

# The Concept of Divorce in Quran and Sunnah, and Adopting Alternative Dispute Resolution for Separation and Reconciliation

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## KEYWORDS

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## ABSTRACT

Divorce has been often viewed negatively throughout history owing to different societal and familial considerations. It is often referred to as a breach of a covenant, a departure from one's solemn obligations, carelessness, or a transgression of one's moral and ethical standards. Divorce stigma can be related to a variety of problems, but it typically stems from the idea that it is a failure. There are a number of verses in the holy book "Quran" that go into length about divorce. In Islam, divorce is a legal way to end a marriage, however, it is discouraged and seen as undesirable. The teachings of the Prophet Muhammad (ﷺ) and the Quran discourage divorce and stress the value of preserving a sound and stable marriage. Prophet Muhammad (ﷺ) have made it clear that divorce is probably the most horrible thing that Allah has made lawful. Alternative Dispute Resolution (ADR) mechanisms are a group of strategies used to settle legal disputes and disagreements outside of the conventional courtroom setting. Due to its perceived benefits over conventional litigation, alternative dispute resolution (ADR) has achieved significant acceptability among the general population and the legal community. Current study focus on the issue of divorce, different ADR approaches, concept of ADR in Quran and Sunnah. Even though the ADR is not mentioned directly in the Quran or Sunnah but there are concepts in Quran and Sunnah that are relevant to modern concept of ADR. The study has discussed these concepts in detail.

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## 1. Introduction

*"In the intricate dance of relationships, it becomes apparent that men and women hail from different planets, each with their own unique emotional language. Men, who predominantly reside on Mars, often prioritize independence and problem-solving, valuing their ability to provide and achieve success. Meanwhile, women, from the planet Venus, tend to focus on nurturing and connection, seeking emotional support and understanding. Recognizing and embracing these inherent differences is crucial to fostering harmonious relationships, as it allows us to navigate the complexities of communication and*

*bridge the gap between our diverse emotional landscapes"* (Gray, 1993). John Grey wrote these words in his famous book *"Men Are from Mars, Women Are from Venus"* and contends that identifying and acceptance these intrinsic differences is critical to fostering harmonious relationships. Grey's book has its foundation on the notion that men and women come from distinct planets, metaphorically speaking, and consequently have distinct methods of communicating and expressing emotions. In a broad sense, men and women are entirely different in every aspect of life. Their way of life, thinking, managing, and the way they face challenges is entirely different, and keeping these

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two entirely different minds in single sphere through the bond of marriage might be challenging sometimes. John Grey has illustrated these differences very concisely.

Marriage is one of the Shari'a which seeks to foster harmony in the family. A harmonious household turns into an avenue to establish order in society (Yunus et al., 2020). All women in middle-class Pakistan are expected to get married, and premarital sexual interaction is frowned upon. Finding the ideal partner therefore necessitates a deft balancing act between personal interests and goals, as well as between public representations and group concerns. Young women frequently come to an understanding—a covert premarital relationship that they normalize by bringing in family members late to set up an arranged marriage—to help them handle these competing demands. Understandings are firmly rooted in the social life of joint families and do not represent either a rejection of patriarchal standards or an attempt at self-cultivation within them. Instead, they provide a glimpse into how young women interact with the last remaining normative norms while still pursuing novel opportunities (Maqsood, 2021).

In the 1980s and 1990s, marriages in Pakistan were colorful and eagerly awaited occasions, but social changes have led the younger generation to doubt their significance, and the rising divorce rates underline the need to comprehend and foresee relationship disintegration. 3,800 divorce cases were reportedly filed in Karachi only within the first quarter of 2020, which indicates a sizable number of marriage breakdowns in the city, according to police records. In a comparable manner between January and November 2021, the District Judiciary of Rawalpindi documented 10,312 instances involving divorce, khulas (a type of divorce started by the woman), guardianships, and maintenance, underscoring the prevalence of marital conflicts in the city.

