

**THE SCOPE AND RELEVANCE OF
ALTERNATIVE DISPUTE RESOLUTION (ADR)
FOR AREA/SHARIA/CUSTOMARY COURTS**

BEING THE ADDRESS OF

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

All thanks belong to God for making the plan of all the stakeholders of this programme to come to pass. I want to use this unique occasion to express my gratitude to the Chief Justice of Nigeria and Chairman Board of Governors of the National Judicial Institute, Hon. Justice Ibrahim Tanko Muhammad GCON, at whose instance and directive, I understand, I was invited to write and deliver a paper on - **The Scope and Relevance of ADR for Area/Sharia/Customary Courts**. I also want to thank Hon. Justice R.P.I. Bozima (OFR), the Administrator of the National Judicial Institute for putting up my name for consideration to address the distinguished participants and others in the workshop. I am very grateful. God bless.

The theme of the workshop is **Nurturing High Standards of Judicial Performance at the Lower Courts**. The topic is very apt for both target and the workshop. The objective of this brief paper then is to examine in which parts of the jurisdiction of the Lower Courts, applying Islamic Law, does Alternative Dispute Resolution (ADR) apply and where it does not.

When the experts in the Common Law of England talk of Alternative Dispute Resolution (ADR), the *Fuqaha'*, the jurists in Islamic Law talk of *Sulh* and *Tahkim*. Casually they are alike but their close and careful studies will reveal a number of basic and fundamental differences that separate them. ADR is not originally part of the Common Law Legal System. Rather, as the name suggests, it is an alternative approach to achieve the goals of solving conflicts for which all legal systems are designed. It is adopted in place of normal way and process to resolve crisis in the Common Law system. As you do not change the winning horses, coaches in the football games do not recall players who are doing well in the game. I guess, I may be wrong; the reason(s) for the Common Law finding an alternative to achieve justice is/are well expressed by its experts in the following words:

Hon. Justice L.H. Gummi (Rtd) quoted Chief Justice Warren E. Burger, United States Supreme Court Justice, 1969-1986, saying:

“The entire legal professions- Lawyers, judges, Law Professors – has (sic) become so mesmerized with the stimulation of the court room that we tend to forget that we

*ought to be healers of conflicts. For some disputes trials will be the only means, but for many claims trial by adversarial contest must in time go the way of the ancient trial by battle...Our system is too costly, too painful too destructive and too inefficient for really civilized people”.*¹

That is the opinion of Justice Burger on the Common Law legal system while Justice L.H. Gummi (Rtd) has the following to say in respect of the Law and the Judges:

*“It has been apparent for several years that something is fundamentally wrong with our legal system. We are trained to administer the Law; but somewhere along the line, we became slaves to it. Our calling is to justice, unfortunately, rather than being artists, we became common masons. Instead of being architects, we are bricklayers, putting one brick on top of the other without much sense or style. Stifling the very justice at whose feet we are meant to worship”.*²

What was expressed by Chief Justice Warren E. Burger of the United States Supreme Court and Hon. Justice Lawal Hassan Gummi, formerly Chief Judge of the High Court of the Federal Capital Territory, Abuja and formerly Chairman Board of the Abuja Multi-Door Court House (AMDC), Nigeria’s Second Court - connected ADR Centre, satisfactorily explains why experts in the Common Law thought of Alternative Dispute Resolution (ADR) to replace the operative legal process to resolve some stubborn conflicts. The story is different in Islamic Law.

