

Analysing the Conceptual and Legal Frameworks of *As-Sulh* in Marital Relationships under Islamic Law

By

Khadijat Kuburat Ibrahim-Eletu*

Issa Babatunde**

Abstract

This paper explores the analysis of the conceptual and legal foundations of As-sulh (amicable settlement) as a mechanism for resolving matrimonial disputes within the framework of Islamic law. The analysis relies on doctrinal method of legal research. Rooted in the principles of justice, mercy, and preservation of family harmony, As-sulh embodies both a legal and moral obligation to restore peace and maintain social cohesion. The paper analyses the origin, development, and legal basis of As-sulh as established in the Glorious Qur'an, Sunnah, and juristic consensus (ijma'), and highlights its scope and applicability across civil, criminal, political, and family-related contexts. Particular attention is given to its relevance in matrimonial disputes where reconciliation is encouraged as a preferred remedy before recourse to judicial dissolution. The study further delineates the stages of As-sulh, from private negotiation and family-based arbitration (hakamayn) to formal judicial reconciliation. and examines the conditions necessary for a valid As-sulh agreement under Shari'ah.

Keywords: As-Sulh, Islamic law, Matrimonial Disputes, Marital Relationship, Maqasid al-Shari'ah

* LL.B (Common and Islamic Law), BL, LL.M, PGDE, Ph.D. (in view), Chief Lecturer and Deputy Provost, College of Arabic and Islamic Legal Studies, Ilorin, Kwara State. PhD Scholar, Department of Islamic Law, Al-Hikmah University, Ilorin, Nigeria; Tel: 08032947632 Email: kkibrahimeletu96@gmail.com

**PhD; Senior Lecturer, Faculty of Law, Department of Islamic Law, Al-Hikmah University, Ilorin, Nigeria. issaoba@yahoo.com or iboba@alhikmah.edu.ng +2349134306909

1.0 INTRODUCTION

This paper delves into the conceptual and theoretical foundations of *As-sulh* (reconciliation) within the framework of Islamic law, with a particular focus on its application to matrimonial disputes. The aim of the study is to establish a comprehensive understanding of *As-sulh* as a pivotal mechanism for conflict resolution, rooted in the principles of justice, mercy, and the preservation of familial harmony. By exploring the legal bases, scope, and objectives of *As-sulh*, alongside an examination of the causes of matrimonial conflicts, this framework seeks to illuminate the inherent synergy between Islamic jurisprudence and practical dispute resolution. This paper also details the multi-tiered approach to *As-sulh*, from initial private efforts to formal judicial interventions, emphasizing its consensual and contractual nature. It meticulously outlines the essential elements and conditions for a valid *As-sulh* agreement, including the critical adherence to *Shari'ah* prohibitions. Furthermore, the research delves into the multifaceted causes of marital discord, ranging from failures in fulfilling spousal obligations to external interferences and moral deviations, highlighting how Islamic law encourages reconciliation as a primary means to preserve family integrity before resorting to dissolution. This foundational analysis is crucial for appreciating the enduring relevance and effectiveness of *As-sulh* in contemporary contexts, especially within family law matters.

2.0 CONCEPT OF *AS-SULH* UNDER ISLAMIC LAW

As-sulh, (reconciliation or amicable settlement) is a foundational mechanism of dispute resolution in Islamic law. Deeply rooted in the principles of justice, mercy, and communal harmony, *As-sulh* reflects a moral and religious obligation that encourages disputing parties to reach mutual understanding and restore social cohesion.¹ Thus, this section explores the meaning and nature of *As-sulh*, its legal basis in Islamic sources, its wide scope and applicability across various types of disputes, and the numerous advantages it offers within the framework of Islamic law.

¹ Aseel Al-Ramah, 'Sulh: A Crucial Part of Islamic Arbitration, London School of Economics and Political Science [LSE]' *Law, Society and Economy Working Papers*, (2008) (2) 3. < <http://ssrn.com/abstract=1153659> > accessed on 1 May, 2025.

3.1 Meaning and Nature of *As-Sulh*

As-sulh is an Arabic term that linguistically connotes reconciliation, amicable settlement, or the peaceful resolution of disputes through mutual agreement.² Technically, it refers to the voluntary relinquishment or waiver of one's legal right or claim, often in exchange for a consideration, to settle a dispute or prevent its escalation.³ Within the Islamic legal tradition, *As-sulh* represents not only the process of restorative dialogue and reconciliation but also the legal agreement that results from such efforts.⁴

In Islamic law (*Shari'ah*), *As-sulh* is conceptualised as a form of a binding contract between two disputing parties, wherein each party voluntarily concedes a portion of their claim to achieve a mutually acceptable resolution.⁵ In this sense, it may take several forms and is usually manifest in the form of sale (*Al-Bay*), lease (*Ijara*), gift (*Hibah*), etc.⁶ This contract may be concluded privately between individuals or facilitated by a neutral third party such as a judge (*Qādī*) or arbitrator (*Hakim*).⁷ *As-sulh* may be pursued either within the informal sphere as part of communal or religious mediation or within formal legal proceedings (*al-Qadā' bi al-As-sulh*), depending on the context and procedural preferences of the parties involved.⁸

However, while a neutral facilitator may guide the reconciliation process, they are not empowered to impose a binding decision without the mutual consent of the parties.⁹ Because *As-sulh* is inherently contractual, its enforceability under Islamic law is contingent upon the voluntary

² J M Cowan, *Arabic'- English Dictionary* (Junaid Offset Work, Neri' Delhi) 52

³ S U D Keffi, 'The Legal, Social and Economic Roles of As-Sulh from the Perspective of Jurisprudence (Fiqh) of the Maliki School' in I A. Aliyu (ed), *Alternative Dispute Resolution and Some Contemporary Issues* (M. O. Press and Publishers, Kaduna, 2010) 192.

⁴ *ibid.*

⁵ O A Al-Zailaie, *Tabyīn al-Haqā'iq Shar'h Kanzu ad-Daqā'iq*, (2 edn Dār al-Mā'rifah, Beirut) 29

⁶ *ibid.*

⁷ Aida Othman and *Sulh is Best: Amicable Settlement and Dispute Resolution in Islamic Law* (Unpublished Ph.D. Thesis, Harvard University, 2005) 25.

