

[TO BE INTRODUCED IN THE NATIONAL ASSEMBLY]

A
BILL

further to amend the Code of Civil Procedure, 1908.

WHEREAS it is expedient further to amend the Code of Civil Procedure. (No. V of 1908), for the purpose hereinafter appearing :

It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act may be called the Code of Civil Procedure (Amendment) Act, 2015.

(2) It shall come into force at once.

2. Substitution of section 89-A, Act V of 1908.- In the Code of Civil Procedure, 1908 (Act V of 1908), hereinafter referred to as the said Act, for section 89-A, the following shall be substituted namely:-

“89A. Alternate Dispute Resolution.- (1) Notwithstanding any other laws in force, where it appears to a court having regard to the facts and circumstances of the case that the dispute is fit to be settled through a process of alternative dispute resolution including arbitration, mediation or conciliation, the court may in all cases of civil or commercial nature, at any stage of the case require the parties, upon submission of application by any of the parties to the suit or on its own motion, to have resort to one of the alternative dispute resolution methods, such as arbitration, mediation or conciliation and while passing decree in accordance with such award or recommendations of the arbitrator, mediator or conciliator may impose costs on a party which is found to have false or baseless claim or defense. The costs may extend up to five million rupees having regard to the facts and circumstances of the case.

(2) Notwithstanding anything contained in sub-section(1), the parties may resort to arbitration, mediation or conciliation before legal proceedings commenced in a court and in that case the parties or either of them may apply to the court for resolution of their dispute through arbitration, mediation or conciliation. In case, a party submits application to the court for resolution of their dispute through arbitration, mediation or conciliation, the court shall serve notice on the other party or parties and if both or all of them agree on resolution of their dispute through arbitration, mediation or conciliation, the court may refer the matter to an arbitrator, mediator or conciliator as provided in sub-section (3) and upon such reference other provisions of this section shall *mutatis mutandis* apply. All or any costs of arbitration, mediation or conciliation shall be borne by the parties as determined by arbitrator, mediator or conciliator.

Provided that reference to mediation or conciliation shall be mandatory in the matters specified in Fourth Schedule annexed to this code:

Provided further that the Government may at any time amend the Fourth Schedule by adding or modifying any entry therein or omitting any entry therefrom.

Provided further that provisions of this section shall also apply to civil matters under the Small Claims and Minor Offences Courts Ordinance, 2002.

(3) The court may refer the matter for arbitration, mediation or conciliation to a professionally trained arbitrator/ mediator/ conciliator or to an approved alternative dispute resolution centre where a mediator shall be appointed for mediation. For the purposes of this section, the High Courts shall prepare a panel of duly qualified arbitrators/conciliators/mediators (to be updated from time to time) consisting of persons known to be trained by a dispute Training Institute, and such other persons as may be deemed appropriate for this purpose, and shall inform all the civil courts under its administrative jurisdiction about the said panel. Upon referring the matter, the court shall direct the parties to appear before the arbitrator, mediator or the conciliator on the date and time fixed by the court under intimation to the mediator or the conciliator for conclusion of the proceedings before or within a time duly fixed by the court while issuing direction therefor.

(4) The parties to the dispute shall take part in the arbitration, mediation or conciliation in person or through proceedings of a representative duly authorized in writing attested by an Oath Commissioner, to settle the matter on behalf of the concerned party

(5) An arbitrator shall follow the Arbitration Act, 1940 (as amended or substituted from time to time) to a possible extent. A mediator or a conciliator to whom a matter is referred for mediation or conciliation under this section shall act as a facilitator too and without imposing decisions on the party, try to resolve the dispute within a period of sixty days from the date of receiving the reference, this duration is extendable by the court for sufficient cause for a period of thirty days and during this period the proceedings of the Court shall remain stayed.

(6) With dealing with the dispute or referred to him, the arbitrator, mediator or the conciliator may follow such procedure as it may be necessary in the circumstances of the case, having regard to any procedures established by alternative dispute resolution center(s).

