

# Comparative Study of Alternate Dispute Resolution in Islamabad, Khyber Pakhtunkhwa and Punjab

Muhammad Sohail Khan<sup>1</sup> and Muhammad Zubair Khan<sup>2</sup>

<https://doi.org/10.62345/jads.2023.12.4.74>

## Abstract

*Pakistan's alternative dispute resolution landscape faces challenges and variations in effectiveness across regions. While Islamabad exhibits successful implementation due to factors like education, ADR facilities, and government support, Punjab and KPK encounter obstacles like limited access, scarcity of skilled practitioners, cultural influences, and economic considerations. The research underscores the need for a concerted effort to address these challenges and promote ADR awareness, emphasizing the importance of government, civil society and stakeholders in ensuring widespread acceptance and accessibility. As outlined in this research below, ADR offers advantages over traditional court systems. This includes party control, confidentiality, time and cost savings, expertise, finality of awards and societal benefits. The paper further underscores the evolution of ADR, incorporating online platforms and virtual mediation sessions to enhance accessibility of efficiency. In the broader context of legal frameworks, the study compares ADR Acts in Islamabad, Punjab, and KPK. While similarities exist, differences in scope, the role of ADR centers, the concept of Saliseen that are present in KPK and no such concept in the other two Acts, and dispute types are notable. The effectiveness of these acts varies, requiring a nuanced approach to implementations and awareness campaigns tailored to regional nuance. Ultimately, the research concludes with a forward-looking perspective on the potential transformative impacts of ADR in Pakistan. Emphasizing its role in fostering economic growth, reducing legal costs, and promoting fairness, the study envisions a society where ADR has become a widely accepted and accessible mechanism for dispute resolution.*

**Keywords:** Dispute Resolution Laws, Skilled Practitioner, Traditional Court System.

## Introduction

Alternative Dispute Resolution (ADR) is a process of dispensing justice and resolving issues of the masses without referring the matters to formal courts. All the methods are utilized to manage the disputes among the parties outside the legal courts. Mediation, arbitration, conciliation, and negotiation are significant modes helpful in ADR systems. Pakistan has its autonomous constitutional entities, i.e., provinces and an International Capital Territory called Islamabad (the Capital). Each of these entities possesses its own separate ADR Acts. Islamabad as ADR Act, 2017, Punjab ADR Act, 2019 & Khyber Pakhtunkhwa (KPK) as ADR Act, 2020. These acts have similarities in procedural formalities and some differences depending upon the socio-cultural and ethnic challenges of the vicinities. Federal Capital, i.e. Islamabad, has its own norms and societal

<sup>1</sup>LLM Scholar, Abdul Wali Khan University, Mardan. Email: [sohailkhank733@gmail.com](mailto:sohailkhank733@gmail.com)

<sup>2</sup>Associate Professor, Department of Law, Abdul Wali Khan University, Mardan. Email: [mzubair@awkum.edu.pk](mailto:mzubair@awkum.edu.pk)



Copyright: © This is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license.

Compliance with ethical standards: There are no conflicts of interest (financial or non-financial). This study did not receive any funding.

structure to follow the ADR formalities and compatibility according to the needs and demands of its citizens. Here, ADR centers are established according to Section 2 (b) of the act to cater to subject citizens' dispute resolution. On the other hand, in KPK, the socio-cultural requirements of the Pakhtun population prefer to set its dispute through Jirgas and mutual reconciliation between the aggrieved parties through their respectable persons of the locality, i.e. Ameeris. In Punjab province, the traditional and old "Panchayat" system is settled where most of the countryside population refers its disputes and grievances to be resolved.

There are also similarities among these localities in the use of the ADR act and the proper application of the law. All three entities and their courts are working according to the instructions and time-to-time regulations set by higher courts. The higher courts are also running under the direct supervision of the August Supreme Court of Pakistan. Therefore, apart from the societal and cultural differences, all the provinces have to follow the common formalities, including judicious use of the act according to instructions of the higher courts.

