

# Issues Of Adjudication of Disputes Among Muslim Minorities in Europe A Study from The Perspective of Islamic Jurisprudence

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## ABSTRACT

The study aimed at investigating the Issues related to the Muslim minorities' arbitration and law court appealing from Islamic perspective. The study used the comparative descriptive methodology to investigate the targets in question. To gather the required data, a review of literature was administered. The study came to the conclusions that; first, arbitration means that the adversaries choose a well-behaved and experienced man as a judge to settle the dispute, but the law court appealing means that the foes go to a judge that is officially appointed to settle the problem in question; second, the jurisprudence rulings of the Muslim minority or majority are affected by the question of necessity; third, arbitration is permitted especially of the Muslim minority who have no choice; fourth, the Muslim minority can make a law file to the secular law courts in the non-Muslim countries if they have no choice to have their rights; fifth, it is forbidden to make a family law file to the secular law courts in the non-Muslim countries; sixth, the secular court rulings concerning the Muslim minorities in the non-Muslim countries are accredited if more harm is unavoidable; seventh, it is permissible to have a job in secular law courts in the non-Muslim countries if it is difficult to have a job anywhere else; The study recommended that Muslim minorities in the non-Muslim countries ought to be aware of the rulings of arbitration. .

**Keywords:** Arbitration, Muslim minorities, Jurisprudence rulings.

## INTRODUCTION

All praise is due to Allah, for whomever Allah wants good, he gives him understanding in the religion, by His grace, he has guided whomsoever to straight path and to follow his messenger peace be upon him and may God Almighty be pleased with his companions, his wives, his family, and those who follow him in goodness until the Judgment Day.

Muslim minorities in Europe suffer from many problems, most notably the absence of the courts and jurists involved in the resolution of disputes and the adjudication of disputes between members of the Muslim minority in personal status cases.

This constitutes a great embarrassment for the members of these communities, especially in personal status cases. The courts in these States have some laws that contradict with the sharia's provisions with regard to personal status provisions.

In this sense, the current research deals with issues related to arbitration and court trials among members of Muslim minorities, in order to clarify the shar'i ruling on these issues for members of these communities.

## Research Problem:

The research problem can be focused on the current main question: What are the issues of settling disputes among Muslim minorities in Europe in Islamic jurisprudence, and what is its shar'i ruling?

The main question is divided into the following sub-questions:

1. What is the concept of Muslim minorities, and what is the concept of adjudication of disputes and other concepts associated with Muslim minorities in Europe?
2. What are the issues of disputes related to arbitration with members of Muslim minorities? And what is the shar'i ruling for them?

3. What are the issues of litigation related to court trials among members of Muslim minorities? And what is the shar'i ruling for them?

#### **Research Objectives:**

According to the research questions, the research objectives can be formulated as follows:

1. Clarifying the concept of Muslim minorities, the concept of arbitration, and arbitration in courts, and highlighting the nature of the relationship between the two concepts, and other related concepts.
2. Clarifying of issues that related to arbitration among members of Muslim minorities.
3. Clarifying the shar'i ruling on issues that related to arbitration for members of Muslim minorities.
4. Clarifying of issues that related to court trials of members of Muslim minorities.
5. Clarifying the shar'i ruling on issues that related to adjudication in the courts for members of Muslim minorities.

#### **The Importance of Research:**

Theoretical importance: the theoretical importance of research is reflected in the attempt to complement the scientific efforts in the field of jurisprudence of minorities.

Practical importance: The practical importance of research is reflected in the statement of jurisprudence on issues relating to arbitration, the prosecution of minority jurisprudence, and the quest to inform this group about the provisions of their religion in these issues.

#### **Research Methodology:**

The research is based on the descriptive method, and in the context of that, it is based on the inductive method. Where the opinions of jurists are tracked on issues related to the subject of the study. The research is also based on the analytical method. Where jurisprudential opinions are interpreted, evaluated in the light of evidence, and deduced.

#### **Limits of Research**

The objective limits of the research are that it focuses on some issues related to arbitration, and trial in the courts of Muslim minorities in terms of clarifying its nature and clarifying its legal ruling in the light of the four adopted doctrines of thought.

#### **Research Plan**

The research plan consists of three Chapters, a conclusion, and an index as follows:

- **The first Chapter:** the concept of adjudication in disputes and the definition of (arbitration - Litigation - minorities)
- **The second Chapter:** the disputes related to arbitration among members of Muslim minorities.
- **The third Chapter:** the disputes related to trial in the courts of Muslim minorities.
- **Conclusion:** deals with the most important results of the research, and its recommendations.
- Index of search references.
- This is detailed as follows.

