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Mediator Certification and Professional Standards in Pakistan: Toward a Three-Tier National Framework

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Abstract
The development of the professionalisation of mediation is crucial, as is the development of mediators' certifications and professional standards, and their design and enforcement. While the Alternative Dispute Resolution Act 2017 and Punjab ADR Act 2019 provide power to the batches of peace process that are the Islamabad Mediation and Conciliation Centre and the Punjab Mediation Centre to train, accredit and regulate the mediators, there is no sprawling national framework for the standards of certification of mediators. In this article theoretical bases of mediator credentialing are discussed, followed by a review of the mediators' credentialing models developed in Australia, UK, Singapore and the USA, an assessment of the present mediator credentialing's system in Pakistan, identifying their structural weaknesses and suggesting a national mediator credentialing's system based on three tier levels according to the context of Pakistan's institutional framework and its diversity in the demand of dispute resolution facility.

Keywords: mediator certification, professional standards, ADR, Pakistan, IMAC, mediator accreditation, quality assurance, dispute resolution competency

Introduction
Mediators are independent of the quality of mediation as a dispute-resolution process. But even the best mediation process, built into a supportive legal and institutional structure, will not regain its potential benefits if its mediators are not knowledgeable, skilled, and professionally minded in implementing the mediation. The skilled, ethically engaged mediator, on the other hand, can achieve great results in less sophisticated institutional settings by taking on the role of filling in the blanks as recommended by that institution's rules. This predominance of mediator quality in shaping the performance of a mediation system makes the design of mediator certification and mediators' professional requirements one of the most significant decisions in moving toward a national mediation system (Moore, 2014).
The legislation in Pakistan recognises the importance of mediator quality and delegates responsibility for training, accrediting, and regulating mediators to IMAC and the Punjab Mediation Centre; however, it doesn't define the certification standards in much detail. IMAC is currently in the process of developing its standards for training and accreditation, which is a reasonable starting point, but hasn't been developed based on the systematic consultation of different stakeholders and compared against other frameworks, which may ensure that it is more robust and validated (Law and Justice Commission of Pakistan 2021). There is no unifying vision or framework for the competencies of mediators at various levels, training and experience, continuing obligations and requirements of credentialed mediators, or a mechanism for accountability if they don't meet them.
Not having such a framework entails several practical implications. This also leads to variations in the levels of mediators within IMAC's panel, as the standards of the training programme might not always be proportionate to the abilities of the mediators chosen to be part of the panel. It hampers parties' confidence in IMAC's abilities, since parties or lawyers who aren't familiar with the standards the mediator has met cannot judge whether a mediator assigned to their case is properly qualified. It hinders the international

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recognition of Pakistani mediators, as they are not nationally recognised, making it more difficult for institutions in other countries to evaluate their qualifications. Also, it prevents the development of a specialism in mediator skills in, for instance, commercial, family, labour, and community mediation, each of which requires its own skill set (Sourdin, 2016).

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This article seeks to address these gaps and proposes a three-tier national mediator certification system in Pakistan. The idea is based on a comparison between the different systems of certification in Australia, the United Kingdom, Singapore and the United States, the literature on the theory of mediators' competency, as well as the specific situation of Pakistan's legal and institutional framework. This article goes on to the following. The underpinning theory of mediator credentialing and the various skills needed for effective mediators are examined in Section 2. The models for certification of four comparator jurisdictions are examined in Section 3. The current framework of Pakistan is tested with the above-mentioned models in Section 4. Deficiencies in the existing system are identified in Section 5. In Section 6, we propose a three-tier approach. Section 7 concludes.