(7) In case, as a result of the efforts of the mediator or conciliator, a settlement is reached between the parties, the mediator or the conciliator shall record such settlement, duly signed by him and by the parties and submit it to the court. The court shall pronounce judgment in terms of the settlement and upon the judgment so pronounced a decree shall follow provided that it is not in violation of law. With regard to the award passed by an arbitrator, the award shall be filed by the arbitrator before the court which had referred the matter to the arbitrator and the court shall pass the judgment and decree accordingly.

(8) When the court itself mediates, it shall make a report and pass order in such manner similar to that as stated in sub-section (7).

(9) If the efforts of mediator or the conciliator fail in bringing about a settlement between the parties, the mediator or conciliator shall submit a report certifying that the parties have not reached at any settlement and the court shall proceed with the case without compromising confidentiality of the process and facts having come to know during mediation or conciliation not to be shared or relied upon in the court proceedings.

(10) Save as otherwise provided in this section, the proceedings before the mediator or the conciliator shall not be admissible before any court and the mediator or conciliator 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 a subject matter of a mediation or conciliation. The mediator or the conciliator shall also not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings with respect to a dispute that is or was the subject matter of a mediation or conciliation before him. A mediator or conciliator shall not disclose any facts that may give rise to any doubts as to his or her impartiality or independence before or during mediation or conciliation process.

(11) Save as otherwise provided in this section or the rules made thereunder, this Code and the Qanun-e-Shahdat, 1984 (P.O.No. 10 of 1984) shall not apply to the proceedings before a mediator or conciliator.

(12) No appeal or revision shall lie from a decree or order made as a result of the settlement arrived at with the consent of the parties.

(13) Nothing herein contained shall debar a court to make a decree in terms of settlement arrived at by the parties through a process of mediation or conciliation at their own.

(14) The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this section.”

3. Insertion of new Schedule, Act V of 1908.- In the said Act, the following new Schedule shall be inserted namely:-

“FOURTH SCHEDULE

[See Section 89 A (1)]

1. A dispute between a landlord and tenant.
2. Pre-emption cases.
3. Civil matters under the Small Claims and Minor Offences Courts Ordinance, 2002.
4. Commercial dispute including but not limited to any claim, right or interest arising out of trade and commerce and relating thereto:
 - i. ordinary transactions of merchants and trades such as those relating to enforcement and interpretation of mercantile documents, export or import of merchandise;
 - ii. business documents or contracts;
 - iii. an agreement of sale of land by housing societies and private developers;
 - iv. any sale of goods as defined under the Sale of Goods Act 1930;
 - v. the carriage of goods;
 - vi. business agency, franchising, distribution and licensing agreement;
 - vii. maintenance and consultancy agreement;
 - viii. mercantile agency and usage;
 - ix. partnership agreements and related matters;
 - x. technology development in software, hardware, networks and website;
 - xi. construction contracts; or

- xii. any other matter as may be determined by the Government through a notification from time to time.”

STATEMENT OF OBJECTS AND REASONS

In view of the tremendous burden on Judicial Courts of Pakistan, where a huge backlog of cases exists it is essential that other processes which prevent conflicts and disputes from exacerbating should be encouraged in society. Alternate Dispute Resolution mechanism and measures such as mediation, conciliation and arbitration have been used the world over in recent years as effective tools to reduce conflict between individuals, communities and businesses. Historically in all the provinces of Pakistan such measures have been used in the form of the local panchayats and jirgas but without any formal restraints, training, encouragement or structure.

There is tremendous damage caused by lingering disputes if left unresolved with matters pending in the courts or because of lack of affordability, as most disputes do not even reach the courts of law. Delays and non-resolution lead to deaths, deprivation, loss of billions to the economy, closure of businesses and severe damage to society.

The proposed Bill would go a long way in reducing friction, disputes, and conflicts in society as well as in trade and businesses.

Sd/-

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