#### **The First Chapter**

Defining adjudication in disputes and explaining the concept of (arbitration - arbitration - minorities)

#### **First: the definition of Adjudication of Disputes:**

Adjudication of disputes: Judging them through arbitration, litigation, and others [51].

#### **Second: The concept of arbitration:**

The concept of arbitration linguistically

**Arbitration** linguistically means the source of his judgment in the matter and the thing, that is: He made him arbitrator and delegated the judgment to Him. and in the Noble Revelation: (But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], judge concerning that over which they dispute among themselves and then find within themselves no discomfort from what you have judged and submit in [full, willing]

submission. ) Surat Al-Nisa: from verse (65). And his judgment among them: He commanded him to judge between them. He is a judge, and an arbitrator [58].

The concept of arbitration Technicallly: means an authorization and agreement of the two opponents to accept the judgment of a specific person in resolving the dispute between them, including the arbitration board: a committee that makes judgments between the disputing parties and the like [16][45][53].

The difference between arbitration and the judiciary: Arbitration, although it is a kind of judiciary and part of it, but there are many differences between it and the judiciary, and these differences do not take arbitration out of the judiciary, but they clarify the privacy of arbitration in the litigants because it gains jurisdiction from them, and the most important of these differences are the following:

- First: The jurisdiction of the arbitrator in arbitration is issued by the disputing parties, but in the judiciary, the jurisdiction of the judge is issued by the guardian.
- Secondly: the arbitration must have the consent of the two arbitrators, and as for the judiciary, it does not require their consent to it when arbitration is taken.
- Third: The arbitrator's power is limited to the case that was arbitrated and agreed to be arbitrated with him, and he does not extend it to others. As for the judge, he has the right to look into all that is entrusted to him by the imam [65] [67].

#### **The Four Pillars of Arbitration are as Follows:**

The first pillar is the two disputed parties: the two parties of the dispute, and the parties may be two persons, or they may be more than that. They are required to be eligible for contracting; because arbitration is a type of contract, and their consent is required by arbitration.

The second pillar is arbitrator: It is the one that judges the dispute in the disputed case. It requires: eligibility for the

jurisdiction of the judiciary, the arbitrator's knowledge: : it is not permissible to arbitrate by ignorant

The third pillar is arbitrated dispute: It is the disputed case, which requires two things: first, that it be specific and informative. No arbitration may take place in an unknown case. Second, the case may be arbitrable.

The fourth pillar is the formula: a specific wording is not required in the arbitration, but it is permissible to arbitrate with every word that indicates it, as if they say to him: Judge between us and the like, and the arbitrator accepts that [9] [10] [12] [64] [70].

#### **Arbitration Ruling:**

The jurists agreed on the legality of arbitration, and this is evidenced by Quran, the Sunnah, and consensus [20] [50] [67] [70].

As for Quran: God Almighty says: (If you fear a breach between the two, appoint an arbitrator from his people and an arbitrator from her people) Surah An-Nisa, From verse (35).

The evidence from the verse: The noble verse indicates the proof of arbitration [18].

As for Sunnah, Abu Sa'id Al-Khudri Narrated "When the tribe of Bani Quraiza was ready to accept Sa'd's judgment, Allah's Messenger (Peace be upon him) sent for Sa'd who was near to him. Sa'd came, riding a donkey and when he came near, Allah's Messenger (Peace be upon him) said (to the Ansar), "Stand up for your leader." Then Sa'd came and sat beside Allah's Messenger (Peace be upon him) who said to him. "These people are ready to accept your judgment." Sa'd said, "I give the judgment that their warriors should be killed and their children and women should be taken as prisoners." The Prophet (Peace be upon him) then remarked, "O Sa'd! You have judged amongst them with (or similar to) the judgment of the King Allah. [17] [35].

