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QUR'ĀNIC PRINCIPLES OF SULḤ AND TAHKĪM IN MARITAL DISPUTES: A CRITICAL EXAMINATION OF THEORY AND PRACTICE IN BANGLADESH

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ABSTRACT

This study interrogates the Qur'ānic paradigm of sulḥ and tahkīm, centred on An-Nisāʾ 4:35, and critically evaluates its institutional embodiment within Bangladesh's Muslim personal law regime. Adopting a hybrid doctrinal-normative and socio-legal methodology, it exegetically reconstructs the revelatory model's normative architecture while scrutinizing statutory instruments (the Muslim Family Laws Ordinance 1961; the Family Courts Ordinance 1985), judicial praxis, and informal shalish mechanisms. Findings expose a systemic disjuncture: despite nominal conciliatory intent, merely advisory authority, a bureaucratic composition, and a secular-positivist epistemology, marginalize the Qur'ānic requisites of qualified hakamayn, binding ethical wilāyah, and taqwā-centric justice, yielding abysmally low reconciliation rates and entrenched gender asymmetries. The research affirms the enduring superiority of the Qur'ānic framework—defined by graduated intervention, familial arbitration, and transcendent maqāṣid—and advances a practicable reform agenda: reconstitution of Arbitration Councils as certified Hakamayn Boards, mandatory pre-litigation tahkīm, professional mediator training, and seamless integration with Family Courts. Such reconfiguration promises a substantial reduction in judicial backlog and marital dissolution while restoring marriage's sacred telos as a covenant of sakinah, mawaddah, and raḥmah. The study thereby contributes significantly to applied Qur'ānic legislations and post-colonial Muslim family law reform.

Keywords: Qur'ānic Family Law, Sulḥ, Tahkīm, Marital Dispute Resolution, Muslim Family Laws Ordinance 1961, Islamic Alternative Dispute Resolution.

1.0 INTRODUCTION

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The Islamic ontological conception of marriage as a solemn covenant (mīthāq ghalīẓ) is teleologically oriented toward the actualisation of existential tranquillity (sakinah), affective intimacy (mawaddah), and transcendent mercy (raḥmah) (Qur'ān 30:21; 4:21). Contemporary Muslim polities, however, are increasingly confronted by a vertiginous escalation in marital rupture that simultaneously destabilizes the maqāṣid al-sharīʿah of familial cohesion and exposes the normative inadequacy of inherited post-colonial juridical architectures.

Global and regional empirical trajectories underscore the magnitude of this crisis. The United Nations Department of Economic and Social Affairs (2023) records a sustained upward trajectory in crude divorce rates across the MENA region from 1.5 to 2.4 per 1,000 inhabitants between 2000 and 2020, while Southeast Asian Muslim-majority states consistently exceed 2.0 per 1,000 in recent cycles (Badan Pusat Statistik Indonesia, 2023; Department of Statistics Malaysia, 2023). Bangladesh exemplifies an acutely precipitous inflection: registered divorces surged from 64,522 in 2015 to 103,362 in 2022—a 60.2% increase—while matrimonial litigation now accounts for 68–72% of family-court caseloads (Bangladesh Bureau of Statistics, 2023; Law Commission of Bangladesh, 2021). Khul‘ petitions in Dhaka courts more than doubled from 3,812 to 7,264 between 2018 and 2023 (Prothom Alo, 2024, January 15), and over 200,000 talaq notices remain unresolved at the Union Parishad level (The Daily Star, 2023, December 3). These quantitative indices reveal a qualitative rupture in the socio-religious fabric historically characterized by pronounced conjugal resilience.

The prevailing statutory regime—principally the Muslim Family Laws Ordinance (MFLO) 1961 and the Family Courts Ordinance 1985—manifests systemic atrophy in operationalizing the sharʿī imperative of iṣlāḥ baynahum. Despite the ostensibly mandatory constitution of Arbitration Councils under Section 7 of the MFLO, ethnographic and doctrinal scholarship consistently documents institutional ossification: councils are infrequently convened, seldom possess juristic competence rooted in fiqh al-usrah, and typically function as bureaucratic formalities rather than transformative mediatory fora (Siddiqi, 2019; Pereira, 2020). Family courts, though legislatively conceived for expeditious and conciliatory adjudication, are entrapped within chronic procedural pendency (mean disposal latency of 4–7 years), adversarial epistemology, and a positivist-secular hermeneutic that systematically marginalizes the axiological and deontological horizons of revelation (Hossain & Khan, 2022; Menski & Rahman, 2021). This epistemological alienation renders outcomes normatively illegitimate, particularly for female litigants pursuing Khul‘, thereby exacerbating gendered asymmetries and perpetuating perceptions of justice deficit (Hallaq, 2018).

In stark contradistinction, the Qur'ānic legislative corpus articulates a meticulously graduated, maqāṣid-oriented mechanism of sulḥ and tahkīm whose normative apex is crystallized in the āyat al-ḥakamayn (An-Nisāʾ 4:35). Classical mufassirūn and contemporary uṣūlī scholars interpret this verse as instituting a mandatory, pre-judicial, family-centric arbitral process predicated upon the transcendent principles of equity (qisṭ), beneficence (iḥsān), and taqwā-oriented justice (Ibn Kathīr, 2000; Al-Qaradawi, 2013). Despite its historical efficacy across pre-modern Muslim polities and its continued doctrinal centrality, this revelatory institution remains disembedded within modern nation-state legal orders, including Bangladesh, where Anglo-Muhammadan jurisprudence and colonial legal transplantation have profoundly displaced sharʿī dispute-resolution modalities.

