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RESEARCH ARTICLE

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019: A CRITICAL EXAMINATION THROUGH MODERN LEGAL PHILOSOPHY AND ISLAMIC LEGAL TRADITIONS

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Abstract

The Muslim Women (Protection of Rights on Marriage) Act, 2019, criminalizing the practice of instant triple talaq (talaq-e-biddat) in India, marks a significant intervention in gender justice within Muslim personal law. This paper examines the Act through the lenses of gender equity, legal jurisprudence, and social justice, analyzing its implications for Muslim women's rights. While the legislation seeks to empower women by invalidating arbitrary divorce practices, it also raises debates around state intervention in personal laws, constitutional rights, and the socio-legal consequences for marginalized women. The study critiques the Act's effectiveness in delivering substantive justice, its alignment with Islamic jurisprudence and its broader impact on the intersection of religion, gender, and law in India. By evaluating modern legal philosophy and Islamic legal traditions, and lived realities, the paper assesses whether the Act advances gender justice or perpetuates paternalistic legal frameworks.

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Introduction:-

The enforcement of an unjust law in a society committed to constitutionalism and the rule of law poses a significant threat to social harmony. If citizens are compelled to comply with the Muslim Women (Protection of Rights on Marriage) Act, 2019, their moral conscience may resist for several reasons. First, the law contradicts Quranic principles governing divorce (talaq). Second, it not only undermines fundamental criminal jurisprudence but also infringes upon the constitutional guarantee of equality under Article 14. Many Muslims perceive compliance as endorsing an unjust statute, yet defiance risks severe legal penalties, placing them in an ethical dilemma—a choice between two equally untenable options. Moreover, the Act disregards the socio-religious reality that Muslim spouses are unlikely to continue marital relations after the pronouncement of triple talaq. The legislation, thus, reflects a lack of due deliberation and sensitivity, resulting in procedural injustice. Such laws, being inherently unjust, cannot be regarded as valid law but rather as a distortion of legal principles—effectively amounting to institutionalized coercion rather than justice.

The Muslim Women (Protection of Rights on Marriage) Act, 2019 appears incompatible with the principles of the rule of law and natural justice. As Lon Fuller argued, a legal system must maintain a fundamental connection between legality and justice, as law divorced from fairness loses its legitimacy. When enacting legislation,

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Address:-Khalid Al-Azri, One or Three: Exploring the Scholarly Conflict over The Conflict of Triple Talaq (Divorce) in Islamic Law with Particular Emphasis on Oman, (Arab Law Quarterly, 2011) 25.

Parliament must exercise practical reasoning—assessing the real-world implications for citizens. Will the law foster social harmony, or will it, instead, exacerbate marital discord and hardship? In this case, the Act risks inflaming tensions within the Muslim community, potentially leading to civil unrest and undermining its own purported objectives.

The resurgence of Anglo-American political philosophy, particularly through John Rawls, has profoundly shaped modern understandings of justice. His seminal work, *A Theory of Justice*, introduces principles of equal liberty, fair opportunity, and the "difference principle," which holds that societal inequalities are just only if they benefit the least advantaged. Rawls' concept of the "Original Position," framed behind a "Veil of Ignorance," proposes that a just society must be structured without arbitrary biases, ensuring fairness for all, especially the marginalized. Similarly, Islamic teachings emphasize a universal and pluralistic conception of justice. The Quran and Hadith advocate for equity and protection of the vulnerable, aligning with the idea that justice must be inclusive and socially transformative. Thus, any law—including the 2019 Act—must be evaluated against these intersecting frameworks of secular and Islamic justice to determine its true alignment with societal welfare and ethical legitimacy. However, Ibn Taymiya and Ibn al-Qayyim both have made the argument that the triple talaq lacks traditional justification.¹ Islam does not encourage divorce but permits it as a last resort in unavoidable circumstances. As Imam Ghazali emphasized, Islamic law sanctions divorce only when absolutely necessary and for justifiable reasons - never as a means to harass or oppress the wife.² The Islamic approach to human relationships is profoundly practical, recognizing divorce as a regrettable but sometimes essential remedy when marital harmony becomes irreparable.

