



The Principle of Arbitration in Islamic Jurisprudence

📅 6 April, 1995 | Arbitration Terms, Dispute Settlement

In the Name of Allāh,

the Entirely Merciful, the Especially Merciful

Praise is due to Allāh, Lord of the worlds, may the blessings and peace be upon our master Muḥammad, the last of prophets, on his family, and all his companions.

Resolution No. 91 (8/9)

The Principle of Arbitration in Islamic Jurisprudence

The Council of the International Islamic Fiqh Academy of the Organization of the Islamic Conference, holding its 9th session in Abu Dhabi, United Arab Emirates, on 1-6 Dhū al-Qi'dah 1415h (1-6 April 1995),

Having examined the research papers submitted to the Academy concerning the *Principle of Arbitration in Islamic Jurisprudence*,

Having listened to the discussions on the subject,

Resolves

First: Arbitration is an agreement between the two parties to a specific conflict to commission a third party to arbitrate between them and settle their disagreement through a binding verdict compliant with Shariah. Arbitration, thus conceived, is permissible, whether it is amongst individuals or in the field of international conflicts.

Second: Arbitration is a non-binding contract for the two conflicting parties nor is it for the arbitrator. It is permissible for either party to decline it as long as the arbitration has not begun, and it is permissible for the arbitrator to dis- sociate himself from the matter - even after agreeing once - as long as he has not rendered a verdict. However, the arbitrator is not permitted to designate someone else as his replacement without the consent of both parties concerned, for their consent is tied to his persona alone.

Third: Arbitration is not permissible in matters that are exclusive divine rights such as Ḥudūd (pl. of ḥad), nor in cases in which a verdict dependson the establishment or rebuttal of another verdict concerning a third party over whom the arbitrator has no guardianship, such as li'ān (cursing oath), due to its impact on the child's right. Arbitration is also not permissible in cases that fall under the exclusive realm of jurisdiction. Arbitration in cases that are not eligible for arbitration is null and void.

Fourth: It is a condition for the arbitrator, as a fundamental principle, to meet the prescriptive requirements in a judge.

Fifth: As a principle, the verdict issued by the arbitrator should be enforced

voluntarily. If either party refuses to do so, the matter is submitted to the court for enforcement, and the latter cannot abrogate the verdict unless it is found to constitute a clear inequity or deviation from Shariah.

Sixth: In the absence of international Islamic Courts, Muslim States or Islamic institutions are permitted to seek arbitration from non-Islamic international courts to quest for a Shariah-permissible settlement.

Recommendation

Call on the Member states of the Organization of the Islamic Conference to finalize the necessary procedures for establishing an International Islamic Court of Justice and enable the latter to carry out its tasks as stipulated in its statute.

Indeed, Allāh is the Giver of success.