⁸ Aseel Al-Ramahi, 'Sulh: A Crucial Part of Islamic Arbitration' (2008) < <http://ssrn.com/abstract=1153659> > accessed on 01 May 2025.

⁹ G E Irani and C F Nathan., *Rituals of Reconciliation: Arab-Islamic Perspectives* (Working Paper No. 19: OP:2, Kroc Inst, 2000) 19. < http://www.nd.edu/~krocinst/ocpapers/abs_19_2.shtml > accessed on 01 May 2025.

acceptance and agreement of both sides. If either party refuses to enter into a settlement, the facilitator cannot compel them.¹⁰

Consequently, issues arising from *As-sulh* fall under the general framework of Islamic contract law (*'Aqd*), which mandates that contracts freely entered into by the parties must be honoured by the principle enshrined in the Glorious Qur'an.¹¹ Adherence to a *As-sulh* agreement is thus not merely a legal requirement but also a religious obligation, consistent with the ethical duty of Muslims to uphold promises and maintain justice in social relations.¹²

Above all, the institution of *As-sulh* under Islamic Law is designed to restore peace, mend relationships, and prevent disputes from escalating into irreparable breakdowns. It is a pre-emptive mechanism rooted in compassion, forgiveness, and mutual compromise. The ethical core of *As-sulh* lies not in legal coercion but in the moral responsibility of the parties to seek reconciliation in good faith and in accordance with the divine values of justice, mercy, and peace.

3.2 Origin and Development of *As-Sulh*

Understanding the historical foundations of *As-sulh* is vital for appreciating its continued relevance and application in resolving matrimonial disputes within contemporary Muslim societies such as Ilorin. The Islamic legal system embodies a distinct preference for methods of dispute resolution, like mediation and reconciliation reflected in the traditional Islamic concept of *As-sulh*.¹³ *As-sulh* has its roots in early Islamic society and is widely recognised in both the Glorious Qur'an, and Sunnah, and further expounded by the Muslim jurists through the exercise of Ijtihad which is regarded as a commendable and spiritually rewarding method of settling disputes including matrimonial.¹⁴ In the Maliki School, which has influenced West African Islamic jurisprudence, *As-sulh* is seen as a binding resolution provided it meets the requirements of consent, fairness, and

¹⁰ *ibid.*

¹¹ Quran 5 (Surah Al-Maidah) verse 1.

¹² *ibid*

¹³ Walid Iqbal, 'Courts, Lawyering, and ADR: Glimpses into the Islamic Tradition' *FORDHAM URB. L. J.* (2000)1035

¹⁴ Surah Al-Hujurat 49 v 9.

absence of coercion. It is also recognised as a precondition to divorce in certain cases, particularly where *nushūz* (discord or disobedience) is alleged.¹⁵

Ilorin, the capital of Kwara State in North Central Nigeria, occupies a distinctive position in the history of Islamic legal development in the country.¹⁶ Strategically located within the emirate system, Ilorin extends its administrative and socio-cultural influence across five local government areas: Ilorin West, Ilorin East, Ilorin South, Asa, and Moro.¹⁷ The city is home to a vibrant Muslim population, united largely by faith despite linguistic diversity encompassing Yoruba, Nupe, Fulani, and Hausa, among others. The traditional occupations of Ilorin people include weaving, trading, farming, pottery and dyeing.¹⁸

The governance structure in Ilorin emirate was deeply infused with Islamic principles, particularly in matters of dispute resolution. This integration laid the foundation for a Shariah-compliant system of adjudication, especially in civil and matrimonial disputes. Historically, Alternative Dispute Resolution (ADR) mechanisms in Ilorin preceded colonial-imposed systems of formal litigation. Conflict resolution was, and in many respects remains, embedded in community values and Islamic ethical traditions.¹⁹

In the pre-colonial era, conflicts were resolved in a hierarchical and restorative process that began at the family level. The *Baale* (family head) would typically preside over such matters with an emphasis on reconciliation, love, and familial unity. If unresolved, disputes progressed to the *Magaji* (community traditional ruler), and subsequently to the *Alangua* (custodian of several villages). If the conflict still defied resolution, it was taken to the *Daudu*, the Emir's representative at the district level. The final appellate authority rested with the Emir, who held the power to issue

¹⁵ A A Muhammad and Others. 'Alternative Dispute Resolution (As-Sulh) as a Principle of Islamic Legal System on Marriage Conflicts Among Muslim Ummah' *FITRAH: Jurnal Kajian Ilmu-ilmu Keislaman*, (2023) (9) (1)185-200.

¹⁶ I A Olufadi, 'The Roles of *Masjid* in Matrimonial Dispute Settlement (Mds) in Nigeria: An Assessment of the Shar'iah Concept of Sulh'8.

¹⁷ *ibid*

¹⁸ *ibid*

¹⁹ S Raji and H M Olorunoje, 'Sulh as Alternative Dispute Resolution Mechanism for Marital Conflicts Among Muslims in Ilorin, Nigeria' *Journal of Management and Social Sciences* (2019) (8) (2) 635.

binding declarations that served as precedents in the local judicial context.²⁰ These traditional mechanisms reflect a form of restorative justice aimed not merely at resolving disputes but at sustaining social harmony and collective identity.²¹ However, with the advent of colonial administration and the introduction of formal adjudicative systems, Ilorin witnessed the establishment of statutory courts including Customary Courts, Magistrate Courts, and both State and Federal High Courts as well as Alternative Dispute Mediation Centres.²²

Nevertheless, Shari'ah Courts continue to serve an essential function, particularly in handling matrimonial and personal status matters following Islamic law. Despite the formal legal developments, Ilorin's legacy of informal and faith-based dispute resolution endures. In modern-day Ilorin, *As-sulh* remains a culturally embedded and spiritually significant mechanism for addressing matrimonial disputes. Imams, Islamic scholars, and respected elders continue to act as mediators in family conflicts, offering counsel grounded in religious texts and moral persuasion. While the city has seen the rise of statutory courts and formal Shariah courts, many residents still prefer to resolve domestic disputes within the framework of

As-sulh, often as a first step before escalating to formal legal institutions. This continuing reliance on *As-sulh* highlights the resilience of traditional dispute resolution systems and their potential to complement formal justice mechanisms.