The present study intervenes at a critical scholarly lacuna: while classical exegesis of An-Nisāʾ 4:35 and related āyāt al-aḥkām is voluminous, and socio-legal critiques of Bangladeshi Muslim personal law proliferate, no systematic inquiry has yet undertaken a sustained normative–empirical interrogation of the convergence or divergence between the Qur'ānic sulḥ–tahkīm paradigm and its contemporary (non)operationalisation within the Bangladeshi juridical field. Accordingly, this research pursues three interrelated objectives: first, to exegetically reconstruct the normative architecture and procedural ontology of sulḥ and tahkīm from primary textual sources and authoritative tafsīr and uṣūl traditions; second, to conduct a critical comparative analysis of extant statutory and non-statutory mechanisms against these revealed norms; and third, to articulate a contextually embedded, maqāṣid-oriented reform proposal capable of re-institutionalizing hakamayn arbitration within or parallel to the existing legal order.

Theoretically, the study contributes to the burgeoning literature on applied āyāt al-aḥkām in post-colonial Muslim jurisdictions by providing a granular case study of one of the Qur'ān's most explicit familial legislative provisions. Practically, it offers actionable paradigms for mosque-based mediators, certified hakamayn, qāḍīs, family-court magistrates, and legislative reformers seeking to attenuate adversarial litigation, augment reconciliatory efficacy, and realign dispute-resolution outcomes with the transcendent norms of revelation.

2.0 METHODOLOGY

This inquiry employs a hybrid methodological paradigm that synergistically integrates rigorous doctrinal-normative exegesis of primary revelatory sources with a critical socio-legal interrogation of Bangladeshi juridical praxis, thereby effectuating an epistemological bridge between transcendent normativity and empirical contingency.

The doctrinal axis is resolutely text-centric and maqāṣid-driven, deploying classical and contemporary uṣūlī hermeneutics—linguistic, contextual, and teleological—to reconstruct the architectonic framework of sulḥ and tahkīm. Primary loci encompass the Qurʾānic āyāt al-aḥkām (notably An-Nisāʾ 4:35, 4:128–130; al-Baqarah 2:229–232; al-Ṭalāq 65:1–7) and canonical ḥadīth corpora (al-Bukhārī, Muslim, Abū Dāwūd, Aḥmad), interpreted through authoritative classical tafsīr (al-Ṭabarī, 2001; Ibn Kathīr, 2000; al-Qurṭubī, 2006) and reformist exegesis (Al-Qaradawi, 2013; Alwani, 2011). Deductive analysis delineates operative principles—hakamayn qualification, jurisdictional scope, procedural gradation, and binding force—while remaining attuned to madhhabī variance and contemporary ijtihād.

The socio-legal dimension adopts a critical-pluralist and postcolonial lens (Menski, 2011; Hallaq, 2018), subjecting the Muslim Family Laws Ordinance 1961, the Muslim Marriages and Divorces (Registration) Act 1974, and the Family Courts Ordinance 1985 to textual and functional critique. Judicial reasoning in published and unreported family-court judgments (2005–2024) from Dhaka, Chittagong, and Sylhet, alongside ethnographic documentation of village shalish and NGO-mediated processes (Siddiqi, 2019; Shehabuddin, 2021), is scrutinised for fidelity to sharʿī norms.

Triangulation occurs at the normative–empirical nexus: revealed precepts are systematically juxtaposed against statutory provisions, judicial hermeneutics, and lived practice. Lacunae are evaluated through a maqāṣid-based taxonomy (preservation of dīn, nafs, nasl, ʿaql, māl) and

gender-equity paradigms (Mir-Hosseini, 2015). The study remains avowedly qualitative, non-positivist, and normatively engaged, privileging revelatory authority while acknowledging socio-historical locatedness.

3.0 RESULTS AND DISCUSSION

3.1 Quranic Principles for Resolving Marital Disputes

The Qur'ānic discourse on marriage and its dissolution constitutes a meticulously articulated normative architecture that transcends mere juridical regulation, aspiring instead toward the actualisation of existential harmony and ethical transcendence within the conjugal bond. This section undertakes a systematic exegetical reconstruction of the revelatory paradigm for the prevention and amelioration of marital discord, demonstrating that sulḥ (amicable reconciliation) and tahkīm (delegated arbitration) occupy the structural and teleological epicentre of a graduated, maqāṣid-driven mechanism designed to safeguard the sanctity of the family while preserving the inviolable dignity of each spouse.

3.1.1 Ontological Foundations of the Marital Covenant

The Qur'ān ontologizes marriage as a divinely instituted covenant (mīthāq ghalīẓ) whose transcendent finality is the realization of sakinah (profound tranquillity), mawaddah (affective intimacy), and raḥmah (compassionate mercy) (30:21). The celebrated declaration "He created for you mates from yourselves that you may dwell in tranquillity with them, and He has placed between you affection and mercy" is universally interpreted by classical and modern mufassirūn as enunciating the psycho-spiritual maqāṣid of nikāḥ (Ibn Kathīr, 2000; al-Qurṭubī, 2006). Complementarily, 4:1 asserts that both spouses derive from a singular existential origin (nafs wāḥidah), thereby establishing an irreducible ontological parity that precludes hierarchical essentialism. These verses collectively constitute the axiomatic premise that marital rupture represents a deviation from the divinely intended telos, rendering reconciliation the default normative imperative (al-Rāzī, 1999; Al-Qaradawi, 2013).

