Act 1940, Family Court Act 1964, Alternate Dispute Resolution Rules 2002, Alternate Dispute Resolution Act 2017 (Punjab), and Alternate Dispute Resolution Act 2022 (Balochistan).

Literature Review:

Article 2 of Geneva Convention 1927 which empowered parties to dispute to refuse the award upon fulfilling certain conditions envisaged in the said convention. The New York Convention of 1958 about the recognition of foreign awards with purpose to prevent discrimination between foreign and domestic awards this was also considered a step towards bringing ADR in field. European Convention 1961, on international and commercial arbitration. This convention was concerned with making the arbitration an organized and uniform process. It was also concerned with the jurisdictions of domestic courts. In 1965 Washington or ICSID Convention took place which deals with dispute settlements between states and nationals of other state and led to the establishment of the international center for settlement of international disputes.

ADR has become a pivotal mode for case resolution, especially in commercial business, not only in Pakistan but globally. Local terms like 'Panchayat' and 'Jirga,' though sometimes misunderstood as ADR modes, differ significantly, lacking the prerequisite consent of parties and the issuance of a proper award found in formal ADR processes such as arbitration. ADR encompasses methods of settling issues through neutral parties without resorting to formal court hearings, primarily applied in civil disputes rather than criminal cases, where one party is typically the state. In the context of ADR, a dispute refers to "a specific disagreement concerning a matter of fact, law or policy in which a claim or assertion of one party is met with refusal, counter claim of the other" (Reference: Alternate Dispute Resolution Act, Punjab 2017).

It is observed in judicial system of our country that matters are being decided once by one forum and being remanded by the other forum on technical grounds which causes delay on other hand some of the effective methods of ADR, if adopted by the parties and being effectuated by the courts and judicial forums that would have decreased the burden to the greater extend. Many of the acts and laws providing ADR the guideline towards the adoption of alternate process which would expeditiously decide the matters. Like Provision of 89-A CPC and many more provided in number of laws in Pakistan. Such as Family Court Act, Small claims and minor offences Ordinance, Frontier Crimes Regulation, 1901, International Investment Disputes Act, 2011.

Mediation, Negotiation and Arbitration are the processes which always proved beneficial equipment with regard to deciding the disputes which are either criminal in nature of civil, however, ADR is considered important weapon only in civil disputes. But significance of Alternates methods could not be ignored in criminal matters either. Such as, JIRGA system which is well organized and mostly adopted method in most Rural areas of Pakistan, irrespective of the nature of matter which may be criminal or Civil. ADR is considered effective

method in international contractual matters as well and most of the successful countries have adopted it as an instrument to decide disputes. Besides the procedure adopted in alternate methods is also flexible in nature and mostly in the hands of parties by means of appointing the persons of their choice who will decide the matter.

In Pakistan following laws and provisions are indeed admitting the effectiveness of ADR Process. In Pakistan civil disputes are mostly dealt by adopting procedure laid down in Civil Procedure code 1908 which is procedural law introduced to resolve the civil disputes. The aforesaid law contains the following provision which says. 'Where it is considered, important court may, keeping in mind the facts and circumstances of case, and keeping in view the speedy justice, with regard to matter/suit, adopt the ADR method, meant there by any alternate methods and adjudicating process, with the consent of parties.' Section 10 (3) 'Family Court Act, 1964'

Family disputes are also causing problems in societies because it is considered one of the most important institutions for human socialization hence to resolve the family dispute is one of the key reasons of ADR. Keeping the same in mind the jurist inserted the following provision in family laws which is 'At pre-trial Proceedings, The Facts in issue be ascertained by the court between the parties and attempt for the compromise or negotiation between the parties if seems possible between the parties. Section 2 'Small Claims and Minor Offences Courts Ordinance, 2002.

Societies do not contain only serious issues to be resolved but also minor and small causes which are root causes of bigger problems. In Pakistan jurist worked upon that angle as well by means of introducing laws such as; 'Small Causes and Minor Offence ordinance 2001.' That contains the following provision.

'By mutual agreement of parties, amicable settlement through arbitration process, other than arbitration which is done through Arbitration Act 1940, and through mediation, conciliation or other lawful means, (Pakistan Family Court (Amendment) Act, 2015 (XI) of 2015).

Pakistan is considered to be federal republic known to Islamic republic of Pakistan. It has four provinces; Sindh, KPK (Khyber Pakhtunkhwa), Balochistan, and Punjab it also contains the regions which are considered to outside the domain of aforesaid provinces of the country such as FATA and PATA these areas also needs laws and solution of disputes. Hence jurist have worked for those areas as well and introduced various laws such 'Frontier Crimes regulation, 1901.' It also contain Provision related to ADR which is.

'The Political Agent or District Coordination Officer, as the case may be, take cognizance of any offence or Civil dispute in exceptional cases, if so recommended by a Qaumi Jirga of the Tribe in the interest of justice and public peace.' (Frontier Crimes Regulation, 1901).

The Creation of International Centre for settlement of investment disputes is also a step of admission of effectiveness of ADR mechanism in a contemporary globe. Pakistani laws contains the following provision.

'The Purpose of the center shall be to provide facilities for conciliation and arbitration of investment disputes between contracting states and nationals of other contracting states in accordance with the provisions of this convention.' (Arbitration: 'International Investment Disputes, Act 2011).

S. 47-A Custom Act (VI of 1969) Alternate Dispute resolution scheme of--- object scope--- such scheme would facilitate settlement of tax dispute without intervention of court through mediation and negotiation. However such remedy would not be available to a person who is facing criminal charge in addition to tax, besides Central excise and Salt Act, S. 36-D Alternate dispute resolution scheme of--- Object and scope--- such scheme would facilitate settlement of tax dispute without intervention of court though mediation and negotiation. (Federation of Pakistan and others Vs Attock petroleum LTD, (1095): Supreme court Tax cases, 2007)

Custom Act S. 195-C the scheme of alternate dispute resolution is to facilitate the public to settle their disputes without the intervention of court by means of negotiation and mediation. (Federation of Pakistan Vs Attock Petroleum (1495): Supreme court Tax cases (2007).

