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Mediation in Islamic Law and Its Parallels with Contemporary ADR Mechanisms

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Abstract

This paper will examine what is meant by mediation under the Islamic law and how it can be compared to the modern-day Alternative Dispute Resolution (ADR) systems. Although contemporary ADR focuses on non-partisanship, confidentiality and party autonomy, Islamic mediation (sulh) is focused on reconciliation, moral duty and maintenance of community harmony. The paper examines the theological basis of sulh in the Quran and the Hadith, the mediator (hakam and muslih) and the focus on forgiveness and justice.

The paper, in a comparative analysis, comes up with areas of convergence and divergence between Islamic and modern mediation specifically in regard to the neutrality of the mediator, enforceability of the agreements and the ethical grounds. The case studies of Pakistan, Malaysia and the United Arab Emirates demonstrate different methods of introducing Islamic reconciliation practices into the statutory ADR systems. These cases prove the feasibility of the hybrid models, which integrate Shariah-based principles and procedural-based safeguards that are based on the contemporary law.

The paper also addresses the difficulties of harmonizing Islamic jurisprudence and secular ADR norms, particularly concerning such aspects as enforceability and institutional recognition as well as outlining cross-learning opportunities. The paper claim that an integration of the traditions can help to diversify the world in terms of ADR by placing Islamic mediation in the wider context of ADR. The existence of such hybrid modalities can help increase justice-accessibility in Muslim-majority societies, as well as add further ethically-grounded options to the international ADR portfolio.

Keywords: *Mediation, Sulh, Islamic Law, Alternative Dispute Resolution (ADR), Comparative Legal Studies, Access to Justice, Hybrid Dispute Resolution Models*

Introduction

Alternative Dispute Resolution (ADR) has now become an important tool in contemporary juridical frameworks to resolve disputes that are not subject to the adversarial process. Of particular relevance, mediation is now becoming a prominent flexible, consensual and cost-effective approach to resolving conflicts as an alternative or complement to litigation in civil and commercial litigation. As observed by scholars, ADR helps to achieve efficiency, party autonomy and social harmony and takes the courts off the overburdened caseload (Menkel-Meadow, 2016). Mediation in this sense is more and more institutionalized by legislation, court-based programs and international institutions, including the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention on Mediation, 2019) (Feehily, 2022).

The importance of amicable settlement has not been new to Islamic jurisprudence and is embodied in the doctrine of sulh (reconciliation). One of the most notable aspects of Islamic jurists in the classical period was the elaboration of the rules of using sulh in civil and family affairs and it was already a moral and legal duty (Bano, 2023). Under this model, arbitrators (hakam or muslih) were charged with the responsibility of opening up dialogue and settling of disputes without judicial pressure.

The overlap between Islamic mediation and modern ADR is a promising place to conduct scholarly research. Although both systems put emphasis on consensus, voluntariness and fairness, their philosophical underpinnings are different, with Islamic mediation working on the basis of religious and moral values and modern mediation being mostly secular and party-focused. The paper will discuss these similarities and differences with a particular focus on the doctrinal underpinnings, the features of comparisons and current uses of these differences in Muslim dominated legal systems.

Doctrinal Foundations in Islam

The Islamic juristical foundations of mediation can be found, in the first place, in the Quran, Hadith, and later juristic commentaries abbreviated here as fiq'h al-mua'qmalat (Islamic jurisprudence of social and commercial relations). The main principle of this premise is the idea of sul'h (reconciliation), which is clearly supported as a valid and admirable way of dispute resolution.

The Quran gives a number of injunctions, which emphasize on reconciliation as an ideal method of settling disputes. To illustrate the example, the Quran in the case of marital discord prescribes the appointment of mediators (hakam) on both sides, both on the side of his family and on the side of her family: "In the case of fear of a breach between the two, appoint two arbitrators, one of his, and the other of her; should

they both desire a reconciliation, Allah will reconcile them (Qur'an 4:35) (Muhammed-Mikaaeel, 2021). Equally, Qur' 49:9 calls on parties involved in conflict to be just and fair in restoring peace by urging people to be just and fair in their beliefs (Fazaluddin, 2022a). Such verses set a spiritual and legal precedent of mediation as a process which is authorized by God.

