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THE CRITIQUE OF ALTERNATIVE DISPUTE RESOLUTION UNDER ISLAMIC LAW AND ITS RELEVANCE IN THE CONTEMPORARY NIGERIA

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ABSTRACT

The practice of Alternative Disputes Resolution (ADR) such as Taḥkīm (arbitration), Ṣulḥ (mediation), ombudsman (Muḥtasib), expert opinion (fatwā) and other ways of compromising disputes out of court is sanctioned under Islamic law. Muslims need to know the relevance of these ADR processes and their applicability in the settlement of disputes. This is based on the authority that Allah unequivocally stated that Ṣulḥ is the best (Qur'an al-Nisā': 128). This article offers a critique of ADR processes under Islamic law and the chances of its assimilation in Nigeria. This paper argued that the ADR processes are very significant in the administration of justice. The setback is in its application in Nigeria despite the practice of Shariah in about twelve states in Northern Nigeria. It is opined that individuals, institutions and courts have not manifestly practised ADR

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processes. This paper adopted a combination of doctrinal, empirical, historical and analytical research methods. We consulted primary and secondary materials, coupled with the use of questionnaires. The paper employed explorative method of data analysis. This paper revealed that the current application of Islamic ADRs is informal and unpopular as it lacks statutory backing in Nigeria. People are desirous to embracing it, which will help improve the administration of justice through the decongestion of court cases. This paper concludes that Islamic ADRs are effective for access to justice in Islam. The paper therefore recommended amongst others that Ṣulḥ should be statutorily provided for in Nigeria and adequate Islamic legal training of those involved in the administration of justice should be conducted to avoid an improper practice that will undermine its positive impact on the administration of justice in Nigeria.

Keywords: *alternative dispute resolution, Ṣulḥ, Taḥkīm and fatwā*

INTRODUCTION

Disputes are inevitable parts of life and it occurs in the course of any human interaction.[4] At whatever time disputes occur, there ought to be civilized ways and means of resolving them without recourse to hostility or other behaviors that conflict with the basic standards of any civilized society.[5]

Even though litigation is the most acclaimed method of dispute resolution in Nigeria today,[6] in any democratic setting, the inhabitants ought to be free to choose other means of resolving their disputes so long

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4 Martin Sokefeld, *Spaces of Conflict in Everyday Life, Perspective Across Asia*, 1st ed. (New York: Columbia University Press, 2015), 78.

5 Igwe Onyebuchi Igwe, Kevin Onwuka Udude and Ogah Chinyere Constance, 'A Review of Continuous Relevance of the Traditional Methods of Dispute Resolution Mechanism in Southeast of Nigeria', *Beijing Law Review*, vol. 11/1 (2020): 1-3.

6 Benjamin Balzer and Johannes Schneider, 'Managing a Conflict: Optimal Alternative Dispute Resolution', *RAND Journal of Economics*, vol. 52/2 (2021): 415-445.

as they do not interfere with basic values of the society.[7] Other means of resolving disputes which have assumed central roles and recognized by statutes as alternatives to litigation include arbitration, mediation, conciliation, negotiation and facilitation.[8]

ADR is the use of methods such as mediation, conciliation & arbitration without resulting to litigation. ADR typically includes; early neutral evaluation, negotiation, conciliation, mediation and arbitration. As court queues, rising costs of litigation, congestion in prisons, expensive nature of management of prisons and time delays continue to affect criminal defendants and even the states. Like common law, ADR is also available under Islamic law. These ADR processes under Islamic law include *Ṣulḥ*, *Taḥkīm*, a combination of *Ṣulḥ* and *Taḥkīm*, *Muḥtasib* (Ombudsman) and *fatwā* of *Muftī* (Expert Determination).

With the inevitability of conflicts among people, the need to have a dispute-resolution forum is also indispensable. What comes next is the avenue to resolve such disputes. It can be the hard way which some see to be the court, through law enforcement agents or formally and informally through amicable dispute resolution. Negotiation, mediation and compromise of action also known as *Ṣulḥ* is provided by Allah in the Qur'an and the Sunnah of Prophet Muḥammad (S.A.W) it is recognised in the resolution of civil and criminal disputes in Islamic law.[9] The importance and relevance of amicable settlement of disputes for Muslims as stressed in the Qur'an and Sunnah of Prophet Muḥammad (S.A.W) has influenced some Muslim countries and their codes[10] to recognize this model of settlement. These models have however been sparsely implemented in Nigeria.

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7 Babatunde Osibanjo, 'An Appraisal of Arbitration and Litigation Techniques as a Panacea for Fair Justice Administration under the Nigerian Legal System', *Ligitation/Dispute Resolution*, 15 April 2016, https://s3.amazonaws.com/documents.lexology.com/fca1fde9-c4e0-478d-93d8-c8825b4edeb2.pdf?AWSAccessKeyId=AKIAVYILUYJ754JTDY6T&Expires=1713395776&Signature=keOo0Td8xOG4ZPim%2BXBThqn1SPg%3D, accessed on 25 January 2024.

8 See Section 19 (d) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

9 Norjihan Ab Aziz and Nasimah Hussin, 'The Application of Mediation (*Ṣulḥ*) in Islamic Criminal Law', *Shariah Journal*, vol. 24/1 (2016), 115

10 Norjihan Ab Aziz and Nasimah Hussin, 'The Application of Mediation (*Ṣulḥ*) in Islamic Criminal Law', 118

ADR is increasingly practised in Nigeria and is considered pivotal to the country's legal system. The 1999 Constitution of the Federal Republic of Nigeria provides for the settlement of disputes by arbitration, mediation, conciliation, negotiation and adjudication, highlighting the importance of ADR in the legal framework.[11] It is in a bid to foster the use of ADR that some states in Nigeria have established a Multi-Door Court House.[12] These processes offer several advantages, including faster resolution, cost-effectiveness, flexibility and the preservation of relationships between parties. According to a study done with professionals in Nigeria's criminal justice system, ADR is used to prevent and respond to violent crimes and is viewed as a means of enhancing access to justice because it is a more flexible, affordable and expedient process than drawn-out court trials.[13]

However, despite its potential benefits, the widespread adoption and effective practice of ADR in Nigeria face numerous challenges. One significant obstacle is the lack of awareness and understanding of ADR mechanisms among the populace, including both legal professionals and the public. Many people are unaware of their rights to seek alternative forms of dispute resolution or are sceptical about their effectiveness compared to traditional litigation. Additionally, there is a shortage of skilled mediators and arbitrators, leading to concerns about the quality and neutrality of ADR proceedings.[14]

Furthermore, structural and institutional challenges hinder the integration of ADR into the Nigerian legal system. Legal frameworks and regulations governing ADR are often fragmented and inconsistent, creating confusion and ambiguity regarding their application and enforcement.

