THE PARADOXICAL USE OF THE TERM SULH: AN ANALYTICAL STUDY FROM QURANIC PERSPECTIVE

Muhammad Rafiqul Hoque  
Faculty of Quranic and Sunnah Studies  
Universiti Sains Islam Malaysia, Bandar Baru Nilai, Negeri Sembilan  
E-mail: rafique20012000@yahoo.com

Muhammad Mustaqim Mohd Zarif  
Faculty of Quranic and Sunnah Studies  
Universiti Sains Islam Malaysia, Bandar Baru Nilai, Negeri Sembilan  
E-mail: mustaqim@usim.edu.my

ABSTRACT

Dispute resolution systems are broadly divided into two sides namely Judicial Dispute Resolution (JDRS) and Non-Judicial Dispute Resolution Systems (NJDRS). The first one is more formal, and the latter is informal which is known as Alternative Dispute Resolution (ADR) all over the world. Though ADR is claimed to be a great innovation of the West, it is found to be practiced in the Islamic Judicial System from its very inception. ADR was practiced throughout the history of Islamic Judiciary as sulh. However, the use of the word sulh in the meaning of ADR needs to be explained in the present judicial context. Scholars sometimes discussed sulh as a system parallel to ADR and sometimes as a process, which creates confusion in its multiuse. Hence, this study aims at eliminating this confusion on the paradoxical use of the term sulh as a system for dispute resolution as well as a process of that system. At present, hardly any study has precisely differentiated between them. Thus, this qualitative study focuses on discussing it primarily from the perspectives of the Quran, documented sources as well as interviews. The major finding of this study is that sulh, comparing with present day ADR, does not need to be used paradoxically. The main contribution of the study is to propose a clarification of sulh in the line of ADR fruitfully. The findings of this study are not only useful in clarifying the exact meanings of the term as used in different contexts but also applicable to solve problems faced by arbitrators involved in various indigenous traditional dispute resolution systems such as shalish in Bangladesh and elsewhere.

Keywords: Sulh, takkim, Alternative Dispute Resolution (ADR), Shalish, dispute resolution, settlement.
1. INTRODUCTION

Sulh and Tahkim are two necessary systems for dispute resolution in Arabian dispute resolution culture. At the beginning of Islam, both systems remained in practice with some modifications. Gradually Qada (formal adjudication), wali-al-Mazalim (Public grievances tribunal), muhtasib (Ombudsman) were developed based on needs of the society in broader range instead of tribal limitation. According to al-Nawawi, the words sulh, al-islah and al-musalahah originated from saluha or salaha, explain the process of restoring something. The objective of sulh is the restoration of relationship and ensuring justice through removing the dispute between individuals, groups or between a group and individuals by the parties themselves or by an impartial third party. The Arabic word tahkim means to appoint a hakam (arbitrator) by each disputing party to resolve a dispute arbitrarily. Qada is the state-backed independent formal judiciary. Muhtasib and wali-al-mazalim are also state-backed dispute resolution system under the executive organ of the state. However, for being out of formal court muhtasib and wali-al-mazalim are two institutions of mediation (ADR).

The Prophet (PBUH) himself resolved social disputes being appointed by the parties both in his pre-prophetic and prophetic life. After Islam had become the code of life for the Arabian Peninsula, it brought changes and developed the contemporary dispute resolution system gradually following the sources of Islamic shari'ah. The prophet performed the duty as a chief executive and chief justice. He appointed governors and judges for several provinces of the then Islamic state. Thus, qada became official institution backed by the state for dispute resolution, and sulh and tahkim remained as the informal institutions for the same. In the pre-Islamic era, sulh was an amicable dispute resolution system compared with tahkim. After the qada (formal judicial institution) had been established in full fledge, both sulh and tahkim became non-official institutions for dispute resolution for the tribal or rural community. Qada and sulh become two institutions for dispute resolutions as formal and informal justice system respectively. Tahkim virtually becomes a tool for sulh (out of court settlement while used as a non-state justice system contrary to Qada.

Moreover, the pre-Islamic sulh remains as another tool under the sulh (informal system for dispute resolution compared with qada. Sulh becomes an umbrella term for all informal ways of dispute resolution. Researchers use both sulh to mean the system and its method as well. Nevertheless, hardly any research differentiated between the two. The difference is understood from the context. It needs to remove the ambiguity, which creates confusion sometimes. Hence, this study takes the challenge to remove this confusion systematically.

