

# ROLE OF TRADITIONAL FAMILY SHALISH FOR MUSLIM MATRIMONIAL DISPUTE RESOLUTION IN BANGLADESH: FROM THE PERSPECTIVE OF HAKAM <sup>○</sup>

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## ABSTRACT

Matrimonial dispute between husband and wife, even though very sensitive, is a common and normal phenomenon. Therefore, such disputes are required to be resolved as much as possible quietly and privately within the family by the family members. The Holy Qur'an initiated the institution of Hakam for this purpose. It is instituted to act as the neutral third party in the process of dispute resolution in case the husband and wife fail to resolve it amicably. In Bangladesh, however, the traditional family shalish is commonly used for this purpose. Since family shalish plays the role of Hakam it is necessary to critically examine how closely its operations and performances conform to the role and goals of Hakam. This study is meant to serve that purpose. From the analyses, it is found that the family shalish by and large closely conforms to the norms of Hakam in terms of formation, role, and goals. However, some slight modifications in respect of the selection of the shalishkers have been recommended for its improved performances. It is hoped that the findings will help shalishkers to deal with such disputes in a more effective manner to prevent the families from breaking up.

**Keywords:** *Hakam, Nushuz, Shiqaq, Family Shalish, Family Laws Ordinance*

## 1. Introduction

A man and a woman coming together through a valid marriage constitute a family. Husband and wife are the core of a family. They, coming together through a unique love and mercy, create a happy family. A pure relationship is highly esteemed between them. For the safety, security, and purity of the

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upcoming generation, the Islamic family system is highly protected. However, a threat to this family accord may arise from matrimonial disputes, such that if the dispute is not resolved appropriately that may lead to breaking-up of the family.

A dispute may be defined as “a fact which is alleged by one party and denied by the other and by both with some show of reason”. In other words- “Dispute is a problem to be solved together, rather than a combat to be won”<sup>2</sup>. A dispute necessarily demands two opposite parties and in a matrimonial dispute, husband and wife are the disputing parties. Disputes that happen between the husband and wife based on their disagreement, disobedience, negligence, or hatred of each other are termed as a matrimonial dispute. It hampers matrimonial tie badly. Even create the situation of divorce by one another. If the couple is left without external help, it may defiantly turn into a divorce. Therefore, the holy Qur’an initiates a system of *tahkim* (arbitration) with two family members as *hakams* (arbitrators) from two sides to examine and resolve Muslim matrimonial disputes. This system is commonly termed as *Hakam*. It is an institution formed to act as a third party in the process of Muslim matrimonial dispute resolution.

A matrimonial dispute may be resolved through conciliation by the couple themselves or by intervention of a neutral third party consisting of two guardians of the disputing parties. This neutral third party may play their role as mediators where decision of the couple will remain dominant or arbitrators where they have right to impose a decision on the disputing couple as well. It may be resolved ultimately through the dissolution of marriage when deemed necessary. However, the dissolution of a marriage must go through some reconciling steps by the husband or wife or a neutral third party or an administrative authority set by the state like arbitration council. Generally, in rural Bangladesh, for close blood ties, people take so many steps to reconcile between a husband and wife involved in a matrimonial dispute. Families automatically become involved with a family dispute resolution through family *shalish* (Family members resolving family disputes within family level). However, some social elites or notables may also take part to resolve some of the family disputes if the main family involved in the dispute invites them. In addition, some NGOs also deal with such disputes in their operating areas. Moreover, Arbitration Council and Family Court as well deal with matrimonial disputes but mostly divorce related cases.

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2. Akhtaruzzaman, M. (2013). *Concept and Laws on Alternative Dispute Resolution and Legal Aid* (5th ed.). Dhaka: Advocate Razia Khatun. P.27

The *hakam* according to the Quranic instruction consists of two experienced family members preferably from two sides. In Bangladesh, the family *shalish* plays the role of *Hakam* for Muslim families. Hence, this study aims to examine how far the family *shalish* conforms with Quranic *hakam* for matrimonial dispute resolution of Muslim families in Bangladesh, and make necessary recommendations for incorporating precautionary steps needed to be taken by family *shalish* under section 7 of the Muslim Family Laws Ordinance 1961 before a couple decides to settle their dispute through a divorce (*talaq*). The study follows a methodology of descriptive analyses.