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[11] Section 19 (d) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

[12] Oyeniyi Ajigboye, 'The Concept of Multi-Door Courthouse in Nigeria: Rethinking Frank Sander's Concept', *SSRN*, 16 November 2014, https://ssrn.com/abstract=2525677 or http://dx.doi.org/10.2139/ssrn.2525677

[13] Agatha Anulika Okeke, 'Exploring Alternative Dispute Resolution for Settlement of Criminal Disputes in Nigeria' (Ph.D Thesis, College of Social and Behavioral Sciences, Walden University, 2021), 5.

[14] Emilia Onyema and Monalisa Odibo, 'How Alternative Dispute Resolution Made a Comeback in Nigeria's Courts', *Africa Research Institute-Understanding Africa Today*, 23 Jun 2017, 5-6, https://www.africaresearchinstitute.org/newsite/publications/counterpoints/alternative-dispute-resolution-made-comeback-nigerias-courts/#:~:text=When%20the%20Lagos%20Multi%2DDoor,and%20rooted%20in%20Nigeria's%20past.

Additionally, there are issues of enforcement and compliance with ADR outcomes, as parties may refuse to abide by agreements reached through alternative processes.[15]

This research aims to critically examine the Alternative Dispute Resolution (ADR) processes within Islamic law and assess their potential for integration into the legal system of Nigeria. Despite the significant presence of Muslims in the country, particularly in the Shariah-practicing states of Northern Nigeria, the implementation of these ADR mechanisms remains limited. This study delves into the reasons for this limited application and explores the possibilities of enhancing their utilization for efficient and just conflict resolution in Nigeria.

The problem statement revolves around the apparent discrepancy between the acknowledged importance of ADR processes and their limited application in Nigeria, despite the existence and practice of Shariah law in a significant portion of the country. While ADR methods are widely recognized as effective means of resolving disputes outside the formal court system, their integration into the legal system of Nigeria, especially within the framework of Islamic law, has faced challenges and setbacks.

By conducting this study, the aim is to identify the reasons behind this gap between the potential of ADR processes and their actual implementation, particularly within the context of Islamic law in Nigeria. This entails analyzing various factors such as legal, cultural, institutional and practical barriers that hinder the effective assimilation of ADR methods into the Nigerian legal system, despite the presence of Shariah law in certain regions. Through a comprehensive critique, the study aims to provide insights and recommendations to enhance the utilization of ADR processes within the Islamic legal framework in Nigeria, ultimately contributing to a more efficient and accessible system of justice.

METHOD OF ADR UNDER ISLAMIC LAW

The recognised methods of ADR under Islamic law include;

a) Ṣulḥ

It literally connotes “to end a dispute” or “to cut off a dispute” either directly or with the help of a neutral third party, as in mediation.[16] It is

[15] Emilia Onyema and Monalisa Odibo, ‘How Alternative Dispute Resolution Made a Comeback in Nigeria’s Courts’, 6.

viewed as the act of conceding by a party of a dispute involving his right, partially or totally. *Ṣulḥ* means negotiation, mediation/conciliation and includes the compromise of action.[17] *Ṣulḥ* is the advice for reconciliation among warring parties.[18] *Ṣulḥ* may be defined in many ways. According to one author: *Ṣulḥ* has two meanings under Islamic law. It is one of the methods through which a resolution to a dispute is attempted, the other two being *Taḥkīm* means arbitration by an arbitrator and *Qaḍā'* (adjudication) by a judge. The second meaning refers to the outcome of such process, as encapsulated in a contract entered into by the disputants outlining the terms of their settlement.[19]

It is explained that in its legal usage, *Ṣulḥ* means a commendable contract consisting of the surrender of a right or discontinuance of a dispute for consideration.[20]

Thus, *Ṣulḥ* is generally categorized according to the position maintained by the party to which the claim is directed as in whether he denies, admits or keeps silent on the claim.[21] It is to be stated that when the defendant denies the claim such may be difficult but it needs still to be attempted based on the view that *Ṣulḥ* is best.[22] It is better to use *Ṣulḥ* before using any other dispute resolution method. It is, therefore, necessary that priority should be given to *Ṣulḥ* and parties should not proceed directly to adjudication. This is more desirable in matters involving kinship ties, preservation of family harmony as well as fear of deterioration of an

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16 Syed Khalid Rashid, *Alternative Dispute Resolution: The Emerging New Trend of Informal Justice* (Gombak: International Islamic University Malaysia, 2006).

17 Syed Khalid Rashid, *Alternative Dispute Resolution in Malaysia* (Kuala Lumpur: Kulliyyah of Laws, IIUM, 2000), 28.

18 Muhammed S. O (Qadi, Shari'ah Court of Appeal, Ilorin Kwara State Nigeria) in interview with the author, 1 December 2009.

19 Aida Othman, *And Ṣulḥ is Best: Amicable Settlement and Dispute Resolution in Islamic Law* (Harvard University, 2005), 64-70.

20 Ali Ahmad, Jummai Audi and Ibrahim N. Sada, 'Resolution of Civil Disputes in Jigawa State Nigeria', *Access to Justice Programme-Research Report*, June-August 2003, 11, https://docplayer.net/77986514-Resolution-of-civil-disputes-in-jigawa-state-nigeria.html, accessed on 10 May 2023.

21 Aida Othman, 'And Ṣulḥ is Best: Amicable Settlement and Dispute Resolution in Islamic Law', 80.

22 Aida Othman, 'And Ṣulḥ is Best: Amicable Settlement and Dispute Resolution in Islamic Law', 83

existing hostile situation or even when the parties involved are virtuous men in the society.[23]

Even when it is accepted that *Ṣulḥ* is central to the Islamic legal system and one of the best methods of dispute resolution in Islamic law, it may have to give way to other Islamic law dispute resolution mechanisms that may be more suitable for some particular type of dispute.[24]

Allah says in the Qur'an

إِنَّمَا ٱلْمُؤْمِنُونَ إِخْوَةٌ فَأَصْلِحُوا۟ بَيْنَ أَخَوَيْكُمْ ۚ وَٱتَّقُوا۟ ٱللَّهَ لَعَلَّكُمْ تُرْحَمُونَ ﴿١٠﴾

"The believers are but a single brotherhood, so make peace and reconciliation (Ṣulḥ) between two (contending) brothers; and fear Allah, that ye may receive mercy."