*“Although, arbitration is recognized by all sources of Shari’ah, it did not receive close attention in the doctrinal writings of the four major Islamic Schools. This might be attributed to the fact that Islamic Judiciary was sufficient and developed enough to provide suitable solutions to all types of problems which arose from the social life of that time...”*³

Definition of Sulh

¹ Judiciary and Democracy in Nigeria, Essays in Honour of Hon. Justice Salihu Modibo Alfa Belgore CJN(rtd), GCON, Page 79

² Ibid

³ Shahadat Hussain, “Arbitration in Islamic Law for the **Treatment** of Civil and Criminal Cases: An Analytical Overview in Journal of Philosophy, Culture and Religion, Volume I, 2013 available at www.iste.org/journals/index.php/JPCR/article/view/9231 accessed on 15/10/2015

The equivalent of Alternative Dispute Resolution (ADR) in Islamic Law is *Sulh* and *Tahkim*. Certainly, two terminologies from different legal systems, especially, with different backgrounds may and may not convey the same meaning, talk less of being identical. In ordinary language, *Sulh* means termination of hostility or conflict. In Islamic Law, it is used for:

(i)	<i>“Term(s) upon which an accord to terminate a conflict between two disputants is/are based.”⁴</i>	ا- وفي الشرع عقد ينهى الخصومة بين المتخاصمين (راجع فقه السنة للسيد سابق ج (٣) ص (٣٠٥))
(ii)	<i>“Sulh is to forgo a right or to terminate a suit for a consideration in order to bring the suit to an end or to avoid the occurrence of dispute.”⁵</i>	ب- الصلح انتقال عن حق أو دعوى بعوض لرفع نزاع أو خوف وقوعه (راجع الشرح الصغير على أقرب المسالك لأحمد الدريدي ج (٣) ص ((١٦٢))
(iii)	<i>“As-Sulh is to bring conflict to an end”⁶</i>	ج- الصلح وهو قطع المنازعة - (راجع حاشية العدوى على شرح رسالة ابن أبي زيد القيرواني ج (2) ص ((324))
(iv)	<i>“...We do not accept that Sulh is only to shift ground but it is really a demand for an alternative...”⁷</i>	د ... لا نسلم أن الصلح هو الانتقال بل هو المعاوضة... (راجع بلغة السالك لأقرب المسالك على الشرح الصغير لأحمد الدريد ج (2) ص ((136))
(v)	<i>At the end of a Sulh session between Al-Hasan b. 'Aliy (the 4th Caliph) and Mu'awiyad may God be pleased with them, Mu'awiyah told him (Al-Hasan): get up and address the people. Mention what you are quarreling about. So Al-Hasan rose and addressed them,</i>	هـ - لما جرى الصلح بين الحسن بن علي ومعاوية - رضي الله عنهم - قال له معاوية: قم فاخطب الناس واذكر ما كنت فيه! فقام الحسن فخطب فقال: الحمد لله الذي هدى بنا أولكم

⁴ As-Sayyid Sabiq, *Fiqhus-Sunnah*, Volume III, Page 305

⁵ Ahmad Duraydiy, *Ash-Sharhu Sagiriy 'Ala Aqrabul Masalik*, Volume III, Page 162

⁶ Ibn Abi Zaid Al-Qayrawaniy, *Hashiyatul 'Adawiy*, Volume II, Page 324

⁷ Ahmad Ad-Durayd, *Bulgatus Salik Liaqrabil Masalik 'Ala Sharhis Sagir*, Volume II, Page 136

saying: All thanks belong to Allah Who used us to guide your ancestors and prohibit shedding your blood (who are their descendants). Certainly the wisest persons are those who are conscious of Allah. And the weakest of all are the lawlessness. This matter in which Mu'awiyah and I differ, maybe he is more qualified for it than I or it is my due right. We leave it for the sake of Allah and in the interest of the **Ummah**, the generality of followers of Muhammad, may Allah's peace and blessings be on him.⁸

وحقن بنا دماء آخركم! ألا أن أكيس الكيس التقى، وأعجز العجز الفجور، وإن هذا الأمر الذي اختلفت فيه، أنا ومعاوية إما أن يكون كان أحق به مني وإما أن يكون حقي فتركناه لله ولصلاحي أمة محمد صلى الله عليه وسلم وحقن دماهم. (راجع حياة الصحابة لمحمد يوسف الكندهلوى ج (2) ص (499))

Definition of *Tahkim*

In Islamic law, *Tahkim* means an agreement between two or more warring parties that a learned person or a panel of learned persons in Islamic Law settles their dispute in a manner and matter that Islamic Law allows arbitration.

