THE CONCEPT AND BASIS OF ARBITRATION UNDER SHARI'AH

By
ABUBAKAR SALISU BAFFA*
ABDULAZEEZ HAMZA OKENE, *Ph.D.***

Abstract

The discovery and usage of Arbitration as a quick, friendly and cost effective mechanism of resolving disputes outside the purview of formal litigation in regular courts across the globe usually sounds more like a new discovery. However, this article argues that arbitration could be traced and has its bases found and built in Shari'ah, which predates the current discovery of its usage under the context of western laws. The paper adopted the library base research method (doctrinal researh), with material collected from both primary and secondary sources. The primary sources were the Qur'an and Hadith, while the secondary sources were drawn from text books, journal article and other scholarly works. The article concluded that the arbitration is well rooted and traceable to Shari'ah and that its practical existence dates back to the early days of Shari'ah.

INTRODUCTION

Islam proffers several means at solving disputes between individuals (Muslims and non-muslims) and also ensures that the smooth running of our worldly affairs are done in such a manner that seeks to engrave peace as the most treasurable wealth of any good and civilized government. It has encouraged peaceful disputes and conflict settlement among governments, and between the government and the governed. In addition to the text of the glorious Qur'an, the Sunnah of the prophet (peace be upon him), his companions and their successors, Muslims jurist and administrators have consistently supported peaceful means of conflict settlement.

This article tends to examine Arbitration under Shari'ah, its basis, rules, and the Syrian crisis vis-à-vis the possible application of Sharia'ah'a Arbitration to the Syrian conflict that is yet to be resolve by the so-called "super powers" for an amicable resolution to the crisis and restoration of peace into the sub-region.

MEANING OF ARBITRATION

The Arabic word *"tahkin",* which laterally means "Arbitration" is a method of dispute resolution involving one or more neutral third party(ies), who are usually agreed to by the disputing parties and whose decision is binding[1].

It can also be defined as a term applied to an arrangement for accepting and a binding by the judgment of a selected person in some disputed matter as opposed to litigation[2].

Furthermore, Arbitration in Sharia'ah is identified as a situation in which two conflicting parties choose a natural judge (arbiter) to resolve their dispute and their claim. Thus, the traditional differences between arbitration and formal dispute resolution through judicial process or proceedings, is that the parties themselves elect their arbiter and voluntarily accept and abide by the decision of the arbitrator.

In *MISR Nigeria Ltd. V. Oyedele*[3], the Court, while adopting the definition in Halsbury's Laws of England, held that:

> *"Arbitration is the reference of dispute or difference between not less than two parties, for determination after hearing both parties in a judicial manner, by a person or persons other than a court of competent jurisdiction*[4] *".*

Qualities of an arbitrator under Sharia'ah

For an individual to qualify as an arbiter, he or she must generally possess the same qualifications as that of qadi (Judge) under the shari'a, namely:

- sane and adult
- A male (Hanafis allow a women also to act as a qadi in matters not involving had and qisas).

1. Bryan A. Garner '*Black Law Dictionary*' 9th edition (USA: West Publishing Company, 2009) P. 119.
2. Chowdhu-ry and Saharay '*Abitration*' (Calcutta: Eastern law house, 1979) P.3.
3. (1996) N. Comm. L.R 191 at 94
4. *Agu v. Ikewibe* (1991) 3 NWLR, 417: also in *Collins v. Collins* (1858) 28 LJCH 184

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- A Muslim (Hanafis allow a non-Muslim to act as an arbitrator).
- He must be intelligent, free and just.
- He must be learned in Sharia'ahh.
- Family members (from the husband and wife side) in matrimonial matter[5].

