ABSTRACT
As humans are social beings, disputes among them are inevitable. Judicial settlement of disputes is unfortunately costly, time consuming and open for public. Nevertheless Islamic law provides for settlement of disputes by many ways of ḫulūf including mediation. The purpose of the paper is to examine principles on mediation laid down in the Quran and the Sunnah of Prophet Muhammad (S.A.W.), which are both the primary sources of Islamic law. The paper will seek to apply the deduced principles in contemporary mediation. Reference will be made to certain incidents wherein the final Prophet (S.A.W.), the earlier prophets and the Caliphs seemed to have resorted to mediation.

There are many lessons that can be learned from the exemplary conduct of the Prophet (S.A.W.) who was a politically righteous person with highest moral and ethical values. His society wherein fighting would break out over petty matters and insignificant incidents and could linger on for generations had been successfully transformed by the Prophet (S.A.W.) to become civilised in settling their differences.
**Introduction**
Islam introduced the rule of law to solve disputes and ensure the smooth running of our worldly affairs, and it has encouraged and rewarded peaceful dispute and conflict settlement. In addition to texts in the Holy Qur’an, the Sunnah of Rasullah (SAW), his Companions and their successors, Muslim jurists and administrators have consistently supported peaceful conflict settlement: within the Muslim community; between Muslim and non Muslim communities; and between non Muslim communities.

**Key Words Definition:**
In Islamic law, peaceful conflict settlement is to be achieved either by means of conciliation (Sulh) or arbitration (Tahkim) or mediation (Wasaata). To have a clear understanding of these concepts, it is important to define them by their similarities and differences.

**Conciliation (Sulh):** Al-Jurjani in his “Taarifat” defines Sulh as: “An accord to end a dispute”\(^1\). The Ottoman Code, "Majalla" defines "Sulh" in Article 1531 as: “A contract removing a dispute by consent. And it becomes a concluded contract by offer and acceptance”\(^2\). Sulh is also defined as: “An accord between two parties or more to resolve a specific dispute by ending its causes”\(^3\).

**Arbitration (Tahkim):** The appointment of a judge or judges by the disputed parties to adjudicate a certain dispute or issue.

**Mediation (Wasaatah):** ‘Wassatah’ is the common term for mediation, and is used in Islamic law. Al-Jahshiyari (331 A.H-943 A.D) in his book ‘kitab al-wuzaraa’ (The Book of Ministers), has used ‘tawasut’ in the case of the mediation of Muhammad Ibn Muslim to end the hardship of land tax (kharaaj) payers, and also the Mediation of Yahya between a man and the Abbasside Khalifah Harun al-Rashid (198 A.H- 814 A.D)\(^4\). Nevertheless the common word for mediation in Islamic law is (Al-Mashyu Bayna Al-Mutanaziinah); ‘walking between the disputants’. Al-shafaa, Al-jaryu and Husnu Al-Sifara are also terms used for mediation.

As for the definition of mediation (wassatah), it is a benevolent and non binding procedure to end a dispute. It is characterized by one or more persons intervening in a dispute either of their own initiative or at the request of one of the parties. The independent mediator must then seek to achieve an amicable settlement by proposing solutions to the parties\(^5\).

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2. The Mejelle, p255
Similarities and Differences:
In terms of similarities, these are forms of alternative dispute resolution, and are conditional on
the choice of the disputants, and possible, settlement of the dispute.

As for the differences, arbitration "tahkim", for instance, differs from conciliation (Sulh) in
two aspects: firstly, arbitration ‘tahkim’ results in a binding, judicial decision, whereas conciliation "sulh" results in a non binding proposal for settlement; secondly, in conciliation ‘sulh’ one or both parties renounce some rights; whereas in arbitration no one renounces any of
his rights.

Arbitration also differs from mediation; where the former ends in a binding judicial decision, the
latter facilitates negotiation.

As for conciliation "Sulh" and mediation "Wasaatah", they are considered by some scholars to be
similar in general terms, but they are, in my opinion, different in nature.

Conciliation in Islamic Law is a means of amicable dispute settlement, whereas mediation is one
of the means of amicable settlement, and arbitration is another one.

Proof of Legality of Mediation
There are two categories of proof:
The first is the Syariah evidence commending assistance: Allah (SWT) says in Surah Al-Maidah
Verse 2

وَتَعاوَّناَّ عَلَى الْبِرِّ وَالْطَّقُوْفِ وَلَا تَعاوَّناَّ عَلَى الْإِثْمِ وَالْخَنْدُونَ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ العَقَابِ

“(H)elp ye one another in righteousness and piety. But help ye not one another in sin and
rancour” (Al-Maidah: 2)

His Messenger (SAWS) said: “The best of you in Allah’s eyes are those who are more beneficial
to others and amongst the best deeds in Allah’s eyes are: creating happiness in the heart of a
Muslim, or paying his dept, or satisfying his hunger”. He added: “Attending my brother’s need is
dearer to me than retreat “Ilkaaf” in this mosque (Madinah Mosque) for one month”6.