## 2. Methodology

This study has been conducted based on both primary and secondary sources. The primary data have been collected mainly through extensive discussion with some traditional *shalish*kers (arbitrators) of Sylhet and Chittagong districts of Bangladesh. Interviews with some disputants in marital issues and observation of some events of *shalish* regarding matrimonial disputes are the primary sources of this study too. All these extensive discussions, interviews, and observations of the events had been done from 2015 to 2019 while the researcher was conducting his PhD thesis under Faculty of Quranic and Sunnah Studies of Universiti Sains Islam Malaysia. Secondary data have been collected from several journal articles, periodicals, books, tafsirs etc.

## 3. Sources of matrimonial dispute

Matrimonial dispute i.e., dispute between husband and wife is a natural and common phenomenon. It is not any separable part of family disputes. This dispute may base on the disobedience of the wife to her husband in any righteous command or negligence of the husband to his wife or hatred of both husband and wife. It may be from the sexual dissatisfaction of the husband or wife. Other causes of matrimonial dispute could be - failure of maintenance of the wife or wives by husband, dowry demand by the husband or his family, physical torture to the wife by her husband, and unnecessary second marriage of husband and creating mental pressure on existing wife for second marriage, etc.<sup>3</sup>

Husband or wife or both may be the source of matrimonial dispute. Accordingly, the causes of marital discord could be categorized under following categories:

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3 Kundu, D. K., Khan, A., & Samadder, M. (2010). Understanding Alternative Dispute Resolution for the Rural Women in Bangladesh: Some Illustrations from BRAC HRLS Programme *Working Paper No. 13*: BRAC. P 11.

**a. Arising from behavior of the husband:**

- (i) Oppression and rough treatment with the wife
- (ii) Refusing to maintain her financially
- (iii) Injustice among wives in polygamous family
- (iv) Breaching premarital/prenuptial agreements
- (v) Abandoning the wife
- (vi) Financial problem
- (vii) Dowry demand, etc.

**b. Arising from behavior of the wife:**

- (i) Being disobedient, aggressive and querulous with her husband
- (ii) Being negligent in carrying out domestic chores and duty to her husband
- (iii) Going out without her husband's permission
- (iv) Lack of domestic skill
- (v) Lack of proper dress or dress up alluring for her husband

**c. Arising from behavior of both:**

- (i) The nature of husband's or wife's work
- (ii) Difference in their personal and career goals
- (iii) Unnecessary jealousy and suspicion
- (iv) Transgressing against the matrimonial rights of one another
- (v) Unfriendly to cleanliness and adornment by either of the spouses
- (vi) Child-rearing issue
- (vii) Religious and cultural differences
- (viii) Sexual incompatibility

**4. The Quranic approaches for resolving matrimonial disputes**

The main objective of marriage, according to *sharia*, is to live in tranquility and harmony with one another and to build healthy family relationships (Al-Quran, Ar-Rum 30:21). To save and preserve the main objective the holy Quran, it requires immediate settlement of the disputes between husband and wife. The holy Quran discusses matrimonial disputes briefly as *nushuz* and *shiqaq* and describes their resolution procedures elaborately. The problem that arises from wife or husband only is termed as *nushuz* (undesirable behaviour) in the holy Quran; when both parties are involved in the dispute and are unable to resolve it mutually it is termed as *shiqaq* (Cleavage; Divergence; Chism. The word is not used for the party which sides with the truth)<sup>4</sup>. Generally, matrimonial dispute starts with *nushuz* and accelerates to *shiqaq*. All possible forms of arrogance, negligence, hatred, and transgression of the legal limits by both husband and wife, such as not preserving the rights of one by the other, are included in the meaning of *nushuz*. The Holy Quran demands the couple to settle their dispute which comes under *nushuz* by themselves internally. If they fail and it turns into *shiqaq*, only then a third party has to take responsibility to resolve it.

