



KHYBER PAKHTUNKHWA

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PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 28th December, 2020.

No. PA/Khyber Pakhtunkhwa/Bills-131/2020/15376.— The Khyber Pakhtunkhwa Alternate Dispute Resolution Bill, 2020 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 08th December, 2020 and assented to by the Governor of the Khyber Pakhtunkhwa on 18th December, 2020 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA ALTERNATE DISPUTE RESOLUTION ACT, 2020.
(KHYBER PAKHTUNKHWA ACT NO. XLVIII OF 2020)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 28th December, 2020).

AN
ACT

to provide for the system of alternate dispute resolution in the Province of the Khyber Pakhtunkhwa.

WHEREAS under Clause (d) of Article 37 of the Constitution of Islamic Republic of Pakistan, it is the responsibility of the State to ensure inexpensive and expeditious justice to the citizens of Pakistan;

AND WHEREAS it is expedient to provide for the Alternate Dispute Resolution System in the Province of Khyber Pakhtunkhwa which will facilitate the settlement of disputes without resort to formal litigations and to ensure inexpensive and expeditious justice and for matters connected therewith and ancillary thereto;

It is hereby enacted by the Provincial Assembly of Khyber Pakhtunkhwa as follows:

1. Short title, extent and commencement.— (1) This Act may be called the Khyber Pakhtunkhwa Alternate Dispute Resolution Act, 2020.

(2) It shall extend to whole of the Khyber Pakhtunkhwa.

(3) It shall come into force on such date as the Department may, by notification in the official Gazette, appoint and different dates may be so appointed for different areas of the Province.

2. Definitions.— In this Act, unless there is anything repugnant in the subject or context,-

- (a) “Alternate Dispute Resolution” means a process in which parties’ agree to resolve a dispute, other than through formal adjudication by courts, and includes but not limited to negotiations, mediation, conciliation and evaluation;
- (b) “Civil dispute” means a Civil dispute as referred to in the Schedule;
- (c) “Code” means the Code of Criminal Procedure, 1898 (V of 1898);
- (d) “court” means a criminal court or a civil court having original jurisdiction under any law for the time being in force;
- (e) “Criminal dispute” means a Criminal dispute as referred to in section 4 of this Act;
- (f) “Department” means the Home and Tribal Affairs Department of Government;
- (g) “dispute” means a Civil or Criminal dispute;
- (h) “Saliseen (ثالثین) Selection Committee” means the Saliseen (ثالثین) Selection Committee constituted under sub-section (2) of section 7 of this Act;
- (i) “Government” means the Government of Khyber Pakhtunkhwa;
- (j) “prescribed” means prescribed by rules;
- (k) “referring authority” means the court or any other referring authority as provided in sub-section (2) of sections 3 and 4 of this Act, respectively;
- (l) “rules” means the rules made under this Act;
- (m) “Salis (ثالث) or “Saliseen (ثالثین)” means a person or panel of persons notified as Salis (ثالث) or Saliseen (ثالثین) under this Act;
- (n) “Schedule” means a Schedule appended to this Act; and

- (o) "settlement" means an agreement reached between the parties as a result of successful Alternate Dispute Resolution.

3. Reference in Civil disputes.— (1) The court, after appearance of all parties, as soon as possible, may refer a Civil dispute for Alternate Dispute Resolution except, where-

- (a) any of the parties to the dispute do not agree for Alternate Dispute Resolution;
- (b) the court, having regard to the facts and circumstances of the case, is satisfied that there is no possibility of resolution of the dispute through Alternate Dispute Resolution; or
- (c) an intricate question of law or facts is involved in the case which cannot otherwise be resolved through Alternate Dispute Resolution.

(2) Without limiting the powers of the court under sub-section (1), the Deputy Commissioner or any other officer nominated by the Government may also refer a Civil dispute for Alternate Dispute Resolution.

(3) Before referral of a Civil dispute to Alternate Dispute Resolution under sub-sections (1) and (2), the referring authority may frame issues with the consent of the parties, for facilitating the settlement:

Provided that the Saliseen (ثالثین) with the consent of the parties, frame additional issues if so required during the course of Alternate Dispute Resolution proceedings.

(4) In every Civil dispute where a reference is made for Alternate Dispute Resolution, the referring authority shall provide a time table for completion of Alternate Dispute Resolution proceedings not exceeding three months:

Provided that the referring authority, on the application of both the parties, may extend the time granted for resolution of the case through Alternate Dispute Resolution:

Provided further that the total time, granted for completion of Alternate Dispute Resolution proceedings, shall not exceed six months in any case.

(5) The trial or final adjudication of a case, referred for Alternate Dispute Resolution, shall be postponed till the completion of the time allotted for under sub-section (3).

