



Vol. 2 No. 5 (December) (2024)

Comparative Analysis of ADR and Conventional Legal Systems in Former FATA

Irfan Muhammad Afridi (Corresponding Author)

LLM scholar, Department of Law, Abdul Wali Khan university Mardan.

Email: irfan03339629009@gmail.com

Abdus Samad Khan

Assistant Professor, Department of Law, Abdul Wali Khan University Mardan.

Email: abdus@awkum.edu.pk

Abstract

This study provides a comprehensive comparative analysis of alternative dispute resolution (ADR) mechanisms and traditional legal systems in the former Federally Administered Tribal Areas of Pakistan (FATA). It examines the performance, accessibility and cultural significance of the ADR agreement, in particular the jirga system, and compares these features with the formal judicial framework. ADR demonstrates flexibility, cost-effectiveness and cultural alignment, offering faster, community-focused solutions tailored to the region's social and cultural dynamics. However, biases, human rights concerns and enforcement challenges are key issues. By contrast, the formal legal system ensures legal certainty and the enforcement and protection of human rights, but is hampered by high costs, procedural complexity and limited access in remote areas. This study calls for a hybrid model that integrates the cultural sensitivity of ADR with the legal rigor of the formal system to ensure justice.

Keywords: Alternative Dispute Resolution (ADR), Conventional Legal System, Jirga System, , Hybrid Justice Model, S Tribal Justice Systems, Community-Centric Solutions, Mediation and Arbitration,.

Introduction

The goal of this chapter is to deliver an extensive comparison between Alternative Dispute Resolution (ADR) tools and the usual legal process for resolving disputes in the newly combined territories of the former Federally Administered Tribal Areas (FATA) (Iqbal, 2023). The focus of the analysis is on analyzing the performance and outcomes of each system in handling disputes, especially in an area characterized by anomalous socio-cultural dynamics while dependent on traditional justice systems including the Jirga (Islam, 2020). The integration that followed the merger has presented difficulties in both governance and justice delivery because of the drive to conjoin formal legal systems and traditional ones. This chapter attempts to investigate whether Alternative Dispute Resolution (ADR) mechanisms, regarded as a bridge between informal justice systems and formal courts, provide a more efficient and effective solution for dispute resolution in the newly governed domains. ADR mechanisms show great potential in locales where distrust in the state's judicial system is high, or the state's infrastructure can't adequately manage a high volume of disputes (Ullah, 2021). Throughout history, community-based conflict



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resolution systems have been the dominant legal feature in the former FATA region. For many centuries, the Jirga system served as the chief way to resolve disputes. The merging of FATA with KP has brought the formal legal system of the state into focus, which has resulted in a dual system linking traditional practices with regulatory statutes. This chapter will analyze the results of ADR approaches compared to those produced by the traditional legal system to establish which method is more successful in the region's special environment.

The former FATA region's rules-based legal framework has an important challenge that concerns the issue of access. In the rural areas more so the formal courts present significant difficulties for the local population mainly due to the lengthy processes that are involved, the cost of the whole process and the legal expertise needed (Islam, 2020). ADP stands out from other methods as indicating numerous and diverse but flexible and categorisable culturally interpretable procedures which are generally faster, cheaper and easier to attend. The following chapter examines how effectively the ADR mechanisms have gone in addressing those barriers to the conventional legal framework. The investigation will also entail whether different ADRs are considered legitimate in the local setting. This chapter will also discuss how ADR systems complement the conventional court structures in the former FATA. Traditionally, ADR is defined as an option outside of the court, but it can also benefit communities by reducing the number of minor disputes that go to trial by using mediation or arbitration. A 'hybrid model' of justice, regarded through a layered approach, might provide a more complete solution to dispute resolution in the region. When looking at ADR next to the traditional law system, the discussion regarding accessibility and cultural relevance collides with the requirement for statutory law compliance and the defense of human rights.