#### 4.1. Role of the husband towards *nushuz* from his wife

Allah has designated husband as *Qawwam* (protector, guardian, and leader) over his wife (Al-Quran, 04:34) whom he has taken under a trust from Allah. Therefore, the husband must handle most responsibly any kind of *nushuz* caused by his wife. The word *nushuz* has come with all its derivatives five times in the holy Quran - two times as noun (04:34, 04:128) and three times as verb (02:259, 58:11). As a noun used in *ayat* 34 of sura an-Nesa (04:34) *nushuz* is arrogance over the establishment of righteous things and goodness. It destructs the relationship between husband and wife and corrupts the family system completely. According to Al-Bagawi, *Ayat* 34, sura *al-Nisa*, suggests that the husbands give their wives some sorts of advice when they observe any sign of *nushuz* like ill conduct. If the advice does not work and they see some clear activities of *nushuz* like disobedience they should avoid intimacy in bed, sleep oppositely without talking with the wives, and finally the *Ayat* permits the husbands a light beating when they see their wives are repeating their ill conduct and disobedience toward them<sup>5</sup>. In order to avoid *nushuz* or to get a remedy from it the Quran, therefore, advises the husbands for admonishing the wives, avoiding intimacy with them in bed and light beating if they suspect or observe

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4 Omar, A. M. (2010). *Dictionary of the Holy Qur'an*. Hockessin: NOOR Foundation - International Inc. P 295.

5 Al-Bagawi, M. S. (1999). *Malim At-Tanzil fi Tafsir al-Quran* (A. R. Al-Mahdi Ed. Vol. 5). Bairut: Dar Ihya at-TurathAl-Arabi. P 589

or see repeated happening of *nushuz* from them<sup>6</sup>. However, regarding light beating Abdulhamid Abusulaiman opines that the Arabic word '*daraba*' does not necessarily mean 'beat' but rather the temporary separation of a husband from his wife<sup>7</sup>.

وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ

“As to those women on whose part you see ill-conduct, admonish them (first), (next), refuse to share their beds, (and last) beat them (lightly, if it is useful) (Al-Quran, An-Nisa 04:34).

If, in any of these three steps, the wife returns to obedience and starts to run a balanced conjugal life the husband is strictly ordered not to criticize or humiliate her anyway.

فَإِنْ أَطَعْتَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلاً إِنَّ اللَّهَ كَانَ عَلِيماً كَبِيراً

“But if they return to obedience, seek not against them means (of annoyance). Surely, Allah is Ever Most High, Most Great” (Al-Quran, An-Nisa 04:34).

#### 4.2. Role of the wife towards *nushuz* from her husband

*Sulh* is encouraged in the case of domestic discord due to the possible *nushuz* 'ill-treatment' or neglect of the husband. The husband is the leader of the family. If a wife observes a possible *nushuz* or negligence from her husband she is advised to settle the matter peacefully in a compromising way (*sulh*). The Holy Quran declares that this type of compromise (*sulh*) is the best way than a continuous discord or at the worst a divorce between them.

وَإِنْ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ

“And if a woman fears cruelty or desertion on her husband's part, there is no sin on them both if they make terms of peace between themselves; and making peace is better.” (Al-Quran, An-Nisa 04:128).

The Quranic terms *nushuz* and *i`radh* involve any type of misbehavior or injustice from a husband to his wife. It may be from him intentionally to marry

6 Al-Jawzi, J. A. F. (2001). *Zadu Al-Masir fi Ilm At-Tafsir* (A. R. Al-Mahdi Ed. 1422AH ed.). Bairut: Dar Al-Kitab Al-Arabi. Part 2, P 76.

7 Alwani, Z. (2007). The Quranic Model for harmony in family relations. In M. B. Alhateeb & S. E. Abugideiri (Eds.), *Change from Within: Diverse perspectives on domestic violence in Muslim communities*: ACADEMIA. P 33-66.

another wife or to decrease her legal rights in a polygamous marriage. It may come unintentionally also for being the husband uncultured. The wife is advised to deal with him within a compromising manner and settle thereof. These two steps taken by husband and wife need no third party. They are expected to communicate directly and find out a solution for their problems.

