



The Institute of Ismaili Studies

**Family Mediation in the Shia Imami Ismaili Muslim Community –
Institutional Structures, Training and Practice¹**

by Mohamed M. Keshavjee – PhD (London)

*Presented at the Seventh European Conference on Family Law – International Family Mediation,
Council of Europe, Strasbourg, France on 16 March 2009*

Abstract

In this paper, the author describes who the Shia Imami Ismaili Muslims are and the traditional ADR processes they have always followed based on the Qur’anic principle of *Sulh* (negotiated settlement) and the guidance of their hereditary Imams from the family of Prophet Muhammad (Peace of Allah be upon him). The paper shows how His Highness the Aga Khan, the 49th hereditary Imam, in the 1980s instituted a study of dispute trends among members of the Ismaili Muslim Community as part of a multifaceted endeavour towards improving the quality of their lives. The Aga Khan did this with a view to setting up Conciliation and Arbitration Boards for them under a global Constitution to enable them to settle their disputes amicably within the ethics of the faith. The paper highlights the training programmes he supported, the learnings that emerged from them and how best practices from these programmes have been developed and shared among members of the Ismaili Community and others.

Islam, like Judaism and Christianity, is a monotheistic faith whose most fundamental principle is the belief in the Supreme Being – God, or Allah in Arabic – who is unique and without equal or partners. The Shia Imami Ismaili Muslims, generally known as the Ismailis, belong to the Shia branch of Islam, of which the Sunnis comprise the other. The Ismailis live in over 25 countries of the world, mainly in South and Central Asia, Iran, the Middle East, as well as sub-Saharan Africa, Europe and North America. Ismailis affirm the fundamental Islamic Testimony of Truth, the *shahada*, that there is no deity but Allah and that Muhammad (Peace of Allah be upon him) is His Messenger. They believe that Hazrat Muhammad was the last and final Prophet of Allah, and that the Holy Qur’an, Allah’s final message to mankind, was revealed through him.

¹ I am grateful to Mr Shams Vellani, of the Institute of Ismaili Studies, London, for his assistance in formulating this paper and for reading my draft and making valuable suggestions. I am also grateful to Ms Izzat Nordling, of School of Oriental and African Studies, for translating the paper into French.

The use of materials published on the Institute of Ismaili Studies website indicates an acceptance of the Institute of Ismaili Studies’ Conditions of Use. Each copy of the article must contain the same copyright notice that appears on the screen or printed by each transmission. For all published work, it is best to assume you should ask both the original authors and the publishers for permission to (re)use information and always credit the authors and source of the information.



In common with other Shia Muslims, the Ismailis affirm that after the Prophet's death, Hazrat Ali b. Abi Talib (d.661), the Prophet's cousin and son-in-law, became the first *Imam* – the spiritual leader of the Muslim community and that this spiritual leadership – known as *Imamat* – continues thereafter by heredity through Imam Ali and his wife Fatima, the Prophet's daughter. Succession to the *Imamat*, according to Shia doctrine and tradition, is by way of *nass* or designation. It is the absolute prerogative of the *Imam-of-the-Time* to appoint his successor from amongst any of his male descendants, whether they be sons or remoter issue. His Highness the Aga Khan is the 49th hereditary Imam of the Shia Imami Ismaili Muslims. Born on 13 December 1936, in Geneva, Switzerland, he spent his early childhood years in Nairobi, Kenya. He attended Le Rosey School in Switzerland for nine years and graduated from Harvard University in 1959 with a BA Honours in Islamic History. He succeeded his grandfather, Sir Sultan Mahomed Shah Aga Khan, as *Imam* of the Ismaili Muslims, on 11 July 1957 at the age of 20.

Consistent with 1,400 years of Muslim tradition of leadership and ethics, covering all interpretations of Islam, as *Imam*, the Aga Khan not only guides his community in matters of faith but also leads the effort towards improving the security and quality of their lives and of all those among whom they live and who are in need, regardless of creed, gender or ethnicity. In keeping with this mandate, and in accordance with Ismaili history, tradition and the needs of the time, the *Imams* have given rules of conduct and constitutions in conformity with the Islamic concepts of unity, brotherhood, justice, tolerance and goodwill. In the modern period, the first Ismaili Constitution was ordained by the 48th Imam, Sir Sultan Mahomed Shah Aga Khan III, in 1905 for the Ismailis of East Africa. This gave the community a form of administration comprising a hierarchy of councils at local, national and regional levels, setting out rules of personal law to govern such matters as marriage, divorce and inheritance, as well as guidelines for mutual cooperation and support within the community and its interface with other communities. Similar constitutions were promulgated in South Asia under instructions from the *Imam*. All of them were periodically revised to address emerging needs.