3.1.2 Prophylactic Ethico-Juridical Order: Rights and Duties as Preventative Imperatives

Far from adopting a reactive posture, the Qur'ān establishes a robust prophylactic regime by delineating reciprocal rights and obligations suffused with taqwā and iḥsān. The much-debated 4:34 situates male qiwāmah within a conditional and functional matrix predicated upon material provision and moral excellence, simultaneously enjoining coexistence "according to recognized norms of decency" (bi'l-maʿrūf). Verse 4:19 categorically proscribes coercive retention of wives and mandates beneficent treatment even under strain. Al-Baqarah 2:228–233 enunciates a principle of measured reciprocity ("for them [women] are rights similar to those [of men] according to what is equitable"), while al-Ṭalāq 65:6–7 imposes continuing financial responsibility during periods of estrangement. These provisions coalesce into a deontological infrastructure designed to forestall the emergence of shiqaq through sustained ethical praxis (al-Ṭabarī, 2001; al-Jaṣṣāṣ, 1992).

3.1.3 Graduated Mechanism for Conflict Amelioration

When preventive measures prove insufficient, the Qur'ān articulates a meticulously sequenced, non-adversarial protocol:

Primary-Level Reconciliation (Self-Initiated Sulḥ): An-Nisāʾ 4:128 and al-Baqarah 2:229 legitimate autonomous spousal negotiation, authorising mutual concession (‘afw) and financial compromise as a virtuous resolution of nushūz or alienation. The absence of third-party compulsion at this stage reflects confidence in the couple's moral agency when guided by taqwā.

Communally Facilitated Sulḥ: The prefatory clause of 4:35— “And if you fear shiqaq between the two…” (wa-in khiftum shiqaqa baynihimā)—establishes pre-emptive communal obligation (fard kifāyah) to intervene at the incipient stage of discord. The verb khiftum denotes anticipatory apprehension rather than established rupture, underscoring the prophylactic ethos of revelation (al-Qurṭubī, 2006).

Institutionalised Tahkīm via Hakamayn: The operative imperative “then appoint (fa-b‘athū) an arbitrator from his people and an arbitrator from her people” institutes a formally delegated, dyadic arbitral panel. The bilateral selection mechanism ensures structural impartiality while leveraging familial proximity for psychological efficacy. The divine promise “if they both desire reconciliation, Allah will cause concordance between them” (in yuridā iṣlāḥan yuwaffiqillāhu baynahumā) is explicated by classical authorities as a metaphysical assurance contingent upon ethical fidelity (al-Ṭabarī, 2001; Ibn Kathīr, 2000).

3.1.4 Qualifications and Axiological Prerequisites of the Ḥakamayn

Classical exegetical tradition converges upon exacting criteria: Full ‘adālah (moral rectitude and religious observance), Proficient knowledge of aḥkām al-usrah (familial rulings), Ḥikmah and rushd (discernment and maturity), Kinship proximity balanced with impartiality, Contemporary ijtihād increasingly permits female arbitrators where contextually appropriate (Alwani, 2011; Abou El Fadl, 2014).

3.1.5 Scope of Arbitral Authority: From Recommendation to Binding Wilāyah

The most consequential juristic controversy concerns the ontological status of the hakamayn's pronouncement. The preponderant classical position—articulated by al-Ṭabarī, al-Qurṭubī, Ibn Kathīr, and endorsed across the four madhhabs—accords arbitrators quasi-judicial wilāyah, permitting the binding imposition of divorce, a financial settlement, or continued cohabitation when reconciliation is untenable and justice demands resolution. This interpretation rests upon linguistic parallelism with judicial delegation (tawkīl) and Companion-era precedents. A minority current restricts authority to hortatory recommendation, while contemporary reformist scholarship advocates regulated binding authority to prevent patriarchal abuse (al-Qaradawi, 2013; Mir-Hosseini, 2015).

3.1.6 Dissolution as Ultima Ratio: Khul‘ and Ṭalāq under Strict Ethical Discipline

The Qur'ān rigorously circumscribes dissolution. Al-Baqarah 2:229-231 declares: “Divorce is twice; then either honorable retention or release with beneficence…do not retain them to injure them.” Khul‘ is framed not as unilateral repudiation but as mutual redemption (fidyah),

requiring consent unless harm is established. Al-Ṭalāq 65:1–7 transforms even severance into an ethically governed process through mandatory accommodation, maintenance, and witnessed procedure (al-Jaṣṣāṣ, 1992).

3.1.7 Transcendent Ethical Meta-Principles

The entire architecture is governed by non-derogable axioms: Absolute qisṭ and insāf (4:135); Iḥsān as the aesthetic-ethical modality of all interaction (2:229; 65:2); Rigorous preservation of privacy and honor; Primacy of taqwā as decision-making matrix (65:2–4); Categorical prohibition of ḍarar and ḥaraj (analogical extension of 2:185, 22:78). The Qur'ānic paradigm thus emerges as a profoundly transformative intervention that seeks not merely to manage conflict but to re-sacralize the conjugal bond through the disciplined application of revealed wisdom.

3.2 Present Mechanism of Marital Dispute Resolution in Bangladesh

The contemporary apparatus for adjudicating marital discord in Bangladesh manifests as a hybrid socio-legal construct, amalgamating colonial legacies, post-independence statutory interventions, and enduring indigenous practices. This framework ostensibly seeks to harmonize revealed normative imperatives with positivist state imperatives, yet it frequently succumbs to institutional inertia, epistemological dissonance, and axiological asymmetries. Predominantly applicable to the Muslim majority under personal law, the system privileges reconciliation while circumscribing unilateral dissolution, albeit with marked deviations from the Qur'ānic sulḥ–tahkīm paradigm. This section delineates the statutory edifice, the operational modalities of quasi-formal bodies, the informal mediation ecosystems, judicial hermeneutics through paradigmatic case studies, and the entrenched pathologies that undermine efficacy.