Understanding ADR in the Former FATA Region

Alternative Dispute Resolution (ADR) includes a diverse pool of methods for managing disputes, different from the classic processes within the justice system. Features that are essential to ADR are mediation, arbitration, and conciliation (Jan, 2020). Mediation brings together a third party who is impartial, to help facilitate conversations aimed at creating an agreement that is advantageous for all participants. Throughout the arbitration, both involved parties share testimonies and engage in mutual conversations presented to an arbitrator, who afterwards makes a decision that carries the weight of legality after listening to everything. Conciliation is like mediation, but it typically involves a larger responsibility for the conciliator in suggesting solutions (Islam, 2020). Throughout the rollout of these ADR methods, we accommodate the local cultural values of the former FATA area, giving access to culturally sensitive mechanisms for the resolution of conflicts. Pakistan has executed a diversity of approaches in legislative policies and institutionalized frameworks aimed at folding ADR into its legal system. Important legal measures for the improvement of ADR are the Arbitration Act from 1940 and the Small Claims and Minor Offences Courts Ordinance of 2002 (Khan, 2023). The goal of the Khyber Pakhtunkhwa Alternative Dispute Resolution Act of 2020 is to formalize traditional dispute resolution techniques within the general legal system for the areas formerly comprised by FATA (Khalil, 2021). The act implements Dispute



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Resolution Councils (DRCs) supervised by local officials that make certain ADR practices are in keeping with national legal standards and respectful of local traditions. The intention in adding ADR to Pakistan's legal system is to reduce the strain on formal courts, speed up dispute resolution, and improve equitable just access across all sectors, particularly in remote tribal zones where the practice of Jirgas is a traditional heritage (Wikipedia, 2024).

Traditional ADR Methods in FATA

The cultural code of Pashtunwali plays a key role in the deeply established dispute resolution methods of the Federally Administered Tribal Areas (FATA) in Pakistan. The function of this strategy is to support social harmony; it points out that restorative justice is of higher priority than customary sanctions for convicted individuals (ACCA, 2020). Revered for its capability of being accessible, relevant to its culture, and for making speedy judgments, the Jirga system is the method of choice for the tribe to resolve disputes. Associating with ADR, the disorderly nature of negotiation offers parties an opportunity to have unstructured talks to resolve disagreements on their terms. This strategy greatly relies on the tendency of the participants to take part in conversations and achieve a jointly satisfactory outcome (Khan A. , 2022). The negotiations in FATA take place guided by tribal customs, consequently linking the community to participate with and accept the decisions made. What the mediator achieves is to encourage an understanding of each party's opinion and to reveal shared concerns instead of mandating a resolution. In FATA, mediation is characteristically supported by community leaders or elders, who benefit from substantial knowledge of local customs and the trust of the community (Khalil, 2021).

The arbitration process involves a structured ADR framework wherein an arbitrator listens to evidence and faces off with arguments from both parties before rendering a final, implementable verdict. In the tribal context, arbitration usually takes place with an elder panel, relevant and perceived as fair, with knowledge of local customs and the law. The functions of binding arbitration ensure that the parties comply with the decision, which the community interprets as both fair and just (Sardar Omer Hassan Khan, 2023). One of the primary ways to deal with complicated disagreements, especially related to land or property, is this method because a refined result is necessary. Just like mediation, conciliation involves an extensive proactive dedication from the conciliator, who also brings possible solutions to the table. To identify the real causes of the disagreement, the conciliator partners with every party and proposes implementable solutions that meet the needs of both sides (Jan, 2020). The methodology of conciliation often resembles several other ADR strategies in FATA, producing a diverse method for conflict resolution that fulfils the specifications of each involved party. Calling ADR methods is a result of their concentration on processes for community-centered, collaborative dispute resolution. The Jirga system is valuable thanks to its skill in delivering fast justice that has cultural relevance. The main criticism levels are against potential biases and human rights challenges, particularly focused on their effects on women and minorities. Legal frameworks currently indicate that the patriarchal framework of the Jirga system can result in the perception of injustice within cases of



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gender-based violence as well as discrimination (Khan A. , 2022). The combination of traditional approaches with strict legal criteria continues to be a serious challenge in ADR integration within the former FATA region. Traditional alternate dispute resolution (ADR) procedures, including the Jirga system, provide community-conscious and readily available mechanisms for resolving conflicts, but it is important that these mechanisms satisfactorily meet essential human rights requirements and provide fair justice for every community member. Relentless projects seek to blend conventional governance frameworks with formal governance to fuse these techniques, honoring the cultural heritage of the Jirga system and raising its compatibility with national and international legal requirements. Significant importance is placed on this incorporation for growing a justice system that recognizes the multitude of cultural elements of the former FATA region and is also functional.