In continuation of this tradition, the 49th *Imam*, Aga Khan IV, has extended this constitutional governance to other regions of the world – from Afghanistan and South Asia, through the Middle East and sub-Saharan Africa, to Western Europe and North America. In 1986, he ordained an Ismaili Constitution which, for the first time, brought under a common aegis, the self-governance of the global Ismaili community in order better to secure their peace and unity, spiritual and social welfare, as well as to foster fruitful collaboration among different peoples, to optimise the use of resources, and to enable the Ismaili Muslims, wherever they are settled, to make a valid and meaningful contribution to the improvement of the quality of life of the societies in which they live.

To achieve these ends, the Imam has established, within the framework of the Constitution, National, Regional and Local Councils responsible for overall social governance; and Central Institutions for the provision of services to the community in education, health, social welfare, housing, economic welfare, cultural and women's activities, youth and sports development. The Constitution also incorporates Religious Education Boards for the provision of religious education at all levels of the community, for the requisite human resource development and for research and publication. Under the



Constitution, the *Imam* has also established Grants and Review Boards to ensure financial discipline, probity and accountability in the use of resources; as well as National and International Conciliation and Arbitration Boards to encourage amicable resolution of conflicts through impartial conciliation, mediation and arbitration, a service which is being increasingly used, in some countries, even by non-Ismailis. In fulfilling the mandate to sustain social, economic, cultural and civil society development, the Imamate collaborates with national governments, regional and international institutions as well as civil society organisations. This paper highlights the work of the Conciliation and Arbitration Boards established under the Ismaili Constitution and more particularly the training programmes that have been conducted for them over the last decade, indicating some of the best practices.

Alternative Dispute Resolution and Islam

Alternative Dispute Resolution or ADR, as it is generally known, is deeply embedded in the Islamic tradition – whether Shia or Sunni. It is highly recommended in Islam’s scripture – the Holy Qur’an – and in the traditions of Prophet Muhammad, as well as in the teachings of the Imams from the family of the Prophet (*Ahl al Bayt*).

The Qur’an says:

“If you fear a breach
Between them two (i.e. husband and wife)
Appoint (two) arbiters,
One from his family,
And the other from hers;
If they wish for peace,
Allah will cause
Their conciliation:
For Allah has full knowledge,
And is acquainted
With all things”.

Qur’an (IV:39)

In another Ayat, the Qur’an states:

“Allah does command you
To render back your Trusts
To those to whom they are due;
And when you judge
Between man and man,
That you judge with justice:
Verily how excellent
Is the teaching which He gives you!
For Allah is He Who hears
And sees all things.”



Qur'an (IV:58)

This concept of reconciliation and harmony is also found in the traditions (*sunna*) of Prophet Muhammad whose life is filled with examples of mediated solutions to human problems. There is a well documented incident that during the reconstruction of the Ka'ba, the building in Mecca to which Muslims go for pilgrimage, a dispute arose over the placing of the Black Stone (*Hajr al-Aswad*) into the building. Each of the four tribes of the Quraysh wanted to have the honour of placing the stone, to the exclusion of the others. An impasse arose and the matter was referred to the Prophet. He asked each of the contesting tribes to choose a leader. He then spread a full sheet of cloth on the floor and placed the stone in the centre, asking all four leaders to each hold it at one end and raise it together. Thus, a serious conflict was averted by the Prophet's prudent action in giving all four leaders an equal honour of placing the stone.

Hazrat Ali b. Abi Talib, the fourth caliph of Islam and the first Shia Imam, extolled the virtue of dialogue and the value of compromise. He likened the assistance given to solve human disputes to prayer and encouraged negotiated settlements within the principles of the ethics of the faith.

