

ADR in Employment Disputes: Considering Common Law Vis-a-Vis Islamic Law Principles

¹Kamal Halili Hassan and ²Rabiu Sani Shatsari

¹Faculty of Law, Universiti Kebangsaan Malaysia Bangi, 43600 Selangor, Malaysia

²Faculty of Law, Kano University, Bayero, Nigeria

Abstract: Employment disputes are the prevailing norm in any society or economy. Conflict occurs when there is tension or problems between employers and employees whether driven by trade unions or individuals. The conflict at times results in a dismissal of workers and ends up in courts or tribunals. Employment disputes can be resolved a variety of ways such as through the courts or by way of arbitration, conciliation and mediation. This study examines these three methods from the perspectives of common law and Islam. Islam has indeed contributed greatly to the use of these three methods in resolving disputes.

Key words: ADR, employment dispute, law, Islamic law, common law, trade unions

INTRODUCTION

Employment disputes are a common phenomenon in any country (Samuel, 1990; Maltby, 2003). Economic growth has created a large pool of labour. Thus, it is inevitable that the employer-employee relationship is sometimes affected by problems and disputes that have to be resolved for the good of the countrys economy (Shinning and Jie, 2010; Freyens, 2011; Cooke and Geoffrey, 2011). The law requires companies or employers to create internal mechanisms for the resolution or settlement of disputes (Sanders, 2010). However, if these internal mechanisms fail to resolve the disputes, the parties will have to resort to external mechanisms (Menkel-Meadow, 2011; Shen, 2008; Bendersky, 2003; McCabe, 1997). There are various forms of mechanisms provided by the law whether by way of conciliation, mediation or arbitration. Employer-employee relationship disputes occur either individually or collectively (Lewin, 2005). The dispute is said to occur individually if it has implications for service contracts. The dispute is in a collective form if it occurs between the employer and a group of employees or trade unions and is mainly based on collective agreements or trade disputes (Marcum and Campbell, 2008). Malaysia as a developing country, practices these three methods to resolve employment disputes (Mohamed and Baig, 2009). The number of employment (dismissal cases) and trade disputes in Malaysia is quite high as shown in Table 1. Although, legally speaking, Malaysia is an Islamic country, it does not practice the Islamic legal system in its totality (Bari, 2003). In respect to employment law, the applicable law

Table 1: The number of employment and trade disputes in Malaysia

Items	Balance from previous years	Received until September 2009	Resolved	Balance
Trade disputes	101	253	252	102
Claims for Reinstatement	1288	3902	3453	1737

www.jpp.mohr.gov.my

is Malaysian law-backed by statutes and case law-largely influenced by English/common law. However, the local system pertaining to Malaysian employment law has developed to the extent that there can say that the present law is Malaysian law. Although, the Malaysian courts have from time to time followed the common law principles as propounded from English cases, the accepted position is employment law in Malaysia has much local flavour. To what extent does Malaysian employment law resemble the Islamic law principles that form the theme of this study? The researcher wishes to advocate that there is a great resemblance between the principles of Malaysian employment law and Islamic law, especially in dispute resolution (Smith, 1994).

ADR IN EMPLOYMENT DISPUTES: A CONCEPT IN INTERNATIONAL NORMS

ADR has become a famous mode of disputes resolution nationally and globally in many aspects of business and non-business activities. In the context of employment disputes, they can be resolved by way of a normal litigation process or by Alternative Dispute Resolution (ADR) (Goldberg *et al.*, 1999). However in many jurisdictions, employment disputes are presented

more often to the ADR mechanism; only appeals are forwarded to mainstream courts (Roberts and Palmer, 1998). Conciliation and mediation form a major component in ADR in employment disputes (Black, 2001). Mohamed and Baig (2009) states that conciliation seeks to create harmony, compatibility, agreement or consensus. It is a process where a third party intervenes to mediate between the disputing parties. He says that mediation is considered an effective and affordable alternative to litigation. The word mediation derives from the Latin word medium which means middle. What is the difference between mediation and conciliation? Mediation is more gentle and facilitative in nature. A mediator does not recommend and prescribe the terms to the settlement where as in conciliation, the conciliator adopts a rather strong stance in advising parties.