Evidence: The hadith indicates the permissibility of arbitration in this world to a man known for his righteousness and

goodness is necessary for the arbitrators. So how is there between us and our enemy in religion? And that money is lighter than the soul and the family. [33]

Abu Shuraih Narrated: when he came to the Prophet, may Allah bless him and grant him peace, with his people, the Prophet (Peace be upon him) heard them using the kunya Abu'l-Hakam. The Prophet, may Allah bless him and grant him peace, called him and said, "Allah is the Judge (al-Hakam) and He has judgement. Why have you been given the kunya Abu'l-Hakam?" He said, "When my people disagree about something, they bring it to me and I judge between them so that both parties are content." "How excellent this!" the Prophet exclaimed. Then he asked, "Do you have any children?" Hani' replied, "I have Shurayh, 'Abdullah and Muslim, the Banu Hani'." He asked, "Which of them is the oldest?" "Shurayh," he replied. He said, "You are Abu Shurayh," and he made supplication for him and his children. [29] [32].

The aspect of evidence: The hadith indicates that arbitration is proven and that the judgment is in a manner that satisfies the disputing parties [22].

- Ibn Qudamah commented on the hadith by saying: If two men are arbitrating to a man, he arbitrates between them and they are satisfied with him, and he is one of those who are fit to judge, so he judges between them, so that is permissible, and his judgment is implemented on them [64].
- As for consensus: The companions of the Messenger of God, may God bless him and grant him peace, agreed on the permissibility of arbitration by consensus. And the consensus was conveyed in this Imam al-Nawawi: Where he said: The scholars unanimously agreed that it is permissible to arbitrate in the affairs of Muslims and in their great missions [35] [50] [52] [63] [70].

The preponderant view of the previous evidence is that arbitration is permissible in everything, and this is the saying of the Hanbali jurists:

Imam Al-Qarafi stated that the means take the Sharia purposes (for the legal rule is that the necessity of the means follows the necessity of the purposes, and because that which does not fulfill the necessity without it is obligatory) [7] In the sense that when the goal is obligatory, then the means to this aim is also obligatory[15] ] .

Several jurists have stated that arbitration is obligatory, including:

Imam Ibn Abidin said: (And if there is no sultan and there is no one from whom it is permissible to imitate, as is the case in some Muslim countries, they are dominated by non-Muslims, such as Cordoba in the countries of the Maghreb today, Valencia, and the countries of Abyssinia, and the Muslims settled with them over money taken from them, then they must agree on one of them They make him a governor, and he takes over. A judge, or he is the one who decides between them...) [20] [34].

The Imam of the Two Holy Mosques, Imam al-Juwayni, may God have mercy on him, said: "If the time is vacated from the ruler, it is necessary to proceed as far as possible to ward off scourges from the people of faith.... What the sultan undertakes in matters of politics is more effective, more successful, and pushes back to competition and gathers opinion in the possession of the subjects in matters of blood." ) [39].

He decides that the people must appoint a judge according to their ability, and that this pays off the corruption of the appointment of individual people to implement the rulings of the Sultan, and his words - may God have mercy on him - are necessary that if appointing an arbitrator is the goal of what they can, then they must do so[15].

It is necessary to choose the qualified arbitrator for arbitration , and the original in the ruler is to be diligent [20], for the hadith of Amr bin 'Al-'As (May Allah be pleased with him) said: I heard the Messenger of Allah (peace be upon him) saying, "When a judge utilizes his skill of judgement and comes to a right decision, he will have a double reward, but when he

uses his judgement and commits a mistake, he will have a single reward. ” [17] [35].

Imam al-Nawawi said: Muslims are unanimously agreed that this hadith is about a ruler who is knowledgeable and qualified to rule. When a judge utilizes his skill of judgement and comes to a right decision, he will have a double reward, but when he uses his judgement and commits a mistake, he will have a single reward, and in the hadith, his estimate is omitted. If the ruler wants, then he strives. They said: As for the one who is not qualified to rule, it is not permissible for him to judge. If he judges, there is no reward for him, rather he is a sinner and his judgment is not implemented, whether it agrees with the truth or not [66].

Imam Ibn Al-Mundhir said: The reward is only for the erring ruler if he is aware of the *ijtihad* and the *Sunnah*. As for those who do not know that, they do not enter into the meaning of the *hadeeth* [33].

### **Third: the concept of litigation:**

The concept of litigation in linguistics: it is derived from the trial. And the trial: the dispute to the judge, and judge for judgment to the judge. And his judge to the ruler: He called him and his opponent. I said: And the two parties - the plaintiff and the defendant - engaged in (the dispute to the judge) [58].

The concept of litigation technically (*Shariia* terminology):

Litigation is a request to resolve the dispute and litigation, i.e., taking the two opponents as a judge to settle their dispute and claim [8].

