

The Role of Islamic Mediation in Resolving Family Disputes in Turkish Families

Türk Ailelerinde Aile Uyuşmazlıklarının Çözümünde İslami Arabuluculuğun Rolü

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Abstract

This article examines Islamic family mediation as a value-driven approach to conflict resolution, grounding its principles in the Qur'an, the *sunnah*, and the jurisprudence of Islamic scholars (*fuqaha*). It highlights the importance of the mediator's ethical and religious grounding, emphasizing their role in promoting justice and reconciliation. While traditionally applied to marital disputes, the study argues for the broader applicability of Islamic mediation principles across diverse family law contexts. The paper examines the legal frameworks for mediation in both Turkish and Islamic legal systems, noting their distinct scopes and procedures. It observes that Islamic law generally supports mediation in family matters, with exceptions in cases involving violations of Allah's rights or public order. This study is based on a comprehensive review of the existing literature on Islamic family mediation, examining previous research to provide an in-depth understanding of the subject. Islamic family mediation fosters mutual respect, forgiveness, and compromise, helping individuals develop skills to navigate interpersonal relationships with wisdom and grace. This approach addresses conflicts while also highlighting the significance of maintaining family ties and fostering community. The study concludes by advocating for the expansion of mediation's application in Türkiye, suggesting that its broader adoption would unlock its full potential in fostering peaceful and equitable resolutions to family conflicts.

Keywords: Islamic Family Mediation, Turkish Mediation System, Family, Family Mediation

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Öz

Bu makale, İslami aile arabuluculuğunu, ilkelerini Kur'an, sünnet ve İslam âlimlerinin (*fukaha*) içtihatlarına dayandırarak, uyuşmazlık çözümüne yönelik değer odaklı bir yaklaşım olarak incelemektedir. Arabulucunun etik ve dini temellerinin önemini vurgulayarak, adaleti ve uzlaşmayı teşvik etmedeki rollerini vurgulamaktadır. Geleneksel olarak evlilik anlaşmazlıklarına uygulansa da, çalışma İslami arabuluculuk ilkelerinin çeşitli aile hukuku bağlamlarında daha geniş uygulanabilirliğini savunmaktadır. Makale, hem Türk hem de İslami hukuk sistemlerinde arabuluculuk için yasal çerçeveleri inceleyerek, bunların farklı kapsamlarını ve prosedürlerini belirtmektedir. İslam hukukunun, Allah'ın haklarının veya kamu

düzeninin ihlallerini içeren davalar hariç, aile meselelerinde genellikle arabuluculuğu desteklediğini gözlemlemektedir. Bu çalışma, İslami aile arabuluculuğu hakkındaki mevcut literatürün kapsamlı bir incelemesine dayanmaktadır ve konuya ilişkin derinlemesine bir anlayış sağlamak için önceki araştırmaları incelemektedir. İslami aile arabuluculuğu, karşılıklı saygıyı, bağışlamayı ve uzlaşmayı teşvik ederek, bireylerin kişilerarası ilişkilerde bilgelik ve zarafetle gezinme becerilerini geliştirmelerine yardımcı olur. Bu yaklaşım, çatışmaları ele alırken aynı zamanda aile bağlarını sürdürmenin ve topluluğu beslemenin önemini de vurgulamaktadır. Çalışma, Türkiye’de arabuluculuğun kapsamının genişletilmesini savunarak, bunun aile içi çatışmalara barışçıl ve adil çözümler bulmada arabuluculuğun tüm potansiyelini açığa çıkaracağını öne sürerek sonuçlanmaktadır.

Anahtar kelimeler: İslami Aile Arabuluculuğu, Türk Arabuluculuk Sistemi, Aile, Aile Arabuluculuğu

Introduction

Mediation is a dispute resolution process in which the mediator, a neutral figure, helps the parties communicate, brainstorm on a problem, and negotiate their solutions to their dispute. With its informal character, mediation can be said to resolve disputes by delegating the problem to the parties involved and not delegating it to external arbitrator.

It is the character that convinces many people that mediation is useful as an effective way to resolve a conflict without inviting other problems.

Recently, resolving marital disputes outside formal legal systems has become increasingly popular among legal practitioners, policymakers and social-legal scholars. Various alternative dispute resolution (ADR) mechanisms have emerged. ADR mechanisms, which include mediation, collaborative law, arbitration and negotiation, offer different methods to resolve disputes without resorting to traditional litigation. These mechanisms are in opposition to and alongside state law processes designed to resolve civil, commercial, and family law disputes (Hak, 2002).

Separation and divorce often create transitional periods that lead to uncertainty and conflict between parents and cause distress for their children. Lack of access to adequate legal information, advice and representation poses a significant challenge in the context of marital conflicts for vulnerable individuals, particularly women and victims of domestic violence. Emery (1995), found that the harmful effects of divorce on children result from their involvement in parental conflict. Dispute

resolution involves the reorganization of family relationships, not the division of family members into hostile camps. Mediation is a type of ‘Alternative Dispute Resolution’ (ADR) that resolves disputes without the order of a judge after a contested hearing. Unlike negotiation, where the parties or their representatives try to find a solution to their dispute through direct talks, in mediation a neutral third party, the mediator, facilitates the process of reaching a conclusion (Casal, 2005).

The preservation of the family unit is a value of paramount importance in contemporary society. The 2024 “Türkiye Century Education Model” places a strong emphasis on family unity as a core value in the newly implemented educational curriculum in Türkiye. Central to this approach is the Virtue-Value-Action Model, which conceptualizes the values that guide individuals toward virtues and manifest in their actions, bridging moral principles with observable behavior. The main goal of this model is to move from actions to values, from values to virtuous people, and from virtuous people to the ultimate goals of “Peaceful Family and Society” and “Peaceful People in Livable Environments.” The 12th Development Plan (2024-2028) emphasizes the need to protect the family, formed by the marriage of a man and a woman, as the foundation of national and spiritual values. It calls for safeguarding against harmful influences, nurturing healthy generations, and reinforcing the family institution to maintain a stable, dynamic population structure and development. In navigating the complexities of familial relationships, potential conflicts may arise. In such instances, the recourse to mechanisms like family counselling and mediation can serve as invaluable tools for safeguarding and strengthening the familial bond. These approaches offer a structured and supportive environment for addressing discord, fostering understanding, and facilitating resolution, thereby contributing to the preservation of the family unit.

Turkish academic studies on mediation and arbitration in Islamic law have been limited, with few studies establishing a relationship between these practices and family mediation. Yusuf Şen (2012) compared the concept of mediation with Islamic law, but family mediation was not the main focus of his article. Köse and Beriker (2012) and Yılmaz (2002) discussed the current legal aspect of family mediation in Türkiye, focusing on the secular structure of the Turkish Republic and the validity of Islamic law. Köse and Beriker argue that informal conflict resolution practices like arbitration and mediation are not allowed due to Türkiye’s secular structure and similarities to Western-based systems of law. Yılmaz argues that secular official Turkish law and unofficial Muslim law are used together in social and legal fields. Türkiye was one of the first Muslim countries to respond

to Western civilisation and power challenges, adopting a completely secular legal system and abolishing Sharia law. Yılmaz's (2017) article suggests mediating could be effective in preventing divorce problems in Türkiye due to arbitration practice in Islamic Family Law. Ahmet Temel's (2019) article suggests that the application of arbitration should be included in a mixed system to establish the relationship between family mediation and arbitration. This study investigates the under-researched role of Islamic mediation in resolving family disputes within the context of Türkiye's secular legal framework, potentially contributing to culturally sensitive and effective conflict resolution approaches for Turkish families.