Methodology

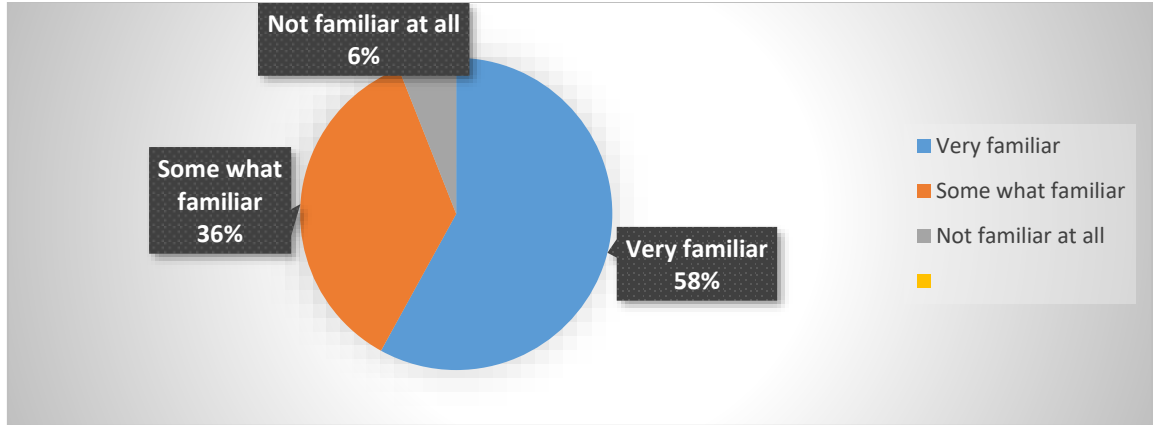
The integration of qualitative and quantitative data as the centerpiece mixed methods is preferably paramount approach to conduct this study. Mixed method approach significantly essential in understanding any legal and social phenomena with its natural settings. Qualitative aspect of this research focuses on question 'why' rather than 'what' this research relies on the experiences of human which are direct. This research contains semi-structured interviews as the primary source of research from available and accessible notable Jurists of Balochistan. The questions were formulated within specified time period along with occasional questions from my side for more clarification so the interviewees could talk about their experiences throughout an extended interview. On other hand number of cases with different nature and overall summary is made out by means of putting a numerical data of cases and making proper examination by means of keeping Adjudicative and ADR methods in mind. Both qualitative and quantitative research strategy helped me to construe and better understand the complexity, reality and applicability and Non applicability of ADR methods within the prevailing norms of society. In this research, Quantitative research criteria is also applied as relevant technique for explaining study objectives therefore, for accomplishment of this research, in the light of interviews, the quantitative research techniques was applied through the SPSS statistical program for data analysis and making conclusions on the basis of statistical tools.

Data Collection & Population Sampling

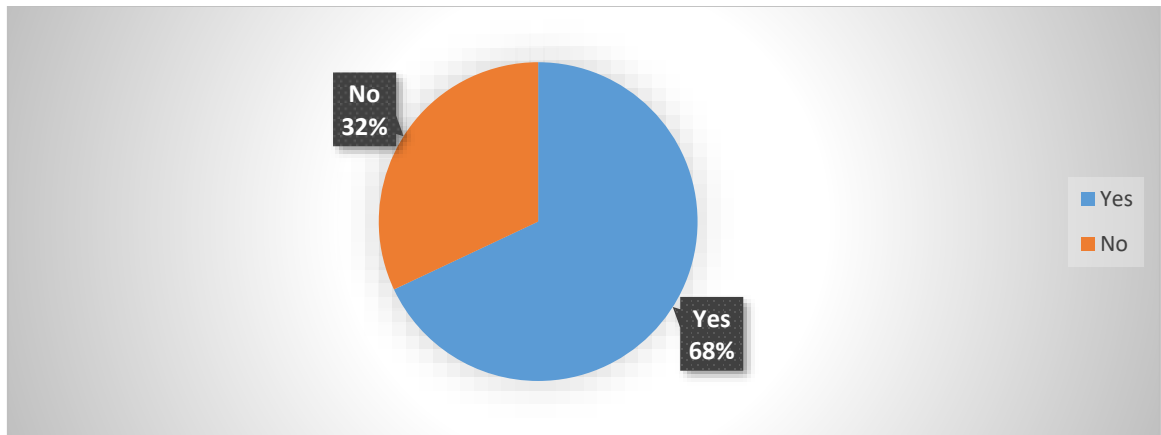
For the validation of the study, the Objectives and Characteristics determined the selection of population according to size and diversity and this was actually framed or structured on the availability of resources and time. Sampling method including Group Participants under preselected criteria, interviews or interactions with people specific characteristics specially Judges and Lawyers and other notables of society who remained part or experienced ADR methods (classified on the basis of age, gender, area, class, profession etc). Recruitment strategies and chain referral system was also observed by using social contacts of participants. This Research includes semi-structured methods such as in depth conducted interviews with judges, observation with the textual description of their experience methods were being used for compiling accurate research study. Based on interviews, further survey was conducted designed on the received insights from interviews. The overall findings are compiled as below:

Findings:

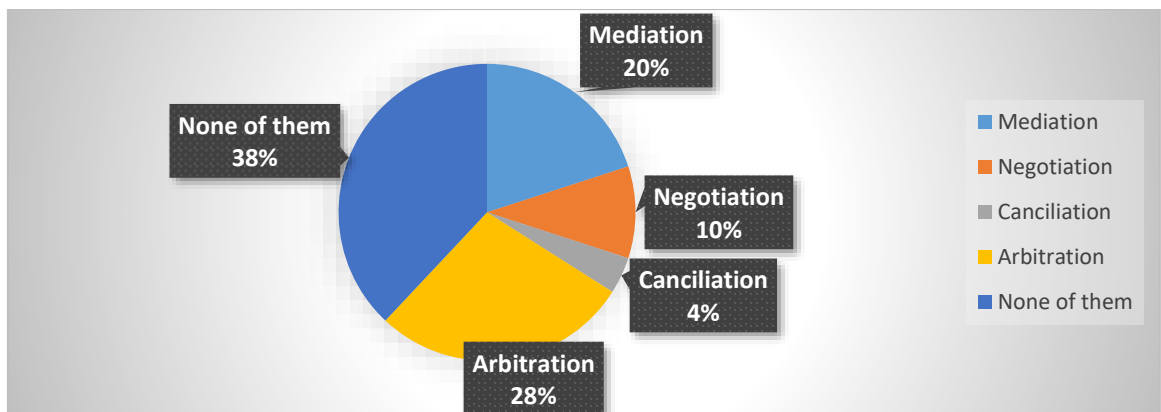
In this study, we aimed to collect primary data from Female and Male Advocates, 4 Judges & General Public. Further, the age group were divided into various class interval and it was demonstrated that the majority of respondents fall under the age of 24 to 30 Years Female Advocate, 23 to 35 Years Male Advocate, 30 to 45 Judges & 30 to 40 General Public.



