

The Legal Admissibility of Online Family Dispute Resolution in Pakistan

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Abstract

This paper evaluates the legal admissibility and practical application of Online Family Dispute Resolution ('OFDR') in the Pakistani context with a particular focus on Islamic jurisprudence. The advent of technology has made Online Dispute Resolution ('ODR') extremely relevant in the world as a cost-effective and efficient alternative to traditional legal dispute mechanisms, which bridges barriers between disputing parties. OFDR, as a subset of ODR, offers an efficient alternative to traditional family dispute resolution in courts by incorporating Islamic principles such as the idea of *Sulh* (reconciliation) and *Tahkim* (arbitration) in the legal system with the help of technology. In doing so, it reduces the propensity for long, drawn-out family disputes for speedy resolution. Thus, this paper makes a case for the adoption of OFDR in Pakistan while evaluating Islamic principles of mediation, arbitration, and negotiation as well as global practices in other jurisdictions such as Australia, the United Kingdom, Bangladesh, and others.

Introduction

The family is universally defined as a social institution composed of individuals directly linked by kinship, where adult members assume responsibility of raising children.¹ Family serves as the centre of society and functions as the primary institution for the socialization of norms, values, and beliefs.² The lack of speedy and peaceful resolution of family disputes can foster resentment and ill will within

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¹ Admin, 'Problems in Families, Sample of Essays' (*EduCheer!*, 7 February 2013) <<https://educheer.com/essays/problems-in-families/>> accessed 11 August 2024.

² Akhmedov B.T. 'The Family As The Basic Unit of Society' (2021) 8(12) IJMMU 201.

this foundational institution.³ For this reason, effective mechanisms for resolving family disputes are essential to social stability.

Modern law and Islamic legal theory offer a range of mechanisms to resolve disputes. One such method is the use of informal dispute resolution of family conflicts which includes analysing the problems between the parties amicably. During such informal dispute resolution, the disputing parties aim to resolve the conflict rather than win the argument.⁴ This approach in resolving family disputes often keeps the door open for reconciliation between both parties. If the dispute is not resolved through informal modes of dispute resolution, the parties still have formal options for the resolution of conflict such as litigation.⁵

Informal dispute resolution finds support in numerous Islamic traditions including the *Ahadith* (sayings) of Prophet Muhammad (P.B.U.H.). One such saying narrated by Ibn Abbas is as follows: ‘He who makes peace (*Sulh*) between the people by inventing good information or saying good things is not a liar.’⁶ Another saying, as narrated by Anas Ibn Malik, is ‘[a]ll types of compromise and conciliation amongst Muslims are permissible, except those which may harm anything *halal* and a *halal* as *haram*.’⁷ Thus, Prophetic sayings indicate that Islam stresses the importance of informal dispute resolution mechanisms to facilitate reconciliation between conflicting parties. The teachings of Islam appreciate love, affection, and harmony within family relationships and across the social system to avoid quarrels and conflicts.⁸ Islam commands Muslims to resolve family disputes through the involvement of family members.⁹ Therefore, the primary purpose of Islamic law is to resolve disputes of all kinds harmoniously and cordially.¹⁰

³ Thomas Killian, Harvey C. Peters, and Lainey J Brottem, ‘Religious and Spiritual Values Conflicts in Queer Partnerships: Implications for Couples and Family Counselors’ (2019) 27 FJ 250.

⁴ Arshad Muradin, ‘Religious Authority and Family Dispute Resolution among Moroccan Muslims in the Netherlands’ (2022) JME 1.

⁵ George E. Irani, ‘Islamic Mediation Techniques for Middle East Conflicts’ (ciaotest.cc.columbia.edu, June 1999) <https://ciaotest.cc.columbia.edu/olj/meria/meria99_irg01.html> accessed 11 August 2024.

⁶ Muhammad Al-Bukhari, *Sahih Bukhari*, Book. 73, Hadith No. 83.

⁷ Ibn Majah, *Sunan Ibn Mājah*, Book 20, Hadith No. 2535.

⁸ Hamad al-Humaidhi, ‘*Ṣulḥ*: Arbitration in the Arab–Islamic World’ (2015) 29 ALQ 92.

⁹ Md Zahidul Islam, ‘Provision of Alternative Dispute Resolution Process in Islam’ (2012) 6 IOSR-JBM 31.

¹⁰ Aida Othman, “‘And Amicable Settlement Is Best’: *Sulh* and Dispute Resolution in Islamic Law’ (2007) 21 ALQ 64.

Additionally, Alternative Dispute Resolution ('ADR') is the more efficient method of dispute resolution globally in contrast to the judicial system due to its streamlined procedure and shorter timelines. The applications of ADR, mediation, and arbitration engage an independent third party to resolve the dispute.¹¹ Nowadays, ADR has been transformed into ODR. This involves using virtual techniques by third parties to reach an amicable solution instead of face-to-face interaction. The participants of ODR are free to choose any appropriate tool for virtual interaction, including popular virtual meeting platforms like Zoom, Webex, or Google Meet.¹²

The concept of invoking internet-based mediation and arbitration for equitable dispute resolution between the spouses for an eventual cordial agreement is known as OFDR.¹³ For now, the global breakthrough in dispute resolution applications is through technological advancement. The prevailing system avoids face-to-face interaction between the disputants, mediators, or arbitrators while resolving family disputes. Many countries, such as Australia, New Zealand, and Morocco, are equipped with various technological tools for resolving disputes virtually due to the constraints of long distances.¹⁴

As a result, in the current context, OFDR is an appropriate, flexible, and convenient method of family dispute resolution.¹⁵ This paper outlines the role of OFDR and its online forms in other jurisdictions, its relevance to Islam, and its possible application to Pakistan.

Definition of ADR

ADR serves as a new alternate mode of dispute resolution outside the formal judicial system involving mediation, arbitration, conciliation, or negotiation. While there are some ADR mechanisms that are attached to court proceedings such as

¹¹ Ibid 93.

