IS SHARIA LAW AN OBSTACLE TO THE DEVELOPMENT OF COMMERCIAL ARBITRATION IN THE COUNTRIES OF THE GULF COOPERATION?

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Abstract

The Gulf Cooperation Council (GCC) has been slow in accepting cutting-edge arbitration practices due to the fear of Islamic Sharia law, which is seen as an obstacle to improving arbitration in the region. This thesis confirms that there is great flexibility within Sharia to accommodate modern global commercial arbitration practices, and that the delay in accepting these practices is due to various factors, such as the bad experience of the Gulf Cooperation Council countries with arbitration. This research reveals that arbitration in the GCC countries will only be realistic if updating the legal guidelines for arbitration is blended with an increased understanding and acceptance by the Western legal community of Sharia as an existing legal system.

Key words Gulf Cooperation Council countries, arbitration agreement, implementation, Arbitration Agreement, Islamic Law, Enforcement, Public Policy.

Introduction

The Gulf Cooperation Council (GCC) is an association of six Arab nations of along the Arabic Gulf; Oman, Bahrain, Qatar, UEA, Kuwait and Saudi Arabia. The GCC countries are all Arab countries and are of the Islamic religion, which is governed by the Sharia law[1]. The sharia law provides instructions on how business should be conducted, with clear indications on what ought to or ought not be finished. The GCC countries faithfully adhere to these regulations both domestically and internationally"[2]. It also has some sets of rules that do not sit well with business, like prohibiting the collection of interest. This has led to disagreements

[1] Ramahi. A. A., (2008) Sulh: A Crucial Part of Islamic Arbitration. LSE Law, Society and Economy.

[2] Quran, Surah Al-baqarah, 2:275.

between the participating countries due to a conflict of interest. The GCC countries, often find themselves in trade disputes with other countries in the international business community. There have been many instances of Islamic countries failing to abide by arbitral awards awarded outside these countries, citing differences from the regulations provided by the sharia law. This has led to a common conclusion by Western and other non-Muslim countries that the sharia law is hindering the creation of international arbitration[1].

This thesis will discuss and demonstrate that there is sufficient flexibility within Sharia law to accommodate modern international arbitration practices, and the delay in accepting these practices is due to other factors. The Islamic law is not an obstacle to the development of arbitration as some think, and it is not cause of the negative experience with arbitration that the Gulf Cooperation Council countries have gone through[2]. This study concludes that arbitration in the Gulf Region will not achieve its full potential and goals unless the modernization of arbitration rules is increasing the awareness and appreciation of Sharia as a legal framework of the Western legal community.

The aim and objective of the paper: To demonstrate that Islamic law is consistent with the development of commercial arbitration in the Arabian Gulf. Sharia is not an obstacle to its development.

Novelty of the paper: The novelty of this thesis is that this exact subject has not been addressed nor written about in the English language. As a result, this paper may clear up the existing misunderstanding that Islamic law is somehow preventing the development of arbitration in Gulf.

Questions of the Paper

1. What is the role of Sharia in commercial arbitration ?
2. Does the intervention of Islamic law in commercial

[1] Ahdab, E. A. H. and Ahdab J. E., (1999). Arbitration with the Arab Countries, Arbitration in Saudi Arabia, p. 673-698

[2] Razali HJ Nawawi (2009). Islamic Law on Commercial Transactions, (CERT Publishing, Malaysia) 142-43, 144

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arbitration negatively affected the develop ment of the Gulf states?

Hypothesis

1. The Gulf states supposed to apply Islamic law in commercial arbitration.
2. The causes of the slow growth of commercial arbitration in the gulf states, and whether Islamiclaw is responsible.

Research Methodology

This Paper uses textual analyses to research how people assimilate to the world, using scientific articles, books, and articles to collect information and interpret them. It is based on the logical examination of propositions written in a subjective manner without making interviews[1]. This postulation comprises of illustrative investigation, without making interviews, by breaking down and deciphering books and articles.

Description of the legal problem, reasoning of the topic relevance

Sharia law is flexible enough to accommodate modern international arbitration procedures, but the delay in adopting such practices is due to other factors, not Islamic Sharia law. This thesis concludes that arbitration in the countries of the Gulf Cooperation Council will not achieve its full potential and goals unless the modernization of arbitration laws is combined with the growth in the understanding and acceptance of Sharia as a legal system.

