

# Prospect and Challenges of Using Online Mediation in Resolving Domestic Violence

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**Abstract--- Purpose of Study:** *Domestic violence happens when a woman or man regularly hurts his or her spouse physically or verbally such as beats or mentally tortures the other. Meeting face-to-face in the mediation process with the batterer to resolve family disputes may raise the issue of power imbalance, especially when the victim hide the history of violence. This article reviews the challenges of Muslim family disputes in Malaysia resolving the disputes with the history of violence and analyses what online mediation may offer to overcome the said problem.*

**Methodology:** *Being a pure legal research, this paper is doctrinal in its approach.*

**Result:** *The finding of this research is mediation is not an appropriate mechanism to resolve Muslim family disputes with the history of violence because it will cause more injustice to the victim. Thus, this paper concludes by suggesting online mediation as another alternative to resolve the family disputes.*

**Keywords---** *Domestic Violence, Muslim Family Disputes, Mediation, Online Mediation.*

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## I. INTRODUCTION

Domestic violence may break the family relationship. Domestic violence is violence or aggressive behaviour by one person against another within the home, such as in marriage. Domestic violence is a pattern of behaviour used to maintain power and control over an intimate partner or family member. Research depicted women and children are most often the victims of domestic violence over the year. Women's Aid Organisation reported that there are a total of 15,617 cases of domestic violence between 2014 and 2017 in Malaysia. The numbers are alarming, but it shows that more women are knowing about their rights.

There is no generally accepted definition of domestic violence. Malaysian law has adopted in its Domestic Violence Act 1994 broad definition that can be interpreted to take into account any illegal act that results in harm or injury as domestic violence. For example, physical injury, intentional causing of injuries, coercion to engage in any conduct or acts that is sexual or otherwise, confining and detaining the survivor against his or her will, and causing destruction or damage to property. However, non-physical acts of violence which will cause the victim to live in fear is uncovered by this definition.

Domestic violence has led to a family dispute. Family dispute is a combination of the word "family" and "dispute". Literally, "family" refer to a group of people who are related to each other, especially parents and children. (Mimi Kamariah, 1999; Masson, J. et al., 2008) and "dispute" means disagreement or argument between

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people or group. Meanwhile, the term of “family disputes” include any conflict between people who are related in some way, or who are part of a family or have been part of a family in the past (Bagshaw, 1995). In other words, family disputes can be defined as disputes among family members. This paper is not intended to discuss all the family disputes but only limit to after divorce matter when there is the history of violence. This paper also focused on Muslim family disputes because Malaysia has more Muslim family compared with non-Muslim family.

Resolving family dispute when there is the history of violence in Malaysia poses many challenges. In practice, the disputing parties in Muslim family disputes have to attend the mediation session in the Syariah Court as it is part of the court procedure to resolve the dispute. It is also being called court-annexed mediation. In the event of disclosure of family disputes with the history of violence, the mediator will not mediate the case. Further, if during the mediation process the mediator believes that there is the history of domestic violence, the mediator will stop the mediation process and report the violence. Nevertheless, domestic violence often is hidden and difficult to prove. The victim might be fear to the batterer and anxious about the safety which ultimately not to report the violence to the police and opt to proceed with mediation. Mediating family dispute with the history of violence may raise the issue of power imbalance. (Jen-T'Chiang, 2010) Many criticisms on resolving the family disputes by mediation in Malaysia as there is no written legal provision about power imbalance existed in the relevant Acts or guidelines before the beginning of the mediation session. (Nor Fadzlina, 2011).

Thus, this paper aims to analyse the challenges of resolving family disputes when there is a history of violence and highlights the benefits of using online mediation in resolving domestic violence. It is hoped that this research will benefit the future researcher to do further research upon this matter as well as the legislator to improve current practice of resolving Muslim family disputes when there is the history of violence.

