Law Research Journal (LRJ)
Volume 3 Issue 2, 2025
ISSN(P): 3006-3027, ISSN(E): 3006-3035
Homepage: https://lawresearchreview.com/index.php/Journal

Arbitration in Pakistan Under Islamic Jurisprudence: A Comprehensive Legal Analysis

Syeda Nimra Sabahat[1], Abida Hassan[2], Kashif Imran Zaidi[1], Muhammad Riaz[1]
[1]School of Law and Policy, University of Management and Technology, Pakistan
[2]Iqbal Law School, GC University, Pakistan

How to Cite this Article:
Sabahat, S. N., Hassan, A., Zaidi, K. I., & Riaz, M. (2025). Arbitration in Pakistan Under Islamic Jurisprudence: A Comprehensive Legal Analysis. *Law Research Journal*, *3*(2), 01–11.

Abstract
Arbitration (taḥkīm) has deep roots in Islamic jurisprudence, where amicable settlement (sulḥ) and conflict resolution are strongly encouraged by the Qur'an and the Sunnah of the Prophet Muhammad (peace be upon him). In modern Pakistan, arbitration is regulated primarily by the colonial-era Arbitration Act of 1940 and the recent Alternative Dispute Resolution Act of 2017. These laws operate within a constitutional framework that declares Islam to be the state religion and mandates that no law shall be repugnant to the injunctions of Islam. This article explores (1) the Islamic foundations for arbitration, including the Qur'anic texts and Hadith references in both Arabic and English translations; (2) the evolution of Pakistan's arbitration landscape, highlighting key legislation; (3) pertinent case law reflecting the judiciary's efforts to reconcile statutory arbitration with Islamic principles; and (4) a comparative overview of how other Muslim-majority jurisdictions, such as Saudi Arabia, the UAE, and Malaysia, approach arbitration under Islamic law. Central to this discussion is the ongoing tension between conventional arbitration practices—particularly the enforcement of interest (riba)—and the prohibition against riba in Islamic jurisprudence. The Federal Shariat Court's rulings on interest, the role of the Council of Islamic Ideology, and higher courts' interpretations all underscore the challenges in harmonizing modern commercial arbitration with the teachings of Islam. Through a case law analysis and a robust theoretical framework, the study delves into topics such as arbitrator qualifications in Islamic law, public policy exceptions based on Shariah, and the cultural dynamics of jirga-style dispute resolution. The conclusion offers recommendations for legislative reforms, institutional capacity building, and policy interventions to foster a more coherent, Islamic-law-compliant arbitration system in Pakistan.

Keywords
Arbitration, Islamic jurisprudence, taḥkīm, interest (riba), public policy, Pakistan, Shariah, Alternative Dispute Resolution (ADR)

Corresponding Authors: syedanimrasabahat@gmail.com

1. Introduction

Arbitration is widely recognized as an efficient, private, and flexible alternative to litigation (Ahmed, 2018). In the Islamic Republic of Pakistan, arbitration operates under multiple legal influences: colonial-era legislation, modern statutory reforms, and an overarching constitutional requirement that laws conform to Islamic injunctions (Constitution of Pakistan, 1973, Art. 227).

However, the practical integration of Islamic jurisprudential principles into Pakistan's arbitration regime remains uneven. While the Arbitration Act, 1940, has long governed arbitration proceedings, this colonial-era legislation has faced criticism for its outdated procedures and limited flexibility. More recently, the Alternative Dispute Resolution Act, 2017, has attempted to modernize the arbitration landscape. Still, debates persist over the extent to which Islamic law (Shariah) is or should be reflected in these processes (Munir, 2021). Against this backdrop, this article offers a comprehensive legal analysis of how arbitration in Pakistan is informed by Islamic jurisprudence, spotlighting relevant Qur'anic verses, Prophetic traditions (Aḥādīth), Pakistani case law, and commentary from contemporary legal scholarship and media sources. This study examines the Islamic foundations of arbitration, Pakistan's arbitration laws and their Islamic alignment,

This work is licensed under a Creative Commons Attribution 4. 0 International License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

relevant judicial precedents, comparisons with other Muslim jurisdictions, contemporary issues, and recommendations for harmonizing statutory arbitration with Islamic law. The focal point of this article lies in exploring how these convergent legal frameworks shape and, at times, conflict with each other. The resulting arbitration system grapples with questions such as: Does awarding interest (riba) in arbitral proceedings contravene Shariah? What role should Islamic scholars (ulema) play in arbitral tribunals? How can the courts balance international arbitration norms with local Islamic values?

