

The Effect of Arbitration on the Islamic Political System

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Abstract

The current research aims to elucidate the concept of arbitration, its legitimacy, scope, significance, the extent of obligation, and its impact on the internal political system of the state, particularly constitutional issues related to assuming power and resolving internal political disputes within the administration of the Muslim state. The study examines the influence of arbitration on foreign policy matters involving wars or international conflicts over land or water, providing real-life examples from the time of the Prophet, his companions, and his followers. The current study concluded that arbitration could have a significance impact on resolving both internal and external political disputes if employed appropriately and optimally. The study emphasizes the risk associated with failing to arbitrate political issues, which may result in adverse consequences such as widening the conflict gap among the opponents.

Keywords: Arbitration, political, system, international, state.

Introduction

Arbitration in Islam hold an undeniable and significant impact on resolving various disputes among individuals, groups, countries, and organizations. Recently, arbitration has involved to the point where there are specialized international courts addressing specific types of disputes. Some of these courts specialize in international trade, while others focus on maritime matters, as well as disputes over borders and waters. Additionally, there are specific courts didacted to various dispute categories, such as the Hague Court and the Geneva International Court specialize in international disputes.

Recognizing the global importance of arbitration, countries worldwide have collectively established an international charter of arbitration. This agreement serves as evidence of widespread acknowledgment of the benefits of arbitration and its effectiveness in resolving disputes of diverse natures.

This study aims to illuminate the impact of arbitration on the Islamic political system. To achieve this, it was essential to define arbitration, examine the extent of its legitimacy, delineate its conditions and domains, explore the importance and necessity, and assess its impact on the political system of the Islamic state both internally and externally through the presentation of relevant examples. The study has yielded several conclusions.

Importance of the study

The importance of the study lies in:

- 1- Demonstrating the concept of arbitration and the extent of its legitimacy.
- 2- Stating the conditions and areas of arbitration.

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- 3- Showing the importance of arbitration and its obligation.
- 4- Explaining the impact of arbitration on the internal and external political systems of the Islamic State.

Methodology of the study:

This study employed an incomplete inductive approach, referring numerous sources and references on this topic. Descriptive and analytical approaches were also utilized to define the research problem, present evidence, analyze it, and draw the most probable conclusions.

Problem of the study

This study aimed to address the following questions:

- 1- What is the concept of arbitration, and what evidence supports its legitimacy?
- 2- What are the conditions of arbitration and its applicable areas?
- 3- What is the importance of arbitration, and what extent is it obligatory?
- 4- What is the impact of arbitration on the external level of the Islamic political system?
- 5- What is the impact of arbitration on the internal level of the Islamic political system?

Previous studies

To the best of my knowledge, it is challenging to find literature that specifically addresses the subject of political arbitration. Previous works discussing arbitration have often mentioned political arbitration within broader public events, without dedicating a distinct chapter to it. Given the significance of this form of arbitration, this study aims to shed light on its impact on the political system of the Muslim, state both internally and externally, and to discern any positive or negative outcomes that may result from it.

Structure of the study

This study is organized into four sections and a conclusion, outlined as follows:

- The first section: The concept of arbitration and evidence of its legitimacy.
- The first section: The definition of arbitration and the political system linguistically and idiomatically.
- Section Two: Evidence of the legitimacy of arbitration.
- The second section: The conditions and areas of arbitration.
- Section One: The conditions for the arbitrator and the arbitrated.
- Section Two: Areas of arbitration.
- The third section: The importance of arbitration and the extent of its necessity.
- The first section: The importance of arbitration in the political system.
- Section Two: The extent to which arbitration is obligatory.
- Fourth topic: Arbitration and its impact on the Islamic political system.
- Section One: Arbitration and its impact on the foreign political system.
- Section Two: Arbitration and its impact on the internal political system.

- Conclusion.

The first section: the concept of arbitration and its ruling.

The first section: The linguistic and terminological definition of arbitration and the political system.

Linguistically, "tahkim' arbitration" is derived from the roots meaning "judge, resolve, settle, and decide." It is expressed in phrases like "it was decided for him", "it was judged against him", "it was judged between opponents", and "so-and-so was chosen to judge a matter", all signifying the act of making an arbitration. The arbitrator is the selected to mediate and settle disputes. Phrase as "He controlled the matter" is synonymous with "he arbitrated it," and saying, "I made the man an arbitrator" means "I delegated the ruling to him." "tahkim' arbitration is employed to authorize someone's ruling, as seen in phrases like "We authorized so-and-so," indicating approval of his judgment (Al-Zubaidi & Al-Husseini, 1414AH). In the terminology of jurists, most scholars did not explicitly define arbitration but referred to its literal meaning. For example, if two people choose an individual to judge between them, they shall execute his judgment. It is permissible if the arbitrator judges an opponent within the limits set by Allah, and if they judge an individual and are satisfied with his ruling, they shall be bound by his decision. (Al-Bahouti, 1983). (Awadh, 2005)

However, some jurists provided definitions that align with previously mentioned meanings. Al-Durr defined arbitration as "two opponents choosing an arbitrator who judges between them) (Ibn-Abdeen, 1992). Similarly, the Journal of Judicial Rulings presented a definition that emphasized the voluntary appointment of an arbitrator by two opponents to decide their dispute and claims."(Al-Hattab, 1992).