2. METHODOLOGY

This study followed a qualitative method of research exploring sulh as an informal dispute resolution system compared with Alternative Dispute Resolution System. It is based on both secondary and primary data; however, secondary data is dominant. Primary data has been collected through extensive discussion with some local arbitrators of rural area in Bangladesh. It has been observed that even rural dispute resolution has two forms somojuta (sulh) and bichar (tahkim). The study lightly criticized the uses of the word sulh done paradoxically by some researchers and suggested to use some processes of sulh used in the Holy Quran like hiwar (dialog). For translation of the meaning of the holy Quran, http://tanzil.net/#trans/en.sahih has been used. To explain some related words of the holy Qur’an some prominent Islamic scholars’ translation has been used from this source also.

3. DISCUSSION

A brief history of sulh

In the pre-Islamic era, sulh and tahkim were standard modes of dispute resolution. Tahkim was more formal and frequently used when disputants themselves failed to reach a settlement. Hakams (arbitrators) had a prominent position and were mainly chosen from healers and soothsayers of the society. They were believed to have supernatural powers. People were emotionally blackmailed because of their superstitious belief on the hakams. Islam modified the system eliminating the false belief about the hakams and advanced the tahkim gradually uplifting it to formal Qa'da. Regarding the rejection of soothsaying, the Quranic verse is as follows:

“O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful”⁵ ("Al Quran", Al-Ma'idah 05:90).

The practice of sulh and tahkim, was introduced in accordance with the teaching of Islam and was recognized as a method of resolving disputes. The Prophet (PBUH) used to act not only as the head of the state but also as a mediator and arbitrator for a few cases. The role of mediator and arbitrator was sometimes delegated to other officials due to the expansion of Islam to different localities⁶. The appointment of Mu'adh bin Jabal and Ali bin Abi Talib as qadi in Yemen was an example of the delegation of roles from the Prophet (PBUH). Qadi, as it was known at that time, acted not only as a judge but also as a mediator and arbitrator because of no clear distinction between their functions. However, qadi’s main role was to judge according to the general principles stated in the Quran and Sunnah.

During the period of Khulafa al-Rashidin, a qadi carried out the duty not only as a judge but also as an arbitrator and mediator. Sulh was widely applied and recognized as a tool for resolving disputes. The first caliph, Abu Bakr, for example, used mediation during the

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appointment of the successor of the Prophet (PBUH). Caliph Umar, for example, wrote to Abu Musa Al-Ash'ari appointing him as a qadi. There were rules regarding the administration of justice, including the rule on sulh. It was stated that "all types of compromise and conciliation among Muslims are permissible, except those which make haram anything which is halal, and a halal as haram". This was in accordance with another hadith, "If somebody innovates something which is not in harmony with the principles of our religion, that thing is rejected.

Sulh in the Quran

The word salaha and its derivatives have appeared 179 times in the Holy Qur'an. However, the word sulh itself appears only once. In this verse, Allah prescribed that sulh is the best. There are four Ayats in which Allah commands us to reconcile and make peace. The translation of the meaning of the ayat in which the word sulh comes only is:

“And if a woman fears from her husband contempt or evasion, there is no sin upon them if they make terms of settlement between them - and settlement is best. And present in [human] souls is stinginess. But if you do good and fear Allah - then indeed Allah is ever, with what you do, Acquainted10b ("Al Quran ", An-Nisa 04:128).

The word sulh in this ayat is translated by Ali11 as “amicable settlement”, Asad12 as “to set things peacefully”, Pickthall13 “to make terms of peace between themselves” and Maududi14 translated it “to make peace between themselves (by means of a compromise)”. In this ayat, husband and wife are two parties, and the wife is the victim of the husband's contempt or evasion. The ayat addressed their marital problems and suggested sulh as resolution through negotiation by compromising on their rights. The ayat certified that the sulh (compromise of action) is the best way to solve the problem rather than going to separation or being incessantly tensed, for the family is not a place of conflict. This is a bilateral sulh by disputing parties themselves, and the next ayats coming bellow included an impartial third party to do sulh. The translations of the meaning of the ayats that command us to make sulh in a dispute are:

“And if two factions among the believers should fight, then make settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance of Allah. And if it returns, then make settlement between them in justice and act justly. Indeed, Allah loves those

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7 Ibid, 73.

The word *islah* in this *ayat* is translated by Ali, Pickthall, Asad, Maududi and others as “make ye peace” avoiding fighting and “reconcile” between the parties equitably.