However, there is an in-built barrier to solving this type of disputes. Both parties should be aware of it. The holy Quran warned about it and says:

وَأَخْضِرَتِ الْأَنْفُسُ الشُّحَّ وَإِن تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

“And human inner-selves are swayed by greed. But if you do good and keep away from evil, verily, Allah is Ever Well-Acquainted with what you do” (Al-Quran, An-Nisa 04:128).

The *ayat* discloses that human being's main barrier to achieving *sulh* through a compromise is their greed for their own entitlements. Even though the wife is conscious of the causes which have contributed to her husband's aversion towards her, she nevertheless expects from him the treatment that a husband accords to the wife that he loves. The 'greed' of the husband, on the other hand, lies in suppressing her unduly and curtailing her rights to an intolerable extent, merely because she is keen to continue to live with him even though she has lost her attraction for him.<sup>8</sup> A man might induce his wife to give up as many of her rights as he could, while the wife might refuse any such concession, even though it might enable them to save their marriage. Thus, many will prefer a consequence like the divorce or continuous dissension, which is less desirable in the eyes of Allah and the society.

If it is found that both husband and wife have been involved with an uncompromising hostility and not able to solve their problem themselves, a neutral third party consisting of members from their two families should take initiatives to settle the dispute amicably.

### 5. Neutral third party to deal with the matrimonial disputes

When the couple fails to resolve the dispute amicably close family members are the right persons to interfere with. As the family is a sensitive place not everyone should be involved there to intervene in a dispute. Only experienced well-wishing members from the two families should be allowed to deal with a matrimonial dispute. The Holy Quran provides for the institution of *Hakam* to act as a neutral

8. <https://www.islamicstudies.info/tafheem.php?sura=4&verse=127>

third party for dealing with the resolution process for matrimonial disputes in such a critical situation. The Family Court, established under the Family Court Act 1984, Arbitration Council, constituted under the Muslim Family Laws Ordinance 1961, and The Traditional Family *shalish* are three justice forums meant to independently play the role of *hakam* and serve its main purpose. These are three neutral third parties playing the role of *hakam* under different circumstances in resolving matrimonial disputes in Bangladesh.

#### a. *Hakam and Tahkim*

*Hakam* is initiated as a neutral third party consisting of two arbitrators from two families of disputing couple to settle their dispute peacefully. *Tahkim* means appointing or authorizing someone to give punishment or sentence<sup>9</sup>. The appointing authority is called *Muhakkim*. In simple it means arbitration; it is an attempt by the disputing parties to submit their case to a third party called a *hakam* or *muhakkam* (the arbitrator)<sup>10</sup>. The Quranic spirit of *tahkim* for matrimonial dispute, therefore, is the submission of a dispute by two or more parties to a third party to be addressed according to *Shari'ah*<sup>11</sup>.

In pre-Islamic Arabia, the concept of *tahkim* (arbitration) was familiar and it was practiced to settle various types of civil and commercial disputes. Islamic law allows people to seek the aid of arbitrators when they are quarreling and are unable to resolve personal matters among themselves. This can be proven from the Quran, Sunnah, *Ijma'*, and *Qiyas*. The arbitration derived its textual basis from *Sura an-Nesa*, *Ayat* No. 34 of the holy Quran (04:34).

#### b. Role and goal of *Hakam*

Arbitration (*tahkim*) through *hakam* is a recognized practice in Islam and it is not limited to economic, social, religious, and political affairs but it could be applied to all fields of private law as well. However, it remains limited to rights or obligations to specific individuals as a restorative device and not extended to physical punishment or any kind of retribution. Studies have shown that in the field of family law, there is more mediation (which offers non-binding ruling

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9 Sa'odah, b. A. (2015). Sulh: An Alternative Dispute Resolution and Amicable Settlement of Family Dispute. *UMRAN Journal of Muslim Affairs*, 1(M/21), 19.

10 Oseni, U. A. (2009). Dispute resolution in Islamic banking and finance: current trends and future perspectives. Available at SSRN 1461895. P 11.

11 Oseni, U. A. (2015). Shari'ah court-annexed dispute resolution of three commonwealth countries—a literature review. *International Journal of Conflict Management*, 26(M/21), 214-238. doi: doi:10.1108/IJCM-06-2012-0050. P3.



from a neutral third party) than arbitration offering binding ruling on the disputing parties if they have the assent before issuance of any decision by the arbitrator<sup>12</sup>. Any of the parties has the right to withdraw from the arbitration before the pronouncement of the award.