Definition of political system:

Linguistically, "nidham' system" means arrangement, as illustrated in phrases like "organize it" which implies "arrange it." Additionally, expressions like "nadhmtu allulu" convey the idea of arranging pearls in a wire, and "nadmtu alshi'r" means composing poetry". The plural forms of "nidham' system' are 'andhimah systems' and nudhum' systems. "Intidham' regularity' is synonymous with "itisaq' consistency", indicating that when affairs take a system, they take guidance or uprightness. "Nidham' can also mean "a'adah' a habit" (Ibn-Manzur, 1414AH).

Linguistically, "siyasah' politics' means "idarah' 'management," or "individual tending," by someone in charge. The term "siyasah' politics" is said to stem from "sasa' did it", as seen in phrases like 'swashu alqaum' (they made him govern them) (Ibn-Manzur, 1414AH). In terminological terms, politics refers to reforming people by guiding them to the path of salvation in the immediate and future and managing their affairs. Another definition states that politics is about reforming the affairs of the subjects and managing them (Ibn-Najeem, n.d.). It is noted that the first definition deviates from the meaning when it defines politics as "the reform of people"; instead, it should be "the reform of the affairs of people". However, the second definition is deficient as it does not specify the type of reform, whether worldly or otherworldly. The study suggests that the appropriate definition of politics is "managing the affairs of the subjects in a way that improves their situation in both realms".

Section Two: The arbitration ruling according to Sharia law

The four jurisprudential schools of thought agreed on the legitimacy of arbitration in general, but they differed in their views on the specific areas where arbitration is permissible or not. (Al-Aini, 2000). This divergence will be elucidated when discussing the various domains of arbitration.

However, these schools of thought opposed the Kharijites (an early Islamic sect that formed in response to a religio-political controversy over the Caliphate) who asserted that

oldest?" "Shurayh," he replied. He said, "You are Abu Shurayh," and he made a supplication for him and his children. (Al-Harroui, 2002). hadith indicates that the people used to choose Abu Shurayh as an arbitrator between them regarding controversial matters, and the Prophet approved of this, signifying of the legitimacy of arbitration. (Al-Sarkhasi, 1971).

2- On the authority of Abu Saeed Al-Khudairi (may Allah be pleased with him), he said: When the Banu Qurayza surrendered, agreeing to have their fate decided by Sa'd b. The Messenger (PBUH) sent for Mu'adh, and he came on donkey, because he was nearby. The Messenger (PBUH) said, "Rise up in respect to your chief." Then, when he had come and sat down, the Messenger (PBUH) said, "These people have surrendered, agreeing that you should decide their fate," so he said, "I decide that the fighting men be killed, and that the offspring be taken into captivity." The Messenger (PBUH) then declared, "You have given regarding them the decision of the King." (Al-Nasir, 1422AH)

This narration highlighted that Banu Qurayza proposed Saad bin Muadh as an arbitrator between them and the Messenger of Allah (PBUH). Sa'd's ruling was accepted by both parties, emphasizing the permissibility and legality of arbitration in important matters within the Muslim community. One of the things he did in this regard was his address to the Banu Qurayza, saying, "You would take Allah's pledge and convention that you accept the decision." They said 'Yes', then he went to the side where the Messenger of Allah (PBUH) was sitting, while turning his face away from him out of respect for him. He said, "And Ali, who is here?" Then the Messenger of Allah (PBUH) said 'Yes' (Al-Sarkhasi, 1971).

This infers that there is permissibility for arbitrating in Muslims' political affairs and in their important tasks. The scholars have unanimously agreed on its legality, and only the Kharijites disagreed with it, whose disagreement is anomalous and not considered (Anawi, 1392AH).

C- Evidence from consensus:

1- On the authority of Abd Al-Razzaq, on the authority of Muammar, he said, "the man, who heard Abu Jaafar say, told me that Abu Jaafar said, "the immigrants were commanded to do ghusl (take bath), and the Ansar said, 'Water is only necessary when there is an (sexual) emission', so who will arbitrate between these people?" The immigrants said, 'When the circumcised part touches the circumcised part, ghusl (taking bath) is obligatory'. So they chose Ali bin Abi Talib to arbitrate. So, Ali said, "Do you think that if you saw a man getting into his wife's groin, would punishment be required for him?" He said 'the punishment is obligatory, but he is not required to take a saa' of water (a jug of water). So, he decided for the immigrants, and Aisha heard it and said, "Perhaps I and the Messenger of Allah (PBUH) did such that, so we got up and had (ghusl) took a bath." (Al-Sanani, 1403AH). This is clear evidence of the legitimacy of arbitration, as the companions took it without objection. This is a consensus among them regarding the legitimacy of arbitration. (Atta, 2000)

2- Al-Bayhaqi narrated that there was a dispute between Omar and Ubayy (may Allah be pleased with them) regarding a wall, and Omar (may Allah be pleased with him) said, "Zaid bin Thabit shall judge between us. So they went to Zaid, and Omar knocked on the door. Zaid recognized his voice, opened the door, and said, "O Commander of the Faithful, have you not sent me a message so that I may come to you?" He said, "In his house, the judge will come." This indicates the legitimacy of arbitration in the event of a dispute. If it was not legitimate, the great companions would not have endorsed it, as it was like a silent consensus. (Al-Bayhaqi, 1344AH)

3- The arbitration between Ali and Muawiyah (may Allah be pleased with them), which is a famous incident in which Abu Musa Al-Ash'ari and Amr ibn Al-Aas ruled to settle the dispute that occurred between Ali and Muawiyah. In Islamic history, this occurrence is

regarded as one of the most significant cases of political arbitration. Since its success depended on saving Muslim blood and preventing more from being lost because of this competition, its significance is derived from the significance of the issue it tackles. Furthermore, none of the companions denied that, so there was also a silent consensus among them regarding the permissibility of arbitration in political disputes (Al-Sanani, 1403AH).

D- The evidence is that people need to resolve disputes among themselves without referring to the judiciary, engaging in the production of evidence, making a lot of pleadings, paying exorbitant financial costs, or prolonging the duration of the dispute. This is attributed to the large number of litigation proceedings in the courts and their complexities, especially nowadays. This would lead to losing many rights and making the disputing parties bored, so arbitration is employed to quickly decide the matter and settle the dispute (Al-Durri, 2002).

The second section: Conditions and areas of arbitration.

Section One: Conditions for the arbitrator and the arbitrated.

A- Arbitrators' conditions:

One of the conditions for being an arbitrator is that the person should have guardianship over themselves, which is attained through reaching puberty and having sound reasoning. It is not permissible for a child or an individual who is mentally incompetent to serve as an arbitrator. No other specific condition is mandated of the arbitrator. therefore, there is no requirement for the arbitrator to be a Muslim or to be free; it is permissible for anyone with legal capacity to participate in arbitration. (Ibn-Hamam, n.d.)

B - Conditions of the arbitrator (the judge).

Regarding the conditions of the arbitrator, most jurists assert that the arbitrator is deemed necessary at the time of arbitration because the arbitrator plays a role like that of judge between two parties. additionally, certain conditions applicable to judges must be met by the arbitrator, including being a Muslim, possessing sound reasoning, attaining maturity, exhibiting justice, having ability to see and speak. There are variations among scholars regarding additional conditions, such as being male and free, having the ability to hear, and being diligent. (Ibn-Hamam, 1994) (Ibn-Abdeen, 1992)

Section Two: Areas of arbitration.

The areas in which arbitration is permissible encompass financial transactions, personal status matters (conflicts and disputes between spouses), and political matters. However, scholars have disagreed regarding its permissibility in the context of punishments and retaliation. In the following sections, we will elaborate on each of these areas separately.

1- Arbitration in personal status affairs (discord and dispute between spouses):

As for arbitration in matters of personal status, it was stated in the Almighty's saying: (وَإِنْ جَفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from her's; if they both wish for peace, Allâh will cause their reconciliation. Indeed, Allâh is Ever All-Knower, Well-Acquainted with all things) (An-Nisa: 35). The inference is that this is a text from Allah (Glory be to Him the Almighty) on the legitimacy of arbitration in disputes that occur between spouses. (Al-Jasass, n.d.). The majority of Hanafi, Shafi'I, and Hanbali have said "they are agents on their behalf and do not separate between them except with their consent. (Ibn-Hamam & Al-Muhtajj)

As a result, there is unanimous agreement of the acceptance of arbitration in the realm of personal status matters. However, debates may arise regarding the extent of each arbitrator's authority to mediate between the parties involved. Questions may arise as to

whether it is necessary for both individuals in a dispute to agree on arbitration or if it is solely their decision to opt for separation. Disagreements may emerge regarding the admissibility of arbitration in specific personal status cases. These issues encompass curses, lineage, divorce, annulment of marriage, maturity, mental incapacity, rulings concerning an absent person, and matters pertaining to their finances, spouse, life, and death. (Al-Sawi, 1999). The intricacies of the disagreement over these specifics' issues are beyond the scope of this discussion.

2- Arbitration in financial transactions

Arbitration in financial disputes is an undisputed domain among the four major imams (Al-Sherbini, 267). The initial codification of arbitration matters adhered to the principles of Islamic Sharia, with the first legal texts drawn from the Hanafi school of thought. Article 1841 in the Journal of Judicial Rulings states, "It is permissible to arbitrate money claims related to people's rights." Subsequent articles detailed specific provisions, and as positive legislation evolved, special provisions for arbitration found their place in procedural laws. Arbitration has gained prominence globally, integrated into various legal systems and bodies. In the context of transactions, including bail, money, liens, debts, and sales, arbitration is both valid and permissible (Ibn-Abdeen, 1992). The "Al-Tabisrah Book" affirms the permissibility of arbitration when individuals agree to resolve financial matters and similar disputes (Ibn-Farhun, 1986). Al-Sharh Al-Saghir (the brief explanation) notes that arbitration is applicable in determining the rightness or wrongness of financial dealings, purchases, sales, and disagreements, allowing a judge to discern what is correct, necessary, permissible, or not (Al-Sawi, 1998).

Arbitration in matters of punishment and retaliation:

Jurists have varied opinions regarding the permissibility of arbitration concerning punishments and retaliation. The majority of Hanafi, Maliki, and Shafi'i scholars assert that it is impermissible to arbitrate punishments by agreement, as they lack a specific claimant. They also generally disapprove of arbitration in retaliation, except in certain cases like wounds, while appreciating it in the context of reconciliation. According to the authority of Abu Hanifa, this is deemed impermissible. Al-Khasaf stated, "Arbitration is not permissible in cases of punishment and retaliation." This perspective is favored by Al-Qudduri and Al-Aini in the summary, which they consider the more plausible opinion. However, Al-Sarkhasi argued that it is permissible to arbitrate in retaliation as it pertains to the rights of individuals, and similarly in cases of slander because resolving it is at the discretion of the individual (Al-Aini, 1986).

The assertion made by those scholars regarding the permissibility of arbitration in cases of retaliation is considered weak, as it encompasses the right of Allah Almighty, even if the majority pertains to the rights of the individual. Al-Sarkhasi's position favoring the permissibility of arbitration in cases of slander punishment is also considered weak, as the majority emphasized the right of Allah Almighty (Ibn-Abdeen, 1992). The Maliki school of thought explicitly prohibits arbitration in cases of punishment and retaliation. Al-Sawi stated in his commentary: The key point is that arbitrators can rule on matters related to property and injuries, whether intentional or accidental, but not on punishments, including the amputation of the hand in cases of theft, nor on matters involving loss of life. Punishments are intended for rebuke, which is considered Allah's right, and the same applies to cases of murder, whether related to apostasy or hostility (Al-Sawi).

The Shafi'i school of thought similarly prohibited arbitration in cases of punishment, and they differed on whether to prohibit it in cases of retaliation. Al-Mawardi explained: The rulings on arbitration can be divided into three categories: a category where arbitration is permissible, covering matters related to financial rights, compensation contracts, and valid contracts and releases. Another category prohibits arbitration, encompassing matters over which judges have the authority to enforce, such as the rights of Allah Almighty, guardianship over orphans, and imposing quarantine on deserving individuals. The third

category is controversial and includes four rulings: marriage, cursing, slander, and retaliation (Al-Mawardi, 1997).

Al-Nawawi noted, "Our companions differed regarding the permissibility of arbitration. Some of them said it is permissible in all matters where two adversaries seek judgment. Likewise, the ruling of the judge appointed by the Imam is permissible. Others said it is only permissible in financial matters, but not in marriage, retaliation, cursing, and defamation, as these involve precautionary rights" (Al-Marwardi, 2000).

The Hanbali school of thought disagreed with the majority and took a more expansive view on arbitration. Unlike the majority, they did not restrict arbitration to specific matters. According to Al-Bahuti, "If two people are brought to court and a man is referred to judge between them, his ruling will be implemented regarding money, retaliation, punishment, marriage, cursing, and other cases" (Al-Marwardi, n.d.).

9- Arbitration in the political field: We will postpone talking about it in the fourth section when examining the impact of arbitration in the Islamic political system.

The third section: The importance of arbitration and the extent of its obligation.

Section One: The importance of arbitration.

The significance of arbitration has been discussed in various domains, but in the context of our research, the importance of the arbitrator and the underlying principles make it particularly relevant. When addressing the political system, both internally and externally, we refer to the state in terms of its system of government, administration, and its relationships with other countries. Consequently, this becomes one of the most crucial factors for the survival or demise of nations. The political system serves as the head of the body; a healthy head ensures a healthy body, whereas a corrupt head results in a corrupt body. Therefore, the reformation of a state's political system is vital for its sustained existence; otherwise, permanence cannot be guaranteed.

Muslims have historically embraced and applied arbitration, especially in the political domain, setting significant examples. Throughout ancient times, nations recognized the critical role of arbitration in resolving conflicts amicably and minimizing damage. In the contemporary era, almost every contract includes an agreement stipulating arbitration, highlighting its effectiveness in addressing disagreements related to contract interpretation and execution. The scope of arbitration has expanded beyond agreements involving nationals of a single nation, gaining prominence in international commercial relationships. With global progress in production elements, transportation, communication, and interconnected interests, the world has become a unified entity. International organizations, focusing on trade, have sought to establish comprehensive laws or charters for the principles of international trade, emphasizing the importance of commercial freedom (Alamuldeen, 2000).

Given the crucial role of arbitration in regulating international economic relations, there is a growing consensus advocating for arbitration as the preferred method for resolving disputes arising from international ties and contracts. Various disputes, including those related to the sale and delivery of goods, licensing contracts for manufacturing, patent exploitation, establishment of factories in foreign countries, and large-scale projects like constructing ports, airports, and roads, often incorporate an arbitration clause. Consequently, it is widely acknowledged that arbitration has become the customary approach for addressing disputes in international trade (Tharwatt, 1974).

The second section: The extent to which the arbitrator's ruling is obligatory.

The arbitrator's role concludes with the issuance of the ruling specified in the arbitration contract. Once the arbitration process results in the intended decision, the arbitrator assumes a position akin to one of the parties involved until the conclusion of their designated term. Post-issuance, the arbitrator lacks the authority to rescind or alter the

decision previously made. Any attempt to render a different ruling after the initial one would be considered invalid, as the arbitrator is not empowered to do so (Ibn-Najeem, n.d.).

In cases where the issued ruling is evidently unjust, inconsistent with Islamic law, or contains factual, clerical, or mathematical errors, and this is brought to the attention of the judiciary, the judge holds the authority to rectify it. However, absent such circumstances, the ruling stands as binding, enforceable, and irrevocable, aligning with the majority opinion among the four imams (Al-Zayla'i, 1994). This stance is grounded in the understanding that the ruling, having originated from a valid legal process, remains within the confines of its jurisdiction, and must be upheld. The commitment to the ruling becomes imperative as arbitration serves as a resolution mechanism for disputes that the involved parties could not amicably settle on their own (Makhlouf, 1997). If they opted for arbitration, the resulting ruling is deemed obligatory and not subject to discretionary choice. Hence, both parties must express satisfaction with the ruling before its issuance, preventing subsequent denial or disavowal (Al-Bahouti, 1983).

The fourth topic: The impact of arbitration in the Islamic political system.

Arbitration serves as a crucial method for resolving disputes, particularly in the realm of the political system. Its adoption in political conflicts is paramount, contributing to the preservation of lives, finances, and honor during times of political turmoil. Political disputes can manifest in various forms, including internal power struggles, which pose significant threats as they may escalate into internal strife and conflict within a nation. Successfully employing arbitration in such disputes can yield profound positive effects on the nation's strength, resources, and unity. Conversely, failure in this regard may lead to undesirable consequences such as internal strife, division, and armed conflict. Historical examples, such as the arbitration led by Abd Al-Rahman bin Awf following the demise of Omar (may Allah be pleased with him) in Islamic history, highlight the pivotal role of arbitration in shaping the destiny of nations.

This arbitration, notably during the transfer of the caliphate through consultation and arbitration to our master Othman, successfully averted conflict, ensuring the prevention of strife and the preservation of the nation's unity. Conversely, the failure of arbitration is evident in the case of the arbitration between Ali and Muawiyah (may Allah be pleased with them), where Abu Musa Al-Ash'ari and Amr bin Al-Aas (may Allah be pleased with them) were appointed as arbitrators.

This arbitration, unfortunately, did not result in success. Instead, it fueled animosity, division, and discord within the Islamic community. The emergence of the Kharijites, who opposed the arbitration and engaged in conflict with Ali (may Allah be pleased with him), further intensified the turmoil. The inability of the arbitrators to bring a resolution to the matter contributed to the prolonged dispute between Ali and Muawiyah (may Allah be pleased with them both). This serves as an example of the shortcomings and adverse effects of arbitration in a political context, which the study will scrutinize.

The second type of political arbitration pertains to foreign policy and international disputes, encompassing wars, territorial boundaries, and maritime issues. Instances of this type of arbitration in Islamic history include the Prophet's (PBUH) arbitration with Saad bin Muadh in the dispute with the Jews. This arbitration played a crucial role in ending the siege and hostilities, fulfilling the Prophet's (PBUH) desire to address the betrayal of the Jews without a single drop of Muslim blood being shed.

Section One: The impact of arbitration on the foreign political system.

The nations of the world have collectively embraced the resolution of disputes through amicable means to prevent wars. They have decided to submit every dispute between countries to arbitration or the judiciary and prohibited resorting to war before these peaceful means are exhausted. This principle was stipulated in the Law of the League of

Nations and later in the Charter of the United Nations (Abu-Haif, 2015). In Islamic jurisprudence, Muslims are instructed not to engage in combat unless they have invited others to Islam, explained the provisions and laws of Islam, and given them the opportunity to accept. If they refuse, they are required to pay jizya (a tax); otherwise, fighting becomes the last resort. Al-Mawardi emphasized the importance of presenting the call to Islam, informing them of its principles, and providing evidence before engaging in any form of conflict. This approach aligns with the Quranic guidance in Surah An-Nahl (16:125) to invite mankind to the way of the Lord with wisdom and fair preaching, arguing in a way that is better (Al-Mawardi, n.d.).