## II. LITERATURE REVIEW

It is in debatable whether litigation or mediation is the proper way to resolve family disputes especially when there is domestic violence. Criticism in resolving family disputes when there is domestic violence by litigation is the severity of conflict which parallels to the nature of litigation may make the conflict getting worst. The victim of domestic violence will be affected psychologically and emotionally when the victim has to meet face-to-face during the court session. Moreover, the issue of the safety of the victim and batterer also critical in this matter. Research depicted that, increased hostility between parents may lead to a homicide of a victim and subsequently homicide of a batterer. (Lavi, 2015b) Thus, it is in need to use another medium as an alternative to resolve the family disputes when there is domestic violence despite litigation to reduce the hostility of the family conflict.

Mediation is overwhelming in Malaysia. The implementation of mediation in the Syariah Court in 2001 is derived from the backlog of cases and the realisation and knowledge that mediation is developing means of Alternative Dispute Resolution in the West. (Hak & Oseni, 2011) The first state formally introduced Sulh as a court-annexed mediation is the state of Selangor. The previous researches proved the effectiveness of mediation in reducing the backlog of cases in the Syariah Court, especially in Selangor. (Raihanah, 2009; Sa'odah, 2010; Hammad, 2014; Hanis, 2015) Nevertheless, mediation does not help the safety of a victim of domestic violence especially when the victim hides the history of violence. If there is the history of violence, there may be a

dominating party (husband or wife) whose temperament cannot be changed drastically over a mediation session. Hence, it will affect the safety of the victim during the mediation session.

The issue of safety is closely related to the issue of power imbalance. One of the factors of the failure of resolving family disputes in the Syariah Court is the existence of power imbalance (Safei, 2009). Power imbalance may end into injustice resolution of family disputes. The victim may unduly influence by the batterer to accept an unfair agreement. Thus, power imbalance will affect the legitimacy of the mediation process which consequently makes mediation as an inappropriate medium to resolve the dispute. (Baylis & Carroll, 2005) It is supported by Jen-T'Chiang, (2010), whereby it was found that the possible disadvantage of court-annexed mediation in the Syariah Court is the issue of power imbalance in terms of knowledge, maturity, experience, and negotiation ability. Jen-T'Chiang, (2010) added that prolonged abusive behaviour of a spouse also may deter the spouse to attend any meeting whether formal or informal. Therefore, it will contribute more abundance of the backlog of cases in the Syariah Court.

The research by Baylis & Carroll,(2005) emphasised on the significant role of a mediator when dealing with power imbalance. The ability of the mediator to deal with the issue of power imbalance must depend on their knowledge, skills, and ethics as a mediator. The mediator should have adequate knowledge and experience about how to suspect whether there is the history of violence between the disputing parties. In practice, the training of Sulh Officer is more to substantive-based seminars rather than a skilled based workshop. Jen-T'Chiang, (2010) highlighted that there is a constant fear that whether the Sulh Officer has adequate knowledge and experience when the training is more to substantive-based seminars. Added that, there are no stringent guidelines that the mediator can follow to restrain manipulation of knowledge obtained in general caucus.

On the other hand, the study by the previous researcher which differentiates how the family dispute will be resolved when there is domestic violence in Australia and Malaysia raised attention. The research had referred to a real case study. In Australia, by virtue of the Family Law Reform Act 1995, it has been compulsory for the mediator to screen separately for family violence to ensure the safety of the weaker party. Also, the mediation should only proceed if the perpetrator has admitted the responsibility for the violence, the victim is aware of his/her legal rights and entitlements and is linked to the source of support, have to follow and enforced strict guidelines and rules by two highly experienced trained mediators, the mediators use shuttle mediation or offer separate interviews and an advocate, or support person is available for victims during the process. In contrast, Malaysia has no provision in the relevant Act and guidelines on screening separately for family violence to protect the safety of the victim of domestic violence. (Bagshaw & Porter, 2009)

Bagshaw (2008) noted that, regardless of tradition, cultural background or religious persuasion, family mediators need to be aware of the gendered nature of domestic violence. The mediators should be educated and trained to screen for violence and abuse in a family relationship not only prior to mediation but also during the mediation process. Bagshaw (2008) gives the example in Australian experience where many disputing parties opt to proceed with mediation when the Family Relationship Centre provide free dispute resolution service as the litigation too costly, but the disputing parties unaware that they are exempt from mediation when there is domestic violence.