In Islam, governance of the polity requires scrupulous adherence to the principles of justice and equity. In the words of Hazrat Ali, the person who is chosen to dispense justice or decide matters should be one

“who is full of learning, clemency and piety, who will not be disturbed by disputes, who will not be angered by opposing parties, who will not be exasperated by the faltering speech of the stammerer... who will not fall a prey to temptation nor to fulsome praise...”²

If a dispute arises between two parties, the *muslihun* (dispute resolver) is obliged to persuade the parties to settle it within the community's own provisions for mediation, and ensure its settlement in the fairest manner possible even if it hurts either of them personally.

For the Qur'an says: *“O believers, be you securers of justice, witnesses of Allah, even though it be against yourselves, and your parents and kinsmen, whether the man be rich or poor”³.*

The ethic of fair mediation is frequently expounded in the Qur'an which says:

“He who shall mediate between people for a good purpose shall be the gainer by it. But he who shall mediate with an evil mediation shall reap the fruit of it. And Allah keepeth watch over everything.”⁴

Elsewhere in the Qur'an, it says:

“If two parties of the believers fight, put things right between them; then, if

² Da'aim al-Islam, Al-Qadi al-Numan, v. 1 and 2. ed. AAA Fyzee, Dar al-Adwa, Beirut, 1991.

³ Q.4:135 (The Holy Qur'an – tr.: Mir Ahmed Ali).

⁴ This verse Q4:85 is said to have been revealed in connection with a dispute between the tribes of Aus and Khazraj of Medina, which the Prophet settled, reconciling the tribes in peace and harmony. (The Holy Qur'an – tr.: Mir Ahmed Ali).



one of them does wrong against the other, fight the insolent one till it reverts to Allah's commandment. If it reverts, set things right between them equitably, and be just. Surely, Allah loves the just. The believers are indeed brothers: so set things right between your two brothers, and fear Allah; haply so you will find mercy."⁵

According to a Prophetic tradition, the reward for bringing about reconciliation between quarrelling groups is equal to that of prayer. This ethic is highly commended in Hazrat Ali's exhortations:

*"Do not separate yourself from your brother unless you have exhausted every approach in trying to put things right with him... Do not be harsh with your brother out of suspicion, and do not separate from him without first having tried to reason with him... Seek reconciliation with your brother, even if he throws dust at you."*⁶

According to a Shia tradition, Imam Husayn was once asked how a dispute between two members of his community, who had fallen out over the issue of debt or inheritance, should be handled. The Imam replied that the parties should refer to a qualified person from among his followers.

Similar advice occurs in the teachings of Imam Jafar as-Sadiq who, for instance, is reported to have said:

*"The charity which Allah loves the most is the peace re-established between quarrelling parties."*⁷

In the Fatimid Ismaili tradition, if the *Muslihun* (dispute resolver) finds himself unfit or unable to discharge his obligations, he must resign from his office, so that some other person, fit for the post, may be appointed in his place. It is also his duty to ensure smooth transition in office by training, educating and generally preparing people who may be able to replace him. The *Muslihun* must never select or recommend candidates for office out of consideration of their material affluence, friendly or other relations and clientage or in fulfilment of a promise, or as a favour returned or under a threat.

Sulh (negotiated settlement) in Muslim contexts

R. Jennings in his *Kadi Courts and legal procedures in the 17th century Ottoman Keysari*, says:

"Muslihun (those who help negotiate compromise and reconciliation) were regular features of the court. Often, litigants reported to the court that *Muslihun* had negotiated *sulh* between them, indicating that a compromise had been accomplished away from the Court."

Just to give one particular example: the Jordanian Law of personal status 1976 article 132

⁵ Q.49:9-11.

⁶ The Sayings and Wisdom of Hazrat Ali, England, 1992.

⁷ Among the footnote commentaries of Mir Ahmed Ali in his translation of the Holy Qur'an.



has an elaborate procedure on reconciliation and arbitration. It outlines in great detail the actual procedures to be followed and provides, *inter alia*, for two arbitrators of upright character to intervene to bring about reconciliation. Such persons have to be people of experience, integrity and ability to effect reconciliation.

Similar provisions exist in the Personal Law codes of countries such as Syria, Egypt, Kuwait, Libya, Algeria, Morocco, Tunisia, Iran, Iraq and Malaysia, as well as the Muslim Family Law Ordinance of Pakistan.