The second category consists of Syariah evidences recommending peaceful settlement of conflict
in general and mediation in particular.

With regards to the evidences recommending peaceful settlement of conflict, we can find
numerous verses of the Holy Qur’an and many Hadith.
Allah says in Surat Al-Nisaa:

لاَ خَيْرٌ فِي كُلِّ مِنْ تَجَوَّاهُمْ إِلَّا مَنْ أَمَرَ بِصُدُقَةٍ أَوْ مَعْرُوفٍ أَوْ إِسْلَاهُ بَيْنَ النَّاسِ وَمَنْ يَفْعَلْ ذَلِكَ أَجْرًا عَظِيمًا
فَسَوْفَ نَوْفَكُهُ ذَٰلِكَ عِنْدَ اللَّهِ

“In most of their secret talks there is no good; but if one exhorts to a deed of charity or justice or conciliation between men, (secrecy is permissible): to him who does this, seeking the pleasure of Allah, We shall soon give a reward of the highest (value)” (An-Nisaa:114).

"وَإِنْ خَفَّفَ شَقَافُ بَيْنَهُمَا فَأَلْقَاهُمَا حَكَمًا مَّنْ أَهْلَهُ وَحَكَمًا مَّنْ أَهْلَهَا إِنْ يُرِيدَا إِسْلَامًا يَوْقَعُ اللَّهُ بَيْنُهُمَا إِنَّ اللَّهَ كَانَ عَلِيماً خَبِيرًا"

"If you fear a breach between a man and his wife, appoint an arbiter from his people and another from hers. If they wish to be reconciled God will bring them together again. God is all-knowing and wise.” (An-Nisaa:35)

"وَإِنْ أُمَرَتْ خَافَتْ مِنْ بَعْلُهَا نَّسِبًا أوَّذَاعُ الزَّمَنُ فَلاَ جَنَاحٌ عَلَيْهِمَا إِنْ يَسْتَحْيَى بَيْنُهُمَا صَلَحًا وَالصُّلحُ خَيْرٌ وَأَخْضَرَتُ الأَنفُسُ النَّسَبُ وَإِنْ تُحْسَبُوا وَتُقْسَطُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَيْرٌ"

“If a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best; even though human inner-selves are swayed by greed. But if ye do good and practise self-restraint, Allah is well-acquainted with all that ye do” (An-Nisaa:128)

"وَإِنَّ صَافُقٍ مَنْ النَّفْسِينَ اقْتَلَوْا فَأَصِلَّحُوا بَيْنَهُمَا فَإِنْ يَقْضَى عَلَى الْأَخْرَى فَقَتَلُوا الَّذِي تَبَغَّى حَتَّى تَقُيَّدُ إِلَى أُمَرٍ"

“And if two parties among the Believers fall into a quarrel, make ye peace between them: but if one of them transgresses beyond bounds against the other, then fight ye (all) against the one that transgresses until it complies with the Command of Allah; but if it complies, then make peace between them with justice, and be fair: for Allah loves those who are fair (and just). (Al-Hujuraat: (Al-Hujurat: 9).

Beside these verses Hadiths of the Prophet (SAAS) are loud in supporting peaceful settlement. The Prophet says:

"الصَّلَحُ جَانِزٌ بِينَ الْمُسْلِمِينَ إِلَّا صَلَحًا حَرِيمٌ حَلَالًا أَوْ أَحْلَ حَرَامٌ"

"Conciliation between Muslims is permissible, except for a conciliation that makes lawful unlawful and unlawful lawful".

The prophet also says:

"أَشْعِبْ تَؤْمِرُوا ""Intercede so you will be rewarded"

The second Caliph Umar Inb Al- Khataab says:

"رَدُّوا الخَصُومَ حَتَّى يُصَلَّحُوا فَإِنَّ فَصُلَّ الْفَضَاءِ بَيْنَهُمَا الضُّغْنَانَ"

“Return the disputants till the conciliation is achieved. Verily, litigation causes rancour between disputants.
As for mediation as means to conciliation, the direct evidence is verse 85 of Surat Al-Nisa.

Allah Says:

"Whosoever intercedes for a good cause will have the reward thereof, and whosoever intercedes for an evil cause will have a share in its burden. And Allâh is Ever All-Able to do (and also an All-Witness to) everything." (An-Nisa: 85)

Fundamentals of Mediation in Islamic Law:

Based on the above evidences, Muslim jurists state that all means of peaceful conflict settlement including mediation are recommended in Islamic law. They further stress that the fundamentals of mediation in Islam may be derived from these texts and from the general principles of Islamic Law. These fundamentals may be summarized as follow:

1- Peaceful conflict settlement is encouraged regardless of the ideology or sects or religion of the parties involved in the conflict. The Quran lauds all type of peaceful conflict settlement as long as they do not contravene Islamic teachings. The Prophet practiced this directive and conciliated his Companions, and accepted mediation between Muslims and non Muslims. His Companions have done the same in their time of leadership.

