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An Overview of Islamic Dispute Resolution in the United States

Amerika Birleşik Devletleri'nde İslami Uyuşmazlık Çözümüne Genel Bir Bakış

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Abstract

This paper provides a comprehensive overview of Islamic dispute resolution practices in the United States, addressing the intersection of U.S. secular law and Islamic legal traditions. It begins with an examination of the U.S. Muslim population and explores how constitutional guarantees of religious freedom as well as the U.S. arbitration laws and the types of alternative dispute resolution (ADR) used in the United States have enabled religious communities to establish faith-based dispute resolution systems, such as Christian Conciliation and rabbinic tribunals, whose decisions are enforced by U.S. courts. The main focus of this paper is on Islamic dispute resolution traditions such as *taḥkīm* and their practical application, describing the types of Islamic dispute resolution organizations that have been developed in the United States over the past few decades and how they function, aiming to provide insights into the evolving role of Islamic dispute resolution within the U.S. legal framework.

Keywords: Islamic law, Islamic family law, arbitration, mediation, United States of America

Öz

Bu çalışma, ABD'deki İslami uyuşmazlık çözüm uygulamalarına kapsamlı bir genel bakış sunmakta ve ABD seküler hukuku ile İslami hukuk geleneklerinin kesişimini ele almaktadır. Çalışma, ABD'deki Müslüman nüfusun incelenmesiyle başlamakta ve din özgürlüğüne ilişkin anayasal güvencelerin yanı sıra ABD tahkim yasalarının ve Birleşik Devletler'de kullanılan alternatif uyuşmazlık çözüm (ADR) türlerinin, kararları ABD mahkemeleri tarafından uygulanan Hristiyan Uzlaştırma ve haham mahkemeleri gibi dini toplulukların inanç temelli uyuşmazlık çözüm sistemleri kurmalarına nasıl olanak sağladığını araştırmaktadır. Bu makalenin ana odağı, İslami uyuşmazlık çözümünün ABD yasal çerçevesi içinde gelişen rolü hakkında fikir vermek amacıyla son birkaç on yılda Amerika Birleşik Devletleri'nde gelişmekte olan İslami uyuşmazlık çözüm kuruluşlarının türlerini ve nasıl işlediklerini açıklayarak tahkim gibi İslami uyuşmazlık çözüm gelenekleri ve bunların pratik uygulamalarıdır.

Anahtar Kelimeler: İslami hukuku, İslam aile hukuku, tahkim, arabuluculuk, Amerika Birleşik Devletleri

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I. Introduction

In addition to being generally compatible with current U.S. state and federal laws, Muslims' use of faith-based arbitration and mediation to resolve disputes is deeply rooted in Islamic law and tradition. All major schools of Islamic law, Sunni and Shi'i, regard conciliation and arbitration – known in Arabic as *tahkīm* – to be based on the Qur'an and Sunna, with the Prophet Muhammad himself frequently called on to serve as an arbitrator, settling disputes between individuals and tribes.¹ While an in-depth discussion of the intricacies of *tahkīm* is beyond the scope of this Article, it is sufficient for our purposes to state that modern *tahkīm* is perhaps best seen as combining mediation with arbitration, making this traditional form of private Islamic dispute resolution relatively easy to adapt to the U.S. context.

Historically, Islamic law (sharia) has provided comprehensive guidelines for virtually all aspects of life, including personal disputes, family matters, and commercial transactions. While many Muslims in the United States navigate their legal concerns through secular courts, an increasing number seek resolution through religiously and culturally relevant methods that align with their religious beliefs. This phenomenon raises important questions about the compatibility of Islamic dispute resolution with existing U.S. laws, the role of U.S. courts in recognizing and enforcing such processes, and what these processes look like in practice.

To date, there has been little study of how many Islamic dispute resolution tribunals or services currently exist in the United States and how they function. Like the U.S. Muslim community itself, Islamic ADR services in the U.S. are diverse and currently remain highly fragmented, varying greatly from community to community, with many still in the very early stages of development. The U.S. lacks any formal, nationwide system of Islamic arbitration tribunals or services, and there has been little to no consistency or coordination between organizations or individuals offering Islamic ADR services. The few services that do exist tend

1 While the practice of *tahkīm* is well established in all schools of Islamic jurisprudence, there are clear differences between the schools over the exact nature of *tahkīm*, and some scholars argue that it is a form of conciliation or mediation between the parties, and hence the *hakām*'s (mediator/arbitrator) award is neither final nor binding without both parties' consent. See generally Zeyad Alqurashi, "Arbitration Under the Islamic Sharia," in *OGE Energy Law Journal* (2003), <http://www.ogel.org/article.asp?key=149>; Abdul Hamid El-Ahdab, *Arbitration with the Arab Countries* (New York: Kluwer Law International, 2011), 12-13; Zahraa and Nora A. Hak, "Tahkīm (Arbitration) in Islamic Law Within the Context of Family Disputes," *Arab Law Quarterly* 20 (March 2006): 28-29 (noting dominant opinion of Mālikī School was that parties' consent at beginning of arbitration was sufficient; Ḥanbalī School required consent up until the issuance of the award; and Ḥanafī and Shāfi'ī Schools require consent of parties through execution of the award).

to be rather informal; most are not truly “tribunals,” but simply services that tend to rely more on counseling and mediation than arbitration, and very few consider seriously how their decisions can or should interact with that of the U.S. legal system. The handful of more formally organized tribunals or services that do exist are small, generally focusing on one specific geographic area or just starting out and not yet very well known.

Resources are available that explain both sharia and its use by Muslims in the US, including recent publications and reports by Muslim individuals and organizations, civil liberties groups, the US legal community, and academics. These include *Sharia Law in the US 101: A Guide to What It Is and Why States Want to Ban It*,² *Nothing to Fear: Debunking the Mythical ‘Sharia Threat’ to Our Judicial System*,³ and *Islamic Divorce in North America: A Shari’a Path in a Secular Society*.⁴ On the other hand, critics of sharia have countered with their own books and reports, such as *Sharia: The Threat to America*⁵ and *Sharia Law and American State Courts: An Assessment of State Appellate Court Cases*⁶ and other books and reports.

There are also a number of academic studies and reports of meetings organized by Muslims on the principles that should be followed for a successful religious arbitration model. In 2010, the Assembly of Muslim Jurists of America (AMJA) held its annual gathering of imams where the issue of arbitration was on the agenda and the necessary conditions for an effective arbitration system were discussed.⁷ *The Pillars of Successful Religious Arbitration: Models for American Islamic Arbitration Based on the Beth Din of America and Muslim Arbitration Tribunal*

2 Omar Sacirbey, “Sharia Law in the US 101: A Guide to What It Is and Why States Want to Ban It”, *Huffington Post*, July 29, 2013, https://www.huffpost.com/entry/sharia-law-usa-states-ban_n_3660813.

3 “Nothing To Fear: Debunking The Mythical “Sharia Threat” to Our Judicial System,” American Civil Liberties Union, accessed January 15, 2025, at <https://www.aclu.org/publications/nothing-fear-debunking-mythical-sharia-threat-our-judicial-system>.

