

**ISLAMIC MEDIATION IN TURKEY: THIRD PARTY ROLES OF “ALİM’S”  
IN THE RESOLUTION OF COMMUNAL CONFLICTS**

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**SABANCI ÜNİVERSİTESİ**

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ISLAMIC MEDIATION IN TURKEY: THIRD PARTY ROLES OF “ALİM’S” IN  
THE RESOLUTION OF COMMUNAL CONFLICTS

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## ABSTRACT

### ISLAMIC MEDIATION IN TURKEY: THIRD PARTY ROLES OF *ALİMS* IN THE RESOLUTION OF COMMUNAL CONFLICTS

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In the Conflict Resolution field (CR), communal level dispute resolution practices are studied within the context of Alternative Dispute Resolution (ADR), which includes a variety of techniques, processes, and institutions of conflict management and settlement, as alternatives to formal legal procedures. This thesis examines the mediation practices of *Alims* as examples of the consent based third party intervention practices of ADR processes.

*Alims* are mainly guided by the principles and the normative assumptions of Islam in their mediation practices. This study is one of the first empirical studies on the communal level dispute resolution practices within the Islamic networks of the Turkish society. Semi structured interviews are conducted with a focused group of *Alims* for the generation of empirical data about their mediation practices.

Cultural characteristics and normative orders of the societies, or communities significantly influence the natures, underlying assumptions, and mechanisms of the dispute resolution processes. The recent popularity of the cross-cultural comparative CR researches facilitates the study of the role of norms and culture on the techniques, methods, and underlying assumptions of the mediation practices. While approaches to the study of comparative aspects of cultures have been emphasized in the CR field, analysis of the deeper more unique aspects of however, is not yet commonly employed in the field. This study proposes a broader theoretical notion of culture in CR studies by emphasizing theoretical and research approaches from the fields of Legal Anthropology and Cultural Anthropology.

Key determinants of mediation procedure such as dispute types, mediator roles, and mediator techniques, are also systematically analyzed with reference to empirical data.

**Key Words:**

Alternative Dispute Resolution (ADR)	Culture	Conflict Resolution
Mediation	Communal Disputes	Legal Anthropology
Etic and Emic Approaches		

## ÖZ

# TÜRKİYE'DE İSLAMİ ARABULUCULUK: ALİMLERİN TOPLUMIÇİ ANLAŞMAZLIKLARIN ÇÖZÜMLENMESİNDEKİ ÜÇÜNCÜL TARAF ROLLERİ

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Uyuşmazlık Çözümleri (UÇ) sahasında, toplumsal düzeydeki uyuşmazlıklar Alternatif Uyuşmazlık Çözümleri (AUÇ) bağlamında incelenir. AUÇ resmi hukuki prosedürlerin alternatif olana muhtelif uyuşmazlık çözümü teknikleri, süreçleri ve kurumlarını içerir. Bu tez Alimlerin Türk toplumundaki arabuluculuk uygulamaları ve faaliyetlerini AUÇ süreçlerinden olan rıza temelli üçüncü taraf müdahelesi olarak incelemektedir.

Alimlerin arabuluculuk faaliyetleri temel olarak İslami prensipler ve normatif kabuller çerçevesinde şekillenmektedir. Uyuşmazlık çözümleri faaliyetlerinin İslami çevrelerdeki pratiğini konu alan bu çalışma, Türk toplumundaki toplum düzeyindeki uyuşmazlık çözümü faaliyetleri araştırmaları açısından ilk çalışmalarandır. Arabuluculuk faaliyetleri konusundaki empirik veriler, belirli bir *alim* grubu ile yapılan mülakatlar vasıtası ile elde edilmiştir.

Toplumların ve toplulukların kültürel karakterleri ve değer sistemleri anıtsalızmazlık çözümü süreçlerinin doğası, mekanizmaları ve temel varsayımlarını önemli ölçüde belirlemektedir. Kültüllerarası karşılaştırmalı UÇ araştırmalarının son dönemlerde yaygın şekilde yapılmaya başlanması, kültür ve değer sistemlerinin arabulucuk teknik, metod ve temel kabullerine etkileri konusunda yapılan çalışmaları da kolaylaştırmaktadır. UÇ disiplininde kültürlerin karşılaştırılabilir yönlerini incelemekte kullanılan yaklaşımlar ön plana çıkmaktadır, öte yandan kültürlerin daha kendine has ve derin yönlerini inceleme konusunda halen kuramsal yaklaşım eksikliği bulunmaktadır. Bu çalışma UÇ çalışmalarındaki dar kültür anlayış ve yaklaşımılarına yeni açılımlar getirmek için Kültürel Antropoloji ve Hukuk Antropolojisi

disiplinlerinden kuramsal yaklaşımlar ve araştırma tekniklerine vurguda bulunmaktadır..

Arabuluculuk prosedürlerinin temel unsurları olan uyuşmazlık çeşitleri, arabulucu rolleri ve arabulucu teknikleri de empirik verilere dayanılarak sistematik olarak analiz edilmiştir.

#### Anahtar Sözcükler

Kültür              Uyuşmazlık Çözümleri              Toplumsal uyuşmazlıklar Arabuluculuk  
Hukuk Antropolojisi              Alim /Ulema              Etik ve Emik yaklaşımlar  
Alternatif Uyuşmazlık Çözümleri

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## INTRODUCTION

Conflicts can be evidenced in all human social interactions and in all human societies. One of the best definitions of the conflict is “the perceived divergence of interest, or a belief that the parties’ aspirations can not be achieved simultaneously” (Rubin, Pruitt, & Kim, 1994: 5). Conflict refers to a very general state of affairs in a relationship, or to some basic incompatibility in the very structure of the relationship. On the other hand, dispute refers to a particular, episodic manifestation of a conflict (Avruch, 1996: 241). Most common types of disputes are between spouses, children, parents and children, organizations, fellow workers, labour and companies, communities, ethnic and religious groups, and nations. In order to get rid of physical, emotional, relational, and material damages of conflicts, societies from the most primitives<sup>1</sup> to most sophisticated ones, tried to develop conflict restricting norms and conflict resolution procedures.

While the presence of conflicts are common to all human social groups, resolution mechanisms and means of societies and communities to tackle these conflicts can manifest differences. When disputing parties can not resolve their problems themselves, they can resort voluntarily to a neutral third party or they can bring their dispute away to an official court (if it is available). Especially in collectivist environments<sup>2</sup> such as families, kin groups, tribes, clans, religious brotherhoods and neighbourhoods, the legitimate agencies of the community may intervene to a conflict in order to preserve the harmony, order and peace of the community. Customs and traditional norms play an important role in the settlement and resolution of communal conflicts in such environments. In his classic book Politics, law and ritual in tribal society, well known legal anthropologist Max Gluckman mentioned that *“In stateless societies, their leaders depend so much on their traditional positions that they do not and cannot legislate in any formal sense, but they must take administrative decisions to regulate the group’s affairs.”* (Gluckman, 1965).

Islam is one of the most important sources of social values in Turkish society. Although many of the Islamic practices in public sphere are restricted in Turkey, on

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<sup>1</sup> In terms of their social and economic organizations.

<sup>2</sup> In my study I will refer to these communities as “informal networks” or “networks of interpersonal relations”.

community level and in informal networks, Islamic values continue to serve some social and practical functions. Certainly, religion is not the only source of communal norms and customs in Turkey. Especially in the rural settings, customary rules and practices also play important conflict resolution roles. On the contrary, customs and communal norms can frequently generate conflicts such as feuds and honour crimes<sup>3</sup>. One distinctive characteristic of Islam as a normative system is that, during the entire Ottoman period, the official judicial system within Muslim populated districts was Islamic judicial system. In addition to their formal judicial procedures, *Kadi*'s (official practitioners of Islamic law, *sharia*) also used different techniques and they sometimes cooperated with the third parties *muslihs* (peacemakers), who are usually local notables, influential family or community leaders (Akgündüz, 1989).

Turkey experienced significant structural and social transformation with the establishment of a modern, secular Turkish Republic. Islamic legal system and Islamic laws are no more valid in the official domain, but Islamic norms are still vivid in non-secular sections of Turkish society. Therefore, Islam provides the most systematic and sophisticated normative and procedural basis for alternative dispute resolution and conflict resolution systems in contemporary Turkish society. Although their advises or decisions are non-binding and officially invalid, *alim*'s (Islamic scholars) assist disputants as third parties for the generation of peaceful solutions consistent with Islamic rules and community customs.

The objective of this study is to explore the third party roles<sup>4</sup> of alims (Islamic scholars), who have expert knowledge on Islamic legal jurisprudence and who are known as wise and prominent figures in their communities, in the resolution of the communal conflicts in the contemporary Turkish society. There are two basic dimensions of this study: first of all, the processes and mechanisms utilized by the alims to resolve the disputes brought to them are systematically described, secondly, the underlying cultural and normative assumptions of these processes and practices is also explored. Empirical data is collected from field interviews with alims conducted in İstanbul in February-April 2002.

This study aims to make contributions to the Conflict Resolution field at two levels. At the empirical level, this study aims to initiate Conflict Resolution researches

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<sup>3</sup> Turkish versions are “kan davası”, “namus cinayeti”.

on the third party intervention practices in communal disputes, in the contemporary Turkish context. Although much research has been made on community mediation and other conflict resolution methods in different cultural contexts, there is almost no systematic study on the community mediation and informal conflict resolution mechanisms in Turkey, except June Starr's ethnographic research which was conducted in the late 1960's at an Aegean village<sup>5</sup> (Starr, 1978; 1979).

At the theoretical level, this study attempts to broaden the narrow and outdated notion of culture in the Conflict Resolution (CR) discipline. Cross-cultural comparison frames<sup>6</sup> such as Edward T. Hall's high context vs low context culture (Hall, 1976); Triandis's individualism vs collectivism (Triandis, 1995); Geert Hofstede's power distance, uncertainty avoidance, individualism vs collectivism, masculinity vs femininity and, long term vs short term orientation frames (Hofstede, 1984; 2000) are frequently employed in cross cultural comparisons in the CR field. Although these two frames and few other similar schemas are extremely useful and necessary for cross-cultural comparisons, they are insufficient tools to comprehend the complex inner dynamics of particular cultures. Therefore the methodic and theoretical tools of legal anthropology and cultural anthropology, are presented to understand underlying assumptions and meaning systems of conflict resolution processes.

Particularly possible answers to the following questions in my research will be elaborated:

Why is there a need for informal justice and why do people resort to the mediation of alims? Is it because informal CR (Conflict Resolution) is cheaper and more rapid or is it because of the lack of legitimacy of formal litigation and because it satisfies the parties interests better?

What kinds of disputes usually go to *alims*? (ie: family, marriage, neighbourhood, blood feuds, financial disputes)

How do the alims tackle the disputes? What kind of tools, procedures and tactics (rationality, values, using pressure) do they use?

---

<sup>4</sup> Most common types of third party interventions in communal disputes include, mediation, arbitration, med-arb, fact finding, facilitation, and conciliation.

<sup>5</sup> June Starr's field research was conducted at a village called Mandalinci at late 1960's. Mandalinci village is at Bodrum which is now one of the most popular holiday resorts on the Aegean shores.

<sup>6</sup> Hall and Hofstede's frames are most popular comparison frames. We can also include other comparison frames such as Glen's (1981), Schwartz's (1994) and Douglas's (1996) etic frames to our list.

How is the conflict resolution process conducted?

What are the roles of *alims* as third parties? (ie: counselling, arbitrating, or mediating)

What are the underlying meanings and value systems of the practices of Islamic mediation?

What are the meanings of verbal and non-verbal (gestures, symbolic acts, and ritualistic practices) language and metaphors?

My research is composed of five chapters and a conclusion section. In the first chapter a brief background related to the main concepts of the thesis is presented, as well as historical and theoretical origins of the concepts such as Alternative Dispute Resolution, mediation, and *alim*.

In the second chapter, the basic theoretical approaches that will be adopted in the thesis will be elaborated. Various approaches and research traditions to the study of culture are reviewed and the most suitable approaches for my research topic will be emphasized. Conflict theories are also critically examined, and possible contributions and drawbacks of these theories to the cultural approaches to the study Conflict Resolution are discussed.

In the third chapter, research methods and approaches that are employed to collect empirical data, and the rationale behind usage of these approaches is explained. Translation of verbatim-transcribed cases that were told by the interviewee's are presented.

In the fourth chapter, empirical data, from interviews with *alims* is analyzed with reference both to the Islamic principles related to my research topic, and to the parallel conceptual literature generated from other cultural contexts.

In the fifth chapter, cultural underpinnings, key metaphors, underlying value assumptions and meaning systems of these approaches and techniques is analyzed.

## CHAPTER 1

### HISTORICAL AND THEORETICAL ORIGINS OF THE BASIC CONCEPTS

In this chapter I will try to elaborate on the historical and theoretical origins and the sources of the basic concepts that will be adopted in this study. Precisely I will explicate the conceptual and theoretical origins of Alternative Dispute Resolution (ADR), mediation, informal networks, alim's and ulema, and their relevance for the study of communal level conflict resolution in the contemporary Turkish context.

#### *A.1. Conflict Resolution and Alternative Dispute Resolution (ADR) Movement*

The origins of the modern study of conflict resolution in the West, especially in the United States can be traced to various movements. Almost all these movements began in the mid 1960's. Alan Tidwell mentions three movements: 1) Organizational Development and Management Science, 2) International Relations and the Peace Movement, and 3) Alternative Dispute Resolution (Tidwell, 1988: 12-16). In this context, Scimecca mentions four items: 1) New developments in organizational relations, 2) The introduction of the “problem solving workshops” in international relations, 3) A direction of religious figures from activist work in peace related endeavours to an emphasis upon “peacemaking”, and 4) The criticism of lawyers and the court system by the general public that resulted in what is known as Alternative Dispute Resolution (ADR) (1991: 19). Similarly Muhammad Abu-Nimer considers origins and practice domains of conflict resolution as follows: 1) Industrial relations; 2) “Problem Solving Workshops (PSW)” in international relations; 3) Religious figures’ peacemaking efforts and activities; 4) Court system and ADR (Alternative Dispute Resolution); 5) Interpersonal and family disputes (1996b: 36-37).

As it can be understood from its origins and sources, Conflict Resolution (CR) is an interdisciplinary and eclectic field with its own theoretical framework, research agenda, and various practical applications at different levels. Conflict Resolution, studies the origins, nature and dynamics of conflicts in all levels and tries to generate resolution or transformation mechanisms for conflicts. Since my unit of analysis will be communal level conflicts, I will approach conflict resolution with ADR

perspective. In addition to ADR processes literature<sup>7</sup>, I will resort to another under-utilized literature that still has not attracted much the attention of CR scholars and researchers: *Legal Anthropology*. While ADR scholars and practitioners are more interested in conflict resolution processes and structural aspects of these processes, legal anthropologists pay more attention to the underlying cultural assumptions and symbolic dimensions of conflict resolution practices such as mediation and negotiation.

#### *A.2. ADR Movement and Third Party Intervention in the West*

ADR includes a variety of techniques, processes, and institutions of conflict management and settlement, which are all alternatives to litigation in formal courts of law, and so the movement toward implementing ADR is sometimes referred as “delegalization” or “informal justice” (Abel, 1982). At the end of 60’s and beginning of 70’s, in the United States there was an increase in the dissatisfaction with the methods used to administer justice and resolve community disputes.

American judicial system was an adversarial one and American society was too litigious; therefore material and time costs of the court cases were extremely burdensome. State courts were unable to deliver fast and efficient dispute resolution service. On the other hand, the primary concern of the state courts was not to generate mutually satisfying solutions that also take into consideration the relational aspects of disputant’s conflictual interactions. In addition to enhanced delivery of judicial services, another source of ADR was based on the “social transformation,” where the key theme was often expressed as increasing “community empowerment” (Avruch & Black, 1996: 49-50).

Laura Nader’s critical points about the development of the ADR movement are remarkable. Nader notes that in post-Civil War period, the American State began to organize alternative dispute settlement process in order to allay fears of class warfare and racial discord. During the 1960’s in the United States, adversarial law was highly valued as a means of attaining civil rights and civil remedies in issues of race, sex, consumer problems, environmental problems. According to Nader, during 1970’s and 1980’s, a variety of “bedfellows” with mixed motives marshalled their allies and introduced a policy embodying harmony ideology in the form of ADR

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<sup>7</sup> My special focus will be on the CR processes, which are consent based third party interventions such as mediation and arbitration and conciliation.

(Nader, 1997; 1991: 43-44). Nader considers the harmony ideology behind the ADR movement as a powerful form of direct and indirect control (*Ibid*).

In order to ease congested courts, reduce settlement time, minimize costs, and support community empowerment, the development of “neighbourhood justice centres” (which practiced mediation) and multi-door courthouses (which directed disputants to the most appropriate dispute resolving mechanisms: litigation, mediation, or arbitration) was encouraged (Scimecca, 1991: 30). The establishment of neighbourhood justice centres and community mediation centres also contributed to the plan of transformation of the legal system from an adversarial system to a harmony oriented one (Nader, 1991). Similarly Community Justice Centres were opened in Australia (Tidwell, 1989: 16). Mediation services are also institutionalized in Canada.

The sociological and philosophical imagination behind the ADR movement represented itself in the practical domain with the application of conflict resolution processes such as mediation and arbitration. As Scimecca emphasized, in 1981 at the *Ad Hoc Panel of Dispute Resolution and Public Policy*, most important ADR processes are listed by the National Institute of Dispute Resolution as follows:

1. *Adjudication*: Includes both judicial and administrative hearings, where parties can be compelled to participate.
2. *Arbitration*: Widely used in labor-management disputes, where a neutral third party renders a decision after hearing arguments and reviewing evidence.
3. *Court-Annexed Arbitration*: Judges refer civil suits to arbitrators who render prompt, nonbinding decisions. The option is available to return to court if a party or both parties are not satisfied with the decision.
4. *Conciliation*: An informal process in which the third party tries to bring the disputants to agreement by lowering tensions, improving communications, interpreting issues, exploring potential solutions, and in general trying to bring about some sort of negotiated settlement
5. *Facilitation*: Where the facilitator functions as a neutral process expert to help parties reach mutually accepted agreements. The facilitator avoids making any substantive contributions.

6. *Med-Arb*: A third party is authorized by the disputants to serve first as a mediator and then as an arbitrator empowered to decide any issues should mediation not bring about a satisfactory settlement.
7. *Mediation*: A structured process in which the mediator (neutral third party) assists the disputants to reach a negotiated settlement of their dispute. The mediator is not empowered to render a decision.
8. *Mini-trial*: A privately developed method used to bring about a negotiated settlement in lieu of corporate litigation. Attorneys present their cases before managers with the authority to settle; most often a neutral advisor is present.
9. *Negotiation*: A process where two parties bargain with each other.
10. *Ombudsman*: A third party employed by the institution to handle the grievances of its employees and constituents. The ombudsman can either be empowered to take action directly or to bring suggestions to those in decision-making positions in the institution.

(Scimecca, 1991: 29)

The most commonly practiced conflict resolution processes are mediation arbitration and negotiation. Although the definitions above were made within American context, their practices are not unique to American social and legal context. Similar practices can commonly be encountered in Arab Islamic contexts (Abu-Nimer, 1996; Hamzeh, 1997; Antoun, 1997, 1972; Irani, 1999, 2000; Rosen, 1989, White, 1991), East Asian contexts (Wall & Blum, 1991; Wall & Callister, 1997-1999, Diamant, 2000) or at African tribes<sup>8</sup> (Zartman, 2000, Gluckman, 1955-1965, Gulliver, 1963, 1969, 1979; Hoebel, 1961) under different names. Definitions and conceptual categories made within American context may not fully correspond to conflict resolution processes categories for other cultural contexts. Practice and scope of a method such as mediation can vary within different cultural environments; therefore my study has a strong cultural and contextual emphasis.

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<sup>8</sup> We can increase the number of cultural contexts in which comparative legal studies and conflicts resolution studies were made. These three (Arab- Islamic, African and East Asian) are the most common and popular cultural contexts for comparative legal and conflict resolution studies. I have to note that some of the literature that I cited above belong to culture and conflict resolution literature; whereas, others are mentioned under legal anthropology literature.

### *A.3. ADR and Informal Networks*

Settling disputes prior to adjudication or prior to official courts is not a new phenomenon. As Goldberg mentions:

Even before ADR movement, methods other than litigation were used for resolving disputes. Some claims were not voiced and avoided in order not to alienate the offender, whereas those raised were resolved by a host of indigenous mechanisms such as ward boss, the village priest, and the family friends

(Goldberg *et al.*, 1992; p: 6).

Disputes especially in the pre-modern communities or in the informal social networks such as families, kin groups, religious brotherhoods (*tarikats* and *cemaats*), village communities, clans (*aşirets*), and minority groups are usually handled with informal and non-judicial means of conflict resolution techniques.

The essence of *informal networks* is the shared value systems (religion, kinship, etc.) and norms. Networks of interpersonal relationships and shared value system and interests tend to limit conflicts (R. Moore & Andrew Sanders 1996). According to Gluckman (1965), common values are seen as mechanisms whereby there is at least agreement on the undesirability of conflict, how conflicts, once they occur, should be carried out, and how conflict may be resolved.

Even within modernized societies such as the United States, some informal networks try to resolve their conflicts with reference to their shared value assumptions. Carol Greenhouse studied a group of Southern Baptists in the US, who abstain from the official courts because of their Christian beliefs (1986). Quakers and Mennonites, who play a significant role in the development of the conflict resolution, also refrain from resorting to formal institutions and legal system. They see institutionalization of conflict resolution as part of their religious mission (Scimecca, 1991: 26). Instead of an individual based, universalistic legal system, they try to be governed by a private system of dispute settlement that was tailored for the specific needs of the community (Scimecca, 1991).

George Irani's observations about contemporary Middle Eastern societies can be relevant for many of the non-Western societies that experienced a process of social economic and political modernization. According to Irani, traditional forms of social interactions are still vivid, and those relations perform significant tasks. Despite the emergence of urban professional classes, the Middle Easterns have not yet disposed of

loyal attachment of the families and distinctive rituals of hospitality and conflict mediation.

Even today, the institutions of the state do not always penetrate deeply into society and “*private justice*” is often administered through informal networks in which local political and/or religious leaders determine the outcome of feuds between clans or conflicts between individuals. Communal religious and ethnic identity, remain strong forces in social life, as do patron-client relationships and patterns of patriarchal authority. Group solidarity, traditional religious precepts and norms concerning honor and shame retain their place alongside exhortations of service to the nation and the newer values of intellectuals intent on profound social change.

(Irani, 1999)

We can increase the number of examples related to the practice of informal conflict resolution modes within modern urban contexts. Especially in the community oriented cultures such as East Asian and Middle Eastern cultures, networks of informal relationships still play important role in daily social interactions, even in business encounters (Wall & Callister, 1997, 1999; Wall & Blum, 1991; Irani, L., 2000). Whereas in individualistic cultural contexts, the role of informal networks is very limited and, legality and rationality are essential aspects of conflict resolution practices (Abu-Nimer, 1996b).

#### *B.1. Alims as Conflict Resolvers: An Analysis of the Past and Present*

Islam is one of the most important value systems in Turkish society. In my research case, the third party (*alim*) is promoted by the common cultural and religious values of the informal networks. Their authority comes from the Islamic value system and their expert knowledge of Islamic religion and Islamic legal jurisprudence (*fiqh*). *Alims* (Islamic scholars) usually are prominent and respected figures in their societies. My definition of *alim* includes theology faculty (*ilahiyat*) professors<sup>9</sup> or traditionally educated (*medrese icazetli*)<sup>10</sup> scholars. The fundamental legitimacy of these *alims* depend on their knowledge of the “ Islamic legal jurisprudence (*fiqh*); on the other hand they are known as wise, knowledgable, trustworthy and reliable persons in their

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<sup>9</sup> Prof. Dr Hayrettin Karaman, and Assoc. Prof. Dr Abdülaziz Bayındır, are theology faculty professors and Prof. Mehmet Akif Aydın is a professor at law faculty but his main research interests are Ottoman Legal System and Islamic Law.

societies. Of course, religion is not the only value system that penetrates to the informal networks in Turkey. There are also other informal networks such as; village communities, *aşirets* networks (clans), families and kinship based networks, patrilineal networks (*hemşehrilik*). The object of my research is limited with the third party role of “*alims*” in contemporary Turkey; therefore Islamic religion is the normative basis of networks of informal interactions.

### *B.2. Conceptual and Historical Origins of “Alims” and “Ulama”*

Conceptually, *ulama* (plural of *alim*) is defined as a group of Islamic scholars that keep harmony and concordance of Islamic societies, congruence with Islamic rules and principles. Another important characteristic of *ulema* is their independence from political authorities and governance<sup>11</sup> (Gökbilgin, 1997). According to Islamic belief system, laws based on religion should regulate all aspects of public and private life and business; the science of these laws is *fiqh* (Schacht, 1982). Scholars (*müderris*) and practitioners (*qadi*), of Islamic legal jurisprudence (*fiqh*) were included to the *ulema* group. Ulema were deemed as the representative of peace, stability and comfort within Islamic societies (Gökbilgin, 1997). Therefore during the entire Islamic history, study of *fiqh* was considered to be one of the most prominent professions with *alims* always respected figures among Islamic societies. Primary responsibility of *ulema* is to *Allah*. Unlike our contemporary understanding of scholarship, traditionally *alims* perform both social, communal, and scholarly tasks related to their domain of expertise. The persons entitled as *alims* in my study, who were my interviewees, must be treated within such a conceptual context. Today all *fiqh* scholars or theology faculty professors cannot be included to my definition of *ulama*. Some other persons can also be placed in the domain of *ulama* in contemporary Turkish context, such as some *imams*, leaders and important personalities of sects and religious orders (*tarikat, cemaat*). My choice of informants were determined after a careful and focused search with recommendation and

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<sup>10</sup> Halil Gönenç, is a very prominent and well-known scholar of Islamic Law (fiqh). He has a traditional Islamic education. His books and articles are related to the contemporary issues of Islamic Law.