ARBITRATION UNDER THE PRE-ISLAMIC ERA

The Arabian Peninsula was populated by tribes who claimed descent from a common ancestor. It was to the tribe as a whole that individual's owed allegiance and it was from the tribe that protection of interests was obtained. The tribe was bound by a body of unwritten rules, which hail evolved along with die historical growth of the tribe itself as manifestation of its spirit and character. No one had the legislative power to interfere with this system and there was an absence of any official organisation for the administration of the law. Enforcement of the law was generally the responsibility of the private individual who had suffered injury. Tribal justice was administered by the chief of the tribe in a form adapted to the way of life which used arbitration and conciliation extensively[6].

The tribal laws were built upon two basic principles:

(1) The principle of collective responsibility, and
(2) The principle of retribution or compensation.

Though, the objectives of the tribal laws were not merely meant to punish offenders, but to restore the equilibrium between the offending amid the offended families and tribes[7].

However, conciliation and peacemaking is a practice that pre-dates Islam. Within the framework of tribal Arab society, chieftains (sheiks), soothsayers and healers (Kuhhan), and influential noblemen played an indispensable role as arbiters in all disputes within the tribe or between rival tribes. The authority and stature of those men served as sanctions for their verdicts[8]. The decision of the hukam was final but not legally enforceable. It was an authoritative statement as to what the customary

5. Dr. Zulkifili Hassan, *Law of Arbitration*. Paper Presentation at Islamic Science University, Malaysia on the 19th October, 2011 at slide No. 15
6. Ibid
7. Al-Ramahi, Aseel.*Sulh: ACrucial Part of Islamic Arbitration.* Islamic Law of the Muslim World Paper Series New York Law School, No. 08-45 at p.3
8. Ibid

law was or should be and later of Islamic principles. In fact, Schacht refers to a hakam in such situations as 'a lawmaker, an authoritative expounder of the normative legal custom or sunna[9]. The main objective of these third parties was conciliation and the maintenance of harmony, as some arbitrators would go to a great extent to produce the necessary compensation or inducement out of their own pockets in order to persuade the feuding parties to agree to arbitration[10].

The sons of the tribes were socialized to refer to their leaders in order to help them resolve disputes. This was built into their attitudes from an early age. The youngster referred to his father to resolve problems between him and his family or relatives. Thus, the father was his *wasta*[11] (mediator) between him and his relatives. As the child got older, he starts to refer also to the elders in his family whether they are uncles or cousins, thus everyone is used to helping each other. At times of crisis, everyone rallies round their tribal son. Tribesmen are familiar with what is considered to be arbitration- *wasta* the arbitration of the father for his sons, in addition the relatives and also the sheikh for the members of his tribe. Usually, only when disputes are complex and serious do the tribal members refer to their sheik.

"*Wasta*" means, literally the middle and is associated with the verb Yatawassat, to steer parties towards a middle point or compromise. '*Wasta'* refers to both the act and the person who mediates or intercedes[12]. '*Wasta'* is an institution and a part of Arab society since its creation. Its tribal origins centered on an intermediary role that is associated with prevention of retaliation in inter-personal or intergroup conflict[13].

Parties normally agreed on the choice of arbitrator, the cause of action, and the question, which they were to submit to him. All of which will be recorded if the hakam agreed to act, each party had to provide a security, in the form of property to signify their assurance that they would abide by his decisions. The decision of the hakam, which was final, was not an enforceable judgment but rather a statement of right on a disputed point[14]. Hence, the need for execution to be guaranteed by security. The enforcement of an arbitral award depends entirely on the arbitrator's respectability and status within the society.

9. J, Schacht. *An introduction to Islamic Law* (United Kingdom: Claredon press,1964) p.8
10. A. El-Tayib *'The Ode (Qasida)' in the Cambridge history of Arabic literature: Arabic literature to the end of Ummayad Period* (United Kingdom: Cambridge University Press, 1983)P.5
11. Ibid
12. Cunningham, R.B and Sarayrah, Y.K "*Wasta" The hidden force in the middle eastern society* (London: Praeger publishers, 1993) p.1
13. A. Al-Ramahi, '*Wasta in Jordan A Distance Future of (and benefit for) Middle Eastern Society'* (2008) Arab Law Quarterly Vol. 22 (1) p.35
14. A. Ahdab, '*Arbitration with the Arab countries, (*Boston: Klower Law International, 1999) p.11.