Theoretical Foundations of Mediator Credentialing

There are three different theoretical arguments in support of the formal mediator certification. The first is the competency assurance argument, namely, that mediation parties have a right to know that the neutral is competent to conduct mediation, as evidenced by their training and the necessary knowledge and skills to do so effectively. Mediation can't be done well, even by those with good intentions who wish to do right. It involves a high level of skill in conflict sensitivity, negotiation theory, and facilitation, as well as the necessary legal and ethical competence to conduct the procedures successfully. Through certification, parties can be assured that the mediator assigned to their case meets a minimum level of competence. (Riskin, 2003)

The second is the accountability argument: the purpose of professional certification is to foster continued professional discipline, which is vital to upholding high standards of ethical behaviour in mediation. Should there be a violation of the mediator's obligations of neutrality, confidentiality, or competence, nothing will happen other than the loss of reputation, which may result from complaints from the group. To be effective and properly disciplined, a professional discipline must have a body to investigate complaints, sanction practitioners who don't meet professional standards, and, finally, revoke practitioners' certification (Zumeta, 2000).

The third is the market development argument, namely, that a formal certification system sets up the ground for a working professional mediation market because it allows for the identification of certified mediators and a comparison of their certifications and specialisations, and gives parties and their attorneys a choice of which mediator would be most suitable for the particular dispute they have. The potential mediation market is opaque: parties lack clarity about the availability of highly qualified mediators versus those with minimal training, and referrals are based on personal relationships rather than on an assessment of training backgrounds and qualifications. Transparency of and on certification, coupled with a publicly available mediation register and mediation certifications, provides the market information infrastructure required for a successful mediation profession (Goldsmith & Ingen-Housz, 2018).

Significant attention, both academically and professionally, has been given to the competency framework that certification standards should aspire to measure. Riskin's powerful grid of mediator styles posited that party communication and exploration of options were the two major types of mediator styles, "facilitative" mediators working to help parties communicate and "evaluative" mediators giving the parties an evaluation of the merits and likely outcome of the case, so that parties' realistic assessment of their options is facilitated (Riskin, 2003). Since certification programmes—like the Florida bar exam and the California bar exam—must evaluate competencies, the issue of styles is not enough; substantive knowledge about the legal and factual context of the common types of disputes, procedural management skills, cultural competency, and the necessary skills for shuttle diplomacy (in case joint sessions fail to be productive), should also be looked at.

In Pakistan, where many conflicts have legal aspects and litigants are legally represented, an important consideration is whether a mediator should be certified solely on skills, or whether a substantive legal context and/or professional background knowledge are required in the certification process. A mediator without a working knowledge of the legal context of the types of cases he or she mediates will not be as effective as one who can speak to parties' legal arguments and advise them on the realistic consequences of

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their positions. This suggests that certification programs have process-skills requirements at all levels of certification and, at the specialist levels, also have substantive requirements.

Comparative Certification Models

Australia's National Mediator Accreditation System, created by the Mediator Standards Board and adopted in 2008, is the most thorough and systematically designed national mediator accreditation system of its comparator jurisdictions. NMAS operates at two levels: Entry-level Mediator credential involves a completion of an approved 38-hour training programme, assessment through the demonstration of competency, and a certain number of co-mediations under supervision; and a higher level, Nationally Accredited Mediator - involves the completion of additional experience and ongoing requirements for practice, plus continuing professional development. The NMAS is applicable in all jurisdictions throughout Australia, facilitated by the delivery of accredited training and assessment programs based on the national standards by Recognised Mediator Accreditation Bodies, which offer providers diversity and consistent standards (Sourdin, 2016).

The United Kingdom's Civil Mediation Council is a voluntary accreditation body for mediators in civil and commercial cases, maintaining a register of Providers of Civil Mediation accredited by the CMC, which teaches and accredits mediators in accordance with the CMC's standards. In order to gain CMC accreditation, one must undergo and be tested in a training programme of a certain number of hours – currently 40 – and have a minimum number of hours of mediation practice annually – currently 30 – and observe the CMC code of conduct. Snooping around the Internet, parties and attorneys can access the CMC's register and determine who is accredited, and what the accreditation status of mediators is. In addition, England's Family Mediation Council operates a separate structure for family mediators, as the skills required to practice in that specialist area differ (Wall & Dunne, 2012).