The concept of social justice is deeply embedded in Islamic divorce provisions, offering spouses an honorable exit from irreconcilable unions. This is reflected in the Prophet's (PBUH) saying that while divorce is permissible, it remains the most displeasing of lawful acts in Allah's sight. The Islamic philosophy of divorce balances individual autonomy with social welfare, granting personal freedom while protecting community interests. Justice Krishna Iyer notably observed that Islamic divorce laws demonstrate remarkable rationality and modernity.³ The system provides structured yet humane mechanisms for marital dissolution that uphold dignity and justice for all parties involved, making it remarkably progressive in its approach to family law matters.

The Quran and Hadith contain numerous sacred injunctions emphasizing social justice and socioeconomic equity, articulated through principles such as *Al-'adl* (Justice), *al-Qist* (Fair Measure), and *Al-Mizan* (Divine Balance). These concepts underscore Islam's universal and pluralistic vision of justice. As the Quran affirms in Surah Al-Hujurat (49:13), while human beings are diverse, they originate from a single soul, reinforcing the intrinsic equality of all individuals. This study examines whether The Muslim Women (Protection of Rights on Marriage) Act, 2019 aligns with John Rawls' theory of justice. By evaluating the perspectives of classical, medieval, and contemporary jurists, the authors highlight the Act's procedural injustices. Their analysis concludes that legislation lacks justification, raising critical concerns about its socioeconomic and ethical ramifications. The broader inquiry explores how such legally flawed statutes may adversely impact societal harmony, economic stability, and moral integrity.

Muslim Women (Protection Of Rights On Marriage) Act, 2019: Normative Challenges And Modern Legal Theories

Following the landmark *Shayara Bano v. Union of India*⁴ verdict, which declared instant triple talaq unconstitutional, the Muslim Women (Protection of Rights on Marriage) Bill, 2019 was passed by the Rajya Sabha on 30th January 2019 and subsequently enacted into law.⁵ However, while the Supreme Court invalidated triple talaq in its judgment, the criminalization of Muslim husbands under this Act appears less about justice and more about procedural oppression. The legislation was formulated without meaningful consultation with key stakeholders, particularly the Muslim community it most affects. Rather than safeguarding women's rights, the Act seems designed to suppress minority voices, disproportionately penalizing Muslim men by imposing imprisonment. Far from empowering women, this punitive approach risks exacerbating their financial and social vulnerability. A jailed

¹Khalid Al-Azri, *One or Three: Exploring the Scholarly Conflict over The Conflict of Triple Talaq (Divorce) in Islamic Law with Particular Emphasis on Oman*, (Arab Law Quarterly, 2011) 25.

²Ibrahim Abdul Hamid, *Dissolution of Marriage*, (Islamic Quarterly, 1956), 166.

³*Yousuf v. Swaramma* AIR (1971), Ker 261.

⁴*Shayara Bano v. Union of India and Others*, (2017), 9, SCC 1

⁵India Today, *W. History made, triple talaq bill passed by Parliament*, (30 July 2019). <https://www.indiatoday.in/india/story/triple-talaq-bill-passed-in-rajya-sabha-1575309-2019-07-30>.

husband cannot provide maintenance, leaving wives economically stranded, while the very institution of marriage is further destabilized by such an extreme legal measure. Thus, instead of delivering justice, the Act may deepen hardship for Muslim women, undermining its purported objectives.