(6) The referring authority or the Saliseen (ثالثین), in order to prevent the Civil dispute from further aggression or to maintain status quo, if deem appropriate, may issue interim injunction.

4. Reference in Criminal disputes.--- (1) In all compoundable offences under section 345 of the Code, the court may with the consent of parties, refer the Dispute for Alternate Dispute Resolution:

Explanation: The State shall be deemed to be a party for the purpose of Alternate Dispute Resolution under this section.

(2) It shall be lawful for the Deputy Commissioner or the Dispute Resolution Council constituted under the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017), that before a court has taken cognizance of an offence under section 345 of the Code, may also refer a dispute under section 345 of the Code for Alternate Dispute Resolution.

(3) In every compoundable offence, where a reference is made for Alternate Dispute Resolution under sub-sections (1) and (2), the referring authority shall provide a time for completion of Alternate Dispute Resolution proceedings not exceeding three months:

Provided that the referring authority may, on the application of both the parties, extend the time granted for resolution of the Criminal dispute through Alternate Dispute Resolution:

Provided further that the total time granted for completion of Alternate Dispute Resolution proceedings, shall not exceed six months in any case.

(4) If the offence is compounded, the Saliseen (ثالثین) shall submit a report in this respect in the court duly witnessed and signed by them and by the persons authorized to compound the offence and the court shall pass order and the accused shall be discharged.

(5) If the efforts of the Saliseen (ثالثین) for compounding the offence fail, the court shall proceed with the trial from the stage it was referred to the Saliseen (ثالثین).

(6) If the parties have themselves resorted to the Alternate Dispute Resolution and the offence is compounded in terms of section 345 of the Code, they may make application to the court in terms thereof. If the court is satisfied that the parties have voluntarily compounded the offence and the document recording their agreement has been duly witnessed and signed by them, the court shall pass order accordingly and the accused shall be discharged.

(7) Proceeding for compoundable offences under section 345 of the Code shall *mutatis mutandis* apply to the Saliseen (ثالثین) acting under this section.

(8) The Salis (ثالث) or the Saliseen (ثالثین), as the case may be, in order to prevent the Criminal dispute from further aggression or to maintain status quo, may require the parties to arrange such amount of surety and arrange such number of witnesses, as it may deem appropriate.

5. Power to record evidence during postponement.--- (1) Nothing in sections 3 or 4 shall prohibit or restrain the court from recording evidence which is likely to become unavailable due to postponement of trial.

(2) The court may order the recording of evidence of such person on its own or on the application of any party to the trial including the public prosecutor.

6. Power to refer a case to Alternate Dispute Resolution at any time.--- (1) Notwithstanding anything contained in this Act, the court may, on the application of the parties to the dispute before it, refer any Civil or Criminal matter under sections 3 and 4, for Alternate Dispute Resolution at any stage of the proceedings.

(2) Where a referral is made under sub-section (1), the court may if it deems fit,-

- (a) fix a time period for completion of Alternate Dispute Resolution; and
- (b) postpone the trial during the period given for completion of Alternate Dispute Resolution proceedings.

7. Composition of Saliseen (ثالثين) Selection Committee.--- (1) There shall be a Saliseen (ثالثين) Selection Committee at divisional level, which shall approve and notify for each district, a panel of Saliseen (ثالثين) on the recommendation of the concerned district administration.

(2) The Saliseen (ثالثين) Selection Committee shall consist of-

- | | |
|---|----------------------|
| (a) Commissioner of the Division; | Chairman |
| (b) Regional Police Officer; | Member |
| (c) Senior Civil Judge (Admin) of the concerned District; | Member |
| (d) a representative of the Law Enforcement Agencies; | Member |
| (e) Regional Director Prosecution; | Member |
| (f) representative of Special Branch; and | Member |
| (g) Deputy Commissioner of the District concerned. | Member/
Secretary |

(3) The Saliseen (ثالثين) Selection Committee may co-opt any other person as co-opted member.

(4) The Saliseen (ثالثين) shall be selected in the prescribed manner from amongst the lawyers with at least seven years of experience, retired Judicial Officers, retired Civil Servants, Ulema, notables of the locality, experts or such other persons of repute and integrity having such qualification and experience as may be prescribed, for a period of three years.

(5) The Saliseen (ثالثین) Selection Committee may have its meeting at such place as the Chairman may deem appropriate.

(6) The Saliseen (ثالثین) Selection Committee may add or remove any Salis (ثالث), in the prescribed manner, from the panel of Saliseen (ثالثین) with simple majority, on its own accord or on the recommendation of district administration:

Provided that the Saliseen (ثالثین) Selection Committee may in writing record reasons while removing any Salis (ثالث).