4 MacFarlane, Julia, *Islamic Divorce in North America: A Sha’ria Path in a Secular Society* (Oxford University Press, 2012).

5 “Shariah: The Treat to America,” Center For Security Policy, accessed January 15, 2025, at <https://centerforsecuritypolicy.org/shariah-law-and-american-state-courts/>.

6 “Sharia Law and American State Courts,” Center For Security Policy, accessed January 15, 2025, at <https://centerforsecuritypolicy.org/shariah-law-and-american-state-courts/>.

7 “Islamic Arbitration: Guidelines and Procedures,” AMJA, accessed January 15, 2025, at <https://www.amjaonline.org/research/islamic-arbitration-guidelines-and-procedures/>.

*Experience*⁸, *Jewish Law Courts in America: Lessons Offered to Sharia Courts by the Beth Din of America*⁹ and *Sharia Tribunals, Rabbinical Courts, and Christian Panels*¹⁰ discuss how Jewish arbitration has successfully established itself in the American legal system and the methods that Muslims can follow in this regard.

In this article, we begin with an overview of the history and demographics of the US Muslim population, the youngest and most diverse religious group in the United States. From there, we will turn to U.S. laws relating to religious freedom and alternative dispute resolution (ADR) practices, showing how multiple religious traditions – Christian, Jewish, and Muslim – have utilized these secular laws to establish faith-based dispute resolution forums whose decisions are routinely enforced by the U.S. court system. Finally, we describe the various types of Islamic dispute resolution forums and services in the United States today and how they have developed over the past 30 years to meet the needs of the diverse U.S. Muslim population.

II. Muslims in the United States

According to reliable estimates, as of 2017 there were approximately 3.45 million Muslims lived in the U.S., accounting for roughly 1.1% of the U.S. population.¹¹ Good statistics are difficult to obtain because the official U.S. census does not collect any information on religious affiliation, so any estimates of the U.S. Muslim population are all based on surveys using differing methodologies. However, almost all surveys agree that Islam is one of the fastest growing religions in the United States because of its high rates of immigration, conversion, and birth rate. As a result, the U.S. Muslim population is expected to double in the next twenty-five years to an estimated 8.1 million in 2050, surpassing Jews as the second-largest religious group in the United States by 2040.¹²

8 Ira Bedzow, "The Pillars of Successful Religious Arbitration: Models for American Islamic Arbitration Based on the Beth Din of America and Muslim Arbitration Tribunal Experience," *Harvard Journal on Racial & Ethnic Justice* 30, (2014).

9 Michael J. Broyde, "Jewish Law Courts in America: Lessons Offered to Sharia Courts by the Beth Din of America," *New York Law School Law Review* 57, (2012/13).

10 Michael J. Broyde, *Sharia Tribunals, Rabbinical Courts, and Christian Panels*, (Oxford University Press, 2017).

11 The Pew Research Center, "Demographic Portrait of Muslim Americans," in *U.S. Muslims Concerned About Their Place in Society, but Continue to Believe in the American Dream: Finding from Pew Research Center's 2017 survey of U.S. Muslims (2017)*, <https://www.pewresearch.org/religion/2017/07/26/demographic-portrait-of-muslim-americans/>.

12 AJ Willingham, "By 2040, Islam Could Be the Second-Largest Religion in the U.S.," *CNN* (January 10, 2018) (citing polls by the Pew Research Center).

The largest increase in the size and diversity of the U.S. Muslim population, however, came as a result of the 1965 Immigration and Nationality Act, which did away with national-origin quotas, thereby opening the doors to Muslim immigration from every part of the globe. Since the passage of this law, the largest group of Muslim immigrants has been “Asian,” predominantly from India, Pakistan, and Bangladesh, but also including immigrants from Indonesia, Malaysia, and other countries. Other significant groups include Arabs, Iranians, Africans, and Bosnians,¹³ as well as U.S. born converts to Islam.¹⁴

As a result, Muslims are the most diverse religious group in the United States and, because of this diversity and lack of any official or centralized Muslim leadership, it is in many ways impossible to speak of “a” U.S. Muslim community. Rather, there are many Muslim communities and different ways to be Muslim in the United States. Some people may consider themselves Muslim but are very secular, while others are deeply religious; some remain closely tied to their home countries, languages, and traditions, while others come from families that have been in the United States for generations. Some live in small communities in the U.S. heartland, while others live in big cities. But importantly, all these Muslim communities overlap and influence each other in many ways, creating a dynamic and ever-evolving Muslim population in the U.S. that is unlike anywhere else in the world.

III. U.S. Laws That Protect Faith-Based Dispute Resolution

Courts have always been an expensive and time-consuming means of resolving disputes. In addition, because court decisions generally end up with a “winner” and a “loser,” litigation tends to be very destructive of relationships. It is therefore unsurprising that people have always looked for alternatives and that many prefer to resolve disputes privately, often with the help of a third party such as a mediator or an arbitrator. This is known as “alternative dispute resolution” or “ADR,”¹⁵ and includes informal negotiations, mediation, in which a neutral third-party assists

13 Pew Research Center, “Demographic Portrait.”

14 Besheer Mohamed and Elizabeth Podrebarac Sciuapac, *The Share of Americans Who Leave Islam Is Offset by Those Who Become Muslim* (Pew Research Center, January 26, 2018), <https://www.pewresearch.org/short-reads/2018/01/26/the-share-of-americans-who-leave-islam-is-offset-by-those-who-become-muslim/>.

15 4 Am. Jur. 2d Alternative Dispute Resolution [ADR] § 1 (2014).

the disputants in reaching a mutually acceptable agreement,¹⁶ and arbitration, where disputants agree to have a neutral third-party hear their arguments and issue a decision.¹⁷

A. The Dual Constitutional Protections of Freedom of Religion and Their Limits

The U.S. Constitution provides strong guarantees of religious freedom. As will be examined in this section, this means that the government is prohibited from adopting any type of “official” religion and, at the same time, must also protect individuals’ rights of religious practice and belief regardless of what religion it is.

Many of the earliest European colonists arrived in the United States to escape the religious persecution they had suffered in Europe and find religious freedom in the United States. Accordingly, the founding fathers of the new United States enshrined this tradition of religious freedom in not one but two guarantees of religious freedom under the First Amendment in the U.S. Constitution’s Bill of Rights,¹⁸ which opens

16 Mediation (also sometimes called “conciliation”) is consensual; the parties may not end up reaching a mutually acceptable agreement and, if they do not, the mediator has no power to impose one. This means that any agreement reached through mediation/conciliation is not legally enforceable in the absence of a written agreement signed by the disputants permitting enforceability.

