



**LUMS**

Centre for Chinese Legal Studies  
Shaikh Ahmad Hassan School of Law

# **PATHWAYS TO RESOLUTION**

**ADVANCING ADR FOR  
PAKISTAN-CHINA  
PARTNERSHIP**

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## Foreword

“It is the duty of the Courts to promote ADR by way of developing the confidence of the parties to adopt ADR without lengthy litigation before the Courts, which practice would definitely strengthen the ecosystem of ADR to promote foreign investment in Pakistan. The Courts and ADR have a symbiotic relationship with critical interdependence.”

Waqas Yaqub v. Adeel Yaqub (2024 CLD 990)

The China-Pakistan Economic Corridor (CPEC) is a significant economic initiative between Pakistan and China. It provides unprecedented opportunities for trade, investment, and infrastructure development. However, the success of it depends also on a strong legal framework that guarantees efficient dispute resolution. Cross-border commercial agreements demand a predictable and investor-friendly legal ecosystem. In this regard, Pakistani courts have played a transformative role to ensure that the country's dispute resolution framework aligns with global best practices and provides a secure legal environment for foreign investment.

A judge speaks through his judgments. My judgments have been aimed at establishing a modern commercial dispute resolution framework in Pakistan. Recognizing the need for a specialized commercial access for the commercial disputes, I played a crucial role in establishing the first ever Commercial Courts of Pakistan in the largest province of Punjab under The Lahore High Court. These courts are designed to provide specialized fast-track adjudication of commercial disputes. Through the Pizza Hut case (2021 CLD 639), I highlighted the role and purpose of these Commercial Courts:

“...it is observed that the Commercial Courts, which are established by the Lahore High Court in Lahore, Multan, and Faisalabad for the time being, are meant to secure expeditious disposal of cases of commercial nature within the scope of Article 202 and 203 of the Constitution.”

Additionally, this judgment underscores the significance of Commercial Courts in improving Pakistan's Ease of Doing Business ranking, stating:

“The Enforcing Contracts indicator of Doing Business, a project introduced by the World Bank as ‘Ease of Doing Business’ in 2002, has followed a data-driven approach to measure improvements in business environments based on time, cost, and quality of judicial processes across economies of 190 countries. Since the launch of DB Report, for the first time in 2020, Pakistan has reached at No. 108 in overall ranking in Contract enforcement indicator, on which it was holding 156th position previously.”

“With each passing day, the World is becoming more global and interconnected, particularly in the affairs of trade and commerce. The volume of foreign investment and the number of such business initiatives are taken as one of the determining traits for measuring economic growth of a country.”

The judgment by my fellow brother judges in China Harbour Engineering (PLD 2024 Lah 421) and Blitz Advertising (2025 LHC 290) strengthened the jurisdiction and procedural framework of these commercial courts. These decisions upheld the judiciary's commitment to creating a business-friendly legal environment by ensuring that commercial disputes are resolved efficiently and fairly.

Apart from this, Pakistan has also made significant strides in international and investment arbitration to further enrich an investor-friendly ecosystem. The country has not only enacted the Acts of 2011 in line with the New York and ICSID Convention, but has now taken a major step forward with the approval of the new domestic Arbitration Act Bill, 2024 by the federal cabinet. This Act will also bring the domestic arbitration in line with global best practices.

The judiciary has taken a pro-enforcement approach toward foreign arbitral awards. This is evident in the recent *Taisei* (2024 SCMR 640) case, where the Supreme Court of Pakistan reiterated the country's commitment to the NYC and emphasized minimal judicial interference in arbitration proceedings. The High Courts consistently recognize and enforce foreign arbitral awards, highlighted by the recent judgments in *Tradhol* (2023 CLD 819) and *China Water* (2023 CLD 1400). These decisions reflect Pakistan's transition towards becoming an arbitration-friendly jurisdiction.

However, arbitration alone is not sufficient to create a truly effective dispute resolution system in Pakistan. The global trend, as also seen in China, emphasizes mediation as a primary dispute resolution tool. Recognizing this, my court introduced the concept of mandatory mediation in Pakistan for the first time in *Faisal Zafar* (2024 CLD 1) case. In *Morgah Valley* case (PLD 2024 Lah 315), my "court adopted the approach of mediation to resolve the issue between the parties keeping in view international image of Pakistan's financial institutions for future investment and financing which is crucial these days".

A significant shift in mandatory mediation came after the ruling in *Strategic Plans Division* (PLD 2024 Lah 545) whereafter mediation was made mandatory/ pre-requisite for State Owned Enterprises (SOE) in tax matters through the late Tax Laws Amendment Act, 2024. The doctrine of mandatory mediation laid down in *Faisal Zafar* has now been followed throughout Pakistan and officially endorsed by the Supreme Court in a recent judgment reported as PLD 2025 SC 1. This marks a fundamental shift in Pakistan's legal landscape. It will ensure that mediation is integrated into the judicial system and viewed as the first step in dispute resolution rather than a mere alternative.

These judicial advancements have direct implications for CPEC and Pakistan-China economic relations. By ensuring efficient, enforceable, and predictable dispute resolution, Pakistan is reinforcing investor confidence. Mediation, in particular, aligns with China's traditional dispute resolution practices and it will create harmonious business relationships.

A well-structured ADR ecosystem will further strengthen Pakistan's position as a strategic investment hub. It will ensure that foreign investors, including those engaged in CPEC, have reliable legal protections. Therefore, the future of ADR in Pakistan is promising as courts, policymakers, and the business community are working together towards creating an efficient and internationally recognized dispute resolution framework.

I commend the authors for their insightful contribution to this critical subject and reaffirm my commitment to furthering ADR in Pakistan's judicial landscape.

**Hon'ble Justice Jawad Hassan**

**Lahore High Court, Punjab, Pakistan**

## **Acknowledgements**

This research initiative was made possible with the generous support of the Consulate General of the People's Republic of China in Lahore. Their encouragement and support have enabled an in-depth exploration of ADR mechanisms, underscoring the importance of mutual trust and sustainable frameworks for CPEC's success. This white paper addresses the critical need for effective dispute resolution frameworks to support the China-Pakistan Economic Corridor (CPEC). Its completion reflects our shared commitment to strengthening legal innovation and fostering collaboration between Pakistan and China.

We extend our gratitude to Honourable Justice Jawad Hassan of the Lahore High Court for his unwavering support to the Centre, and exemplary leadership in advancing Alternative Dispute Resolution (ADR) in Pakistan. His landmark judgments and steadfast dedication to improving access to justice and fostering an investor-friendly legal environment have been pivotal in shaping progressive dispute resolution frameworks. Justice Hassan's contributions have significantly inspired the direction and substance of this paper.

We are also grateful to Dr. Sikander Ahmed Shah, Director of the Centre for Chinese Legal Studies (CCLS) at the Shaikh Ahmad Hassan School of Law (SAHSOL), LUMS, for his invaluable guidance and support. His expertise in international law and dedication to fostering Pakistan-China legal cooperation have been instrumental in shaping this initiative.

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We are proud to present this white paper as a significant milestone in advancing dispute resolution frameworks and reinforcing the shared vision of a resilient and prosperous Pakistan-China partnership.

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## Executive Summary

This white paper, *Pathways to Resolution: Advancing ADR for Pakistan-China Partnership*, explores the pressing need for culturally aligned and effective Alternative Dispute Resolution (ADR) frameworks to support the dynamic scope of the China-Pakistan Economic Corridor (CPEC). As a flagship initiative under China's Belt and Road Initiative (BRI), CPEC underscores Pakistan's strategic role in China's global economic vision. However, its success hinges on establishing dispute resolution mechanisms that ensure efficiency, equity, and confidence for stakeholders engaged in cross-border investments.

China offers a valuable blueprint for institutionalising ADR. Its approach, rooted in Confucian principles of harmony, reconciliation, and compromise, emphasises mediation as a cornerstone for conflict resolution. The Grand Mediation framework and key institutions like the China International Economic and Trade Arbitration Commission (CIETAC) demonstrate how mediation, arbitration, and technological advancements such as online dispute resolution (ODR) platforms can streamline dispute resolution processes. These practices not only reduce judicial backlogs but also foster trust and cooperation in commercial relationships.

In Pakistan, the superior judiciary has actively supported ADR, demonstrating a pro-arbitration and pro-mediation bias in recent landmark judgments. By encouraging early resolution mechanisms and minimising judicial intervention in arbitral awards, the judiciary has laid the foundation for a more ADR-friendly legal environment. The vision of establishing a “Judicial Silk Road”—a collaborative framework to enhance legal cooperation among BRI nations—further highlights the commitment to building effective cross-border dispute resolution systems.

This paper addresses two interconnected goals: integrating Chinese ADR practices into Pakistan's domestic framework and collaboratively developing a tailored ADR mechanism for CPEC. The recommendations focus on strengthening Pakistan's legal infrastructure while ensuring the cultural and operational alignment necessary for cross-border dispute management.

To adapt Chinese best practices, Pakistan can establish community-level mediation committees modelled on China's People's Mediation Committees (PMCs) to address local disputes, such as labour grievances and land conflicts. Judicial and administrative mediation frameworks should be institutionalised to promote early resolutions, reducing reliance on litigation. Introducing multi-tiered systems like med-arb can enhance flexibility and efficiency, while a national ODR platform can increase accessibility for rural and urban stakeholders alike. These measures will ensure that Pakistan's ADR framework is not only modernised but also reflective of its socio-legal context.

For CPEC, the development of a sector-specific ADR framework is essential to manage the complexity of disputes arising in construction, energy, telecommunications, and logistics. Capacity-building programs focused on dispute avoidance and adjudication boards (DAABs) should be prioritised to ensure effective implementation under construction contracts governed

by FIDIC standards. Training for DAAB members and technical experts will enhance their ability to address disputes early and minimise project delays. Additionally, revising bilateral agreements like the 1989 Bilateral Investment Treaty (BIT) and the Free Trade Agreement (FTA) with China to include multi-tiered ADR clauses can better align with the demands of CPEC stakeholders.

The Centre for Chinese Legal Studies (CCLS) at LUMS is uniquely positioned to lead these initiatives. As Pakistan's foremost institution for Chinese legal studies, the CCLS combines academic excellence, research capabilities, and collaborative networks to strengthen ADR frameworks. Its efforts include designing capacity-building programs, conducting policy-oriented research, facilitating cross-border collaboration, and developing courses in Chinese law and language. By fostering mutual understanding and equipping professionals with practical skills, the CCLS plays an essential role in bridging gaps between the legal systems of Pakistan and China.

This white paper provides a comprehensive roadmap for enhancing ADR in Pakistan, emphasising collaboration, cultural sensitivity, and innovation. By adopting Chinese ADR best practices and developing a CPEC-specific framework, Pakistan can reinforce its legal infrastructure, foster investor confidence, and ensure the long-term success of its partnership with China. The Centre for Chinese Legal Studies is at the forefront of this transformation, offering the expertise and vision required to establish sustainable pathways for dispute resolution that align with the shared goals of a resilient Pakistan-China partnership.

## 1. Introduction

The relationship between Pakistan and China is deeply rooted in strategic cooperation, economic partnership, and mutual trust. Over the decades, this bond has been fortified through landmark agreements, such as the Pakistan-China Bilateral Investment Treaty (BIT) signed in 1989,<sup>1</sup> which established a foundational framework for protecting and promoting investments between the two nations. This was further reinforced by the Free Trade Agreement (FTA) in 2006,<sup>2</sup> which enhanced trade ties and created mechanisms for increased economic exchange. Together, these agreements have laid the foundation for a relationship that transcends traditional bilateral engagements.<sup>1</sup>

A pivotal milestone in this dynamic collaboration is the China-Pakistan Economic Corridor (CPEC),<sup>3</sup> launched in 2015 as a flagship initiative under China's Belt and Road Initiative (BRI).<sup>4</sup> The \$62 billion initiative focuses on infrastructure, energy, and transportation, transforming Pakistan's development landscape and bolstering regional connectivity.<sup>2</sup> With Pakistan positioned as a critical hub in the BRI framework, CPEC underscores the strategic importance of Pakistan in China's broader vision of economic globalisation and regional cooperation.