ADR has a long, rich, and exciting history that dates back to ancient times when people in old civilizations used informal methods to resolve conflicts. In ancient times, societies understood the value of resolving disputes peacefully and created different ways to achieve this. They would involve well-respected individuals from the community or elders who acted as mediators or arbitrators. Their role was to help people communicate and find solutions everyone could agree on. Long ago, people understood the importance of resolving conflicts peacefully and maintaining good community relationships. They created ways to settle disagreements by talking and finding solutions together. In some cultures, like Native American tribes and African communities, they used mediation and reaching agreements that everyone agreed on to bring back peace and unity. They believed it was better for everyone to work together and find solutions to benefit the community rather than just focusing on individual rights or punishment. However, as formal legal systems started to develop, they became more dominant and overshadowed the use of ADR (Barrett, 2004). Nevertheless, there were instances in specific historical periods, like ancient Rome, ancient Greece, and medieval Europe, where ADR principles were sometimes included in the legal frameworks, although not consistently. It was in the 20th century that ADR started receiving more attention because people were unhappy with the traditional way of resolving disputes through lawsuits.

This led to the creation of organizations like the Centre for effective dispute resolution in the UK and the passing of the Alternative Dispute Resolution Act in the US (Won, 2013). These initiatives aimed to promote the use of ADR in both federal and state courts. Another important event was the introduction of the Alternative Dispute Resolution Act of 1998 in the United States. This law promoted the use of ADR in federal courts and played a significant role in bringing ADR into state court systems. It acted as a catalyst for the widespread adoption and integration of ADR practices in the legal system.

Furthermore, the law highlighted the excellent things about ADR, like letting the parties have more control, keeping things private, and not harming relationships. Also, because of technology, ADR has evolved to include online dispute resolution platforms and virtual mediation sessions. ADR can now happen online, which means people can resolve problems without being in the same place. This makes it easier for everyone to get justice, no matter where they are.

### **Significance of the Study**

The study of Alternate Dispute Resolution (ADR) in Islamabad, Punjab & KPK is significant for several reasons: Improving access to justice: ADR provides a quicker, less expensive, and less

formal way to resolve disputes, which can improve access to justice for individuals and communities in Islamabad, Punjab & KPK who may otherwise face significant barriers to the court system. Enhancing the effectiveness of dispute resolution: By examining the efficacy of ADR methods in Islamabad, Punjab & KPK, the study can identify ways to improve the use and implementation of ADR, leading to more efficient and effective resolution of disputes. Overall, the comparative analysis of ADR in Islamabad, Punjab & KPK is significant because it can improve the lives of individuals and communities by providing faster, more effective, and less expensive ways to resolve disputes. Despite the cultural barriers and sociological ways of living, the most common approach of dispute resolution in the provinces must be implemented in letter and spirit.

### Objectives

1. To evaluate the effectiveness of ADR in resolving disputes and to analyse the process of ADR in resolving disputes in Islamabad, Punjab & KPK.
2. To identify legal barriers to the use of ADR in Islamabad, Punjab & KPK.

### Literature Review

A literature review on a comparative study of alternate dispute resolution (ADR) in Islamabad, Punjab & KPK would examine the existing research and literature on the topic, including academic articles, reports, and legal documents. The literature review would aim to:

1. **Identify the common forms of ADR used in Islamabad, Punjab & KPK:** This would involve an examination of the types of ADR methods used in Islamabad, Punjab & KPK, including mediation, arbitration, conciliation, Jirgas, Panchayats and traditional dispute resolution methods.
2. **Evaluate the effectiveness of ADR in resolving disputes:** This would involve reviewing case studies and empirical data to assess the success rate of ADR in resolving disputes in Islamabad, Punjab & KPK and identify factors that contribute to its effectiveness. How Panchayats, Jirgas and ADR Centers effectively manage the dispensation of justice out of the courts to meet the spirit of the dispensation of justice.
3. **Identify barriers to the use of ADR:** This would involve an examination of cultural, legal, and systemic barriers that may prevent parties from using ADR as a means of resolving disputes in Islamabad, Punjab & KPK.
4. **Examine the role of traditional dispute resolution methods:** This would involve an examination of the role played by traditional dispute resolution methods, such as tribal jirgas or panchayats, in resolving disputes in Islamabad, Punjab & KPK and how they interact with modern ADR methods.

### Advantages of ADR Over Traditional Court Systems

The alternative dispute resolution mechanism is an innovation that stands apart from the traditional judicial system enforced in a country. While litigation has been present and popularly used before, in stark contrast to ADR, the public is aware of the disadvantages and discrepancies presented by the traditional system, like the burden placed on concerned parties, the long-winded resolution process, the complex procedures involved and the immense amount of time it takes. Due to these factors, an alternative, non-litigation, dispute resolution process which is faster, easier and consumer friendly has been formulated.