According to statistics and a recent poll by Gallup and Gilani Pakistan, divorce rates in Pakistan may be at an all-time high. According to the survey, adultery and family strife were the top two reasons for divorce, with lack of commitment coming in third. This finding suggests that emotional and interpersonal elements are frequently at the base of marital problems. (Muhammad Ali Falak, 2023). According to a research survey, COVID-19 and other issues contributed to a noticeable rise in the divorce rate in 2019. In Lahore city during that time, there were up to 24,157 divorce cases reported, of which 13,540 men divorced their spouses and 9,827 women went to court to end their marriages. 2,642 of the cases are still ongoing in court, while just 831 were settled through reconciliation at the level of the union council. The majority of these cases have been delayed due to the fact that they were not properly pursued. 11,879 divorces were registered in the city tehsil, compared to 6,656 in Shalimar and 5,679 in Cantt tehsil, as the greatest number in the district (Muhammad Ilyas, 2022).

**Divorce Stigma:**

Due to various societal and familial factors throughout history, divorce has frequently been viewed through various adverse lenses. It has frequently been described as a violation of a covenant, a deviation from one's solemn duties, careless conduct, or a violation of one's religious principles and social values. A complex amalgam of thoughts and beliefs continues to surround marriage disintegration, particularly with regard to those who make a conscious decision or are forced to negotiate this difficult terrain, notwithstanding positive adjustments in attitudes towards divorce in many societies over time. The stigma associated with divorce can be attributed to numerous issues but frequently comes down to the perception that it's a sign of failure. However, this is merely an

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impression and an extremely false one at that. Divorce is a terrible and painful process, but it can also be a very potent catalyst for change (Chris Terrone, 2022). If choosing to reach out and ask for a divorce is painful, getting it granted is agonizing. Midway through the 1930s, Muslim women in the subcontinent obtained the knack to file for divorce, but because of the lengthy legal processes, widespread violence fear, and intricate nature of the legal system, many women never even pursue it. When leaving an unsatisfactory marriage, Pakistani women experience guilt and stigma, which makes it challenging for them to find new partners. The inability to get court-ordered child support payments forces some divorced moms to continue living in violent situations. Some women are compelled to stay in unpleasant marriages due to a lack of financial independence and concern for the safety of their children (Aisha Chowdhry, 2013).

Even if they have endured domestic violence, Pakistani women who are considering divorce frequently face societal pressure and are compelled to make concessions and sacrifices. Up to 90% of Pakistani women report experiencing some type of domestic violence from their spouses or in-laws, according to the Human Rights Commission of Pakistan (Timsal, 2023). According to a 2008 research, nearly 50% of wives in developed urban regions reported to having their husbands beat them. Domestic violence is not just a problem in rural areas. Women who try to leave abusive husbands are frequently targeted by them, and they run the risk of being killed if they do so. Families frequently coerce women into denying their need for assistance, which can result in isolation or even honor killings. With police and judges seeing domestic violence as a family concern and encouraging women to dismiss their cases, society frequently dissuades women from filing for divorce (Rebbia Aliya, 2021).

**Divorce in Islam:**

The holy book “Quran” provides several verses on the issue of Divorce that provide a detail on the matter like Verse 229 of Surah Al-Baqarah (Chapter 2), Verse 230 of Surah Al-Baqarah (Chapter 2), Verse 1 of Surah At-Talaq (Chapter 65), and Verse 2 of Surah At-Talaq (Chapter 65). Divorce is a legal means to dissolve a marriage in Islam, however, it is not promoted and is viewed as undesirable. The teachings of the Prophet Muhammad (ﷺ) and the Quran discourage divorce and stress the value of preserving a sound and stable marriage. As per Islamic Teachings, divorce should only be thought of as a last resort after all previous attempts at reconciliation have failed. The Prophet Muhammad (ﷺ) also counseled against divorcing and encouraged couples to resolve their issues and seek counseling first. There are precise steps and requirements that must be fulfilled in accordance with Islamic law in order for a divorce to be regarded as legal. For instance, the husband must initiate the divorce by uttering "Talaq" three times in the presence of witnesses, and there needs to be a waiting period prior to the divorce being finalized. Before the divorce is finalized, a waiting period is meant to give the couple a chance to mend their relationship and make sure the wife is not pregnant. Even in these situations, divorce should be addressed cautiously and only after all other possibilities have been exhausted. In certain instances, divorce may be essential like if the marriage is abusive.