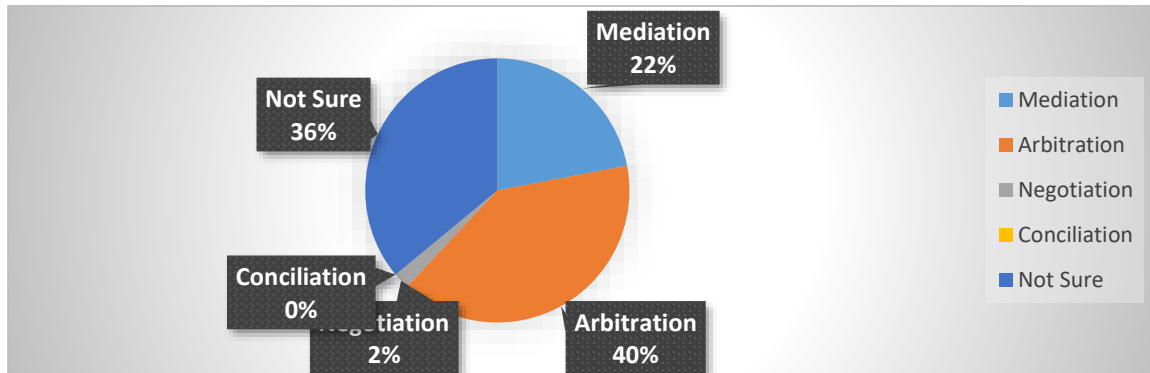
The received data indicates that 58% respondents are very familiar with Alternate Dispute Resolution (ADR) methods, 36% have some level of familiarity, and 6% are not familiar with ADR at all



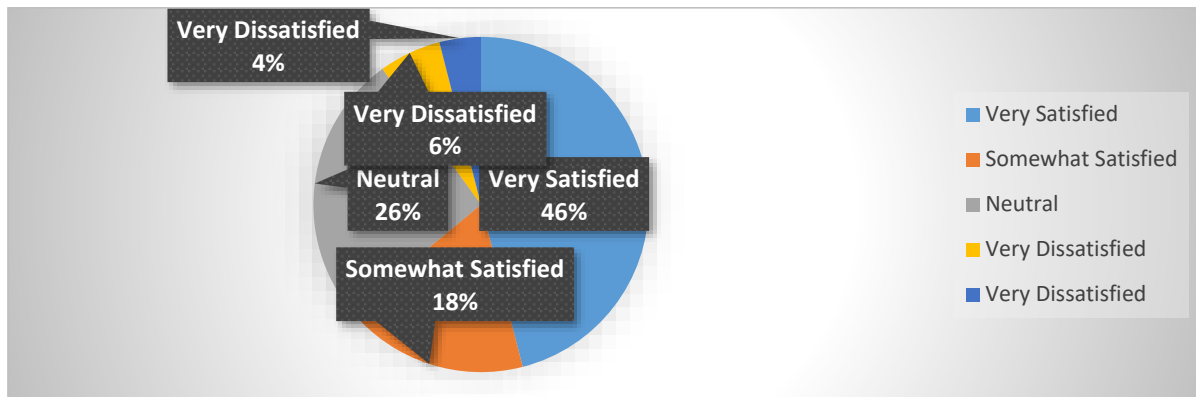
In Quetta's courts, 68% instances involved in civil disputes, while in 32% cases was not part of any civil dispute proceedings.



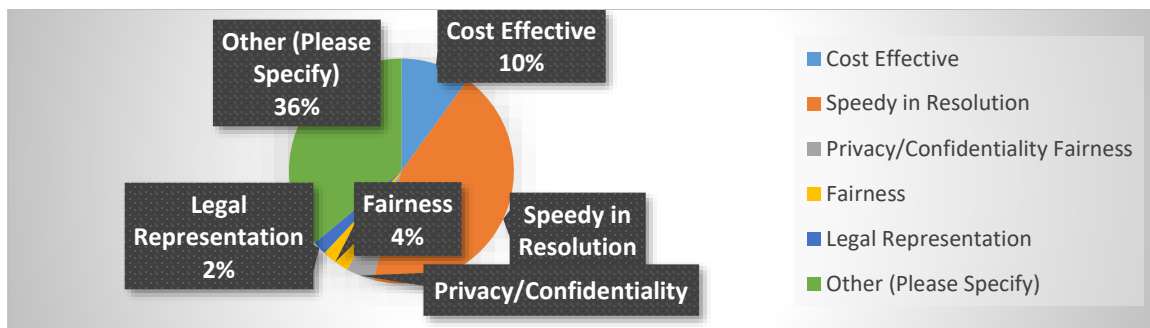
Out of the respondents, 20% indicated familiarity with Mediation, 10% with Negotiation, 4% with Conciliation, and 28% with Arbitration as alternative dispute resolution (ADR) methods. Additionally, 38% respondents claimed not to be familiar with any of these methods.



Respondents favor conciliation as the most effective alternative dispute resolution (ADR) method for resolving civil disputes. . Mediation follows with 22% endorsements, while arbitration receives 40% affirmation. Negotiation is favored by 2% respondents, and 36% individuals are uncertain about the most effective ADR method.

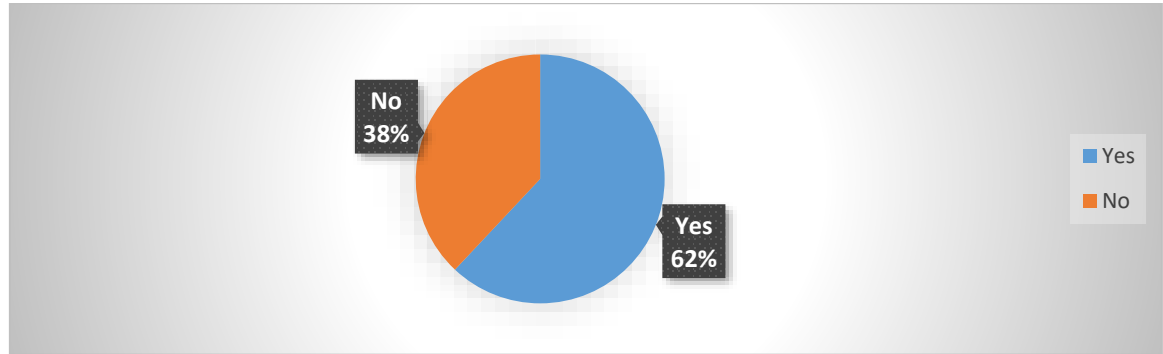


The majority of respondents expressed a high level of satisfaction with the current alternative dispute resolution (ADR) processes in the Courts of Quetta, with 46% indicating they are very satisfied. Additionally, 18% respondents reported being somewhat satisfied, while 26% remained neutral. On the other hand, a smaller number expressed dissatisfaction, with 6% respondents being somewhat dissatisfied and 4% very dissatisfied with the ADR processes.

