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NOT AN ALTERNATIVE: SULH, TAHKIM, AND THE RESTORATION OF ISLAMIC DISPUTE RESOLUTION IN PAKISTAN'S ADR FRAMEWORK

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Abstract

Comparative ADR literature often treats Islamic mechanisms such as sulh (reconciliation) and tahkim (arbitration) as evidence that Muslims are no strangers to a technique developed elsewhere. This paper argues the relationship runs the other way: reconciliation is not an alternative to litigation in Islamic law but its default, with adjudication reserved for cases reconciliation fails. Reading the Qur'an and Hadith together, the paper traces a graduated argument moving from a command to reconcile, through a preference for settlement over strict rights, to a procedure for appointing arbitrators, and a justice standard governing any outcome. It then examines Pakistan, where the Alternative Dispute Resolution Act 2017 and the International Mediation and Arbitration Center (IMAC) increasingly echo this position. The paper concludes that Pakistan's reforms recover Sulh's place in Islamic law rather than import a foreign technique, and proposes a formal role for qualified scholars on IMAC's mediator panels.

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I. Introduction

Most academic writing on Islamic Alternative Dispute Resolution takes a defensive stance. It treats sulh, tahkim, and related institutions as proof that modern ADR is not foreign to Muslim societies, a parallel tradition that happened to exist fourteen centuries before the West rediscovered it. That framing is useful, but it understates the point. It leaves reconciliation and litigation standing side by side, as though a Muslim disputant simply has the option of either.

This paper argues something stronger. In the Qur'an and in Prophetic practice, reconciliation is not one path among several. It is the rule. Adjudication before a judge exists for the cases where reconciliation has genuinely failed, not as a co-equal starting point. The distinction matters because it changes what a modern Islamic ADR institution is doing when it processes a dispute: not offering litigants a faster alternative to court, but restoring the ordinary mechanism that litigation was always meant to be the exception to.

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The argument proceeds in five steps after this introduction. Section III reads four Qur'anic passages not as isolated proof-texts for peace but as a graduated argument, moving from a general moral duty to a specific arbitral procedure. Section IV does the same for Hadith, showing the Prophet acting first as an encourager of peace, then as a practising mediator, and finally as the appointing authority behind a binding arbitral award. Section V asks who is qualified to occupy that arbitral role today. Section VI turns to Pakistan, where the Alternative Dispute Resolution Act 2017 and the International Mediation and Arbitration Center (IMAC) supply a live test of the argument. Section VII draws the pieces together, and Section VIII concludes.

II. Methodology

This paper follows a doctrinal, qualitative method. It does not gather empirical data from disputants, mediators, or arbitrators; it works instead from primary religious and legal texts and secondary scholarly literature, read comparatively against contemporary institutional practice.

Three bodies of material are used. The first is the Qur'an, read directly rather than through a single translator's rendering, with citations given by surah and verse so the argument can be checked against any standard mushaf or translation. The second is Hadith and sira literature, drawn from recognised compilations, principally Sahih al-Bukhari, supplemented by classical historical narrations, chiefly Ibn Hisham's recension of Ibn Ishaq's sira (Ibn Hisham 1955), where the Qur'anic text alone does not supply a concrete precedent. The third is contemporary primary and secondary material on Pakistan's ADR framework, including the text of the Alternative Dispute Resolution Act 2017, IMAC's own published mandate, and recent news reporting on IMAC's training programmes and public seminars, used to test whether the textual argument in Sections III and IV has any observable counterpart in current institutional practice.

The analytical method applied to the religious material is thematic and sequential rather than exhaustive. Rather than surveying every verse or hadith touching on peace or dispute resolution, a small, deliberately selected set is read in the order the paper argues they build on one another, from general duty to specific procedure. This method has a clear limitation: a different selection or ordering of the same textual corpus could support a different narrative, and readers should treat the sequence argued for here as an interpretive claim rather than an uncontested description of the material. Where classical juristic opinion is divided, principally on the technical character of the arbitration described in Qur'an 4:35 and on the authenticity of the letter attributed to Umar ibn al-Khattab (Margoliouth 1910), that division is noted rather than resolved, since resolving it is not necessary to the paper's structural argument. The Pakistan case study is similarly limited to one jurisdiction and one institution, chosen because IMAC's own public language happens to engage the argument directly rather than because it is representative of ADR practice across the Muslim world.