Both *Sulh* and *Tahkim* are as old as Islam. Qur'an 49:100, Qur'an 4:114 and Qur'an 8:1 prescribed *Sulh* for Muslims.

(a) “The believers are nothing else than brothers. So make reconciliation between your brothers...” ⁹	ا- إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ فَأَصْلِحُوا بَيْنَ أَخْوَيْكُمْ (سورة الحجرات: ١٠٠)
(b) “So fear Allah and set things right among yourselves...” ¹⁰	ب- فَاتَّقُوا اللَّهَ وَأَصْلِحُوا ذَاتَ بَيْنِكُمْ (سورة الأنفال: ١)
(c) “There is no good in many of their secret talks except the conferences of such as enjoin charity or goodness or the making of peace among men...” ¹¹	ج- لَا خَيْرَ فِي كَثِيرٍ مِنْ نَجْوَاهُمْ إِلَّا مَنْ أَمَرَ بِصَدَقَةٍ أَوْ مَعْرُوفٍ أَوْ إِصْلَاحٍ بَيْنَ النَّاسِ (سورة النساء: ١١٤)

⁸ Muhammad Yusuf Al-Kandahalawi, *Hayatus Sahabah*, Volume II, Page 499

⁹ Qur'an 49:100

¹⁰ Qur'an 8:1

¹¹ Qur'an 4:114

(d) “...And reconciliation is best...” ¹²	د ...وَالصَّلْحُ النِّسَاء: 128)
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For **Tahkim**, the second Caliph, 'Umar Ibn Khattab challenged Al-'Abbas to appoint a judge to settle a rift between both of them. It is reported as follows:

“Al-'Abbas b. Abdul Muttalib, may Allah be pleased with both of them had a landed property adjacent to the Mosque of Madinah. 'Umar asked Al-'Abbas to sell it to him. He wanted to use it to expand the mosque. Al-'Abbas turned down the request. Then 'Umar requested him to make it a gift to him. Al-'Abbas refused. 'Umar told Al-'Abbas to donate it to expand the mosque. He refused. Then 'Umar said, you have to choose one of the options. He refused. 'Umar then ordered Al-'Abbas to name a person to resolve their difference. He chose 'Ubay b. Ka'ab, may Allah be pleased with him. They both went to him to settle their conflict...”¹³

كان للعباس بن عبد المطلب - رضي الله عنهما - دار إلى جنب مسجد المدينة. فقال عمر رضي الله عنه بعينها فأراد عمر أن يزيد لها في المسجد، فأبى العباس أن يبيعها إياه. فقال عمر فهبها لي، فأبى. فقال فوسعها أنت في المسجد، فأبى فقال عمر لا بد لك من إحداهن، فأبى عليه فقال خذ بيني وبينك رجلا، فأخذ أبي بن كعب رضي الله عنه فاختصما إليه... (راجع حياة الصحابة لمحمد يوسف الكاند هلوى ج (2) ص (160) إلى ص (161))

The Codes of Sulh

(a) Legitimacy

“on the authority of 'Amr b. 'Aofin Al-Muzanniy, may the Most High be pleased with him, the Apostle of God, blessings and peace of Allah be on him said, **Sulh** between warring Muslims is in order except **Sulh** that forbids what is legitimate or legitimizes what is forbidden. Muslims are bound by the terms of agreement they enter into

عن عمرو بن عوف المزني رضي الله تعالى عنه أن رسول الله صلى الله عليه وسلم قال "الصلح جائز بين المسلمين إلا صلحا حرم حلالا أو أحل حراما. والمسلمون على شروطهم، إلا شرطا حرم حلالا، أو أحل حراما (رواه الترمذي). (راجع سبل السلام شرح بلوغ المرام من جمع أدلة الأحكام للصنعاني ج (3) ص

