

## **Alternative Dispute Resolution (ADR) Under Islamic Law**

Abubakar Bashar

Department of Legal Studies  
College of Administrative Studies and Social Sciences  
Kaduna Polytechnic

[basharabubakar.company@gmail.com](mailto:basharabubakar.company@gmail.com)

**Abstract:** *This paper succinctly analyzes concept of alternative dispute resolution mechanism under Islamic law (Shariah), with the aim of ascertaining the use of Arbitration under Islamic Law. The paper comparatively examines other means of ADR under Islamic Law. The paper finds that Arbitration under Islamic law is as old as the Religion of Islam, hence the recommendation that the concept of Arbitration should be formally integrated into the proceedings in the Shariah court legal system*

**Keywords:** *Shariah; Arbitration; ADR;*

### **1.0 INTRODUCTION**

Shariah Law is an embodiment of Laws which regulate all aspects of Muslim life. Every act of a believer is expected to conform to Islamic law and observe ethical standards derived from Islamic principle (Mervyn K Lewis, 2007). Dispute settlement is one of the fundamental affairs of a Muslim as he was ordained to do so peacefully being the best way of resolving disputes among Muslims without sense of grievance from all parties. Arbitration and amicable settlement (Suihu) are pre-Islam concepts of Arab which were modified and redefined by Islam to suit Islamic Societies. (Aseel, Al-Ramahi, 2008).

Alternative Dispute Resolution (ADR), also known as external dispute resolution in some quarters. It is a dispute resolving process and technique that are meant for the disagreeing parties to come to an agreement. It is a collective term through which conflicting parties can settle disputes with or without a third party. It is intended to serve as an alternative to the conventional court processes. The rising popularity of ADR in the modern days can be attributed to the increasing weight of cases and delays in the traditional courts system. Alternative Dispute Resolution has gained a widespread acceptance among the general public and the legal profession in the recent years. The main components of ADR are: Arbitration, Meditation, Conciliation and Negotiation (Hon. Justice Idris Abdullahi Haroon, 2017).

**Citation:** Abubakar B. (2021). Alternative Dispute Resolution (ADR) Under Islamic Law, Paper Presented at the First Virtual Conference on Issues and Challenges of Education Development in Post Covid 19 Era.

## 2.0 ALTERNATIVE DISPUTE RESOLUTION (ADR) IN ISLAMIC LAW

It is pertinent to stress that ADR is not alien to Islamic Law. This is evident from the fact that, Islam brought sciences and scholarship. It was an acclaimed system of religion, governance, politics, economics and adjudication. Shariah Law which derives its origin from the divine message revealed to mankind through the noble Prophet Muhammed (PBUH) remained and continuing to remain universal in character as it leaves no aspects of life and man without given adequate attention. The Supreme Court of Nigeria declared in the Case of Alkamawa vs. Bello as follows:

*“Islamic law is not same as customary law as it does not belong to any particular tribe. It is a complete system of universal law, more certain and more permanent and universal than English Common Law (2013) SQLR, VOL.1, PART I”*

Alternative Dispute Resolution in Islamic Legal system is simply known as “As-Suihu”. It is a popular aspect of Islamic Legal System which derives its origin like other Islamic principles of law from the Qur’an and supplemented by the Hadith; traditions of the Prophet and Ijma; the consensus of Muslim Jurists.

*Sulhu* was first practiced by the Prophet (PBOH) and his early disciples during an incident which occurred at a place between Makkah and Madinah known as al-Hudaybiyyah. This was when the Prophet (PBOH) wanted to perform lesser Hajj (Umrah) after he had been forced out of Makka and decided to migrate to Madinah. The incident took place towards the end of the sixth year of the Hijrah; the prophet left Madinah with a party consisting of about 1400 – 1500 men. On hearing of the Prophet approaching Mecca, the Makkans decided to decline his entry with a strong Armed Force under the leadership of Khalid bn. Walid. When the Prophet Mohammed (PBOH) became aware of this, he turned back and settled at a place known as al – Hudaybiyyah.

The representatives of the Mekkan Oligacy met with the Muslims and they both decided to reach a truce which metamorphosed into a treaty that all warfare between Makkah and Madinah be suspended for 10 years; that no entrance to Makkah by any of the disciples of the prophet for that

particular year; that any Makkan citizen who approach the Prophet to accept Islam shall be sent  
Citation: Abubakar B. (2021). Alternative Dispute Resolution (ADR) Under Islamic Law, Paper Presented at the First Virtual Conference on Issues and Challenges of Education Development in Post Covid 19 Era.

back to Makkah, but if any disciple of the Prophet wish to return to their own Religion, such a person will not be sent back. Notwithstanding the last term of the truce which is highly disadvantageous, the prophet still agreed to it in pursuance of the context of Quran where Allah states:

*There shall be no coercion in matters of faith (Q2:256)*

This truce of Hadaibiyyah became an historic event in Islamic context of Sulhu which later endeared Islam to hundreds of Meccans. It was from the aforementioned incident of Hudaibiyyah that Sulhu under Islamic Law become an instrument of terminating disputes or conflicts, hence Sulhu is as old as the Islamic religion or shariah itself. It is worth nothing that Sulhu in Islamic Law is traceable to the sixth year of the Hijrah calendar which is now over 1442 years; whereas, the concept of Alternative Dispute Resolution under the common Law was established in 1945 by the United Nations (Stefan, Reichmuth, Aladin, Sarhan, Jorn Rusen, 2012). Also whatever must be avoided in respect of a purchase must also be avoided in respect of a compromise.

### **3 PROCESSES OF A.D.R UNDER ISLAMIC LAW**

ADR in Islamic Law comprises of the following processes as tools of Conciliation

1. Sulhu: Negotiation, Mediation/Conciliation.
2. Tahkim: Arbitration
3. Muhtasib: Ombudsman.
4. Fatawa or Mufti: Expert Determination.

#### **3.1 Sulhu: Negotiation, Mediation/ Conciliation**

The Concept of Sulhu under Islamic Law can be described as contract that is contracted by two or more individuals, wherein each party willingly waives part of his rights for the purpose of reaching a mutual and consensus resolution of a conflict. Hence, in the legal parlance, Sulhu is a settlement grounded upon compromise negotiated by the disputants themselves or with the help of a third party. Sulhu or compromise is recognized and enforceable under Islamic law. F. H. Ruxton on maliki law defined Sulhu or compromise thus:-

Citation: Abubakar B. (2021). Alternative Dispute Resolution (ADR) Under Islamic Law, Paper Presented at the First Virtual Conference on Issues and Challenges of Education Development in Post Covid 19 Era.

*Surrender of a right or the discontinuance of a suit for a consideration.*

In Tuhfatul Hukkam, Sulhu or compromise is defined in the following terms:-

*“A settlement based upon a compromise is lawful according to all Muslim jurists but that does not mean under any circumstances”. The compromise can be based upon an avowel, just in the case of a purchase it can also be based on a denial. Whatever is lawful with regards to purchase is also lawful with regards to compromise”.*

*Sulhu* represents one of the methods of ADR in the Islamic legal system and it is attained through mediation and conciliation which may be facilitated by either a *Qadi* or prominent members of a family or community. However, it involves the principles of counseling, advising and arbitration.

The early *Quranic* verses on *Sulhu* are:

- i. *The believers are but a single brotherhood, so make peace and conciliation between two (contending) brothers, and fear Allah, that ye may receive mercy. (Q49: 10)*
- ii. *If two parties among the Believers fall into Quarel, make peace between them with justice and fairness, for Allah loves those who are fair and just. (Q 49:9)*

The aforementioned verses strongly advocated amicable settlement of disputes on equitable and fair grounds, hence the fact that God will reward those who indulge in it. The prophet, in furtherance to the above verses was reported as follows:

- i. *He who makes peace (Sulh) between the people by inventing good information or saying good things (in his attempt to settle the disputants) is not a liar. (Sahih Al – Bukahari Vol. 3)*
- ii. *“For everyday in which the sun rises there is a reward for the one who establishes reconciliation and justice among people”.*

The prophet also gave preference to dispute resolution over prayer (*salat*), *sadaqah* and *zakah* (charity and almsgiving) and fasting.

Shall I inform you of a deed more rewarding than fasting, prayer and charity? It is the act of settlement between people, for bad relationships and disputes are like a razor (which can eliminate a community). The prophet upheld the cause of *Sulhu* at a very difficult situation even when derogatory reactions were made against his noble personality and his mission. It is reported thus:

*When Allah’s apostle concluded the peace treaty of Huddayhiyyah, Ali bn Abi Talib was to put in into writing; at the opening chapter of the document, he wrote: between*

Citation: Abubakar B. (2021). Alternative Dispute Resolution (ADR) Under Islamic Law, Paper Presented at the First Virtual Conference on Issues and Challenges of Education Development in Post Covid 19 Era.

*Mohammed; Allah's messenger ..... The non – Muslims objected that introductory part claiming if he (the prophet) is an apostle of Allah they would not fight with him. Allah's messenger asked Ali to delete that statement while Ali declined saying that he will not be the one to delete it. The prophet (PBUH) on his own deleted it in the interest of peace and settlement. (Sahih Al – Bukhari Vol. 3, Supra)*

All types of compromise and conciliation and among Muslims are permissible except those which make haram (unlawful) halal (lawful) and halal (lawful) haram (unlawful)

### **3.2 Tahkim: Arbitration**

Prior to advent of Islam, the concept of Takhim (Arbitration) was in practice to settle civil and commercial disputes. But with the advent of Islam, arbitration was given approval in the Quran as enshrined in some of its verses dealing with Tahkim.