1.1 Research Problem

Dispute resolution in Pakistan often suffers from a massive backlog of cases, high litigation costs, and protracted delays (Dawn Editorial, 2021). While the Alternative Dispute Resolution Act of 2017 sought to modernize and expedite arbitration and mediation processes, critics argue its implementation has been uneven (Hussain, 2025). Moreover, the Federal Shariat Court (FSC) and the Council of Islamic Ideology (CII) maintain the constitutional prerogative to review laws and practices for consistency with Islamic teachings. This can lead to tensions, particularly around interest-based financial awards and disputes involving transactions deemed haram (forbidden) under Islam. Hence, there is a pressing need to examine how to reconcile the statutory arbitration framework with Islamic jurisprudence in an integrated, coherent manner.

1.2 Research Questions

Following research questions will be answered:

1. How do the Arbitration Act of 1940 and the ADR Act of 2017 align—or conflict—with key Islamic jurisprudential principles regarding dispute resolution?
2. What is the judicial stance in Pakistan's higher courts (Supreme Court, Federal Shariat Court) and provincial High Courts when arbitrations raise Islamic law issues (e.g., riba, haram contracts)?
3. How do other Muslim-majority jurisdictions (Saudi Arabia, UAE, Malaysia) integrate Islamic principles in arbitration, and what lessons might Pakistan draw?
4. What legislative and policy reforms could better harmonize Pakistan's arbitration practices with the injunctions of the Qur'an and Sunnah?

Following this Introduction, the article proceeds with a Literature Review exploring the historical underpinnings of arbitration in Pakistan and the broader Islamic conceptualization of taḥkīm. The Case Law Analysis section focuses on Pakistani judicial precedents. Next, the Theoretical Framework delves into the jurisprudential foundations—Qur'anic verses, Hadith, and the four Sunni schools—and their interplay with modern arbitration laws. A Discussion and Contemporary Challenges section follows, articulating the main issues faced in integrating Islamic principles. Finally, the article concludes with recommendations for policy and legal reforms.

This research employs qualitative legal analysis, combining a review of primary sources (statutes, case law, constitutional provisions, blog posts, news articles, Qur'anic verses, and Hadith) with secondary sources (academic literature, news articles, blog posts, and policy reports). A comparative lens is also used, referencing relevant arbitration practices and Islamic law provisions in other Islamic jurisdictions. The study's objective is primarily doctrinal, aiming to clarify legal tensions and propose solutions for policy and legislative reform (Creswell & Creswell, 2018).

2. Theoretical Framework & Hypotheses

2.1 Historical Evolution of Arbitration in Pakistan

Pakistan inherited the *Arbitration Act of 1940* from British India (Munir, 2021). This law, though functional, was criticized for its formality and alignment with colonial legal traditions. Over time, Pakistani courts adapted the 1940 Act to local contexts, allowing for the setting aside or enforcement of arbitral awards subject to court oversight. However, no explicit mention of Islamic jurisprudence existed in the Act.

By the early 21st century, significant delays in conventional litigation led policymakers to consider modernizing the dispute resolution framework. The Alternative Dispute Resolution Act of 2017 (ADR Act, 2017) aimed to introduce or strengthen mediation, conciliation, and arbitration processes (Pakistan Law Commission, 2017). Proponents viewed the ADR Act as part of Pakistan's broader judicial reform initiative to reduce case backlogs (Dawn Editorial, 2021). Yet, scholars like Ahmed (2018) emphasized that the ADR Act still lacked comprehensive guidance on integrating Islamic legal principles. Moreover, it initially only applied in the Islamabad Capital Territory, leaving significant variations across provinces.

3. The Concept of Arbitration in Islamic Jurisprudence

3.1 Definition and Concept

In Islamic jurisprudence, *Taḥkīm* refers to appointing a neutral third party (*ḥakam*) to adjudicate a dispute by mutual consent of the parties. The term derives from the Arabic root *ḥ-k-m*, meaning "to pass judgment". Classical scholars such as Al-Māwardī (a Shafi'i jurist) described it as two disputants choosing someone to judge between them. Contemporary Muslim scholars define *Taḥkīm* as "an agreement by the parties to appoint a qualified person to settle their dispute by reference to Islamic law" (Hagshah, 2013). It is thus a Sharia-sanctioned form of alternative dispute resolution (*ADR*) for civil matters.