Efficiency and Effectiveness: ADR vs. Conventional Legal System

One of the noticeable perks of Alternative Dispute Resolution (ADR) when compared to the traditional legal process is how rapidly disputes can be resolved. There are very well known methods, which not only Pakistan uses, but it is in use all around the world. Some of the famous methods are, arbitrations, mediation, conciliation and negotiations, and many more. They are impactful, it is mentioned below:

Speed and Accessibility

In the former FATA region, this accelerated process is notably valuable because fast resolution is vital for sustaining social harmony. The skill of accessing resources effectively enhances the viewpoint that ADR is superior to the usual legal framework. In distant and tribal locations, common people find ADR processes to be more convenient to access. Using the Jirga system as a case study illustrates that it is widely a part of the local culture and easily available to the community. The Khyber Pakhtunkhwa Alternative Dispute Resolution Act of 2020 has been important in increasing access to ADR in these locales by forming Dispute Resolution Councils. (Khan S. O., 2023)

For participants in lawsuits, the issue of cost-effectiveness is a major element when selecting ADR over the usual legal framework. Methods of ADR tend to be more economical than traditional formal court processes. High levels of legal costs, along with court costs and extended litigation time, are typical in the usual legal system. A report from the International Finance Corporation (IFC) shows that commercial dispute arbitration in Pakistan costs approximately 30-40% less than equivalent processes through the country's court system (IFC, 2020). This cost reduction is especially vital for the inhabitants and small enterprises of the former FATA area, where financial means may be inadequate. Also, the unstructured design of ADR processes, especially the Jirga system, removes a lot of the expenditures tied to formal litigation. There are no court charges, and the community-focused method frequently indicates that parties need not engage in costly legal help. ADR mechanisms feature an amount of flexibility and customization that the expected legal system frequently misses. It confers on the parties the authority to decide outcomes and the opportunity to secure a resolution that appeals to both, instead of having a judge dictate a ruling.



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Flexibility of this nature is critically important in the former FATA zone since local cultures and customs dramatically affect dispute resolution (Iqbal, 2023). The Jirga system provides a malleable structure that permits solutions which the surrounding community considers both sensible and acceptable, based on its cultural framework. At a Jirga, the general tone invites the elders to think about a variety of concerns, including social relationships and the equilibrium of their community, which may be unnoticed by a formal court. The main merit of ADR lies in its ability to adapt the resolution approach to the distinctive context of every dispute (Iqbal, 2023).

Public Trust and Cultural Acceptance

Public confidence in a system and the cultural acceptance it receives play vital roles in the system's effectiveness. Trust and acceptance are very high among the local community regarding the Jirga system in the former FATA region. This is mainly due to its established ties with the Pashtunwali code and its adherence to the regional legal systems and traditions (Siegrist, 2021). The communal aspects of the Jirga system lead to the birth of some sort of ownership and legitimacy which the formal judicial structure rarely possesses. In 'tribal areas' of Pakistan, the organized legal system constantly encounters challenges in gaining the support and incorporation of a broader population. This type of legal system, as well as the identified one, could evoke skepticism from the population and refusal on its part to engage in it because the subject is undoubtedly difficult and quite obviously inaccessible (Robinson, 2020). The study conducted by the United Nations Development Program (UNDP) shows that the majority of the population in the former FATA area preferred traditional methods for resolving disputes despite being a literate population. Thus, this selection raises awareness about the key role of cultural appreciation in conflict solution methods. Comparing ADR with the support of a long-term court framework, applying the Jirga system has certain weaknesses. These features suggest that ADR is an especially suitable and timely way to address disputes in the post-FATA area. However, it is equally crucial to address the biases and human rights-related challenges existing in classic ADR systems and provide justice to each citizen in the community.

Outcome Comparison: ADR vs. Conventional Legal System

About the former Federally Administered Tribal Areas (FATA), the addition of a formal legal system in conjunction with conventional dispute resolution strategies has generated questions about each method's outcomes and efficiency. Traditional tribal communities rely on Jirgas, as well as conventional mediation and arbitration, for dispute resolution historically, along with the state's recent intention to provide statutory regulations for fair justice (Bhatti, 2023). Here, the section delivers an extensive critique of how the resulting characteristics of each system match up, especially by concentrating on how decisions are enforced, the systems' role in the resolution of ongoing conflicts, and the dynamics among communities.