*“Allah did not make anything lawful more abominable to Him than divorce” (Sunan Abi Dawud 2177)*

*“Of all the lawful acts the most detestable to Allah is divorce” (Sunan Abi Dawud 2178)*

In accordance with these Ahadiths, Prophet Muhammad (ﷺ) have made it clear that divorce is probably the most horrible thing that Allah has

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made lawful. This implies that even while divorce is permitted in Islam, it is nonetheless strongly frowned upon and discouraged. The word "abominable" is used to highlight how serious the act of divorce is and how detrimental it is to both individuals and society as a whole. Divorce ought to be regarded as a last resort after all other choices have been exhausted. It is not a decision that should be made lightly. The Hadith emphasizes the significance of preserving solid and healthy bonds, particularly in the context of marriage.

*There are three things which, whether undertaken seriously or in jest, are treated as serious: Marriage, divorce and taking back a wife (after a divorce which is not final) (Sunan Abi Dawud 2194).*

The Prophet Muhammad (ﷺ) outlined three crucial subjects in the mentioned hadith. The first subject brought up is marriage, which involves two people making a genuine commitment to coexist as husband and wife. It entails a binding contract as well as societal responsibilities to one another and their families. Divorce, which is the formal dissolution of a marriage, is the second subject addressed. It is an extremely important decision that could have lasting emotional, monetary, and social repercussions for the persons concerned, as well as for their offspring and families. Regaining a wife after an unsatisfactory divorce is the third subject addressed. This pertains to a practice where a divorce can be revoked before it is legally binding in various Islamic legal traditions. It is a significant choice that needs careful thought, as well as input from family members and religious experts.

By declaring that these issues should be regarded seriously regardless of whether they are handled seriously or in jest, the Prophet (ﷺ) is highlighting the significance of these issues. This means that even if someone is making jokes about

these issues or not taking them seriously, they still need to be conscious of their importance and their possible implications. The expression of the Prophet Muhammad (ﷺ) emphasizes how crucial marriage and divorce are to Islamic law and society, as well as how seriously, respectfully, and responsibly people should handle these issues. The importance of open lines of communication, understanding, and consultation between partners and their families in regard to marital and divorce issues is also emphasized.

### Alternative Dispute Resolution:

Alternative Dispute Resolution (ADR) Mechanisms are a group of strategies used to settle legal disputes and disagreements outside of the conventional courtroom setting. Due to its perceived benefits over conventional litigation, alternative dispute resolution (ADR) has achieved significant acceptability among the general population and the legal community. The main benefit of ADR is that it enables private conflict resolution rather than going through the public court system. In the course of ADR, an unbiased third party is called in for the purpose of assisting both parties in quarrel to reach a peaceful solution or common ground. Contrary to old-fashioned litigation, where the parties are inoperative and the magistrate or bench regulates the outcome, ADR enables the parties to take an active role in the settlement process (Abusomwan, 2023). According to Akinbuwa (2010), the term "Alternative Dispute Resolution" (ADR) represents a variety of practices intended to assist parties to resolve dispute peacefully and without the need for formal legal action. ADR measures are utilized in preference to old-fashioned litigation to put an end to disputes more expeditiously, equitably, and satisfyingly. ADR methods are particularly constructive when parties want to retain their relationships undamaged, for instance in

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marriage disputes where there may be children at stake.

### **Different ADR Techniques:**

The term "alternative dispute resolution" (ADR) speak of approaches for deciding disputes outside of the traditional judicial system. ADR can be employed to deal with innumerable subjects, like matrimonial and monetary disputes. However, the present study concentrates precisely on ADR approaches for resolving matrimonial disputes. Divorce arbitration, divorce mediation, and collaborative divorce are the three diverse ADR approaches investigated in the current research.