3.2 Qur'anic Foundations

Islamic law places significant emphasis on amicable settlements and the peaceful resolution of conflicts. A foundational verse for arbitration in marital disputes—and, by extension, other conflicts—is:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا ۖ إِن يُرِيدَآ إِصْلَٰحًا يُوَفِّقِ ٱللَّهُ بَيْنَهُمَآ ۗ إِنَّ ٱللَّهَ كَانَ عَلِيمًا خَبِيرًا .

"And if you fear dissension between the two (husband and wife), send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Aware." (The Qur'an 4:35, Sahih International).

Although the verse addresses marital disputes, Muslim jurists interpret its broader principle as permitting neutral arbiters in other civil conflicts (Arif et al, 2024). Another verse—"The believers are but brothers, so make settlement between your brothers" (Qur'an 49:10)—underscores reconciliation as a core Islamic value (*Rugarli, 2020*). Through such verses, the Qur'an promotes the values of fairness, impartiality, and good faith—principles that resonate with the modern arbitration framework (Kamali, 2008).

3.3 Prophetic Traditions (Aḥādīth)

Several Ḥadīth (plural: Aḥādīth) reinforce the idea of reconciliation (ṣulḥ) as a virtuous act. One notable narration in *Sahih al-Bukhari* reads:

"Reconciliation between Muslims is permissible except for a settlement that makes lawful what is unlawful, or that makes unlawful what is lawful." (Al-Bukhari, Book 49, Hadith 859).

This Ḥadīth succinctly captures the essence of Islamic arbitration: any resolution method is acceptable if it does not contravene explicit Islamic injunctions. Consequently, an arbitrator in an Islamic context must ensure that the final award or settlement aligns with Shariah's ethical and legal mandates (Khan, 2019).

Prophetic traditions further affirm arbitration. Numerous *ahadith* show the Prophet Muhammad (peace be upon him) approving third-party decision-making. For instance, a companion nicknamed “Abu al-Ḥakam” earned this title because people commonly sought his judgment in disputes. While the Prophet objected to the nickname (since *Al-Ḥakam* is an attribute of Allah), he approved of the companion’s role as arbitrator. In another incident, Sa’d bin Mu’adh arbitrated a dispute involving the Jewish tribe of Banu Qurayẓah with the Prophet’s consent, and his decision was commended as aligning with Divine will. The Rightly Guided Caliphs also endorsed *Taḥkīm*: Caliph ʿUmar ibn al-Khaṭṭāb and others relied on Zayd bin Thābit to resolve their disagreements (Arif et al, 2024).

3.4 Scholarly Perspectives

Islamic legal scholarship on taḥkīm has evolved through classical jurists and continues to adapt in modern contexts. Ijmaʿ (consensus) and qiyās (analogical reasoning) are secondary sources of Islamic law that jurists employ to refine arbitration principles, emphasizing due process (istiḥsān) and mutual consent (tarāḍī). Contemporary Muslim scholars often argue that these principles can readily integrate with international arbitration standards, provided that arbitrators respect Islamic norms on equity and justice (Kamali, 2008).

3.4.1 Sunni Schools of Law

Each of the four Sunni schools—Hanafi, Shafi’i, Maliki, and Hanbali—recognizes the legitimacy of arbitration. They differ on procedural details, such as whether an arbitrator’s award must be endorsed by a qadi (*judge*), but generally permit arbitration for civil, commercial, and family disputes. *Hudud* crimes (Qur’anic fixed punishments) remain the domain of state courts and thus are typically not arbitrable (Hagshah, 2013).

3.5 Arbitrator Qualifications

Classical jurisprudence requires arbitrators to possess the same characteristics as judges: adulthood, sanity, integrity, and knowledge of Islamic law (Hasan, 2008). Although some schools restrict arbitrators to Muslim males, the Hanafi school allows more flexibility, including women arbitrators or non-Muslim arbitrators for non-Muslim disputants (Hagshah, 2013; Hasan, 2008).

3.6 Binding Nature of Awards

The Maliki, Shafi’i, and Hanbali schools generally consider an arbitrator’s decision binding if it does not violate Sharia (Turner, 2011). The Hanafi position is more cautious, often requiring a qadi’s confirmation (Hagshah, 2013). Modern Muslim-majority states typically treat awards as final, subject only to limited judicial review (Turner, 2011).

