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## Evaluating the Impact of ADR Mechanism in Reducing the Backlog of Civil Disputes on Judiciary

Fozia Naseem<sup>1</sup>

Aas Muhammad<sup>2</sup>

Muhammad Adnan Aziz<sup>3</sup>

Yasir Aleem<sup>4</sup>

<sup>1</sup> Assistant Professor, College of Law, Government College University Faisalabad. Email: [fozianaseem@gcuf.edu.pk](mailto:fozianaseem@gcuf.edu.pk)

<sup>2</sup> Assistant Professor: The Department of Law, The Islamia University of Bahawalpur. Email: [aas.muhammad@iub.edu.pk](mailto:aas.muhammad@iub.edu.pk)

<sup>3</sup> Lecturer, Department of Law, The Islamia University of Bahawalpur. Email: [adnan.aziz@iub.edu.pk](mailto:adnan.aziz@iub.edu.pk)

<sup>4</sup> Chairperson, Department of Law, University of Sargodha. Email: [Yasir.aleem@uos.edu.pk](mailto:Yasir.aleem@uos.edu.pk)

### ABSTRACT

In Pakistan, the concept of access to justice exists only as delayed justice which is a denied justice. However, the Constitution of Pakistan 1973 emphasises the promotion of accessible justice to all citizens, which means there must be a smooth channel for the sake of justice to aggrieved seekers. On the contrary, it has been observed through years of practice that the legal system is overburdened with proceedings and litigation. Due to this, the scenario of delayed justice is arising and the alternate dispute resolution ADR is becoming the need of an hour. ADR presents a feasible means to speed the resolution of disputes, improve the strain on traditional court systems, and enhance the availability of alternative modes of resolving conflicts for individuals within a legal system characterised by a backlog, delays, and restricted access to justice. The study seeks to identify the deficiencies that obstruct the fulfilment of ADR capabilities through an examination of the current legal framework and the available mechanisms to tackle such challenges. The study's primary objective is to assess how ADR methods such as negotiation, mediation, arbitration, and conciliation have gained attention for offering a faster, cost-effective, and adaptable approach to resolving conflicts compared to traditional litigation. The outcomes of this research will contribute to the existing knowledge on ADR in Pakistan, offering practical insights for policymakers and legal professionals. In the end, this study deliberates some recommendations for the revival of justice by the successful implementation of ADR in Pakistan.



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Corresponding Author's Email: [Yasir.aleem@uos.edu.pk](mailto:Yasir.aleem@uos.edu.pk)



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## 1. Introduction

Alternate Dispute Resolution (ADR) is an alternative parallel system to adjudicate the conflicts between parties in formal as well as informal systems (Menkel-Meadow, 2015). Instead of depending on agnostic litigation, ADR emphasizes collaboration, communication, and the promotion of amicable agreements. Courtroom disputes are typically settled in a win-lose manner that may not completely serve the requirements and interests of the parties involved. ADR, on the other hand, provides a more adaptable, effective, and economical method of resolving disputes between aspiring litigants. However, historically speaking the ADR mechanism isn't new to the sub-continent (Amjad, 2016). Before the British rule in the sub-continent, the most reliable and convenient method of resolving issues between the disputing parties was ADR which typically includes Jirgas and Panchayat, especially in tribal areas. Since independence, the practice of such kind of ADR has been notable however, with the advancement in the legal system and loopholes in such kind of activities it eventually, received negative attention from the media, stakeholders of legal authorities and the elite society of state (Nazir et al., 2024).

In today's modern system of law and order, we may categorise the ADR mechanism into two distinctive heads; formal ADR and informal ADR. Formal ADR means the system of alternate dispute resolution which is widely accepted and recognized by law and includes: negotiation, mediation, arbitration, conciliation and summary trials. On the contrary, the informal ADR refers to the system of dispute resolution which hasn't yet been recognized by law and isn't widely accepted. For such kind of ADR, we usually observe a lack of facilitation, concern and positive approach by state and legal authorities. It simply includes the Panchayat and Jirgas, etc (Ali et al., 2019). Since the subject of ADR gained much attention and its need has highly emerged, the concept of arbitration and mediation through the channel of Panchayat and Jirgas hasn't been accepted on multiple grounds as it has been perceived as a violation of human rights, not recognized by law and is inadequate to fulfil the requirements of justice as well as law and order (Amjad, 2016). Therefore, the recognized, legally enforced and commonly adopted modes of ADR are negotiation, mediation, arbitration, conciliation, pretrial court settlement or compromise and summary trials.