III. A Graduated Qur'anic Argument

Two verses of Surah al-Hujurat supply the starting point. Believers are described as a single brotherhood, instructed that when two believing parties fall into conflict, peace should be made between them (Qur'an 49:10). If one side continues to transgress after that attempt, the same passage allows the community to act against the transgressor until it submits to a just resolution, and once it does, peace is to be restored on equitable terms (Qur'an 49:9). Read on their own, these verses look like a general moral duty, no more specific than an instruction to be kind. But they set the frame for what follows: peacemaking is not an aside to community life. It is close to a communal obligation.

Surah al-Nisa moves the argument from duty to preference. In the context of marital discord, it acknowledges that a wife may fear ill treatment or desertion, and states that there is no fault in the couple reaching their own settlement, adding that reconciliation is better (Qur'an 4:128). The word choice does real work. The verse does not merely permit reconciliation, or list it as one lawful option equal to others. It ranks it above the alternative. That ranking, small as it looks, is the hinge between the first pair of verses and what comes next.

Where the Hujurat verses instruct people to make peace and the marital verse ranks peace above confrontation, a further verse in the same surah supplies the procedure for when peace does not arrive on its own. If a breach is feared between a husband and wife, the community is told to appoint two arbitrators, one drawn from each family, so reconciliation can be pursued through people who already carry standing with each side (Qur'an 4:35). This is no longer an exhortation. It names a mechanism: two arbitrators, one per side, with the express aim of restoring peace between the parties. Classical jurists disagree about whether this verse describes arbitration in the full technical sense of a binding award or a more limited process closer to conciliation, and that disagreement is worth flagging rather than resolving here (Rashid 2000). Either reading confirms the same structural point: the Qur'an did not leave dispute resolution to spontaneous goodwill. It built an institution for it.

A final verse closes the loop by supplying the standard against which any settlement, mediated or arbitrated, must be measured. Believers are commanded to return trusts to those entitled to them, and told that when they judge between people, they must judge with justice (Qur'an 4:58). Placed after the three verses above, this is not a separate topic. It is the constraint that keeps reconciliation from collapsing into compromise for its own sake. A settlement that trades away someone's due in the name of peace fails the Qur'an's own test.

Taken together, these four passages do not read as scattered mentions of peace. They read as an argument with a shape: a duty to reconcile, a preference for reconciliation over the assertion of strict rights, a named procedure for achieving it, and a standard of justice any resulting settlement must meet. Modern ADR literature routinely mines the Qur'an for supporting verses. Fewer treatments ask whether those verses form a sequence, and the sequence is where the argument of this paper actually lives.

IV. The Prophetic Model: From Encouragement to Delegated Authority

Hadith literature supplies the same progression in the register of lived example rather than legislation.

At the most general level, the Prophet is reported to have said that a person who brings about peace between two disputing parties, by conveying good words even where those words stretch the literal truth in the service of reconciliation, is not counted a liar for doing so (Sahih al-Bukhari, Kitab al-Sulh). The point is not to license dishonesty. It is to signal how highly reconciliation is valued, that the ordinary duty of strict truthfulness bends slightly to accommodate it. Few areas of conduct receive that kind of exception in Islamic ethics.

Beyond encouragement, the Prophet is recorded acting as a mediator in person. When a dispute broke out among the people of Banu 'Amr ibn 'Awf, he went to the affected parties himself to bring about a settlement, rather than sending a representative or waiting for the matter to be brought to him (Sahih al-Bukhari, narrated by Sahl ibn Sa'd). That he attended in person matters for the argument here: mediation, on this evidence, was not delegated downward as a lesser task. It was something the highest authority in the community did directly.

A further hadith moves the model a step further, from mediation toward binding arbitration. In a dispute involving the Banu Qurayza, the Prophet delegated the matter to a companion, Sa'd ibn Mu'adh, as arbitrator, with both sides having agreed in advance to accept whatever judgment he reached (Ibn Hisham 1955). What matters for a paper on dispute-resolution mechanics, rather than the historical episode as a whole, is the structure of consent: an arbitrator agreed to by both parties beforehand, and a judgment both sides were bound to accept once delivered. That structure is recognisably what a modern arbitration clause tries to reproduce by contract. Given the sensitivity and contested detail of this episode in the secondary literature, it is cited here narrowly for its arbitration structure and should be checked independently against primary hadith and sira sources before further reliance.