Thus, the mediator should put safeguards in place to ensure the participants are safe and the outcomes of mediation are fair and just for all involved.

In order to avoid from having power imbalance issues in resolving family disputes as what has been practiced by other states such as Australia, it is suggested by the previous researcher to provide more safe and protected environment to the disputing parties. Rossi et al., (2017) highlighted the advantage and disadvantage of using shuttle mediation (separate mediation) and online mediation in resolving family disputes with the history of violence. The study found that both shuttle mediation and online mediation may present several advantages over mediation including increased safety protections and express voice in a protected environment.

### **III. RESEARCH METHODOLOGY**

This research adopted doctrinal research. Being so, research methodologies of library research and critical analysis were used in analysing relevant materials, data, and information. A search of library books, library online databases, Google Scholar relating to family disputes and domestic violence was undertaken. A search of articles in relevant journals also was undertaken with the keywords of mediation in family disputes, domestic violence and mediation involving violence. A critical analysis on relevant Acts such as Domestic Violence Acts 1994, Penal Code of Malaysia, Islamic Family Law Enactments, Islamic Family Law (Federal Territories) Act 1984 and *Syariah* Court Civil Procedure (Federal Territories) Act 1998 relating to domestic violence and family dispute also was undertaken.

### **IV. PROSPECT AND CHALLENGES**

#### ***Domestic Violence***

Islamic Law does not envisage domestic violence. The basic principle of Islam in marriage is the husband is a leader in the family and in the household. Both husband and wife have a distinctive role to play and certain obligations to fulfil. According to the Holy Quran, the husband is responsible to protect and maintain his wife and the wife is responsible for caring for the husband and the family.<sup>1</sup> The wife also obliges to obey her husband during the existence of marriage. A husband is acknowledged to have absolute authority over his wife. However, the husband's leadership does not imply dictatorship over his wife. Even though Islam allows some degree of punishment towards a nusyuz (recalcitrant) wife, however, Islam prohibits the husband to act cruelly towards his wife. Indeed, Islam encouraged the husband to resolve the problems with kindness and consider the positive aspects of the wife. (Roslina, 2010).

In Malaysia, domestic violence is a crime. Malaysian Law provides protection to the victim of domestic violence. Research showed that most of the victim of domestic violence are women and children. In 1995, Malaysia ratified Convention on Elimination of All Forms of Discrimination against Women (CEDAW) to protect the victim of domestic violence and oblige to take reasonable steps to achieve the purpose of CEDAW. Consequently, Malaysia has the Domestic Violence Act 1994 to protect the victim of domestic violence. Domestic Violence Act 1994 has to be read together with the crime under the Penal Code in order to charge the batterer. Domestic Violence Act 1994 is attached to Penal Code classifications and processes for offended and criminal ones because criminal

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<sup>1</sup> The Quran, 4:34.

laws are federal issues and relevant to all Malaysians, however, family laws are divided into Muslim and non-Muslim residents. (Bahare Fallahi et al., 2015)

All the provisions in the Penal Code relating to offences affecting human body such as criminal assault and force, wrongful restraint and wrongful confinement, kidnapping and abduction, causing hurt and causing grievous hurt, culpable homicide and murder, and the offences of causing miscarriage and offences relating to infanticide, miscarriages and concealment of birth apply to spouse amount to domestic violence. Nevertheless, the majority of domestic violence cases in Malaysia mainly falls under section 323 of the Penal Code for voluntarily causing hurt. (Amirthalingam, 2003). In the event of a complaint of domestic violence, the victim may get interim protection and the protection order to restrain the abuser from using domestic violence against the victim as provided under the Domestic Violence Act 1994. Nevertheless, the interim protection order to prevent further violence cannot be obtained immediately as it might only be sought if there is police investigation being carried out and in the long-term protection order. (Roslina, 2010). Thus, there is no protection of domestic violence for the victim if the victim not reporting the violence.