The procedure for *tahkīm* in matrimonial dispute resolution is quite informal, cost-effective, expeditious, and less technical as compared to the legal arbitration.

For *tahkīm* the prerequisite is that the dispute must have already arisen, future disputes cannot be arbitrated unlike mediation<sup>13</sup>.

i. Formation of Quranic *Hakam* committee

*Hakam* committee consists of generally two experienced, reliable, sound-minded family members from two families of bride and groom<sup>14</sup>. Relatives are usually better acquainted with the heart of the problem and better suited for conciliation; however, people from outside the family may also be appointed<sup>15</sup>. The parties would be free, for instance, to decide that the mediators be nominated either by the spouses themselves or by the elders of their respective families. In the event, the dispute is brought before the court, the latter also has the right to nominate mediators, representing the families of both parties, before referring the matter for judicial verdict<sup>16</sup>.

ii. Quality of the *Hakams*

The Holy Quran has suggested the *hakam* should be from a close relative of the disputing husband and wife. As far as possible, the person selected must possess uprightness (*`adl*), intelligence (*`aql*) and discernment (*tamyz*). Since Islam has laid down utmost importance on justice and it is dependent on the judges, and the position of an arbitrator is similar to the position of a judge (*`Awdah*) in the formal court in this sense that under Islamic law, the same jurisdiction would be

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12 Rashid, S. K. (2002). Alternative dispute resolution: The emerging new trend of informal justice. *Kuala Lumpur: International Islamic University Malaysia*.

13 Hossain, M. S. (2013). Arbitration in Islamic law for the treatment of civil and criminal cases: An analytical overview. *Journal of Philosophy, Culture and Religion*, 1, 1-6. P 11.

14 Al-Bagawi, M. S. (1999). *Malim At-Tanzil fi Tafsir al-Quran* (A. R. Al-Mahdi Ed. Vol. 5). Bairut: Dar Ihya at-TurathAl-Arabi. P 589.

15 Othman, A. (2005). *"And Sulh is Best" : Amicable Settlement and Dispute Resolution in Islamic Law*. (PhD), Harvard University, Cambridge, Massachusetts. (UMI Number: 3173999). P 42.

16 <https://www.islamicstudies.info/tafheem.php?sura=4&verse=34&to=42>

given to the arbitrator as a judge in case of solving the dispute and giving an award to a dispute. So the *Hakams* as arbiters should meet the above-mentioned qualities and have the capability of judgment<sup>17</sup>.

### iii. Operational mechanism

The *Ayat* 35 ((*وإن خفتن شقاق بينهما*) of *sura an-Nisa* (4:35) provides no guidance as to how these arbiters (*hakams*) should approach their task. Many authorities are suggesting that *hakam*'s task is essentially a fact-finding mission to ascertain the *nashiz* (wrongdoer) in the case before them and convince the parties to fulfill his or her obligations to the other with a view to bringing them back together<sup>18</sup>.

The *hakam* should first approach the husband privately, and ask him to reveal his true feelings regarding his wife. If he professes a commitment to her and agrees to do what is necessary to retain her, then the *hakam* can conclude that there has not been *nushuz* (misconduct) on his part. If the husband insists that he does not wish to remain with her and desires a divorce, one can conclude that the violation originated from him. The same procedure applies to the wife.

When both *hakams* have ascertained which party is in violation of his or her marital obligations, their duty then is to provide him/her with spiritual advice, remind him/her of his/her obligations (*al-`izah*, *al-nasihah*, *al-maw`izah*), or to warn him/her accordingly (*al-zajr*, *al-nahy*). However, if they perceive that the marriage will not achieve its main objective, they may initiate separation as the last solution.