A separate and better-documented source for the move from mediation toward institutionalised judicial authority is the letter attributed to the second caliph, Umar ibn al-Khattab, instructing Abu Musa al-Ash'ari on the conduct of his office as judge (Margoliouth 1910). Among its provisions is an instruction that all forms of compromise between litigants are permissible, except a compromise that converts something lawful into something forbidden or the reverse (Margoliouth 1910, 311-312). Historians of Islamic law have long debated the letter's precise chain of transmission, and that debate is worth flagging rather than glossing over (Muneeza 2010). Even bracketing the question of authenticity, the letter's content matches the Qur'anic and Prophetic pattern closely enough that later jurists treated it as authoritative practice, and it supplied the basis on which classical manuals discussed the limits of permissible settlement.

Read as a set, these narrations mirror the Qur'anic sequence from the previous section almost exactly: encouragement, personal mediation, delegated binding arbitration, and a codified standard for what compromise may and may not do. Nothing in this progression treats

litigation as the default from which reconciliation is a discount or a shortcut. Litigation appears only once these prior stages are exhausted.

V. Who Is Qualified to Arbitrate: The Case for Trained Scholars

If the preceding sections are right that arbitration under Islamic law is not an improvised process but one governed by a defined standard of justice, the question of who is qualified to sit as arbitrator becomes central rather than incidental.

Classical jurisprudence treated the position of an arbitrator as close in substance to that of a judge (qadi), even though the two offices differ in how they are appointed (Rashid 2003). A qadi holds a standing public appointment; an arbitrator is chosen by the parties for a specific dispute. Once chosen, however, an arbitrator under most schools of Islamic law is expected to bring the same grounding in legal method, the same command of the relevant texts, and the same impartiality a formal judge would bring (Rashid 2003). This is not a technicality. It follows directly from the standard of justice established in Surah al-Nisa: a settlement that fails to meet that standard is not a valid exercise of sulh or tahkim regardless of how amicably it was reached.

This carries a direct implication for who should staff modern institutional ADR panels in a Muslim-majority jurisdiction. Scholars trained through the traditional curriculum, with grounding in Arabic legal texts, hadith methodology, and substantive areas such as inheritance and family law, are positioned to bring exactly the qualification classical jurisprudence expected of an arbitrator. This is distinct from the muhtasib and wali al-mazalim offices, which historically supervised markets and heard complaints against public officials respectively (Khan 1982). Those institutions solved a different problem: enforcement and complaint-handling by a public officer. The qualification question raised here is narrower and more specific: whether the person sitting as neutral arbitrator between two private parties actually has the training the Qur'anic standard of justice presupposes. Pakistan's own ADR institutions, discussed next, are only beginning to engage that question directly.

VI. Pakistan's Alternative Dispute Resolution Act 2017 and IMAC

Pakistan's statutory ADR framework rests on the Alternative Dispute Resolution Act 2017, which provides the legal basis for referring civil disputes to mediation and arbitration outside ordinary litigation (Pakistan 2017). Institutional weight behind the Act has grown substantially since, most visibly through the International Mediation and Arbitration Center (IMAC), established under the Ministry of Law and Justice specifically to address judicial backlog and to build a credible domestic arbitration profession (International Mediation and Arbitration Center, n.d.).

IMAC's own public statements are worth reading closely against the argument developed above. At the closing ceremony of IMAC's first internationally accredited arbitration training programme in Islamabad in July 2026, the Minister of State for Law and Justice told participants that arbitration had moved beyond being merely an alternative to court litigation, describing it instead as a core pillar of an efficient justice system and an investment-friendly

legal environment (Associated Press of Pakistan 2026). Taken on its own, that remark reads as an economic argument about investor confidence, and that is almost certainly the primary intention behind it. But the language used, arbitration as no longer merely an alternative, tracks the structural claim made in Sections III and IV: that reconciliation and arbitration were never meant to run parallel to litigation, but were the ordinary mechanism litigation departs from.

IMAC has also engaged the religious framing directly rather than leaving it implicit. A seminar it organised, titled *The Prophetic Art of Peacemaking: Negotiation, Mediation and Sulah in Islam for the Modern World*, brought together judges, lawyers, religious scholars, ADR practitioners, and academics specifically to discuss the place of Islamic principles in contemporary dispute resolution (The News Lark 2026). At that event, the Minister of State called for a collective national effort, spanning the judiciary, the legal profession, religious scholars, and civil society, to promote a culture of Sulh, and urged scholars specifically to promote reconciliation among younger generations (The News Lark 2026). The Acting Chief Justice of the Federal Shariat Court added that Pakistan's constitutional framework requires legislation to remain consistent with the Qur'an and Sunnah, and that Islamic teaching supplies durable principles of justice and dialogue relevant to that requirement (The News Lark 2026).