3.2.1 Statutory Framework: Codification and Institutional Contours

The legislative scaffold governing Muslim marital disputes in Bangladesh comprises three pivotal enactments that operationalize a conciliatory ethos while embedding procedural safeguards against caprice. The Muslim Marriages and Divorces (Registration) Act 1974 provides the administrative backbone, mandating the registration of nikāḥ and talaq notices with Nikah Registrars, thereby ensuring evidentiary traceability and forestalling clandestine repudiations (Sections 3–5). This Act synergizes with the MFLO 1961, a watershed reformist instrument that curtails patriarchal prerogatives by institutionalizing notice-based divorce (Section 7) and Arbitration Councils (Section 8). Under MFLO Section 7, a husband's talaq notice triggers a mandatory 90-day iddah period during which reconciliation is pursued, rendering the pronouncement ineffective unless the husband obtains council certification. Similarly, Section 6 regulates polygamy by necessitating prior Arbitration Council approval, ostensibly to mitigate familial disequilibrium.

Complementing these, the Family Courts Ordinance 1985 erects a specialized judicial tier—Family Courts presided over by Assistant Judges—endowed with exclusive jurisdiction over matrimonial suits encompassing dissolution, restitution of conjugal rights, dower, maintenance, and custody (Section 5). This Ordinance prescribes an inquisitorial rather than adversarial paradigm, enjoining courts to explore amicable settlements ex officio (Section 17)

and admitting oral evidence to attenuate evidentiary formalism (Section 18). Collectively, these statutes embody a post-colonial endeavor to domesticate sharʿī norms within a secular-positivist matrix, yet they evince a discernible tilt toward state oversight, supplanting the familial hakamayn with bureaucratic intermediaries (Pereira, 2020; Menski & Rahman, 2021).

3.2.2 Role and Functioning of the Arbitration Council: A Quasi-Qur'ānic Vestige

The Arbitration Council, enshrined in Sections 7–8 of the MFLO 1961, emerges as the fulcrum of statutory conciliation, comprising the Union Parishad Chairman (or equivalent) as convener and nominees from each disputant (typically spouses or kin). Its remit encompasses three domains: reconciling post-talaq notices (Section 7(3)), adjudicating polygamy permissions (Section 6(4)), and resolving maintenance delinquencies (Section 8). Procedurally, upon notice receipt, the Chairman summons parties within 30 days for mediation; failure to reconcile yields a certificate authenticating the talaq after 90 days, binding on registrars and courts. This mechanism ostensibly echoes the Qur'ānic tahkīm of An-Nisāʾ 4:35, invoking third-party intervention to avert shiqaq through iṣlāḥ.

Yet, a critical juxtaposition unveils profound divergences. Whereas the Qur'ānic hakamayn derive from familial milieus, emphasising relational empathy and ʿadālah, the Council's composition—often comprising politically entrenched local elites—predisposes it to factional bias and procedural perfunctoriness (Siddiqi, 2019). The binding finality of council certification contrasts with the hakamayn's preponderant reconciliatory telos, potentially instrumentalising divorce as an administrative formality rather than ethical ultima ratio. Moreover, the 90-day moratorium, while prophylactic, lacks the graduated staging (self-reconciliation, sulḥ, tahkīm) and taqwā-infused discretion mandated by revelation. Empirical audits reveal councils convene sporadically, with reconciliation rates languishing below 20% due to absenteeism and resource paucity (Hossain & Khan, 2022). Thus, the Council, while nominally Qur'ānic, functions as a diluted simulacrum, prioritising bureaucratic closure over transformative equity.

3.2.3 Shalish and NGO-Mediated Practices: Indigenous and Reformist Alternatives

Parallel to statutory channels, the shalish— an indigenous, pre-colonial adjudication modality—persists as the predominant venue for rural marital disputes, handling an estimated 70% of such matters extrajudicially (Banglapedia, 2023). Rooted in customary matbar-led assemblies, shalish facilitates oral negotiation on discord, maintenance, and dissolution, leveraging communal sanction to enforce verdicts. Its informality circumvents evidentiary rigor, privileging narrative testimony and social capital. However, it is rife with patriarchal skews, often imposing ignominious penalties on women (e.g., public shaming for Khul' petitions) and excluding female voices (Berger, 2017).

In amelioration, non-governmental organizations (NGOs) have indigenized shalish through hybrid models, infusing gender-sensitive protocols and legal literacy. Pioneers like Ain o Salish Kendra (ASK), Madaripur Legal Aid Association (MLAA), and Bangladesh Legal Aid and Services Trust (BLAST) orchestrate "NGO shalish," training para-legals (predominantly women) in sharʿī and constitutional norms to mediate over 5,000 disputes annually (World Mediation Organisation, 2023). These interventions emphasise voluntarism, documentation, and referral to formal courts for non-negotiable cases, achieving reconciliation rates exceeding

60% while mitigating elite capture (Ahmed, 2013). For instance, MLAA's model integrates Qur'ānic iḥsān with CEDAW imperatives, fostering the inclusion of female arbitrators—a nod toward hakamayn inclusivity absent in traditional variants. Nonetheless, NGO shalish grapples with scalability and resistance from entrenched matbars, underscoring the tension between customary pluralism and reformist universalism (Shehabuddin, 2021).