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Arbitrators used persuasive means to ensure that an award was complied with by the parties, including making an award easy to follow and convincing the offender that he had committed a wrong[15].

BASIS OF ARBITRATION UNDER SHARIA'AH LAW

The Holy Qur'an

The four sources of Sharia'ah, namely the Qur'an, the Sunnah, Ijma (Consensus of opinions) and Qiyas (reasoning by analogy) recognized the validity of Arbitration as a means of settling dispute. Arbitration also finds support in Ijtihad (independent reasoning) and Urf (custom)[16].

However, classical Muslism Jurists, debate over the concept of arbitration[17] and according to one view, arbitration is a form of conciliation, close amiable composition, which is not binding on the parties[18].

Those favouring this view hold that the Arbitrators decision is neither binding nor final, unless it is accepted by the parties. This arbitration does not have any jurisdictional nature, but close to conciliation, proponents of this view supported their view by the following verse from the Qur'an.

> "If you fear a breach between a man and his wife, appoint an arbiter from his people and another from hers. If they wish to be reconciled God will bring them together again. God is all-knowing and wise[19]".

The later part of the text gave an indication to the effect that if during the proceeding any of the parties or both wish for reconciliation rather than arbitral award through a compromise, then Allah will guide them to such reconciliation. Therefore, it is always emphasized that the arbitrator must begin with suggestions of possible moves toward reconciliation before embarking on the arbitral proceedings.

15. Al-Ramahi, Aseel. Op.Cit.p.5
16. Akanbi,M.M. '*Mainstreaming Sharia'ahh Arbitration into the Nigeria legal system*: Al-Adl (the just) Essay on Islam, Islamic law and Jurisprudence in Honmour of Hon. Justice Tijani Bolarima O. Babalakin JSC (rtd) (Ibadan: Published by Namlas University of Ibadan)p.33
17. El-Adab, A. Hamid, '*Arbitration with the Arab countries*' (Haque: Klower law international,1999) P. 16
18. Ibid
19. Qur'an chapter 4 verse 35.

While the textual basis for settlement (*Sulh*) comes from the Qur'anic verse, where Allah maintained that settlement is best[20].

Based on the above mentioned verses of the Qur'an making settlement between Muslims is permitted, except one which legalized what is prohibited or prohibit what is legal[21]. Scholars of Hadith and Fiqh observe that this Hadith applies to Muslims and non-Muslims alike but, that the report only mentions Muslims since they are the ones most likely to adhere to Sharia'ah judgments.

Islamic law recognizes several types of settlement based upon the relationship of the parties involved, and each type is treated individually. These include: settlement between a Muslim state and a non-Muslim state: between Iman and renegades: between husband and wife and between parties to a financial transaction[22].

THE SUNNAH

The Sunnah refers to the teachings or known practices of the prophet Muhammad (Peace and blessings of Allah be upon him) which have been recorded in the volumes of Hadith literature. These resources include many things that he said, did, or allowed. During his lifetime, the prophet's family and companions directly learned from him and observed him and related to others what they had seen and heard. People also asked the prophet (peace and blessing of Allah be upon him) directly for rulings on various matter's and he would pronounce his judgment[23].

Although the sunnah compliments the Qur'an and is used to further understand the Qur'an. It is also used as a source for many other rulings not explicitly mentioned in the Qur'an. There are over forty verses in the Qur'an that command believers to obey the messenger and his Sunnah (way).

