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Beyond Statutory ADR: Why Pakistan Needs a Codified Shariah-Compliant ADR Framework

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Abstract

Pakistan has already enacted several ADR related legislations with an aim of making justice more accessible and judicial process less time-consuming. Despite these legislative advances, the legal direction of shariah-compliant ADR is disjointed and does not have a unified statute. This article suggests that the problem is not that there is no legislation on arbitration in Pakistan, but the lack of a comprehensive law for the codification of ṣulḥ, taḥkīm and wasāṭah under the constitutional and procedural framework in Pakistan. The doctrinal and comparative legal analysis explores Pakistan's current state of affairs, as well as the developments in Malaysia, Saudi Arabia, England and Singapore. It argues that for the Shariah-compliant ADR to be effective, it cannot be limited to legislative recognition, it must have institutional regulation, it must be procedural, it must have ORI, and there must be legal standards that are enforceable and are adherent to Shariah. Therefore, the authors suggest the possibility of enacting a comprehensive Shariah-Compliant Alternative Dispute Resolution Code to harmonise Islamic jurisprudence with the constitutional guarantees and the principles of international dispute resolution. It concludes that such codification would help to reinforce access to justice, build public confidence in ADR and create a coherent legal structure that is consistent with Pakistan's constitutional obligations and the Islamic principles of justice, reconciliation and public welfare.

Keywords: Alternative Dispute Resolution (ADR); Shariah-compliant ADR; Sulh; Tahkim; Wasatah; Islamic Law; Arbitration; Mediation; Pakistan; Comparative Law.

INTRODUCTION

“If two groups of believers fight one another, make peace between them.”¹
Qur’an 49:9.

The situation of delayed justice in Pakistan is a noticeable legal paradox. In the last ten years, legislatures have focused more and more on alternative dispute resolution as a solution to the high costs of litigation, delays and judicial congestion.² These laws demonstrate the constitutional mandate of the State to provide “inexpensive and expeditious justice”, but have not yet led to a unified national culture of dispute

¹ Qur’an 49:9. The translation has been rendered in contemporary English for clarity. See also Qur’an 49:10 and 8:1.

² Alternative Dispute Resolution Act 2017, Act XX of 2017; Punjab Alternate Dispute Resolution Act 2019, Act XVII of 2019; Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020, Act XLVIII of 2020; Code of Civil Procedure (Sindh Amendment) Act 2018, ss 9-A and 9-B.

resolution.³ The formal recognition of ADR is not, however, having an impact on the structural causes of delay, as shown by the fact that at the end of December 2023, some 2.26 million cases were pending before the courts in Pakistan.⁴

The traditional answer is for more mediation centers, more judicial mediations, and more ADR legislation. It is not a complete diagnosis. Pakistan's problem is not just of alternative procedures, rather it is a disconnect between the statutory ADR and the normative basis of how the population understands dispute resolution. Current laws cover mediation, conciliation and arbitration in a rather vague manner and do not systematically define, regulate or institutionalize the Islamic mechanisms of *sulh*, *tahkim* and *wasatah*, Islamic law does not regard reconciliation as a sideline away from adjudication.⁵ Classical and contemporary works also point to substantive goals of Islamic jurisprudence as settlement of conflict, public welfare and justice, and state that the Qur'an refers to believers as brothers and instructs believers to make peace between themselves.⁶

But informality is not necessarily authentic. If the Shariah-based dispute resolution is not part of a distinct legal framework, this can lead to unclear procedures, uncertain enforcement, possible qualification and practices issues that are deficient of constitutional rights.⁷ On the other hand, Pakistan's history of unregulated *jirgas* and *panchayats* shows that the legitimacy of culture is not a valid alternative to law, voluntariness or judicial protection.⁸ Otherwise, it would be mere symbolism to add Islamic names to the existing ADR. To integrate effectively, it is necessary to have rules for consent, neutrality, professional competence, procedural fairness, review and enforcement.

It has been shown through experience that Islam and modern legal regulation are not incompatible. The institutional arrangements in Malaysia also show that measures to ensure Shariah conformity can be integrated into the institutional and appellate framework of arbitration⁹, and that the possibilities and constraints of adapting a secular arbitration regime for Shariah-based agreements are evident in the decisions of the English courts in Islamic-finance disputes.¹⁰ The New York Convention and the UNCITRAL Model Law illustrate how party autonomy can coexist with formal appointment and enforcement requirements.¹¹

³ Constitution of the Islamic Republic of Pakistan 1973, art 37(d).