(Surah al-Ḥujurāt, 49: 10)

The application of *Ṣulḥ* is further enjoined in the Holy Qur'an when Allah says

وَإِن طَآئِفَتَانِ مِنَ ٱلْمُؤْمِنِينَ ٱقْتَتَلُوا۟ فَأَصْلِحُوا۟ بَيْنَهُمَا ۖ فَإِنۢ بَغَتْ إِحْدَىٰهُمَا عَلَى ٱلْأُخْرَىٰ فَقَٰتِلُوا۟ ٱلَّتِى تَبْغِى حَتَّىٰ تَفِىٓءَ إِلَىٰٓ أَمْرِ ٱللَّهِ ۚ فَإِن فَآءَتْ فَأَصْلِحُوا۟ بَيْنَهُمَا بِٱلْعَدْلِ وَأَقْسِطُوٓا۟ ۖ إِنَّ ٱللَّهَ يُحِبُّ ٱلْمُقْسِطِينَ ﴿٩﴾

"If two parties among the believers fall into a quarrel, make ye peace (Ṣulḥ) between them… with justice and be fair; for Allah loves those who are fair (and just)."

(Surah al-Ḥujurāt, 49: 9)

It may be deduced from the above verses of the Qur'an that the believers are enjoined to ensure that in times of any quarrel the need to make peace between parties assumes importance while at the same time, justice and fairness should be the guiding principle for achieving reconciliation.

Prophet Muḥammad (S.A.W) in some of his *aḥādīth* endorsed the use of *Ṣulḥ*, as narrated in Ṣaḥīḥ al-Bukhārī:

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23 Aida Othman, 'And Ṣulḥ is Best: Amicable Settlement and Dispute Resolution in Islamic Law', 73-78.

24 Aida Othman, 'And Ṣulḥ is Best: Amicable Settlement and Dispute Resolution in Islamic Law', 90

عَنْ أَبِي هُرَيْرَةَ ـ رضى الله عنه ـ قَالَ قَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم " كُلُّ سُلاَمَى مِنَ النَّاسِ عَلَيْهِ صَدَقَةٌ، كُلَّ يَوْمٍ تَطْلُعُ فِيهِ الشَّمْسُ يَعْدِلُ بَيْنَ النَّاسِ صَدَقَةٌ

"Narrated Abū Hurayrah: Allah's Messenger said: there is a ṣadaqah to be given for every joint of human body (which number 360); and for every day on which the sun rises, there is a reward of a ṣadaqah (i.e charitable gift) for the one who establishes Ṣulḥ and justice among people." [25]

(Ṣaḥīḥ al-Bukhārī)

The Prophet Muḥammad (SAW) also demonstrated the importance of using *Ṣulḥ* even if the price to be paid for it is self-honour. A tradition reported in Ṣaḥīḥ al-Bukhārī makes it clear.

عَنْ أَبِي إِسْحَاقَ، قَالَ سَمِعْتُ الْبَرَاءَ بْنَ عَازِبٍ ـ رضى الله عنهما ـ قَالَ لَمَّا صَالَحَ رَسُولُ اللَّهِ صلى الله عليه وسلم أَهْلَ الْحُدَيْبِيَةِ كَتَبَ عَلِيٌّ بَيْنَهُمْ كِتَابًا فَكَتَبَ مُحَمَّدٌ رَسُولُ اللَّهِ صلى الله عليه وسلم. فَقَالَ الْمُشْرِكُونَ لاَ تَكْتُبْ مُحَمَّدٌ رَسُولُ اللَّهِ، لَوْ كُنْتَ رَسُولاً لَمْ نُقَاتِلْكَ. فَقَالَ لِعَلِيٍّ " امْحُهُ ". فَقَالَ عَلِيٌّ مَا أَنَا بِالَّذِي أَمْحَاهُ. فَمَحَاهُ رَسُولُ اللَّهِ صلى الله عليه وسلم بِيَدِهِ، وَصَالَحَهُمْ عَلَى أَنْ يَدْخُلَ هُوَ وَأَصْحَابُهُ ثَلاَثَةَ أَيَّامٍ، وَلاَ يَدْخُلُوهَا إِلاَّ بِجُلُبَّانِ السِّلاَحِ، فَسَأَلُوهُ مَا جُلُبَّانُ السِّلاَحِ فَقَالَ الْقِرَابُ بِمَا فِيهِ

"Narrated by al-Barā' bin 'Āzib: when Allah's Messenger s. a. w. concluded a peace treaty with the people of Ḥudaybiyah. 'Alī bin Ṭālib wrote the document and he mentioned in it, 'Muḥammad, Allah's Messenger.' The pagans said, "Do not write: "Muḥammad Allah's Messenger", for if you were an apostle we would not fight with you." Allah's Messenger s. a. w. asked 'Alī to rub it out, but 'Alī said, "I will not be the

[25] Muhammad Mushin Khan, *Translation of the Meanings of Sahih al-Bukhari*, vol. 3, 5th ed., (New Delhi: Kitab Bhavan, 1984), 543.

person to rub it out". Allah's Messenger s. a. w. rubbed it out and made peace with them…."[26]

The companions of the Prophet also subscribed to the use of *Ṣulḥ* in the resolution of disputes. It is argued that *Ṣulḥ* or peaceful settlement of a dispute is encouraged in Islam to any extent except which makes a thing halal as haram and haram as halal. This position found support in the letter of 'Umar bin Khatṭāb to Abū Mūsā al-Ash'arī on his appointment as a *Qāḍī*: *"All types of compromise and conciliation among Muslims are permissible, except those which make haram anything which is halal and halal as haram."*[27]

Ṣulḥ is, therefore, sanctioned by Allah and practised by Prophet Muḥammad S.A.W as well as the companions of the Prophet. Syed Sābiq was quoted to describe *Ṣulḥ* to mean to settle any dispute between two parties.[28]

b) Taḥkīm

Taḥkīm is described as a process in which the disputing parties agree to appoint someone to act as an arbiter (*ḥakam*) for the settlement of the dispute between them.[29] It has been explained by a scholar as an agreement by the parties to appoint a qualified person to settle the dispute between the two disputing parties following Islamic law.[30]

Allah says in Qur'an:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَٱبْعَثُواْ حَكَمًا مِّنْ أَهْلِهِۦ وَحَكَمًا مِّنْ أَهْلِهَآ إِن يُرِيدَآ إِصْلَٰحًا يُوَفِّقِ ٱللَّهُ بَيْنَهُمَآ ۗ إِنَّ ٱللَّهَ كَانَ عَلِيمًا خَبِيرًا ﴿٣٥﴾

"If ye fear a beach between them twain, appoint (two) arbiters one from his family and the other from his family and the other from hers; if they wish for peace Allah will cause their

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26 Muhammad Mushin Khan, *Translation of the Meanings of Sahih al-Bukhari*, 536.