President Xi Jinping has described the relationship between China and Pakistan as “*good neighbors linked by the same mountains and rivers, good friends with mutual trust, and good partners supporting each other through thick and thin.*”<sup>5</sup> This sentiment reflects the deep-seated historical, cultural, and political ties between the two nations, as well as their shared vision for a “community of common destiny.” By drawing on the legacy of the ancient Silk Roads, this partnership seeks to promote principles of peace, cooperation, and mutual benefit.

Beyond economic initiatives, this partnership encompasses defense cooperation, cultural exchanges, and diplomatic collaboration, making it a multidimensional relationship. However, the increasing scale and complexity of joint ventures, particularly under CPEC, necessitate robust frameworks for conflict management and dispute resolution. As projects progress, disputes related to construction, energy, and logistics may arise, highlighting the critical need for well-defined mechanisms to resolve conflicts efficiently and equitably.

Recent discussions with policymakers, industry stakeholders, and legal experts have underscored the importance of establishing Alternative Dispute Resolution (ADR) mechanisms tailored to the unique demands of CPEC. Such frameworks would not only address potential conflicts but also strengthen investor confidence, ensuring the long-term success of this strategic alliance. By adopting proactive measures and learning from global best practices, Pakistan and China can enhance the resilience and sustainability of their economic partnership.

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<sup>1</sup> Pakistan-China Bilateral Investment Treaty, 1989.

<sup>2</sup> Pakistan-China Free Trade Agreement, 2006.

<sup>3</sup> China-Pakistan Economic Corridor (“CPEC”) <<https://cpec.gov.pk/>> accessed 5 September 2024.

<sup>4</sup> Belt and Road Initiative (BRI) <<https://eng.yidaiyilu.gov.cn/>>.

<sup>5</sup> Ministry of Foreign Affairs of China, ‘Xi Jinping Meets with Prime Minister Shehbaz Sharif’ (7 June 2024). <[https://www.fmprc.gov.cn/eng/zxxx\\_662805/202406/t20240611\\_11424755.html](https://www.fmprc.gov.cn/eng/zxxx_662805/202406/t20240611_11424755.html)> accessed 5 September 2024.

## **2. Objectives of the Paper**

This paper examines the current dispute resolution frameworks within the context of CPEC, evaluating their strengths and identifying areas requiring improvement. It addresses the procedural gaps that persist despite Pakistan's recent initiatives, including legislative reforms, judicial rulings, and the introduction of ADR mechanisms. While these efforts represent progress, they remain insufficient to address the growing complexity and scale of disputes associated with CPEC projects.

At a macro level, the paper focuses on incorporating the best elements of China's ADR practices into Pakistan's domestic legal framework. These practices, particularly mediation rooted in Confucian philosophy, emphasise harmony, compromise, and efficient dispute resolution. China's design of seamless, multi-tiered ADR frameworks—integrating mediation, arbitration, and dispute avoidance mechanisms—serves as an exemplary model. The paper examines how such design elements can be adapted to align with Pakistan's cultural and institutional contexts, creating a system that balances efficiency with equity.

At a micro level, the paper provides actionable strategies for tailoring context-sensitive ADR mechanisms to Pakistan's specific needs. This includes the development of multi-tiered frameworks that prioritise dispute prevention and early resolution through mediation and dispute boards while reserving arbitration for complex matters. Recommendations emphasise capacity-building initiatives, sector-specific expertise, and the integration of technological advancements such as online dispute resolution (ODR) platforms to enhance accessibility and transparency. These measures are designed to address the immediate challenges within key CPEC sectors such as construction, energy, telecommunications, and logistics.

By addressing these dual objectives, the paper aspires to design a sustainable dispute resolution framework that ensures the long-term success of CPEC. The proposed reforms aim to enhance investor confidence, safeguard investments, and promote regional connectivity. By balancing global best practices with local realities, Pakistan and China can foster a partnership that reflects shared values and achieves mutual prosperity.

## **3. Existing Dispute Resolution Mechanisms between Pakistan and China**

The current dispute resolution framework between Pakistan and China is rooted in bilateral agreements, informal negotiations, and diplomatic interventions. While these mechanisms have addressed disputes effectively thus far, the unique characteristics of CPEC and the evolving nature of conflicts highlight the need for more formalised and sophisticated ADR frameworks. This section outlines the existing mechanisms, their limitations, and the pressing need for structural reform.

### 3.1 Formal Dispute Resolution Mechanisms

Bilateral agreements such as the **1989 BIT** and the **2006 FTA** serve as the foundation for formal dispute resolution between Pakistan and China. These agreements provide for amicable settlement through negotiations and, if unresolved within six months, escalation to international arbitration under the ICSID Convention.

- **1989 BIT, Article 9:** Stipulates that investment disputes should first be resolved through negotiations, with arbitration as a secondary option.<sup>6</sup>
- **2006 FTA, Article 54:** Specifies the use of ICSID arbitration, provided domestic administrative procedures are exhausted.<sup>7</sup> The arbitration award is binding and enforceable under the domestic laws of the disputing state.

While these mechanisms provide a structured framework, Pakistan's experience with ICSID arbitration has been far from encouraging.

### 3.2 Pakistan's ICSID Experience: Reko Diq and Karkey Karadeniz

Two high-profile cases highlight the limitations of reliance on ICSID arbitration:

1. **Reko Diq Case:** Pakistan faced a \$6 billion penalty for the cancellation of a mining lease, marking one of the largest awards in ICSID's history.<sup>8</sup> The settlement, negotiated in 2022, involved the government transferring a 50% share of the project to a consortium that included Barrick Gold.<sup>9</sup>
2. **Karkey Karadeniz Case:** Pakistan was ordered to pay \$1.2 billion over the termination of a power ship contract.<sup>10</sup> A negotiated settlement eventually resolved the dispute, but only after significant reputational and financial damage.<sup>11</sup>

These cases illustrate the adversarial nature of ICSID arbitration, which often imposes substantial costs and prolonged timelines, eroding investor confidence, straining state resources, and highlighting the need for more flexible, interest-based mechanisms better suited to managing the complexities of state-driven projects like those under CPEC.

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<sup>6</sup> Pakistan-China BIT 1989, Article 9.

<sup>7</sup> Pakistan-China FTA 2006, Article 54.

<sup>8</sup> *Tethyan Copper Company Pty Limited v Islamic Republic of Pakistan* (ICSID Case No ARB/12/1).

<sup>9</sup> Ibid.

<sup>10</sup> *Karkey Karadeniz Elektrik Uretim A.S. v Islamic Republic of Pakistan* (ICSID Case No ARB/13/1).

<sup>11</sup> Ibid.

### 3.3 Mediation, Conciliation, and the Role of the FTA

The 2006 FTA introduces additional provisions that aim to encourage amicable settlements and reduce reliance on adversarial methods. Article 61<sup>12</sup> provides for good offices, conciliation, and mediation facilitated by the Commission established under the FTA. These processes, while non-binding and confidential, offer parties an alternative to formal arbitration. Furthermore, Article 60<sup>13</sup> grants flexibility by allowing parties to select their preferred forum for resolving disputes, ensuring exclusivity once a choice is made.

In practice, however, these provisions are underutilised or informally applied. Mediation and conciliation often take the form of bilateral negotiations between parties, with limited institutional support. The informal nature of these processes, while effective in some cases, lacks the procedural rigor and consistency needed for resolving more complex disputes.

### 3.4 The Role of Sinasure and Political Risk Insurance

CPEC projects are characterised by their state-driven nature, with significant involvement from Chinese state-owned enterprises (SOEs), state-owned banks, and the China Export & Credit Insurance Corporation (Sinasure).<sup>14</sup> Political Risk Insurance (PRI) provided by Sinasure plays a crucial role in mitigating risks for Chinese investors. In disputes involving delays or financing issues, the conditions imposed by Sinasure often influence Pakistan's regulatory decisions.<sup>15</sup> For instance, in 2015, NEPRA's rejection of Sinasure's insurance for a wind energy project due to high fees led to coordinated petitions from stakeholders, including Chinese SOEs, pushing for Sinasure's approval. This highlights the powerful influence of PRI in dispute resolution.<sup>16</sup>

While PRI and Sinasure-driven negotiations have helped resolve many disputes informally, these mechanisms are inadequate for addressing the broader, more complex conflicts expected to arise as CPEC projects advance.

### 3.5 The Trend toward De-Legalisation

The reliance on mediation and bilateral negotiations reflects a broader trend toward de-legalisation in resolving disputes under CPEC.<sup>17</sup> This approach prioritises interest-based solutions over rigid legal frameworks like arbitration, aligning with China's soft-law norms and Pakistan's preference for diplomatic resolution.

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<sup>12</sup> Pakistan-China FTA 2006, Article 61.

<sup>13</sup> Pakistan-China FTA 2006, Article 60.

<sup>14</sup> Mark McLaughlin, 'The Geoeconomics of Belt and Road Disputes: A Case Study on the China-Pakistan Economic Corridor' (2024) 14 Asian Journal of International Law 94-122  
<<https://doi.org/10.1017/S2044251323000176>> accessed 15 September 2024.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

China's support for mediation is evident through its participation in international reform efforts, such as UNCITRAL Working Group III<sup>18</sup>, and its incorporation of mediation in agreements like the China-Hong Kong CEPA<sup>19</sup>. This shift toward mediation allows for greater flexibility, preserves relationships, and avoids the adversarial pitfalls of arbitration.

#### 4. Limitations of the Current Framework

While existing mechanisms have resolved disputes effectively, they are ill-equipped to oversee the increasing complexity of future conflicts under CPEC:

- **Public-Private Partnerships (PPPs):** CPEC projects involve state-owned enterprises (SOEs) and private stakeholders, creating intricate layers of contractual obligations and regulatory oversight.
- **Geoeconomic Considerations:** Disputes often extend beyond commercial interests, encompassing geopolitical, security, and diplomatic dimensions.
- **Evolving Legal and Technical Challenges:** As CPEC progresses, disputes are expected to involve advanced technical, environmental, and cross-border issues, requiring specialised expertise.

The reliance on informal mechanisms, such as diplomatic channels and PRI-backed negotiations, is insufficient to address these complexities. Without formalised ADR frameworks, Pakistan risks undermining investor confidence and jeopardising the long-term sustainability of CPEC.

#### 5. Toward Specialised ADR Frameworks

As disputes grow more complex, Pakistan and China must move beyond existing mechanisms and develop specialised ADR frameworks tailored to the unique demands of CPEC. These frameworks should integrate lessons from China's mediation model, incorporate multi-tiered dispute resolution processes, and align with international best practices.

In the following sections, we will analyse sector-specific frameworks, beginning with FIDIC contracts in the construction sector, to propose actionable solutions that address the challenges of CPEC's dispute resolution landscape.

#### 6. Dispute Resolution Framework in CPEC Contracts

With the evolution of CPEC into its advanced stages, the complexity of projects and their strategic importance demand a closer examination of dispute resolution mechanisms. The initiative spans diverse sectors—construction, energy, telecommunications, logistics, and transportation—each presenting unique challenge. Although disputes under CPEC have been minimal to date, this has largely been due to informal channels and diplomatic interventions.

