



# Mediation vs. Litigation: Exploring Alternative Dispute Resolution Mechanisms in Muslim Divorce Case

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**Abstract**— With so numerous cases happening each day, it isn't conceivable to depend on the court. That's where Alternative Dispute Determination comes in. It isn't something modern; it has been in hone for thousands of a long time indeed in Islam to resolve clashes. It is considered one of the foremost effective and dependable strategies to fathom any debate. In truth, in this article, we'll discover that in cases of certain debate, ADR could be indeed superior than Litigation for the Muslim community. Using doctrinal inquire about strategies, the creator has dove into different strategies of ADR in India. The creator has too analyzed the method of ADR beneath Islamic law, talking about its beginning as well as the past. At last, the creator has given a supposition on the adequacy of the ADR in Islamic communities at the side commenting on its future.

**Index Terms**— Mediation, Litigation, Muslim divorce.

## 1. What is Mediation?

By definition, litigation is the determination of a debate in court. This can be very expensive and lead to a very long process requiring certificates, evidence and witnesses. Litigation is often not the preferred way to resolve disputes because the process can be lengthy and expensive.

Mediation, on the other hand, is an alternative dispute resolution (ADR) procedure that can be used to resolve disputes out of court. Mediation is a process that focuses on helping both parties in the middle. Unlike litigation, where there is a clear winner and loser, mediation can satisfy both parties, which is essential to maintaining professional relationships. If one party does not sue the other, it tries to keep the relationship between the two parties healthy. In addition, mediation is often preferred because it is cheaper.

## 2. Was Mediation Successful? Predictable or Unpredictable Outcomes

"Many spouses find mediation successful because of its unique structure and flexibility. In mediation, all decisions are made by the parties, not the mediator or judge, and the parties are never forced to reach an agreement. Mediators have their preferences, but all mediations follow the same general format."

"Mediation has been successful for many divorcing spouses who have tried to create a plan for the future that is satisfactory to everyone. It can be a much less expensive and time-

consuming process than going through to court. In addition, mediation is usually confidential, unlike court, where hearings are open to the public. Mediation offers spouses more flexibility than a traditional divorce process because they can make their own decisions about key issues within the law, rather than asking the court to make them. When the court decides who lives with your child or how much child support you have to pay, it can be a nerve-wracking experience. Mediation allows you to avoid this unpredictability and is more likely to yield a stable long-term outcome.

With the entry into force of the new mediation law, it is important to familiarize yourself with the changes resulting from the law in various legal fields. The Mediation Act of 2023 aims to promote and facilitate mediation as an alternative dispute resolution method to litigation, focusing on institutional mediation, community mediation and online mediation. The purpose of the Act is to facilitate the cost-effective resolution of contractual, commercial, family and community disputes and to make mediation an acceptable and readily available alternative to disputes. The law defines who are the parties to mediation, who can act as a mediator, how community mediation is conducted, matters not suitable for mediation, mediation agreements, jurisdiction of courts, mediation procedures, mediated mediation agreements and the formation of a mediation board, as well as many other issues related to mediation procedures.

According to the act, "mediation" is consensual and confidential process aimed at resolving disputes, where an unbiased or neutral third party, referred to as a mediator, facilitates communication and negotiation between conflicting parties. The mediator's job is not to impose or suggest a settlement, but to guide the disputing parties in exploring potential solutions, understanding differing perspectives, and collaboratively working towards a resolution. The act also signifies that mediation and conciliation are synonymous terms, aligning with the international standards, where both the terms are used interchangeably.

## 3. What is Divorce Mediation?

In divorce proceedings, mediation is an important method of dispute resolution that provides a more efficient and effective

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way for couples to resolve their differences. A divorce mediator is a third person, known as a mediator, who helps facilitate discussions between divorcing parties to reach a mutually agreed upon settlement without entering into a protracted dispute in court.