The mediation certification scheme for Singapore is managed by the Singapore Mediation Centre (SMC) and by the Singapore International Mediation Institute (SIMI), which is also the accreditation body for Singapore's international mediation practice. There are four levels of certification for SIMI: Provisional Member, Associate Mediator, Mediator, and Senior Mediator. The requirements for certification at each level involve increased training, practice, and review of other mediators. The framework clearly takes into account the international competency standards required for commercial mediators, thereby mirroring Singapore's broader goals of becoming a world-class global hub for commercial dispute resolution services, and includes sections that will enable the recognition of foreign commercial mediators' credentials in jurisdictions with similar standards. Singapore's experience is significant for Pakistan due to a shared strategic objective of nurturing capacity in international commercial dispute resolution, as well as both countries' common law heritage (Sourdin, 2016).

There is no national framework of mediators' certification in the United States, and states and other types of disputes have different certification requirements. A few states, such as Florida and Virginia, have established prerequisite training, experience, and continuing education standards for mediators seeking certification at various levels and for various court types. Both the Association for Conflict Resolution (ACR) and the American Bar Association (ABA) have promulgated ethical rules that many mediators subscribe to. However, these rules are not necessarily part of a national certification process. The disjointed US model serves to remind everyone of how far a nationally disjointed certification system can go without a nationwide system, thus reiterating the importance of Pakistan having a nationally coherent certification framework from the beginning to avoid the default development of a disjointed system (Stipanowich, 2004).

India's mediator certification process under the Commercial Courts Act 2015 and the Mediation Act 2023 is highly relevant to Pakistan, as there are common grounds, such as shared legal history and similar institutional development issues. India's Mediation Act 2023, which establishes the Mediation Council of India as the national certification and regulatory body, has a two-tiered certification regime with different requirements for certifying mediators in domestic commercial mediations and in mediations involving international commerce. The recognition of foreign mediators in international mediations and the mutual recognition of mediator credentials with other jurisdictions' provisions of the Act underscore India's

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intentions to become intertwined in the mediation market, a trend that should be mirrored by Pakistan, given the increasing involvement in international commercial arbitration.

Pakistan's Current Certification Framework: An Assessment

The provincial mediator training and accreditation programme, outlined in the IMAC Annual Performance Report 2022, is a stepping stone towards the accreditation of mediators in Pakistan. This programme is based on the basic formal aspects of mediator training: Negotiation theory, facilitation skills, process management of mediation, ethical duties of mediators, and Legal aspects of the organisation of ADR in Pakistan. The training consists in part of role-play exercises and training in conducting actual mediations, and the assessment process involves actually mediating; the trainee must be competent at doing the actual simulated mediations in order to be accredited. In 2022, several hundred mediators had already been trained and upskilled under this programme, following a significant investment in building professional capacity (IMAC, 2022).

The IMAC programme is, however, subject to certain key limitations as compared to the comparator programmes included in the review in Section 3. First, the programme is a flat hierarchy: All mediators are IMAC-accredited and are the same level of accreditation – no distinction is drawn between various ITCO levels of accreditation, nor is it drawn between different mediators based on specialist area or suitability in handling different kinds of dispute. This one-size-fits-all approach implies that two mediators—one with core basic training and another with proven experience in conducting hundreds of mediations in a variety of dispute categories over many years—are scored the same by IMAC on a mediator panel, which is clearly incomplete for parties that require specialist mediators of experience for complex commercial and family disputes (Law and Justice Commission of Pakistan, 2021).

Secondly, IMAC's accreditation maintenance process is not systematically monitored or enforced. Whilst it is expected that accredited mediators will undertake ongoing professional development and practice to maintain their mediator skills, at this time, there are no minimum conditions for accredited mediators to maintain their accredited status through evidence, CPD, peer supervision or evaluation. This means that mediators who were originally trained a few years ago and haven't conducted dozens of mediations over the last year will be on the panel with the same accreditation status as mediators who are actively practising and have been on the panel for several years. In the absence of active maintenance, a certificate value is lost over time and is no longer a meaningful assessment of competency in the present day.