Some commentators opined that the Domestic Violence Act 1994 does not recognize domestic violence to a woman as a crime per se. (Mahdzir, Rahman, Rahim, & Ismail, 2016) This is because the Domestic Violence has to be read together with the Penal Code to constitute a crime. In contrast, the violence against children is specifically recognised as a crime per se as compared with violence against woman. If the children become the victim of domestic violence, the children will be protected by the Child Protection Act 1991. The issue of whether domestic violence to a woman is a crime per se still debatable. Nevertheless, the act of committing violence itself still constitutes a crime.

There is a Guideline for Domestic Violence Cases to the relevant government agencies in order to ensure the maximum protection of the victim of domestic violence. The relevant government agencies consist of Bar Council, Social Welfare Department, Royal Malaysia Police, Chief Registrar Office of Federal Court, Department of Islamic Development Malaysia and Department of Islamic Religion-State, Ministry of Health Malaysia, Ministry of High Education, Department of Women Development and National Population and Family Development Malaysia. These guidelines were published in 2015 by the Ministry of Women, Family and Community Development. The guidelines describe the role and responsibility of nine relevant government agencies for protecting domestic violence cases. Therefore, nine relevant government agencies may have a clear role and steps to be taken when there is a domestic violence case.

From the abovementioned, Islamic Law and Malaysian Law are against domestic violence. The protection for domestic violence indicates that the issue is crucial and domestic violence is one of the causes of family disputes.

### ***Family Disputes***

Family disputes are close related to divorce matters. Islamic Family Law (Federal Territories) Acts 1984 is the governing law of Muslim family disputes in Malaysia and every 14 states in Malaysia has Islamic Family Law Enactments to govern Muslim family disputes. Islamic Family Law Enactments in every state in Malaysia were modelled after the Islamic Family Law Acts 1984 but the arrangement of the provision in the Enactments is

difference according to the states. Categories of family disputes that being recognised by the law such as divorce and further proceedings in respect of such divorces, outstanding maintenance or claims arising after divorce, maintenance of wife, maintenance of children, muta'ah (alimony), matrimonial property, ancillary orders in divorce and domestic violence.

Apart from Domestic Violence Act 1994 provides the protection for the victims of domestic violence, Islamic Family Law (Federal Territories) Act 1984 and other Islamic Family Law Enactments in every state in Malaysia also provides protection to the victim in Muslim family disputes. For example, Islamic Family Law (Federal Territories) Act 1984 give ways to the wife to apply for the divorce by fasakh, khulu', ta'liq or annulment of marriage and an injunction against molestation as well as the wife also has the right to charge the husband under ill-treatment. Apart from the specific injunctions provided under Islamic Family Law (Federal Territories) Act 1984, Syariah Court Civil Procedure (Federal Territories) Act 1998 also provide a general injunction to restrain the batterer from doing any act which may jeopardise the victim. Hence, the battered wife will get an immediate injunction as provided under Islamic Family Law (Federal Territories) Act 1984 and Syariah Court Civil Procedure (Federal Territories) Act 1998 once she filed a divorce by fasakh, khulu' ta'liq or annulment of marriage.