27 Syed Khalid Rashid, *Alternative Dispute Resolution: The Emerging New Trend of Informal Justice*, 23.

28 Sayyid Sābiq, *Fiqh al-Sunnah*, vol. 3 (Qāhirah: Dār al-Fatḥ li al-I'lām al-'Arabī, 2000), 210.

29 'Abd al-Karīm Zaydān, *Niẓām al-Qaḍā' fī al-Sharī'ah al-Islāmiyyah* (Baghdād: Maṭba'ah al-'Ānī, 1984), 291.

30 Wahbah al-Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuh*, vol. 6, 3rd ed. (Dimashq: Dār al-Fikr, 1989), 756.

> *reconciliation for Allah hath full knowledge and acquainted with all things."*
>
> (Surah al-Nisā', 4: 35)

It is therefore clear from the above verse that *Taḥkīm* in Islam is legal. *Taḥkīm* had since been practised by Muslims all over the world. The prophet was reported to counsel the Banī Qarnata tribe to arbitrate a dispute.[31] Another example is the arbitration between Caliph 'Alī and Mu'āwiyah which aimed at resolving the dispute between two warring Muslim leaders over the right of succession. The arbitration agreement they entered into was all-encompassing as it stated the place of arbitration, the applicable law, the procedure and the provision for the appointment of a substitute arbitrator in the event of the death of the nominated arbitrators.[32] The arbitration agreement provides thus:

> *"In the name of Allah, the Powerful, the Merciful. This is what was agreed between 'Alī bin Abī Ṭālib and Mu'āwiyah bin Sufyān, 'Alī for the people of Iraq and their Moslem and believing partisans and Mu'āwiyat for the people from the country of Damascus and their Moslem and believing partisans: we shall comply with the decision of Allah by complying with the provisions of his book concerning our dispute and by applying them from the beginning up to the end, affirming what is affirmed there in and rejecting what is there in rejected. This dispute must be examined in a period expiring during the month of Ramadan unless the arbitrators desire to settle the dispute earlier or later...If one of the arbitrators dies, the chief of each sect shall appoint, with the help of his partisans, a man to replace him and who shall choose amongst the wise and just. The place of arbitration shall be located between Kufa, Damascus and the Hidjaz... Each of the arbitrators shall be entitled to appoint the witness of his choice, but these witness statements must be written in this document...."*[33]

On who is qualified to be an arbitrator under Islamic law, it has been suggested that it should be someone who is wise and just and must not be a slave, an infidel, a slanderer or an infant as they fall within the category of

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[31] Abdul Hamid El-Ahdab, *Arbitration with the Arab Countries* (The Netherlands: Kluwer Law International, 1990), 15.

[32] Syed Khalid Rashid, *Alternative Dispute Resolution in Malaysia*, 36.

[33] Abdul Hamid El-Ahdab, *Arbitration with the Arab Countries*, 15.

persons who are not competent to be a witness.[34] The legality of arbitration in family disputes or disputes in goods or property is well settled.[35]

Non-arbitrable matters under Islamic law include arbitration *li'ān* (mutual imprecation), *nasab* (paternity), *ṭalāq* (divorce), *faskh nikāḥ* (judicial abrogation of marriage), the emancipation of slaves, *rushd* (adolescence), *safih*[36] (spendthrift, who wastes his property), *mafqūd al-khabar* (person whose whereabouts are not known), *waqf* (endowments) and revenue matters since judge alone can decide these matters.[37]

c) *Muḥtasib* (Ombudsman)

Al-Muḥtasib is a judge who takes decisions on the spot, in any place at any time, as long as he protects the interests of the public. His responsibilities are almost open-ended to implement the following principle: commanding the good and forbidding the evil of wrongdoing.[38]

Ombudsman is an officer charged with the responsibility of receiving complaints from the citizens (public) of a country, public authorities or departments and investigating to checking and correcting the abuses of public administration. And ombudsman is said to have originated from the Scandinavian countries, with particular reference to Sweden.[39] However, Ombudsman or *Muḥtasib* in Islamic law has existed right from the time of the Prophet and formed part of Islamic law. Although it is equivalent to Ombudsman, the functions of *Muḥtasib* in Islam are wider than that of an Ombudsman.[40]

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34 Sheikh Burhanuddin Abi Al Hasan Ali Marghinani, *The Hedaya Commentary on the Islamic Laws*, trans. Charles Hamilton (Pakistan: Darul-Ishaat, 2005), 752.

35 Abdul Hamid El-Ahdab, *Arbitration with the Arab Countries*, 39.

36 *Safih* a person wastes his property.

37 Syed Khalid Rashid, *Alternative Dispute Resolution in Malaysia*, 40.

38 Rufa'i Sulaiman Abubakar and Atikullah Hj Abdullah, 'The Roles of Hisbah Commission and its Challenges in the Zamfara State of Nigeria', *International Journal of Academic Research in Business and Social Sciences*, vol. 11/9 (2021), https://www.researchgate.net/publication/355149435_The_Roles_of_Hisbah_Commission_and_its_Challenges_in_the_Zamfara_State_of_Nigeria, accessed on 19 December 2023.

39 Stephen B. Goldberg, Frank E. A Sander, Nancy H. Rogers and Rudolph Cole, *Dispute Resolution: Negotiation Mediation and Other Process*, 3rd ed. (New York: Wolters Kluwer, 1999).