So what is meant by Litigation is the resort of the two opponents to a judge appointed by the sultan; That is, the jurisdiction of the judge is issued by the guardian, and this is unlike arbitration, the jurisdiction of the arbitrator in arbitration is issued by the litigants.

There are some pillars on which Litigation is based, namely:

**The First Pillar:** the two parties to the dispute. The second pillar: the disputed Claim.

The third pillar: a neutral party to which this case was referred for judgment. If these elements are available, then there will be Litigation [24] [70].

Ruling on resorting to the judiciary in the country of immigration: Referring to the courts of the country of immigration is permitted for Muslims of minorities because there is no way to extract a right or ward off a grievance without it [8] [14] [68].

**Third:** The concept of Muslim minorities in Europe:

The Organization of the Islamic Conference defines the word minority, as: a human group with peculiarities that fall within a homogeneous human group that is more numerous than it is and possesses power or most of it [43].

Minorities were defined as: every human group in one country that is distinguished from the majority of its people in religion, sect, race, language, or the like from the basics by which human groups are distinguished from one another [3].

Accordingly, the Muslim minority is a human group in one of the countries that is distinguished from the majority of its people in religion. As is the case in the European continent; Where Muslims represent a numerical minority compared to the majority of the European population of Christians [6].

Determining minorities in the research with the minorities of Europe, being the oldest regions in Islam. Islam has reached the continent of Europe since the entry of Muslims into Andalusia under the leadership of Tariq bin Ziyad.

General provisions related to the jurisprudence of Muslim minorities:

The principle in all *Shari'a* assignments is that they include all those charged if the conditions for assignment are met in the *Shari'a* ruling, and the terms of assignment, Revelation, implementation, and fulfillment of the criteria are what make the scope of the *Shari'a* ruling wide or narrow, or non-existent.

The general provisions related to the jurisprudence of Muslim minorities that must be observed are:

- The relationship of the Muslim minority with its state, institutions and society is based on the rights of citizenship that arise from the contracts that the Muslim accepted, and from the system before him, and the prevailing laws and legislations, and therefore he must fulfill his legitimate rights, just as he accepted or benefited from his rights since His entry into that country or his original presence in it.
- Personal status issues with minorities are based on arbitration.
- One of Shariah objectives is the security of the community and society and its preservation, in addition to the security of the individual in himself and his honour, and therefore this objective must always be before our eyes in everything.
- The mandated rulings, whether they are for the majority or the minority, are dependent on the ability and capacity that are affected by time, place, circumstances and conditions. God Almighty said: "Allah does not lay a responsibility on anyone beyond his capacity" ) Surah Al-Baqara from verse (286). The content of this verse was repeated in the Holy Qur'an, and explained in Sunnah of the Prophet separated it, as in the hadith of Abu Hurairah (May Allah be pleased with him) reported: The Prophet (peace be upon him) said, "Do not ask me unnecessarily about the details of the things which I do not mention to you. Verily, the people before you were doomed because they were used to putting many questions to their Prophets and had differences about their Prophets. Refrain from what I forbid you and do what I command you to the best of your ability and capacity".[17] [35].
- The Rule of providing the facilitation in the provisions and raising up the embarrassment and hardship and taking into account cases of necessity and

need for individuals and the group are among the irrevocable general principles.

- The general principles of Islamic jurisprudence are: (Quran, the Sunnah, consensus and analogy, Laws of our Predecessors, Absolute Interests, acclaim and custom) are the ruling in the jurisprudence of minorities on the part of the arbitrator, but with linking them to the general objectives of the Sharia, Islamic Jurisprudence, Prohibition of evasive legal devices, Scrutinizing the realization of the conditions, the conditions of implementation, legal jurisprudence, taking care of the general rules and general principles of facilitation and lifting the embarrassment, and taking care of the fatwa regarding the change of place, time, customs, and so on [19] [69].

## **The Second Chapter**

### **Litigation related to arbitration among members of Muslim minorities.**

The first issue: arbitration terms

The following conditions are required for arbitration:

- 1- The existence of a dispute and a Litigation over a right [53] [62] [64] and this condition necessitates the establishment of two disputing parties, each claiming a right before the other.
- 2- The two parties to the dispute agree to accept his ruling. As for the one appointed by the judge, their consent is not required, because he is the judge's representative.
- 3- The parties and the arbitrator agree to accept the arbitration assignment. . . The sum of these two agreements constitutes the cornerstone of arbitration, which is: the word that indicates it with the acceptance of each other.

