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A Tribute to Our Founder

Ancient & Traditional Approaches to Dispute Resolution – What Modern Practitioners Can Learn

Listening Past Labels

New York Dispute Resolution Lawyer

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Alternative Dispute Resolution in Islamic and Arab Culture: A Brief Summary

By Mohamed F. Sweify

Introduction

Alternative dispute resolution (ADR) is not a recent innovation. It is deeply rooted in ancient cultures, including Africa, Asia, Latin America, and the Arab and Islamic culture. ADR has evolved alongside the development of the Arab and Islamic civilization for at least 2,000 years. Many Arab and Islamic jurisdictions have developed sophisticated systems for resolving conflicts amicably for the purpose of preserving social harmony while reflecting both religious values and practical necessities shaped by the nature of Islamic history and the Arabian environment. This article presents a brief overview of the Islamic and Arabic traditional methods of ADR, their origins, practices, and developments over time.

Islamic Foundations of ADR

Islamic law has two main sources for rulings: primary and secondary sources. The primary sources include (i) the Qur'an (the holy book for Muslims and is defined as the word of God revealed to Prophet Muhammad) and(ii) the Sunnah (the teachings, deeds, and practices of Prophet Muhammad). The secondary sources supplement the primary sources and include (i) consensus of scholars and(ii) analogy. ADR in the Islamic context traces its origins to the Qur'an and the Sunnah, which provide a framework for conflict resolution that prioritizes peace, justice, and coexistence amongst the members of the society. The Qur'an explicitly encourages the peaceful settlement of disputes, stating, "If two parties among the believers fall into a quarrel, make peace (Sulh)

between them . . . with justice, and be fair." The traditions of Islamic ADR are intertwined with religious obligations, traditional rituals, and the overarching goal of maintaining social cohesion.

Arabic Foundation of ADR: Tribal Customary Law and Tribal Leaders

The Arab world has been historically structured into tribes, which comprise clusters of villages. This tribal structure has played a central role in conflict resolution. Tribes are governed by customary law known as Urf. Urf can be defined as the unwritten social contract that regulates relationships within the tribe, with other tribes, and with the state. Tribal leaders, also known as sheikhs, are chosen for their wisdom, experience, and ability to resolve conflicts. They normally inherit their positions from their ancestors. Their legitimacy is not rooted in a formal authority over the people, but rather it is rooted in their capacity to maintain peace and provide for their people. The power structure within the tribes is decentralized, relying on consensus and mutual respect.

Tribal leaders often act as mediators or arbitrators. In doing so, they apply Urf or tribal codes that are passed down through generations. These codes, while not formally part of the state justice system, remain influential, especially in regions where the formal legal system is not as strong. Two main ancient ADR methods exist in the tribal communities, including Sulh (the processes of settlement) and Musalaha (rec-

onciliation), and these two methods continue to be practiced in countries such as Iraq, Palestine, and some parts of Egypt. The primary aim of these methods within the tribes is to preserve peace, order, and social cohesion through compromise, empathy, and the culture of apology and forgiveness.

Islamic ADR Processes

Islamic law recognizes several ADR methods, each with distinct features and applications:

- **Sulh (Amicable Settlement):** Sulh encompasses negotiation, mediation, conciliation, and compromise. It is grounded in the principle of making peace between disputing parties with justice and fairness. Sulh is particularly significant in family and interpersonal disputes, where maintaining relationships is paramount.

- **Tahkeem (Arbitration):** Tahkeem predates Islam but was incorporated into Islamic practice. It involves appointing arbitrators from each side to resolve disputes. Prophet Muhammad himself was appointed by the disputing parties to serve as an arbitrator on several occasions. Islamicly, arbitration is especially common in commercial and private disputes, but not in cases involving criminal sentences or the rights of Allah. Certain disputes, such as those involving criminal law, paternity, or endowments, are reserved exclusively for judges.

- **Med-Arb:** This hybrid process involves attempting mediation first, followed by arbitration by the same mediator if mediation fails.

- **Muhtasib (Ombudsman):** Muhtasib is an official who is appointed by the ruler to oversee public conduct, business honesty, and community affairs in order to ensure compliance with religious and ethical standards.

- **Wali Al-Mazalim (Chancellor):** Wali Al-Mazalim is also appointed by the ruler. The role of Wali Al-Mazalim combines judicial and executive functions, allowing for flexible and expedient resolution of disputes, particularly those involving public grievances or corruption.

- **Fatawa (Islamic Opinions)**: Fatawa are non-binding religious opinions provided by scholars (Muftis) to guide individuals in resolving disputes.

Cultural Features: Western vs. Islamic and Arab Approaches to ADR

The approach to conflict resolution in the Arab and Islamic context differs significantly from Western models:

- **Western Approaches:** Conflict is seen as normal and potentially a chance for positive force that can lead to growth and creativity. The process is collaborative, rational, and task-oriented, with an emphasis on individual interests, legal formality, professionalism, and written agreements.

- **Arab Approaches:** Conflict is viewed as negative and potentially destructive, and it should be avoided if possible. Group affiliation – whether family, clan, religion, or sect – is central to identity and must be protected. The process is relationship-oriented, relying on social values, norms, and codes of honor rather than legal formalities. Written agreements are less important than the maintenance of dignity, honor, and social harmony. The involvement of respected elders, religious leaders, or powerful officials as neutrals is common, and the process often emphasizes forgiveness and the restoration of relationships.

Collectivism vs. Individualism

Arab culture is fundamentally collectivist, prioritizing the welfare of the community over individual rights. This contrasts with the individualism prevalent in Western societies, where personal rights often take precedence over communal obligations. In the harsh environment of the desert, cooperation and mutual support were essential for survival, fostering a strong sense of communal responsibility that persists today.

The Qur'anic concept of justice in commercial activities is based on submission to the moral order of God and the avoidance of harm to others. There is a strong emphasis on the interconnectedness of personal and group identity, collective responsibility for wrongdoing, and the importance of public apology, fair compensation, and forgiveness.

The Human Dimension in Arab Conflict Resolution

Personal relationships, honor, and reputation are of paramount importance in Arab society. Arabs believe in people, more than institutions, and decisions are often influenced by personal connections and emotions, rather than strict rules. Negotiation is seen as an opportunity for spirited discussion and personal engagement, with a focus on saving face and preserving dignity for all parties involved. Arab cultures also tend to be conservative and traditional, with a strong emphasis on conformity and predictability. Tribalism and customs of reciprocity and favors shape social interactions, and the preservation of honor is a key consideration in conflict resolution.

High-Context and Polychronic Society

Arab society is characterized as high context, meaning that communication relies heavily on shared understandings, non-verbal cues, and close personal relationships. Business and conflict resolution are approached as intellectual exer-

cises, with personal rapport taking precedence over immediate discussion of substantive issues. Social etiquette, such as avoiding direct criticism or public confrontation, is strictly observed.

Conclusion

ADR in Islamic law and Arab culture is a rich and multifaceted tradition that prioritizes peace, social cohesion, and the maintenance of relationships. Rooted in religious teachings, tribal customs, and communal values, it offers a distinctive approach to conflict resolution that contrasts with, but also complements, Western models. Understanding these differences is essential for effective cross-cultural engagement and the development of dispute resolution systems that are both just and culturally sensitive. Still, there is much that Western and Islamic/Arab ADR approaches can learn from each other. A balanced approach that incorporates the strengths of both traditions can lead to more humane and effective dispute resolution processes.

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