<sup>11</sup> Independence of ulama from political decision making bodies and political authorities, is an ideal definition. Whereas in practical level relationships of ulama and political authorities was a controversial issue in the entire Islamic history. Detailed information about the relationships of ulama and political authorities during the Ottoman period can be found in İsmail Hakkı Uzunçarşılı's significant study, “Osmanlı Devletinin İlmiye Teşkilatı” (Ankara, 1965).

reference of few scholars of Islamic studies<sup>12</sup>; therefore I believe my focused group is prototypic of *alims* in contemporary Turkey.

### *B.3. Historical Transformation of Ulama and Legal Revolution in the Republican Era*

In this part I explain the structural and institutional transformation of *ulama* and role of Islamic Law (*sharia*) in Turkish society. Western thought influenced and, to some extent, permeated the Islamic tenets of Ottoman criminal and commercial law during the nineteenth century. Western jurisprudence had not previously been allowed to challenge the *Sharia* in its control of betrothal, marriage, divorce, and inheritance for Muslim adherents until the new civil law was brought into force. (Starr, 1978; Berkes, 1998). In that sense, transformation of civil law in the early republican era wasb a revolutionary event.

Turkish nation will be saved from false beliefs and traditions, and the fluctuations since the Tanzimat; it will close the doors of an old civilization, and will have entered into a contemporary civilization of.... progress.

There is no fundamental difference in the needs of nations belonging to the modern family of civilization...We must never forget that the Turkish nation has decided to accept modern civilization and its living principles without any condition or reservation....If there are some points of contemporary civilization that do not seem capable of conforming Turkish society, this is not because of lack of capability and native capacity of the Turkish nation, but because of the medieval organization and the religious codes and institutions which abnormally surround it....The aim of law is not to maintain religious regulations, nor to maintain any other habitual customs, but to ensure political, social, economic, and national activity at all cost.

(From the Preamble of the new Civil Code, adapted from Swiss Civil Code, passed the National Assembly on February 17, 1926)

(op.cit.,Berkes, 1998; 470-471)

As in some other modern or modernizing states, the legal system in Turkey does not encourage and allow the usage of mediation, arbitration, and other forms of informal conflict resolution. Those two excerpts from the preamble of Turkish Civil

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<sup>12</sup> I am especially indebted to Dr. Recep Şentürk from Centre for Islamic Studies (ISAM). Without his generous help and recommendations, I could not determine and meet my interviewee's.

Code, which was adapted from Swiss Civil Code and passed the National Assembly on February 17, 1926, summarize the intention and philosophy behind the legal revolution in Turkey. Especially the new civil law was revolutionary and tried to create a westernized society from Turkish society. Western social, economical, political and legal standards were treated as a standard of universal civilization and founders of the Turkish Republic intended to reach these “universal standards” as early as possible. Islamic tenets of the Turkish Society were seen as obstacles for the fulfilment of Westernization aim; therefore, all the Islamic social and political institutions were abolished.

According to Şerif Mardin, religion in “traditional pre-republican” Turkish society had a multiplex social role. The mets of mediating mechanisms were operating within the frame of Islam (Mardin, 1998; 207). His description of the triangular<sup>13</sup> organization of the Ottoman State was composed of central power (responsible for military organization, administration, and tax collection), the *ulema* (filled the position of judges, professors, part-administrators, prayer leaders and theologians), and Sufi orders (Mardin, 1998). *Ulema* had organic connections to the Ottoman centre, and with the establishment of the republic, the traditional *ulema* almost disappeared. Whereas, the Sufi orders, functioned as informal networks, and these networks provided social services, and education. Sufi orders were civil and informal organizations; thus some of them managed to continue their existence in spite of centralization and secularization efforts of republican elites. In contemporary Turkish society some of the Islamic scholars<sup>14</sup> and leading figures of religious brotherhoods perform the some of the traditional roles of *ulema*. Institutional structures such as traditional *ulema* organization and Islamic legal administrations have disappeared; whereas networks of interpersonal relations, which are informal in nature succeeded in persisting.

With the initiation of secular legal system, Islamic law *sharia* and local and informal dispute resolution approaches were forbidden. Civil and commercial codes made marriages, business and commercial contracts entirely a secular matter. Religious marriages were considered valid if official representatives of the Turkish

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<sup>13</sup> Traditional triangular description of Ottoman State organization was composed of three pillars: seyfiyye (central power, military, administrative body), kalemiyye (bureaucrats) and ilmiyye (*ulema*). While sufi brotherhoods were regarded as the civil pillar of Ottoman social organization (Mardin, 1997, 1992)

<sup>14</sup> My interviewee's can be included to this category

State authorize them. Secularization and transformation of civil and commercial laws are important for this study because almost all communal conflicts brought to *alims* are within the domains of these two codes. Especially in rural settings, customary dispute handling procedures continued despite the legal revolution. Legal codes are transferred and imported from Western legal systems, but it was not easy to receive philosophical, normative and cultural background of these laws immediately. The normative basis of these codes flourished within a different cultural and civilizational environment (Bozkurt, 1996: 6-7). With the reception of the Western norms there emerged a gap between communal norms structures and legal, institutional structures. Western oriented codes could not easily penetrate to Turkish society, especially the rural contexts of the Eastern Anatolian Region. Therefore, patriarchal norms, tribal-clan (*aşiret*) norms, and Islamic norms played an important role in the sustenance of communal order and resolution of communal disputes. Local notables, clan leaders, elders of families and influential religious persons such as *seyh*'s, *seyyid*'s<sup>15</sup> and *alim*'s frequently perform third party functions in resolution of communal conflicts. In some places, going to official court was considered even as shameful and inappropriate behaviour.

In urban social settings, the practice of Islamic Law (*fiqh*), especially in family, husband-wife, inheritance and commercial partnership dispute cases, is still continuing. People informally consult or resort to the consensual intervention of “*alim*'s”, who are now defined as scholars of Islamic legal jurisprudence (*fiqh*) and leading figures of religious brotherhoods (*tarikats* and *cemaats*). *Ulema* in the contemporary Turkish context have undergone a considerable transformation. While the institutional structure of *ulema* disappeared with the establishment of the Turkish Republic, the social and interpersonal structure of *ulema* was maintained with a significant transformation. The domain of my study comprises urban settings; therefore, alim's that I specify in my study are scholars of Islamic Law (*fiqh*); two of them also served as *mufti* more than 20 years, and thus had official duties as well.

### *C.1. ADR and Third Party Interventions*

The main focus of the research is the third party roles of the *alims* in communal disputes. The definitions of main ADR processes are listed above.

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<sup>15</sup> A person who has lineal ties with Prophet Muhammad.

Mediation, arbitration, facilitation, conciliation and few other third party intervention forms are also studied within the domain of International Relations (IR). Although I benefit from the literature related to both ADR and IR, my main focus is on the communal level third party approaches in the ADR context. The most common form of third party intervention is mediation; in this study there is also an emphasis on arbitration, conciliation, and med-arb. We should keep in mind that unlike in Middle Eastern countries, the US, China and other nations, in the Turkish context, the decisions of *alims* as third parties are legally non-binding. Therefore, the terms mediation, and arbitration do not fully correspond to the indigenous third party intervention modes that are practiced by *alims*, but what they do functionally corresponds to mediation and arbitration that defined in ADR literature. *Alims* do not have sanction enforcement power, and their decisions are only morally binding. On the other hand, in their arbitration or mediation cases, *alims* gave very systematic decisions according to Islamic Law (*sharia*); in that sense their decision may sometimes seem close to official judicial processes. There are also other indigenous and Islamic forms of third party methods such as *sulh* (settlement), *tahkim* (arbitration), and *fatwa* (legal opinion of the *alim* according to, Islamic Law and principles “*sharia*”).

### *C.2. Mediation: Definition and Scope*

Mediation is defined as a triadic mode of dispute settlement, entailing a neutral third party at the invitation of the disputants, the outcome of which is a bilateral agreement between the disputants (Koch, 1974; p: 28; In Greenhouse, 1985; p: 90). Jacob Bercovitch, one of the well-known scholars of international mediation summarized the main features and characteristics of mediation as follows:

- 1- Mediation is a decisionmaking and conflict management process.
- 2-It is activated when a conflict can not be resolved by the parties only, and it involves an extension and communications of the parties' own conflict management efforts.
- 3- Mediation involves the intervention in a conflict of an acceptable third party. The mediator is there to assist the disputants with their decision making. Mediation is an essentially negotiation with the involvement of an additional actor.

4- Mediation is non-coercive, non-violent, and ultimately non-binding form of reaching decisions. Mediators have no authority to force the parties to resolve their differences.

5- Mediators enter a conflict in order to resolve it, affect, change, modify, or influence it.

6-Mediators bring with them, consciously or otherwise, ideas, knowledge, resources, and interests of their own (Bercovitch, 1992; Bercovitch, 1996; p: 405).

Bercovitch's compilation about the features of mediation is a comprehensive one; other scholars also mentioned the similar criteria for fundamental features of mediation (Kressel, & Pruitt, 1989; Moore, 1996; Goodpaster, 1997). There is a significant difference in definitions and scopes of mediation in IR discipline, and in ADR. In IR the main objective of mediation is to enable settlement, and mediation serves to communication and facilitation purposes; whereas in ADR, mediation's main objective is to resolve the dispute completely.

In anthropological literature, mediation is discussed either in contrast to the dyadic processes (negotiation, coercion, avoidance, etc) or as contrast to adjudication and other forms of coercive dispute resolution processes (Greenhouse, 1985; p: 90; Nader & Todd; 1978). Different scholars in anthropology emphasize different characteristics of mediation in reference to their own field experiences. When compared to adjudication, mediation is the softer mode: it is therapeutic (Gibbs 1967), conciliatory (Gulliver, 1969), and flexible procedurally and substantively (Nader 1969). The mediator's relationship with the disputants is an important element of the process, in that sense mediation differs from formal and dyadic dispute resolution forms.

Main features and characteristics of mediation are listed above, but these features can manifest substantial differences in different contexts. When referring to mediation in different cultures, we should consider the possible differences. For example in Arab culture the mediator is perceived not as a mere facilitator but rather someone who has all the answers and solutions; he therefore has a great deal of power and corresponding responsibility. If the third party does not provide the answer, he or she is not really respected or considered to be legitimate (Irani, 1999; p: 11). Such a notion of a mediator is not even considered in European or US contexts.

For the practice of affective mediation and other ADR processes, there is a necessity for either a strong institutional and procedural backup as in the Western

contexts, or a value system that encourages informal dispute resolution methods such as minorities, religious communities, and informal networks. Both of these two prerequisites can coexist such as in Chinese, Korean and Arab-Islamic contexts. Witty suggests that the preconditions of successful mediation include a community that shares values, disputants who share a commitment to settle the dispute, and a cultural preference for the procedures and likely outcomes of mediation (Witty, 1980). Legal anthropologist Sally F. Moore's discussion of semi autonomous social fields resembles to informal networks that I mentioned in my research. Moore suggests that social cohesion is a process that develops over time around specific normative problems (Moore, 1973; In Greenhouse, 1985; p: 92).

The semi-autonomous social field is not a discrete organizational unit, but a community that is defined by processual characteristic, the fact that it can generate rules and coerce or induce compliance to them

(Moore, 1973; p: 722).

In my research, rather than an institutional or legal backup, mediation practices of the *alims* are backed up with the consensus of the disputants over the Islamic belief systems and values of their informal networks.

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In this chapter, the conceptual and historical origins of the research topic are discussed within the context of the CR Discipline and Turkey. In the next chapter, the theoretical approaches and assumptions of the thesis, especially cultural approaches to the conflict resolution processes, are examined.

## CHAPTER 2

### CONFLICT, CONFLICT RESOLUTION and CULTURE

In this chapter, basic theoretical approaches adopted in the thesis are elaborated. Conflict and conflict resolution theories are critically examined, and possible contributions and drawbacks of these theories to the thesis are discussed. The cultural approaches to conflict, and conflict resolution, constitute the main theoretical backbone of this thesis. Various approaches and research traditions to culture are reviewed and most suitable approaches for my research topic are emphasized. On the other hand some of the false conceptions about culture and their implications for the thesis are also mentioned. First, some basic notions about theory in the Conflict Resolution Field are briefly remarked upon.

#### *A.1. State of Theoretical Approaches in the Conflict Resolution Field*

Analysing the origins, sources, and dynamics of conflicts and identifying the methods and processes by which conflicts may be resolved peacefully are the two complementary objectives of the study in the CR Discipline. In the CR field, theory is a vague term since the field is an interdisciplinary and eclectic one; sources and natures of theoretical approaches can be diverse. The focal point of the theories in CR field is the conflict resolution processes. Abstractions and generalizations related to theory are usually done in order to generate analytic process components that nullify the destructive components and dynamics of conflicts. In that sense, analyzing sources, dynamics and natures of the conflicts is considered more meaningful if it contributes to improvement of conflict resolution processes.

Conflict theories, conflict resolution theories, and underlying assumptions of conflict resolution processes are closely interrelated. Conflict resolution processes are formulated and designed to eliminate, or peacefully resolve the conflicts depicted in the conflict theories. Therefore conflict theories and conflict resolution approaches are closely interconnected. Conflicts can be observed in many different levels ranging from an intra-psychic level to a global level. Formulating analytic conceptual tools and generating generic conflict resolution models are the main task of CR scholars. Theories in CR are mid-level theories and practical implications and explanatory capacities of these theories are considered to be more important than their arguments related to abstract and grand questions. On the other hand, there are no generic

theories or frames applicable to all conflicts at different levels of analysis, and different cultural contexts. Theoretical approaches in the CR field are extremely diverse this can sometimes lead to confusion, but this is at the same time the richness' of the CR field. Some conflict theories, such as Burton's "human needs theory", claim to relevance at all levels of social intercourse from interpersonal, marital, domestic to international levels<sup>16</sup> (Burton, 1979; Burton, & Sandole, 1986).

CR is a growing field with increased sophistication in terms of theoretical analysis and case-by-case practical applications. However, there are certain dimensions of conflicts that are underemphasized in the current CR literature, such as historical, normative and cultural dimensions. Cultural aspects and dynamics of conflict resolution processes are the main theoretical themes of this study. In this study, cultural dimensions of conflicts and conflict resolution processes are emphasized within the context of contemporary Turkish Society. Conflicts and conflict resolution mechanisms are examined at the societal and communal levels. The group of people examined in this study do not represent the entire Turkish Society, nor do they behave and interact within the manner that is anticipated in the generic conflict and conflict resolution theories. They do not behave uniquely either and have many commonalities with the rest of the Turkish Society, with the other Muslim societies, and with other societies of the world.

The way in which conflicts are defined and conceptualized influences methods used to tackle them. Keeping this in mind will conflict theories be elaborated below.

#### *A.2. Genetic Needs, Interests and Interpretations: A Critical Review of the Conflict Theories*

Different approaches to resolving conflicts can be suggested depending on the basic assumptions of social order. In the conflict theories, the reasons that disrupt social order and lead to social conflict and aggression are formulated. If it is assumed that social order results from a general consensus on values, conflict regulation and resolution mechanisms would be shaped accordingly. Order can be based on utilitarian assumptions, and rational exchanges can be seen as the driving force of social and economic progress. In such circumstances mechanisms would be designed

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<sup>16</sup> There are some criticisms to these generic theories (Avruch, & Black, 1987).

to secure the possible disruptions and conflicts encountered in rational exchanges in both micro and macro levels. Psychiatric approaches need to be used if problems are rooted in individuals (Jeong, 1999; p: 517). On the other hand, if the conflict is a result of misperceptions and false interpretations in interpersonal or inter-societal levels, conflict resolution mechanisms would be designed to correct these misinterpretations. Diagnosis of the sources of conflicts is the first and foremost step for resolution of conflicts. Conflict theories are important because using wrong or insufficient lenses can hinder correct diagnosis. In addition to generic lenses, cultural lenses will be offered to put on in this study.

In the literature regarding conflict theories and conflict resolution theories, especially ones primarily inspired by positivistic social science approaches, situational and contextual issues and variables are usually avoided or underestimated. The majority of the conflict theories are generic theories, and theories avoid cultural and contextual variations in their explanations. There are two main clusters of generic conflict theories: the first cluster is genetic and psychological theories; and the second cluster is rationalistic theories. In genetic conflict theories, dissatisfaction of species-specific physiological and psychological needs of human beings are seen as the basis of conflicts. On the other hand, the emergence of conflicts as a consequence of rational struggles over scarce resources is seen at the core of rationalistic conflict theories. Cultural and value dimensions of conflicts remain at the margins of the conflict theories. Anthropologists and some social psychologists emphasize these two dimensions in their studies of social conflicts. Different notions and definitions of conflicts are reviewed below and their implications for the conflict resolution processes are emphasized.

Alan Tidwell classified the conflict theories into three clusters: inherency theories, contingency theories, and interactionist theories (Tidwell, 1998; pp: 41-56). Inherency theories base human aggression on human nature, while contingency theories postulate that aggression is not innate, but its expression depends upon factors external to the person (Tidwell, 1998). Interactionists combine elements of both contingent and inherency schools. Genetically determined and human needs theories, physiological theories, and the majority of psychological and economic theories can be categorized under inherency theories. Social learning theories, perceptual theories, and cultural theories can be categorized under contingency theories.

Lewis Coser, an American sociologist, defines conflict as a struggle over values and claims to scarce status, power and resources, a struggle in which the aims of opponents are to neutralize, or eliminate rivals (Coser, 1956; p: 8). In Coser's definition, scarcity of resources is emphasized as the sources of conflicts.

Political Scientist Robert Axelrod, also a game theorist, defines conflict as an incompatibility in the aims, goals, or interests of two or more individuals, groups or other units (Axelrod, 1970; p: 5). Axelrod makes an essential distinction by differentiating conflict of interest from "conflictual behaviour". According to Axelrod "conflictual behaviour" is a kind of behaviour, involving a proneness to hurt, damage, frustrate, or destroy some other actor or actors (Axelrod, 1970). Conflict of interest is seen as ubiquitous in human life, cultures differ in their appraisal of it (Ogley, 1999; p: 402). According to Roderick Ogley, Western societies exalt manifestation of conflict of interest as economic and political competition, or confrontational court proceedings. Absence of conflict of interest is viewed as a source of inefficiency in the West (Ogley, 1999).

Pruitt, Rubin and Kim, are social psychologists who define conflict as a perceptual one. According to Pruitt, Rubin and Kim, conflict means perceived divergence of interest, or a belief that parties' current aspirations can not be achieved simultaneously (Rubin, Pruitt, & Kim, 1994: p: 5). As social psychologists, the trio emphasize the impact of mental status on social behaviour in their study of social conflicts (Rubin, Pruitt, & Kim, 1994).

Marc Howard Ross's definition synthesizes both scarcity and perceptual modes of conflicts. According to Ross, managing conflicts effectively is difficult because complex social and political conflicts invariably have multiple sources rather than a single clearly defined cause. Conflicts are about the concrete interests that adversaries pursue as well as their interpretations of the motives of opponents (Ross, 1993; pp: 2-3). Ross also used a dual approach in his study of political and social conflicts and subtitle of his study reflects his approach: "The Management of Conflict: Interpretations and Interests in Comparative Perspective" (Ross, 1993).

According to John Burton's comprehensive and generic theory, sources of conflicts are dissatisfaction of basic human needs, which are generic to all human species. Burton lists nine basic human needs as follows: for consistency in response, for stimulation, for security, recognition, for distributive justice, to appear rational, for meaning in response, for sense of control, and role defence (protection of needs once

they have been acquired) (Burton, 1979; p: 73). Burton and Sandole argue that their generic theory of conflict and conflict resolution is applicable at all levels of social intercourse, from interpersonal, marital and domestic, to international. They argue that the old discipline based paradigm for the study of conflict- psychology, sociology or anthropology, international relations, etc. is outmoded. These disciplines all implicitly accept the reality and integrity of different levels of social discourse and interaction (Avruch, & Black, 1987; pp: 87-88). According to Burton, individuals are motivated by a set of ontological and universally distributed human needs, since human behaviour is motivated to fulfil these needs.

In “Frustration-Aggression Theory”, John Dollard’s argues that aggression is always a consequence of frustration. Frustration is the interference with the occurrence of an instigated goal-response at its proper time in the behaviour sequence (Dollard et al., 1939; in Sandole 1999, p: 114). In Dollard’s hypothesis, aggression is believed to be a response to certain biological and psychological stimuli. The origin of conflict is attributed to aggressive impulses that invite violent expression no matter what the object might be. If aggressiveness cannot be expressed against the real source of frustration, displaced hostilities can be targeted to substitutive objects (Dollard et al., 1939; in Jeong 2000, p:67, Jeong, 1999, p:512).

Ted Robert Gurr had conceptualized “relative deprivation” as sources of social conflicts. Relative deprivation is defined as perceived discrepancy between “ value expectations” (resources to which one feels entitled) and “value capabilities” (resources which one feels capable of acquiring and keeping). As the gap between value expectations and value capabilities increases, the potential for violence and conflict increases (Gurr, 1970; in Jeong 2000, p:67, Sandole 1999, p: 117).

Albert Bandura formulated a theory of aggressive behaviour not based on inner impulses and intra-psychic mechanisms. He offers a theory based on social learning, social contexts and roles, response feedback influences, modelling and reinforcement (Bandura, 1973). According to Bandura, there are three primary sources of human aggression: familial settings, subcultural context, and symbolic modelling (*Ibid*). The initial and most influential social learning takes place in the family. With reference to his arguments, we can conclude that conflictual families produce conflictual offspring. The second source of aggression can be found in subcultures and environments where aggressiveness is regarded as highly valued attribute. The third category of social learning comes from symbolic sources. Bandura

argues that major source for transmission of violence is television (Bandura, 1973: In Tidwell, 1998, pp: 54-55). According to Bandura, social values related to violence and conflictual behaviour are transmitted through a complex and multi-layer process of social learning. He does not attribute sources of violence and conflicts to psychological and genetic characteristics, but he mentions a culture of conflict.

According to Leon Festinger, violence and conflict results from felt discrepancies between preferred and actual states of affairs. He uses the concept of “cognitive dissonance” in order to state the discordant relationships between beliefs, values, behaviour and environment (Festinger 1962; in Sandole, 1999, p: 117). People have tendencies to reduce inconsistencies that may arise in the knowledge concerning the person’s values, environment, and behaviour. Inconsistencies may arise by modifying any of the three.

Though awareness of biological, social and scarcity approaches to conflicts, cultural anthropologists argue for cultural bases of conflicts. According to anthropological approach, both conflict and violence are understood as shaped in response to culturally specific norms, values, ideologies, and worldviews (Kyrou et al., 1999, p: 519). What motivates societies in conflict arises out of social interactions that are defined by the members of the society and their values, beliefs, institutions, rituals and norms. In anthropology, scholars record conflicts occurring under different forms such as witchcraft practices, feuds, factionalism, warfare, competitive games, contradictory values and discord between the spouses (Nader, 1968, p: 237).

There are many other conflict theories, such as Freud’s attribution of human aggression to dialectical struggle between two opposing forces; life (Eros) and death (Thanatos) instincts; Paul MacLean’s schizophysiology<sup>17</sup>; Johan Galtung’s structural violence thesis<sup>18</sup> and others.

Many of these conflict sources can be embedded in a single conflict, thereby mistakenly attributing sources of conflict to a single generic theory. A contextual and cultural analysis is necessary in order to understand sources and dynamics of conflicts. Rationalistic, genetic and psychological explanations can be useful yet

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<sup>17</sup> Limbic system dominates the cerebral cortex in stressful situations, learning stimuli response relationship in stressful conditions may condition the organism for learning this relationship and repeating the same relationship in similar conditions.

<sup>18</sup> A group of people’s proneness to violence as a consequence of structurally based discrepancy between actual and potential states of their somatic and mental well-being. These people can be characterized as victims that suffer as consequence of involuntary membership in certain ethnic, religious, class, gender and other groups (Galtung, 1969; in Sandole, 2001; p:117).

inadequate in this study. The subject of this study, and the third parties that try to contribute to the resolution processes have a shared system of beliefs, norms, values and symbolic systems, and these cultural factors play a significant role both in conflicts and conflict resolution processes. Although the majority of the disputes mentioned in this study are either marital disputes or commercial disputes, disputants resort to *alims* mainly as a result of their religious sensitivities.

### *B. CULTURE AND CONFLICT RESOLUTION*

In the young CR Discipline, cultural elements and variables are usually considered as a challenge to generic theoretical frameworks for the analysis and resolution processes of conflicts. John Paul Lederach's comments on the role of culture in conflict resolution are noteworthy:

Culture should not be understood by conflict resolvers and trainers primarily as a challenge to be mastered and overcome through technical recipes. Culture is rooted in social knowledge and represents a vast resource, a rich seedbed for producing a multitude of approaches and models in dealing with conflict"

(Lederach, 1995)

In the recent years there is an increased attention on indigenous methods and conflict resolution tools in different cultural settings. Main researches concerning the cultural dimensions of conflicts and their resolution processes and mechanisms still focuses on the communication problems and misunderstandings in cross-cultural encounters in a "globalizing world". Although there is a remarkable break-off from the generic notions of conflict and conflict resolution in cross-cultural encounters, there is still a necessity for a systematic approach to study local and indigenous forms of conflict resolution.