This Pillar may be shown explicitly, It is as if the two opponents said: We judged you between us. Or he said to them: I judge between you, so they accepted, and an indication may appear.. If the two

parties agreed on a man between them, and did not inform him of that, but they argued to him, and he decided between them, then it is permissible. [9] [20] [53] [63].

The two parties may restrict the arbitration to a condition. . So if they appointed him to judge between them in his day, or in his council, that is obligatory. And if they rule him to ask a fatwa for so-and-so, then judge between them according to what he said, it is permissible.

If two parties litigated, and ruled for one of them, and didn't judge for the favor of the other party , and it is necessary for them to agree on what is ruled, and if they differ, it is not permissible [9] [23] [41] [63]

If two parties agree to arbitrate a specific man. He may not authorize others to arbitrate. And the two parties must be approved after the ruling [9] [20] [23] [34].

The two parties may not agree on an arbitrator who is not qualified to arbitrate. And if a non-Muslim judged between Muslims, and he permitted his ruling, it is not permissible, just as if they judged him at the beginning [9] [20] [23] [34].

The agreement on arbitration does not require witnesses to testify against the two opponents that they have rendered the ruling. However, the witness should bear witness for fear of dishonesty. And this is a practical result: if the two opponents had rendered the judgment, then a judgment was passed between them, and the one against whom the judgment was issued denied that the agreement on arbitration must continue until the judgment is rendered, as the Withdrawing one of the two opponents from the arbitration before the judgment is rendered annuls the arbitration [64].

In general, witnessing the judgment is not a condition for the validity of the arbitration, but rather a condition for accepting the judgment's statement upon denial, and witnessing must be witnessed in the ruling council[50].

From this it is clear that a dispute or a Litigation among members of Islamic minorities is required for the adoption of arbitration. It is also required that the parties to the dispute agree to accept the arbitrator's award and agree on the arbitration mission. Attestation of the award is not required for the validity of the arbitration.

#### **The second issue: withdrawing from arbitration:**

The right to withdraw from arbitration is a branch of the permissive arbitration capacity. However, this right is not absolute.

The Hanafis, and the Sahnun of the Malikis, have said that each opponent has the right to withdraw from arbitration before the judgment is issued, and there is no need for the two parties to agree on that, if one of them withdrew, the arbitrator will be dismissed.

As for after the issuance of the ruling, no one has the right to withdraw from the arbitration.

As for after the issuance of the ruling, no one has the right to withdraw from the arbitration. If he withdraws after the ruling, the ruling does not invalidate, because it was issued by the legal authority of the arbitrator, such as the judge who issues his ruling, then the sultan dismisses him [13].

According to the Malikis, it is not required that the two opponents be satisfied until the verdict is issued. Rather, if they established the evidence at the time of the ruling, then one of them wanted to withdraw from the arbitration before the ruling The arbitrator must issue his ruling, it will be valid. Asbagh said: Each one of them has a recourse unless the litigation begins before the arbitrator. Ibn al-Majishon said: Neither of them has the right to return, even before the initial of the dispute [13] [34].

According to the Shafi'is, it is permissible to recourse before the verdict is issued, even after the establishment of evidence. it is the doctrine. And it was said that this is not permissible. after the ruling, the opponent's consent is not required, as is

the case with the judge's ruling. And it was said: It is required; Because their consent is considered as part of the arbitration, as well as in the necessity of the ruling. And the first one is more likely [27] [70].

According to the Hanbalis: each of the two litigants has the right to withdraw from the arbitration before proceeding with the ruling.

First: He has the right to return because the judgment was not issued, more like before the initiation.

second: He does not have that, because it leads to each one of them if he sees something from the ruling that does not agree with him. So he recourses and nullified his intention. If the verdict is issued, it will be executed [50] [62] [64].

According to above mention, it is clear that the two parties have the right to withdraw from arbitration before the ruling is issued, but after the issuance of the ruling, no one has the right to withdraw from arbitration.

### **The Third Issue: The Effect of Arbitration:**

What is meant by the effect of arbitration: the ruling that result from it, and this effect is represented in the obligation and enforcement of the award, as well as in the possibility of annulment by the judiciary.

First: The obligation of the ruling and its enforcement: When the ruling was issued, it became binding on the two disputing parties, and its enforcement was required without dependence on the consent of the two parties, and on that the jurists. And his ruling is as the ruling of the judge.