2- Mediation is not available in cases where the law is clear and explicit e.g. Rasullulah’s rejection of the mediation of Usamah Ibn Zaid, whose honorific was ‘the loved one of Allah's Messenger’, in the case of the Makhzumi women to avoid the punishment of theft. Rasulullah’s reply to the request of Usamah Ibn Zayed was stern: “Do you intercede regarding one of the punishments prescribed by Allah? He then stood up and addressed the people: “O people, those who have gone before you were destroyed, because if anyone of high rank committed theft amongst them, they spared him; and if anyone of low rank committed theft, they inflicted the prescribed punishment upon him…..”

3- Mediation as a process of peaceful conflict settlement falls under the scope of Siyasah Shar’iah which “includes all measures which bring the people closer to beneficence, and furthest away from corruption, even if it has not been introduced by the Prophet (SAAS) nor regulated by divine revelation”\(^8\), therefore whatever procedure applied in the process of mediation is valid as long as it brings the people closer to beneficence, and furthest away from corruption, and as long as it does not contravene the principles of Islamic teaching.

4- Islam permits the mediation of a non-Muslim in internal and international conflicts occurring between Muslims and non Muslims. The name of Mutaam Ibn Adi, Badil Ibn Warqaa, Majdi Ibn Umar and Muhaysah Ibn Masood mentioned above, are a clear example of such acceptance. As for mediation in conflicts occurring between Muslims or between Muslim countries many scholars are not in favor of accepting the mediation by non-Muslims based on the prohibition of the arbitration by non-Muslims in a conflict between Muslims and non-Muslims. However, many other scholars permit mediation by a non Muslim, as long as the matter it is not in a purely religious, and it is within Islamic Values (public interest; ending hardship; reaching a fair settlement etc).

5- Sincerity, fairness and qualification are the core conditions of a mediator. Allah says in the Holly Quran:

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\text{يا أباها الذين آمنوا كولوا قوامين لله شهداً بالقسط ولا يجرمنكم شنآن قومٌ على ألا تغلوا اغتيلوا هو أقرب للتقوى وأثّروا الله إن الله خبير بما تعملون}
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\(^8\) This definition of Siyasah Shar’iyah was introduced by Ibn Aqil Al-Hanbali and adopted by Ibn Qayim Aljujaah and later adopted by the majority of contemporary scholars.
“O ye who believe! stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to Piety; and fear Allah. For Allah is well-acquainted with all that ye do” (Al-Maidah: 9).

He also says:

“O ye who believe! stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do” (An-Nisaa: 135).

The prophet (SAAS) says:

“القضاة ثلاثة: واحد في الجنة، واثنان في النار. رجل عرف الحق فقضى به فهو في الجنة، ورجل قضى بين الناس بالجهل فهو في النار، ورجل عرف الحق فجار بمجرد في النار”.

“There are three kinds of judges: two are in the Fire and one in Paradise; the one in Paradise is the one who knew the truth and judged by it. The one who judged amongst people in his ignorance is in the Fire, and the one who knew the truth, but he deviated from it in his judgment, then he is in the Fire”.

6- The mediator should be of good reputation and acceptable to both parties. The Holy Quran emphasizes, for instance in the issue of witnesses to contract formation, on reputation and acceptability. Allah says:

(Al-Baqarah; 282)

"ممن ترضون من الشهادات"

The word “Tardawna” is derived from “Redha” Which means acceptance.

7- Although mediation is a benevolent act, authorities should encourage and assist financially mediators either they are individuals or organizations. Proof of this is that the prophet (SAAS) remunerated Majdi Bin Amr who mediated to end the conflict between the Islamic military detachment and the trade convoy headed by Abu Jahl in the first year of Hijrah. Books of Sirah mentioned that the prophet has well received the group of Majdi and rewarded them.

9 Narrated by Al-Tirmizi and Abu Dawood. See Al-haythami. Majmaa Al-zawa’id Wa Manbaa Al-Fawa’id. V4, p252.
**Contemporary Application of Mediation**

Islam as an everlasting religion applicable for all mankind and suitable to all times and places has two important characteristics absorbing and solving all incidents that may encounter Muslims Ummah: the first one is comprehensiveness; and the second one is flexibility. Furthermore it is not a literal application of mediation in prophet’s era.

As such all types of mediation and all procedures applied by the mediators to end a dispute and reach a fair settlement of conflicts are welcomed as long they do not contravene Islamic principles and fundamentals, therefore, foundations of Islamic mediation mentioned above are maintained as they are basics for conflicts settlement and still valid for contemporary peaceful conflict settlement. In addition to these fundamental customs and tradition of Islamic countries are of crucial importance and sensitivity and even supported by Islamic legal maxim that says: "A matter recognized by custom is regarded as if stipulated by agreement".

**Conclusion**

Islam did not merely encouraged peaceful conflict settlement, but introduced a systematic and time-space consideration approach to end conflicts, however, Islam while preserving the openness of Shari‘ah law to the impact of time and space dimension, also protects it from the influence of contradictory norms and laws of non Islamic provenance, or from the renunciation of fundamental of Islamic Law under the justification of time and space factor, or the pressure of globalization and international law.