McCormack and Lanyon (1997) argue that the process of mediation is not bound by the rules of procedure and substantive law. The same principle applies in the conciliation method. In conciliation, the conciliator is not bound by legal principles such as rules of natural justice (although, he embraces the spirit of it) and the law of evidence. A conciliator may propose to the parties a number of approaches to reach a settlement. What is important in conciliation is that it is privately run. What happens during conciliation cannot be used as evidence in court. Conciliation can occur voluntarily or forcibly. The latter is by the state or legislation. Mediation, on the other hand is always voluntary carried out. Writes that mediation is a procedure in which a neutral third party facilitates communications and negotiations between parties to a dispute in an effort to achieve resolution by agreement of the parties. Notes that the essence of mediation is the common sense that the intervention by invitation of the parties of an experienced, independent and trusted person could be expected to help the parties settle their quarrel by negotiating in a collaborative rather than adversarial way. Hassan (2006a, b) argues that ADR is suitable for resolving employment disputes. He writes that ADR in employment law ought to be seriously considered as it would lighten the burden on the Industrial court and the Mainstream courts. Some researchers believe that mediation is no different from conciliation because in practice, it is difficult to distinguish between the two (Boon *et al.*, 2010). In mediation, the mediator may attempt to encourage the exchange of information rather than pursue a quick settlement. The mediator helps the parties to understand each other's views, letting them know that their concerns are understood; promote a productive level of emotional expression and addresses differences in perceptions and interests. Arguably, there are few differences between

mediation and conciliation. Mediation is seen more as a facilitative manner in which the mediator does not recommend or prescribe any other terms as the starting point for peace efforts. In mediation, it is up to the parties to propose terms of settlement between them. However, in practice or during the mediation process, the dividing line between mediation and conciliation is very fine. It is actually difficult to distinguish between these two processes. Arbitration in ADR is a mechanism frequently used in a dispute. It has become an important second mechanism after adjudication in mainstream courts (Othman, 2002). Arbitration is the referral of disputes to a third party acting as a referee to resolve a dispute.

Arbitration is provided by the authorities and some arbitrators are appointed by the parties concerned. Arbitration starts with the consent of both parties to refer their dispute to an arbitrator. In contrast to conciliation and mediation in which a middle man does not make a decision in arbitration, judges make decisions binding on the parties. Arbitration in employment dispute is commonly provided by the state. It is unlike arbitration as practiced in business or commercial disputes where parties refer their disputes to a private arbitrator or agency.

THE EMPLOYMENT DISPUTE RESOLUTION PROCESS IN MALAYSIA

Admittedly, a significant number of literature has discussed the employment dispute resolution in Malaysia (Hassan, 2006a, b, 2007; Mohamed and Baig, 2009; Mohamed, 2005, 2007), thus it is suffice to only highlight the interesting features in this part. In Malaysia, a hybrid mechanism is used in the settlement of trade disputes involving methods of conciliation, mediation and arbitration (Disputes can also be submitted to the civil courts for adjudication). The resolution process is provided under Sections 18 and 20 of the Industrial Relations Act 1967 (IRA) (Fig. 1). Conciliation is the 1st step in the resolution process. This is a concept of the ADR system that is provided by the government. Thus, it is free of charge. The conciliator who is a government officer will conciliate the dispute. In such a process, he is not bound by any technical rules or procedures. The law says that he may take such steps as necessary in resolving the disputes. Disputes may end at this stage if a compromise or settlement is achieved otherwise, the case is be submitted to the Minister of Human Resources



Fig.1: The resolution process

Table 2: The statistics of cases referred to and settled by Industrial court

Subject	2000	2001	2002	2003	2004	2005	2006	2007
Total cases carried forward	1524	2017	2074	2098	2331	4143	3723	4566
Total cases referred	1050	1056	1092	1085	3406	1859	2990	2346
Total cases heard/given award	726	1026	1081	1026	1911	2403	2332	2599
Total cases pending	1868	1935	2098	2331	3966	3723	4566	4612
Total cases settled	706	963	956	887	1788	2209	2233	2367

(www.mp.gov.my/mp-baru/biver/temid68bi.htm)

for further action. The minister then makes a decision either to refer the case to the Industrial court or not. The decision of the minister is final and conclusive; in practice however, any aggrieved party may challenge the minister's decision by way of judicial review. In *Minister of Labour v Wix Corporation*, South East Asia Bhd. (1980), the court held that the Director General (DG) has discretion to determine the process or method of conciliation; this is because he only discharges his duty administratively and not judicially.