17 In arbitration, the disputing parties enter into a voluntary agreement to have one or more private third-party neutrals hear their dispute and render a decision (technically called an “award.”). The term “arbitration” can encompass a wide variety of processes, ranging from fairly informal to extremely formal procedures that may be similar to a court trial in scope and complexity. Unlike mediation agreements, arbitration awards are generally binding on the disputants and enforceable in courts; however, because arbitration is essentially contractual and the power of the arbitrator(s) is set by the contract, the disputants may choose to specify in the contract that the arbitration award will constitute a non-binding advisory opinion that is not enforceable in a court. Thus, arbitration can be “binding” or “non-binding.”

A hybrid process, called Mediation-Arbitration, or “med/arb”, is also possible. The disputers voluntarily agree to a process that begins with mediation but that will proceed to arbitration on any issues that they are not able to settle through mediation. The same third-party neutral or neutrals generally serve as both mediator and then arbitrator, if necessary, unless the disputants choose otherwise. As with regular arbitration, any arbitration award issued will be legally binding and enforceable in court unless the parties specify in advance that it will be non-binding.

18 The U.S. Constitution was written in 1787 and ratified in 1788. However, early concerns about restricting the power of the federal government and protecting individual liberties led to the addition of ten amendments to the Constitution in 1791. These ten amendments, known collectively as the Bill of Rights, ensure, in addition to freedom of religion, other individual rights such as freedom of speech and right to assembly (First Amendment), freedom to bear arms (Second Amendment), due process rights under law (Fifth Amendment), and the right to a speedy trial (Sixth Amendment), among others. Bill of Rights Institute, *Bill of Rights: The 1st Ten Amendments*, <https://billofrightsinstitute.org/primary-sources/bill-of-rights>.

by stating that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”¹⁹ These two interlocking clauses offer all individuals, regardless of their religion or even lack of religion, broad protections of religious freedom.

The first clause in this sentence – “Congress shall make no law respecting an establishment of religion” – is known as the Establishment Clause and was designed to ensure that the Congress cannot pass any law establishing an official state religion or a law that might be seen as favoring one religion over another, or even religion in general.²⁰ The second clause – “or prohibiting the free exercise thereof” – is known as the “Free Exercise Clause” and extends the prohibition against government intrusion into religion further, by prohibiting the government from making any law designed to interfere with an individual’s freedom of religious belief or practice.²¹ This freedom is not absolute; the government may prohibit religious practices if it runs afoul of “public morals” or a “compelling” government interest such as health or safety.²²

With the growth of the U.S. Muslim population in the 1960s due to immigration and conversion,²³ it became clear that Islam was a religion that merited the same

19 National Archives, *Amendments to the U.S. Constitution*, <https://archivesfoundation.org/amendments-u-s-constitution/>

20 *Abington School District v. Schempp*, 374 U.S. 203 (1963) (ending devotional exercises in public schools because the Establishment Clause forbade the recognition of one religion over others).

21 Although the First Amendment refers explicitly only to laws passed by “Congress,” which would mean it only applied to federal laws, since 1940 the U.S. Supreme Court has consistently ruled that it also applies to the states by incorporating First Amendment rights into the Fourteenth Amendment due process clause. This was done first done implicitly in *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (incorporating the free exercise clause), and then explicitly in *Everson v. Board of Education*, 330 U.S. 1, 14-15 (1947) (incorporating disestablishment clause). Accordingly, neither Congress nor state legislatures can pass laws that are seen as establishing or favoring religion, nor can they pass laws that unduly burden an individual’s right to religious belief or practice.

22 *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

23 The Immigration and Nationality Act of 1965 did away with the earlier quota system based on national origin, replacing it with a preference system that prioritized immigrants with skills and family ties to the United States. This led to a surge of immigration from Asia, Africa, and other regions outside of Europe. As a result, “from 1966 to 1997, approximately 2,780,000 immigrated to the United States from areas of the world with significant Muslim populations... [and] one demographer estimates that approximately 1.1 million immigrants were Muslim.” Edward E. Curtis IV, *Muslims in America: A Short History*, 72-73 (Oxford University Press, 2009). In addition, conversion to Islam picked up steam during the 20th century, especially among African Americans who often found Islam attractive for political, as well as religious, reasons. *Id.* 43-44.

protections as Christianity or Judaism, and Muslims had the right to engage freely in religious practices. For example, some Muslim inmates affirmed their rights to engage in religious practices such as Friday prayers, the observance of Ramadan, and access to halal foods.²⁴

In a similar way, religious believers from a variety of different faith traditions have been able to use secular laws regarding arbitration and other forms of alternative dispute resolution as a way to establish private forums that will resolve disputes according to religious law or tradition. One important caveat remains, however – U.S. federal and state law always remains the supreme and final authority, which means that Muslims, like members of other religious traditions, may not violate generally applicable civil or criminal laws, even if they feel these laws conflict with their sincerely held religious beliefs.²⁵

B. Laws Promoting Alternative Dispute Resolution (ADR)

The U.S. legal system today is highly favorable, even encouraging, toward these types of private dispute resolution, both because they are generally faster and cheaper than litigating in court and because they reduce the caseload on the court system.²⁶ The Federal Arbitration Act, passed by Congress in 1925,²⁷ promoted arbitration by holding that arbitration agreements were “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract”²⁸ and that judges must enforce arbitration awards unless there is some issue with the arbitration itself (for example, there was duress in entering

24 *E.g.*, *Cooper v. Pate*, 378 U.S. 546 (1960) (landmark case involving Muslim inmates, recognizing that prisoners have constitutional rights); *Battle v. Anderson*, 376 F. Supp. 402 (E.D. Okl. 1974) (religious services); *Cochran v. Sielaff*, 405 F. Supp. 1126 (S.D. Ill. 1976) (Ramadan observance); *Barnett v. Rodgers*, 410 F.2d 985 (D.C. Cir. 1969) (suitable diet).

25 For example, in 2010 a New Jersey appeals court held that a husband’s belief that his actions were permissible under Islamic law could not be a defense against general criminal laws regarding domestic violence. *S.D. v. M.J.R.*, 2 A.3d 412 (N.J. Super. 2010).

26 This has not always been the case, however. Early English common law was extremely hostile to private dispute resolution, claiming that it “ousted the jurisdiction of the courts” and could not be trusted to provide fair results. *I Domke on Com. Arb.*, § 2:5 (2023). This common law hostility toward arbitration has been the norm in the U.S. legal system since its founding. It was therefore not until the early twentieth century that federal and state legislatures and courts began to change the laws in favor of enforcing arbitration agreements and awards. *I Domke* § 2:9.

27 Legal Information Institute, *Federal Arbitration Act*, (Cornell Law School), https://www.law.cornell.edu/wex/federal_arbitration_act.

28 Codified at 9 USCA § 2 (2022).

the agreement, bias on the part of the arbitrator, etc.). Similar laws exist on the state level for arbitration and mediation.²⁹

It is important to note that these laws regarding arbitration and mediation will generally be applied by U.S. courts regardless of whether the dispute resolution forum is secular or religious.³⁰ On the one hand, the Establishment Clause prohibits the government from “establishing” any kind of official religious court or dispute resolution forum, and courts therefore will not “compel” a party to appear before a religious dispute resolution forum or require that a religious arbitrator or mediator be appointed unless the voluntary agreement between the disputants clearly calls for it,³¹ on the other hand, the “free exercise” clause means that when a religious dispute resolution forum is *privately* convened, it can be considered part of the disputants’ right to freely practice their religion and cannot be prohibited by the courts.