(7) The Saliseen (ثالثین) Selection Committee, while selecting the panel of Saliseen (ثالثین), may require any information from any agency or office of Government, as deem appropriate.

(8) The Department shall arrange necessary trainings for the Saliseen (ثالثین) in the Judicial Academy or any other accredited Institute.

8. Nomination.--- While referring the matter for Alternate Dispute Resolution, the referring authority, with the consent of the parties, may either nominate the whole panel of Saliseen (ثالثین) for resolution of the dispute or may nominate one or more Salis (ثالث) from amongst the panel of Saliseen (ثالثین), for resolution of dispute through Alternate Dispute Resolution:

Provided that the referring authority may, where it deems appropriate, also nominate,-

(a) panel of Saliseen (ثالثین) from any other district; or

(b) committee of Saliseen (ثالثین), consisting of Salis (ثالث) or Saliseen (ثالثین) of the district, where the dispute arises, and the Salis (ثالث) or Saliseen (ثالثین) of any other district.

9. Appearance of parties.--- Upon referring the matter for Alternate Dispute Resolution, the referring authority shall direct the parties to appear before the Saliseen (ثالثین) on the date and time fixed by the referring authority.

10. Submission to court.--- A dispute referred for Alternate Dispute Resolution shall be submitted to the court in the prescribed format on the completion of Alternate Dispute Resolution proceedings or on the expiry of the time provided under sections 3 or 4 of this Act, whichever is earlier.

11. Confidentiality.--- Notwithstanding anything contained in any other law for the time being in force, the Saliseen (ثالثین) and the parties taking part in the Alternate Dispute Resolution proceedings shall keep all matters confidential relating to such proceedings.

12. Meaningful offer.--- Where a meaningful offer is made by a party to a Civil dispute and is rejected by the other, the party which rejects the offer shall not be entitled to costs for the suit and the other party shall be entitled to costs.

Explanation: A 'meaningful offer' is an offer which is substantially the same as the decree or order of the court.

13. Alternate Dispute Resolution proceedings.--- (1) The parties to the dispute shall take part in the Alternate Dispute Resolution proceedings in person, through authorized agents or attorneys:

Explanation: For authorize agent, the authorization should be in writing.

(2) An attorney who has acted for a party in an Alternate Dispute Resolution proceedings shall not represent another party in the case with regard to the same dispute.

(3) Any party who fails to attend or who requests an adjournment in any Alternate Dispute Resolution proceedings or fails to comply with a deadline stipulated either by the referring authority or the Saliseen (ثالثین), as the case may be, or does any other act which has the effect of delaying the Alternate Dispute Resolution proceedings, shall be liable to pay costs to the other party as may be determined by the referring authority or Saliseen (ثالثین), as the case may be.

14. Failure of Alternate Dispute Resolution.--- Where a dispute has not been resolved or cannot be resolved through Alternate Dispute Resolution on referral, the court shall proceed to adjudicate the dispute or remaining dispute in accordance with law.

15. Settlement.--- (1) If as a result of the Alternate Dispute Resolution a settlement is reached between the parties, the Saliseen (ثالثین) shall record such settlement, duly witnessed and signed by them and by the parties or their duly authorized representatives or attorneys and submit it to the court which shall pronounce judgment and pass decree in terms of the settlement.

(2) If the settlement relates only to part of the dispute, the court shall pass order in terms of such settlement and shall proceed to adjudicate upon the remaining part.

(3) The Saliseen (ثالثین) on resolution of the dispute shall render a written award, duly signed by them and by the parties or their duly authorized representatives or attorneys, as the case may be, and submit it to the court which shall pronounce the judgment and pass decree in terms of the award.

(4) If the award relates only to part of the dispute, the court shall pass order in terms of such award and shall proceed to adjudicate upon the remaining part.

(5) Where the outcome of Alternate Dispute Resolution is not clear, the court may ask the Saliseen (ثالثین) to provide the requisite clarification.

16. Execution of an order or a decree.--- Where an order or a decree is passed by a court following Alternate Dispute Resolution, it shall be executed in the manner as may be prescribed and until so prescribed, it shall be executable in accordance with the procedure provided for in any other relevant law and rules for the time being in force.

17. **Appeal and revision barred.**--- No revision or appeal shall lie from the decree or order of the court under this Act.

18. **Saliseen (ثالثین) not to act as representative of parties to an Alternate Dispute Resolution in subsequent proceedings.**--- The Salis (ثالث) concerned shall not act as a representative or attorney of any party to the Alternate Dispute Resolution, in any subsequent proceedings with respect to a dispute that is or was the subject-matter of an Alternate Dispute Resolution.