¹² Qur'an 4:128

¹³ Muhammad Yusuf Al-Kanda Halawiy, *Hayatus Sahabah*, Volume II, Pages 160-161

*except the terms of agreements that make **Halal**, lawful, unlawful or makes unlawful acts lawful”¹⁴*

((119))

(b) The Consent of the Parties

The consent of the warring parties is a must to make the decision of the arbitrator(s) valid in Islamic Law. **لا يحل مال امرئ إلا بطيبة من نفسه** meaning, *It is not lawful to tamper with anybody’s right except with his consent.* Any of the parties is at liberty to bolt out of **Tahkim** before the beginning of the exercise. However, there are two contesting opinions whether any of the parties can withdraw his consent when the exercise has begun.

When both parties give their consent to the move to reconcile them and they consent to the membership of the panel, there are two opinions on whether or not any of them can opt out. The group, which approves the withdrawal, argues that it is not only at the onset of the session of the tribunal that the consent is required but throughout the proceedings. So, if it is withdrawn before the decision, such decision is null because there is no consent at the time the decision was taken.¹⁵ Plausible. The opponent’s stand is that the consent given at the beginning covers the panel’s proceedings throughout. The weakness of the first opinion lies in the fact that any dishonest party that realizes in the process that his case is weak will abuse the principle and withdraw his consent. He is like a plaintiff who turns round to challenge the jurisdiction of the court.

(c) The Applicable Law

The members of the panel should be knowledgeable and be men or women of integrity. Arbitration in Islamic Law is not for Tom Dick and Harry. Rather, Islamic Law insists that (a) the subject matter in dispute is identified (b) the relevant law is applied in the process of arbitration. For instance, if the cause of disagreement is a matter of **Bay’**, sales contract, its law should be followed to arrive at the decision. If it is **Ijarah**, hire or **Hibah**, gift, the law of **Ijarah** or **Hibah** should respectively be

¹⁴ Muhammad bin Ismail as-Sona’aiy, *Subulus Salam Sharhu Bulugul Maram*, Volume III, Page 119

¹⁵ Abdulkareem Zaidaniy, *Nisamul Qadai Fish Sharhil Islamiyyah*, Al-’Aaniy Press, Bagdad, Pages 294 – 295

applied. Hence, an arbitrator cannot but be learned in law. For integrity of the members of the panel, Islamic Law stipulates that each member of the panel should enjoy the confidence of all the warring parties.

(d) No Compromise for Justice

Sulh neither prescribes nor recommends that justice and equity in the matter in dispute, should be sacrificed on the altar of reconciliation. No. This is the message of Al-Qur'an 49:1 where the concluding portion of the verse said, "... then if it complies, then make reconciliation between them justly and be equitable".

(e) Jurisdiction of *Tahkim*

Islamic Law limits the jurisdiction of *Tahkim* to civil causes.

"(The eighth chapter is on At-Tahkim). Its meaning is that two disputants appoint a person to intervene in their difference with a view to resolving it. That is Tahkim is in order in money and any valuable materials. It (Tahkim) shall not impose punishment for the following:

- (a) *Hadd*, criminal offences for which Islamic Law prescribed fixed legal punishments.
- (b) *Lian*, denial of the fatherhood of a pregnancy or a child by a husband.
- (c) *Qisas*, the right of retaliation involving life or bodily injury.
- (d) *Qadhf*, slander/libel.
- (e) *Talaq*, repudiation of marriage.
- (f) *Itq*, setting a slave free.
- (g) *Nasab*, consanguinity.
- (h) *Walai'*, oath to maintain distance with a wife.