There is confusion on the definition and operationalization of culture in the CR Discipline. CR is an interdisciplinary and eclectic field; therefore each discipline that makes theoretical and methodological contributions to the CR has its own operational definitions of culture. Anthropologists, political scientists, international relations scholars, social psychologists, jurists and business management scholars, who conduct CR related researches and theoretical contributions, define and study culture very differently. Each of these disciplines has varying research questions

related to culture, which emphasize different dimensions of culture according to their research questions.

Here various approaches to the study of culture in the CR discipline are examined and the best approaches suit my research domain are elaborated. On the other hand, some drawbacks and mistakes of cultural analysis are mentioned. The currently available approaches to the study of culture in the CR discipline are inadequate for my research topic. While reviewing the present approaches, I propose new cultural approaches that complement some of the inadequacies of the present approaches. The theoretical approaches related to culture and conflict resolution that are adopted in this study are mainly inspired from cultural and legal anthropology.

### *B.1. Definitions of Culture and Their Implications for CR Research*

There is confusion on the definition of culture; there is not a consensus among the scholars about the definition of culture. The definition of culture also determines the operationalization of culture in culture related conflict resolution studies. It is mistaken to consider culture either as an entirely abstract and mental phenomenon or as a behavioural one. According to John Bodley, culture involves at least three components: what people think, what they do, and the material products they produce. Thus, mental processes, beliefs, knowledge, and values are parts of culture (Bodley, 1994; pp:3-9). Some anthropologists define culture entirely as mental rules guiding behaviour, although often-wide divergence exists between the acknowledged rules for correct behaviour and what people actually do. Some researchers on the other hand, pay most attention to human behaviour and its material products (Bodley, 1994). There is a close interrelatedness between mental and behavioural processes; therefore a cultural analysis comprises a multi-layer and a circular analysis rather than a linear behavioural or mental analysis approaches. Culture also has several properties: it is shared, learned, symbolic, transmitted cross-generationally, adaptive, and integrated (Bodley, 1994).

Bodley's classification table (Figure 2.1) is very useful for understanding diverse notions and definitions of culture. The concept of culture is mentioned in the titles of many academic studies and researches, but usually very different dimensions of culture are emphasized in those studies. Different disciplines in particular approach culture very differently. Bodley's schema helps to comprehend the notions and

approaches of culture emphasized in different studies, more specifically conflict resolution related studies.

Figure 2.1: Definitions of Culture <sup>19</sup> :	
<b>Topical:</b>	Culture consists of everything on a list of topics, or categories, such as social organization, religion, or economy
<b>Historical:</b>	Culture is social heritage, or tradition, that is passed on to future generations
<b>Behavioural:</b>	Culture is shared, learned human behaviour, a way of life
<b>Normative:</b>	Culture is ideals, values, or rules for living
<b>Functional:</b>	Culture is the way humans solve problems of adapting to the environment or living together
<b>Mental:</b>	Culture is a complex of ideas, or learned habits, that inhibit impulses and distinguish people from animals
<b>Structural:</b>	Culture consists of patterned and interrelated ideas, symbols, or behaviours
<b>Symbolic:</b>	Culture is based on arbitrarily assigned meanings that are shared by a society

Definition, operationalization, and classifications of culture determine the way by which culture would be studied. According to the nineteenth century social evolutionist theorists culture was equivalent to civilization. There was a conception of a unique linear progressive path of civilization and differences in societies' knowledge, customs and beliefs reflected differences in how advanced they were on scale of progress (Goodenough, 1996; p: 291). The classical definition of culture according to evolutionary approach is E. B. Tylor's 1871 definition. According to Tylor, culture is the complex whole, which includes knowledge, belief, arts, morals, law, custom, and any other capabilities and habits acquired by a man as a member of a society (Singer, 1968). Tylor's notion of high culture is a topical and a functional one according to Bodley's schema.

With reference to Clyde Kluckhohn's book " Mirror for Man", Clifford Geertz lists definitions of concept of culture comprehensively as follows:

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<sup>19</sup> Adopted from Bodley's book, Cultural Anthropology: Tribes, States, and the Global System., also at <http://www.wsu.edu:8001/vewsu/commons/topics/culture/culturedefinition/bodley-text.htm>

(I) "the total way of life of a people"; (2) "the social legacy the individual acquires from his group"; (3) "a way of thinking, feeling, and believing"; (4) "an abstraction from behaviour"; (5) a theory on the part of the anthropologist about the way in which a group of people in fact behave; (6) a "storehouse of pooled learning"; (7) "a set of standardized orientations to re-current problems"; (8) "learned behaviour"; (9) a mechanism for the normative regulation of behaviour; (10) "a set of techniques for adjusting both to the external environment and to other men"; (11) "a precipitate of history"; and turning, perhaps in desperation, to similes, as a map, as a sieve, and as a matrix.

(Geertz, 1973; pp: 4-5)

In his own definition of culture, Geertz places particular emphasis on notions of "symbol" and "thick description". According to Geertz culture is to be understood as an accumulated totality of symbol systems<sup>20</sup> (religion, ideology, common sense, economics, sport) in terms of which people make sense of themselves and their world and represent themselves to themselves and to others (Geertz, 1973). His notion of culture is essentially a semiotic one.

Believing, with Max Weber, that man is an animal suspended in webs of significance he himself has spun, I take culture to be those webs, and the analysis of it to be therefore not an experimental science in search of law but an interpretative one in search of meaning.

(Geertz, 1973; p: 5)

If human behaviour is seen as symbolic action, the question as to whether culture is patterned conduct or a frame of mind, or even the two somehow mixed together, loses sense, the thing to ask [of actions] is what their import is" (Geertz, 1973; pp: 9-10). According to Geertz systems of meaning are the collective property of a group.

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<sup>20</sup> A system of meaning is a set of relationships between one group of variables (like words, behaviors, physical symbols, etc.) and the meanings which are attached to them. Relationships in meaning systems are arbitrary: there is no particular reason why the word "cat" should refer to a furry four-legged animal, for example. However, when a society agrees upon certain relationships between a certain class of variable (like words or behaviors) and their meanings, a system of meaning is established. Language is perhaps the most formal of human meaning systems. At the same time, we all know what it means to wink at someone or to give someone 'the finger' ; this suggests that human behavior, like language, can be a part of a complex and established system of meaning.

<http://www.wsu.edu:8001/vcwsu/commons/topics/culture/system-of-meaning.html>

In the CR Discipline Kevin Avruch and Peter Black contributed to definition and conceptualization of culture. According to Avruch and Black, culture is seen to be a fundamental feature of human consciousness, the *sine qua non* of being human (Avruch, & Black, 1993; p: 131). Their understanding of culture is also close to symbolic and perceptual one.

Metaphorically speaking culture is a perception-shaping lens or (still metaphorically) a grammar for the production and structuring of mental action. Therefore, an understanding of the behaviour of parties to a conflict depends upon understanding the “grammar” they are using to render that behaviour meaningful. 131-132

(Avruch, & Black, 1993; p: 132)

Black and Avruch classify culture into two categories. They refer to them as generic and local cultures. Generic culture is a species-specific attribute of Homo sapiens, an adaptive feature of our kind on this planet for at least a million years ago (Black, & Avruch, 1989, pp:187-194; Avruch, 1998, p: 10). Local culture concept is borrowed from Clifford Geertz (Geertz, 1983), local cultures are those complex systems of meanings created, shared, and transmitted (socially inherited) by individuals in particular social groups (Geertz, 1983).

Generic culture directs our attention to universal attributes of human behaviour –to “human nature”. Local culture directs our attention to diversity, difference, and particularism. Much confusion results from ignoring one or another dimension of culture. To ignore local culture is to rely theoretically overdeveloped and deterministic concept of human nature that erases the observable facts of cultural variability... To ignore generic culture is to find oneself locked in the cylinder of postmodern solipsism and to lose sight of the possibilities of intertranslatability across local cultures...

(Avruch, 1998; p: 10)

Avruch and Black argue that if one wishes to understand conflict behaviour it is particularly useful to attend to the indigenous understandings of being and action which people use in the production and interpretation of social action. (Avruch and Black ,1993; p:132). In the Avruch and Black’s notion of culture, meaning is the key

word here. Culture provides us with systems of symbols by which meaning is asserted and established in the world; therefore a cultural analysis at root is the searching out of meaning in these systems of symbols (Avruch and Black ,1993; p:134). Their approach to culture is close to Clifford Geert's interpretive approach and thick description.

Marc Howard Ross's operational definition of culture is a cognitive and value oriented definition. According to Ross, culture shapes what people consider valuable and worth fighting over, investing particular goods, social roles, official positions, or actions with meaning. His psychocultural conflict theory focuses on the disputants' differences in interests and their divergent and mutually hostile interpretations. In his cross-cultural study of conflicts, he explained conflicts with the discrepancy in disputant's dominant images and metaphors concerning what is at stake or the relationship between key parties (Ross, 1993).

Geert Hofstede's works and his cross-cultural comparison schemas are cited very commonly by many scholars in cross-cultural researches. Hofstede defined culture as collective programming of the mind that distinguishes the members of one group or category of people from another (Hofstede, 2001; p: 9)

As I mentioned in the introduction, this research aims to study both indigenous conflict resolution processes, methods, and the underlying meanings and value assumptions of these processes. Consistently with the research objectives, understanding of culture in this study is a comprehensive one, which comprises the body of socially learned and shared meaning systems, perceptions, values that underlie conflict resolution processes. On the other hand, patterns of the conflicts resolution processes within my field are compared and contrasted with some other indigenous cultural contexts. In Clifford Geertz's terms there is both thin description, by which conflict resolution process are described, and a thick description by which underlying meaning systems of conflicts and conflict resolution processes is interpreted. Both generic and local-indigenous- elements of culture are present in my research. There are many commonalities and parallelisms with other cultures, as well as differences.

### *C. APPROACHES to CULTURE*

Methodologically there are two basic approaches for the study of cultures, they are etic and emic approaches. Linguistic anthropologist Kenneth Pike, adapted linguistic concepts “phonemic” and “phonetic” into the study of cultures as etic and emic and concepts (Pike, 1967). Pike proposed two perspectives for the study of society’s cultural systems, just as there are two perspectives that can be employed to a language’s sound system (Lett, 1996). Emics are ideas, behaviours, items, and concepts that are culture specific. Etics, are ideas, behaviours, items, and concepts that are culture general.

These two approaches closely relate with the diverse definitions and conceptualizations of culture, in the previous section. The dimensions of culture, and categorical differentiations for the study of culture such as local vs generic cultures; thick description vs thin description; meaning and symbolic systems vs behaviours and practices can be framed along etic and emic approaches schema (Figure 2.2). Avruch remarks this categorization as follows:

In some sense the tension between emic and etic is related to the one we identified earlier as between local and generic understandings of culture itself. Emic approaches provide “thick descriptions” and rich context. Etic models offer cross-cultural categories or discretely arrayed variables that, being scalable, are amenable to codings in databases and statistical manipulations; they seem to be able to reduce tremendous cultural diversity onto a few manageable dimensions.

(Avruch, 1998, p: 68)

<b>Figure 2.2: Etic and Emic Approaches for the Study of Culture</b>	
<b>ETIC APPROACH</b>	<b>EMIC APPROACH</b>
Thin Description (Systematic Description)	Thick Description (Interpretation)
Behavioural patterns and common practices	Meanings, Symbols, Metaphors, Rituals, Language and special terms
Generic Culture’s Characteristics	Local Culture Characteristics

Communication, Business Management, Anthropology, Comparative Politics	Anthropology, Sociology
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According to Avruch, the emic way of looking and studying culture necessitates actor-centered, thickly described, and context rich research strategy. On the other hand the etic way of looking and studying culture necessitates an analyst-centered, “objective,” and trans-cultural research strategy (Avruch, 1998; p: 57). An emic analysis identifies, systematizes, and utilizes native categories, terms, and propositions about the world, culture, or domain under study. Emic concepts are useful in communicating within a culture, where a single word or metaphor sometimes can be used to convey a very complex idea or the essential components of worldview of the society which is under study (Triandis, 1994, p:67-68). Therefore an emic approach, which is an ethnographic approach, brings the attention to context and subtlety translations of culturally specific verbal and non-verbal symbols and metaphors. Within the anthropology, perhaps the most famous example of this sort is Clifford Geertz’s “thick description” concept, which is operationalized by many anthropologists in different cultural contexts (Avruch, 1998, p: 61). Harry Triandis argues that emic concepts are essential for understanding a culture; however, since they are unique to a particular culture, they are not useful for cross-cultural comparisons (Triandis, 1994).

Different understandings and worldviews can have very varying social and behavioural implications, which can manifest themselves as patterned ways of behaviours and social interactions in certain cultural context. Behavioural patterns of different groups, their distinct responses to similar conditions can be compared and contrasted by etic schemas. The basic feature of etic approach is the identification of underlying, structurally deep, and transcultural forms, expressed in terms of certain descriptors that are putatively capable of characterizing domains across all cultures (Avruch, 1998, p:63). Etic schemes allow comparisons, even for instruction across cases, and they enable efficient, retrievable handling of large amounts of cultural data. They can give us good ideas of what elements of a cultural complex tend to hang with other elements we would likely not to encounter (Avruch, 1998).

Emics are studied within the system in one culture, and their structure is discovered within the system; therefore, if we are going to understand a single culture

deeply and more detailed manner as a closed and isolated system, it can be more appropriate to resort to emics (Triandis, 1994, p: 68). Unlike emics, etics are studied outside the system in more than one culture, and their structure is theoretical (Triandis, 1994). A given culture's points of convergence and divergence with other cultural contexts can be examined comparatively with reference to etic comparison frames. To develop "scientific" generalizations about relationships among variable and to test quantifiable hypothesis, it is more appropriate to use etics. We can frequently encounter quantitative social science studies with an emphasis of 'culture' in their titles, in which formal mathematical theories and models are utilized in a sophisticated way. It is inappropriate to consider hypothesis testing oriented notions of culture as complete and robust understanding of culture. We can only narrowly and incompletely understand a particular culture with reference to solely etic approaches.

We should mention that these two approaches are complementary, and not considered as mutually exclusive and contrary research tracks. Berry (1990, p. 93) has suggested a three-step approach that tries to combine a concern for the specific and can be applied where functional equivalence of behaviors in two cultures can be demonstrated.

- 1-Existing descriptive categories and concepts are applied tentatively, as an imposed etic.
- 2-these are then modified so that they represent an adequate emic description from within each system;
- 3- shared categories can then be used to build up new categories valid for both systems as a derived etic, and can be expanded if desired until they constitute a universal. This derived etic or universal is used as the basis for new measurement instruments and techniques.

(In, Hofstede, 2001; p: 26)

In this study, both etic and emic approaches are used. Especially in analysing conflict resolution processes and steps, I benefit from process schemas and definitions of James Wall and his colleagues (Wall,& Blum, 1991, Wall, & Callister 1995; 1997; 1999; Pruitt, 1995; Kim, Sohn, & Wall, 1999; Wall, Sohn, & Jin, 1995). On the other hand, many studies are conducted on the conflict resolution, negotiation and mediation in different cultural settings <sup>21</sup> such as Chinese (Wall, & Blum 1991;

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<sup>21</sup> In the forms of religion, region, nation states or other local culture.

Wall.et.al 1995; Faure, 2000), Malaysian (Callister & Wall 1999, Japanese (Callister & Wall 1997), Polish (Olszanka, Olszanki, & Wozniak, 1993), Azari (Keller, 1991) Arab (Salem 1997, Abu-Nimer 1996, 2000; Irani 1999, 2000; Murray 1997)<sup>22</sup>, Navajo (Pinto, 2000) and Jewish (Steinberg 2000) cultures. Etic process frames and comparison schemas and points of these studies will also be part of my study.

On the other hand, when analyzing underlying assumptions and meanings of these processes, I benefit from emic and approaches. Various emic and etic approaches that are frequently used by CR scholars will be presented below. Also I mention legal anthropology, which is a very useful but an underutilized discipline in CR researches. Legal anthropology focuses on both emic and etic dimensions of cultural study in that sense it suits to my research objectives. I benefit especially from interpretive and emic dimension of legal anthropology.

### *C.1. Etic Approaches*

Throughout the history of the study of culture there has been a dispute between those stressing the unique aspects and those stressing comparable aspects. The first hold that you can not compare apples and oranges, whereas the second argue that apples and oranges are both fruits and can be compared on a multitude of aspects, such as price, weight, colour, nutritive value, and durability. The selection of these aspects obviously requires an *a priori* theory about what is important in fruits.

Hofstede, 2001;p:24; Hofstede, 1998)

Hofstede's metaphorical illustration related to the subject is impressive. In Hofstede's terms, etic study of culture is a systematic comparison of apples and oranges. In the etic tradition, cultures are examined and compared according to certain variables and parameters that are considered to be relevant for the entire set of comparison units. Before comparing two items, there is a necessity to establish and state commonalities between the items of comparison. Units of comparison must be at the same scale and level; it is meaningless to compare fruits with animals.

Commonalities and differences between the cultures can be compared on a multitude of aspects. Comparisons can be made according to expected behaviour sets in similar conditions, choices among limited contingency sets, sequences of behaviour

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<sup>22</sup> We can expand the list, also there is a remarkable literature on legal anthropology that can be included to our list.

or different values that motivate and shape behaviours and attitudes. It is not always possible to measure cultural similarities and differences because of operationalization and measurement difficulties. Some of the categorizations such as High Context Communication vs Low Context Communication are ‘ideal types’, they do not always represent concrete categories. The aim of all frames and ideal types is to present a universal scale or set of dimensions upon which all cultures can be placed and to present abbreviating and comparing cultures across the board (Avruch, 1998, p: 64)

#### *i. Dimensional and Categorical Frames and Hofstede*

Dimensional and categorical<sup>23</sup> frames are two common types of etic treatments. With the formulation of dimensions or taxonomies of culture, each culture is not treated as a unique case but in terms of either a multi-dimensional culture space or as belonging to a broader culture category. Geert Hofstede’s dimensional treatment of culture and his operationalized frame is one of the most prominent and cited frames for the cross-cultural empirical social science researches. He examined the work-related values of nations along five dimensions:

*Power distance*: defined as the extent to which the less powerful members of institutions and organizations within a country expect and accept that power is distributed unequally<sup>24</sup>. *Uncertainty avoidance*: defined as the extent to which the members of a culture feel threatened by uncertain or unknown situations<sup>25</sup>. *Individualism versus collectivism*: is related to the integration of individuals into primary groups<sup>26</sup>. *Masculinity versus femininity*: related to what extent to which social gender roles in a society are clearly distinct<sup>27</sup>. *Long-term versus short-term orientation*: related to the choice of focus for people’s efforts: the future or the present (Hofstede, 2001; 1998; 1984).

Since Hofstede’s approach was conceptualized in order to study differences and commonalities at national level, it is very commonly used in cross-cultural conflict resolution researches, especially in international political and business negotiations and mediations.

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<sup>23</sup> Formulating taxonomies

<sup>24</sup> How to deal with human inequality

<sup>25</sup> Dealing with the unknown

<sup>26</sup> Human togetherness

<sup>27</sup> Gender roles

### *ii. High vs Low Context Communication Cultures*

Edward Hall's classified cultures according to their ways of communication, into high context communication (HC) vs low context communication (LC) cultures. Hall's taxonomy is also very commonly used in many levels ranging from communal level to international level (Hall, 1976). According to Hall, any transaction can be contextualized as high-, low-, or middle contexts. HC transactions feature programmed information that is either in the physical context or internalized in the person, while very little is in the coded, explicit transmitted part of the message. A low-context (LC) communication is just the opposite; i.e., the mass of the information is vested in the explicit code. (Hall, 1976; p:91). High context (HC) communication is more often found in traditional cultures and LC communication in modern cultures so that the HC/LC distinction partially overlaps with traditional/modern cultures distinction. In HCC system what is not said is sometimes more important than what is said. In contrast, in the LCC system words represent truth and power (Ting-Toomey, 1985; 71). Ting-Toomey operationalized Hall's taxonomy and adapted it to the conflict patterns. Her table (Figure 2.3) demonstrates the differences of two categories clearly.

Figure 2.3 A Summary of Basic Characteristics of LCC Conflict and HCC Conflict		
Key Questions	Low Context Conflict	High Context Conflicts
Why	<ul style="list-style-type: none"> <li>• Analytic, linear logic,</li> <li>• Instrumental-oriented</li> <li>• Dichotomy between conflict and conflict parties</li> </ul>	<ul style="list-style-type: none"> <li>• Synthetic, spiral logic</li> <li>• Expressive oriented</li> <li>• Integration of conflict and conflict parties</li> </ul>
When	<ul style="list-style-type: none"> <li>• Individual -oriented</li> <li>• Low collective normative expectations</li> <li>• Violations of individual expectations create conflict potentials</li> </ul>	<ul style="list-style-type: none"> <li>• Group -oriented</li> <li>• High collective normative expectations</li> <li>• Violations of collective expectations create conflict potentials</li> </ul>
What	<ul style="list-style-type: none"> <li>• Revealment</li> <li>• Direct, confrontational attitude</li> <li>• Action and solution oriented</li> </ul>	<ul style="list-style-type: none"> <li>• Concealment</li> <li>• Indirect confrontational attitude</li> <li>• Face and relationship oriented</li> </ul>
How		

	<ul style="list-style-type: none"> <li>• Explicit communication codes</li> <li>• Line-logic style: rational factual rhetoric</li> <li>• Open, direct strategies</li> </ul>	<ul style="list-style-type: none"> <li>• Implicit communication codes</li> <li>• Point-logic style: intuitive affective rhetoric</li> <li>• Ambiguous, indirect strategies</li> </ul>
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(Ting-Toomey, 1985)

Communication is one of the most important aspects of conflict resolution processes and the cultural differences presented in two categories influence entire conflict processes and conflict resolution processes. HC-LC categorization, which can also be conceptualized as traditional/ modern cultures taxonomy is also a popular etic schema in CR researches.

### *iii. Individualism/ Collectivism*

Another important taxonomy, especially popular in comparing Western societies and Eastern societies (especially East Asian Societies) is individualism vs collectivism taxonomy. Although there are many elements of essentialism and orientalism are embedded in this taxonomy, ideal typical forms of attitudes and behaviours can be useful in comparative studies. According to Triandis, people in individualistic cultures often give priority to their personal goals, even when they conflict with the goals of important in-groups, such as family, tribe, work group, religious community. Conversely, people in collectivist cultures give priority to in-group goals (Triandis, 1994; p: 165). In collectivist cultures behaviour is regulated by largely by the in-group norm; in individualist cultures it is regulated largely by individual likes and dislikes. Norms are more important determinants of behaviour in collectivist culture, and attitudes are more important in individualist cultures (Triandis, *et.al*, 1990). Collectivists tend to think groups as the basic units of analysis of society, while Individualists tend to designate the individual as basic unit of analysis.

**Figure 2.4****Attributes Defining Individualism and Collectivism and Their Antecedents and Consequents**

<b>Antecedents</b>	<b>Attributes</b>	<b>Consequents</b>
<b>Individualism</b>	<ul style="list-style-type: none"> <li>• Affluence</li> <li>• Cultural complexity</li> <li>• Migration</li> <li>• Urbanism</li> <li>• Exposure to mass media</li> </ul>	<ul style="list-style-type: none"> <li>• Emotional detachment from ingroup</li> <li>• Personal Goals have primacy over group goals</li> <li>• Behaviour regulated by attitudes and cost-benefit analyses</li> <li>• Confrontation is OK</li> </ul>
<b>Collectivism</b>	<ul style="list-style-type: none"> <li>• Agriculture</li> <li>• Large families</li> <li>• Unit of survival is food ingroup</li> </ul>	<ul style="list-style-type: none"> <li>• Family integrity</li> <li>• Self defined ingroup term</li> <li>• Behaviour regulated by ingroup norms</li> <li>• Hierarchy and harmony within ingroup</li> <li>• Ingroup is seen as homogenous</li> <li>• Strong ingroup/outgroup distinctions</li> </ul>

(Triandis, et.al., 1990; p:53)

There are many other etic frames for cross-cultural studies for different levels of analysis. For example, Schwartz derived seven dimensions of values: mastery, harmony, conservatism, intellectual and affective autonomy, egalitarian commitment, and hierarchy (Schwartz, 1994; in Kozan, 1997). British anthropologist Mary Douglas proposed a two-dimensional ordering of cosmologies: 1) “group” or inclusion (the claim of groups over members) and 2) “grid” or classification (the degree to which interaction is subject to rules (Douglas, 1973; in Hofstede, 2001; p:31). Douglas then applied the “grid” and “group” dimensions on the level of subcultures of groups and categories of people rather than on the level of national cultures.

In many CR related studies, in order to present conflict resolution approaches and underlying assumptions of these approaches within a cultural context, some generalizations and comparisons are made without sufficient empirical basis and systematic references to the frames that I mentioned above<sup>28</sup>. Etic frames have some methodological deficiencies because they are essential categories, but ideal typical models presented in the conceptual etic schemas still provide important tools for comparative analysis.

### *C.2. Emic Approaches or Anthropological Perspectives to Study of Conflicts*

In the emic approaches, the analyst is concerned with the pertinent cultural context. The analyst tries to understand the cultural system under study within the relevant cultural context; therefore, emic approach carries ethnographic characteristics. There are many possible definitions of culture. According to Clifford Geertz's definition, culture is made up of meanings, conventions, and presuppositions; that is, the grammar that governs the creation and use of symbols and signs, is the shared "common sense" or "local knowledge" underpinning a group's construction of reality (Geertz, 1983). Meaning is embedded in those special words, rituals, ceremonies, normative orders and special artefacts. First hand observation and study of language, symbols, rituals, norms, values, special methods and processes, and artefacts is the main approach of emic approaches. The hallmarks of anthropological approach to the study of conflicts and conflict resolution processes are:

An emphasis on first hand observation and fieldwork, augmented by use of other sources.

A concern with the small scale as well as with larger scale events and processes.

An interest in the interpretation of meanings and the expression of intentionality, agency, and capacity for action, including sensitivity to language use.

An understanding generally of the role of symbols and ritual in sociopolitical history

(Strathern, & Stewart, 1999, p: 90).

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<sup>28</sup> For example Mohammed Abu-Nimer's "Conflict Resolution Approaches: Western and Middle

Anthropological work, especially legal anthropology and cultural anthropology, treats conflict within the context of more general ethnographic accounts. Data and interpretation of conflict in the anthropological literature span a variety of approaches: meaning systems, ritual and symbolism, language and communication, reciprocity and environmental stress, gender, ethnicity and identity. (Kyrou, et.al., 1999; p:517). In the CR field ethnographic dimensions have been avoided until recently, except for a few recent studies related to the role of language, and underlying linguistic aspects of conflict resolution processes (Cohen, 2000; 2001). There are also few recent studies related to ritualistic (Krenavi, & Graham, 1999; Irani, & Funk, 2000; Irani; 1999), ceremonial, symbolic (Pinto, 2000; Deng, 2000; King-Irani, 2000) and religious (Gopin, 1997; Steinberg, 2000; Irani, 1999; Abu-Nimer, 1996, Greenhouse, 1986) aspects of conflicts, and conflict resolution processes. This study benefits from the theoretical approaches and perspectives of legal anthropology and cultural anthropology.

### *i. Legal Anthropology and Conflict Resolution*

Legal processes and the way that those processes fit into the rest of culture are the primary foci of the discipline of legal anthropology (Bohannan, & French, 1996; p:697). One way to understand law is to call it a system of third party interference in two party disputes<sup>29</sup>. Especially in the communal level studies in the legal anthropology, legal processes are frequently considered as third party interventions such as mediation, arbitration, village councils or communal norms. Therefore the ADR processes defined in the first chapter of the study can also be considered within the domain of legal anthropology.

There are three basic subjects in the comparative study of legal systems in the legal anthropology. First there is the substantive law of many different societies, including the degree to which codification as a specific cultural attainment<sup>30</sup>. The second subject includes the procedures and institutionalization of dispute settlement by which disputes are recognized, lifted out of the context in which they occur, put

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Eastern Lessons and Possibilities”

<sup>29</sup> Parties can be individuals, families, tribes, and other groups and actors.

<sup>30</sup> Evolutionary tradition in the legal anthropology consider, Modern Western judicial system, which is basically a legal rational one as the highest stage and peak point of evolutionary line.

into a settlement context held in this context and agreed procedure and reached to a decision. The third subject is the way law fits in with other control mechanisms and values of society, that is the processes by which some aspects of custom, morality, and the consonance of such law with other dimensions of culture (*Ibid*). Both institutionalized formal legal procedures and rules, and other informal procedures such as ceremonies, rituals, informal, non-written codes and practitioners of these codes are studied in the legal anthropology. On the other hand, the relationship of these norms, rituals and ceremonies with the rest of cultural system and meaning system is one of the central research objectives of the legal anthropology. I will not get into the details of central debates and scholars of the legal anthropology discipline<sup>31</sup>, but I have to mention that there are both interpretive and comparative research traditions within the legal anthropology and those approaches can coexist within the ethnographic researches. Since my focus is emic approaches, I will mention interpretive approaches to legal anthropology. These approaches can be used in CR related researches and in the analysis of my data I will refer to these approaches.

### *ii. Thick Description*

The task of the interpretive anthropology is to uncover conceptual structures that inform people's acts and then demonstrates the role that these structures play in determining human behaviour. Perhaps one of the most distinctive examples of interpretive emic approach is Clifford Geertz's "thick description". Social life is composed of a public- but not transparent- exchange of significant symbols. In thick description anthropological analysis delves more and more deeply and finely into the underlying conceptual structures that give meaning to a culture's symbolic usage (Rapport;1996).

Lawrence Rosen examined the judicial system and legal procedures and dispute resolution processes within the Moroccan Society (Rosen,1984; Rosen, 1989).

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<sup>31</sup> For detailed discussions of central debated and research issues of the legal anthropology see Nader, L. (Ed.). (1997). *Law in culture and society* ( 2<sup>nd</sup> ed.). Berkeley, CA: University of California Press. Moore, S.F. (1969). Law and anthropology. *Biennial Review of Anthropology*, 6, p: 252-300. Nader, L. (1965). The anthropological study of law. *American Anthropologist, Special Issue: The Ethnology of Law, Laura Nader, ed.*, 67 (6), pp: 3-32. Introduction chapter of Carol J. Greenhouse's "Praying for Justice" book, Greenhouse, 1986.

In his thick description, Rosen studied the Moroccan legal system, in order to understand the broader cultural system. According to Rosen, law and anthropology are just inextricably linked to one another, they constitute two sides of the same configuration.

The approach in question suggests, quite simply, that the analysis of legal systems like the analysis of social systems, requires at its base an understanding of the categories of meaning by which participants themselves comprehend their experience and orient themselves toward one another in their everyday lives. ... the significance of rules and procedures is seen to reside in their capacity to operate as systems whose constituent features are far more extensive and interrelated than our own disciplinary divisions.

(Rosen, 1989, xiv)

Rosen argues that the legal realm is an extremely characteristic part of the entire social fabric; therefore metaphor system and symbolic structure of the legal realm can represent entire cultural realm.

From such an orientation... one must try, often with the aid of metaphor and analogy, to understand the nature of judicial decision making and the constitutive role of law in Moroccan life

(Rosen, 1989; p:5).

After his ethnographic field researches, Rosen argues that the central analogy, the key metaphor, that may prove helpful when thinking about the social life of Morocco- and for the matter of much of the Middle East- is concerned with the notions of *contract and negotiation*. “It is an image of bazaar market-place writ large in social relations, of negotiated agreements extending from the real of the public forum into those domains of family history, and cosmology where they might not most immediately be expected to reside” (Rosen, 1984)

It is as if, in the market-place of relations, one were able to operate in much the same way as in the economic market-place arranging ties as advantage and circumstance allow and rearranging them, within the constraints of custom, law, and existing entanglements, whenever necessity, desire, and opportunity suggest their alteration.

(Rosen, 1984; Rosen, 1989; pp: 11-12)

The approach is very important and efficient to understand a particular cultural context. Thick description of a culture and identification of the key metaphors helps to understand dynamics of conflicts and conflict resolution processes. Disputes, dispute resolution methods and social relations are parts of the broader cultural system, discovering key metaphors and dynamics of the cultural system can enable better and more systematic analysis about the disputes and dispute resolution methods. Meanings behind authentic conflict resolution methods, and their underlying assumptions can be understood with the theoretical tools provided by the interpretive anthropology.

### *iii. Laura Nader and Harmony Ideology*

Laura Nader's main focus is dispute resolution processes and more importantly underlying assumptions and ideologies of laws and dispute resolution processes. Nader analyzed the ideology behind the ADR, which is one of the central pillars of the CR Field. In the American legal system, the early 1970's was characterized by harmony rhetoric, the concerns were not with justice but with harmony and efficiency. Harmony law models usually emphasize programs that support non-judicial means for dispute handling. Nader argued that the theory of harmony that undergirds the alternative dispute resolution movement conceptualizes harmony behaviour as the keystone of community. The harmony theorists believe that litigation causes loss of community, destroys trust and cooperation, and leads to problem solving based on emotion rather than on rationality and efficiency (Nader, 1991; p:53).

Nader approached harmony rhetoric critically and cynically. According to Nader, harmony may be used to suppress peoples by socializing them toward conformity in colonial contexts, or the idea of harmony may be used to resist external control. In what follows we and missionizing contexts. She reached to such a conviction after her ethnographic researches conducted in a Zapotec mountain village, in the Sierra Madre Mountains of Oaxaca, Mexico (Nader, 1990).

The Zapotec observe that “a bad compromise is better than a good fight.”

Why? My research suggests that compromise models and, more generally, the harmony model are either counter-hegemonic political

strategies used by colonized groups to protect themselves from encroaching superordinate powerholders or hegemonic strategies the colonizers used to defend themselves against organized subordinates. In the case of Talean Zapotec, I have come to the conclusion that their harmony tradition stems from Spanish and Christian origin, an idea that leads me to propose that the uses of harmony are political. Legal styles are a component of political ideology that link harmony with autonomy or harmony with control.

(Nader, 1990, p; 1-2)

Nader argues that the basic components of harmony ideology are the same everywhere including the ADR movement in judicial system (Nader, 1991), or CR approaches in international relations (Nader, 1995): an emphasis on conciliation, recognition that resolution of conflict is inherently good and its reverse is bad or dysfunctional. A view of harmonious behaviour as more civilized than disputing behaviour, the belief that consensus is of greater survival value than controversy is also important underpinnings of CR Field. In the Zapotec case, harmony was imposed by European Christianity and colonialism and operated as control or as pacification tools of colonialists.

Nader interprets the underlying assumptions and meaning systems of the legal systems and dispute resolution processes with reference to her ethnographic data.

#### *iv. Carol Greenhouse: Christian Value Systems and ADR*

Carol Greehouse studied a group of Southern Baptists, who abstained from the formal courts because of their Christian value systems. Greehouse used Geertz's definition of religion. According to Greenhouse Geertz's definition of religion serves just as well, word for word, as a definition of normative order in general: "A religion is: a system of symbols which acts to establish powerful, pervasive, and long-lasting moods and motivations or even by formulating conceptions of general order of existence and clothing these conceptions with such an aura of factuality that the moods and motivations seem uniquely realistic (Greenhouse, 1986, p; 31-32).

In her study, my Greenhouse's subject is way the Baptists of Hopewell order their community; it is not legal order but one based on deeply held values (Greenhouse, 1986). Greenhouse explains the ethic of harmony to Christian values and worldviews.

The people who manage to avoid the court in Hopewell fall into two categories. Baptists form one of them, in that they avoid not only the courts but also the adversarial concepts of conflict and remedy that the law entails. The other category, which includes the everyone else, expresses attitudes about conflict that are congenial to the law but prefers to settle dispute out of court (Greenhouse, 1986, p:13). For the litigation there is a necessity of a *worldview* which must include both the legitimacy of the state's institutions and a sense that human conditions can be meaningfully changed by human action. The Baptists in Hopewell do not believe in the second of these things; the state merits our obedience, but only God can change the conditions of life, they say.

(Greenhouse, 1986;pp:12-13)

Although the Baptists accept the legitimacy of state institutions, they believe that human conditions cannot be changed and arranged by human action. They want to arrange their lives and social interactions according to the Christian value systems; therefore they developed a dispute resolution system coherent with their value systems.

#### *v. Language and Culture*

Studying language of a society is also one approach to understand its culture and meaning systems. In the late 1920's, the linguist Edward Sapir suggested that language influences the way we think (Sapir 1951, Triandis 1994, p: 120-121). His student Benjamin Whorf proposed that the "worldview" of members of a culture depends on the structure of the language. In the CR field, Raymond Cohen pursued a linguistic analysis of cultures and meaning systems (Cohen, 1997; Cohen, 2000; Cohen 2001a; Cohen, 2001b)

Cohen argues that differences in approach in conflict resolution rest on contrasting understandings of the nature of conflict and society (Cohen, 2001a, p: 25). A good way to study these differences is through a comparative analysis of language.

Linguistic analysis points to four primary dimensions of conflict resolution, along which significant conceptual variations, reflected in language can be detected: causes and nature of conflict, expectations of the mechanics and objectives of conflict resolution; understanding of what it means for a

conflict to have been settled; and preference for rituals appropriate for affirming and restoration of harmonious relations at the end of conflict.

(Cohen, 2001; p:25)

Cohen assumes that communal life is possible only because members of a community's possess a set of shared meanings, enabling them to coherent sense of world. The stock of meaning constitutes the common sense of the community and underpins all communication and organized activity (Ibid: p:26). Cohen argues that the mother tongue is the main repository of a community's common sense because other systems of symbolic meaning such as religion, popular culture, and nonverbal behaviour demarcate communities. (Cohen, 2001a; p:26)

Cohen also refers to Michael Agar's "rich points" concept. Agar suggests that major cross-cultural gaps are revealed at certain "rich points" of contrasting meaning (Agar, 1994). "Rich points" are very important because of the complex web of associations and connotations that they carry with them. Webs have few or only opaque correspondents in one's native language so that their correct translation is almost impossible.

Rich points are linguistic tip of the cultural iceberg, the locations in discourse which signal major disjunctions in interpretations. Rich points can seriously impede intercultural negotiation and conflict resolution

(Cohen,2001a; p: 30)

Cohen examined conflict resolution related vocabulary, which carried special cultural connotations in English, Arabic, and Hebrew languages. English vocabulary displayed four dominant themes and metaphors: industrial relations, engineering, Christian theology, and sports and games. In the Arabic world, two primary motifs appear: Honor and Islamic ethics, whereas in Hebrew, military, Jewish law, ethics, and customs appear as the dominant themes and metaphors. These themes and metaphors also shape the cognition and minds of the people who live in context in which these languages are spoken. Cohen's approach can also be usefully be utilized for different cultural context including the micro cultures. Analyzing special vocabularies, verbal and nonverbal languages related to conflict and conflict resolution can be very useful and efficient in understanding meaning systems and metaphors of various cultures. I also benefit from Cohen's approach when analyzing

my empirical findings, but it can be insufficient to fully understand meaning system of a culture with only a linguistic analysis.

There are other approaches to for the study of disputes at the communal level, such as Starr and Collier, who view law as nonneutral and full of asymmetrical power relations. According to Starr and Collier law encodes hierarchy and economic and political domination. (Starr, & Collier, 1989). Starr and Collier see legal orders as means to institutionalize and normalize any kinds power and status differences and discrepancies. With reference to her field research conducted in a Turkish village in late 1960's, June Starr argued that a village representative acts as third party in a simple dispute when the disputants have a disparate status relationship (Starr, 1978; p:266)

The important point about a representative is that he does not mediate: he represents the side of one one disputant to the other, and his role is to neutralize the status differences between the disputants so that power of the higher ranking person cannot be used as a way of achieving his goals and the lower ranking person does not humiliate or use force.

(Starr, 1978; 266)

According to Starr both dispute resolution approaches and third parties serve to consolidate the status order and relations of power. Shared values, norms and belief systems and impacts of these important cultural components are disregarded in Starr's ethnographic study.

#### *D. Some Common Mistakes about Culture and Their Implications for This Study*

In the CR field we can encounter many problems and shortcomings about culture. Because of outmoded and inadequate assumptions and notions about culture, some scholars make grand assertions and claims with empirical references to few case studies or with references to particular cultural encounters. Some others can use the titles such as "Conflict Resolution in Arab World, Conflict Resolution in Islam, Conflict Resolution in China, Conflict Resolution in Western World." with reference to minor empirical and theoretical evidences. Cultural researches always faces the dilemma of being either essentialist or particularistic. The problem of uniqueness assumes that the cultural factors within a particular cultural context can not be generalized therefore they are not applicable across cases (Okumuş, 2001; p: 12). Whereas in essentialism, the fundamental differences among the members of the

cultural group may be disregarded. Different authors emphasize similar problems that can be encountered in culture related studies I will take into consideration the criticisms of Avruch (Avruch, 1998), Triandis (Triandis, 1994) and Pedersen and Jandt (Pedersen, & Jandt, 1996)<sup>32</sup>.

*i. Heterogeneity of cultures:* Cultures and societies are enormously heterogenous with large variations within a culture or a society. Especially it is very problematic to consider nations as cultural categories. Cultures are not evenly distributed among the groups. Considering culture homogenous among the society presumes that a (local) culture is free of internal paradoxes and contradictions such that it provides clear behavioural “instructions” to individuals-a program for how to act-or and once grasped or learned by an outsider, it can be characterized in relatively straightforward ways (Triandis, 1994; pp: 8-9; Avruch, 1998; p14, Avruch 1993; p: 132; Pedersen, & Jandt, 1996).

In Turkey there are multiplicity of cultures, especially the group of people, within the domain of my research who are religious people, living in rural contexts. The Islamic dispute resolution methods and processes that will be discussed in the following chapters, are not adopted and practiced by the secular parts of the Turkish society. On the other hand, different dispute resolution methods and social relations and interactions operate at the various rural contexts of Turkey. There is a blend of religious, patrimonial and customary values and practices at the rural contexts. In my research, Islamic Law is the basic normative order that shapes dispute resolution processes. Although sources of the Islamic Law are universal, custom is also a source of Islamic Law. Therefore decisions and rules are derived from these sources can manifest spatio-temporal variations. It is mistaken to consider Islamic Law as static and a monolithic entity,

*ii. Culture is uniformly distributed among members of a group.* This idea imputes cognitive, affective, and behavioural uniformity to all members of the group under study. Intracultural variation, whether at the individual or group level, is ignored or dismissed as “deviance” (Avruch, 1998; 14-15). The disputants who resorted to *alims* were religious people but the degree of religious commitments and

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<sup>32</sup> The points mentioned below do not comprise all the points that are emphasized by the authors, only the points that have relevance for my thesis are referred.

devotion can manifest differences among people. Some of the disputants tried to evade from the decisions of alims; whereas some others accepted their decisions without any objection because of their religious beliefs. On the other hand some disputants had different expectations from the decisions of *alims*, some of them wanted to misuse religious values to maximize their interests.

*iii. An individual possesses many cultures and identities.* Culture is sometimes considered synonymous with group identity such as (s)he is American, French, Turkish. Such a definition is not useful for cultural analysis. The root of this conception stems from the privileging of tribal culture, ethnic culture, or national culture over cultures that are connected to very different sorts of groups, structures, or institutions (Avruch, 1998; p: 15). Anthropologists first developed the culture idea within small scale and relatively socially undifferentiated tribal or ethnic groups. It was then compounded by political scientists, who took up the nation –state as their unit of analysis- hence the national character idea (Avruch 1998). A person possesses and controls several cultures; in real life people do not arrange and organize their daily social relations with regard to solely nation state parametres. People have multiplex relations and social interactions in their lives. Sometimes different interactions and social relationship forms can contradict. A person's religious identity and culture can contradict with his businessman culture, or his religious loyalty and culture can contradict to his national loyalty and national culture. Like in the case of Hopewell Baptists, the disputants in my research sometimes faced with such contradictions and paradoxes. Disputants in my research sometimes avoided their religious values in order to protect their economic interests. Economic interests, religious values or tribal rituals and customs can overlap or contradict, but we should be aware that the multiplicity of these cultures influence on a person's behaviour and social interactions.

*iv. Consistency versus Change:* Some cultural markers change over time while others remain stable (Pedersen, & Jandt, 1996; p: 5). It is mistaken to perceive culture as timeless entity (Avruch, 1998; p: 16). The Alim definition and socio-cultural structure of the Turkish society experienced a important change. Basic Islamic principles related to *sulh* and social order did not change but practical implications of these principles experienced an enourmous transformation. Both continuous and variable characteristics and features of culture and culture can be studied with an emphasis on each of these features. My study in principle I focuses on the continuity

(my reference to *alims* and *Islamic law*) within the private domains of culture, but also emphasize the structural changes, which can more easily be observed in the public domains.

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In culture related conflict resolution studies, general notion of the culture is usually limited with the cross-cultural comparison frames. Anthropological and interpretive approaches are not used in cultural analysis in the CR field. I refer to both etic frames, mentioned above and anthropological approaches in analyzing my empirical data in chapter 4 and chapter 5.

In the following chapter I present the important methodological issues related to my research, and than I will describe the dispute cases told by my informants.

## CHAPTER 3

### METHOD AND CASES

In this chapter research methods and approaches employed to collect empirical data, and the rationale behind usage of these approaches will be explained. In the first part of the chapter some general issues related to the research are addressed. In the second part of the chapter, translation of verbatim-transcribed cases<sup>33</sup> of the interviewee's is be presented.

#### A. METHOD

##### *A.1. Scope of the Research*

The present study is a qualitative research. The empirical data is collected by recording semi-structured interviews that were conducted in between February and April 2002, in İstanbul. The research and interviews have several complementary objectives:

- Examining the nature and sources of the conflicts that are brought to alim's.
- Examining the third party roles of the alim's, and the contextual characteristics of disputes.
- Elaborating the conflict resolution process and steps within a systematic sequence and identifying the special techniques and strategies that are utilized by alim's.
- Understanding and interpreting the underlying assumptions of the practices and actions that took place during the conflict resolution processes.

The systematic description of conflicts brought to alims is made and disputes categorized according to types. On the other hand, conflict resolution mechanisms and processes are described systematically and sequentially. Third party techniques, their stages and steps are also elaborated. Interpretation of the symbols, metaphors and normative attributes of the disputants and the third parties within the context of Turkish, Islamic culture and particular cultural practices of the informal networks is another dimension of the research.

#### *A.2. Research Approach*

For the accomplishment of the entire intended tasks, the best method was a combination of participatory ethnographic research and interviews. The subject of my study is a sensitive one, and because of the privacy reasons I could not have chance to participate mediation and arbitration sessions of the *alim's*. In Turkey, people do not want to publicise their disputes and conflicts, especially if the disputes are intra-family, marriage and honour disputes; in such cases people usually tend to hide their disputes<sup>34</sup>. Most of the cases that my interviewee's described were either husband-wife disputes or commercial partnership disputes, and majority of the disputes that I listened during the interviews were very private. I intended to learn about the lived experiences and practices of alims; therefore I acquired the data about their experiences by semi-structured indepth interviews and detailed case narrations.

#### *A.3. Contact with Interviewee's*

My definition of *alim* includes both Islamic scholars (they can be theology faculty professors or scholars who have taken traditional *medrese* education). My criterion for *alim* definition is the expertized knowledge on Islamic legal jurisprudence. My interviewee's are a special group of people; they are not randomly selected group of Islamic scholars. They are selected after a careful process of consultation with several scholars of Islamic Studies. Dr. Recep Şentürk and several other members of Center for Islamic Studies (İslami Araştırmalar Merkezi/ İSAM), were especially very helpful in my selection process of alim's. Professor Hayrettin Karaman, who is also one of my interviewee's also helped in the process of identification of *alim's*. I also consulted to former *mufti* of İstanbul.

After a process of consultation and search, several person's names were emphasised very frequently and I selected six of the most mentioned names. I contacted to all of them with the reference of my gatekeepers. I had face to face contact with six persons. Prior to my formal recorded interview sessions I meet my six individuals and I presented myself and informed them about my research, I also

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<sup>33</sup> In the interviews there are two sections in first section open-ended questions will be posed to the interviewee's. In the second section interviewee's will describe several conflict cases that were brought to them, and their resolution processes.

<sup>34</sup> Especially in religious circles, “mahremiyet” (privacy) is a sensitive issue.

built rapport with my interviewee's<sup>35</sup>. In my pre-interview sessions I recognized that I would not be able to generate efficient data from two of the informants. One of them was very old<sup>36</sup> and it was hard to communicate systematically with him, but he told me about some general principles of "sulh" (peacemaking), in Islam and in the Ottoman history, but it was a spontaneous discussion. I did not want to tire him with my further questions. On the other hand in my initial contact with another informant, he told me that in the past, few dispute cases came to him, but after the disputants' unwillingness to accept and apply his solution options in those cases, he gave up mediating between disputants. Although this was an important finding, it was not useful for my research objectives. My data is basically obtained from four interviews that I conducted with three professors of Islamic Law and a well-known scholar<sup>37</sup> of Islamic legal jurisprudence (*fiqh*).

#### A.4.*Semi Structured Interviews and Case Descriptions*

In the semi-structured interviews<sup>38</sup>, there was a mix of both open ended, and close-ended questions. Understanding the meaning of the actions and underlying assumptions of the practices and processes was as important as explaining and describing the processes. Since the research is an initial, explorative research I did not want to limit the set of response categories with close ended, structured interviews.

Three of the interviews took place in the offices of my interviewee's, and I visited one of them in his home. I had opportunity to observe some of the activities of the informants and their social relations with the people around them. One thing that I strikingly observed was the respect of the people that they showed to my informants. Two interviews are tape recorded<sup>39</sup> with the consent of the interviewee's, whereas two other interviewee's were disinclined to tape record, so I have taken detailed notes. Interviews started with a conversation. Prior to telling their own experiences some of the interviewee's talked about some general characteristics of *sulh* (peacemaking), mediation (*arabuluculuk*), and arbitration (*hakemlik*) in Islamic law and in the

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<sup>35</sup> I am grateful to their warmth and encouragement's about my research. Their positive attitudes and inclinations to cooperate made my research task easier and more efficient.

<sup>36</sup> More than 80 years old

<sup>37</sup> He is also a retired *mufti*.

<sup>38</sup> I benefitted from the following books; InterViews (Kvale, 1996), Qualitative Interviewing (Rubin, & Rubin, 1995), Research Design Qualitative and Quantitative Approaches (Creswell, 1994), Social Research Methods (Bernard, 2000), Handbook of Qualitative Research (Denzin, & Lincoln, 2000)

<sup>39</sup> Interviews with Professor Hayrettin Karaman and Pofesor Mehmet Akif Aydin are tape-recorded and than verbatim transcribed.

practices of these processes within the Ottoman period. All of the interviewee's are expert scholars in Islamic law (*fiqh*); therefore, their initial explanations were very useful in order to for me to understand *fiqh*'s theoretical approaches, and systematic treatments on these subjects.

I usually asked them similar questions, but the majority of the questions were open-ended and flexible, allowing certain space for individual interpretations. Interview questions tried to generate knowledge about the following themes:

1. Personal characteristics, academic and professional backgrounds and experiences of the third parties.
2. Characteristics and attributes of the disputants and their reasons of resorting to a third party
3. Nature and types of the disputes
4. Dispute resolution strategies and techniques
5. Context where mediation and arbitration sessions takes place

(Interview questions are listed at the appendix).

In addition to general questions, in the second part of the interviews, each interviewee was asked to describe few cases in which they served as a third party. One of the most important aims of the research was to explore ritualistic/metaphoric practices that take place during and after the mediation or arbitration processes and value systems and underlying assumptions of the third party tactics. I could not directly participate in mediation or arbitration sessions. Therefore I tried to acquire detailed and rich descriptions and I attempted to guide case narrations. Some of the common questions that I asked about all cases are:

What was the last dispute that was brought to you?

What was the dispute about?

What was your relation with the disputants?

Can you explain the mediation/ arbitration process sequentially?

Where did you accept the disputants?

How was nature of you relationship with the disputants?

What were your tactics for resolving the dispute?

Analysis of the interviews according to specified themes is made in the subsequent chapters. In the following chapter mediation/arbitration processes are analyzed in the light of third party intervention literature, especially according to similar researches that were conducted in different social/ cultural settings and in relation to the theoretical frameworks of mediation researches.

In the remaining part of this chapter, translation of case descriptions is presented. Anonymous names like Ali, Ahmet, Ayşe, etc. will be used because of privacy reasons. Also I do not specify which case belongs to which informant, therefore, “the *Alim*” may refer to any one of my four informants. There were more cases than the ones that I described below. Some of the case descriptions were not detailed enough, and so I do not mention them below. On the other hand, there were many similar cases, especially about marriage disputes and commercial partnership disputes. I describe few of them because I did not want to describe similar cases repeatedly.

## B.CASE DESCRIPTIONS

### *Case1-Industrialist and the Financial Institution*

The dispute was between an industrialist living and working in Konya and a financial institution which operates according to Islamic principles (faizsiz finans kurumu). The case took place in the year 2000. The dispute was over 550.000 DM (Deutsche Mark) credit debt. Industrialist Ahmet, who owns a middle-sized industrial company with his associate, appealed to well-known Alim<sup>40</sup>. He described the case within a detailed manner and sent the documents and records related to the case to Alim and asked a *fatwa*<sup>41</sup> (juridical decision according to Islamic law and principles) from him.

Ahmet has taken 1.4 million DM (Deutsche Mark) credit from the financial institution for an investment. When the credit return date came, Ahmet could not return his debt. According to Ahmet’s initial statement to Alim, the finance institute’s managers threatened him to sign a new document and he accused them of usury.

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<sup>40</sup> In order to preserve the privacy of the disputants I will not specify the name of Alim’s, instead I will call them Alim with capital “A” in the remaining parts of the study, to refer general category alim I will use alim with “a”. On the other hand names of the disputants are anonymous names like Ali, Ahmet, etc.

<sup>41</sup>Fatwa means legal opinion of the Islamic scholar (usually *mufti*) according to principles of Islamic law. Concept and its implications in Islamic law will be elaborated in the next chapter.

Ahmet said that because of the threat he was forced to accept a new investment project, and he took new credit for the new project. As a result of the devaluation and economic crisis his new investment failed and he lost 550.000 DM. He accused the finance institute's managers for his failure, and he did not want to pay his 550.000 DM loss.

The *Alim*'s initial decision was according to these statements. The *Alim* decided the case according to the relevant principles in the Islamic law. Islamic law states that if a buying-selling contract is done involuntarily and forcefully<sup>42</sup>, the person who was forced and as a result damaged from the contract can annul the contract unilaterally. Therefore the initial decision was in favour of the industrialist. The initial decision of Alim was as follows:

If the statements you made above are valid and evident, the fiqhic consequence of the case is as follows

- 1- Ahmet's real debt to the institution is not 550.000 DM, the amount which was stated in the contract, but 489.500 DM which was actually used by Ahmet.
- 2- The project which was signed under the threat of referring to the court of bailiff (icra), is invalid and illegitimate
- 3- The ones who were not loyal to the contract and who, caused to the material loss of Ahmet should pay the losses of Ahmet, or they can agree on *sulh* (peace-making) with less amount with the consent of Ahmet.

*Alim* examined the documents and the arguments of Ahmet. After careful examination, the *Alim* gave the fikhic<sup>43</sup> consequence of the case according to Ahmet's statements. The *Alim*'s judgement was conditional and he added the note; "if all the information you mentioned is true and evident, the fikhi (fiqhic) consequence of this case is as above" and he declared his decision with a written statement.

After taking the written statement from Alim, Ahmet went to financial institutions' managers and asked whether they find the Alim trustworthy and whether they would accept the judgement and decision of the Alim. The finance institution's managers said that they would accept any judgement made by the Alim. The financial institution's managers examined the written decision and recognized the note that "the decision is valid if only the statements you made above are valid and evident".

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<sup>42</sup> Conceptual correspondence of "bey ud darure" in Islamic law

Finance institute's managers said that the statement of Ahmet was one-sided, and they offered to discuss the case together with the Alim. They also added that if the decision remained same after Alim hears about their perspective and statements, they were ready to accept his decisions.

Both parties went to İstanbul and met at the office of the Alim. The financial institution's managers brought an expert on Islamic law with them. In the presence of the both parties, the *Alim* listened the case from both parties. The finance institute's managers' version of the case was diametrically opposed to Ahmet's version. The manager's said that when the time of dept return came, Ahmet was unable to pay his dept and the institution was legally obliged to return the credit that they gave. Otherwise they would be punished by audit companies and by the central administration of the institution. Manager's tried to find options that would protect both parties' interests. After a process of negotiation they offered to provide a project based on new credit. They said that Ahmet accepted the new offer. With the new credit Ahmet returned his dept and made new investments, but because of the devaluation and fluctuations in the exchange rates, Ahmet's firm made a huge money loss. They said that they did not force Ahmet because he accepted the contract with his consent. They also accused Ahmet with trying to abuse their goodwill.

The *Alim* listened parties together, and after examination of the documents it was understood that financial institution did not forced Ahmet for signing the contract. *Alim* decided Ahmet to pay his debt to the financial institution. The *Alim* declared his decision as an arbitrator and gave a written fetva. He also advised Ahmet to pay his debt. After such a process Ahmet accepted the decision.

### *Case 2: Traffic Accident*

The event took place in İzmir in 1970's, close the *Alim*'s house. The *Alim*'s wife and daughter also saw the event. The daughter of one of the friends of the Alim died in a car accident. A young male driver, who was a student at İzmir, hit the girl and the girl died immediately after the carcrash. The young man was son of a rich merchant living in Denizli, although he was driving in the city he was driving over the speed limit. He was driving at the speed of 120-130 km/h, and his carelessness led to death of the girl. With the force of the crash, the girl's body moved 50 metres. The

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<sup>43</sup> According to Islamic law.

young man was found guilty and after the event taken to jail. The young man's father came to the Alim and wanted him to mediate with girl's family. The public prosecutor opened a public suit, but girl's family had not yet opened a suit. If the complainant's family opens a lawsuit, the penalty would be much higher. The father of the young man said that opening a case would not bring the girl back and he requested a mediated solution. In his contacts with Alim he also resorted to religious arguments. Merchant argued that a mediated outcome would also be more auspicious (*hayırlı*) according to Islam. The alim accepted to mediate between the parties, after his contact with the merchant, he went to the girl's father, who was also his friend. Father of the girl accepted the mediation of the Alim and he said that nothing would bring his daughter back. The girl's family was extremely sad and angry, and the girl's father requested the Alim to give such a lesson for the young man that he would never dare to repeat the same mistake. The young man's family was also hopeful about a mediated solution. They did not want to go to court and were also afraid of the possible consequences court decisions. Hence the merchant flattered the *Alim*.

According to the *Alim*, the issue was very obvious. The young man caused the death of the girl without intent. According to Islamic law, the consequence of such an act is payment of *diyet*<sup>44</sup> (payment of blood money) by the erroneous party. The alim calculated the amount of the *diya* payment. In the classical Islamic law (fiqh) books punishment and other material payments and issues were stated in terms of gold, cattle's, clothes and agricultural products. The Alim calculated the contemporary correspondents of the punishment amount in terms of Turkish liras and after his calculations he found the amount of *diyet* as 500 million Turkish liras, which was an astronomic amount.

The girl's family authorized the Alim and they said the Alim that we will obey and put into practice whatever decision you reach. Therefore after calculating the amount of *diyet*, he met with the merchant. When the merchant heard 500 million he was shocked and objected to the amount. The Alim, authorized by family of the dead girl, said that, "the real amount of *diyet* is 500 millions but in order to reach a peaceful settlement<sup>45</sup> and solution I decided to decrease the amount to 200 millions". The Alim said to the merchant that to agree on a solution congruent with our religion and to preserve peaceful future relations I decided to donate 300 million TL to you.

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<sup>44</sup> It is transcribed as *diya* in English, I will use Turkish transcription of the concepts of Islamic law.

<sup>45</sup> Technical term is "*sulh*"

Merchant was still shocked and he was unwilling to pay the amount. After a period of thinking, the merchant who was once using religious arguments and metaphors to avoid going to court, decided to go to official court. His argument was very interesting he said “*Ne yapalım o zaman mahkemeye gidelim, şeriatın kestiği parmak acıma*”<sup>46</sup>. The *Alim* ironically mentioned that now the sharia became the official courts, which are empowered by the enforcement of the state. After the disagreement case went to the official court. “I did not follow the final decision” said the *Alim*.

### *Case 3: The Judge and her Husband*

The case was a marriage dispute between a woman who is a criminal court judge and her husband who is a high school teacher. Both parties had religious sensitivities and both were concerned about religious principles. When the couple got married, as a principle, they agreed to go to a mediator or arbitrator rather than an official court, if in the future there would take place a conflict between them. The woman (judge) made the offer and her husband accepted it. They agreed that if a conflict occurred between them they would go to the *Alim*, would accept his arbitration or mediation. Both of them also signed that statement. The *Alim* was not aware of their agreement.

During their marriage of more than ten years they had many disputes. At the end they understood that it was not a harmonious marriage, and the women decided to divorce. It was very easy for the judge (woman) to divorce her husband because she had also witnesses about her claims against her husband. Because of her religious beliefs the judge did not resort to official court. Instead she wanted to resolve the issue according to Islamic law. The judge also heard about the *fiqhic* principle related to her case<sup>47</sup>, which does not allow women to divorce their husbands without the husband's consent. The judge also read the *Alim*'s books, and she was aware of the arbitration and mediation mechanisms and other channels of the Islamic law. She went to the *Alim*, whom she and her husband pointed out as a mediator or arbitrator years ago. After his initial meeting, the *Alim* was convinced that they were very inharmonious couple. The *Alim* said that they were discordant in every sense. Their

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<sup>46</sup> “Let us go to court, the finger which is clipped with the order of the sharia would not hurt”. Meaning that we should consent to decisions of courts. It was interesting because sharia is a religious concept, but in the contemporary context it was distorted and interpreted by the merchant as a binding and enforcing authority. He also had the intention to abuse religious sentiments and values.

<sup>47</sup> According to the Islamic law women can only divorce with the consent of their husbands.

expectations from each other, their worldviews and visions on life, intellectual capacities, and their daily routines were very different. The Alim also reached the conviction that woman was self-sacrificing and the altruistic.

The woman also complained about financial issues, as her husband was taking her salary and giving only a limited amount of the salary to her. If the woman demanded more money, then her husband asked the reason. The husband also did not want his wife to visit her family frequently; the man accused the family of his wife of trying to destroy their relationship. According to the judge, the real reason behind her husband's unwillingness to allow her to meet her family was her husband's fear that she would give money to her family. The judge also accused her husband of being extremely envious and sceptical<sup>48</sup>. In the initial meeting the Alim took notes.

After hearing the judge, the Alim called her husband and talked to him alone. The man did not want to get divorced and in order to prevent his wife to divorce him, he abused his wife's religious beliefs. The Alim mentioned the accusations and the husband tried to answer some of them. For the money issue, man said that he was keeping his wife's money in a bank account. The husband was afraid of his wife spending the money with other men; therefore he only gave her a limited amount of money. Having listened the husband's perspective, the Alim said to him that he was violating some of the rights of his wife and according to Islamic law he has enough evidence to divorce them. The man begged the Alim not to divorce them. The Alim said he would try for a peaceful solution, but he warned the husband not to abuse his wife and not to violate her rights.

Woman wanted to divorce and she wanted the help of the Alim. The man begged the Alim in order not to divorce them. After hearing each party one by one, the Alim wanted them to meet together. In the light of his notes and his meetings he prepared a written document. In the written document the Alim listed six issues according to which man violated his wife's rights, with reference to Qur'an, Sunna of the prophet and ijma<sup>49</sup>. In the document, the Alim declared that if the husband repeats any of the items, the couple would automatically be divorced according to Islamic law. He wanted each party to sign the agreement. They both signed the Alim's decision. It was very hard to convince the woman to sustain the marriage, but she

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<sup>48</sup> The judge in the initial meeting, which was done alone with the Alim, mentioned those accusations and complaints about the man.

<sup>49</sup> These are the main sources of the Islamic Law, is explained in chapter 4.

acquired an enormous protective mechanism that would prevent any further abuses of her husband. The man also verbally declared that if he would repeat the listed items, he would divorce his wife automatically<sup>50</sup>.

#### *Case 4: Distrustful Husband*

The case was a husband-wife dispute. The disputants were a young couple. The husband, Ali was 22 years old and his wife Ayşe, was 15 years old when they were married. Young woman gave birth to her first child at her 16. Husband and his father visited the Alim and they told their problem. The husband's family was a very rich family living in *Uşak*<sup>51</sup>. They came to Istanbul from *Uşak* with his brother in order to consult the Alim about his problem. His wife was constantly talking to her teacher on the phone. Teacher was in *Kahramanmaraş*<sup>52</sup> and the girl appreciated and respected him because he was an important religious figure. The girl considered her teacher as a wise man (evliya) and she telephoned him many times. Although her husband warned her not to talk her teacher, she continued to call her teacher. After his wife's disobedience, Ali got angry at Ayşe and, took her away to her family's house. He decided to divorce her but he had some hesitations. Some people offered him to consult to the *Alim* and he decided to go to Istanbul and talk the problem over with the Alim.

Ali and his brother Ahmet met the Alim, and, Ali explained the situation. He said that he would divorce Ayşe ,and wanted to learn whether it would be a faulty and sinful action. After listening Ali's statements, the *Alim* told Ali that he was mistaken. The Alim explained Ali his mistaken beliefs and convictions about Ayşe. First of all Ayşe called his teacher because she considered him a saint (evliya). The *Alim* said, “you can not accuse him because of your suppositions and doubts, you must be sure about her mistakes and errors”. The Alim added that accusing someone without relevant evidences is considered a sinful act in Islam. He advised Ali to go to his Husband's family and apologize from her because of negative convictions. The *Alim* also recommended Ali tolerate his wife because she was very young only 16 years old. The Alim advised to Ali to behave his wife both as a husband and as an elder brother until she gets to 19-20 years old. Ali objected some of the Alim's advises he

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<sup>50</sup> He said “Bir daha yukarıdaki maddeleri tekrar edersem karım boş olsun”

<sup>51</sup> A city in Aegean Region of Turkey.

<sup>52</sup> A city in the Sourt-Eastern Anatolian region.

said that “inspite of my warning she called the man again”. The Alim said that, “it can be an error but according to our religion forgiving errors is considered a virtue”. The Alim gave some similar examples from his life and from the life of the Prophet and his friend. After a period of advice and discussion Ali understood his mistake. The Alim persuaded Ali that his idea to divorce was a mistake and, he also mentioned about the virtues of being tolerant. Ali got relieved, he thanked the Alim and kissed the Alim’s hand as sign of respect.

#### *Case 5: Secret Marriage*

The dispute was between Hamit and Ayla. Ayla’s husband Hamit married to a second woman and had a son from his second wife. Hamit did not tell about his second marriage and son to Ayla. When Ayla learned the situation, she was shocked and she refused to accept her husband’s second wife and son from her. Ayla went to the Alim and explained the situation to the Alim. She asked to Alim what she could do about her situation. Alim explained the relevant rules according to Islamic law. According to Islamic law a man can marry to a more than the single woman if his wife was sick, if she could not give birth to a child or if she was unable to handle housework alone. These situations are exceptions, in principle single wife is recommended according to Islam. In addition to these conditions, if a man convinces his first wife about the second marriage he can make the second marriage. It was obligation of husband to behave just and equitable if he had done more than a single marriage.

Under these circumstances the Alim mentioned the options for Ayla. He said Ayla that “you can divorce your husband, but I do not advice you to divorce, breaking a marriage is not supported in Islam”. The Alim advised Ayla to be patient and not to break her marriage. Alim than met to Hamit and warned him to behave in fair and equitable to his two wives. The Alim also recommended Hamit to persuade Ayla, for his previous erroneous behaviour. Both parties has taken the statements and recommendations of the Alim seriously and they maintained their marriage.

#### *Case 6: Inefficient Investment*

The dispute is about a commercial partnership. Hasan and Nihat were friends and both of them were members of the same religious brotherhood. Hasan was an entrepreneur and he went to China in order to buy a pen factory with its machinery.

After a process of negotiation, he decided to purchase the machinery and establish the factory in Turkey. He offered partnership to his friend Nihat for the investment. Nihat accepted Hasan's offer, and they signed a partnership contract. Together they paid 1 million dollars and purchased the machinery in order to establish the factory. While they were trying to establish the factory, Turkey experienced an economic crisis and devaluation. Because of the devaluation of the Turkish lira, their investment became inefficient. With the devaluation, the direct import of the items became cheaper than domestic production. Nihat wanted to withdraw his capital investment and did not support the establishment of the factory. Nihat also felt cheated in his partnership with Hasan.

Hasan could not convince his associate to sustain the investment. Hasan visited the Alim two times to explain the situation. Hasan than convinced his partner for mediation of the *Alim*. Hasan and Nihat went to the Alim together and they explained the story again. Hasan did not mention the Alim about the extend of the investment. The Alim was not aware of one million dollars. Hasan insisted on taking his money back. The *Alim* said to parties that "you made the contract together and the decision was made by the consent of both of you; therefore, if you want to make new decision it should be with consent of both of you". He added "You can complete the factory and initiate production or you can sell the machinery and share the money. The third alternative is that one of you can sell his share to the other one". From the options selling the machinery was not an efficient one. Because in the economic crises in Turkey, they could hardly sell the machinery, even if they demanded half the its price. Hasan did not want to purchase shares of Nihat by paying him 500.000 US dollars, while Nihat wanted 500.000 US dollars back. There was a deadlock and the Alim caucussed with Nihat, in his caucus with Nihat, the *Alim* understood that the real issue that irritated Nihat was Nihat's conviction that his partner swindled him. Nihat thought that his partner deceived him; Nihat believed that the real value of the investment was not 1 million US dollars.

The *Alim* examined the arguments of the both parties carefully, he tried to understand underlying interests of both parties. After initial meetings, they decided to either sell the factory or establish it and start production. The Alim convinced them to agree on a peaceful solution (*sulh*). The *Alim* understood the real source of the dispute and proposed solution options. The partners decided to establish the factory and start production as soon as possible in return Hasan agreed to give some money to his

partner Nihat who felt cheated. They bargained over the money that Hasan would give Nihat. Hasan offered to pay 100.000 US dollars, Nihat wanted more. At the end of the negotiations Hasan accepted to pay 200.000 US dollars, while he would pay 100.000 US dollars immediately, he would pay the remaining 100.000 dollars in the future by instalments.

The Alim said that in his initial contacts with Hasan, Hasan explained the problem partially. After the agreement the Alim said that he had the perception that Hasan cheated his partner. The businessmen reached to a peaceful solution with the mediation of the Alim.

#### *Case 7: Bloody Fight*

The event took place in the south-eastern Anatolian region of Turkey. Two people fought because of an unknown reason. One of the parties died at the end of the fight. The family of the murderer man visited the *Alim* and wanted him to mediate between the family of the person who has been killed. They said that they were very sorry for the tragic event and they wanted to resolve the issue without going to court. The Alim went to meet the family of the victim and tried to convince them to a mediated solution. He said that going to court would not bring the dead man back, he also mentioned that making sulu (peace) would be more auspicious according to Islam. On the other hand the *Alim* expressed the sorrow of the murderer's family.

The victim's wife and children were not rich and they needed financial support. They were also religious family. After meeting the death man's family, the Alim met the murderer's family again and he said, if they accept paying a reasonable amount of *diyet* (blood money), he would prevent the dead man's family's resorting to court. The *Alim* also wanted the murderer's family to apologize to the dead man's family. Murderer's family accepted to pay *diyet*. With the mediation of the *Alim*, the parties agreed on a certain amount of blood money. The man's family promised not to go to court. In addition to paying *diyet*, murderer's family apologized from the family of the death man and they expressed their sorrow. The dispute ended peacefully and religious metaphors and arguments of the Alim played important role in convincing both parties to a peaceful resolution.

### *Case 8: Seasonal Workers*

Every summer seasonal agricultural workers from various regions of Turkey, go to work in the cotton plantations in the Çukurova Region<sup>53</sup>. Big land-owners collect workers especially from the south -east Anatolian region of Turkey in order to employ them in the Çukurova Region. Workers are usually transported to Çukurova under poor conditions<sup>54</sup> in order to minimize transportation expenses.

The dispute occurred when a dump truck owner, who was transporting the agricultural workers on dumper of his truck, caused an accident. Workers were from poor families that were living in the South-Eastern Anatolian Region. Several people died at the accident and many people were injured. The driver was responsible for the death of many people because of his negligence and carelessness. On the other hand, it was legally forbidden to carry people in dump trucks.

Family of the Driver went to the *Alim* and wanted him to mediate between families of the people who were killed in the accident. They wanted to avoid going to court because most probably the driver would be fined for long years of imprisonment as a consequence of his carelessness and negligence. The family of the driver was relatively rich. The Alim visited the families' of the workers. Most of them were living in misery. They were extremely poor and the accident further depressed their economic situation. Some of the families were even living in cave-like places. The Alim listened to the problems and complaints of the worker's families. He tried to console the families, and also promised to help them.

After visiting workers' side the *Alim* met to driver's family again, and he explained the misery of the worker's families. He offered the idea that the driver's family pay compensation money. He said according to the Islamic law "you are expected to pay *diyet* (blood money), because you caused misery of so many people". The Alim said that if the compensation money is calculated according to *diyet* criteria it would be extremely burdensome. He said, if they were ready to pay some money he would try to convince the worker's families for *sulh*. According to Islamic Law *sulh* means avoiding litigation in order to prevent hostilities and in order to protect future relations. For the *sulh* option consent of the both parties was a necessity. One of the parties can renounce in order to reach a peaceful solution.

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<sup>53</sup> Most fertile agricultural area of Turkey.

<sup>54</sup> On dumper-tracks or on tractor trailers.

The *Alim* than went to the Worker's families again and tried to convince them not to litigate and reach a peaceful solution. The Alim said to the families' of the workers that the accident was not intentional, and he mentioned the sorrow of the driver's family. He said that since litigation would not bring the dead people back, he tried to convince them for sulu. On the other hand, he expressed the promise of the driver's family about material support and compensation. He also mentioned the virtues and benefits of sulu according Islam. As a result of the *Alim*'s mediation parties agreed on a peaceful solution. The worker's families did not litigate, in response, driver's family apologized from to the workers' families and paid them compensation money.

#### *Case 9: Injured Relative*

The disputants were relatives of the *Alim*, Salih, the *Alim*'s uncle's son, and Zeyd, the son of the Alim's younger son. The disputants were also relatives. Because of a money issue, Salih and Zeyd quarrelled. As a consequence of the fight, Zeyd was injured seriously. The Alim heard about the fight, and he decided to mediate between his relatives. First of all, he went to Zeyd's house. He wanted Zeyd to explain the event. They were partners in a trade issue when they were sharing the money, they had a disagreement and they quarrelled; the quarrel ended with fight and injuries. Both of the parties were responsible for the fight.

The Alim asked Zeyd not to litigate. He mentioned about their family ties, future relationships, he also emphasized the religious dimension of the *sulu*. He then visited Salih, who was also sorry about the event. He said "we behaved like children, we were annoyed and we could not control our anger, I am sorry about Zeyd". After a shuttle diplomacy, the alim convinced them both to make peace. In return, Salih accepted paying symbolic compensation money. Since the money was symbolic, the *Alim* determined the amount and both parties agreed on the amount. In the meantime, the *Alim* also talked the families of the both sides, and he tried to reconstruct their peaceful and harmonious relationships. The Alim was a respected figure by the both families.

While they were reaching an agreement, Zeyd's maternal uncle Kamil intervened and he tried to prevent the agreement. Kamil convinced Zeyd's family to break the agreement and demand more compensation money. The initial amount that the Alim determined was a symbolic amount, but after the Kamil's intervention

Zeyd's family demanded a very high amount. The Alim talked to Kamil in order to prevent his spoiling the agreement, but Kamil did not give up. After the Kamil's intervention, the Alim withdrew and he ceased to mediate, but he also warned Zeyd's family about the possible consequences of their move. Although there was not an event of murder, with the interference of the Kamil, Salih's family paid an enormous amount of compensation money. They settled the dispute without litigation, but Salih's family got very upset because of Kamil's last move, their frustration still continue.

#### *Case 10: Employer and Foreman*

The dispute took place in İstanbul and the disputants had employer- employee relationship. Prior to the dispute employer and his foreman had a close friendship. The employer was well-educated person, who studied and worked abroad for long years. The employer was a religious person, with the knowledge of the principles of Islam. He was also known as a religious person among his friends and acquaintances. On the other hand foreman was not a well-educated and a religious person, but he was a successful and a hardworking employee. In order to motivate his foreman the employer promised to pay %10 premium over the profit, if the company increases its profits. That year the company did not made any profit. On the contrary, they made a substantial loss. The employer's promise failed, but the employer wanted his foreman to pay the 10% of the loss. The foreman refused to pay anything, he said "that there was not a two party contract, you only promised to pay me a premium; therefore I am not responsible to pay a part of the loss". The employer insisted on his claim and he threatened not to give *tapu* (title deed) of an apartment that he previously sold to the foreman.

They could not agree on the issue. The employer proposed to go to the *Alim*, although the foreman did not know the Alim he accepted the employer's offer. The employer communicated with the Alim using the technical terminology of Islamic law. Since he was educated and more religious, the employer was confident that the Alim would make a decision close to his position. Together they went to the *Alim* and met at his at his office. The Alim listened them one by one and took notes. After carefully considering the details of both parties' arguments, the Alim said that the issue was not a reciprocal contract, the *Alim* said that it was a one sided promise; therefore, the foreman was not responsible to pay anything to his employer. The *Alim*

advised employer not to violate the rights of his foreman. The employer was very disappointed from the decision and statement of the *Alim* and he resorted to “İstanbul Müftüsü” and he told the case to the Müftülük, and Müftülük gave a similar answer. The employer than went to the *Alim* and threatened the *Alim*, he threatened to complain about the activities of the Alim to the legal authorities. He said that the *Alim* does not have the right to give religious decisions in a secular state. At the end he could not reach the solution that he was expecting. He tried to misuse religion, but when he could not reach to his aim with that channel, he threatened the *Alim*.

#### *Case 11: An Offer of Bribery*

The event took place in İstanbul. Both of the disputants were acquaintances of the *Alim*. The dispute was over the partitioning of the commercial partnership. The disputants were owners of a company that they had established and developed by working together for long years. They tried to separate their shares, but they faced some problems. Both of the parties wanted to sustain the company himself and wanted to convince the other party by giving a certain amount of money. They could not agree on which one of them would continue the business. Both of the parties were committed on their positions.

They decided to go to the *Alim* together. First of all, both parties told the problem and the *Alim* did not make an immediate decision at the first session. After hearing the dispute, the *Alim* wanted to investigate and do a research over the case, from the basic Islamic sources. In the meantime, one of the partners came to the *Alim* and promised to make a 100.000 US\$ donation to the foundation, whose chairman was the *Alim*. It was bribery and the *Alim* insulted the man for his immoral offer. The other partner heard about the offer of his partner and he also threatened to damage the *Alim* if he gave a decision close to the other’s position. Because of these unpleasant events, the *Alim* withdrew from the case. After the withdrawal of the *Alim* the case went to the court, the case is still continuing for many years, and both parties are materially in a loss because of the incompatibility.

#### *Case 12: Ominous Inheritance*

The event took place in İstanbul. Hatice is a woman who has is neighbour of the *Alim*. Hatice had a dispute with his husband Haşim. Hatice inherited a certain amount of property and money when her father died. Hatice and her husband, was a

relatively rich family, and Hatice decided to leave his share of inheritance to her brother who had some financial difficulties. Haşim objected to Hatice's decision, he did not want her to give her share to her brother. Hatice was disappointed after this event he said to his husband "are you with me because of my property". Hatice decided to divorce her husband, and he visited the Alim in order to consult him. Hatice said that her brother was always kind to her and made many favours to her; therefore she wanted to do a favour to her brother. Hatice was committed to his divorce decision, and she wanted to learn the religious relevance of her intention.

Hatice met the *Alim*, she complained about her husband. The Alim said that he tried to understand the underlying reasons of her decision to divorce. After a period of informal talk, the Alim advised Hatice not to break her marriage because of such an event. The Alim said that these kinds of disputes can be experienced in many marriage. It would be more beneficial to continue her marriage. The Alim also said that she had children, and he reminded to Hatice that her children would also suffer from such a divorce.

When Haşim learned Hatice's meeting with the Alim, Haşim also went to the Alim to talk to him. Haşim's version of the story was a little bit different. But after meeting Haşim, the Alim understood that the dispute had other dimensions. According to Haşim's statements, the Alim understood that Hatice had some other intentions. The Alim then met Hatice. He basically told her that she can divorce because of the problem but it would be much better to sustain her marriage. The Alim explained the benefits of continuing her marriage and possible disadvantages of a divorce. The Alim convinced the couple not to divorce. Hatice did not give her share of inheritance to her brother. Two years later Hatice experienced a few events that made her understand the correctness of her decision about continuing her marriage. Hatice expressed her gratitude to the Alim many times for rescuing her marriage.

### *Case 13: Young Couple*

The disputants were son of the Alim's neighbour and his wife. They were a young couple but decided to get a divorce because of the disputes between them. The couple divorced, but because they did not take the written copy of the court decision from the court, the divorce decision is not considered legally valid. The mother of the man, who was the Alim's neighbour, told the case to the Alim. The Alim said he would try to help the couple if they had not taken the legal divorce certificate. The

*Alim* first talked to the son of his neighbour. He asked detailed questions and tried to understand dynamics of their relationship and its problem points. He took notes and advised as a friendly wise person. He said “you are a young couple there may be problems in every marriage, as far as I understood from your statements you love your wife, it is better to be patient; otherwise, you can feel sorry in the future”. The *Alim* also mentioned some religious connotations about the benefits of continuing marriage.

The *Alim* then called the wife of the man, he heard her version of the story. He advised similar things to her. The *Alim* told the woman, the positive feelings of her husband that he mentioned about his wife. (He did not tell the woman, the negative feelings of her husband about her). The *Alim* mentioned the points of convergence points of the couple. The *Alim* also took notes in his meeting with the woman. In the meantime the *Alim* never informed wrongly the couples about the feelings of their spouses about themselves, tried not to exaggerate the points of divergence between the couple.

After the one to one meetings, the *Alim* then met the couple together. In the one to one meetings, the husband and wife’s positive feelings about their spouses increased. They were ready to take positive steps for reconciliation. Based on the information he collected, the *Alim* mentioned about the points of convergence and he tried to confirm the spouses about these points. The *Alim* then advised to the couple. The couple made a decision in order to try to continue their marriage for a period of time. They said, “if we still face similar problems we can take the written divorce certificate”. They continued their marriage, and according to the statements of the *Alim*, the couple has a much happier marriage now.

#### *Case 14: Prevented Blood Feud*

The conflict took place in Urfa<sup>55</sup>. The *Alim* was the mufti<sup>56</sup> of the city. Because of a leadership dispute, two of the biggest clans of the city fought. The fight was a very bloody one, and 12 people died. One of the clan leaders was the mayor of the city, the other clan leader was an MP elected from the city. The *Diyonet İşleri Başkanlığı* (Chairmanship of Religious Affairs), wanted the *Alim* to mediate between the parties in order to prevent a blood feud. The *Alim* was a well-known and

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<sup>55</sup> A City in the South-Eastern Anatolia Region

<sup>56</sup> Highest official religious authority

respected figure; therefore the other state officials also mentioned him for mediation. The father and brother of the mayor were killed in the fight and he was himself injured. The *Alim* visited the mayor in the hospital and expressed his sorrow and condolence for the dead people. The event was not taken to the court yet. The *Alim* talked to the mayor in the hospital and convinced him not to turn the issue to a blood feud. The mayor promised not to initiate a blood feud. The *Alim* later visited the other family and wanted them to do their best in order to pardon themselves. The MP's clan promised to calm the hatreds and animosities. After the initial talks the *Alim* ensured the promises of the two clans for not transforming the case into a blood feud. The *Alim* left the case to the mediation of the governor and brigade commander.

## CHAPTER 4

### PROCESS ANALYSIS OF THE CASES: A THIN DESCRIPTION

In this chapter, Islamic conflict resolution processes, mainly non-coercive third party approaches practiced by *alims* within the contemporary Turkish context, are analyzed. Empirical data, collected by interviews with *alims* is analyzed with reference both to the Islamic principles related to my research topic, and to the parallel conceptual literature that is generated from other cultural contexts. There is a remarkable literature about mediation and other ADR processes in Western contexts which provides sophisticated analytic tools for similar researches in other cultural contexts.

There will be a two-dimensional description: firstly, the nature and characteristics of disputes and third parties and conflict resolution techniques and methods are described. Secondly, the cultural underpinnings, underlying assumptions, and meaning systems of these approaches and techniques are analyzed. In Clifford Geertz's terms, there is a both thin description in which systematic empirical descriptions of the cases and interview transcriptions are done, and a thick description in which dispute resolution processes will be interpreted as a part of broader cultural meaning system. Cultural analysis is presented in the chapter 5, where mainly the process analysis of the cases is focused on. In both kinds of descriptions, I will benefit from etic and emic frames used in similar researches in mediation and other local dispute resolution processes literature. Especially in the thin description I will resort to emic schemas and description frames.

#### *A. Determinants of Mediation*

Mediation can be analyzed from very different dimensions. There are various parameters for the evaluation of mediation practices. In my analysis, I will focus on the following mediation parameters: (a) nature and types of disputes; (b) mediator roles and approaches; and (c) mediator techniques and processes. These three variables are closely interrelated, for example nature, of the disputes can determine mediator approaches and techniques.

#### *A.1. Nature and Types of Disputes*

All of my informants currently live in urban contexts, and majority of the disputes that come to them take place in urban contexts. Rarely though, some rural disputes can also come to my informants. Two of my informants beforehand worked in Eastern, and South-Eastern Anatolian Regions of Turkey. Before his retirement one of my informants served as the mufti<sup>57</sup> of Urfa for more than 20 years. On the other hand, since my informants are very well-known scholars, many people from different districts of Turkey have brought their disputes to my informants. In general, many of the disputes are civil disputes that take place in urban contexts, although rural disputes can occasionally come to my informants. My informants indicated that in rural contexts “aşiret ileri gelenleri” (clan leaders), şeyh’s (leaders of religious orders), seyyid’s (descendants of prophet Mohammed), and respected elders play important roles in mediations, but these people do not conduct their mediation practices systematically.

The most common types of disputes are husband-wife disputes and financial disputes. In the husband wife disputes, the main issues are related to the divorce cases, incompatibility of spouses, and husbands’ secret second marriages. One of my informants is an expert on Islamic family law: therefore, many marital issues and disputes come to him very frequently. Marital disputes also come to other *alims*; in the case descriptions, they only explained a few of the recent cases. On the other hand, main financial disputes are related to problems in commercial partnerships and distribution of profits. Two of my informants serve as legal counsellors to Islamic finance institutions; therefore, many disputes between financial institutions and its customers and depositors come to them frequently. The third cluster of dispute issues includes fights or accidents that result with murders or injuries. Unintentional<sup>58</sup> murder and injury cases are especially more frequent. In addition to these dispute issues, inheritance disputes, neighbourhood disputes can also be brought to *alims* for their mediation or arbitration.

I classified the cases that my informants explained in my interviews in figure 4.1. The cases described in third chapter are classified according to the case numbers assigned in the third chapter. My informants described many other cases, which I did not describe in the third chapter because of repetitions or incomplete information.

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<sup>57</sup> Highest official religious authority

<sup>58</sup> Traffic accidents or other accidents and spontaneous fights can be included to unintentional deaths

<b>DISPUTE TYPES</b>	<b>CASE NUMBER</b>	<b>CLUSTERS</b>
<b>Financial, and commercial disputes</b>	1, 6,10,11	<b>Financial Disputes</b>
<b>Marital disputes</b>	3,4,12,13	<b>Marital Disputes</b>
<b>Wife objects to Second Marriage</b>	5	
<b>Accident that causes injury</b>	9	
<b>Accident that causes to death</b>	2	
<b>Fight that causes death</b>	7,14	<b>Fights and Accidents</b>
<b>Fight that causes injuries</b>	8	

Figure 4.1 classifies the disputes along three basic clusters. As I mentioned before the cases in the third chapter are among a few of the cases that my informants encounter very frequently.

#### *A.2. Mediator Roles and Approaches*

The literature about mediator roles and approaches suggests that they are closely related to the nature and types of disputes (Moore, 1996; Bercovitch, 1996; Wall, & Callister, 1999). Consistent with the literature, my informants appealed to different approaches and mediator roles in various kinds of disputes. My informants do not have single mode of intervention, which they apply in all the dispute cases that come to them. My informants state that they adjust their roles and attitudes according to nature of the disputes and disputants but they never disregard Islamic principles and principles of justice.

Financial and commercial disputes are interest based disputes and disputants mainly struggle over distribution of scarce resources. Financial disputes may have emotional or value based dimensions, and these dimensions may prevent solutions, but the main dispute is over perceived or actual competition over substantive interests.

In marital disputes, attitudinal and relational dimension of disputants becomes more important. Misperceptions, stereotypes, poor communication or miscommunication, repetitive negative behaviour can lead to relational misconduct between disputants. In relationship conflicts, it is more effective to convince parties to

pursue positive attitudes to disputants. Therapy and advice oriented non-coercive approaches are effectively employed by my informants in relationship disputes.

In the Western literature, following criteria are offered in order to successfully intervene to the interest based interventions:

- Focus on interests, not positions
- Look for objective criteria
- Develop integrative solutions that address needs of all parties
- Search for ways to expand options of resources
- Develop trade-offs to satisfy interests of different strengths

(Moore, 1996; p: 60-61)

On the other hand following intervention types are offered for the relational disputes:

- Control expression of emotions through procedure, ground rules, causes, and so forth.
- Promote expression of emotions by legitimizing feelings and providing a process
- Clarify perceptions and build positive perceptions
- Improve quality and quantity of communication
- Block negative repetitive behaviour by changing structure
- Encourage positive problem-solving attitudes

(Moore, 1996; p: 63)

In the interest based disputes *alims* try to act neutrally, and they do not pursue coercive or value oriented strategies. For example, in cases 1, 6, and 10 *alims* behaved like neutral arbitrators. They examined the documents and tried to understand the dispute with objective criteria. They also tried to understand the perceptual factors that keep the disputants away from an agreement. For example in case 10, after his initial conducts, the Alim said that Nihat felt cheated by Hasan, and the feeling of humiliation prevented Nihat from agreement. After analyzing both disputants, the Alim understood the real source of the dispute and intervened accordingly. Their strategies and approaches were very close to communication-facilitation strategies (see Figure 4.2). In the cases over scarce resources, effective intervention options are very limited for the *alims*. In such cases my informants usually refrained from using

coercive or value oriented intervention approaches. They tried to generate options that are consistent with *sharia*, and principles of justice and equality.

<b>Figure 4.2 Mediator Strategies</b>	
<b>Communication-Facilitation Strategies</b>	<b>Manipulation or Directive Strategies</b>
<ul style="list-style-type: none"> <li>• make contact with the parties</li> <li>• gain the trust and confidence of the parties</li> <li>• arrange for interactions between the parties</li> <li>• arrange for interactions between the parties</li> <li>• identify issues and interests</li> <li>• clarify the situation</li> <li>• avoid taking sides</li> <li>• develop a rapport with the parties</li> <li>• supply missing information</li> <li>• develop a framework for understanding</li> <li>• encourage meaningful communication</li> <li>• offer positive evaluations</li> <li>• allow the interests of all parties to be discussed</li> </ul>	<ul style="list-style-type: none"> <li>• change the parties' expectations</li> <li>• take responsibility for concessions</li> <li>• make substantive suggestions and proposals</li> <li>• make the parties aware of the costs of nonagreement</li> <li>• supply and filter information</li> <li>• suggest concessions that the parties can make</li> <li>• help negotiators undo a commitment</li> <li>• reward the parties' concessions</li> <li>• help devise a framework for acceptable outcomes</li> <li>• change expectations</li> <li>• press the parties to show flexibility</li> <li>• promise resources or threaten withdrawal</li> <li>• offer to verify compliance with agreement.</li> </ul>

(Adopted from Bercovitch, 1993)

Some of the financial disputes can initially be brought to *alims* in the form of asking *fatwa* (legal opinion). In financial cases the *alims* acted either as neutral and expert arbitrators or pursued mediator roles of “agent of reality” and “process facilitator”. Mediator roles are defined by Christopher Moore, according to Moore’s definition, an agent of reality is defined as a person, who helps build a reasonable and implementable settlement, questions, and challenges parties who have extreme and unrealistic goals (Moore, 1996; pp:18-19). On the other hand, a process facilitator provides a procedure and often formally chairs the negotiation session (Moore, 1996).

If both of the disputants are friends or relatives of the *alims* they may use value based assumptions and may also mention the benefits of unity and cooperation, but personal factors do not always make positive contributions in financial disputes.

Marital disputes and family disputes have very different dynamics than financial disputes. More than half of the dispute cases that are brought to *alims* belong to this category. Marital disputes and family disputes can be categorized under the relational dispute category. In marital disputes my informants behave as counsellors and/ or family elders. Their emphasis on Islamic values, references to the Prophet's life, and advises can be very influential in marital disputes.

The alims' legitimacy and social prestige does not only derive from Islamic values and their knowledge on Islamic law (*fiqh*) and principles; they are also respected because of their wisdom, trustworthiness, and their success in human relations. Almost all of my informants mentioned the importance of communication skills. They said that understanding human psychology and trying to change perceptions and attitudes of disputants is much more effective in marital disputes than telling the legal consequences of a disputant's actions. Sometimes hearing only the advises of the *alims* and their remarks from the Prophet and his friends' lives and Islamic principles can be influential for the disputants in taking positive steps for reconciliation. One of my informants said that "Disputants consider us wise and trustworthy people that would regard their well-being and benefits, therefore they take care of our advises... even when they hear well-known principles and common-sense knowledge from us they take it seriously and they usually put our advises into practice".

My informants are more successful in peacefully resolving marital disputes; they usually succeed in reconciling disputants in marital and family disputes. According to my informants, the disputant's satisfaction level is very high in family disputes and marital disputes. Unlike in financial disputes, the *alims* do not act as neutral arbitrators in marital disputes: rather they pursue manipulative strategies (see Figure 4.2), behave like family elders who take care of the harmony of the family. They resort to almost all of the tactics that are listed in the manipulative-directive strategies column of the Figure 4.2<sup>59</sup>. In some marital disputes and family disputes,

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<sup>59</sup> Adopted from Jacob Bercovitch's articles; J. Bercovitch, "Evaluating Mediation Strategies: A Theoretical and Empirical Analysis". *Peace & Change*, Jan93, V. 18 (1), pp:15-18.

the *alims* act like therapists or family counsellors. People tell them very private (*mahrem*) information about their marriages, spouses and family members, which they can not dare to pronounce in court sessions.

Murder and accident cases are more complicated and harder cases for the *alims*. Level of hatred and negative feelings are very high in murder and injury cases. Such cases necessitates more intense intervention and more active involvement of the third parties. In murder and injury cases after accidents and fights, the alims do not directly intervene. One of the parties' requests the *alims* to intervene. Usually the parties who caused death or injury initially request the intervention of alim in order to avoid litigation, blood feuds, and cycles of victimization and vengeance. Alims usually accept to mediate, in such cases and they act like traditional “*muslihs*” (peacemaker). Private *sulh* of the alims takes place when both the crime and the guilty party are known. The purpose of private *sulh* is to achieve restorative justice and to make sure that revenge will not take place against the family of perpetrator, leading to an escalation of conflict (Irani, & Funk, 2000; p:23). On the other hand, if the perpetrator's family is rich they may offer compensation in order to avoid litigation process, which will result with sentence to long years of imprisonment for the perpetrator.

The *Alims*' legitimacy mainly depend on their religious stance; whereas in private *sulh* cases, traditional patriarchal values can also be very influential for a successful intervention. If we define the alims' approaches in fights and accidents cases in ADR concepts we can use med-arb<sup>60</sup> concept as correspondent of their activities. First of all, they try to calm down the hatreds and try to convince the disputants for non-violent and constructive forms of future interactions. The victim's family can forgive the perpetrator or ask for *diya* payment. If the perpetrator's side accepts payment for material compensation (*diya*), the alim calculates the amount of compensation according to Islamic law. In order to reach a peaceful solution (*sulh*), the Alim negotiates on behalf of both parties. For example, case 2 was about a traffic accident, in which a young man caused the death of a young girl because he was driving very speedy and carelessly. The young man's family wanted the Alim to

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<sup>60</sup> Med-Arb: A third party is authorized by the disputants to serve first as a mediator and then as an arbitrator empowered to decide any issues should mediation not bring about a satisfactory settlement

convince girl's family for a non-judicial settlement. The Alim persuaded the girl's family to avoid litigation and, the girl's family accepted the arbitration of the Alim. The Alim calculated the amount of *diya* payment, and he then decreased the amount substantially for the benefit of the perpetrator's side in order to reach a *sulh*. Similarly in cases 8, and 9, the *alims* first of all calculated the amount of diya according to Islamic law like an arbitrator, he then negotiated over the amount with both parties in order to reach a peaceful solution. When determining the *diya* amount, alims took into consideration the financial states of the disputants, and with their mediations they tried to reconcile parties over an acceptable and reasonable amount of payment. The victim's family may even forgive and pardon the perpetrator if the mediator opens channels of communication

In private *sulh* cases, *alims* may resort to both communication-facilitation strategies and manipulation strategies. If victims and perpetrators belong to same tribe, family, or religious orders in fights and accidents cases, *alims* can more easily convince them for a mediated solution. In addition to the religious values and principles the alims also consider customs and communal values, in fights and accidents cases.

*Alims* pursue different roles depending on the nature of the disputes and, dynamics of relationships of the disputants. In some cases behaving like a family elder is more effective; whereas in some other cases, acting like a jury or a neutral arbitrator can be more effective. *Alims* may also adopt different strategies (manipulative, facilitative) in different cases. Among all these variations my informants mentioned three principles that they always take serious. In their mediations: i) basic principles of Islamic law (fiqh), ii) principle of justice<sup>61</sup>, iii) goodwill<sup>62</sup> and kindliness. They also take into consideration the communal values and customs. In close relation with these third party roles and approaches; in the following section I the mediator techniques and methods practiced by the *alims*, with reference to the case descriptions are presented.

#### *A.3. Mediation Processes and Techniques*

For the definition and classification of the mediation techniques Dean Pruitt and his team developed and implemented a comprehensive classification system

(Pruitt, *et al.* 1989). Pruitt and his team's classification system had been developed, refined, and implemented while studying U.S community mediation. James Wall and his team modified, operationalized Pruitt's classification system, and added new categories when studying community level mediation practices in different cultural contexts (Wall, & Blum 1991; Wall.*et.al* 1995; Callister & Wall, 1997, 1999). Wall and his team relied on the list and also added different indigenous categories in their researches in studying Japanese (Callister, & Wall, 1997), Korean (Kim, Sohn, & Wall, 1999), Malaysian (Wall, & Callister, 1999), Chinese (Wall, & Blum, 1991; Wall, *et. al.* 1995) community mediation practices.

He gave the names of 38 techniques and than described those techniques (see figure 4.3). Although his definitions and techniques derive from American mediation, it's a useful guide can be applicable to other cultures with minor revisions. I adopted the table (Figure 4.3) below from Wall and Callister article which was Wall and Callister modified with minor revisions for the Malaysian context (Wall, & Callister; 1999).

<b>Figure 4.3 Mediator Techniques</b>	
<b>TECHNIQUE</b>	<b>DESCRIPTION</b>
<b>1. Meet separately</b>	Mediator meets with each disputant separately
<b>2. Meet together with disputants</b>	Mediator has disputants state their points
<b>3. Put disputants together</b>	The mediator brings the disputants together for a meeting that otherwise would not take place
<b>4. Listen to disputant's side</b>	Mediator has disputants state their points
<b>5. Being vague</b>	Mediator is intentionally vague when describing the situation or asking for concessions
<b>6. Gather information</b>	Mediator collects or asks for information from the disputants or others and does research to obtain information
<b>7. Gather information from third party</b>	Information, opinion, and advice obtained from third party
<b>8. Analyze the disputants</b>	Mediator analyzes disputants and grasps each disputant's characteristics

<sup>61</sup> Hakkaniyet prensibi

<sup>62</sup> İyi niyet

<b>9. Educate</b>	Mediator educates, persuades, or advises one disputant as to how he or she should think and act
<b>10. Moral</b>	Mediator points out a specific moral obligation or societal norm
<b>11. Praise disputants</b>	Mediator praises the disputant who is being addressed
<b>12. Have third party criticize</b>	Mediator has third party criticize a disputant's person, attitude, or behaviour
<b>13. Have third party educate</b>	Mediator has a third party educate, persuade, or advise one or both disputants on how they should act or think
<b>14. Quote law or rule (from the sources of sharia)</b>	Mediator quotes a specific law or rule that is relevant to the dispute (ex: a verse from quran, a hadith or relevant rules from sharia)
<b>15. Example</b>	Mediator cites example or similar case
<b>16. Provide logical explanation</b>	Mediator backs up any technique with logic
<b>17. Cite dependency</b>	Mediator expresses similarities or interdependence in disputants' goals, fates, and needs (includes mentioning personal costs of disagreement and benefits of agreement)
<b>18. Have third party argue for concessions</b>	Mediator has a third party argue for or propose a specific concession or agreement
<b>19. State other's point of view</b>	Mediator presents or argues the other disputant's point of view and asks a disputant to see the other's point of view
<b>20. Meet with third party present</b>	Mediator brings additional third disputants to meeting
<b>21. Have third party assist</b>	Mediator offers or gets third party's assistance for the disputants or the mediator
<b>22. Mediator assist</b>	Mediator personally offers or gives assistance and takes a specific action
<b>23. Reconcile</b>	Mediator negotiates a general compromise
<b>24. Apologize</b>	Mediator has one disputant apologize or acknowledge his or her fault
<b>25. Obtain forgiveness</b>	Mediator asks one disputant to tolerate or forgive the other
<b>26. Relax</b>	Mediator makes specific statements to calm the disputants
<b>27. Pray</b>	Mediator prays alone or with one or both disputants
<b>28. Have drink with disputants</b>	Mediator has a drink with the disputants prior to agreement
<b>29. Break time</b>	Mediator stops the quarreling and has disputants rest
<b>30. Separate disputants</b>	Mediator separates the disputants
<b>31. Mediator's data</b>	Mediator provides objective data about the dispute or the environment
<b>32. Threat</b>	Any threat from the mediator
<b>33. Note cost to third party</b>	Mediator points out costs of dispute to others, cites an obligation not to dispute (includes noting benefits of agreement to others)
<b>34. Get grasp of situation</b>	Mediator grasps the cause (analyze situation)
<b>35. Criticize</b>	Mediator criticizes a disputant's person, attitude, and behaviour or uses a specific label
<b>36. Call for empathy</b>	Mediator enhances the other disputant or calls for respect of the other; mediator puts a positive face on the other disputant
<b>37. Formalization</b>	Mediator caps the agreement with techniques other than a drink
<b>38. Written agreement</b>	Mediator has disputants sign a quasi-legal written agreement governing their future behaviour

### B. Coding Dispute Cases

Wall and his colleagues utilized the description table for their quantitative analysis; they coded dispute cases according to the techniques and run statistical descriptions. I will also code my cases according to the mediator's techniques classification table, but my analysis will not be a quantitative analysis, I will rather make a qualitative description. I coded the 14 cases that my informants described according to the classification table. My coding is a sequential one, I arranged the techniques in order, and enumerated techniques according to their sequences within the process in each case. For example number 5 in the first column and first row of the Figure 4.4 means that in the first case<sup>63</sup>, as the fifth (in the sequence) technique Alim met the disputants separately. Also number 6 in the first column means that after meeting together with the disputants as a sixth technique the Alim met together with the disputants in the case 1.

There are additional techniques derived from Islamic Law (*fiqh*), I added new categories for these methods and made a special mark for these techniques within the bottom sections of the table (see Figure 4.4). Additional techniques include mainly *fiqhic* principles and techniques such as *fatwa*, *diya*<sup>64</sup> and other explanations and decisions that are mainly according to *sharia*. Since the categorization table that I benefited is a very comprehensive and detailed one, some of the columns remained empty, this may also be as a consequence of cultural and contextual differences.

TECHNIQUES	CASE NUMBERS													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Meet separately	5	3	2		5	3	3	4	2	3		2	1	1
Meet together with disputants	6		9			5				4	2			
Put disputants together														
Listen to disputant's side	1	2	3	1	1	2	2	2	1	2	3	3	2	2

<sup>63</sup> Which is described in case descriptions section of the Chapter 3

<sup>64</sup> I will give detailed information about these concepts in the following pages.

<b>Being vague</b>				4	8					4			
<b>Gather information</b>	7	5					3				3		
<b>Gather information from third party</b>													
<b>Analyze the disputants</b>		5	2		6			5		7	4		
<b>Educate</b>		8	5			5		6		9	10		
<b>Moral</b>			6			4	8	5		8		5	
<b>Praise disputants</b>						11							
<b>Have third party criticize</b>													
<b>Have third party educate</b>													
<b>Quote law or rule(from sharia)</b>	8			3						11	6		
<b>Example</b>										10			
<b>Provide logical explanation</b>		4			7	8	9						
<b>Cite dependency</b>				6			4			6	6		
<b>Have third party argue for concessions</b>		9			8		7				8		
<b>State other's point of view</b>			5			6	5			4	5		
<b>Meet with third party present</b>													
<b>Have third party assist</b>													
<b>Mediator assist</b>													
<b>Reconcile</b>				9	9	11	13				11		
<b>Apologize</b>						9	10	10					
<b>Obtain forgiveness</b>			7			10	11					7	
<b>Relax</b>				2		7				5		3	
<b>Pray</b>													
<b>Have drink with disputants</b>													

<b>Break time</b>												
<b>Separate disputants</b>								3				
<b>Mediator's data</b>												
<b>Threat</b>												
<b>Note cost to third party</b>		7			7			8		11	7	4
<b>Get grasp of situation</b>	3	6	4			4		6		3	5	
<b>Criticize</b>			6	3				9				
<b>Call for empathy</b>												9
<b>Formalization</b>												
<b>Written agreement</b>	10		10									
<b>Disputants ask for fatwa</b>	2									1		
<b>Alim decides a fatwa or arbitrates</b>	4 9								7			
<b>Disputants asks intervention of Alim</b>		1	1			1	1	1		1	1	
<b>Explanation &amp; decision acc. to sharia</b>		8	7		4	6		7		6		
<b>Payment of diya (compensation)</b>							12	12	11			

### *C. Analysis of the Findings*

If we examine Figure 4.4, coded according to case descriptions, we can see that some techniques are not used in any of the 14 cases, while some others are very commonly utilized by the alims. On the other hand, there are several additional techniques, mainly originated from Islamic law, which are also frequently utilized by the alims. Each three clusters of findings are very important for the analysis. Recognizing the presence of techniques, which are utilized by the mediators in other cultural contexts but not utilized by the *alims* in the Turkish context, is also an

important finding that be elaborated. Therefore, I analyze the table from the mediation techniques categories that were not utilized or rarely utilized by the *alims*.

### *C.1. Analyzing the Empty Columns and Rows*

*Alims* did not initiate the mediation processes themselves; they intervened only if they are asked to intervene. Usually the disputants themselves asked the *alims* to mediate in their disputes; whereas in some instances third parties who have close relations with the disputants requested *alims* to intervene to the disputes of their friends or relatives. In some cases, there were intermediaries between the *alims* and the disputants. The main functions of the intermediaries were to put the disputants and the mediator together<sup>65</sup>; in our case the *alims*, together and initiate the mediation process.

There is always a certain relational distance between the disputants and the *alims*, who tried to preserve this distance. People respected wisdom, knowledge and attitudes of the *alim,s* and they trusted their straightforwardness. *Alims* did not behave like ordinary friends of the disputants. The *Alims* tried to keep a distance between the disputants and themselves in order to assure their trustworthiness and personal prestig; therefore, they did not have a drink with the disputants or prayed with them. Another important point is that *alims* did not share their authorities and did not allow intervention of any other third parties other than themselves<sup>66</sup>. *Alims* did not allow any third parties other than themselves to argue for concessions, assist, criticize or educate the disputants. On the other hand, *alims* did not also use tactics, such as threatening or praising the disputes

### *C.2. Analyzing the Marked Columns and Rows*

With reference to Figure 4.4 and to the general statements of the *alims* that they mentioned in the interviews, we can mention some remarks and generalizations about the third party techniques and methods employed by my informants. In almost all cases the *alims* met each disputants at least once and listened to disputants in all cases. If the disputants' hostility levels are high, the *alims* never accept them together. After initial separate meetings (in all the cases, except cases 4, and 11) if the

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<sup>65</sup> The empty row titled “put disputants together”

<sup>66</sup> The empty rows: “Gather information from third party”, “Have third party criticize”, “Have third party educate”, “Meet with third party present”, “Have third party assist”.

disputants tend to take conciliatory steps, the *alims* accept to meeting both parties together (cases: 1, 3, 6, 10, 11). My informants never make a decision before listening the disputants (coded in all cases) always meet the parties directly, and they do not take into consideration indirect information that can be conveyed by a third party.

Alims do not use “educate” and “moral” techniques in financial disputes (cases: 1, 6, 10, 11). They analyze the financial disputes according to objective criteria to grasp the situation (cases: 1, 2, 3, 6, 8, 10, 11)<sup>67</sup> and evaluate according to Islamic Law. On the other hand, they frequently use “educate” and “moral” techniques in marital disputes (cases: 3, 4, 12, 13). In marital disputes, for moral references they give examples from the Prophet’s life, they give examples, rather than directly mentioning rules and procedures. They also hear both parties, and in order to reconcile disputants they sometimes mention the positive views of the party he previously met to the other person and the vice versa. They usually avoid conveying negative views of disputants about the other disputants. They examine points of discordance and try to find the underlying dimensions of these problems in analyzing the psychic situations of the spouses (cases: 3, 4, 12, 13) or the disputants who had conflicts over the material resources. In such cases, they perform the tasks of psychoanalysts. My informants mentioned the importance of understanding the psychological situations and underlying frustrations of the disputants. They have also taken into consideration the psychological approaches in their mediation practices. In analyzing the psychological situations of the disputants, the *alims* benefited from their life experiences rather than a professional training.

In the marital disputes, alims also emphasize to the disputants that their problems are not unique, give examples from similar cases, and also want spouses not to exaggerate their problems. If the couple has child or children, it can be easier to convince them for positive taking positive step. In such cases, alims may cite dependency (cases: 5, 12, 13) or may criticize the spouses because of their irresponsibility (case: 3, 4). After meeting the spouses, if the *alims* cannot enable a peaceful solution, they do not insist on a constructive solution. Like arbitrators, they determine the conditions of divorce according to Islamic Law. In most instances, disputants trust the *alims* and take their advises very seriously.

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<sup>67</sup> 1, 6, 10, and 11 are financial cases also 2, and 6 are fight and accident cases in which alims made evaluations according to the *fiqhic* principles.

After initial conducts with the disputants, *alims* analyze the situation according to Islamic law (in almost all cases) and they usually reach a decision. Their *fiqhic* decisions can sometimes be unacceptable for one or for both of disputants. In such cases, alims can modify their decisions with the consent of the disputants in order to reach a solution. Some of the cases (fe: cases 1 and 12) may initially come to alims as a request of a *fatwa* (legal opinion according to sharia). In fact, tens of *fatwa* requests come to *alims* every month, even during my interview sessions they received *fatwa* requests by fax and telephone.

In accident and fight cases, consistent with *sharia*, *alims* may convince disputants for *diya* payment (cases 7, 8, & 9). *Diya* payment may not be adequate for reconciliation. In such cases, verbal or non-verbal statements of apology (cases: 7, 8, 9) and forgiveness (cases: 4, 7, 8, 14) are very important requirements for reconciliation. Alims act as brokers of peace in accident and fight cases. They behave much more flexibly depending on the attitudes of the disputants. Alims also shape their techniques and method according to communal customs and “*urf’s*”<sup>68</sup>.

In some cases, especially in financial cases, *alims* may give their decisions in written form (case: 1, 3). The *Alims’* decisions are officially non-binding therefore, they do not follow post settlement developments but also mentioned that after settlements most of the disputants call them in order to thank and express their gratitudes.

#### *C.2.1. Further Insights about Alims’ Mediation Approaches and Techniques*

The excerpts below that are from my interviews with three of my informants can give us important additional clues about their methods and techniques. If we paraphrase and summarize the excerpts, in the first except the informant says; “In initial stages of all disputes, people’s feelings are usually very intense. The hatreds of the disputants can be very intense, I try to prevent them from taking immediate steps that will make resolution of the dispute impossible. I try to assist the disputants in order to bring them to a point, in which they will think and act more objectively and more peacefully. I never decide on behalf of the disputants, I want them to make their decisions themselves because they know their conditions better than me”.

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<sup>68</sup> Urf is also considered as a source of sharia

Ilk aşamada, olay henüz sıcak iken, benim prensibim bu gibi durumlarda olayı zamana yaymaktır bu dönemlerde tarafların birbirlerine sevgi de duysalar, nefret te duysalar duyguları çok yoğun olur, acil olarak yanlış kararlar vermelerini engellemeye çalışırım ve daha sonra olayı zaman sürecine yayarım.... Tarafları daha objektif bir noktaya getirdikten sonra kararları kendilerine verdiririm çünkü ben onun şartlarını bilmem.

In the second excerpt, my informant mentions that “All of the disputants initially consider themselves to be right, they think very subjectively, in such cases I refer to the “ayets<sup>69</sup>”, “hadiths<sup>70</sup>” and “ijtihads<sup>71</sup>”, I mention my own views about their case. I try to enable them to think and act according certain principles. I try to correct their mistaken notions to make them ready for constructive engagement.

Tarafları alırken şeytanın değil adaletin avukatı oluyorum, karşı tarafın duygularını yumusatıyorum, taassubunu hafifletiyorum subjektif haklılık iddiasını objektif haklılık çizgisine getiriyorum, iki tarafı oluşturuyorum....Haklı olduklarını iddia ediyorlar, işte akıl burda diyorum; ayet söylüyorum, hadis söylüyorum, içtihadi naklediyorum, kendi fikrimi söylüyorum, o zaman öyle mi tamam diyor. Olayı o yanlış tahlil ediyor ben de kurallar çerçevesinde doğru tahlil etmesini sağlıyorum, sebep sonuc ilişkisinde yanlışlıklar yapıyor onları düzeltiyorum, bunlardan sonra normal bir çizgiye geliyorlar.

In the third excerpt, another *Alim* says that “ Most of the disputants who come us are aware of the principles of Islamic law (fiqh). They sometimes look at the books, but their knowledge is usually wrong or incomplete. When they hear the principles from an expert who is considered to decide according to principles of goodwill, they take our advices and offers seriously. We should be straightforward, good intentioned and behave according to principles”.

Tarafların aslında İslami kurallardan haberleri var ama genelde yanlış biliyorlar. Bu kuralları ve kendi durumları ile ilgili muhtemel kararları ve çözüm seçeneklerini konunun otoritesi olan ve iyi niyetle karar verdiği düşünülen biri tarafından söylemenesi tarafları çözüm yolunda ikna ediyor. Dürüst, iyi niyetli ve prensip sahibi olmak lazım.

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<sup>69</sup> Verses from the Holy Koran

<sup>70</sup> Formal tradition deriving from the Prophet

<sup>71</sup> Individual reasonings of scholars of Islamic Legal Jurisprudence (fiqh)

In the section below, I elaborate the main principles and basic guidelines of Islamic law which guide mediation practices of my informants. I evaluate the basic concepts and practices such as “*fatwa*”, “*diya*”, and “*sulh*” which appeared in the table (Figure 4.4) as additional categories, within the context of the Islamic law.

### *C.3.Fiqhic Origins and Sources of Mediation and Conflict Resolution*

My interviews are composed of two parts, in the first parts of the interviews, I ask general questions about the basic principles and methods by which my informants operate in their mediation and arbitration practices. Since all my informants are scholars of Islamic jurisprudence (*fiqh*), they explain the general principles in *fiqh*, which guides them in their practices. As I understood from their case descriptions and responses to my general questions related to their third party approaches as mediators or arbitrators, *alims* conduct cases very systematically according to *fiqhic* principles.

My informants have personal differences and these differences occasionally affect their mediation and arbitration practices. On the other hand, if we compare the influences of personal differences with the commonalities in their general principles and approaches in mediation and arbitration practices, we can argue that personal differences are minor and negligible. My informants mentioned their references to the concepts and general principles of Islamic jurisprudence (*fiqh*) in almost all of the dispute cases that they intervened as third parties. They also try not to Turkish official legal codes. I now introduce the very basic concepts and theoretical background of Islamic jurisprudence (*fiqh*).

#### *i. Sources of Sharia and Fiqh*

The Arabic word *sharia* deals with the faith, behaviour, manners, and practical daily matters. According to Islam, all aspects of public and private life and business should be regulated by the laws and way of life prescribed by Allah (*sharia*), the science of these laws is *fikh* (Schacht, 1968; Schaht, 1982, Karaman,1997; Karaman, 1987). *Fiqh* is the science of *sharia*. it also refers to the legal rulings of the Muslim scholars, based on their knowledge of the *sharia*.

My interviewee's mentioned that when dealing with disputes if there exists any related references in the sources of *sharia*, they firstly take into consideration these sources. There is a hierarchy among the sources of *sharia*. my informants said that when a dispute comes to them, they take into consideration the following sources

sequentially: *koran*, *sunna*, *ijma of ulama*, *ijtihads of madhab imams*, *urf* (customs and traditions of the society). They interpret and apply these sources in the cases that come to them. They do not approach these sources like static rules. They usually treat them very flexibly in order to reach a consensus based solution. In some of the cases, *alims* do not have direct references to these sources in such cases, they resort to their personal initiatives and interpretations, but their initiatives and interpretations do not contradict with these sources. I will briefly define the fundamental sources of *sharia*, according to which my informants deal the cases that are brought to them. These sources are mentioned in any introductory texts to the *usul-u fiqh* (methodology of Islamic jurisprudence) (f.e.; Zuhayli, 1996; Schacht, 1964; Bilmen, 1985 )

#### *ii.Sources of Sharia Ranked According to Their Priority:*

1. The *Koran*; is the holy book for Muslim. It is the totality of rules which Allah has laid down and revealed to the prophet *Mohamed*. Since they are derived from *Allah*, they are considered the highest rules and must be followed at all times.
2. The *Sunna* is the authentic tradition of the prophet *Mohammed*. It includes his sayings about specific cases and his conduct regarding them. It is the path of the prophet that all Muslims are required to follow and is the second-highest source of Islamic law. It is outside of the revelation from God but is still sacred and divinely inspired. *Sunna* and hadith compilations, play a significant role as a way of interpreting texts of the Koran.
3. *Ijma* refers to the consensus of Muslim scholars on the judgment of a specific case in a given period of time. It does not require the agreement of all Muslim's and is restricted to Muslim jurists. When a new case occurs and its judgment is not clear either in the *Koran* or the *Sunna* then the validity of the judgment is to be derived from this source. It finds its basis in a statement of the prophet: "A community shall never unite upon error". Judgments based solely on this document are few.
4. *Ijtihad* is the attempt of a particular jurist to formulate a rule of law on the basis of evidence found in the prior sources mentioned. Since the law was revealed 1400 years ago is universal and governs all religious and social interactions, it is necessary at times to find a flexible way of interpreting these existing laws to cope with the changing needs and demands of Muslim people. Some Muslim scholars

have defined it as the legal reasoning and development of legal theories and philosophies compatible with the *sharia*.

5. *Qiyas* is the judgment given in a new case on the basis of a legal analogy. This is the application of legal solutions cited in the first two primary sources of law.

6. There are three supplementary sources of Islamic law, the *istislah* (taking public interest into account), *istihsan* (approval), and *urf* (customs and culture).

In the interviews my informants made special emphasis on *urf* and customs. It is not always possible to find direct references to some of these sources. In such cases alims take into consideration cultural context and relational dynamics of the disputants.

### *iii. Classification of Crimes and Punishments in Fiqh.*

There is a distinction between penal law, civil, commercial and property laws in Islamic jurisprudence. Mediation and arbitration practices of my informants are mainly within the domain of civil, commercial, and property laws. Since they do not have official titles and sanction enforcement power, they refrain from the cases that are within the category of penal law. There are three kinds of crimes in Islamic penal law: *Hadd* Crimes (most serious), *Tazir* Crimes (least serious), and *Kisas* Crimes (revenge crimes restitution).

*Hadd* punishments are given as consequences of certain acts which have been forbidden or sanctioned by punishments in the *Koran*, and have thereby become crimes against religion. These most serious of all crimes are found by an exact reference in the *Koran* to a specific acts such as murder; apostasy from Islam making war upon *Allah* and his messengers, theft, adultery, defamation - false accusation of adultery or fornication, robbery and alcohol-drinking. *Hadd* crimes have fixed punishments, which are set by *Allah* and are found in the *Koran*.

The second type of crimes in Islamic penal law are *Tazir* crimes. *Tazir* crimes are less serious than the *Hadd* crimes. *Tazir* crimes can and do have comparable "minor felony equivalents." These "minor felonies" are not found in the *Koran* so the Islamic judges are free to punish the offender in almost any fashion. *Tazir* crimes are acts, which are punished because the offender disobeys God's law and word. *Tazir* crimes can be punished if they harm the societal interest. Sharia Law places an emphasis on the societal or public interest. Some of the common punishments for *Tazir* crimes are: counselling, fines, public or private censure, family and clan

pressure and support, seizure of property, confinement in the home or place of detention, and flogging. The authority for making *Tazir* crimes punishable is left to the judge as long as the authority used is in compliance with the *Koran* and the *Sunna*. Official authorities (in Islamic governed political administrations) conduct judgements and punishments of *hadd* and *tazir* crimes; therefore in my case the *alims* refrain from intervening to disputes that are included to these two categories of crimes.

*Kisas* is a crime of retaliation. If a *Kisas* crime, is committed, the victim has a right to seek retribution and retaliation. *Kisas* (retaliation) according to Muslim law is applied in cases of murder (premeditated and non-premeditated), premeditated offenses against human life, short of murder, murder by error or accident, offenses by error against humanity short of murder killing, and of wounding which do not prove fatal. The family also may seek to have a public execution of the offender or the family may seek to pardon the offender. In Islamic law, *diya* means the compensation payable in cases of homicide, the compensation payable in the case of other offences against the body, being termed more particularly *arsh* (Longrigg, 1986). It is a substitute for the law of *kisas*, victim can accept *diya* in return for *kisas*. *Diya* can also be paid to the victim's family<sup>72</sup> as part of punishment. *Diya* is a specified amount of money or goods due in cases of homicide or other injuries to physical health unjustly committed upon the person of another. The amounts of *diya* payments are specified in *fiqh*, but these amounts are open to negotiation between victim's side and offender. In their mediation sessions especially cases related to bloody fights, murders, and accidental killings, the offenders' side requested the *alims* to convince the victim's side for acceptance of *diya* payments in return for litigation (cases, 2, 7, 8, & 9). Sometimes the *alims* advise offender's side to pay the *diya* in order to avoid the litigation process.

*Fatwa* is opinion on a point of law, the term "law" applying to all civil or religious matters. In any kinds of private or interpersonal matters, disputants may ask the legal advice of the *alims*. The public function of *fatwa* is without prejudice to the private exercise of profession. Although some of the literature it is argues that, with the introduction of codes practice of *fatwa* became obsolescent (Tyan, 1986; Schacht,

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<sup>72</sup> In the cases in which victim is death as a consequence of the offense.

1982), the reverse of the argument is relevant in our case. The alims receive scores of *fatwa* requests monthly.

*Sulh*: The purpose of *sulh* is to end conflict and hostility among believers so that they conduct their relationships in peace and amity (Khadduri, E.I.2). In Islamic law, *sulh* is a form of contract, legally binding on both the individual and community levels. We can not include *sulh* to the Islamic penal law. The objects of the *sulh* are essentially the same as those in contracts of sale consisting of material and non-material objects. The main feature of *sulh* is that it is a negotiated settlement and agreement between the disputants, *alims* play non-coercive catalyst roles in the *sulh* processes.

To sum up, the most common types of cases, my informants face, belongs to *fatwa*, *sulh* and *kisas-diya* categories of Islamic Law. My informants act and decide according to requirements and principles of *fiqh*; on the other hand, their personal charisms and tactics also play important roles in the success of their interventions.

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In this chapter the empirical data is analyzed according to the key determinants of mediation process. For the analysis I benefited from the frames formulated in other cultural contexts. There are both points of convergence and divergence with the other cultures, and both kinds of findings are very important. In our context, especially Islamic nature of the processes and additional techniques and methods that are derived from *fiqh* constitute substantial difference with the mediation processes in Western contexts.

In the next chapter, I further elaborate on the underlying assumptions and meaning systems of the mediation practices of *alims*.

## CHAPTER 5

### KEY METAPHORS and UNDERLYING MEANING SYSTEMS of ALIM'S MEDIATONS: A THICK DESCRIPTION

In the theoretical chapter of the study, it is mentioned that for the cultural analysis there are dual approaches (etic and emic) that complements each other. Etic approaches mainly provide cross-cultural comparison frames. Although comparison frames are not designed for the indepth analysis of particular cultures, they are useful for systematic analysis along the key parameters and determinants of dispute resolution activities. In many studies that are under this category, the underlying assumptions of Western (especially American) conflict resolution practices are compared with traditional cultures such as Middle Eastern Cultures and East Asian cultures. Essentialism and over-generalizations are two important deficiencies of the studies conducted along these approaches. Being aware of the shortcomings of these frames, which are mentioned in the theory chapter, I refer to these frames for purpose of comparisons in analyzing my empirical data. I also interpret the key metaphors and underlying meaning systems of the conflict resolution practices in my study with reference to broader cultural context of Turkish and Islamic cultures. Firstly I elaborate on the distinctive features of *Alims'* mediations, which makes the *alims* as an attractive alternative of the formal court procedures for the disputants.

#### *A. Features of Islamic Mediation in Turkey*

Like the Hopewell Baptists, who were examined by Greenhouse (Greenhouse, 1986), many of the people, who go to *alims* for mediation in Turkey think that human conditions cannot be changed and arranged according to actions and decisions of the secular state mechanisms. In some Islamic groups, there is a strong notion that human life is a whole and people's entire actions and behaviours are within the domains of *Allah's* order and rules. Such a notion is especially relevant for civil dispute cases (family, inheritance and marital disputes) and commercial disputes (especially partnership disputes). The *Alim*'s mediation is not an alternative to the official judicial system in the public sphere but can be considered an alternative in private lives and interpersonal interactions of religious people. All of my informants mentioned that in

most cases, at least one side of the disputants who came to them has religious sensitivities. In some occasions secular people also go *alims* for mediation.

In addition to the common Islamic values and other normative elements, there are also many other factors that motivate people to resort mediation of *alims*. Mediation is not financially burdensome in comparison to official court system. *Alim*'s do not expect and accept any money and presents from the disputants, who ask their mediation or arbitration. The *Alims* consider mediation as a public duty, and all of my informants mentioned that they do such a service for God's sake "Allah rızası için". Their mediations and arbitration decisions can sometimes be costly and burdensome for *alims*. Some of the disputants threatened *alims* to obtain favourable decisions in arbitration cases, some others offered bribery. On the other hand, if the *Alims* mediate or arbitrate between their fellows, relatives, and friends, these people may expect favourable decisions from the *alims*, and if *alims* do not meet their expectations, their friends and fellows can get upset to them. Almost all of the *alims* in my research experienced similar contradictions, when they were mediating between their friend and relatives. Their decisions in arbitration cases were always consistent with Islamic canons, and principles of justice and fairness, people who were expecting favour from them were disappointed and sometimes threatened the *alims*.

There are many other factors that make mediation of *alims* attractive for disputants. Mediation is cheaper<sup>73</sup> and much faster than official litigation processes. Official judicial process operates very slowly in Turkey, like in many other states. Judicial system is not designed to take into consideration the satisfaction of the disputants, as a result in many instances both of the disputants are not pleased from judicial decisions. Mediation is much more flexible and alims take into consideration the satisfaction of the disputants. In the courts, disputants do not have opportunity to negotiate over the judgments and verdicts of the judges they are subject to the judgements of the judges, whose decision options are determined by the legal codes. Whereas in many of the cases that are mentioned in my research, *alims* negotiated on behalf of the both disputants in order to reach a peaceful settlement that would bring optimal satisfaction for both disputants. In many instances, the flexibility of the mediation makes intervention of *alims* much more attractive for the disputants, then resorting to official courts.

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<sup>73</sup> Actually none of the *alims* accept money and presents.

Another important feature of alims' interventions is that their interventions are usually conciliatory. *Alims* emphasize commonalities (Muslim brotherhood and sisterhood) and future relations of the disputants, they refer to many "hadiths", and verses of the "Koran" in order to motivate disputants for conciliatory moves. Unlike American and European societies, Turkish people are not litigious, rather than resorting to formal court procedures they either avoid minor disputes or try to resolve them with self-help methods. The disputants' agreement on a mediated settlement is one of the most important conciliatory moves for the resolution of the dispute, and mediator (*alim*) is the catalyst of this move. The reverse of this is also relevant: the disputants usually interpret litigation as a hostile activity; therefore, if they have intention to resolve the dispute and to protect their future relations with the other party, they usually try to avoid litigation. Especially in marital disputes and family disputes, litigation and court procedures can cause irreparable damages in relationships of the disputants. Alims' minor advices and conciliatory statements that are backed up with religious values can be very effective. Advises and conciliatory statements of *alims* were less effective in financial disputes.

#### *B. A Comparative Analysis of the Underlying Assumptions of Dispute Resolution Practices*

*i. Individualism vs collectivism* (Triandis, *et.al*, 1990; Triandis; 1994), and High Context Cultures (HCC) vs. Low Context Cultures (LCC) (Hall, 1976; Ting-Toomey, 1985; Gudykunst, & Ting-Toomey, 1988) are two most important ideal typical models for the comparison of modern, individualist, secular cultures with the traditional, community oriented cultures. In many studies, the underlying assumptions of conflict resolution processes in Middle East-Islamic Cultures, East Asian Cultures and tribal communities are described in comparison to the Western assumptions and approaches (Abu-Nimer, 1996, 2000; Kimmel, 1994; Irani, 1999, Irani, & Funk 2000; Salem, 1997; Rubin 1997, Kriesberg 1998). Systematic references to these two popular frames are rarely done in many studies. In analyzing the broader context in which my own cases take place, I comparatively refer to the literature about the underlying assumptions of conflicts and conflict resolution processes in Western contexts. I also refer to the general assumptions of HCC-LCC, and individualism-collectivism frames.

*Individualism:* Western Societies are individualist societies, people who are not related directly to the conflict have minimal involvement in the process and outcome. Social pressure does not operate as a factor that increases parties' commitment to settlement and resolution. Individuals are considered as free agents, and there is a primacy of individual choice in the process. Individual choice is more important than loyalty to group decisions and communal norms. In individualist cultures there is little emphasis on being harmonious or consistent and there are low collective normative expectations (Abu-Nimer, 2000; Irani, & Funk, 2000; Kimmel, 1994; Gudykunst, & Ting-Toomey, 1985). In our case, people are considered within webs of relationships. Especially there is a significant emphasis on the family solidarity and harmonious relationships with religious "brothers and sisters". People's choices and interactions are considered and evaluated within these webs of relationships. *Alims* constantly emphasized the charity and benefits of sustaining peaceful and harmonious relations between the spouses, conflicting relatives or community of believers. In general, *alims* advise to almost all disputants to concede for the sake of their peaceful communal relationships. In almost all the cases in my study there was an emphasis on the communal values and normative consensus. In disputes over distribution of scarce material resources, *alims* rarely referred to communally oriented values, but they referred to relational dimensions of the material disputes.

In the American context, conflict is seen as the source of growth, not necessarily a negative thing to be avoided. Conflict and fair competition is seen as a driving force for progress. In our context, cooperation rather than conflict is seen as the source of growth and progress. Conflict is seen as something to be avoided, and it is seen as a disease that has potential to make social organism ill. Alims are also seen as the healers of spiritual and moral diseases, which threatens the community of believers.

*ii. Fair-play*, principled behaviour, equity and objective thinking are valued in the Western contexts (Kimmel, 1994). Deception, coercion, elitism, unresponsiveness, and bribery are criticized and they are regarded as activities to be abstained from carefully. The common notion in the Western contexts is that everyone with an interest in an issue should have some say in how things are done (*Ibid*), and conflicts should be resolved through democratic processes. Process is based on collaborative decision making and finding a win-win solution to satisfy the underlying needs of conflicting parties. On the other hand, justice rather than equity, is seen as the

fundamental principle of the *alims*. The positive usage of patronage consistent with the principle of justice is seen as tolerable. Sometimes undemocratic resolution processes are tolerated in order to reach “just” outcomes. In almost all of the cases *alims* dealt the cases very systematically and objectively and they behaved very fairly to the disputants.

*iii. Utilitarianism and Conflict*, Western conflict resolution relies heavily on the assumption that pain is bad and pleasure, or comfort, is good. Suffering, physical or otherwise, associated with conflict is one of the main inconveniences that conflict resolution practitioners try to eliminate (Salem, 1997; p: 223). Limited and fair conflict and competition are not considered negatively, but physical suffering and violence are not seen tolerable. Those who committed acts of violence and physical damage are confronted and punished in order to avoid further acts. Avoiding discomfort and physical violence and suffering are crucial principles of the Western conflict resolution. In Islamic contexts, loyalty to religious principles is considered more important than physical suffering. Altruism and sacrifice for the protection of religious values and norms is valued in Islam. People may be involved in physical violence and fights in many cases, but these people may also be reconciled by *alims*, if they agree to resolve their dispute without litigation. Qisas (retaliation) is a legitimate punishment according to *sharia*, *alims* tried to avoid physical retaliation and violence with diya (compensation) payments.

*iv. Mediators*: In Western cultures mediators are always strangers to dispute and they tend to be low power court officials, experts, or community volunteers (Abu-Nimer 2000, Irani & Funk 2000). Authority and manipulative approaches are resisted and independence is valued. Alims are prominent figures in their communities, and they are as powerful to decide on the amount of *diya* payment. They are considered as wise and knowledgeable persons, and disputants take their advises and decisions very seriously. If they have close relations with the disputants, *alims* also resorted to manipulative approaches for the mutual benefits of the disputants.

*v. Legitimacy of the third parties*: In the intervention processes, Westerners give importance to rational and expectable measures; therefore they are always fixed and predetermined steps for handling disputes. These involve the “professional behaviour” and “business image” to give the mediator credibility (Abu-Nimer, 2000, 1996). *Alims* also have certain principles and procedures for handling disputes according to the Islamic law but they are much more flexible in their approaches.

Because the *alim*'s legitimacies do not simply derive from their predetermined procedural interventions or from their rationality, disputants trust goodwill and wisdom (*iyi niyet*) of the *alims*. Basis of the trust is the consensus of the disputants on the values and principles according to which *alims* conduct their intervention procedures. People trust alims because they consider them as agents of justice<sup>74</sup>; they believe that at the end of the process the decisions or advises of the *alims* generate a just solution. Rather than a rational and expectable intervention process, Turkish people expect a just and equitable final outcome.

*vi. The nature of the communication metaphors:* In the American conflict resolution, third parties rely on secular idioms and metaphors with reference to personal anecdotes and experiences (Irani & Funk 2000). The main concerns of the third parties are the satisfaction of the underlying substantial needs of the individuals (Rubin 1997, Abu-Nimer 2000; Kimmel 1994; Irani & Funk 2000). In our context it is important to recognize that the process of reconciliation and conflict resolution is deeply laden with religious meanings and references to sacred texts and tradition of the Prophet and his friends. The *alim*, referred to various religious sources very frequently in their advises to the disputants. In addition to the religious metaphors and anecdotes, the *alims* also referred to their own life experiences and experiences of the disputants who previously came to them. The process of dispute resolution itself closely parallels the prescriptions of the Quran, which regulates the extent of punishment (*qisas*) and retribution with the principle of justice (*adalet*).

*vii. The objective of Dispute Resolution Process:* The objective of a negotiation and mediation in American context is to get job done which usually requires a mixture of problem-solving and bargaining activity. There are few absolute truths, what works for the resolution process is considered to be useful and good. Problems can be solved and differences through compromises. Current information and ideas are more valid than historical or traditional opinions and information (Kimmel, 1994). In our case, the reconciliation of the disputants and healing of the hostilities between the “muslims” is also seen as a crucial part of dispute resolution activity. Reliable current information is very important for the healthy analysis and grasp of the situation. Alims may sometimes be ambiguous and do not give clearly understandable decisions and advices. With references to historical and normative

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<sup>74</sup> Which is fundamentally an Islamic notion of justice

knowledge, they may implicitly manipulate disputants for the sake of peaceful present and future relations. On the other hand there are non-negotiable items, which can not be traded off. *Alims* try not to contradict Islamic principles; also people's honour and dignity are non-negotiable items.

*viii. Reliance on verbal behaviours:* In the Low context cultures<sup>75</sup> communication is direct and verbal. There is little deliberate or intentional use of nonverbal and metaphorical behaviours in the communication process. *Alims* were also clear and direct in their modes of communications with the disputants, but *alims* sometimes resorted to stories and allusive anecdotes.

*ix. Forms of agreements:* Oral commitments are not binding in Western context. Oral contracts are considered invalid, and written contracts that are exact and impersonally are binding. Communal culture in Turkey, especially in the informal networks is an oral culture, tradition and rules are transmitted orally. Except for financial contracts and agreements, people rarely sign written contracts such as in family disputes or in fights and accidents cases. In many cases, *alims* stated their decisions in a written form but since their decisions are legally non-binding, disputants did not sign contracts for these decision. According to *alims*' statements, in most cases disputants take their decisions and advices seriously, and put them into practice.

Underlying assumptions and fundamental values of the European and American conflict resolution processes can be summarized as follows: Individuals as independent and decisive actors; utilitarianism and pragmatism; democratic processes; equal opportunity and fairness; mechanistic and pre-determined processes; competition; time as commodity; direct communication; and secular metaphors. On the other hand the most important values and underlying assumptions of *alims*' interventions are: Justice; religious brotherhood and emphasis on community; cooperation; use of both secular and religious metaphors; direct and indirect (metaphorical) communication; responsibility of both *alims* and disputants is to Allah; fair and just outcome rather than democratic process; and privacy (mahremiyet).

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<sup>75</sup> Generally modern Western cultures

C. “*Adalet*” (*Justice*), “*Mahremiyet*” (*privacy*), “*Kardeşlik*” (*fraternity*) and “*Bağışlamak*” (*forgiveness*): Key Metaphors of Alims’ Interventions

During my interviews with the *alims* I recognized that alims frequently referred to certain concepts and metaphors when they are explaining logic and fundamental principles of their intervention practices. The most remarkable of these concepts and metaphors are “*Adalet*”, “*Mahremiyet*”, “*Kardeşlik*”, “*Bağışlamak*”. All of these metaphors are also concepts of Islamic Theology and Turkish communal traditions, but since alims are scholars of Islamic Law and Islamic Theology religious dimensions of these concepts are dominant. In the *Koran* and *Hadith* compilations there are many references to these concepts. I only give few verses from the *Koran* for each concept.

*C.1. Adalet*

**95: 08** Is not Allah the wisest of judges?<sup>76</sup>

**4:58** Surely Allah commands you to make over trusts to their owners and that when you judge between people you judge with **justice**; surely Allah admonishes you with what is excellent; surely Allah is Seeing, Hearing.

**5.8** O you who believe! Be upright for Allah, bearers of witness with **justice**, and let not hatred of a people incite you not to act equitably; act equitably, that is nearer to piety, and be careful of (your duty to) Allah; surely Allah is Aware of what you do.

**60.8** Allah does not forbid you respecting those who have not made war against you on account of (your) religion, and have not driven you forth from your homes, that you show them kindness and deal with them justly; surely Allah loves the doers of **justice**

*Adalet* is an Arabic originated concept (adl) and has a rich range of meanings such as “*justice*”, “*equity*”, “*fairness*”, “*consistency with morals and religious law*”. *Adalet* (adl) is the fundamental principle of Islamic social and political order, Islamic law and conflict resolution. According to Islamic theology there is a clear-cut ontological hierarchy between *Allah* (creator of everything), and human beings and all the other created things. *Allah* arranges the rules of relationships between Himself and human beings, and sets the basic rules of conduct among human beings, and He also arranges relationships between human beings and all the other created things. Principle of *adalet*, according to which alims try operate in their interventions, is mainly the representation of Allah’s order in the social, political and economic domains. It is believed that if all the Muslims obey to the law of Allah (*sharia*), there

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<sup>76</sup> The English Translation Of The Holy Qur'an by Abdullah Yusuf Ali, I will use the same translation in the remaining parts.

will be no conflicts and problems among the community of Muslims. On the other hand, rationality, efficiency, and maximization of benefits and minimization of losses are modern secular principles, and these principles mainly guide the conflict resolution practices in the Western contexts.

### C.2. *Mahremiyet*

The second important metaphor is “mahremiyet”, it means privacy and confidentiality. In Turkey many people avoid going to official courts to resolve their marital disputes and in family disputes because of privacy reasons. According to my informants, Turkish people, especially religious people, do not want to publicise their private disputes. Disputants may share very private information to *alims*, which they cannot dare to pronounce in the official courts. Many people do not even directly take their disputes to *alims*, rather they ask their disputes in form of a *fatwa* or question. In *fatwa* cases people describe the disputed issues without giving the real names of the persons, and ask the legal opinions of the *alims*.

**49: 9** 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).

**49:10** The Believers are but a single Brotherhood: So make peace and reconciliation between your two (contending) brothers; and fear Allah, that ye may receive Mercy.

Confession and public declaration of the sins are not common in Muslim societies because it is believed that Allah knows every act that a person does, even in the imagination’s of everyone’s mind. It is better for a Muslim to hide his/her sins and errors from other Muslims while asking apology from Allah. Repentance and apology are the means for people to return their hierarchical relations with Allah and public declaration of sins and errors are not encouraged in Islam. There is no notion of confessing to a priest; it is not good to publicize sins in Islam. Rather *tevbe* (repentance) which means personal statement of contrition and promise of not repeating the mistaken acts, is very important concept in Islam. Allah forgives all the sins if the sinner prays and makes a sincere repentance to Allah. The word repentance appears in 35 verses in the Holy Quran. Here are two of them:

**42:25** He is the One that accepts repentance from His servants and forgives sins: and He knows all that you do

**11: 90** But ask forgiveness of your Lord, and turn unto Him (in repentance): For my lord is indeed full of mercy and loving-kindness

If we examine the state of publicity of sins in the Western Societies, we can recognize hidden symbolic references from Christian Theology. Confession and acknowledging the sins and asking forgiveness from the God with the assistance of middlemen (priest) is one of the important routines in the daily lives of ordinary Christians. The sinner expresses his/her contrition and God forgives sinners with His eternal grace. Confession of the sin with the presence and witnessing of the priest is sufficient for forgiveness of the God. Also in the Bible reconciliation and forgiving mistaken persons are encouraged. Pope John Paul II, confessed and apologized for all mistakes and errors that were committed in the last two thousand years of Christianity, in the penitence day ceremony, which was held in Saint Pier Church (Vatican) in March 2000. In the contemporary secular contexts, therapy can be considered as the substitute of Christian concept of confession. Western people explain their psychic problems with the presence of a professional analyst. Mediation in the Western contexts also has a therapeutic characteristic. Origins of the “mahremiyet” concept, on the other hand, can be traced back to the notion of repentance and confidentiality of the sins in Islamic tradition.

### C.3. “*Kardeşlik*”

Harmony and reconciliation are two important underlying principles of the communal conflict resolution practices in many cultures. Some scholars explained harmony and reconciliation metaphors in Western conflict resolution models with reference to Christian theology (Nader, 1990; Cohen, 2001; Greenhouse, 1986). In East Asiaan cultures, harmony is explained with reference to Confucianism. In our context, religious brotherhood and fraternity (*kardeşlik*) are used by *alims* as an important and efficient conciliatory metaphor. Alims used the metaphor of religious fraternity (*kardeşlik*) in order to emphasize the commonalities of the disputants. “*Kardeşlik*” is a religious metaphor; therefore, it is an effective metaphor, and it is not so easy for disputants to violate Allah’s order for minor issues. “*Kardeşlik*”

emphasizes the importance of relational dimension of the dispute against substantial dimensions that prevent agreement.

#### C.4. “Bağışlayıcı Olmak”

**42: 40** The recompense for an injury is an injury equal thereto (in degree): but if a person forgives and makes reconciliation, his reward is due from Allah: for (Allah) loveth not those who do wrong

**5: 45** We ordained therein for them: "Life for life, eye for eye, nose or nose, ear for ear, tooth for tooth, and wounds equal for equal." But if any one remits the retaliation by way of charity, it is an act of atonement for himself. And if any fail to judge by (the light of) what Allah hath revealed, they are (No better than) wrong-doers.

**2:263** Kind words and the covering of faults are better than charity followed by injury. God is free of all wants, and He is Most-Forbearing.

The fourth important metaphor is “*af dilemek and bağışlamak*” (apology and forgiving). Covering mistakes of Muslim “Brothers” and the charity of forgiving the ones who, acknowledged their mistakes and pardoned for their mistakes, are reiterated in both *Koran* and *Hadith* literature; these references are very commonly referred by every kinds of Muslim peace-makers in any level of social relations.

Mercifulness and compassion of *Allah*, to humankind is also constantly reiterated in the Koran. In the Koran, of the 99 names of *Allah*, there are many names that have references for mercifulness of Allah: *Ar-Rahman* (The all merciful, cited 57 times in the Koran), *Ar-Rahim* (the all compassionate, cited 115 times), *As-Salam* (the source of peace, cited 33 times), *Al Gaffar* (the forgiving, cited 5 times), *Al Ghafur* (the forgiver and hider of faults, cited 91 times), *At-Tawwib* (the acceptance to repentance, cited 11 times), *Al-Afu* (the pardoner, cited 5 times), *Al-Halim* (the forbearing, who is most clement). If we refer the *Hadith* literature (collected speeches of the Prophet Muhammed) we can see hundreds of references to both apology and forgiving the persons who, made mistakes. Allah wants Muslims to forgive other people and hide the mistakes of their religious brothers

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Islamic nature of Alims’ mediations penetrated into the metaphors and underlying assumptions of their mediation practices.

## CONCLUSION

In the recent years, there is an increased interest on the study of indigenous conflict resolution tools and methods in different cultural settings. There are many scholars from different disciplines studying different aspects of conflicts and conflict resolution processes with various approaches and perspectives. However, there is still a lack of systematic theoretical frameworks and approaches to the study of the cultural aspects of the conflict resolution processes. In this study, I employed a two level approach (thick description and thin description) to study cultural aspects of conflict resolution processes within the contemporary Turkish context. The existing theoretical and analytical frames for the study of cultural aspects of conflict resolution are very useful, but they are insufficient for an in depth analysis of the meaning systems of dispute resolution practices within a broader cultural context. In the theoretical domain, this study attempts to establish that the theoretical approaches of the disciplines such as Cultural Anthropology and Legal Anthropology can be utilized to broaden the narrow notion of culture in the conflict resolution discipline. Especially for the emic descriptions, various sub-disciplines of Anthropology may provide sophisticated analytical and theoretical tools.

On the empirical level, Islamic dispute resolution methods and processes in the contemporary Turkey are examined. There is only a few studies about the communal level dispute resolution practices in Turkey (Starr, 1978; Starr, 1992). June Starr's research, which was conducted in mid 1960's in a Bodrum village is now outdated<sup>77</sup> research, and her research aims also different than analyzing communal dispute resolution methods. With reference to the field research that she conducted in Bodrum and her further researches, Starr argued that Islamic values and metaphors do not play significant role in resolution of communal disputes:

In the Bodrum district, Islamic sayings and metaphors were not quoted in support of a discussion. In a conflict, no sayings of the Prophet were invoked to push a position. It is the lack of all such practical signs among the villagers and Bodrumites that I point to when I suggest that Islamic tenets of conflict

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<sup>77</sup> Today Bodrum is a very different place than it was in the 1960's.

resolution were not a part of daily consciousness. No one knew the customs, rules, and ideas of customary Islamic Law. Nor did anyone know if Islamic structures had actually functioned to resolve disputes in this region during the nineteenth century. In Bodrum, no reference to Islamic sentiments or maxims occurred in the courtroom, as happens in Arab Islamic law countries.

(Starr, 1992; p 179)

We have to note that neither a Bodrum Village Community, nor my research domain can represent entire Turkish society. Islam is one of the most important sources of social values in Turkish society. Although many of the Islamic practices in public sphere are restricted in Turkey, on community level and in certain networks, Islamic values still continue to serve important social and practical functions.

*Alims* are defined as scholars of Islamic legal jurisprudence (*fiqh*) and leading figures of religious brotherhoods (*tarikats* and *cemaats*). In the urban social settings, the practice of Islamic Law (*fiqh*), especially in family, husband-wife, inheritance and commercial partnership dispute cases, is still continuing. People informally consult or resort to the consensual intervention of the *alims*. Although their practices are not so widespread, *alims* perform an important social service by helping to the disputants to resolve their disputes peacefully. Alims' mediation is a flexible and consent based process and the satisfaction level from the *Alims*' decisions are relatively high, but since *Alims* do not have sanction enforcement power some of the disputants may avoid Alims' decisions or may abuse religious sensitivities of other disputants.

Further research may be conducted on the communal level ADR approaches in Turkey. Government can also encourage establishments of various institutions that provide dispute resolution services for the disputants who do not pursue court based dispute settlement processes. There is also necessity for the further studies on the dispute resolution methods of *alims* and other third parties in Turkey. This study may be considered as an initial step for further researches. On the other hand in the Western states which have large population of Muslim minorities, governments can encourage usage of Islamic mediation in civil dispute cases, which take place between Muslims. Mediation techniques and approaches that are presented in this study can be implemented in civil dispute cases in other Muslim communities.

Another important finding of the study is that mainly three clusters of dispute types come to alims are: marital, financial and those related to fights and accidents. Alims pursue different third party roles, different mediation strategies and different

intervention methods in different clusters of cases. In addition to the mediator techniques utilized in the Western contexts, alims also resort to the techniques, which originated from Islamic law, such as *fatwa*, *kisas-diya*, *muslaha*, and *tahkim* (arbitration). On the other hand, except in the financial case, alims very frequently resort to value-oriented techniques and arguments. Origins of these values are usually from the *Koran*, the *Sunna* and the life of the Prophet and his friends. This can create some contradictions and problems for institutionalization in secular states like Turkey.

Most important values and underlying assumptions of alims' interventions are justice; religious brotherhood, and emphasis on community; cooperation; use of both secular and religious metaphors; direct and indirect (metaphorical) communication; responsibility of both alims and disputants is to Allah; fair and just outcome, and privacy (mahremiyet). “*Adalet*”, “*Kardeşlik*”, “*Mahremiyet*”, and “*Bağışlamak*” are the key metaphors of the alims' interventions, and these metaphors penetrate to the entire process of dispute settlement and resolution.

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