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<sup>18</sup> UNCITRAL Working Group III <[https://uncitral.un.org/en/working\\_groups/3/investor-state](https://uncitral.un.org/en/working_groups/3/investor-state)> accessed 19 September 2024.

<sup>19</sup> CEPA Investment Agreement (adopted on 28 June 2017, entered into force 1 January 2018).

However, as investments scale and diversify, it is imperative to establish structured ADR mechanisms that cater to the specific needs of each sector, ensuring seamless implementation and fostering investor confidence.<sup>20</sup>

## 6.1 The Construction Sector: FIDIC Contracts and ICC Arbitration

The construction sector is the backbone of CPEC, driving the development of transformative infrastructure projects like motorways, railways, and ports. These large-scale endeavours adopt International Federation of Consulting Engineers (FIDIC) contracts, which are internationally recognised for their standardised approaches to risk management and dispute resolution.<sup>21</sup>

FIDIC<sup>22</sup> contracts employ tailored editions or “Books” for different project types:

- **Red Book:** For employer-designed construction projects, focusing on traditional contracts.
- **Yellow Book:** For design-build contracts, where the contractor manages both design and execution.
- **Silver Book:** For turnkey projects, emphasising contractor responsibility for risk.

A key feature of FIDIC contracts is their multi-tier dispute resolution system, beginning with Dispute Avoidance and Adjudication Boards (DAABs). These boards aim to resolve disputes early in the project lifecycle, providing binding recommendations that help avoid delays and financial risks.<sup>3</sup> Should disputes escalate, FIDIC contracts generally designate ICC<sup>23</sup> arbitration as the next step, leveraging its international legitimacy and enforceability.

This structured mechanism not only facilitates efficient conflict management but also sets a benchmark for best practices in large-scale construction projects, emphasising the need for similar frameworks in other CPEC sectors.

## 6.2 Energy Sector: Sector-Specific Challenges and ADR Mechanisms

The energy sector plays a pivotal role in CPEC, encompassing Independent Power Producers (IPPs), coal-fired plants, and renewable energy projects such as hydropower and solar installations. These ventures often involve multi-party agreements and intricate regulatory frameworks, making them particularly prone to disputes. Key issues include:

- **Tariff Disputes:** Disagreements over tariff rates and adjustments, often involving government bodies and private operators.
- **Payment Delays:** Late payments by power purchasers, leading to liquidity issues for IPPs.

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<sup>20</sup> MK Consultus, *Pakistan Construction Disputes Report 2022* <<https://pcdr.pk/pcdrreport/>> accessed 21 September 2024.

<sup>21</sup> Ibid.

<sup>22</sup> International Federation of Consulting Engineers (“FIDIC”), *FIDIC Contracts: An Overview* <<https://fidic.org/bookshop/about-fidic-forms-contract>> accessed 23 September 2024.

<sup>23</sup> International Chamber of Commerce (ICC), *Dispute Resolution Services* (“ICC”) <<https://iccwbo.org/dispute-resolution-services/>> accessed 23 September 2024.

- **Regulatory Compliance:** Challenges related to environmental standards and local licensing requirements.

For such disputes, mechanisms like expert determination and arbitration under specialised energy frameworks, such as UNCITRAL Rules,<sup>24</sup> can provide effective solutions.<sup>5</sup> Moreover, sector-specific mediation could help resolve disputes quickly, preserving business relationships and minimising project disruption.

### 6.3 Telecommunications: Emerging Challenges in Digital Connectivity

As investments under CPEC grow, the telecommunications sector holds significant potential to transform Pakistan's digital landscape. Projects such as fibre-optic networks, satellite communication systems, and the gradual adoption of 5G technologies aim to bridge the digital divide and establish seamless cross-border connectivity. However, this sector also presents unique challenges that demand specialised dispute resolution mechanisms. Disputes in this domain are likely to revolve around:

- **Licensing and Spectrum Allocation:** Conflicts over operational licenses and frequency band allocation, crucial for the rollout of telecommunication services.
- **Intellectual Property:** Disagreements regarding technology transfers and the use of proprietary software in joint ventures.
- **Cross-Border Data Governance:** Regulatory misalignments between Chinese and Pakistani standards for data privacy, storage, and cybersecurity.

Given the pace of technological evolution, expeditious and sector-specific ADR mechanisms are indispensable. The telecommunications industry globally is undergoing profound changes due to deregulation, emerging technologies, and increasing competition. These transformations make efficient dispute resolution a cornerstone of progress. A discussion paper by the ITU and the World Bank aptly notes:

“Disputes can be enormously destructive to the sector, and effective dispute resolution is increasingly central to the successful deployment of modern information infrastructure. This is particularly so where it is necessary to encourage investment and competition to reach the underserved billions of people on the wrong side of the digital divide.”<sup>25</sup>

The relevance of this observation cannot be understated in the context of CPEC. With its ambitious integration of digital infrastructure, Pakistan must develop fast-track dispute resolution frameworks, such as expedited arbitration or sector-specific mediation, to pre-empt

<sup>24</sup> United Nations Commission on International Trade Law (“UNCITRAL”), *Model Law on International Commercial Arbitration* (UNCITRAL 1985, with amendments as adopted in 2006) <[https://uncitral.un.org/en/texts/arbitration/modellaw/commercial\\_arbitration](https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration)> accessed 25 September 2024.

<sup>25</sup> Robert R. Bruce and Rory Macmillan, *Dispute Resolution in the Telecommunications Sector: Current Practices and Future Directions* (ITU and World Bank) <<https://www.itu.int/ITU-D/treg/publications>> accessed 27 September 2024.

and manage potential conflicts effectively. Ensuring the success of these projects will not only support the objectives of CPEC but also solidify Pakistan's role in the region's digital transformation.

#### 6.4 Logistics and Transportation: Managing Jurisdictional and Operational Risks

CPEC's transportation projects—such as Gwadar Port, motorways, and railway networks—are critical for regional connectivity. However, disputes in this sector are often rooted in operational delays, cross-border regulations, and jurisdictional conflicts.<sup>26</sup> Specific challenges include:

- **Jurisdictional Overlap:** Conflicts arising from overlapping regulations across regions and agencies.
- **Operational Delays:** Disputes linked to construction timelines and logistical coordination.
- **Supply Chain Disruptions:** Issues impacting freight movement and cargo management.

For logistics and transportation, mediation followed by arbitration (Med-Arb) offers a balanced approach, allowing parties to negotiate mutually acceptable solutions while retaining the option for binding decisions. The creation of joint mediation centres between China and Pakistan could further streamline dispute resolution in this sector.

#### 7. The Case for Multi-Tiered ADR Frameworks

While no major disputes have arisen under CPEC contracts so far, the initiative's growing scale necessitates a proactive approach to dispute resolution. A multi-tier ADR framework, combining dispute prevention, mediation, and arbitration, is essential to address sector-specific needs effectively. Such a framework would not only reduce reliance on diplomatic channels but also align CPEC's governance with international best practices, fostering trust among stakeholders and ensuring the long-term viability of projects.

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<sup>26</sup> Gao Quan, 'The Role of Alternative Dispute Resolution (ADR) in Dispute Settlement of Logistics Activities' (2021) 5(3) *International Journal of Trend in Scientific Research and Development* 518–521 <<https://www.ijtsrd.com/papers/ijtsrd39925.pdf>> accessed 27 September 2024.

## 8. ADR Landscape in Pakistan

The evolution of ADR in Pakistan traces its roots to the foundational arbitration laws inherited from the colonial era: the Arbitration Act of 1940 and the Arbitration (Protocol and Convention) Act of 1937. These legislations, modeled on British laws, provided the initial framework for arbitration but lacked the flexibility and modern principles required for the burgeoning complexities of contemporary commercial disputes. Despite their shortcomings, these Acts laid the groundwork for Pakistan's subsequent efforts to adopt and modernise ADR mechanisms.

A pivotal moment came in 2005, when Pakistan became a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), signalling a commitment to harmonise its arbitration framework with global standards. This commitment was formalised in 2011 through two critical enactments: the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (NYC Act), which domesticated the New York Convention, and the Arbitration (International Investment Disputes) Act, 2011 (ICSID Act), which incorporated the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). These legislative measures underscored Pakistan's growing emphasis on creating an investor-friendly environment by ensuring the enforceability and predictability of arbitral awards.

The most significant legislative development in Pakistan's ADR landscape is the proposed Arbitration Act of 2024. This progressive legislation, aimed at replacing the outdated 1940 Act, introduces modern principles aligned with the UNCITRAL Model Law on International Commercial Arbitration. Key features include the kompetenz-kompetenz principle, which empowers arbitral tribunals to determine their jurisdiction, and a pro-enforcement bias limiting judicial interference in arbitral proceedings. The Act emphasises party autonomy, allowing parties greater flexibility in selecting arbitrators, procedural rules, and venues. These advancements are crucial in attracting foreign investment and ensuring Pakistan's competitiveness in the global arbitration arena.

Parallel to the developments in arbitration, Pakistan has made strides in institutionalising mediation. The Alternative Dispute Resolution Act, 2017, marked a significant federal initiative, providing a statutory framework for mediation and conciliation. It allows courts to refer disputes to ADR at any stage with the parties' consent, aiming to reduce litigation backlogs and ensure timely resolutions. Provincial efforts, such as the Punjab Alternative Dispute Resolution Act, 2019, further demonstrate a commitment to enhancing mediation. This Act, recently amended in 2023, mandates the referral of certain disputes to ADR and imposes strict timelines to conclude proceedings within 120 days. Similar provisions are reflected in the Khyber Pakhtunkhwa Alternative Dispute Resolution Act, 2020, which expands the scope of ADR to both civil and criminal disputes, underscoring its versatility.

The Trade Dispute Resolution Act, 2022, represents another significant step in fostering a business-friendly environment. This Act provides mechanisms for resolving trade disputes

through ADR, focusing on mediation and arbitration to ensure swift and amicable settlements, particularly for international trade conflicts. By aligning with global trade norms, this legislation enhances Pakistan's attractiveness as a trade partner.

Beyond arbitration and mediation-specific laws, ADR mechanisms have been embedded across various statutory frameworks, reflecting their critical role in fostering efficient dispute resolution across diverse sectors. For instance, the Income Tax Ordinance, 2001, under Section 134-A, provides for the resolution of tax disputes through ADR committees. Similarly, the Sales Tax Act, 1990, under Section 47A, and the Customs Act, 1969, under Section 195-C, encourage out-of-court settlements by allowing disputes over valuation, classification, and other tax-related issues to be resolved efficiently. The Federal Excise Act, 2005, under Section 38, further extends ADR to excise-related disputes, enabling pre-litigation resolution of conflicts.

In the corporate domain, the Companies Act, 2017, under Sections 6 and 276-278, integrates ADR for resolving disputes among shareholders and directors, thereby promoting corporate harmony and reducing adversarial litigation. The Punjab Sales Tax Act, 2012, under Section 69, also provides businesses a streamlined mechanism for addressing sales tax disputes outside of court proceedings.

Consumer-related disputes have been addressed through ADR under the Punjab Consumer Protection Act, 2005, specifically Section 29, which facilitates conciliation and resolution between consumers and businesses. Family disputes are governed by the Muslim Family Laws Ordinance, 1961, and the Family Courts Act, 1964, with Section 10(3) of the latter emphasising pre- and post-trial reconciliation efforts to preserve relationships. The Conciliation Courts Ordinance, 1961, and the Small Claims and Minor Offences Ordinance, 2002, under Sections 14-25, streamline procedures and encourage conciliation for minor disputes, ensuring access to swift and cost-effective justice.