### ***Collaborative Divorce:***

Collaborative divorce, often termed as collaborative law or collaborative family law, is a consensual and constructive family legal procedure that permits people who reached the conclusion to dissolve their marriage in order to prompt their attorneys and other familial experts to reach an covenant that best meets their interests. As a result, this method avoids the unpredictability that is sometimes linked to judicial proceedings. The engaged couples' consensual execution of a binding contract known as the "Participation Agreement" marks the beginning of this course of action. This agreement forbids both parties' respective solicitors from representing them in any potential family-related litigation while also committing both parties to the collaborative divorce process. The development of this alternative strategy can be credited to Stuart Webb, a renowned family lawyer from Minnesota, who realized that traditional litigation procedures frequently caused harm and did not always meet the best interests of the parties represented (Daicoff, 2009). Since its founding in 1990, the collaborative law movement has consequently rapidly gained momentum and become widely accepted throughout the majority of the United

States, Europe, Canada, and Australia. In 2003, it received a formal introduction in England. Collaborative law is one of the Alternative Dispute Resolution (ADR) methods that have been introduced into the Texas Family Code. The legal code expressly authorizes parties to a divorce to mutually agree, with the assistance of their solicitors, to conduct the divorce process under the rules of collaborative law, free from judicial involvement (Abusomwan, 2023).

Using an integrated strategy, collaborative law entails both parties employing individual solicitors as well as additional family law specialists. The Participation Agreement has clauses that prohibit litigation, require full disclosure of all information, and emphasize finding mutually beneficial solutions. Both parties work together to hire neutral professionals to handle the divorce's financial, emotional, and legal facets. While a child expert informs parents of their children's needs and makes sure they are not held responsible for the divorce, mental health professionals assist in managing the emotional aspects of the dispute. A financial expert facilitates the resolution process and aids in defining asset valuations. The goal of collaborative law is to resolve disputes quickly and with as little harm to the parties as possible (Cole et al., 2023).

The legal process of collaborative divorce was developed mainly in Western nations; it is not a widely recognized or generally accepted practice inside Pakistan's legal system. It's important to remember, though, that the idea of alternative dispute resolution (ADR) techniques, involving collaborative legislation, is gaining popularity and acknowledgment in many nations, including Pakistan. Family conflicts in Pakistan, including divorce proceedings, are often resolved through the traditional legal system, which entails courtroom litigation. For issues pertaining to family, marriage, and divorce, Pakistani law

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(Sharia) is applied in accordance with its principles. In Pakistani law, collaborative divorce may not be legally recognized as a formalized process, but there are still options for couples to explore consensual alternative dispute resolution approaches.

***Mediation:***

Family mediation, also referred to as divorce mediation, is a non-adversarial, facilitating, and beneficial method of decision-making where a knowledgeable and objective third person helps couples resolve marital issues, primarily those that include divorce and separation. Mediation can be used by couples to help them resolve marital disputes. It entails an experienced and unbiased third party, often referred to as a mediator, who helps the parties reach a resolution. The mediator does not decide for the parties; instead, they are assisted in identifying the problems and taking steps to address them on their own. Following a code of conduct that is founded on the core principles of mediation, mediators are guided through the process of resolving disputes. The mediation process is non-adversarial, which means that it promotes cooperation between each party and avoids confrontation (Garcia, 2019).

To guarantee that the mediation process is fair, neutral, and successful, mediators are obligated to abide by specific ethical rules or codes of conduct (Bush, 2019, Shapira, 2020). The most typical components of mediators' codes of conduct are:

- A commitment to provide information to parties regarding the mediation process: Mediators are obligated to educate the parties engaged regarding the mediation process, including its advantages, restrictions, and guidelines.
- A commitment to encourage communication between the parties: Mediators urge parties to

speak to one another honestly and openly without worrying about consequences or criticism.

- Being unbiased towards the parties: Mediators are supposed to maintain their objectivity and refrain from siding with or favoring one party over the other.
- An interest in the parties' emotional and physical health: Mediators are supposed to be considerate of the parties' mental and physical wellness and to make sure that the process of mediation does not result in damage or anxiety.
- Conduct the mediation in an impartial, equitable, respectful way: Mediators are tasked with overseeing the mediation process in a way that gives both parties an equal chance to voice their thoughts and concerns.