The literature of Hadith also enhances this basis by glorifying the practice of reconciling of conflicting parties. It is reported of Prophet Muhammad (peace be upon him) who said: Shall I not tell you of something greater in degree than fasting, prayer and charity? It is mending fences among individuals; the hatred and the evil cuts the heavenly gains at the root (Abu Dawood, Book of Manners, Hadith 4919) (Bangsawan, 2021). Such traditions underscore the religious merit and communal importance of mediation, extending its application beyond family disputes to broader social conflicts.

The doctrine of *sul'h* was organized by early Islamic jurists within Islamic law, as a voluntary binding settlement between parties. The Hanafi and Maliki schools promoted reconciliation to the extent that it did not allow the unlawful (haram) or did not forbid the lawful (halal) (Askara, 2025). Mediators, who were sometimes referred to as *hakam* or *mus'lih* was not involved in adjudication only but also in building harmony, justice and forgiveness. This is unlike in litigation where there is a need to fight over things, which judicial power dictates.

In this way, Islamic mediation has its doctrinal grounds, which are firmly rooted in scriptural sources as well as in juristic thinking. The process of mediation within Islam is not only a procedural variant but an expression of moral and spiritual orientation and striving to maintain peace and justice within the community.

Core Features of Islamic Mediation

Islamic mediation, articulated through the doctrine of *sulh*, embodies distinctive features that differentiate it from adversarial dispute settlement methods. These features highlight not only procedural aspects but also the ethical and communal dimensions embedded within Islamic jurisprudence.

Consent and Voluntariness

A fundamental principle of *sulh* is that reconciliation must arise from the free consent of the disputing parties. Classical jurists emphasized that coerced settlements are invalid because they contradict the spirit of reconciliation and the requirement of mutual satisfaction (Faizi & Ali, 2024a). This is consistent with the Qur'anic instruction that arbitrators (*hakamayn*) should facilitate agreement only when both parties are willing, as reconciliation cannot be imposed unilaterally. Voluntariness ensures that settlements maintain legitimacy and social harmony, distinguishing Islamic mediation from judicial rulings enforced through state authority.

Emphasis on Reconciliation, Forgiveness and Justice

Islamic mediation is underpinned by values of forgiveness (*afw*), compassion (*rahmah*) and justice (*adl*). The Qur'an urges believers to incline toward reconciliation whenever possible: "*The reconciliation between you is best*" (Qur'an 4:128) (Fazaluddin, 2022b). This verse reflects the preference for negotiated harmony over prolonged conflict. Moreover, Hadith traditions underscore the spiritual rewards of resolving disputes amicably, portraying reconciliation as an act of worship and moral excellence (Afsaruddin, 2025). Unlike purely contractual settlements in modern ADR, Islamic mediation integrates moral accountability, encouraging parties to prioritize long-term communal welfare over short-term gains.

Community and Family Involvement

The other distinctive feature of the Islamic mediation is the communitarian inclination. In situations where there is a marital dispute, Quran (4:35) stipulates that the arbitrators must be selected among the families of the conflicting marital partners. This is an expression of a view that people within the social context are in a better position to appreciate the context of conflicts and generate sustainable solutions (Elmahjub, 2021). Sulh in tribal and communal societies was commonly a communal process in which elders or religious leaders or affluent members of the community participate. This collective nature does not only render results legitimate, but also enhances social unity, which is usually quite individual and personal in modern mediation.

Collectively, these fundamental attributes indicate that Islamic mediation is indeed not just a procedural instrument, but a comprehensive process, which is based on spiritual, ethical and social values. Although its voluntariness and focus on fairness can be compared with the contemporary mediation practices, the high level of communal and moral orientation offers the distinctive contribution to the discussion of the dispute resolution.