40 Syed Khalid Rashid, *Alternative Dispute Resolution: The Emerging New Trend of Informal Justice*, 28.

The functions of an Ombudsman include keeping a watchful eye on weights and measures, quality of commodities sold in the market, honesty in trade and commerce, observance of modesty in public places and observance of religious rites among other things.[41] The observance of the duties is premised on the dictates of Allah as contained in the Qur'an

وَلْتَكُن مِّنكُمْ أُمَّةٌ يَدْعُونَ إِلَى ٱلْخَيْرِ وَيَأْمُرُونَ بِٱلْمَعْرُوفِ وَيَنْهَوْنَ عَنِ ٱلْمُنكَرِ ۚ وَأُو۟لَٰٓئِكَ هُمُ ٱلْمُفْلِحُونَ ﴿١٠٤﴾

"Let there arise out of you a band of people inviting to all that is good, enjoining what is right and forbidding what is wrong: They are the ones to attain felicity."

(Surah Ali-'Imrān, 3: 104)

Thus, in furtherance of this provision, in Islamic history, several people have been appointed to hold the office of *Muḥtasib*. An account of this position was captured in the following analysis:

"Sa'ād Ibn Al-'Āṣ Ibn 'Umayyah was appointed Muḥtasib of Makkah and 'Umar bin al-Khaṭṭāb that of Medinah by Prophet himself.[42] A separate pay of ḥisbah, with full time Muḥtasib assisted by qualified staff (known as 'Ārif and Amīns) was introduced by the Abbasid Caliph Abū Ja'afar al-Manṣūr in 157 A.H. The institution of ḥisbah moved along with Muslims in Western provinces of Spain and North Africa. Similarly, the office of Muḥtasib (ombudsman) was an important department during the rule of Fatimids, Ayyubids and Ottomans... The institution of ḥisbah remained in vogue during the entire Muslim period of history, through it has been termed differently in various regions. For example, in the eastern provinces of Baghdād caliphate the officer in charge was Muḥtasib, in North Africa he was Ṣāḥib al-Sūq, in Turkey, Muḥtasib (ombudsman) Aghasi and in India (during the Muslim period) Kotwal."[43]

41 Syed Khalid Rashid, *Alternative Dispute Resolution: The Emerging New Trend of Informal Justice*, 28.

42 Mushtaq Ahmad, *Business Ethics in Islam* (Pakistan: The International Institute of Islamic Thought, 1995), 136-138.

43 Muhammad Akram Khan, 'Al-Hisba and the Islamic Economy', in *Public Duties in Islam: The Institution of the Hisba*, Aḥmad Ibn 'Abd al-Ḥalīm Ibn

Ombudsman protects the ordinary citizen against administrative wrongs notwithstanding its lack of jurisdiction over malpractices of business firms against a citizen.[44]

d) *Fatwā* of *Muftī* (Expert Determination)

Fatwā is a non-binding evaluative opinion offered by a *Muftī* (Jurist Consult) in answer to issues raised by a questioner (*Mustafti*) concerning a dispute or an unresolved issue.[45] In Nigeria, under the Sokoto Caliphate, *Muftī* was an official connected with the administration of justice. Although the *Qāḍī* is assisted by the *Nā'ib* (Deputy) and the *Muftī*, he is more learned in matters of Shariah and this is why he gives *fatwā*. It is stated that the *fatwā* of *Muftī* is akin to the non-binding evaluation of an expert called upon to provide an expert determination. *Fatwā* has always been used by Muslims to solve ambiguous issues and for offering the best solution to resolve a dispute. Although it is non-binding, the stature of *Muftī* gives it a respectable status. There are many collections of *fatāwā* in the Muslim world.[46] Such collections have been made for a very long time.

Based on all the above foregone, in approach *Ṣulḥ* emphasizes reconciliation and compromise, *Taḥkīm* offers formal arbitration and adjudication, *Muḥtasib* serves as a regulatory authority in economic matters and *fatwā* provides religious guidance and interpretation. It thus means *Ṣulḥ* promotes reconciliation, while *Taḥkīm* delivers a verdict. *Muḥtasib* focuses on public concerns and *fatwā* provides legal guidance.

Concerning their bindingness, *Ṣulḥ* and *Taḥkīm* involve varying degrees of commitment, while *Muḥtasib* acts preventively and *fatwā* offers non-binding advice. Together, these ADR tools reflect the diverse approaches within Islamic law to resolving disputes while upholding principles of justice, fairness and social harmony.

Taymīyah, ed. Muhtar Holland and Khurshid Ahmad, trans. Muhtar Holland (Leicester: The Islamic Foundation, 1982), 136-138.

44 Muhammad Akram Khan, *An Intrduction to Islamic Economics* (Islamabad: The International Institute of Islamic Thought, 1994), 83-84.

45 Syed Khalid Rashid, *Alternative Dispute Resolution: The Emerging New Trend of Informal Justice*, 29.

46 Syed Khalid Rashid, *Alternative Dispute Resolution: The Emerging New Trend of Informal Justice*, 29.

APPLICATION AND RELEVANCE OF ISLAMIC ADR TO DISPUTE SETTLEMENT IN NIGERIA

Traditionally Muslims do not like to go to court but like to settle disputes either through bilateral negotiations or with the help of elders or chiefs. This practice accounts for the low rate of litigation among Muslims in Northern Nigeria.[47]

The use of *Ṣulḥ* stemmed from several factors among which are the traditional settings of the people in terms of their background and inclination to amicable settlement of disputes kindled in them by the Shariah principles. The very first related to *Ṣulḥ* and some of the other functions aimed at dispute avoidance and resolution.

There is, therefore, no doubt that there existed an established mechanism for the resolution of disputes before the advent of colonialism and that Shariah as a legal system was well entrenched. The first instruction to *Qāḍī* to ensure compromise and effect mutual reconciliation indirectly help to create a mindset among the people generally to use *Ṣulḥ* for the settlement of any dispute that arose between them. The local Emir was also influenced by this trend.

A typical description of the use of *Ṣulḥ* at the traditional level is captured in the following:

> *"The role of traditional rulers is thus most prominent in settling family matters, cases of witchcraft, land disputes and religious disputes. For instance, the district head of Maru in Zamfara State reported that he handled over 17 cases of witchcraft and 21 matters related to marriages in the first few months of 2006. Only 2 witchcraft cases and 3 marriage ones were transferred to court for further settlement. Generally speaking, it is cheaper and quicker to resolve this type of local dispute with a traditional rulers. Taking matters to the police and courts can turn a simple case into a protracted dispute*

[47] Ibrahim Barkindo, 'The Role of Traditional Rulers in ADR - An Islamic Law Perspective', (Paper presented at the National ADR Summit for Traditional Rulers, Asaa Pyramid Hotel, Kaduna, 6-7 October 2009), https://www.scribd.com/doc/24011864/The-Role-of-Traditional-Rulers-in-ADR-An-Islamic-Law-Perspective, accessed on 19 December 2023.