The Code of Civil Procedure (Sindh Amendment) Act, 2018, through Sections 2, 89-A, and Rules 1-B and 1-C of Order X, has further institutionalised ADR mechanisms by allowing courts to refer civil disputes to mediation or conciliation with the consent of the parties. Additionally, Punjab's Local Government Act, 2013, under Section 96, facilitates the amicable settlement of disputes through the traditional Panchayat system, reinforcing community-based dispute resolution mechanisms.

The Securities and Exchange Commission of Pakistan (SECP) has incorporated ADR into its regulatory framework to address disputes in the securities market effectively, further strengthening investor confidence. Similarly, the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983, under Section 33, provides informal mechanisms for dispute resolution, while the Cooperative Housing Societies Act, 1925, under Section 54, facilitates arbitration between societies and their members. The National Electric Power Regulatory Authority (NEPRA) Regulations, 2003, through Regulation 3, also establish ADR processes for disputes between licensees, contributing to an efficient dispute resolution environment in the energy sector.

A significant addition to the ADR ecosystem is the establishment of court-annexed mediation centres, such as the Islamabad High Court Mediation Centre, which has been instrumental in promoting mediation for both civil and commercial disputes. These avenues provide structured platforms for litigants to resolve conflicts efficiently, fostering a pro-business and collaborative environment. ADR provisions are embedded across numerous statutes, offering structured mechanisms for dispute resolution across multiple sectors, as summarised below:

**Table 1: ADR Provisions across Various Pakistani Statutes**

Statute	Relevant Sections	Key Provisions on ADR
<b>Arbitration Act, 2024 (Proposed)</b>	Entire Act	Introduces modern principles aligned with UNCITRAL Model Law, including kompetenz-kompetenz and party autonomy.
<b>Trade Dispute Resolution Act, 2022</b>	Multiple Sections	Establishes ADR mechanisms for resolving trade disputes, focusing on mediation and arbitration.
<b>Alternative Dispute Resolution Act, 2017</b>	Sections 2, 8, 11	Defines mediation and conciliation; empowers courts to refer disputes to ADR.
<b>Punjab Alternative Dispute Resolution Act, 2019</b>	Section 10	Mandates ADR referral for specific disputes and sets timelines for resolution.
<b>Khyber Pakhtunkhwa ADR Act, 2020</b>	Sections 5, 8	Promotes mediation, conciliation, and arbitration for civil and criminal disputes.
<b>Code of Civil Procedure (Sindh Amendment) Act, 2018</b>	Sections 2, 89-A, Order X, Rule 1-A	Provides mechanisms for mediation and conciliation with court oversight.
<b>Family Courts Act, 1964</b>	Sections 10(3), 12(1)	Provides for pre- and post-trial reconciliation for family disputes.
<b>Small Claims and Minor Offences Ordinance, 2002</b>	Sections 14 to 25	Encourages settlements through Salis by allowing alternative modes of dispute resolution.

<b>Income Tax Ordinance, 2001</b>	Section 134A	Establishes ADR committees for resolving tax disputes.
<b>Sales Tax Act, 1990</b>	Section 47A	Allows settlement of tax disputes through ADR mechanisms.
<b>Customs Act, 1969</b>	Section 195C	Provides for ADR in customs-related disputes, including valuation and classification.
<b>Federal Excise Act, 2005</b>	Section 38	Facilitates the resolution of excise-related disputes through ADR mechanisms.
<b>Companies Act, 2017</b>	Sections 276-278	Encourages ADR for disputes among shareholders and directors, promoting corporate harmony.
<b>Office of Wafaqi Mohtasib (Ombudsman) Order, 1983</b>	Section 33	Facilitates informal resolution of disputes through the ombudsman's office.
<b>Cooperative Housing Societies Act, 1925</b>	Section 54	Encourages amicable resolution of disputes between societies and members through arbitration.
<b>National Electric Power Regulatory Authority Regulations, 2003</b>	Regulation 3	Enables resolution of disputes or disagreements between licensees regarding activities under their licenses.
<b>Punjab Local Government Act, 2013</b>	Section 96	Provides for amicable settlement of disputes through the Panchayat system.

These legislative advancements reflect Pakistan's commitment to creating a robust and inclusive ADR ecosystem. By integrating ADR into diverse legal frameworks, Pakistan is laying the groundwork for a more efficient, equitable, and investor-friendly dispute resolution environment.

## 9. Judicial Efforts in Advancing ADR in Pakistan

The Hon'ble judiciary in Pakistan has been pivotal in transforming the ADR landscape, recognising its potential to establish a harmonious relationship between efficient dispute

resolution, investor confidence, and economic prosperity. These judicial advancements aim not only to alleviate the backlog of pending cases but also to position Pakistan as an attractive and business-friendly jurisdiction. In the context of complex and large-scale projects like CPEC, the judiciary's active role in institutionalising ADR reflects its commitment to fostering an environment conducive to economic growth and international collaboration.

### 9.1 Strengthening ADR: Judicial Recognition of Procedural Integrity and Finality

The judiciary has consistently reinforced the importance of arbitration as a cornerstone of Pakistan's ADR framework. In *Taisei Corporation v. A.M. Construction*,<sup>27</sup> the Supreme Court highlighted the importance of the kompetenz-kompetenz principle, stating: "Arbitral tribunals hold the authority to determine their jurisdiction, a principle essential for maintaining party autonomy and procedural efficiency." This landmark decision underscores the importance of minimising judicial interference to uphold the sanctity and efficiency of arbitration proceedings.

In *Waqas Yaqub v. Adeel Yaqub*,<sup>28</sup> the Lahore High Court emphasised the judiciary's duty to promote ADR, observing: "It is the duty of the Courts to promote ADR by developing the confidence of the parties to adopt ADR without lengthy litigation before the Courts, which practice would strengthen the ecosystem of ADR to promote foreign investment in Pakistan."

The Supreme Court in *Orient Power Company v. Sui Northern Gas Pipelines*<sup>29</sup> highlighted the effectiveness of arbitration in addressing complex technical disputes, particularly in the energy sector, thereby underscoring its adaptability to diverse commercial challenges.

In *Commissioner Inland Revenue v. RYK Mills*,<sup>30</sup> the Supreme Court recognised pre-litigation mechanisms, such as show-cause notices, as analogous to ADR strategies. The Court observed: "A show cause notice can also be viewed as being akin to ADR, providing a pre-litigation opportunity for resolution and preventing unnecessary escalation." This approach promotes efficiency and reduces the burden on courts, particularly in tax-related disputes.

In the recent case of *Askari Bank Limited v. Khawaja Flat Glass Industries (Pvt.) Ltd.*<sup>31</sup> case introduced the Five R Framework—Recovery, Restructure, Renewal/Revival, Resurrection, and Resolution—as a heuristic approach to resolving financial disputes. Notably, the framework incorporated Resolution through mediation, illustrating the growing preference for collaborative approaches in arbitration.

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<sup>27</sup> 2024 SCMR 640.

<sup>28</sup> 2024 CLD 990.

<sup>29</sup> 2021 SCMR 1728.

<sup>30</sup> 2023 SCMR 1856.

<sup>31</sup> 2024 LHC 5873.

## 9.2 Mediation: A Cost-Effective and Collaborative Mechanism

Mediation has emerged as a transformative tool under Pakistan’s judicial framework, prioritising dialogue, and collaboration over confrontation. In *Province of Punjab v. Haroon Construction Company*,<sup>32</sup> the Supreme Court stated: “Mediation thrives on creative problem-solving, offering resolutions that preserve relationships and transcend the adversarial limitations of litigation.”

The *Faisal Zafar v. Siraj-ud-Din*<sup>33</sup> judgment reaffirmed mediation’s significance in corporate disputes, observing: “A corporate dispute or petition under sections 286 and 287 of the Companies Act, 2017, alleging the mismanagement of members of a company may be resolved through mediation and compromise before passing any determination by the Court with the consent of the parties involved.”

In *Netherlands Financierings Maatschappij Voor Ontwikkelingslanden N.V. (F.M.O.)*,<sup>34</sup> the Lahore High Court endorsed Early Neutral Evaluation (ENE) and mediation for resolving disputes, stating: “Mediation outcomes not only save time and money for parties but also reduce the workload on courts.”

*The Sindh High Court, in Shehzad Arshad v. Pervez Arshad*,<sup>35</sup> addressed the systemic bottlenecks caused by litigation, observing: “Pro-mediation bias is heightened by the overwhelming and ever-increasing pendency of cases ... making it all the more imperative to embrace alternate means of dispute resolution such as mediation.”

In *Civil Aviation Authority of Pakistan v. Federation of Pakistan*,<sup>36</sup> Hon’ble Sindh High Court emphasised the significance of fostering a pro-mediation culture. The judgment remarked: “Mediation offers the best chance for solutions where both parties leave with dignity and satisfaction, as opposed to the all-or-nothing results of litigation.”

## 9.3 Judicial Endorsement of ADR in Complex and Commercial Disputes

The recent decision in *Ali Ahmed Khan v. Muhammad Afraz Khan*<sup>37</sup> consolidated the principles from prior rulings, emphasising: “Access to justice includes the right to have disputes resolved in a timely and efficient manner. Mediation respects the autonomy of parties, providing a faster, cost-effective alternative that mitigates financial strain and emotional distress while preserving relationships.”

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<sup>32</sup> 2024 SCMR 947.

<sup>33</sup> 2024 CLD 1.

<sup>34</sup> 2024 PLD Lahore 315.

<sup>35</sup> 2024 PLD Sindh 408.

<sup>36</sup> 2024 CLD 1518.

<sup>37</sup> C.O. No. 06/2024.

In *Strategic Plans Division v. Punjab Revenue Authority*,<sup>38</sup> the Lahore High Court reiterated the importance of mediation, stating: “By fostering a pro-settlement bias, courts contribute to a harmonious and efficient dispute resolution environment.”

In *M/s Mughals Pakistan (Pvt.) Ltd. v. Employees Old Age Benefits Institution & PRIMACO*,<sup>39</sup> The Supreme Court underscored mediation’s significance for ensuring the continuity of large-scale projects like CPEC. The judgment noted: “*ADR mechanisms safeguard investments and enhance Pakistan’s reputation as a reliable partner for international collaboration.*”

Finally, in *Imperial Electric Company v. Zhongxing Telecom Pakistan*,<sup>40</sup> the Lahore High Court illustrated mediation’s adaptability to sector-specific disputes, emphasising its suitability for resolving intellectual property and commercial conflicts.

These above discussed judgments collectively reflect the judiciary’s pivotal role in embedding ADR mechanisms into Pakistan’s legal and commercial systems. By promoting arbitration, mediation, and ENE, the courts have strengthened investor confidence, reduced litigation backlogs, and fostered a more efficient dispute resolution framework. This emphasis aligns Pakistan’s judiciary with global trends, ensuring the country’s legal ecosystem remains competitive and conducive to sustainable economic growth.

## **10. Persistent Challenges in Pakistan’s ADR Framework**

Despite significant legislative and judicial strides in establishing ADR mechanisms, Pakistan continues to grapple with structural, procedural, and institutional gaps that hinder the full realisation of ADR’s potential. These challenges, spanning across enforcement, institutional capacity, regional disparities, sector-specific protocols, and technological integration, underline the urgent need for a cohesive and strategic reform agenda.