An impartial third party plays a vital role to settle a dispute between individuals or groups. This *ayat* addresses the neutral third party to play their role fairly and settle the dispute peacefully. If any party goes against the peaceful settlement, this impartial third party may have to go against the aggressive party to create a balance of power of the disputing parties and thus build an environment for a peaceful settlement. This *ayat* commands the impartial third party to make *sulh* two times under two separate situations. Firstly, it orders to make *sulh* between two parties when they are to fight. An impartial third party is ordained to try to make a *sulh* so that they can avoid fighting. Secondly, when the parties began fighting, the *ayat* orders the neutral third party to go against the party who denies *sulh* until they come back to *sulh*. And in this situation, the *ayat* again orders to make *sulh* justly. The *ayat* reminded that the mindset of the third party must be to do *sulh* and thus ensure the justice, for justice is the main objective of any legal treatment. In this connection, the next *ayat* focuses on the base of the relationship of Muslim society as brotherhood, and orders the third party to reconcile between two disputing parties reminding them that they are not allowed to interrupt the brotherly relationship at all.

“The believers are but brothers, so make settlement between your brothers. And fear Allah that you may receive mercy” ("Al Quran ", Al-Hujrat 49:10).

This *ayat* reminds us all that the Muslim society is a compassionate society where respect for elders and affection for the younger will remain active. Though there is no clear blood relation, the faith-based brotherly relationship is a stronger relationship between two Muslim individuals or groups. So they are required not to fight one another during their disputes, but they should choose the way of *sulh* instead of fighting.

“They ask you, [O Muhammad], about the bounties [of war]. Say, "The [decision concerning] bounties is for Allah and the Messenger." So fear Allah and amend that which is between you and obey Allah and His Messenger, if you should be believers” ("Al Quran ", Al-Anfal 08:01).

The word *islah* in this *ayat* is translated by Al-Mubarakpuri as “settle all matters of difference”, Asad “keep alive the bonds of brotherhood”, Ali “keep straight the relations

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21 [http://tanzil.net/#8:1](http://tanzil.net/#8:1)
22 [http://tanzil.net/#8:1](http://tanzil.net/#8:1)
between yourselves”, 24 and Pickthall “adjust the matter of your difference.” 25

This first ayat of sura al-Anfal depicts a situation in which disputants were involved with getting spoils of war without waiting for any instruction from the prophet (PBUH). This attitude hampered their relationship. The ayat put the issue aside and asked the disputants to reconcile and keep the relationship alive. Of course, the problem should get a solution by the real authority, and another revelation solved the matter of distributing the spoils latter.

Thus, the holy Quran recommended sulh and orders to do sulh to ensure justice and equity. So the ways through which sulh is achieved may be considered a process of sulh which are actually not the main things. But the main target is to reach to an agreement concluded by the consents of the parties involved in a dispute.

Use of sulh by Researchers

The researchers used the word sulh to mean mediation. In a wider sense, mediation means Alternative Dispute Resolution (ADR) and in narrower sense, it is a process or method of ADR where a third party helps the parties to settle their dispute peacefully. The word is used to affirm that the present-day Alternative Dispute Resolution (ADR) and sulh in Islamic legal system are same. At the same time, they defined the word sulh by negotiation, conciliation, mediation and compromise of action with an exception in the case of tahkim (Arbitration) considering it just opposite to sulh whereas arbitration is a simple method of ADR. Some examples of this paradoxical use are as follows:

Aziz and Hussin in their article titled "The Application of Mediation (Sulh) in Islamic Criminal Law" used the word mediation as Alternative Dispute Resolution system (ADR) in broader sense. In the statement, "Dispute resolution through mediation or sulh is encouraged in Islam in almost all disputes" mediation or sulh is used mainly for ADR. 26 Sa’odah in her article titled “Sulh: An Alternative Dispute Resolution and Amicable Settlement of Family Dispute” used the word in wider sense of mediation parallel to ADR. She stated that tahkim is a form of sulh 27.

