



## Resolution of Marital Discord under Muslim Law: An Appraisal in Contemporary Context

Lubna Tanweer\*  
Hassana Quadri†

### Abstract

The paper explores the concept of “Sulh,” an Islamic approach to Alternative Dispute Resolution (ADR), focusing on its application in resolving marital discord. Rooted in the primary sources of Muslim law—namely the Quran, Sunnah, and Hadith—“Sulh” emphasizes amicable settlements while upholding the moral and spiritual values of Islamic law. This study examines the historical origin of “Sulh,” its religious and legal sanctity, and its practical application in marital disputes.

While the concept of “Sulh” has been institutionalized in various ways, its implementation in India remains uncertain. Using a doctrinal and empirical approach, the researchers analyze the importance of “Sulh” and its judicial recognition in India. Landmark judgments, such as *Shamim Ara v. State of U.P.*, have underscored the necessity of pre-divorce reconciliation in alignment with Quranic mandates.

The paper further highlights the limited awareness and adherence to the practice within the Muslim community in India. It emphasizes the lack of legislative and institutional frameworks to support the adoption of “Sulh.” Through this analysis, the authors explore whether adopting “Sulh” in its true spirit can mitigate marital disputes, reduce divorce rates, and alleviate the burden on courts.

Additionally, the paper discusses how relevant institutions must prioritize the practical implementation of amicable settlements over pushing marital discord towards dissolution. This approach ensures that the underlying principles of “Sulh” are effectively realized, fostering harmony within the Muslim community.

**Keywords:** Alternative Dispute Resolution, Muslim Law, Marital Disputes, Sulh

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\* Research Scholar, Jamia Millia Islamia, New Delhi, India. email: lubnaatk@gmail.com

† Assistant Professor, Amity University, Dubai, United Arab Emirates.

## 1. Introduction

As a result of the extensive dissemination of information and knowledge across borders, nations, faiths, and civilisations, it is now vital to research cross-cultural and multi-cultural practices. Any study of religion must begin with carefully analysing its traditions and customs. Religious traditions and rituals have been crucial to forming modern laws and the evolution of civilisation. Customary methods of dispute resolution have proved to be very efficient and effective. In a few religions, they are so sacred that they have been included in the “*formal legal system*”.

Islam’s main method of resolving disputes is founded on religious principles, customs, rituals, and the idea of peaceful coexistence. Although alternative dispute resolution (ADR) practices are generally credited to the West, it is important to note that ADR procedures like mediation, arbitration, Med-Arb, conciliation, and negotiation are referenced in the Holy Quran and are granted legal sanctity under Islamic law. As a result, these ADR techniques are not only stated in the Quran but have also been used since the Prophet (Peace Be Upon Him), who was a strong advocate for the concept of peaceful conflict resolution.

An attempt has been made to look at and trace the origins of ADR practices under Islam, their legal sanctity under Islamic law, and their judicial recognition in India. An empirical method was also used to look at the present status of ADR practices in the Muslim community in India.

A simple look at ADR practices under Islamic law would reveal its features that provide individuality as well as legal sanctity under the Islamic legal system to these practices:

- a) The ADR processes under Islamic law have religious sanctity owing to its origin under the Quran as well as the approval by the Prophet. The sense of submission instilled in Muslims by the Quran and the *Hadith* (the Prophet’s sayings, actions, and tacit approvals) elevates ADR to a higher level of spirituality.
- b) It is now morally required of both the “parties” and the “arbitrator” to settle a disagreement amicably after it has already been referred to arbitration.

- c) Amicable composition is acceptable, enabling an arbiter to render a decision in accordance with his moral principles of justice, equity, fair play, and conscience.
- d) Under Islamic law, parties to an arbitration procedure may withdraw from it at any moment prior to the arbiter's award being made.
- e) Islamic law prohibits arbitration agreements for future matters. Therefore, the "wait and see" strategy is maintained because a dispute might not arise.
- f) The fatwa of muftis is a sort of expert determination. Because fatwas are non-binding, the judgement of a high-ranking religious jurist on a contentious issue carries the stamp of wisdom and religious piety, eliciting more eager cooperation than the verdict of a "mere" expert.