### 1.1 Research Questions

This paper will attempt to answer the following questions:

1. What prescribed mechanism of Alternative dispute resolution (ADR) is available in Pakistan?
2. How it may impact to reduction of the burden of civil cases on the judiciary of Pakistan?
3. What are the challenges or limitations of its implementation?

### 1.2 Research Methodology

Since Alternate dispute resolution relates to the subjective matter of legal concerns it is necessary to make analyses of data, facts figures and notes with a broader spectrum. Therefore, the research methodology which has been taken for the sake of writing this paper is qualitative and a particular narrative has been established as to the role of ADR in reducing the backlog of cases. For this purpose, secondary data such as academic journals, published research articles, data cited on websites and real-time observations have been investigated. Moreover, this research topic is of a pure doctrinal kind for that purpose, studies of multiple statutes, legal research and articles have been reviewed.

### 1.3 Research Objective

The primary objectives of writing this paper are the following:

1. To highlight the need to incorporate ADR as a tool for combat the backlog of civil disputes.
2. To introduce the ADR as a gateway to align with the modern litigation system.
3. To lay out the significance of ADR to complement the traditional legal system more efficiently.

4. Moreover, to provide information on alternate dispute resolution for educational purposes. And to provide recommendations on how ADR may be improved to grant access to speedy justice.

## **2. Mechanism of ADR available in Pakistan**

The ADR mechanism typically involves modes which provide less formal, flexible and faster services for settling disputes and fulfilling contractual obligations, etc. The following are the mechanisms:

### **2.1 Negotiation**

Negotiation is a mode of ADR which involves the process of discussion and communication between two or more parties to resolve a dispute or to fulfil an agreement (Hassan et al., 2020). It typically involves identifying the common interest of parties on which compromise may be made to fulfil the satisfaction of all disputing parties.

### **2.2 Mediation**

It is a process through which the disputing parties may seek guidance and suggestions through third neutral party to resolve the disputes. It usually involves a third neutral party who suggests the opposing parties to a resolution. The decisions or suggestions of such third parties aren't binding on the disputing aspirants, rather they portray a clear image of their conflict and unbiased decision on it. When disputing parties become unable to find their solution through negotiation, mediation is a good option to go with.

### **2.3 Arbitration**

Arbitration is the method of resolving disputes between parties, outside the court settlement, by appointing the arbitrator/s or umpire by parties or the court itself. The court may on the opinion of the parties by itself refer the case to arbitration (Hassan et al., 2020). Therefore, the decision of the arbitrator is binding on the parties which is known as the award of the arbitrator lastly, it is passed in the form of a decree from the court, if all the participating parties agree with it. In Pakistan, such a process is recognized under The Arbitration Act of 1940.

### **2.4 Conciliation**

It is a flexible way of ADR in which disputing parties resolve their conflicts with the aid of conciliator/s. These conciliators are supposed to provide legal advise to the parties and to provide aid to resolution. A conciliator is more proactive in pursuing the dispute of parties and providing them with reasonable opinions.

### **2.5 Summery Trials**

The summary trail isn't, however, a mode of ADR, yet it aims to provide a more efficient and speedy remedy to the aggrieved parties. With features of quickly adopted procedure, faster decision making and aiming to resolve without a full-blown court trial, make it as beneficial as ADR.

## **3. Laws Related to ADR**

This part of the paper provides the legislative measures which have been taken so far for the implementation of ADR, the role of judiciary and institutional support on its practicality, moreover, the role of the Alternate dispute resolution committee ADRC and the online ADR services.

