

INFORMAL DISPUTE RESOLUTION IN ISLAMIC WORLD: JORDAN, EGYPT, SAUDI ARABIA AND PAKISTAN

Abida Hassan, PhD Scholar, University of South Asia Lahore. doctor.abidahassan@gmail.com

Dil Muhammad Malik, University of South Asia Lahore. doctor.abidahassan@gmail.com

ABSTARCT

This article is about dispute resolution practices in Islamic World, which briefly discusses the different civilizations in various times and in different Muslim Countries i.e. Egypt, Saudi Arabia Jorden and Pakistan. Islamic Legal system also provided for litigation as well as alternative process of dispute resolution. The purpose of this research was to discuss some Muslim civilizations i.e. Jorden, Egypt, Saudi Arabia and Pakistan and to find out the informal dispute resolution in the said countries in past times. The Muslim conquest promoted both methods but the most popular method was alternat dispute resolution in all Islamic countries.

KEYWORDS: Dispute Resolution, Informal, Muslim World.

Introduction Islamic Jurisprudence provides ADR for dispute resolution, which has the divine sanctity of Quran and other sources. During the past few decades, many Arab countries, including Egypt, Syria, and United Arab Emirates, have adopted some of the alternative dispute resolution methods.¹ The dispute resolution is based on religious background. Islamic law is far ahead from other codes and provides a simplified view of favoring peaceful solution over dispute.²

During the pre-civilized days, human beings lived a nomadic life. Domestication of animals and plants lead to agriculture and human settlements in ancient Egypt and Iraq. In other parts, the nomadic life continued and the dispute resolution developed on two different patterns among the nomadic and settled people. The nomads continued with the customary methods of dispute resolution through the elders of the tribe, while the settled tribes developed different and more formal method through official forum (court) presided by an official adjudicator (judge).³ It appears that the dispute resolution through elders continued during the early periods of agricultural settlements, but with emergence of centralized administration of the strong kings such as Pharaohs in Egypt, a more formal method through courts emerged. It is logical to assume that both the systems continued on parallel lines in the beginning.⁴ Thus, for example, the earliest available written law, Ur Nammu Code, (Enacted in Mesopotamia, in 2100-2050 BC) provided for settlement of disputes through courts, it prescribed certain offences, empowered the courts to decide the cases arising under that Code. Thus, it can be safely assumed that disputes, not arising under the code, were decided by non-judicial forums. Similarly, the judicial system in Egypt was based on the combination of both these systems in Egypt during 3rd millennium BC. The civil disputes, particularly, petty matters were decided by the council of elders at rural level and more serious disputes relating to murders were decided by king and later on by his Wazir, who also had the jurisdiction to hear appeals against the decisions of village councils. So, it is important to understand the scope of informal dispute resolution and to made this process more popular in Islamic World, because it not only saves the relationships of people but also a speedy, less-expensive and friendly dispute resolution process with less emphasis of formalities.

Materials And Methods The procedural aspects relating to research methodology are explained in necessary details. Methodology is purely qualitative. Data was collected through primary as well as secondary studies. articles. The research was carried out at Lahore using its vast public library resources. It is descriptive in nature and also explains the informal dispute resolution system in Jorden, Saudi Arabia, Egypt and Pakistan in early times.

The selection of the countries (Jorden, Saudi Arabia, Egypt and Pakistan) is based on being Muslims countries. Furthermore, the study of reference countries (Jorden, Saudi Arabia, Egypt and Pakistan) is limited with main focused on informal dispute resolution because in depth study in these countries was neither possible within the time frame. The main reason for this approach (qualitative method only) was that quantitative method could not be used because such an attempt would have involved sophisticated and expensive logistic set up but the researcher had no funding source from outside and could not afford survey etc.

1. Dispute Resolution in Islamic Countries

3.1 Jorden In Jorden, the scope of Intellectual Property Rights is territorial. As Islam is not in favor of litigation, therefore, a contractual clause preferring ADR, in case of dispute relating to patent matters in Jorden, the parties will refer their dispute to it for dispute resolution, as ADR processes are speedier for dispute resolution,⁵ and these processes can decrease the expenses of dispute resolution.⁶

The parties appreciate the opportunity to use the informal dispute resolution processes.⁷ There are many cases in Jorden which were settled through ADR.⁸ Matters which can be mediated become difficult.⁹ Some of the view is that almost all the matters are arbitral in Jorden. However, the evidence relating to infringement and validity are not arbitral.¹⁰

Arbitration covers the legal disputes which the parties refer in civil or commercial, contractual or non-contractual.¹¹ Arbitration is not allowed in cases which cannot be mediated.