This article focuses on Islamic teachings on mediation. The discussion centres on mediation as a recommended method for resolving family disputes in the Quran, which is the primary source of the Islamic legal tradition. For this study, library research is essential to gathering the relevant materials necessary for the conceptual and theoretical understanding of mediation, particularly family mediation. Therefore, research was drawn on primary and secondary sources, including books, journals, and family mediation reports. The advantage of this methodology lies in the way all researchers, legal specialists and others interested in mediation can understand the different schools of thought, analyse them, choose them from their interpretations, and adduce legal arguments on the principles formulated by the classical schools. Hence, this study provides a thorough understanding of the principles and rules of Islamic mediation that will be utilized to analyse the current regulations on mediators. It also enhances understanding of mediation rules in Islamic law and their conformity with the Turkish legal system. Such a theoretical view of mediation is also useful as a comparative tool for understanding the theory of mediation in Islamic family law. Finally, the necessity of Islamic family mediation for families in Türkiye has been discussed.

Mediation Concepts in Western Law

Mediation is a process in which the parties in dispute come together under the guidance of a neutral third party, the mediator, and work with mutual understanding and cooperation to resolve their problems (Charlton & Dewdney, 2004). During this process, the parties determine the source of the dispute, seek solutions, evaluate different options, and ultimately aim to reach an agreement that satisfies both parties. Mediation is a fair and constructive method that allows parties to produce their solutions.

The key feature of this approach is that the mediator does not provide advice or influence the content or outcome of the negotiation. In this process, the nego-

tiating parties decide on the outcome, while the mediator facilitates the process. With this understanding, mediation should be differentiated from arbitration. Although both mediation and arbitration methods utilize a third party other than the parties in dispute to reach an agreement outside of court, mediation is quite unique in terms of the participation of a neutral party.

The basic characteristic of mediation is that it allows the parties to make their own decisions instead of imposing a solution. Unlike traditional judicial processes, the authority in mediation belongs to the real parties to the dispute. This has made mediation one of the most preferred dispute resolution methods in recent years, enabling the parties to find solutions tailored to their needs and interests (Charlton & Dewdney, 2004). As alternative dispute resolution (ADR) methods become widespread, mediation is increasingly recognized as an effective method (Friess, 1986). Many experts consider mediation to be a fundamental process that forms the essence of ADR (Creighton, 1980). In line with the general principles of ADR, mediation allows the parties to produce solutions that differ from traditional litigation processes in a more flexible, confidential and participatory environment (Robins & Deenenberg, 1976).

Various theoretical approaches to mediation differ in terms of the role and the extent of intervention of the mediator. The first of these is the settlement-oriented approach. In this approach, the mediator sees reaching an agreement between the parties as the primary goal and avoids intervening in the content of the solution (Erickson, 2001). The second approach, the problem-solving approach, focuses on the mediator understanding the underlying needs and interests of the parties and helping them find “win-win” solutions (Folger & Bush, 2005). This allows the parties to resolve the dispute and improve their future relationships. The third and most ambitious approach is transformative mediation. In this approach, the mediator aims to transform the relationship between the parties and help them understand each other, empathize and develop communication skills (Riskin, 1996). Transformative mediation aims to provide a long-term and sustainable solution by empowering the parties and increasing their capacity to solve their own problems. Regardless of the theoretical approach adopted, the mediator must maintain his/her impartiality. Impartiality is critical to the credibility and fairness of the mediation process (Moore, 2014). The mediator must remain impartial, maintaining equal distance from all parties without showing favor or bias toward any side.

Mediation in the Qur'an

In addition to settling the conflict between people, ensuring peace and tranquillity in society is an issue that Islamic law focuses on with sensitivity, because resolving disputes and ensuring unity in the society is the unchangeable provision of the Qur'an.

There are two main surah of proof for mediation in the Quran; first, the assistance feature of mediation is mentioned as follows in the surah al-Maidah Verse 2:

...Cooperate with one another in goodness and righteousness, and do not cooperate in sin and transgression. And be mindful of Allah. Surely Allah is severe in punishment (The Qur'an 5:2).

The second proof consists of evidence of the surah, which suggests peaceful resolution of the dispute in general and mediation in particular. Evidence suggesting peaceful conflict resolution can be found in verses and hadiths of the Qur'an. These verses provide guidance on how to approach disagreements and disputes in a way that fosters understanding, reconciliation, and peace. It can be listed in the following verses on the subject.

If you [believers] fear that a couple may break up, appoint one arbiter from his family and one from hers. Then, if the couples want to put things right, God will bring about reconciliation between them: He is all knowing, all aware (The Qur'an 4:35).

The verse clearly explains the procedure to be applied when there is a concern over separation between spouses. The main criterion of mediation relates to the assistance of a neutral third party (a mediator) to facilitate the disputed parties to communicate their dispute amicably and to reach consensus on a binding agreement whenever possible (Cusairi, 2013). On the other hand, although the mediator does not have the power and authority to separate spouses, there may be situations where the mediator helps the parties to accept the inevitability of divorce.

The Quranic verse recommends appointing two arbitrators in marital disputes, one from each family, resembling a mediation process rather than modern legal arbitration, as noted by Akgündüz (1997) and Manaf (2018). This method encourages mediated resolutions. While arbitration involves a binding decision by a neutral third party, mediation emphasizes facilitated communication voluntary agreement between disputing parties (Atar, 1991). The verse's emphasis on reconciliation and the involvement of family members suggests a mediation-like process, as the primary goal is to restore peace and encourage a mutually agreeable solution (Şen, 2012). The verse uses the term "arbitration", but its historical

and cultural context suggests a more flexible role for the arbitrators, prioritizing reconciliation over imposing a strict judgment (Şen, 2012). Therefore, while the verse technically mentions arbitration, the system it describes aligns more closely with mediation due to its emphasis on reconciliation and voluntary agreement. The Quranic emphasis on preserving familial harmony and promoting peaceful conflict resolution supports this interpretation (Manaf, 2018).

The verses emphasize that those appointing a mediators are also obligated to adhere to their decisions, demonstrating the practical application of mediation within Islamic law and its integration within the legal framework (Manaf, 2018). As stated in the conceptual framework, the referees also have mediation roles in the first stage in the light of these verses.