⁴ Staff Reporter, 'July–Dec 2023 Statistics Show 2.26 Million Cases Pending in Courts: Report' *Dawn* (16 February 2024).

⁵ Qur'an 49:9–10; Qur'an 8:1.

⁶ Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence* (3rd edn, Islamic Texts Society 2003) 298–301; Muhammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oneworld Publications 2008); Aida Othman, "'And Amicable Settlement Is Best': *Sulh* and Dispute Resolution in Islamic Law' (2007) 21 *Arab Law Quarterly* 64.

⁷ *National Commission on the Status of Women v Government of Pakistan* (Supreme Court of Pakistan, unreported); Syed Khalid Rashid, 'Alternative Dispute Resolution in the Context of Islamic Law' (2012) *Vindobona Journal of International Commercial Law and Arbitration* 95.

⁸ *National Commission on the Status of Women v Government of Pakistan* (Supreme Court of Pakistan, unreported); Syed Khalid Rashid, 'Alternative Dispute Resolution in the Context of Islamic Law' (2012) *Vindobona Journal of International Commercial Law and Arbitration* 95.

⁹ Central Bank of Malaysia Act 2009, ss 56–57; *JRI Resources Sdn Bhd v Kuwait Finance House (Malaysia) Bhd* [2019] 4 MLJ 561 (FC).

¹⁰ *Shamil Bank of Bahrain EC v Beximco Pharmaceuticals Ltd* [2004] EWCA Civ 19, [2004] 1 WLR 1784; *Sayyid Mohammed Musawi v RE International (UK) Ltd* [2007] EWHC 2981 (Ch); *Uddin v Choudhury* [2009] EWCA Civ 1205, [2010] 1 FLR 361.

¹¹ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3; UNCITRAL Model Law on International Commercial

Thus, this article suggests that Pakistan's ongoing problems in ADR are not just a failure to provide adequate statutory provisions, but also the lack of a codified system of reconciliation in accordance with the Shariah that could guarantee institutional oversight, enforceability and constitutional protection of its concepts. It argues, through doctrinal analysis, and a careful comparison with Malaysia, Saudi Arabia and England, that the most viable way of reconciling Islamic legitimacy with modern conceptions of justice is through the process of codification and informality not being anarchy.

THE ILLUSION OF ADR REFORM: WHY PAKISTAN'S EXISTING LEGAL FRAMEWORK REMAINS INADEQUATE

Legislation can provide a path to non-litigation, but it can't make that path believable simply by calling it that.

Pakistan's recent reform on ADR seems to have left the impression of institutional changes but its impact is not as clear as it is intended to be.¹² The problem is not one of complete legislative silence, however, as there are other models available, namely those of Punjab, Khyber Pakhtunkhwa and Sindh,¹³ which authorise courts to refer to ADR certain civil and commercial matters, and arbitration is still subject to the Arbitration Act 1940.¹⁴ It is the simultaneous use of several enactments that use different processes, geographical application and organizational and structural models, but do not make available a common understanding of how ADR should be practiced in the national justice system. This fragmentation is not insignificant because legal certainty requires more than just the possibility of settlement. Parties should be informed of what types of disputes are referable, whether or not referral is obligatory, who may serve as a neutral, the procedures to be adhered to and how the result will be recognized and enforced. The federal legislation lists various types of ADR processes, and it allows for the appointment of neutrals from panels of which they have been notified¹⁵ however, merely listing a process in the statute does not imply that it is competent, independent, or consistent. Pakistan's laws also support court-annexed settlement, but they do not provide for a well-resourced system to implement it.¹⁶ Sindh's amendment to the Code of Civil Procedure provides for the use of ADR techniques by the courts, whereas, the inclusion of community-based decision makers poses its own questions about legal training, impartiality, representation and procedural protection.¹⁷ Khyber Pakhtunkhwa has a locally based model involving panels of Saliseen, but the engagement of community based decision makers introduces its own challenges around legal training, impartiality, representation and procedural protection.¹⁸ This leaves the institutions with a framework that is not so clear as to the judicial function of referring. A judge can refer people to mediation, but in the absence of a neutral who is trained to conduct the mediation; in the absence of the parties being aware of the

Arbitration 1985, as amended in 2006, art 1; Gary B Born, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014).