### **Locus of Control**

The power of settlement is given to the dispute parties, and dispute resolution is to be decided by a neutral third party. The disputing parties typically will attempt to resolve their dispute through a process in which both can still control the trial process until the case cannot be resolved. They then refer to a third party to help fix it. The optional don't need the power to make decisions because they only serve as a facilitator or mediator to oversee the negotiation process or as advisers, especially experts in a particular field. ADR procedure usually involves the disputing parties as a whole without any exception, also involving their lawyers to reach a solution together (Adrian, 2014).

### **Element of Confidentiality**

In traditional court trials, the documents, proceedings, and outcomes are accessible to the public, sometimes resulting in adverse publicity for the involved company or business. However, arbitration offers a solution to this issue by prioritizing confidentiality and keeping the proceedings and details of the case private. This ensures that external pressures do not influence decisions and helps protect the parties' reputations (Block, 2016).

### **Save Time and Money**

Arbitration offers advantages in terms of saving time and costs compared to traditional litigation. The duration of a case, from its initiation to completion, can be significantly shortened through arbitration. In contrast, the litigation process tends to be time-consuming, resulting in higher costs. Therefore, the option of arbitration becomes more favorable due to its potential to minimize both the time and financial resources expended on resolving a dispute (Adrian, 2014).

### **Arbitration Expertise**

Arbitration proceedings require the use of arbitrators agreed upon for handling such cases. The general public does not appoint the arbitrator, as they must be able to manage and provide insights using their expertise in the issues in dispute. On the other hand, in litigation, the judge overseeing a case is sometimes unable to delve into issues or problems facing a case, as certain technical matters or issues related to specific industries may be unfamiliar to them (Block, 2016).

### **Final Reward**

The awards an arbitrator provides in arbitration cases are generally considered final and binding, as both parties have agreed upon them. It is uncommon for arbitration cases to be appealed for a retrial, and the parties involved typically abide by the award. On the other hand, the litigation system guarantees a different level of finality. In litigation, there is the possibility of appeals, which can lead to prolonged time and increased costs without a definite end in sight.

## **Overview of ADR Mechanisms**

### **Arbitration**

In this alternative dispute resolution process, parties agree to let someone else decide their dispute instead of going to the traditional court system. This third person is called an arbitrator. The arbitrator listens to both sides and makes a final decision that everyone has to follow. The parties can choose the arbitrator and decide how the process will work. Parties can also create their own rules, which is why there are different ways to do arbitration. Some ways are less formal and let parties present any evidence they want, while others follow stricter rules, similar to a court.

Sometimes, parties can gather information from each other, but only occasionally. The arbitrator can be one person or a group of people. If parties don't like the decision, they can only appeal in some instances, like if the arbitrator did something wrong on purpose. They cannot appeal because they disagree with the facts or the law (Mustill, 1989).

### **Mediation**

Mediation is an alternative dispute resolution mechanism in which different parties, people, or organizations solve their problems with the help of a third person called a mediator. The mediator can meet with everyone involved in a dispute and try to find a solution that everyone agrees on. Also, a mediator can talk to each person separately and share information to find a solution. The goal of this alternative dispute resolution mechanism is that everyone involved in a dispute must agree on a solution by themselves. Then, they write down the solution, which becomes a contract everyone must follow (Boullé, 1998).

### **Conciliation**

Conciliation is more relaxed and formal than mediation. It is, on the other hand, an alternative dispute resolution process in which a third party helps people who are disagreeing by improving how they talk to each other and giving them technical advice (Houzhi, 1996)

### **Fact-finding**

This Alternative dispute resolution mechanism solves disputes with the help of facts. Fact-finding is when someone who doesn't take sides looks into and helps to figure out the facts in a dispute—the Fact-finder to what everyone says and more information independently if needed. Then, after studying the facts, they write a report about what they find. The report is not a strict rule but helps find a solution through discussions and negotiations. Fact-finding is often used in disagreements that happen in public sectors.