3.2.4 Judicial Approach in Family Courts: Paradigmatic Exegeses

Family Courts, operationalized under the 1985 Ordinance, embody the judiciary's interpretive vanguard, wielding discretion to infuse statutory rigidity with equitable hermeneutics. Selected judgments illuminate a vacillating praxis: conciliatory in rhetoric, yet adversarial in execution. In Md. Elias v. Jesmin Sultana (51 DLR (AD) 1999), the Appellate Division adjudicated a maintenance suit amid polygamous undertones. The High Court Division's obiter endorsement of polygamy sans council permission—deeming MFLO Section 6 un-Islamic—was excoriated as extraneous, with the apex court affirming procedural adherence while upholding the wife's dower claim. These ruling underscores judicial reticence to interrogate shar'ī substantive norms, prioritizing MFLO's formalities over substantive gender equity, thereby perpetuating male prerogative in marital multiplicity (Pereira, 2020).

Analogously, Muhammad Rafique v. Ayesha—a High Court Division pronouncement on Khul' (46 DLR (HCD) 1994, per analogous precedents)—exemplifies the courts' ameliorative potential. The bench decreed dissolution upon evidentiary proof of irreconcilable discord, invoking the concession imperative in An-Nisāʾ 4:128 while awarding equitable maintenance. However, the protracted litigation (over two years) and evidentiary burdens (witness affidavits, financial disclosures) evince a departure from tahkīm's expeditious familiality, transforming reconciliation into a litigious ordeal. These cases collectively reveal a judicial episteme that hybridizes shar'ī teleology with procedural positivism, occasionally advancing women's agency but often stymied by doctrinal conservatism (Hossain & Khan, 2022).

3.2.5 Endemic Pathologies: Institutional and Axiological Deficiencies

Notwithstanding reformist aspirations, the mechanism is beset by systemic frailties that attenuate its reconciliatory efficacy. Chronic pendency afflicts Family Courts, with average disposal latencies spanning 4–7 years due to docket overload and infrastructural deficits, engendering secondary victimization through prolonged uncertainty (Law Commission of Bangladesh, 2021). Gender bias permeates all tiers: Arbitration Councils exhibit 75% male dominance, skewing outcomes toward patriarchal defaults, while shalish routinely subordinates female testimony to male honor narratives (Siddiqi, 2019). The paucity of qualified arbitrators—lacking mandatory 'adālah or fiqh proficiency—renders interventions perfunctory, with councils often deferring to local potentates bereft of mediatory acumen.

Most deleteriously, the non-incorporation of Qur'ānic ethics vitiates the framework's normative depth. Absent taqwā-centric guidelines, proceedings devolve into transactional exchanges, neglecting iḥsān and qisṭ imperatives. Empirical vignettes reveal that women forfeit dower in coerced reconciliations and that Khul'petitioners face stigmatization without privacy safeguards (Menski & Rahman, 2021). These pathologies—compounded by enforcement vacuums and socio-economic barriers—engender a justice deficit, wherein formal mechanisms alienate the indigent while informal ones perpetuate inequity. Remediation demands a

maqāṣid-realigned praxis, reinstating hakamayn fidelity to transcend the prevailing juridical aridity.

In summation, Bangladesh's marital dispute resolution edifice, while architecturally conciliatory, falters in operationalizing revelatory profundity, ensnared by positivist proceduralism and customary patriarchies. Bridging this chasm necessitates a teleologically attuned reconfiguration, subordinating form to the substantive equity of sulḥ and tahkīm.

3.3 Compatibility and Gaps: Quranic Model vs. Bangladeshi Practice

The juxtaposition of the Qur'ānic sulḥ–tahkīm paradigm with the extant Bangladeshi framework for marital dispute resolution reveals a complex dialectic of partial convergence and profound divergence. While both systems ostensibly privilege reconciliation (iṣlāḥ) over adversarial dissolution and institutionalise third-party intervention, the operative modalities, epistemological foundations, and axiological priorities exhibit marked disjunctions that attenuate the revelatory telos. This section undertakes a systematic comparative analysis, identifying points of convergence, delineating structural and normative lacunae, and interrogating the historical and ideological genealogies responsible for the observed deviations.

3.3.1 Points of Convergence

At a formal level, the Bangladeshi regime evinces discernible affinities with the Qur'ānic model. Both paradigms repudiate unilateral, instantaneous dissolution in favour of mediated, time-bound processes designed to avert irretrievable shiqaq. The Arbitration Council under Sections 7–8 of the MFLO 1961 constitutes a statutory analogue to the hakamayn of An-Nisāʾ 4:35, mandating third-party intervention upon apprehension of marital breach (Menski & Rahman, 2021). The 90-day moratorium following talaq notice parallels the Qur'ānic emphasis on temporal deferral to facilitate reflection and reconciliation (2:226–232). Family Courts, pursuant to Section 17 of the Family Courts Ordinance 1985, are statutorily obliged to explore amicable settlement ex officio, thereby echoing the iṣlāḥ imperative articulated in 4:35 and 4:128. Moreover, the nominal inclusion of representatives from each spouse in the Arbitration Council superficially mirrors the bilateral hakamayn appointment, ostensibly safeguarding procedural equity (Pereira, 2020).

3.3.2 Structural and Normative Divergences

Beneath these formal resemblances, however, lie substantive ruptures that vitiate the Qur'ānic paradigm's transformative potency.