In practice, most court opinions reviewing arbitral awards from a religious dispute resolution forum have not even discussed the First Amendment at all. In those cases, most have focused on the courts’ ability to resolve disputes involving

29 The 1955 Uniform Arbitration Act (UAA) was eventually adopted by 49 states, with a revised version (RUAA) introduced in 2000 and thus enacted in 22 states and the District of Columbia. Uniform Law Commission, *Arbitration Act*, <https://www.uniformlaws.org/committees/community-home?CommunityKey=a0ad71d6-085f-4648-857a-e9e893ae2736> (last visited September 22, 2024). Similarly, a Uniform Mediation Act has been adopted by 11 states and the District of Columbia, although similar laws allowing for mediation exist in most states. Uniform Law Commission, *Mediation Act*, available at <https://www.uniformlaws.org/committees/community-home?CommunityKey=45565a5f-0c57-4bba-bbab-fc7de9a59110> (last viewed September 22, 2024).

30 However, there are important caveats for disputants, especially when it comes to arbitration, because once an arbitration agreement has been signed, it is difficult for a party to challenge the agreement or subsequent arbitral award in court. Courts will not review the merits of the arbitral award even for mistake of law or fact, and the courts can generally only vacate or modify an arbitral award when the court finds “that the rights of the party were prejudiced by corruption, fraud, or misconduct in procuring the award; partiality of an arbitrator; that the arbitrator exceeded his power or failed to make a final and definite award; or a procedural failure that was not waived.” *Lieberman v. Lieberman*, 566 N.Y.S.2d 490 (N.Y. Sup. 1991); *see also, e.g., N.Y. C.P.L.R. § 7511(b)(1)(i-iv)* (West 2014); *GA. CODE ANN. § 9-9-13(a)(1-4)* (West 2014). Courts may also vacate an award on due process grounds, or the award is determined to have been the result of coercion or duress, unconscionable, or a violation of public policy.

31 *See, e.g., Mayer-Kolker v. Kolker*, 819 A.2d 17, 20 (N.J. Super., 2003); *see also In re Ismailoff* (Golan), 836 N.Y.S.2d 493 (Table) (N.Y. Sur., 2007).

religious concerns using “neutral principles of law.”³² According to this approach, a court may apply “neutral, objective principles of secular law to determine if the arbitration award issued by the [religious] tribunal should be binding on the parties” without violating the First Amendment.³³

Therefore, taken together, these two varieties of religious freedoms guaranteed by the U.S. Constitution have enabled religious groups in the United States to use secular ADR laws to establish private dispute resolution forums that apply religious law or principles and to have agreements and awards issued by these religiously based forums enforced by the secular U.S. court system. What this means in practice is that, for the most part, U.S. courts simply do not care whether a case stems from a secular forum or a religious forum – both will be treated the same way.

IV. Use of Secular ADR Laws to Enable Faith-Based Dispute Resolution

Similar to how Jewish and Muslim faith communities have used secular truth-in-advertising laws to ensure that kosher and halal certifications can be relied on, the existence of secular U.S. laws regarding ADR has inspired believers from various religious traditions – including Christian, Jewish, and Islamic – to establish faith-based dispute resolution forums to serve their communities. This section

32 Avitzur v. Avitzur, 446 N.E.2d 136, 138 (N.Y., 1983) (citing Jones v. Wolf, 443 U.S. 595 (1979); Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976); Presbyterian Church v. Hull Church, 92 U.S. 440 (1969)).

33 Stein v. Stein, 707 N.Y.S.2d 754, 759 (N.Y. Sup., 1999) (involving a rabbinic tribunal). However, one exception to these general rules comes from a recent case out of California. In *Bixler v. Scientology*, the Church of Scientology sought to enforce an arbitration agreement and to require harassment lawsuits filed by former members of the Church to be resolved within a Scientologist tribunal and under Scientologist law. Unusually, the court in this case struck down the arbitration clause on the grounds that forcing former church members to adhere to the arbitration agreement would violate their First Amendment rights to free exercise and change their faith. *Bixler v. Super. Ct. for the State of Cal.*, No. B310559, 2022 WL 167792 (Cal. Ct. App. Jan. 19, 2022), *review denied sub nom.* *Bixler v. Super. Ct.*, S273276, 2022 Cal. LEXIS 2283 (Apr. 20, 2022), *cert. denied sub nom. Church of Scientology Int'l v. Bixler*, 143 S. Ct. 280 (2022). The California Supreme Court declined to grant a review of the case, and the case was ordered not to be published.

To date, however, no other courts have followed the *Bixler* court’s lead and it is not clear that any will, as legal scholars have taken issue with the *Bixler* decision, arguing that it was wrongly decided because it creates “a new exit right to contracts and a new doctrine in federal arbitration law, only applicable where an arbitration clause delegates disputes resolution through religious avenues” and that courts considering what they deem to be abusive arbitration clauses should instead use the faith-neutral doctrine of unconscionability. Michael J. Broyde and Alexa J. Windsor, “Contract Law Should Be Faith Neutral: Reverse Entanglement Would Be Stranglement for Religious Arbitration,” *N.Y. University Annual Survey of American Law* 79 (2023): 18.

examines how Christian, Jewish, and Muslim communities in the United States have used secular ADR laws to support and strengthen their own “faith-based” or “religious” dispute resolution traditions.

A. Christian Conciliation

While the vast majority of Christians have no qualms about using the secular legal system, there are a growing number who believe that Christians should not sue other Christians in a secular court³⁴ and, beginning in the 1980s, the “Christian Conciliation” movement began to formalize such services. Currently, several Christian Conciliation organizations exist, the largest of which is called the Institute for Christian Conciliation (ICC), that provide biblically based mediation and/or arbitration for a broad range of disputes, including family, communal, and commercial.³⁵ Christian Conciliation mediators and arbitrators are usually Christian lawyers, ministers, or counselors who have received special training or certification in the field.

Courts have routinely upheld the enforceability of agreements using Christian Conciliation to resolve disputes. For example, *Encore Productions v. Promise Keepers* involved a contract containing a dispute resolution clause that stated: “Any claim or dispute arising from or related to this Agreement shall be settled by mediation and, if necessary, legally binding arbitration, in accordance with the Rules of Procedure for Christian Conciliation of the Institute for Christian Conciliation.”³⁶ When one party tried to ignore this clause and to sue in court, the court rejected the party’s argument that the court was prohibited from enforcing “theological conclusions,” stating that it was merely using its power to enforce “secular contract rights” and would be able to employ “neutral principles” to review decisions of religious dispute resolution.³⁷ The court also rejected the argument that compelling the party to a religious dispute resolution process violated the First Amendment because it had voluntarily entered into the agreement in the first place

34 This belief is based on a number of verses in the Christian New Testament, most prominently the Gospel of Matthew, in which Jesus is quoted as saying: “If your brother sins against you, go and confront him while the two of you are alone. If he listens to you, you have won back your brother. But if he doesn’t listen, take one or two others with you so that ‘every word may be confirmed by the testimony of two or three witnesses.’ If, however, he ignores them, tell it to the congregation. If he also ignores the congregation, regard him as an unbeliever and a tax collector.” Matthew 18:15-18 (New International Version).