> *with no greater chance that a fair judgement will be reached."*[48]

However, a land dispute that was resolved through *Ṣulḥ* in Jigawa State furnishes a good example of the settlement of a dispute through *Ṣulḥ*. In this matter, Ghazālī of Ringim town erected a house on a piece of land he inherited from his parents. He decided to include in his compound a tract of land on which his grandparents used to dump refuse, but that practice stopped long back. Yet people still used it for dumping. So, the inclusion of this land within the compound was to prevent further dumping. Muhktār was his neighbour and he challenged Ghazālī's attempted claim of sole ownership of the dump site. Ghazālī first took the matter to the Hakimi (District Head) who directed him to Mai Unguwa and Dagaci. The parties were assembled and witnesses called, but Ghazālī was not satisfied with the settlement, claiming the whole site belonged to him. He went back to the Hakimi (District Head) who gathered the families concerned at the dispute premises, including neighbours, Mai Unguwa (neighborhood owner) and Dagaci (Village Head). The Hakimi preached to them about the virtue of good neighbourliness and he announced his award of two-thirds of the disputed area to Ghazālī and one-third to Muhktār. Everyone was satisfied and there has not been an issue involving the disputed site.[49] The beauty of this mode of settlement of neighbourhood disputes which may extend to an interpersonal and inter-communal dispute that is resolved by the family head, village head or Emir, is basically toward the maintenance of social cohesion. It is pointed out that local leaders and heads play an important role in the resolution of local disputes, which need not be taken to court.

The Imām and other members of the community do play a meaningful role in the resolution of disputes. Involvement in mediation is more of a public (community) service rather than a service to gain benefit. The participation of Muslims in societal affairs is in line with the prophetic tradition "Who amongst you sees something abominable (an evil) should modify it with his hand; and if he does not have the strength to do it, then

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48 Roger Blench, Selbut Longtau, Umar Hassan and Martin Walsh, 'The Role of Traditional Rulers in Conflict Prevention and Mediation Nigeria', (Prepared for the United Kingdom's Department for International Development (DFID), Nigeria, 9 November 2006), 73.

49 Ali Ahmad, Jummai Audi and Ibrahim N. Sada, 'Resolution of Civil Disputes in Jigawa State Nigeria', 18.

with his tongue; and if he does not have the strength to do it, then with his heart and that is the weakest of faith."[50]

Ṣulḥ is an age-long dispute resolution mechanism employed by Imāms and our ancestors enjoined that amicable resolution is in line with Allah's commands and prophetic guidelines. In minor disputes, the parties are called by the Imām for a joint meeting to resolve the matter. However, Caucus is used if the matter requires more probing. But in serious issues, The Are Ogele (District Head in a Suburb of the city of Ilorin) gets involved in the resolution process. There is no verdict as to who the wrong party is.[51]

It is argued that the belief in a corporate existence of a collective responsibility with the concept of communality and interdependence as expected in Islam, together with the Qur'anic provision and Prophetic traditions form this attitude. And particularly the dictate of Allah: *"And Ṣulḥ is best."*[52] Thus, *Ṣulḥ* as practised in Northern Nigeria[53] is seen as an acceptable mode of resolution of disputes that offers access to justice to the common man.

The fact that the mediators are known members of the community like the Emir (King), Hakimi (District Head), Neighbors and Family Head, further enhance its acceptability. Generally, the Emir or traditional heads resolve land disputes and more serious issues while religious disputes and the distribution of estate issues are resolved by the Imāms.[54]The situation is described by Ramizah that:

> *"Once a person is appointed as a leader, he or she indirectly has to deal with the problems of his community. As such, some of the headmen or Imām were fulfilling the duty as mediators*

[50] Abdul Hamid Siddiqi, *Sahih Muslim Arabic-English*, vol. 1 (Delhi: Adam Publishers, 1999), 39.

[51] Alfa Saka (Imam Gbobi Ogele, Kwara State Nigeria), in interview with the author, 13 December 2009.

[52] Ali Ahmad, Jummai Audi and Ibrahim N. Sada, 'Resolution of Civil Disputes in Jigawa State Nigeria', 12.

[53] Ali Ahmad, Jummai Audi and Ibrahim N. Sada, 'Resolution of Civil Disputes in Jigawa State Nigeria', 14.

[54] Ali Ahmad, Jummai Audi and Ibrahim N. Sada, 'Resolution of Civil Disputes in Jigawa State Nigeria', 6.

reluctantly. This job was done unofficially and they were non-assertive mediators."[55]

This supports the informal application of *Ṣulḥ* in Muslim societies. This has however influenced the resolution of disputes within the society as one of the religious and public services of ensuring peace. The need for a formal application of *Ṣulḥ* is a way forward. To substantiate or debunk this assertion, it is expedient to carry out a field survey to answer some lingering questions that border on the knowledge of the populace on ADR, Islamic ADR, willingness to explore ADR or Islamic ADR and the availability of Islamic ADR in the country.

DATA ANALYSIS AND RESULT

This study employed a quantitative research design to investigate the application and relevance of Islamic Alternative Dispute Resolution (ADR) to dispute settlement in Nigeria. A researcher-designed questionnaire was utilized as the primary data collection instrument to gather relevant data from participants. The questionnaire was structured to elicit responses regarding the awareness, utilization, perceptions and effectiveness of Islamic ADR methods among the target population.

The sampling technique for this study comprised a combination of purposive and random sampling methods. The target population consisted of individuals who were old enough to understand ADR, particularly within the context of Islamic law. This included people of different religions, sexes and age grades. The sample size was determined based on statistical considerations to ensure adequate representation of the target population.

Data were collected using the researcher-designed questionnaire distributed electronically or in-person, depending on the accessibility and preferences of the participants. Data was consequently analysed using descriptive and inferential statistics. The results are presented as follows:

[55] Ali Ahmad, Jummai Audi and Ibrahim N. Sada, 'Resolution of Civil Disputes in Jigawa State Nigeria', 41.