Enforcement of Decisions

Enforcing judicial integrity is an essential factor of all justice systems. In ADR



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mechanisms, the traditional Jirga system in particular shows that enforcement is largely a community effort. Members of the Jirga resolve issues that the nearby tribal community feels are critical, and social pressure is the key technique for enforcing their judgments. Customs of tribes carry considerable influence, and compliance with decisions tends to be associated with the status of the individual or their group in the community (Pandya, 2023). The violation of Jirga resolutions may trigger inequalities in society, generate new financial duties, or bring extra penalties from the community. In 2018, the Human Rights Commission of Pakistan (HRCP) performed investigations that demonstrated an 85% compliance rate from Jirga's decisions, which underscored the respectful inclusion of local community norms in FATA (Melenko, 2020). The high level of compliance notwithstanding, social pressure enforcement has its constraints, particularly when disagreements include participants from outside the tribal framework or when external elements such as modernization and state actions interfere. In addition, judgements that oppose national law, particularly when addressing human rights violations, have a hard time when assessed by official legal authorities. In this regard, there is opposition to directives that address "swara" (which enables women to take part in compensation situations), and collective forms of punishment, as human rights entities may prompt public courts to dismiss their application, making their implementation troublesome. Decisions made by formal courts receive support for enforcement from the state's authority. Systems in the state made up of law enforcement, court bailiffs, and the opportunity for judicial consequences for defiance, are accountable for imposing compliance with a court order (Iqbal, 2023). This, according to theoretical models, enhances the enforceability level within formal legal frameworks. Practically speaking, the carrying out of court decisions in the former FATA region is slow and often complicated due to local opposition, inefficiencies within the administration, and inadequate infrastructure. The International Crisis Group (2019) stated that just 60% of judicial results in the recently unified areas received proper enforcement within the allotted legal timeframe, thereby indicating obstacles to the recognition of formal courts in an area with a rich customary law heritage.

Conflict Resolution and Social Harmony

Assessing Alternative Dispute Resolution (ADR) concerning the classic legal system includes valuing its contribution to sustaining conflict resolution and building a harmonious community. Many individuals like ADR methods, especially the Jirga system, due to their ability to encourage cohesion and reconciliation in dispute resolution (Tetep, 2024). Besides addressing disagreements, the purpose is to renew relationships among those in conflict. According to a 2020 survey carried out by the Institute of Peace and Conflict Studies, 70% of those in former FATA regions believed that the Jirga system was more successful at maintaining social harmony than the formal judicial system. The results of the survey showed that Jirga's decisions typically generated reconciliation characterized by apologies, settlements, and ritual signs of restoring social splits. The prioritization of social harmony in this informal system can, from time to time, compromise justice, particularly for vulnerable groups (Islam, 2020). Typically, women, minorities, and those of little social



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regard fail to profit from the benefits originating from personal choices as Jirgas mainly facilitate the requirements of prominent tribal sectors. This difference is generating worries about the successful commitment of the system to providing fairness and equality, particularly in competitions that involve vulnerable participants. The regulations of law order the formal legal system to reach justice for all, without consideration of economic or social class. The framework is impartial and reasonable due to the fact proceedings follow both established legal theories and statutory rules. The principal aim of the structured legal system usually regards individual justice, which might allow for ongoing social tensions after a rule of law has come into effect. For instance, the punitive characteristics of a lot of formal judicial rulings may intensify disputes or deepen resentment among the participants (Jan, 2020). Even though the formal normative system furnishes accountability via legal instruments, it may infrequently foster lasting reconciliation, notably in small tribal groups.