So, basically, Islam premiates reconciliation and settlement of disputes outside an adversarial, formalised context.

Islam also premiates certain rights and assigns certain corresponding responsibilities to persons which are pertinent to the whole area of dispute resolution. These are rights such as the right to privacy and the right to justice. Respect for privacy is covered by a number of rules which protect an individual's life in the home from undue intrusion from within or without.⁸ In addition, the Qur'an recognises the right of human beings to be protected from defamation, sarcasm, offensive nicknames and backbiting. It also states that no person is to be maligned on grounds of assumed guilt and that those who engage in malicious scandal-mongering will be grievously punished in both this world and the next.⁹ The reposing of confidence in someone by sharing confidential information with them is treated as *Amanat*. *Amanat* is a trust that one leaves with someone to be returned in full at a given time and place. *Amanat* belongs to another person, that he or she gives to a person for safe keeping and to abide under the rules of the pact (covenant) he or she has made with that other person. *Khianat* is taking something out of what is given to one for safekeeping and betraying the trust of such person. Any person who betrays another person's confidence, does not keep the other person's confidential information secret and does not complete his or her duty as promised, violates an *Amanat* for which he is responsible and is guilty of *Khianat*. Islam distinguishes between freedom and a license. The former has to be used responsibly, whereas the latter can become an abuse of the former.

Over the centuries, Ismaili communities in various parts of the world, have been conducting their own ADR processes based on the ethics of the faith as guided by the Imams of the Time. In the early 1980s, the Aga Khan appointed a team of community leaders to study the needs of the community globally and to reflect on the type of issues they would be facing in the years to come, given the changing global situation. He was concerned about the massive costs of litigation faced by members of the Ismaili community in various parts of the world. Not only were the legal costs very high, but the legal procedures, in many countries, were particularly lengthy and did not always result in outcomes that conformed with the principles of natural justice. The Aga Khan was concerned about compliance with the ethics of the faith which promote a non-adversarial approach to dispute resolution in keeping with the principles of negotiated settlement (*sulh*) enshrined in the Holy Qur'an.

⁸ See, for instance, Surah 24: An-Nur: 27-28, 58; Surah 33: Al-Ahzab: 53; Surah 49: Al-Hujurat: 12.

⁹ Surah 49: Al-Hujurat: 11-12.



The study indicated that a majority of the cases were in the field of family disputes and that the national courts in the countries, where the disputants were settled, were not always able to comprehend the inter-generational attitudinal issues involved, let alone being able to resolve them. This syndrome is very much in keeping with the notion of the “limited remedial imagination” that Menkel-Meadow attributes to the adversarial system which focuses on a zero-sum numbers game where the “winner takes all”.¹⁰ It was therefore decided by the *Imam*, in consultation with the leaders of the various Ismaili communities worldwide, to build on the community’s existing tradition of settling disputes amicably within the ethics of Islam and to establish Conciliation and Arbitration Boards at various levels of social governance in the Ismaili communities throughout the world. It was also felt that the system should be such that the first submission of an issue to an arbitral or mediational body should ensure the highest degree of proficiency, probity and fairness so that the number of cases which go for appeal would be minimal and that the process would be seen as being equitable, fair and cost effective. The Aga Khan’s advice was that such a system should endeavour to resolve disputes within the community without the disputants having to resort to unnecessary litigation which is time consuming, expensive and destructive. The Aga Khan saw the amicable resolution of disputes, without resorting to a court of law and within the ethics of the faith, as an important aspect of the improvement of the quality of life of the Ismailis globally. Consequently, the Ismaili Constitution of 1986 made provision for the establishment of the Conciliation and Arbitration Boards.