Justice Syed Othman said that under Section 20 (2), the DG has wide discretionary power to take any necessary steps he thinks suitable to resolve a dispute. He might speak to the parties individually or write to them to determine their status or call for a meeting so that he could guide them to a settlement. He could appoint other officers to represent him. He or his representatives can refuse to engage with an employer or an employee's agents, whether they are lawyers or not. In this case, the court held that the parties are not entitled to be given copies of the reports prepared by the DG as the right to natural justice is not applicable at this stage. The DG's role is only administrative. He is not making a decision; he only encourages parties to come to a settlement.

The Malaysian system also introduces mediation as an ADR in employment disputes (Mohmed *et al.*, 2009). Interestingly, mediation here is annexed court mediation. In other words, the court before proceeding with the hearing may advise the parties again as a last resort to have their case mediated. This mediation will take place before another Chairman of the court. Strictly speaking however, there is no legislative provision to support this mediation system.

Nevertheless, Industrial Court Practice Note No. 3 of 2010 provides an early case assessment for parties to evaluate their case and if needed, settle their case through mediation. There have been a good number of cases of late settled by way of mediation as reported by the Industrial court. Examples of such cases are; Raden Likom in 2007, Manulife Insurance in 2007, Foo Kee Seong in 2007, Mok Mun Pong in 2007, Goh Keat Hin in 2007, Yahaya Mohd Tap in 2007 and The City Bayview Hotel Penang in 2007. Arbitration is a common form of adjudication in Malaysia (Anantaraman, 1997). However, the arbitration of employment disputes here is handled by the Industrial

court, a specialised institution established under the Industrial Relations Act, 1967. What is the status of the Industrial court? In the case of *Telekom Malaysia v. Northern area Kutty Krishnan a/l Sarguni Nair*, Judge Abdul Hamid Mohammed stated that the Industrial court is actually a court of arbitration.

It is not bound by technical issues, procedures or evidence. In this context, the court is acting in accordance with the principles of equity, good consciousness and merit of the case and should not be bound by technicalities. However, the arbitration process adopted by the Industrial court may resemble the mainstream court adjudication style as it involves the examination of witnesses and documents, submission of which involves questions of admissibility (Hassan, 2005). Furthermore, the hearing is presided over by a chairman and parties represented by lawyers who are trained for and exposed to trials in the mainstream courts. Although, there was criticism on the performance of the Industrial court in resolving employment disputes (Table 2). The statistics of cases referred to and settled by the Industrial court and it does show that the system was quite efficient (Table 2).

A COMPARISON OF ADR IN ISLAM AND MALAYSIAN EMPLOYMENT LAW

Islam recognises both adjudication and other forms of dispute-resolution mechanisms. Adjudication by a single judge is normally used in a trial for hadd offences which carry a fixed penalty in Islamic law. This form of adjudication involves a judge, assisted by the prosecutor and the defence which is usually used in some Muslim countries, modelled after the early days of Islam. Alternatively, other forms of disputes which do not involve the hadd offences are resolved by other means which in modern terms is referred to as ADR. In fact in Islam, ADR is firmly rooted in its teaching and precepts. One writer says that ADR is actually not a Western concept or a new mechanism but rather it is the basic idea of an amicable settlement which was known in every civilisation in the past including Islam (Hassan, 2006a, b; Saleh, 1984; El-Ahdab, 1990). Employment disputes fit into the concept of ADR as practised in Islam. In Islam, employment relationships are anchored on the concept of brotherhood (Syed and Ali, 2010). Employees are not

cattle and they should not be treated unfairly and unequally by their employer (Ramzan, 1992). Thus, any problem that occurs between an employer and employees should be resolved amicably and the ADR system is very suitable to that end. Litigation is not encouraged in Islam, especially in disputes such as employment (Hassan, 2006b). At least five forms of ADR can be identified in Islam (Tyser *et al.*, 2001):

- Sulh which can be roughly translated to as negotiation, mediation/conciliation or compromise
- Tahkim which can be translated as arbitration
- The combination of Sulh and Tahkim (Med-Arb)
- Muhtasib which in modern terminology is known as the Ombudsma
- Fatwa by a Mufti or Fatwa council