If they propose reconciliation or arbitration, Muslims are encouraged to respond positively, following the example set by the Prophet Muhammad (PBUH) in his dealings with the Jews of Banu Qurayza. This serves as a significant model for external political arbitration in the Islamic State.

The first incident was the arbitration of the Prophet Muhammad (PBUH) appointing Saad bin Muadh to judge over the Jews of Banu Qurayza. This event stands as the initial arbitration within the Islamic State after its establishment, occurring during the time of the Messenger of Allah (PBUH). According to Abu Yusuf, who narrated from Muhammad bin Ishaq, the Banu Qurayza surrendered during the siege by the Prophet (PBUH) under the condition that Saad bin Muadh would arbitrate their case. Saad, who had been wounded by an arrow during the Battle of the Ditch, was carried on a donkey to fulfill this responsibility. When he approached the Messenger of Allah (PBUH), his people informed him of the appointment, and Saad, undeterred by his injuries, affirmed his commitment to justice. He then proceeded to judge, declaring that the female fighters should be killed, and the offspring taken captive. The Prophet (PBUH) accepted Saad's ruling, acknowledging it as in accordance with the divine command (Al-Naysaburi, n.d.).

The basis of inference is that the arbitration of the Messenger of Allah (PBUH) over Saad (may Allah be pleased with him) is the greatest evidence of the legitimacy of arbitration and its importance in resolving disputes at the level of the state's foreign policy. It appears that arbitration has the greatest impact and benefit in ending the dispute and reaching a quick solution with the fewest losses. Therefore, resorting to arbitration in foreign disputes is one of the best means that will be effective in resolving such disputes without resorting to war and increasing the loss of lives and property.

The second incident: This event stands out as one of the most significant examples of arbitration that had an impact on the external political system of the Islamic State, occurring during the caliphate of Omar bin Abdul Aziz. A group of people from Samarkand approached him with a complaint that Qutaybah, the leader of the Islamic army, had entered their city and populated it with Muslims treacherously and unjustly. Omar wrote to his governor there, instructing him to appoint a judge to investigate their claims. If the judge ruled that the Muslims should be expelled from Samarkand, they were to leave. The governor then appointed "Jami bin Hakhir Al-Baji" as a judge to examine their grievances. The judge, a Muslim, ruled that the Muslims should be expelled, with the condition that the commander of the Islamic army would warn them afterward and engage in a fight with them according to the principles of war in Islam. This was to ensure that the people of Samarkand would be prepared to face the Muslims and not be taken by surprise. Witnessing the justice carried out by the state on its army and its leader, unprecedented in history, the people of Samarkand remarked, "This is a nation that shall not be fought, because its rule is mercy and grace." Consequently, they accepted the presence of the Islamic army and allowed Muslims to reside among them (Al-Baladhuri, 1988).

This incident illustrates Muslims' commitment to their international covenants and agreements, even those maintained by their adversaries. They insisted that Muslims should treat them in accordance with these agreements, highlighting the high level of

justice and fairness achieved by the Islamic State. The judge's ruling, although issued by a Muslim judge, can be seen as a form of arbitration since it was reached with the consent of both parties on a specific foreign policy matter. This demonstrates the impact of arbitration in maintaining the equilibrium of the Islamic State's foreign policy in alignment with the principles of the Holy Sharia. If the Islamic army were to violate these agreements and provisions, it would be notified and rectified, as such violations are not condoned. Therefore, arbitration serves as a means of reforming and organizing foreign policy.

Section Two: The impact of arbitration on the internal political system.

Certainly, arbitration plays a crucial role in the internal policy of a state, particularly in resolving disputes related to assuming power. It serves as a mechanism to avert internal strife and conflict among the people within a state. This form of arbitration is deemed highly significant and perilous due to its profound repercussions on the longevity, stability, and prosperity of nations. Throughout Islamic history, real-life instances of such arbitration have unfolded across different eras. Notably, the era of the noble companions of the Prophet (PBUH) witnessed compelling examples of internal political arbitration. Two of these instances will be briefly highlighted to underscore the impact of arbitration on the internal political structure of the Muslim state.

The first incident: The people of the Shura Council arbitrated Abd Al-Rahman bin Awf to choose the caliph.

Abdul Rahman bin Awf's arbitration in the selection of the caliph after the death of Omar serves as a practical model for internal political arbitration. As narrated in Ibn Abi Shaybah's work, when the death of Omar (may Allah be pleased with him) approached, concerns about choosing a caliph arose. Omar, in his wisdom, identified a group of individuals who were deemed worthy, as they were those with whom the Messenger of Allah (PBUH) was pleased. He named Ali, Uthman, Talha, Al-Zubayr, Abd Al-Rahman bin Awf, and Saad as potential successors.

To prevent potential strife and division, Abd Al-Rahman bin Awf proposed an arbitration process. He suggested that three individuals among them should make the final decision. Al-Zubayr assigned his command to Ali, Talha to Uthman, and Saad to Abd Al-Rahman. In the end, these three individuals conspired together to reach an agreement. Abd Al-Rahman, demonstrating humility and commitment to the welfare of the Muslims, urged his companions to disavow the matter and entrust it to him, pledging to act in the best interest of the Muslim community.