By situating *As-sulh* within its historical trajectory, this study underscores the importance of understanding its normative foundations and societal functions as a precursor to assessing its modern-day application in Ilorin.

4.0 LEGAL BASIS OF *AS-SULH* IN ISLAMIC LAW

The concept of *As-sulh* is not a recent development within the Islamic system of justice administration. It is deeply rooted in the *Glorious Qur'an*, *Sunnah* and the *Ijma* of the Muslim

²⁰H M Olorunoje, *Examination of Sulh (Reconciliation) as Alternative Dispute Resolution Mechanism among Muslims in Ilorin West Local Government Area of Kwara State, Nigeria* (M.A. Dissertation, Centre for Peace and Strategic Studies, University of Ilorin, Nigeria)17-22.

²¹ *ibid* 27

²² K I Eletu and H A Hammed., 'Matrimonial disputes resolution Among Muslims in Ilorin: An Examination' *Al-Hikmah University Journal of Public and International Law* (2017) (11) (1) 343.

jurists as a recommended mechanism for resolving discords.²³ The *Glorious Qur'an* repeatedly emphasizes the virtue of reconciliation, particularly in interpersonal and communal disputes. For instance: It stated thus:

*There is no good in most of their secret talks Save (in) him who orders Sadaqah (charity in Allah's cause), or Ma'ruf (Islamic monotheism and all the good and righteous deeds which Allah has ordained), or conciliation between mankind; and he who does this, seeking the good pleasure of Allah, We shall give him a great reward.*²⁴

Also, it is provided thus:

If two parties among the believers fall into a quarrel, make peace between them. But if one of them transgresses against the other, then fight the one that transgresses until it complies with the command of Allah. If it complies, then make reconciliation between them with justice and act equitably. Verily, Allah loves those who act justly. The believers are but a single brotherhood, so make peace between your brothers and fear Allah that you may receive mercy.²⁵

Additionally, the legitimacy of *As-sulh* in Islamic law is supported by numerous *ahadith* of the Prophet Muhammad (SAW.)²⁶, whose life consistently demonstrated the use of mediation to resolve human conflicts. A very famous *Sunnah* of the Prophet Muhammad (SAW.) that historically illustrates the origin of *As-sulh* was that concerning the setting of *Hajar al-Aswad* (Black Stone) during the reconstruction of *Ka'bah*.²⁷ Then, the four major clans of the Quraysh disputed over who would have the honour of placing the revered Black Stone (*Hajar al-Aswad*) back into its position. To avoid conflict, it was agreed that the first person to enter the *Ka'bah* the next morning would decide the matter. That person turned out to be the Prophet Muhammad (SAW), who, with great wisdom, suggested that representatives from each clan lift the stone

²³ *ibid*

²⁴ Quran 4 (Surah An-Nisai) verse 114

²⁵ Surah Al-Hujurat 49 v 9-10.

²⁶ This is acronym of the statement: *Salla Allahu alayhi wasalam*- meaning: may Allah be please with him. This statement is said whenever the name of prophet Muhammad is being mentioned.

²⁷ A H Abdullah, *Kitab Bhavan* (New Delhi, India) 181.

together using a cloth. Each representative held a corner of the cloth, and the Prophet placed the stone in position himself. This act of collaborative compromise, facilitated by the Prophet, is often cited as a classical model of *As-sulh* in practice, embodying both equity and communal harmony.²⁸

Similarly, it is reported that the Prophet Muhammad (SAW.) said:

As-sulh is permissible among the Muslims except the one which makes the unlawful as lawful and which makes the lawful as unlawful. Muslims are bound by their promises except promises that permit the unlawful as lawful and the lawful as unlawful²⁹

In another hadith, it was narrated by Abdul-Azeez bin Abdul-Allah from Ibrahim bin Sa'ad, from Saluh from bin Shihab, that Humaidah bin Abdur-Rahman informed him that his mother Umm Kulthum bint Uqbah informed him that she heard the Prophet (SAW) saying: *“he who reconciles between people is not a liar by Reason of what lies he makes or says (with the best of intentions)”*. Umar bin Khattab (RA) was reported to have said, *“return the disputants for reconciliation, for adjudication of conflicts through litigation engenders hatred.”*³⁰

More so, from a juristic perspective, Muslim scholars have reached a consensus (*ijma*) on the legitimacy of *As-sulh* in Islamic law. In other words, Islamic jurists unanimously affirm that *As-sulh* is not only legally permissible but also highly recommended and commendable within the framework of Sharia.³¹ Therefore, based on the aforementioned Glorious Qur'anic injunctions, Prophetic traditions, and juristic consensus, the practice of *As-sulh* between disputing parties is regarded as a virtuous and commendable act. Consequently, it is entirely appropriate and indeed encouraged for recommendations to be made urging litigants to pursue *As-sulh* as a means of resolving their disputes.

4.1 Principles and Conditions of *As-Sulh* under Islamic Law

²⁸ ibid

²⁹ Sayyid Sabiq, *Fiqh al-Sunnah*, Vol 3 (Cairo: Dar al-Fath li'l-lam al-'Arabi, n.d.) 305.

³⁰ Abū Dāwūd, *Sunan Abī Dāwūd* (Dār al-Fikr for Publishing and Distribution) 289. Hadīth 4955

³¹ Keffi (n 2)

For *As-sulh* agreement to be considered valid and binding under Islamic law, it must adhere to a set of foundational principles and specific conditions. From the perspective of Islamic legal theory, a valid *As-sulh* agreement is conceptualized as a binding contract (*'Aqd*) and must therefore fulfil specific essential elements. Without these elements, the agreement may be deemed void or defective. These six key elements are:

- i. *Al-Muṣāliḥ Lahu*: This refers to the claimant or the person asserting a right or claim in the dispute.
- ii. *Al-Muṣāliḥ 'Alayhi*: This denotes the respondent or the person against whom the claim is brought.
- iii. *Al-Muṣāliḥ 'Anhu*: This is the subject matter or the disputed right involved in the reconciliation process.
- iv. *Badl al-As-sulh (Al-Muṣāliḥ Bihi)*: This represents the consideration or object offered in exchange for reconciliation. This exchange can be compensatory, akin to a sale, where one party offers an item or sum to settle a claim. For instance, if a debtor admits to a debt but offers a car as settlement, the agreement is treated as a sale contract.
- v. *Al-Ijāb*: This is the offer made by one party to initiate the settlement.
- vi. *Al-Qabūl*: This signifies the acceptance of the offer by the other party, completing the contractual agreement.³²

When these six elements are met, the *As-sulh* agreement is deemed valid and binding upon the parties under Islamic law.³³

Moreover, beyond the formal elements, the validity and spirit of a *As-sulh* agreement are underpinned by several core principles.³⁴Foremost among these is voluntariness. *As-sulh* is inherently consensual; parties must willingly accept and agree to the settlement. Facilitators, whether judges or arbitrators, cannot compel parties to enter into a settlement against their will. This consensual nature is a defining characteristic that distinguishes *As-sulh* from adversarial

³² Sayyid Sabiq, (n 29) 210.

³³ S K Rashid, (n 72) 101.

³⁴ S Saleh, 'The Settlement of Disputes in the Arab World Arbitration and Other Methods – Trends in Legislation and Case Law' *Arab Law Quarterly* (1985) 1, 198.

adjudication.³⁵ Another critical principle is good faith (*Husn al-Niyyah*). The ethical core of *As-sulh* lies in the moral responsibility of the parties to seek reconciliation with sincerity and a genuine desire for peace. This implies a commitment to the spirit of compromise and mutual understanding.³⁶

Moreo so, fundamental condition for the validity of any *As-sulh* agreement is its strict adherence to *Shari'ah* principles.³⁷ *As-sulh* is permissible among Muslims, but with a crucial caveat: it is invalid if it renders lawful what is unlawful (*haram*) or renders unlawful what is lawful (*halal*). This prohibition ensures that reconciliation does not compromise the foundational moral and legal tenets of Islam.³⁸ Examples of prohibited conditions in a *As-sulh* agreement include those that would allow alcohol consumption, legalize brothels, tolerate acts of prostitution, or otherwise compromise the full implementation or practice of *Shari'ah*. Judges in Shariah courts are empowered to scrutinize proposed settlements to ensure they do not contravene Islamic law before recording them as court orders.³⁹

5.0 GENERAL SCOPE AND APPLICABILITY OF *AS-SULH* IN DISPUTES RESOLUTION UNDER ISLAMIC LAW

Making inference from the earlier discussion on the meaning and nature of *As-sulh*, it is clear that *As-sulh* is not applied in isolation but is always prompted by the existence of a dispute or misunderstanding. These conflicts can arise from various contexts ranging from everyday contractual dealings, whether commercial or domestic in nature, to more complex issues such as inter-state political disputes, which may escalate into military confrontations and ultimately necessitate ceasefires or truces.⁴⁰ The broad classifications of *As-sulh* under Sharia reflect its

³⁵ *ibid*

³⁶ *ibid*

³⁷ A. Ahdab, *Arbitration with the Arab Countries* (Kluwer Law International, Boston 1999) 11.

³⁸ M. C. Bassiouni and G. M. Badr, 'The Shari'ah: Sources, Interpretation, and Rule Making' *UCLA J. Islamic & Near E. L* (1998) 1,135.

³⁹ A. Othman, 'And Amicable Settlement Is Best': Sulh and Dispute Resolution in Islamic Law' *Arab Law Quarterly*, (2007) 21, 64.

⁴⁰ Ibn Qudama, *Al-Mughni* (3rd ed, 7th Vol, Dar Alim al-Kutb, Riyadh, 1997) 5.

extensive scope, encompassing nearly all areas of human interaction where disputes may emerge, whether between Muslims or even between Muslims and non-Muslims. This wide applicability underscores the flexible and inclusive nature of *As-sulh* as a tool for dispute resolution. However, it also implies that the different forms of *As-sulh* recognized under Islamic law may not all be governed by identical rules, but rather by context-specific principles suited to the nature of the conflict involved.⁴¹ Thus, the general scope of application of *As-sulh* is considered hereunder:

5.1 *As-Sulh* in Transactional Cases (*Muamalat*)

Under Islamic law, *Muamalat* which deals with interpersonal transactions such as sales, debts, mortgages, partnerships, leases, and hire is one of the primary fields where the application of *As-sulh* is particularly relevant.⁴² Within this context, Islamic jurists have classified *As-sulh* into three principal categories: *As-sulh 'ala al-Iqrar* (reconciliation following an admission of liability by the defendant); *As-sulh 'ala al-Inkar* (reconciliation despite a denial of liability), and *As-sulh 'ala al-Sukut* (reconciliation where the defendant neither admits nor denies liability).⁴³

a. *As-sulh 'ala al-Iqrar* (reconciliation following an admission of liability by the defendant)

The Islamic jurists treat this form of reconciliation as a contractual transaction akin to a sale. Accordingly, all the legal requirements and conditions that govern Islamic sale contracts apply equally to this type of *As-sulh*. This only applies where the defendant clearly acknowledges the claim or indebtedness asserted by the plaintiff.⁴⁴ For example, if person 'A' alleges that person 'B' borrowed ₦5,000,000 but lacks evidentiary proof, and person 'B' admits to the debt and instead offers a car as settlement, the dispute is resolved through *As-sulh* based on a compensatory exchange. In this case, the agreement is treated as a sale contract because the car is rendered in

⁴¹ Al-Kasani, *Badai' al-Sana' fi Tartib al-Shari'ah* (Vol 6, The Scientific) 47.

⁴² Sayyid Sabiq (n 29) 212.