*Here are some key facts about why mediation is important in divorce proceedings:*

1. *Voluntary Participation:* Both parties must agree to participate in a mediation session. It is not imposed on the couple but is recommended as a means of resolving disputes.
2. *The role of the mediator:* The role of the mediator is to facilitate communication between the spouses. They are professionals who remain neutral throughout the process, helping teams identify problems, explore possible solutions, and reach agreements.
3. *Privacy:* One of the benefits of mediation is privacy. Discussions that occur during mediation are confidential and create a safe space for open and honest communication.
4. *Informal Setting:* Mediation sessions are often held in a more informal setting than in court. This environment can ease tensions and create a spirit of cooperation.
5. *Cost-effective:* Mediation is often more cost-effective than a lengthy court battle. The parties involved can save on legal fees and other related costs, making it an attractive option for those looking to reduce the financial burden of divorce.
6. *Faster Resolution:* Arbitration is faster than litigation. Because the process is more focused and flexible, couples can reach agreements in a shorter period of time, making their lives faster.
7. *Legal Binding:* When parties reach an agreement through mediation, it can be formalized into a binding document.
8. *Child-centered approach:* Mediation allows couples to focus on the interests of the children involved.

In India, there are five methods of dispute resolution under ADR: arbitration, arbitration, mediation, negotiation and Lok Adalat. Arbitration means the absence of a legal arbitration agreement before a dispute arises. The arbitration proceedings cannot continue. In this method of dispute resolution, the parties submit their differences to one or more arbitrators. The parties shall abide by the arbitrator's decision (referred to as the "Award"). Mediation is an informal process in which the parties to a dispute seek to resolve their issues with the help of a third party, the mediator. This form of mediation is called mediation.

During mediation, a third party, known as a "mediator," assists the parties in their efforts to resolve their disputes amicably. The arbitrator does not decide for the parties. The agency retains control over the decision after mediation. Negotiation is a free process, where the parties start talking to each other, without going through a third party, to reach a satisfactory solution. Businesses, non-profit organizations, government agencies, court cases, international relations, and special issues such as marriage, divorce, parenthood, and

everyday life depend on negotiation. Finally, Lok Adalat refers to an informal forum where matters can be discussed before a judge and resolved without being burdened with legal aspects. The parties involved in the matter have to abide by the final order of the Lok-Adalat, which is binding and is called the judgment of the civil court, there is no legal way to appeal the decision of the Lok-Adalat.

#### 4. Alternative Dispute Resolution in Islamic Religion

Islam also promotes peaceful dispute resolution as an alternative to aggressive dispute resolution. Therefore, Alternative Dispute Resolution (ADR) is not against Islamic law. Dispute Resolution (ADR) methods have been used by Muslims to resolve conflicts peacefully for 1,400 years and have been referenced and promoted by Islamic legal authorities. This is because Islam is a religion that emphasizes unity over conflict and discourages conflict.

Islam uses a combination of general principles and formal rules and regulations to resolve disputes. These procedures provide a framework for conflict resolution. Conventional courts and dispute resolution (ADR) procedures are closely related to Islamic principles. The legal systems of countries that have adopted traditional dispute resolution models are probably better than those of countries that have chosen to abandon Islamic principles. Prophet Muhammad, who is known as the Messenger of Allah and who presided over the birth of Islam, tried to resolve disputes peacefully and also practiced these rituals. ADR is known as the holiest faith in Islam because it is based on the Qur'an, which was taken by the Prophet in his time. In Islam, the purpose of an ADR procedure is acceptable as long as it does not change an accepted practice into a prohibited practice or a prohibited practice into a permitted practice.

Later, after Abu Musa Al Ash'ri was appointed a qadi (judge), a famous letter arrived from Muhammad bin Khattab, the second caliph of Islam. A guide for him when deciding on his case. Even before this letter, the following Quranic verses can be used to confirm the legitimacy of ADR in Islam:

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

However, the current prospects for a peaceful solution through mediation, conciliation and diplomatic processes demonstrate the importance of Islamic law. There are many disputes about which Islam recommends that the best way to resolve disputes is through litigation. But neither the Hadith nor the Qur'an emphasizes the necessity and value of marriage. However, the Qur'an and Hadith support negotiation and mediation methods to realize legal rights.

The Quran mentions several Islamic ADR methods, including Sulh (negotiation, mediation, conciliation, arbitration), Tahkim (arbitration), Fatwa (expert decision), Muhtasib (ombudsman) and Med-Arb (combination of sulh and tahkim).