### **Mini-trial**

A mini-trial is such alternative dispute resolution process in which parties or organizations, mainly companies, agree to have a short trial with a neutral person as the judge, but the decision is not final. They will choose a person themselves who acts as a judge. It would be up to their choice. After that, lawyers from both sides show evidence and summarize what they would say in an actual trial. Companies often use mini-trials to help their leaders understand how vital their case is as well as how strong the other side's case is. The main goal of a mini-trial is similar to all alternative dispute resolution mechanisms, i.e. to encourage the parties to settle their disputes (Edelman, 1989).

### **ADR Systems of Islamabad, KPK and Punjab**

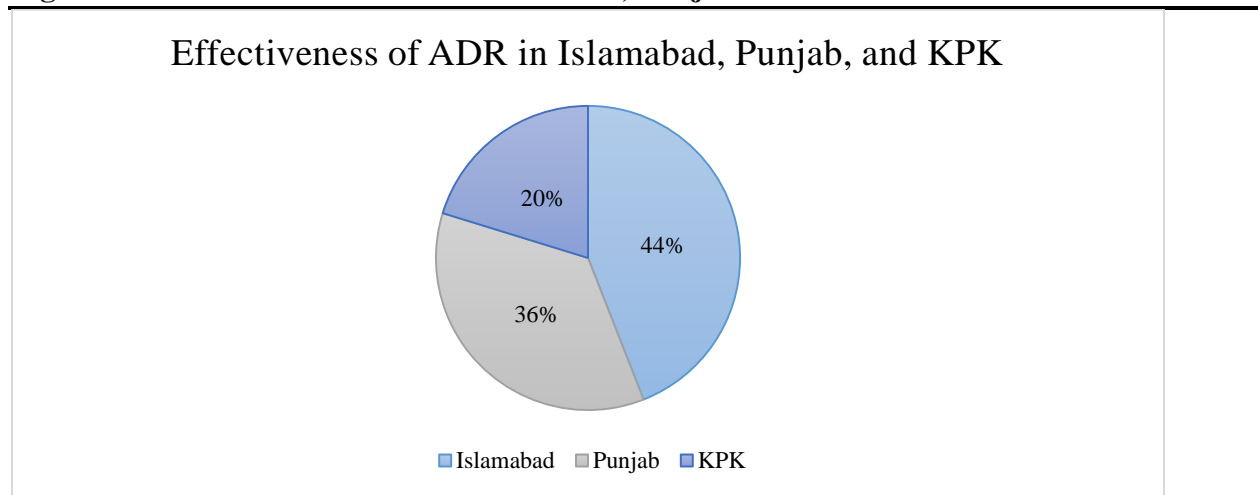
There is a long history of the practice of ADR's objectives, which is to settle the disputes between parties without going to court through the old Jirga system. Alternative dispute resolution is a new concept in town, but Jirga! has existed for centuries. It is an ancient institution in Pakhtun society. During the period when terrorism was at its peak following the 9/11 attacks, the Jirga attempted to persuade terrorists and protect the public from the inevitable bloodshed of such terrorism. Jirga was traditionally used to settle feuds between individuals, families, and tribes. Now, in Pakistan, the government has set acts to legalize this objective of resolving disputes outside the court system in the form of alternative dispute resolution acts. There are three central alternative dispute

resolution acts. The alternative dispute resolution act, 2017, in Islamabad, the Punjab alternative dispute resolution act, 2019, and the Khyber Pakhtunkhwa alternative dispute resolution act, 2020. These are Pakistan's most extensively used ADR laws (Mukhtar, 2016).

### Effectiveness of ADR in Islamabad, Punjab and KPK

The implementation and efficacy of the ADR Act in Pakistan vary by location. Although the Act applies throughout the country, Islamabad has had tremendous success in implementing it due to a higher level of education and understanding of ADR procedures, a well-established network of ADR facilities, skilled specialists, a legal framework, and strong government support. However, limited access to ADR services, a shortage of experienced specialists, poor infrastructure, economic considerations, insufficient funding, and less comprehensive legal frameworks have hampered the act's implementation in Punjab and KPK. Traditional practices such as Jirga's and cultural norms in these areas may further discourage people from using the official ADR process (Boulle, 1998). As a result, to ensure the successful implementation of the ADR Act in Punjab and KPK, there is a need to address these challenges and promote awareness of ADR methods. It will require a concerted effort by the government, civil society, and other stakeholders to effectively implement ADR across the country. Although the ADR Act has been a positive step towards promoting ADR in Pakistan, further work is required to ensure that ADR is accessible, effective, and widely accepted in all regions (Mukhtar, 2016). By taking a comprehensive and coordinated approach, it is possible to overcome these challenges and realize the potential of ADR to contribute to a more peaceful and just society.