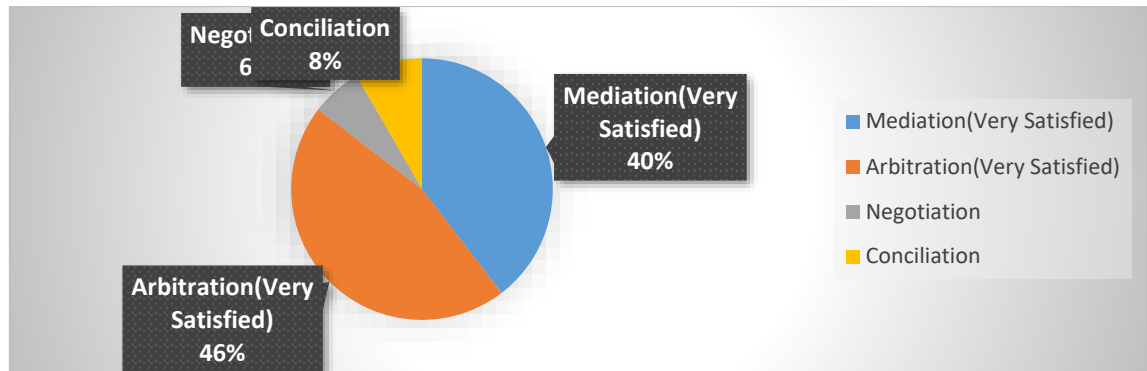


The data suggests that the factors influencing the choice of alternative dispute resolution (ADR) methods in resolving civil disputes vary among respondents. A majority of respondents prioritize the speedy resolution of disputes, while cost-effectiveness is also a significant consideration for 10% respondents. Privacy and confidentiality, as well as fairness, each garnered 4% responses respectively. Additionally, 36% respondents indicated "Other" factors influencing their ADR method choice, and more specific details would be needed to elaborate

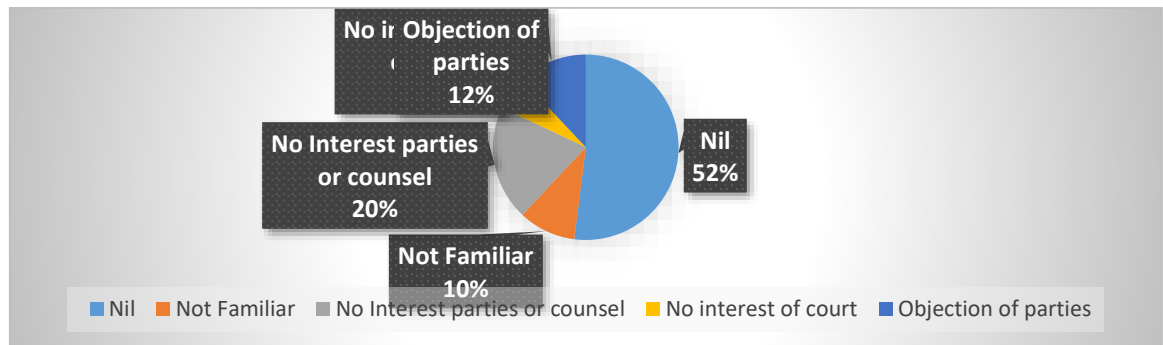
on these diverse considerations. Legal representation received the least emphasis, with only 2% respondent highlighting its importance.



Out of a total of all responses, 62% individuals have reported using Alternative Dispute Resolution (ADR) methods to resolve civil disputes in Quetta, while the remaining 38% respondents have not employed ADR for such purposes.

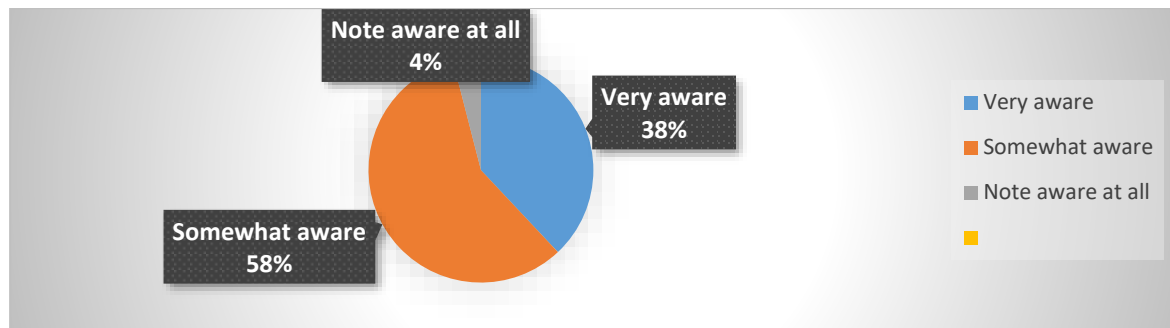


Among the alternative dispute resolution (ADR) methods employed, 40% individuals reported utilizing mediation, expressing a high level of satisfaction with the outcomes. Arbitration was the preferred ADR method for 46% respondents, and they also reported a very high level of satisfaction. In contrast, negotiation was chosen by 6% individuals, and conciliation by 8%.