## **2. Literature Review**

### **Tahir Mehmood, "Muslim Law in India and Abroad", Universal Lexis Nexis, Second Edition, 2016**

In his book, the author talks explicitly about the provision of reconciliation, which is the settlement of marital discord between the spouses. He claims that the Quran prescribes an arbitration procedure according to which representatives of the respective spouses jointly need to endeavour to resolve their disputes to bring both parties at dispute together. The author states that the Quran directs the arbitrators, with the promise of God's help, to genuinely try to effect reconciliation. However, if there is a failure, the spouses can think of dissolving the marriage under the principles of the Quran.

### **"Aseel Al Ramahi, *Sulh: A crucial part of Islamic Arbitration*, LSE Law, Society and Economy Working Papers 12/2008"**

The idea of Sulh as an efficient Islamic dispute resolution procedure is covered in great length in this work. The author highlights that Arab and Islamic civilisations, which have their roots in "*pre-Islamic Arabia*", have a long tradition of arbitration and peaceful resolutions (Sulh). Sulh was the ideal result and approach for any

kind of dispute resolution. Furthermore, arbitration is preferred above judgement under Islamic law. The author talks about how everyone in the group, including outsiders like judges (qadi), arbitrators (hakam), and conciliators, have an obligation to preserve and bring peace back. The foundation of any conflict resolution process under Islam is Sulh (amicable settlements), which uphold the ties of family, brotherhood, and society.

This paper focuses on the obligations of reconciliation or a “duty to reconcile” is imposed upon all Muslims. *Sulh* is a compromise-based agreement reached through direct or indirect negotiation between the disputing parties. In Islam, it is the moral and most revered course for those involved in a dispute. This paper explores the legitimacy of arbitration under Islamic law and explains its conciliatory nature.

**“Nora Abdul Hak and Hanna Ambaras Khan, *The Application of Sulh in resolving Community Disputes*, January 2013”**

The author provides a thorough explanation of the idea of Sulh and explains how the Quran provides a third party for Islamic dispute resolution. This essay discusses the practice of Sulh during the time of the prophet (PBUH) and his companions, as well as the method of peaceful resolution they employed to settle all disagreements, even those within the family. The author also mentioned the need to formalize or institutionalize dispute settlement in order to resurrect the old Sulh technique. The study’s author suggested using Sulh to help the husband and wife work out their differences. This will contribute to the development of a society that comprehends and practices Sulh, as the family is the smallest social unit. There won’t be any family disagreements in civil court if this method becomes more widespread in society, unless the matter is extremely severe and complex and cannot be settled within the family.

**“Sulaiman Dorloh, *Sulh and Implementation of Mediation Process in Islamic Family Law cases at Muslim Religious Committee Councils in Thailand*, December 2015”**

The author of this study has emphasised the value of mediation and arbitration as very successful dispute resolution processes. The study is to evaluate the roles of the arbitration process, conflict mediators, and conflict conciliators at the councils with reference to a few Islamic family law cases. It also gives a detail about the procedure of appointing arbiters in the holy Quran in the cases where the marriage is on the verge of breakdown. The Author has quoted many verses from chapter II .... and Chapter IV.... of the Holy Quran regarding Sulh in order to strengthen his research point.

**“Sayed Sikander Shah, *Mediation in Marital Discord in Islamic Law: Legislative Foundation and Contemporary Applications*” Arab Law Quarterly, Vol. 23, No. 3 (2009)**

In the paper, the author discusses how mediation has become one of the most practical institutionalised methods of resolving marital disputes in Western countries in recent years. Nonetheless, centuries ago, Islamic law recognised the potential of the reconciliation process to uphold the purity of marriage. According to the author, mediation was the fundamental *ratio legis* for the arbitral institution. The author continues by highlighting the ways in which mediation was culturally practiced using both official and informal approaches. The author examines the laws of Malaysia, where Shari’ah solicitors, judges, and religious department officials regularly mediate family disputes. He proposes a different approach, like establishing a body like a “Conciliatory Committee” that mimics the mediation mode used in the West.

**“Sayed Sikandar Shah Haneef and Mohd Abbas Bin Abdul Razak, *Stabilizing Muslim Marriages: Some Reflections on Ethical Management of Family Law*” Mazahib, 16(1).**

In this article, the author discusses how marriage dissolution and unstable families, along with the crippling consequences they have on women and children, are the hallmarks of today’s highly automated global society. According to the authors’ study on Malaysian law, early marriage, women’s “*financial independence*”, and easy access to multimedia are some of the variables that contribute to the increased divorce rate among Muslims, even in

the early years of marriage. This article's discussion of marriage counselling, legislation change, and pre-marriage education—topics that are primarily prioritised by both mainstream legal experts and “women's rights activists”, is crucial to the current research proposal. The writers also express their views on formalistic methods and how they could lead to more divorces rather than strengthening families if they are not combined with the focus on the moral aspects of Islamic law. The author also makes the case for a more focused and moral strategy, such as conciliation and mediation, to avoid marriage failure.