I listed these exceptional cases because their proof or otherwise lies only in a court of law."¹⁶ (emphasis mine)

(الفصل الثامن في التحكيم)
ومعناه أن الخصمين إذا
حكما بينهما رجلاً
وارتضياه لأن يحكم بينهما
فإن ذلك جائز في الأموال
وما في معناها ولا يقيم
المحكم حداً ولا يلاعن بين
الزوجين ولا يحكم في
قصاص أو قذف أو طلاق
أو عتاق أو نسب أو ولاء
وإنما استثنيت هذه المسائل
من هذه القاعدة لاستلزامها
إثبات حكم أو نفيه من غير
المتحاكمين (راجع فتح
العلی المالك في الفتوى
على مذهب الإمام مالك
المجلد الأول ص (55))

(f) Enforcement of *Tahkim*

¹⁶ Abi 'Abdullah Shaykh Muhammad Ahmad 'Elish, *Fathul 'Ula Al-Malik Fil Fatwa 'Ala Madhabil Imam Malik*, Volume I, Page 55

Ordinarily, going by the spirit of give and take and avoidance of further rift or litigation, the party against whom decision of the arbitrator goes takes the initiative by carrying out the orders of the panel. It is when he fails to comply that the party in favour of whom the decision goes, goes to court to enforce the decision. The judge goes over it, enforces it, if he is satisfied, otherwise, he declines to enforce it. Highlighting this principle, Hon. Justice Abubakar Bashir Wali CON of blessed memory and formerly Justice of Supreme Court, said:

“Where a Muslim dies, his heirs are permitted by law to appoint a person learned in Islamic law to share his estate among them according to such law, and if subsequently the matter is taken before a court of law, that court will enforce the sharing, if it conforms with the law.”¹⁷

(g) Binding Effect of **Tahkim**

Hassan Al-Katsinawiy expressed the binding effect of the decision of panel of arbitration as follows:

*“That is to say, it is in order for two disputants to agree to put their matter before an Islamic jurist to settle their differences. That is provided they both agree to abide by whatever he decides for them and provided it is in specific matters allowed to be settled through the process of **Sulh**. It should be in accordance with stipulated regulations in the books of Law of the School of Law. It is stated in **Al-Mudawwanah** and other authorities that if two disputants appoint an arbitrator to settle their dispute and he decides it for them, the court confirms it. The court shall not upset it unless it is an open injustice.”¹⁸*

يعنى أنه يجوز للخصمين أن يتفقا ويرفعا أمرهما إلى رجل فقيه يجعلانه حكما إذا رضيا بما يحكم عليهما في أمور مخصوصة بشروط مذكرة في كتب المذهب. قال في المدونة وغيرها: لو أن رجلين حكما بينهما رجلا فحكم بينهما أمضاه القاضي ولا يردده إلا أن يكون جورا بينا (راجع أسهل المدارك شرح إرشاد السالك في فقه إمام الأئمة مالك لحسن بن أبي بكر الكشناوى ج (٣) ص ((٢٠٩))

¹⁷ Alhaji Jiddun v. Abba Abuna (2000) 14, N.W.L.R. pt. 686, p. 209, at 219-220

¹⁸ Hassan Al-Kashnawiy, **Ashalul Madarik Sharh Irshadus Salik**, Volume III, Page 209

(I) Circumstances for *Tahkim*

- (i) When the issue in dispute is explosive or protracted.
(ii) In the interest of blood ties, 'Umar said:

“Stop litigation between members of the same family and insist that they should reconcile because court actions lead to bitterness.¹⁹

ردو القضاء بين ذوى الأرحام حتى
يصطلحوا، فإن القضاء يورث
الضغائن. (راجع تبصرة الأحكام فى
أصول الأفضية ومناهج الأحكام ج
(2) ص (54))

- (iii) When there is genuine fear that the court resolution is capable of causing *Fitnat*, disorder such as break down of law and order and causing more problems than it is designed to solve. This doctrine of Islamic Law may not be valid and acceptable in a legal system in which it is justice and nothing else. In such system, justice must be done even if the heavens will fall. The legal system believes that courts are to do justice and when heavens fall, it is the duty of the security apparatus to take care of it. The question then is, shall we sacrifice justice on the altar of peace or the other way round? That is, to sacrifice justice and avoid break down of law and order which atimes can consume the society including the courts.
- (iv) When both parties produce equally strong proofs, then the court persuades and encourages them to adopt *Sulh*, reconciliation.
- (v) *Ba'thul Hakamain*, Qur'an 4:35