35 Institute for Christian Conciliation, <https://www.aorhope.org/icc>.

36 *Encore Productions v. Promise Keepers*, 53 F. Supp. 2d 1101, 1106 (D. Colo. 1999).

37 *Encore Productions*, 53 F. Supp. 2d at 1112 (citing *Jones v. Wolf*, 443 U.S. 595 (1979)).

and “[a]lthough it may not be proper for a district court to refer civil issues to a religious tribunal in the first instance, if the parties agree to do so, it is proper for a district court to enforce their contract.”³⁸

B. Jewish Rabbinic Tribunals

For centuries, Jews have lived as religious minorities under Christian or Muslim rule and have become well-versed in adapting their legal traditions to work under non-Jewish governments. While most Jews in the United States have no objection using secular courts, “orthodox” Jews³⁹ who are committed to living according to Jewish law, known as *halakhah*. Because *halakhah* contains a prohibition against bringing suit against another Jew in a non-Jewish court,⁴⁰ orthodox Jews will bring any dispute with a fellow Jew – from family law issues to multi-million-dollar contract disputes – to a rabbinic tribunal, known as a *beth din*.

However, when it comes to forcing a disputant to appear before a *beth din* or enforcing the decision handed down by the rabbis on the panel, the *beth din* has little power other than social pressure and a disputant’s own religious belief to compel them to abide by the *beth din*’s decisions.⁴¹ However, some Jewish groups, such as the Beth Din of America (BDA),⁴² have resolved this problem by harnessing the power of the secular U.S. legal system. For example, if the *beth din* issues a decision and one party refuses to abide by it, then the other party is permitted to go to a secular U.S. court to get the award enforced. In this way, the BDA provides

38 Encore Productions, 53 F. Supp. 2d at 1112-1113.

39 In the United States today, there are four main branches of Judaism – reform, conservative, reconstructionist, and orthodox, with a number of different varieties of orthodox Jewish communities in the U.S., ranging from highly insular Hassidic to highly acculturated “modern orthodox” communities and individuals. My Jewish Learning, *The Jewish Denominations*, <https://www.myjewishlearning.com/article/the-jewish-denominations/>.

40 See Rabbi Simcha Kraus, “Litigation in Secular Courts,” in *Jewish Law*, http://www.jlaw.com/Articles/litigation_in_secular_courts1.html (discussing Talmudic ban against using “courts of Akkum” interpreted as prohibition against using secular or other non-Jewish courts). Furthermore, a Jew who brings an accusation against another Jew before a non-Jewish court is seen as violating the supreme prohibition of *chillul ha-shem*, or the desecration of God’s name, by exposing the alleged wrongdoing before non-Jews, bringing shame upon the entire Jewish community. Kraus, “Litigation in Secular Courts.”

41 Beth Din of America, *See How Cases Are Brought to Beth Din*, <http://www.bethdin.org/cases.asp>.

42 The BDA is affiliated with the “modern orthodox” Rabbinical Council of America, however it is also open to non-orthodox Jews and even non-Jews, who might under certain circumstances (such as a dispute with an orthodox Jew) find them an attractive venue based on their low cost and high speed relative to court proceedings.

both a venue for orthodox Jews to fulfill their religious obligations when it comes to dispute resolution, but also enlists the power of the U.S. court system to ensure the enforcement of its decision.⁴³

C. Islamic Dispute Resolution

It is clear that, like their Christian and Jewish counterparts, at least some Muslims in the United States find it important to resolve disputes in a manner consistent with their religious beliefs and principles. Evidence of this is found in the small handful of cases that have appeared since 1999, in which state appeals courts in the United States have dealt with disputes involving Islamic arbitration. These cases show that faith-based Islamic ADR services exist at some level in the United States and are utilized for a variety of different disputes, such as mosque governance issues,⁴⁴ business contracts,⁴⁵ and divorce or custody matters.⁴⁶

Just as they have with faith-based ADR based on Jewish and Christian traditions, courts have generally found the fact that these cases involve Islamic ADR cases to be unremarkable and decide them on neutral principles of law. For example, in a Texas divorce case in which one of the parties challenged the validity of an agreement to submit “all claims and disputes among them” to an Islamic arbitration tribunal, the appeals court upheld the agreement, deeming it a simple question of contract interpretation.⁴⁷ Similarly, a court in Minnesota upheld an Islamic arbitration committee’s award in a contract dispute between business partners

43 For example, in *Lang v. Levi*, a Jewish couple was married in accordance with secular and Jewish law and had signed an arbitration agreement designating the BDA as the arbitral forum for any disputes arising from their religious prenuptial agreement. After receiving a civil divorce from a secular state court, the couple went to the BDA for a religious divorce, and a BDA panel originally awarded the wife \$10,200 but then reversed its decision. The wife then went to the Maryland state court, asking that the BDA’s decision be vacated. The court refused and upheld the BDA’s decision, stating that it “[could not] delve into whether under Jewish law there [was] legal support” for the rabbi’s decision to reverse the original decision, and that “the Beth Din appropriately exercised its authority within the confines of its own rules and procedures, which both parties agreed to be subject to under the arbitration agreement. *Lang v. Levi*, 16 A.3d 980 (Md. Ct. Spec. App. 2011).

44 *Yaseen Educational Society v. Islamic Association of Arabi, Ltd.*, 406 S.W.3d 385 (Text. Ct. App. 2013); *El-Farra v. Sayyed*, 226 S.W.3d 792 (Ark. 2006).

45 *Abd Alla v. Mourssi*, 680 N.W.2d 569 (Minn. App. 2004); *Hamzavi v. Ahmad*, 1999 WL 33452466 (Mich. App. 1999) (unpublished).

46 *In the Interest of N.Q. and F.Q.*, 2010 WL 2813425 (Tex. App. 2011) (unpublished); *Jabri v. Qaddura*, 108 S.W.3d 404 (Tex. App. 2003); *Amro v. Iowa Dist. Court for Story County*, 429 N.W.3d 135 (Iowa, 1988).

47 *Jabri v. Qaddura*, 108 S.W.3d 404 (Tex. App. 2003).

on the grounds that the partner challenging the decision had failed to prove any fraud or misconduct in the arbitration and, under state law, had waited too long to challenge the results of the arbitration.⁴⁸

These cases, like those arising from a Christian or Jewish context, demonstrate that over the past three decades, U.S. courts have routinely dealt with decisions issued by faith-based dispute resolution forums and have treated them as secular arbitral awards and ruled upon them through the application of neutral principles of law. The combination of the United States' constitutional protections of freedom of religion and secular ADR laws provide fertile ground for the growth of such faith-based dispute resolution systems, and the next section explores the wide varieties of Islamic dispute resolution forums and services have developed as a result.