### **10.1 Overburdened Judiciary and Strained Enforcement Mechanisms**

As of June 30, 2024, Pakistan’s judiciary faced a staggering backlog of 2,221,512 pending cases. The district judiciary alone accounts for 82% of this total (1,815,783 cases), while the superior courts manage the remaining 18% (347,173 cases).<sup>41</sup> This overwhelming caseload underscores the limitations of the current system in providing timely justice. The following figure depicts this:

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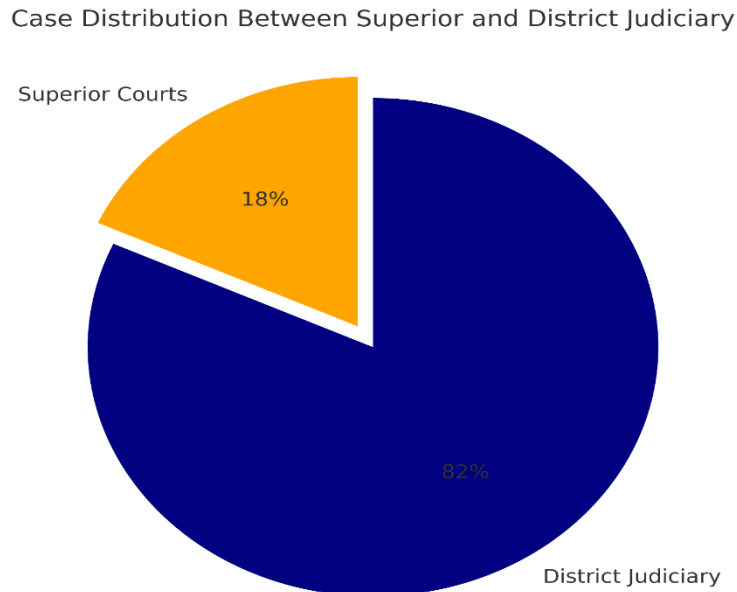
<sup>38</sup> 2024 LHC 2525.

<sup>39</sup> 2024 SCMR 1132.

<sup>40</sup> 2019 CLD 609.

<sup>41</sup> Judicial Statistics 3rd Bi-Annual Report: An Insight into the Cases Decided and New Institutions During January to June <<http://www.ljcp.gov.pk/reports/3bar.pdf>> accessed 13 January 2025.

**Figure 1: Case Distribution between Superior and District Judiciary**



*Source: Judicial Statistics 3rd Bi-Annual Report, providing insight into cases decided and new institutions during January to June.*

The enforcement of arbitral awards under the Arbitration Act of 1940 relies on already overburdened civil courts. This archaic approach delays resolution and undermines the credibility of arbitration as an efficient dispute resolution mechanism. The lapse of the Commercial Courts Ordinance in 2021 further exacerbates the problem, depriving businesses of a streamlined forum for addressing commercial disputes. Without specialised courts, arbitration loses its appeal as a speedy alternative to litigation, particularly for high-value commercial disputes.

## 10.2 Regional Disparities in ADR Implementation and Governance

The progress of ADR varies significantly across Pakistan, reflecting a lack of uniformity in institutional development. While Islamabad has set a benchmark with its High Court Annexed Mediation Centre and the mediation accreditation and eligibility rules,<sup>42</sup> other regions lag. Punjab's ADR Act of 2019 envisioned a regulatory authority, but its non-establishment leaves a significant gap in governance. Provinces like Sindh and Khyber Pakhtunkhwa lack standardised accreditation frameworks, leading to inconsistencies in the quality and practice of ADR.

The absence of a national accrediting body exacerbates this issue, as it prevents the establishment of uniform training and evaluation standards for mediators and arbitrators. This

<sup>42</sup> ADR Mediation Accreditation (Eligibility) Rules 2023.

disparity not only creates regional inequalities but also undermines the national integration of ADR practices.

### 10.3 Institutional Capacity Deficits and Sector-Specific Shortcomings

Pakistan's institutions, such as the SECP, lack the specialised capacity to effectively manage sector-specific ADR requirements. Customised ADR protocols and rules tailored to the needs of different sectors—such as energy, telecommunications, and construction—are largely absent. For instance:

- The energy sector, integral to CPEC, lacks frameworks for Dispute Avoidance/Adjudication Boards (DAABs) and expert determination, both of which are critical for managing disputes in complex, multi-party agreements.
- The telecommunications sector faces disputes over intellectual property, licensing, and cross-border data governance, yet has no sector-specific ADR protocols.
- The construction sector, heavily reliant on FIDIC contracts under CPEC, would benefit from local adaptations of international dispute resolution models.

Without targeted capacity-building initiatives and sector-specific ADR frameworks, Pakistan cannot fully address the nuanced demands of its economic sectors, especially those tied to foreign investments.

### 10.4 Absence of Integrated ADR Protocols

The absence of integrated ADR protocols in key institutions such as the Ministry of Planning, Development, and Special Initiatives, multiple Boards of Investment (BOIs), and Chambers of Commerce highlights a critical gap in Pakistan's investment framework. For instance, the Ministry of Planning lacks a dedicated ADR desk to address CPEC-related disputes, missing an opportunity to pre-emptively resolve complex conflicts that arise in large-scale projects.

Similarly, while provincial and federal BOIs play a vital role in facilitating investments, they lack standardised mechanisms for dispute prevention and resolution. This inconsistency creates hurdles for investors, who face fragmented systems without access to coordinated ADR services. Chambers of Commerce, despite being well-placed to mediate business disputes, have also failed to institutionalise arbitration and mediation centres, leaving businesses without accessible, cost-effective options.

### 10.5 Technological Gaps and the Absence of Online Dispute Resolution

Integrating technology into Pakistan's ADR ecosystem is essential for modernising dispute resolution processes and addressing the chronic backlog in judicial dockets. However, achieving this requires overcoming significant barriers related to internet penetration and digital literacy. By 2025, Pakistan's internet penetration is expected to reach 53.57%,<sup>43</sup> leaving

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<sup>43</sup> Statista, *Internet Penetration in Pakistan* <<https://www.statista.com/outlook/co/digital-connectivity-indicators/pakistan>> accessed 16 November 2024.

nearly half the population without access to online platforms. This digital divide is particularly detrimental for rural and remote communities, where Online Dispute Resolution (ODR) mechanisms could provide an accessible and efficient means of resolving disputes.

Key challenges include:

- **Limited Internet Access:** Nearly half the population will remain without internet connectivity, restricting their ability to engage with ODR platforms, especially in underserved regions.
- **Low Digital Literacy:** Many individuals lack the skills to effectively use online tools, with Pakistan's literacy rate at 62.8%.<sup>44</sup>

Addressing these challenges requires focused investment in digital infrastructure and comprehensive literacy programs, with an emphasis on closing the gender gap in digital access and education. Expanding internet connectivity and equipping individuals with the skills to navigate ODR platforms will not only enhance accessibility but also contribute to a more efficient and inclusive ADR ecosystem. These measures are critical for alleviating the burden on courts, promoting equitable access to justice, and fostering a modern, technology-enabled dispute resolution landscape.

## 10.6 Mediation Framework Deficiencies

Mediation, despite its potential, faces several structural and procedural challenges that limit its effectiveness. A significant concern is the existence of regulatory gaps, such as Punjab's ADR Act, which envisions an authority to oversee mediation but has yet to establish it. In contrast, Islamabad has implemented detailed accreditation rules and established the High Court Annexed Mediation Centre, offering a model for other regions to follow.

Key challenges include:

- **Limited Mediation Centres:** While Islamabad has made progress, the lower judiciary, where most disputes originate, lacks sufficient mediation infrastructure. Provinces like Punjab, Sindh, and Khyber Pakhtunkhwa urgently need more centres with standardised operating rules.
- **Absence of a National Accreditation Framework:** The lack of a central accrediting body results in inconsistent mediation quality and hinders the scalability of mediation practices across Pakistan.

Addressing these gaps through regulatory reforms, expanding mediation centres, and creating a national accreditation framework is critical for maximising mediation's potential as an effective dispute resolution tool.

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<sup>44</sup> Pakistan Bureau of Statistics, *Labour Force Survey 2020-21* <<https://www.pbs.gov.pk/>> accessed 16 November 2024.

## **11. Alternative Dispute Resolution in China: A Model for Efficiency and Innovation**

China's approach to ADR is deeply rooted in its cultural, philosophical, and legal traditions. By integrating ancient practices with modern innovations, China has created a robust framework that addresses the complexities of domestic and international disputes. This section explores the historical roots of ADR in China, its contemporary forms, and the technological advancements that have made it a global leader in dispute resolution.

### **11.1 Historical and Philosophical Roots of ADR in China**

#### **11.1.1 Confucian Philosophy and Harmony**

The origins of ADR in China can be traced back to Confucian philosophy, which emphasises harmony as a fundamental societal value. Confucian thought prioritises collective well-being over individual rights, encouraging parties to resolve disputes amicably to maintain social order.<sup>45</sup> Legal disputes were traditionally viewed as disruptions to societal harmony, and mediation emerged as a preferred method to address conflicts without escalating tensions. Mediators, often respected elders, or community leaders facilitated reconciliation by encouraging self-reflection and compromise.

#### **11.1.2 The Grand Mediation System**

China's Grand Mediation System exemplifies its commitment to embedding mediation into its governance structure.<sup>46</sup> This policy integrates civil, commercial, and administrative disputes into a unified mediation framework, leveraging People's Mediation Committees (PMCs), social groups, lawyers, and experts to de-escalate conflicts before they reach formal litigation. Between 2007 and 2012, the success rate of mediation in China hovered around 96%, underscoring its effectiveness in maintaining societal stability.<sup>47</sup>

#### **11.1.3 Evolution of Mediation Practices**

As China transitioned from imperial rule to the modern state, its mediation practices evolved. The establishment of PMCs under the 1954 Constitution<sup>48</sup> institutionalised grassroots mediation. These committees aimed to resolve civil disputes within local communities, embodying Confucian ideals in a formal legal framework.

### **11.2 Types of Mediation in Modern China**

China employs a multi-faceted approach to mediation, categorised into five primary types:

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<sup>45</sup> Yun Zhao, *Mediation and Alternative Dispute Resolution in Modern China* (Springer, 2022).

<sup>46</sup> Ibid.

<sup>47</sup> International Mediation Institute, 'Grassroots Mediation in China' (IMI, 2020)

<<https://imimediation.org/2020/06/17/grassroots-mediation-in-china/>> accessed 24 October 2024.

<sup>48</sup> Constitution of the People's Republic of China 1954.

1. **People's Mediation:** Conducted by grassroots community mediators under PMCs, these mediations address civil disputes such as family disagreements, neighbourhood conflicts, and housing issues. In 2017 alone, PMCs managed 8.74 million disputes, demonstrating their scalability and effectiveness. People's Mediation remains the most widely used form of ADR in China.<sup>49</sup>
2. **Judicial Mediation:** Judges actively mediate cases during litigation, with an estimated 30-40% of court cases resolved through this process. Judicial mediation reduces court caseloads and encourages settlements that preserve relationships, reflecting the balance between formal adjudication and reconciliation.<sup>50</sup>
3. **Administrative Mediation:** Government officials mediate disputes involving regulatory or administrative issues. This approach ensures efficient resolution of public-sector conflicts and supports the government's goal of maintaining order.<sup>51</sup>
4. **Arbitral Mediation:** Integrated within arbitration proceedings, this hybrid model allows parties to explore amicable solutions during arbitration. If mediation fails, the arbitration process continues, ensuring a binding resolution.<sup>52</sup>
5. **Industry Mediation:** Managed by professional associations, these mediations address sector-specific disputes in fields such as intellectual property, securities, and insurance. This targeted approach provides specialised expertise for resolving complex commercial conflicts.<sup>53</sup>

### 11.3 New Developments in Mediation in China

Recent years have seen China adapt traditional mediation practices to meet the needs of a modern, rights-conscious society. The key developments include:

- **Professionalisation of Mediators:** While China has millions of mediators, many lack formal training. Efforts are now being made to provide resources and education, leading to the emergence of full-time professional mediators in industries such as insurance, intellectual property, and securities.<sup>54</sup>
- **Collaboration Between Courts and Mediation Bodies:** Courts increasingly work with non-judicial mediation organisations, enabling mediated settlements to be confirmed by courts. Cases are also referred to mediation organisations, fostering a collaborative approach to dispute resolution.
- **Technological Advancements and ODR:** The Supreme Court's national online dispute resolution platform, [www.fayuan.com](http://www.fayuan.com), established in 2017, has significantly expanded access to mediation services.<sup>55</sup> Within a year, over **1,000 courts** and **12,000 mediation organisations** joined the platform, allowing parties to select mediators, conduct hearings via video, and finalise agreements digitally.<sup>56</sup> Additionally, the Zhejiang province government launched [yundr.gov.cn](http://yundr.gov.cn), a comprehensive dispute

<sup>49</sup> Rama Subramanian, 'Mediation in Modern China' <<https://mediate.com/mediation-in-modern-china/>> accessed 5 November 2024.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

resolution platform offering services such as consultation, evaluation, mediation, and arbitration.<sup>57</sup>

- **Legislative Reforms:** The enactment of the *People's Mediation Law* and amendments to the *Civil Procedure Law* have formalised mediation processes, established qualifications for mediators, and clarified procedures for judicial confirmation of mediated settlements.
- **Focus on Individual Rights:** Traditional mediation, influenced by Confucian ethics, often prioritised group harmony over individual interests. Modern mediation now emphasises the rights of the parties, reflecting China's push toward Rule of Law and the expectations of a more rights-conscious society.