#### 5. ARI Proceedings Under Islamic Law

*Sulh (Negotiation, Agreement, Council, Action):* Sulh means

"ceasing a dispute" either on your own initiative or with the help of an impartial third party. Arbitration does not fall within the scope of marriage because it is subject to separate rules. Conciliation includes, in addition to compromise, mediation, conciliation and negotiation, all of which easily fall within the realm of out-of-court dispute resolution. Its purpose is to end hostility and strife between believers, so that they may continue to have harmonious relations in society. In nature, it is similar to private mediation, where the parties often resolve disputes between themselves without outside help and intervention. Sulh's adaptability and tripartite method of negotiation, conciliation and conciliation are its strengths.

*Tahkim (Arbitration)*: The idea of Tahkim or arbitration was understood and used to settle a case in pre-Islamic Arabia. Various civil and commercial conflicts. If the parties contested the arbitration award, it was not enforceable until the presiding judge executed it. However, one author argues that the parties traditionally accepted the decisions of arbitrators chosen at the ukazi (regular Meccan fairs) as legally binding. When people cannot resolve their differences or enter into disputes, Islamic law allows them to seek help from arbitrators. The Sunnah, Ijma, Qiyas and the Qur'an are all proofs of this. It is important to emphasize that an arbitrator has the same powers as a judge in formal courts in resolving disputes and making decisions according to Islamic law. This makes the role of an arbitrator comparable to that of a caddy (judge). However, there are certain issues related to marriage, custody, divorce, gifts, etc. that cannot be resolved.

*Fatwa (Experient Rule)*: ADR in certain countries where a fatwa or legal opinion is used for resolution. There is no legal dispute. A fatwa is a scientific ruling on religious matters and is considered a religious rule of the Islamic faith. According to Islamic custom, the only person issuing a fatwa is a distinguished legal expert or body of scholars (ulama) in Sunni schools, or a mufti in Shia schools. It is customary for fatwas to be issued through reasoning and logic (ijtihad). Fatwa conclusions are advisory rather than legally binding. Islamic history is full of examples of complex issues brought to the attention of muftis who issued fatwas in response.

*Muhtasib (Umblicator)*: The practice of ombudsman has existed in Islam since the revelation of Korr. From Allah and it is derived from the Koran. There are several verses in the Holy Qur'an that mention the mediator. According to Islamic law, the main responsibility of the mediator is to keep accounts (hisbah). The obligation of the muhtasib included leading mosques and other religious practices such as Salat (prayer). In addition, he monitored market behavior and community affairs, observing the truthfulness of rules in economic life and the accuracy of weights and measures. In addition, urban issues include keeping clean, well-lit highways and streets at night, and preventing the construction of housing or factories that conflict with neighborhood interests.

*MED-ARB (Combination of Sulim and Tahkim)*: Another ADR used in Islam is called med-arb, which combines tahkim and sulh. It is expected that the arbitrator must first try to reach an agreement between the parties and, failing that, resort to arbitration. Islam sees Medi-Arb as a characteristic that combines the finality of arbitration with the agreement of the mediation process. The full dispute resolution process consists of two steps: the first step is mediation, and arbitration is used to determine the finality of the proceedings. This technique differs from Sulhi and Tahkim due to its mixed methods and unique characteristics.

## 6. Effectiveness of Mediation in Islam

Under Islamic law, settling disputes through arbitration is a difficult process with many drawbacks. Many countries do not rely on Sharia to handle certain disputes, especially in the finance and financial sectors. Therefore, sometimes the Muslim community can settle disputes without going to court. However, mediation and mediation are effective methods of dispute resolution in Muslim society. ADR is often considered a more efficient and cost-effective alternative to litigation. However, its effectiveness depends on the commitment of the parties and the suitability of the ADR process chosen for the matter.

## 7. Conclusion

After looking into the writing and works said over, it can be concluded that the strategies utilized to manage equity in a society can be a marker of social insights and open instruction. Parties can select from an assortment of debate determination (ADR) strategies, guided by the Islamic guideline of fair-mindedness. Political and social impacts have caused teach to lose validity over time. In short, combined settlement isn't modern. Non-judicial strategies of settling national debate have long been utilized by all social orders. The over definition infers that agreeing to the Islamic concept of impartial equity, different ADR methods are open to the party who chooses them.

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