V. Islamic Dispute Resolution Services in the U.S.

Generally speaking, the Islamic dispute resolution services that do exist in the United States fall into one of four main types, although some overlap exist among some of the categories: (A) services offered in mosques, both informal and formal; (B) ad hoc arbitration panels; (C) sect-specific ADR services; and (D) independent tribunals or dispute resolution, either provided by independent religious scholars, U.S. trained legal experts, or a combination of the two. Each of these types is briefly discussed below.

A. Services offered in mosques

Mosques in the United States are much more than just spaces for prayer – many also function as community centers, providing a range of activities and services for members, which may include education, cultural events, recreation, social services, and various types of counseling. It is therefore not unexpected that when dealing with a dispute or conflict, many Muslims turn to the mosque for help and guidance. Often, congregants turn to the mosque's imam⁴⁹ for counseling or mediation. Often

48 Abd Alla v. Mourssi, 680 N.W.2d 569 (Minn. App. 2004).

49 While in Muslim countries the term "imam" is primarily used to mean a person who leads the Friday congregational prayer, imams in the United States have taken on many other responsibilities, often functioning more like a Christian minister or Jewish rabbi and "pastoring" to members of the mosque community. Yvonne Yazbeck Haddad and Adair T. Lummis, *Islamic Values in the United States: A Comparative Study* (New York: Oxford University Press, 1987), 58-59 (noting "imam" in the Islamic world is used for various leadership roles, included Islamic scholars, religio-political leaders, and Friday prayer leaders).

this is informal,⁵⁰ with the imam working with the parties to a conflict to reconcile them whenever possible, in keeping with Islamic norms of mercy and conciliation.⁵¹ In some cases, an imam may act as an “arbitrator” between two parties, hearing both sides of a dispute and any resulting “decision” or “ruling” tend to be informal, in that they are meant to be accepted and enforced voluntarily by the parties and not intended to be legally enforceable by a U.S. court. For example, given the lack of any formal sharia court system in the U.S., a woman seeking a “religious divorce” may turn to an imam. Any divorce so issued may well be recognized by a woman’s family and community, but it will not be enforceable in a secular court.⁵²

In addition, a very small number of mosques offer formal dispute resolution (ADR) services such as mediation or arbitration. Unfortunately, identifying which mosques offer such services is extremely difficult.⁵³ However, anecdotal evidence shows that such services do exist in some mosques, generally developed independently of each other by local leaders in response to a perceived need in the community. Accordingly, there is no standard model for such mosque-based services and, while most will hear a broad range of disputes, including family, business, or organizational (intramosque) disputes, they differ greatly in the way

50 Ihsan Bagby, *The American Mosque 2020: Growing and Evolving - Report 2 of the US Mosque Survey 2020: Perspectives and Activities* (Institute for Social Policy and Understanding, 2021), <https://www.ispu.org/report-2-mosque-survey-2020/#mosque-activities> (“78% of U.S. mosques provide family and marital counseling services, which is usually the job of the imam.”)

51 Aida Othman, *And Sulh is Best: Amicable Settlement and Dispute Resolution* (unpublished Ph.D. dissertation, Harvard University, May 27, 2005), 266 (on file with author).

52 Given the secular nature of the U.S. legal system, no state-appointed or state-recognized religious judges (*qadis*) are authorized to issue a divorce. To be divorced under U.S. law, the parties must undertake civil divorce proceedings, usually in the state in which they reside, in which the state court will adjudicate issues of alimony, custody, and child support. Some Muslim families or communities may refuse to recognize these divorces issued by secular U.S. courts, especially when it is considered that the wife has initiated the divorce action. In such cases, a woman may seek a “religious divorce” from a local imam, who is believed to have religious authority. See generally Julie Macfarlane, *Islamic Divorce in North America: A Shari’a Path in a Secular Society* (New York: Oxford University Press, 2012), 155 *et seq.*

53 While there are some online databases of mosques and Islamic schools, such as Muslimguide.com and salatomatic.com, they are searchable by geographic location only. While salatomatic.com previously had a search function for services, including “sharia arbitration,” it was never reliable. For example, a search in 2012 of the approximately 2400 U.S. mosques and Islamic services included in the salatomatic database at that time revealed 21 results showing that a mosque offered such services. However, of the 21 mosques identified, only 2 had active websites that mentioned mediation or arbitration services. However, some mosques noted that they provided mediation and arbitration services on their websites but not on their salatomatic profiles.

they are structured. Some offer only mediation, while others offer arbitration (binding or non-binding).⁵⁴

The majority of mosques that provide more formalized dispute resolution services, however, seem to take a hybrid approach to dispute resolution, combining both mediation and arbitration. The reasons for this appear to be two-fold. First, since the primary goal of such services is to reconcile the disputing parties, this is best done through an approach that emphasizes the parties working together through a third-party mediator, such as an imam, to craft a mutually agreeable solution to their dispute. For example, the Mosque Foundation, a mosque in Chicago, states on its website:

“Whenever disagreements arise (whether they involve business matters or personal aspects of life), it is helpful to seek an impartial mediator to resolve the issue. The Mosque Foundation offers objective arbitration to resolve disputes and preserve relations between the disputants.”⁵⁵

However, the second reason, for the hybrid, fluid approach to dispute resolution found in many U.S. mosques is sometimes the lack of a basic understanding of the technical and legal differences between “counseling,” “mediation,” and “arbitration” under U.S. law on the part of the imams and other community members who provide these services. For example, one imam speaking about the services his mosque offered stated that disputes would be “mediated by an arbitrator.”⁵⁶

B. Ad-hoc Arbitration Committees

Some mosques and other Muslim organizations may have by-laws or other organizing documents that specifying procedures for establishing an arbitration committee, either internally or externally, to deal with internal disputes. For example, a New Jersey mosque’s by-laws included an arbitration clause that stated: “The board shall create an Islamic Arbitration Committee of 3-5 members in case of disagreement among board members or general assembly members of matters related to the center.... The decisions of the committee shall bind on all parties and may be entered in a court of competent jurisdiction.”⁵⁷

54 For example, the al-Huda mosque in Minnesota states on its website that it provides only arbitration services, stating: “Our Center provides a court-like service for the Muslim community. The Imam will work as a judge to resolve the dispute between any two parties or group. Cases may include social, family matters, business, or any conflict. Based on the complexity of the case, we might organize an arbitration committee from experts to help in solving the problem and make the decision. All the arbitration decisions are final.” <https://www.alhudacenter.net/services>.

55 <https://mosquefoundation.org/services-overview/>.

56 Interview with anonymous imam (December 17, 2013) (notes on file with the author).

57 *Matahen, et al. v. Schwail, et al.*, 2016 WL 1136602 (N.J. App. 2016).