### **3. Objectives of the Study**

- a) To analyze the history and importance of Sulh (amicable settlement of dispute) in Islam.
- b) To trace out the concept of “Sulh” in Marital discord among Muslims
- c) To emphasize the Sulh procedure, which is used in divorce cases in India.
- d) To study Muslim understanding of the concept of Sulh.
- e) To conduct an “empirical study” on the awareness and implications of the concept of Sulh.

### **4. Research Questions**

- a) What is the importance and procedure of “Sulh” mentioned in the Holy Quran regarding marital dispute?
- b) What are Islamic scholars' thoughts on the concept of Sulh as a prerequisite for divorce?
- c) Whether the holy Quran's procedure for conciliation before divorce is actually followed in divorce cases in India?

### **5. Hypothesis**

The research proceeds primarily on the following hypothesis:  
The number of cases of divorces can be amicably resolved and the burden of court will be reduced by strict adherence to the principles of Sulh (amicable settlement).

## 6. Research Methodology

The methodology which the Authors seek to adopt for this study is “doctrinal” as well as “empirical”. The doctrinal part would include the study of the available literature on the topic i.e. the holy Quran, Hadith and the juristic works in different languages. Journals, books, reports and articles published have been used for assessing the present legislative and judicial trends in India and Muslim countries. For doctrinal part, the data has been collected by undertaking a review of literature, of both primary and secondary sources.

For the empirical study, the Authors created a Google form with questions about the topic, and the opinions of law students, law professors, practicing lawyers, judges and general public were sought for the purpose of the study.

## 7. Historical Background of ADR in Islam

Sulh is the term for “*alternative conflict resolution*” in the “*Islamic legal system*”. As is well known, the Qur’an serves as the foundation for the “*Islamic legal system*”, which is further strengthened by hadith, or the Prophet’s traditions, and Ijma, or the consensus of Muslim jurists.

Arbitration and peaceful resolution, or *sulh*, have a long history in Arab and Islamic civilisations that stretches back to “*pre-Islamic Arabia*”. Before Islam, the “*Arabs*” and a number of other ancient communities were used to and familiar with arbitration as a means of resolving disputes. When the Islamic Ummah was founded in Medina on the basis of Islamic Sharia, it recognised and authorised a number of “*pre-Islamic techniques*” for resolving conflicts amongst individuals, though with certain adjustments.<sup>1</sup>

Arabic people have historically had a cultural predisposition to settle disputes out of court by private means including conciliation, mediation, and bargaining. This practice has historical roots that extend beyond the framework of the society to the pre-Islamic period, known in Arabic as Ayyam-e-Jahiliyya.

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<sup>1</sup>Fauz Law Firm, *Sharia Quarterly Law Report - Volume 1 Part 1* 13 (Kaduna, Nigeria, 2013).

In the pre-Islamic era, there are numerous examples of alternative dispute settlement. The most well-known example is a dispute that developed during the reconstruction of the Kaaba, which was resolved through arbitration, and the arbitrator was none other than the Prophet Muhammad (PBUH). To trace the above example, local tribes fought over who would reinstall the Black Stone in the Kaaba once it was renovated. No clan chief wants to give up such a prestigious position to another. A potential conflict between the “*Quraysh*” tribes was avoided by the Prophet Muhammad by successfully settling that disagreement. After the Kaaba’s walls were rebuilt, the Black Stone (Alhajar-al-Aswad) was placed on the southeast corner of the edifice. One point of controversy was the honour of placing the Black Stone in its proper location. Abu Umayyah, the oldest man in Mecca, proposed that a fight would probably break out over the mosque’s gate, thus the first man to reach it the next morning should make the decision. Muhammad was the man in question. The people declared, “This is Muhammad, and we have accepted him as arbitrator,” They approached Muhammad and asked him to make a decision. He concurred. According to the manner that Prophet Muhammad described, the elders of each side decided to place the “Black Stone” on a cloak, grasp onto one end of the cloak, and carry the stone to its correct place. The stone was subsequently placed against the wall of the Kaaba by the Prophet.