Read together, these statements suggest that Pakistan's ADR institutions are already, if not always self-consciously, moving toward the position argued for on textual grounds above: that Sulh is not a modern alternative that happens to have Islamic antecedents, but the recovery of dispute resolution's original and primary place in Islamic legal practice. What IMAC has not yet done, on the public record reviewed here, is translate that religious framing into a structured role for classically trained scholars within its own mediator and arbitrator panels, distinct from their invitation to seminars as guests. That is the gap the next section addresses.

VII. Synthesis: Restoration, Not Reception

Putting the pieces together produces a claim different from the one most comparative ADR scholarship makes. The usual claim is one of reception: modern ADR techniques, developed in Western legal systems over the twentieth century, happen to resemble mechanisms Islamic law already had, so adopting them poses no great tension for a Muslim-majority state. That claim is defensible but modest, and it leaves the direction of travel running from the West toward Islamic law.

The argument built across Sections III through VI runs the other way. The Qur'an constructs reconciliation as a graduated system, moving from general duty to preference to procedure to substantive standard. Hadith supplies concrete precedent at each stage, culminating in a codified standard for what compromise may and may not achieve. Classical jurisprudence then attaches a qualification requirement to the arbitral role that tracks the same standard of justice. On this reading, a state such as Pakistan building institutions like IMAC is not importing a foreign technique and finding it compatible with Islamic law after the fact. It is restoring reconciliation to the primary position the Qur'an and Sunnah already gave it, using the administrative tools available in 2026 rather than 622.

This carries one concrete policy implication worth stating plainly. If the qualification argument in Section V is right, IMAC's accreditation and training pipeline, which currently draws heavily on international arbitration trainers and best-practice frameworks, would gain from a parallel, formally structured track for classically trained Islamic scholars to qualify as accredited mediators and arbitrators, not merely as seminar participants. IMAC has already shown, through the seminar discussed in Section VI, that it sees the connection. Formalising it within the accreditation structure itself would close the distance between what the institution says about Sulh and what its panels are actually staffed to do.

VIII. Conclusion

Comparative ADR scholarship has spent considerable effort proving that Islamic law is not a stranger to mediation and arbitration. That project has largely succeeded, and the sources are not in short supply. The harder and more interesting question, and the one this paper has tried to answer, is what changes once reconciliation is read not as an available option within Islamic law but as its default position, with litigation held in reserve for the cases reconciliation cannot resolve. Read that way, the Qur'an's escalating structure, the Prophet's own conduct as mediator and delegating authority, and the classical qualification requirement for arbitrators all point in the same direction. Pakistan's Alternative Dispute Resolution Act 2017 and the institutions built under it, IMAC chief among them, are converging on that same position through their own public language, whether or not that convergence has been named as such inside the institution itself.

The paper's contribution is narrow but, it argues, worth making: not another survey of Islamic ADR mechanisms, but a claim about their internal order, and a reason to treat Pakistan's current institutional reforms as restoration rather than reception. That claim carries the limitations set out in Section II. It rests on a deliberately selected, non-exhaustive set of texts; it treats one jurisdiction's institutional language as representative evidence rather than as a comprehensive survey of practice across Muslim-majority states; and at least two of its sources, the Sa'd ibn Mu'adh arbitration and the letter attributed to Umar ibn al-Khattab, carry authenticity questions in the secondary literature that this paper has flagged rather than settled.

Within those limits, the practical recommendation is direct. If IMAC and similar institutions accept, even informally, that arbitration was never merely an alternative in Islamic legal practice, that acceptance should extend to how their mediator and arbitrator panels are built, not only to how their work is described in seminars and press statements. A formally accredited track for classically trained scholars, sitting alongside the international arbitration training IMAC already provides, would be the clearest institutional expression of the argument this paper has made on textual grounds. Future research could test this proposal directly, through interviews with IMAC's own trainers and religious-affairs officials, in a way the doctrinal method used here does not attempt.

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Note: In keeping with Chicago Author-Date convention, the Qur'an and Hadith are cited parenthetically in the text by surah/verse or by collection and book, and are not repeated here as reference-list entries.

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