A Rawlsian analysis of The Muslim Women (Protection of Rights on Marriage) Act, 2019 demonstrates substantive deficiencies in its conception of justice, particularly regarding its infringement upon fundamental civil liberties. Within Rawls' theoretical framework, the evaluation of legislative justice necessitates examination through three primary considerations, with primacy given to the alignment of statutory provisions with foundational principles of justice.⁶ The Act's criminalization of triple talaq - a matter traditionally situated within the civil domain of Islamic personal law - presents significant jurisprudential concerns regarding the appropriate boundaries between civil and criminal legal spheres.⁷ This legislative approach engenders critical questions about the justifiability of imposing criminal sanctions for breaches of marital contracts, which Islamic jurisprudence fundamentally construes as civil agreements. The statutory conflation of civil contractual violations with criminal liability not only represents a problematic distortion of legal categories but also constitutes a substantive violation of Rawls' first principle of justice, which prioritizes the protection of equal basic liberties. Furthermore, this legislative strategy fails to satisfy Rawls' difference principle, as it disproportionately impacts marginalized groups without demonstrable benefit to the least advantaged members of society. The Act's departure from these fundamental justice principles suggests a failure to meet the requirements of public reason within a pluralistic democratic framework. This analysis necessitates a rigorous examination of the fundamental conception of criminal acts within legal theory. As Grand Lamond articulates, criminality fundamentally involves elements of "social volatility".⁸ Becker's theoretical framework further clarifies that purely private disputes between individuals lack this essential characteristic of social disruption.⁹ This perspective finds reinforcement in classical jurisprudential thought, particularly in Blackstone and Salmond's conceptualization of crimes as violations against the collective interests of society rather than merely private wrongs. Hegel's philosophical approach additionally incorporates intentional deception as a constitutive element of criminal acts. In other words, according to Becker, there will be no existence of social volatility if the breach of interests involves two or more private parties; a crime is undoubtedly capable of doing that.¹⁰ Nonetheless, Jurists like Blackstone and Salmond opined that crime is a "breach of public rights and duties due to the whole community". Such an act is harmful to society in general whereas Hegel has also included "fraud" as an essential element of crime.¹¹

The legislative criminalization of triple talaq under the 2019 Act fails to satisfy these established theoretical criteria for several substantive reasons. First, the practice affects an extremely limited demographic segment (less than 0.2% of cases), with consequences primarily confined to the immediate parties rather than generating broader societal harm. Second, applying Bentham's utilitarian calculus of criminalization - which requires legislation to be purposeful, effective, beneficial, and necessary - reveals the Act's fundamental deficiencies. The pronouncement of talaq, when examined through this framework, demonstrates no substantive grounds for criminalization, as the verbal declaration itself produces no immediate legal effect under Islamic jurisprudence. For answering this question, it is reasonable to define a criminal act. In the words of Grand Lamond, a criminal act consists of "social volatility".¹² According to Becker, there will be no existence of social volatility if the breach of interests involves two or more private parties; a crime is undoubtedly capable of doing that.¹³ Nonetheless, Jurists like Blackstone and Salmond opined that crime is a "breach of public rights and duties due to the whole community". Such an act is harmful to the society in general whereas Hegel has also included "fraud" as an essential element of crime.¹⁴ The Act fails to address the cause as to on what basis the practice could be treated as a crime, since a negligible portion

⁶John Rawls, *Equal Liberty, A Theory of Justice*, Chap. IV, 171, Revised Edition (2019).

⁷AhmarAfaq, Sukhvinder Singh Dari, *The Muslim Women (Protection of Rights on Marriage) Act, 2019: An Insubstantial Addition to the Realm of Law*, (International Journal of Modern Agriculture, 2021), Vol.10, No.2.

⁸Lamond G. *Whatis a Crime*, (Oxford Journal of Legal Studies, 2007) 609.

⁹Becker L. *Criminal Attempts and the Theory of the Law of Crimes:Philosophy and Public Affairs* 3, 262, (1974).

¹⁰ Becker L. *Criminal Attempts and the Theory of the Law of Crimes:Philosophy and Public Affairs* 3, 262, (1974).

¹¹Nicholsonson, P.P. *Hegel on Crime, History of PoliticalThought*, (1982), 103.

¹²Lamond G. *Whatis a Crime*, (Oxford Journal of Legal Studies, 2007) 609.

¹³ Becker L. *Criminal Attempts and the Theory of the Law of Crimes:Philosophy and Public Affairs* 3, 262, (1974).

¹⁴Nicholsonson, P.P. *Hegel on Crime, History of PoliticalThought*, (1982), 103.

of society which consists of less than 0.2%,¹⁵ affects only the rights of parties; fails to negatively impact the society. According to Bentham, an act shall not be treated as a criminal act if such action is groundless, inefficacious, unprofitable and needless.¹⁶ If you apply this principle, the criminalization of triple talaq is groundless since there is no effect of the word “talaq” if it is being pronounced by the husband to his wife. The legislation demonstrates significant normative and functional deficiencies when subjected to rigorous jurisprudential analysis. The continued validity of talaq-e-ahsan within Islamic legal tradition presents an existing, more equitable mechanism for marital dissolution that better balances spousal rights. The Act's imposition of criminal sanctions constitutes a disproportionate regulatory response that fails the test of legislative necessity, particularly given the comprehensive legal protections already available under the Protection of Women from Domestic Violence Act's civil remedies (2005) and existing personal law provisions governing marital obligations. This legislative approach contravenes fundamental principles of legal minimalism and proportionality. As Rawlsian theory elucidates, legitimate lawmaking in a constitutional democracy requires:

- Collective determination through just institutional procedures
- Adherence to the two fundamental principles of justice:
 - a) Equal basic liberties
 - b) Socioeconomic arrangements benefiting the least advantaged.