Under this global Ismaili Constitution, provision is made for a National Conciliation and Arbitration Board (NCAB) for each of the territories specified in the Constitution and to be known as “His Highness Prince Aga Khan Shia Imami Ismaili National Conciliation and Arbitration Board” for the territory for which it is formed. Submission to the jurisdiction of the Board is made on a purely *voluntary* basis and the Boards are made up of trusted individuals, mainly volunteers, from various fields of endeavour from within the Ismaili community. The Boards’ main task is to assist in the conciliation process between parties in differences or disputes arising from commercial, business and other civil liability matters, domestic and family matters, including those relating to matrimony, children of a marriage, matrimonial property, and testate and intestate succession. The Boards also act as an arbitration and judicial body, and accordingly hear and adjudicate upon such disputes. The Constitution outlines the composition of the Boards and stipulates their tasks which, *inter alia*, include providing rules of procedure and the authority to constitute Regional Conciliation and Arbitration Boards (RCABs) within their jurisdictions. The National Conciliation and Arbitration Board also functions as an appeal Board for any decision of any Regional Conciliation and Arbitration Board within its jurisdiction.

At the international level, the Constitution provides for an International Conciliation and Arbitration Board (ICAB) composed of a Chairperson and six other members. The present panel is made up of lawyers and non lawyers from Canada, India, the United Kingdom, Kenya and Pakistan. The ICAB assists in the conciliation process between

¹⁰ Menkel-Meadow, C. (2003) *Dispute Processing and Conflict Resolution*. Aldershot: Dartmouth Publishing Company and Burlington, MA: Ashgate Publishing



parties in the categories of disputes mentioned above. ICAB also acts as an arbitration and judicial body and accordingly hears and adjudicates upon the above matters. The ICAB hears disputes that are international in scope but also acts as an appeal Board for appeals from decisions of any National Conciliation and Arbitration Board worldwide. A decision by the ICAB is final, conclusive and binding upon all the parties, provided they have voluntarily submitted earlier to be so bound.

It is worth mentioning that in some countries such as India, Kenya and Uganda, the law of the land recognises the Ismaili Community's jurisdiction over many aspects of Ismaili personal law. In these countries, the NCABs function as tribunals with the authority to grant divorces and make custody and other ancillary orders. The ICAB also hears appeals from these decisions.

The Ismaili Community's National Conciliation and Arbitration Boards are operative today in Afghanistan, Canada, France, India, Iran, Kenya, Madagascar, Pakistan, Portugal, Syria, Tanzania, Uganda, the United Kingdom and the USA¹¹. These Boards consist of a number of outstanding volunteers ranging from judges and lawyers to doctors, teachers, businesspeople and home engineers, carefully chosen by the Imam in consultation with the leaders of the community for their probity, proficiency and credibility in the community. At the national and international levels, they are appointed directly by the *Imam-of-the-Time*. Being in different fields of endeavour, coupled with their years of community experience, these members bring to this exercise an unique optic to deal with the polyvalent issues that Alternative Dispute Resolution lends itself to. In some countries, e.g. Canada, the Chairperson of the NCAB is a female, Family Court Judge¹², while in Pakistan, the Chairman, at one time, was a leading clothing manufacturer. Both men and women serve on the Boards in various capacities. The Boards also include people of different generations – in some cases, there are young volunteers who have specialised knowledge in fields such as accountancy, law, ADR, counselling and education.

In 2000, His Highness the Aga Khan gave guidance that he wanted the Conciliation and Arbitration Boards globally to be acquainted with “state-of-the-art” training in Alternative Dispute Resolution techniques that were then beginning to develop in various parts of the world. While non-lawyers on the Board were often not fully aware of the laws obtaining in their respective jurisdictions, lawyers, in such jurisdictions, were not fully acquainted with the contemporary principles of mediation. There was a need to acquaint members of the Boards with the contemporary approaches to ADR which found resonance with the ethos of the community that has always favoured a non-adversarial approach to dispute resolution as part of the ethics of the faith. To further this aim, His Highness the Aga Khan agreed to provide the resources for such a training programme and since 2000, he has unstintedly supported the programme globally. Consequently, the first training programme commenced in London, UK, in 2000 and was conducted by professionals from The Institute of Ismaili Studies in London, the School of Oriental and African Studies of London University and two leading British Training Organisations:

¹¹ In some of these countries, there are also regional and local boards.

¹² Females are also appointed as Presidents of National and Local Councils.



National Family Mediation (NFM) and the Centre of Dispute Resolution (CEDR).