In Islamic Law courts, the application of this verse is reserved for matrimonial dispute in which the wife repeatedly files her suits but repeatedly fails to satisfy the courts that she deserves the release. It is called *Takrarush-Shakwah* distinguished from *Israrush-Shakwah*. The former is a repeatedly filling of suits after failing to obtain the release because she fails to show evidence to support her claim. The court rules against her. She returns to the matrimonial home but the breach of the marriage contract continues and she goes back to court. This is distinguishable from

¹⁹ Ibn Farhun, *Tabsiratul Ahkam*, Darul Kutubil 'Ilmiyyah, Beirut, Lebanon, Volume II, Page 54

Israrush-Shakwah, which is her insistence in one single suit from a grassroots court up to the apex court through the process of appeal. To address the problem of repeated suits without success for want of evidence, the jurists on the basis of Qur'an 4:35 formulated its procedure as follows:

*“If she repeatedly puts up complaints before the court against her husband and she seeks separation and she fails to satisfy the court because she fails to establish the genuineness of her allegation before the court, the judge appoints a panel of two arbitrators on condition that (a) they are both upright and guided (b) they have experience about the spouse’s problems with the capacity to solve them. It is preferable that they are of the spouse’s blood relation, otherwise, non-relation will be accepted. They should be familiar with the causes of their (couple’s) rift and work hard, as much as possible to settle them. If they do not succeed and (found that) the fault(s) are/is attributable to both or they found that the fault(s) are/is with husband or the true position is not clear, the panel recommends separation – release of the wife. It should be regarded and treated as first time irrevocable separation (divorce). If the faults are from the wife, they should not be separated by **Talaq**, releasing the wife, they should be separated through the process of **Khul**’ – the women opting out of the marriage and compensating the husband. If the panel does not agree on a consensus, the court orders them*

فإذا تكررت منها الشكوى
وطلبت التفريق، ولم يثبت
للمحكمة صدق دعواها،
عين القاضي حكمين
بشروط أن يكونا عدلين
راشدين، لهما خبرة
بحالهما، وقدرة على
الإصلاح بينهما، ويحسن
أن يكونا من أهلها إن
أمكن. وإلا فمن غيرهم،
ويجب عليهما تعرف
اسباب الشقاق بين
الزوجين، والإصلاح
بينهما بقدر إمكان، فإن
عجزا عن الإصلاح وكانت
الإساءة من الزوجين، أو
من الزوج، أو لم تتبين
الحقائق، قررا التفريق
بينهما بطلقة بائنة وإن
كانت الإساءة من الزوجة
فلا يفرق بينهما بالطلاق،
وإنما يفرق بينهما بالخلع
وإن لم يتفق الحكمان على
رأي أمرهما القاضي
بإعادة التحقيق والبحث
فإن لم يتفقا على رأي
استبدلها بغيرهما. وعلى
الحكمين أن يرفعا إلى
القاضي ما يستقر عليه
رأيهما ويجب عليه أن
ينفذ حكمهما. وأصل ذلك
كله قول الله سبحانه:

to go back and carry out the investigation. If they still not agree, the court dissolves them and sets up another panel of two arbitrators.

The panel must place their findings before the court. The court shall enforce their recommendation. All these are based on His words the Most Glorified in Qur'an 4:35."²⁰

"وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا... (راجع فقه السنة للسيد سابق ج (٢) ص (٢٤٨-٢٤٩)).