In addition, the Qur'an encourages mediation in the surah of Hujurat. It says:

If two groups of the believers fight, you [believers] should try to reconcile them; if one of them is [clearly] oppressing the other, fight the oppressors until they submit to God's command, then make a just and even-handed reconciliation between the two of them: God loves those who are even-handed. (The Qur'an 49:9)

According to this verse, when there is disagreement or dispute between the two parties of believers, then a third will reconcile the two parties (Manaf, 2018). First of all, Allah ordered peace between the two warring factions, and yet said that mediation could not be achieved if even one of the parties continued the persecution. Thus, in all disputes, including war, mediation is not allowed if one party behaves unjustly toward another.

Besides, Allah highlights justice among people in verses that mention mediation (Manaf, 2018). The Quranic principle of justice and fairness, as exemplified in verse 4:58, is crucial in resolving family disputes. This verse also serves as a guiding principle for mediators involved in family disputes, reminding them of their ethical obligation to uphold justice and fair treatment (Şen, 2012).

It is important for the welfare of the society to run family mediation first so that the family that forms the basis of the society does not break up (Şen, 2012). Adopting the way of persuasion between the couples on issues that can be resolved before proceeding with the court process, and trying to convince the parties is a method recommended by the Qur'an. Allah says in Nisa verse 35 that if there is a fear of violation of the marriage contract between a man and his wife, two mediators or arbitrators, one from the man's family and one from his wife's family, should be appointed, and if both are willing to make peace, reconciliation will be made.

If a wife fears high-handedness or alienation from her husband, neither of them will be blamed if they come to a peaceful settlement, for peace is best. Although human souls are prone to selfishness, if you do well and are mindful of God, He is well aware of all that you do (The Qur'an 4:128).

This verse emphasizes that it would be better to resolve the dispute between them or their problems through mediation. In cases where the woman is uncomfortable with her husband or does not like her husband's appearance, it is recommended that the woman assist the mediator. Islamic mediation views the mediator as an active agent in the mediation process, being intimately involved in finding a solution to the conflict as long as the husband and wife agree to their presence (Lukito, 2006).

Also, this verse outlines a process for resolving marital disputes. In any conflict, each spouse should choose a representative from his or her respective families to negotiate a solution. The Islamic mediation process involves three key aspects: first, the mediators should be chosen from the husband and wife's relatives. Second, the representatives act as proactive mediators, actively seeking a settlement. Third, due to their familial ties, these mediators have an insider perspective during the negotiation process.

The expressions in the verses show that the mediation system offered by the Qur'an is fair and solution-oriented. For instance, Hallaq argues that the Quran's emphasis on mediation reflects a broader Islamic ethos of prioritizing community cohesion and avoiding unnecessary conflict (Hallaq, 1997). Although the spouses have religious and social responsibilities regarding obeying the marriage law and protecting the family, this may not be possible for various reasons and the family may collapse (Shah, 2009). Therefore, the verses bring about mediation, an important institution in the name of divorce for the continuation of the family or to protect the family institution.

In conclusion, mediation in Islamic family disputes cannot be described solely as an issue-oriented process, but rather as an on going process aiming to foster a healthier family life. The informal nature of this method allows conflicts between husband and wife to be settled within the circle of the family without interference by an outsider in the role of neutral party (Lukito, 2006). This informal mediation process is crucial for resolving family disputes before divorce proceedings begin and a judge makes a decision.

Hadiths of the Prophet on Mediation

The concept and practice of Islamic mediation can also be found in the *hadith* (the words of the Prophet Muhammad (pbuh) and *sunnah*, the secondary Islamic source. Practices of the Prophet Muhammad (pbuh) regarding the issue show that mediation was an important element that the Prophet prioritized in his time.

First and foremost, according to Nabawi, one of the six great *muhaddiths*, the Messenger of Allah, says that the person, who makes peace between people by saying good things and inventing good information, is not a liar (Sahih Al-Buhari, *hadith* 857). Also, the Prophet (pbuh) reconciled parties in dispute. For instance, when the Prophet (pbuh) received information that a dispute arose amongst the people of Quba as to whether which tribe shall be putting the stone at the appropriate place, he said, “Let us go to bring about a reconciliation between them” and prevented blood spilling (Sahih Al-Buhari, *hadith* 858).

Many hadiths about ensuring peace among people were narrated by the Prophet (pbuh). “Shall I tell you what is more virtuous than fasting, prayer, hajj and charity?” When they were said “Yes, the Messenger of Allah”, the Prophet (pbuh) said: “mediate between people and mediating them” (Abu Dawud, Manners 49).

However, the Prophet (pbuh) stated that the parties should be directed to mediation, but they cannot be forced to mediate, and if one or both parties do not agree to mediation, then the judge should make a decision by justice (Şen, 2012). The Prophet (pbuh) promoted mediation as a path to fairness but also recognized that individuals might have legitimate reasons to refuse it. In such situations, the judge is tasked with delivering a just and unbiased verdict, relying solely on the evidence presented (Şen, 2012). This approach aligns with the Islamic legal system’s focus on both reconciliation and justice, guaranteeing that disputes are settled in a way that protects the rights of all involved.

At the same time, as in all areas of conflict, there are mediation practices in the *sunnah* and hadiths regarding marital disputes between husband and wife or any member in the family. Even in a situation where reconciliation fails and one or both parties insists on separation, the Prophet (pbuh) advised the marriage parties to resolve their issues amicably and divorce. It is reported from Aisha (wife of the Prophet) that:

The following Verse: If a woman fears cruelty or desertion on her husband’s part (i.e. the husband notices something unpleasant about his wife, such as old age or the like, and wants to divorce her, but she asks him to keep her and provide for her as he wishes). (The Qur’an 4/128) ‘There is no blame on them if they reconcile on such basis (Sahih Al-Buhari, *hadith* 859).

The hadith clearly advocates a harmonious, peaceful and friendly resolution of family conflicts. A solution achieved through mediation and communication is thought to be much more advisable and greater in benefits than using public proceedings such as in courts (Cusairi, 2013).

Fatwas of Muslim Jurists on Mediation

In view of the foregoing, Muslim jurists state that any peaceful solution, including mediation, is recommended by Islamic law. They also emphasize that the foundations of mediation in Islam can be derived from these texts and general principles of Islamic law. As a matter of fact, in the judicial instruction that Umar sent to the qadi of Musa in Kufa, Umar (the second caliph of the Rashidun Caliphate) said: "Guide people to mediation, because the verdict of the cases by court decision creates hostility among them" (Mejelle, 2001).

However, the definitions of Islamic mediation of the Hanafi, Shafi, Hanbali and Maliki sects differ. In Islamic law, mediation is defined as an agreement concluded by the parties of their own accord to settle the dispute for a price (Yaylali, 1993). In the Maliki's, the field of mediation is not only limited to the legal relations on which there is dispute, as in other sects, but also includes the situations where there may be a dispute between the parties and they accept the agreements that will prevent such an event from occurring (Abdulmevcüd & Muavvid, 2003).

As for the Islamic definitions of mediation by Shafiis, it shows that it is an agreement that the parties have made with their free will and that the parties cannot be forced to make peace. The definition of "the contract that puts an end to controversy", made by Hanafi scholars, is the most appropriate definition of mediation in Islamic law, because this definition is more concise and more comprehensive than others (Abdulmevcüd & Muavvid, 2003).