This historical incident illustrates how arbitration, when wisely employed, can contribute to the resolution of internal political disputes and the preservation of unity within the Islamic state.

Abd Al-Rahman bin Awf's arbitration in the selection of the caliph after Omar's death involved careful consultations and engagements with the potential successors. Abd Al-Rahman approached both Ali and Uthman separately, seeking their commitment to fairness and pledging allegiance to the chosen caliph. Ali and Uthman, in turn, agreed to abide by the decision.

Afterward, Abd Al-Rahman conducted an extensive referendum involving various segments of the Muslim community, including companions, soldiers, notable figures, women, children, and Bedouins. The majority, including three out of five from the Shura Council, favored Uthman's election, with Al-Zubayr bin Al-Awwam choosing Ali. In the end, when asked about their choices, Ali acknowledged Uthman's suitability, and Uthman, in turn, referred to Ali.

This thorough and inclusive arbitration process led to Uthman's election, and Abd Al-Rahman's comments suggest a recognition of Uthman's just governance. When the pledge

of allegiance commenced, Abd Al-Rahman played a crucial role in facilitating the process. Despite Ali's declining popularity at that time, Abd Al-Rahman approached him, emphasizing the commitment to follow the Quran, the Sunnah of the Prophet, and the traditions of the two previous successors. Ali, while expressing his intention to follow his own opinions, participated in the pledge, showcasing the significance of the arbitration process in maintaining unity and resolving internal political disputes.

This real-life example of arbitration in the internal political system illustrates the efficacy of arbitration and its significant impact in resolving disputes and conflicts, specifically those categorized as one of the most perilous types of conflicts for nations—power disputes. The failure to address such disputes can result in severe consequences. Therefore, arbitration serves as an effective remedy for these issues when conducted by a skilled arbitrator, akin to a proficient doctor, exemplified by the successful arbitration led by Abdul Rahman bin Awf (may Allah be pleased with him). His adept handling of this critical matter demonstrated the potential of arbitration to effectively resolve serious disputes and bring about a positive resolution.

The second incident: arbitration between Ali and Muawiyah (may Allah be pleased with them) in the dispute that occurred between them.

This incident stands out as one of the most notable occurrences of arbitration in Islamic political disputes. This conflict resulted in the deaths of tens of thousands of Muslims, extensive financial losses, and widespread fear and panic among the nation, its individuals, and various groups. Furthermore, it posed a significant threat to the ongoing existence of the Islamic State. The importance of arbitration becomes evident in the context of the arbitrator, the gravity of the situation, and its potential hazards. Indeed, few conflicts are as critical as this type, where the fate of the state hangs in the balance, with consequences ranging from bloodshed, financial loss, fear, and the potential collapse of the economy. It is imperative to scrutinize the events of this dispute, its root causes, the role of arbitration, and the resulting impact on the broader landscape of Islamic political disputes.

When our master Othman (may Allah be pleased with him) was killed, and our master Ali (may Allah be pleased with him) assumed the caliphate, a dispute arose between Ali and Muawiyah (may Allah be pleased with them). Given that the killers were a collective group, they were not individually singled out, evident in Muawiyah (may Allah be pleased with him) not seeking retribution from specific individuals (Ibn Al-Amad, 1986). It is confirmed that whenever an envoy from Muawiyah came to Ali, vigilant crowds would assemble, declaring, "We are all killers of Uthman, so whoever wishes, let him attack us" (Al-Arnaout, 1986). Faced with this large gathering, the only option was to remain silent and attempt to address the issue. The situation escalated when no reconciliation was achieved. Ali sought allegiance from Muawiyah, who, in turn, asked Ali for retribution against Uthman's killers, leading to conflict and bloodshed. Muawiyah (may Allah be pleased with him) was not disputing Ali over the caliphate but aimed for the succession to be completed through shura (mutual consultation), as was the case during Uthman's reign (may Allah be pleased with him) (Al-Arnaout, 1986). The implication is that allegiance should be taken from influential figures, not from rebels who killed the Caliph and pledged allegiance elsewhere, as this is not accepted in the Islamic constitutional system (Al-Sayyid, 1981).

The pledge of allegiance must be secured from its rightful recipients, namely the people of influence and the veterans of the Battle of Badr at that time. As hostilities erupted between the two factions and victory seemed likely for Ali (may Allah be pleased with him), the people of the Levant hoisted the Qur'an on spears, calling for the arbitration of the Book of Allah (Ibn Muzahim, 2012). The arbitration was carried out by Abu Musa Al-Ash'ari and Amr ibn Al-Aas (may Allah be pleased with them). A key provision in the text of the arbitration document is as follows: It clarifies that the parties in dispute are not Ali

and Muawiyah as individuals but rather in their capacities – Ali (may Allah be pleased with him) representing the people of Iraq, and Muawiyah (may Allah be pleased with him) representing the people of the Levant (Abadi, n.d.).