**Figure 1: Effectiveness of ADR in Islamabad, Punjab and KPK**



### Legal Barriers to ADR Implementations

Two key legal barriers to the implementation of alternative dispute resolution in KPK prevent people from using ADR and may undermine its effectiveness as a dispute resolution mechanism.

- People's reliance on Jirga's and Panchayat
- The lack of specialized ADR centres

Some factors contribute to the failure of ADR cases in KPK, which need to be considered. Even though ADR has been recognized as a legally valid mechanism for dispute resolution in KPK, many people in the province must be aware of its existence, benefits, and procedures. There is a general lack of awareness about the role of ADR in resolving disputes, which results in people

relying on traditional dispute resolution methods, such as Jirga, panchayat, and tribal councils. Moreover, the government and civil society organizations have yet to launch any major awareness campaigns to educate people about the benefits of ADR. There is a need for sustained campaigns to promote ADR and its benefits, including its cost-effectiveness, speed, and flexibility (Advocate, 2013).

### **Research Methodology**

For this research article, the qualitative research methodology has been adopted, in which the already published scholarly article, the interviews conducted from the relevant personals by various forums, international reports and case laws have been discussed. In furtherance to this, descriptive and analytical research methods have been adopted, as there is always room for improvement in everything after the collection of all the data from various forums (be it primary data from the statutes or secondary data as mentioned above) all these have been critically analyzed. Based on that analysis, recommendations are given at the end.

### **Finding and Analysis**

Various factors in the effectiveness of ADR in Islamabad, including the availability of adequate legal enforceability. These include:

- A high degree of trust in the formal court system
- A strong emphasis on ADR practitioner and lawyer training and capacity building
- A high level of education and awareness.

Islamabad is the federal capital of Pakistan and has a well-established legal system that includes a robust judiciary, well-trained lawyers, and effective legal frameworks. The availability of these resources and mechanisms ensures that the decisions reached through ADR processes are legally enforceable and carry weight in the eyes of the law. In Islamabad, ADR processes such as mediation, arbitration, and conciliation are often used to settle property, family, and commercial disputes. These processes are facilitated by trained and experienced mediators and arbitrators who are well-versed in the legal frameworks of the city. Additionally, the courts in Islamabad often refer cases to ADR processes to reduce the burden on the judicial system. Moreover, the use of ADR processes in Islamabad is also promoted by the legal community, and the legal system is further supported by the presence of professional bodies such as the Pakistan Bar Council and Islamabad Bar Association, who have taken an active interest in promoting ADR as a viable alternative to traditional litigation.

Additionally, in KPK, people have a higher level of trust in the formal judicial system, which means that people are more willing to use ADR as an alternative. Parties are more likely to comply with agreements reached through ADR if they believe that the formal judicial system will uphold those agreements. They may be more willing to negotiate and compromise when they believe that the traditional legal system is fair and impartial and that they will receive a fair hearing if the matter were to be prosecuted in court. The citizens of KPK have a strong faith in the ability of the formal judicial system to deliver justice. As a result, they are more willing to engage in ADR processes recognized and supported by the traditional legal system. The availability of a solid formal legal system, combined with a high level of trust in that system, provides a solid foundation for the success of ADR cases in KPK. KPK has a well-established system of professional development and continuing legal education that helps to ensure that ADR practitioners are well-trained and equipped to handle a wide range of disputes. The training and capacity building is

provided through various channels, including the local bar associations, universities and other educational institutions, and government and civil society organizations.

ADR practitioners in the country are encouraged to undergo regular training and professional development, which helps to ensure that they stay up-to-date with the latest developments and best practices in the field. For instance, Islamabad's alternative dispute resolution center provides regular training programs and workshops for lawyers and ADR practitioners to enhance their knowledge and skills. Similarly, the Islamabad high court bar association also offers training programs and seminars on ADR methods and techniques to lawyers. This leads to more people opting for ADR to resolve their disputes, which in turn contributes to the success of the ADR system in the entire country.