1. The history and origination of commercial arbitration and the emergence ofIslamic arbitration

1.1. The history and origin of commercial arbitration

The Gulf Cooperation Council (GCC) has a strong presence on the worldwide business map, with around half of the oil reserves of the world lying underneath its territories. Many firms,

[1] McKee, A. (1970, January 01). Textual analysis: A beginner's guide: McKee, Alan: Free Download, Borrow, andStreaming.

corporations and other undertakings have been keen on entering the region, but there have been grumblings about the lack of current arbitration laws[1]. Oman has passed the UNCITRAL Model Law on the International Commercial Arbitration of 1985, but the rest of the Gulf Co-action nations have been more delayed in modernizing their arbitration laws. Kuwaiti arbitration law was launched in 1995, and is the subject of heavy criticism. Saudi Arabia has adhered to a fresher arbitration law presented in 2012, that has incompletely been subject to the Model Law[2].

Bahrain followed by passing a more present-day arbitration law in 2015, which was similarly founded on the Model Law[3]. Kuwaiti arbitration law was launched in 1995, and is the subject of heavy criticism. This law has been commonly portrayed as not being inside the lines of "current arbitration rehearses"[4]. GCC Arbitration centers have been established in the GCC, but there has still been some vagueness between the partnership of the New York Convention of 1958 and public arbitration laws, as evidenced by certain court decisions inside the nations of the Gulf Cooperation Council[5].

[1]Gemmell, J. A., (2006). 'Commercial Arbitration in the Islamic Middle East'. *Santa Clara Journal of International Law,* vol. 5, no. 1, pp. 169 – 193.

[2] Nesheiwat, F. & Khasawneh, A. A., (2015). 'The 2012 Saudi Arbitration Law: A Comparative Examination of the Law and Its Effect on Arbitration in Saudi Arabia. *Santa Clara Journal of International Law,* vol. 13, no. 2, pp. 443- 465.

[3] Faris, N., & Ali, A.-K. (2015). The 2012 Saudi Arbitration Law: A Comparative Examination of the Law and Its Effect on Arbitration in Saudi Arabia. Santa Clara J. Int'l L, 13(2), 443, 445.

[4] Dalal, A. H. (2016). Arbitration in Kuwait: Time for Reform? Retrieved from http://kluwerarbitrationblog.com/2015/02/20/arbitration-in-kuwait-time-for-reform/, accessed on 20\08\2020

[5] Tawil. L. E., 92011). "East Meets Wesr: Introducing Sahria into the Rukes Governing International Arbitrations at the BCDR-AAA". Cardozo Journal of Conflict Resolution, vol. 12, no. 2, pp. 609-639.

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1.2 The emergence of Islamic arbitration

Islam is a religion based on the monotheism of God Almighty and the principles of justice, equality, mercy, and unity. It is a faith that calls for positive values such as patience, wishes, bravery, and truthfulness, and prohibits all kinds of vices. It also contains the divine legal rules and methods that require the servants' pastimes in life, that our Messenger explained, the requirements of this religion, its values, etiquette, and worship through came from the Noble Qur'an and the Prophet's Sunnah[1]. It is applicable for all times and locations, and covers human affairs at the individual, social, and practical levels[2]. Islam is concerned with human commercial relations, from buying and selling, in addition to the interest of Sharia, including the words of God Almighty[3]. Sharia law is a collection of legal provisions and binding rules relating to controlling the actions of individuals within society. It is a large legal framework, surrounded by minutes of issues, and broad to be described as versatility and non-rigidity[4].

This research focuses on the compatibility of Sharia law with current procedures in international commercial arbitration. It is grounded on the 4 Sunni schools of Islamic jurisprudence, Hanafi, Shaif'i, Maliki, and Hanbali. Those schools have been the dominant ones within the GCC nations' legal systems. Still, need to pay attention that every aspect of arbitration not yet dealt with by any school of the Islamic jurisprudence[5]

[1] Dorar [online]. Available at: < https://dorar.net/aqadia/3376/ >. [Accessed on: 1November 2020].