Another disagreement among legal experts is whether the mediator does not mandatory (*wajib*) to be related to the parties to the dispute; on the contrary, it is recommended (*mandub*) (al-Sabuni, 1980). In this context, it would be entirely appropriate and acceptable for any individual, whether they are an acquaintance, a professional mediator, or even a judicial figure, to step in and facilitate a mediation process between two parties engaged in a dispute. They also mention that Umar appointed 'Utham and Ibn 'Abbas to mediate between a married couple from Bani Hashim and Bani 'Abd Shams and that blood kinship is not a condition for agency or adjudication (Ibn Qayyim, 1966). They also argue that the legal rationale behind arbitration is reconciliation, which can be fulfilled by qualified mediators (al-Dawri, 1985).

The Maliki and some Hanafi argue that mediators must be from the blood relations of the wife and husband (al-Qarafi, 1994). They believe this is the true statement of the law, as the verse explicitly states this. Relatives' rights to arbitrate for maintaining or dissolving the marriage take priority over the question of the relationship. They are best suited for mediation as they are most interested in reconciling rather than separating the disputing spouses, have the best knowledge of what is best for them, and are most capable of enforcing the agreement reached between them (Ibn al-'Arabi, 1957).

The majority's view is commendable as it is based on the *sahabah* precedent and is compatible with institutionalising religious percept (al-Kaylani, 2004). This is crucial for effective implementation in today's age of specialisation and technical expertise. Even Maliki compromises on kinship essentiality by allowing strangers to mediate or having no qualified next of kin (al-Dawri, 1985). However, relatives' views can be sought if it helps reconcile the couple.

Role of the Mediator In Islamic Law

Islamic mediation law stipulates certain qualities that must be observed for a mediator to qualify. These qualities include being Muslim, having legal knowledge, and meeting certain conditions in their duties.

The first critical factor is religious adherence. The mediator's religious adherence is crucial for effective legal mediation, as it reflects their deep understanding of Islamic law and enables them to navigate legal nuances effectively (Hak & Oseni, 2013). That is, religion is considered a precondition and authorises Muslims over non-Muslims in matters that concern Muslims. Furthermore, Islam does not encourage non-Muslims to occupy a position over Muslims (Hagshah, 2013). Accordingly, it is not permissible for a non-Muslim to deal with the cases of Muslims (Maverdi, 2003). At this point, Islamic mediation is separated from other legal mediation systems.

Second, legal capacity (*ahliyyah*) is paramount. The legal competency of mediators involves three conditions: the external standard of puberty (*bulugh*), full mental development and discretionary power (*rushd*) (Al-Shirāzī). In essence, these conditions emphasize that a mediator must be a mature and mentally capable individual who has reached the age of puberty and possesses the ability to make informed decisions. A person who cannot use his / her rights and competence cannot conciliate by solving other people's conflicts. The Hanafis, Shafis,

and Hanbalis have made clear that a mediator should have full legal competence (Cusairi, 2013). The mediator cannot merely be a respected figure or someone who is well versed in Islamic law; they must also possess the authority to enforce their decisions. For example, Imam Shafi upholds that the mediator must have intelligence and ingenuity in order to be entrusted with this responsibility.

Regarding fairness (*adalah*) and trustworthiness, some debate exists. The four schools of Islamic jurisprudence have different views on the need for the mediator to be fair. According to Shafi, Maliki and Hanbali scholars, the mediator must be fair. Hanafis, on the other hand, stated that fairness is not a requirement in this regard, but this is only a sign of competence. Therefore, the mediation of a sinner (*fasiq*) person is permissible and as long as it does not exceed the limit of the law, the decision made by the mediator is accepted. However, some scholars prohibit *fasiq* from mediating a dispute on the grounds that 'it is forbidden to have legal power because of doubt about the character of such a person' (Zahraa & Hak, 2006).

The primary goal of the mediation process is to reconcile the disputing parties. However, when reconciliation is not achievable, mediators assist the parties in making future arrangements, such as decisions concerning property, finances, and the upbringing of their children. In this regard, the appearance and reputation of the mediator is as important as building a good relationship in the process as well as gaining the trust of the parties. This is especially true when mediating family matters involving intimacy and confidentiality, based on the mediator's ability to trust the mediator to assist parties in providing and resolving a safe place to disclose private and confidential matters (Cusairi, 2013). Therefore, fairness (*adalah*), which must be present in everyone as a moral qualification, should be an important feature sought for mediation.

Finally, legal knowledge emerges as a central point of discussion. But what does legal knowledge mean for those tasked with resolving disputes? It refers to understanding the Qur'an and the Sunnah, as well as drawing examples from the practices of the Prophet (pbuh), while adapting to changing and evolving conditions. The mediator should have both a sufficient knowledge of the law in its basic principles and rules, and the ability to make legal judgments by analogy (*qiyas*), and to make correct and fair decisions in accordance with the recognized sources of the law. In mediation, which is a part of the dispute process, legal knowledge is important and necessary as in arbitration.

According to most of the Islamic scholars (Baji, 1999) other than Hanafis, the mediator must have legal knowledge about the problem subject to mediation. Al-

though it is not necessary to know all parts of the law, it is stated (Hak, 2008) that it would be good for the mediator to have a general knowledge of law, apart from the subject of mediation. Conversely, Hanafis argued that while the mediator's legal knowledge would be beneficial, it shouldn't be mandatory (Ibn Qudāmah, 1997). As a justification, they argued that the mediator, whose legal knowledge was insufficient, could adjudicate by taking the opinion of other lawyers. However, it was not considered appropriate to mediate by someone who had no knowledge of the law, because it is possible for an ignorant person to spoil many things that are right and make wrong decisions without knowing it (Ahmed, 1978).

The well-known Shafii jurist Māverđī is of the opinion that the mediator should be wise enough to make case law. According to him, a person who does not have this qualification cannot be a mediator and his provision is also invalid (Ahmed, 1978). Nonetheless, if it is understood that Māverđī's requirement of "ijtihad" is understood as having all the religious information in the Qur'an, *sunnah*, *ijma* and *qiyas* enough to make a new judgment from the evidence, it is often not possible to find mediators who fulfil this requirement.

When evaluate all the opinions, it is essential that the person to be appointed as the mediator is a *mujtahid* (interpreter of Islamic law) as the most appropriate opinion, but if such a person is not found, a person who has the ability to properly evaluate the evidence of the parties can be used.

The Functioning of Mediation in Islamic Family Law

Marital conflicts can arise from various factors. In Islamic law, for example, "shiqaq" (discord) between spouses can stem from "nushuz" (disobedience) (Isfehni, 1986) by either the husband or wife (Shah, 2009). Other causes include violations of each partner's marital rights. Islam proposes several preliminary measures and solutions to prevent the destruction of the family home due to simple and solvable issues. Therefore, in the Islamic legal tradition, in disputes involving family members, especially between husband and wife, mediation is always encouraged as a method of resolution to settle disputes between them (Şen, 2012). The mediation method proposed by Islam, which allows rethinking in the name of saving the family, will be effective in solving an important social problem.