> "He who obeys the messenger has obeyed Allah…"[24]

As regard to the practice of using arbitration as a dispute settlement mechanism, there are at least three recorded instances involving the prophet (PBUH). The first instance has to do with his appointment as an arbitrator[25]. The second instance was when he

20. Qur'an Chapter4: Verse 128
21. M, Ibn Hibban. *Sahih Ibn Hibban* (Beirut: Mu'assisat al-Risalat,1988) Hadith no. 5182.
22. Al-Sharqawi and Al-Ansari Z, '*Hasiyat Al-Sharqawi ala Tuhfat al-Tullab* (Cairo:Mustapha al-Babi al-Halabi 1941) Vol.2 p. 64
23. Jamal al-Din Zarabozo '*The sunnah and its place in Islam*' Available at www.islamreligion.com visisted on 28/2/2016
24. Q4: 80

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submitted to the decision of an arbitration and was bound by the award[26]. In the third instance, he recommended the use of arbitration to others[27].

Qiyas, Ijtihad, Ijma and Urf

After the demise of the holy prophet, the practice of the companions was to first consult the Qur'an, and then the sunnah and when these two primary sources were silent then they resorted to extrapolating and deducing from the principles gleaned from the two inspired source. A distinction must be made between the Sharia'ah as revealed in the Qur'an and as contained in the Sunnah and many of the technical legal rules derived from both the Qur'an and Sunnah through Fiqh (the science of Islamic jurisprudence which was invented to systemize the development of Islamic law).

The laws as revealed in the Qur'an and as practiced by the holy prophet, are divine and eternal, however, as regards the other sources, a '*Faqih*' or '*Fuqaha*'[28], derived these rules and thus decisions based on them are not eternal and are therefore open to re-interpretation in light of inter-alia, new social, economic, educational and political circumstances.

For the purpose of justifying the use of arbitration for dispute settlement the above secondary sources of Sharia'ah will be examined.

THE IJMA

Ijma can be defined as the consensus of opinion of companions of the prophet (sahaba) and the agreement reached on the decision taken by the learned "muftis" or the jurists on various Islamic Matters[29].

Allah encourages the seeking of opinions of others on religions matters as mentioned in the Holy Qur'an.

25. It was once reported that the prophet was invited by people of Madina to arbitrate over a feud involving two Arab tribes and three Jews clans. Martin Lings, '*Muhammad:* His life based on the earliest sources (Islamic Texts society and G. Allen and United Kingdom, 1983) PP. 56-57
26. El-Ahdab and A. Hamid Op Cit. P.13.
27. Ibid
28. Jurist or jurist consult; an expert in the field of Islamic law possessing outstanding knowledge of revealed source and methodology and the intelligence to make use of basic sources through independent reasoning and principles provided by the Sharia'ahh.
29. Doi, Abdurahman, I. *Sharia'ahh the Islamic law,* (Malaysia:A.S Noordeen, Islamic Book Trust,2007) P. 64

> "It is through the mercy of Allah that you are lenient with items: if you were to be hard-hearted; they would have deserted you; pardon them and seek for the forgiveness for them and seek their opinion in the matters: whenever you decide upon something, have belief in Allah Surely Allah loves those that rely on him[30]"

The practice of Ijma can be traced back to the days of the companions of the prophet as can be seen from the following example. Almighty Allah does not state the types of punishment that should be applied to one who drinks Alcohol. But the agreement was reached by the consensus of opinions of the Sahabah when Sayyidna Ali bin Abu Talib said: He who drinks, get drunk: he who get drunk, raves: he who raves, accuses people falsely; and he who accuses people falsely should be given eighty strokes of cane according to the injunction of the Holy Qur'an.

> "Those that accuses the innocent women falsely, and they do not bring forth your witness, flog them eighty strokes of cane and do not accept their witness, they are the wrong does[31]".

AL-QIYAS (ANALOGICAL DEDUCTION)

Al-qiyas could be defined in Islamic theological parlance, as analogy, or analogical deduction in other words, al-Qiyas is the legal principle introduced in order to derive at a logical conclusion of a certain issue that has to do with the welfare of the Muslims.

In exercising this, however, it must be based on Qur'an, sunnah and Ijma. Thus, the pro-Qiyas supported their stand with the following Qur'anic verse.