*If ye fear a breach between them (i.e. husband & wife), appoint (two) arbiters, one from his family and the other from hers: if they wish for peace, Allah will strengthen their conciliation: for Allah hath full knowledge, and is acquainted with all things. (Q4:35)*

The prophet also in series of his reported Hadiths encouraged Arbitration. In one reported case, he appointed an Arbitrator and also advised the tribe of Bani Qarnata to have a dispute arbitrated upon. However, under Islamic Law, an arbitrator must have certain qualification which qualifies him to be so appointed; namely, sufficient knowledge, honesty, fear of Allah and requisite competency to discharge the responsibilities.... This is in consonance with the relevant provisions of the Arbitration and Conciliation Act which requires a modern Arbitrator to be trained and certified before he can practice as one.

### **3.3 Muhtasib: Ombudsman**

The institution of ombudsman or commissioner of Public Complaints has now become an indispensable tool of government in many countries to settle disputes. The institution of Ombudsman emerged in its present form in Sweden in 1809. England had its first ombudsman under the preliminary Commissioner Act, 1967. He adjudicates between a private person and any governmental or statutory agency. In Islamic law, Muhtasib is equivalent to ombudsman. His

Citation: Abubakar B. (2021). Alternative Dispute Resolution (ADR) Under Islamic Law, Paper Presented at the First Virtual Conference on Issues and Challenges of Education Development in Post Covid 19 Era.

functions include account taking (hisbah) of such matters like weight and measures, quality of commodities on sale in markets, honesty in trade and commerce, observance of modesty in public places, such other things dispute resolution, and also to maintain moral standards among members of a community.

The institution of muhtasib is as old as Islam itself and owes its origin to various verses of the Quran. One of such verses is:

*Let there come up amongst you, a set of people enjoining what is right, forbidding what is wrong and believing in Allah (Q3: 104).*

The prophet himself appointed Sa'ad Ibn Ummayyaj as muhtasib of Mukkaa and Umar bn al – khattab as that of Madinah. Abdullah bn Utbah al- Mas'ud was the muhtasib of Madinah during the reign of Umar Bin Al – Khattab. According to Ibn Taymiyyah, duties of muhtasib cover areas not covered by Qadi or Governor. This generally related to Quranic duty of enjoining the good and forbidding evil. To do this he is empowered to lay down rules to regulate different activities falling within his jurisdiction and duties.

The office of Muhtasib is a useful institution in dispute resolution and dispute avoidance. The powers vested in him are wider than those enjoyed by Ombudsman in the western world.\

### **3.4 Fatawa or Mufti: Expert Determination.**

Expert determination is the process where parties to a dispute entrust their disputes to some experts for evaluation in view of the technical nature of the dispute. The evaluation or verdict given by the expert is only of persuasive value, not binding.

Fatawa are non – binding evaluative opinions given by a Mufti to an individual disputant generally in connection with a particular dispute, when parties or a party is unsure in which way to tackle their matter.

## **4. FINDINGS AND RECOMENDATION**

This work finds that Sulhu has become an indispensable tool in dispensation of Justice under Shariah from the genesis of Islam. Accordingly, it is recommended that judges and Legal Practitioners in Shariah should back up their knowledge of practice and administration of Justice with studies and practice of Sulhu.

Citation: Abubakar B. (2021). Alternative Dispute Resolution (ADR) Under Islamic Law, Paper Presented at the First Virtual Conference on Issues and Challenges of Education Development in Post Covid 19 Era.

## REFERENCES

1. Aseel A R, Sulhu; A crucial part of Islamic Arbitration, (2008) LSC Law, Society and Economy working Paper of London School of Economics and Political Science.
2. Muhammad A A, Features of Arbitration in Islamic Law when resolving Disputes in Muamalah,(2019), International Journal of Innovation, Creativity and Change, Volume 9, www.ijicc.net accessed on the 30<sup>th</sup> April 2020 at 10:30am.
3. Hon. Justice Idris Abdullahi Haroon, (2017), The Use of Alternative Dispute Resolution (sulhu) in Sharia cases.
4. Alkamawa V Bello (2013) *S Q L R, VOL. 1, (PART 1)*
5. Sihadat H, Arbitration in Islamic Law for treatment of civil and criminal cases, (2003) Journal of Philosophy, Culture and Religion, Vol. 1
6. Alhaji Isa V Estate of Late Alhaji Abdul – mumuni (2007) 3 S.L.R. (part IV) 162 at 176 – 177.