The authority to mediate family disputes in Islam is found in the Qur'an in verse 35 of an-Nisa, as stated earlier. Regarding disputes between married couples, Allah gives us clear guidance on managing this matter by the following

an-Nisa 34. Despite the mediator's efforts to reconcile the Qur'an, the mediator appeals to arbitration if the mediator is afraid that the on going debates between the couple will lead to the breakdown of the marriage. This is an indication of the joint functioning of both mediation and arbitration in Islamic mediation.

On the other hand, in circumstances where the conflict is severe and there is severe incompatibility, appealing to the mediator is considered a necessary step after all personal efforts have failed to restore harmony. These procedures are fully set out in the Qur'an and explained in more detail by Muslim scholars.

Family Mediation in Turkish Legislation

In Türkiye, there is no special law on family mediation for family disputes. Therefore, the provisions of the Law on Mediation of Civil Disputes also apply to the resolution of family law disputes (Özmumcu, 2021). However, there are ongoing consideration to either to make a special law for mediation in family law disputes or to introduce special provisions to the Law on the Establishment, Duties and Trial Procedures of Family Courts.

The main regulations on family mediation are set out in the Law on the Establishment, Duties and Trial Procedures of Family Courts (FCC). According to Article 7 of the FCC, "Family courts, according to the characteristics of the cases and proceedings before them, shall, before entering into the merits, identify the problems faced by the spouses and children in order to protect the mutual love, respect and tolerance within the family, and encourage their solution through reconciliation, by making use of experts when necessary (CCP, n. 137). If settlement cannot be achieved, the proceedings shall continue and a decision shall be taken on the merits. Without prejudice to the provisions of special laws, the procedural provisions of the Turkish Civil Code relating to family law and the provisions of the Code of Civil Procedure shall apply in matters not provided for in this Law."

Although the law encourages mediation before the case is concluded, it does not prohibit mediation after the case is concluded (Ercan, 2007). Mediation is permissible at any point before the case's resolution. Furthermore, mediation can be beneficial even after a court judgment has been issued. In such cases, mediation can facilitate the enforcement of the judgment or resolve any disputes arising from its interpretation (Koltaş, 2016).

Apart from the Law on Mediation in Civil Disputes, it is known that the Ministry of Justice is working on making special legal arrangements for the

resolution of family law disputes through mediation (Börü, 2019). The Ministry of Justice plays a crucial role in regulating mediation, establishing training requirements, and certifying mediators (Atçeken, 2021). Recent discussions about Türkiye suggest that family mediation could be beneficial in dealing with family law disputes that involve matters the parties cannot freely control, such as divorce, nullity of marriage, determination of paternity, and custody issues (Özbek, 2013). First of all, the mediation method is cheaper and less costly compared to the traditional judgement method (Coşkun, 2019). Increasing divorces and family law disputes cause high social and economic costs not only for the parties to the dispute but also for the state and society (Özbay, 2006). Compared to the judicial process, the cost of resolving family disputes through mediation is much lower (Coşkun, 2019).

Another advantage of resolving family law disputes through mediation is the confidentiality of the mediation process. According to Article 4 of the Mediation Law, “Unless otherwise agreed by the parties, the mediator is obliged to keep confidential the information, documents, and other records submitted to him or obtained in any other way within the framework of the mediation activity. Unless otherwise agreed, the parties and other persons participating in the negotiations are also obliged to observe confidentiality in this respect” (Turkish Mediation Law in Legal Disputes, art 4). In a traditional judicial process, in an environment where a large number of people are present, the parties may not want some sensitive issues to be raised due to the nature of family relations; they may not be able to express them, or they may not want the other party to learn about them (Coşkun, 2019). Under these circumstances, it will not be possible to talk about a fair and permanent settlement of the dispute. Moreover, confidentiality in the mediation process is valid for the mediator and the parties, as well as for the third person or persons participating in the process (Parkinson & Robinson, 2011). Confidentiality is crucial in family mediation for continuity and achieving permanent solutions (Atçeken, 2021). It ensures parties express disputes comfortably, without prejudice or blame, allowing for a comfortable and peaceful resolution without fear of falling out (Coşkun, 2019).

One of the advantages of family mediation is the impartiality of the mediator. Indeed, according to Article 9 of the Mediation Law, “The mediator shall fulfil his/her duty diligently, impartially, and personally. The person appointed as a mediator is obliged to inform the parties in the event of the existence of important circumstances and conditions that require doubting his impartiality. Despite this explanation, if the parties request the mediator together, the mediator may

undertake this duty or continue the duty he has already undertaken. The mediator is obliged to observe equality between the parties. The mediator may not subsequently act as the lawyer of one of the parties in the lawsuit filed in relation to the dispute in which he has acted in this capacity” (Turkish Mediation Law, art 7). Impartiality will be maintained by prohibiting the mediator from acting as a lawyer for any party in family disputes and from forming personal or professional connections with the parties before or during the mediation process (Yaşa, 2019). The mediator must consider the power imbalance between parties and their equally interests in the mediation process, ensuring that the will of the parties to the dispute is the primary factor in resolving the dispute (Duran, 2022). In mediation, parties can jointly decide on a solution, resulting in a psychological outcome where the decision taken through the mediation institution is adopted and internalized by the family, despite the traditional judicial process’s lack of influence on the decision (Coşkun, 2019).

Mediation is a peaceful dispute resolution method that may not further deteriorate the parties’ relations (Demircioğlu, 2015). It addresses the lack of communication, which is the basis of most family disputes, allowing parties to better understand each other’s feelings and thoughts (Duran, 2022). This, in turn, significantly improves the relationship between the parties involved (Coşkun, 2019).

The resolution of family disputes, which is an extremely sensitive area, through the mediation method carries some disadvantages in itself. Family mediation, despite its collaborative nature, can be susceptible to power imbalances within the family unit (Demircioğlu, 2015). A dominant or abusive partner may pressure a vulnerable party to accept an unfavourable agreement, leading to coercion. This is especially harmful in cases of domestic violence or control. Family mediation relies on a shared willingness to compromise and reach collaborative solutions (Coşkun, 2019). However, highly acrimonious disputes, abuse histories, or complex legal issues may not be suitable for mediation alone. Parties deeply entrenched in conflict may find it difficult to negotiate fairly, hindering the possibility of finding mutually agreeable solutions (Yaşa, 2019). Complex legal matters, such as asset division, contested child custody arrangements, or legal agreement interpretation, may require court intervention to protect all involved rights and reach legally sound resolutions (Akkaya, 2014).

One of the disadvantages of mediation in family law disputes is that it is seen as an attack on women’s equality because it does not address women’s rights issues (Coşkun, 2019). It may make women invisible and deepen gender inequality. Women’s rights experts argue that mediation may normalise violence against women,

soothe them, and force couples to continue their marriages (Demircioğlu, 2015). The mediation process is criticised for promoting men’s power and independence, favouring the stronger party (Akkaya, 2014). There are concerns about the loss of women’s rights and violations of their rights, as agreements between unequal parties often favour men. The inclusion of family law disputes in mediation puts women’s security at risk, which mediators cannot provide and which the state should provide for women (Coşkun, 2019). Additionally, divorce and violence against women will be considered “private matters” under family mediation (Coşkun, 2019).