The arbitrator does not have the right to retract his ruling, so if he retracts his ruling and decides for the other, his ruling is not valid. Because the mutual consent was completed by the first judiciary, so the second judiciary was invalid [9] [41].

But this obligation that characterizes the arbitration rule is limited to the two opponents only, and does not transgress to others, because it was issued for them by a legitimate guardianship that arose from their agreement to choose the arbitrator to

rule in the dispute and rivalry between them. There is no guardianship for either of them over the other, so the effect of the ruling does not apply to the other [9] [28] [49] [50] [70].

Applying this principle, if a man claimed another person for 1,000 dirhams, and claimed him about that, then he claimed that so-and-so who was absent had guaranteed it for him on behalf of this man, then the arbitration between them was a man, and the guarantor was absent. The plaintiff has established his evidence on the money and on the penalty bail, so the judgment was issued on the money and a penalty bail, neither is the guarantor. If the guarantor is present, and the sponsored is absent, then the applicant and the guarantor are satisfied so the arbitrator's ruling is permissible, and enforceable against the guarantor rather than the sponsored [20] [34].

In other words, the custom among the merchants made arbitration by one of the partners as if it were arbitration by all the other partners. That is why the ruling was necessary, and it was implemented against all of them.

### **Second: Appeal of the ruling:**

The two litigants may be satisfied with the ruling, and they work to implement it, and one of them may refuse the arbitrator's ruling. At that time, it is inevitable to file the grievance or complaint to the judiciary, even if it is a Statutory law. Preserving rights and rejection.

According to the Hanafis: If the arbitrator's ruling was submitted to the judge, he examined it, and if he found it in agreement with his school of thought, he took it and signed it, because there is no point in overturning it, and then concluding it. The benefit of this signature: that no other judge who sees his disagreement should overrule it if it is referred to him, because his signature is like his judgment from the beginning.

But if he finds it contrary to his school of thought, he invalidates it, and obliges not to act according to it, even if it is among those in which the jurists differ. And this



invalidation is not a matter of necessity, rather it is a matter of permissibility.

Permission must be from the judge after the arbitrator's ruling. Accordingly, if they judge a man, and the judge permits his ruling before ruling, then he rules contrary to the opinion of the judge, it is not permissible; Because the judge authorized non, so permitting something before its existence is invalid, so it is as if it was not permitted [10].

As for the Malikis, the judge does not overrule the arbitrator's ruling unless it is clear injustice. Whether it agrees with the judge's opinion or disagrees with it. And they said that this was not disputed by the people of knowledge, and it was said by Ibn Abi Layla [13] [48] [67].

As for the Shafi'is and Hanbalis, the judge, if the arbitrator's ruling was submitted to him, does not overrule it except by what he overrules the rulings of other judges [27] [62].

In conclusion, it is permissible to refer the ruling by the arbitrator to the judiciary, and the judge may overrule the ruling for a reason that requires this overturning, unlike a dispute in that.

#### **The fourth issue: dismissal of the arbitrator:**

The appointed arbitrator is dismissed by Muslim minorities for any of the following reasons:

- 1- Dismissal: Each of the two parties may dismiss the arbitrator before the ruling, unless the arbitrator has approved it before a judge, in which case they do not have the right to remove him. Because the judge appointed him.
- 2- The time set for arbitration expires before the judgment is issued.
- 3- Ineligibility for arbitration.
- 4 - Issuance of the ruling [37] [61].

#### **The third Chapter**

##### **Litigation related disputes among members of Muslim minorities**

##### **The first issue: the Res Judicata of rulings issued to Muslim minorities in cases other than personal status:**

The conditions of Muslims in non-Muslims state make them arbitrate their disputes according to the laws of the judges of the country in which they reside, making their situation fall within the necessities that have their provisions and that take interests as a criterion for judgment, possibility, and ability as a basis for assignment, according to the Almighty's saying: (So hold Allah in awe as much as you can, and listen and obey") Surat Al-Taghabun: From verse (16)

Clarifying the concept of enforcing judges' rulings in minority countries, Al-Ezz bin Abdul Salam says:

If non-Muslims took over the judiciary.... then what appears to be the implementation of all of this is to bring public interests and ward off comprehensive corruptions, as it distances from the mercy of Allah and his care for the interests of his servants the disruption of public interests and bearing the comprehensive corruptions of the lack of perfection, so whoever takes over it from those who are worthy of it, This may seem like a distant prospect; [64] .