In mediation, the mediator meets with each side separately for private discussions, known as caucuses, to gain a greater understanding of their demands, interests, and opposition. In divorce mediation, the mediator takes into account matters like budgets, parenting plans, financial obligations, and properties while focusing on the best interests of the parties instead of their positions or entitlements. The mediator is unable to offer legal advice and instead refers divorcing parties to their attorneys, who typically don't show up for mediation sessions. When all disagreements have been resolved and the conditions agreed upon have been submitted to the judge for endorsement, the divorce mediation procedure is considered to be final (Noone, 1996). Conciliation and mediation are comparable processes, but a conciliator gives suggestions, whilst a mediator helps the parties arrive at a compromise (Abusomwan, 2023).

***Mediation in Islam:***

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The Quran does not specifically mention the idea of divorce mediation, however, the goals and moral principles of mediation, particularly divorce mediation, are consistent with the Islamic teachings' intrinsic values of justice, fairness, and reconciliation. Islamic teachings promote the crucial role of dealing with conflicts respectfully in order to preserve family harmony. Although mediation as a modern concept is not specifically mentioned in the Quran or Hadith, the underlying concepts encourage amicable dispute resolution and communication between parties. For example: Islam places an intense focus on the idea of reconciliation (Sulh), which urges individuals to settle conflicts and disagreements amicably. The Quran promotes the value of peaceful and amicable conflict resolution in numerous circumstances and encourages the idea of reconciliation and compromise. Reconciliation is frequently facilitated by mediation, in which a neutral third party assists the disputing parties in coming to an amicable agreement. The mediator serves as a facilitator, assisting the parties in understanding one another's points of view and coming to an agreement through active listening, discussion, and bargaining. The concepts of mediation are consistent with the spirit of reconciliation stressed in Islam, since both seek to advance peaceful conflict resolution and inspire people to cooperate for a win-win result. In Islam, people are encouraged to put these ideals above their own interests or desires because they are seen as virtues. The idea of Sulh encompasses more general societal issues, such as fostering peace and harmony across various cultures and countries, in addition to resolving disputes between individuals. Sulh literally means mediation, negotiation, conciliation, and compromise which easily fit within the definition of ADR (Malik and Muda, 2015). Although no reconciliation process is ever going to be perfect, its conflicts must always be brought to light. But for a reconciliation process to continue, both

parties must act with great generosity (KHAKIMOV, 2020). Such an interpretation is confirmed by the Glorious Qur'an, the most important source of Islamic instruction, which validates the idea as follows:

*If a woman fears either ill-treatment or aversion from her husband it is not wrong for the husband and wife to bring about reconciliation among themselves (by compromising on their rights), for settlement is better. Man's soul is always prone to selfishness, but if you do good and are God-fearing, then surely Allah is aware of the things you do (Surah An-Nisa (4:128)).*

Islam permits a maximum of four wives and suggests equal treatment among them. The verse stresses the value of spouses' knowledge of one another. It implies that staying married to the same man she has known for a significant portion of her life is better for the woman. This indicates that divorce must not be the first choice when dealing with disagreements in a marriage. The Quran places a strong emphasis on preserving family relationships and preventing divorce unless it is inevitable. The text exhorts husbands and wives to strive towards settling their differences and discovering common ground. This can be accomplished by interaction, compromise, and compassion towards each other's needs and sentiments.

*If two parties of the believers happen to fight, make peace between them. But then, if one of them transgresses against the other, fight the one that transgresses until it reverts to Allah's command. And if it does revert, make peace between them with justice, and be equitable for Allah loves the equitable (Surah Al-Hujurat (49:9)).*

Muslims are not supposed to fight, but if it does, the protocol is to mediate a settlement. Other Muslims ought to strive to bring about reconciliation and tranquility rather than just

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stand by and watch two factions fight. They should implore the parties to put an end to their hostilities, identify the root of the conflict, and strive toward a resolution. Islamic law holds that justice and equity, not only an end to hostilities, are the foundations of true peace. The cited passage serves as the foundation for Islamic law governing conflict between Muslims. Even though the verse is entirely linked to the divorce or family dispute, still, it entails the importance of maintaining peace between the parties of the dispute.