Case Studies on Dispute Resolution

Analyzing cases of dispute resolution in the former FATA region aids in improving our understanding of the results generated by ADR mechanisms when compared to the formal legal system. A land dispute between two tribes in the Khyber Agency was settled by means of a traditional Jirga. The Jirga became involved in this matter after it had festered for several years without resolving through conventional courts. The Jirga, made up of tribal elders from every, equally apportioned the land and levied fines for anyone who could violate the rules in the future (Ahmed, 2019). The tribes accepted the decision and devised a solution for the conflict that had no relation to future growth. The results of this case show how efficient the Jirga system is in dealing with disagreements when both sides agree to abide by customary law and are motivated to achieve community equilibrium. Besides that, the prompt resolution of the conflict, resolved in just a few weeks, is in marked distinction to the extensive court cases that happened in the formal legal system previously. An instance connected to a conflict about property inheritance in Bajaur was settled with the help of the formal legal system. After mediation efforts were unsuccessful, the situation that included violence among family members moved to local courts. After taking care to underscore its conformity with statutory laws, the court awarded the asset to the real heir, jumping over the local rituals that followed the standard patriarchal view of inheritance (Ahmed, 2019). The judgment, which was built strongly on the law and obeyed national inheritance laws, prompted considerable anger among family members and the wider community, with a number choosing not to accept the court's decision. An example is shown that emphasizes the truth that, even if we preserve existing legal principles, the regular legal system may find it challenging to support social reconciliation, especially when it ignores local customs.

Complementarity of ADR and Conventional Legal Systems

In areas dealing with resource deficiencies, such as the former Federally Administered Tribal Areas (FATA) of Pakistan, Alternative Dispute Resolution (ADR) can remarkably enhance and enrich the standard legal system. Methods of ADR such as mediation, arbitration, and conciliation provide fast, cheap, and



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culturally fitting means for dispute resolution, which can help take some pressure off formal courts. Areas characterized by weak resources tend to have serious problems within their formal legal systems, often because of insufficient infrastructure, a lack of judicial resources, and cases that may take a long time to resolve (Council, 2018). There lies the potential of ADR to reduce these challenges by supplementing more methods of solving disputes. One of them is the illustration that through the power of mediated or arbitrated disputes, one can sort out a disagreement within less time as compared to normal judicial procedures. According to the World Bank, the cases relating to arbitration in Pakistan are known to be settled within six months maximum (Report, 2017). For the sake of social stability and economic performance, areas which are in the middle of lengthy disputes require this level of speed. Local people tend to find the ADR processes more achievable. The key system of the ADR in the former FATA is the Jirga system, which is strongly embedded in the local culture and can still be easily accessed by the population. Areas needing formal legal institutions to be accessible faced serious importance.

Hybrid Models of Justice

Through this approach, ADV processes are aligned with national legal practices while respecting local cultural norms. A hybrid model is demonstrated using community mediation centers combined with formal courts. While centers might focus their activities on straightforward issues such as family disagreements and fundamental civil disputes, the more involved cases will still go to the formal court system. Supporting the formal justice system in concentrating on key cases, division of labor enhances case congestion and raises system productivity. According to research from the United Nations Development Program (UNDP), mediation centers functioning in Pakistani communities have adeptly settled a substantial number of conflicts, which has reduced the burden on formal courts. The hybrid models may additionally increase public confidence and the cultural acceptance of the justice domain (Ullah, 2021). These models can strengthen their position by adopting traditional ADR methods that already have trust and legitimacy in local dispute resolution. In this case, the process confirms that the resolutions are both just and secure basic human rights. This proportionality is important in places like the former FATA, at the point where cultural practices and state laws meet. There's a possibility that hybrid models could spark exchange of knowledge and capacity building between practitioners in traditional and formal law. We can develop skills for local mediators and community elders through training programs and workshops, thereby guaranteeing they know both old protocols and the laws officially recognized. The overlap of ADR strategies with traditional legal frameworks provides a reliable framework for reaching justice in impoverished areas such as the former FATA (Noone, 2020). A model combining regular legal frameworks with ADR solutions creates straightforward, cheap, and effective resolutions for conflicts. These frameworks increase both the range and effectiveness of the justice system, build public trust, and also make certain that solutions are consistent with basic human rights.



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Which System Is Better Suited for Dispute Resolution in Former FATA?