The episode mentioned above demonstrates the key characteristics of arbitration at the time, which are:

- a) “Arbitration agreements” were straightforward and impromptu;
- b) They weren’t documented in writing;
- c) Since the goal of the entire procedure was to come to an understanding and resolve the conflict through whatever amicable means rather than issuing a legally enforceable ruling, arbitration was comparable to conciliation.

Prior to Islam, both the arbitration procedure and the implementation of the ruling were discretionary. The parties to the

case had to be present during the proceedings for the arbitral award to be valid. Other than a few conventions, arbitrators were not subject to any rules on procedural norms. For example, they were required to evaluate the parties' evidence in accordance with tribal customs and to hear disputing parties equally.

### **7.1 Etymology and Religious Sanctity Attached with the ADR (Sulh) in Islamic Law**

Sulh literally translates to "disagreement termination." Terminologically, Sulh refers to a contract that a disputing party enters into in order to resolve their disagreement once and for all. Sulh is an offer-and-acceptance agreement that only occurs when a dispute is brought about by an impartial third party and is consented to by both disputants.<sup>2</sup>

The idea of Sulh has deep roots and is present in both scriptural (Quranic) and extra-scriptural (the "corpus of Ḥadith") texts. There are numerous guidelines to demonstrate that making amends is a noble endeavour that is valued as a religious act. Sulh is governed by the scripture and extra-scriptural sources that Muslims consider to be the Shariah, just like many other areas of the law. Second, because Sulh is flexible, contractual, quick, and one of the best ways to settle many kinds of conflicts—whether business or family—it is also the recommended alternative dispute resolution option.

Throughout the sacred Quran, the idea of resolving disagreements amicably appears in multiple instances. According to the Holy Quran:

"And if two parties among the believers fall into the quarrel, make peace between them both, but if one of them rebels against the other, then fight you (all) against the one which rebels till it complies with the commands of Allah, then if it complies, make reconciliation between them justly, and be

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<sup>2</sup>Bassam Sulaiman Abughosh and Wafaa Zaki Shaqra, "A Glossary of Islamic Terminology", 1992.

equitable, Verily Allah loves those who are just and equitable”<sup>3</sup>

“If two parties among the believers fall into a quarrel, make ye peace between them...with justice and fair, for Allah loves those who are just and fair”<sup>4</sup>

The significance and function of conciliation and reconciliation in settling conflicts are explained in the sentences above. Islamic law states that the goal of Sulh is to put an end to animosity and conflict among Muslims so that they can live in harmony and peace with one another.

According to reports, the prophet who affirmed the verse above said:

“He who makes Sulh (peace) between people by inventing good information or saying good things (in his attempt to please the disputants) is not a liar”<sup>5</sup>

Additionally, the Prophet prioritised dispute resolution over fasting, sadaqah & zakah (almsgiving & charity), and prayer (salat).

“Shall I inform you of a deed more rewarding than fasting, prayer and charity? It is the act of settlement between people, for bad relationships and disputes are like a razor (which can eliminate a community).”<sup>6</sup>

The famous letter that Umar bin Khattab, the second caliph of Islam, wrote to “*Abu Musa Al-Ash’ri*” after appointing him as a *Qazi* (judge) and containing guidelines to help him decide cases, is another example of the historical significance Islam places on resolving conflicts and disputes.

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<sup>3</sup> The Holy Quran 49:10.

<sup>4</sup> The Holy Quran 49:9.

<sup>5</sup> Muhammad Muhsin Khan, “*Sahih al - Bukhari = Sahih - I Buhari : Arabic - English 3.Cilt 553*” (Islamic University, Medina, 1989), at p. 553.

<sup>6</sup> ‘abd Al-Raḥmān Ibn Nāṣir Sa’dī, S ‘abd Al-Ḥamīd and Sajid H Chaudhary, *Tafsīr As-Sa’dī 202* (Islamic Literary Foundation, Floral Park, Ny, 2012), at p. 202.