Comparative Analysis with Modern Mediation

Although mediation in the Islamic law and the modern ADR systems is similar in that the ultimate goal of these systems is the attainment of amicable settlement, the two systems exhibit numerous differences in their bases, structural arrangements and application abstractly and realistically. Comparative analysis brings into focus areas of convergence and divergence that of necessity play a key role in determining the interaction between religiously inspired and secular models of dispute resolution.

Neutrality of the Mediator

The concept of neutrality is viewed as the foundation of mediation in the contemporary ADR, and mediators are supposed to be neutral and not to be connected with the disputing parties (Nga, 2022). In Islamic mediation, though, the role of a mediator and his/her trust and moral integrity is put in a higher emphasis since a mediator is usually a family member or a

community elder having close connections with the parties. The selection of arbitrators who are members of both families during marriage disagreements according to the Quranic provisions (4:35) is important to note since relational closeness is valued over neutrality (Shehata, 2021). While this may compromise strict impartiality, it strengthens the moral authority of the mediator and ensures that settlements align with communal norms.

Confidentiality and Enforceability of Agreements

According to modern mediation, the information is kept confidential, and the privacy of the parties is preserved, as well as honest communication with no fear of being outed or being disadvantaged by the law (Allen, 2024). In comparison, Islamic mediation was traditionally organized in communal or family contexts, in which transparency and social responsiveness were given more importance than confidentiality. Enforceability is another difference: the contracts made by means of sulh could be enforced according to Islamic law, but they had to outlaw neither what is haram (prohibited) nor what is halal (lawful) (Qureshi, 2024). In modern ADR, enforceability depends on contractual principles or statutory recognition, as reflected in instruments like the Singapore Convention on Mediation (2019).

Cultural and Ethical Dimensions

Both systems are based on ethical concerns in which mediation is oriented differently. Contemporary mediation emphasizes party autonomy, procedural fairness and efficiency. In its turn, Islamic mediation is impregnated with the element of religious and moral imperatives, e.g., forgiveness, reconciliation and the search of justice (adl). This ethical aspect places the Islamic mediation as a conflict resolving mechanism, as well as a spiritual and communal healing process (Syihab, 2023a). In practice, this means that Islamic mediation often places collective welfare above strict individual rights, contrasting with the more individualistic orientation of contemporary ADR.

Overall, even though both Islamic and modern mediation are intended to promote voluntary and friendly resolutions, the role of the mediator, procedures, and ethical orientation demonstrate such differences between Islamic and modern mediation due to the differences in their socio-legal contexts. The overlap of these models, though, provides the possibility of hybrid solutions that would be based on secular procedural protections and Islamic moral and communal principles.

Case Studies

5.1 Pakistan: Statutory ADR and Community Mediation

In Pakistan, the trajectory of ADR reflects a blend of statutory frameworks and localized community-based initiatives. At the statutory level, the Islamabad Capital Territory (ICT) Alternative Dispute Resolution Act,

2017 empowers courts to refer civil disputes to accredited neutrals for mediation, conciliation, or arbitration. Settlements reached under this scheme may be given binding effect by courts, provided they do not contravene law or public policy (Rahman et al., 2022). This framework has been hailed as an attempt to integrate consensual processes into the mainstream justice system.

Parallel to this, Pakistan has seen the rise of Dispute Resolution Councils (DRCs), particularly in Khyber Pakhtunkhwa province, where community leaders facilitate reconciliation in minor civil and criminal disputes (Usmani et al., 2025). These DRCs revive elements of traditional *jirga* culture but are structured to provide a degree of oversight and transparency (Nawaz & Aman, n.d.). Scholars note that while they reduce case backlogs and promote access to justice, concerns remain about procedural safeguards and consistency with constitutional rights (Ismaili & Sulejmani, 2024).

Together, these models illustrate Pakistan's dual approach: formal statutory ADR in urban courts and community-led reconciliation rooted in Islamic and customary traditions.