- The Arbitration Act, 1940

- Punjab Alternate Dispute Resolution Act, 2019
- KPK Alternate Dispute Resolution Act, 2020
- Section 89-A of the Code of Civil Procedure, 1908
- Code of Criminal Procedure, 1898
- Small claims and minor offences courts Ordinance, 2002
- Muslim Family Law Ordinance, 1961 and Family Courts Act, 1964
- Federal and Provincial Ombudsman Offices
- The Punjab Local Government Act, 2013
- ADR under Tax and Labour laws

### 3.1 Role of Judiciary in promoting ADR

Pakistani courts have recognized the benefits of ADR and mediation also have actively taken steps to promote their use. They understand the need to reduce the burden on the courts and provide efficient and accessible dispute-resolution mechanisms. According to the report of the Law and Justice Commission of Pakistan, released in February 2024, showed the statistics of pending cases in Pakistan was 2.26 million (of 1.86 million pending cases at the district judiciary level while 0.39 million cases at the upper judiciary level including the High Court, FSC and Supreme Court) (Ali et al., 2019). To combat such an emerging tsunami of cases, one of the key initiatives taken by the courts is the establishment of dedicated mediation cells or centres to provide alternate channels to deal with public concerns. These cells are staffed by trained mediators who facilitate the mediation process and guide parties towards resolving their disputes amicably. These cells are often set up within the court premises, making it convenient for litigants to access mediation services. In addition to establishing mediation cells, Pakistani courts have also incorporated mediation into their legal framework (Awais et al., 2018). The Code of Civil Procedure, for instance, provides for court-annexed mediation, allowing judges to refer cases to mediation before proceeding with formal court trials. This approach encourages parties to explore mediation as a first step in dispute resolution, thereby reducing the burden on the courts and promoting efficient case management (Nazir et al., 2024).

### 3.2 Establishment of ADR centres in Pakistan

ADR centres are those centres where the parties tend to seek resolution of their disputes through negotiation and mediation. Such centres are of high importance to combat the backlog of cases. In the modern portrait of the world, no country is left without the intervention of ADR in its legal system. Pakistan's first-ever ADR centre was established in Karachi in February 2007, with the collaboration of the Sindh High Court and the International Finance Commission (Khan et al., 2023). A dispute resolution Organization was established which is named as "National Center for Dispute Resolution" NCDR. Courts can refer the cases to it as mentioned in its charter and because of the reason that it was established to reduce the backlog of cases in the judiciary. NCDR entertains a variety of cases including family disputes, landlord and tenant disputes, labour disputes and contractual disputes.

In Punjab "ADR Implementation and Liaison Center" has been established in Lahore HC under the supervision of its director general for implementation of ADR. In Sindh, three court-annexed mediation centres have been established at HC of Sindh. Moreover, two organizations named "Legal Aid Society & Institute of Business Administration" as accredited mediation centres have been established by HC. In KPK, there has been a "Saliseen committee" established in twenty districts. In Balochistan, the HC of Balochistan has issued the SOPs of the ADR mechanism (Khan et al., 2023). Another ADR centre is also working in the Lahore Chamber of Commerce. It is on the same working pattern as NCDR, however, isn't associated with the Lahore High Court. In the KPK judicial academy, there has also an ADR centre has been established for providing mediation to disputing parties (Khan & Khan et al., 2023). Likewise,

several ADR centres are working in Pakistan to provide an amicable mode of justice, especially in Punjab. In today's era, there is almost no district left where the ADR centres haven't been established, where designated judicial officers are working as Mediators and Conciliators.

### 3.3 Alternate Dispute Resolution Committee ADRC

The ADRC is an established authority in Pakistan under the supervision of the Chief Justice of Pakistan. The primary purpose of establishing such a committee was to ensure the dispensation of justice to all citizens by reducing the burden of pending cases on the overall judicial hierarchy of Pakistan. Therefore, it supervises the framework of the legal mechanism of ADR in Pakistan. The need for such a committee emerged with the emerging need for an ADR mechanism to be implemented in Pakistan (Khan & Khan et al., 2023). To pursue the modern legal system in comparison with international trends, a proposal for the implementation of the ADR mechanism was approved by CJP, hence, the ADRC was formed. They're contributing to establishing the ADR centres annexed to the courtroom, and promoting ADR campaigns, awareness seminars, also a collaboration with public and private institutions for the promotion of ADR practices. As far as its composition is concerned, Justice Mansoor Ali Shah is the current Chairman of the committee while Justice Aisha Malik and Shahid Waheed are two members of the committee. Till now the committee has been successful in establishing the ADR centres in Punjab including the capital territory, Sindh, KPK, and Balochistan, as well as the legislative framework for the promotion of ADR. Moreover, with the contribution of such a committee, the Ministry of Law and Justice has notified the ADR centre and the Federal Judicial Academy has been conducting the workshop for the training of ADR staff members Khan et al., 2023).