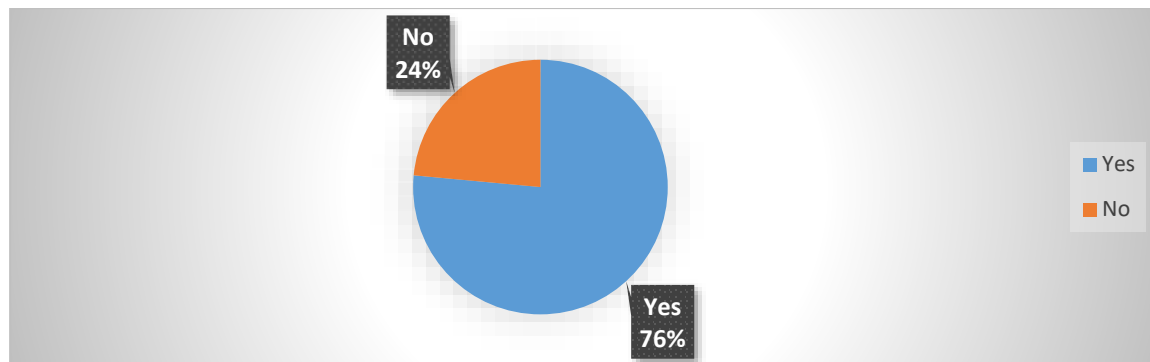


In Quetta's courts, the utilization of Alternative Dispute Resolution (ADR) methods has faced several challenges and barriers. These include a notable number of cases with no instances of Alternative Dispute Resolution recorded (Nil: 52%), a lack of familiarity with ADR methods among the stakeholders involved (Not Familiar: 10%), a significant portion of cases where no interest parties or counsel were present (No Interest parties or counsel: 20%), instances where the court did not express an interest in pursuing ADR methods (No interest of court: 6%), and objections raised by parties involved in the legal proceedings (Objection of parties: 12%).

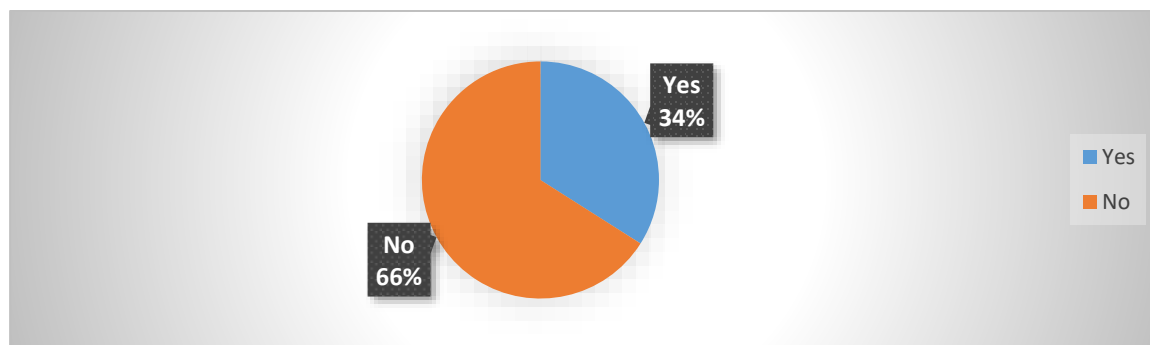
These challenges collectively underscore the complexities and resistance encountered in promoting the adoption of ADR in the Quetta court system.



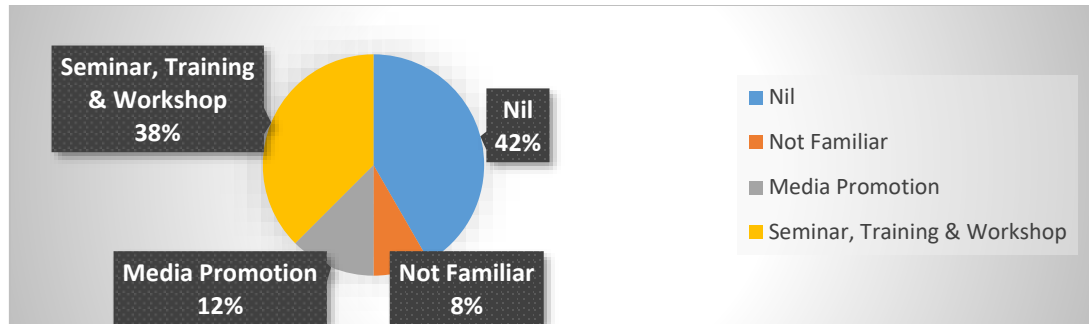
Out of the respondents, 38% individuals reported being very aware, 58% claimed to be somewhat aware, and 4% stated that they were not aware at all of the legal framework and regulations governing Alternative Dispute Resolution (ADR) in Quetta.



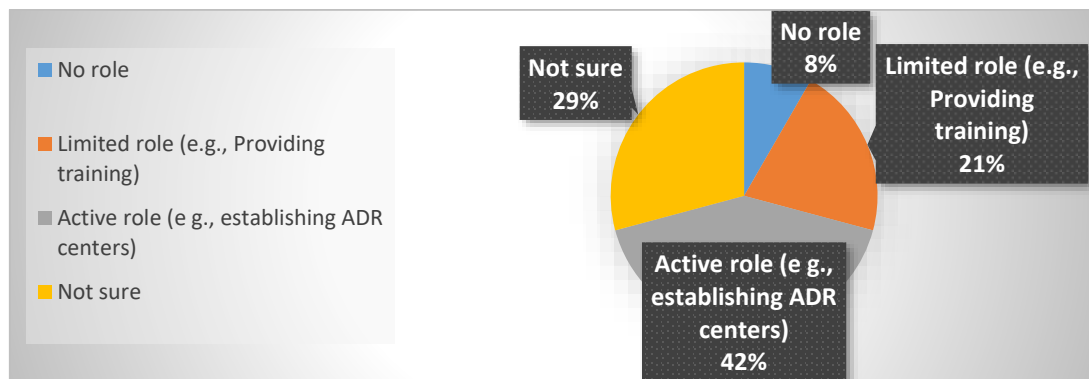
The data suggests that a majority of respondents, 76% believe there is a need for more public awareness campaigns regarding Alternative Dispute Resolution (ADR) in Quetta, while 24% respondents hold the opposite view.