[2] Qaradawi, A. Y., (1993). The Tape of Islam is correct to say relies on Time and Place, pp 11,16,18

[3]Quran, Surat An-Nahal, 16:90.

[4] Paul turner (2011), Finding your path: Arbitration, Sharia, and the Modern Middle East, Available at: < https://www.tamimi.com/law-update-articles/finding-your-path-arbitration-sharia-and-the-modern-middle-east/>. [Accessed on: 19November 2020].

[5]Badawy, T., (2012). The General Principles of Islamic Law as the Law Governing Investment Disputes in the Middle East, vol. 29, no. 3. J. Inst' Arb. 255, 256, 260, 261. [Accessed on: 2 December 2020].

Arbitration in the GCC has grown significantly over the last few decades due to globalization, liberalization of economic resources, and the growth of oil production. To comply with international criteria[1], some GCC countries have amended their arbitration laws by following the UNCITRAL Model Law. Assertion can be adjusted to Islamic culture and customs. There are three stages in the advancement of intervention in the twentieth century. During the main stage, Islamic and neighborhood laws were refuted by mediators and Western laws were applied in their place.

The second period of present-day global discretion Arab nations tested the entire worldwide discretion foundation as it was made and created without their investment or consideration of their qualities, culture and lawful conventions. Subsequently, a few Arab nations repudiated their oil concession concurrences with Western financial specialists and dismissed assertion conjured by these speculators. Islamic countries started to adopt the framework of international arbitration during the third process, with GCC countries in particular embracing international commercial arbitration[2].

2. The development of international commercial arbitration in the countries of the Gulf Cooperation Council, and the effect of Islamic law on its development.

2.1. The development of international commercial arbitration in the countries of the Gulf Cooperation Council

The Saudi Arbitration System of 1983 specified that if there is a disagreement with Islamic Shari'ah, no law can be implemented in the Islamic country. However, some scholars,

[1] Yousif, A. Y. K. (2004), *Topics in Middle Eastern and North African Economies, Oil Economies and Globalization: The Case of The GCC Countries*, p. 2.

[2] Abbadi, S. M. B., (2008). Arbitration in Saudi Arabia: The Reform of Law and Practice. *Penn State Law eLibrary.*

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especially in some areas, continue to criticize the ambiguous nature of Islamic jurisprudence. Some scholars have argued that the principles and terminology of Islamic jurisprudence should be articulated by legislative authorities in Islamic countries, such as the Kingdom of Saudi Arabia, in a codified form similar to modern laws. In their view, this will limit the interpretation of the Islamic Shariah and compel judges to submit ideas and opinions originating from more than one Islamic school[1]. This principle was followed under the name 'Majlat A1 Ahkam A1 Adliah' during the Ottoman Empire and still commands a great deal of respect. However, Islamic Shariah is not a floating or an elastic document, as some biased critics claim, and there are many words and laws that have agreement among all Muslim scholars and no one can split or touch these provisions. Individual Muslim countries may have agreed to follow one of the favored schools of Islamic jurisprudence while attending legal matters, which can lead to conflicting legal decisions.

In areas where the Islamic Shariah is silent, it is normal for scholars to defer to their individual interpretation of the rules and texts relevant to the case studied[2]. This is not specific to Islamic law, as there are many similar cases brought before English courts which have different outcomes. It should be acknowledged that it is not that easy for any legal system, whether Islamic or western, to deal in depth with all legal issues and disputes. To solve these issues, more consideration should be given to the overall comprehension of reasonableness and equity, instruments of picking judges, and training for adjudicators. Additionally, Islamic Shari'ah does not allow an adjudicator to force his view on another

[1] Understanding Islam, The Four Schools of Law in Islam, tag One Module Four, Available at: < https://free-islamic-course.org/stageone/stageone-module-4/four-schools-law-islam.html>.