***Arbitration:***

Divorcing couples can hire an impartial arbitrator with experience in family law to hear their case and render a judgment (an award) after hearing from both parties. This process is known as divorce arbitration. Like a judge, the arbitrator renders a final verdict at the conclusion of the proceedings, but unlike a judge, the arbitrator is more forgiving because the couples can influence the rulings. Depending on what the parties decide, the arbitrator's ruling in a divorce case may be binding or not. The choice will subsequently be formalized into a ruling if the couples choose to make it binding. The ruling of the arbitrator may be accepted or rejected by the parties if they choose to make it non-binding or advisory. If they agree with the judgment, an agreement to that effect will be reached, and the judgment will then be formalized. A legal appeal may be made to a court of law if any party or both parties later reject the decision on the grounds that the arbitrator was biased and reached the decision incorrectly. The partner who appeals may be required to cover the other's costs if the outcome is the same as the initial ruling or is in the other spouse's favor. An appeal against an arbitrator's decision (award) is not permitted, with the exception of the circumstances described above. The selection of an arbitrator is essential because their judgment is binding and cannot be

challenged. In most cases, both spouses are free to agree on the arbitrator's identity or, if they cannot, to establish the procedure for the arbitrator's selection. When a divorce case in court fails because the parties cannot come to an agreement on one or more issues, such as who should be liable for the children's custody or support, arbitrators, like mediators, are sometimes called upon. It should be pointed out that arbitrators might be divorce attorneys or former judges, but in any event, they ought to be knowledgeable about local family law (Abusomwan, 2023).

In most nations, arbitration awards are enforceable and legally binding. In interstate trade and international transactions, arbitration agreements and judgments may be enforced in accordance with the United States Arbitration Act, of 1925. A model legislation for matrimonial arbitration does exist, nevertheless. Although less formal than litigation, arbitration is not the same as mediation. A mediator cannot give a couple a binding ruling, in contrast to an arbitrator. A mediator conducts hearings without the couples and is less formal than an arbitrator. A demand for arbitration must be filed, an arbitrator must be chosen, a hearing date and location must be set, testimony and documents must be submitted to the arbitrator, witnesses must be questioned and cross-examined, and an irrevocable award must be issued. Divorce arbitration is a process for resolving disagreements relating to divorce by means of an unbiased, third-party arbiter (Walker, 2008). Divorce arbitration normally necessitates a number of procedures that are carried out in a specific order.

- One side has to initially file an arbitration demand during judicial proceedings. This suggests that they want to resolve the dispute through arbitration instead of the courts.



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- The other side is then informed of the request for arbitration and given time to react. This way, it is ensured that both parties are aware of the process and have a chance to engage.
- The arbitrator chosen by the parties will then hear the dispute and render a decision. It's crucial that the arbiter is impartial and neutral.
- A hearing schedule and location that is convenient for both sides and the arbitrator are determined after the arbitrator has been selected. Everyone can participate in the process as a result.
- During the hearing, the arbitrator is open to hearing facts and documentation from both parties. Additionally, witnesses may be questioned and cross-examined. As a result, the arbitrator can thoroughly understand the dispute and draw a well-informed decision.
- After reviewing all the facts presented, the arbitrator issues a binding decision. This shows that the decision is final and that it is binding on both parties.
- Copies of the award are sent to both parties as the last step. This guarantees that everyone is informed of the choice and can take the appropriate steps.