- (vi) When the facts leading to the dispute have occurred for a very long time and it is difficult to recall them vividly, *Sulh*, peacemaking, is the answer because (a) The parties and witnesses can hardly narrate/recall their cases succinctly before the court (b) The court will not have clear picture of the dispute before it.²¹

"On the authority of Umm Salmah, may Allah be pleased with her: Two men brought their dispute over an estate to the Prophet, blessings and peace of Allah be on him. The incident has taken place long ago then that none of them had clear evidence. The Prophet, blessings and peace of Allah be on him, then said: I am just a mortal. It is possible that one of you is more eloquent than the other and so I will judge in his favour on the basis of what I heard. Whoever I give the right of other fellow should not take it. Surely, I cut for such a person a lump of fire. He will come with it like a hot and burning iron against him on the Day of Judgment. Each litigant busted into tears, saying I surrender my right to my brother... The Prophet, peace be on him told them to go and share..."²²

فمن أم سلمة رضي الله عنها قالت جاء رجلان إلى رسول الله صلى الله عليه وسلم في مواريث بينهما فقد درست، ليس بينهما بينة فقال رسول الله صلى الله عليه وسلم وإنما أنا بشر ولعل بعضكم الحن حجتة من بعض وإنما أفضى بينكم على نحو ما سمع' فمن قضيت له من حق أخيه شيئاً فلا يأخذه' فإنما أقطع له قطعة من النار... فبكي الرجلان وقال كل واحد منهما: حتى لأخي... فقال رسول الله فاذهبا واقتسما... (راجع فقه السنة للسيد سابق ج (٣) ص ((٣٠٧))

²⁰ As-Sayyid Sabiq Optic Volume II, Pages 248 - 249

²¹ Ibn Farhun 1422AH/2001 AD, *Tabssiratul Hukkam*, Beirut Lebanon, Darul Kutubil 'Ilmiyyah, Page 54-55

²² As-Sayid Sabiq, Darul Fikr Lebanon, *Fiqhus Sunnah*, Volume III, Page 307

Conclusion

Tahkim, arbitration has many advantages over litigation. It is not only cheaper and faster but also it is usually free of bitterness. At its end and unlike litigation there would be no victor and no vanquished. The parties often directly state their cases and their actions, with the spirit of give and take and then appreciate the strength of the case of the other parties.

In **Tahkim**, the proceedings are of low level of professionalism and less technicalities. The arbitration panels listen to raw facts and it is easy to follow, dissect and arrive at the just decision. This is not to say that there is no place for representation in **Tahkim**. No. Both legal practitioners and non legal practitioners are allowed to represent the parties that chose to hire them. This is in conformity with the Islamic principles of **Wakalah**. However, it should be noted with concern that when professionalism is involved, technicality follows. Then, whether it is litigation or arbitration, it is the lawyers who will be smiling to the bank. Atimes some lawyers and the parties abandon real issues before the court and fight on ego. What a pity.

The desire or passion to safeguard the sanctity of the institution of marriage, which is the foundation of the civilization of any society, calls for according the matrimonial issues/causes, the deserving degree of confidentiality. This, I believe, is better offered by the arbitration process than litigation. The press patronizes the latter to make fun and fund and to feed fat on the misfortune of others. Agreed, they have become public issues once they are before the courts. This is one aspect why arbitration recommends itself than litigation. The arbitration, on the other hand is private, restricted and enjoys deserving confidentiality.

Qur'an 65:1 cautions that mutual respect should guide the process of termination of marital contracts.

...These then are the bounds set by God – and he who transgresses the bounds set by God does indeed sin against himself: (for, o man, although) thou knowest it not after that (first breach) God may well cause something new to come about."²³

...وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ
حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا
تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ
ذَلِكَ أَمْرًا (سورة
الطلاق:2)

²³ Qur'an Chapter 65 verse 1

Finally, I am want to conclude with the word of elders and wisdom from 'Umar b. Al-Khattab, may Allah be pleased with him that goes thus:

“Prevail on disputants until they go for settlement. Judicial settlement leads to bitterness between them.”²⁴

ردوا الخصوم حتى يصلحوا فإن فصل
القضاء يورث بينهم الضغائن (راجع فقه
السنة للسيد سابق ج (٣) ص (٣٠٠))

Thank you and God bless.

²⁴ As-Sayyid Sabiq, *Fiqhus-Sunnah*, Volume III, Page 300