¹² Ibid 93.

¹³ James C. Melamed, 'Establishing Ethical Standards for Online Family Mediation' (2021) 59 FCR 244.

¹⁴ Ibid 245.

¹⁵ Margaret M. Huck, 'The Value of Online Dispute Resolution in Family Law' (2020) 6 IJODR 52.

court-annexed arbitration, others are independent from the government and formal oversight.¹⁶ Since its inception, ADR has gained much popular support as a less expensive and less time-consuming endeavour that leads to amicable solutions amongst disputing parties.

According to the International Chamber of Commerce, arbitration, one form of ADR, has increased in a number of different countries including Central and Eastern Europe, North America, and Middle East.¹⁷ While these arbitral awards concern disputes in commercial transactions especially in international contracts, they point to a larger move towards out-of-court judicial mechanisms globally. The success of ADR mechanisms worldwide depicts the ease of accessibility and efficiency that they create.

Introduction to Family Dispute Resolution

Family Dispute Resolution ('FDR') is a procedure for resolving disputes between the parties belonging to a family institution. A neutral person/mediator can facilitate the parties towards an amicable dispute settlement.¹⁸ FDR aims to provide cheap, quick, and amicable settlements to the disputed partners in an informal and pleasant environment.¹⁹

Section 10(3) of the Family Courts Act, 1964 ('1964 Act') requires conflicting parties to undergo FDR proceedings before initiating court proceedings.²⁰ To simplify, parties who wish to approach the court to resolve their

¹⁶ Harry T. Edwards, 'Alternative Dispute Resolution: Panacea or Anathema?' (1986) 99 (3) HLR 668–84.

¹⁷ 'ICC Releases Preliminary 2023 Arbitration and ADR Statistics - ICC - International Chamber of Commerce' (ICC, 26 June 2024) <https://iccwbo.org/news-publications/news/icc-releases-preliminary-2023-arbitration-and-adr-statistics/?utm_source=chatgpt.com> accessed 6 February 2025.

¹⁸ Susan M. Armstrong, 'Encouraging Conversations about Culture: Supporting Culturally Responsive Family Dispute Resolution' (2011) 17 JFS 233.

¹⁹ Family Relationships Online, 'Family Mediation and Dispute Resolution | Family Relationships Online' (*Familyrelationships.gov.au*, 2019) <<https://www.familyrelationships.gov.au/separation/family-mediation-dispute-resolution>> accessed 11 August 2024.

²⁰ Aamir Latif Bhatti, 'Role of Arbitration Councils and Mediation in Family Disputes' (*Courting The Law*, 31 July 2023) <<https://courtingthelaw.com/2022/12/19/faqs/role-of-arbitration-councils-and-mediation-in-family-disputes/>> accessed 23 May 2025.

family disputes must attend family dispute resolution/mediation sessions. During those sessions, the mediator sincerely tries to resolve their conflicts and restrains them from approaching the judicial system.²¹ Notably, the matters related to domestic violence and child abuse do not fall under the domain of FDR and mediation centres.²² FDR is facilitated by a neutral and independent third party, a mediator/arbitrator, who resolves the dispute between the conflicting parties.²³ The person appointed as the neutral arbitrator should qualify as an arbitrator as per ADR Laws, which, in Pakistan, include the qualification of a neutral arbitrator, as defined under Section 4 of the 2017 Act.²⁴ In the event of arbitration, the agreement made after the proceedings of FDR is legally binding, and its violation constitutes a breach of contract.²⁵

Online arbitration is the transformation of traditional arbitration into virtual reality. During online arbitration and mediation, communication, interactions, and documentary evidence are based on electronic means.²⁶ The service provider, who hosts and runs the ODR forum, must cope with sophisticated infrastructure efficiently to offer online mediation and arbitration processes in the true spirit. In developed countries, OFDR centres and family mediators are available with the equipped infrastructure of Web, WhatsApp, Skype, Zoom, or WebEx video and audio conferencing to assist the parties to a dispute. Therefore, family disputes are no longer confined to courts involving face-to-face interactions only.²⁷ These are of greater significance when it is difficult or impossible to get the parties together into face-to-face interaction or when both parties are residing in different jurisdictions.²⁸ Family arbitrators can also provide the disputants with an online pre-negotiation session to collect the required information and to ascertain the issues that require redressal. This exercise will help to inform and prepare

²¹ Ibid 123.

²² Helen Rhoades, 'Mandatory Mediation of Family Disputes: Reflections from Australia' (2010) 32 JSWFL 183.

²³ Ibid.

²⁴ Ibid.

²⁵ Carlo Vittorio Giabardo, 'American Legal Realism in Dispute Resolution: Alternative Dispute Resolution as a "Realist" Project' (2020) SSRN-EJ 63.

²⁶ Ibid.

²⁷ Michael J. Dennis, 'APEC Online Dispute Resolution Framework' (2019) 6(2) IJODR 138–43.

²⁸ Ibid.

disputants for their first joint session with the mediator. It can save time and help disputants engender reasonable expectations related to the process and outcome.²⁹

In conclusion, whether pursued online or in person, FDR provides a suitable platform for the resolution of disputes between two conflicting parties. The advent of technology provides ease in the way in which FDR is administered. The next section explores the importance of OFDR, keeping in mind the outlined statutory framework and procedural mechanism.