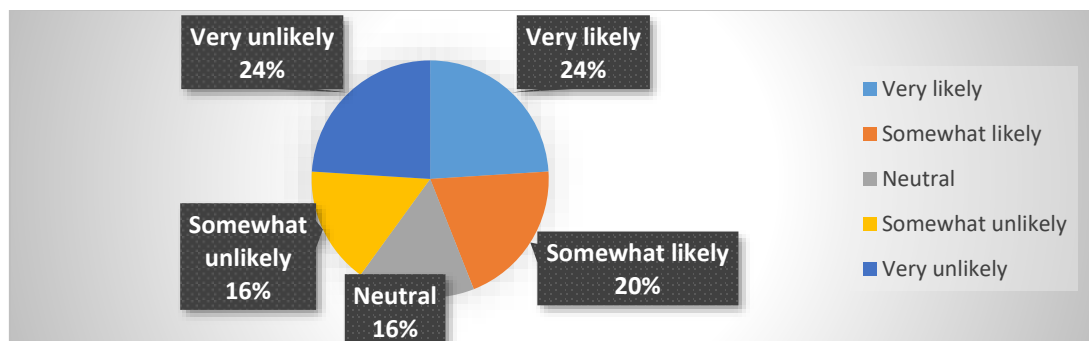
Yes, based on the provided data, 34% respondents are aware of local organizations or institutions that offer Alternative Dispute Resolution (ADR) services in Quetta, while 66% respondents are not aware of any such entities in the region.



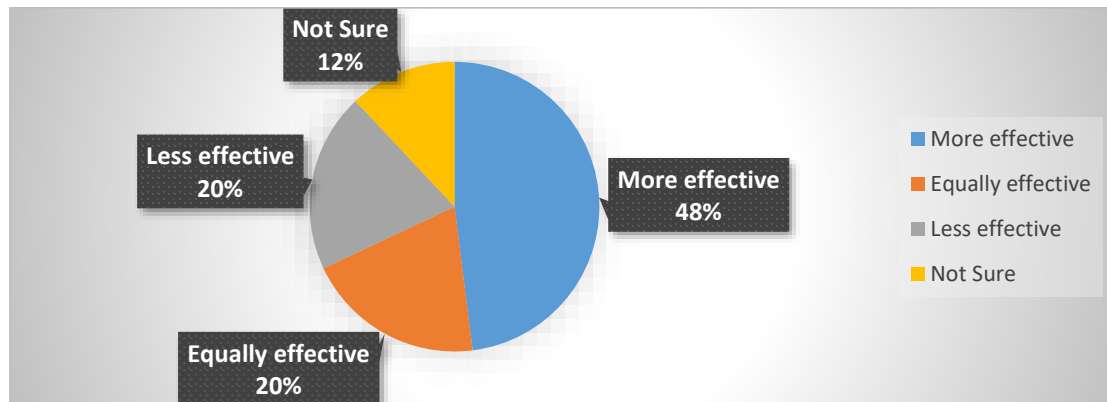
Alternative Dispute Resolution (ADR) methods in Quetta's courts, with respondents indicating various suggestions for improvement. The majority, 42% respondents, expressed no specific recommendations, while 8% respondents admitted not being familiar with the topic. 12% respondents suggested utilizing media promotion to enhance awareness and understanding of ADR methods. Additionally, 38% respondents recommended organizing seminars, training sessions, and workshops as effective measures to improve the effectiveness of ADR in Quetta's courts.



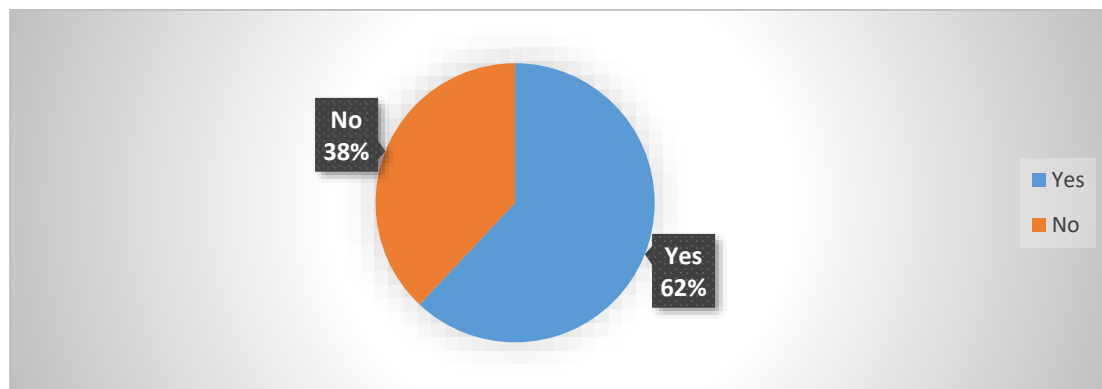
The majority of respondents (42%) advocate for an active role in enhancing Alternative Dispute Resolution (ADR) methods in Quetta's courts, such as establishing ADR centers. A substantial number (21%) support a limited role, potentially involving providing training. However, a notable portion (29%) remains unsure about the specific improvements or changes needed for ADR effectiveness in Quetta's courts. There is a consensus against taking no role, with all respondents (8%) rejecting this option.



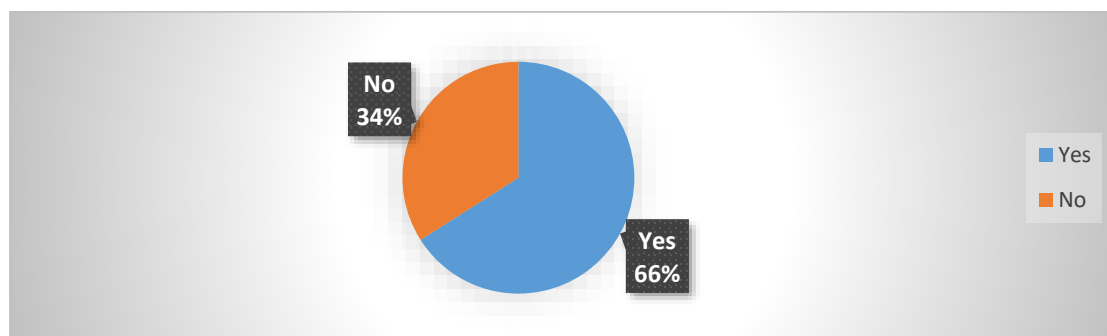
The data indicates that opinions on recommending Alternative Dispute Resolution (ADR) methods for resolving civil disputes in Quetta's courts are evenly distributed, with 24% respondents expressing a high likelihood, 20% indicating a moderate likelihood, 16% remaining neutral, another 16% leaning towards being somewhat unlikely, and 24% expressing a strong reluctance to recommend ADR methods.