> "Think deeply, o ye who are understanding[32]"

The pro-Qiyas say that the people of understanding referred to in this verse must use their common sense to deduce Islamic law.

30. Qur'an Chapter3: Verse 159
31. Qur'an4: Verse 115
32. Qur'an Chapter59: Verse 2

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Al-IJTIHAD

The Arabic word for Ijtihad literally means on effort or an exercise to arrive at one's own judgment. In its widest sense, it means the use of human reason in the elaboration an explanation of the Sharia'ah law. It covers a variety of mental processes, ranging from the interpretation of texts of the Qur'an and the assessment of the authenticity of Ahadith[33].

URF AND ADAT (CUSTOM)

Urf, the known practices and Adat or Customs are recognized as a subsidiary source by all schools of jurisprudence. The Maliki School attaches more importance to custom than other schools. But customary rules are valid as long as there is no provision on the matter in the Qur'an and the Sunnah. If any of the customs contradict any other rule of Sharia'ah, they will be considered outside the pale of Islamic law[34].

In principle, the Sharia'ah permits Islamic legal rules to be changed and modified in accordance with changing circumstances. Inflict a suitable punishment on him.

THE MAIN FEATURES OF ARBITRATION:

Under Islamic Law, in order to understand the concept of arbitration under Islamic Law, the main features of arbitration may be considered under the following:

The arbitration agreement:

According to the authorities of all Schools of Islamic Law the arbitration agreement is the Principal basis for conferring upon the arbitrators the power to issue binding decisions[35]. The use of arbitration as a method for the settlement of dispute under Islamic Law depends upon the full and valid consent of the parties. Whether the Arbitration agreement should be in writing or oral is not discussed by any school in Sharia'ah. However, in the leading case between the Caliph 'Ali Bin Abi Taleb' (the fourth rightly guided Caliph) and "Muawiya Bin Abi Sufyan", the two parties agreed to appoint two Arbitrators in written deed which stated the names of the arbitrators, the time limit for making the award, the applicable law and the place of issue of the award[36]. In this dispute the parties used Arbitration to settle their dispute, but the

33. Doi, Abdurrahman.I. Op. Cit. P.78
34. Ibid P. 84
35. Abul-Enein,M.I. *'Liberal Trends in Islamic Law (Sharia'ah) on peaceful settlement of disputes'* (2000) 2 J Arab Arb, P.2
36. Walied, El-Malik. *Mineral investement under the Sharia'ahh law* (London: Graham and Tortman,1993) at P.127

arbitration clause was not effective[37]. The question which may arise in this respect is whether arbitration clause, which refers future disputes to arbitration, is valid under Islamic Sharia'ah.

The doctrinal writings of the four Sharia'ah Schools dealt with the use of arbitration in existing disputes. Therefore, the doctrinal writings of the scholars of the Sharia'ah Schools are silent about Arbitration clauses, which refer future dispute to Arbitration. This issue has been a subject of controversy among some classical scholars of Sharia'ah. Whatever the case is, ignorance of Sharia'ah in early time's does not mean that Arbitration clauses are prohibited.

According to the principle of freedom of contracts under Islamic Sharia'ah, parties are free to include any clause in their contract as long as it does not permit acts against God's commandments, such as the incorporation of 'interest' (Riba) clauses.
Thus, arbitration clauses were ignored by the early Muslim scholars because of the fact that the commercial conditions at that time did not require the use of such clauses. It has to horn in mind that the answers given by Islamic Law to arbitration problems have been given before the commercial and economic evolution had reached today's stage. However, they are not unalterable and do not constitute an exception to the universal rule that the Jaw must change OS en the times'. Indeed. Sharia'ah is not static and rigid and it is only bound by the Qur'an, Sunna, ljma' and Qiyas (Analogy)[38]. Arbitration clauses are necessary to the contract, especially in international contracts and they are beneficial to both parties as the enable the justice to Lie done more quickly. Furthermore, since arbitration clauses are not contrary to public policy (namely do not permit acts against acts commands). They should he considered valid under Sharia'ah. A division of opinion between the authorities of Sharia'ah prevails over whether the consent of the parties to go to arbitration would be required only at the hale of the agreement or should the consent continue until the issuance of the award by the arbitrator(s). Some classical Muslim jurists question the binding force of arbitration agreement[39]. To them Arbitration agreements are revocable options rather than contractual undertakings[40]. This idea was incorporated in Al-Majalla which some codification was including the rules of arbitration to be applied in the Othman Empire[41]. This view has been challenged by contemporary