### 3.4 Online ADR Service

Online ADR services which are called ODR (online dispute resolution) are a modern portrait of ADR, aiming to provide the remedy and redress the conflicts using internet facilities. ODR left no excuse for not choosing the platform while it is available on your door. It can provide dispute settlement services without any formal requirement of filing private complaints. There must be some features to be fulfilled to operate ODR, that it must be part of the judicial institution not of a private ADR centre and secondly the ODR must provide services only to aspiring litigants, the purpose must be to serve citizens, not judicial staff or any legal authority (Awais et al., 2018). The mode of ODR may effectively be utilized to file new cases to combat the burden on the judiciary. This platform is the need of the hour, while looking at the backlog and burden of cases on the judiciary, the ODR seems will not only reduce the burden but also will modify the channel of legal approach to provide amicable settlement of disputes. Such services although aren't available in Pakistan currently, however, in future, seem to step in Pakistan to make the way of justice more smooth and approachable to every citizen.

### 3.5 Cases which may referred for ADR (In Punjab)

By schedule I and II of Punjab Alternate Dispute Resolution, the following cases are normally considered to be suitable for the ADR process namely;

- Land and property disputes
- Contractual disputes
- Pre-emption cases
- Dispute between landlord and tenant
- Commercial disputes
- Companies and banking matters
- Insurance disputes
- Personal injury/defamation suits
- Negotiable instruments

- Suits for specific performance
- Suits for compensation and damages
- Disputes related to mortgage
- Trademark disputes
- Dispute for recovery of moveable property
- Dispute related to accounts in joint business
- Suits related to mesne profit
- Suits for partition
- Suits to remove nuisance

#### **4. Discussion**

Pakistan's judicial system is currently facing a backlog of cases especially in the civil domain. It demonstrates the pathetic portrait of the judicial sector. After the partition of British India in 1947, Pakistan inherited a judicial framework that was influenced by English common law (Saeed, 2020). The country adopted an adversarial legal system, wherein disputing parties presented their cases through legal representatives, and judicial officers were responsible for determining the truth and passing judgment (Khan & Khan, 2023). Comprehensive civil and criminal procedure codes were enacted, incorporating numerous safeguards aimed at preventing miscarriages of justice. Nevertheless, this system became ineffective in the face of escalating litigation and a rapidly growing population. Until 1975, the number of cases filed and pending was relatively low, but over the past thirty years, there has been a dramatic increase in both litigation and backlog. Some of the ground reasons behind such a backlog of cases especially in civil litigation are so concerned with practical observation as follows:

- There is so much rush of already filed cases that the date of adjournment for hearing of cases remains due to almost 20-25 days or more.
- With such annoying conditions, a bundle of new cases are filed daily.
- The procedure followed for the prosecution of the case is not of modern requirement, there is a lack of modern technology. That is why, it is time-consuming too.
- One of the leading root causes is the transfer of cases and the transfer of judicial officers. Such a rule was primarily adopted for the transparency of the system, yet this scenario breaks the rhythmic flow of the case and makes its nature complex to solve.
- Another root cause is that strikes and protests on account of lawyers have been recorded. Due to such strikes, judicial activities become disabled and exempted to poor justice-seeking parties.
- Moreover, in civil cases, it has been observed that often opposing parties make the situation vulnerable to the others, by not appearing duly in court proceedings and when the proceedings are held ex parte against them. They apply to set off such proceedings. This scenario makes the litigation so much more annoying and causes a waste of time.
- Lastly, the outdated laws don't compete with modern conflicts of citizens which makes the litigation absurd to follow. Therefore, conclusively we can say that the typical system of litigation needs a break.