¹² Alternative Dispute Resolution Act 2017, Act XX of 2017, ss 3–4 and sch.

¹³ Punjab Alternate Dispute Resolution Act 2019, Act XVII of 2019; Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020, Act XLVIII of 2020; Code of Civil Procedure (Sindh Amendment) Act 2018.

¹⁴ Arbitration Act 1940, Act X of 1940.

¹⁵ Alternative Dispute Resolution Act 2017, ss 2 and 4–5.

¹⁶ Punjab Alternate Dispute Resolution Act 2019, ss 3–7.

¹⁷ Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020, ss 2, 4–7.

¹⁸ Code of Civil Procedure 1908, ss 89-A and 89-B, as applicable in Sindh following the Code of Civil Procedure (Sindh Amendment) Act 2018.

mediation process; in the absence of the attorneys acting as mediators; or in the absence of a neutral who is experienced in mediations, a referral can not facilitate meaningful justice. These are not merely administrative challenges, but rather are practical impediments to ADR identified through research on the trial courts in Pakistan.¹⁹ They expose a flaw in legislation whereby implementation is delegated, but uniform standards are not provided. Events are a positive development, but episodic training is not a substitute for a national regulatory framework for entry qualifications and ongoing training, ethical responsibilities, conflict of interest and disciplinary accountability.²⁰

The continued use of the Arbitration Act 1940 illustrates how uneven the reform has been.²¹ The Act was written to address an earlier commercial setting and provides for significant judicial involvement in arbitration procedures at multiple points during the case,²² while it is important that the judiciary play a role in maintaining fairness, too much judicial involvement can be counterproductive and lead to delays which are what arbitration is designed to prevent.²³ The Pakistani domestic arbitration regime, however, is a mix of recent mediation laws and an outdated overall arbitration law, which results in a fractured reform in chronological and conceptual terms.²⁴

More to the point, however, the statutes offer no definition of how Islamic principles of dispute resolution fit into this framework²⁵. The terms mediation, conciliation and arbitration are recognised but *sulh*, *tahkim* and *wasatah* are not systematically defined or regulated as separate legal mechanisms. Modern academic research also shows that Islamic ADR is not merely an alternative to traditional adjudicative proceedings in which parties agree to their own settlement,²⁶ but is a legal system, substantively grounded in the principles of justice and public welfare and the restoration of relationships.²⁷

“And settling is best.”²⁸

The current legislation, however, does not make any specific provision on such matters as the translation of such principles into enforceable statutory standards, nor on the relationship between such principles and positive law. This omits two risks. The first is that Islamic ADR is only in name, a label put on top of the traditional approaches to ADR,

¹⁹ Hasan Awais and Muhammad Amir Munir, ‘Alternative Dispute Resolution (ADR) in Trial Courts of Pakistan’ (2018) SSRN Electronic Journal; Sohaib Mukhtar, ‘Settlement of Disputes by Way of Arbitration in Pakistan’ (2016) 3 *World Journal of Social Science Research* 51.

²⁰ Press Information Department, ‘IMAC Launches 6 Day Accredited Mediation Training Programme’ PR No 316 (28 May 2025).

²¹ Arbitration Act 1940, ss 5, 8, 14, 17, 30 and 33.

²² Nigel Blackaby KC and others, *Redfern and Hunter on International Arbitration* (7th edn, OUP 2022); Gary B Born, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014).

²³ UNCITRAL Model Law on International Commercial Arbitration 1985, as amended in 2006, arts 5, 8, 16, 34 and 36.

²⁴ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3, arts III and V.

²⁵ Mohamed M Keshavjee, *Islam, Sharia and Alternative Dispute Resolution: Mechanisms for Legal Redress in the Muslim Community* (IB Tauris 2013); Syed Khalid Rashid, ‘Alternative Dispute Resolution in the Context of Islamic Law’ (2012) *Vindobona Journal of International Commercial Law and Arbitration* 95.

²⁶ *The Mejjelle: Majallah el-Ahkam-i-Adliye* (C R Tyser, D G Demetriades and Ismail Haqqi trs, Government Printing Press 1913), arts 1531–1571.

²⁷ Muhammad Hashim Kamali, *Shari‘ah Law: An Introduction* (Oneworld 2008); Aida Othman, “‘And Amicable Settlement Is Best’: *Ṣulḥ* and Dispute Resolution in Islamic Law’ (2007) 21 *Arab Law Quarterly* 64.

