Reconstructing Shāfiʿī Jurisprudence for Social-Conflict Resolution in Plural Malaysia: A Doctrinal and Institutional Framework

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ABSTRACT

This article asks how selected principles and methods associated with the Shāfiʿī legal tradition can inform an ethically defensible framework for addressing intercommunal social conflict in plural Malaysia without misattributing later jurisprudential formulations to Imām al-Shāfiʿī (d. 204/820). It adopts a qualitative doctrinal method, reading al-Shāfiʿī's al-Risālah as a primary source, distinguishing his documented method from later Shāfiʿī legal-maxim literature, and examining selected Malaysian institutional materials on community mediation, court-annexed mediation and court-connected ṣulḥ. The article argues that al-Shāfiʿī's insistence on evidence-governed reasoning, disciplined qiyās and rejection of ungrounded juristic preference provides a methodological ethic rather than a ready-made modern mediation code. The maxims lā ḍarar wa-lā ḍirār and the developed doctrine of maṣlaḥah, together with the law of ṣulḥ, should therefore be presented as a layered Shāfiʿī-tradition framework whose later systematisation must be acknowledged. The article proposes a staged community mediation model based on screening, informed consent, balanced participation, impartial facilitation, rights review, written agreement and follow-up. It distinguishes this voluntary, non-court process from civil court-annexed mediation and statutory or procedural ṣulḥ in the Syariah Courts. The proposed model is conceptual and requires empirical evaluation; its anticipated benefits are stated as propositions rather than demonstrated outcomes.

Keywords: al-Shāfiʿī; uṣūl al-fiqh; legal maxims; lā ḍarar wa-lā ḍirār; maṣlaḥah; ṣulḥ; community mediation; Malaysia.

INTRODUCTION

Social conflict in a plural society may arise from competing interests, unequal access to resources, identity-based misunderstanding, discrimination, neighbourhood disputes and disagreements concerning religious or cultural practices. Such disputes do not all have the same character. Some are interpersonal and amenable to consensual negotiation; others involve structural inequality, threats, violence, public-law questions or rights that private parties cannot waive. A defensible framework must therefore distinguish disputes that may be mediated from those requiring investigation, protection, adjudication or public-policy intervention.

The present article narrows its inquiry to a jurisprudential and institutional question: how can selected concepts within the Shāfiʿī tradition inform a voluntary, rights-respecting model for managing intercommunal disputes in Malaysia, and what limits must govern that use? The question matters because the existing manuscript presents al-maṣlaḥah al-mursalah, lā ḍarar wa-lā ḍirār and ṣulḥ as though they were all formulated as a coherent conflict-resolution package by al-Shāfiʿī himself. That attribution is historically and doctrinally imprecise. It also moves

too quickly from classical legal theory to claims about modern community mediation without specifying institutional authority, procedural safeguards or evidence of outcomes.

The argument advanced here is deliberately more limited. Al-Shāfiʿī's own contribution is treated primarily as a method of legal reasoning: authoritative sources, disciplined interpretation, consensus and analogy, together with a rejection of independent preference unsupported by recognised proof. Later Shāfiʿī jurists developed and systematised legal maxims and discussions of public welfare. Ṣulḥ, meanwhile, has a broader scriptural and juristic history and is not reducible to a distinctively Shāfiʿī invention. These strands can be brought into a contemporary conceptual framework, but the synthesis is the authors' proposal, not a historical doctrine authored by al-Shāfiʿī.

Research question, scope and methodology

Research question and objectives

The principal research question is: How, and within what doctrinal and procedural limits, can selected Shāfiʿī legal methods and later Shāfiʿī jurisprudential principles inform a voluntary community mediation framework for social conflict in plural Malaysia?

Three objectives guide the inquiry: (i) to distinguish al-Shāfiʿī's documented positions from subsequent Shāfiʿī legal developments and from the authors' contemporary normative proposals; (ii) to identify the doctrinal relevance and limits of lā ḍarar wa-lā ḍirār, maṣlaḥah and ṣulḥ for consensual conflict management; and (iii) to formulate a staged model with accountable actors, decision criteria and safeguards, while distinguishing community mediation from court-connected procedures.

Doctrinal method and materials

The study uses qualitative doctrinal legal research. First, it undertakes close reading of al-Shāfiʿī's al-Risālah, using Majid Khadduri's English translation as the accessible translation consulted. The analysis focuses on the chapters on qiyās, ijtihād and istiḥsān. The translation's paragraph numbering and chapter headings are used where possible because pagination differs between editions. Secondly, it examines later Shāfiʿī legal-maxim scholarship, particularly al-Suyūṭī's al-Ashbāh wa-l-naẓāʾir, as evidence of later systematisation rather than as direct evidence of al-Shāfiʿī's own wording. Thirdly, it analyses relevant primary normative texts, including Qur'an 49:9–10 and the Prophetic report "lā ḍarar wa-lā ḍirār". Fourthly, it reviews Malaysian institutional sources: the Federal Court's Mediation Division, the Department of National Unity and National Integration (JPNIN), the Department of Legal Aid (JBG), and the Negeri Sembilan Syariah Judiciary's published Majlis Sulh procedure.

The method is doctrinal and institutional, not empirical. It does not include interviews, observation, case-file analysis, outcome statistics or a comparative evaluation of mediation programmes. Accordingly, the article can establish legal and conceptual plausibility, identify institutional examples and propose testable propositions; it cannot claim that the proposed model has been proven to reduce conflict or improve interethnic relations.

Principal categories

For analytical clarity, 'social conflict' means a disagreement involving individuals or groups in a community that has a relational, cultural, religious, economic or identity dimension. 'Community mediation' means a voluntary, pre-litigation process in which an independent neutral assists parties to negotiate their own resolution; the mediator does not adjudicate. 'Court-annexed mediation' means mediation connected to pending civil court proceedings under the judiciary's procedural framework. 'Ṣulḥ' refers to consensual settlement or reconciliation recognised in Islamic jurisprudence; in Malaysian practice the term also identifies formal procedures conducted within the Syariah Court system. 'Legal maxim' (qāʿidah fiqhiyyah) means a general juristic proposition distilled from legal materials and applied to a range of subsidiary questions, subject to its recognised scope and exceptions. 'Maṣlaḥah' refers broadly to welfare or legally cognisable benefit; the more specific term al-

maṣlaḥah al-mursalah denotes an interest not expressly validated or negated by a particular text, and its authority and conditions differ among legal schools.

Al-Shāfiʿī's documented legal method

Text, disciplined reasoning and qiyās

Al-Shāfiʿī's al-Risālah is a foundational work of uṣūl al-fiqh, but it should not be treated as a manual of modern social mediation. Its relevant contribution is methodological. In the chapter on analogy, Khadduri's translation records al-Shāfiʿī's statement: "On all matters touching the [life of a] Muslim there is either a binding decision or an indication as to the right answer. If there is a decision, it should be followed; if there is no indication as to the right answer, it should be sought by ijtihād, and ijtihād is qiyās (analogy)" (al-Shāfiʿī, trans. Khadduri, 1961, ch. XII, §493).

This passage supports a limited but important proposition: legal reasoning is not free-form preference. Where a direct rule exists it governs; where the matter requires inference, the jurist must reason through a recognised method. It does not establish that al-Shāfiʿī endorsed modern mediation, an unrestricted appeal to social utility, or a general power to set aside legal rights in the name of harmony. For this article, the passage supplies a methodological discipline: the proposed model must identify its normative basis, make its criteria explicit and avoid ad hoc decisions by community leaders.

The same discipline is evident in al-Shāfiʿī's treatment of istiḥsān. In the chapter devoted to juristic preference, he challenges a method that permits a jurist to prefer a conclusion without a recognised evidential basis. The relevant argument is not that context and reason are irrelevant; rather, reasoning must remain accountable to recognised sources and methods. The manuscript's earlier claim that al-Shāfiʿī rejected 'extreme textualism' and endorsed broad context-driven adaptation is therefore too sweeping unless supported by specific textual evidence. A more defensible formulation is that al-Shāfiʿī allowed disciplined inference while resisting arbitrary preference.

What cannot be attributed directly to al-Shāfiʿī

The article must distinguish three levels of attribution. First are al-Shāfiʿī's documented positions in al-Risālah and al-Umm, including his account of qiyās and his criticism of istiḥsān as an independent method. Secondly are later developments within the Shāfiʿī school, including the compilation and ordering of legal maxims and later juristic discussions of welfare, harm and the objectives of law. Thirdly are the authors' own proposals for applying these materials to contemporary intercommunal mediation. These levels may be connected analytically, but they are not interchangeable.

In particular, it is inaccurate to state without qualification that al-maṣlaḥah al-mursalah was a principle 'formulated by Imam al-Shāfiʿī' or that he expressly deployed the five necessities as a systematic test for community conflict. The five necessities and maqāṣid discourse received later systematic elaboration, notably in the work of later theorists. A careful article may argue that a contemporary proposal is compatible with certain Shāfiʿī methodological commitments, but it must not present later conceptual vocabulary as al-Shāfiʿī's own formulation.

The relevant principles across the Shāfiʿī tradition

Lā ḍarar wa-lā ḍirār: a Prophetic report and later maxim

The maxim lā ḍarar wa-lā ḍirār ('no harm and no reciprocating harm') is grounded in a Prophetic report transmitted in the hadith literature, including Sunan Ibn Mājah, no. 2340. It is not an original aphorism coined by al-Shāfiʿī. Its later use as a general legal maxim belongs to the wider juristic process of extracting and organising principles from scriptural and legal materials. The maxim is also associated with the broader five-major-maxim tradition and is discussed in later legal-maxim compendia.

Its relevance to mediation is normative rather than dispositive. It supports screening for foreseeable harm, discourages retaliatory escalation and requires that a proposed settlement not expose a party or third person to serious injury. It does not mean that every perceived offence must be settled privately, that a mediator may suppress a complaint to preserve harmony, or that an unlawful agreement becomes valid because both sides sign it. Where there is violence, coercion, intimidation, child abuse, serious discrimination or a significant public-interest issue, protection and lawful referral take priority over a private settlement.

Maṣlaḥah and the limits of public-interest reasoning

Maṣlaḥah is a broad juristic concept, but al-maṣlaḥah al-mursalah has a more specific doctrinal history and is not uniformly treated across the schools. The manuscript's attribution of a developed doctrine of unrestricted public interest to al-Shāfiʿī is therefore unsafe. Al-Shāfiʿī's concern to tether legal judgment to recognised proofs and qiyās must be taken seriously. Later Shāfiʿī jurists and other legal theorists developed more elaborate accounts of public welfare and the objectives of the law. The present article draws on that later discussion transparently, rather than claiming that the fully developed doctrine is al-Shāfiʿī's own.

For the proposed model, maṣlaḥah is used as a constrained evaluative consideration: a settlement should be assessed for its effects on all affected parties, including absent and vulnerable persons; it must not contradict binding law or extinguish non-waivable rights; and its claimed public benefit must be evidenced rather than asserted rhetorically. 'Community harmony' cannot be treated as an overriding benefit that justifies silencing minorities or imposing an agreement on a weaker party.

Ṣulḥ: reconciliation within legal and ethical limits

Ṣulḥ is supported by Qur'anic teaching on reconciliation. Qur'an 49:9 instructs believers to reconcile disputing groups with justice, while 49:10 describes believers as brothers and calls for reconciliation. The qualification 'with justice' is central: reconciliation is not simply the termination of visible disagreement, but a process constrained by fairness. Qur'an 4:128 also refers to settlement as a good course in the context addressed by that verse. These texts provide a scriptural foundation for reconciliation, but they do not establish that every dispute is suitable for mediation.

The classical law of ṣulḥ was developed by jurists across the legal schools. In Malaysia, the term is also embedded in formal Syariah Court processes. Ramizah Wan Muhammad's study of ṣulḥ in the Malaysian Syariah Courts discusses its legal position, officers and procedure. Thus, ṣulḥ should be treated as a legal-ethical concept with a distinct institutional expression in the Syariah Courts, not simply as a synonym for all community mediation.

Later Shāfiʿī legal-maxim scholarship

Later Shāfiʿī jurists collected and systematised legal maxims in works such as al-Suyūṭī's al-Ashbāh wa-l-naẓāʾir. This literature is relevant because it shows how general principles were organised and applied to subsidiary legal questions over time. Egypt's Dar al-Ifta's institutional overview of legal maxims similarly explains that maxims were distilled from scriptural and juristic materials over an extended period and identifies al-Suyūṭī among the major Shāfiʿī compilers. The article should therefore use the expression 'principles within the later Shāfiʿī legal tradition' where appropriate, rather than repeatedly labelling each maxim 'the thought of Imam al-Shāfiʿī'.

Malaysian institutional landscape: distinct pathways

Voluntary community mediation

JPNIN describes mediation as a process in which a neutral third party assists disputants to reach a mutually agreed understanding. Its public information identifies community mediators and lists matters such as neighbourhood, family, land, environmental, consumer and other disputes as potentially suitable. This is a relevant example of community-level dispute management. It should not, however, be represented as a court process or as proof that every interethnic dispute is eligible for mediation.

Kuala Lumpur City Hall's Community Mediation Centre (Pusat Mediasi Komuniti) provides another municipal example. Its published description emphasises voluntariness, confidentiality, impartiality and party control over outcomes. These are useful procedural standards for the authors' proposed model. The centre's remit is geographically and administratively specific; it should not be generalised into a nationwide statutory scheme.

Court-annexed civil mediation

The Office of the Chief Registrar of the Federal Court states that its Mediation Division was established on 1 June 2016. Its functions include establishing and supervising court-annexed mediation centres, training and advising state centres, formulating policy and managing national information. The same official page reports 18 court-annexed mediation centres operating nationwide at the time of access. The judiciary also identifies Practice Direction of the Chief Justice No. 2 of 2022 as governing mediation management and procedure in civil proceedings in the High Court and Subordinate Courts.

Court-annexed mediation is connected to civil proceedings and operates within judicial rules and case-management structures. It must not be conflated with informal community mediation, which is generally pre-litigation and depends on the parties' voluntary participation. The existence of court-annexed mediation does not confer judicial powers on a community mediator.

Syariah Court ṣulḥ

The Negeri Sembilan Syariah Judiciary's published procedure describes a process beginning with case registration and screening by the Registrar, referral of suitable cases to a Sulh Officer, notification of the parties and a session chaired by that officer. The described stages include opening explanations, each party's presentation, joint discussion, possible separate caucuses, negotiation and either a written settlement for judicial endorsement or return of the matter for adjudication if settlement fails. This is a court-connected procedure, not a generic neighbourhood mediation scheme.

The Federal Territories Syariah Courts describe the statutory basis for ṣulḥ under section 99 of the Syariah Courts Civil Procedure Act (Federal Territories) 1998, which allows parties in proceedings to enter ṣulḥ at any stage in accordance with prescribed rules or, where absent, Hukum Syarak; section 131 addresses recording consent judgments, including ṣulḥ. The relevant law is jurisdiction-specific and should not be assumed to apply identically in every state. JBG also offers mediation services under its statutory framework, with published eligibility limits and exclusions. Its mediation process is another distinct institutional pathway.

Proposed Community Ṣulḥ-Informed Mediation Framework

The following framework is the authors' normative proposal. It is informed by the ethical and methodological resources discussed above, but it is not a historical procedure prescribed by al-Shāfiʿī, nor does it replace existing Malaysian legal processes.

Actors and responsibilities

- Parties to the dispute: identify issues, provide information voluntarily, consider options and retain control over whether to settle.
- Community referral coordinator (for example, a trained JPNIN or local-authority officer): receives referrals, explains the process and screens for suitability; does not decide the merits.
- Independent mediator: facilitates communication, manages the process impartially, tests whether participation is voluntary and records agreed terms; does not impose a decision.
- Safeguarding/legal referral officer: identifies violence, threats, child-protection concerns, discrimination, criminal conduct or non-waivable rights and refers the matter to competent authorities or legal services.

- Interpreter or cultural adviser: assists communication where requested, without speaking for a party or controlling the outcome.
- Independent support person or legal adviser: assists a party facing language, disability, financial, status or power disadvantages.
- Monitoring body: reviews anonymised process data, complaints, mediator conflicts and referral outcomes without disclosing confidential negotiation content.

Stages, decision criteria and safeguards

Stage	Responsible actor(s)	Decision criteria / action	Safeguards
1. Intake and referral	Coordinator; referring agency	Record parties, nature of dispute, urgency, affected persons and referral source.	Explain that mediation is voluntary; protect personal data; no promise of confidentiality beyond lawful limits.
2. Suitability and risk screening	Trained screener; safeguarding officer where needed	Check violence, threats, coercion, serious power imbalance, criminality, child safety, public-law issues and whether all affected rights-holders can participate.	Do not mediate where safety or meaningful consent cannot be secured; refer urgent or non-mediable matters to competent authorities.
3. Informed consent and preparation	Mediator; parties; support persons	Explain role, process, costs, confidentiality limits, right to withdraw, possible outcomes and access to advice.	Obtain separate, informed consent; provide interpreters, accessible formats and cooling-off time; no retaliation for refusal.
4. Appointment and conflict check	Mediation provider	Select mediator with relevant competence and no material connection to either party.	Disclose conflicts; allow challenge or replacement; ensure gender/cultural competence without assuming identity determines viewpoint.
5. Opening and issue definition	Mediator; parties	Agree ground rules, agenda and issues; distinguish facts, interests, needs and non-negotiable legal rights.	Equal speaking time; no intimidation, slurs or threats; mediator may pause or terminate session.
6. Dialogue and option generation	Mediator; parties; advisers if appropriate	Explore options and foreseeable effects on each party and affected third persons.	Private caucus only with clear confidentiality rules; do not use caucus to pressure or manipulate; check understanding and bargaining power.
7. Rights and fairness review	Mediator; parties; independent legal/safeguarding referral where required	Test legality, feasibility, proportionality, voluntariness, distribution of burdens and effects on minorities or absent persons.	No waiver of non-waivable rights; no agreement contrary to law or public policy; legal advice for complex property, family or status issues.

8. Agreement or exit	Parties; mediator	Record only terms freely accepted; specify actions, timelines, responsibilities and review mechanism.	Read-back in each party's language; allow independent review/cooling-off; parties may leave without penalty; no settlement is also a valid outcome.
9. Follow-up and evaluation	Coordinator; parties; monitoring body	Check implementation with consent; record anonymised process indicators and referrals.	Keep confidential content separate from evaluation data; provide complaint route; monitor adverse effects and unequal outcomes.

Thresholds for suitability and termination

The model should not accept a case merely because a local leader believes that mediation would preserve harmony. Mediation is presumptively unsuitable where there is an immediate threat to life or safety, credible intimidation, domestic or sexual violence, child abuse, severe coercive control, a serious criminal allegation requiring investigation, or a dispute about the validity of public action that requires an authoritative legal determination. It may also be unsuitable where one party cannot participate meaningfully, where the dispute affects absent rights-holders, or where the proposed agreement would waive statutory or constitutional protections. A mediator must suspend or terminate the process if these risks emerge.

Impartiality requires more than appointing a respected local figure. A mediator must disclose relationships, financial interests, institutional loyalties and prior involvement. Parties must be able to object. Where a dispute is framed as an interethnic or interreligious conflict, no party should be presumed to speak for an entire community. Minority representatives must be selected by the affected parties themselves, and individual parties must not be compelled to accept a collective leader's position.

Community mediation and court-connected pathways

The proposed community model is an optional, voluntary pre-litigation pathway. It does not create a new court jurisdiction, confer enforcement powers on a mediator or displace statutory complaint mechanisms. If parties have filed proceedings, the case should proceed through the relevant court's mediation or ṣulḥ pathway where legally available. A community settlement requiring enforceability, judicial endorsement or determination of legal status must be referred to the appropriate court or legal authority. The mediator must explain that a private memorandum is not automatically a court order.

Propositions for future evaluation

Because this is a doctrinal and conceptual study, the following are propositions for empirical testing, not established findings:

- P1: Where participation is genuinely voluntary and parties have comparable opportunities to speak, community mediation may improve perceived procedural fairness compared with unstructured informal negotiation.
- P2: Early screening and referral may reduce the risk that mediation is used in cases involving violence, coercion or non-waivable rights.
- P3: Independent mediators with cultural and language competence may improve parties' understanding of the process, but competence should be assessed through training and feedback rather than presumed from ethnic or religious identity.
- P4: Written agreements with clear responsibilities and follow-up may improve implementation rates, although this requires longitudinal evaluation.

- P5: A transparent referral relationship between community mediation, JPNIN, local authorities, JBG and courts may reduce procedural confusion, provided confidentiality and jurisdictional boundaries are maintained.

Evaluation should measure not only settlement rates but also informed consent, withdrawal rates, perceived impartiality, repeat disputes, implementation, participant safety, minority-party experience, complaints, referral appropriateness and whether weaker parties felt pressured to settle. High settlement rates alone are not evidence of justice.

DISCUSSION

The reconstructed framework uses the Shāfiʿī tradition in a carefully delimited way. Al-Shāfiʿī's insistence on disciplined proof and qiyās cautions against arbitrary decision-making by mediators or local authorities. The later maxim of preventing harm provides a useful ethical screen, while maṣlaḥah directs attention to the effects of a proposed settlement on the wider community. Ṣulḥ supplies a normative language of reconciliation, but Qur'an 49:9 makes justice integral to reconciliation. Taken together, these ideas support neither forced consensus nor the concealment of structural injustice.

The model also recognises that mediation is not a substitute for law. A dispute involving minority rights, discrimination, safety or the exercise of public power may require remedies beyond private agreement. A settlement that merely restores surface calm while leaving a vulnerable party exposed to harm is not a successful outcome under the proposed framework. This is why consent, impartiality, independent advice, rights review and referral are structural requirements rather than optional procedural details.

The Malaysian examples demonstrate that mediation already exists in different institutional forms: community mediation associated with JPNIN and local authorities; civil court-annexed mediation under the judiciary; Syariah Court ṣulḥ; and JBG mediation. These pathways have different legal bases, eligibility rules, purposes and consequences. The proposed model should therefore operate as a carefully bounded community-level framework that complements, rather than conflates or replaces, existing institutions.

CONCLUSION

This article has asked how selected Shāfiʿī legal methods and later jurisprudential principles can inform a voluntary community mediation framework for plural Malaysia. The answer requires historical and doctrinal precision. Al-Shāfiʿī's documented contribution lies in evidence-governed legal reasoning, qiyās and the rejection of ungrounded juristic preference. The systematised legal maxims and developed discussions of maṣlaḥah belong to a later juristic history, while the contemporary staged mediation framework is the authors' proposal. Ṣulḥ is grounded in Islamic sources and juristic practice and has a distinct institutional expression in Malaysia's Syariah Courts.

The proposed model links screening, informed consent, impartial facilitation, equal participation, rights review, agreement and follow-up. It distinguishes voluntary community mediation from court-annexed civil mediation and court-connected ṣulḥ. Its safeguards are designed to prevent the language of harmony or public benefit from legitimising coercion, silencing minorities or overriding legal rights. The anticipated benefits remain propositions requiring empirical testing. Future research should pilot the framework with independent oversight and evaluate procedural fairness, safety, implementation and the experience of less powerful parties.

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