



Guidebook

on

Informal Resolution of Disputes (IRD)

Article 33 of the President's Order No. 1 of 1983

**Establishment of the Office of Wafaqi Mohtasib (Ombudsman) &
Federal Ombudsmen Institutional Reforms Act No. XIV of 2013**

**Wafaqi Mohtasib Secretariat,
36 Constitution Avenue G-5/2,
Islamabad.**

CONTENTS

1. Introduction
2. Article 33 of the President Order No. 1 of 1983
3. Scope of Work
4. Procedure
5. **Annexures:**
 - Annex-I Concept Paper

 - Annex-II *Proforma* for Reporting the Case to WMS

 - Annex-III Salient Points of the Presentations by:
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 - ii. Mr. Muhammad Saqib Khan, Consultant/Registrar WMS, Islamabad.

 - iii. Dr. Muhammad Zahid, Investigation Officer, WMS Bahawalpur.

 - iv. Mr. Shahzada Alauddin, Investigation Officer, WMS Kharan.

1. Introduction

The concept of Informal Resolution of Disputes (IRD) is akin to the centuries old Jirga / Panchayat systems where local elders resolved complaints of locals through the force of moral character, social influence and conventional wisdom. IRD offers inexpensive, rather free of any cost, expeditious and convenient forum for resolving disputes. Therefore, is likely to be 'preferred mode' especially for lower strata of society, compared to the formal judicial system which is expensive and involves lengthy legal processes. It is in a way out of court settlement of dispute.

Article 33 of PO 1 of 1983 provides for resolution of disputes of the citizens through mediation and conciliation without necessity of docketing any complaint or issuing any official notices. This mechanism involves resolution rather than decision whereby parties are persuaded to come to an understanding/agreement.

In March 2022, it was decided by the HWM to further broaden the scope of activities of the Wafaqi Mohtasib by invoking Article 33 for the benefit of common citizen of Pakistan. The step / decision was in compliance with the advice of the Honorable President of Pakistan to the HWM to expand the scope of activities of Wafaqi Mohtasib.

Accordingly, on the directions of the HWM, a committee of senior officers of WMS prepared modalities and procedure for implementation of IRD. These were approved, after thorough deliberations, by the HWM. The scheme was to be implemented in 2 phases i.e. based on the success of the pilot (1st) phase, the IRD to move in 2nd phase.

The Pilot Project has been launched at the Head Office Islamabad and the Regional Offices at Karachi, Lahore, Peshawar, Quetta, Multan, Bahawalpur, Abbottabad and D.I. Khan.

2. The Article 33

“Informal Resolution of Disputes.— (1) Notwithstanding anything contained in this Order, the Mohtasib and a member of the staff shall have the authority to informally conciliate, amicably resolve, stipulate, settle or ameliorate any grievance without written

memorandum and without the necessity of docketing any complaint or issuing any official notice.

(2) The Mohtasib may appoint for purposes of liaison counselors, whether honorary or otherwise, at local levels on such terms and conditions as the Mohtasib may deem proper.”

3. Scope of Work

First/Pilot Phase

- a. Small contractual claims up to the value of Rs. 50,000/-
- b. Disputes based on negotiable instruments valued up to Rs. 50,000/-
- c. Any dispute where the parties agree for the resolution of their dispute through Wafaqi Mohtasib Centre for Informal Resolution of Disputes (WMCIRD).
- d. Complaints relating to delay in processing the payment of pension and other retirement benefits to the retired employees and the families of deceased employees, of the Defence Forces.
- e. Delay in reimbursement of medical claims of employees of federal agencies.
- f. Delay or refusal in grant of house subsidy or hiring facility to the ministerial staff of federal agencies.

Second Phase

Based on the success proportion of the first phase, the second phase shall be implemented by:

- a. Expanding the scope of jurisdiction whereby the amount of claims and negotiable instruments up to the value of Rs.50,000/- will be increased to Rs.100,000/- and complaints regarding non-payment of rent of houses/vehicles requisitioned by the Defence Forces.
- b. Establishing offices at remote areas;
- c. Involving the members of the civil society/elders of the locality in the process of mediation and conciliation.

- d. Reporting important cases to the press without compromising on the privacy of the contending parties.
- e. General invitation to public for availing the services of WMCIRD;
- f. Members of the civil society especially retired experienced civil servants can be engaged for the purpose as Counsellors under Article 33(2) of the Order.
- g. The High Courts can also be requested to enlist the Wafaqi Mohtasib Centre for Informal Resolution of Disputes (WMCIRD) as the institution of ADR for reference of matters from the Courts under the ADR Laws.