²⁸ Qur’an 4:128. See also Qur’an 49:9–10 and 8:1.

with no distinct Shariah methodology.²⁹ The second is it is not subject to effective judicial oversight. Both of these scenarios are not true integration. Equality, voluntariness and access to legal remedies set limits on procedures in respect of public welfare and reconciliation, as Kamali explains, and Islamic legal reasoning cannot be reduced to the concept of moral aspiration.³⁰ Similarly, public welfare and reconciliation cannot be achieved at any cost of equality, voluntariness and access to legal remedies.

The history of jirgas and panchayats in Pakistan shows us how cultural familiarity is not enough to ensure justice. The constitutional hurdle is not that every community process is necessarily illegal, it is that when decisions are taken without legal authority it cannot be made legitimate just by being customary, especially in relation to women and vulnerable people.³¹ A Shariah-compliant model thus has to be distinguished from unregulated customary adjudication, as guaranteed by Article 4 of the Convention and required by Article 10A and Article 25 of the Convention.³² Islamic legitimacy does not justify the use of coercion, discriminatory results, or interference with an individual's ability to go to court.

This problem is worsened by the lack of a clear enforcement regime. There is no uniformity in the law as to when a settlement becomes final, the grounds for challenging a settlement, or how the court will deal with allegations of coercion, fraud, incapacity or non-compliance with Shariah.³³ In Singapore, the Singapore Mediation Act 2010³⁴ introduces a process for providing a national framework of certainty for mediated settlements, once they satisfy certain conditions, as court orders³⁵ Pakistan's set of separate provisions currently lacks this same level of national certainty.

Nor is the answer to the problem that when a dispute occurs the courts will be able to decide whether Shariah-compatible or not. Judges can be knowledgeable in law but cannot be expected to provide answers to all specialized questions of Islamic commercial jurisprudence without an institutionalized process of authority.³⁶ While in Malaysia, relevant questions in Islamic-finance litigation are treated as a matter of statute before an Islamic-finance court and can be referred to the Shariah Advisory Council for doctrinal consistency, Pakistan does not have such a framework to link ADR neutrals to an Islamic-finance court or recognised Shariah expertise. Thus, the same issue could be treated differently for the different neutrals or judges.³⁷

The reforms also do not address the issue of diversity among Islamic law. Wherever the question of the qualification of an arbitrator, the appointment of women or non-Muslims,

²⁹ Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence* (3rd edn, Islamic Texts Society 2003) 298–301.

³⁰ Mahmood Ahmad Ghazi, *State and Legislation in Islam* (2nd edn, International Institute of Islamic Thought 2006) 143; Abdel Wahhab El-Affendi, *Who Needs an Islamic State?* (2nd edn, Malaysia Think-Tank 2008) 165–167.

³¹ *National Commission on the Status of Women and others v Government of Pakistan and others* CP No 24 of 2012 (SC), order dated 16 January 2019.

³² Constitution of the Islamic Republic of Pakistan 1973, arts 4, 10A and 25.

³³ Michael L Moffitt and Robert C Bordone (eds), *The Handbook of Dispute Resolution* (Jossey-Bass 2005); Alternative Dispute Resolution Act 2017, ss 9–10.

³⁴ UNCITRAL Model Law on International Commercial Conciliation 2002, art 14; UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation 2018, arts 15–18.

³⁵ Mediation Act 2017 (Singapore), ss 3–8.

³⁶ Central Bank of Malaysia Act 2009, ss 56–57.

³⁷ *JRI Resources Sdn Bhd v Kuwait Finance House (Malaysia) Bhd* [2019] 4 MLJ 561 (FC) [36].

recoverable compensation, *riba*, *gharar*, and public policy arise, there may be different juristic views and these differences cannot be resolved by codification,³⁸ but they may be identified by appealing to a particular source of interpretation, by establishing transparent procedures for arbitration appointment, and by requiring reasoning. Without those protections, “Shariah compliance” is moot and could only be called by the aggrieved party when bad things have happened.³⁹

The current ADR regime in Pakistan is thus deficient rather than due to the failure of every piece of legislation, but because it has been done legislatively and has not become systemic. As long as Pakistan does not provide a clear role, protection and constraints for Shariah compliant ADR, its reforms will provide alternate remedies in form but remain devoid of legal certainty, which is needed for others to trust in them and use them in lieu of state courts.⁴⁰

CODIFYING SHARIAH-COMPLIANT ADR: LESSONS FROM COMPARATIVE JURISDICTIONS', FOCUSES ON LESSONS TO BE LEARNED FROM COMPARATIVE JURISDICTIONS IN THIS REGARD

Comparative experience demonstrates that the implementation of Shariah-compliant ADR is more likely to be effective when it is linked to the state's legal process, rather than when it is absent.