China's integration of traditional mediation practices with modern reforms and technology showcases its ability to adapt to evolving societal and economic needs. This model provides valuable lessons for other countries, including Pakistan.

#### 11.4 Arbitration in China

Arbitration is a key component of China's ADR landscape, offering effective mechanisms for resolving commercial and international disputes. While China hosts several arbitral institutions, this section highlights some of the most prominent ones. Private arbitral bodies also operate within the country, complementing the work of the major institutions discussed below.

The China International Economic and Trade Arbitration Commission (CIETAC),<sup>58</sup> established in 1956, is the leading arbitral institution in China. It has overseen nearly 70,000 cases, involving parties from over 150 countries, making it a trusted forum for resolving cross-border commercial disputes.<sup>59</sup> CIETAC's 2024 Arbitration Rules introduced key reforms, including:

- Early dismissal of claims that are manifestly without legal merit.
- Regulation of third-party funding (TPF), enhancing transparency in proceedings.

The Shanghai International Arbitration Center (SHIAC)<sup>60</sup> focuses on disputes involving foreign investments, particularly in the Yangtze River Delta region. Its expertise in handling high-value and complex cases has made it a preferred choice for resolving disputes in this economically dynamic area. SHIAC's collaboration with foreign stakeholders further bolsters its international reputation.

The Shenzhen Court of International Arbitration (SCIA)<sup>61</sup> plays a pivotal role in cross-border dispute resolution in the Greater Bay Area, a region encompassing major economic hubs like

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<sup>57</sup> Ibid.

<sup>58</sup> China International Economic and Trade Arbitration Commission (CIETAC) <<https://www.cietac.org.cn>> accessed 24 November 2024.

<sup>59</sup> Ibid.

<sup>60</sup> Shanghai International Arbitration Center (SHIAC) <<http://www.shiac.org>> accessed 24 November 2024.

<sup>61</sup> Shenzhen Court of International Arbitration (SCIA)' <<https://www.scia.com.cn>> accessed 24 November 2024.

Hong Kong, Macau, and Shenzhen. SCIA specialises in handling disputes related to finance, technology, and intellectual property, providing tailored solutions for the region's unique commercial challenges.

These institutions represent China's commitment to providing efficient and internationally aligned arbitration services, fostering confidence among domestic and international investors. While these are among the most prominent arbitration centres, China's growing network of private arbitral institutions also contributes significantly to its ADR ecosystem.

### 11.5 Technology and Dispute Resolution in China

China's integration of technology into dispute resolution has significantly enhanced the efficiency and accessibility of its ADR mechanisms. The Supreme People's Court's National Online Dispute Resolution (ODR) Platform, launched in 2017, connects over 1,000 courts and 12,000 mediation organisations, enabling seamless online applications, video-based mediation sessions, and digital agreements. This initiative has streamlined the resolution process and reduced costs while expanding access to justice.<sup>62</sup>

Key advancements include:

- E-commerce ODR Mechanisms: Platforms like Taobao and JD.com resolve consumer disputes swiftly, ensuring efficiency in handling high-volume cases.<sup>63</sup>
- Bayu Peacemaker Platform: Based in Chongqing, this administrative ODR system combines mediation with public outreach, fostering community engagement and social harmony.<sup>64</sup>

China's use of technology demonstrates its commitment to innovation in ADR, offering practical solutions to meet the demands of modern commerce and societal needs.

### 11.6 Internet Courts: A Technological Milestone

China's establishment of internet courts in Hangzhou (2017), Beijing (2018), and Guangzhou (2018) marks a significant advancement in integrating technology into the judiciary.<sup>65</sup> These specialised courts are designed to manage internet-related cases, such as e-commerce disputes, online copyright infringements, and digital defamation. By 2019, the internet courts had processed over 118,000 cases, achieving a 98% satisfaction rate among litigants.

Key features of these courts include:

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<sup>62</sup> Supreme People's Court, 'Online Mediation' <<http://tiaojie.court.gov.cn/>> accessed 16 December 2024.

<sup>63</sup> Study on the Online Dispute Resolution System in China' (2015) 129 *Advances in Engineering Research* 361 <<https://www.atlantis-press.com/article/25875030.pdf>> accessed 17 December 2024.

<sup>64</sup> Ibid.

<sup>65</sup> Supreme People's Court of the People's Republic of China, *Chinese Courts and Internet Judiciary: White Paper* (2019) <<https://english.court.gov.cn/pdf/ChineseCourtsandInternetJudiciary.pdf>> accessed 17 December 2024.

- **Fully Online Proceedings:** From case filing to judgment, all procedures are conducted online, providing enhanced accessibility and convenience for litigants.
- **Technological Integration:** Advanced technologies, including blockchain for evidence authentication and artificial intelligence for legal analysis, ensure accuracy and expedite case resolution.

China's internet courts highlight the country's innovative approach to judicial reform, offering efficient, transparent, and accessible solutions to disputes arising in the digital age.

## 12. ADR Role in the BRI

To support the BRI, China has established three International Commercial Courts, often referred to as "Belt and Road Courts," strategically located in Xi'an, Shenzhen, and Beijing.<sup>66</sup> These courts are designed to handle disputes arising from the vast network of BRI projects, offering specialised services in litigation, mediation, and arbitration to ensure efficient and impartial resolution of cross-border conflicts.

### 12.1 International Commercial Courts (CICC)

China's International Commercial Courts address the unique demands of BRI-related disputes. Each court has a distinct focus:

- **Xi'an Court:** Dedicated to the Silk Road Economic Belt,<sup>67</sup> This court manages land-based infrastructure and investment disputes, particularly those involving Central Asian countries.
- **Shenzhen Court:** Tailored for the Maritime Silk Road,<sup>68</sup> It focuses on disputes related to maritime trade, shipping, and logistics.
- **Beijing Court:** Serving as the administrative hub, this court oversees coordination and governance,<sup>69</sup> ensuring consistency in resolving BRI-related disputes.

The CICC integrates mediation, arbitration, and litigation into a unified platform, allowing parties to select the most suitable resolution method while preserving business relationships. These courts employ international legal experts and multilingual staff, further enhancing their accessibility to global stakeholders.

<sup>66</sup> Bushra Aziz and Mehwish Batool, *China-Pakistan Economic Corridor: The Quest for a Dispute Resolution Mechanism* (CCLS, 2023) <[https://ccls.lums.edu.pk/sites/default/files/2023-01/01\\_-\\_china-pakistan\\_economic\\_corridor\\_-\\_the\\_quest\\_for\\_a\\_dispute\\_resolution\\_mechanism.pdf](https://ccls.lums.edu.pk/sites/default/files/2023-01/01_-_china-pakistan_economic_corridor_-_the_quest_for_a_dispute_resolution_mechanism.pdf)> accessed 27 December 2024.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

## 12.2 Joint Arbitration Centres

China has also collaborated with partner countries to establish joint arbitration centres, such as the China-Africa Joint Arbitration Centres (CAJAC).<sup>70</sup> These centres facilitate neutral and efficient dispute resolution for trade and investment disputes between China and African nations. The Centre has dual location: disputes in Africa are resolved at the Johannesburg centre, while those in China are overseen in Shanghai, ensuring equitable access for both parties.

## 12.3 Judicial Efficiency and Pre-Litigation Mediation in China

In the first half of 2023, Chinese courts received an influx of 16.96 million new cases, reflecting an 11.01% year-on-year increase, and successfully concluded 15.26 million cases, marking a 9.65% rise.<sup>71</sup> Despite this significant caseload, the backlog of pending cases was reduced to 4.54 million, a 4.45% decrease compared to the previous year.<sup>72</sup> This efficiency was further bolstered by China's emphasis on pre-litigation mediation, which resolved nearly 5 million disputes in the same period—a 51.2% increase from the previous year.<sup>73</sup>

These results underscore China's commitment to streamlining its judicial processes, integrating pre-litigation mechanisms, and using technology-driven solutions to promote accessible and efficient dispute resolution. By prioritising mediation at the pre-litigation stage, the Chinese judiciary has not only alleviated the burden on courts but also reinforced trust and confidence in its dispute resolution framework.

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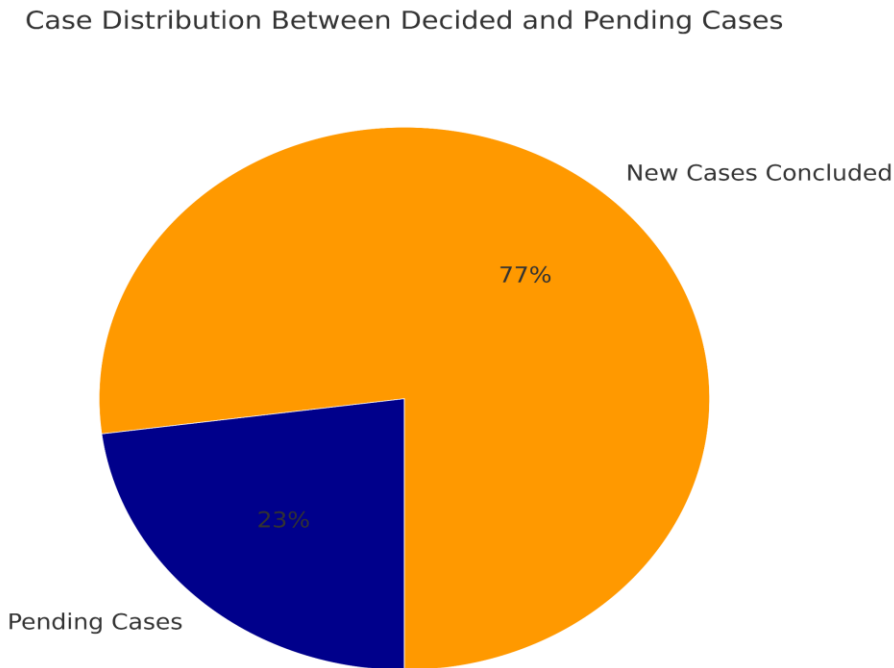
<sup>70</sup> China-Africa Joint Arbitration Centre (CAJAC), 'Introduction' <<https://cajacjhb.com>> accessed 27 December 2024.