37. Mahamassani,S. *International law in the light of Islamic Doctrine* (Academia de Droit International, Recueil des cours, 1967)p. 272
38. A. Hamid El-Ahdab Op. Cit. P. 19
39. The Hanafi Shafie, and Hanbali schoolsgives each party the right to withdraw his consent for arbitration at any time. Al-Mawardi, Abu Al-Hassan. *Adab al-Qadi*(Cairo: Saadah Publication, 1323H)P.383
40. A. Hamid El-Ahdab Op. Cit. P. 24
41. Article 1488

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Muslim scholars. According to them, this view is obsolete, superficial and ill-founded[42]. The modern trend in Islamic law is to consider the arbitration agreement binding upon the parties once it has been entered into parties would also be bound by decision of the arbitrator(s). Authorities in the subject proved that this view is the direct application of the general principles in Islamic Law. It is the direct application of the Qur'an when it "… *and fulfill every agreement, for every engagement*….." This meaning was stressed by the prophet (PBUH) in a famous saying; he said, "*believers should honour their engagements*…[43]" It may be concluded that the view that receives mostly full approval and application in the legal profession is that Arbitration agreements are binding and no party is permitted to withdraw from any agreement he concluded with others by his own free and valid will.

Finally, as to the formalities of arbitration procedures to the place of arbitration as appointment of arbitrators the Qur'an is Silent. Accordingly, they are within the discretionary powers of the parties.

Arbitrators

Once the disputing parties have agreed to resolve their dispute by Arbitration, they should reach an agreement on the appointment of the arbitrator(s). The parties may specify the arbitrator(s) by name or they may define the arbitrator(s) by certain position without specifying the name. If the parties agree on Arbitration but did not appoint the Arbitrator(s), the Arbitration may not take place. The four schools of Islamic Sharia'ah are silent on the possibility of appointment arbitrators by a third party.

However, there is nothing under the Sharia'ah prohibits the appointment of the Arbitrator(s) by a third party. Thus it is left to the entire freedom of the contracting parties to decide whether they want the appointment to be made by a third party or not. According to the four Islamic law schools, there are no restrictions on the number of Arbitrators. The matter is left to the parties to arbitration agreement to appoint an arbitrator, and the two Arbitrators authorized to appoint a third arbitrator, the majority rule may be applied if the parties give their consent to that. As an arbitrator is deemed under the four Sharia'ah schools to exercise a judicial function, he must have the same qualifications as a judge. This qualification can be summarized as follows.

42. Abdurrazak al-Sanhury. *Masader Al-Haq,* (Cairo:Dar Al-Nahza Al-Arbia,1968)Vol. 1 P. 80
43. Under Maliki School once parties have agreed on Arbitration, they are bound by their agreement and would not be permitted to withdraw from Arbitration agreement. Unlike other schools, it requires the consent of the parties to Arbitrate only at the time of the agreement.

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The arbitrator must posse the foregoing qualifications continuously from the date of the commencement of the arbitration until the rendering of the award[44].

As to the revocability of arbitrators by one of the parties, the Maliki school prohibits revocation after the procedure has started. The Shafi'i and Hanafi schools permit the revocation of arbitrators at any time before rendering the award. However, the view that receives mostly full approval and appreciation in the legal profession is the view of the Maliki school, which provides that the appointment of an arbitrator is irrevocable after the commencement of the procedure except by mutual agreement of the disputing parties. This view seems to be the most appropriate because it meets the requirements of international business community.