Pakistan does not need to build a new system of ADR which is compatible with Shariah without precedent. There are a number of lessons to be learned from the experiences of Malaysia, Saudi Arabia and England and Singapore about legal recognition, institutional design, and judicial control.

The best example of the institutionalization of the Sharia expertise without the judicial function being handed over to the religious scholars can be seen in Malaysia.⁴¹ *JRI Resources Sdn Bhd v Kuwait Finance House (Malaysia) Bhd* was a case in which the Federal Court upheld the model, which involves a separation of the doctrinal expertise from the adjudicative role, with the Shariah Advisory Council making a determination of the relevant Shariah principle, and the court determining the civil liability of the parties.

⁴²The key lesson for Pakistan from the experience is that judges and arbitrators need not

³⁸ Abdullah M Almutairi and others, ‘Appointing a Non-Muslim as an Arbitrator’ (2024) 16(4) *Pakistan Journal of Criminology* 1003; Khalid A A Khudair, *Arbitration by Woman and Non-Muslim in Arbitration Disputes in Islamic Jurisprudence, Saudi Arbitration Law, and Judicial Awards* (King Fahad National Library 2019); Taqi Usmani, *An Introduction to Islamic Finance* (Idaratul Ma‘arif 2002) 88–90.

³⁹ The Asia Foundation, ‘Alternative Dispute Resolution Gains Traction in Pakistan’ (1 December 2019); Ahsan Iqbal, ‘Reforming the Alternative Mechanisms of Dispute Resolution in Pakistan’ *Dawn* (2016).

⁴⁰ Constitution of the Islamic Republic of Pakistan 1973, art 37(d).

⁴¹ Central Bank of Malaysia Act 2009, ss 56–57.

⁴² *JRI Resources Sdn Bhd v Kuwait Finance House (Malaysia) Bhd* [2019] 4 MLJ 561 (FC) [36].

be Islamic judges or arbitrators, but rather there must be a recognised institutional mechanism for the purpose of resolving specialist questions with authority.⁴³

Saudi Arabia shows the possibility of Shariah observance in relation to party autonomy and a modern arbitration.⁴⁴ This arrangement allows for specialised tribunals and internationally composed tribunals, and can provide for a review against the Saudi public policy and Islamic principles at the enforcement stage.⁴⁵ The same should also apply to Pakistan, where the source, stage and legal consequences of Shariah review be predetermined, rather than allowing for an unstructured exercise of judicial judgment in the guise of Islamic public policy when an award is made after it is reviewed by Shariah.⁴⁶ The opposite problem is found in English jurisprudence: religious legitimacy is made precariously legal in the absence of a recognized governing framework within the language of contracts. The Court of Appeal ruled in *Shamil Bank of Bahrain EC v Beximco Pharmaceuticals Ltd* that the reference to “principles of Glorious Sharia” was not sufficiently determinate to

displace English law.⁴⁷ Shariah language was therefore deemed to be insufficient to oust English law. If the contracting parties authorize Shariah-based principles, however, as in *Musawi v RE International (UK) Ltd*,⁴⁸ then the legal effect of Shariah is more likely to be achieved, as those principles are meant to be applied within the context of a valid mandate.⁴⁹

Singapore is not an Islamic jurisdiction, but it does offer some lessons to learn about mediated settlements. The model preserves confidentiality and allows for the execution of a qualifying settlement agreement as a court order where such action occurs with consent and safeguards.⁵⁰ The mediation process does not become litigation, but the settlement agreement becomes a court order. Similarly, for *ṣulḥ*, procedural clarity is needed in order to know when an agreement is a contract, and when it can be registered by a court and on what grounds it cannot be registered.