“All types of compromise and conciliation among Muslims are permissible except those which make haram (unlawful) anything which is halal (lawful), and a halal as haram”<sup>7</sup>

This idea is derived straight from the Prophet’s statement:

“if somebody innovates something which is not in harmony with the principles of our religion, that thing is rejected”

The function of the qazi (judge) and the Islamic judicial institution of the qadi (court) are given far more weight in the analysis of many reflections on Islamic culture. Nonetheless, there are distinct contemporary viewpoints on the customs of amicable settlement through the conciliation or mediation procedure (known as *sulh* in Islam) and the arbitration process (called *tahkim*), and their significance to Islamic justice is becoming more widely recognised.<sup>8</sup>

## 7.2 Concept of Sulh in “Matrimonial Disputes”

The Quran’s usage of the idea of Sulh in connection with settling marital conflicts is the second instance. The Islamic term for marital disagreement is shikaq, which translates to “difference and conflict” in Arabic. When a spouse’s relationship has been broken by friction or conflict, the Qur’an has commanded Sulh as a way to mediate the situation.

It is provided in the Holy Quran (4:35):

“If you fear that husband and wife may break up, then appoint one arbitrator from his family and one

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<sup>7</sup> The letter is still preserved. For its authenticity, which is established with carbon dating process, see, D. D. Margolich, “Omar’s Instructions to the Qazi”, *Journal of Royal Asiatic Society*, (1910), p. 307 at 311312; Asif A. A. Fyzee, “A Modern Approach to Islam”, (Lahore, 1978 ed. Of the original Indian Edition), pp. 41-46; Mahmood A. Ghazi, *Adab al-Qadi*, (Urdu) 2<sup>nd</sup> ed. (Islamabad, Islamic Research Institute, 1993), p. 164

<sup>8</sup> E. Ann Black, Hossein Esmaeilli, Nadirsyah Hosen, “*Modern Perspectives on Islamic Law*”, 154 (UK and Northampton, MA: Edward Elgar, 2013)

from her, if the couple wishes to reconcile, then Allah will indeed bring about their reconciliation”<sup>9</sup>

According to this verse, if a disagreement occurs between a husband and wife, it is advised that they resolve it amicably through a process called tahkim, or arbitration, in Islam. Sulh might take the form of tahkim.

Another verse in the “Holy Quran” states that-

“If a wife fears cruelty or desertion on her husband’s part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best; even though human inner-selves are swayed by greed. But if ye do good and practice self-restraint, Allah is well-acquainted with all that ye do”<sup>10</sup>

According to the passage, the wife can speak with her husband face-to-face through Sulh if she believes he is not fulfilling his duties as a husband or is attempting to leave her and she is not prepared for a divorce.<sup>11</sup>

There are “*different opinions*” on this verse. Some scholars believe the Government has the authority to designate arbiters from the families of husband and wife, while others believe it refers to the spouses themselves. The roles of the two arbiters are likewise debatable. Muslim jurists argue over the role of the appointed arbiters and whether their ruling should be recommended or binding. Imam Shafi’i believes that the arbiters’ decision will be binding, whilst Imam Abu Hanifa believes that the judgement will just be a recommendation. Irrespective, from the above arguments among the Muslim scholars, it can be said that both recognise the foremost responsibility of the two arbiters which is to find ways of bring about reconciliation among the spouses.

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<sup>9</sup>*The Holy Quran*, Chapter 4, Surah Al Nisa, Verse 35.

<sup>10</sup>*The Holy Quran*, Chapter 4, Surah Al Nisa, Verse 128.

<sup>11</sup>Abd al-Karim Zaydan, “*Al-Mufassal Fi-Ahkam Al-Mar’ah Wa Al-Bayt Al-Muslim: Fi Al-Shari’ah Al-Islamiyyah*” (Mu’assasah al-Risalah, 1997), at p. 411.

The most frequent cause of divorce is reportedly marital strife, and although divorce is legal in Islam, it is strongly frowned upon. According to the explanation above, there are numerous Qur'anic injunctions that support peaceful conflict resolution, or Sulh.

In family disputes, Sulh can also be used to settle matters concerning: "non-property rights (like consummation of the marriage), property rights (like maintenance), and rights that emerge during or after the marriage (like matrimonial property, mut'ah, hadhanah, and maintenance during 'iddah)." This point of view holds that the judge or arbitrator has an obligation to maintain objectivity.