⁴³ Al-Kasani (n 22)

⁴⁴ Ibn Farhun, *Tabsirat al-Hukkam fi Usul al-Aqdbiyah wa Manahij al-Ahkam* (Vol. 2 Dar al-Kutub AlIlmiyyah, Beirut 1995) 55.

satisfaction of the debt. Hence, the rules regulating sales in Islamic law such as the requirement for clear knowledge of the exchanged item's value, the right to reject defective goods, and the obligation of mutual consent must be duly observed to ensure the validity and enforceability of the *As-sulh* agreement.⁴⁵

b. *As-sulh 'ala al-Inkar* (Reconciliation despite a denial of liability)

Under this category, the defendant outrightly denies the plaintiff's claim, whether it concerns property, debt, or usufruct (*manfa'a*), or partially admits to a lesser obligation.⁴⁶ In such circumstances, the majority of jurists hold that nothing prohibits the parties from entering into *As-sulh* agreement, viewing it as a practical means to terminate a dispute even when no full admission has been made.⁴⁷ In contrast, the Shāfi'īs argue that *As-sulh* is only permissible where liability is expressly acknowledged, asserting that a right cannot be legally justified or enforced based on denial.⁴⁸ Nonetheless, where *As-sulh* is permitted in cases of denial, the arrangement often takes on a compensatory character: the plaintiff accepts payment or some benefit in lieu of litigation, while the defendant views the settlement as a means to avoid taking an oath or facing trial.⁴⁹ This demonstrates a softening of the strict procedural principle in Islamic law that a claimant must present evidence and a defendant who denies a claim must take an oath.⁵⁰

c. *As-sulh 'ala al-Sukut* (Reconciliation where the Defendant neither admits nor denies Liability).

The third form of *As-sulh* in transactional matters is known as *al-As-sulh 'an Sukūt*, which arises when the defendant chooses to remain silent neither affirming nor denying the claim but agrees to provide some compensation or benefit to the plaintiff in order to bring the dispute to an end.⁵¹ This

⁴⁵ *ibid*

⁴⁶ Sayyid Sabiq, (n 29) 213.

⁴⁷ *ibid*

⁴⁸ *ibid*

⁴⁹ A M Muhammad, 'The Concept of Sulh in Islamic Law: A Case Study of the Practice and Procedure of the Katsina State Sharia Courts (LL.M Thesis, Department of Islamic Law, Ahmadu Bello University, Zaria 2014) 67

⁵⁰ *ibid*

⁵¹ *Ibid*, 68

type of *As-sulh* is generally deemed valid by the majority of Muslim jurists, who regard it as a pragmatic means of settling disputes.⁵² However, the Shāfi‘ī school and the Zahiri jurist Ibn Hazm oppose this position. They argue that the defendant’s silence should be interpreted as an implicit denial of the claim, and therefore, such silence cannot serve as a valid foundation for reconciliation. According to their view, the absence of explicit admission renders *As-sulh* impermissible in such contexts.⁵³

Above all, these classifications demonstrate the flexibility of *As-sulh* in addressing a wide range of transactional disputes. Importantly, this aspect of Islamic jurisprudence envisions *As-sulh* not only as a private arrangement but also as a process integrated into formal judicial proceedings. In this regard, *As-sulh* functions as a court-connected mechanism (*al-Qada’ bi al-As-sulh*) wherein parties engaged in litigation may, either at their own initiative or upon the court’s recommendation, pursue an amicable resolution outside the traditional adjudicative route. This reflects Islam’s overarching emphasis on reconciliation and peaceful dispute settlement, even within formal judicial settings.

5.2 *As-Sulh* in Criminal Cases

The application of *As-sulh* in criminal matters is contingent upon the type of right involved whether it pertains to the right of Allah (*Huquq Allah*) or the right of an individual (*Huquq al-‘Abd*).⁵⁴ The general principle in Islamic jurisprudence is that crimes falling under *Huquq Allah* such as *ḥadd* offences like adultery, theft, and consumption of alcohol are non-negotiable, as these are divine rights and cannot be altered, waived, or replaced by human intervention, whether by a judge (*Qadi*) or a leader (*Imam*). Therefore, *As-sulh* cannot be affected in such cases, as there is no permissible alternative to the prescribed punishment.⁵⁵

However, in cases involving transgressions against individual rights such as bodily harm or murder, *As-sulh* becomes applicable, provided that the injured party or their heirs agree to a

⁵² Sayyid Sabiq, (n 38) 213.

⁵³ *ibid*.

⁵⁴ Muhammad (n 30) 79.

⁵⁵ *ibid*

substitute form of justice, such as compensation. This principle finds clear support in Islamic legal texts. The Glorious Qur'an affirms:

O you who believe! Al-Qisās (the law of retaliation) is prescribed for you in cases of murder: the free for the free, the slave for the slave, and the female for the female. But if the killer is forgiven by the brother (or heir) of the deceased, then grant the blood money (Diyyah) in fairness and pay it to him with kindness. This is a concession and a mercy from your Lord...⁵⁶

Islamic jurists interpret the phrase "*faman 'ufiya lahu*" ("but if the killer is forgiven") as a reference to the permissibility of accepting blood money (*Diyyah*) in place of retributive justice (*Qisas*) in cases of intentional killing. This forgiveness should be granted without excessive demands or injustice, and the agreed compensation must be fulfilled with fairness on both sides.⁵⁷

The permissibility of *As-sulh* in criminal matters is not only established in the Glorious Qur'an but is further reinforced by the Sunnah and the consensus (*Ijma'*) of Muslim jurists. One notable tradition narrated by 'Ā'isha (RA) reports that the Prophet Muhammad (SAW) once sent Abū Jahm ibn Ḥudhāfah to collect *Zakāt*. A man refused to pay, and as a result, Abū Jahm physically struck him. The man's kin approached the Prophet (SAW) demanding *Qisās* (retaliation). Initially, the Prophet (SAW) offered them compensation, which they rejected. He increased the compensation a second time still, they declined. Finally, upon a further increase, they accepted the settlement.⁵⁸ This incident illustrates a clear precedent for *As-sulh* in criminal cases involving personal harm, so long as the right in question is that of an individual (*ḥaqq al-'abd*).⁵⁹

In addition, Muslim jurists are unanimous (*Ijma'*) in affirming the permissibility of *As-sulh* in cases of intentional harm, thereby establishing a strong legal foundation for compromise in such matters.⁶⁰ Thus, it becomes reasonable according to some Muslim jurists to conclude *As-sulh* over certain criminal cases from two perspectives:

⁵⁶ Surah Al-Baqorah 2 v 178

⁵⁷ Muhammad (n 30) 71

⁵⁸ Abu Dāwud (n 19).

⁵⁹ *ibid*

⁶⁰ Al-Zaila, *Tabyin al-Haqaa'iq Sharh Kanz al-Daqa'iq* (Dar al-Kitab Al-Islami) 98.

- i. In relation to *Qisās* (retaliation) since this is a personal right held by the victim or their heirs, they are permitted to either accept a negotiated settlement or grant a full pardon (*'afw*).⁶¹
- ii. Where proportional retaliation is impractical: In circumstances where enforcing *Qisās* may not yield equitable results due to, for example, an inability to achieve exact parity it is deemed appropriate to allow a settlement in the form of compensation, except in cases involving *Qadāf* (false accusation of fornication or adultery), which remains an exception.⁶²
- iii. Hence, while in the English criminal justice system neither the victim nor the accused holds discretion in resolving a criminal matter through amicable settlement, Islamic law recognizes and institutionalizes *As-sulh* in criminal cases as a legitimate and historically grounded practice.

5.3 *As-Sulh* in Armistice (Truce and Cease-Fire Agreements)

As previously established, *As-sulh* literally denotes reconciliation, compromise, or the pursuit of peace ultimately aimed at resolving disputes.⁶³ In the context of warfare or armed conflict, *As-sulh* assumes an additional and significant role: it serves as a mechanism for terminating hostilities (*hurūb al-baghī*), whether among Muslims or between Muslims and non-Muslims.⁶⁴ It represents a formal agreement or contract wherein the warring parties agree to reconciliation, temporarily or permanently ceasing hostilities.⁶⁵ In matters of war, the term *As-sulh* holds varying legal implications depending on the circumstances and intentions of the agreement. It may manifest in different legal forms such as *Dhimmah* pact, *Aman* (safe conduct), *Hudnah* (cease-fire), etc.⁶⁶

An illustrative example of such an armistice during the Prophet's (SAW) lifetime is the *As-sulh* concluded with the tribe of Juhaynah. The terms of the agreement ensured the protection of life and property and entailed mutual defence obligations, except in cases involving religious

⁶¹ *ibid*

⁶² Al-Sarkhasi and Al-Hanafī, *Al-Mabsuud*, (Vol 9 Dar al-Ma'arifa) 21.

⁶³ Keffi (n 2).

⁶⁴ *ibid*

⁶⁵ Muhammad (n 30) 97

⁶⁶ W al-Zuhaili, *Figh al-Islam wa Adillatuhu*, (Vol 5, Dar al-Fikr, 1984) 256.

disputes.⁶⁷ Following the Prophet's demise, the practice of negotiating *As-sulh* agreements continued under the leadership of his companions. Noteworthy examples include:

- i. The treaty concluded by Khālīd ibn al-Walīd (RA) with the people of Ilyās.
- ii. The peace agreements made by Ibn Baqalah (RA) with the people of Nahr al-Mulk, as well as similar pacts with the communities of Ahl al-Ambar and Basrah in Iraq.
- iii. Additionally, both Khālīd ibn al-Walīd (RA) and Abū 'Ubaydah (RA) are reported to have executed treaties with the people of Damascus, Ḥimṣ (in present-day Syria), Ba'labakk (in Lebanon), and al-Jūsiyyah.⁶⁸

These examples highlight the continuous application of *As-sulh* as a practical and strategic tool in Islamic diplomacy and military policy, emphasizing the preference for peace and order even in times of armed conflict.

Nonetheless, the conduct of *As-sulh* in an armistice or cease-fire agreement demands the observance of certain principles under the *Shari'ah*. First, the process must be preceded by *Da'awah* (preaching), as Islamic teachings prioritize peaceful invitation to faith over the use of force. The willingness of non-Muslims to accept a peace treaty is, therefore, seen as a welcome development, as it allows Muslims to continue preaching Islam. Any condition in the treaty that would hinder this objective is deemed unacceptable. The goal is not to annihilate the enemy but to preserve life in order to create an opportunity for individuals to encounter and possibly embrace the message of Islam.⁶⁹

Also, a truce is intended to promote the peaceful propagation and acceptance of Islam. Accordingly, any nation that enters into a treaty with the Islamic State is guaranteed protection of life and property, while in return, the Muslim community secures the freedom to spread Islamic teachings.⁷⁰ Similarly, the payment of *jizyah* (poll tax) by non-Muslims forms a critical part of

⁶⁷ A S Qasim, *Nasha'at Da'awat al-Islamiyyah*, 295.

⁶⁸ *ibid*

⁶⁹ Al-Marawadatu, *Kaamil al-Sirah al-Nabawiyyah* (Vol. 4) 539.

⁷⁰ *Ibid*

peace treaties. In cases where a non-Muslim nation refuses to accept Islam but desires peace, they must remit *jizyah* as a prerequisite for entering into a *Dhimma* pact with the Islamic State.⁷¹

Finally, Muslims are prohibited from agreeing to any treaty obligations that would render lawful what is unlawful in Islam, or vice versa such as allowing alcohol consumption, legalizing brothels, or tolerating acts of prostitution. Similarly, any treaty that would compromise the full implementation or practice of *Sharī'ah* is unacceptable.⁷²

6.0 APPLICATION OF *AS-SULH* IN MATRIMONIAL DISPUTES

Conflict is an inherent part of human relationships, and matrimonial unions are no exception. Due to the delicate and intimate nature of marital bonds, Islamic law does not encourage spouses to resort immediately to formal litigation when disputes arise. Instead, the *Sharī'ah* strongly recommends that couples pursue reconciliation through peaceful and amicable means before considering judicial intervention.⁷³ Although *As-sulh* is a versatile mechanism available for the resolution of all types of civil disputes, it finds particular prominence and effectiveness in the domestic sphere. Its relational emphasis makes it especially well-suited to addressing conflicts within families, where emotional and social dynamics often play a crucial role.⁷⁴

While the earlier-cited verses underscore the centrality of peace and reconciliation in interpersonal relations, the *Glorious Qur'an* also places a strong emphasis on tranquillity, love, and mercy as the foundation of the matrimonial relationship. This is beautifully expressed in the following verse:

And among his signs is this: that he created for you spouse from among yourselves so that you may find tranquillity with them, and he placed between you affection and mercy. Verily in that are signs for people who reflect⁷⁵

This verse encapsulates the Glorious Qur'anic vision of marriage as a divine institution premised on mutual comfort, spiritual companionship, and emotional harmony. To uphold this vision,

⁷¹ *ibid*

⁷² *ibid*

⁷³ M S Abubakar, The Role of the Sharia in Resolving Armed Conflicts Between Muslims or Between Muslims and Non-Muslims, in I A., Aliyu, *Alternative Dispute Resolution and Some Contemporary Issues* (M. O. Press and Publishers, Kaduna, 2010) 172.