Significance of OFDR

OFDR has three distinguished models. It is facilitative, evaluative, and transformative since it involves settlement through mediation.³⁰ These models can be further divided into two tools: facilitative and advisory mediative.³¹ Notwithstanding the notable acceptance and expansion of OFDR, its growth in developing countries is challenging. OFDR is based on the amicable principle of settlement through Information and Communication Technology ('ICT'). Modern tools of ODR can resolve arguments and issues efficiently and positively because it is wrapped up in a quick, cheap, and expedient online process. When it comes to the actual process of family dispute resolution, in the offline FDR, participants may only end up dealing with the symptoms of the problem because emotional issues may make the parties avoid face-to-face interaction.³² Therefore, in this era of ICT, OFDR is the best mode of resolving family disputes amicably, and it is also essential for dispute resolution in the long-term efficacy of relationships.³³

²⁹ Giselle Beran Medella D'Almeida, "'Digital Family Justice - from Alternative Dispute Resolution to Online Dispute Resolution?'" (2021) 43(2) JSWFL 231–33.

³⁰ Zena Zumeta, 'Styles of Mediation: Facilitative, Evaluative, and Transformative Mediation' (*Mediate.com*, 27 February 2018) <<https://mediate.com/styles-of-mediation-facilitative-evaluative-and-transformative-mediation/>>.

³¹ *Ibid.*

³² Melamed (n 13).

³³ Melamed (n 13).

Application of Family Dispute Resolution in Other Jurisdictions

I. Australia

ADR gained traction in Australian Family Law post-1970s as a means of conflict mediation for family disputes. The subsequent reforms in the 2006 Australian Family Law Act introduced mediation as a prerequisite for parenting orders. This mandatory requirement ensured mediation was part of the FDR process to facilitate reconciliation between the parties. Additionally, the establishment of 65 Family Relationship Centres ('FRCs') across Australia provided subsidized mediation services, information, and advice to help families transition to alternative family arrangements.³⁴ The significance of FDR, coupled with the increased access to technology, has assisted in the use of OFDR in Australia to help solve geographical constraints and increased costs of physical dispute resolution arrangements. Recently, the use of Artificial Intelligence ('AI') in OFDR has also been evaluated to help inculcate AI in negotiation processes and research for the speedy resolution of complex family disputes.³⁵

Additionally, the COVID-19 pandemic further facilitated the transition towards OFDR as a legitimate medium of dispute resolution. The growth of video conferencing and the increased use of Online Applications/Programs provided a web-based/mobile-based solution to legal disputes. The free-flow of communication led to streamlined resolution of conflicts.³⁶ Cumulatively, the increased role of tech-based solutions for legal problems in Australia has, in turn, increased the role of OFDR as a legitimate medium of resolving family disputes.

II. United Kingdom

FDR is legally mandated under Section 10 of the Children and Families Act, 2014 in the United Kingdom. This Act mandates a Mediation Information and Assessment Meeting ('MIAM') before the initiation of a formal suit to provide

³⁴ Elisabeth Wilson-Evered and John Zeleznikow, 'The Evolution of Family Dispute Resolution and the Need for Online Family Dispute Resolution in Australia' (2021) 45 OFDR 1–16.

³⁵ Melissa Conley Tyler and Mark McPherson, 'Covid-19, Technology and Family Dispute Resolution' (2020) ADJR.

³⁶ Ibid.

information about mediation as an alternative to the court for dispute resolution. Additionally, it forces disputing parties to contemplate key issues, including arrangements for the children, sharing finances, and dealing with debts. This is a mandatory requirement before approaching the court, except in special circumstances such as domestic abuse.

The Family Mediation Council ('FMC') provides access to trained mediators to facilitate the MIAM procedure. The advanced search engine enables conflicting parties to search for mediators closest to them based on their postal codes. The website accounts for online mediation options as well to improve accessibility to parties. This MIAM signals the start of a confidential and comprehensive mediation process.³⁷ Cumulatively, ODR and OFDR mechanisms play a substantial role in increasing access to justice for litigants.

III. India

Lok Adalats (People's Courts) under the Legal Services Authorities Act, 1987 are an efficient mechanism for ADR in India. These People's Courts serve as mediation forums, settling disputes pending in courts or at the pre-litigation stage through conciliation and compromise. They address matrimonial disputes, property issues, land acquisitions, motor vehicle claims, and compoundable criminal cases. These courts have facilitated the growing relevance of ADR in India.³⁸

More so, the eCourts Mission Mode Project of 2007 in India served to inculcate online dispute resolution tools in mediating legal disputes. This project introduced video conferencing, e-filing, e-payment gateways and mobile applications to increase accessibility to litigants and lawyers. Apart from the large-scale effort to digitise records and introduce new tech-based solutions in the Indian legal system, such a project further strengthens the use of alternative legal dispute resolution mechanisms such as OFDR. While there are no specific OFDR mechanisms in India, the growing influence of different platforms for ADR and

³⁷ 'What Is a Miam?' (*Family Mediation Council*, 17 January 2021) <<https://www.familymediationcouncil.org.uk/family-mediation/assessment-meeting-miam/>> accessed 25 May 2025.

³⁸ Smartaz Majumder, 'A Critical Analysis on Lok-Adalat in Indian Legal System' (2024) 5 IJRPR 1913.

subsequently ODR depict a renewed commitment to the inclusion of online mediation to resolve civil disputes.

Applicability in Pakistan

The continued advancement in technology has only increased the relevance of OFDR. While the success of OFDR in different jurisdictions is laudable, its integration in Pakistan requires careful consideration of its admissibility with Islamic family law. The effectiveness of OFDR is contingent on its alignment with cultural and religious values cohesively. For this reason, it is important to evaluate the permissibility of OFDR in Islam and its applicability in Pakistan.

I. Sources of Islam

Islam means ‘peace’, i.e., the inverse of hostility. Thus, peaceful resolution of disputes lies at the heart of Islamic ideology. Under Islamic legal tradition, *qadi* and Arbitrators can play a crucial role in dispute resolution because Islam promotes justice and encourages reconciliation amongst the disputants.³⁹

Within the larger theoretical framework of dispute resolution in Islamic Law, the sources of Islamic law are derived from the teachings of the Holy Quran and practices of Prophet Muhammad (P.B.U.H.).⁴⁰ These sources are primarily divided into two classifications: primary (commands obtained from the Holy Quran and *Sunnah*) and secondary sources, including juristic commands derived from the injunctions of Islam, which provide a base for the achievement of objectives of *Shari’ah* (*Maqasid ul Shari’ah*).⁴¹ As per the divine commands in the verse of the Holy Quran.

وَأِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا. ٣٥

³⁹ Amyr B Sajoo, ‘Islam, the Shari’a and Alternative Dispute Resolution: Mechanisms for Legal Redress in the Muslim Community by Mohamed M Keshavjee’ (2014) 69 IJ-CJGPA 264.

⁴⁰ Imran Ahsan Khan Nyazee, *Outlines of Islamic Jurisprudence* (Advanced Legal Studies Institute 2005) 263.

⁴¹ Munir Ahmad Mughal, *Islamic Legal Maxims* (Createspace Independent Publishing Platform 2017).

If you anticipate a split between them, appoint a mediator from his family and another from hers. If they desire reconciliation, Allah will restore harmony between them. Surely Allah is All-Knowing, All-Aware.⁴²

The aforementioned divine command of the Holy Quran is similar to one of the sayings of Prophet Muhammad (P.B.U.H.): '[w]hoever judges between two disputing parties and both of them agree with (the arbitrator) whereas he does not do justice between them, Allah will curse him.'⁴³ It declares that the believers are tied through a string of brotherhood and guides them to peace and prosperity through principles of fairness and justice.⁴⁴ The Holy Quran and *Sunnah* depict that Islamic injunctions aim to resolve disputes amicably.

Apart from the Holy Quran and *Sunnah*, other sources of Islamic Law also allow amicable dispute resolution. The third source of Islam is *Ijma*. The divine authority of this source of Islamic Law is illustrated through Prophet Muhammad's (P.B.U.H.) saying, narrated by Ibn Masud: '[t]he Muslim community would never agree upon an error.'⁴⁵ This *Hadith* is the reasoning for consensus on *Ijma* as the third source of Islamic law because it will create cohesion between the Muslim community and moral determination of conduct.⁴⁶

The fourth source of Islamic law is *Qias*, wherein the primary sources, the Holy Quran and *Sunnah*, are relied upon to find answers through a juristic approach. This endeavour attempts to fill the gaps in understanding divine law. In addition to these four sources, the fifth source is customs/social norms known as *Urf* in Islamic Law, and the last source is individual legal reasoning or *Ijtihad* (*Mufti* or *Mujtahid*), which must comply with or be based on the other four sources of Islamic Law.⁴⁷

⁴² *Qur'an* 4:35.

⁴³ Ibn Majah (n 7) Hadith No. 2251.

⁴⁴ M. Ali Sadiqi, 'Bismillah Ar-Rahman Ar-Rahim Islamic Dispute Resolution in the Shade of the American Court House' (*amjaonline.org*, October 2010) <<https://www.amjaonline.org/wp-content/uploads/2019/04/2010-7-dispute.pdf>> accessed 11 August 2024.

⁴⁵ Ibn Majah, *Sunan Ibn Mājah*, Book 36, Hadith No. 3950.

⁴⁶ Hisham Hanapi, Mohd Amsyar, and Mohd Arif, 'Alternative Dispute Resolution in Islamic Law: Analysis on the Practice of Sulh' (2018) 6 IJSSHR 326.

⁴⁷ Vandana Singh, 'Alternative Dispute Resolution in Islam: An Analysis' (2017) 1 ILI-LR 137–146.

Cumulatively, these different sources of law provide a myriad of analytical tools with which to approach modern problems in light of divine commandments. The result is an ever-evolving and dynamic application of Islamic law in keeping with the recent global technological developments. The different sources maintain the hierarchy within Islamic Law by relegating the Holy Quran and *Sunnah* as the primary source of Islamic teachings; however, they leave room for the application of *Ijtihad* (individual legal reasoning) and *Ijma* (consensus) in the community.

II. Dispute Resolution in Islam

The family institution is significant in a Muslim society and emerges from a marriage contract. Therefore, the teachings of Islam encourage amicable settlement between the disputants. A husband and wife should resolve their disputes with the help of their family members and relatives. Islam appreciates the involvement of representatives from both sides of disputed spouses to protect their rights and safeguard matrimonial ties.

Islamic approaches to family dispute resolution are based on fundamental principles of social justice derived from religious values. Islamic religious texts offer a significant wealth of constructive solutions to disputes. To understand the Islamic theory of FDR, we need to understand some essential terms of Islamic Jurisprudence. The term *Sulh*⁴⁸ means peace-making or reconciliation and dates to the time before Islam, when Arabs used them to resolve tribal disputes. Prophet Muhammad (P.B.U.H.) adopted and employed the *Sulh* technique in dispute resolution in the Treaty of *Hudaybiya* indicating his preference for reconciliation over adjudication.⁴⁹

The foremost concept in the dispute resolution mechanism in Islam is the idea of *Qada*, which has received much attention in Islamic scholarship who use both *Sulh* and *Tahkim* in court. This aligns with the extensive literature written over centuries by Muslim jurists regarding the characteristics and duties of the *qadi* and

⁴⁸ Saidilyos Khakimov, 'Arbitration (*Tahkim*) And Reconciliation (*Sulh*) in Islam as Alternative Dispute Resolution Mechanisms' (2020) 6 TLI 31, 33. *Sulh*, or conciliation and peacemaking, is a practice that predates Islam.