The Prophet Muhammad (PBUH) makes this obligation very clear:

"Whoever judges between two disputing parties (by way of tahkim) and both of them agree with (the arbitrator) whereas he does not do justice between them, Allah will curse him"<sup>12</sup>

As was already established, surah al-Nisa has two verses, 35 and 128: they specifically call for the use of "sulh" and the "appointment of arbitrators" to settle Muslim marital disputes. When it comes to family conflicts, sulh is comparable to sulh in other contexts, such property and non-property issues. Furthermore, sulh can be utilised to resolve conflicts that arise during a marriage or following a divorce. Sulh can be performed at any moment, according to Shafi'i jurists, either before or after the disagreement is brought in court for settlement.<sup>13</sup>

### 7.3 Recognition of Concept of Sulh by Indian Courts

The concept of Sulh, or pre-conciliation before divorce, was often highlighted by Indian jurists and courts. There are several rulings that discuss the specified condition of Sulh preceding divorce.

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<sup>12</sup>Mansur ibn Yunis ibn Idris al-Bahuti, *Kashshaf Al-Qina' "an Matn Al-Iqna"*. 107–8 (maktabat al-nasr al-Haditha, 1999), at pp. 107–8.

<sup>13</sup>Shams Al Din Muhammad Ibn Hamzah Ramli, *"Nihayat Al-Muhtaj Ila Sharh Al-Minhaj"* (Turath For Solutions, 2013), at p. 178.

In the case of *“Rukia Khatun v. Abdul Khaliq Laskar”*<sup>14</sup> and *Jiahuddin Ahmed v. Anwara begum*<sup>15</sup>, Justice Baharul Islam, in both judgments have, after referring to various religious texts under Quran, has observed that reasonability as an essential for Talaq. Prior to the start of Talaq, efforts at reconciliation by the family’s elders or well-wishers are crucial, and “it may be effected” if the aforementioned outcomes are unsuccessful. A necessary precondition for talaq is an effort at reconciliation by both parties in their relationships. According to the ruling, talaq should only be administered following unsuccessful attempts by the husband and wife to resolve their differences and after each of them designated an arbitrator. Divorce is seen to be in violation of the Holy Quran’s teachings if reconciliation is not achieved.

In the leading case of *“Shamim Ara v. State of U.P.”*<sup>16</sup>, the Hon’ble Supreme court observed the judicial opinion recorded by Baharul Islam J. of Guwahati High Court (as he then was):

“The correct law of talaq as ordained by the Holy Quran is that Talaq must be for a reasonable cause and be preceded by attempts at reconciliation between the husband and the wife by two arbiters, one from the wife’s family and the other from the husband. If the attempts fail, talaq may be effected.”

The Court has further observed that:

“We are in respectful agreement with the above said observations made by the learned judges of the High Court. We must note that observations were made 20-30 years before and our country has in recent times marched steps ahead in all walks of life including progressive interpretation of laws which cannot be lost sight of except by compromising with regressive trends”

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<sup>14</sup> (1981) 1 GLR 358.

<sup>15</sup> (1981) 1 GLR 375.

<sup>16</sup>(2002) 2 SCC 518.

Later, this observation was relied upon by Justice Badar Durrez Ahmad of the Delhi High Court (as he then was) in the case of *"Masroor Ahmad v. State (N.C.T of Delhi) & Another"*<sup>17</sup>, and he held: "Reconciliation before the procedure of the divorce is of utmost importance and is in concurrence with the Holy Quran. It is of utmost necessity to follow the procedure of divorce as written in Quran and proper reasoning to be given before the commencement of the Divorce"

Further, in the case of *"Gaurav Nagpal v. Sumedha Nagpal"*,<sup>18</sup> the Supreme Court observed:

"It is a very disturbing phenomenon that large numbers of cases are flooding the courts relating to divorce or judicial separation. Efforts should be to bring about conciliation to bridge the communication gap which lead to such undesirable proceedings. People rushing to courts for breaking up of marriages should come as a last resort, and unless it has an inevitable result, courts should try to bring about conciliation. The emphasis should be on saving of marriage and not breaking it."

In the case of *"A.S Parveen Akhtar v. Union of India"*, Justice Siddiq in his judgment held:

"There must be an attempt at reconciliation before divorce between the husband and wife, a Muslim husband cannot divorce his wife at his whim or caprice i.e. divorce must be for a reasonable cause and it must be preceded by a pre-divorce conference to arrive at a settlement. Even if there is any reasonable cause for divorce, yet there must be an evidence to show that there was an attempt for a settlement prior to the divorce and when there was no such attempt prior to divorce to arrive

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<sup>17</sup>(2008) (103) DRJ 137.