⁷⁴ *ibid*

⁷⁵ Surah Ar-Rum 30 v 21.

Islamic law (*Shari'ah*) prescribes specific rights and duties for both spouses. The husband is entrusted with the financial, emotional, and psychological maintenance of the family.⁷⁶ While the wife is enjoined to be obedient, sincere, and supportive.⁷⁷ When either party fails to observe these mutual obligations, marital harmony can deteriorate, giving rise to conflict and potential dissolution of the union. Thus, *As-sulh* can be exercised in a matter relating to either property rights, for example, arrears of maintenance, settlement of deferred dowry, etc. It may also involve non-property rights such as consummation (of the marriage), cruelty and ill-treatment, so also, it may pertain to rights that arise either during the marriage or after divorce, such as *muta'ah* (consolatory gift), *hadanah* (custody), maintenance during iddah, etc.⁷⁸ Issues of divorce, child custody and support, guardianship of infants and domestic violence are highly sensitive and emotional family issues that may not be entirely appropriate to be resolved by the court system which is mainly adjudicatory in nature. This may be seen as the rationale behind the stand taken by Islamic law at the outset of event in recommending *As-sulh* in the resolution of matrimonial disputes with such approach further qualified as being the best.⁷⁹

In this context, Islam outlines a structured and progressive method for resolving such conflicts. The first step is for the couple to make sincere efforts to settle their differences privately, a process the Glorious Qur'an regards as the preferred approach:

And if a woman fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; reconciliation is better. But people are often swayed by selfish desires. If you do good and practise self-restraint, Allah is aware of all that you do”⁸⁰

Where private efforts fail, the Glorious Qur'an prescribes the intervention of neutral arbitrators from each spouse's family:

⁷⁶ Surah An-Nisa 4 v 34.

⁷⁷ Surah Al-Furqaan 25 v 74.

⁷⁸ Muhammad (n 30) 88.

⁷⁹ R Lukito, 'Religious ADR: Mediation in Islamic Family Law Tradition' *Al-Jami'Ah Magazine* (2006) (44) 337

⁸⁰ Surah An-Nisa 4 v128

If you fear a breach between the two, appoint (two) arbiters: one from his family, and the other from hers. If they desire reconciliation, Allah will cause it between them; indeed, Allah is All-Knowing and Fully Aware.⁸¹

Islamic scholars are unanimous in their interpretation that this verse provides a procedural foundation for *As-sulh* in matrimonial cases. Once family-appointed arbitrators have been designated, their recommendation if mutually agreed upon is considered binding. This form of dispute resolution is rooted not only in law but also in the ethical imperative of upholding family integrity.⁸²

More so, in instances where a third-party reconciliation effort is necessary whether led by a judge (*Qādī*), a prominent community leader, or a family elder principle of counselling, advice, and arbitration are employed.⁸³ During the process, the facilitator assists the parties as they attempt to reach a voluntary settlement. The mediator or facilitator assists the disputants in reaching a voluntary resolution. While they may suggest options or compromises, they cannot impose a settlement, as *As-sulh* is by nature a consensual agreement.⁸⁴ Muslim jurists reinforce the view that the judge has no power to compel the parties to conclude an agreement by *As-sulh* in the event that one or both parties are not inclined to it. Because this contract is optional, the judge has no power to compel conflicting parties to enter such a contract.⁸⁵

7.0 STAGES OF *AS-SULH* UNDER ISLAMIC LAW

While the preceding section established the broad scope and applicability of *As-sulh* (reconciliation) in Islamic dispute resolution, understanding its practical implementation necessitates a detailed examination of its distinct stages. Thus, this section delineates the sequential phases through which *As-sulh* proceedings typically unfold, providing a comprehensive overview of how reconciliation is facilitated and formalized under Islamic legal frameworks:

7.1 Initial Private Efforts and Negotiation

⁸¹ *ibid*, v 34.

⁸² Ibn Kathir, *Tafsir al-Qur'an al-Azim* (1st ed, Vol 4 Maktab Awlad ash-Sheik li-Atturath , 2000) 29-32.

⁸³ S Saleh, 'The Settlement of Disputes in the Arab World Arbitration and Other Methods – Trends in Legislation and Case Law' *Arab Law Quarterly* (1985) (1) 198.

⁸⁴ Lukito (n 60) 338.

⁸⁵ M Abu-Nimer, 'Conflict Resolution in an Islamic Context: Some Conceptual Questions' *Peace and Change* (1996) (21) 30.

The initial stage of *As-sulh* emphasizes self-initiated resolution and direct communication between the disputing parties. Islamic law strongly encourages spouses to make sincere efforts to settle their differences privately before resorting to external intervention.⁸⁶ This approach is regarded as the most preferred, with the Glorious Qur'an explicitly stating, "reconciliation is better" in situations where a woman fears cruelty or desertion from her husband;

If a woman feareth ill treatment from her husband, or desertion, it is no sin for them to twain if they make terms of settlement between themselves Such settlement is the best. But greed hath been made present in the minds (of men). If ye do well and keep from evil, lo! Allah is ever informed of what ye do.⁸⁷

As such, making insights from this verse, parties to a dispute are expected to engage in informal negotiation through various means such as bargaining, compromise, discussion, and persuasion in their day-to-day interactions. This stage underscores the importance of effective communication, active listening, patience, and forgiveness in addressing disagreements. The primary objective at this preliminary stage is to resolve issues internally, fostering direct dialogue and avoiding third-party involvement, thereby preserving the privacy and sanctity of bonds.⁸⁸