4. Statutory Framework for Arbitration in Pakistan

4.1 The Arbitration Act, 1940

Originally enacted during British colonial rule, the Arbitration Act, 1940, remains part of Pakistani law. Key features include:

- Appointment of Arbitrators: Parties typically appoint their arbitrators, though courts can intervene where necessary.
- Procedural Rules: While relatively straightforward in theory, the 1940 Act often becomes entangled in technicalities, delaying the arbitration process.
- Judicial Interference: Courts may set aside arbitral awards on limited grounds such as misconduct of arbitrators or procedural irregularities.

Despite its foundational role, the Act has been criticized for being "overly formalistic," leading to protracted proceedings that often resemble litigation (Munir, 2021). Media outlets, such as *Dawn*, have published editorials urging legislative reform, citing inefficiencies and outdated provisions (Dawn Editorial, 2021).

4.2 The Alternative Dispute Resolution Act, 2017

In 2017, Pakistani lawmakers sought to modernize and streamline ADR mechanisms, including arbitration, through the Alternative Dispute Resolution Act. This statute:

- Expands Scope: Addresses mediation, conciliation, and other ADR methods in addition to arbitration (Pakistan Law Commission, 2017).
- Streamlines Procedures: Encourages quick resolution by limiting procedural formalities, thereby reducing burdens on the formal court system (Ahmed, 2018).
- Challenges: Implementation has been slow due to insufficient training of arbitrators and mediators and a lack of public awareness. The *Express Tribune* has reported that while the Act is a positive step, it requires extensive capacity-building measures to fulfill its promise (Hussain, 2025).

4.3 The Arbitration Act of 1940 & ADR Act of 2017 critique

Pakistan inherited the Arbitration Act of 1940 from British India. Critics argue it is outdated and lacks mechanisms for complex modern disputes (Anjum, 2024). The *Alternative Dispute Resolution Act, 2017* (initially for Islamabad) encourages arbitration, mediation, and other ADR methods. Courts can refer civil disputes to ADR if suitable, and the Act allows panels of "Neutrals," including *ulema* (Islamic scholars), retired judges, and community elders.

4.4 The Constitution of Pakistan (1973) and Article 227

Article 227(1) mandates that no law may contravene the injunctions of Islam (Sharif et al., 2022). The Federal Shariat Court (FSC) can declare a statute *repugnant* to Islam, compelling legislative amendment or judicial reinterpretation. This constitutional injunction means the Arbitration Act and other ADR statutes must theoretically align with Islamic jurisprudence.

4.5 Constitutional Compatibility and the Shariah Angle

Article 227 of the 1973 Constitution stipulates that all existing laws shall be brought in conformity with the injunctions of Islam. In practice, Pakistani courts and legislatures often reference Islamic principles when interpreting laws, especially in family and commercial disputes. However, critics argue that statutory arbitration frameworks rarely incorporate explicit Shariah-based clauses, leaving courts to harmonize these principles on a case-by-case basis (Khan, 2019).

4.6 Alignment and Tensions

1. **Interest (Riba) on Awards**. Section 29 of the Arbitration Act, 1940, explicitly allows arbitrators to award interest (Anjum, 2024). However, the Federal Shariat Court and Supreme Court's Shariat Appellate Bench have declared riba *haram* (forbidden) (Sharif et al., 2022). While interest awards remain enforceable, the FSC's 2022 ruling calls for the elimination of interest by 2027, creating significant tension for arbitrations that include interest components (Sharif, 2022).
2. **Haram Contracts**. Pakistani courts have refused to enforce judgments or awards involving gambling or other forbidden activities, labeling them contrary to public policy under Sharia (e.g., *Grosvenor Casino Ltd. v. Abdul Malik Badruddin*, PLD 1999 Kar. 362) (Sharif et al., 2022).
3. **Arbitrator Eligibility**. Current Pakistani statutes do not impose religious or gender restrictions on arbitrators, consistent with the more flexible Hanafi approach (Hagshah, 2013).

4. **Family Law Arbitration**. The Muslim Family Laws Ordinance 1961 requires an Arbitration Council to reconcile spouses after a pronouncement of divorce (Islamqa.org, n.d.-a). This is a formal recognition of Qur'an 4:35 in Pakistani personal law.

