

AN ANALYSIS OF DISPUTE RESOLUTION COUNCIL

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Abstract

The current study deals with an exploratory investigation of the Dispute Resolution Council Mardan. It aims to examine the mechanism and challenges to dispute resolution and its effectiveness in dealing familial cases. The theoretical underpinning for this study is Structural Violence proposed by John Galtung which assumes that violence is rooted in the cultural processes and becomes the violence when occurred in the structure of the society. Keeping in view the literature gap and the theoretical underpinning, the researchers embarked on the path of investigating the effectiveness of Dispute Resolution Council Mardan. Based on the qualitative research design, the researchers interviewed 15 cases and reached the saturation point on the note that the Dispute Resolution Council was relatively less effective in tackling familial disputes. It was, nevertheless, found that the monetary and civil disputes were more effectively tackled by the Dispute Resolution Council than that of familial ones. It is suggested on the part of the researchers that the Dispute Resolution Council should have an expert in theological studies so as to tackle familial cases more effectively than it presently does.

Keywords: Dispute Resolution Council, Familial Disputes, Civil Disputes

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Introduction

Pakistan is an Islamic state where peoples of different religions and different ethnic groups live. Constitutionally every individual has equal rights. Maintaining a cooperative environment becomes a difficult task because conflicts are intrinsic within society's structure. Dispute resolution council is the system where disputes are resolved it is based on dynamic engagement amongst the victimized subject and the offender as well as the community for hunt of re-conciliation by adapting a fair approach tending to the needs of the three by a process that ensures security and dignity of Masses. The tradition of Jirga has been practiced for a long while and it has great importance in resolving conflicts, but the recent terror and war has not only demolished the peace but also has an impact on this tradition as well. The concept of alternative dispute resolution is available in almost all the four major cultures of Pakistan. "Parya" and "Panchayats" The caste and village level arbitration councils are too much efficient and effective in rural settings (Ahmad, 2013). There are some forms of ADR observed all through the Asia irrespective of the vulnerable the past of arbitration in Thailand Thais don't really acknowledge the concept of resolving dispute through arbitration opting beside the old form of mediation. (Winckless, M. L. 2004).

Issues are sorted out in alternative dispute resolution without litigation. ADR is the abbreviation. Arbitration and mediation are the two forms of ADR. Alternative dispute resolution, or ADR, is an informal way to settle a disagreement. People can negotiate, or work with a mediator or arbitrator. Mediation, arbitration, and negotiation are different types of ADR. In familial cases no one can be forced to opt one of them (Bear, L. S. 1992).

The concept of alternative dispute resolution is available in almost all the four major cultures of Pakistan. The caste and village level arbitration councils called “Parya” and “Punchayats” are very much operational and functional in rural areas. The vital role of caste played in the overall cultural set up can also be seen in the urban settings. People in the country are more assured about their caste memberships as it obliges many resolves reaching from pool for matrimonial associations, resettlements of inter-caste conflicts, making a nexus of social linkages for spreading the web of social collaboration and as a source of credits and demanding a social esteem liked by a specific caste in Punjabi culture. (Ahmad 2013). In Pakistan and Afghanistan, the ethnic authority structure has orthodoxly occupied the vacuum left by the nonexistence of state. It may be that tribalism today is more as a plan of social struggle to state switch that as a culture based on kinship (Rubin 1995).

2.Theoretical framework

The problems are rooted in the culture of a society that influence the structure and becomes direct violence. To explain the direct structural violence the cultural violence should be recognized. As Galtung theory suggests Galtung states that violence is rooted in the culture of society he goes further and narrates that since personal and direct violence are often built into social structure it is much important to have holistic picture revealed by structural violence and conditions for peace. Thus, the dispute is rooted in the in the culture of a social system that goes to structure and become direct violence (Galtung, 2013). Therefore, the researcher wants to see some cultural roots in various disputes and how these cases are resolved at Dispute Resolution council.

3. Review

It is observed that in traditional societies all parts of the world have featured varieties in mediation and arbitration. Western cultures saw these practices included by the growth of current judiciaries. The increased complication of these processes, however, saw reduced satisfaction with legal outcomes between parties, leading to a renaissance of ADR in the 1970s in many parts of the world. (U.N2007). Authorities are in search for the support of international trade there is general desire between the parties to global contracts and wants to have a balance and reliable approach to dispute resolution council there has been an unexpected influence on international arbitration law and practice (Howell, D. J. 2006). With the increasing matters of disagreement and litigated matters involving in Indian jurisdiction arising a common questions that comes up with each relating issue and at the end each issue relates to the enforcement and implementation of overseas judgments and foreign arbitration awards in Indian soil. (Malhotra, R. 2006).