#### **4.1 Findings**

ADR being the most effective, cost-friendly, and widely adopted system complements such traditional litigation in many ways. In Pakistani society, it is already operating in the form of informal modes like the *Panchayat and Jirga* systems. Although it isn't regulated by law, however, a formal ADR has been

recognized and promoted by legal authorities such as ADR committees, judicial platforms and legislative assemblies as well. Unlike the complex system of litigation ADR provides a faster resolution of disputes with a flexible mode. ADR Mechanisms refer to dispute resolution processes in which the parties resort to neutral established forums such as mediation centres which help them to resolve their disputes in less formal and more consensual ways. ADR is efficient in terms of both time and money, allowing parties to avoid highly expensive and lengthy court trials (Deffains et al., 2017). They facilitate parties in achieving mutually agreeable solutions. For instance, mediation is an informal process that eliminates the need for discovery, pleadings, motions, formal procedures, hearings, or evidentiary rules. Likewise, arbitration is a process that varies from being very informal, cost-effective, and quick to one that can become costly, time-consuming, and bureaucratic.

ADRS offer a fast and more affordable way to resolve disputes compared to court litigation while ensuring a high level of privacy for the parties involved. These methods are preferred since they encourage greater involvement from the disputants. The involvement of attorneys, judges, and the legal system is minimized, which contributes to lowering the overall costs of the proceedings. The satisfaction of the aspiring litigants is increased with the outcome as they get for which they have gone after assessing their advantages and disadvantages. ADR is based on an integrative approach. The approach of parties is more cooperative and less competitive as compared to traditional litigation. Mostly, the parties in ADR end up in improved relationships and less escalation (Deffains et al., 2017). Above all, the confidentiality of the whole procedure is of great value in commercial, private and family matters, overall covering the domain of civil suits.

According to a survey conducted by Pakistan Law College, Lahore as reported in the article of “Justice Tassaduq Hussain Jilani” 70% of lawyers, 60% of litigants and 100% of judges are in favour of ADR can reduce the backlog of cases more effectively. Moreover, Justice Mansoor Ali Shah of the Supreme Court the chairperson of the ADR committee emphasised the importance of ADR in a press conference, as reported in a Dawn news article on 25<sup>th</sup> September 2024 (ATTAULLAH & SAQIB, 2016). while uttering the words that “*ADR is the only solution to raising litigation and pendency of cases.*” His narrative has also highlighted the emerging need to shift to the ADR. Also, the recent initiatives by legislative authorities and judicial platforms are playing an important role in the incorporation of ADR. Summarizing the whole narrative, ADR compliments the traditional litigation in the following manners:

- It reduces the burden of cases from courts.
- It provides faster resolution of conflicts as compared to judicial settlement.
- It is time and cost-effective, which makes the dream of cheap justice true.
- It is a flexible forum to settle the conflicts which doesn't formally require hiring of attorneys, paying the handsome fees, and following up the exhausted system of proceedings.
- Overall, it enhances access to justice and provides parties with multiple options.

### 4.3 Issues and Challenges

In the light of above discussion, it is apparent that the ADR mechanism is available in several laws of the country but their exercise is not encouraging due to multiple observations and reasons. The analysis reveals that there are several issues and challenges behind the poor practice of ADR in our society which may include the following:

- Lack of quality control authority
- Political influence (which may be used against the vulnerable)
- Lack of ethical rules and code of conduct
- Lack of awareness and knowledge of litigants
- Limited role of ADR such as; advisory or re-commendatory

- Non-binding nature of the ADR mechanism which creates the hurdles in enforce-ability of decisions of mediators or arbitrators
- Lack of integration with the formal existing legal system; such as advocates.
- Inconsistency of outcomes due to lack of interest of litigants and non-availability of precedents
- Unregulated or inconsistent training and selection of ADR staff members
- Lack of collaboration of public and private institutions and modern technology

The role of arbitration remained limited despite the legal provisions found in various substantive laws of the country. Along with the judiciary's lack of tactfulness, there are some inherent flaws in these laws. Such as The Arbitration Act of 1940 limited the court's ability to refer a case to arbitration. Without an agreement between the parties, the courts were left with no choice but to make adjudications. Additionally, this law permitted courts to interfere at every stage of the arbitration process (Horton, 2018). Moreover, it did not prevent parties from bringing disputes before the courts and even allowed for the challenging of awards of arbitrators on multiple grounds, including the merits of the award. Moreover, under the Customs Act if a matter is referred to the ADR committee for dispute settlement then its role, according to the act, is merely re-commendatory and the ultimate decision-making is made by a central board of revenue. ADR committee is constituted under section 195-C of the Customs Act to which parties involved may refer their dispute and after interacting with parties the said committee sends the recommendations to CBR and the board of revenue is subjected to decide it, being administrative authority (Khan & Mumtaz, 2020). Such kind of issues need to be addressed if the newly added provisions in law are not titled to a mere symbolic reflection of the new modes of dispute settlement, lacking in effectiveness.