Even where a formal arbitration clause is lacking, as a practical matter many mosques and other Islamic organizations seek to resolve governance or membership disputes through some sort of arbitration process, often convened with the help of an outside organization, such as the Islamic Society of North America (ISNA) or its affiliate, the Fiqh Council of North America. Although these groups do not themselves have formal arbitration programs, they nevertheless serve as a resource to refer interested parties to potential arbitrators, who are generally Islamic scholars, although these scholars may work with U.S.-trained lawyers or other experts.⁵⁸

C. Sect-specific ADR services

Some Muslim groups have developed internal ADR services designed to deal with disputes between their members. This is the case, for example, for the Ismaili Muslim community, a Shi'i Muslim community of approximately 12-15 million members in 35 different countries.⁵⁹

The Ismaili community is extremely cohesive, with a governing structure that includes a constitution,⁶⁰ which sets up a system of “Conciliation and Arbitration Boards” (CABs) designed to assist in the conciliation process between parties in disputes arising from commercial and family matters.⁶¹ Although CABs stress conciliation to help the parties reach an agreement through mediation, the constitution expressly states that a CAB may “act as an arbitration and judicial body.”⁶² While Ismaili Muslims are encouraged to use the CAB system, in the United States, they remain free to take disputes to courts or other forms of private ADR if they prefer. Nonetheless, most Ismailis generally prefer to use the CAB system due to its reputation for resolving disputes quickly, cheaply, and confidentially, in a

58 For example, a Pennsylvania mosque facing governance disputes decided to “submit[] the resolution of the [Islamic center]’s disputes to the Islamic Society of North America (“ISNA”) for voluntary and binding arbitration.” ISNA referred the issue to an imam from another part of the country, resulting in a panel consisting of that imam and two U.S.-trained Muslim attorneys, who held a series of hearings and issued a final ruling. Copy of the 2011 arbitration submitted the author.

59 <https://the.ismaili/global/about-us/the-ismaili-community>.

60 While the Ismailis have had written rules since 1905, the current constitution, known as “The Constitution of the Shia Imami Ismaili Muslims,” was signed by the Aga Khan in 1986 and revised in 1998. “Ismaili Constitution”, *Encyclopaedia of Ismailism*, ed. Mumtaz Ali Tajddin, <http://www.ismaili.net/heritage/node/10434>.

61 *Constitution of the Shia Imami Ismaili Muslims*, Art. 12.1(a). Article 12 establishes International Conciliation and Arbitration Boards; national-level boards are established by Article 13, which includes identical language.

62 *Ismaili Constitution*, Arts. 12.1(b), 13.1(b).

culturally and religiously sensitive environment. However, as the Ismaili Constitution mandates that national and regional CABs are subject “to the overriding effect of any applicable laws of the land of abode,”⁶³ as a matter of practice this means that the CAB system in the United States recognizes and respects applicable state and federal laws.

D. Independent Muslim Dispute Resolution Organizations

A small but growing number of Muslim dispute resolution services and organizations are unaffiliated with a particular mosque or Islamic center. Some of these are quite small, seeking to serve only Muslims in a limited geographic area, while others provide (or hope to provide) Islamic dispute resolution services nationwide. In some cases, the mediators and/or arbitrators are classically trained Islamic scholars, while in others, they are U.S.-trained lawyers or counselors. In at least two instances, the staff is made up of both.

Each of these Islamic dispute resolution organizations shares in common is a deep belief that it is preferable for Muslims, whenever possible, to resolve disputes outside of the U.S. legal system for both religious and practical reasons. All also look to resolve disputes by reconciling the parties as much as possible and therefore, as with Muslim ADR in other types of forums discussed above, seek first and foremost to help the parties arrive at a mutually acceptable resolution to the dispute to the greatest extent possible. However, given the very different structures and types of services available through these independent Islamic dispute resolution organizations, generalizations are difficult. Given the constraints of this article, this section can only briefly describe six such venues that provide dispute resolution services to Muslims in the United States. While additional stand-alone Islamic dispute resolution organizations may exist, as is the case for other types of Muslim ADR in the United States, the lack of any centralized organization or listing of such services makes it difficult to determine the exact number of them.

1. Center of Islamic Counseling and Guidance (Georgia)

The Center of Islamic Counseling and Guidance (CICG) is primarily a counseling and education organization, but it has Islamic scholars on staff who provide arbitration services. It was established in 2001 and is located in the south Atlanta area, where it serves primarily the local African-American Muslim community.⁶⁴

63 *Ismaili Constitution*, Art 3.2.

64 Center of Islamic Counseling and Guidance, *About Us*, <https://islamiccounseling.org/about-us/>.

Most disputes CIGC deals with involve family or marital issues, although it has dealt with intra-mosque and business disputes. Its founder, Sheikh Daoud, understands *tahkīm*, or Islamic arbitration, as encompassing both what U.S. law considers mediation and arbitration. He states that *tahkīm* is “not necessarily dictating a judgement – the *hakam* (mediator/arbitrator) is there to solve the problem. *Tahkīm* is solving, reconciling, bringing to a good end...through the *hukum* (decision or rule) of Allah.” Therefore, generally the CIGC *hakam* will work with the parties, seeking first to solve the dispute through counseling and mediation between the parties to reach a mutually agreeable solution to the dispute and, only when that is not possible will the *hakam* “dictat[e] a decision.”⁶⁵ However, CIGC’s arbitration decision is not designed to be legally binding, instead depending solely on the parties to voluntarily abide by whatever decision the *hakam* has issued from a religious duty.

2. The Islamic Tribunal (Texas)

The Islamic Tribunal (IT) was founded in approximately 2012 to serve the Dallas-Fort Worth area in Texas.⁶⁶ All its committee members are classically trained Islamic scholars.⁶⁷ According to IT’s website, it handles “any kind of dispute in our community” and includes examples of a business dispute, a “community problem,” as well as family and divorce cases.⁶⁸

IT views resolving disputes under Islamic law as being in complete harmony with U.S. law, stating that it views “effective mediation and arbitration” as a way in which “decisions can be made that are stipulated in the Shari’ah and adhering to the binding, ethical and legal code that exists within this country with the final approval of the relevant courts and judges.”⁶⁹

3. Islamic Arbitration and Mediation Services (Texas)

Although also based in Texas, Islamic Arbitration and Mediation Services (IAMS) operates nationally. It offers a wide range of services, including family-related

65 Center of Islamic Counseling and Guidance, *About Us*, <https://islamiccounseling.org/about-us/>.

66 Dr. Taher Elbadawi, “Islamic Tribunal,” November 26, 2013, video, 3:09, <https://www.youtube.com/watch?v=a3iB-55uIQ0&t=6s>.