Table 1: Demographic Data of the Respondents Based on Religion Involved in the Study

Religion	Frequency	Percentage (%)
Islam	45	90%
Christianity	5	10%
Others	0	-
Total	50	100%

Source: Google Survey

The result in Table 1 reveals that out of 50 sampled respondents, 45 (90%) respondents are Muslims, 5 (10%) of the respondents are Christians and none of the respondents belongs to other religions. This implies that the majority of respondents sampled are Muslims.

Answers to Research Questions

Research Question One: Do you know what Alternative Dispute Resolution (ADR) is?

Close-ended and dichotomous scale question which required a 'yes' or 'no' answer was asked to evaluate the level of awareness of what is called Alternative Dispute Resolution generally. The statistics of the respondents are summarised and presented in Table 2 below.

Table 2: Level of Awareness on ADR

Response	Frequency	Percentage (%)
Yes	44	88%
No	6	12%
Total	50	100%

Source: Google Survey

From the above, out of the 50 respondents, 6 of them do not know what ADR is representing 12% of the total respondents. On the other hand, 44 respondents are familiar with and know what the term ADR means representing 88% of the respondents.

From the above, it can safely be said that most people are knowledgeable about ADR generally.

Research Question Two: Do you know *Ṣulḥ* or *Taḥkīm* or *Muḥtasib* as an ADR mechanism?

This question is also a dichotomous scale question requiring a 'yes' or 'no' response to evaluate the extent of awareness and knowledge of *Ṣulḥ*,

Taḥkīm or *Muḥtasib* as an ADR mechanism. The table below summarises the responses gotten from the respondents.

Table 3: Level of Awareness on Islamic ADR Mechanism

Response	Frequency	Percentage (%)
Yes	20	40%
No	30	60%
Total	50	100%

Source: Google Survey

The result in the above table showed that out of the 50 respondents, just 20 of them know about Islamic ADR mechanisms such as *Ṣulḥ, Taḥkīm, Muḥtasib* amongst others 40% of the total respondents. Conversely, 30 of the respondents 60% of the total respondents affirmed that they were not aware of the availability or existence of the Islamic ADR mechanism.

It can thus be inferred that the majority of people do not know about the availability of the Islamic ADR mechanism.

Research Question Three: Should there be a need, where would you prefer to resolve a dispute?

The questionnaire contained 5 items structured in a four-response-type option with respondents having the opportunity to choose only one option. The question is to know the preferred option for dispute management amongst the available mechanisms as summarised in the table below.

Table 4: The Preferred Place of Dispute Resolution

Response	Frequency	Percentage (%)
The Court	4	8%
ADR (Amicable Settlement)	42	84%
The Police or Other Law Enforcement Agencies	4	8%
Jungle Justice	0	0
Total	50	100%

Source: Google Survey

The result showed that just 4 of the respondents which is 8% of the total number of respondents would prefer to resolve disputes in court and the same percentage would prefer law enforcement agencies while none opted for jungle justice. 42 respondents which amount to 84% of the total respondents preferred to resolve their disputes through ADR.

It can thus be concluded that the overwhelming majority of respondents would prefer to explore ADR in dispute adjudication to all other means of dispute adjudication.

Research Question 4: Would you like to explore and resolve your dispute amicably using *Ṣulḥ* or *Taḥkīm* or *Muḥtasib*?

The question is a close-ended question that requires a 'yes' or 'no' answer to evaluate the willingness of people to explore the Islamic ADR mechanism after a succinct explanation of what they imply. The below table is a summary of the results of the survey.

Table 5: Willingness to Explore Islamic ADR

Response	Frequency	Percentage (%)
Yes	45	90%
No	5	10%
Total	50	100%

Source: Google Survey

From the above 45 which is 90% of the respondents answered in the affirmative that should there be a need they would like to explore Islamic ADR to resolve their disputes while just 5 of them amounting to 10% are not interested in using Islamic ADR. It can be concluded that the most of the respondents have an interest in the Islamic ADR mechanism.

Research question 5: Do you know of any place/institution that has an Islamic Alternative Dispute Resolution House?

The question is a closed question requiring a 'yes or 'no' response of which just 5 i.e. 10% of the respondents said they know of an Islamic dispute resolution house while the remaining 45 respondents (90%) do not know of any. This is well represented in the table below.

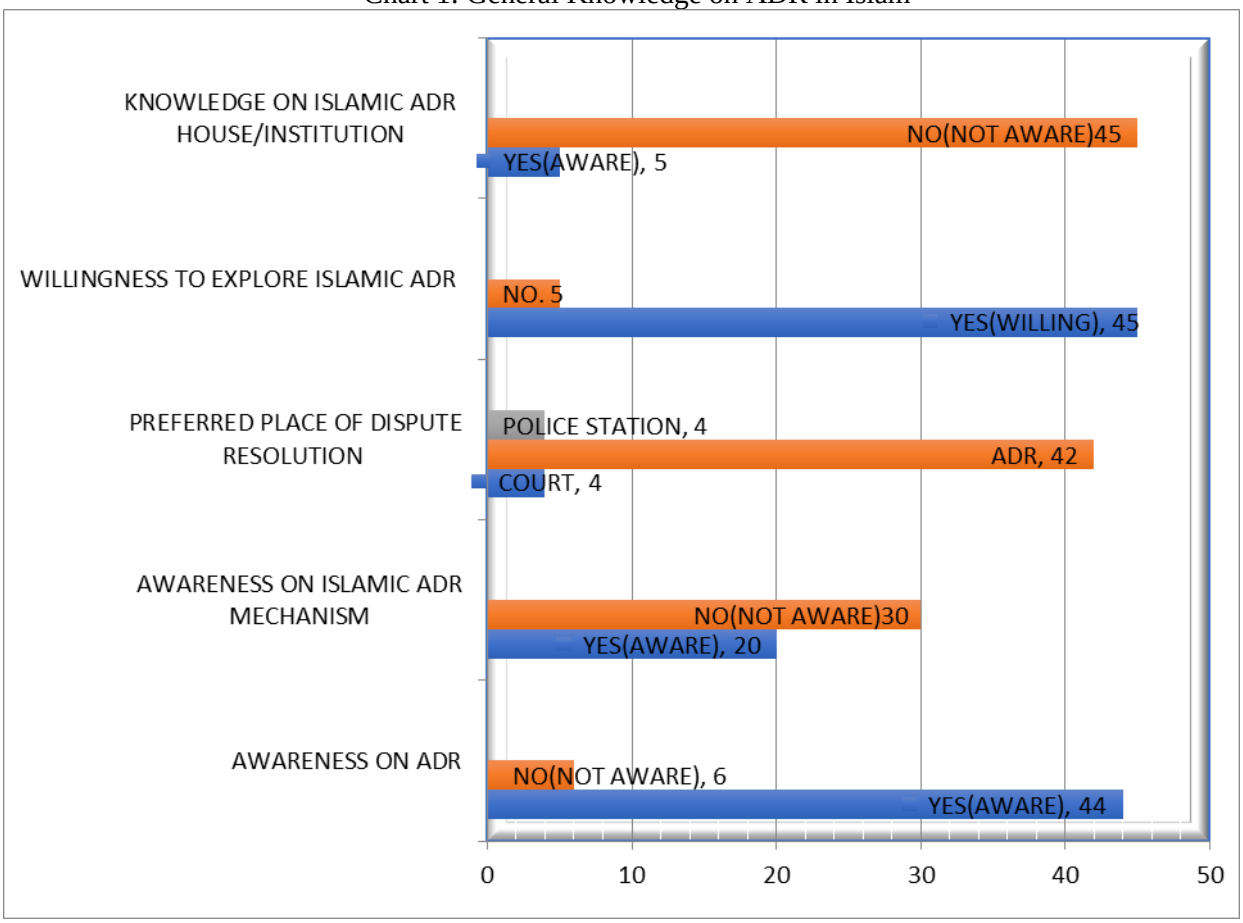
Table 6: Knowledge of Islamic ADR House/Institution