Abdul Hak and Khan, in their article "The Application of sulh in Resolving Community Disputes,” discussed sulh in the same meaning of ADR under which arbitration is a process. They set the example of the arbitration between Ali Ibn Abi Talib (r.a) the fourth caliph, and Muawiya ibn Abisufiyan by Abumusa al-Ashari and Amr-ibn-al’As as representatives from both sides as a process of sulh. 28

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Sulha is a Palestinian and Middle-Eastern peacemaking process. Gellman and Vuinovich, state that sulha is promoted as a technique for addressing the right to dignity within controversial multiparty discourse through the tactic of education and community exposure at both local and international levels.29

Pely states, "Unlike the Sharia (formal) courts, the sulh a process is an informal conflict resolution mechanism in the Middle East." Many kinds of disputes including business, financial, and consumer conflicts, can be resolved through sulha. Many disputes arising out of acts of violence, including murder, injury and physical assault can also be addressed through this.30

Tamdoğan in his article "Sulh and the 18th Century Ottoman Courts of Üsküdar and Adana" explores and compares cases of sulh (amicable agreement) that are documented in the records of two Ottoman courts. 31

Wahed states, "the concept of dispute resolutions is not new in Islam. However, many believe that the concept has emerged and originated from the West, whereas it existed 1400 years ago as tools to resolve disputes". The use of sulh has been encouraged by the holy Quran because of its ability to resolve a dispute without affecting the existing relationship among parties. The approaches of dispute resolutions in Islam are as follows: sulh (negotiation, mediation, conciliation and compromise of action); nasihah (counseling); qada (court adjudication); tahkim (arbitration); muhtasib (ombudsman); fatwa of mufti (expert determination); wali-al-mazalim (Public grievances tribunal); and other hybrid mechanisms. Wahed used sulh as parallel to ADR and mentioned the approaches among which sulh is one. This dual use of sulh is termed as paradoxical use in this study.32

Haroon states, "Alternative Dispute Resolution in Islamic legal system is simply known as sulh". Again, to discuss the process of ADR/sulh he mentioned four processes namely “sulh (Negotiation, mediation/Conciliation, Compromise of action), tahkim (Arbitration), muhtasib (Ombudsman) and fatwa of mufti (expert determination)”. The word sulhin the statement of Haroon is not similar to sulh, which has been stated as a process. Because, the first sulh is a system and the second one is a process for that system.33

Muhammad asserts that informal dispute resolution under Arab-Islamic culture is generally known as sulh or sulha. The word sulh can be defined as a method or mechanism to

settle a dispute amicably. *Sulh* can also mean “an agreement between two parties relying on the prescribed conditions, which they agreed to earlier in the process of resolving their disputes.”

**ADR and Sulh**

Alternative Dispute Resolution (ADR) based on its backup authority is of three types. These are formal ADR backed by a legal and judicial authority, quasi-formal ADR backed by legal and non-judicial authority and informal ADR backed by informal administration and customary law. ADR is said to be the alternative methods of helping people to resolve legal problems before going to court. It is also known as external dispute resolution in some quarters. It has emerged as a potential means of resolving disputes. Different terms related to this system have been used in different countries based on the community culture. The term Alternative Dispute Resolution (ADR) covers all methods of resolving disputes. ADR refers to a wide range of dispute resolution processes that help parties resolve their disputes without a trial. From informal discussions to formal adjudications, there are over sixteen distinct ADR processes currently in use.

*Sulh*, on the other hand, literally means termination of a dispute, a compromise or to end a dispute among persons. It is an accord, a contract between two parties or more to end a dispute by ending its causes, and it concludes by offer and acceptance. *Sulh* is a kind of agreement between disputants to settle disputes amicably. *Sulh* is a settlement grounded upon compromise negotiated by the disputing parties themselves or with the help of a third party. It is a process of restoring justice amicably among disputants to attain the agreed settlement outside the court. According to Ibn Qudamah, *sulh* is an agreement between two disputing parties, which would lead to peace. In Islam, the process of *sulh* can be practiced in all cases except in *Hudud* cases.

**Traditional Shalish in Bangladesh and Sulh**

*Shalish* is a non-state rural justice system and still the most effective procedure for quick and useful legal redress in Bangladesh. It provides a win-win situation for both parties and entails
fewer sufferings and costs. Usually, the process of a particular Shalish starts with interrogating the disputants to ascertain the facts. Then the Shalishkars (who do Shalish) offer their solutions and seek the opinions of disputants before coming to a final decision.  

As the shalishkars know the causes and factors of a dispute more or less, they try to settle the matter through somojuta (compromise) or bichar (arbitration). Somojuta (compromise of action) is more informal than bichar (adjudication). To settle a dispute through bichar (arbitration), they take evidence, ask the witnesses much, make arguments or they get involved in the debate. Finally, they reach a decision unanimously. Unlike bichar, after hearing from both applicant and defendant, the shalishkars sometimes make a compromise between the disputants for it is the best-fit solution to restore the relationship of the disputing parties. This is called somojuta, a win-win resolution of a dispute. Bichar is arbitration in English and tahkim in Arabic. Somojuta may be translated as mediation, conciliation with or without the help of a third party. In turn all these informal adjudication or conciliation are informal ADR or sulh. For the main objective of shalish is to restore the relationship, not to adjudicate.