4. Procedure to be Followed in IRD Cases

The procedure of handling the IRD cases will be as follows:

- a. The Registrars will apply their mind at the time of preliminary examination of the complaints as to whether the matter (which may be otherwise not fit for admission/investigation) can be taken up for informal resolution under 3rd proviso to Regulation No. 5(2) of the Wafaqi Mohtasib Regulation 2013 read with the parameters laid down in the Concept Paper of IRD (***Annex-I***) for taking up types of cases for informal resolution.
- b. One or more officers may be designated at the Head Office Islamabad as well as at the Regional Offices for informal resolution of disputes. The Registrar concerned shall forward the case to the designated officer for resolution.
- c. As the work relating to IRD expands, dedicated officers for IRD work will be appointed, thereby relieving other IOs in order to avoid disruption of the routine investigation work.
- d. The IRD cases should be undertaken with the consent of all parties; should strictly be on the basis of persuasion, mediation and reconciliation; and without any legal obligation.
- e. More emphasis should be on the outcome rather than process and procedures.

- f. Separate hearings may be held with each party where necessary, before holding joint hearings.
- g. Cases related to land disputes may be avoided.
- h. Cases related to family disputes such as divorce, *khula* and controversial-wills etc., may also be avoided.
- i. The IO while dealing with IRD cases should strive to remain polite but firm in their dealing with the parties.
- j. Efforts should be made to resolve the issues through telephonic conversations and persuasions.
- k. The cases that are within the jurisdiction of Wafaqi Mohtasib can also be taken under IRD, if the subject matter brooks no delay; and needs to be resolved instantly.
- l. The designated officer shall examine the file and approach the private respondent, preferably on phone, to know whether he is willing for the informal resolution of the dispute. If he/she concedes, the IO may fix a date, time and venue as per convenience of the parties for conciliation or mediation.
- m. If the private respondent does not agree to informal resolution, the designated IO may require the complainant to get the consent from the respondent. If the complainant fails to get the consent, the IO may stop further action on the complaint, consign the case, and file to the record.
- n. If the respondent is an Agency, the investigating officer may write a polite letter to the focal person or the officer in charge of the branch to which the complaint relates, for favourable action or comments.
- o. If the Agency contests the claim, the IO may fix a date for hearing of the case and may try to persuade the representative of the Agency and the complainant for settlement or resolution of the dispute.
- p. If the matter is resolved, the terms of settlement may be reduced into writing with signature of the parties.
- q. The IO concerned should write a letter of thanks to the Agency concerned for resolving the case expeditiously.

- r. If the issue cannot be resolved, proceedings may be stopped and file may be consigned to record under intimation to the parties concerned.
- s. A report, on completion of the case, will be submitted to the Coordination Wing WMS as per *poforma* already circulated (***Annex-II***).
- t. On an average 10-15 cases may be taken up under IRD scheme by an IO, and his normal work may not be allowed to suffer.
- u. It is important that both parties enjoy complete trust in the ability of the WMS IO to negotiate the settlement as well as ensure complete secrecy and confidentiality of the information made available by the parties.
- v. Although no precise timelines can be fixed for various stages of the IRD process, the IO may determine notional timelines in the beginning of every case in order to ensure optimum time management.
- w. **Regional Heads will ensure that the IRD mechanism in no way is exploited by influential individuals/parties or used as a coercive enforcement tool that could impede the access to justice.**

**CONCEPT PAPER ON INFORMAL DISPUTE RESOLUTION UNDER
ARTICLE 33 OF ESTABLISHMENT OF THE OFFICE OF WAFAQI
MOHTASIB (OMBUDSMAN) ORDER 1983**

Introduction:

Before bringing Informal Resolution of Dispute system into light, it is necessary to take on alternative dispute resolution. The term “alternative dispute resolution” or “ADR” is often used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to, full-scale court processes. The term can refer to everything from facilitated settlement negotiations in which disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or mini-trials that look and feel very much like a courtroom process. Processes designed to manage community tension or facilitate community development issues can also be included within the rubric of ADR. ADR systems may be generally categorized as negotiation, conciliation/mediation, or arbitration systems.

Negotiation systems create a structure to encourage and facilitate direct negotiation between parties to a dispute, without the intervention of a third party, Mediation and conciliation systems are very similar in that they interject a third party between the disputants, either to mediate a specific dispute or to reconcile their relationship. Mediators and conciliators may simply facilitate communication, or may help direct and structure a settlement, but they do not have the authority to decide or rule on a settlement. Arbitration systems authorize a third party to decide how a dispute should be resolved.

