

Mediation, Peace, and Reconciliation: Alternative Dispute Resolution Approaches with a Jurisprudential and Judicial Perspective, and a Comparative Study of Iran and Germany

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Abstract

This article examines the concepts of mediation, peace, and reconciliation within the framework of Islamic law and jurisprudence. Mediation is introduced as an alternative dispute resolution method in which a neutral third party assists the conflicting parties in reaching a solution through meetings and dialogue. Compared to traditional litigation methods, mediation offers advantages such as lower costs, confidentiality, and time savings. Additionally, mediation can act as a preventative measure for future disputes and facilitate negotiations in contracts. The section on peace and reconciliation defines crime and its types, including offenses that are *pardoned* (forgivable) and those that are *non-pardoned* (non-forgivable). Forgivable crimes are those that depend on the complaint of the private party, and prosecution ceases upon the victim's pardon. In contrast, non-forgivable crimes are public offenses, and the victim's forgiveness does not affect prosecution. The article then examines mediation in Imāmī jurisprudence, with a focus on the concepts of "*ishlāḥ dhāt al-bayn*" (reconciliation between people) and "*shafā'ah*" (intercession). In Islamic jurisprudence, mediation is most commonly framed as *shafā'ah*, where a third party seeks to create peace and reconciliation between the disputants. However, mediation, in cases where a ruler is involved as one of the parties, is prohibited within the limits of *ḥadd* (prescribed punishments). Finally, the article explores the differences between mediation and reconciliation, examining these concepts from the perspective of German law. While the two concepts share similarities, they also have differences in their practical applications. For instance, the role of a conciliator may be more active than that of a mediator. Overall, the text emphasizes the importance of mediation and peace efforts in resolving conflicts, reducing social tensions, and strengthening relationships. The Qur'an and Islamic narrations also stress the importance of striving for peace and reconciliation among individuals.

Keywords : Mediation, Iranian legal system, German legal system, criminal law, cooperation, right of priority.

Extended Abstract:

This article examines the concepts of mediation, peace, and reconciliation within the framework of Islamic law and jurisprudence, comparing the practices in Iran and Germany. Mediation is introduced as an alternative dispute resolution (ADR) method, where a neutral third party assists the conflicting parties in resolving their issues through dialogue and negotiation. Compared to traditional litigation, mediation offers several advantages such as lower costs, confidentiality, and time efficiency. Moreover, mediation serves as a preventive tool for future disputes and facilitates smoother negotiations in contracts.

The article begins by exploring the concept of "peace" in Islamic jurisprudence, focusing on the Quranic teachings and Islamic traditions that promote reconciliation and conflict resolution. The concept of *iṣlāḥ dhāt al-bayn* (reconciliation between people) is emphasized, along with the idea of *shafā'ah* (intercession), where a third party seeks to create peace and resolve disputes. However, it also acknowledges the limitations of mediation, particularly in cases of criminal law (ḥadd) where the involvement of a ruler or authority figure as a mediator is prohibited.

The article further examines the difference between forgivable and non-forgivable crimes in both the Islamic legal context and the Iranian legal system. Forgivable crimes, which rely on the private complaint of the victim, can be pardoned, while non-forgivable crimes are considered public offenses, and the prosecution continues regardless of the victim's forgiveness. The role of mediation in resolving these types of disputes is explored, focusing on the potential for restorative justice in cases of forgivable crimes.

A comparative analysis is conducted between the Iranian and German legal systems concerning the practice of mediation. In Iran, mediation is still developing and is largely based on traditional principles such as *iṣlāḥ dhāt al-bayn* and *shafā'ah*, with some regulations for its implementation in civil disputes. On the other hand, Germany has a more established framework for mediation, with specific laws and a clearer role for mediators in both criminal and civil cases. The paper explores these legal frameworks, highlighting the differences in how mediation is implemented in both countries.

The article also delves into the practical applications of mediation, distinguishing it from conciliation. While mediation is primarily a facilitator of dialogue, conciliation may involve a more active role in proposing solutions. The paper identifies that while the two concepts are similar, there are practical differences in their application. In countries like Germany, conciliation is often used to resolve commercial disputes, while mediation is more common in family and civil disputes. The active role of a conciliator in influencing the outcome contrasts with the more neutral role of a mediator, whose suggestions are non-binding unless agreed upon by the parties involved.

The paper concludes by discussing the growing global acceptance of mediation as an alternative to litigation. Despite the differences between legal systems, mediation provides an effective method for resolving conflicts, reducing social tensions, and promoting long-term peace. The research emphasizes the importance of integrating mediation into the broader legal and judicial systems, particularly in Iran, where it is still gaining ground. It suggests that further development of mediation frameworks in Iran, along with the adaptation of best practices from Germany and other countries, could lead to more efficient and peaceful dispute resolution processes, improving access to justice and enhancing social harmony.

In summary, this article highlights the significance of mediation in Islamic jurisprudence and its potential as a tool for resolving conflicts and fostering peace. By comparing the legal approaches to mediation in Iran and Germany, the study provides valuable insights into the evolving practice of mediation in both countries, suggesting ways to improve its implementation and effectiveness in various legal contexts.

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