⁴⁹ Siraj Islam Mufti, 'Peacebuilding and Conflict Resolution in Islam - IslamiCity' (*Islamicity.org*, 16 November 2014) <<https://www.islamicity.org/6351/peacebuilding-and-conflict-resolution-in-islam/>> accessed 11 August 2024.

his court in the Islamic legal system.⁵⁰ A *qadi*'s position carried considerable political and social prestige, and he was given a legal education appropriate to the role of the final arbiter of disputes and interpreter of divine will. This is a more significant means of resolving disputes in Islamic Law, but the focus on the judge and adjudication has obscured it.⁵¹ *Sulh* is a peaceful resolution, and it is considered by some jurists to be the most morally and religiously appropriate course of action for parties involved in family disputes.⁵²

III. The Concept of *Sulh* in Islam

The teachings of Islam and its permitted methods for family dispute resolution introduced the practice of *Sulh* (mediation) in Islamic law.⁵³ A verse of the Quran elaborates:

إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ فَأَصْلِحُوا بَيْنَ أَخَوَيْكُمْ ۚ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُرْحَمُونَ ١٠

All believers are but brothers; therefore, seek reconciliation between your two brothers and fear Allah so that you may be blessed with mercy.⁵⁴

Sulh is a settlement grounded upon compromise where the conflicting parties negotiate themselves or through the help of a third party.⁵⁵ Quranic verses praise the role of the mediator, assumed during conflict resolution proceedings. *Sulh* is the best and most accurate of all illustrations of conflict resolution, even for the disputes generated out of heinous offences.⁵⁶ Prophet Muhammad's (P.B.U.H.) statement on this subject is essential to be understood:

Should I inform you of something higher in virtue than fasting, praying, and charity?' They said, 'Yes, O Messenger of Allah Almighty.' Then the Holy

⁵⁰ Steven Judd, 'The Jurisdictional Limits of Qāḍī Courts during the Umayyad Period' (2015) 63 Bulletin d'études orientales 43–56.

⁵¹ Ibid.

⁵² Justin Jones, 'Muslim Alternative Dispute Resolution: Tracing the Pathways of Islamic Legal Practice between South Asia and Contemporary Britain' (2020) 40 JMMA 48.

⁵³ Mohammad Nor Anwar Mohd Sabri and Nor 'Adha Ab Hamid, 'Sulh and Peace: Its Application according to Islamic Perspective' (2021) 6 IJLGC 76.

⁵⁴ *Qur'an* (n 42) 49:10.

⁵⁵ Othman (n 10).

⁵⁶ Ibid.

Prophet (S.A.W.) said to make reconciliation between people that conflict: ‘enmity and malice tear up heavenly rewards by the roots.’⁵⁷

Sulh tends to resolve family disputes in the same way as mediation, which is about property, civil, criminal, and other social disputes. Significantly, *Sulh* is applicable when the conflict arises during the continuance of marriage or even after its dissolution.⁵⁸ The concept of *Sulh* (reconciliation) and justice has been further elaborated in the *Hadith* of Prophet Muhammad (P.B.U.H.), whose life is a complete code for the guidance of humanity. In a *Hadith* narrated by Kathir bin Abd Allah bin Amru bin Auf al Muazni, it is stated that Prophet Muhammad (P.B.U.H.) said: ‘*Sulh* is permissible amongst the Muslims except for the one which makes the unlawful as lawful and which makes the lawful as unlawful. Their promises bind Muslims except for promises that permit the unlawful as lawful.’⁵⁹ On another occasion, Prophet Muhammad (P.B.U.H.) said, ‘He who makes peace between the people by inventing good information or saying good things is not a liar.’⁶⁰

The following verse of the Quran highlights the amicable settlement of disputes on equitable terms and conditions:

لَا خَيْرَ فِي كَثِيرٍ مِّنْ نُّجْوَاهُمْ إِلَّا مَنْ أَمَرَ بِصَدَقَةٍ أَوْ مَعْرُوفٍ أَوْ إِصْلَاحٍ بَيْنَ النَّاسِ ۚ وَمَن يَفْعَلْ ذَلِكَ
أَبْتِغَاءَ مَرْضَاتِ اللَّهِ فَسَوْفَ نُؤْتِيهِ أَجْرًا عَظِيمًا

There is no good in most of their whisperings unless one bid charity or appropriate action or reconciliation between people. The one who does this, to seek Allah’s pleasure, we shall give him a great reward.⁶¹

The companions of Prophet Muhammad (P.B.U.H.) preferred *Sulh* in dispensing justice. A letter was written by Umar bin Khattab to Abu Musa al-Asharion, putting forth the principles of *Sulh* to be considered during judicial

⁵⁷ Muḥammad Ibn ‘Isā Tirmidhī, *Sunan al-Tirmidhī*, محمد بن عيسى، ترمذی، *English Translation of Jāmi‘ At-Tirmidhī = Jāmi‘ Al-Tirmidhī* (Riyadh: Darussalam 2007) Hadith No. 2509.

⁵⁸ Ibid 32.

⁵⁹ Ibn Mājah (n 7) Hadith No. 2353.

⁶⁰ Al-Bukhari (n 6) 870.

⁶¹ *Qur’an* (n 42) 4:128.

proceedings: '[a]ll types of compromise and conciliation are permissible except those which makes *haram* anything *halal* and *halal* as *haram*.'⁶²

The fact is that *Sulh* is a legal tool meant for private conciliation between spouses, whereas litigation is rarely acknowledged in private matters of Islamic Law.⁷⁷ Moreover, a *qadi* may also use it as a procedural tool in his courtroom because judges can send parties in dispute to *Sulh* (mediation) before or at any point during the trial process.⁶³

IV. The Concept of *Tahkim* in Islam

The practice of *Tahkim* (Arbitration) in Islamic law is based on the teachings of Islam and its permitted methods for family dispute resolution.⁶⁴

وَأِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلَحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَىٰ فَفْتَلُوا إِلَيْنَا
تَبْغِي حَتَّىٰ تَفِيءَ إِلَيْنَا أَمْرٌ بِالْعَدْلِ وَالْأَفْطُورُ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

If two groups of believers fight each other, seek reconciliation between them. And if one of them commits aggression, it comes back to Allah's command. So, if it comes back, seek reconciliation between them with fairness and maintain justice. Surely, Allah loves those who maintain justice.⁶⁵

In the verses mentioned above of the Quran, for *Sulh* and *Tahkim*, the most significant aspect is that in *Sulh*, an amicable settlement may be reached between the parties with or without the involvement of a third party, unlike *Tahkim*, where the engagement of a third party is indispensable.⁶⁶

As mentioned before, Quranic verses emphasise the amicable settlement of family disputes between the spouses on equitable terms and conditions:

⁶² Al-Bukhari (n 6) 874.