It is important to distinguish between binding and non-binding forms of ADR. Negotiation, mediation, and conciliation programs are non-binding, and depend on the willingness of the parties to reach a voluntary agreement. Arbitration programs may be either binding or non-binding. Binding arbitration produces a third party decision that the disputants must follow even if they

disagree with the result, much like a judicial decision. Non-binding arbitration produces a third party decision that the parties may reject.

It is also important to distinguish between mandatory processes and voluntary processes. Some judicial systems require litigants to negotiate, conciliate, mediate, or arbitrate prior to court action. ADR processes may also be required as part of a prior contractual agreement between parties. In voluntary processes, submission of a dispute to an ADR process depends entirely on the will of the parties.

Alternate Dispute Resolution System in Pakistan

Pakistan is a federal state, wherein provinces have their own laws/rules on all the issues after observing constitutional provisions except currency, foreign policy and defense. All the provinces have their own judicial system as well as Alternate Dispute Resolution Mechanism. The details of some laws on the impugned topic are as under:

- i. Alternative Dispute Resolution Act, 2017 (Federal).
- ii. The Punjab Alternative Dispute Resolution Act, 2019.
- iii. The Code of Civil Procedure (Sindh Amendment) Act, 2018.
- iv. The KPK Alternative Dispute Resolution Act, 2020.
- v. Arbitration Act, 1940.
- vi. Conciliation Courts Ordinance, 1961.
- vii. The Small Claims and Minor Offences Courts Ordinance, 2002.

As Pakistan is not a unitary state and in the presence of above laws and provincial as well as judicial jurisdiction i.e. territorial jurisdiction, pecuniary jurisdiction and administrative jurisdiction, the invoking of *Article 33 of Order ibid* for informal resolution of disputes should be cautious and prudent. However, the invoking of above provision in IDR is possible in two ways:

1. All the complaints against the Federal Government Agencies, the subject-matters which are not in the purview/jurisdiction of WMS i.e. sub-judice matters, service matters etc., may be mediated, conciliated or arbitrated by the WMS (Head Office & Regional Offices) with the consent of both the parties after observing due procedure.

2. All the Small Contractual Disputes to the limitation of Rs. 100,000/-, Dispute regarding Negotiable instruments valued upto Rs. 100,000/-, Disputes to restrain waste and remove nuisance and any other Dispute agreed by the parties to be settled with the help of WMS-CIDR may be settled after signing mutual agreement by parties through mediation, conciliation and arbitration of CIDR.

Forms of IDR (Informal Dispute Resolution) offered to the Parties through WMCIDR (Wafaqi Mohtasib Centre for Informal Dispute Resolution)

WMCIDR will conduct IDR by accepting the complaint and forwarding it to opposing party. The same would be resolved through conciliation, mediation and Arbitration.

1. CONCILIATION:

After receiving complaint, the representative of WMCIDR will play a role as conciliator among the parties and meet with the parties, often separately, to informally discuss and negotiate a complaint informally. The conciliator may make suggestions as the parties consider how to resolve a dispute, as well as their own. The parties will find their own resolution to a dispute, with the assistance of the conciliator. After reaching at a point of resolution to dispute, both the parties will sign an agreement for conciliation. The agreement is not in conflict with law or the governing documents of the common interest development or association.

2. MEDIATION:

“Mediation is the most common method presently used for resolving disputes. Mediation offers the parties a safe forum for reviewing options and enables the parties to develop their own settlement terms by a mutual agreement. After receiving complaint, the representative of WMCIDR will play a role as mediator among the parties and aids the parties in reaching agreement on how to resolve a dispute. To request mediation through the WMCIDR, relevant party/parties has/have to submit Contract/Complaint Form and the Agreement to Mediate. Mediation conferences are informal

proceedings. That means that the strict legal rules of evidence do not apply in mediation. This allows for an unrestricted discussion of issues and misunderstandings. If the parties reach a settlement, the mediator puts the settlement agreement in writing and all the parties and the mediator sign it. The agreement describes both the settlement of issues and the future responsibilities of each party. Once signed the agreement is a binding contract, which is enforceable by courts.

3. ARBITRATION:

“Arbitration” is a voluntary, confidential process in which a neutral “arbitrator” hears both sides of a controversy and decides all aspects of the case based on the facts and the law just like a judge without judicial trial. The parties may agree in writing that the decision will be binding, and enforceable. Arbitration through WMCIDR will be voluntary. The parties must be agreed for arbitration, and if they do, they must be present for the arbitration hearing. However, sometimes an agreement made before there is a dispute requires the parties to arbitrate instead of filing a lawsuit.