The initial training programme was conducted with sixteen participants – mainly NCAB Chairs from Africa, Europe, North America, Asia and the Middle East. While the participants were excited to learn about a new process in dispute resolution, there was an element of anxiety discernible among some of them. One of the trainers from England, Tony Whatling, with some background in cross-cultural mediation training, immediately picked this up. He realised that the particular model that the trainers were using for training was basically a Western, individualistic, problem-solving model suitable for a Western context but not totally suitable for a communitarian culture to which most of the Ismaili communities belong. He immediately changed the pedagogy and introduced a concept known as “community sculpt”, whereby he asked the participants in the programme about the people in their particular societies who would be concerned about the outcome of a family dispute. The participants came up with a range of people, e.g. paternal grandparents, maternal grandparents, siblings, uncles, aunts, teachers, employers, employees (if the couple were running a business), etc. He then asked the participants to pair up and each pair represented one interest group whose task was to ensure whether the mediator was taking cognisance of their interest¹³. Like this, the mediator became more cognisant of issues impacting the couple’s post divorce life against a wide matrix of communitarian concerns. This pedagogy, since, has become part of the curriculum developed for usage in the Ismaili NCAB training programmes globally.

Another issue that came up in the first training programme was the issue of reconciliation of the parties in a family dispute. Though marriage in Islam is viewed as a contract and not as a sacrament, and in the event of an irretrievable breakdown of a marriage, the parties are expected to part mutually, provided they treat each other ethically, divorce is not viewed lightly. Islam permits divorce, but only as a last resort. Western family dispute resolution models which are used globally today do not provide processually for a possibility of a reconciliation to save the marriage. This absence in the initial training model gave rise to a concern on the part of some participants who felt that their task in resolving family disputes within a faith-based dispute resolution system, was not primarily to preside over the breaking up of a marriage but to see how the parties could be brought together again, if a chance for reconciling them was still possible. Over a period of time, this concept, as well, got built into the curriculum of the Ismaili NCAB training programmes worldwide.

The major challenge was to respond to the excitement that the initial training programme engendered in the participants – all of whom asked for the training to be conducted in their respective countries and in their respective languages. This clearly was a daunting challenge and one which no training organisation was yet geared to face. With the financial support of His Highness the Aga Khan, the Department of Community Affairs at his Secretariat at Aiglemont in France, has undertaken this challenge and embarked on a training programme to train all the CAB members globally since 2001. To-date, some

¹³ Asking them to use flipcharts, he got them to note all the concerns they had and pasted these on the walls. He then conducted a role-play and asked them to observe it and to see if the mediators were taking their concerns on board.



800 mediators in over 15 countries of Asia, Africa, Europe, North America and the Middle East have been trained in modern techniques of mediation in both the family and commercial fields. In Portugal, the Ismaili NCAB training programme trains human resources in mediation for the Ministry of Justice. In Syria, for example in 2006, seven High Court judges from outside the Ismaili community participated in the mediation training programme conducted in Salamieh. In India, in 2006, three High Court judges attended the training programme, and one, a female judge, participated as faculty.

Over the past decade, these training programmes have developed a great deal of educational materials in the different languages in which these programmes are conducted. The training programme now has:

- Two training DVDs which are translated and dubbed in Arabic, Farsi, Portuguese and Urdu, which show actual role plays and highlight examples of mediation techniques, such as mutualising, normalising, summarising and future focus. They also show how to overcome an impasse in mediation.
- Written materials on mediation translated into the languages mentioned above.
- Four skilled mediator, translator, cultural adaptation specialists from Iran, Syria, Afghanistan and Tajikistan, who do sequential translation on these programmes for their respective countries' training programmes.
- Five volunteers – two of whom are past mediators with NCAB experience of over 6 years each and three young lawyers (including two women) from Portugal, France and the United Kingdom.
- Daily evaluation templates to gauge participant reaction to the learning process with a computer-based system of feedback before the next day's presentations.

Some best practices that have developed

The training programmes have found great acceptability in the various countries because of the following best practices:

- (a) A joint conceptualisation of the programme from inception to implementation with the field developing its own scenarios for role plays which participants love to do.
- (b) Readiness to adapt the curriculum to different cultural needs provided it does not conflict with the core “non negotiable” principles of mediation or with the ethics of Islam which are compatible with the core values of mediation.
- (c) Involvement of both male and female dispute resolvers from within each community where the CAB system operates.
- (d) Daily evaluation of the programme with a readiness to adapt and modify the approach by giving adequate feedback the next morning to the participants and demonstrating to them how and where the teaching approach is adaptable and where it is not.