### iv. Jurisdiction of *Hakams*

There is disagreement among Muslim jurists about the extent of the *Hakam*'s authority. *Hanafis* and *Shafis* hold that arbitration is very closely similar to compromise of action through mediation (*sulh*). However, the arbitral award is inevitable to be followed if the parties agree. Thus arbitration is like conciliation<sup>19</sup>. To explain more clearly Mawlana Maududi mentions - The *Hanafi* and *Shafi'i* schools are of the opinion that they (arbitrators) normally have no authority to issue a binding verdict. All they may do is to recommend the

17 Masud, M. K., Messick, B., & Powers, D. S. (1996). Muftis, fatwas, and Islamic legal interpretation. *Islamic legal interpretation: muftis and their fatwas*, 3-32.

18 Othman, A. (2005). "*And Sulh is Best*" : *Amicable Settlement and Dispute Resolution in Islamic Law*. (PhD), Harvard University, Cambridge, Massachusetts. (UMI Number: 3173999). P 41.

19 Oseni, U. A. (2009). Dispute resolution in Islamic banking and finance: current trends and future perspectives. *Available at SSRN 1461895*. p 12.

solution they advocate; whereafter the spouses have the right either to accept or to reject it. The exception is if the spouses have nominated the mediators to act on their behalf in regard to either *talaq* or *khula*: they will then be bound by their verdict.

Another group of jurists argues that the authority of the mediators is confined to deciding how the spouses should reconcile their differences and does not extend to the annulment of marriage. This is the opinion of Hasan al-Basri and Qatadah, among others.

Yet another group holds the opinion that the mediators have full authority both in respect of reconciliation and annulment of marriage. This is the opinion of Ibn 'Abbas, Sa'id b. Jubayr, Ibrahim al-Nakha'i, al-Sha'bi, Muhammad b. Sinn and several other authorities.

Nevertheless, according to the best of opinions, in a matrimonial dispute, should the *hakams* conclude that separation is inevitable or necessary, they are also empowered to effect the separation of the couple or divorce of the wife on behalf of the husband<sup>20</sup>.

It should be noted here that the position of an arbitrator is similar to the position of a *qadi* (judge) in the formal court in this sense that under Islamic law, the same jurisdiction would be given to the arbitrator as a judge in case of solving the dispute and giving an award to a dispute. Therefore, the arbitrator shall need the same qualification as a judge, and the parties who chose him are bound to follow the award given by him. However, from the beginning, neither arbitration nor a compromise can be made to disputes of a *hudud* nature. Furthermore, matters concerning *li'an* (mutual imprecation), *talaq* (divorce), *nasab* (paternity), *faskh nikah* (judicial abrogation of marriage), *Ethq* (the emancipation of slaves), *rushd* (adolescence), *safih* (spendthrift), *mafqud al-khabar* (a person whose whereabouts are unknown), *waqf* (endowments) and revenue matters cannot be arbitrated, as the judge alone has the discretion to decide these matters<sup>21</sup>.

From the opinions mentioned above and discussion about the position of arbitrators (*Hakams*), it seems that this *ayat* 35 of *sura an-Nisa* (فابعثوا حكما من أهلها) is the main textual source for all justice forums concerned to matrimonial dispute

<sup>20</sup> Othman, A. (2005). *"And Sulh Is Best: Amicable Settlement And Dispute Resolution In Islamic Law.* (PhD), Harvard University, Cambridge, Massachusetts. (UMI Number: 3173999). P 42-43.

<sup>21</sup> Uthman, M. R. f. (1994). *Al-Nizam Al-Qadaei fi Al-Fiqh Al-Islamy* (2 ed.): Dar al-Bayan. P 32.

resolution. Thus, the Family Court, Arbitration Council, and Traditional Family *Shalish* base their legality from the Bangladeshi Muslim family perspective. All these forums serve the goal of *Hakam*. As the family court has only authority to declare a binding decree and Arbitration Council and family *shalish* have no authority to give any binding verdict, the purpose of the Quranic *Hakam* is being served by all these three forums ingratiatingly<sup>22</sup>.