### **Recommendations**

- Create uniform ADR laws that apply consistently throughout the country. Developing standardized and consistent ADR laws that are uniformly applicable across the country holds immense potential for enhancing the efficiency and effectiveness of dispute resolution processes. By establishing a cohesive legal framework, this approach would ensure that individuals and businesses encounter consistent guidelines and regulations when seeking ADR solutions.
- Establish dedicated ADR centres that operate under judicial supervision. The establishment of dedicated Alternative Dispute Resolution (ADR) centres operating under the supervision of the judiciary represents a pivotal stride towards bolstering the efficacy and credibility of ADR mechanisms. By aligning these centres with the judicial system, a symbiotic relationship can be fostered, ensuring adherence to legal standards and procedural integrity.
- Ensure that ADR service providers are competent and adequately trained. A crucial step in optimizing Alternative Dispute Resolution (ADR) effectiveness involves ensuring ADR service providers' competence and thorough training. Robust training programs, backed by recognized standards and credentials, are paramount to equipping mediators and arbitrators with the skills necessary for impartial and informed decision-making.

### **Conclusion**

To sum up, alternative dispute resolution provides a valuable and efficient option for settling disputes in Pakistan instead of going through formal court processes. The country has passed laws like the alternative dispute resolution act 2017, Punjab alternative dispute resolution act 2019, and Khyber Pakhtunkhwa alternative dispute resolution act 2020. These laws aim to make justice more affordable and timelier by encouraging negotiation, mediation, and conciliation between the parties involved. However, alternative dispute resolution is gaining recognition worldwide for its ability to change how conflicts are resolved. It can help save money, be fair to everyone, and make things more efficient. If ADR is used widely in Pakistan, it can bring many benefits to the country. However, there are problems implementing ADR in different parts of Pakistan because of laws and culture. To make it work better, Pakistan needs to address these problems. This means making systems to handle complaints, using technology, telling people about ADR, teaching and training people, giving incentives, starting ADR programs, making it easier to access, and working with ADR providers. Pakistan can overcome the problems and make ADR work well by doing these things. ADR has already started to improve how conflicts are resolved in Pakistan, but we need to keep working on it in the future.



## References

- Adrian, P. O. (2014). Traditional Approaches In Alternative Dispute Resolution: A Brief Overview. *Conflict Studies Quarterly*, 34-48.
- Advocate, B. & Sajid, I. A. (2013). Jirga System In Pakhtun Society: An Informal Mechanism For Dispute Resolution. *Pakistan Journal Of Criminology*.
- Arfin, M. R. (1995). The Benefits of Alternative Dispute Resolution in Intellectual Property Disputes. *UC Law SF Communications and Entertainment Journal*.
- Barrett, J. T. (2004). A History Of Alternative Dispute Resolution: The Story of a Political, Social, and Cultural Movement. *The association for conflict resolution*.
- Bear, L. S. (1992). *Alternative Dispute Resolution*. Sweet and maxwell publishers.
- Block, M. J. (2016). The Benefits of Alternative Dispute Resolution for International Commercial and Intellectual Property Disputes. *Rutgers Law Record*.
- Boulle, L. (1998). *Mediation: Principles, Process, Practice*. LexisNexis.
- Cummins, D. (2018). *Women's multiple pathways to justice: Alternative Dispute Resolution and the impact..* UN Women asia and pacific report.
- Edelman, L. C. (1989). The Mini-Trial: Alternative Dispute Resolution series. *Army engineer for water resources Alexandria VA*.
- Houzhi, T. (1996). International dispute resolution: towards an international arbitration culture. *ICCA congress series*.
- Khan, H. A. (2022). Comparative Analysis Of Alternative Dispute Resolution Laws In Pakistan: Its Adaptation, Procedure And Compatibility. *Annals of Human and Social Sciences*.
- Mukhtar, S. (2016). Settlement Of Disputes By Way Of Arbitration In Pakistan. *World Journal of Social Science Research*.
- Mustill, M. J. (1989). Arbitration: History and Background. *journal of international arbitration*.
- Won, A. (2013). Overview of Alternate Dispute Resolution with special reference to Arbitration Laws in Pakistan. *Journal of arbitration studies*, 23(3), 149-147.