Most Jordanians like to avail the court litigation as they have the right of appeal in that process as the Arbitration Law excludes the appellate right of parties, arbitral awards are available only in gross errors.¹²

In ADR process, parties select the neutrals by themselves who entertain their conflicts.¹³ Jordan could attempt to address this lack of expertise by establishing a center to train staff-judges and arbitrators-on complex infringement cases. In 2003, the Arab Intellectual Property Mediation and Arbitration Society was established, in Jordan, to handle IP disputes. Before this, there was no such institution. The Arab Intellectual Property Mediation and Arbitration Society is a new institution that requires to be developed. ADR processes, require that qualified person should be appointed from a schedule.¹⁴

In 2000, laws were modified and framed on Jordan's agreement to the World Trade Organization (WTO). It is compulsory for Jordan to public validate it and imposes Intellectual Property Rights. The Jordanian government tried to defend the foreign Intellectual Property interests which have been very popular news.¹⁵

ADR processes, such as conciliation and mediation, are in practice in Jordan. In 2006, the Mediation Law to settle the Civil Disputes was framed. This law also covers the commercial disputes. Mediation Directorate which is established under the Mediation Law consists of judges from the Court of Cassation and Court of First Instance, special as well as private mediators appointed by the court, to resolve the referred dispute. So, the law gives three types of mediators i.e. judges, special mediators, and private mediators.¹⁶

The neutrality of ADR is the talent of arbitration and mediation to settle the legal and commercial disputes. Arbitration is the major usage of ADR in the Arab world. In Saudi Arabia, and the United Arab Emirates, western arbitrators gave their decisions that disqualified the legal system of these countries in a humiliating way.¹⁷ ADR participants in Arab permits the Western arbitrators and mediators to control the Arab arbitrators and mediators.¹⁸ In reaction, laws and rules are not excluded due to bias.¹⁹

3.2 Saudi Arabia Saudi Arabia is ruled by Islamic law which is based on the Holy Qu'ran and Sunnah, ijma, (consensus of Islamic scholars) and qiyas, or analogy. In 1928, Saudi courts depended on the Hanbali School of Islamic Thought and in practice, the Saudi courts relate to Shari'a, in domestic relations, criminal matters, questions of property, and generally in contract disputes. Commercial activities generally, such as distributorship agreements, corporate matters, trademarks and patents and government contracts are subject to "Regulations" and "Implementing Rules", which are decreed by the Saudi Council of Ministers and the various government ministries. These administrative rules and regulations are viewed as supplementing and conforming to, but not replacing, the Shari'a, because Shari'a courts generally adjudicate matters governed purely by Shari'a, the various commercial rules and regulations are less relevant in these courts and rarely utilized there. All courts in Saudi Arabia, however, whether they be Shari'a, the secular commercial courts or arbitration tribunals, are intended to use Shari'a rules and methods. Some commercial courts have specific procedural and evidentiary rules, set out in ministerial rules and regulations, but they are implied to obey to Shari'a.

In Saudi Arabia, Kadi is the person who defends the parties from formal system and guides them. All the proceedings are oral, not written and as a basic rule, conciliation is the heart of dispute resolution.

Kadi encourages the parties to enter into an agreement and resolve their disputes friendly.

- (1) Several levels of Shari'a courts that have general jurisdiction (including jurisdiction over civil matters); and
- (2) Specialized judicial committees for commercial matters whose jurisdiction is determined by their respective constituting decrees.²⁰

These courts were first organized in 1927, have general jurisdiction in all matters such as civil, real property disputes, criminal and domestic relations except those for which a special committee survives, and are normally settled by Board of Grievances (BG), Commercial Papers Committee (CPC), Commercial Agency Commission (CAC), Saudi Arabian Monetary Agency (SAMA) Committee which is suitable for banking disputes, and

Primary and Supreme Commissions for Labor Disputes. The Patents Regulation provides for a Committee for Settlement of Patent disputes but it has not yet been constituted. In addition, Saudi Arabia completed its own arbitration regulations in 1983.

Sharia courts, divided between (1) summary and (2) ordinary courts, are administered through Ministry of Justice pursuant to the Judicial Regulations in 1975 as modified, and the judge must be a Saudi national with a degree from a Saudi Islamic law college. The summary court can be viewed as a small claims court in that it has jurisdiction in civil matters, except land disputes and those criminal offenses whose penalties involve death or amputation of the hands. In the ordinary court, a single judge hears a civil case, but three judges sit on a criminal case.

The decision is appealable within 15 days of the party's receipt of its notification. A court in Makkah hears appeals from the Western Province, and a court in Riyadh hears appeals from Central Province and Eastern Province.²¹

Diwan-Al-Mazalim, established and supplemented by Council of Ministers Resolution and the Board of Grievances had many functions, including being the final opportunity for resolution of disputes between the private party and the government.