Fasakh, khulu', ta'liq and annulment of marriage are the types of divorce that being recognised under Islamic Law. In Islamic Law, only the man has the right to pronounce talaq (divorce). Fasakh, khulu' and ta'liq are the exception to this basic principle. The wife may apply for fasakh to the court. Fasakh (dissolution of marriage by the court) means annulment of marriage after the applicant successfully prove valid reason for any circumstances under Islamic Law. Domestic violence is one of the valid reasons to apply for fasakh. Khulu'divorce (divorce by redemption) means a request to dissolve a marriage made by a wife to her husband either by paying a money or returning a property. It must be agreed by husband and wife at the time when they contracted. Thus, if the wife is the victim of domestic violence and wants to dissolve a marriage, the wife may pay an amount of money or return the property to the husband by khulu' divorce. Ta'liq divorce (stipulation) means a promise expressed by the husband after solemnization of marriage in accordance with hukum syara' and the provision of Islamic Family Law in the state. The parties are entitled to a divorce upon breach of the condition as per stated in the agreement. In practice, one of the promises by the husband in this ta'liq is causing harm to the wife. Hence, if the husband caused harm to the wife, the wife may apply to the court under this ta'liq divorce.

Litigation is the main medium how to resolve the family disputes. However, litigation is expensive and timely. Moreover, dissatisfaction of public with the increasing backlog of cases, (Mohamed Ishak & Nik Azahani, 2016) unacceptable delay in the litigation process and declining delivery of judicial works, (Azahar, 2015) make the public change the medium to resolve family disputes to alternative disputes resolution. The most outstanding alternative dispute resolution in resolving the family disputes in Malaysia is mediation.

### ***Current Mechanism to Resolve Family Dispute (Mediation)***

Mediation has become one of the alternatives to resolve the family disputes. Family disputes have its own characteristics which make mediation is a suitable medium to resolve the dispute amicably; firstly, family disputes occur in family situations where there are continuing and interdependent relationships. Secondly, in family disputes,

the conflicts often involve a complex interplay of emotional and legal complaints. Thirdly, is the fact that marriage breakdown leads to disputes with frequent impacts on some family members who are not legally competent such as children (requires special procedures and protections). Finally, the family itself represents a private ordering system that has the capacity for resolving its own disputes. (Sander, 1984)

The benefits of mediation such as conducted in a private setting, confidential, cheaper, faster and flexible than litigation make a mediation a preferable choice as a medium to resolve a family dispute. By referring to the latest statistics, interview and observation, previous researchers also prove that mediation is effective in resolving family disputes especially in Muslim family disputes in Malaysia. (Sa'odah, 2010).

Nevertheless, many criticisms on this mediation process where the failures of the mediation process is due to the disputing parties not attending the mediation process, one or both of the parties could not attain the compromise, one or both of the parties not prepare for mediation process accordingly, one or both parties have no information to make a decision and one or both of the parties are not influenced by the third party. (Kamaruddin, 2016) It shows that the co-operation between the disputing parties is the major contribution of the successfulness of the mediation process.

Research depicted that, any matters involving personal danger, uncontrolled emotional problems between the disputing parties and having any issues relating to safety and power imbalances (Vestal, 2007) are the examples of cases that are not suitable to be mediated. This is because it will defeat the purpose of mediation to resolve the dispute amicably. Domestic violence in family disputes, therefore, is inappropriate to be mediated as it has the said features. However, it is a loss to the disputing parties which involve the history of violence could not enjoy the benefit of resolving the dispute by mediation.

Malaysia has court-annexed mediation or known as Sulh in the Syariah Court. Mediation becomes part of the Syariah court procedure which resolves Muslim family disputes. It is provided under No. 1 of Practice Direction of Department of Syariah Judiciary Malaysia 2010 that all the family disputes in the Syariah Court have to refer to Sulh (Islamic mediation) first at the early stage of registration of cases. It is supported by the Code of Ethics of a Syarie Judge where the court encourage to Sulh (mediation) in any stage in the proceeding before the judgment being given by the judge. Failure of the disputing parties to attend Sulh session is amount to contempt of court. Mandatory nature of court-annexed mediation denies the freedom of the disputing parties to solve their disputes (Jen-T'Chiang, 2010) especially when there is the history of violence.