⁶³ Othman (n 10).

⁶⁴ Muhammad Babagana and Bello Tukur, 'Peace and Conflict Resolution in Islam an Instrument for Sustainable Peaceful Coexistence in Nigeria' (2020) 4(9) IJRISS 454–458.

⁶⁵ *Qur'an* (n 42) 49:9.

⁶⁶ Md. Shahadat Hossain, 'Arbitration in Islamic Law for the Treatment of Civil and Criminal Cases: An Analytical Overview' (2013) 1 JPCR 1.

وَإِنْ أَمْرًا خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ وَأُحْضِرَتِ الْأَنْفُسُ الشُّحَّ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

If a woman fears ill-treatment or aversion from her husband, then there is no sin on them in entering a compromise between them. Compromise is better. Avarice is made to be present in human souls. If you do good and fear Allah, Allah is All-Aware of what you do.⁶⁷

This verse clarifies that if a disagreement arises between spouses, *Tahkim* (arbitration) may preferably be applied for amicable settlement of disputes based on the injunctions of Islam. It is recognised that dispute resolution based on *Tahkim* establishes a productive relationship for the future and creates a sense of respect for each other, even in the case of dissolution of marriage, where the spouses discontinue to live together.⁶⁸

V. Validity of ODR in Islam

The teachings of Islam require us to negotiate our conflicts and encourage amicable settlements to preserve human relationships. However, it is also acknowledged that family dispute resolution establishes long-term relationships for spouses through *Sulh* and *Tahkim*. In the case of the dissolution of marriage, an amicable settlement lets the separating parties end their ties with kind words and consideration.⁶⁹

Muslims use religious principles, customary reconciliation rituals, and intercommunal behaviours to resolve family disputes. In resolving conflicts, it is crucial to consider contextual factors like culture, ethnicity, and history that influence sources, parties, attitudes, and behaviours in different Islamic societies.⁷⁰ Islamic legal approaches to resolving disputes may differ from culture to culture. However, adhering to the Holy Quran and the teachings of Prophet Muhammad (P.B.U.H.) is a fundamental component of Islamic legal discourse. To reach a peaceful and mutually agreeable resolution in family disputes, arbitrators must be

⁶⁷ *Qur'an* (n 42) 4:128.

⁶⁸ Islam (n 9).

⁶⁹ Ibid 44.

⁷⁰ Hanafi (n 46).

appointed to represent both the husband and the wife.⁷¹ The theory of family dispute resolution is based on verse 35 of Surah Al-Nisa of the Holy Quran.

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا. ٣٥

If you anticipate a split between them, appoint a mediator from his family and another from hers. If they desire reconciliation, Allah will restore harmony between them. Surely Allah is All-Knowing, All-Aware.⁷²

The Islamic perspective emphasizes human effort and divine purpose in the approach to family dispute resolution, which is based on human self-determination.⁷³ In this sense, researchers contend that morality serves as the foundation for *Shariah* law, but ultimately, the goal of Islamic Law is to find the truth and administer justice.⁷⁴

To discuss it juristically in the theoretical framework of FDR, the *Hanafi* School of Law (named after the founder, Imam Abu Hanifah al-Nu'man b. Thabit, 80-148 A.H.) and *Ash-Shafi'i* School of Law (named after the founder, Imam Muhammad bin Idris al Shafi'i, 150-206 A.H.) maintain that arbitrators lack the authority to render a binding decision, and the above-cited verse 35 of *Sura Al-Nisa* of the Quran also does not specify the arbitrators' verdict's binding nature. Their only option is to suggest a solution to the disputant spouses, who can accept or reject it.⁷⁵ However, in the event of a divorce, the decision will be legally binding if both the husband and the wife have designated the arbitrators to act on their behalf. However, some academics contend that arbitrators have complete authority over marriage and reconciliation.⁷⁶

Islamic family dispute resolution also makes use of the communication skills that have long been valued in Islamic Law, such as *Tahkim* (arbitration), *Sulh*

⁷¹ Ibid.

⁷² *Qur'an* (n 42) 4:35.

⁷³ Mufti (n 49).

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

(mediation), and *Musalaha* (reconciliation).⁷⁷ This indicates that there are a lot of disagreements amongst Muslims in informal family conciliation, where older family members or relatives mediate disputes. To facilitate communication and restore harmony within the family, the idea of mediation and third-party intervention to resolve conflicts using fairness and justice as the primary values of intervention has been put forth.⁷⁸ Thus, it can be said that the process of resolving family conflicts in Islam starts, in general, with the analysis of the conflict, the choice of the intervention strategy, and the agreement reached at the end, where all parties agree on essential matters, such as how to guarantee the agreement's implementation.

In this context, we propose that an Islamic model of intervention should be based on three principles: bringing Islam's teachings of justice, freedom, and equality back to the forefront; involving the family members and relatives in the intervention and resolution processes; and modifying intervention tactics based on the nature and phases of the conflict.⁷⁹ Therefore, Islamic Law appreciates the principles of *Sulh* and *Tahkim* that have remained enshrined in the methods of ADR in family matters for the last 1400 years. This form of Islamic ADR is endorsed and approved by many sources of Islamic Law; however, if *Sulh* and *Tahkim* remain ineffective, then the parties may approach the traditional court of a *qadi*.