President of the Board can authorize a single judge of tribunal to decide small claims, enlisted by the President. According to Saudi law, all the panels must be formed by Saudi Shari'a experienced judges; they are assisted by consultants who frequently are non-Saudi Arab legal consultants having sufficient knowledge in administrative law. The Board, at its own instigation or at the request of one or both parties to a dispute, also seeks assistance and reports from local universities' technical staff and at the Saudi House for Consulting Services, a quasi-governmental consulting institution.²²

The Board Rules apply, inter alia, to any dispute under a contract between a non-government party, whether Saudi or foreign, and a government ministry, agency or other entity-such as construction contracts for government projects, procurement contracts etc. and to applications for the execution of foreign judgments.

The Board Rules set forth the form of the judgment, e.g., that it should state the nature of the case (administrative, disciplinary, penal and, while not specified, presumably commercial), who was present at each hearing, the various requests of the parties, defense and evidence. The original judgment must be signed by the panel members and the secretary of that tribunal within 15 days of the decision. The panel, of its own accord or at the application of an interested party, can correct material errors, whether "in words or figures" in the judgment. Furthermore, in the event of an ambiguity in a judgment any interested party can request the President of the Board to refer the inquiry to the relevant panel for interpretation.²³

Commercial Paper Committee has jurisdiction over bills of exchange, and promissory note etc. and disputes are heard by a panel consisting of one chairman who is nominated by the Ministry of Justice and two legal experts who are appointed by the Ministry of Commerce. Once the Commercial Paper Committee accepts the case, the plaintiff or any authorized person on his behalf serves notices/summons to defendant/respondent or any of his

authorized representative. Place of hearing is the defendant's place of residence. Sometimes, the plaintiff finds it difficult to approach the defendant.²⁴

Defendants frequently fail to appear, thereby forcing postponement. As in the Shari'a courts, default judgment is permitted after the defendant has failed to appear twice in succession, but the defendant can appeal a CPC default judgment within 15 days of notice of its issue. If the defendant fails to appear at the appellate proceedings, however, the appeal will normally be dismissed and the default judgment upheld. Appeal of other than default judgments is likewise to the Legal Committee, but must be made within 30 days after receiving notice of decision.²⁵

Pursuant to the original Implementing Rules of the Commercial Agencies Regulations, a three-member tribunal was established in 1969 in Riyadh, under the MOC, to enforce the Commercial Agencies Regulation. One of the three members of the CAC must be a legal consultant appointed by the Minister of Commerce; the other two may be MOC employees. The CAC appears to function as an investigative body whose recommendations for penalties for violations of the Commercial Agencies Regulation must be approved by the Minister of Commerce; decisions of the CAC can be appealed to the Minister within 15 days after receiving the notice of the CAC's decision.²⁶

Pursuant to Council of Ministers Resolution No. 729/8, Saudi Arabian Monetary Agency (SAMA) was established and the purpose of this committee was to see the bank cases and their customers.

The SAMA Committee prefers conciliation process for resolution of disputes rather than litigation. In case the Committee can not reach at any agreed point, then it refers the matter to the competent court (Shari'a court or the Board of Grievances) to adjudicate upon the dispute.²⁷

The Labor Law Regulations, established (i) Primary Commission as well as (ii) Supreme Commission for labor disputes. Procedure for settlement of disputes is governed by rules of Procedure. There is one chairman of Primary Commission who is qualified in Sharia and it is also compulsory for at least one member of committee to have degree in Sharia, administrative law, or civil law.

Labor dispute proceedings are entertained on an application in the area where the worker is working. In case of failure for settling dispute amicably, it forwards the matter to the Primary Commission, and it has the right to compel for evidence or to present witnesses. The Commission has also jurisdiction to issue an award in case of continuous silence from defendant, against the award of Primary Commission appeal lies within 30 days of the decision to Supreme Commission. The decisions of the Supreme Commission are final and enforceable.²⁸

The Labor Regulation permits companies and staffs to refer their disputes to arbitration specifying the time limits for settlement of disputes.²⁹

3.3 Egypt As the largest Arab country in the Middle East, Egypt plays an important role in favor of Alternative Dispute Resolution. The officers of Egypt encourage the commercial ADR in the Western Corporations to start business in the area. In Egypt, the

private sectors such as insurance, information technology, banking and construction industries prefer ADR. The main purpose is to use the private mediation institutions i.e. the Centre for Effective Dispute Resolution (CEDR) to give the basic training to lawyers, and promote a mediation practice in Egypt through conferences, workshops, media, and public awareness movements.³⁰

Due to the inefficiencies, the Egyptian courts faced international business contract enforcement very slow. Some knowledgeable or trained judges in ADR make it available, so the Egypt requires to establish the institutional capacity for ADR services. Religion played an important role for the implementation of ADR in Egypt, ADR was introduced that highlights its harmony with Islam to create awareness in public.³¹

