A Comparative Study of the Principles, Objectives, and Structure of Mediation in Iranian and German Law

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Abstract
This study aims to examine and compare the principles, objectives, and structural foundations of mediation within the legal systems of Iran and Germany. The central question of the research concerns the similarities and differences in the conceptualization and application of mediation in the two jurisdictions. As an alternative dispute resolution mechanism, mediation has gained increasing attention in recent years due to its capacity to reduce judicial formalities, preserve confidentiality, and promote restorative justice. Employing a descriptive–analytical methodology, this research investigates the legal foundations and existing documents in both countries and analyzes the principles and goals that guide mediation. The findings demonstrate that both legal systems emphasize core principles such as voluntariness, confidentiality, and neutrality; however, they differ in their legislative frameworks and in the institutional mechanisms through which mediation is implemented. By providing a deeper understanding of this legal institution, the present study may contribute to improving and expanding the use of mediation as an effective means of dispute resolution.

Keywords: Mediation, Iran, Germany, Criminal Law, Comparative Law

Extended Abstract

This extended abstract presents a comparative analysis of the principles, objectives, and structural features of mediation in the legal systems of Iran and Germany, with particular emphasis on criminal justice, restorative justice, and the interaction between formal and informal mechanisms of dispute resolution. Mediation, as a form of alternative dispute resolution (ADR), has gained renewed significance in both jurisdictions, albeit through different historical trajectories and legal traditions. In Iran, mediation is rooted not only in modern statutory developments, but also in longstanding Islamic teachings on sulh (reconciliation) and a rich repertoire of customary and tribal practices such as Eslah Zat al-bain, blood-feud settlements, “house of equity”, and local reconciliation councils. In Germany, by contrast, mediation has emerged more recently as a structured, legally recognized instrument—especially in the context of victim–offender mediation—integrated into a mature, codified criminal justice system that traditionally prioritizes written law and judicial procedure.

Methodologically, the study adopts a descriptive–analytical and comparative approach, combining doctrinal analysis of statutory provisions, case law and model laws (such as the UNCITRAL instruments on conciliation) with the examination of religious, historical and sociological sources. In the Iranian context, the research traces mediation-related concepts from Quranic verses emphasizing reconciliation (“وَالصلحُ خَيرٌ”, “فَأصلِحُوا بَينَ أَخَوَيكُم”) and classical Islamic jurisprudence, through pre-modern tribal and local practices, to contemporary institutions such as criminal mediation provisions in new codes, councils for dispute resolution and community-based

mechanisms. In the German context, the study reviews the evolution of mediation within criminal procedure—starting from experimental programs in the 1980s and 1990s to its formal insertion into the Code of Criminal Procedure and the Mediation Act—highlighting the strong influence of restorative justice theory, victimology and European ADR policy.

The analysis of principles of mediation shows substantial convergence at the level of general norms. Both systems emphasize voluntariness, neutrality of the mediator, confidentiality of negotiations, and the non-binding nature of proposals until a settlement is agreed upon by the parties. In international and comparative instruments discussed in the study, such as the UNCITRAL Model Law on International Commercial Conciliation, additional guarantees appear: non-admissibility of statements made in mediation in subsequent judicial or arbitral proceedings, and suspension or interruption of limitation periods during the mediation process. These principles are echoed, with variations, in Iran's emerging mediation framework—particularly in rules concerning the non-use of mediation statements in court, and in provisions enabling parties to elevate their mediated agreement to an enforceable instrument through notarization, court "settlement reports" or the incorporation of a settlement into an arbitral award.

In terms of objectives, the study identifies both shared and distinctive aims. In Iran, mediation is strongly associated with religiously and culturally grounded values: maintaining social harmony, preventing escalation of conflict, promoting forgiveness, and realizing substantive justice beyond rigid formalism. The goals of easing court congestion and reducing the financial and temporal burdens of litigation are also present, but they often appear as secondary to the broader moral and communal vision of reconciliation. In Germany, the explicit primary aim of criminal mediation—especially victim–offender mediation—is restorative: recognizing the victim's harm, facilitating offender accountability, and enabling reparations in a manner that complements or, in some cases, partially substitutes formal punishment. While efficiency and dejudicialization (Gerichtsentlastung) are relevant policy concerns, German doctrine and policy documents frame mediation mainly as an instrument of restorative justice rather than merely a cost-saving device.