Elements of Sulh

Sulh as a contract has certain essential elements that form a valid sulh agreement under Islamic law. The following are the essentials of sulh agreement:

a. Al-Mutakhasim
   i) Al-Musalahu`Alaihi, (one who makes a declaration of claim)
   ii) Al-Musalahu`Alaihi, (one against whom the claim is declared)

b. Al-Musalah `Anhu (Subject-matter in respect of which the claim is lodged)

c. Al-Musalah `Bihi/Badl al-Sulh (the object offered for the Sulh/Consideration)

d. Al-Ijab (offer)

e. Al-Qabul (acceptance)

a. Al-Mutakhasim (Al-Musala`e, Al-Musalah `Alaihi)

The disputants (Al-Mutakhasim) coming together to a contract to avert the dispute are called muta`aqidan, or musalih by the jurisprudents. “The two conflicting parties (al-Musalih) should be persons who possess the legal capacity to surrender their rights, donate or make a gift and not otherwise. In accordance with the principle, an insane, a minor, a guardian over orphan’s


property, an administrator over endowment funds (waqf), shall have no legal capacity to validly dispose under Islamic law47”.

b. Al- Musalahu`Anhu (Subject of Dispute)

“The subject matter of sulh should be valuable property (mal). The subject matter of sulh may emanate from dispute over anything lawful- be it dispute involving monetary claims, property, issues concerning marriage and divorce and lots of civil cases with the exclusion of Hudud cases48”.

c. Al-MusalahuBihi (Consideration)

“This is the object or thing tangible or otherwise upon which the parties to the sulh agree to be given as consideration in place of the right forgone by way of sulh. It must be Halal, valuable and beneficial49”.

d. & e. AL-Ijab and Al-Qabul (Offer and acceptance)

“Like any other contract under Islamic law, offer and acceptance are essential ingredients of sulh. The offer as well as the acceptance may be conveyed in any expression that clearly illustrates the mutual consensus of the parties50”.

ANALYSIS

It is observed from the discussion that the researchers are in a trend to show sulh in Islamic legal context as an inseparable and same part of judiciary and akin to ADR from their objective. Again, to discuss the processes, approaches or moods of Islamic sulh as ADR they mentioned the first one is sulh and then tahkim, muhtasib and other processes. A question may arise if sulh is same to ADR which is an umbrella term and sulh again is a process of that ADR that means there is an ADR under ADR or a smaller sulh under the main sulh. The answer is that the word sulh is used proportionately in the Islamic legal system. It means an agreement to avoid fighting between two independent states. For example, sulh-al-hudaibiyah averted the fighting between Madina and Makkah, the then two city-states. As far as Qada is concerned, it actually ends any conflict through formal court where win or loss is inevitable among the disputing parties; all informal processes to avoid litigation are sulh. So, outside the formal court, tahkim, med-arb, wali-al-mazalim, muhtasib are the process of sulh.

Fatwa had an important place associated with mufti both in formal and informal judicial system throughout the Muslim period in India both in Sultanat and Mugal period. In case of informal dispute resolutions by local notables, tahkim is more formal, and sulh is informal. Sulh in this stage includes sulh through negotiations, conciliation or mediation between the parties, by a neutral third party or not. Thus, sulh as a process includes negotiation, mediation and conciliation. As a system, it includes tahkim, wali-al-mazalim, muhtasib etc. additionally. So sulh

48 Ibid. p. 12
is a system to avoid political fighting. Likewise, it is a system to prevent judicial combat avoiding litigation through Qada (formal judiciary by state-appointed judges). It is attached to tahkim (informal judiciary). Ultimately, sulh considering similar to ADR, may include hiwar (dialog), mufawadah (negotiation), wasitah (mediation), shafa’ah (intercession) tanazul (compromise of action), mujadalah (Dialect), Munazarah (debate) as processes of sulh, avoiding repeated utterance of the word.

Sulh, an informal system of dispute resolution, is similar to present day Alternative Dispute Resolution (ADR). Mediation, negotiation, conciliation, compromise of action, arbitration, muhtasib, wali-al-mazalim etc. are its processes. Sulh is an agreement reached through the processes mentioned above. In any process of sulh, the consent of disputants plays an active role to get an outcome amicably or arbitrarily if necessary. On the other hand, in qada once a case is filed, the appointed judges play the main role to reach the outcome based on evidence arbitrarily, not amicably.