The Applicable Law

In disputes where one party is a non-Muslim. Choosing a non-Islamic legal system is recognized by the Maliki, Shafi'i and Hanbali schools as valid. Furthermore, several Muslim countries became parties to the New York convention and by doing so: they approve the delocalization of Arbitration agreements. However, recourse to a non-Islamic legal system is valid as long as the rules to be applied on the contract do not violate express provisions of Qur'an or Sunna[45].

ARBITRABILITY ACCORDING TO ISLAMIC LAW

According to the four schools of Islamic Sharia'ah arbitration is not authorized in matters relating to the "Rights of God"[46]. The said area is quite large, covering criminal law as well as patrimonial rights. The Qur'an also excludes certain subjects such as guardianship on orphans, which must obligatorily be referred to courts of law. This area resembles the area of public policy in modern laws. Apart from the subjects excluded above, any other dispute should be just as cable of being resolved by arbitration as by a national court. Accordingly, disputes arising out of commercial transactions are Arbitrable.

44. Samir, Saleh. *Commercial Arbitration in the Arab Middle East: A Study in Sharia'ah and Statutes Law(*London: Graham and Tortman,1984)P. 42
45. Prophet Muhammad (Peace be upon him) in a well known case on Islamic history called Banu Quraydah" accepted application of customary.
46. Samir Saleh Op. Cit. at p. 47

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THE ARBITRAL AWARD AND ITS ENFORCEMENT:

According to the Maliki, Hanbali, Hanafi, and the majority of the "Shafi' is''[46] an arbitral award is as enforceable as an order of a court of law or a judge's judgment. However, the intervention of a judge is necessary, as the arbitrator has no authority with respect to enforcement of arbitral awards (for example, authority for the use of State law enforcement agenesis to enforce arbitral awards). The Maliki, Hanafi, Hanbali and the majority of shafi'is stress that the Judge who has been required to enforce an arbitral award, cannot deny the enforcement simply because it does not conform to his opinion. Thus according to Sharia'ah law, an arbitral award has a jurisdictional character and it is binding and enforceable. Moreover, a judge when enforcing an arbitral award is not authorized to review the merits of the despites or the arbitrators reasoning. The judge's duty is limited to examining some normal matters, such as the existence of a valid arbitration agreement and whether the award deals with the disputes subject matter. However, a judge may set aside an arbitral award if it is inconsistent with Shari's public policy[48] or if the award contains a flagrant error or injustice.

It should be noted that the judge's power to set aside an arbitral award on the latter grounds is not a second level of jurisdiction but a form of' supervision over the award[49]. As to the enforcement of foreign arbitral awards, the attitude of Sharia'ah is dependent on the bilateral and international conventions to which the party states are committed. Moreover, the Muslim judge may set aside a foreign award or refuse enforcement if the award violates the general spirit of Sharia'ah and/or its sources (Qur'an and Sunnah).

47. According to the minority of Shafi school the arbitral award cannot be binding and enforceable unless is accepted by all parties. To them the binding force of an arbitral award is derived from the arbitration agreement, the consent of the parties to the agreement is crucial for the enforcement of the award.
48. The concept of public policy in Islamic Law based on the respect of the general spirit of the Sharia'ah .and its source on the principle that individual most respect their clauses, unless they forbid what is authorized or authorized what is forbidden.
49. Abdul Hamid El-Ahdab Op. Cit p. 7.

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CONCLUSION

It is hereby put to rest, that Islam did not merely encouraged peaceful conflict settlement, but introduced a systematic and time space consideration approach to end conflicts, however, Islam while preserving the openness of Sharia'ah law to the impact of time and space dimension, also protects it from the influence of contradicting norms and laws of non-Islamic provenance, or from the renunciation of fundamental of Islamic law under the justification of time and space factor, or the pressure of globalization and in

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