Thirdly, the IMAC framework at present lacks schemes for specialisation across various competency domains necessary to meet Pakistan's diverse needs. Family mediation requires expertise in family law, awareness of the patterns of family relations (which includes differing levels of power and the potential for domestic violence) and skills in how to mediate sensitive family issues when parties are highly emotional and have unequal bargaining positions. Mediators at the high end of the commercial mediation market should be experienced in commercial mediation practice, with the knowledge and experience to handle parties represented by counsel acting in adversarial roles and to manage multi-party conflicts with complex contractual issues. Labour mediation, or employment mediation, entails an understanding of Pakistan's labour laws and the landscape of employment-related disputes. At present, there is no separate certification track for any of these specialist areas within IMAC.

Punjab Mediation Centre's certification structure is similar to IMAC's, as specified below, but includes several provincial modifications and is aligned with the same curriculum. Given the lack of coordination between the IMAC and Punjab frameworks, there is no possibility for reciprocal recognition of qualifications between the two frameworks, and for a mediator who is accredited by IMAC, but wants to mediate within the Punjab framework, he/she would have to go through the accreditation procedures of each framework. This fragmentation is likely to increase if additional provinces enact their own ADR laws and certification standards, thereby creating unnecessary layers of costs for practitioners and inconsistencies in standards across provinces. There needs to be a national system that provincial systems implement to avoid further fragmentation.

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Structural Deficiencies in the Existing System

There are structural weaknesses in the current certification system for mediators in Pakistan, organised under four headings. One of them is the lack of independent regulation. Both the institution of mediation proceedings and the body of certifying and regulating mediators conducting mediation proceedings are IMAc. This dual role gives IMAC an institutional stake in certifying as many mediators as possible, in the hope that there will be sufficient mediators to continue serving IMAC's caseload, which could lead to lax certification standards and continued accreditation. Independent professional regulation, whereby the certifying and disciplinary duties are conducted by an independent body separate from the institution employing or contracting the mediator, should be the benchmark for Pakistan's ADR system (Sourdin, 2016).

The second is a lack of a register of public mediators. Interested parties and their counsel can't use a publicly available, searchable register of certified mediators and their qualifications, specialisations, experience, or the status of their accreditation to select a conveniently suited mediator for a party-initiated mediation. There is no such market transparency mechanism to redraw lines for mediating parties to choose to mediate, which makes the proceedings less 'owned' by the parties and reduces the incentives for mediators to develop good, special, less frequent solutions.

Thirdly, the overall complaints and discipline system is lacking. IMAC provides information on the ethical responsibilities of mediators on its panel in the code of conduct. However, there is no clear indication in publicly available information about the circumstances and procedures for filing a complaint against a Mediator, the criteria for determining whether a complaint would be upheld, and the sanctions available for upheld complaints. If certifications process is to inspire confidence in parties, there must be a complaints process which is easy, open, and credible, for parties that are unhappy with the mediations process, their mediator or believe that a mediator has acted “unethically,” (e.g. violates the confidentiality, imparts a partiality, or favours one party over the other, or does not have adequate competencies to be a mediator, or conducts the mediation in a manner which prejudices mediation quality).

Last but not least, the fourth structural gap in Pakistan's mediator certification system is the absence of a research and evaluation dimension. The most developed coach certification systems in the world are not static, but continue to develop based on research on which of its competencies contribute more to successful mediation results, on the most effective way to develop those competencies through a training program and on the further competency requirements for continuing development of coaches over their career. However, Pakistan's framework has not yet developed this research and evaluation capacity, and therefore, the standards mainly come from practitioners' experience, with international frameworks adopted.

A Proposed Three-Tier National Certification Framework

This article suggests three levels of national mediator certification to implement the national model of mediator certification through a Gazette notification under the authority of the ADR Act 2017, by IMAC and the provincial ADR Institutions. The three tiers aim both to offer a clear progression path for mediators moving from initial qualification to high-level specialist practice and to give parties a clear indication of the level of qualification and specialisation of mediators.