Nor Fadzlina, (2011a) highlighted that the presence of violence makes the issue of power imbalance more apparent. There may be a power imbalance in terms of knowledge, maturity, and experience and negotiation ability. (Jen-T'Chiang, 2010). The issue of power imbalance in the mediation process is crucial to the disputing parties. Power defined by Mayers, (2000) is the ability to get one's needs met and to further one's goal. The illustration of power in mediation is the ability of the party to meet his or her needs and further his or her interests during the mediation process and in any agreement reached as a result of the mediation. Batterer always has more power to influence the victim.

Therefore, power imbalance in the mediation process should be control in order to do justice to the disputing parties. The power imbalance may be reduced by the mediator in the mediation session. However, the mediator may

not always notice the existence of the history of violence if the mediator does not have enough experience and also less training.

Based on the practice of Australia, the mediator will use online mediation as another safer and protective way to the victim of domestic violence. The use of online mediation in family disputes in Australia is being supported based on two reasons. The first reason is the development of laws in Australia which require most family disputes to be mediated through a family dispute resolution process. It is a mandatory requirement before resorting to the court. The second reason is the increase in the use of technology in both formal courts and informal dispute resolution mechanisms of the family disputes. On the other hand, United Kingdom opts to use online mediation in family disputes because the public legal funding declines, but the litigation is still expensive. (UK, 2015) Therefore, the United Kingdom resort to introducing online mediation as one of the methods to resolve the dispute.

### ***Online Mediation***

Online mediation is one of the Online Dispute Resolution. Online mediation first arises as a means of addressing conflicts that arise online in auction transactions or other e-commerce, which both parties wanted to resolve and for which there was no other dispute resolution option. (Marian, 2014). In the same time, online mediation also can be used for the disputes arising from an offline dispute. (H. Sree, 2016) The online mediation website makes use the technologies such as e-mail, chat room and instant messages,(Gramatikov & Klaming, 2011) electronic conferencing, online chat, video-conferencing (Poblet, Casanovas, & López-cobo, 2010), facsimile and telephone as a medium of communication. (Rossi et al., 2017). These asynchronous communications are suitable to be used if the disputing parties opt to not to meet each other face-to-face. It also can be another medium to resolve the dispute especially when the mediation is not an appropriate medium to be used (Smith, 2017).

Indeed, online mediation is environmental-friendly. (Ebner & Getz, 2012) Online mediation may minimize the paper to be used, minimize the carbon emission from any available transport, no special office space required and can avoid other environmental costs. This is due to the effect of technology on its accountability and accessibility, fairness, effectiveness and costs. The online environment may also reduce the emotional temperature of disputing parties by itself. Each disputing parties may develop fully position before responding without the pressure of the other. Further, the disputing parties may save cost and save substantial costs when mediating online. (Chandra & Carter, 2016) For example, online mediation does not require disputing parties to pay for long distance phone calls and teleconferencing. Added that, messages in online mediation do not need to be submitted live, but the message can be in writing and to be submitted later. The advantage of having idle time before submitting the response is the disputing party can give the best-edited response to the other party.

Other than that, text-based communication in online mediation makes the drafting of agreement easier and faster. The mediator can lift the language used from the database to ensure that the parties will approve the phrasing. (Bains & Andrade, 2018) Thus, online mediation is a more structured process. The database placing all the marital property and support payments in the system to create packages while the mediator deals with relational issues involving children in drafting the agreement. (Braeutigam, 2006) The disputing parties may focus on the substantial issue rather than emotional content. It has to note that, online mediation also can be made offline. The disputing parties

may meet before the online mediation session to reframe the arguments or the parties may arrange that all of the communication must be approved by the mediator. (Bains & Andrade, 2018) It showed the flexibility of online mediation compared to mediation.