### **Arbitration in Islam:**

*Tahkim* and *Sulh* are two Arabic words that are frequently used to refer to arbitration. The word *tahkim* comes from the root *hkm* and refers to the participation of a third party, such as an arbitrator or *muhakkam*. The arbitrator is chosen by the parties to settle their dispute, and the arbiter renders a legally enforceable ruling. The Qur'an contains the term *tahkim*'s root in 14 different incarnations at 209 different locations. *Hakkama* refers to selecting a judge or entrusting the decision to another person. *Tahkim* basically

means the process of appointing an arbitrator to render a legally binding verdict in a dispute. The phrase has historical use as a method of conflict resolution and is founded in Islamic tradition (KHAKIMOV, 2020). The importance of choosing an arbitrator and using arbitration to settle disputes is frequently mentioned in the Qur'an.

*But no, by your Lord, they cannot become true be-lievers until they seek your arbitration in all matters on which they disagree among themselves, and then find not the least vexation in their hearts over what you have decided, and accept it in willing submission (Surah An-Nisa (4:65)).*

The verse discusses the prerequisites for being a true believer. The text states that a need to become a real believer is to seek the Prophet's mediation in any quarrel. To "seek your arbitration" is to ask the Prophet (ﷺ) to mediate a conflict. The verse illustrates how important it is to embrace the Prophet's (ﷺ) decision without having any internal disagreements. The phrase "not the least vexation in their hearts" describes the believers' incapacity to harbor resentment or anger against the Prophet's (ﷺ) decision. The passage additionally stresses how important it is for believers to make the choice deliberately, therefore they should do it with honesty and humility. The term "accept it in willing submission" tells the followers to willingly and fully embrace the Prophet's (ﷺ) decision. The verse accentuates the need to follow the Prophet's (ﷺ) directives while resolving disagreements and conflicts among followers. The Quran also implies that true religion requires following the Prophet's guidance in all spheres of daily life in addition to trusting in God.

### **ADR and Pakistan's Legal System:**

The 1973 Constitution of Pakistan serves as the cornerstone for alternative dispute resolution

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(ADR). Although not expressly stated in the Constitution, ADR may nonetheless be performed in accordance with its guidelines. The government must create a social framework that permits Muslims in Pakistan to conduct their lives in compliance with Islam in all aspects of their lives, including political, economic, and social affairs, as per Article 2A of the Constitution. Islam has a concept of tahkim and sulh for settling disputes, which the ADR process can make a reality (Stempel, 1996, ATTAULLAH and SAQIB, 2016). Pakistan is a signatory to a number of international agreements that recognize and uphold arbitration, including those with the World Trade Organization (WTO), Economic Cooperation Organization (ECO), SAARC, and United Nations Commission on International Trade Law (UNCITRAL) (Iftekhar et al., 2022, Ravala, 2008). At a national level, multiple laws have been established for ADR objectives, including:

***Section 89-A of the Civil Procedure Code, 1908 read with Order X, Rule 1-A:***

Section 89-A is a provision in the Civil Procedure Code, 1908, which addresses the resolution of disputes in lieu of court. This clause permits the transfer of conflicts to alternate dispute resolution processes including arbitration, mediation, or conciliation. The process for referring conflicts to alternative dispute resolution procedures is described in Order X, Rule 1-A. When taken as a whole, these clauses offer a legal basis for using alternative dispute resolution techniques to settle conflicts.

***The Arbitration Act, 1940:***

In the Indian subcontinent, the arbitration procedure was regulated by the Arbitration Act, 1940. As a substitute for conventional court-based litigation, the act offers a legal framework for arbitration disputes. The act outlines the parameters and process of arbitration, involving

the choice of arbitrators, how trials are run, and how conclusions are upheld. The act also stipulates that international arbitral awards may be recognized and enforced in India. The legal framework has undergone numerous revisions to solve difficulties with the practice of arbitration and to keep up with evolving circumstances.