Family Mediation in Türkiye as a Solution in Divorce Process

The predominance of Muslims in Türkiye, the societal reverence for family as a sacred institution, and the 90% preference for religious marriages according to TürkStat data underscore the importance of incorporating religious references in addressing family-related issues. The rising wave of divorce and marital discord in Turkish societies calls for a critical evaluation of existing family mediation systems, especially those that cater to Muslim societies. The Office for National Statistics (2019) highlights a significant rise in divorce rates across. Between 2009 and 2023, Türkiye has experienced a concerning 52% rise in divorces, sparking worries about family stability and the well-being of children (TürkStat, 2023). The steady increase in divorce rates, as illustrated in the table below, further underscores this trend.

Table 1: Number of Marriages and Divorces in Türkiye (2009-2023)

Year	Number of Marriage	Crude marriage rate	Number of Divorces	Crude Divorce Rate
2009	591 742	8,21	114 162	1,58
2010	582 715	7,97	118 568	1,62
2011	592 775	7,99	120 117	1,62
2012	603 751	8,03	123 325	1,64
2013	600 138	7,88	125 305	1,65
2014	599 704	7,77	130 913	1,70
2015	602 982	7,71	131 830	1,69
2016	594 493	7,50	126 164	1,59
2017	569 459	7,09	128 411	1,60
2018	554 389	6,81	143 573	1,76
2019	542 314	6,57	156 587	1,90
2020	488 335	5,86	136 570	1,64
2021	563 140	6,69	175 779	2,09
2022	574 358	6,76	180 954	2,13
2023	565 435	6,63	171 881	2,01

Extensive research demonstrates the strong correlation between family structure and children's physical, emotional, and academic outcomes, emphasising the urgency of addressing marital conflict (Anderson, 2014). Family conflict, and divorce in particular, has a traumatic impact on individuals, as legal systems do not clearly respond to the feelings and trauma experienced by the parties in dispute. Indeed, couples seeking to end their marriage describe divorce as one of the most difficult times of their lives. Spouses in conflict often tend to blame their partner, saying that the other party causes the problems. Children born into this marriage often become their parents' weapons in the marital struggle. Children of divorced parents are often disturbed by the break-up of their family. Moreover, when the dispute is brought to the courts, even if the result is not a divorce, there is a high probability of damage to the marital bond due to the contentious nature of the process (Ahmad & Hak, 2010).

The resolution of the issue within the family before it is submitted to the judiciary will provide a significant benefit to the courts in terms of reducing the workload of the judiciary. In addition, it can be mentioned among the important benefits of the mediator procedure that the resolution of the dispute outside the court process may have a psychological effect in terms of protecting the family. Returning a case referred to the court is generally more challenging than resolving the dispute through mediation (Erdoğan, 2017).

To ensure that mediation is a properly supervised institution, regulating family mediation in disputes, as in commercial and business disputes, will help preserve marriages by allowing the parties to choose their mediators from among family members, as in Islamic family mediation, and thus avoiding going to court as much as possible. When family courts are examined in terms of conducting mediation activities; it is possible that mediation can also be applied in areas where reconciliation incentives are applied. Considering the structure of the courts and the trial procedures, the goal of promoting reconciliation and mediation is to achieve an amicable solution. Indeed, in the practice of encouraging reconciliation, which is implemented before the investigation of the case in cases heard in family courts, assistance is received from experts such as social workers, psychologists, and pedagogues. In addition to these experts, professional groups such as family counsellors and Islamic mediator are also used in mediation practice to solve the problem.

When the structure of family courts in Türkiye is examined, the practice of encouraging reconciliation in divorce cases is similar to Islamic mediation. Family mediation aims to resolve the incompatibility between the parties amicably

with the least damage. Like mediation, the activity of encouraging reconciliation, which we encounter in divorce cases seen in family courts, focuses on the solution of these problems by investigating the causes of the dispute between the spouses. From this point of view, some consider the activity of encouraging reconciliation in family courts as mediation (Şahan, 2019). Mediation at the stage of encouraging reconciliation may be in the form of the judge encouraging the couple who want to divorce to reconcile based on the provision in the AMK, directing them to a mediator within the scope of experts, or it may be in terms of the preparation of the divorce protocol. The preparation of the divorce protocol is favourable for mediation (Demircioğlu, 2015).

However, due to the significant differences that distinguish the settlement incentive practice from mediation, settlement incentive cannot be considered as mediation. This is because in mediation, the parties may voluntarily apply for the support of an impartial third party, whereas the settlement incentive applied in family courts is a mandatory practice if the judge deems it necessary. However, the mediator is not authorized to decide on the dispute. The family court judge, on the other hand, can decide on the dispute by going into the substance of the case if the problem between the couples cannot be resolved. As a result, although the judge is obliged to act like a family mediator, it can be said that the judge has more influence than the family mediator (Şahan, 2019).

Conclusion

In conclusion, there is currently no family mediation practice in Türkiye. However, there is a draft law to legalize family mediation. The draft law is based on mediation, which is completely institutionalized in the Western style. However, both the family structure and the social structure of Türkiye are quite different from the West. The draft constitution does not consider the religious guidance necessary for Türkiye's mostly Muslim society. A significant issue in Türkiye's collective labour law mediation is that only lawyers with mediation training serve as mediators, which limits the provision of necessary religious guidance to society. Instead of only lawyers acting as mediators, it would be appropriate for people with religious education to be employed in this field by undergoing mediation training. Considering all these, it would be appropriate to apply the Islamic mediation method in cases related to family disputes.

The perceived efficacy of Islamic mediation, attributed to its respect for cultural nuances and religious foundation, underscores the promise of this method in ad-

addressing the distinct requirements of women and marginalized communities seeking justice in family matters. The strong alignment of Islamic family mediation with Turkish cultural and societal expectations, stemming from the longstanding reliance on religious figures for guidance in familial issues, further underscores its potential significance within the Turkish context. Nonetheless, the findings also emphasize the necessity for careful examination of legal reforms and adjustments to ensure the safeguarding of individual rights and the alignment of Islamic mediation practices with Türkiye's secular legal structure. By implementing these recommendations, Türkiye can strengthen its Islamic family mediation system, ensuring that it serves as an effective and equitable avenue for resolving family disputes, upholding the principles of Islamic law, and protecting the rights of family.

As highlighted in the initial sections of this article, family cohesion is a critical societal value that informs both individual and collective perceptions of familial relationships and dispute resolution. This value is not only shaped by cultural traditions but is also deeply intertwined with religious principles, particularly in a predominantly Muslim context. The preference for mediation approaches that incorporate religious guidance, as evidenced by the data, suggests that any proposed system of family mediation must be attuned to the specific socio-religious fabric of Turkish society. The potential for Islamic mediation to serve as an effective tool in resolving family disputes stems from its alignment with the cultural and religious expectations surrounding family unity, where religious figures historically play a pivotal role in mediating familial matters. This alignment is particularly significant when considering the diverse needs of marginalized groups, including women, who may perceive Islamic mediation as more culturally resonant and potentially more equitable. Consequently, integrating Islamic mediation practices, while ensuring conformity with Türkiye's secular legal framework, offers a nuanced approach that respects both the socio-cultural context and the legal imperatives of individual rights. Thus, the implementation of such practices must be viewed not only as a legal reform but as a comprehensive initiative to uphold family unity within a modern, pluralistic society. This approach ensures that the mediation system align with cultural values while maintaining a sound legal framework.