Firstly, Sulh as a way of settling disputes is the most basic way in resolving disputes. It can be translated as the peaceful settlement of disputes and includes the use of solution processes such as mediation, conciliation, negotiation and compromise. According to Al-Zuhaili Wahbah, Sulh or compromise, occurs when parties enter into an agreement to resolve their conflict and the principle is based on the Quran in which in Surah An-Nisa verse 128, Allah SWT says that should they (two) reconcile with each other and reconciliation is best. Furthermore, the Prophet SAW says; all types of compromise and conciliation between Muslims are permissible, except those which make haram anything which is halal and a halal as haram. Further the Quran (Surah an-Nisa, verse 4) says; in most of their secret talks there is no good but if one exhorts to a deed of charity or justice or conciliation between men (secrecy is permissible); to him who does this, seeking the good pleasure of God, we shall soon give a reward of the highest (value). In this context, the ADR system in Malaysian Employment law is in consonance with the Islamic principles. Under the Malaysian system, conciliation is an accepted process under the IRA in which Sections 18 and 20 provide conciliation for individual employees and trade unions, respectively. During conciliation, parties are not bound by any legal or technical issues.

The conciliator only needs to apply his experience and wisdom in trying to resolve the dispute. Mediation is also encouraged under the Malaysian system. The Chairman of the Industrial court would advise parties to settle their case even at the eve of the trial. Conciliation or mediation under the Malaysian system is not to determine who is right or who is wrong. Parties can compromise to settle their disputes without admitting guilt or liability.

What is said during conciliation or mediation cannot be a matter of evidence admissible in court. Secondly, Tahkim or arbitration is a resolution mechanism that is often used in Islam (Ibrahim, 1991).

There are two aspects that govern arbitration. The first concept which refers to arbitration in the form of amiable settlement is not binding on the parties. This concept is based on the following verse from the Quran (Surah an-Nisa, verse 35); if you fear between the two parties, appoint (two) arbitrators, one of his family and the other from hers if they wish for peace, Allah will cause their reconciliation God; for Allah has full knowledge and is acquainted with all things. Another authority (Surah Al-Hujurat, verse 10) is that where Allah says; if two parties among the believers fall into a quarrel make peace between them. The believers are but a single brotherhood, so make peace and reconciliation between your two (competing parties) brothers and fear Allah that you may receive mercy. This is a concept introduced by Islam of appointing a middleman or third party to resolve differences between two sides. This in modern terminology is called arbitration or the appointment of a third party. The second concept of arbitration is based on the following verse from the Quran (Surah an-Nisaa, verse 58), Allah does command you to render back your trusts for 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. Conceptually, arbitration as mentioned in Surah an-Nisa is closer to conciliation. The arbitrators are to represent both parties in the conflict. As the number of arbitrators is the same they have no choice but to find amicable solution. The concept which can be deduced from Surat Al-Hujurat verse 10 is more akin to the concept of arbitration in the modern terminology, i.e., an appointment of a third party to resolve the conflict of parties. In this case, the arbitrator is independent. It acts as the intermediary between the parties. The connotation of the verse is given the authority to judge, means that the arbitrator is authorised to make decisions binding on the parties. The approach in this verse is different from that of Surah an-Nisa (verse 35) and Surah Al-Hujurat (verse 10) mentioned above as in verse 58 Surah an-Nisa, the arbitrators are of an odd number.

The implication is that if no unanimous decision is obtained then the results will follow the majority. If a judge is alone to adjudicate a dispute he has to make the decision. Modern literature by Islamic scholars such as Saleh (1984) also define and examine Tahkim as a method of dispute resolution. According to Salleh, Tahkim/arbitration is the submission by two or more

parties to a third party of a dispute to be adjudicated according to Sharia. Zuhaili from the Shii school defines Tahkim/arbitration as a voluntary procedure whereby by the opposing parties bring in a neutral qualified jurist to preside over a case according to Islamic law.

This definition is in line with the Sunni school where Zuhaili defines Tahkim/arbitration as an agreement by the disputants to appoint a qualified person to settle their dispute with reference to Islamic law. All four schools (Hanafi, Maliki, Shafii and Hanbali) approve of the practice of Tahkim/arbitration. The arbitrator in Islam is required to possess the qualifications of a Qadi (judge). He must be a religious person of good conduct and learned in the Shariah. However in the Shafii school, the arbitrator is slightly lower in status than the Qadi.