- (e) Conducting a number of role plays. Participants love role plays. Many people learn best through the experiential approach and the role plays lend themselves to this form of learning.
- (f) Involving lawyers and non-lawyers in the training programmes together and showing them how both legal and non legal perspectives are required to reach *pareto – optimal* outcomes which are in the best interest of the parties and their families and societies. For non-lawyers, the programme instils an understanding of the reality that all “negotiation takes place within the shadow of the law” and that the law cannot be ignored. For lawyers, it helps to expand the “limited remedial imagination” inherent in the adversarial system. Participants realise through this interaction that a combination of thinking and approaches is what leads to a good dispensation of an issue and not necessarily the particular methodology that is applied.

Practice

As far as practice is concerned, different Boards follow their own procedures with a set of rules provided by the ICAB. These Boards, as mentioned, always work within the laws of the different countries under whose jurisdictions they operate and develop their own best practices which they share with other Boards. For example, in Canada, the NCAB, between 2005 and 2008 handled some 500 cases of which 70% were matrimonial, 20% commercial and 10% other. The success rate they reached was 75% and the average time it took to handle a case was 18 hours. As part of its best practice, the NCAB and the Local Boards in the Provinces, provide Post Settlement Services in the form of referral services to other institutions of the community that deal with post conflict rehabilitation. The Chairs try and ensure that the parties have complied with their agreements and work closely with other institutions in the community to undertake initiatives to minimise conflict wherever this is possible.

The Boyd Commission, set up by the Ontario Government, to review faith-based arbitration in the Province in its report stated:

The Ismaili CAB system is rooted in tradition, yet its modern infrastructure interfaces comfortably with the national legal systems within which it functions. The CAB system is grounded in the ethics of the faith and complies with the laws of the various lands where the Ismaili community lives. In addition, the community context of the CAB system makes it a system that goes beyond pure dispute resolution, addressing also dispute prevention and the possibility of wider support for parties to a dispute.

The Ismaili CAB system in Canada serves the Ismaili community well and has demonstrated its value and effectiveness as an ADR system. It operates in a manner that keeps at the forefront the need for equity among parties whatever their gender, financial resources or relative positions. The system respects the parameters of the Ontario Government's Arbitration Act, 1999 (sic) which recognises the value and contribution of ADR systems and encourages the resolution of disputes outside the legal system



in a fair and equitable manner within the confines of the law of the land".¹⁴

In India, for a similar period, the CAB system handled over a thousand cases. Among their best practices are a policy to try and finalise a case within 4-6 months, to provide for the parties to gain advice on their legal situation and the impact certain decisions will have on their rights and liabilities and, wherever possible, to have a dialogue with the parties even after they have decided to go for an appeal to see if the matter can still be resolved amicably.

To understand Muslim ADR systems and processes, one has to appreciate the plurality of legal schools of Islam. There is no one monolithic version of “the *Sharia*”. Legal pluralism has always been a part of the dispute resolution landscape of Muslims. However, the classical *Sharia* acknowledges the higher values that the *Sharia* is meant to protect which is life, religion, property, offspring and intellect. This is known as the *Maqasid al-Sharia* or purposes behind the *Sharia* and its underlying principles include the public welfare of the community and the particular context in which the community has to live. Among the many diverse schools of jurisprudence which make up the Islamic Ummah is the Shia Ja‘fari *Madhab* (school). In explaining the role of Muslim schools of law in contemporary Islam, His Highness the Aga Khan, in a statement to the International Islamic Conference held in Amman, Jordan, in July 2005, referred to the need of Muslims to define which *Madhaib* will apply to the Ummah – a clarity which is critical for modern life in Islam as is evident in areas such as law, access to Islamic banking, or in dealing with the challenges of the rapid generation of new knowledge such as in bio-medical and other fields. In his message, he also explained that Ismailis historically adhere to the Ja‘fari *Madhab* and other *Madhaib* of close affinity and this continues, under the leadership of the hereditary Ismaili *Imam-of- the-Time*. This adherence is in harmony also with the Ismaili acceptance of Sufi principles of personal search and balance between the *Zahir* and the spirit or the intellect which the *Zahir* signifies.¹⁵