5. Judicial Precedents & Case Law Analysis

5.1 Public Policy and Islamic Principles

Pakistani courts regard contracts or awards violating Sharia to be against public policy. In *Grosvenor Casino Ltd. v. Abdul Malik Badruddin* (PLD 1999 Kar. 362), the court refused to enforce a gambling debt, stating that the "Quran and Sunnah are incorporated in every law" (Sharif et al., 2022).

5.2 Interest (Riba) in Awards

The seminal 1991 FSC ruling (affirmed in 1999) declared interest in all forms unconstitutional, but the Supreme Court vacated and remanded it in 2002, keeping the interest status quo intact. *Flame Maritime Ltd. v. Hassan Ali Rice Export Co.* (2004 CLD 334) upheld an arbitral award with interest, citing Section 29 of the 1940 Act. However, the FSC's 2022 decision banning interest in banking by 2027 may soon force changes in arbitration awards (Sharif et al., 2022).

5.3 Consent and Validity of Arbitration Agreements

In *Ansari Sugar Mills Ltd. v. Federation of Pakistan* (2021 SCMR 363), the Supreme Court underscored that arbitration must be based on free consent, paralleling the Islamic principle of mutual agreement (*tarāḍī*) (Anjum, 2024).

5.4 Role of the Federal Shariat Court (FSC)

The FSC can declare statutory provisions repugnant to Islam. Though the Arbitration Act, 1940, remains largely intact, the court's rulings on interest have implications for arbitral awards. An eventual FSC review of Section 29 would likely forbid awarding interest outright (Sharif et al., 2022).

5.5 Supreme Court Views on Sharia and ADR

The Supreme Court has repeatedly acknowledged the desirability of quick dispute resolution, linking it to Islamic values that condemn delay in justice. *Khan Muhammad v. State* (PLD 2019 SC 261) noted that excessive litigation backlogs are antithetical to Qur'anic principles (Anjum, 2024).

5.6 Role of Islamic Principles

In various family and commercial disputes, litigants have invoked Islamic legal tenets to argue for or against certain awards. Pakistani courts have sometimes considered these arguments, referencing Qur'anic injunctions and Ḥadīth-based moral guidelines (Khan, 2019). Consequently, while not overtly codified, Islamic principles can—and do—inform how arbitrators craft their awards and how courts evaluate them.

6. Law Case Analysis

Fauji Foundation v. Shamim-ur-Rehman (PLD 1983 SC 457)

In one of the landmark rulings on arbitration, the Supreme Court of Pakistan reiterated the importance of finality in arbitral awards. The Court emphasized that while the judiciary must ensure an absence of arbitrator misconduct, it should refrain from micromanaging arbitration proceedings. This decision underlined the principle that parties who freely opt for arbitration should honor the arbitrators' decision, barring exceptional circumstances (Fauji Foundation v. Shamim-ur-Rehman, 1983).

National Construction Ltd. v. Aiwan-e-Iqbal Authority (PLD 2011 SC 44)

Here, the Supreme Court further elaborated on the balance between judicial review and respecting arbitral autonomy. The judgment clarified that courts could set aside an award if it contravened public policy or demonstrated corruption, but they should avoid rehearing the entire dispute. This aligns with international

best practices, where minimal judicial interference is key to preserving the efficiency of arbitration (National Construction Ltd. v. Aiwan-e-Iqbal Authority, 2011).

7. Comparative Analysis: Arbitration in Other Muslim Jurisdictions

7.1 Saudi Arabia

Saudi Arabia applies strict Hanbali jurisprudence. Its 2012 Arbitration Law modernized procedures but maintains Sharia oversight, forbidding interest and restricting arbitrator eligibility. Courts typically sever interest from awards (Turner, 2011).

7.2 United Arab Emirates (UAE)

The UAE Federal Arbitration Law (2018) aligns with UNCITRAL standards, featuring limited references to Sharia. However, the Civil Code deems “fundamental principles of Islamic Sharia” part of public policy, allowing courts to strike interest that violates Sharia (Turner, 2011).

7.3 Malaysia

Malaysia’s dual legal system dedicates family/personal matters to Sharia courts while handling commercial disputes under secular courts. The Asian International Arbitration Centre (AIAC) operates “i-Arbitration Rules” for Islamic finance disputes, enabling direct Sharia guidance (Abdul Hak, 2017). This approach preemptively ensures awards comply with Sharia, especially regarding interest-free Islamic banking instruments.