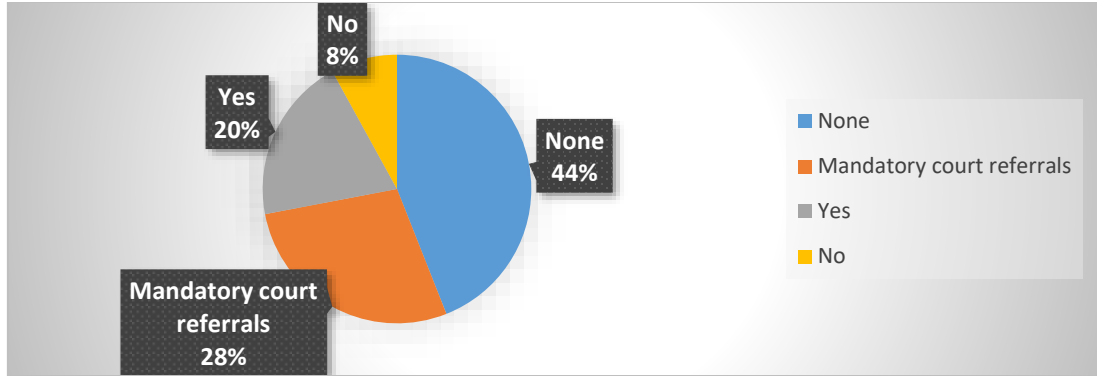
Among the respondents, 48% individuals perceive Alternative Dispute Resolution (ADR) methods as more effective compared to traditional legal proceedings. Additionally, 20% respondents believe that ADR methods and traditional legal proceedings are equally effective, while another 20% individuals consider ADR methods to be less effective. 12% respondents expressed uncertainty about the effectiveness of ADR methods versus traditional legal proceedings.



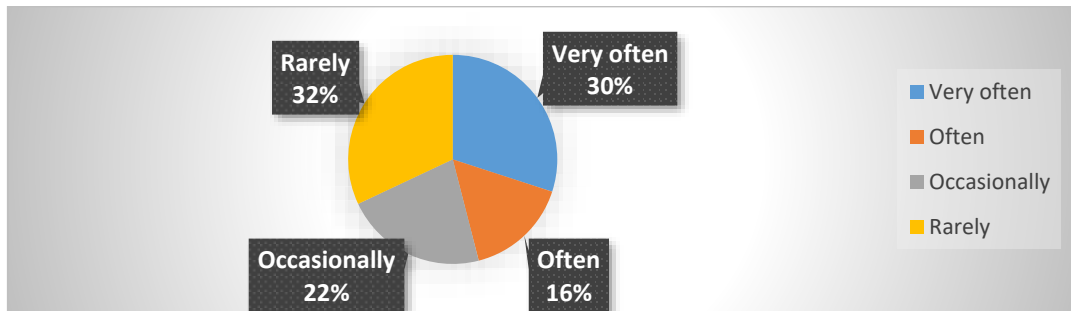
In a survey or poll, 62% respondents indicated that there are specific types of conflicts or disputes where they believe alternative dispute resolution (ADR) methods are more suitable, while 38% respondents disagreed with this notion.



66% respondents are open to receiving more information and education about Alternative Dispute Resolution (ADR) methods and their benefits, while 34% respondents are not interested in such information.



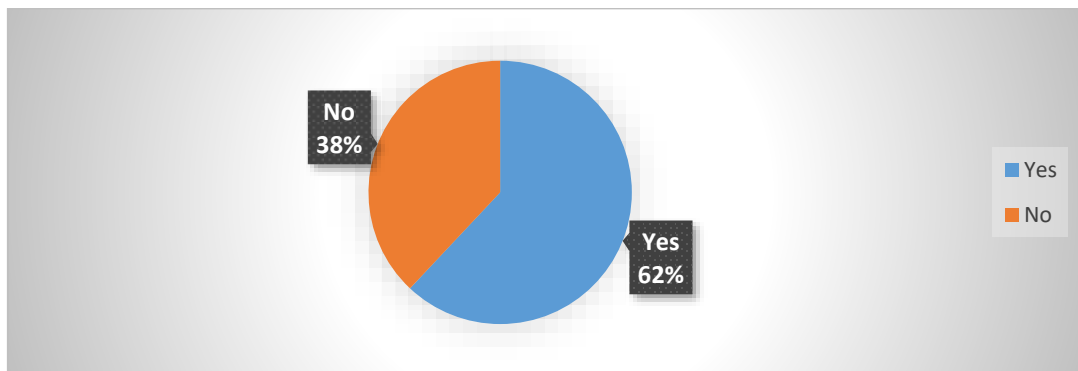
The provided data appears to represent responses to a question regarding legal requirements that may restrict the use of Alternative Dispute Resolution (ADR) methods in dispute resolution. Among the options, 44% respondents indicated that none of the listed legal requirements restrict ADR, 28% mentioned mandatory court referrals as a restriction, 20% responded affirmatively (yes) to a restriction, and 8% responded negatively (no) to a restriction.



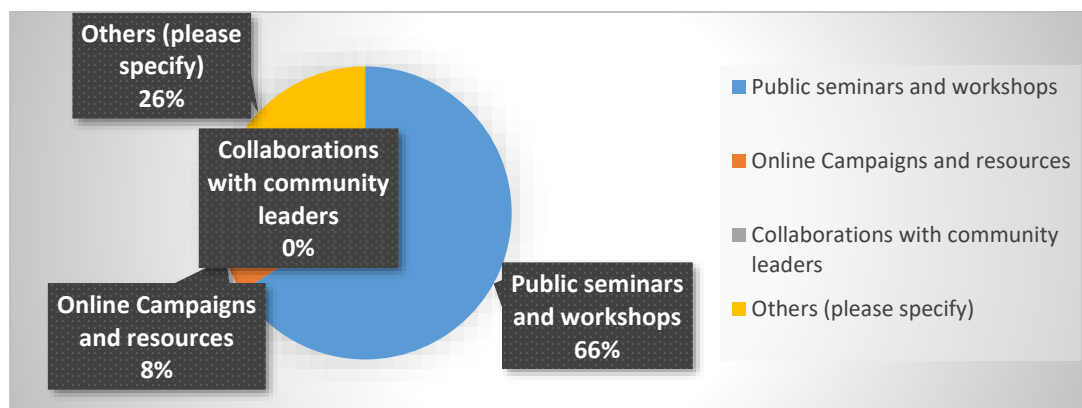
Based on the provided data:

- Rarely is the most frequently occurring response, with 32% instances.
- Very often follows, with 30% occurrences.
- Occasionally is the next most common response, with 22% instances.
- Often has the lowest frequency, with 16% occurrences.