***The Family Courts Act, 1964:***

The Family Courts Act, 1964 is an act that came into force in Pakistan aimed at creating family courts in the country. The legislation contains a number of sections that describe the duties and authority of these courts. The act's sections 10 and 12—which deal with the authority of the family courts—are of particular significance. According to Section 10, family courts have jurisdiction over all lawsuits and legal actions including marriage, divorce, dower, maintenance, and child custody. This implies that an individual must file a case in a family court if they want to pursue a claim involving any of these issues. After the written statement is submitted, the court schedules a pre-trial hearing at which the plaintiff, written statement, and supporting evidence are reviewed. During the pre-trial phase, the Family Court may try to settle disagreements and come to an agreement between the parties. In the event that an attempt at reconciliation falls short, the Family Court may issue an order of dissolution and allocate dower among the parties. Contrarily, Section 12 addresses the geographic scope of the family courts' authority. It specifies that a family court has jurisdiction over situations that occur within its geographic boundaries. This means that the local family court will have jurisdiction over any cases involving marriage, divorce, dower, maintenance, or child custody that arise there. The Family Court must attempt to reconcile both sides within 15 days, and if not successful, it's obligated to declare its decision and issue a decree; cases, which includes dissolution of marriage lawsuits, ought to be

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resolved within a period of six months, with the possibility of seeking guidance from the High Court if not.

***The Local Government Ordinance, 2001:***

Sindh Ordinance No. XXVII of 2001 sets the Musalihat Anjuman in Section 102, which is comprised of a committee of three Musaleheen (Conciliators) chosen by the Insaf Committee of the Union Council. The Musaleheen (Conciliators) are appointed for the duration of the Union Council and may be removed if persistent bias or improper behavior is alleged. According to section 103, if all parties agree to it and there are no fees involved, the Union Nazim, Insaf Committee members, and Conciliators ought to employ mediation, conciliation, and arbitration to resolve individual issues, irrespective of whether legal processes have been started. According to Section 104, any court can refer a dispute to Musalihat Anjuman for resolution, and the court may specify the process, the scope of the dispute, and other pertinent information. The court has the authority to put into effect the settlement as a court rule if the matter is resolved through the Musalihat Anjuman. As per section 105, the Union Nazim may appoint a different conciliator at the parties' request after consulting with the Insaf Committee in those circumstances. According to Section 106, the Convener of the Musalihat Anjuman is in charge of calling meetings, running informal proceedings, and attempting to reach an amicable settlement among parties; legal counsel is not permitted to attend, and the conciliators' report must be documented in writing and given to the parties.

***The Alternative Dispute Resolution Act, 2017***

The ADR Act 2017, which defined ADR as a voluntary and consensual method for addressing issues via negotiation, mediation, conciliation, or arbitration, provides a legal foundation for ADR

in Pakistan (Iftekhhar et al., 2022). Unless both sides concur, there is no chance of a resolution through ADR, or there is a complex legal or factual issue, the court must send civil cases for alternative dispute resolution (ADR). Because it specifies criteria for employing ADR to resolve conflicts, the ADR Act 2017 is significant. Since it allows parties an opportunity to resolve their disputes outside of the limits of the courtroom, ADR approaches, including mediation, are essential. Mediation is a sort of ADR that enables parties to actively participate in the settlement process and reach an agreement. Act 2017 promotes the use of ADR by mandating that parties use ADR as a last resort prior to proceeding to court. It might be useful because mediation is a confidential, flexible process that allows parties autonomy over how their dispute will be addressed. ADR and mediation can decrease the burden on the legal system by providing a rapid and economical means of resolving disputes (Iftekhhar et al., 2022).

**Conclusion:**

The main areas of the current study were divorce and alternative dispute resolution (ADR) approaches. It provided a thorough analysis of several ADR techniques, the idea of ADR within the context of Islamic jurisprudence, and the pertinent regional laws governing ADR. Islamic teachings place a strong emphasis on the necessity of respectfully resolving disputes in order to maintain familial peace. Although the Quran and Hadith don't address mediation specifically as a modern practice, their fundamental principles support peaceful dispute settlement and effective communication between parties. It is noteworthy that Islam accentuates the value of reconciliation (Sulh), urging people to settle disputes amicably. In a number of circumstances, the Quran continually stresses the benefits of peaceful and amicable conflict resolution as well as the concepts of

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reconciliation and compromise. Tahkim and Sulh, are widely used in the Quran to signify arbitration. Pakistan's legal system also contains a number of legislations that signifies the

importance of alternative dispute resolution and mechanism for the proper implementation of these laws.

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