These jurisdictions have not got an overall blueprint for Pakistan to follow. They set out a more general rule: that effective Shariah-compliant ADR requires a statutory “bridge” between the religious principles and the state’s law and that this bridge should be clear and

⁴³ Abdullah N A and Mohamad Yazid Saleem, ‘Managing Shariah Non-Compliance Risk via Islamic Dispute Resolution’ (2020) 13 *Journal of Risk and Financial Management* 2; Nasrul M A D and others, ‘A Comprehensive Comparative Analysis of Mediation Practices in Indonesia and Malaysia’ (2024) 6 *Khazanah Hukum* 63.

⁴⁴ Arbitration Law 2012 (Saudi Arabia), arts 13–14; Abdullah M Almutairi and others, ‘Appointing a Sayyid Mohammed Musawi v RE International (UK) Ltd [2007] EWHC 2981 (Ch). Non-Muslim as an Arbitrator’ (2024) 16(4) *Pakistan Journal of Criminology* 1003.

⁴⁵ Arbitration Law 2012 (Saudi Arabia), art 55.

⁴⁶ Abdul Hamid El-Ahdab and Jalal El-Ahdab, *Arbitration with the Arab Countries* (3rd edn, Kluwer Law International 2011); Khalid A A Khudair, *Arbitration by Woman and Non-Muslim in Arbitration Disputes in Islamic Jurisprudence, Saudi Arbitration Law, and Judicial Awards* (King Fahad National Library 2019).

⁴⁷ *Shamil Bank of Bahrain EC v Beximco Pharmaceuticals Ltd* [2004] EWCA Civ 19, [2004] 1 WLR 1784 [48]–[55].

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⁴⁹ Elana Levi-Tawil, ‘East Meets West: Introducing Sharia into the Rules Governing International Arbitrations at the BCDR-AAA’ (2010) 12 *Cardozo Journal of Conflict Resolution* 609; El Maknouzi M E H and others, ‘Islamic Commercial Arbitration and Private International Law: Mapping Controversies and Exploring Pathways towards Greater Coordination’ (2023) 10 *Humanities and Social Sciences Communications* 523.

⁵⁰ Mediation Act 2017 (Singapore), ss 4–8 and 9–11.

precise⁵¹ Malaysia provides authoritative experience, while Saudi Arabia adopts a hybrid approach with statutory review of the Shariah principles, and England highlights the fragility of unclear spiritual clauses, and Singapore shows how settlements can become binding. Pakistan's reform should build on these lessons, with the conditionality of constitutional safeguards for voluntary participation, equality and fair process.⁵²

BEYOND RECOGNITION: TOWARDS THE CODIFICATION OF A SHARIAH-COMPLIANT FRAMEWORK OF ADR IN PAKISTAN

"Indeed, Allah commands justice, excellence and giving to relatives." (Qur'an 16:90)

Comparative analysis shows that Pakistan's problem is not to recognize the legislators but to have coherent legislators. However, despite the recognition of mediation, conciliation and arbitration under federal and provincial statutes, mediation, conciliation and arbitration is not an integrated legal institution in Pakistan, but rather a disorganized body of statutory rules, judicial interpretation and informal community processes.⁵³ Future reform should thus go beyond mere tinkering at the edges and adopt a complete code of Alternative Dispute Resolution in accordance with Shariah and compatible with the Pakistan's constitution and procedures.

This law should start with statutory definitions of the main Islamic means to solve disputes. Current legislation uses general terms like "mediation", "conciliation" and "arbitration", but does not explicitly mention the legal bases, conditions of validity, procedures, and consequences of these concepts, which have specific juristic features in classic Islamic law.⁵⁴ By this means Parliament would not establish new Islamic rules, but rather would convert into positive law rules that are already recognised by the jurists, but are not known by law, and are in accord with the constitutional requirements.⁵⁵ This one is in line with the understanding of Hart that the legal certainty relies on the rules that can be seen from the outside rather than uncertain moral expectations.⁵⁶

Secondly, a separate institutional mechanism is needed in Pakistan, which can guarantee the doctrinal uniformity.⁵⁷ As in Malaysia, it is possible to have specialist Shariah expertise which can work alongside judicial authority, with the introduction of a statutory National Shariah ADR Advisory Council comprising judges, Islamic jurists, arbitration specialists and commercial lawyers to provide binding advisory opinions on matters of Islamic commercial jurisprudence referred by courts or arbitral tribunals. It would reduce the chance of variation in interpretation across provinces and maintain judicial independence in deciding civil liability, while its power would be directly applied from the parliamentary

⁵¹ Sundra Rajoo, 'The Islamic Arbitration Centre: A Potential Role Model for the Ummah' (2017) 83 *Arbitration* 227; Mohamed M Keshavjee, *Islam, Sharia and Alternative Dispute Resolution: Mechanisms for Legal Redress in the Muslim Community* (IB Tauris 2013).