This suggests that, in the given context, contractual agreements mandating Alternative Dispute Resolution (ADR) as the first step in dispute resolution are reported to occur most rarely, while very often is the second most common frequency.



According to the provided data, 62% respondents believe that there are specific types of conflicts or disputes where alternative dispute resolution (ADR) methods are more suitable, while 38% respondents do not share this belief.



The data suggests that a majority of respondents, 66%, believe that improving public awareness about the benefits of Alternative Dispute Resolution (ADR) for conflict resolution in Quetta city can be achieved through organizing public seminars and workshops. Additionally, a smaller number, 8%, advocate for the use of online campaigns and resources for spreading awareness. Surprisingly, none of the respondents proposed collaborations with community leaders as an effective method. There are also 26% respondents who suggest other methods, the specifics of which are not provided in the given data.

Discussion Based on Findings:

In ADR it is often seen one party be capable to have power over other which obviously affects the reason of other party. E.g. employment cases, employee is often found on weaker side in such cases court is found as best alternate for weaker party.

No use of mechanism which is provided in the ordinary laws and adjudicative process which could certainly be proved helpful, but same is not used in ADR process. Particularly the means through which the attendance of witnesses is precured the 'coercive' and 'Non-coercive' methods which are set in the ordinary laws.

Where arguments take place between the parties so that definitely involves different points which may be, social, moral and legal, which requiring the mediator to be acquainted with every perspective of the case particularly when legal complications arise in the case but in ADR scarcity of same is often seen.

It is not easy in ADR to take precedents and make the same as the guideline for the resolution of dispute.

Enforceability of the decision made in ADR process is again one of the hurdles because of which this process could not achieve the goals. Best example is 'arbitration proceedings' which requires court action in case of a party not agreeing with the final verdict by means of 'award'. The survey on Alternate Dispute Resolution (ADR) in Quetta provides a comprehensive understanding of the awareness, experiences, and perceptions of respondents regarding ADR methods. Here are the key findings and implications derived from the data:

Awareness and Familiarity:

A substantial portion of respondents are very familiar with ADR methods, indicating a decent level of awareness in the community.

However, some respondents admit to having no familiarity with any ADR methods, suggesting a need for increased education and outreach.

Usage of ADR:

A significant number of respondents have utilized ADR methods to resolve civil disputes in Quetta, reflecting a willingness to engage in alternative dispute resolution.

Types of ADR Known:

Mediation and Arbitration are the most recognized ADR methods among respondents, However, some respondents claim no familiarity with any ADR methods, indicating potential gaps in knowledge.

Effectiveness of ADR:

Respondents perceive conciliation as the most effective ADR method for resolving civil disputes, followed by mediation and arbitration.

The majority express high satisfaction with the current ADR processes in the Courts of Quetta.

Factors Influencing ADR Choice:

Speedy resolution is a predominant factor influencing the choice of ADR methods for a majority of respondents. Other factors, such as cost-effectiveness, privacy, and fairness, also play a role in decision-making.

Challenges in ADR Usage:

Challenges in utilizing ADR methods include cases with no recorded instances, lack of familiarity, absence of interested parties or counsel, court disinterest, and objections raised by involved parties.

Legal Awareness:

There is a mixed level of awareness regarding the legal framework and regulations governing ADR in Quetta with people who are very aware, somewhat aware, and not aware at all.

Public Awareness Campaigns:

A significant majority believes that more public awareness campaigns regarding ADR are needed in Quetta, emphasizing the importance of education and outreach.

Awareness of ADR Service Providers:

Awareness of local organizations or institutions providing ADR services in Quetta, indicating a potential need for better communication and visibility.

Recommendations for Improvement:

Recommendations for enhancing ADR effectiveness include media promotion, seminars, training sessions, and workshops, showing a desire for continued education and awareness.

Likelihood to Recommend ADR:

Opinions on recommending ADR methods are varied, with respondents expressing diverse levels of likelihood, neutrality, and reluctance.

Perception of ADR Compared to Traditional Legal Proceedings:

A majority perceives ADR methods as more effective compared to traditional legal proceedings.

Types of Conflicts Suitable for ADR:

A significant majority believes that there are specific types of conflicts where ADR methods are more suitable than others.

Willingness for Education:

A substantial majority expresses a willingness to participate in ADR training or workshops, indicating a proactive approach to learning.

Restrictions on ADR Usage:

The majority believes that none of the listed legal requirements restrict ADR usage, suggesting a perceived flexibility in the use of ADR methods.

Contractual Mandate for ADR:

Respondents report that contractual agreements mandating ADR as the first step in dispute resolution occur most rarely, with a preference for occasional and rare occurrences.

Cultural and Social Factors:

A notable number believes that cultural or social factors may influence the perception of ADR effectiveness in Quetta, highlighting the need for cultural sensitivity.

Interest in Public Awareness:

The majority expresses interest in receiving more information and education about ADR methods and their benefits.

Improving Public Awareness:

Respondents suggest public seminars and workshops as the most effective means of improving public awareness about the benefits of ADR for conflict resolution in Quetta.

In summary, the data reflects a generally positive perception of ADR methods, a willingness to engage in ADR processes, and a recognition of the importance of public awareness and education. However, there are opportunities for improvement in addressing challenges, enhancing knowledge, and promoting ADR services in Quetta. The recommendations provided by respondents offer valuable insights for stakeholders involved in ADR promotion and implementation in the region.

Conclusion:

The research of ADR and its methods are designed to streamline, enabling parties to reach at resolution more quickly. Secondly it is cost effective. It enables and engages parties in resolving disputes it results in satisfaction and compliance. ADR also overcome the legal limitation and resolving the matters beyond the traditional legal system, ADR in Pakistan more particularly in Baloshistan and then in Quetta city is not quite extensive and neither holds important role up till now and currently since ADR is transforming the country's legal landscape. ADR offers parties a mechanism which includes mediation, arbitration, negotiation and conciliation for resolving their disputes without being engaging in lengthy procedure of ordinary legal system. The scope of this study extends to all the disputes relating to trade and commerce (including all money claims). It also deal with the cases arising from strained or soured relationships which includes maintenance and custody of children, it also extends to the cases where there is a need for continuation of the preexisting relationship (including easementary rights, encroachments and nuisance etc), all cases relating to tortious liabilities and also compoundable offences.

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