The arbitrator mainly handles financial cases and his position-unlike that of the Qadi-can be revoked by the parties. In Malaysian employment law, arbitration is implemented by the Industrial court. A judge who is called a Chairman is appointed by the state to arbitrate/adjudicate employment disputes. However, the Chairman is not appointed in the same manner as the judge in the mainstream courts whose appointment and tenure are provided under the Federal constitution. In the case of the former, he is appointed under the Industrial Relations Act and the tenure of his appointment is contractual. In certain cases, the Chairman as arbitrator is assisted by two assessors, appointed from the industry and the workers' unions, respectively. The Chairman of the Industrial court is a state-appointed post.

The requirement is that he must be the advocate and solicitor of the officer of the Judiciary and Legal service of 7 years standing. Unlike the Islamic principles which require the arbitrator to be a religious person and of good conduct under the IRA, the Chairman needs only to have the required amount of legal experience. But in terms of dispensing justice both of the arbitrators (under Islamic and Malaysian law) are required to discharge their duties impartially and independently. Thus, strict neutrality is required; the rules of natural justice must be observed under both laws.

The Holy Quran says (Surah al-Anam verse 152); And when you pronounce (judgment), pronounce with justice even if a near relation is concerned and fulfil the covenant of Allah. The Quran (Surah an-Nisa, verse 58) further says; Allah doth 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 has and sees all things. In certain circumstances, the arbitrator might decline to arbitrate a case. For example if the parties are related to him or he has

interest in the case he can choose to decline. In regards to this point, the Quran (Surah al-Maida, verse 42) says; but if they come to you, either judge (arbitrate) between them or decline and if you decline they shall not hurt you all. But if you judge (arbitrate), judge between them with equity for God loves those who judge with equity. Under Malaysian law, a Chairman/arbitrator might also withdraw himself if he feels he will not be able to give justice to the parties by reason of related interests. Under the Malaysian IRA, the decision of the Chairman is binding on the parties and the decision/award is enforced legally. However, there is no sanction for contempt of court if one of the parties refuses to obey the decision.

Legally the party, however can be charged and sentenced in a criminal court for disobeying the court decision. Alternatively, the decision of the Industrial court can be enforced by the mainstream courts. The latter is favoured as the enforcement of the court decision/award means that the party (employee) will be compensated in monetary terms whereas the former sanction will only result in punishment to the offenders (employers). In Islam, the Majelle which is based on the Hanafi school states that it is not compulsory for the award to be presented to a judge/Qadi for confirmation. However, the Maliki and the majority of the Hanbali school are of the view that the award is as binding and enforceable as an ordinary judgment without qualifications.

Saleh (1984) suggests that the defaulting parties (debtor) who does not honour his debt although, he is solvent after prior notice may be imprisoned by the Qadi; in the event of the debtor's insolvency, the technique of mulazama or quasi-permanent control by the creditor of the debtor's activities and dealings might be employed to check if and when the debtor becomes solvent; the debtor's assets might be attached and sold at a public auction and the proceeds distributed among creditors. Privileged claims are expected. Thus, the Malaysian IRA is very much in line with the Islamic principles where judgment can be enforced by the court either through criminal or civil sanctions. In sum, the arbitration system via the Industrial court in Malaysia is consistent with the Islamic concept of Tahkim.

Thirdly, the dispute-settlement mechanism in Islam can also take the form of a combination of Sulh and Tahkim or mediation and arbitration (Med-Arb). It is based on Surah an-Nisa, verse 35 of Al-Quran which refers to arbitration and reconciliation efforts that lead to peaceful settlement. Article 1850 of the Majelle also has the same provision which allows for the arrangement of a compromise to be made even after an arbitrator has been appointed. The Med-Arb approach recognises that if

there is a chance for the parties to compromise even in the middle of arbitration then they should be allowed to do so. In other words, the process of arbitration or trial should adjourn and mediation should take over.

This two-pronged approach shows that Islam does not only present a rigorous method and a single solution. Flexibility in the resolution of the dispute is allowed as long as the end result is reconciliation between parties. In this context, the Malaysian system also allows parties to approach the court to adjourn the trial for the purpose of settlement. However, the adjournment cannot be used as an excuse to delay the trial which amounts to abuse of the process of the court. The mediation system introduced by the Industrial court is akin to the Med-Arb concept in Islam. Mediation can be used before or during the arbitration process. Fourthly, the resolution of disputes in Islam can also be carried out by a Muhtasib or in modern terminology the Ombudsman. However, this process is not a method of dispute in which a third party or arbitrator is appointed to resolve disputes between the parties. The Muhtasib is an appointed government official entrusted with the power to ensure that complaints by any party (usually the employees) are heard.