⁵² Constitution of the Islamic Republic of Pakistan 1973, arts 4, 10A, 25, 37(d) and 227.

⁵³ Alternative Dispute Resolution Act 2017 (Act XX of 2017); Punjab Alternate Dispute Resolution Act 2019 (Act XVII of 2019); Khyber Pakhtunkhwa Alternate Dispute Resolution Act 2020 (Act XLVIII of 2020); Code of Civil Procedure (Sindh Amendment) Act 2018.

⁵⁴ Muhammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oneworld Publications 2008); Mohamed M Keshavjee, *Islam, Sharia and Alternative Dispute Resolution* (IB Tauris 2013).

⁵⁵ Mahmood Ahmad Ghazi, *State and Legislation in Islam* (2nd edn, IIIT 2006) 143.

⁵⁶ HLA Hart, 'Positivism and the Separation of Law and Morals' (1958) 71 *Harvard Law Review* 593.

⁵⁷ Central Bank of Malaysia Act 2009, ss 56–57.

laws and/or constitutional regulation.⁵⁸ Informal fatwa, as explained above, would not have such a power to influence because it would not be directly related with the parliamentary laws and the regulation by the parliament.

Thirdly, there should be an enforceable national accreditation for mediators and arbitrators who facilitate Shariah compliant proceedings. Presently, neither the Alternative Dispute Resolution Act 2017 nor the provincial legislation provide detailed qualifications for the neutrals in ADR. Therefore the qualification for the neutrals in ADR should include proficiency in the alternative dispute resolution practice, in Pakistani procedural law and Islamic jurisprudence.⁵⁹ Impartiality, confidentiality, conflicts of interest and disclosure requirements must be contained within a statutory code of ethics; and there should be an independent disciplinary process for overseeing professional misconduct. Proper regulation would increase public confidence and minimize legal and religious ineptitude issues that lead to inconsistencies in decisions.⁶⁰

The codification should also include standardised procedural protection to guarantee constitutional compatibility. Participation must remain genuinely voluntary; informed consent should be recorded before proceedings commence; parties should enjoy equality of representation; and settlements should remain subject to judicial review where obtained through fraud, coercion, undue influence or manifest procedural unfairness.⁶¹ These safeguards are not inconsistent with Islamic law⁶². On the contrary, they would indicate the obligation of Qur'an to ensure justice and reconciliation through fairness and not force, and a codified system would thus differentiate between authentic *ṣulḥ* and illegal customary decisions made by *jirga* which are punishable by the Supreme Court of Pakistan.⁶³

The creation of a coherent enforcement system is also just as significant. Currently, mediated settlements, family reconciliations and arbitral awards have different procedural avenues in Pakistani law, which leads to uncertainty about their legal status. It is suggested that a future Code should provide a single statutory process for the registration of qualifying settlement agreements and arbitral awards in competent courts and enforcement as decrees subject to very narrowly drawn statutory grounds for refusal.⁶⁴ This would be akin to the practice in the New York Convention and UNCITRAL Model Law, and would keep consistent with the constitutional promise of all laws being in harmony with Islamic injunctions in Pakistan.⁶⁵

⁵⁸ *JRI Resources Sdn Bhd v Kuwait Finance House (Malaysia) Bhd* [2019] 4 MLJ 561 (FC) [36]; Abdullah NA and Saleem MY, 'Managing Shariah Non-Compliance Risk via Islamic Dispute Resolution' (2019) 13(1) *Journal of Risk and Financial Management* 2.

⁵⁹ Alternative Dispute Resolution Act 2017, ss 4–8; Punjab Alternate Dispute Resolution Act 2019, ss 3–8.

⁶⁰ Michael L Moffitt and Robert C Bordone (eds), *The Handbook of Dispute Resolution* (Jossey-Bass 2022); Hasan Awais and Muhammad Amir Munir, 'Alternative Dispute Resolution (ADR) in Trial Courts of Pakistan' (2018) SSRN Electronic Journal.

⁶¹ Constitution of the Islamic Republic of Pakistan 1973, arts 4, 10A and 25.