### c. Role and goal of traditional Family *Shalish*

Clan/family-based dispute settlement process is an age old practice in Bangladesh and other societies. It is done through a body of *shalish* consisting of close relatives of the disputing parties. The word *shalish* originates from the Arabic ordinal number *thalith* meaning third. In the Bengali language, it is pronounced as *salis*, *shalish*, *shallish* etc in various areas of the country. It denotes a neutral third party to resolve a dispute between two disputing parties. Family *shalish* consists of nearest family members for resolving family disputes within the family level. It hardly goes out of the family level. However, based on the nature of the dispute and its gravity it may become an issue of clan or village *panchayat* also. If family dispute is surrounded by husband-wife relationships, it sometimes leads to the separation of a marital bond. When a disputed matter involves husband and wife as the parties it becomes more sensitive and needs settling the issues by themselves privately. Sometimes the senior close relatives remain present to settle their problem. Children or other junior members may not get access unless they are required to settle the issue. Hence, this type of *shalish* consisting of close relatives of the couple is termed as private *shalish* also.

Generally, in rural Bangladesh for close blood ties, people take so many steps to reconcile between a husband and wife involved in a matrimonial dispute. Families automatically become involved with a family dispute resolution through family *shalish*. However, some social elites or notables take part to resolve some of the family disputes through their intervention if the main family involved in the dispute invites them. The important feature of family *shalish* in Bangladesh is that it works everywhere and keeps the society in order, but it does not follow any standard operational mechanism and it has no written rules or regulations. Even though it plays so important role in the society. Thus, it needs proper guidance to perform its activities according to the spirit of the Quran and Sunnah.

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22 <https://www.islamicstudies.info/tafheem.php?sura=4&verse=127>

#### d. Nature and extent of conformity of Family *Shalish* with *Hakam*

Based on the analyses of the structures, functions, roles, goals, and operating mechanisms of the Quranic institution *Hakam* and the institution of traditional family *shalish* in Bangladesh meant for Muslim matrimonial dispute resolutions, it is found that they are closely similar in nature. A simple comparison between the two can be stated and seen as below:

A simple comparison among traditional family *shalish* (TFS) and the Quranic *hakam* (QH):

| Criteria                        | TFS   | QH  |
|---------------------------------|---|---|
| Basis                           | Based on tradition and customs  | Based on Quranic Injunction   |
| Formation                       | No fixed rule but consisting of members from the families of the disputing parties. | Consisting of generally 2 members from the families of the two disputing parties. |
| Used for                        | Any type of matrimonial dispute ( <i>nushuz &amp; shiqaq</i> )                      | A continuous discord ( <i>shiqaq</i> ) Before any divorce happens                 |
| Features of the council members | Nearest family members  | 2 nearest and experienced family members  |
| Documentation                   | Not needed  | Needed because of having official link.   |
| Formality                       | Very informal   | Informal / Quasi informal   |
| Goal                            | Restoration of accord and avoidance of separation                                   | Restoration of accord and avoidance of separation                                 |
| Results                         | Avoidance of separation most often  | Avoidance of separation most often  |

It can be seen from the above display that *Hakam* and traditional family *shalish* are almost same in nature. The Muslim Family Laws Ordinance 1961 in Bangladesh apparently lacks any provision to include *hakam* for matrimonial

dispute resolution. But certainly, there is a scope for such a provision. However, AC is called to be taken from the concept of Quranic *Hakam*<sup>23</sup>.

Though statutory laws covered many important issues of family disputes, but for lack of knowledge *shalishkars* are not following it. Similarly, because of lack of integration between Islamic Family laws with statutory Muslim family laws, traditional *ulamas* are not aware of many things related to family disputes. However, it has been observed from interviews with various categories of *shalishkars* that they feel the presence of *ulama* in *shalish* activities for the fact that *ulama* have much ability to convince disputing parties reminding the couple about the final Day of Judgment and admonishing them properly.

## 6. Conclusion and recommendations

The Quranic *hakam* and family *shalish* are found almost the same in nature. The Muslim Family Laws Ordinance 1961 does not directly provide for *hakam* as an institution for matrimonial dispute resolution, though Arbitration Council is said to be based on the spirit of *Hakam*. Therefore, certainly there is a scope, if the government likes, for including *hakam* as an institution specially for matrimonial dispute resolution. Nonetheless, in the meantime, some slight modifications in respect of selection of the *shalishkars* are recommended for its improved performances. It is hoped that the findings will help *shalishkars* to deal with such disputes in more effective manner to prevent the families from breaking-up.

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