[2] Bermann, G. (2018). 'Mandatory Rules of Law in International Arbitration'. European International Arbitration Review, vol. 7, no. 1, [online]. Available at: <https://arbitrationlaw.com/library/mandatory-rules-law-international-arbitration- european-international-arbitration-review-eiar>. [Accessed on: 1 December 2020].

appointed authority or a referee and can't renounce his choice or an honor in the region of optional arrangements. This is a precautionary measure against any legitimate escape clause that can be utilized to force an honor that influences the interests of the State and its basic qualities. Article V(2)(b) Recognition and consistence of an arbitral honor can likewise be denied if the able power thinks about that the honor's acknowledgment or execution is conflicting with that country"[1].

The 5 major pillars of arbitration are arbitration agreement, choice of arbitrators, conduct of arbitral proceeding, applicable substantive law, and arbitral award. These pillars are important for nations to have the option to solve these issues, as they should be given consideration to the overall comprehension of reasonableness and equity. Finally, the Prophet said that honesty is that about which the spirit feels quiet and the heart feels peaceful, while bad behavior is what falters in the spirit and causes disquiet in the bosom[2].

The Model Law is a renowned instrument in the field of arbitration, which several nations rely upon for modernizing their arbitration laws. Article 7(1) of Model Law describes the arbitration agreement as a binding agreement, which takes the form of either a contractual clause or different agreement[3]. In compliance with Article 8(1), the Court has been obliged to ensure that the subject-matter of the conflict is arbitrable and that it is protected by an arbitration agreement in place. The arbitration clause is distinct from the other provisions of the agreement (Article 16). Parties' authority towards either selecting arbitrators or authorizing the 3rd party for doing so has been well established practice in modern arbitration. Article 13(2) permits parties for

[1] New York convention guide, article v(2)(b),1958.

[2]Sunnah,TheHadithoftheProphetMuhammad:40HadithNawawi,Availabl eat:<https://sunnah.com/search?q=%22Consult+yo ur+heart>.

[3] United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration (2006), Article 7 (1), Ch. 2 Arbitration agreement & Article 8 ,P. 4–5.

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agreeing on the procedure to challenge the arbitrator along with paragraph 2 of a similar agreement.

In this regard, the Tribunal should handle the parties in a similar manner and the parties should be free to select the rules which the arbitral tribunal must obey. The arbitral award should be recorded as a hard copy and endorsed by the authorities, and should incorporate the explanations behind the choice. It is final and binding, and its enforcement may only be denied in accordance with the set number of legitimate grounds (Articles 34 and 35)[1]. GCC nations have moved to amending their arbitration laws to reflect global business assertion principles, and have accepted the Convention on the Acceptance and Compliance of International Arbitral Awards. The western global business network knows almost nothing about arbitration in the GCC, and there is still uncertainty.

The effect of Islamic law on its development

Western thinkers attributed Sharia law used by Gulf states as the cause of Sharia arbitration decisions. Islamic law was not incompatible with modern arbitration law and was not the main reason for the failure to reform the special arbitration laws in this region. Arbitration was recognized among the two most important sources of Islamic law, the Qur'an and Sunnah, and was discussed by early Muslim scholars. The Prophet himself was a party to arbitration proceedings involving his conflict with the Banu Qurayza tribe[2].

There has been disagreement as to whether arbitration is merely a form of conciliation or a separate method of dispute

[1] United Nations Commission on International Commercial Arbitration (2006), Article 16, Ch. 4, Competence of arbitral tribunal to rule on its jurisdiction, Article 11(3), Ch .3, Appointment of arbitrator & Article 13(2), Ch .3, Challenge procedure & Article18, Ch .5, Conduct of arbitral proceedings & Article 20 -24 & Article 31&34-35, Ch .6 , Making of award and termination of proceedings

[2] Qadri, M. M. (2009). Arbitration in Light of the Islamic Sharia Rules. Riyadh: Alsomaie Publishing.

settlement, which leads to a binding settlement. Proponents of the second perspective base their contention on the verse 4:58 of the Quran that imposes the duty for acting fairly on anybody entrusted towards judging disputes between people[1]. Hanafi researchers perceive that assertion is a powerful option in contrast to the court, and some of them feel that authority has function in making a decision about an issue between the gatherings of a question.

Hanafi researchers view assertion as a model of con-ciliation, while Maliki researchers view it as a coupling pro- cedure of dis-pute goal. Assertion has high believability in the brains of Maliki researchers, who acknowledge one of gatherings similar to the referee when another gathering grants it. In the Maliki School, an arbitral honor is official just as final as the court judgment, and an arbitrator ought to have comparable capabilities like the appointed authority[2].