Response	Frequency	Percentage (%)
Yes	5	10%
No	45	90%
Total	50	100%

Source: Google Survey

The results are all represented in the chart below

Chart 1: General Knowledge on ADR in Islam



Source: Google Survey

From the above, it can be inferred that almost all the respondents do not know of any Islamic ADR house or institution.

A general assessment of the questionnaire revealed the following findings.

Most people know ADR and most people are willing to use its avenue to resolve their disputes. On the other hand, most people neither know of the existence of Islamic ADR nor know of any place or institution where

they can get access to it. With little information on Islamic ADR and its religious undertone, most are willing to explore the mechanism.

CHALLENGES TO THE APPLICATION OF ISLAMIC ADR MECHANISMS IN NIGERIA

The major challenge to the application of Islamic ADR mechanisms in Nigeria by the Nigerian courts is lack of statutory recognition. Islamic law in Nigeria is most times based on *Qāḍīs* of the Shariah Courts and the Shariah Courts of Appeal sometimes informally apply *Ṣulḥ* in the resolution of disputes in Nigeria, but officially there is no specific provision in any law on *Ṣulḥ* and *Taḥkīm*.[56] There is no law in Nigeria conferring the authority for the application of *Ṣulḥ* by a Superior Court. However, the law governing the practice and procedure of the Area Courts allows the court to use it without unnecessary bothering for technicalities.[57]

> *"No proceedings in an area court and no summons, warrant, process, order or decree issued or made thereby shall be varied or declared void upon appeal or revision solely by reason of any defect in procedure or want of form but every court or authority established in and for the state and exercising powers of appeal or revision under this Edict shall decide all matters according to substantial justice without undue regard to technicalities."*[58]

What could be inferred from this is that the court may use *Ṣulḥ* if they so like or require to do so. In recent research conducted in Northern Nigeria, 'Alī Aḥmed found that *'the court applied a practice that was not complex in process and procedure, as they were mandated by law to strive to achieve substantial justice rather than revel in technicality"*.[59]

Some scholars pointed out that there are a lot of things wrong in the court procedures in Nigeria. However, by employing *Ṣulḥ* many wrongs may be corrected particularly in the Northern Nigeria which is dominated

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[56] Muhammed S. O (Qadi, Shari'ah Court of Appeal, Ilorin Kwara State Nigeria), in interview with the author, 1 December 2009.

[57] Section 61 of the Area Courts Edict, 1967 Central-West State of Nigeria Gazette No. 7, vol. 1, 21st December 1967-Supplement.

[58] Section 61 of the Area Courts Edict, 1967.

[59] Ali Ahmad, Jummai Audi and Ibrahim N. Sada, 'Resolution of Civil Disputes in Jigawa State Nigeria', 23.

by Muslims and Islam is generally followed as a way of life.[60] This therefore shows the importance of *Ṣulḥ* if adopted in this part of the country would reduce the burden on the court.

CONCLUSION AND RECOMMENDATIONS

The usefulness of the alternative disputes mechanisms in Islam can never be underestimated. The study demonstrated how these mechanisms have been applied with success in the northern part of Nigeria. Though, the application of *Ṣulḥ* and other forms of alternative methods in Islam remain informal in Nigeria as such there is need for statutory backing for these mechanisms under the Nigeria laws. ADR practices under Islamic law even though similar to the conventional ADR processes and it also conforms to the dictates of Allah. However, it is an undeniable reality that much still has to be done in Nigeria towards strengthening the application of these ADR processes. *Ṣulḥ* for instance plays a significant role in dispute resolution in Islam.

This study has discussed the ADR practices under Islamic law even though similar to the conventional ADR processes and it also conforms with the dictates of Allah. However, it is an undeniable reality that much still has to be done in Nigeria towards strengthening the application of these ADR processes. *Ṣulḥ* for instance plays a significant role in dispute resolution in Islam.

Ṣulḥ, Taḥkīm, Muḥtasib and *fatwā* suffer the same fate in Nigeria. An expert opinion or determination that resolves controversial Islamic issues was only functional once upon a time in the past under the Sokoto Caliphate but has been phased out by colonialism. Efforts at resuscitating it have not been successful.

This study recommends the *Ṣulḥ* and other Islamic ADR should be statutorily provided under the Penal Code and other Sharia Codes in Nigeria. This is not enough, the training of the personnel involved in the administration of Islamic justice system is strongly recommended. The practice of *Ṣulḥ* by officers who are not well grounded in Islamic Knowledge portends danger for the administration of justice. Therefore, adequate training should be ensured to acquire the required skill and knowledge to conduct the process successfully so as not to perpetrate illegality for lack of knowledge.

[60] Ali Ahmad, Jummai Audi and Ibrahim N. Sada, 'Resolution of Civil Disputes in Jigawa State Nigeria', 23.

It is recommended that law makers should initiate a bill for the recognition and implementation of *Ṣulḥ, Taḥkīm, Muḥtasib* and *fatwā* of *muftī* as part of legal system in Nigeria, particularly that majority in Nigeria are Muslims.

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