The process of Conciliation, Mediation and Arbitration involves the following:

- i. The complaining party files/fills out a Contract/Complaint form requesting for Conciliation, Mediation and Arbitration and files it with the WMCIDR, and delivers copy to the responding party with a copy of an Agreement to Conciliate/Mediate/Arbitrate.
- ii. The Services of WMCIDR for the whole process will be free of cost.
- iii. The parties must agree for conciliation/mediation/arbitration.
- iv. The parties may agree whether the arbitration will be binding or non-binding.
- v. On the request of both the parties, another person may also be involved (with his consent) as arbitrator.
- vi. WMCIDR will specify a date and time for the arbitration that is convenient for both parties.
- vii. 15 days before the Mediation/Arbitration date the complaining party will submit all pertinent records needed for decision of the case to WMCIDR and the responding party.

- viii. On the day and time of the Conciliation/Mediation/Arbitration the parties will attend hearing at WMCIDR.
 - ix. Both the parties would be provided opportunity of hearing and they may be advised by WMCIDR to submit their evidences/proofs etc.
 - x. After completion of due procedure, the complaint / application / agreements of conciliation / mediation / arbitration will be disposed of in the following manners:
 - a. At the end of successful conciliation process, all the parties must put any agreement resolving the dispute in writing and sign it.
 - b. During mediation when the parties reach an agreement, WMCIDR will assist by reducing the agreement to writing. WMCIDR may follow up with each party to see that each side is honoring the agreement, if that is necessary.
 - c. WMCIDR as an arbitrator may make a decision on the spot or may make a decision within seven days and deliver a written decision to the parties within that time.
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SALIENT POINTS OF PRESENTATIONS

PRESENTATION ON IRD BY MR. GHULAM SARWAR BROHI,
ASSOCIATE ADVISOR /INCHARGE WMS REGIONAL OFFICE, QUETTA

- IRD provides for resolution of issues with mutual consent of the parties through conciliation, mediation and arbitration.
- Justice without any cost in a short time.
- No lawyer No fees.
- Section -33 of PO # 1 of 1983 stipulates, “Notwithstanding anything contained in this Order, the Mohtasib and a member of the staff shall have the authority to informally conciliate amicably resolve, stipulate, settle or ameliorate any grievance without written memorandum and without the necessity of docketing any complaint or issuing any official notice”.
- Disputes which can be taken up under IRD may include family matters, divorce cases, contractors/clients disputes (up to Rs.100,000), bank/money exchange / microfinance, etc.
- The procedure for IRD may include :
 - Check the relevancy between both parties.
 - Agreement between both parties.
 - Not binding on both parties.
 - Confidentiality.
 - Representative of both parties must participate.
 - Separate hearings between both parties and then joint hearing with them.
 - Date of hearing time and place according to their consent.
 - Online hearing as we are living in tribal area, it would be beneficial for *parda nashin* females.
 - Amicable settlement with no fine, etc.
 - Before conducting hearing both parties should sign the agreement and give consent orally as well.
- Media campaign needs to be launched for awareness among general masses through Radio/TV, press releases, seminars in universities/colleges, posters/banners, etc.
- To cope with the workload, the Honorable Wafaqi Mohtasib may appoint Liaison counselors, whether honorary or otherwise, at local levels on such terms and conditions as the Honorable Wafaqi Mohtasib may deem proper.

PRESENTATION ON IRD BY MR. MUHAMMAD SAQIB KHAN,
REGISTRAR, WMS, ISLAMABAD.

- Article 33 of PO # 1 of 1983 states that “Informal Resolution of Disputes: Notwithstanding anything contained in this Order, the Mohtasib and a member of the Staff shall have the authority to informally conciliate, amicably resolve, stipulate, settle or ameliorate any grievance without written memorandum and without the necessity of docketing any complaint or issuing any official notice”.
- **IRD system** allows speedy, free of cost, without any legal binding and on the spot resolution rather than decision

Concept of Justice (R) Sardar Iqbal, Ex-Wafaqi Mohtasib:

- This provision not only widens the ambit of the Ombudsman's activity but also provides a positive means for settlement of dispute through conciliatory proceedings and mutual satisfaction of the parties.
- The rationale underlying this provision is to effect settlement through discussion and persuasion enabling the parties to understand each other's point of view.
- The parties voluntarily contract that they are willing to submit themselves to the Ombudsman's good offices for the resolution of a dispute or controversy.
- It is something in the nature of a settlement out of court.
- The Agencies concerned in all such complaints agreed to accept his good offices although in most cases he had no jurisdiction and could not take up the matter formally.
- The proceedings were based on goodwill and left very pleasant impressions of satisfaction and friendliness.