Genişletilmiş Özet

Türk Ailelerinde Aile Uyuşmazlıklarının Çözümünde İslami Arabuluculuğun Rolü

Bu makale, arabuluculuk konusuna İslami öğretiler perspektifinden yaklaşmaktadır. İslam hukuk geleneğinin temel kaynağı olan Kuran'da, aile içi anlaşmazlıkların çözümünde arabuluculuğa önemli bir yer verilmiştir. Makale, bu yöntemi detaylı bir şekilde inceleyerek, Kuran'ın aile içi sorunların çözümüne yönelik önerilerini ve bu önerilerin günümüzdeki uygulamalarını ele almaktadır. Aile içi anlaşmazlıklarda arabuluculuğun nasıl kullanılabileceği, arabulucunun rolü ve sorumlulukları, İslami prensipler çerçevesinde arabuluculuk sürecinin nasıl işleme gerektiği gibi konulara odaklanılmaktadır. Bu bağlamda, hem klasik İslami kaynaklar hem de çağdaş yorumlar incelenerek, aile birliğinin korunması ve toplumsal barışın sağlanması hedeflenmektedir.

Arabuluculuk, tarafsız bir figür olan arabulucunun, tarafların iletişim kurmasına, bir sorun üzerinde beyin fırtınası yapmasına ve anlaşmazlıklarına çözümler bulmaları için müzakere etmesine yardımcı olduğu bir anlaşmazlık çözüm sürecidir. Gayri resmi karakteriyle arabuluculuk, sorunu ilgili taraflara devrederek ve başka bir bireye devretmeyerek anlaşmazlıkları çözebilir. Karakter, birçok insanı arabuluculuğun, başka sorunları davet etmeden bir çatışmayı çözenin etkili bir yolu olarak yararlı olduğuna ikna eder.

Son zamanlarda, evlilik anlaşmazlıklarını resmi hukuk sistemleri dışında çözmek, hukuk uygulayıcıları, politika yapıcılar ve sosyal-hukuk bilim insanları arasında giderek daha popüler hale geldi. Çeşitli alternatif uyuşmazlık çözümleri (ADR) mekanizmaları ortaya çıktı. Arabuluculuk, işbirlikçi hukuk, tahkim ve müzakereyi içeren ADR mekanizmaları, geleneksel davalara başvurmadan anlaşmazlıkları çözmek için farklı yöntemler sunar. Bu mekanizmalar, medeni, ticari ve aile hukuku uyuşmazlıklarını çözmek için tasarlanmış devlet hukuku süreçlerine karşıdır ve onlarla birlikte (Hak, 2002).

Ayrılık ve boşanma, genellikle ebeveynler arasında belirsizliğe ve çatışmaya yol açan ve çocukları için sıkıntıya neden olan geçiş dönemleri yaratır. Yeterli yasal bilgi, tavsiye ve temsile erişim eksikliği, özellikle kadınlar ve aile içi şiddet mağdurları olmak üzere, savunmasız bireyler için evlilik çatışmaları bağlamında önemli bir zorluk oluşturmaktadır. Emery (1995), boşanmanın çocuklar üzerindeki zararlı etkilerinin, ebeveyn çatışmasına katılımlarından kaynaklandığını bulmuştur. Uyuşmazlık çözümü, aile üyelerinin düşmanca kamplara bölünmesini değil, aile ilişkilerinin yeniden düzenlenmesini içerir. Arabuluculuk,

çekişmeli bir duruşmadan sonra bir yargıcın emri olmadan uyuşmazlıkları çözen bir tür 'Alternatif Uyuşmazlık Çözümü'dür (ADR). Tarafların veya temsilcilerinin uyuşmazlıklarına doğrudan görüşmeler yoluyla bir çözüm bulmaya çalıştıkları müzakerelerin aksine, arabuluculukta tarafsız bir üçüncü taraf, arabulucu, bir sonuca ulaşma sürecini kolaylaştırır (Casal, 2005).

İslam hukukunda arabuluculuk, özellikle evliliklerin kurtarılması amacıyla büyük önem taşır. Bu önemin altında yatan temel sebep, İslam'ın aile birliğine verdiği değer ve boşanmanın mümkün olduğunca önlenmesi gerektiği yönündeki öğütlerdir. Genel olarak kabul gören bir görüşe göre, İslami bir konuyla ilgili herhangi bir araştırma, İslam hukukunun temel yetkili metinleri olan Kur'an ve sünnete bir soruşturmaya başlamalıdır. Sünnet, Hz. Muhammed zamanındaki tüm Müslümanların gördüğü, izlediği ve sonraki nesillere aktardığı şeydir. Sünnetin sözlü kanıtı olan hadisler, Müslümanlara Peygamberin sözleri ve eylemleri konusunda rehberlik eder. Hadisler, İslam hukukunun kavramlarının türetildiği Kur'an-ı anlamak için bir rehber sunar. Arabuluculuk, İslam hukukunun kaynakları olan Kur'an, sünnet ve sahabe gibi farklı kavramlarla meşrulaştırılmıştır. Nitekim Kur'an-ı Kerim'de "Eğer karı koca arasında anlaşmazlıktan korkarsanız, erkeğin ailesinden bir hakem, kadının ailesinden bir hakem gönderin. Bunlar barıştırmak isterlerse Allah aralarını bulur." (Nisa Suresi, 35. Ayet) şeklinde buyrulmaktadır. Bu ayet, arabuluculuğun İslam hukukundaki köklü dayanaklarından birini oluşturur. Yukarıdaki açıklamadan, Kur'an 4:35'te açıklanan evlilik uyuşmazlığı çözümünün modern arabuluculuk yöntemi ışığında anlaşılabileceği anlaşılıyor. Bu, ayetin modern uyuşmazlık çözüm kültürüyle uyumlu bir şekilde uygulanması için insan yorumuna ihtiyaç duyan genel bir önerme olarak görülmesi durumunda mümkündür. Burada, ayette formüle edilen aile uyuşmazlığı çözüm mekanizmasının uygulanmasında arabuluculuk ve arabuluculuk ile tahkim süreçlerinin melezi kullanılabilir.