⁶² Qur'an 49:10; Aida Othman, "'And Amicable Settlement Is Best": *Ṣulḥ* and Dispute Resolution in Islamic Law' (2007) 21 *Arab Law Quarterly* 64.

⁶³ *National Commission on the Status of Women v Government of Pakistan* (Supreme Court of Pakistan, 16 January 2019).

⁶⁴ Mediation Act 2017 (Singapore), ss 3–8; Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, art V; UNCITRAL Model Law on International Commercial Arbitration (2006), arts 34–36.

⁶⁵ Constitution of the Islamic Republic of Pakistan 1973, arts 227 and 37(d); Gary B Born, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014).

Last, but not least, meaningful reform demands that Shariah-compliant ADR is not just a process of doing less than litigation, it's a part of Islamic legal philosophy. Codification should be both efficient in the context of the constitution and legitimate in the Islamic context, in that reconciliation is emphasized in the Qur'an and classical jurists regarded *ṣulḥ* as a preferable way to maintain communal relations without compromising on justice.⁶⁶ Pakistan should rather have both the informal and the secular ADR systems under a single roof and law, rather than having them run parallel to each other without the guidance of Islamic jurisprudence.

A broad-based Shariah-Compliant ADR Code would thus have more than a mere procedural reform effect. It would boost the constitutional governance, the certainty of business, and the confidence that the public has in dispute resolution as well as the Islamic principles of justice, reconciliation and public welfare. In absence of a systematic legislation of Shariah compatible ADR, it is merely a promising idea and not a fully operational aspect of the national justice system before Pakistan.

CONCLUSION

Ultimately, the legitimacy of the Shariah friendly ADR in Pakistan will rely on the ability of the government to establish a law that reflects the principles of Islamic justice and reconciliation into a coherent, enforceable and constitutionally consistent legal structure and framework rather than the number of ADR statutes enacted.

The argument has been put forward that the problem in Pakistan is not that there is no legislation on Alternate Dispute Resolution, but that the legislation on Alternate Dispute Resolution is not coherent and there is no legislation regarding Shariah compatible ADR. While the Alternative Dispute Resolution Act 2017 and subsequent provincial legislation are significant steps toward legislation, the action is still quite disjointed, not fully integrated with Islamic studies, and weak in effectiveness. However, Pakistan's current system does not provide for the institutional certainty, regulatory uniformity and doctrinal precision that is essential for the ability of alternative dispute resolution mechanisms to serve as a coherent part of the national justice system, especially in a manner that is consistent with Islamic principles.

A comparative analysis of Malaysia, Saudi Arabia, England and Singapore shows that a successful Shariah compliant ADR system relies not just on recognition of religion, but also on clear and adequate statutory powers, specialist institutional support, and professionally regulated neutrals, and predictable enforcement systems. The following jurisdictions show that Islamic principles of law do not stand in competition with religious legitimacy but are reinforcing each other when embedded in an overall legal system with sound judicial controls. Their experience shows that effective ADR systems are ones which provide legal certainty, accountability and fairness in the process, not informal or discretionary ones.

For this reason, this article argues that Pakistan should resist the tendency of incremental statutory reform and enact a Shariah Compliant Alternative Dispute Resolution Code. This would create a coherent system of Islamic law that would be compatible with the constitutional protections, create a standardised national procedure and accreditation for Islamic institutions, and offer a clear institutional process for resolving issues of Shariah

⁶⁶ Qur'an 49:9; Qur'an 49:10; Qur'an 8:1; Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence* (3rd edn, Islamic Texts Society 2003); Qazi Attaullah and Lutfullah Saqib, 'Tracing the Concept of ADR in Shari'ah and Law – A Comparative Study' (2021) 39(3) *Hamdard Islamicus*.

compliance. It would in the process enhance access to justice, boost public trust in the ADR and deepen the value of providing access to inexpensive and expeditious justice while upholding the principles of Qur'an, reconciling and balancing.

Another point of interest from the analysis is that it is a space that still needs to be explored and discussed by scholars and legislators. Future study should focus on empirical evaluation of court annexed mediation centres, provincial ADR institutions and existing Islamic commercial arbitration in Pakistan to get an idea of the practical application of the Shariah compliant ADR in Pakistan. This evidence would help policy makers evaluate the effectiveness of codified reform in meeting its desired goals and help shape a new, constitutionally based and internationally accepted system of dispute resolution under Shariah.

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