His task is to supervise or in certain circumstances to ensure that persons or entities will not violate laws or regulations. In employment law, an analogy can be used here in which the Ombudsman can receive complaints from employees when employers violate employment laws. However in the history of Islam, the Muhtasib was not used for law enforcement work but for other activities such as trade practices. The idea of appointing a Muhtasib arose from verse 104 Surah Al-Imran; let there arise out of you a band of people enjoying what is right forbidding what is wrong and believing in Allah. In Malaysian employment law, the analogue of the Muhtasib is the Director General of Labour, appointed under the Employment Act 1955 to ensure the enforcement of legislation which includes instructing employers to submit returns (reports) about the particulars of their employees. Employees may also lodge a complaint to the Director General for an infringement of the provisions of the 1955 Act.

Finally, the Fatwa by Mufti or by the Fatwa council is one other method to resolve disputes. However, the Mufti or council does not make decisions binding on the parties. Their rulings/decisions are expected to be enforced by an authority or a third party. Under employment law such decisions are like the decisions of the Minister or Cabinet who make decisions on basic labour policy. This policy has to be translated into legislation for strict adherence by the employers and employees. A good current example is the case of

minimum wage. The Malaysian government plans to implement minimum wages for all industries by the end of 2011 although, it is hotly debated by many quarters.

CONCLUSION

ADR is the most appropriate method in resolving employment disputes because of the unique relationships between employers and employees. In Malaysia, conciliation in dismissal cases is provided under Section 20 and trade dispute under Section 18 of the IRA. The method is similar to Sulh in Islam. In Malaysia, mediation is introduced by the Industrial court as a last resort to resolve disputes. Only if it fails will the case be tried in the court. Parties, however, are not forced to accept mediation at this stage. This concept of mediation is in line with Sulh in Islam. Arbitration as implemented by the industrial court is akin to the Islamic principles of Tahkim. Finally, mediation as a method of resolution, ought to be used more widely in Malaysia to accelerate the disposal of employment-disputes cases.

ACKNOWLEDGEMENTS

The researchers record with thanks the financial support given by the Ministry of Higher Education, Malaysia and the Universiti Kebangsaan Malaysia for conducting this review research. The constructive comments of the anonymous reviewers are also appreciated. The Prophet Muhammad SAW attached great importance to this system that he appointed Muhtasib for Makkah and another for Medinah (Tyser *et al.*, 2001).

REFERENCES

- Anantaraman, V., 1997. Malaysian Industrial Relations Law and Practice. Universiti Putra Malaysia (UPM) Press, Serdang, ISBN: 9789679600674, Pages: 493.
- Bari, A.A., 2003. Malaysian Constitution: A Critical Introduction. The Other Press, The University of Michigan, USA., ISBN: 9789839541366, Pages: 305.
- Bendersky, C., 2003. Organizational dispute resolution systems: A complementarities model. *Acad. Manage. Rev.*, 28: 643-656.
- Black, A., 2001. Alternative dispute resolution in brunei darussalam: The blending of imported and traditional processes. *Bond Law Rev.*, 13: 1-29.
- Boon, A., P. Urwin and V. Karuk, 2001. What difference does it make? Facilitative judicial mediation of discrimination cases in employment tribunals. *Ind. Law J.*, 40: 45-81.