OFDR in Islamic Jurisdictions: A Case Study of Bangladesh

ADR as a method has been a common tool for resolving family disputes in other Muslim-majority jurisdictions, including Bangladesh, primarily through informal dispute settlement processes such as a *Panchayat*.⁸⁰ Over time, formal ADR mechanisms were incorporated, beginning with the Muslim Family Laws Ordinance ('MFLO') of 1961 and later with the Family Courts Ordinance ('FCO') of 1985 (recently repealed by the Family Courts Act, 2023), which emphasizes pre-

⁷⁷ Mohamed M. Keshavjee, *Islam, Sharia and Alternative Dispute Resolution* (Bloomsbury Publishing 2013).

⁷⁸ Ibid.

⁷⁹ Othman (n 10).

⁸⁰ Jamila Ahmed Chowdhury, 'Legitimacy of Mediator's Powers and Techniques of Intervention in Family Mediation: An analysis on Riskin's Grid on Mediation' (2010) The Dhaka University Studies 77–100.

trial, pre-judgement, and post-judgement conciliation.⁸¹ ADR processes such as mediation and arbitration offer faster, less expensive, and less adversarial alternatives to court trials, particularly for sensitive family matters like marriage dissolution, dower claims, and child custody.

The suitability of ADR in family matters is supported by its ability to address the unique and sensitive nature of such disputes, which often require specialized processes beyond formal litigation. ADR is particularly beneficial in Bangladesh's conservative context, where it allows women to participate directly in resolving disputes while avoiding the stigma and public exposure associated with court proceedings. This approach promotes their involvement in settling matters without fear of societal judgement.

However, critics have observed that despite its potential, ADR in family courts faces significant obstacles. Judges and lawyers often lack the necessary training and commitment to facilitate ADR effectively. Political interference, lack of public awareness, and inadequate resources further impede its success. Women, who are the primary beneficiaries of ADR in family disputes, frequently face social and economic disadvantages that undermine their ability to approach the mediation councils.⁸²

Therefore, the online equivalent of ADR, i.e., ODR, is suggested as a method that can help overcome the limitations associated with traditional ADR, as it delivers solutions in a swift, efficient, and cost-effective manner. While the usage of ODR for family matters in Bangladesh is still fairly limited, and there is no firm legislative foothold as yet, a number of positive indicators suggest that Bangladesh is paving the way for ODR, and other countries can follow.⁸³

⁸¹ Family Courts Act 2023, s 11, 14, and 15.

⁸² Md. Sefat Ullah, 'Application of ADR in Family Courts: A Critical Analysis under Legal Framework and Practice in Bangladesh' (2018) 4(1) GURSS.

⁸³ Md Nayem Alimul Hyder and Jenath Chowdhury, 'Scope of Online Dispute Resolution in Bangladesh' (2018) 6(4) IJBSSR 103–110.

Application in Pakistan

A case is undoubtedly made for the application of ODR in Pakistan due to several pressing issues facing the country's judicial system. A significant challenge is the backlog of pending cases across various levels of the judiciary, from lower courts to superior courts, which has reached an alarming 2.26 million cases. There is an overwhelming load on the district courts, where 1.86 million cases are pending, making it harder for citizens to access expeditions and inexpensive justice.⁸⁴ ADR, and particularly ODR, for its cost- and time-efficiency, is certainly necessary to address these systemic issues by providing a more efficient and accessible means of resolving disputes outside of the traditional court process. ODR platforms can efficiently handle small claims and family disputes, which tend to be more straightforward, reducing the need for physical hearings and long waiting periods.

To effectively implement ODR for family matters in Pakistan, it is crucial to build upon the existing legal framework, which includes the ADR Act of 2017 ('2017 Act') and the 1964 Act, as well as the Muslim Family Law Ordinance 1961 ('1961 Ordinance'). The 2017 Act provides provisions for methods like mediation, arbitration, and reconciliation, all of which are suitable for resolving family-related disputes, including child custody, alimony, property division, and inheritance. The key challenge lies in transitioning these processes from traditional in-person settings to an online environment. The 1964 Act lays down the reconciliation attempts to be undertaken by the court after the filing of a written statement under Section 10(3), and the 1961 Ordinance sets out the procedure for husband-initiated *talaq* (divorce). Under Section 7 of the 1961 Ordinance, an Arbitration Council is to be formed in the case of *talaq* to attempt reconciliation between the disputing parties.

The current scheme of law pertaining to family law disputes recognises the need for amicable out-of-court settlement as a precursor to formal court adjudication for family law disputes. However, this arbitration or mediation is court-mandated and does not include the use of technological alternatives to effect compromise. Though there is recognition for mediation in family disputes, there is

⁸⁴ Staff Reporter, 'July-Dec 2023 statistics show 2.26 million cases pending in courts: report' *Dawn* (Islamabad, 16 February 2024) <<https://www.dawn.com/news/1814586/july-dec-2023-statistics-show-226-million-cases-pending-in-courts-report>> accessed 11 August 2024.

a need to formally incorporate technologically advanced ODR methods in Pakistan. Additionally, there is a need to ensure that the mediation is inclusive for all parties instead of a mere procedural step before litigation.⁸⁵

The first step in implementing ODR would be to ensure that the technological infrastructure is in place to support digital interactions between all parties involved in family disputes. As seen with initiatives like the online case management systems in the Supreme Court, Islamabad High Court, Lahore High Court, and even district courts in Punjab, Pakistan has already taken measures towards digitizing judicial processes. The websites for the higher courts, as well as certain tribunals in Pakistan, include features like e-filing of documents, video conferencing for hearings, and secure online portals for case and queue management. These tools could very well be implemented for family matters, providing a streamlined and easily accessible process for filing disputes, scheduling hearings, and facilitating virtual mediation and arbitration sessions. Effective implementation of ODR could require the development of clear regulations outlining the specific requirements for family dispute mediators, the procedural steps for online mediation, and the rules for safeguarding sensitive information. Given that family matters involve private and sensitive information, protecting the confidentiality of the parties involved and ensuring data storage and communication will be a priority.