<sup>71</sup> The Supreme People's Court (SPC), 'Chinese Courts Show Significant Improvements in Judicial Efficiency in H1 2023' (English.gov.cn, 9 August 2023) <[https://english.court.gov.cn/2023-08/09/c\\_946056.htm](https://english.court.gov.cn/2023-08/09/c_946056.htm)> accessed 28 December 2024.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

**Figure 2: Case Distribution between Decided and Pending Cases**



*Source: Supreme People's Court of China (H1 2023)*

### 13. ADR Provisions in Chinese Statutes

China's legal framework has increasingly integrated ADR mechanisms to address the growing complexities of commercial and civil disputes. Provisions for mediation, arbitration, and hybrid models can be found across various statutes, including the Civil Procedure Law, the Arbitration Law, and sector-specific regulations. These laws reflect China's commitment to promoting efficient, non-adversarial dispute resolution processes that align with its socio-economic objectives. Some of these key statutes are outlined in the following table:

**Table 2: Key ADR Provisions in Mainland China's Statutes**

Statute	Relevant Provisions	Key Provisions
Arbitration Law of the People's Republic of China (1994)	Entire Act	Governs arbitration processes, emphasising party autonomy, enforceability of awards, and neutrality.
People's Mediation Law of the People's Republic of China (2010)	Articles 8-18	Institutionalised People's Mediation Committees (PMCs) and promotes pre-litigation mediation frameworks.

Civil Procedure Law of the People's Republic of China (1991)	Articles 94-100	Encourages judicial mediation during litigation and integrates ADR into civil dispute resolution.
Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases by Internet Courts (2018)	Entire Provisions	Ensures the protection of foreign investors' rights, introducing mechanisms for dispute resolution, including mediation and litigation.
Foreign Investment Law of the People's Republic of China (2019)	Articles 34, 35	Ensures the protection of foreign investors' rights, introducing mechanisms for dispute resolution, including mediation and litigation.
Provisions of the Supreme People's Court on Several Issues Concerning the Establishment of the International Commercial Court (2018)	Articles 1-5	Introduces specialised courts and mediation centres for cross-border disputes under the BRI.
Contract Law of the People's Republic of China (1999)	Articles 107-114	Provides mechanisms for resolving disputes arising from breach of contract through arbitration or mediation.
Company Law of the People's Republic of China (1993)	Articles 20, 37	Allows shareholders to resolve internal corporate disputes through ADR mechanisms.
Environmental Protection Law of the People's Republic of China (1989)	Article 58	Encourages ADR for resolving environmental disputes, particularly in community and industrial settings.
Securities Law of the People's Republic of China (1998)	Article 173	Includes provisions for mediation and arbitration in securities-related disputes.
Law of the People's Republic of China on the Administration of Tax Collection (1992)	Articles 88-94	Facilitates ADR mechanisms for resolving tax-related disputes through administrative reconsideration and litigation.
Labor Contract Law of the People's Republic of China (2007)	Articles 77-84	Encourages arbitration and mediation for resolving employer-employee conflicts.
Anti-Monopoly Law of the People's Republic of China (2007)	Articles 45-48	Provides for ADR mechanisms in resolving disputes related to anti-competitive practices.
Administrative Procedure Law of the People's Republic of China (1989)	Articles 60-65	Encourages mediation for resolving administrative disputes to reduce the burden on courts.

E-Commerce Law of the People's Republic of China (2018)	Articles 60-62	Integrates Online Dispute Resolution (ODR) mechanisms for resolving consumer disputes, ensuring efficient resolutions in digital commerce.
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## 14. Policy Recommendations for Enhancing ADR Frameworks in Pakistan with Focus on CPEC

This set of policy recommendations has been carefully developed through a comprehensive review of literature, roundtable discussions, and expert insights. It addresses two core objectives: first, how Pakistan can incorporate Chinese best practices into its ADR framework; and second, how to create a CPEC-specific ADR mechanism tailored to the unique challenges posed by large-scale, state-driven investments. These recommendations are designed to strengthen Pakistan's capacity to resolve disputes efficiently, enhance investor confidence, and ensure the sustainability of projects under the CPEC.

The recommendations are broadly classified into two major categories which are discussed below:

### 14.1 Incorporating Chinese Best Practices into Pakistan's ADR Framework

#### 14.1.1 Leveraging China's Mediation Model

China's approach to mediation, deeply rooted in Confucian values and emphasising harmony, offers valuable lessons for Pakistan. The integration of community-based mediation, judicial mediation, and administrative mediation has allowed China to resolve over five million disputes annually. Pakistan's adaptation of this model must consider local cultural, legal, and institutional nuances.

- **People's Mediation Committees (PMCs):** Pakistan can establish community-level mediation committees modeled on China's PMCs. These committees would resolve smaller disputes, such as labor grievances, land acquisition conflicts, and family matters, reducing the burden on courts. By empowering local leaders and respected figures as mediators, the committees can gain trust and legitimacy within communities.
- **Judicial Mediation:** Training judges at all levels to facilitate mediation during court proceedings is critical. Pakistan's judiciary can incorporate mediation as a pre-litigation step, especially in civil and commercial disputes, ensuring early resolution without escalating to formal litigation.
- **Administrative Mediation:** Government agencies, particularly those handling labor, environmental, and public-sector disputes, should institutionalise administrative mediation mechanisms. A standardised national framework for administrative mediation would ensure consistency and efficiency.

### 14.1.2 Multi-Tier Dispute Resolution Models

Adopting multi-tier dispute resolution clauses, such as med-arb and arb-med-arb, ensures flexibility and efficiency in addressing disputes. Pakistan's ADR framework can integrate these methods tailored to sector-specific needs.

- **Med-Arb Integration:** Introduce med-arb mechanisms in critical sectors like construction and energy. For instance, disputes could initially undergo mediation, and if unresolved, the mediator can transition into the role of arbitrator, providing continuity and finality.
- **Escalation Clauses:** Mandate multi-tier dispute resolution clauses in contracts, starting with negotiation, followed by mediation, and culminating in arbitration if earlier steps fail. This ensures disputes are addressed at the most cost-effective and amicable level before escalating.

### 14.1.3 Adoption of ODR and the Internet Courts

China's innovative use of technology-driven ADR, including internet courts and ODR platforms, offers a transformative model for Pakistan to replicate within its socio-economic context.

- **National ODR Platform:** Pakistan should develop a centralised ODR platform to oversee small claims and consumer disputes efficiently. Such a platform can include AI-driven tools for case triaging, document analysis, and resolution tracking, enhancing accessibility for rural and urban populations alike.
- **Internet Courts:** Establish pilot internet courts in major cities such as Islamabad and Karachi, focusing on e-commerce, intellectual property, and small commercial claims. These courts can process cases entirely online, ensuring faster and more efficient resolutions.
- **Blockchain for Evidence Management:** Integrate blockchain technology to ensure secure and tamper-proof storage of evidence in ADR proceedings, addressing concerns about document integrity.

### 14.1.4 Commercial Court Corridor and ADR Benches

Enact the Commercial Courts Act to establish specialised commercial courts and ADR benches within every High Court in Pakistan. These courts will:

- Manage ADR-related enforcement cases, including arbitration and mediation agreements, ensuring swift resolution.
- Integrate court-annexed mediation centres for civil and commercial disputes to reduce the caseload of traditional courts.
- Provide training to judges and court staff on hybrid dispute resolution mechanisms such as med-arb, promoting efficiency and sector-specific expertise.

### 14.1.5 Capacity Building for ADR Professionals

The success of China's ADR system is underpinned by a trained cadre of mediators, arbitrators, and judges. Pakistan must prioritise capacity building to develop its own pool of skilled professionals.

- **Training Programs:** Launch comprehensive training programs for ADR practitioners, focusing on hybrid models like med-arb and incorporating technological innovations like ODR.
- **Certification Standards:** Establish national certification standards for mediators and arbitrators, ensuring uniformity and credibility across provinces.
- **International Collaboration:** Partner with institutions like CIETAC and CCPIT to facilitate joint training initiatives and knowledge exchange, enabling Pakistani professionals to learn from China's experience.

## 14.2 Developing a CPEC-Specific ADR Mechanism

### 14.2.1 Recognising the Nature of CPEC Disputes

CPEC projects involve state-driven investments with complex public-private dynamics, making traditional arbitration unsuitable. Disputes often involve state-owned enterprises (SOEs), public interest concerns, and geopolitical considerations. Mediation and hybrid ADR models can provide more flexible and culturally aligned solutions.

- **Dispute Characteristics:** Acknowledge that disputes in CPEC extend beyond construction and energy to include telecommunications, logistics, labor, and environmental grievances. Each sector demands tailored resolution mechanisms.
- **Cultural Alignment:** Mediation's emphasis on amicable resolution aligns with the values of both China and Pakistan, making it a preferred option for maintaining relationships and avoiding public controversies.

### 14.2.2 Integrating Sinosure and PRI

Sinosure plays a pivotal role in financing and insuring CPEC projects, with its underwriting decisions influencing dispute outcomes. Pakistan must integrate PRI considerations into its ADR mechanisms to enhance effectiveness.

- **Understanding Sinosure's Role:** Recognise that Sinosure acts as both an insurer and a strategic actor, influencing project approvals and dispute settlements. Aligning Pakistan's ADR framework with Sinosure's expectations can streamline resolution processes.
- **PRI-Linked ADR:** Develop ADR mechanisms specifically tailored to address disputes involving PRI. For instance, specialised mediation panels can be formed to resolve issues related to insurance claims or financing terms, ensuring swift and amicable outcomes.

### 14.3 Judicial Silk Road Initiative

Establishing a Judicial Silk Road aligns with the vision proposed by Honourable Justice Mansoor Ali Shah to foster legal collaboration between China, Pakistan, and other BRI partner countries. This initiative aims to:

- Develop BRI-focused commercial mediation centres and domestic commercial courts to ensure seamless dispute resolution across jurisdictions.
- Foster capacity-building through regular exchange programs for judges, mediators, and arbitrators to enhance their understanding of cross-border disputes within the BRI framework.
- Create a Judicial Collaboration Network to share best practices, enhance mutual understanding of legal systems, and strengthen enforcement mechanisms for dispute resolution agreements.

### 14.4 Updating Bilateral Agreements

The 1989 BIT and 2006 FTA between China and Pakistan prioritise ICSID arbitration for investment disputes. This approach is outdated and requires revision to incorporate modern ADR mechanisms.

- **Revising BIT/FTA Clauses:** Update bilateral agreements to include multi-tier dispute resolution clauses. This would provide structured pathways for negotiation, mediation, and arbitration, allowing disputes to be addressed at appropriate levels.
- **Moving Beyond ICSID:** Shift the preference away from ICSID to joint arbitration centres co-developed with Chinese stakeholders. These centres can offer culturally sensitive and cost-effective alternatives while maintaining neutrality.

### 14.5 Establishing Joint ADR Centres

Joint arbitration and mediation centres can serve as neutral venues accessible to both nations, enhancing trust and cooperation.

- **One-Window ADR Hubs:** Create ADR hubs in strategic locations such as Islamabad, Gwadar, and Karachi. These centres should be equipped with bilingual professionals and technology-driven tools to cater to the diverse needs of CPEC stakeholders.
- **Stakeholder Engagement:** Collaborate with Chinese SOEs, CIETAC, and CCPIT in governing these centres, ensuring credibility and mutual trust.

## 14.6 National Mediation Act and National Mediation Rules

Following Pakistan's approval for becoming signatory to the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation),<sup>74</sup> It is imperative to enact a National Mediation Act and formulate National Mediation Rules based on the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation.<sup>75</sup> Key aspects include:

- Providing a legislative framework to enforce mediated settlement agreements domestically and internationally.
- Standardising the mediation process, including confidentiality, timelines, and enforceability of agreements.
- Accrediting mediators through clear qualifications and ethical standards to ensure professional excellence.
- Creating model mediation clauses for parties to incorporate into their contracts.