Legal opinion by Mr. Waseem Sajjad, Senior Advocate

- “Notwithstanding anything contained in this order” phrase of Article 33 of PO # 1 of 1983 is termed as non-obstantive clause and over rides the other provisions in the order.
- It gives special power to the Mohtasib and member of the staff irrespective of the other provisions of this order.
- It would involve resolution rather than decision, less time consuming, win-win for both

Lessons learnt

1. We may take cognizance of all the issues related to the agencies which do not fall in our jurisdiction.
2. We can take cognizance of those subject matters which are out of our purview.
3. Sound reasons are essential for invoking Article 33.
4. Not only institution, but also credibility of the dealing officer matters.
5. We should come forward to pay thanks to all the parties verbally as well as in writing for their cooperation extended and trust posed on us.

PRESENTATION ON IRD BY DR. MUHAMMAD ZAHID,
INVESTIGATION OFFICER, WMS, REGIONAL OFFICE, BAHAWALPUR

Spirit of IRD

To resolve the disputes with consent of all the parties after playing conciliatory and mediatory role without any legal binding on any party.

Matters

Those matters to be taken up under IRD which are not in jurisdiction/ purview of WMS.

Prospective Beneficiaries

- Private contractor,
- labour/other service providers,
- workshops/ service providers/shopkeepers,
- aggrieved parties of mal-administration of agencies other than Federal Government Agencies,
- Individuals, etc.

Modus Operandi

- Application by the aggrieved person/party,
- Offering telephone/offer letter to other party for resolution of the dispute,
- If accepted, mediatory/ conciliatory process will be initiated,
- In case of private agency, controlling agency may also be involved.

Procedure of IRD case Disposal

- Application by a party, consent of other party if not provided, IRD process stops,
- If consent of other party provided, IRD process starts,
- If parties agreed on outcome, IRD process completes, otherwise IRD process fails,
- If IRD process succeeds, the contents of agreement may be recorded in writing on order sheet and same may be attached on CMIS before disposal of case.

- If IRD process fails, the case will be closed without any outcome. The same may also be recorded in writing on order sheet and the same will be attached on CIMS before disposal of case.

Forms Required

- Offer letter,
- Agreement among the parties before initiation of IRD process and
- The order sheet.

Success Stories

- Tuck shop,
- Livestock manure,
- License from traffic police,
- Up gradation of record,
- Smoke, etc.

Presentation on IRD by Shahzada Alauddin,
Incharge, WMS Regional Office, Kharan

- ❖ IRD is an approach that allows the parties involved to stay in control of the process and to negotiate and settle on solutions that work for everyone.
- ❖ The success of this process depends on the good faith of all the parties involved and their willingness to resolve the conflict peacefully.
- ❖ Informal resolution is less focused on the process and more focused on the outcome.
- ❖ Many issues were resolved under IRD like:
 - Issue between Higher Education Commission and a student of missing documents/local certificate.
 - Correction of date of birth and name of a student by Balochistan Board of Intermediate and Secondary Education (BBISE), Quetta.
 - ▶ Facilitated in lodging an FIR with the police against a contractor who bulldozed the protected archaeological site of Har o Gok.
 - Payment of a vehicle of Garook Dam.
 - Payment to labor working on Garook Dam.
 - Payment of pension arrears of Rs. 700,000/0 to a widow by Post Office Department.
 - SSGCL installed 70 gas meters at Nushki.
 - Ahmed Wall branch of Utility Stores Corporation was reopened.
 - Pakistan Television rebroadcast station started test transmission after 14 years.
 - Approval of shades and other facilitation for visitors at NADRA office was arranged.
 - 04 cases of office rent issue were resolved and payment of Rs. 400,000/- to each complainant was arranged.
 - More than 92 HT and 57 LT electric poles were enacted and fixed in different areas of Kharan, Nushki Chagai and Washuk by Quetta Electric Supply Company.
 - 16 new and 58 Transformers were repaired and installed in Kharan, Nushki, Chagai and Washuk by QESCO.
 - 03 Feeders installed at Kharan and Nushki by QESCO.

- For BISP beneficiaries, non-functional ATMs were made functional, 100 finger print issues, new devices of biometric were approved for retailers, etc.
-