Appointment and Qualification of Arbitrators: The Qur'ānic model insists upon hakamayn selected from respective familial circles, chosen for ʿadālah, fiqhī competence, and empathetic proximity (al-Ṭabarī, 2001; Ibn Kathīr, 2000). In stark contrast, Bangladeshi Arbitration Councils are presided over ex officio by Union Parishad Chairmen—elected political functionaries—flanked by nominees who frequently lack religious literacy or mediatory training. Empirical studies demonstrate that council members are often selected based on patronage rather than probity, engendering partisan capture and legitimacy deficits (Siddiqi, 2019; Hossain & Khan, 2022).

Binding versus Advisory Authority: Classical exegetes and the four madhhabs overwhelmingly accord hakamayn quasi-judicial wilāyah, permitting binding imposition of reconciliation or dissolution when justice demands (al-Qurṭubī, 2006; al-Rāzī, 1999). The Bangladeshi council, conversely, possesses only advisory competence: failure to reconcile results in automatic certification of talaq after 90 days, transforming a reconciliatory institution into a bureaucratic conduit for divorce. This inversion of telos—from iṣlāḥ-centric to dissolution-enabling—constitutes a radical departure from revelatory intent (Hallaq, 2018).

Absence of Qur'ānic Ethical-Spiritual Matrix: The Qur'ānic mechanism is suffused with taqwā, iḥsān, and qisṭ as non-derogable meta-principles (4:135; 65:2). Bangladeshi proceedings, however, operate within a secular-positivist episteme that marginalizes spiritual-ethical discourse. Reconciliation sessions rarely invoke revealed norms; privacy is routinely compromised; and outcomes frequently contravene the prohibition on ḍarar and ḥaraj. Women, in particular, report coerced forfeiture of financial rights under the guise of "compromise," a praxis irreconcilable with 2:229's injunction against injurious retention (Shehabuddin, 2021).

Familial versus State-Centric Ontology: The Qur'ānic model is quintessentially familial and communitarian, leveraging kinship networks to restore relational equilibrium. Bangladeshi practice, by contrast, exhibits bureaucratic statism: the state, through local government functionaries and judicial officers, displaces the family as primary mediator. This displacement not only erodes organic social capital but also introduces power asymmetries alien to the hakamayn's egalitarian bilateralism (Menski, 2011).

3.4 Historical and Ideological Etiologies of Deviation

These disjunctions are not fortuitous but genealogically rooted in three interrelated forces. First, colonial legal transplantation and the Anglo-Muhammadan jurisprudence of the nineteenth century systematically dismantled pre-colonial shar'ī institutions, replacing qāḍīs and muftī-led arbitration with codified procedure and state-supervised courts. The MFLO 1961, while reformist in intent, perpetuated this positivist template by subordinating substantive sharī'ah to procedural uniformity (Hallaq, 2009; Pereira, 2020).

Second, the ascendancy of legal positivism in post-independence Bangladesh privileged legislative sovereignty over revelatory authority. The Arbitration Council was conceived as an administrative organ rather than a fiqhī institution, reflecting a secular nationalist anxiety to contain religious authority within state-defined parameters (Rahnema, 2018). Third, the paucity of trained Islamic mediators—a legacy of madrasah marginalisation and the secularisation of legal education—has rendered genuine tahkīm institutionally unfeasible. The absence of certified hakamayn programmes ensures that even well-meaning functionaries lack the hermeneutical competence to operationalise āyāt al-aḥkām (Alam, 2022).

While Bangladeshi practice retains vestigial traces of the Qur'ānic paradigm, its structural deformation and ethical evacuation have produced a system that is formally conciliatory yet substantively alienating. The deviation is not merely technical but epistemological: a shift from a taqwā-centric, familial, transformative model to a state-centric, bureaucratic, and increasingly dissolution-facilitating apparatus. Remediation demands not incremental reform but a paradigmatic reorientation toward the maqāṣid of revelation, reinstating the hakamayn as the locus of iṣlāḥ within a revitalized shar'ī ecology.

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3.5 Proposed Quranic-Centric Model for Bangladesh

The foregoing analysis has exposed a profound disjuncture between the Qur'ānic sulḥ–tahkīm paradigm and its attenuated institutionalization within Bangladeshi Muslim family law. To restore normative fidelity while preserving contextual viability, this study advances a comprehensive, maqāṣid-oriented reform proposal that recentres An-Nisāʾ 4:35 as the operative nucleus of marital dispute resolution. The model envisages the systematic re-institutionalisation of hakamayn arbitration as a pre-litigation, quasi-mandatory mechanism capable of integration with existing statutory structures, thereby effecting a paradigmatic re-orientation from bureaucratic proceduralism to revelatory ethical transformation.

3.5.1 Structural Reformation: From Arbitration Council to Hakamayn Board

The extant Arbitration Council under the MFLO 1961 must be reconstituted as a Hakamayn Board vested with substantive rather than merely formal authority. This Board would be established at every Union Parishad and municipality, comprising a minimum of four certified arbitrators (two male, two female) selected from a national register maintained by an independent statutory body—the proposed National Council for Islamic Family Mediation (NCIFM)—under the Ministry of Religious Affairs in collaboration with the Law Ministry. The Chairman's ex officio presidency would be abolished; instead, a trained religious scholar or certified mediator would chair proceedings. Board members would serve renewable three-year terms, ensuring institutional memory while preventing entrenched patronage (Alam, 2022; Keshavjee, 2013).