Kur'an'daki aile uyuşmazlığı çözümüne yaklaşmak için modern arabuluculuk yönteminin kullanılması, temel Kur'an öğretisinin temel amacı olan aile uyuşmazlıklarında evlilik dağılmasının önlenmesini ihmal etmeden haklı gösterilebilir. Bu nedenle, bu uyuşmazlık çözüm sürecinde kullanılan yöntemlerin etkinliği, uyuşmazlığı çözmedeki başarısına bağlıdır, çünkü bir kocanın ve karının boşanması baştan itibaren istenmeyen bir durum olarak kabul edilir. Nihai çözüm karar vermek için çiftin elinde olsa da, arabulucuların tarafları uzlaştırmak için mümkün olan her türlü çabayı göstermeleri gerekir. Bu şekilde bakıldığında, arabulucu sadece basit bir kolaylaştırıcı değil, aynı zamanda bir müzakereci, danışman ve hatta hakem rolü de oynayabilir.

Rollerin bu şekilde bir araya getirilmesi, anlaşmazlığı çözmek için mümkün olan her yolu bulmayı amaçlar. Yukarıdaki Kur'an ayetini, anlamının modern

anlaşmazlık çözüm kültürüne daha yakın olacak şekilde yorumlamak, ayette gömülü olan ilahi değerler insan tarafından yaratılmış arabuluculuk yönteminin kültürel değerlerinden izole edilirse başarılı olmayacaktır. Bu ilahi değerlerin ifade edildiği kültürel arka planı ihmal edersek ayetin mesajı bile anlaşılabilir. Burada, çatışma çözümüne ilişkin dini emir, insan tarafından yaratılmış anlaşmazlık çözüm yöntemleriyle kıyaslanamaz, ayrı bir varlık olarak görülmemektedir. Dahası, bu dini çatışma çözümünün uygulanması, ayetin temel amacına, yani taraflar arasındaki anlaşmazlıkların hukuk sistemi dışında çözülmesine ulaşmak için arabuluculuk uygulamasındaki modern eğilimlerle birleştirilebilir. Bunu yaparken, Kur'an'da belirtilen çatışma çözümü özelliği, arabuluculuk konusunda insan düşüncesinin gelişiminin ötesinde bir şey olarak kavranamaz. Dolayısıyla ayetin pratikte uygulanması katı olarak görülemez; aksine esneklik ve alternatif uyuşmazlık çözüm yöntemlerinin geliştirilmesine açıktır.

Eşler arasındaki anlaşmazlıklar da dahil olmak üzere aile sorunlarının geniş bir yelpazede yer alması nedeniyle sosyoloji, psikoloji, hukuk ve din gibi çeşitli disiplinlerden yararlanmak elzemdir. Bu alanlar, aileyle ilgili sorunlara etkili çözümler sunabilecek teorik bilgiye ve uzmanlara sahiptir. Ancak aile sorunlarının katlanarak arttığı günümüz dünyasında, bu sorunların çözümünde dini referansların yeterince kullanılmadığı veya hiç dikkate alınmadığı görülmektedir. Türkiye'de nüfusun çoğunluğunun Müslüman olması, toplumda ailenin kutsal bir kurum olarak önemini vurgulamaktadır. Dini nikahın yaygın olarak tercih edilmesi, aileyle ilgili sorunların çözümünde dini unsurların dahil edilmesinin önemini daha da vurgulamaktadır. Bu nedenle, dini referansları göz ardı eden çözüm arayışlarının aileyle ilgili sorunların çözümünde yeterince başarılı olması mümkün değildir.

Aile biriminin korunması, çağdaş toplumda çok önemli bir değerdir. 2024 "Türkiye Yüzyılı Eğitim Modeli", Türkiye'de yeni uygulanan eğitim müfredatında aile birliğini temel bir değer olarak vurgulamaktadır. Aile ilişkilerinin karmaşıklıklarında gezinirken, potansiyel çatışmalar ortaya çıkabilir. Bu gibi durumlarda, aile danışmanlığı ve arabuluculuk gibi mekanizmalara başvurmak, aile bağını korumak ve güçlendirmek için paha biçilmez araçlar olarak hizmet edebilir. Bu yaklaşımlar, anlaşmazlığı ele almak, anlayışı teşvik etmek ve çözümü kolaylaştırmak için yapılandırılmış ve destekleyici bir ortam sunar ve böylece aile biriminin korunmasına katkıda bulunur.

Türkiye'deki güncel kentsel sosyal yapıda, insanlar ailevi uyuşmazlıklarda resmi yollara başvurmadan önce veya resmi yollarla eş zamanlı olarak, genellikle "ulema" olarak adlandırılan dini bilginlerden oluşan bir otoriteye danışmayı tercih etmektedirler. Ulemanın meşruiyeti, yalnızca profesyonel uzmanlığa, prosedürlere ve resmi ortamlara dayanmamaktadır; aynı zamanda inanç ve bil-

giye de dayanmaktadır. Bu nedenle, özellikle muhafazakar dini topluluklarda, ulema aile büyükleri/danışmanları, barış elçileri ve kolaylaştırıcı/hakemler gibi farklı roller üstlenerek anlaşmazlıkların çözümüne katkıda bulunmaktadır.

Ulema, bu rolleri üstlenirken, Kuzey Amerika bağlamında kullanılan kolaylaştırıcı teknikler gibi temel arabuluculuk prosedürlerinin unsurlarını kullanmanın yanı sıra, İslam hukukundan kaynaklanan ek yaklaşımları da benimsemektedir. Bu yaklaşımlar, genellikle toplumsal etkileşimlerin hiyerarşik bir düzende gerçekleştiği kolektivist kültürlerle uyumlu bir şekilde, taraflar arasındaki iletişimi kolaylaştırmayı, karşılıklı anlayışı teşvik etmeyi ve adil bir çözüme ulaşmayı hedeflemektedir.

Bu durum, Türkiye’de İslami aile arabuluculuğunun uygulanmasının gerekliliğini açıkça ortaya koymaktadır. Zira, mevcut toplumsal yapı ve kültürel değerler, ulemanın aile uyuşmazlıklarında önemli bir rol oynadığını göstermektedir. Dolayısıyla, resmi arabuluculuk mekanizmalarının yanı sıra, İslami prensiplere ve kültürel değerlere uygun olarak yapılandırılmış bir İslami aile arabuluculuğu sisteminin oluşturulması, aile birliğinin korunması ve toplumsal barışın sağlanması açısından büyük önem taşımaktadır.

Bu sistem, hem modern arabuluculuk tekniklerini hem de İslam hukukunun temel ilkelerini içererek, tarafların ihtiyaçlarına ve beklentilerine daha kapsamlı bir şekilde cevap verebilir. Ayrıca, ulemanın sahip olduğu bilgi ve tecrübe, bu sürecin daha etkili ve adil bir şekilde yürütülmesine katkı sağlayabilir. Sonuç olarak, Türkiye’de İslami aile arabuluculuğunun uygulanması, aile uyuşmazlıklarının çözümünde önemli bir boşluğu dolduracak ve toplumsal refahın artmasına katkıda bulunacaktır.

Etik Beyan / Ethical Statement: Bu çalışmanın hazırlanma sürecinde bilimsel ve etik ilkelere uyulduğu ve yararlanılan tüm çalışmaların kaynakçada belirtildiği beyan olunur. / It is declared that scientific and ethical principles have been followed while carrying out and writing this study and that all the sources used have been properly cited.

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