The Egyptian stock market is a shadow of its former self, there are several Egypt ADRs trading on the OTC. The most important, Orascom NV announced a takeover offer for its former parent company, Orascom Construction Industries in January 2013). The combined entity is a principal natural gas-based fertilizers & chemicals and an engineering & construction contractor established in Amsterdam and Cairo that's one of the region's largest corporations (72,000 employees in 35 countries) in Europe, the Middle East, North America and North Africa.³²

Patrick Philipp, highlighted to Egyptian officials the importance of ADR provided to countries both in terms of transport facilitation and road safety. He also emphasized that developing the knowledge and skills of transport professionals is paramount in ensuring the successful implementation of any road transport legal instrument.³³

Dispute resolution scheme, such as assisted negotiations, conciliation, mediation and expressions of similar import, used in international and domestic commercial practices are alternatives to litigation. There are many advantages of the use of such dispute resolution processes by reducing the chances of commercial relationship and inexpensive resolutions etc.³⁴

3.4 Pakistan At the social level, the system of panchayat (Council of Elders) is well rooted in Pakistan. Panchayat system has been in vogue in the Subcontinent since 500 BC, and this system went into decline when formal courts were established by Muslims and later by British rulers, and took many decades to have a comeback. The legal cover for this comeback in Punjab was the Punjab Panchayat Act, 1929 (PPA), providing a solid base to the informal dispute resolution, which has remained in vogue through various local government laws up till now. Pakistan has traditional institutions (Panchayat & Jirga) to manage the affairs of community. The matters are dealt with by a council of people enjoying amass of wealth and dominance. Due to apprehension of social disapproval and boycott, the rival parties dare not transgress the pronouncement of the said body.³⁵

Alternative Dispute Resolution (ADR) is ingrained in history for finding solutions to problems and increasingly followed in various societies and the traditional society of Pakistan. This method, is certainly more comfortable due to desire to keep disputes secretive and owing to grievances against Jirga system and Panchayat system, there is requirement to provide legal cover to them and append them with the legal system.³⁶ The

contemporary issues of increase in population growth, consciousness of rights and commercialism resulted in heavy case load and delayed justice. It bred a universal wish for improving the justice system, efforts have been made to speed up the method of reaching truth and furnishing low cost procedures.³⁷

Punjab Local Government Act, 2013 provides for the conciliation courts in the form of panchayats (Councils of Elders) in Rural and Musalahati Anjumans in the urban local government set up. The courts can also refer the civil and compoundable criminal cases to these panchayats.³⁸

An institution known as Jirga is available in Khyber Pakhtunkhwa Local Government Act, 2013 (KPLGA) [39]. Prior to colonial rule, the chief of the clan or a group of elders used to hold Jirga to enforce traditional law. It could adjudicate on both civil as well as criminal conflicts. In a sense they were a kind of courts. The mechanism of Kardars was established having duties of amassing yields and curb offences with the intention to place feudal lords and tribal chiefs at the helm of affairs, the tribal arbitration was fused with English codes. It was either just a transition from being verbal to inscribe or quasi-judicial institution was created to appeal the quarrelsome clans. Jirga was comprised of Chiefs of the clans and each chief used to exercise exclusive executive and retributive authority. This association amongst tribal elders and executive is even now very strong. Judiciary has never been allowed to intervene and exercise its authority in tribal or semi tribal areas due to the executive mechanism remnant of period of subjugation and the existence of analogous system wherein tribal Sardars enjoy judicial powers.³⁹

The province of Khyber Pakhtunkhwa has also introduced ADR in criminal/ case by amending the police law to settle the compoundable offences through conciliation and mediation.⁴⁰

Alternative Dispute Resolution (ADR) processes are also available in disputes between private parties under various laws in Pakistan. In 1998, the Chief Justice (CJ) of Lahore High Court, Lahore, started a program on Alternative Dispute Resolution in Lahore, dealing with family matters. In 2002, section 89-A was added for Alternative Dispute Resolution through an amendment.⁴¹

Conclusion From the discussion, it is very much clear that Informal dispute resolution in Islamic countries has been popular in all the times. During past few decades, it has been an important choice of the people in all the times and all the countries under study. The most important finding of study is that formal and informal dispute resolution processes have been working side by side which means that formal dispute resolution (litigation) can not be thresh out as it is also have its own worth. The benefits of informal dispute resolution can be summarized as low cost, avoidance of delay, Secrecy element remains intact, confidential proceedings, non-adversarial process and elasticity. It has bestowed a new authority rather a legal requirement to support reaching of settlements at the phase prior to trial. Islamic Law is far ahead from other codes and provides a simplified view of favoring peaceful solution over disputes.

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