## **5. Conclusion**

Alternate Dispute Resolution (ADR) is an amicable settlement of disputes and is not only an alternative to litigation but also a support to the legal system or collateral system working side by side with litigation. The Constitution of the Islamic Republic of Pakistan under Article 37 is mandated to ensure less expensive and expeditious justice. The ADR is also in line with Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. The use of ADR is one of the excellent feasible options to remedy disputes expeditiously and restore the confidence of the humans inside the judicial system. Summarizing the above discussion of the legal landscape relating to the ADR mechanism and its role in reducing the backlog of cases in the judiciary, it is found that several laws provide for ADR that need to be incorporated into the legal system. This raises the need for ADR to step in and make the delivery of justice smooth. The time requires that the legal actors, including judges, magistrates, lawyers and court personnel be trained in ADR methods for effective outcomes of the system. Sensitization of the litigant public is also relevant so that the consent of parties to adopt the ADR methods can be obtained freely and widely. Although Pakistan has no mandatory requirement for pretrial use of ADR in civil cases, the “open-ended” provisions of the CPC give ample opportunity to the courts and parties to consider the option of using ADR methods before the start of formal trial.

Moreover, the ADR can help to reduce the burden on the court system, leading to a more efficient and effective delivery of justice. It can also help to build trust and confidence in the legal system, as parties involved in disputes can feel more empowered and in control of the process. The study of ADR in Pakistan lies in its potential to offer more efficient, cost-effective, and customized solutions for dispute resolution, leading to the more efficient and effective delivery of justice and building trust in the legal system. As ADR continues to gain popularity, legal professionals are finding themselves at the forefront of this movement. The role of legal professionals as ADR facilitators is worth considering. More research on Alternate Dispute Resolution techniques is needed to support judicial reform related to ADR, reduce power imbalances between parties, and overcome differential norms between disputes.



## **6. Recommendations**

1. To promote ADR as a reliable and accessible option, governments and private organizations with their collaboration can establish dedicated ADR centres. These centres would serve as hubs for information, training, and facilitation of ADR services.
2. To overcome the enforceability challenge, judicial platforms must develop mechanisms for recognizing and enforcing ADR outcomes. This might involve granting ADR decisions a certain level of legal authority, allowing parties to seek court enforcement if necessary, however, the priority must be served to ADR.
3. Technology can play a vital role in ADR by enabling online dispute resolution (ODR). Online platforms can serve with 24/7 communication, document sharing, virtual hearings, and virtual assistance making ADR processes more accessible and efficient, especially for parties residing in different geographical locations.
4. To address the issue of inadequate training and expertise of ADR staff members, there should be a push for standardized and comprehensive training programs and counselling sessions for legal professionals, mediators, arbitrators, and other ADR practitioners.
5. By introducing the basic concept of mediation and conflict resolution education in schools and communities, societies can promote a culture of peaceful dispute resolution from an early age. This can lead to a greater acceptance of ADR methods and inspire the community to promote non-adversarial approaches when conflicts arise.
6. Governments and legal authorities may offer incentives for parties to choose ADR over litigation. These incentives might include reduced court fees, faster resolution timelines, or tax benefits for opting for ADR methods especially in civil cases where finance disputes are included.
7. Development of comprehensive guidelines and best practices for various ADR processes can help ensure consistency and quality in ADR outcomes. These guidelines must cover procedural aspects, ethical considerations, communication strategies, and most important the ways to address power imbalances.
8. ADR practitioners and institutions can collaborate with modern technology providers to develop user-friendly ADR platforms that may offer a smooth and efficient experience for all parties involved.
9. Continuous research and development efforts in the field of ADR can lead to the evolution of more effective and innovative dispute resolution techniques. This includes exploring hybrid ADR models that combine elements of different methods to address specific challenges.
10. Governments, legal associations, leading private companies and NGOs can initiate public awareness campaigns to educate individuals and organizations about the benefits of ADR. These campaigns can rib myths, share success stories, and emphasize how ADR methods can save time, and energy and overcome the burden of pendency of cases from the judiciary.

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