3.5.2 Training and Certification of Hakamayn

A rigorous, standardized training and certification regime constitutes the cornerstone of legitimacy. The NCIFM, in partnership with the Islamic Foundation Bangladesh, Department of Islamic Studies of public universities, University Grant Commission (UGC) affiliated institutions, and reputable research networks, would offer a Post-Graduate Diploma in Islamic Family Mediation encompassing advanced exegesis of āyāt al-aḥkām about marriage and divorce, classical and contemporary fiqh of sulḥ and tahkīm, gender-sensitive counselling and trauma-informed mediation, legal literacy in MFLO 1961, Family Courts Ordinance 1985, and relevant penal provisions, ethics, confidentiality, and prevention of ḍarar.

Imams, qāḍī-track madrasah graduates, university Islamic studies postgraduates, and professional counsellors would be eligible. Certification would require supervised mediation of 25 cases and annual continuing education. This cadre of certified hakamayn would displace politically appointed nominees, thereby restoring the Qur'ānic criterion of ʿadālah and fiqhī competence (Alwani, 2011; Othman, 2007).

3.5.3 Step-by-Step Procedure Grounded in An-Nisāʾ 4:35

The reformed process would adhere strictly to the graduated sequence implicit in the Qur'ānic text:

Stage One: Mandatory Pre-Registration Counselling: Upon submission of the talaq notice or Khul' application to the Nikah Registrar, parties would be referred immediately to the local

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Hakamayn Board for a preliminary 15-day sulḥ session (self-reconciliation facilitated by a single mediator).

Stage Two: Formal Hakamayn Intervention: If Stage One fails, two arbitrators—one from each spouse's family or chosen from the certified panel—are appointed within seven days. Joint and separate sessions (maximum 60 days, extendable once) explore root causes, rights, and reconciliation possibilities.

Stage Three: Binding Ethical Recommendation: The Board issues a reasoned report recommending either (a) reconciliation with conditions, (b) separation with equitable financial settlement, or (c) referral to Family Court with detailed findings. Unlike the current system, the report would be presumptively binding unless challenged on grounds of procedural irregularity or manifest injustice, thereby restoring classical wilāyah while preserving judicial oversight.

Privacy and Documentation: All proceedings remain confidential; only the final report is registered, protecting spouses from social stigma.

3.5.4 Integration with Family Courts: Pre-Litigation Obligatoriness

To reduce judicial burden and enhance efficacy, Hakamayn mediation would be made mandatory and prerequisite before any suit for dissolution, restitution, or maintenance may be filed in a Family Court (amending Section 5 of the Family Courts Ordinance 1985). Courts would retain jurisdiction to review Board reports on limited grounds (bias, ultra vires, or violation of fundamental rights) but would be statutorily obliged to give "due weight" to ethical-spiritual findings. Successful reconciliations would be recorded as binding agreements enforceable under the Arbitration Act 2001, lending legal teeth to sulḥ outcomes (Rashid, 2012; Bano, 2017).

3.5.5 Institutional Ecosystem: Mosques, Madrasas, and Islamic NGOs

The model harnesses existing religious infrastructure:

- Mosques: Friday khutbahs and post-prayer counselling cells would disseminate preventive education on spousal rights and early intervention.
- Qawmī and ʿAlīyah madrasas: Incorporate family mediation modules into dars-e-nizāmī and postgraduate curricula.
- Islamic NGOs: Organisations such as Islamic Relief, Al-Markazul Islami, and Muslim Aid would be accredited to operate certified mediation centres in urban areas, complementing state Boards.

This decentralised, community-embedded approach restores the familial-communitarian ontology of An-Nisāʾ 4:35 while leveraging civil-society capacity (Keshavjee, 2013).

3.5.6 Feasibility and Anticipated Impact

Pilot projects in Malaysia (Jabatan Kehakiman Syariah) and Indonesia (Badan Arbitrase Syariah Nasional) demonstrate that state-supported hakamayn systems achieve reconciliation

rates of 45–65% and reduce court caseloads by over 40% (Giunchi, 2010; Baghdadi, 2017). Given Bangladesh's dense mosque network (over 300,000) and existing NGO mediation infrastructure, scalability is realistic within a five-year horizon. Initial costs would be offset by dramatic reductions in family-court litigation and associated social externalities (domestic violence, child trauma, poverty induced by prolonged disputes).

The proposed Qur'ān-centric model does not seek the wholesale abrogation of existing statutes but rather their ethical reinfusion and structural recalibration. By reconstituting the Arbitration Council as a genuine Hakamayn Board, professionalising mediators, mandating graduated sulḥ–tahkīm, and harnessing religious institutions, Bangladesh can transcend the current impasse and actualise the divine promise of An-Nisāʾ 4:35: "If they both desire reconciliation, Allah will cause concordance between them."

3.6 Challenges and Feasibility in the Bangladesh Context

The transposition of a rigorously Qur'ānic hakamayn framework into Bangladesh's juridical and socio-cultural topography, though normatively imperative, encounters a constellation of structural, ideological, and logistical impediments. These obstacles are neither superficial nor insurmountable; their negotiation requires a strategically phased approach informed by comparative Islamic governance and indigenous experimentation.

The foremost legal hurdle resides in the constitutional and political difficulty of amending the Muslim Family Laws Ordinance (MFLO) 1961, a statute that has acquired quasi-sacral status since its enactment under martial-law conditions. Substituting Sections 7–8 with provisions establishing certified Hakamayn Boards, conferring presumptively binding authority, and mandating pre-litigation tahkīm would necessitate parliamentary legislation in a polity where Muslim personal-law reform invariably catalyses sectarian mobilisation. Historical precedent—the acrimonious debates surrounding the 1980s dowry law and the 2017 child-marriage amendments—illustrates how conservative religious lobbies can successfully reframe sharʿī revitalisation as secular encroachment or, conversely, as insufficiently orthodox (Shehabuddin, 2021; Rahnema, 2018). Overcoming this requires coalition-building among progressive ʿulamāʾ, women's rights collectives, and reform-minded parliamentarians.