7.4 Lessons for Pakistan

Pakistan can draw from:

- **Saudi Arabia**—strict enforcement of Sharia, especially the no-interest principle.
- **UAE**—a broad secular framework with Islamic constraints at enforcement.
- **Malaysia**—specialized “i-Arbitration” or Sharia advisory bodies for financial disputes.

8. Contemporary Debates and Challenges in Pakistan

Arbitration in Pakistan faces a dynamic interplay of cultural, legal, and constitutional factors, all shaping contemporary debates and highlighting ongoing challenges. While the need for efficient dispute resolution mechanisms has grown more pressing due to backlogged courts and protracted litigation, efforts to modernize and expand arbitration have encountered practical, legislative, and socio-religious obstacles. This section examines the most salient challenges currently faced in the arbitration landscape of Pakistan.

8.1 Cultural Resistance and Jirga Systems

Outside major urban centers, many communities rely on traditional tribal councils or *jirgas*, which are informally recognized but do not always align with formal statutory arbitration or Shariah principles of equity (Munir, 2021). Some *jirgas* have been criticized for marginalizing women and minority groups (Dawn Editorial, 2021). Reconciling these customary practices with formal arbitration requires significant educational outreach and legal reforms that respect cultural norms while adhering to Islamic and constitutional mandates.

8.2 Institutional Capacity and Training

A recurring theme in academic literature and media reports is the shortage of qualified arbitrators and lawyers proficient in modern ADR practices and Islamic jurisprudence (Ahmed, 2018). According to Hussain (2025), many practitioners remain unfamiliar with the nuances of Shariah-based arbitration, inhibiting the broader acceptance and effective execution of such processes.

8.3 Harmonizing Shariah with Modern Arbitration

The tension between traditional Islamic jurisprudence and Western-influenced statutory frameworks remains an ongoing conversation. While both systems emphasize fairness, their procedural mechanisms can differ. Properly reconciling these mechanisms requires legislation that explicitly integrates Islamic standards of evidence, mutual consent, and ethical conduct into the modern arbitration process (Khan, 2019). As new ADR legislation and judicial guidelines emerge, the role of Islamic principles may become more pronounced—potentially leading to a hybrid system that satisfies both constitutional requirements and international ADR standards (Hussain, 2025).

8.4 Legislative Challenges

1. Outdated Legislation: The Arbitration Act of 1940 is ill-suited to modern economic realities. The ADR Act of 2017 remains confined to Islamabad, causing legal inconsistencies across provinces.
2. Riba (Interest) Elimination: The FSC's 2022 ruling to phase out interest by 2027 may reshape arbitration awards (Sharif et al., 2022)
3. Cultural Resistance: Many Pakistanis distrust formal arbitration, preferring informal jirgas (Hameed & Khan, 2020). The ADR Act's top-down approach lacks deep community involvement.
4. Informal Justice vs. Human Rights: Tribal councils sometimes impose rulings contradicting both statutory law and Islamic norms, particularly affecting women's rights (Dawn Editorial, 2021).
5. Capacity & Expertise: Few arbitrators and lawyers possess both legal and Sharia training, hampering truly Islamic dispute resolution (Ahmed, 2018).
6. Judicial Interference: Some courts intervene excessively, undermining arbitration's efficiency (Anjum, 2024).
7. International Investors: Concern arises when courts invalidate award components (e.g., interest), potentially deterring foreign capital if unpredictability remains high (*Reko Diq* scenario).
8. Islamic Finance: With a target of full Islamic banking by 2027, specialized arbitration protocols for murābaḥah, ijārah, and other Sharia-compliant contracts are needed.

9. Recommendations for Enhancing Sharia-Compliant Arbitration

Legislative Reforms

- Replace the 1940 Act with a modern arbitration law based on UNCITRAL standards but prohibiting riba and haram contracts.
- Ensure explicit references to Sharia compliance, reducing uncertainty under Article 227.

Expand ADR Centers Nationwide

- Encourage provinces to replicate or adapt the ADR Act 2017.
- Engage community elders, ulema, and retired judges to legitimize the process in local contexts.

Institutionalize Sharia Expertise

- Create a Sharia Advisory Council (akin to Malaysia's model) for Islamic finance and family disputes.
- Develop specialized "i-Arbitration Rules" for parties seeking a fully Islamic procedure.