Rawls' framework further establishes that substantive justice outcomes depend fundamentally on the justice of the constitutional and legislative processes that produce them. The Act's procedural deficiencies - particularly its failure to engage in sufficient democratic deliberation and consider less restrictive alternative including respecting the civil-contractual nature of Islamic marriage. Hence, the Act renders it incompatible with requirements of justice in a pluralistic society. Proper procedural justice demands institutional designs that ensure fair representation and reasonable deliberation - conditions conspicuously absent in this case. The Act seems incompatible with the below-mentioned criteria:

- Violation of the harm principle (Mill)
- Contravention of proportionality in punishment (Kant)
- Failure of deliberative democratic requirements (Habermas)
- Inconsistency with feminist legal theory's nuanced approaches to empowerment

The theoretical position finds strong support in Andrew Ashworth's seminal work *Principles of Minimal Criminalization*¹⁷, which articulates a compelling case against excessive criminalization of human conduct. Ashworth's framework identifies four fundamental criteria for justified criminalization:

- Primacy of Fundamental Rights: Any legislative intervention must demonstrate substantive respect for basic human rights protections.
- Proportionality Principle: State punitive power must maintain appropriate boundaries to avoid undue infringement on liberties.
- Appropriateness Doctrine: Criminal law mechanisms should not be employed where alternative regulatory approaches prove more suitable.
- Consequentialist Evaluation: Conduct should not be criminalized if such intervention would produce net negative societal consequences

This theoretical framework aligns with Rawlsian conceptions of constitutional justice, which posit that citizens must collectively determine institutional arrangements capable of mediating competing justice claims. He further opines that constitutional legitimacy derives from public acceptance of both substantive justice and procedural fairness. Additionally, majority-based decision-making processes constitute imperfect procedural justice when properly constrained by fundamental rights protections. The present legislative approach fails to satisfy these criteria on multiple grounds including infringing upon personal liberty interests disproportionately without demonstrating necessity. The Act employs criminal sanctions where civil remedies would better achieve the stated policy objectives. Moreover, it risks creating counterproductive social consequences that may exacerbate existing vulnerabilities. In a nutshell, Ashworth's minimal criminalization principle thus provides a robust theoretical

¹⁵Supra note 9.

¹⁶Shrotriya E., & Chauhan, S. Instant Triple Talaq and the Muslim Women Protection of Rights on Marriage Act, 2019: Perspective and Counter-Perspective, *Indian Law Institute Law Review* (Summer) 163-176, (2019).

¹⁷Ashworth, A. *Principles of Criminal Law*, (6th ed., Ser.2009), Oxford, England: Oxford.

foundation for critiquing the Act's overreach, while Rawls' constitutional theory reveals its democratic legitimacy deficits. Together, these frameworks suggest that effective legal reform requires both substantive justice and procedurally fair lawmaking processes that respect pluralistic values. Building upon Rawls' theoretical framework, the justice of socioeconomic legislation must be evaluated through the lens of reasonable pluralism. As Rawls contends, unjust laws that violate the principle of equal liberty fundamentally corrupt the institutional architecture of society itself. The second principle of justice assumes particular significance at the legislative stage, requiring those socioeconomic policies:

- Optimize long-term prospects for the most disadvantaged members of society
- Maintain robust guarantees of fair equality of opportunity
- Preserve fundamental liberties without compromise