Structurally, the study demonstrates important differences between Iranian and German mediation frameworks. In Iran, mediation historically has been practiced through a mosaic of informal institutions—tribal elders, religious authorities, local notable figures—and semi-formal mechanisms such as Houses of Equity and arbitration or reconciliation councils. Modern criminal mediation provisions are relatively new, more detailed and formally regulated than their German counterparts, but they are not yet fully implemented nationwide. This creates a duality: a deeply rooted culture of informal reconciliation, with strong local legitimacy but limited codification, coexists with recently enacted, but still practically untested, formal mediation procedures. In Germany, by contrast, the legal structure is more concise and principle-based: the law sets general conditions (voluntariness, neutrality, confidentiality, limits of mediator involvement, and basic eligibility criteria), while leaving considerable room for professional practice standards, training institutions, and local experimentation. This leads to a comparatively flexible but less detailed statutory framework.

The comparative analysis also underscores differences in judicial integration. In Iran, the legislator tends to design mediation in close connection with the judiciary, often under the supervision of

judges or quasi-judicial bodies, with the dual aim of reducing caseloads and maintaining oversight. At the same time, there is a strong policy orientation toward "lightening" the formal criminal justice system by diverting less serious cases to mediation and other non-judicial mechanisms. In Germany, mediation is clearly distinguished from adjudication: while prosecutors and judges may encourage or refer parties to mediation, mediators are not expected to evaluate the legal merits or act as quasi-judges. German law and doctrine insist on facilitative, non-evaluative mediation, reserving authoritative interpretation of law and imposition of sanctions to the courts. This distinction is grounded in a positivist legal culture according to which law must remain within the domain of formal institutions.

Another key finding concerns the role of culture and legal consciousness. In Iran, many traditional practices—such as blood-feud settlements, tribal reconciliation rituals, and community-based rituals of apology and compensation—operate as de facto mediation mechanisms, deeply embedded in local norms and expectations. Any attempt to unify these diverse practices under a single, rigid national mediation law may face cultural resistance or risk undermining the social legitimacy of existing mechanisms. In Germany, by contrast, the primary challenge is not cultural diversity but public familiarity with the concept itself: the word "mediation" is relatively new in German legal-political discourse, often confused with other forms of third-party intervention, and requires sustained public and professional education to clarify its identity as a distinct ADR method.

The extended abstract further highlights that in Germany, the development of mediation has been heavily influenced by European Union policy (e.g. Directive 2008/52/EC) and by interdisciplinary scholarship in psychology, criminology and conflict studies. This has supported the consolidation of mediation training standards, ethical codes, and professional networks. In Iran, academic and policy debates on mediation are growing, especially in the field of criminal justice and restorative justice, but the institutionalization of professional mediators and training centers is still at an early stage. The study argues that separating professional and non-professional mediators, creating specialized mediation institutions, and integrating mediation training into legal education are crucial steps for Iran.

In conclusion, the research shows that while Iran and Germany share common fundamental principles in mediation—voluntariness, neutrality, confidentiality and party autonomy—their legal frameworks, institutional designs and underlying normative orientations differ significantly. Iran's strengths lie in its rich religious and cultural foundations for reconciliation and in its relatively detailed new legal provisions; its main challenges are effective implementation, cultural alignment of formal rules with local practices, and avoiding the reduction of mediation to a mere instrument for relieving judicial caseloads. Germany's strengths lie in its restorative orientation, professionalization of mediators and clear separation between adjudication and facilitative mediation; its challenges include limited use in adult criminal cases and relatively low public familiarity with mediation as a concept. The study concludes that each system can learn from the other: Iran from Germany's experience in professionalization and restorative design, and Germany from Iran's deep-rooted culture of reconciliation and the integration of moral–communitarian values into dispute resolution.

References

Abbasi, M. (2003). *New Horizons of Restorative Justice in Criminal Mediation*. Tehran: Daneshvar Publishing.

Alsan, M. (2012). *Electronic Commerce Law*. Tehran: SAMT Publishing.

Ashayeri, T., Jahani-Dowlatabad, E., & Abbasi, E. (2018). "A Socio-Historical Analysis of Mechanisms for Managing Tribal Conflicts in Rural Iran." *Social Development*, Vol. 12.

Ashouri, M. (2008). *Criminal Procedure*, Vol. 1. Tehran: SAMT Publishing.

Bahman-Beigi, M. (2001). *Customs and Traditions of the Fars Nomads*. Tehran: Azar Publishing House.