## 14.7 Enhancing Enforcement Mechanisms

The enforceability of ADR outcomes is critical for credibility and investor confidence.

- **Specialised Courts:** Establish specialised benches within the lower courts to manage ADR-related enforcement. These courts can expedite the recognition and enforcement of arbitral awards and mediated settlements.
- **Simplified Procedures:** Streamline processes for enforcing local arbitral awards, reducing delays, and fostering trust in Pakistan's ADR framework.

## 14.8 Addressing Sector-Specific Needs

Tailored ADR approaches for key CPEC sectors can improve dispute resolution outcomes.

- **Energy Sector:** Develop expert determination panels for tariff and compliance disputes, drawing from China's energy-specific mediation protocols.
- **Telecommunications:** Introduce ODR mechanisms to manage spectrum and licensing issues efficiently.
- **Labor Disputes:** Establish localised mediation centres to address worker grievances, preventing escalation to formal arbitration or litigation.

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<sup>74</sup> United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (the "Singapore Convention on Mediation")  
<[https://uncitral.un.org/en/texts/mediation/conventions/international\\_settlement\\_agreements](https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements)> accessed 2 January 2025.

<sup>75</sup> UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018)  
<[https://uncitral.un.org/en/texts/mediation/modellaw/commercial\\_conciliation](https://uncitral.un.org/en/texts/mediation/modellaw/commercial_conciliation)> accessed 2 January 2025.

## 14.9 Building Trust through Institutional Support

Investor confidence is paramount for CPEC's success, requiring robust institutional backing for ADR mechanisms.

- **Institutional Arbitration:** Develop arbitration centres modeled on the China-Africa Joint Arbitration Centres. These institutions should integrate global best practices while catering to local contexts.
- **International Affiliations:** Secure affiliations with global bodies like UNCITRAL to enhance the credibility and acceptance of Pakistan's ADR mechanisms.

## 15. The Role of the Centre for Chinese Legal Studies (CCLS) at LUMS

The Centre for Chinese Legal Studies (CCLS) at the Shaikh Ahmad Hassan School of Law, LUMS, is uniquely positioned to drive the development and implementation of specialised ADR mechanisms tailored to the needs of the Pakistan-China partnership, particularly in the context of the CPEC. With its unparalleled expertise in Chinese law and ADR practices, CCLS bridges academic and practical approaches to dispute resolution, fostering collaboration and innovation in this critical area.

### 15.1 Advancing ADR Legislation and Policy Development

CCLS can play a pivotal role in shaping Pakistan's legislative and policy framework for ADR, ensuring it aligns with international best practices and the unique dynamics of the Pakistan-China partnership. Its contributions include:

- **Assisting in the Development of a National Mediation Law:** Drawing on insights from Chinese mediation models, CCLS can provide expert advice and drafting support to establish a comprehensive legal framework for mediation in Pakistan.
- **Drafting Rules for CPEC-Specific ADR:** CCLS can leverage its expertise to create context-sensitive arbitration and mediation rules that reflect the cultural, legal, and economic priorities of both nations.
- **Policy Advocacy:** Through its research and consultations, CCLS can advocate for reforms that enhance the enforceability of mediation agreements and arbitral awards, promoting ADR as a viable alternative to litigation.

### 15.2 Capacity Building and Training Initiatives

As a hub of legal education and training, CCLS can develop the capacity of Pakistan's legal and business communities to manage cross-border disputes effectively. Its initiatives include:

- **Designing and Teaching Courses in Chinese Law:** As the only centre in Pakistan offering academic courses in Chinese law, CCLS can provide students and professionals with in-depth knowledge of the legal frameworks governing the Chinese investments and ADR practices.

- **Seminars and Workshops:** CCLS can organize targeted seminars and workshops for lawyers, mediators, and policymakers, focusing on key areas such as Med-Arb, online dispute resolution (ODR), and sector-specific dispute management.
- **Training Mediators and Arbitrators:** Collaborating with leading institutions such as CIETAC and the Shanghai Commercial Mediation Center, CCLS can design tailored training programs to equip professionals with the skills needed for cross-border mediation and arbitration.

### 15.3 Facilitating Collaboration and Networking

CCLS acts as a platform for fostering dialogue and cooperation between Pakistani and Chinese stakeholders. Its potential efforts can include:

- **Hosting Webinars and Networking Events:** CCLS can bring together legal practitioners, policymakers, and business leaders to discuss emerging trends and challenges in ADR, building a network of professionals committed to advancing dispute resolution.
- **Developing a Consortium for China-Specific ADR:** As the leading institution in this domain, CCLS can spearhead the creation of a consortium to unify efforts in designing and implementing ADR mechanisms tailored to Chinese investments in Pakistan.

### 15.4 Research and Curriculum Development

CCLS integrates academic rigor with practical relevance to drive innovation in ADR practices. Its potential role can include:

- **Developing ADR Curricula:** CCLS can design specialised curricula on mediation, arbitration, and Chinese civil law for academic institutions, training the next generation of legal professionals to address cross-border disputes effectively.
- **Conducting Research on Best Practices:** The Centre can undertake comparative studies of ADR systems, particularly focusing on Chinese models, to identify strategies that can be adapted to Pakistan's legal and cultural context.

### 15.5 Enhancing Institutional Capacity

CCLS can work to strengthen Pakistan's ADR institutions by:

- **Supporting Court-Annexed Mediation Centres:** Providing technical and training support to enhance the effectiveness of mediation centres attached to courts.
- **Promoting Technology Integration in ADR:** Advocating for the adoption of ODR platforms and blockchain-based evidence management to modernise dispute resolution processes.

## 15.6 Leading Pakistan-China ADR Efforts

As a thought leader in this field, CCLS can take a proactive role in bridging gaps in Pakistan-China dispute resolution by:

- **Establishing ADR Guidelines for CPEC:** Collaborating with Chinese counterparts to develop context-specific guidelines for managing disputes under CPEC contracts.
- **Fostering Bilateral Understanding:** Leveraging its understanding of Confucian principles and the cultural underpinnings of Chinese mediation to create frameworks that resonate with both countries.

## 16. Conclusion

As Pakistan navigates the complexities of cross-border collaboration under the CPEC, it faces both immense opportunities and inevitable challenges. The sheer scale and strategic importance of CPEC demand a dispute resolution framework that transcends the inefficiencies of traditional litigation. This paper underscores the critical role of ADR mechanisms in fostering investor confidence, maintaining project momentum, and ensuring the long-term sustainability of this transformative partnership.

The Chinese preference for mediation, deeply rooted in Confucian values, offers a model that prioritises harmony, relationship-building, and collective well-being over adversarial confrontation. Mediation in China is not merely a procedural tool but an extension of cultural principles that emphasise reconciliation and the preservation of social stability. The “Grand Mediation” system and its integration across civil, administrative, and commercial domains demonstrate how mediation can operate as both a conflict resolution mechanism and a societal stabiliser. Pakistan can draw inspiration from this approach, particularly in crafting a nuanced ADR framework that accounts for its own legal, cultural, and institutional context.

To effectively incorporate good practices from the Chinese model, Pakistan must first recognise the value of context-specific adaptability. The Chinese experience highlights that mediation thrives when it is embedded within a broader ecosystem of dispute resolution mechanisms, supported by institutions that integrate mediation, arbitration, and administrative resolution. Similarly, Pakistan must move toward a multi-tiered approach that allows disputes to be addressed at various levels of complexity, ensuring that simpler matters are resolved through negotiation and mediation while reserving arbitration or litigation for more intricate cases.

One of the most significant lessons from the Chinese model is the proactive emphasis on dispute avoidance and early resolution. Mechanisms like Dispute Avoidance and Adjudication Boards (DAABs) under FIDIC contracts or pre-litigation mediation frameworks have proven effective in preventing conflicts from escalating. For Pakistan, institutionalising such practices across CPEC sectors—such as construction, energy, and telecommunications—could mitigate potential risks and enhance project continuity. Mediation, with its focus on dialogue and compromise, is particularly well-suited to the culturally sensitive and multi-stakeholder nature of CPEC projects. It provides a platform where parties can navigate complex public-private dynamics while preserving long-term relationships.

At the same time, Pakistan must strengthen its institutional capacity to deliver effective ADR services. The establishment of specialised mediation centres, equipped with culturally attuned professionals and supported by bilateral partnerships with Chinese institutions, can enhance the accessibility and credibility of ADR mechanisms. Learning from China’s integration of technology, Pakistan should also invest in online dispute resolution (ODR) platforms that leverage AI and blockchain for case management, evidence authentication, and remote hearings. These technological advancements can bridge geographic and logistical barriers, ensuring that ADR remains accessible to all stakeholders, including those in remote regions.

CPEC presents a unique challenge in balancing the interests of diverse actors, from state-owned enterprises to private investors and local communities. The success of its dispute resolution framework will depend on Pakistan's ability to institutionalise ADR mechanisms that are transparent, efficient, and reflective of the cultural values of both nations. For example, by adopting mediation as a pre-litigation requirement in CPEC contracts and ensuring that mediators are trained in both Confucian and Pakistani legal principles, Pakistan can create a dispute resolution system that respects the sensitivities of all parties involved. This approach will not only enhance trust but also foster a shared commitment to the long-term objectives of CPEC.

To make ADR a cornerstone of CPEC governance, Pakistan must also invest in capacity-building initiatives. Training programs for mediators, arbitrators, and judicial officers should focus on the hybrid dispute resolution models that have proven successful in China, such as med-arb and arb-med-arb. Equally important is the need to engage local communities in the ADR process, ensuring that smaller disputes—such as labor grievances or land acquisition issues—are resolved swiftly and equitably. By empowering grassroots institutions and aligning them with national ADR policies, Pakistan can create a dispute resolution ecosystem that is both inclusive and effective.

In conclusion, the path to sustainable dispute resolution under CPEC lies in a balanced fusion of global best practices and local realities. While Pakistan can learn from China's emphasis on harmony and early resolution, it must also adapt these principles to its unique socio-legal context. This requires a long-term commitment to building institutions, fostering collaboration, and integrating technology into ADR processes. By prioritising these efforts, Pakistan and China can not only address the immediate challenges of CPEC but also lay the groundwork for a resilient and mutually beneficial partnership that transcends economic cooperation and fosters a deeper sense of shared destiny.

## **Annex I: Perspectives Shared**

The Centre extends gratitude to the distinguished professionals and academics whose perspectives have significantly enriched this white paper.

1. Advocate Ali Sultan; Adjunct Faculty, LUMS
2. Dr. Sheharyar Sikander Hamid; Associate Professor, LUMS
3. Advocate Ahmed Khan Niazi; Shaikh Ahmad Hassan School of Law, LUMS
4. Professor Yuan Kang; Wuhan University School of Law, China
5. Professor Liang Wenwen; Wuhan University School of Law, China
6. Professor Gan Yong; Wuhan University School of Law, China
7. Mr. Rana Sajjad; Founder, Center for International Investment and Commercial Arbitration (CIICA)
8. Barrister Mian Sheraz Javaid; Chair, CIArb Pakistan; CEO, MK Consultus LLP
9. Ms. Sarah Tarar; Dean, ICLS; Director, ICDRL
10. Dr. Hassan Daud Butt; Former CEO, KP Provincial Board of Investment; Project Director, CPEC
11. Mr. Muhammad Shahzar Ilahi; Co-founder, MICADR
12. Mr. Sheikh Muhammad Ali; Chairman, Lahore High Court Bar ADR Committee; Rasikh Consilium and Markaz ADR

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