Eliminate Riba Systematically

- Amend relevant laws (Arbitration Act, Code of Civil Procedure) to replace interest with inflation-adjusted or profit-based remedies.
- Issue guidance to arbitrators to avoid awarding conventional interest.

Judicial Training and Sensitization

- Educate judges on Islamic contract law concepts (*gharar*, *maysir*).
- Publish practice directions clarifying how riba or haram transactions should be addressed in arbitration.

Public Awareness Campaign

- Highlight Qur'anic verses and Prophetic traditions endorsing *sulḥ* (settlement) and *taḥkīm*.
- Emphasize that modern arbitration aligns with longstanding Islamic dispute-resolution mechanisms.

Leverage Technology and Documentation

- Encourage systematically recorded awards referencing Sharia principles, facilitating enforcement.

Specialized Islamic ADR Tribunals

- Consider a dedicated Islamic Arbitration Centre under the Council of Islamic Ideology or a recognized Islamic finance authority.

Regional & International Collaboration

- Collaborate with OIC member states to standardize Sharia-based arbitration, enabling reciprocity in enforcement.

Ongoing Oversight by Islamic Ideology Bodies

- Mandate periodic reviews by the Federal Shariat Court and Council of Islamic Ideology to ensure evolving disputes (e.g., digital finance) remain Sharia-compliant.

10. Conclusion

Pakistan's arbitration regime stands at a crossroads, shaped by the colonial-era Arbitration Act of 1940, newer legislative reforms (ADR Act 2017), constitutional mandates for Islamic conformity, and the case-by-case evolution of judicial precedents. The Qur'an and Ḥadīth provide a robust framework for fairness, impartiality, and reconciliation that can effectively guide arbitral proceedings. Islamic jurisprudence—from Qur'anic verses (4:35, 49:10) to Prophetic traditions—firmly endorses amicable dispute resolution (*sulḥ* and *taḥkīm*). The tension between statutory provisions allowing interest and Islam's unequivocal prohibition of riba exemplifies the system's transitional nature. Courts have, so far, enforced interest-based awards but remain constitutionally bound to uphold Sharia if the Federal Shariat Court fully actualizes its 2022 pronouncements. However, challenges persist, including cultural resistance to formal arbitration, the shortage of trained practitioners, and the limited explicit integration of Islamic principles in statutory instruments.

Comparative experiences from Saudi Arabia, the UAE, and Malaysia illustrate how Muslim-majority jurisdictions integrate Islamic principles with modern arbitration. These lessons highlight potential reforms Pakistan could adopt: specialized Sharia arbitration rules, interest-free compensation structures, rigorous training for arbitrators and judges, and greater public engagement to legitimize ADR processes. By implementing such measures, Pakistan can become a global leader in Sharia-oriented arbitration, efficiently resolving disputes while preserving Islamic law's essence.

Addressing these issues requires a concerted effort by policymakers, legislators, judges, legal scholars, and civil society. Strategic legislative amendments, rigorous capacity-building initiatives, and clearer judicial guidelines can pave the way for a vibrant arbitration culture aligned with international best practices and the ethical-legal mandates of Islam. In doing so, Pakistan can significantly reduce court backlogs, foster social

harmony, and underscore the enduring relevance of Islamic jurisprudential wisdom in the modern legal landscape.

11. References

Abdul Hak, N. (2017). *Islamic Law in Malaysia: Issues and Developments*. IIUM Press.

Ahmed, S. (2018). *Assessing the Alternative Dispute Resolution Act of 2017 in Pakistan: A Critical Review*. *Pakistan Law Review, 17*(2), 45–67.

Al-Bukhari. (n.d.). *Sahih al-Bukhari*, Book 49, Hadith 859. (Original work compiled in the 9th century)

Al-Samaan, A. (2016). An Overview of Saudi Arabia's 2012 Arbitration Law. *Arab Law Quarterly, 30*(1), 38–50.

Rugarli, Y. (2020, October 16). *Alternative Dispute resolution in Islamic Culture* [Blog post]. Arbitras. Retrieved 16 February. 2025, from https://www.arbitras.org/blog/2020/10/16/alternative-dispute-resolution-in-islamic-culture

Constitution of Pakistan. (1973). Article 227.

Creswell, J. W., & Creswell, J. D. (2018). *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (5th ed.). SAGE.