Strengths and Weaknesses of ADR

| Strengths | Weaknesses |
|--|--|
| Cultural Relevance: ADR methods like the Jirga system are deeply rooted in local traditions and are culturally accepted by the community (IFC, 2020). | Potential Bias: Traditional ADR methods can be biased, particularly against women and minorities. |
| Speed: ADR processes are generally faster than formal court proceedings, providing swift resolutions. | Lack of Formal Training: Mediators and arbitrators in traditional ADR systems may lack formal legal training (Jan, 2020). |
| Cost-Effective: ADR is usually less expensive than formal litigation, making it accessible to more people. | Enforceability Issues: Decisions made through ADR may lack the enforceability of formal court judgments. |
| Community Involvement: ADR encourages community participation and consensus-building. | Human Rights Concerns: Some ADR practices may violate international human rights standards. |

Strengths and Weaknesses of the Formal Legal System

| Strengths | Weaknesses |
|--|---|
| Legal Certainty: Formal legal systems provide clear, enforceable judgments based on established laws. | Complexity: The formal legal system can be complex and difficult to navigate for laypersons. |
| Impartiality: Judges in the formal legal system are trained to be impartial and base their decisions on evidence and law. | Costly: Legal fees and court costs can be prohibitively expensive for many people (Noone, 2020). |
| Human Rights Protection: The formal legal system is designed to protect fundamental human rights (Pandya, 2023). | Time-Consuming: Court cases can take years to resolve, leading to prolonged disputes. |
| Appeal Mechanism: The formal legal system provides mechanisms for appealing decisions. | Limited Accessibility: Courts may be geographically distant and less accessible to people in remote areas. |

Best-Suited Approach for Former FATA

The evaluation of whether ADR, the traditional legal system, or a combination of



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the two—is best for dispute resolution in the former FATA region necessitates attention to the special socio-cultural and economic environment of the location.

ADR's Strengths

Within the former FATA, the cultural framework is richly embedded with the Jirga system, which is part of ADR mechanisms. They supply quick, economical, and culturally understanding solutions to disputes, which are critically important in a locality without a judicial system. The approach of ADR that is driven by the community promotes social cohesion and validates that resolutions gain acceptance and respect from the local community. (Council, 2018)

Formal Legal System's Strengths

The official legal system ensures legal assurance, defends equality, and protects human rights through the concept of difference. The principle behind both protecting personal rights and honoring the rule of law rests in knowing that decisions are actionable, and a method of appealing is present. Yet, the high levels of complexity, cost, and long duration of formal litigation can create serious obstacles for a great many people in the ex-FATA.

Hybrid Approach

Integrating alternative dispute resolution with formal legal procedures results in a hopeful solution. This model is equally capable of getting the best out of both frameworks while at the same time eliminating all the vices that are associated with them. For instance, the Khyber Pakhtunkhwa (KP) province in Pakistan passed its own ADR bill in 2020 to establish Dispute Resolution Councils (DRCs) that can connect conventional informal ADR with formal structures. Such an approach ensures that solutions developed are culturally relevant and affordable but at the same time legally realistic and only implementable (Ahmed, 2019). Perhaps the regional situation of the former FATA has the best result with this hybrid approach to addressing disputes in consideration of the existing socio-cultural reality. This framework is capable of providing the flexibility and rapidity of ADR, and solidity in law, neutrality and recognition of human rights which stem from the confirmed legal system tradition. Therefore, the application of conventional and a formal justice system in interrelated cycles might provide a whole and efficient solution model for the FATA area.

Conclusion

Inefficiency, outcomes, and generalized applicability of ADR techniques opposed to the conventional legal system in the newly merged FATA region, this chapter compared the viability of employing both forms in the resolution of conflicts. ADR demonstrated that it was the traditional Jirga system that was far more effective, cheaper and culturally suitable, that was quicker in offering solutions and that aided in sustaining social cohesion. Alternatively, the systematic legal framework, even though it generates decisions that are both legal and enforceable, often lacks efficiency, is much more expensive, and is ineffectual in motivating social cohesion. The analyses of the case studies showed that both systems featured unique strengths and weaknesses, proposing that a mixed model which brings together the flexibility of ADR with the legal accountability of formal courts could be the best option for dispute resolution in that sector.



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When it comes to accessibility, time saving, cultural resonance, cost effectiveness the best option that people of these region would prefer is ADR system. It is somehow different from the conventional system as well as Jirga syste, because there is always a saliseen committee who would be directly regularized un the writ of the government and they would never pass any decision that would be inhumane or against the humanity, it will be in favour of strong human advocacy. A mixed approach would be better option for the people of this region and it could be best served by the ADR act and the methods and process mentioned over there. Its like the integration of two approach, two systems and making one society indulged into the other.

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