<sup>18</sup> (2009) 1 SCC 42.

at a settlement by mediators, then there cannot be a valid divorce under Muslim law”<sup>19</sup>

Additionally, the Bombay High Court ruled in the case of *“Dilshad Begum Ahmed Khan Pathan v. Ahmad Khan Hanif Khan Pathan & Anr”*<sup>20</sup> that the husband’s merely stating his intention or actions to have pronounced Talaq is insufficient and does not comply with legal requirements. The husband must meet the arbitration requirements for reconciliation and the justifications for talaq in order to exercise his entitlement to talaq.<sup>21</sup>

After examining prior precedents and the authorities of Muslim law, the division bench of the Kerala High Court concluded in the case of *Kunhi Mohammed v. Ayisha Kutty*<sup>22</sup> that:

“Following the decision of the Supreme Court Shamim Ara (supra), it is evident that compliance with the mandate of Ayat 35 of Sura IV that two arbiters must be appointed and an attempt for reconciliation by them must precede the divorce is an essential, non-negotiable and unavoidable pre-requisite.”<sup>23</sup>

However, despite of the clear guidance of the Holy Quran and a number of observations of Supreme Court in many cases, the pre-requisite of *Sulh* is not being followed in most of the divorce cases among Muslims in India.

## 8. Data Analysis

The authors conducted a study by way of a google form and for the purpose of the study; the google form was circulated to law students, professors, lawyers and general public. Authors sought opinions on nine questions. There were in total 73 respondents.

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<sup>19</sup>2002 SCC Online Mad 836.

<sup>20</sup> 2007(109) BOM.L.R. 197.

<sup>21</sup> 2007(109) BOM.L.R. 197.

<sup>22</sup> AIR 2010 (NOC) 992 (KER).

<sup>23</sup> 2010 (2) KHC 64.

### 8.1 Demographics of Respondents

Out of 73 respondents, 38 were male, and 35 were female, reflecting nearly equal representation of both genders.

**Table 1: Demographics of Respondents**

Options	No. of Responses	Percentage
Male	38	52.05
Female	35	47.95

### 8.2 Do you believe the Muslims are aware of the concept of Sulh (Amicable settlement) mention in the Holy Quran?

The majority of respondents (30, 41.1%) feel that Muslims are aware of the concept of Sulh (Amicable settlement) mentioned in the Holy Quran. However, 31.5% of the respondents (23) were not sure about the awareness of the concept of Sulh (Table 1).

**Table 1: Awareness of Sulh in the Quran among Muslims**

Options	No. of Responses	Percentage
Yes	30	41.1
No	20	27.4
May be	23	31.5

**8.3 Chapter 4:35 of the Holy Quran states, “If you fear that husband and wife may break up, then appoint one arbitrator from his family and one from her family, if the couple wishes to reconcile, then Allah will indeed bring about their reconciliation; For Allah has All-knowing and All-aware”. Do you think the practice of Sulh is followed by Muslims in the light of abovementioned verse in marital discords?**

With respect to the question that whether the procedure of Chapter 4, Verse 35 is being followed in cases of marital discord, 49.3% of the respondents (36) replied in the negative (Table 2).

**Table 2: Adherence to Chapter 4, Verse 35 in Marital Discord Cases**

Options	No. of Responses	Percentage
Yes	22	30.1
No	36	49.3
May be	15	20.5

#### 8.4 If No, then do you think that Muslims are not aware of the aforementioned concept in the Holy Quran due to lack of knowledge?

60.3% of respondents (44) feel that there is a lack of knowledge among Muslim masses regarding the concept of Sulh as provided in the Holy Quran.

**Table 3: Lack of Awareness of Quranic Concept Due to Knowledge Gaps**

Options	No. of Responses	Percentage
Yes	44	60.3
No	12	16.4
May be	17	23.3

#### 8.5: Do you agree that there is no sufficient and efficient legislation regarding the problem of divorce among Muslim which imbibes the concept of Sulh (Amicable settlement) in it?

The respondents were divided on whether there is adequate legislation that incorporates the concept of Sulh as a condition precedent in the matter of divorce. However, more than 50 percent of all respondents agree that such legislation does not exist.