Dawn Editorial. (2021, October 1). ADR mechanism. *DAWN.COM*. https://www.dawn.com/news/1649473

Anjum, M. (2024, November 27). Embracing Alternative Dispute Resolution in Pakistan: the Need of the Hour. Devil's Advocates Journal. Retrieved 16 February. 2025, from https://devilsadvocatesjournal.com/post/embracing-alternative-dispute-resolution-in-pakistan-the-need-of-the-hour

El-Hadidy, M. (2018). Arbitration in the United Arab Emirates: An Overview of Challenges and Reforms. *International Journal of Arab Arbitration, 10*(2), 33–47.

Hagshah, F. I. F. I. (2013). *Arbitration in Islamic Shari'ah: A Comparative Study with International Law and English Law.* [Doctoral Thesis, Lancaster University]. Lancaster University.

Hussain, S. J. (2025, February 4). ADR Pakistan s justice revolution. *The Express Tribune*. https://tribune.com.pk/story/2526567/adr-pakistans-justice-revolution

Fauji Foundation v. Shamim-ur-Rehman, PLD 1983 SC 457 (Supreme Court of Pakistan, 1983).

Flame Maritime Ltd. v. M/s Hassan Ali Rice Export Co. (2004 CLD 334). Sindh High Court, Pakistan.

Grosvenor Casino Ltd. v. Abdul Malik Badruddin (1999). PLD 1999 Kar. 362.

Islamqa.org. (n.d.-a). *Arbitration for marriage in Qura'an… examining the ruling from Surah an-Nisa (4:35)*. Retrieved from https://islamqa.org/hanafi/daruliftaa-birmingham/135429/arbitration-for-marriage/

Kamali, M. H. (2008). *Principles of Islamic Jurisprudence* (3rd ed.). Islamic Texts Society.

Khan, N. (2019). *Arbitration and Islamic Jurisprudence: An Examination of Pakistani Case Law*. *Journal of Islamic Law in Practice, 5*(1), 19–32.

Makhdoom, B. (2019). Public Policy Exception in Enforcement of Foreign Awards under New York Convention: Pakistan's Perspective. *Pakistan Business Law Journal, 12*, 39–51.

Arif, M., Ibrahim, M., Umair, M., Haq, M. U., Ahmed, M. A., Saddiq, A. Q. (2024). An Analytical Study of the Necessity, Importance, History, and Legitimacy of Arbitrate in Human Demography. *Migration Letters*, *21*(S14), 515–524. Retrieved from https://migrationletters.com/index.php/ml/article/view/11287

Munir, M. (2021). *Arbitration, Jirga, and Reconciliation in Pakistan: Historical and Contemporary Perspectives*. *Asian Dispute Resolution Journal*, 9(2), 76–93.

National Construction Ltd. v. Aiwan-e-Iqbal Authority, PLD 2011 SC 44 (Supreme Court of Pakistan, 2011).

Pakistan Law Commission. (2017). *Report on the Alternative Dispute Resolution Act, 2017*. Government of Pakistan.

Sharif, A., Ali, S., Sumaira, (2022). Public Policy in Pakistan a Roadblock to the Execution of Foreign Arbitral Award. *Pakistan Journal of Social Research, 4*(1), 893–905. Retrieved 16 February. 2025, from https://pjsr.com.pk/wp-content/uploads/2022/06/89.-Vol-4.-Issue-2-Apr-Jun-2022-Sharif-Ali-Sumaira-Capitalism-Cannibalism-and-Humanism.pdf

The Qur'an. (n.d.). *The Qur'an 4:35, 49:10*. Sahih International Translation. Retrieved 16 February. 2025, from https://quran.com

Hameed, U., & Khan, N. A. (2020). Community Participation, the Missing Link in Pakistan's ADR System-The Way Forward. *RSIL Law Review. 4*, 156-184.

Turner, P. (2011). Finding your path: Arbitration, Sharia, and the Modern Middle East. Tamimi. Retrieved 16 February. 2025, from https://tamimi.com/law-update-articles/finding-your-path-arbitration-sharia-and-the-modern-middle-east/

Hasan, Z. (2008). *Law of Arbitration.* [PowerPoint slides]. SlideShare. Retrieved 16 February. 2025 from https://zulkiflihasan.files.wordpress.com/2008/06/week-xi-arbitration-in-islamic-law.pdf