67 Islamic Tribunal, *Imams*, <https://www.islamictribunal.org/imams/>.

68 Islamic Tribunal, *Cases We Handle*, <https://www.islamictribunal.org/cases-we-handle/>.

69 IT also states that it seeks support from U.S. trained attorneys to ensure that its decisions are in accordance with all pertinent state and federal laws. Islamic Tribunal, *About-IT*, <http://www.islamictribunal.org/about-it/>.

disputes, such as pre-marital counseling, marital mediation, and divorce mediation/arbitration (as well as Islamic divorce documentation), and mediation/arbitration for business or organizational disputes.⁷⁰ IAMS has both “religious consultants” and “experts” trained in classical Islamic jurisprudence and “legal consultants” and “experts” who are lawyers trained and licensed to practice law in the United States, demonstrating its commitment to abiding by both Islamic law and U.S. law.⁷¹

4. Islamic Dispute Resolution Service (California)

The Islamic Dispute Resolution Service (IDRS) is a “full service alternative dispute resolution (ADR) provider” that provides both Islamic mediation and arbitration services, along with other services, such as trainings, consulting, and independent investigations.⁷² Although based in Los Angeles, California, its website states that it provides services locally, nationally, internationally, and online.⁷³

IDRS stands out as “a modern forum that interfaces effectively with timeless principles of our Islamic tradition and contemporary society in a professional, efficient, and cost-effective manner.”⁷⁴ Its mediators and arbitrators are all independent contractors and include Islamic scholars, U.S.-trained and licensed attorneys, and counselors.⁷⁵

5. Muslim Center for Dispute Resolution (New York)

Although it is based in New York City, the Muslim Center for Dispute Resolution (MCDR) is a national organization that can serve disputants located anywhere in

70 Islamic Arbitration and Mediation Services, *Services*, <https://iams.llc/services/>.

71 See Islamic Arbitration and Mediation Services, *Our Consultants*, <https://iams.llc/our-consultants/> and Islamic Arbitration and Mediation Services, *Our Team*, <https://iams.llc/our-team/>. Indeed, on its “About Us” page, it states: “IAMS was established to provide an alternative to the Muslim community to address the issues and conflicts from an Islamic holistic perspective. With the overwhelming rise of marital issues, divorces, and civil conflicts within the Muslim community, religious leaders and legal professionals came together to offer a resolution to these problems in hopes of addressing them within the scope of Islam and in conformity with state law.” Islamic Arbitration and Mediation Services, *About Us*, <https://iams.llc/about-us/>.

72 Islamic Dispute Resolution Service, *Serving the American Muslim Community*, <https://www.islamicdisputeresolution.com/services>.

73 Islamic Dispute Resolution Service, *Serving the American Muslim Community*, <https://www.islamicdisputeresolution.com/services>.

74 Islamic Dispute Resolution Service, *Serving the American Muslim Community*, <https://www.islamicdisputeresolution.com/services>.

75 Islamic Dispute Resolution Service, *People*, <https://www.islamicdisputeresolution.com/people>.

the United States.⁷⁶ MCDR provides services in a large number of areas, including marital and family matters, inheritance, employment, business, commercial, and intra-mosque and other organizational disputes.⁷⁷ However, MCDR currently offers only mediation services, not arbitration.

Its roster of experts includes mediators (who are all either U.S.-trained and -licensed attorneys or hold a certification as a mediator),⁷⁸ licensed therapists,⁷⁹ and a fiqh expert.⁸⁰ Interestingly, although other independent Muslim dispute resolution services discussed in this section do have some female lawyers, MCDR is an outlier with the majority of its board, fully half of its mediators, and all of its therapists and fiqh expert being women.

6. Individual Muslim Lawyers and Law Firms

Islamic arbitration and mediation services may also be offered by individual lawyers and law firms. For example, the Florida-based Law Office of Hassan Shibley, Esq. smartly bills itself as “Muslim Legal” and states that it “connects Muslims who prioritize their faith with lawyers who will strive to secure faith-based solutions for all their legal needs.”⁸¹ The law firm clearly distinguishes between mediation and arbitration, noting that their Islamic arbitration services will result in the issuing of “a binding and enforceable judgment”⁸² that can be taken to a state court for enforcement if necessary.

VI. Conclusion

The United States of America has guaranteed two things under the First Amendment to the Bill of Rights of the US Constitution: “The Establishment Clause” (Congress shall make no law respecting an establishment of religion) under the First Amendment is designed to ensure that Congress cannot pass any law establishing an official state religion or giving the appearance of favoring one religion over another. The second clause, the “Free Exercise Clause,” (or prohibiting the free exercise thereof) further expands the prohibition against government

76 Muslim Center for Dispute Resolution, *Inquiries*, <https://mcdrglobal.com/contact/inquiry/>.

77 Muslim Center for Dispute Resolution, *Mission*, <https://mcdrglobal.com/mission/>.

78 Muslim Center for Dispute Resolution, *Mediators*, <https://mcdrglobal.com/neutrals/>.

79 Muslim Center for Dispute Resolution, *Subject Matter Experts*, <https://mcdrglobal.com/experts/>.

80 Muslim Center for Dispute Resolution, *Havva Guney-Ruebenacker* <https://mcdrglobal.com/fiqh-experts/havva-guney-ruebenacker/>.

81 Muslim Legal, <https://muslimlegal.com/>.

82 Muslim Legal, *Islamic Arbitration*, <https://muslimlegal.com/islamic-arbitration/>.

interference with religion by prohibiting the government from making any law designed to interfere with an individual's freedom of religious belief or practice. This freedom is considered absolute unless it is contrary to "public morality" or a "compelling" state interest, such as health or safety.

Today, under this constitutional guarantee and laws on alternative dispute resolution, individuals of any religion can resolve their disputes in a manner consistent with their religion. In other words, the courts do not look at whether the dispute resolution forum is a secular or religious institution, as long as it fits within the framework established by law. Under this approach, a court can apply "the neutral, objective principles of secular law to determine whether an arbitration award rendered by a [religious] court would be binding on the parties" without violating the First Amendment. This makes alternative dispute resolution an option for individuals such as Christians, Jews and Muslims who wish to resolve their disputes according to their own belief systems. Indeed, the Jewish and Christian communities have long established forums that utilize alternative dispute resolution methods.

Islamic dispute resolution organizations and services are still in the very early stages in the US relative to Christianity and Judaism, but their use is likely to increase as Muslim communities in the US continue to grow and develop and are able to devote more resources to dispute resolution within their communities. In general, Islamic dispute resolution services available in the United States can be divided into 4 main categories. These include (A) services offered in mosques, both informal and formal; (B) ad hoc arbitration panels; (C) sect-specific ADR services; and (D) independent tribunals or dispute resolution, either provided by independent religious scholars, U.S. trained legal experts, or a combination of the two.

Existing arbitration laws and practices in the U.S. today provide a means, at least at the legal level, through which U.S. Muslims can take the rich Islamic traditions of private mediation and arbitration (*tahkīm*) and translate them into dispute resolution forums and services that not only address the Muslim desire to resolve disputes in accordance with their religious beliefs, but also meet the requirements and constraints of local, state, and federal U.S. law. Today, through the organizations featured in this article, Muslims are learning to live in accordance with their religious beliefs by establishing procedures that both comply with U.S. law and meet the requirements of Islamic law. It is clear that these institutions will become more developed and well-established in the coming years.

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