**Table 4: Agreement on Insufficient Legislation Addressing Divorce and Sulh (Amicable Settlement)**

Options	No. of Responses	Percentage
Strongly Disagree	10	13.7
Agree	38	52.1
Neutral	9	12.3
Disagree	9	12.3
Strongly Disagree	7	9.6

#### 8.6 There are numerous legislations relating to divorce among Muslims like Dissolution of Muslim Marriage Act 1939, Muslim Women (Protection of Rights on Divorce) Act 1986, Shariat Act 1937 and Muslim Women (Protection of Rights on Marriage) Act 2019. Do you agree that these legislations are in accordance with the process of divorce provided in Holy Quran?

The respondents agree that the existing legislations in India governing divorce in Muslim law are not in accordance with the

divorce procedure provided in the Holy Quran. However, a large number of people were skeptical about the fact.

**Table 5: Opinion on Muslim divorce laws and their alignment with Quranic principles**

Options	No. of Responses	Percentage
Yes	12	16.4
No	31	42.5
May be	30	41.1

**8.7 Shamim Ara v. State of U.P is one of the most leading and celebrated judgement in Indian Judicial history where the Apex court has emphasized the process of Sulh at the time of divorce among Muslims and has held “Divorce shall be preceded by the attempts of Reconciliation”. Do you agree that after this judgement Muslims have started adopting the procedure of Sulh in the cases of divorce?**

The question of whether the Sulh procedure is being followed despite the Supreme Court’s recommendations in Shamim Ara v. State of U.P, 2002 AIR SCW 4162, the majority of participants believe that despite the Supreme Court’s recommendation, it is not being implemented in India.

**Table 6: Opinion on Sulh procedure followed despite the Supreme Court’s recommendations in Shamim Ara v. State of U.P**

Options	No. of Responses	Percentage
Yes	25	34.2
No	48	65.8

**8.8 Do you think that existing institutions like Darul Qaza, Imaarat-e-Sharia and others are successfully implementing and promoting the concept of Sulh in cases of divorce among Muslims?**

The respondents were almost equally divided in the opinion that whether or not institutions like Darul Qaza and Imaarat-e-Sharia are implementing and promoting the concept of Sulh in cases of divorce among Muslims.

**Table 7: Are Institutions Like Darul Qaza and Imaarat-e-Sharia Effectively Promoting Sulh in Muslim Divorces?**

Options	No. of Responses	Percentage
Yes	13	17.8
No	29	39.7
May be	31	42.5

**8.9 Do you agree that there has to be registered government institution in every Indian state and its Sub-division to tackle with the problem of divorce among Muslims by implementing the concept of Sulh the according to the procedure led down in the Holy Quran?**

80.8% of respondents feel that there should be a registered government institution to tackle with the problem of divorce according to the procedure laid down in the Holy Quran.

**Table 8: Should registered government institutions be established in every Indian State and sub-division to address Muslim divorce issues by implementing Quranic Sulh procedures?**

Options	No. of Responses	Percentage
Yes	59	80.8
No	14	19.2

**8.10 Do you agree that the implementation of Sulh (Arbitration, Conciliation, Mediation) if adopted in its true spirit as provided in the Holy Quran would lead to reduction in divorce cases among Muslims**

89% of the respondents opine that that the implementation of Sulh, if adopted in its true spirit, would definitely lead to a reduction in divorce cases among Muslims.

**Table 9: Impact of Implementing Sulh (Arbitration, Conciliation, Mediation) on Reducing Divorce Rates among Muslims**

Options	No. of Responses	Percentage
Yes	65	89
No	8	11
May be	0	0

## **9. Conclusion**

Divorce is a legal but frowned upon affair under Islam. Shariah gives spouses the right to choose whether or not to live together. It is a very disturbing phenomenon that a large number of divorce cases involving Muslim couples are occurring, and some of these cases even go to court. However, an even more disturbing aspect is that most divorces do not begin with an attempt to reach an agreement, i.e. 'Sulh' between the parties, which is one of the essentials stipulated under the Holy Quran. Divorce is, by far, the most misunderstood and misrepresented concept and procedure among Muslims, as well as the general public, in India, owing to the sheer ignorance of its adherents. Another important aspect of marital discord that must be resolved amicably between the parties-is the issues that arise as a result of the divorce, such as child custody and the Mahr issue.

There is no denying that despite clear guidance in the Holy Quran and Ahadith regarding the adaptation of reconciliation, the parties have failed miserably to make an amicable settlement between them in cases of marital discord. It is the need of the hour that Islamic Institutions and Seminaries, with the help of the Government, take concrete steps to make the process of amicable settlement a mandatory aspect to resolve disputes, particularly marital discord among Muslims.