Different approaches are adopted to resolve conflicts around the Asia despite of the history of arbitration in Thailand Thais businessmen do not accept the concept of resolving dispute through arbitration contrary to traditional form of mediation. (Winckless, M. L. 2004).

Various mechanisms are used in A.D.R However mediation is now an important part of most situations of agreements by the government of the Hong Kong Special administration Region. The earlier ten years witnessed the combination of more and more complex dispute-resolution clauses in building contracts, typically involving several alternative dispute resolutions (ADR) techniques and arbitration arranged in chronological tiers. (Cheung, 2002). Freelance practices of mediation are not fully

developed in Canada, but that private sector mediation institutes have been growing in recent years. (Nesic, Boulle, 2001).

4. Methodology

The study employed Qualitative Research Methodology for knowing and unraveling the process effectiveness of Dispute resolution council the study was qualitative, so the sample size was comparatively small. Purposive sampling strategy was adopted by the researcher for reaching the potential respondents. Interview guide was employed in order to collect data the researcher tried to write responses, but it was too hard to write full responses in short time that is the researcher took the permission of the respondents to record voices and transcribed it later. Data was collected from fifteen respondents including dispute resolution council members. The data was thematically analyzed soon after collection in the field.

5. Results and Discussion

The study revealed that there are no formal criteria for the selection of a member, the researcher was briefed that the members are selected by I.G and D.I.G and even they do not know it. Other members of the panel briefed the researchers that there are no criteria's for selecting the members, but they just look to their reputation and if someone has no history of criminality and has influence in his locality so, he is inducted to Dispute Resolution Council. Similarly, the researchers were also briefed that There is no specific training for them before they are indulging in dispute resolution council. The mechanism of Dispute Resolution Council includes, the people goes to district police officers office the people write their complaint to district police officers the district police officers scrutinizes the case and looks to the nature of the case he decides if district police officers is convinced so he marks the case to

Dispute Resolution Council with stamp and signature. The researcher observed that there was no formal process to remove doubts the researcher was briefed that the impressions are self-explanatory to determine innocence and guiltiness. There were some external pressures to divert the decisions of panel members in one's favor. Dispute Resolution Council was relatively less effective in Divorce cases and the cases were usually referred to courts. There were a lot of challenges yet to dispute resolution council there were no mufti or expert of Islamic theology to cope with familial cases the parties were usually exhorted to bring their own Mufti. Similarly, making the claimants present and laying witnesses in the Dispute Resolution Council was the biggest challenge. In civil cases the parties demanded the panel members to go with them to see the disputed area, but the panel members used to refuse and therefore the cases remained unsolved for months and even years. Furthermore, the respondents from the clients were usually unaware about dispute resolution council and they had no idea before joining dispute Resolution Council one of the respondents briefed the researcher that when district police officer marked my application to dispute resolution council, I had no idea. Most of the respondents were satisfied and they were wholeheartedly praising dispute resolution council. One of the respondents said that I am much satisfied here, it is far better for us than formal litigation it is free of cost and far speedy compared to formal justice system. Similarly, the peoples had very varied annotations about the judges. The researcher recorded different responses and was amazed that the satisfactory remarks of the clients from dispute resolution council used to change when the nature of the cases changed, satisfaction of the parties in monetary cases and civil cases was different the clients were satisfied in monetary cases and civil cases but in familial cases the responses were different.

Moreover, the panel members told the researcher that they are very happy by serving their community they were demanding for more legal protection.

5. Conclusion and Recommendations

Dispute resolution council is gaining the attention of common masses. There are some strengths and some areas are yet to be improved. The decision of Dispute resolution council is not binding the members of dispute resolution council had reservation about it. Dispute resolution council is relatively less effective in divorce cases moreover there was no expert of Islamic theology to make the Dispute resolution council more effective in divorce cases there was an issue of presence of both parties one party was usually absent in the Dispute resolution council corollary the efforts used to go in vain. Some pressure groups are trying to pressurize the panel members therefore by giving Dispute resolution council a more legal protection will not only lead to its effectiveness, but it will also reduce the burden of police department and legal system which will eventually lead to speedy justice system.

6. Recommendations

Following suggestions or recommendations are proposed for a more sustained Dispute resolution council:

- There should be an expert of Islamic theology to make it more effective especially in divorce cases.
- The peoples around the table should not be allowed until one case is resolved.
- Government should provide a car to make sure the presence of parties.
- Decision of panel should be made binding.
- A sociologist or anthropologist is recommended as a reader to read overall situation and cases for further improvement.

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