

附录四:

2017 年巴基斯坦替代性争端解决法案(英文版)

Alternative Dispute Resolution Act, 2017

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PART I

Acts, Ordinances. President's Orders and Regulations

NATIONAL ASSEMBLY SECRETARIAT

Islamabad, the 30th May 2017

No. F. 22(39)/2016 Legis.

The following Acts of *Majlis-e-Shoora* (Parliament) received the assent of the President on the 30th May, 2017 is hereby published for general information:

Act No. XX of 2017

to provide for alternative dispute resolution

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

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

It is hereby enacted as follows:

1. Short title, extent and commencement.

(1) This Act may be called the Alternative Dispute Resolution Act, 2017.

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

(3) It shall come into force at once.

2. Definitions.

In this Act, unless there is anything repugnant in the subject or context,

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

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

(c) “arbitration” means a process by which parties submit a dispute to the decision of a Neutral person or persons appointed by mutual consent or under a statutory or contractual provision;

(d) “award” means an arbitration award;

(e) “conciliation” means a process in which a Neutral person encourages the parties to resolve their civil or commercial disputes voluntarily including by advising on possible solutions and terms of settlement;

(f) “Court” means any court, tribunal or quasi-judicial for having original jurisdiction;

(g) “Government” means the Federal Government;

(h) “High Court” means the High Court concerned;

(i) “mediation” means a process in which a mediator facilitates dispute resolution by encouraging communication and negotiation between the parties, in order for them to arrive at a mutually satisfactory agreement;

(j) “Neutral” includes an arbitrator, conciliator, evaluator and mediator or any other impartial person who is included in the panel;

(k) “panel” means the panel of Neutrals notified under section 4;

(l) “prescribed” means prescribed by rules made under this Act;

(m) “rules” means the rules made under this Act;

(n) “Schedule” means a Schedule annexed to this Act; and

(o) “settlement” means the agreement reached between the parties as a result of successful ADR, other than an award.

CHAPTER I

CIVIL MATTERS

3. Reference to ADR.

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

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

(b) the Court, having regard to the facts and circumstances of the case, is satisfied that there is no possibility of resolution of the dispute through ADR; or

(c) an intricate question of law or fact is involved.

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

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

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

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

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

4. Panel of Neutrals.

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

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

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

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

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

5. Appointment of Neutrals.

While referring the matter for ADR, the Court shall appoint a Neutral or any other person agreed upon by the parties or refer the matter to an ADR Centre;

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

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

6. Referral to ADR Centre.

The Court may, with the consent of the parties, refer the matter to an ADR Centre;

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

7. Appearance of parties.

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

8. Reference to ADR before legal proceedings.

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

(2) On receipt of an application under sub-section (1), the Court or ADR Centre,

as the case may be, shall refer the matter to a Neutral or such other person as may be agreed upon by the parties.

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

9. ADR proceedings.

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

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

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

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

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

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

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

10. Settlement and award.

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

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

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

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

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

11. Failure of ADR.

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

12. Failure of ADR Centre etc.

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

13. Execution of an order or a decree.

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

CHAPTER II

COMPOUNDABLE OFFENCES

14. ADR in compoundable offences.

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

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

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

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

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

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

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

CHAPTER III

MISCELLANEOUS

15. Costs and fees of ADR.

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

16. Utilization of services of an evaluator.

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

17. Penal costs.

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

18. Appeal and revision barred.

No appeal or revision shall lie from the decree or any order of the Court under this Act.

19. Savings.

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

of an ADR;

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

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

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

20. Application, etc. , of certain laws.

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

(a) the Oaths Act, 1873 (X of 1873);

(b) the Limitation Act 1908 (IX of 1908); and

(c) the Arbitration Act, 1940 (X of 1940);

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

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

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

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

21. Overriding effect.

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

22. Transitory provision.

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

23. Cases pending in appeal or revision.

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

24. Code of Conduct.

The Government shall notify Code of Conduct for Neutral (arbitrator, conciliator, evaluator and mediator) in consultation with Chief Justice of Islamabad High Court.

25. Power to make rules.

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

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

26. Removal of difficulty.

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

27. Repeal.

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

SCHEDULE

[See section 3(1)]

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

JAWAD RAFIQUE MALIK

Secretary