When legislation satisfies these criteria, it fosters conditions for mutually advantageous social cooperation. However, the current Act fails this test on multiple dimensions including counterproductive outcomes. For instance, rather than protecting marital stability, the law creates perverse incentives where wives may view cohabitation as morally impermissible post-talaq and hesitate to seek legal recourse due to the draconian consequences for husbands. Similarly, the prescribed punishment demonstrates fundamental incompatibility with the rehabilitative objectives of marriage as a social institution. It further reflects a lack of pragmatic consideration regarding restorative justice and absence of reasonable calibration between offense and sanction. It undermines the very institution it purports to protect. This analysis reveals how the Act's departure from Rawlsian principles of justice produces legislation that is both theoretically unsound and practically ineffective. The absence of reasonable proportionality in sentencing further compounds these deficiencies, highlighting the need for more nuanced approaches that balance legal protection with social welfare considerations. Ultimately, legislation must harmonize abstract principles with concrete social realities - a balance conspicuously absent in the current framework.¹⁸

The Islamic Concept Of Justice: A Holistic Framework

The Islamic paradigm of justice constitutes a comprehensive, metaphysical system rooted in divine revelation and rational principles.¹⁹ This conceptual framework emerges from voluntary submission to the sacred injunctions of the Quran and Sunnah, embodying both immutable universal truths and contextual applications for human governance. The theological foundations of justice in Islam are linguistically and conceptually manifested through several key Quranic terms such as Al-Mizan (The Divine Balance) - representing perfect equilibrium in creation and human affairs, Al-Adl (Justice) - encompassing absolute fairness and righteousness, Al-Furqan (The Criterion) - distinguishing truth from falsehood. The principle of Adalah (justice/equilibrium) serves as the fundamental ethical imperative governing all aspects of Muslim life. This multidimensional concept incorporates substantive Justice, fairness in judgment and decision-making, social Equity, non-discriminatory treatment across all relationships, moral responsibility, ethical conduct in both private and public spheres, relational balance, appropriate treatment of family, community members, and adversaries. As a matter of fact, Islamic jurisprudence establishes justice (Qist) as the supreme normative value regulating, interpersonal relations, legal judgments, social obligations, economic transactions and political governance. The Quranic emphasis on establishing justice ("Indeed, Allah commands justice..." 16:90) makes it the ontological foundation rather than simply an aspirational goal of Islamic social order. The Holy Quran commands to the effect:

"O ye who believe, stand out firmly for Allah as witnesses to fair dealing and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just that is next to piety and fear Allah for Allah is well acquainted with all that you do."²⁰

The Islamic conception of justice fundamentally entails the equitable allocation of rights and entitlements to all individuals. Within this framework, justice manifests through two cardinal principles: first, that compensation must precisely correspond to one's legitimate contributions or merits; second, that punitive measures must maintain strict proportionality to offenses committed.²¹ Any deviation from these principles - whether through inadequate recompense or excessive retribution - constitutes a substantive violation of justice. This egalitarian paradigm applies

¹⁸ Chhabra K.S., Quantum of Punishment in Criminal Law in India, (Publication Bureau Panjab University, 1970).

¹⁹ Kakembo, A.S.W, The Concept of Justice in Comparative Perspective, 138, (University of Malaysia, 1995).

²⁰ Al-Maidah, (5:8).

²¹ Sir Mohammad Zafrullah Khan, The Concept of Justice in Islam, (Bait-Al-Zafar, New York).

universally, transcending all social categorizations including gender distinctions, socioeconomic status, ethnic or racial identities, religious affiliations, geographic origins, and cultural traditions. The Islamic system establishes not merely an idealized vision of justice, but rather an institutionalized mechanism that:

- Systematically balances individual rights with collective responsibilities
- Mandates formal adjudication processes for dispute resolution
- Imposes religious obligations (farā'id) on believers to pursue judicial remedies

This comprehensive approach transforms justice from an abstract ideal into a concrete religious and social imperative, embedding due process within the foundational requirements of Islamic practice. The system's distinctive feature lies in its synthesis of moral absolutes with procedural rigor, ensuring that justice operates as both an ethical principle and an enforceable legal reality. Verse IV: 66 is a gratifying example.²²