Bistooni, M. (2009). *Javān Commentary (Based on Tafsīr-e Nemūneh)*. Tehran: Bayan-e Javān Publishing.

Boskey, J. (2010). *Mediation as Practiced in Criminal Law: The Present, the Pitfalls, and the Potential*. Harvard Law School, Class of 2012.

Boulle, L. (2005). *Mediation: Principles, Process, Practice* (2nd ed.). LexisNexis Butterworths.

Braithwaite, J. (1989). *Crime, Shame, and Reintegration*. Cambridge: Cambridge University Press.

Bush, R. A. B., & Folger, J. P. (2000). *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*. Jossey-Bass.

Dana, A. R. (2005). *Manifestations of Restorative Justice in Iran's Criminal System* (Master's Thesis). University of Tehran.

David, R. C. (1980). *Mediation and Arbitration as Alternatives to Prosecution in Felony Arrest Cases: An Evaluation of the Brooklyn Dispute Resolution Center*. Vera Institute in cooperation with Victim Services Agency.

Dryzek, J. S., & Hunter, S. (1987). "Environmental Mediation for International Problems." *International Studies Quarterly*, 31(1), 87–102.

Ghasemi, M., & Yarmohammadi, S. (2009). *Traditional Cooperation among Ilam Tribes*. Tehran: Ilam University Publishing.

Gholami, H. (2018). *Restorative Justice*. Tehran: SAMT Publishing.

Hosseini, S. M. (1999). "The Role of Mediation in Dispute Resolution and Compliance with Norms." *Journal of the Faculty of Law and Political Science*, No. 45.

Khoei, Sayyed Abolqasem. (2011). *Foundations of Takmilat al-Minhāj* (Vol. 2, Persian Translation). Tehran: Khorsandi Publishing.

Kovach, K., & Love, L. (1996). “Evaluative Mediation Is an Oxymoron.” *CPR Institute for Dispute Resolution*, 14(3), 31.

Kury, H. (2013). “The (Non-)Effect of Sanctions: International Empirical Investigations.” In H. Kury & A. Scherr (Eds.), *Tougher Penalties – Less Crime?*

Mahmoudi Janki, F. (2008). “Formalizing Informal Justice in Iran: A Historical-Social Study of the Formation of the Houses of Equity and Arbitration Councils.” *Judicial and Legal Journal*, No. 62.

Mir Abbasi, S. B. (2006). *Public International Law*, Vol. 2. Tehran: Mizan Publishing.

Mir Abbasi, S. B., & Sadat Meidani, S. H. (1999). *The International Court of Justice in Theory and Practice*, Vol. 1. Tehran: Jungle Publishing.

Mosaffa, N., et al. (1986). *The Concept of Aggression in International Law*, under supervision of Jamshid Momtaz. Tehran: Center for Advanced International Studies, University of Tehran.

Nikbakht, H. R., & Adia, A. A. (2017). “Mediator and Conciliator as Alternatives to Traditional Civil–Commercial Dispute Resolution: Their Applicability in the Oil Industry.” *Legal Research Journal*, No. 78.

Reiss-Husson, F., & Jolchine, G. (1972). “Purification and Properties of a Photosynthetic Reaction Center from *Rhodopseudomonas spheroides*.” *Biochimica et Biophysica Acta – Bioenergetics*, 256(2), 440–451.

Sadeqi, M. (2005). “The Concept and Application of Public Order in Judicial and Semi-Judicial Bodies and Its New Dimensions.” *Journal of Law and Political Science*, No. 68.

Safdari, M. (1963). *Public International Law*, Vol. 3. Tehran: University of Tehran Press.

Sessar, K. (1995). “Restitution or Punishment: An Empirical Study of Attitudes of the Public and the Justice System in Hamburg.” *Eurocriminology*, 8.

Shahbazi, A. (1987). *The Unknown Tribe: A Study of the Surkhi Mountain Dwellers of Fars*. Tehran: Ney Publishing.

Solhchi, M. A. (2010). *Peaceful Settlement of International Disputes*. Tehran: Mizan Publishing, 2nd Edition.

Tadayyuni, A. (2010). *Peaceful Settlement of International and Inter-State Disputes*. Tehran: Mizan Publishing.

Vaezi, M. (2005). “Foundations of Mediation in International Conflicts.” *Journal of Private and Criminal Law Research*, No. 2.