Dispute resolution is a legal and judicial issue. Dispute resolution in Islam is based on Islamic shari`ah and hence all sources of Islamic shari`ah are the sources of dispute resolution in Islam51. The following table presented the dispute resolution system as a whole where sulh is shown as an informal system considering with present context of ADR.

Dispute Resolution in Islam

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<th>Sources</th>
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The table in level 3 explains that there are two systems for dispute resolution namely Qada (formal judiciary) and sulh. In level 1, it explains that the sources for both systems are divided into two sources namely primary and secondary sources. Secondary sources again are of two types, main and additional. In level 2 it has been described that Fatwa of a mufti acts as a processor of shariah laws to make it applicable for present situation and helps judges to resolve the current disputes. Fatwa acts as a processing unit to adjust shariah (Quran, Sunnah, Ijma’, Qiyas and heritage of Islamic fiqh) with current situation to solve contemporary problems. Sulhandqadaare the main two systems for dispute resolution. Researchers are in a trend to see sulhequivalent to ADR, but to discuss the approaches (process) of sulhthey are not adjusting it with the process of ADR which has been displayed in level 4. In level 5, the study proposed to reshuffle the processes of sulh using the Quranic terms for it like hiwar and mujadalah, Shafa’ah (intercession) etc. keeping the processes of present day ADR in consideration.

4. RESULTS

Following the discussion mentioned above we may draw the summery saying that sulh is an inseparable part of a dispute resolution system in Islam. It goes hand in hand with Qada backed by state judiciary and tahkim (arbitration) backed by non-state authority. Sulhis an informal dispute resolution system in contrary to tahkim backed by non-state justice system. Likewise, it is an informal dispute resolution system compared to Qada (formal judiciary). All the processes that help to settle a dispute out of formal court or within the court avoiding strict judicial formalities are termed as a process of sulh. A distinct nature between Qada and tahkim is that state-appointed judges do the first one whereas in the later the disputants appoint the hakams from their own. Arbitration is a process of sulh, which may be proved by the ayah mentioned bellow:

“And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things]”52 (“Al Quran ”, An-Nisa 04:35).

“Fab’athu Hakaman” has been translated by Ali53,Pickthall54 as “appoint (two) arbiters”. This ayat provides a mixed mood of sulh combining with tahkim (mediation-arbitration/ med-arb). It demands an ending with sulh (amicable settlement).

Sulh is an informal system of dispute resolution, which is similar to present-day Alternative Dispute Resolution (ADR). Mediation, negotiation, conciliation, compromise of action, arbitration, muhtasib, wali-al-mazalim etc. are its processes. Sulh is an agreement reached through the methods mentioned above. In any process of sulh, disputants are central figures, and their consent to achieve an outcome amicably or arbitrarily is necessary. On the other hand, in Qadaa once a case is lodged, appointed judges play the leading role to reach the outcome based

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on evidence arbitrarily not amicably. Following the discussion, the study may be concluded saying that *sulhis* an inseparable part of dispute resolution used in pre-Islamic Arab and modified in Arab Islamic Culture following Islamic norms.

ADR and *Sulhare* theoretically and practically same but in some cases, scope of *sulhis* wider than the scope of ADR. *Sulhis* legalized both in civil and criminal cases by the holy Quran, Sunnah of the prophet, *ijma’a and qias*. To compare *sulh* with the modern ADR *sulh* got much importance by the researchers. However, an obscurity is observed for using the word *sulh* for the system and approach paradoxically. As there are many terms remaining even in the holy Quran to present the several ways of *sulh*, paradoxical use of the word should be avoided. It needs more studies only to discuss *sulh* as an umbrella term equal to modern ADR rigorously. Keeping *sulhas* a system for dispute resolution, it is an alternative option of *Qada*, which is formal judiciary. The main character of *sulhis* its flexibility. It includes all the processes like negotiation (*mufawadat*) dialogue (*hiwar*), mediation (*wasitah*), compromise of action (*tanazul*), Arbitration (*tahkim*), public grievance officer (*wali-al-mazalim*), ombudsmen (*muhtasib*) and other processes. It excludes *Qada* only, for *Qada* is formal judiciary by appointed judges. *Sulh* has no access to do all types of adjudication, whereas the formal judiciary is duty-bound to administer all kinds of disputes.

**RUJUKAN (REFERENCES)**

[1] Al-Quranul Karim