In this clause, there is evidence supporting the permissibility of the nation appointing someone to represent it, as the document states that the Holy Qur'an and the Sunnah of the Messenger of Allah (PBUH) are the foundation for arbitrating the dispute. The document specifies that if one of the two representatives dies, his associates would appoint a replacement. It further asserts that if the two arbitrators adhere to the Qur'an and Sunnah, their decision is binding, and the nation supports them. Consequently, Allah has established His covenant in this matter. If the arbitrator's rule against the Qur'an and Sunnah, the decision will be held against them. Twenty-six individuals from Ali's team and twenty-four from Muawiyah's team (may Allah be pleased with them both) signed this document. The two sides did not specify the subject of arbitration; instead, the document stipulated a one-year postponement of arbitration, during which a truce would be observed, and weapons would be laid down. The truth is that arbitration in this dispute did not resolve or conclude the conflict but temporarily deferred it between the two parties. The study posits that arbitration failed in resolving the dispute here, but it did succeed in preventing the shedding of Muslim blood. If Al-Hasan bin Ali (may Allah be pleased with him) had not abdicated the caliphate after his father's death in the year 40 AH, known as the Year of the Group, the conflict and strife among Muslims would have persisted, as it had not been resolved in the first place (Abadi, n.d.).

This serves as evidence for the hadith of the Prophet (PBUH) when he described Al-Hasan bin Ali: "Indeed, this son of mine is a chief; Allah shall bring peace between two [tremendous] parties through his hands." The implication is that Allah brought peace through Al-Hasan (may Allah be pleased with him) between the people of the Levant and the people of Iraq by resolving the dispute and reuniting these two nations (Al-Salabi, 2004).

Hence, we observe the impact of successful arbitration in saving the lives of Muslims and halting the bloodshed between the people of the Levant and the people of Iraq. Therefore, arbitration has a significant impact on preserving the internal political system of the Muslim state from collapse when the two opposing parties turned to arbitration, based on the Qur'an and Sunnah as their reference, to resolve the dispute and end the conflicts that led to fighting among Muslims and the shedding of their blood. These disputes and conflicts had the potential to nearly dismantle the Muslim state and terminate its existence (Ibrahim, 2003).

Conclusion:

The study concludes that arbitration can have a significant impact on both internal and external political systems when utilized effectively. Arbitration plays a crucial role in preventing wars and conflicts, averting financial and resource losses, and resolving various disputes, whether on a domestic or international scale. It contributes to the maintenance of security and stability, regulates relations between countries in commercial, political, and border-related matters, and establishes consistent rules for their interactions. With countries globally adopting arbitration charters to address disputes and problems, the study emphasizes the need to embrace arbitration in general and within political systems, whether at the foreign policy or domestic policy levels. Optimal use of arbitration can yield substantial benefits, especially in the current landscape of frequent conflicts and disputes between individuals, groups, companies, organizations, and nations. Consequently, international arbitration bodies specializing in various fields have emerged as key references for resolving disputes worldwide. These bodies facilitate dispute resolution by ensuring expeditious proceedings, cost-effectiveness, and extensive expertise in the realm of dispute resolution. Ultimately, the judgments delivered by these

specialized bodies, grounded in knowledge and experience, contribute to the optimal and just resolution of disputes between litigants.

Conclusion and results:

In conclusion, it is evident that arbitration can play a crucial role in reforming the internal and external political systems of the Islamic State when used effectively and appropriately. Internally, arbitration in power disputes can prevent conflicts and bring resolution to disputes. Externally, in foreign policy, arbitration can address contentious issues and international disputes, saving time and resources. However, there are inherent risks associated with arbitration in the political system, both internally and externally, which can lead to significant harm if misused. This misuse may involve unqualified arbitrators or inappropriate circumstances for arbitration, resulting in more harm than benefit. In domestic politics, misusing arbitration may exacerbate disputes rather than resolve them, while in foreign policy, it may lead to losses in terms of borders, water, and rights. Additionally, misusing arbitration may compromise the state's sovereignty and prestige. If the Islamic State considers adopting arbitration, it must ensure that the right circumstances exist, and arbitrators meet the necessary conditions for eligibility. Therefore, a careful assessment of expectations, weighing the anticipated benefits against potential harms, is essential to determine the feasibility of resorting to arbitration in political matters.

The following results were revealed through this research.

- 1- Arbitration plays a key role in settling disputes and ending foreign political disputes.
- 2- The arbitration contributes to settling and ending internal political disputes between individuals in one country.
- 3- Arbitration plays a key role in saving effort and costs in resolving disputes at the internal and external levels.
- 4- Arbitration contributes to achieving justice between disputants in the quickest way and not resorting to the judiciary, where litigation takes a long time.
- 5- Arbitration contributes to avoiding many damages and losses to lives and property by resolving political disputes at the internal and external levels.
- 6- Arbitration plays a key role in restoring the rights of the Islamic State in the external political system in the easiest way possible.

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