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[1] Quran, surah An Nisa, (4: 58)

[2] Abdul, H. E.-A., & Jalal, E.-A. (2011). Arbitration with Arab Countries. Kluwer Law International, 11, 10, 14, 15, 16, 18, 28, 34, 35, 36, 37, 38, 39, 40, 48, 49

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Maliki and Hanbali researchers consider mediation to be something like a coupling pro- cedure of dis-pute goal. In the Maliki School, an arbitral honor is official just as final as a court judgment, and an arbitrator ought to have comparable capabilities like the appointed authority. The Code of Legal Provisions (Medjella) was the primary codification of sharia law made as per the request for Sultan Abed Al Majeed after the end of the Crimean War in 1856. The Ottoman Empire had mentioned the explanation about actualizing the law towards Muslims living inside locales, which had just barely gone under Russian control[1].

The key clauses mirrored the informal essence of arbitration, which is similar than court decisions to conciliation and agreement. Juries of the Medjella stated that an arbitral award is inferior to a court decision, so a judge is entitled to invalidate an award if it is contrary to its principles, while another judge is obligated to impose a judgment[2]. Medjella has been executed for a long time in Muslim and Arab countries, and has been heavily reliant on the Hanafi School. It directs arbitration and focuses on the legally binding nature of discretion, making it closer towards placation and unique in relation to a preliminary procedure inside a court. Professor El-Ahdab felt that the disagreement between Muslims scholars in regard towards the essence of the arbitration was similar to the dispute that followed the evolution of the arbitration process within many western legal systems. The earlier disagreement was the natural reaction towards the evolution of

[1] Ramahi, A. A., (2008) Sulh: A Crucial Part of Islamic Arbitration. LSE Law, Society and Economy, p. 16.
[2] Haedar, A. Dorar Alhokam fe Sharah Majalet Alhokam, Judgements within the Provisions of the Medjella.

newer commercial along with economic activities, which requires facilitation and regulation.

Sharia law has a basic principle that any toughness should be made easier, which is why arbitration laws are acceptable in Islamic countries[1]. Dr. Abdel Razzak Sanhury is one of the leading law scholars in the Arab world[2], and he argued that the difference between binding and non-binding contracts was different depending on whether a contract has been nominated or not. He based his opinion on the basic rule of verse 5:1 of the Quran, which obliges all Muslims to honor their undertakings[3]. He also argued that newer contracts have been deemed binding as long as they are not breaching public policy or law, and that arbitration has been recognized within the main sources of the sharia, the Quran and Sunna. The study of the legality of arbitration clauses in the Sharia law involves consideration of two issues: the validity of contracts for future occurrences and the validity of particular contractual clauses. While the presence of the subject matter of the contract has been important for its validity, the practical importance about contracting on upcoming things is now being recognized.

Arbitration clauses have been invalid as per the rules of sharia, but they have been valid in "cases of necessity". In Islamic law, it is important to make sure that there is something or the possibility of its existence is great, which means that Sharia does not accept great doubt and uncertainty. Arab Contract Laws like Article 202(1) Civil Transactions of the UAE Act 1985, permit the contracting of forthcoming contracts as long as there is no confusion, i.e. gharar[4]. Arbitration clauses are seen as a contractual clause having a future effect, which focuses towards diminishing

[1] Abu Ameenah Bilal Philips. The Evolution of Fiqh, (1st edn, International Islamic Publishing House) 12.

[2] A. R. Sanhury (1954), Source of Law in Islamic Jurisprudence: A Comparative Study with Western Jurisprudence, 1stEdn, Vol.1, p. 62-63.

[3] Quran, Surah Al-Ma'idah, 5:1

[4] Sadah, M. A. (2010). International Arbitration Contract Principles: Analysis of Middle East Perceptions. *J. Int'l Trade L. Policy, 9*(2), 148, 153, 154.