7.2 Family-Based Arbitration (*Hakam*) and Community Mediation

If private efforts prove insufficient, Islamic law prescribes a structured intervention involving neutral third parties, often drawn from the families of the spouses or the wider community. The Glorious Qur'an outlines this step by advising, "*If you fear a breach between the two, appoint (two) arbiters: one from his family, and the other from hers. If they desire reconciliation, Allah will cause it between them; indeed, Allah is All-Knowing and Fully Aware*".⁸⁹ Islamic scholars unanimously interpret this verse as providing a foundational procedural step for *As-sulh* in

⁸⁶ Nikahnamah, 'Conflict Resolution in an Islamic Marriage' < <https://www.nikahnamah.com/blog-detail/conflict-resolution-in-islamic-marriage-nikahnamah> > accessed 08 July, 2025

⁸⁷ Surah Al Nisa 4 v128

⁸⁸ Z R Abubakar, and Z R T Amir., 'Sulh in the Malaysian Syariah Courts' < <https://kubanni-backend.abu.edu.ng/server/api/core/bitstreams/1f3a4993-e52a-4075-87f4-34bbddcd0350/content> > accessed 08 july, 2025.

⁸⁹ Surah Nisai 4 v 35.

matrimonial cases.⁹⁰ These family-appointed arbitrators (*Hakam*) are entrusted with facilitating reconciliation. If they desire reconciliation and their recommendation is mutually agreed upon by the spouses, it is considered binding. This highlights the significant authority and trust vested in family elders and the community in resolving disputes.⁹¹

Beyond immediate family, prominent community leaders or respected elders may also facilitate the process, employing principles of counselling, advice, and arbitration. This communal approach to justice is evident in various Islamic societies, where conflict control often takes place within a communal framework rather than a one-on-one setting.⁹² Allah says to the effect:

There is no good in most of their secret talks save (in) him who orders *sadaqa* (charity in Allah's cause, or *ma'aruf* (good deeds), or conciliation between mankind, and he who does this seeking the good pleasure of Allah, We shall give him great a reward.⁹³

The role of the mediator or facilitator at this stage is to assist disputants in reaching a voluntary resolution, suggesting options or compromises without imposing a settlement, as *As-sulh* remains fundamentally a consensual agreement. Muslim jurists consistently affirm that a judge or facilitator has no power to compel parties to conclude *As-sulh* agreement if they are not inclined to it.⁹⁴

7.3 Formal Judicial *As-Sulh* Processes

In instances where informal or family-based efforts do not yield a resolution, *As-sulh* can be integrated into formal judicial proceedings, functioning as a court-connected mechanism (*al-Qada' bi al-As-sulh*).⁹⁵ This demonstrates Islam's overarching emphasis on reconciliation and peaceful dispute settlement, even within formal judicial settings. Parties engaged in litigation may, either

⁹⁰ S Bouheraoua, *Foundation of Mediation in Islamic Law and Its Contemporary Application* (Department of Islamic Law, Ahmad Ibrahim Kulliyah of Law International Islamic University Malaysia (IIUM), 2007) 3.

⁹¹ S K Rashid, 'Alternative Dispute Resolution in the Context of Islamic Law' *The Vindobona Journal of International Commercial Law and Arbitration* (2004) 8 (1) 99.

⁹² U A Oseni, 'Sharī'ah Court-annexed ADR: The Need for Effective Dispute Management in Waqf, Hibah and Wasiyyah Cases in Malaysia' *14th Annual Conference of the Sharī'ah Legal Officers of Malaysia*, 3-4. available online at: http://irep.iiu.edu.my/27072/4/Shariah_Judges_Paper_-_Langkawi_2012.pdf accessed on 08 July, 2025

⁹³ Surah Al-Nisa' 4 v 114.

⁹⁴ A Othman, 'Amicable Settlement Is Best: Sulh and Dispute Resolution in Islamic Law,' *Arab Law Quarterly* (2007) 21, 64.

⁹⁵ *ibid*

on their own initiative or upon the court's recommendation, pursue an amicable resolution outside the traditional adjudicative route.⁹⁶ A judge (*Qadi*) may opt for *As-sulh* in lieu of proceeding to trial, actively steering disputants towards settlement, potentially with the assistance of mediators, or even mediating the case themselves⁹⁷.

To this end, the culmination of the *As-sulh* process involves the formalization of the agreement reached by the parties. Given its contractual nature, the enforceability of a *As-sulh* agreement hinges on the voluntary acceptance and explicit agreement of both sides. If a voluntary agreement is achieved through any of the preceding stages, it can be formally recorded before a judge as a court order without the necessity of a full trial. This judicial endorsement grants the amicable settlement legal enforceability, ensuring compliance.

8.0 CONCLUSION

This paper analysed *As-sulh* stands as a cornerstone of dispute resolution in Islamic law, embodying a holistic approach that integrates legal, ethical, and spiritual dimensions. Its profound roots in the Glorious Qur'an, Sunnah, and scholarly consensus underscore a clear preference for amicable settlement over adversarial litigation, aiming to restore peace and mend relationships rather than merely adjudicate claims. This preference reflects a societal value placed on communal harmony and the preservation of familial bonds, particularly in matrimonial disputes where ongoing relationships are often inevitable. The multi-tiered process of *As-sulh* beginning with private efforts, progressing to family-based arbitration, and culminating in formal court-connected mechanisms demonstrates a graduated approach to intervention. This structured escalation prioritizes internal, community-driven solutions before engaging formal judicial systems, showcasing a flexible legal framework where traditional methods of dispute resolution are not just alternatives but are often formally recognized and integrated. This integration enhances accessibility and cultural resonance, potentially leading to more sustainable resolutions rooted in both legal authority and communal legitimacy.

⁹⁶ J Neusner and T Sonn, 'Comparing Religions Through Law: Judaism and Islam' (1999) 46-47.

⁹⁷ A Abdallah, 'Principles of Islamic Interpersonal Conflict Intervention: A Search within Islam and Western Literature' *Journal of Law and Religion* (2002) 15, 175.