Socio-cultural resistance manifests as deeply sedimented patriarchal epistemologies that construe enhanced female participation in arbitration and streamlined Khul' procedures as ontological threats to male qiwāmah and familial honour. In rural contexts, where female literacy remains below 68% (BBS, 2023), women's capacity to assert rights within mediation processes is structurally constrained, rendering them vulnerable to coerced reconciliation that sacrifices financial entitlements for social acceptability. The cultural valorisation of ṣabr and the stigmatization of divorce further inhibit demand for ethical tahkīm, perpetuating cycles of silent endurance (Hossain, 2018; Siddiqi, 2019).

A critical operational deficit lies in the acute scarcity of trained personnel capable of embodying the Qur'ānic criteria of ʿadālah and fiqhī competence. Bangladesh currently lacks both a nationally accredited curriculum in Islamic family mediation and a critical mass of scholars trained in both classical uṣūl and contemporary gender-sensitive counselling. Although qawmī madrasahs produce thousands of graduates annually, most lack exposure to

mediation praxis or statutory law, while state-sector imams remain under-remunerated and under-trained (Alam, 2022).

Despite these formidable barriers, feasibility is substantiated by robust comparative and indigenous precedents. Malaysia's professionalised sulh officers within the Jabatan Kehakiman Syariah, introduced in 2001 and systematically trained at the Institut Latihan Kehakiman dan Perundangan Syariah, have achieved reconciliation rates of 62–68% and reduced syariah court caseloads by over 45% (Jabatan Kehakiman Syariah Malaysia, 2024). Indonesia's integrated rujuk and islah programmes under Badilag and the Religious Courts similarly demonstrate that state-sponsored, revelation-centred mediation can operate efficaciously within plural legal orders (Cammack & Feener, 2019). Locally, the Madaripur Legal Aid Association's decades-long shalish reform project—incorporating female mediators and sharʿī ethical guidelines—has consistently recorded reconciliation rates exceeding 65% across multiple upazilas, while Ain o Salish Kendra's Islamic mediation units in Dhaka have successfully resolved over 70% of referred cases by invoking An-Nisāʾ 4:35 explicitly (Ahmed, 2013; ASK, 2023). These initiatives illustrate that cultural receptivity is attainable when interventions are framed as authentic restoration of Qur'ānic justice rather than exogenous imposition.

In addition, while legislative inertia, patriarchal entrenchment, and capacity deficits constitute genuine challenges, the Malaysian, Indonesian, and Bangladeshi micro-successes collectively affirm that a phased, mosque-anchored, and civil-society-supported rollout is both feasible and politically viable. Commencing with voluntary hakamayn panels in progressive districts, scaling through public–private partnerships, and culminating in statutory codification offers a realistic trajectory for reconciling revelatory fidelity with socio-political contingency.

4.0 CONCLUSION

This study has systematically demonstrated that the Qur'ānic paradigm of sulḥ and tahkīm, crystallized in An-Nisāʾ 4:35 and its cognate verses, constitutes a sophisticated, graduated, and ethically transcendent mechanism for preventing and ameliorating marital discord. Through exegetical reconstruction, comparative socio-legal analysis, and critical evaluation of Bangladeshi practice, three principal findings emerge: first, the revelatory model is ontologically oriented toward the preservation of familial sanctity through taqwā-centric, family-embedded arbitration; second, extant statutory and informal mechanisms—despite nominal conciliatory intent—exhibit systemic deformation, epistemological alienation, and gendered asymmetries that vitiate the maqāṣid of revelation; third, the divergence is historically traceable to colonial disembedding, positivist hegemony, and the marginalization of sharʿī mediatory competence.

The superiority of the Qur'ānic model is not merely normative but empirically corroborated. Its emphasis on pre-emptive intervention, qualified hakamayn, binding ethical authority, and transcendent principles of iḥsān and qisṭ offers a transformative alternative to the bureaucratic proceduralism and adversarial residuality that presently dominate Bangladeshi practice. In an era of escalating marital dissolution, the model's capacity to heal rather than merely manage conflict, to sacralise rather than secularise the conjugal bond, renders it profoundly relevant to contemporary Muslim societies (Al-Qaradawi, 2013; Hallaq, 2018).

Future scholarship should pursue longitudinal evaluation of pilot hakamayn programs, comparative analysis of the efficacy of reconciliation across reformed and unreformed districts, and ethnographic exploration of female litigants' experiential encounters with Qur'ān-centric mediation. Additionally, interdisciplinary investigation into the intersection of taqwā-based ethics and therapeutic psychology in marital counselling offers fertile ground for enriching applied maqāṣid discourse.

In conclusion, the Qur'ānic institution of hakamayn does not belong to a bygone golden age but constitutes a living legislative mandate whose realization remains both obligatory and achievable. By re-centering An-Nisāʾ 4:35 within Bangladesh's juridical imagination, the state, judiciary, and religious leadership can transcend the current crisis of marital instability and actualize the divine promise: "If they both desire reconciliation, Allah will cause concordance between them." The path forward demands not merely legislative reform but a collective return to the transcendent wisdom of revelation—a return that is simultaneously an ethical imperative and a socio-political exigency.

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