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the uncertainty coming from feasibility to legally resolve the international commercial dispute[1]. As per the rules of sharia, a special clause is the contractual clause, which has been separate from usual clauses about the nominate contract as described by initial sharia scholars. The Prophet Mohammad's statement that Muslims should respect contractual terms is the closest approach to what Hanbali's approach has been[2].

The Hanafi way to deal with legitimacy about the unique legally binding conditions has been that the provision should be obligatory, consistent with the purpose of the contract, and not allow or preclude what has been prohibited. The validity of the arbitration clause as a kind of special contractual clause does not seem to be very troublesome, as it has a crucial role to play in reducing jurisdictional ambiguity and gives the parties a number of benefits. Utilization of the arbitration clauses has been widely practiced and has been accepted through custom as well.

3. THE CAUSES OF THE SLOW GROWTH OF COMMERCIAL ARBITRATION IN THE GULF STATES, AND WHETHER ISLAMIC LAW IS RESPONSIBLE.

3.1 The causes of the slow growth of commercial arbitration in the Gulf states

The UAE has been a party to the 1958 Convention of New York since 2006 and is expected to respect international awards of arbitration delivered within the jurisdiction of a State other than the State in which the authorisation was issued[3]. In 2014, the Qatari Supreme Court reversed the decision of the Doha Court of Appeal maintaining the judgment given by the Court of First Instance declining to force the arbitral award delivered inside Paris by the ICC, on the grounds that the award was not given under the name

[1] Mutasim, A. A. (2016). Alleviating Jurisdictional Uncertainty: An Arbitration Clause or a Jurisdiction Clause? *B. L. R.,37*(4), 124–28

[2] Sunnah, The Hadith of the Prophet Muhammad: 40 Hadith Nawawi, Available at: <https://sunnah.com/nawawi40/10>

[3] International Law Reports 117 (1958).

of His Highness Emir, for example the Prince of Qatar[1]. The Court legitimized its choice by clarifying that the honor abused mandatory arrangements of the Article 69 of Qatari Civil Procedures Code that describes that judgments should be issued and implemented on behalf of the country's highest authority, i.e. His Beauty, the Emir of Qatar. If this law of public order is violated, the relevant judgment is deemed null and void[2].

The Court of Cassation of Qatar applied the New York Convention in its choice of 25 March 2014 and reestablished the ICC decision made in Doha in 2012. In the two cases dependent on the 1990 Qatari Civil Procedure Rule, the courts found that the "judgment" of an arbitrator, which isn't made for the sake of the Emir of Qatar, should be considered invalid and in opposition to public request. The Court Cassation maintained the Qatari subcontractor's case that the award of the ICC was an international award and that the award was made in English and that the material law was the laws of the Paris Commercial Chamber. This is a step in the right direction and it is hoped that the award made in the above-mentioned ICC arbitration in Paris will also be restored and that a new period for the implementation of arbitral awards in Qatar has begun. The peculiar approach of a few Gulf Cooperation State courts to the implementation of international arbitral awards does not stem from a disagreement with the principles of Sharia law, but rather from a lack of faith in international arbitration.

This was exemplified by the arbitration case of *Trucial Coast Ltd. V. The Sheik of Abu* Dhabi, in which arbitrator Lord Asquith refused to implement the domestic law of Abu Dhabi on the basis that no such law may reasonably be stated to exist[3]. This

[1]NewYorkConventionontheRecognitionandEnforcementofForeignArbitralAwards (1958), ArticleV

[2]Al Meezan Qatar Legal Portal, Civil and Commercial Procedure Law - Law No. 13 of 1990, Article 69, Available at: < https://www.almeezan.qa/LawView.aspx?opt&LawID=2492&language=en>, [Accessed on 10th of November].

[3]Petroleum Dev. v. Sheikh of Abu Dhabi, 1 INT'L & COMP. 18 International Law Report 149 (1952).

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case was followed by a series of infamous arbitration cases between the Arab Gulf States with Western investors, including Ruler of the Qatar v. International Marine Oil Company, Ltd (1953) and Saudi Arabia v. Arabian American Oil Company (1958)[1]. The non-compliance of the arbitrators with the domestic laws of the Arab nations concerned was a common factor in these cases, making the whole area apprehensive of the arbitration procedure's fairness.