5.2 Malaysia: Court-Annexed *Sulh* and the Mediation Act 2012

Malaysia has pioneered the institutionalization of *sulh* within its Syariah courts. Beginning with the Selangor Syariah Court Civil Procedure (Sulh) Rules 2001, *Majlis Sulh* sessions were introduced to handle family and personal-status disputes through facilitated settlement (Mokhtar, 2023). Agreements reached in these sessions, once endorsed by a judge, carry the force of law (Adnan, 2024). This system reflects an explicit recognition of the Islamic tradition of reconciliation within state judicial structures.

In addition, the Mediation Act 2012 (Act 749) applies to civil and commercial disputes across Malaysia, emphasizing confidentiality, voluntariness and enforceability of settlement agreements (Abraham, 2023). Scholars highlight that Malaysia's mediation framework demonstrates a "hybrid ecosystem" where Islamic *sulh* coexists with modern ADR practices, providing a culturally resonant yet legally robust mechanism of dispute resolution (Safei & Abdullah, 2023).

5.3 United Arab Emirates: National Mediation Framework and Court-Annexed Settlement

The United Arab Emirates (UAE) has developed a comprehensive mediation regime through Federal Law No. 6 of 2021 on Mediation in Civil and Commercial Disputes, which regulates both judicial and extrajudicial mediation (Konova & Abdullin, 2024). The law outlines procedures for mediator appointment, timelines and recognition of settlement agreements, aligning with international standards.

At the emirate level, Dubai's Centre for Amicable Settlement of Disputes (CASD)—established under Dubai Law No. 16 of 2009—functions as a pre-litigation gateway for a broad range of civil claims (Westcott, 2021).

CASD emphasizes early settlement under court supervision, with timelines designed to reduce costs and court congestion (Sherman & Momani, 2025). Scholars note that this model not only promotes efficiency but also resonates with the Islamic spirit of reconciliation by embedding *sulh* values within a modern legal framework (Alnuaimi & Alkrisheh, 2024).

Challenges and Opportunities

6.1 Tensions Between Shariah Principles and Secular ADR Laws

One of the primary challenges in harmonizing Islamic mediation with modern ADR frameworks is the tension between religious norms and secular legal systems. In many jurisdictions, mediation laws are designed around contractual enforceability and party autonomy, while Islamic mediation is guided by Qur'anic and Hadith-based principles of *sulh*, which emphasize reconciliation and the moral duty to forgive (Faizi & Ali, 2024b). For example, agreements in Islamic mediation cannot legitimize what is *haram* or prohibit what is *halal*, creating potential conflict when parties seek creative settlements that might not align with strict Shariah rules (Hallaq, 2024).

Another issue lies in institutional recognition. While some states (e.g., Malaysia, UAE) have successfully embedded *sulh* into statutory frameworks, in other Muslim-majority countries such integration remains uneven, raising concerns about the enforceability and legitimacy of outcomes (Talib et al., 2024).

6.2 Opportunities for Cross-Learning and Integration

Despite these challenges, the convergence of Islamic and modern mediation frameworks presents significant opportunities. First, Islamic mediation's emphasis on restorative justice, communal harmony and forgiveness can enrich contemporary ADR, which often prioritizes efficiency and party autonomy (Syihab, 2023b). This is particularly relevant in family and community disputes where relational repair is as important as settlement. Second, secular ADR systems provide procedural safeguards—such as confidentiality, neutrality and judicial oversight—that can help formalize Islamic mediation practices and enhance their credibility within modern legal systems (Guerra Valero, 2024). Hybrid models, as seen in Malaysia's *Majlis Sulh* or the UAE's court-annexed settlement centres, illustrate how Shariah-based principles can coexist with international ADR standards. Finally, the global recognition of mediation instruments, such as the Singapore Convention on Mediation (2019), offers Muslim-majority states a platform to harmonize domestic practices with international norms while preserving Islamic values of justice (*adl*) and reconciliation (*islah*) (Rosli et al., 2024).

Conclusion

When comparing mediation within the framework of Islamic law and modern ADR, the similarity of intentions in the promotion of

reconciliation, voluntariness and amicable settlement is the common feature in both frameworks. The two traditions aim at solving conflicts without adversarial litigation but are based on different priorities: modern ADR is founded on the principles of neutrality, confidentiality and party independence, and Islamic mediation on the principles of community peace, moral responsibility and spiritual reconciliation.