19. **Proceedings under this Act to be privileged and not admissible in evidence.**--- Save as provided in this Act, the proceedings before the Saliseen (ثالثین) shall be privileged and shall not be admissible in evidence before any court without consent of the parties and the Salis (ثالث) shall not be required to appear as a witness or otherwise in any arbitral or judicial proceedings with respect to a dispute that is or was the subject-matter of an Alternate Dispute Resolution:

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

20. **Indemnity.**--- No legal proceedings shall lie against a Salis (ثالث) or any other person or official associated in the Alternate Dispute Resolution process for any act done or omitted to be done in good faith in the course of the performance of his functions, in reference to such Alternate Dispute Resolution.

21. **Application of certain laws.**--- (1) Subject to the provisions of this Act the Oaths Act, 1873 (X of 1873) and the rules made thereunder shall apply *mutatis mutandis* to the proceedings under the Act.

(2) Save as provided in this Act, the Qanun-e-Shahadat Order, 1984 (P.O. No. 10 of 1984) shall not apply to the Alternate Dispute Resolution proceedings under the Act:

Provided that the Saliseen (ثالثین) may adhere to principles of evidence contained in the Qanun-e-Shahadat Order, 1984.

22. **Overriding effect.**--- The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

23. **Cases pending in appeal or revision.**--- The provision of this Act shall, with the consent of the parties, apply *mutatis mutandis* to a dispute pending adjudication in an appeal or revision.

24. **Code of Conduct.**--- (1) The Department shall specify a Code of Conduct for Saliseen (ثالثین).

(2) Saliseen (ثالثين) shall comply with and act in accordance with the provisions of the Code of Conduct, as so specified under sub-section (1).

(3) A Salis (ثالث), who commits a violation of the Code of Conduct shall be removed from the panel of Saliseen (ثالثين) by the Saliseen (ثالثين) Selection Committee.

25. Costs and fees of Alternate Dispute Resolution.--- The costs and fees of the Alternate Dispute Resolution proceeding, if required, shall be borne by the parties in such proportion as may be mutually agreed upon by them, failing which it shall be determined by the rules made under this Act.

26. Power to make rules.--- Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

27. Power to amend the Schedule.--- Government may amend the Schedule by adding or amending any entry therein or omitting any entry therefrom.

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

29. Substitution of section 73 of Khyber Pakhtunkhwa Act No. II of 2017.--- In the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017), for section 73, the following shall be substituted, namely:

“73. Dispute Resolution Council.---- The Dispute Resolution Council, constituted by the Provincial Police Officer, may refer Criminal dispute under section 345 of the Code to Saliseen (ثالثين) notified under the Khyber Pakhtunkhwa Alternate Dispute Resolution Act, 2020.”

30. Repeal and saving.---(1) Subject to section 23 of this Act, the following sections of laws and rules are hereby repealed to the extent of the area or areas to which this Act is applied, namely:

- (a) section 89-A of the Code of Civil Procedure, 1908 (*V of 1908*) and the rules made in pursuance of this section; and
- (b) sections 29(1)(b) and 118A of the Khyber Pakhtunkhwa Local Government Act, 2013 (Khyber Pakhtunkhwa Act No. XXVIII of 2013).

(2) Notwithstanding the repeal of the aforesaid laws, all actions taken, matters decided, orders issued and decrees passed etc. under the repealed section, shall be deemed to have been taken, decided, issued and passed under this Act.

SCHEDULE

[See section 3(1)]

- (1) A dispute between a landlord and tenant.
- (2) Dispute involving pre-emption of Land
- (3) Disputes relating to possession of immovable property.
- (4) Family disputes including guardianship and custody of minor children.
- (5) Dispute arising out of enforcement of commercial transactions.
- (6) Suits for specific performance of contracts.
- (7) Disputes arising out of negotiable instruments under the Negotiable Instruments Act, 1881 (XXVI of 1881).
- (8) Dispute for recovery of movable property or value thereof.
- (9) Dispute for separate possession of joint immovable property through partition or otherwise including claims for mesne profits.
- (10) Disputes for rendition of accounts of joint property.
- (11) Disputes to remove nuisance.
- (12) Disputes involving recovery of money.
- (13) Cases relating to inheritance including declaration and succession.
- (14) Disputes relating to ownership of immoveable property.
- (15) Disputes relating to professional negligence under Tort and Consumer Protection.
- (16) Suits for redemption of mortgaged property under the Transfer of Property Act, 1882 (IV of 1882).

- (17) Cases relating to Waqf and Trusts under the relevant laws for the time being in force.
- (18) Any other matter under the law not falling in the Schedule but agreed to by the parties for settlement under this Act.

**BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA**

(KIFAYATULLAH KHAN AFRIDI)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa