Legal Regulation of Mediation as Alternative Means for Dispute Settlement " A comparative analysis Study "

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Article Info

Received:18.07.2016
Accepted: 26.08.2016
Published online:01.09.2016

ISSN: 2231-8275

Abstract

Refuge becomes as means of alternative dispute resolution at the present time, it is a urgency matter to meet the evolving requirements of life, and that the courts are no longer able to face this phenomena individually. With the continued development of trade and services, and the resulting complexity of the transactions, and the need for speed and efficiency in adjudicating disputes, and specialized by how looks of these disputes or contribute to solve, Which has necessitated the deepening of studies on the mechanisms and texts and exceed the classical concepts of justice and expansion perspective for it to take a new dimension to respond to the frequent rises in the number of cases and the available means to resolve them , and think of alternative means to resolve disputes , because the reality of the judiciary became suffers from constraints and problems related with a lot of issues and a lack of resources financial and human efficient and specialization.

In order to minimize or reduce these shortcomings, it has been resorting to alternative methods for the elimination of settling disputes, such as mediation and conciliation and arbitration.

Mediation, in fact, it is only a new legal regime appeared as a result of changing the concept of peoples to social justice, and aims to resolve the disputes and to achieve harmony between the conflicting parties in a non- traditional is characterized by flexibility and speed in deciding and maintain confidentiality in addition to the participation of the parties in finding solutions to their disputes. The subject of the legal nature of the mediation considers as an issues that have not spread dramatically in the arbitration as is the case for that show several questions on the subject and is what is the legal nature r? What are any technical means by which it can end the conflict by mediation and the original claim disputed where? Is that mediation resolved the conflict by moving the disputed rights, or do you have an impact carrier? Or if the role is limited to the disclosure of these rights. This is because the termination of the mediation to accept the parties of the conflict recommendation by the mediator and signed with the mediator to end the conflict , so the final decision of the Executive has a force after ratification of the judiciary, and therefore the mediator 's recommendation becomes obligated for both sides , and that means that the mediation impact essentially is to end the dispute and spare rivalry on the one hand and it owns what is result for mediation on the other hand.

Accordingly, the mediator work for the disputed rights of the detector to the right doesn't have origin, but for mediation instead he conveyor it , so should be noted that there is no agreement among legal scholars about determining the legal nature of the mediation , so there is more than one opinion , because of the legal bases , the reasoning juristic , philosophical and their justifications about the nature of mediation and on this basis we discussed the legal nature of the mediation in the first two chapters we specialized one to talk about mediation in general terms and we divided for two sections:

The first section: the concept of mediation and its stages

The second section: The advantages of mediation and distinguish between mediation and some have similar systems

The second chapter we concentrated o indicate the legal nature of mediation and in three sections:

First: the legal nature of mediation in general

Second: Nature revealer for mediation

Third: Nature transferring the mediation

1- Introduction:

The human soul by nature is prone to evil, it is also inclined naturally to the passion of possess, selfishness and monopolizing all good even if it was at the interest of the other; there is no doubt that this may affect human relations with each other which may cause interests and desires to intertwined and conflicted and this probably leads to dispute and conflict; as this is the cause of corruption, failure and disperse and its removal is required legally and legitimately. Because law is the mirror of reality and society for representing a direct reflect to its needs, aspirations and requirements, we should quest to find solutions for any dispute. Since the past, judiciary is still a way to settle disputes but life in its nature is developing and changing that may causes laws to be changed continuously in order to be able to resolve all the emerging problems and dilemmas; but whenever the expansion of law, the more abounded lawsuits brought before the court. Development is continuous in society and the diversity of transactions led to overtax judges and backlog lawsuits; at mean time, it made citizens bored from the length of period concerning settling these disputes as a result of legislative inflation, the phenomenon of dumping in formalities and procedural complexities, the unwillingness of litigants to implement a part or all these procedures, not to forget the expenses that burdening the litigants because the high cost of litigation (whether it was judicial fees or the expenses that the litigant has to pay represented in the expenses of experts, lawyers and interpreters), led to slowness in judicial procedures to settle disputes or keeping files without finding a solution for the dispute or even breach occurrence in equality principle in addition to the possibility of the lawyer or judge not to understand the problem that the dispute was occurred about that will lead in many cases the judgment will not be satisfactory for the disputed parties especially when not considering their mutual interests, or what the ruling may resulted in of damages concerning the interests o either party or both of them.

Justice that is based on agreement is more positive than justice applied by the judge depending on abstract legal texts; it became necessary to seek alternative means to settle disputes and making new systems and regulations that ensure dealing with cases and lawsuits which represented in satisfying judiciary for both parties and effective justice out the court with minimum efforts and less expenses in order to compensate the aggrieved and end the disturbance resulted from conflict as well as reconcile the litigants by consent and agreement. The concept of litigation before justice differs from resorting to one of the alternative methods to settle disputes, because resorting to the traditional way in settling disputes

between all people, where each citizen has the right to resort to the judge assigned by the government to issue a judgment regarding conflicts and issued submitted before him; while the alternative ways to settle disputes are the methods that the litigants resort to settle their disputes. Subsequently, these methods end their disputes in a fast, fair and active way as they ensure the flexibility and freedom that are not available in choosing the person or persons (mediator, arbitrator and intervener) who they trusted in and reassure them. Experts agreed to divide the alternative methods to settle disputes for four methods: negotiation, conciliation, arbitration and mediation that are representing a way of justice that is too old or in other words it is older than law justice. Mediation represents a professional procedure that is easy for everyone to be benefited from and reduces the burdens on judges, as well, it is useful in settling cases very friendly and by both parties' agreement.

1-1 - Hypothesis of the Study

This research sheds the light on mediation concept for being leading to dispute settlement friendly between the litigants by the intervention of a neutral third party that makes the mediation process and tried to reach an agreement between them until settling their dispute, but this subject is considered as one of the subjects that are not spread dramatically such as arbitration, so there are some questions arose about this concern such as what does mediation mean?, What are its characteristics and conditions?, How to start mediation?, how to be ended? What is its legal nature? and what is the technical method through which mediation could settle the dispute and show the disputed right of the person? Does mediation settle the dispute by transferring the disputed rights, does it have a transferring impact? Or its role is limited to revealing these rights?

1-2- Research Problem:

This research reveals that in spite of the importance of mediation in the legal system in most worldwide countries and enacting it in the comparative legislations with ratifying the international agreements which included the legal framework to be applied, but the Iraqi law does not apply the mediation by legislating a special act or the existence of special section in its legislations such as the other Arabic and foreign ones for example the Jordanian Mediation Act 2003 based on Uncitral model act for international commercial reconciliation 2002 in addition to the special basis of mediation such as mediation basis of world intellectual property organization (wipo) and the Arabic subsidiary system TO SETTLE DISPUTES IN Cairo. But it was mentioned in Baghdad stock exchange No. 24 of 1991 which is recently called (Iraq stock exchange) under the order of coalition authority No. 74 of 2004, where this act was limited to mentioning how the mediator intervenes in securities accounts excluding the idea of mediation as a way to settle disputes friendly such as the other friendly ways such as arbitration, reconciliation, negotiation and other ways.

1-3- Significance of the Study:

The importance of this research is that controversy is still existing about mediation till now regarding its ability to bind the litigants to follow the suggested solutions in order to settle their disputes. Thus, it is the time to reconsider the applied legal rules in each state either by amending them legislatively or by changing their concept to have an active impact in settling disputes in peace without resorting to courts and judiciary complexity.

1-4- Research Structure:

In order to fathom this topic, the research methodology has necessitated to split it into two chapters the first chapter is associated with talking about the mediation in general where this chapter will be of two sections the first will discuss the concept of mediation and its levels while the second section will be devoted for stating the features of mediation and distinguishing between them and the other similar systems; Furthermore, the second chapter will be associated with clarifying the legal nature of mediation within three requirements, the

first requirement will study the legal nature of mediation in general and the second one will talk about the revealing nature of mediation and in the third requirement we will deal with the transferring nature of mediation. And finally, we will conclude this research with the conclusion with includes the most important conclusions and recommendations which we request the Iraqi legislator to follow regarding mediation.

2- Chapter One: Mediation concept comparing with other concepts:

Mediation is a new legal system that was appeared as a result of changing the concept of peoples regarding the social justice, it aims to solve disputes between individuals in a non-traditional way; the humanity development caused complexity in relations and transactions for its increased number and this matter requires new interpretation to face that development and find a mechanism by which we can face it. Mediation found a solution for the human need for quickness in settling disputes and not being increased in the courts in order to alleviate a part of judges suffering as a result of lawsuit increasing number and continuity in delaying them. Mediation in its reality is an alternative method to solve the dispute between the disputed parties. In order to know what is intended, we have to state its concept and distinguish it from the other similar means that are used to settle disputes between individuals.

2-1-The First Requirement: The concept of mediation in its levels

2-1-1- First: Linguistic and terminological definition of mediation:

Mediation in language:

It is the noun of mid, which is the thing between the two tips of something; the mid of the thing: is in its middle such as the Ayah "And so we have made you a median nation" (souret elbakara:143), amid of the folk, the mediation and to be mediated in the right and wrong.

Mediation: is mediating between two matters or persons in order to settle their dispute by negotiation, the mediator is the person who mediated between the disputed parties(Abu Al-Azim, and Ibn Mandhoor,1970,p.177). Mediation in this meaning may appear in many concerns such as political and commercial concerns.

Mediation in Jurisprudence and legal terminology:

There are many terminologies for mediation, it was defined as a way of those that are used to settle disputes which depends on a fair, neutral and independent third person to settle the outstanding dispute by making and agreement between the disputed parties and suggesting practical and logical solutions in order to find a compromise formula and a solution that is satisfactory for both parties without imposing any solution or binding dicision(Al-Hady,2009:4 and Al-Khair Qeshi,1999,p.84) .

Furthermore, mediation also is known as "a one of the legal modern methods to settle disputes that is resorted to find practical solutions for the slow justice as it considered as a way to reach agreement between the disputed parties by the intervention of a third party which is a friend for both parties, trying to make them close to each other for the purpose of reaching a friendly settlement. The third party may have intervene by himself or by a request of either parties and this person usually suggests suitable suggestions that is satisfied both parties without coercion o pressure to reach suitable solutions settling the dispute"(Al-Msaaeda and Saad Zaghlool,2009,p.289).

Mediation also known as "the process that is made by a third party called the mediator who tries to help the disputed parties to meet with each other, negotiate and convergence views for reaching an acceptable solution accepted by both parties; it is an alternative method to settle disputes that is based on providing a meeting for the disputed litigants to meet each other, make a dialogue and converging views by the aid of a neutral person, trying to mediate in settling the dispute (**http//www.bambooweb.com/articles/m/mediation.html.**).

While by law, the third paragraph of first Article of Unictral Model Act 2002 for international commercial conciliation, has defined mediation as "any process whether referred to by the term conciliation, mediation or any other expression of similar significance, where a person or persons ask someone (mediator or mediators) to help them in their quest to reach a friendly agreement for their dispute arose from a contractual relation or any other legal one; the mediator has the authority to impose dispute settlement over the two parties (Al-Zenaty,2003,p.87).
For what was mentioned above, we can say the mediation in its reality represents one of the alternative means that is used to settle disputes and it is a voluntary process that based on the disputed parties will, where those disputed parties with a third person called the mediator which is fair and neutral, try to find a solution accepted by both parties to end this dispute by using dialogue for evaluating the legal points for them under secrecy cover. Mediation may not be an active way in settling these disputes only if the litigants participate in the mediation procedure and were actually willing to reach a solution to end this dispute; from this point e could say that mediation is a judicial process or complementary process, as it is not a process that makes the litigants nervous and uncomfortable but it is designed to give the disputed parties equal roles and responsibilities, that gives each arty the suitable chance to express his point of view; after that the mediator determines their needs and actual interests aided by the parties as well helping them to find mutual goals.
The mediator does not make the decision but use a number of skills that enhance the parties ability to negotiate reaching to a satisfactory settlement for all disputed parties.
Thus, mediation ensures transferring the litigants from the prospective seats to ruling once that make them contributing in making their ruling, helped by the mediator. Mediation seeking the collective profit or by other words reaching an agreed solution not an imposed one; in case reaching a solution, the most important thing that mediation ensures is all parties interest neither of them will lose nor the other will win but both of them are winners.
Mediation in this meaning includes many concerns such as judicial mediation (Abdulhameed,2003,p.4), private mediation(Al-Zenaty,2003,p.88) and agreement mediation (Goldsmith,1996,p.221). All these different concerns aim to settle disputes friendly through agreement and conciliation between the disputed parties by more flexible procedures to avoid the litigations procedures before the courts that may alleviate backlogging lawsuits at courts and achieve the litigants' interest in settling the dispute using the most easy and fast way as well by minimum expenses (Knakerea and Al-Qatawena,2001,p.82-85).

2-1-2- Second: The Mediator (definition and requirements):

We had previously defined mediation as a voluntary process by which the disputed parties agreed to work with a neutral person who exerts efforts regarding the dispute points and suggested solutions to solve the outstanding dispute between them, with giving the disputed parties the full power to accept the mediation or refuse it; there is no doubt that the existence of a third neutral person who converges the views between disputed parties helps in settling the dispute.
This person is called the mediator who has the responsibility of converging between the litigants' interests; the mediator may be a natural or juridical person that has a friendly relations with the disputed parties or he may be a well-trained person to do so. In addition to that, he may be a professional person (gains wages due to that) or may be a volunteer; the mediator may work by himself individually or within a private association.
The person who plays the mediator's role shall has certain conditions in order to do his job fully and achieve the intended goal. Tokyo symposium has determined these conditions accurately and decided that "the mediation shall has the human spirit and willing to serve the society and solving its problems, besides the legal and psychological knowledge that helps in

devising practical solutions. In order to be able to play this role, he shall be independent and neutral as he should not be a judge in the dispute in case his failure in mediation (International Symposium- Tokyo,1983).
There is certain conditions (Bu Belabed ,2003,p.12) that the mediator shall have as follows:

1- The ability to go deeply:

It is a valuable feature that must be available in the mediator to make confidence; it solidified the relationship and unify performance between the disputed parties, this ability is represented in the mediator's taking care of the litigants' relation and reaching to their feelings in order to converge views between them for the purpose of reaching a solution accepted by both parties and without this valuable feature, the mediator will not has this honest desire to understand the dispute.

2- The ability to understand:

This feature arose via hearing the disputed parties and asking them various questions related to the dispute occurring between them; where hearing the litigants and asking the questions is considered as a strong and active procedure to understand the dispute as well as identifying the significant points of dispute and this procedure has a great impact in passing the level of discussing the dispute towards creating a unified collective view preparing to make friendly relations between the disputed parties.

3- The ability to identify the source of dispute and its reason:

The main base for the success of any mediation is represented in the mediation's separation between things related to the disputes from other thing otherwise, thing that have meaning from the other that do not have in order to identify the main reason of dispute and trying to settle it by reminding the disputed parties that the past has passed and the future will delete any dispute between them.

4- The ability to inspire the spirit of personal responsibility and setting the dispute:

The mediator shall exert his best efforts to convince the litigants to bear the personal responsibility of themselves in the dispute, for the success of mediation process and reach a peaceful solution that ends the dispute.
The mediator must be fully aware that each dispute must have an end and saying that there is no way to settle the dispute is an illusion that shall not believe in. Each dispute must have satisfactory solutions represents new stage between its litigants that the mediator could reach for what he has of skill, experience and knowledge in the legal, academic and practical concern in a way which enables him to lead the mediation process and achieve the intended goal with high efficiency (Salam,2003,p.17).

5- Legal experience and transparency:

Often the mediator that was chosen by the litigants is of a good experience and legal knowledge, because this matter has a great impact in achieving the parties convenience to reach a satisfactory solution that ends the dispute. The mediator shall also has the feature of transparency for the implications of clarity in the mediator's personality and his leading to the mediation process; in addition to that the mediator shall clarify all these levels such as fees, expenses, technical experience and the difficulties that face him in the process of mediation.
It is worth mentioning that the request from the mediator is not binding for him because this mediator may refuse the request for whatever reason whether his refusal relates to the subject, persons, his neutrality or independence; binding the mediator with mediation may lead to the process failure if the mediator does not have the success qualifications that require him to be close to the subject of dispute or the persons (Goldsmith,1996, D 15).
The mediator does not have any authorities or real power over any of the dispute parties and if he does not express his point of view may not make his role active in settling the dispute(American Arbitration Association (AAA). Thus, in order to achieve the intended

aims of mediation it is better to give the mediator some powers such as imposing fines when delaying in submitting requests or replying them or upon failure to attend the mediation sessions etc…

The previous mentioned conditions was clarified in Unicitral model law for international commercial reconciliation when it defined mediation and specified the role of the mediator in paragraph 3 of Article one that clarified that mediation is a process by which dispute is settled friendly by the mediator attempting to reach a friendly solution for the contractual or legal dispute without having the power to oblige the litigants to accept the solution, this means that mediation is made by the free will of the disputed parties to resort to this process as a way to settle disputes; this also includes stripping the mediator from obligation powers of accepting mediation or continuing in it, the mediator's work is limited to the attempt to converging views between the parties as they have the right to accept his directions or refuse them.

The mediator's role is limited to helping them to talk about their problems without any constrains, helping them to focus on the real basis of dispute and how to reach a solution, converging views, helping to defuse the row via suggesting alternative solutions before them with no intervention to impose it on them.

The mediator is not bending to follow the legal bases in sessions such as administrating oath and he must not meet with any party without the knowledge of the other so as the other's confidence does not be shaken by one of the disputed parties.

For what was mentioned above, we could see that the mediator's role is the core of mediation system, because he plays a central role in this process, as mediation depends on him in its success, so the conditions and features must be fulfilled in order to be able to achieve his goal in settling the dispute friendly (Salam,2003,p.17) .

2-1-3- Third: Mediation levels:

Mediation has three levels represented in the pre-mediation, during mediation and post-mediation levels as follows (Julam,2008,p.97):

1- Pre-mediation level:

The mediator (especially if he is a lawyer) plays a significant role to success the mediation process, as soon as he is chosen and assigned by one of the litigants and before taking any procedure, in order to be a positive participant, he shall explain the mediation and distinguish between mediation and reconciliation as defining the parties who must attend the mediation session; as well specifying the role of each party during the meeting with the mediator, beside that, the mediator shall make the party chosen him with the chance that will be available to clarify his dispute before him more than any other judicial authority as his participation could help more to find the solution because he will speak freely and the mediator will listen to him; Moreover, the mediator will explain to the disputed parties that the mediation success depends on his readiness to negotiate as he shall explain to his client that his role lays in facilitating and evaluating matters to make sure of his client's readiness to face his foe (whether at the same session or by sitting separately with the mediator) (Al-Manea,2006,p.35). Finally, make a discussion with the client about the results that he would like to reach regarding the conflict with considering the priorities of the client and his various interests such as keeping his position, a trademark, reaching a legal solution that shall not affect the commercial interests in the future between him and the other party in the future, in addition to helping the other party to understand the aims and requirements of his foe, focusing on that the period which any dispute takes before courts that may cripple the movement of concerned parties, for that the mutual interest to find a solution is acceptable in this case and the mediator shall but himself in the place of the other regarding understanding his aims, interests and requirements in order to understand the attitude of the later to reach the

possible options for benefitting these interests. Instead of the mediator's focusing on the financial interests he shall discuss with his client the methods that may expand the understanding as he has to try out options to specify whether the solution matches the parties interests and to make reassure his client that understanding with other party does not mean reaching a final agreement because mediation failure is possible(Knakerea and Al-Qatawena,2003,p.85) .

2- During mediation level:

We have to notice that the success of mediation depends on the attendance of all parties and their participation in this process because their non-attendance in the mediation process may causes the process's failure especially regarding who has an active role in settling the dispute in addition to providing the opportunity for each party to explain his image of the dispute or the solution. This process is the first chance for the disputed parties for the direct discussion between them, making sure to give the opportunity to each party to display his dispute, determining the aims and interests wants to reach and the needs to be fulfilled in the agreement.

3- Post-mediation level:

If the parties reached a total or partial agreement regarding the dispute, then the mediator shall write the essential points that he needs in the final resolution of the agreement that shall be written at that time after the session ends, in which he remarks the solutions that are reached and a copy of this agreement shall be deposited in the file and copies of it shall be delivered to the parties.

For what was mentioned above, we could summarize the levels of mediation as follows (Bu Belabed,2003,p.20-22):

1- Contracting: In this level the mechanism of mediation shall be explained and the ability of mediation to settle the dispute as putting the essential bases for the work and determining the roles of disputed parties.

2- Dealing with the dispute subjects: By specifying and collecting information as well as specifying the subjects of agreement and difference between the disputed parties and determining the matters that must be resolved.

3- Dealing with the dispute: By identifying the types of dispute, concerning the divergent news by separating the legal facts and the parties priorities then reconsidering the dispute.

4- Developing and evaluating options: By suggesting options then evaluating them regarding the goals and their suitability to the benchmarks and after that the options shall be examined and choosing the most important of them.

5- Reaching an agreement: By drafting a draft for the final agreement to be reviewed by the parties, lawyers, advisors and accountants, to be executed thereafter (Al-Manea,2006,p.35).

While regarding the mediation process end, this may be represented in one of the two following cases:

First case: The mediator's reach to friendly dispute settlement between the parties: if the mediator reach a friendly settlement for the dispute and the settlement agreement was ratified by the disputed parties, the mediation process will be ended at the time of ratifying the settlement agreement(Al-Khair Qeshi,1999,p.85-88). In which this agreement after been ratifies shall be binding and obliged to applied as an absolute ruling that may not be appealed.

Second case: The mediator could not reach a friendly settlement of the dispute between the parties: under this case we could list a range of reasons that if one of which does not exist, the mediation process will be ended; for example of these reasons is that the mediator, after consulting with the dispute parties, may issue a declaration stating that there is no reason to exert more efforts or either parties may issue a declaration addressed to the other party or the other parties or the mediator stating ending the reconciliation procedures, or the parties

absence from the mediation sessions without any acceptable execuses(Knakerea and Al-Qatawena,2003,p.86).
The mediator, after the end of the mediation process, shall return the diaries and documents to the parties that they had submitted during the process of mediation and shall not keep copies of them. Finally, the mediation process has been ended and the dispute was referred to judiciary or arbitration to be settled; because the mediator shall not play the role of the judge or the arbitrator in any arbitrational or judicial procedures regarding the dispute subject unless the act of the court which review the dispute stipulates the possibility that the mediator could play the role of the judge or arbitrator or the disputed parties issued a written authorization to play this role(Al-Msaaeda and Saad Zaghlool,2009,p.301).

2-2- Second requirement: Mediation specifications and the differences between mediation and other systems:

2-2-1- First: Mediation specifications and benefits:

Mediation is an alternative way to settle disputes, that is signified with many specifications which made it the most active alternative solutions to settle disputes, these specifications are as follows:

1- Privacy and Confidentiality: Negotiation or understanding must be confidential and this is the main condition in mediation, the disputed parties often prefer to solve their problems away from the public procedures of courts, then the disputed parties who resorted to a mediator shall be binding not to disclose any of what was mentioned before the mediation in case the latter's failure. As they shall not claim any of what was waived before the mediator in case the dispute is displayed before the court as long as this waiver occurred under understanding and mediation in a secret session, then mediation is considered as a guarantee for the parties and protection against aligned or favoritism because it keeps this confidentiality that encourages the disputed parties to resort to that system. Furthermore, confidentiality helps the litigants to reach a satisfactory solutions via the either parties acknowledgment upon himself or disclosing papers or documents that may not be disclosed by the person if he knows that they will be submitted before the judge. This confidentiality prevents the judge to call the mediator for addressing his testimony about what was occurred in the session (Abdulmuhsin ,200,p.22).

2- A third neutral party (mediator):

The mediator helps the parties to find solutions that satisfy all of them. Dialogue sometimes branches and deals with issues and historical conflicts that may not serves the parties' interests regarding the dispute. The mediator, as a third neutral person, may see what the parties may do so, thus he helps them by suggesting some solutions (Mohammed,2010,p.54) to settle the dispute. The mediator shall be neutral, honest, professional and patient because these are factors that may give mediation the power, because solving the issue by the mediator who has the legal and technical information as well as the judge and parties confidence, is considered as another guarantee that the judge does not have who issues his ruling regarding the conventional disputes submitted before the court. Confidence in the mediator, his efforts and intelligence to convince the parties to waive and amend their legal positions to reach a suitable solution, made them assured to his neutrality and choice the satisfying solutions, for that the mediator does not considered as the good willing man only but he is a man full of humanity and qualified to listen, discuss and provide the solution that helps the parties in settling their dispute((Abdulmuhsin ,200,p.24).

3- Quickness and mediation expenses limits comparing to the court expenses: Mediation saves time, effort, fees, expenses and charges as its suitability of its sessions times besides its place for the disputed parties; resorting to the court may make the parties bear fees and

expenses as it takes long time of mediation procedures because the dispute could be settled by the mediation mostly in one or two sessions for that the mediator and the parties had evaluated the successful results for agreement and conciliation in an early time to reach a solution better than wasting time to reach the full right, while the court's procedures require more time and what is follow of fees and expenses as well as the efforts that may be avoided by resorting to mediation system.(Al-Msaaeda and Saad Zaghlool,2009,p.307).

4- Achieving joint benefits for parties:

Final settlement in mediation is based on the parties consent with the solution that was reached by their free willing, which depends on achieving their joint benefits and interests, as the agreement that they reach to by the mediation procedure is made by the parties and aided by the mediator then the strength of this agreement and how to reach lead to the quickness in its execution on the contrary of the judicial rulings whose execution requires a long time and procedures at the competent authorities which featured in obligation some times(Al-Manea,2006,p.36).

5- Keeping friendly relations and joint interests between the parties:

Settling the dispute between the parties via mediation resulted in reaching a solution that is satisfactory for both parties and achieves their joint interests and at the mean time keeps and develops the mutual relations between them; as long as mediation in its reality is a voluntary process which means the final decision is not binding to the parties, this means it is an optional solution not compulsory and based on the parties willing and their desire to use it, this may allow settling their disputes as they like. This means that the mediator is not obliged to follow certain matters as long as the goal is reaching the parties to the solution they like, while the result of judicial dispute mostly leads to the interruption of these relations(Geneva , switzertland conference on mediation /march , 29 , 1996).

Furthermore, it is possible to resort to mediation in different levels of dispute because the law does not prevent the parties to agree or settle the dispute wholly or partially according to their desire before a free mediator or a follower of the court(Al-Khair Qeshi,1999,p.87).

In addition to that, mediation allows the parties to withdraw from this process and resort to judiciary where any of them could withdraw at any time and resort to keep all his rights and legal defenses before judiciary without any affect of the systems of alternative solutions upon the litigation procedures and beside that it is a process that allows the mediator to evaluate the legal positions of the disputed parties(Knakerea and Al-Qatawena,2003,p.86-88) .

2-2-2- Second: Differences between mediation and other similar systems:

Mediation in its general meaning leads to converging views to reach a solution that is satisfactory for both parties away from judiciary, so it is close to some legal systems such as negotiation and conciliation. These methods aim to converging the parties and help them to reach a joint agreement by the aid of a third person, the thing that makes it necessary to distinguish mediation from the other ways that are close to this process to avoid confusion between the concepts.

1- Mediation and negotiation:

Negotiation represents one of the alternative ways to settle disputes, it gives the parties the opportunity to settle their disputes by themselves without any intervention of any third party whether a mediation, arbitration or judiciary, in the way that avoid claims and legal procedures that may be adopted by one of the parties to solve the problem, in addition to that it saves the disputed parties reputation(Al-Khair Qeshi,1999,p.87) .

In negotiation, the parties make control on the total process and its results, if the parties reach a specific point that they might lose their control, they usually resort to the intervention of a third party (who has no interest in the negotiation result) for helping them reaching an agreement, which facilitate the negotiation between them, this is called "the mediator". There is nothing could prevent the parties to have representatives or attorneys in the negotiation, but it this does not change the nature and content of negotiation process until the representatives have the authority to take the decision for their clients; the core of negotiation process lays in the serious willing of parties to reach a solution to their dispute otherwise negotiation process will be formal and has no content and just useless controversies; negotiation process stipulates that there must be an equivalence between the parties regarding the ability and power otherwise negotiation process will turn into a process of imposing conditions not a negotiation process.

Furthermore, direct negotiations save money and time and all what was mentioned before reveals the activeness of this process in settling disputes(Naseef,2012,p.78).

While mediation is considered as an optional process whose parties has the power to make the decision and it represents an advanced way from negotiation in settling disputes, negotiation is made by a third neutral person (mediator) to aid two or more disputed persons to settle their disputes in a voluntary and negotiation way, this mediator uses various methods and skills to help the parties reaching a settlement between them but he does not have the authority to make a decision in the dispute as he could not bind the parties to continue in the mediation process till its end, in other word, any party may withdraw from the process at any time he likes if no settlement is reached without bearing any legal results; but settlement resulted from the mediation process it was reached, it will be binding for its parties. Mediation process also featured with confidentiality because the mediator or parties shall not disclose what was occurred or used before any court or arbitration commission(Al-Mahasna, 2013,p.220) .

Direct negotiation differs from mediation process from many concerns such as:

- In direct negotiation, there is a contact between the disputed parties to solve the misunderstanding or dispute without any intervention of mediator and the levels of the direct negotiation process is free(Mohammed,2010,p.110). While mediation shall have a third party other than the disputed parties and most levels of mediation are with fees and expenses.
- Negotiation will lead to settling the dispute quickly if the parties think to settle the dispute by this way such as, each party try to understand each other views and listen to his ideas and thoughts besides considering the necessity to find a fair solution not for either party interest only but taking into consideration the other party's interest otherwise the dispute will take a long time and it will be difficult to settle it, especially if one of the parties depends in its negotiation on facing strategies such as violence, criticism or irony. These strategies will prevent achieving cooperation between the disputed parties to settle the dispute, while mediation, in addition to the parties willing to settle the dispute, depends on the mediator's ability to converge views, facilitate difficulties, find solutions for each problems and obstacles that may occur during the attempt to settle the dispute.
- If the parties failed to reach a suitable solution that ends the dispute by negotiation, and they desired to settle it, they could appoint a mediator of high experience and legal knowledge for helping them to reach a fair and acceptable solution which ends the dispute(Mohammed,2010,p.112).

2- Mediation and reconciliation:

The reconciliation contract is a contract of agreement that is agreed upon by its parties either for settling an outstanding dispute or avoiding a potential dispute via each other's waiver of a part of claims. Thus, reconciliation contains three elements: an outstanding or potential

dispute, the intention to settle the dispute and the waiver of each party for a part of his claims equally. Reconciliation is not allowed in matters concerning personal status or public order, but it is allowed in financial matters, resulted from personal status due to committing crimes.
The reconciliation contract must be written to be confirmed to be held, because it may contain conditions and complex agreements as a result to the long compromise or give and take, the judge must ratified the reconciliation by his authority and not to issue a judgment agreed upon previously. Reconciliation is a satisfactory contract binding to both parties and revealing all rights; this contract must not be divided because the cancelation of a part means the cancelation of all contract whatever the reason was, by reconciliation the disputed, rights and claims are settled due to the parties final waiver(Abu Al-Hayjaa,2010,p.26).
For what was mentioned above, we could say that mediation and reconciliation are two optional methods to settle disputes between the disputed parties a way from resorting to the state's judiciary. Each of finds its way in the parties' agreement to settle disputes between them; Mediation and reconciliation are made by a joint dialogue (direct or indirect) between the parties or their representatives to discuss the dispute(Al-Sanhoory,1962,p.389).
In addition to that, the scope of applying mediation and reconciliation are identical, so mediation and reconciliation are not allowed in the matters relating personal status or public rule, but they are allowed in the financial matters due to them. Both mediation and reconciliation have a revealing impact regarding the rights of disputed parties because each party is aware of what he is doing. Thus, both methods require the qualification of the parties and a limited power of attorney to be signed. The reconciliation is a direct settlement of the dispute by waiving each party of a part of his rights by a satisfactory way for each parties. Reconciliation is occurred in the way of a formal contract or to be made before the court of dispute; the dispute ends by reconciliation as soon as the parties waive their claims by an agreement contract between them by an agreement contract. What is agreed upon is regarded as a defense for both parties to confirm the dispute settlement when displaying the dispute before judiciary. Reconciliation binding its parties and not allowed to be appealed by appealing ways, even if it is allowed to be canceled or breached according to the civil rules(Yahya,1978,p.252). While in mediation, the parties may resort to judiciary after the process of mediation unlike the situation after reconciliation, the mediator's recommendation and the reconciliation agreement do not have the executive power only after been documented or ratified by judiciary, the impact of reconciliation and mediation is limited to the disputed rights no more than that(Al-Masry,2006,p.21-22). The reconciliation contract is resulted in ending disputes as soon as been signed, while the mediation agreement does not the dispute but ends by the acceptance of parties for the recommendation and signing it with the mediator, in mediation there is a necessity for a third party to intervene to settle the dispute but reconciliation does not require a neutral third party because reconciliation is made by the disputed parties themselves or their representatives and both the mediator or who reconciled the parties are not members in the judiciary system of the state as they subjected to practice his duty for one condition which is objectivity, independence and neutrality, their opinions must be regarding the real and legal matters(Breery,2004,p.20). As well, the source of authority of the mediator and the person reconciled parties is the agreement and no one can represent in interests conflicting with each other interests(abu Al-Wafa,2001,p.30).

3- Chapter two: Legal nature of mediation:
Mediation is a mechanical process facilitates contact between the disputed parties to find out suitable solutions, mediation request must be voluntary confirming that mediation is not an improvisational process but subjects to concepts and takes a certain way in searching about solutions, if mediation is ended and both parties accepted the recommendation of the

mediator and been signed by both parties the dispute is then considered settled, the final decision has the executive power after been ratified by judiciary, then the mediator's recommendation is considered binding for both parties, this means that mediation has a significant impact represented in settling the dispute and ending rivalry by one side and owning what has resulted from mediation from the other side; the mediator's duty regarding the disputed rights is revealing the right not making it while the allowance of the mediation is transferring this right. We have to notice that, here is no agreement between the law jurists about determining the legal nature of mediation, because there is more than one opinion for their legal evidences and jurisprudence besides the philosophical justifications about the nature of mediation and on this bases we will talk about the nature of mediation within three requirements:

First requirement: Mediation nature in general
Second requirement: Mediation revealing nature
Third requirement: Mediation transferring nature

3-1- First requirement: Mediation nature in general:

Jurisprudence did not pay attention to the matter of determining the legal nature of mediation, so many trends appeared with this regard. Some jurists considered mediation of contractual nature while some others considered it of social nature but a number said that it is of absolute administrative nature and the rest viewed mediation as an alternative to the lawsuit especially in the criminal concern(Salih,2012,p.174).

3-1-1- First: Mediation is a way of reconciliation:

Both reconciliation and mediation based on compatibility and congruence of the parties willing; in case this willing was not exist there no reconciliation and mediation. There is a semi-agreement among jurists in considering the reconciling justice of contractual nature and similar to reconciliation contract stipulated in the civil law(Bawa,2011,p.16).

When disputes arise, the disputed parties then be able to hold a reconciliation to settle the outstanding dispute between them whether this matter was submitted to the court or not in accordance with Article 698 of Iraq Civil Act "Reconciliation settles the dispute and ends the rivalry by consent"(Al-Burany,2003,p.38).

While mediation is considered as an absolute procedures that aim to make relations and communications between the disputed parties for the purpose of settling the dispute between them; by other words, mediation as viewed by the supporters of this trend is a legal action that makes the disputed parties facing each other to settle their dispute and it is just as reconciliation. While some others said that mediation is a compromising contract to compromise the conflicting parties to accept the mediation, others believe that mediation is only holding comply, especially in lawsuit of criminal mediation, where the prosecutor or the court is the complying party that dictates its terms to the other party (criminal)(Breery,2004,p.23).

3-1-2- Second: Mediation is of social nature:

Some French jurists consider mediation in its reality that it seeks to achieve social peace and help the conflicting parties in settling problems friendly away of the formal complexities of litigation, mediation reflects the model of coercive justice, the purpose of which is not settling disputes that may rise between individuals, but creating real places for socialization inside city centers and neighborhoods(Nader,2014,p.14), this opinion's supporters confirm that these centers are not made to achieve justice but to help the society. Mediation is considered as a social organization orbiting in law, there are persons who see mediation as a

mixture of social art and law whereas others consider mediation in its reality as a social combination(Attya,2010,p.17-18).
The supporters of this view based on the model of restoration mediation and law bureaus applied in France as well as the model of neighborhood justice model in the United States Of America which are mediation structures of social type that aim to achieve social peace in neighborhoods; mediation makes legal procedures more humanitarian by the intervention of a mediator that has the characteristics of neutrality and independence but does not impose his opinion over the conflicting parties but they have the right to choice(Al-Qadhay,2010,p.262).
On the basis of this opinion, mediation is considered as a form of intervention to solve problems of social nature that may arise inside any of the society major components whether this matter relating to the family when relations strained and conflicts deepen between its members; or in law suitthis relates to the neighborhood as a geographical unit where some families live and there may be some conflicts occur between its individuals at any time. In addition to that, this may relates to the tribe as a residential group that has different customs(Khaleel,2004,p.36), traditions and norms, it also depends on mediation as a mechanism to facilitate the process of communication between the parties which some time being different and in badly need to a mediator that closing its point of view in its relations with the other who may be a natural or juridical one(Laydede,2009,p.47).

3-1-3-Third: Mediation is of administrative nature:

This opinion's supporters goes into the matter of determining the legal formula of mediation, especially criminal mediation that it has an administrative nature, for not be a civil contract but it is just an administrative procedure practiced by judiciary in civil cases or prosecution in criminal case. This does not depend on the lawsuit parties' approval, but this related to the judge's estimation (in civil case)(Al-Burany,2003,P.40).within his authority. Because recommending the mediator is not binding only if it is ratified by the judge(Khaleel,2004,p.39-40).

3-1-4-Fourth: Mediation is considered as lawsuit alternatives:

This opinion's supporters see mediation as alternatives to file a lawsuit and excluding of judicial procedures; it aims to settle dispute and compensate the affected, based on, the essential point where the mediation differs from reconciliation, represented by the scope of application and impact.
Regarding the application, the civil law stipulated reconciliation and stated its impact and scope, but it did not even mention the mediation in law, but as for the impact, reconciliation shall ends dispute where no party could file a lawsuit regarding the same conflict before judiciary again which means the legal lawsuit elapses, while mediation has no legal impact and the disputed parties have the right to file a lawsuit(Bawa,2011,p.23).
After reviewing the entire doctrinal views on the nature of mediation (for being described as a reconciliation, an administrative procedure or a lawsuit alternative); we could say that mediation in fact is merely a procedure within the satisfactory solutions and alternative means for disputes for the sake of fixing social relations (Salih,2012,p.45)

3-2- Second requirement: The revealing nature of mediation:

The revealing nature of mediation means that it does not based on making or transferring to the rights disputed upon, but its role is limited to reveal the right based on its first source, such as two persons dispute on a land or a house that was owned by a mutual inherited and agreed after the mediation of one of their relatives that one o them should own the house while the other own the land; here each of them is considered an owner to what he owned not from the time of mediation and agreement but from the time of the inherited death, as well as he owned that not by mediation but by inheritance(abu Al-Wafa,2001,p.33).

In talking about the scope of this impact, it is concerned with the same rights the reason of dispute between the two parties; the mediation either includes a sum of money to be given by one of the parties to the other against waiving the right of lawsuit in the thing disputed on, the revealing impact does not follow this sum of money but is concerned with the right disputed upon, because the result of this mediation includes transferring a fixed right of one parties to the other then the rules and legal impacts are applied on. This what the Egyptian civil law referred to that the revealing impact is concerned with the disputed rights only. Thus, mediation shall have two impacts: the revealing impact regarding the rights disputed on and a transferring impact to the mediation alternative and there is no inconsistency between the two impacts(Egyptian civil law,P.453).
Many theories arose to determine the legal principle of the revealing nature of mediation such as:

3-2-1- First: Conventional theory:

This theory based on some of the Roman law texts that determines the revealing impact of mediation which was transferred to the ancient French law, this theory stated that mediation reveals or determines the right disputed on that consent was made based on a mediation, here the party acknowledges to the other with some or whole rights disputed on based on the mediation intervention. Some jurists in French have established the revealing impact of mediation based on the similarity between it and the ruling; mediation is considered revealing because it just as the ruling which is limited to acknowledgment with rights and commitments, and mediation leads to a judicial result within n agreement way (malaurie,1997,P.641).
This theory was criticized because the justification of revealing nature of mediation and its comparison with the rule, is incorrect, because there are many huge differences between them. Furthermore, giving mediation the authenticity of res judicata does not impose it to approve the revealing matter, but its impact is limited to ending the dispute between the two parties and it has no right to determine the legal nature of mediation(Al-Manea,2006,p.43).
This theory's supporters developed it, so they said that the principle of revealing nature is acknowledgment and admission of one party with the right of the other, this is not based on the nature of things but it is a legal trickery that should be resorted to prevent dispute again. Some others support this trickery and described it as it is made by law, while other described it as it is made by the will of the parties and this refers to their disability to discover the suitable legal formula. Thus, this conventional theory seems unacceptable whether in its first form or the second way that is amended by the idea of legal trickery(Al-Khooly,1961,P.57).

3-2-2- Second: Deserto theory:

This theory stated that mediation shall not bind with guarantee; if the matter disputed upon goes for a party, the second one shall not be binding with the guarantee, as shall not revoke what has agreed upon according to the mediation because of not implementing the commitments arouse from. Deserto found that these results are linked with the relation between the conflicted parties. He also added that mediation has a revealing nature between its two parties as it should be registered and considered as a right cause in facing the other. Besides that, it may be appealed by the policy lawsuit by the creditors of one of the disputed parties who have been mediating between them; as a result, mediation is of a transferring nature for the other.
This theory was criticized for being a significant breach to the French law, because jurisprudence and law are agreed not applying the transferring impact for the other in all cases; this theory contravene the legal facts determined in the positive law as well as the legal fact(Malaurie et Aynes : op. p 162) .

3-2-3- Third: Modern theory:

This theory is based on analyzing the legal nature of revealing nature of mediation by determining the subject of waiver which is the right of the lawsuit; mediation does not include any acknowledgment with any right of the other party, but it may include the rights that the assignee does not doubt in its authenticity or that the judiciary will approve in case the dispute continued to its final steps. The waiver of the lawsuit avoid investigating the past to determine the fixed rights of each party before the intervention of the mediator regarding this dispute(malaurie,1997,P.423).
Some jurists said that mediation is not revealing rights nor transferring them, but is an action that solve the right conflicted on and ending the dispute only; this may obviates us from the idea of revealing impact in spite of keeping its practical results that may show that both parties are not successor to the other.
This view was criticized because we could not say that mediation drops the right for that the revealing impact signifies mediation from the other dropping actions such as discharge of debt. Thus, mediation is not limited to dropped waiver but beside this negative fact, it include also a positive one that represents in enabling the parties to use the rights they had freely, because each of the two disputed parties removes an obstacle to use the other party's right by waiving the lawsuit, due to the mediation intervention. Thus, here mediation should have an impact that makes rights free(Al-Aboudi,1989,P.136).
This theory supporters tend to say that the revealing impact of this mediation includes two sides the first one is negative side represented in nor transferring rights or making them between the disputed parties; this justify the impact that drops the mediation, while the other side is negative and represented in the full power and access to power that was disabled before making the deal as a result of the mediator intervention(Hamza,1998,P.35).

3-2-4- The results of revealing nature of mediation:
There are two types of results that are resulted from the revealing nature, the first type relating to the disputed parties whom the mediator intervene between them, whereas the second party related with the results with the others as follows:

First: The results of revealing nature between parties whom a mediator intervene between:

A- Lack of renewal: The mediator's recommendation shall not renew the determined commitments but these commitments shall reserve their characteristics, defenses and guarantees that were determined for them before the mediation occurrence but if the origin was the lack of renewal but we observe that this nature is of pure conventional nature because the lesson of renewal represented by the intention of renewal of the two parties, it is not the nature of the mediator to prevent the renewal if it fulfilled its conditions; the two parties could turn to renewal if the links between them complex and intervened that they prefer them by making unified and new commitments(Al-Utaify,1949,P.428).

B- Not committing to guarantee which is in the discharge of one party for the interest of the other if he deserved the money of dispute; where the mediator's recommendation does not entail to commit with the guarantee between the parties only from the personal actions guarantee, because the person does not guarantee only what he transfers to the other of rights; the mediator's intervention shall entail to transfer the ownership of the disputed thing or keeping it in the discharge of the current owner (Arafa,1950,P.22) .

C- The lack of dispute between the disputed parties regarding the disputed right, because each party does not considered as a recipient to the disputed right by the other party and shall not be as a successor for him in this right. Thus, the beneficiary from the mediation could not argue in facing them with the evidences that was of the other party regarding the right the subject of the law suit(Salam,2003,P.22).

Second:- The results of the revealing nature of mediation for the others:

A- Mediation is not suitable as a correct reason for property acquisition in the five-year statute limitations because the correct reason is what the property transferred with even if it was issued by another person not the real owner(Al-Sanhoory,1962,p.588). If there are two disputed persons upon a property and the property given to one of them at the end due to the mediation and the later occupied this property with good intention for five years then it is revealed that this property is due, the occupier of this property could not cling to the short statute of limitations, because mediation is not a correct reason because it reveals the right not transferring it, but the occupier could cling to the long statute limitations if he occupy it for fifteen years.

We could see that no person should make a deal with the non-owner in addition to that this status is considered violating the beneficiary's willing from the mediation.

B- The retroactive impact of mediation and the impact of registration to the other, a conflict was arose and still arising about knowing whether mediation has a retroactive affect or not? The link between the revealing impact and retroactive one, but the most correct is that the retroactive impact is the necessary complementary of the revealing impact (Ghanim,1959,p.207-208). As for the impact of registering mediation for the others, it may seem at the first glance that there is a contradiction between the registration impacts that depend on the priority in the date of registration and the retroactive impact of mediation that due mediation to an earlier date(Shanab,1993,p.107).

C- Intersession and mediation: Jurists(Saad,1997,p.7) and judiciary agreed that there is no intersession in the disputed property which is settled as a result of mediation for either parties, because the mediator's recommendation mentioned on the property against paying a certain amount of money does not considered transferring ownership but revealing and acknowledging it, as well that the paid amount does not represent the property value but the share of both parties from gaining or losing the property lawsuit(Al-Sanhoory,1962,p558)..

In addition to that allowing taking the property that was transferred to one of the parties due to the mediation by intersession may due to unfair results, because the intercessor will take the property against his performance such as the allowance of the party that occupied the property(Arafa,1950,P.320), mostly the allowance does not equal the property value. One of mediation characteristics is mutual scarify and the foreigner shall not get benefited with a benefit that is decided for one of the disputed parties(Saad,1997,p.15).

3-3- Third requirement: The transferring nature of mediation:

Some jurists believed in the theory of the transferring impact of mediation and we could signify two phases for this theory which are:

3-3-1- First phase: It is stated by some jurists of the nineteen and twentieth century who confirmed that the transferring impact of mediation is resulted from the intrinsic nature of the mediation process itself, and we could not accept the revealing impact of mediation because it leads to abnormal results in addition to that it is incompatible with justice (Arafa,1950,P.322), some of them said that mediation may have a revealing impact if the agreed persons admitted that. The origin of mediation is that it is of a transferring impact and in spite of all what was said by those jurists, they did not put a full theory for the transferring impact, but they satisfied with denying the conventional theory in the revealing impact then they described what is resulted from this mediation that it is a transferring action; as well, they narrated the results due to that which is reflecting the due results for considering mediation as an action revealing rights(Al-Sanhoory,1962,p.598).

3-3-2- Second phase: It is the phase where jurists decided that waiving of transferring rights as a result of mediation is considered as doubtful or disputed rights. In other words, mediation in its fact includes transferring the disputed rights which is considered as a

transferring action, they also said that this analysis is closer to the contracting intentions from saying the revealing impact of mediation(Mansoor ,1957,p.98). Mediation also is of relative effect which means that waiver is limited to the rights and disputed allegations, so mediation ends the outgoing dispute by waiver; here we have to realize between the mentioned waiver for the in-kind right and the waiver of personal right. If the waiver thing was an in-kind right it is then shall be considered as transferring which means that these waivers are of transferring waiver; while if it was a personal right, it is then being discharge of debt as it shall be a transferring action too(Shanab,1993,p.109).

This theory was criticized, first of them was that the modern jurisprudence no longer accepts to say that the revealing action does not include a change in the previous positions as the conventional jurisprudence says; the revealing action's impact is not limited to the significance but based on a right whose source is existing before, thus it is signified from the transferring action, but it certifies the right or increases its effectiveness or determines its content or place(Al-Khooly,1961,P.17). While the second criticism based on the idea of transferring the disputed rights that mediation depends on; this idea does not suit with the nature of mediation because transferring the right shall be for a foreigner for the contract while in the mediation waiver occurs if the other party has a right in the same contract(Al-Khooly,1961,P.18).

Since mediation in its simple image has a material impact in settling the dispute, each party has a new commitment represented in the non-renewal of conflict which was settled as a result of the mediator intervene and his success in the mediation, but mediation may lead to the arising of new commitments besides the general commitment. Mediation may have undisputed rights and in this case it will transfer rights or make commitments, then it will have a transferring impact for the alternative that is acknowledged by the mediation or what the mediator has recommended(Al The -Noon,1954,p.572). For this impact, if the allowance agreed by mediation it will then be considered sold and here the provisions of selling will be applied; if the disputed right was a property it shall be registered in the real estate department according to the provisions of Article 1126 of Iraqi Civil law.

The plaintiff who got the allowance as a result of mediation has all options that are mentioned in the compensation contract because what he get as a result of mediation is considered as a compensation for his claim; thus, if the mediation allowance was a property it may be taken by preemption because the plaintiff takes this property against his claiming right, or by other words his acknowledgment is considered as an argument and the plaintiff's denial does not prevent the preemption(Al-Khafeef , p.264) . Furthermore, if the allowance was due totally or partially, the defendant shall pay as much as the other party deserves, or returning to the lawsuit in what equal to the due allowance totally or partially (Al-Sanhoory,1962,p598).

The following example clarifies what was mentioned previously, two persons may disputed about a land of a house property and as a result to a mediation intervene they may agree that one of them owns the house while the other owns the land; but if the house's value was more than the land's and requires the person who owned the house to pay an amount for the other who owned the land, here the mediation made a commitment towards who owned the house, in spite of this allowance was not within the disputed rights, and here mediation will be of making impact. Thus, we could invoke to considering mediation of transferring impact with a correct reason that leads to owning the property of five-years statute of limitations and in case the property was due for being an allowance of the mediation, in this case the purpose of paying the allowance did not achieved and the property's owner could return it back with due to the other party. Because the plaintiff could not renew the dispute with a loss lawsuit against mediation for that he waived all his claims as a result of mediation, so the plaintiff could not claim against the defendant only by a guarantee lawsuit (Mursi,1975,p.263).

Finally, we shall confirm that mediation is as like as all other alternative means to settle disputes which has a relative affect, it is limited to the dispute which it intervenes to solve and its result shall be exclusive for the two disputed parties for the reason of that dispute, in this form, it is similar to judgment that the due material impact is represented by ending the dispute and ending the original claim as follows:

3-3-3- Relative nature of mediation:

Mediation is just like other means ending disputes, has a relative impact, it is limited on the two parties who have been mediated between them. In other words, what has been reached between the parties as a result of the mediator's intervention does not go out to the third party (not taking advantage and not prejudiced even if earns a right); but we shall make sure that the relativity of impact regarding persons does not breach the rules of representing the others (such as the minor or who is under custody) regarding to solving the dispute as a result of mediation between guardians; who have the right of guardianship by the court's permission and is authorized by agreement to end the dispute then make a deal with the minor's opponent to settle the dispute as a result of the mediator's intervene, what has been reached shall be binding with the minor after been adult; so as for the heirs who have a common share regarding the agreement that is held by their ancestors due to mediation and within the same constrains(Knakerea and Al-Qatawena,2003,p.97).

While in talking about the successor of the buyer, creditor and mortgagee and the others of in-kind owner, they do not affected by the mediation result with the seller, debtor and mortgagor only if the agreement caused in-kind rights on the sold or mortgaged property.

The lesson in the meaning of opponents agreement is in their characteristics not by their personalities; agreement that has been made with the person personally has no authenticity before this for being considered beholder for example, because the other characteristics differs from the personal characteristic of the opponent in the agreement of mediation(Mursi,1957,p.375). This rule has an exception including what related to the status of sponsorship, the sponsorship get benefited from the mediation result that has been made between the creditor and debtor if the agreement was for hi interest, while if he wants to increase the burdens he shall have no argument against him(Mursi,1957,p.376). Some of them relates to the status of solidarity, where solidarity (creditor or debtor) could be bind with what has been agreed upon as a result of mediation only if It was detrimental with the creditor or debtor he will increases his commitments (debtor) or harms the creditor and that shall not be executed against him only as far as it will benefit(Al-Khooly,1961,P.50).

Furthermore, the mediation's result is limited to what mediation between them has made for, so its impact is limited to the dispute that mediation is intervene to settle and not expanded to other dispute not included in the mediation, which means that the impact of mediation is relative; sticking to what was agreed upon under the mediation provided that this dispute shall be resolved by it(Al-Burany,2003,p.156). This basis is a result of the relative impact of the contract generally but it is more clear here, due to applying the principle of interpretation when interpreting the mediation result; if the heir (due to the mediator intervention) accepts to take a certain part of a certain inheritance, this acceptance was limited to inheritance that the mediator intervene to and does not has another inheritance that the other heirs participate in.

For what was mentioned above, the disputed parties shall implement the commitments arising from the mediation agreement and shall not commit to any other thing out what has been reached as settlement due to mediation.

In talking about the relativity of mediation impact regarding its cause, it is represented in that if a new dispute was arise between the parties whom previous dispute was settled as a result of mediation and the reason behind the last dispute differs from the reason of the first dispute,

there is no need to argue by the crucial agreement of mediation regarding the first dispute(Al-Burany,2003,p.185.
Here, the relative impact of mediation related to the reason, if the heir disputes I the authenticity of the will that is issued for two persons then as a result of a mediator's intervene one of the legatees has waived his will, thus this waiver could not be argued on the other legatee and this relativity in persons as mentioned before. If we supposed that the second legatee has died and the first one inherited him who accepted to waive due to mediation; in this case the first legatee may return to the dispute in the will regarding his right in the inheritance from the second legatee and the heir should not argue by his waiver from (the will) and from the persons (the heir and the first legatee) because the reason is not identical.
The first legatee was constrained to waive as a legatee and he is now has a new reason which is the inheritance from the other legatee then he is not constrained with what he has agreed upon by mediation for the difference of reason(Mursi,1957,p.155).

4-Conclusion:

The importance of mediation lays in being a mean for settling disputes that occurs between persons friendly because it is the alternative idea of the lawsuit then it is the alternative mean for judiciary too. It is one of the alternatives and not the only one for a lawsuit such as negotiation, reconciliation and arbitration; it is also considered as the modern legal culture in administrating a lawsuit especially the mediator who is required for a culture or a special ability in bringing the lawsuit parties together and administrating the negotiation between them.
Mediation has appeared as a result of the continuous pressure on judiciary to eliminate its duties and shortening its procedures; it does not take the judiciary's specialization in settling the dispute, and what has been resulted from mediation does not implemented in binding only after the judge ratified the mediation recommendation which means that the judge has the final decision either accepting or refusing the mediation.
The study we had made regarding the legal nature of mediation I disputes as a mean to reach a friendly settlement reveals very clearly the importance of its role in these disputes and we could summarize what we had concluded from this research as follows:
1- Adopting mediation system nowadays with the legal system for any state, became a necessity imposed by the problems that the official judiciary suffers from and what have been imposed of complexities and formalities which constitute a waste of time, money and efforts. While the effectiveness of this mediation relates basically into its simplicity and flexibility as well as what it perform in continuing the friendly work relations between the disputed parties and passing what they face faster and exerting less efforts; this ensures its application according to the circumstances of each issue, it settles the dispute without interrupting family, social and commercial ties.
2- The success of mediation system for settling disputes remains depending on confidence of disputed parties in this system with good will because it works to bringing their situation closer friendly; it is the system that respect their equality without aiming to lengthen the dispute and is not exhausting financially as it allows to discuss the dispute without any procedural constrain and very secretly which ends with an executable agreement.
3- The success of mediation as an alternative solution that depends on the personal participation of the two disputed parties and confidentiality that the negotiation has taken place within, not using any judiciary authority by the mediator to find fair solutions or at least acceptable by both parties.

4- Jurisprudence and judiciary have disagreed in determining the legal nature of mediation, most considered it as a type of reconciliation while others viewed it just an administrative procedure and there is some third party considered it as an alternative to the lawsuit.
5- Mediation has a revealing nature for the rights, it does not make a right for a party but specify it, and then resulted the disability to renew and the lack of guarantee.
6- Mediation is of a nature that makes the right, that is when it agreed to pay an allowance by one of the parties to the other one as a result of mediator intervention.

Recommendations:

1- We hope that our Iraqi legislator to enact a law for mediation just like the draft of arbitration law.
2- Opening centers for mediation and holding advanced courses about mediation in order to make a way for persons to educate them and full knowledge in mediation for being a friendly mean and one of dispute settling means.
3- Qualifying judges and specialized mediators to settle all disputes that burdening the judiciary.
4- Setting code of conducts that govern the acts of mediators and arbitrators during mediation and arbitration as well as what follows.
5- Resorting to alternative means even if its procedures are short because there is nothing prevents its expansion for a long time, which may make some to exploit this ability and depend on procrastination to make advantage from the terms of limitations and cancel the lawsuit. Thus, we could say that it is necessary to intervene legitimately by issuing a legal text or revision that includes suspending the limitations terms during the period of alternative methods procedures especially if the mediation was underway where its term does not accounted for.

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