Pakistan, Malaysia and the UAE cases indicate that incorporation of Islamic sulh of statutory frameworks is not only feasible but working as well. The statutory ADR and community-based systems in Pakistan represent a pluralistic system; the institutionalized Majlis Sulh in Malaysia underlines the possibility of making Islamic reconciliation a part of formal adjudication; the hybrid regime of mediation in the UAE demonstrates how international norms can be at the same time as Shariah-inspired principles. However, there are still difficulties in the alignment of Shariah to secular ADR norms specifically in relation to the reinforceability, impartiality and range of agreements allowed. These strains underscore the importance of prudent institutional and doctrinal design. Meanwhile, the cross-learning prospects are numerous: Islamic mediation has been a source of rich ethical and reparative aspects, and modern ADR has provided procedural protection and world-recognition tools.

Next generation development of hybrid models that would strike a balance between these two paradigms may result in dispute resolution systems that are culturally resonant and legally strong. Not only would such models improve access to justice in societies dominated by Muslims, but they would also help to shape ADR globally by inculcating in it the ethos of compassion, forgiveness and community good.

References

- Abraham, S. (2023). Introduction to mediation in Malaysia. *Revista Brasileira de Alternative Dispute Resolution-Brazilian Journal of Alternative Dispute Resolution-RBADR*, 5(9), 103–119.
- Adnan, N. N. B. C. (2024). Sulh (Resolution) of Family Dispute and its Application in The Shariah Courts of Malaysia. *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 6(2), 455–468.
- Afsaruddin, A. (2025). 'Be inclined to peace!' An ethics of peacemaking and non-violent conflict resolution in the Islamic milieu. *Philosophy & Social Criticism*, 51(4), 597–608.
- Allen, T. (2024). *Mediation law and civil practice*.
- Alnuaimi, A. A., & Alkrisheh, M. A. (2024). Advancing criminal justice through mediation: Analyzing the integration of mediation in Emirati criminal legislation. *Humanities and Social Sciences Communications*, 11(1), 1–9.

- Askara, S. (2025). Maqasid Syariah Sebagai Filsafat Hukum Islam: Sebuah Pendekatan Sistem Menurut Jasser Auda. *Journal Review of Islamic and Social Studies*, 1(1), 29–36.
- Bangsawan, M. I. P. R. (2021). *Tafsir Al-Azhar* 07.
- Bano, S. (2023). *The Sharia inquiry, religious practice and Muslim family law in Britain*. Routledge London.
- Elmahjub, E. (2021). Islamic jurisprudence as an ethical discourse: An enquiry into the nature of moral reasoning in Islamic legal theory. *Oxford Journal of Law and Religion*, 10(1), 16–42.
- Faizi, H. F. S., & Ali, H. S. (2024a). The core principles of Islamic jurisprudence within legal theory: A comprehensive analysis. *Online Journal of Research in Islamic Studies*, 11(2), 57–72.
- Faizi, H. F. S., & Ali, H. S. (2024b). The core principles of Islamic jurisprudence within legal theory: A comprehensive analysis. *Online Journal of Research in Islamic Studies*, 11(2), 57–72.
- Fazaluddin, S. (2022a). *Conciliation in the Qur'an: The Qur'anic Ethics of Conflict Resolution* (Vol. 9). Walter de Gruyter GmbH & Co KG.
- Fazaluddin, S. (2022b). *Conciliation in the Qur'an: The Qur'anic Ethics of Conflict Resolution* (Vol. 9). Walter de Gruyter GmbH & Co KG.
- Feehily, R. (2022). *International Commercial Mediation: Law and Regulation in Comparative Context*. Cambridge University Press.
- Guerra Valero, X. (2024). *Mediation: A comparative law study*.
- Hallaq, W. B. (2024). *Şariat; Teori-Uygulama-Dönüşüm*. Ekin Yayınları.
- Ismaili, F., & Sulejmani, S. (2024). THE RIGHT TO TRIAL WITHIN A REASONABLE TIME AND THE CHALLENGES OF RESPECTING IT IN THE CRIMINAL PROCEDURE. *JUSTICIA International Journal of Legal Sciences*, 12(21–22), 345–350.
- Konova, F., & Abdullin, A. (2024). Mediation as an effective way to settle economic disputes: Current experience and prospects for development. *Revista Brasileira de Alternative Dispute Resolution-Brazilian Journal of Alternative Dispute Resolution-RBADR*, 6(11), 141–150.
- Menkel-Meadow, C. (2016). *Mediation and Its Applications for Good Decision Making and Dispute Resolution*.
- Mokhtar, H. M. N. bin. (2023). The Islamic Legal System in Malaysia: Challenges and Strategies. *IIUMLJ*, 31, 39.
- Muhammed-Mikaaeel, A. A. (2021). Legal Implication of Quran Chapter 4 Verse 3 on Muslims' Marital Affairs. *Jurnal Hukum Novelty*, 12, 204–224.