3.1. Whether Islamic law is responsible

Sharia law has a number of inconsistencies that make it subject to accusations of being responsible for the slow growth of arbitration in the GCC[2]. The Islamic religion has different schools of thought, such as Hanafi, maliki, sheji and hanbali. The Qoran and the Sunna have affirmed the assertion that a third individual picked by the parties to determine their disputes either through placation or settling. Arbitration, in Islam, contrasts from sulh in three regards: first, a genial settlement can be reached between the parties with or without the inclusion of others, second, arbitration must be used if the dispute has just happened, and third, different countries conform to different Islamic schools of thought whose interpretation of arbitration law differs.

There is no agreement among the four driving Sunni schools on the question of whether an arbitral award is officially binding on the parties. Hanafi fiqh proposes that arbitration is nearer to placation, while some legal advisers have recommended that the authority has a judgelike work. The four Sunni schools share a view that monetary issues are arbitrable, but there is no agreement between the other Islamic schools of law on what sorts of debates fall inside the extent of arbitration. Gender equality has also raised complications in the growth of arbitration in the GCC, as women can't become jurists nor participate in the process of arbitration as

[1] Saudi Arabia v. Arabian Am. Oil Co. 27 International Law Report 117 (1958).

[2] Arsani William (2010). ‘‘An Unjust Doctrine of Civil Arbitration: Sharia Courts in Canada and England’’, 6(2) Stan. J.Int’l. Relations

an arbitrator[1]. Additionally, Western lawyers and jurists have interpreted sharia as an ancient, unsophisticated and insufficient legal framework.

The interpretation of sharia has changed over time, with Western lawyers and jurists becoming more familiar with its workings. Sharia dependent arbitration has been practiced within a few western nations, and there have been calls to develop the same institutions within the US. However, the view that sharia has been inconsistent with arbitration has still been widespread, with various schools of Islamic jurisprudence seen as a weakness. Muslims see it as a source of flexibility, allowing sharia to evolve and adopt modern solutions. People who deem sharia improper sometimes differentiate rules of the sharia concerning specific transactions with other rules applicable to matters like family disputes.

4. FOR INCREASING THE ROLE OF COMMERCIAL ARBITRATION IN THE GULF STATES, WHICH ARE CONSISTENT WITH ISLAMIC LAW

Islamic countries have been accused of sticking to sharia law when doing international business, but there have been calls to reconcile Western and sharia-based rules of arbitration[2]. The confirmation of the NYAC by most Islamic nations has generally contributed to expanding the implementation of unfamiliar arbitral honors in their locales, and Sharīʿah rules permit the contesting parties to pick the arbitral seat and the relevant procedural law[3]. The need is to follow the guideline of fair treatment that envelops

[1] Dr. Md Yousuf Ali (2011). ‘‘The Appointment of Muslim Women as Judges in the Courts: A Textual Analysis from Islamic Perspective’’, (IPEDR, vol.17, Singapore,) 202, available at: http://www.ipedr.com/vol17/37-CHHSS%202011-H10039.pdf [accessed 13-12-2020]

[2] Levi-Tawil, (n 10) 621.

[3] United Nations Conference on Trade and Development, Dispute Settlement: International Commercial Arbitration, UNCTAD/EDM/Misc.232/Add.38, (New York and Geneva: United Nations 2005) 36

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the regard of gatherings' privilege of safeguard, giving equal opportunities to each party to be heard and to communicate decently their viewpoint.

The adoption of modern international arbitration procedures within Gulf Co-operation states is consistent with Sharīʿah rules, as long as the idea of restricting discretion is perceived by its various assets. Arbitration has been recognized through the Quran and Sunnah, and scholars have only recently started to investigate the validity of arbitration clauses in Sharia law[1].

The principle of arbitration in Sharia law states that all mandatory disputes are subject to arbitration, even if the contract contravenes public policies. There has been no explicit prohibition on appointing female arbitrators, but certain forms of conventions, such as the selling of pork and the sale of alcoholic beverages, have been prohibited. Contracts that contain ambiguity or interest have also been avoided, and the grounds on which the execution of an arbitral award can be rejected may not contradict the grounds of non-compliance recognized in modern arbitration law.