The Islamic Legal Traditions: A Tripartite Framework

The Islamic paradigm of justice can be systematically analyzed through three distinct yet interconnected dimensions: a. justice as Righteous Conduct (Adl bi'l-Ihsan) This is rooted in moral virtue and the imperative to do good (Ihsan) and emphasizes individual ethical responsibility beyond mere legal compliance. Ibn Khaldun posits²³ that true justice requires a cohesive society (Asabiyyah) founded on collective solidarity rather than self-interest. b. Justice as Sharia Compliance (Adl fi'l-Shar'iah): it embodies divine commandments governing human actions. For instance, Al-Farabi and Ibn Rushd²⁴ argue that a virtuous political order (Al-Madina al-Fadila) is essential for justice to flourish. Extends beyond ideal governance to encompass fairness, equality, and social equilibrium. c. Distributive and Social Justice (Adl al-Ijtima'i): It is grounded in the principle of Maslahah (common welfare). In addition to this, it balances individual rights (e.g., property, privacy) with collective well-being. While sharing utilitarian concerns for societal benefit, Islamic justice transcends mere pleasure-pain calculus by integrating divine moral objectives.

This tripartite model demonstrates that justice in Islam operates at multiple levels—individual, legal, and socioeconomic—uniting ethical imperatives with institutional structures. Unlike secular utilitarian frameworks, Islamic justice prioritizes both spiritual fulfillment (pleasure of Allah) and tangible welfare, ensuring a holistic approach to equity that harmonizes divine will with human dignity. This structured approach underscores Islam's unique fusion of moral, legal, and social justice into a unified theological-ethical system.

The Muslim Women (Protection Of Rights On Marriage) Act, 2019: A Study In Just And Unjust Laws

Legal philosophy distinguishes between “just laws”—those aligned with moral and ethical principles—and “unjust laws”, which violate fundamental notions of fairness. As Saint Augustine asserted, "An unjust law is no law at all," meaning that legitimacy depends on conformity with higher moral law. Saint Thomas Aquinas further refined this concept, arguing that unjust laws lack validity because they deviate from eternal and natural law. John Rawls' theory of justice provides a useful framework for evaluating legislative fairness. His "dividing the pie" analogy illustrates how procedural justice ensures equitable outcomes: if one party divides a resource and the other selects their portion, the divider is incentivized to distribute it fairly to avoid disadvantage. Applying this logic to lawmaking, unjust procedures yield unjust laws, undermining equality before the law. The Muslim Women (Protection of Rights on Marriage) Act, 2019, raises critical concerns regarding procedural fairness and substantive justice. By criminalizing triple talaq without adequate consideration of Islamic divorce jurisprudence, the law risks social and economic harm such as subjecting Muslim men to disproportionate penalties, disrupting family structures and livelihoods. It further leads to psychological and spiritual consequences, alienating communities by imposing punitive measures perceived as violating religious principles. According to Finnis', theory of practical reasonableness emphasizes that laws must align with societal welfare and ethical reasoning to command obedience. The Act's failure to balance legal enforcement with Islamic personal law principles undermines its moral authority, rendering it susceptible to resistance. A just legal system requires both procedural fairness and substantive moral grounding.

²²It says that the dispute must be judicially administered. Once the dispute is finally determined, it shall be accepted by the parties concerned without any trace of resentment to whoever the decision has gone, and lastly, it should be submitted to and it should be carried out to the full.

²³Khaduri Majid, *The Islamic Conception of Justice*, (1984), 81.

²⁴Al-Farabi, *Al-Siyasat al-Madaniyya*, 69-70.

Conclusions and Recommendations:-

The Muslim Women (Protection of Rights on Marriage) Act, 2019 demonstrates fundamental deficiencies in both its design and implementation. Our analysis reveals that the legislation fails its stated objective of empowering Muslim women due to the conspicuous absence of meaningful consultation with affected stakeholders during the drafting process. Additionally, its predominant focus on criminal sanctions (Section 4) transforms it into a punitive instrument targeting Muslim men rather than a protective mechanism for women. The Act fundamentally misconstrues Islamic divorce jurisprudence which prohibits frivolous divorce (Quran 2:229). It creates unnecessary community polarization. Moreover, it generates economic instability by incarcerating primary breadwinners. It further undermines marital reconciliation mechanisms. It is suggested to introduce mandatory arbitration (sulh) proceedings before the pronouncement of divorce. The establishment of community-based mediation panels will serve a great purpose in this regard. There should be non-custodial penalties for first offenses. It is also important to ensure proportionality in punishment. The current Act's failure to satisfy these criteria renders it an example of procedural injustice that requires urgent legislative reconsideration.