- Muhtar, M. H., Kasim, N. M., & Suryani, I. (2023). Islamic Law In The Constitution Of Indonesia (a Study of Characteristics Sharia Local Regulations). *Tsaqafah*, 19(1), 236–263.
- Nawaz, S., & Aman, S. (n.d.). *Dispute Resolution Councils in Khyber Pakhtunkhwa: The Personification of Jirgas*.
- Nga, P. T. (2022). Alternative Dispute Resolution (ADR): A new trend of economic conflicts settlement. *ADR Strategies: Navigating Conflict Resolution in the Modern Legal World*, 70.
- Qureshi, O. A. (2024). *What Role Does Custom Have in Sharī'ah? Muḥammad Amīn Ibn 'Ābidīn, Continuity and the Sacred Balance in the Ḥanafī Legal Tradition*. University of Southern California.
- Rahman, S. U., Tanveer, M. S., & Hilal, A. (2022). The critical analysis of procedural aspects in applicability of alternate dispute resolution ACT-2017. *Pakistan Journal of International Affairs*, 5(2), 1112–1127.
- Rosli, I. C., Hanafi, N. I., Hassan, N. A. A., Hazim, W. N. A. W. A., Ab Latif, M. N. H., & Ibrahim, T. C. A. B. T. (2024). Mediated Settlement Agreements: Enhancing Enforcement through the Singapore Convention in Malaysia. *International Journal of Academic Research in Business and Social Sciences*, 14(12), 3225–3233.
- Safei, S., & Abdullah, N. C. (2023). A new proposed features of Malaysian legal framework for alternative dispute resolution in the tribunal for consumer claims. *ESTEEM Journal of Social Sciences and Humanities*, 7(2), 71–83.
- Shehata, A. (2021). *An Islamic Feminist Critique of the Work of Nawal El Saadawi*. Université d'Ottawa/University of Ottawa.
- Sherman, N., & Momani, B. T. (2025). Alternative dispute resolution: Mediation as a model. *F1000Research*, 13, 778.
- Syihab, M. B. (2023a). Telaah Kritis Pemikiran Jasser Auda dalam Buku “Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach.” *AN NUR: Jurnal Studi Islam*, 15(1), 114–136.
- Syihab, M. B. (2023b). Telaah Kritis Pemikiran Jasser Auda dalam Buku “Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach.” *AN NUR: Jurnal Studi Islam*, 15(1), 114–136.
- Talib, M. F., Watto, O. M., & Islam, M. (2024). Harmonizing conflict: Exploring global applications of alternative dispute resolution methods. *Pakistan Journal of Criminal Justice*, 4(1), 77–90.
- Usmani, M. B., Hassan, A., & Tahir, M. T. (2025). Reluctance of People Using Alternative Dispute Resolution: A Critical Analysis in the Pakistani Context. *Law Research Journal*, 3(1), 72–81.
- Westcott, B. (2021). Guidelines for Amicable Settlement Procedures. *Civil Engineering= Siviele Ingenieurswese*, 29(3), 63–67.