One promising example for Pakistan to follow is the United Kingdom's Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations, 2015, which contain provisions for ODR,⁸⁶ offering a framework for adapting traditional dispute resolution methods to the digital world. Pakistan could also develop a similar structure tailored specifically to family matters, ensuring it adheres to local cultural norms and legal requirements. Furthermore, training programs for online mediators would be necessary to equip them with the skills to facilitate virtual hearings and handle family disputes effectively.

⁸⁵ Bhatti (n 20).

⁸⁶ The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, s 8A and 19A.

While ODR presents a promising solution for resolving family disputes, several challenges and limitations need to be addressed to ensure its effectiveness. Pakistan faces a digital divide, and digital literacy may be limited, especially in rural areas (where traditional ADR systems like the *Panchayat* are preferred). Many people living in underserved or remote areas may struggle to access the necessary technology to participate in ODR processes. These digital barriers could result in unequal access to justice. On the positive side, recent studies show an increase in the usage of the internet in Pakistan: there were about 3.718 million internet users in Pakistan in the year 2002,⁸⁷ 34.3 million in 2016, and this number has increased to 82.90 million in 2022 and currently stands at 111 million.⁸⁸ However, this still makes up for less than 50% of the population, thus initiatives to improve digital literacy that would help bridge the gap between different socio-economic groups and ensure that everyone has an opportunity to engage with the ODR system are extremely necessary.

Family disputes often involve highly sensitive personal information, such as financial details, custody arrangements, and personal history. A breach of privacy or unauthorized access to the personal data of parties involved could have serious consequences, including harm to the reputations of the parties and could cause further emotional distress or even escalate disputes. Therefore, before ODR is introduced, it is crucial to establish comprehensive data protection regulations and to implement robust security measures within the ODR system. This includes encryption of sensitive data, secure communication channels, and safeguards to prevent unauthorized access. Legal protections should also be in place to ensure that the confidentiality of the mediation process is upheld.

It must be noted that ADR may not be appropriate for every type of family dispute. Cases that involve divorce or *khula* due to domestic violence or significant power imbalances may require in-person mediation or legal intervention. Online platforms might not provide the necessary support for individuals in vulnerable situations who may need additional legal protection or counselling. For instance, the victim and suspected accused could be present in the same house, compromising

⁸⁷ 'Pakistan Internet Users' (*internet live stats*) <<https://www.internetlivestats.com/internet-users/pakistan/>> accessed 11 August 2024.

⁸⁸ Danyal Khan, Serkan Kaya, and Rao Imran Habib, 'Global Trends of Online Dispute Resolution (ODR) with reference to Online Trade in Pakistan' (2022) 4(2) REDS 303–311.

the victim's ability to properly represent themselves,⁸⁹ and hindering the mediator's ability to effectively intervene in the event of intimidation by a party.⁹⁰ Furthermore, there is limited scope for ODR in complex cases that involve a greater degree of legal intricacy or emotional depth. For example, issues such as contested inheritance or complex divorce cases that involve multiple parties may require more in-depth exploration and face-to-face interactions. In these cases, ODR might only serve as a preliminary step, and parties might need to be referred to traditional court proceedings for a full resolution. In such cases, mediators themselves have noted that having the parties physically present before them is more effective.⁹¹ Therefore, it is essential to have a screening process to determine which cases are suitable for ODR and which require in-person intervention or court proceedings.

Conclusion

The advent of OFDR marks a significant shift in the resolution of family disputes, blending traditional principles of mediation and arbitration with modern technological advancements. This study underscores the compatibility of OFDR with Islamic legal principles, particularly *Sulh* (reconciliation) and *Tahkim* (arbitration), which have long been foundational to dispute resolution in Islam. Rooted in Quranic injunctions, the sayings of Prophet Muhammad (P.B.U.H.), and the practices of classical jurists, Islamic teachings consistently emphasise the peaceful settlement of disputes to protect familial harmony. OFDR, by offering a flexible, efficient, and non-confrontational platform, upholds these values while addressing the practical challenges of face-to-face interactions.

OFDR serves as an innovative mechanism that mirrors the objectives of Islamic law, particularly the protection and sanctity of the family institution. By minimizing emotional confrontations, reducing costs, and providing accessibility across jurisdictions, OFDR caters to the evolving needs of modern society. It also aligns with the constitutional provisions in Pakistan, such as Article 35, which

⁸⁹ MLive, 'Domestic violence suspect arrested at accuser's apartment during virtual court hearing' (*YouTube*, 11 March 2021) 1:53–1:58 <<https://www.youtube.com/watch?v=-8DApY7OE90&t=138s>> accessed 11 August 2024.

⁹⁰ Haley Benson, 'Abuse Just Out of Frame: The Impact of Online Dispute Resolution on Domestic Violence' (2022) 1 JDR 83–95.

⁹¹ 'Online Dispute Resolution and Domestic Violence' (*bwjp.org*, 3 September 2020) <<https://www.bwjp.org/news/online-dispute-mediation-tipsheet.html>> accessed 11 August 2024.

ensures the protection of family and marriage, and Article 37(d), which calls for affordable and expeditious justice.

This paper highlights how the incorporation of OFDR within Pakistan's legal framework could alleviate the judicial backlog, enhance access to justice, and foster amicable settlements. Drawing from successful international examples in countries like Australia, it is evident that OFDR offers a scalable model for the digital transformation of family dispute resolution. Additionally, the adaptability of Islamic jurisprudence through *Qiyas* (analogy) and *Ijma* (consensus) supports the legitimacy of employing technological tools for this purpose, as long as they align with Islamic principles.