In family disputes with the history of violence, it would not be appropriate to mediate face-to-face due to an emotional breakdown. (Betancourt & Zlatanska, 2013). The victim may be too fearful and lack of the competence and power to negotiate with the batterer in the privacy of the mediation room. This may contribute to the power imbalance in the mediation session. Otherwise, online mediation may mitigate the issue of power imbalance in the family dispute with the history of violence by helping the disputing parties to focus on the issues than on the emotion. Research depicted that online mediation is suitable to be used especially when the personal relationship between the parties in family disputes is such as to trigger so many negative reactions when meeting face-to-face (Ross, 2018). Most of the time, batterers are more successful than survivors at securing custody of their children in the mediation process (Lavi, 2015b). Thus, the children have more exposed to violence when the batterer get the custody rights. In contrast, the distance by technology in online mediation when resolving the disputes may help the victim a lot in removing the possibility of injury (Lavi, 2015a) and reducing the power imbalance. Consequently, there will be a fair and just settlement agreement to the disputing parties. Thus, the best interests of the children also are being protected.

It has to note that, even though the procedure of online mediation is almost similar to mediation which involves caucus meeting and joint meeting,(Lavi, 2015a) however, the existence of asynchronous internet communication provide more convenient and protective environment to the disputing parties. Thus, the protective environment itself may reduce the power imbalance in resolving the dispute. The victim may feel safe to express his or her argument in order to reach a mutual settlement agreement. Online mediation may also reduce isolation during caucus meeting by allowing parties to view the entire communication and by prohibiting cross-talk. (Arsdale, 2015) The main difference in a procedure in mediation and online mediation is, in the mediation, the parties are together in person and the mediator must hold a caucus to communicate with parties separately. Consequently, it will slow down the mediation process. In contrast, in online mediation, a mediator may use communication technologies to maintain threads of private conversations simultaneously and without creating perceived barriers or pressure to conclude. (Suzanne 2015) Online mediation also can improve the communication between disputing parties by providing a neutral environment which can reduce the hostility and helping the disputing parties to be more organized.

The first online mediation in Malaysia was launched in the early of 2017 by [www.mediate2resolveonline.com](http://www.mediate2resolveonline.com). It is introduced and conducted privately by two mediators, Tunku Alina Alias and Gunavathi Subramaniam. This online mediation will mediate pursuant to Malaysian Mediation Act 2012. Many types of dispute can be mediated in this online mediation website, especially commercial disputes. This online mediation website also allowed family disputes to be resolved by online mediation. Regarding family disputes with the history of violence, since mediation is part of Syariah court process, it is suggested that the online mediation being introduced as another option to the disputing parties to resolve the disputes. The relevancy of proposing online mediation in the Syariah Court is to overcome the problem of power imbalance in the mediation process especially when the family disputes have a history of violence. Online mediation may reduce the power imbalance with the help of technology itself.

Furthermore, research showed that the factors of failure of Sulh (mediation) in the Syariah Court in Malaysia is when the disputing parties not come to the mediation session.(Kamaruddin, 2016) It is supported by Jen-T'Chiang (2010) whereby the prolonged abusive behaviour of a spouse may deter a spouse to come to any meeting. Hence, if the parties opt not to meet each other face-to-face, online mediation may be another option to be used. Consequently, it encourages the disputing parties to come to mediation session and resolve the dispute amicably.

## V. CONCLUSION AND RECOMMENDATIONS

Litigation and mediation are not appropriate ways to resolve family disputes when there is domestic violence. Resolving family disputes by litigation may affect women and children emotionally and psychologically. Mediation may help the disputing parties to resolve the dispute amicably with a win-win situation, especially in family disputes. Nevertheless, not all types of family disputes are suitable to be mediated, especially when there is a personal danger. The mediator needs to be more cautious to ensure the issue of power imbalance and safety in the mediation process will not arise. By the vast use of the technologies and gadgets such as computer, smartphone or mobile device in Malaysia, and in order to pursuit to Fourth Industrial Revolution (FIR), it is more appropriate that mediation may be aided electronically as an alternative to the family disputes with the history of violence in order to give more justice to the disputing parties in family disputes. In addition, online mediation is more practical to Malaysia since Malaysia has no screening process for violence before the mediation process and online mediation may save more hidden domestic violence cases for mandatory mediation in family disputes.

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