Imam Al-Qarafi mentioned in Al-Dhakhira: Judges are effective in order not to lose interests. He said: I do not think that anyone disagrees with this assignment, which is conditional on possibility [25].

The issue is based on The rule of committing the lightest damage and the contradiction of interest and corruption. In this, Imam Ibn al-Qayyim says: Among the principles of Sharia law is that if interest and To avoid debauchery, he gives precedence to the two [4].

##### **The second issue: Litigation in the personal status of members of Islamic minorities:**

The provisions of the personal status of Muslims, such as marriage, divorce, lineage, number, inheritance, and so on, are established by texts from the Qur'an and Sunnah, and the scope of jurisprudence in them is narrow, as they are closer to worship and belief, and adjudicating disputes arising from them requires a lot of care and precaution.

Muslims abroad are of two types:

- 1- Minorities enjoy a measure of internal independence or self-rule, either by text or treaty, or de facto, and they should strive to establish a judicial system regarding matters of personal status, and direct celibacy is appointed by the head of state or his deputy.

The jurists have stipulated the validity of this appointment: from that is what came in Sharh al-Hidaya: If some Muslims are in a country where non-Muslims prevail over them and they accept Muslims with them, they must agree on one of them and make him a judge between them, "appointed by the head of state [2][38] [46].

- 2- Muslim minorities in countries whose system does not allow anything other than the state's judiciary in matters of personal status, and these Muslims have no choice but to resort to reconciliation or arbitration. The arbitration decision of government agencies, either to be implemented by the parties voluntarily, out of faith, or to refer the arbitration decision to the judiciary of the state to include it in the executive formula [26] [46] [67].

That is why the fatwa is: that court rulings in the West are enforced by divorce because of the absence of that from the existence of a state of suspension, in which the man adheres to the infallibility of his wife, and in which the woman is sent outside the marital home based on the ruling issued by the court, and in that there is corruption that is not hidden.

The saying that the divorce is not enforced, by obligating the wife's divorce to the husband, and the Muslims must take this divorce so that the wife does not remain in disobedience; To avoid debauchery [46].

In fact, the arbitration system - in many of its forms - has now become recognized in most countries of the world, and the judiciary does not object to its outcome unless it violates public order or good morals that prevail in the state.

The third issue: the work of Muslim minorities in the judiciary in the courts of Western countries.

There is nothing wrong with studying the laws in order to get to know their true nature and explain the superiority of the provisions of the Sharia over them, or to reach by studying them the work of the legal profession in order to support the oppressed and extract their rights.

A Muslim may participate as a member of a jury - on the condition that his ruling is in accordance with the Sharia, with the aim of redressing the oppressed among Muslims and others, so that he restores their rights to them, and does not judge any of them unfairly And God Almighty is Most High and Knows[40] [40] 68].

Briefly, Muslims may work in judiciary courts in non-Muslim countries, because it is based on proving rights and repelling injustice.

The fourth issue: the work of Muslim minorities in the advocating profession.

Advocacy in Islamic law is nothing but agency in general and attorney in litigation in particular [11] [47].

The lawyer is usually knowledgeable about the law and its theories and applications, so he can provide an accurate description of all the rights of his principal, and guide him to the means provided by the law to preserve his rights, and to the available defenses against the claims of his opponents.

The lawyer also represents the principal in the lawsuits. This work is considered one of the most important work of the lawyer, as it allows him to take the place of his client in filing lawsuits and supervising the work and legal procedures.

To defend the principal is considered a pure activity carried out by the lawyer, and no one else can do it except under many conditions within the scope that defined by the laws[57].

There is no disagreement among the jurists regarding the legitimacy of agency in litigation (and advocacy), and the basis for

that is the Quran, the Sunnah, consensus, and reason.

As for the Quran: The Almighty said: ("And my brother Aaron is more fluent than me in tongue, so send him with me as support, verifying me. Indeed, I fear that they will deny me." Surah Al-Qasas from the verse: 34.

The noble verse indicated: the legitimacy of seeking the assistance of a helper in disclosing the truth and showing the proof, with Musa's request to send his brother Aaron with him as help and protection.

