

Pre-Taliban Developments of Commercial Dispute Resolution in Afghanistan

By Zahid Omarzai (October 2021)



Image Source: Afghanistan Centre for Dispute Resolution

The people of the Islamic Republic of Afghanistan started their routine schedules on 15th August 2021 but were unaware that the entire regime would be changed in a matter of hours. Given its constitution and dramatic entry, the people of Afghanistan are disillusioned with the governing system of the country. The author recollects an informal talk with a friend where the author was asked his opinion regarding the value of Afghan currency against United States Dollars after the complete pull-out of the American troops from Afghanistan when the Trump administration first declared the same. It recently turned out that the currency's value had been the least of the people's concerns after the complete pull out of the violent American troops.

It is evident that the chaotic intervention by America has led to several problems with sustainability in terms of livelihood, military, and civilian safety in Afghanistan. However, the legal sector of Afghanistan has seen considerable development due to aid by international human rights organizations. The international community rightly believed that a strong Afghanistan should have more vital legal institutions. This sector experienced millions of cash flow in training, infrastructural, substantive and procedural reforms. This blog will introduce the readers to significant reforms in commercial dispute resolution before the Taliban became the ruling government in August 2021.

Courts

In Afghanistan, as elsewhere, courts, state's manifestation for the preservation of the citizen's rights, entertained vast legal discretion and powers under the 2004 Constitution and other relevant statutes. Yet, the question remained, how efficiently are the courts operating to resolve commercial disputes, wherein time and money of involved parties are of utmost importance? It does not come as a surprise that the courts were making all the efforts to be resourceful, but at the same time, they could not disregard the strict and inflexible legal procedures. These resulted in lengthy and costly court litigation of commercial disputes.

Yet, the question remained, how efficiently are the courts operating to resolve commercial disputes, wherein time and money of involved parties are of utmost importance?

Afghanistan ranked 181st for contract enforcement in the World Bank Group's Doing Business 2020 report. This report further mentions that a commercial claim of roughly \$5000 takes 1642 days for resolution in Afghan commercial courts. Imagine being stuck for more than four years in Afghan courts for only \$5000! The results have reportedly dissappointing in this ranking for Afghanistan throughout the years.

The best possible solution was ascertained to establish and promote Alternative Dispute Resolution ("ADR") mechanisms in Afghanistan. As anyone can imagine introducing an alternative to courts does not come free from any barriers. However, long term goals and interests cannot be sacrificed for short term barriers without making an effort to resolve the same.

Alternative Dispute Resolution

Introducing the practice of a new concept for dispute resolution requires comprehensive planning, funding and running successful projects. One should not forget that the trust of beneficiaries of ADR in Afghanistan in this new system was also needed. This required promotion. Promotion of much needed fair, transparent, quick, and cost-efficient dispute resolution mechanisms was seen to be achieved by ADR.



Image Source: ADR Center's Development

One can undeniably say that ADR mechanisms have their advantages over court litigation. Take Arbitration as a means of ADR as an example. Following the 2019 Preliminary Report of the survey titled "International Dispute Resolution Survey: Currents of Change" conducted by International Commercial Arbitration ("ICA") was used by 74% of the respondents within two years

between 2016 and 2018. This figure, in turn, illustrates that ICA has remained the most used method of dispute resolution.

Parties cannot achieve flexibility in Arbitration proceedings in terms of dispute resolution in Afghan courts of litigation. Courts are required to follow the legal procedures, but parties in Arbitration can agree on the strategies they prefer for Arbitration proceedings.

Afghanistan Center for Commercial Dispute Resolution

The first (and currently the only) ADR Centre of Afghanistan, Afghanistan Centre for Commercial Dispute Resolution ("ACDR"), was established in 2015. The Centre began its mediation services for the resolution of commercial disputes after its establishment. The business community quickly recognized these services, given their deeply rooted connection with the Afghan culture. The Centre continued only to provide mediation services for a while, but these could not fill the gap given the voluntary nature of mediation.

Government entities and the private sector were interested in the Arbitration services of ACDR given its cost-efficient and quick manner. Therefore, based on mutual understanding, ACDR opened negotiations with various government entities and the private sector in Afghanistan to resolve their contractual disputes through Arbitration.

Continuing further, ACDR started its expert determination services and launched Arbitration services in 2019. Arbitration was the primary focus of ACDR given its necessity for the business community in Afghanistan and its advantages, of which very few are discussed above. ACDR also launched

its Arbitration rules recognized as the first set of institutional Arbitration rules in Afghanistan. ACDR also organized domestic and international training on international commercial Arbitration for its arbitrators and provided international certification opportunities.

Government entities and the private sector were interested in the Arbitration services of ACDR given its cost-efficient and quick manner. Therefore, based on mutual understanding, ACDR opened negotiations with various government entities and the private sector in Afghanistan to resolve their contractual disputes through Arbitration. ACDR also played a successful role in providing training for various government and private sector entities on Arbitration.

Conclusion

ACDR established the foundation of ADR in Afghanistan. However, immense effort and development is still a dire necessity in this realm. The present blog recommends preserving and further promoting the laborious achievements that benefit the nation's prosperity.