The Foundation Mediator Certificate (Tier One) was created for those entering mediation or those new to the field. The requirements of the Foundation Certificate are: to have attended a mediator training course which has been attended a minimum of 40 hours and has been recognised by a national ADR Training Accreditation Panel; to undergo a standardised practical assessment, consisting of at least two co-mediations in role-plays in front of a trained assessor; and to complete a minimum of five co-mediations in live cases with a trained and experienced senior mediator. The holder of a Foundation Certificate can provide mediation in lower-dollar civil cases, community conflicts, and simple commercial conflicts as a facilitator to the Tier Two or Tier Three mediator. The Foundation Certificate will expire after two years and can be reinforced by completing 20 hours of CPD and at least six mediation sessions in the previous two years.

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Tier Two is the Professional Mediator Accreditation, the standard level of accreditation for an independent practitioner within the scope of work of IMAC and the provincial centres, which includes a broad spectrum of civil and commercial conflicts. Tier Two requires: a valid current Foundation Certificate, or equivalent experience, 30 independent mediations since gaining Foundation Certificate status, completion of a competency assessment (Tier Two) that consists of a structured practice review, a peer interview and a peer supervised mediation with a trained assessor, and 30 hours of CPD over the last 2 years with at least 8 hours in the mediator's main specialist area. Tier Two mediators can independently handle all types of civil, commercial, and family conflicts addressed by IMAC and the provincial centres. Tier Two Accreditation is valid for three years and needs to be renewed at the end of each term.

Tier Three is the Senior Mediator Designation, the most senior level in the national designations system, for practitioners with experienced, proven expertise in multi-million-dollar cases and a desire to invest in the industry through training, mentoring, and research. The Tier Three requirements are: current Tier Two Accreditation, at least 5 years' successful mediation practice, (10 cases or more per year on average), evidence of a mediation specialism (through mediation portfolio or a written mediation specialist competency statement) and be actively involved with training provision and/or mentored Tier One and Tier Two mediators, and/or published research into mediation theory or practice. Senior Mediators can successfully help resolve disputes across all categories, including complex commercial and investment disputes, multi-party disputes, and cross-border disputes with an international dimension.

The venue for the national framework should be a National Mediation Standards Board, an independent entity empowered by the ADR Act 2017, with members from the mediation centres, civil society, academia, the legal profession, the judiciary, and IMAC. The national standards should be set and maintained by the Board; accreditation of training providers should be the responsibility of the Board; the Board should manage the public register of mediators; and a complaints and discipline process should be managed by the Board, which should also commission research on mediator competency and training effectiveness. The separation of the standards-setting/regulatory and service-delivery roles between IMAC and the provincial centres mitigates the structural conflict of interest mentioned in section 5.

Conclusion

The quality and credibility of Pakistan's ADR system must be built on mediator standards and certifications. The legislative framework developed under the ADR Act 2017 and the Punjab ADR Act 2019 appears capable of establishing a comprehensive national certification framework. However, the power has yet to be used to create a tiered, specialised, independently regulated framework that the rapidly developing mediation sector in Pakistan requires. The four structural weaknesses pointed out in this article, the lack of independence, public register, a comprehensive complaints mechanism and lack of capacity for research and evaluation, are the most critical areas to be resolved in the next step of ADR reform.

The three-tiered framework presented in this article aims to be bold enough to justify the international acceptability of Pakistan's certification system, while remaining realistic about the resources and institutional capabilities at hand. The gradual evolution of the government system is envisioned: First, the formation of the National Mediation Standards Board and adoption of Tier One standards; then the progressive adoption of Tier Two and Tier Three standards with time and alongside the increasing practitioner base, is a process that institutions and practitioners can comfortably stand.

The result of a robust mediator certification system is that the party turns to Pakistan's ADR institutions seeking a fair and effective resolution of their conflicts. Each increase in the quality of the mediators equals greater success for the parties: greater satisfaction levels in cases where settlement is a fair choice, better quality parties, and an enhanced sense of the justice system that will increase and maintain greater levels of confidence in ADR as a viable alternative to litigation delays and increased costs. Funding for mediators' certification is a first step towards investing in access to justice.

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