The experience of the Ismaili NCAB programmes worldwide has shown that a good organised institutional structure is vital for an effective dispute resolution system. But this, alone, is not enough. Ongoing training is critical to ensure that informal justice does not degenerate into inferior justice. Training, to be meaningful, has to be a dialogical process with the trainer, working in multicultural settings, assuming, in J.P. Lederach’s words “a posture of leadership that is closer to a facilitator of a group process rather than that of an expert in a particular model of conflict resolution”. The trainer, as facilitator, envisages the overall training group as made up of unique cultural and ethnic groups “more like a garden salad than a melting pot”. According to Lederach, “each has valid and important insights and knowledge about the problem, the possible options, the mechanisms and resources their particular community has or needs, and the viability of

¹⁴ Boyd, Marion (2004) *The Boyd Commission Report 2004. Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion* <<http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/boyd>>, accessed 5 May 2005.

¹⁵ http://www.iis.ac.uk/view_article.asp?ContentID=105673.



proposed solutions”.¹⁶

These training programmes are based on a combination of an elicitive and prescriptive model and, as stated, embody some of the best practices available in the field. New insights are constantly being gained from them – particularly the need for greater understanding of cross-cultural sensibilities. Alternative Dispute Resolution (ADR), as formulated today in the Western world, has a great deal to teach, but at the same time, it also has a great deal to learn from cultures that have a much greater relational approach to both the conceptualisation of conflict and its resolution. An individualistic approach to a problem, based on an assumption that each human being is an island on its own, may not work in societies where human beings are more closely woven into a web of community relationships. Societies in Latin America, Africa, Asia and many parts of the Muslim world have traditional approaches to resolving disputes within a community setting which they have been using long before the formal judicial apparatus came into being. These approaches constitute natural pathways to dispute resolution. Reinvigorating them would lead to giving back to these societies the tools that they have always been using and which, in real life, will work better in ensuring that the healing process that conflict resolution is supposed to engender, does, in fact, take place.

The process of dispute resolution in the Ismaili community, as this paper has shown, is very much linked to the concept of the improvement of the quality of life, which the *Imam* constantly seeks for his followers and all those among whom they live and who are in need. The Ismaili dispute resolution system works in close synergy with a number of institutions of the community to ensure that post dispute rehabilitation is possible for the process of healing to take place. Often this is accompanied by the guidance of the *Imam* which is transmitted to the community globally. For example, in Tajikistan in 1995, following the civil war, the Imam said publicly to congregations numbering in the hundreds of thousands throughout the mountains of the Pamirs:

“As I look to the future of the Ismaili Community world-wide, living in many parts of Central Asia, and in more than 25 different countries, and as I look to the future of Tajikistan, with its variegated population, and as I look at the Ummah, I conclude that every, and all those peoples, if they wish to achieve a better life for themselves in the generations ahead, must absolutely achieve peace within their societies, and because we are Muslim, conflict must be replaced by a peace which is predicated on the ethics of our faith. We must not kill to resolve our differences, whatever they may be. They must be resolved, as I have said, within the ethic of our faith, through dialogue, through compassion, through tolerance, through generosity, through forgiveness and through kindness. These are the pillars on which to build a strong society in modern times - not through weapons”.

The Ismaili Conciliation and Arbitration system, like the Ismaili Constitution itself, are grounded, both in the ethics of the faith but also in the laws of the land where they

¹⁶ Lederach, J. P. (1995) *Preparing for Peace: Conflict Transformation Across Cultures*. Syracuse, NY: Syracuse University Press.



operate. They aim to give expression to a deep social conscience which characterises the community wherever it lives. In the words of His Highness the Aga Khan:

“The Ismailis have always prided themselves on their highly developed social conscience. Our faith teaches us that we have obligations far beyond our own or even our family’s interest. By the way you conduct your daily lives, by the compassion you show to your fellow men and women, and above all, by your faith in God, you will ultimately be judged.”¹⁷

¹⁷ Speech of His Highness the Aga Khan, Installation Ceremony, Bombay, 15 March, 1958.