As for Sunnah "( Narrated Abu Laila bin `Abdullah bin `Abdur-Rahman bin Sahl: Sahl bin Abi Hathma and some great men of his tribe said, `Abdullah bin 'Sahl and Muhaiyisa went out to Khaibar as they were struck with poverty and difficult living conditions. Then Muhaiyisa was informed that `Abdullah had been killed and thrown in a pit or a spring. Muhaiyisa went to the Jews and said, "By Allah, you have killed my companion." The Jews said, "By Allah, we have not killed him." Muhaiyisa then came back to his people and told them the story. He, his elder brother Huwaiyisa and `Abdur-Rahman bin Sahl came (to the Prophet) and he who had been at Khaibar, proceeded to speak, but the Prophet (Peace be upon him) said to Muhaiyisa, "The eldest! The eldest!" meaning, "Let the eldest of you speak." So Huwaiyisa spoke first and then Muhaiyisa. Allah's Messenger (Peace be upon him) said, "The Jews should either pay the blood money of your (deceased) companion or be ready for war." After that Allah's Messenger (Peace be upon him) wrote a letter to the Jews in that respect, and they wrote that they had not killed him. Then Allah's Messenger (Peace be upon him) said to Huwaiyisa, Muhaiyisa and `Abdur-Rahman, "Can you take an oath by which you will be entitled to take the blood money?" They said, "No." He said (to them), "Shall we ask the Jews to take an oath before you?" They replied, "But the Jews are not Muslims." So Allah's Apostle gave them one-hundred she-camels as blood money from himself. Sahl added: When those she-camels were

made to enter the house, one of them kicked me with its leg. [17] [35].

The point of evidence from the narration appears in the words of Imam al-Nawawi, may God have mercy on him. He said: And know that the truth of the lawsuit is for his brother Abd al-Rahman, and there is no right in it for his two cousins. Because what was meant by his words was not the truth of the case, but rather hearing the image of the story and how it took place. If he wanted the truth of the case, he spoke to its owner. And it is possible that Abd al-Rahman and all the proceeds in the lawsuit and his assistance or order to delegate [66].

The evidence from Sunnah: that everything that is permitted by representation of rights is permitted by attorney, such as selling, buying, renting, paying debts, litigation in claiming rights, marriage, divorce, and so on [5].

As for the consensus: Ibn al-Mundhir said: All of the people of knowledge from whom we learned are unanimously agreed that the patient who is unable to go out to the ruling council and who is absent from the country may appoint each one of them as an agent to ask for his rights and talk about him.

As for what is reasonable: God Almighty created people with varying talents and abilities, so some of them are endowed with the ability and competence that make him ready to undertake all his work by himself, except that he may have successive concerns and he is forced to seek the help of others.

And among the people there are those who have the right, but he was not given the argument, the tongue, the eloquence and the statement that would make him able to show his right and defend himself. From their experience in some of their work, whether it was little or a lot, the interest was in the legislation of the agency to fill the need and facilitate the transaction, and remove the embarrassment [42].

after all this textual and mental evidence, it becomes clear that the advocacy profession is legitimate and original in

Islamic law, and working according to it internally and externally is legitimate.

## CONCLUSION

The research aimed to clarify the concept of arbitration, Litigation, and their ruling, and to clarify some issues related to them among members of Muslim minorities.

The research yielded several results, including the following:

First: Arbitration and Litigation according to non-Islamic courts are permissible under certain conditions.

Second: Witnessing the judgment is not a condition for the validity of the arbitration, but rather it is a condition for accepting the judgment's statement when denial.

Third: Refusal of arbitration is permissible. But this right is not absolute.

Fourth: The effect of arbitration is represented in the obligation and enforcement of the ruling, as well as in the possibility of annulment by the judiciary.

Fifth: Both parties shall remove the arbitrator before the judgement, unless the arbitrator has approved it for a judge, they shall not remove him.

Sixth: The inadmissibility of litigation in Western countries in matters of personal status. Muslim minorities in the country whose regime does only permit the judiciary of the State. As they have no choice but to resort to reconciliation or arbitration, so they choose from among them a Sharia scholar who decides on their personal status issues in accordance with the provisions of the Sharia.

Seventh: Judgments issued against Muslim minorities are valid if they cause greater harm.

Eighth: The permissibility of resorting to the judiciary in the courts in which there are Muslim minorities.

The research recommends the following:

Islamic centers and organizations in non-Muslim countries must inform members of Muslim

minorities of the rulings related to arbitration and Litigation to non-Islamic institutions.

## Statements on open data, ethics and conflict of interest [72-76]

1. Data can be accessed by contacting the authors [77-81].
2. No agreements of any type were needed as all participant students were enrolled in a course that researchers of the study were teaching [82-86].
3. The authors declare that they have no conflict of interest [87-89].

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