- Cooke, F.L. and W. Geoffrey, 2011. Symposium on employment relations and new actors in emerging economies. *Relations Industrielles Ind. Relations*, 66: 3-6.
- El-Ahdab, A.H., 1990. Arbitration in the Arab Countries. Kluwer, Norwell, USA., Pages: 20.
- Freyens, B.P., 2011. Dismissal disputes and the incentives to bargain: Estimates of the contract zone. *Ind. Labor Relations Rev.*, 64: 576-598.
- Goldberg, S., F. Sander and N. Rogers, 1999. Dispute Resolution: Negotiation, Mediation and Other Processes. 3rd Edn., Aspen Law and Business Publishers, New York, USA., ISBN-13: 978-0735500198, Pages: 707.
- Hassan, K.H., 2005. The workings of the industrial court: Creeping legalism? *IUM Law J.*, 13: 229-258.
- Hassan, K.H., 2006a. Developments in judicial review in malaysian industrial law. *Aust. J. Asian Law*, 8: 125-167.
- Hassan, K.H., 2006b. Employment dispute resolution mechanism from the islamic perspective. *Arab Law Q.*, 20: 181-207.
- Hassan, K.H., 2007. Composition and jurisdiction of the industrial court: A contemporary perspective. *UITM Law Rev.*, 3: 55-86.
- Ibrahim, A.R., 1991. The institution of arbitration in Islam. MCL Thesis, International Islamic University Malaysia.
- Lewin, D., 2005. Unionism and employment conflict resolution: Rethinking collective voice and its consequences. *J. Labor Res. Spring*, 26: 209-239.
- Maltby, L.L., 2003. Employment arbitration and workplace justice. *USFL Rev.*, 38: 105-105.
- Marcum, T.M. and E.A. Campbell, 2008. Peer review in employment disputes: An employee right or an employee wrong? *J. Workplace Rights*, 13: 41-58.
- McCabe, D.M., 1997. Alternative dispute resolution and employee voice in nonunion employment: An ethical analysis of organizational due process procedures and mechanisms-the case of the United states. *J. Bus. Ethics*, 16: 349-356.
- McCormack, J. and S. Lanyon, 1997. Alternative Dispute Resolution in Labour Relations: A Tale of Two Provinces. In: *Rethinking Disputes: The Mediation Alternative*, Macfarlane, J. (Ed.). Cavendish, London, ISBN: 9781859411513.
- Menkel-Meadow, C., 2011. The NLRA's legacy: Collective or individual dispute resolution or not? *ABA J. Labor Employment Law*, 26: 249-266.
- Mohamed, A.A.A. and F.B.S. Baig, 2009. Procedure for Unfair Dismissal Claims in Malaysia. Lexis Nexis, Singapore, ISBN: 9789675371097, Pages: 614.
- Mohamed, A.A.A., 2005. Alternative dispute settlement: With reference to cases relating to dismissal without just cause or excuse under the industrial relations act 1967. *Industrial Law Report*.
- Mohamed, A.A.A., 2007. Dismissal from Employment and the Remedies. *Malayan Law Journal Sdn. Bhd.*, Singapore, ISBN: 9789679627954, Pages: 561.
- Othman, A., 2002. Introducing alternative dispute resolution in Malaysia: Prospects and challenges. *Malayan Law J.*, 2: 224-224.
- Ramzan, A.M., 1992. An islamic framework for employer-employee relationship. *Am. J. Social Sci.*, 9: 202-218.
- Roberts, S. and M. Palmer, 1998. Dispute Processes, ADR and the Primary Forms of Decisions Making. Heinemann, Butterworth, UK., ISBN: 9780406897749.
- Saleh, S., 1984. Commercial Arbitration in the Arab Middle East. 1st Edn., Springer, London, ISBN-13: 978-0860104537, Pages: 493.
- Samuel, E., 1990. Arbitration of employment disputes without unions. *Chicago-Kent Law Rev.*, 66: 753-753.
- Sanders, A., 2010. A right to legal representation (in the workplace) during disciplinary proceedings? *Ind. Law J.*, 39: 166-182.
- Shen, J., 2008. The chinese labour litigation system and its role in settling labour disputes. *Int. J. Employment Stud.*, 16: 79-98.
- Shinning, Z. and Z. Jie, 2010. Impact of employment contracts law on employment relations in China. *Indian J. Ind. Relations*, 45: 566-584.
- Smith, V.P., 1994. Aspects of arbitration, common law and syariah compared. MCL Thesis, Kulliyah of Law, International Islamic University Malaysia.
- Syed, J. and A.J. Ali, 2010. Principles of employment relations in Islam: A normative view. *Employee Relations*, 32: 454-469.
- Tyser, C.R., D.G. Demetriades and I. Effendi, 2001. The Mejelle: Being an English Translation of Majallahel-Ahkam-i-Adliya and a Complete Code on Islamic Civil Law. The Other Press, Kuala Lumpur, Malaysia, ISBN-13: 9839541129, Pages: 379.