The results of initial arbitration cases involving Gulf Co-operation nations and Western organizations have led to a state of distrust in international arbitration. This distrust has not been completely eliminated, as a few courts within the Gulf Co- Operation Council still may not treat the arbitral award as prima facie valid. The western legal community must show more openness to the utilization of sharia within arbitration for the disputes coming from business transactions. But expectations that sharia has been unsophisticated and insufficient has still been widespread within the western legitimate community[2].

[1] Y. Friedmann (2003), Tolerance and Coercion in Islam, Interfaith Relations in the Muslim Tradition, Religious diversity and hierarchy of religions

[2] Tarek Badawy (2012). ‘‘The General Principles of Islamic Law as the LawGoverning Investment Disputes in the Middle East’’, 29 (3) J. Int’l Arb.255, 256, 260, 261.

Dr. Al-Ahdab remarked that international arbitrators have consented to apply Sharīʿah to settle worldwide business questions when selected by the parties to the dispute[1]. This inclination is continually creating in the structure of inter- national business transactions, which would play a focal and successful function in the turn of events and expansion of the wellsprings of discretion and encouraging the acknowledgment of foreign arbitration awards and guaranteeing their usage. With the evolvement of western judges' demeanor during the most recent twenty years, GCC started to grasp the foundation of worldwide assertion in their overall sets of laws. Evolvement of discretion empowered it to turn into the favored strategy for the goal of GCC questions, due to its secrecy, speed, cost, and adaptability. The GCC exchanges are facing difficulties due to lack of a bound together global administrative or administrative system, diversity of understanding, lack of enough capable global specialists and judges in the space of worldwide Islamic account.

To overcome these issues, improvement of the function of Islamic administrative sheets administration, distribution of the 'fatawas' choices of Islamic monetary foundations, guideline of Islamic law affirmed and properly qualified specialists, and establishment of a provincial focal capable and specific intervention organization in one of the GCC[2]. Additionally, the worldwide market is in genuine need for setting up a Sharīʿah consul- tation council and to give a uniform Islamic banking law. To accomplish a worldwide orchestrated framework of acknowledgment and authorization of arbitral awards, the public

[1] R. Messager, La Prise en Consideration de la Shari'a dans L'arbitrage Commercial International, (Université de Paris 1, Panthéon- Sorbonne, Thesis 2008)

[2] Kroll, S., (2010). 'Arbitration and Insolvency – Selected conflict of Laws Problems'. Conflict of Law in International Arbitration, pp. 211-254 Edited by: Ferrari, F. and Kroll, S. [online]. Available at: <https://www.degruyter.com/view/title/121763>. [Accessed on: 2 December 2020].

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policy exemption should be made clearer and more actualized in a straightforward and systematic way, as per the soul of the NYCA and in regarding the global highlights of the subject question.

Conclusions

1. Islamic law is not an obstacle to innovations of commercial arbitration, as it is completely opposite to that. Sharia is mentioned in the Qur'an and Sun nah, and has been used a lot despite being missing parts to clearly describe its nature.
2. The principle of Sharia is that all disputes are subject to arbitration, and the prohibition of appointing non-Muslims as arbitrators exists in only very limited cases. However, there is a defect in the countries of the Cooperation Council and regarding the use of Islamic arbitration, which is due to other reasons, such as the delay of the Gulf countries in updating their laws on arbitration and bringing them in line with the laws and Western society.
3. There is a large number of experts and highly qualified arbitrators, but the West still does not accept the word Shari'a leading to a retreat and delay in arbitration in the Gulf region. To overcome this, there are proposals to improve the procedure of arbitration in this region, such as establishing and opening training and qualifying centers for arbitrators, updating laws to be in accordance with two laws, establishing a legal Sharia advisory council, and taking the facilitated interpretations, rulings, and legislative fatwas that apply to almost all arbitration cases and collecting them in one, special place to facilitate the application of foreign judgments and enhance the speed of arbitration in a region.
4. Additionally, Western society has become more accepting of Islamic arbitration, especially in family issues, after it has achieved proven success and is widely applied in European countries. It is hoped that Islamic commercial arbitration will become just as accepted as Islamic family arbitration in these countries, and prove to be equally successful.

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