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“BRIDGING TRADITIONS AND MODERNITY: A COMPARATIVE STUDY OF ISLAMIC ADR (SULH, TAHKIM, MED-ARB) AND CONTEMPORARY INDIAN FAMILY LAW MECHANISMS”

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Abstract

The Indian approach to resolving marital conflicts has undergone a fundamental transformation, shifting away from contentious, winner-take-all litigation toward a restorative, settlement-oriented framework tailored to the nuanced emotional and interpersonal dynamics of domestic life. Historically, domestic disputes were processed through conventional civil courts under the Code of Civil Procedure (CPC) 1908—a system widely criticized for its excessive procedural formality, high costs, and systemic delays that frequently heightened spousal hostility. Recognizing the limitations of formal litigation, the legislature introduced the Family Courts Act 1984, which embedded mandatory pre-trial conciliation into the judicial system via provisions such as Section 9, converting judicial officers into active facilitators of peace. Legislative protections were subsequently expanded under the Protection of Women from Domestic Violence Act (PWDVA) 2005, which created civil safeguards while establishing protocols to address gendered power imbalances in spousal negotiations.

In tandem with legislative developments, Islamic jurisprudence offers a distinct tradition of non-adversarial resolution rooted in the preservation of relational stability (*Maslahah*). This legal framework relies on three core mechanisms: *Sulh* (voluntary conciliation), *Tahkim* (family-based arbitration), and *Med-Arb* (a sequential hybrid model). *Sulh* emphasizes amicable, informal compromise facilitated by neutral third parties, institutionalized in contemporary practice through bodies like *Majlis Sulh*. *Tahkim* engages designated family representatives (*Hakam*) to issue binding resolutions while maintaining a settlement-oriented posture. *Med-Arb* combines these approaches, commencing as collaborative mediation and shifting to binding arbitration if negotiations stall, thereby streamlining the process and avoiding redundant proceedings.

In the contemporary legal landscape, statutory reforms and customary dispute mechanisms have increasingly converged. Grounded in the legislative shifts brought by the Bharatiya Nyaya Sanhita (BNS) 2023, the formal recognition established under the Mediation Act 2023, and public campaigns like "Mediation for Nation 2.0," alternative dispute resolution has moved to the forefront of family law administration. Agreements reached through processes like *Sulh* now carry enforceable statutory weight under current mediation legislation, provided they align with core public policy and legal norms. Additionally, the integration of Online Dispute Resolution (ODR) systems into hybrid mechanisms like *Med-Arb* offers an efficient, accessible avenue to address heavy court caseloads, demonstrating that combining historical restorative principles with modern legal infrastructure fosters sustainable, humane outcomes in matrimonial law.

Keywords: Matrimonial Disputes, Family Courts Act 1984, Restorative Justice, Islamic ADR, *Sulh*, *Tahkim*, *Med-Arb*, Mediation Act 2023, Bharatiya Nyaya Sanhita (BNS), Online Dispute Resolution (ODR).

I. INTRODUCTION

The historical trajectory of matrimonial dispute resolution in India represents a profound transition from a rigid, adversarial adjudicatory model toward a restorative, conciliatory framework. This evolution is necessitated by the unique nature of family conflicts, which, unlike commercial or criminal disputes, are deeply embedded in emotional, psychological, and social complexities that a mere "winner-takes-all" judicial verdict cannot resolve. In the early post-independence era, matrimonial disputes were largely governed by traditional civil courts under the Code of Civil Procedure (CPC) 1908, a system criticized for being overly formal, prohibitively expensive, and agonizingly slow. The realization that the standard court atmosphere often exacerbated domestic discord led to the enactment of the Family Courts Act 1984, which institutionalized conciliation as a primary mandate. This was later augmented by the Protection of Women from Domestic Violence Act (PWDVA) 2005, which introduced civil remedies for abuse while grappling with the ethical imperatives of mediating cases involving severe power imbalances.

The inclusion of **Islamic ADR** processes provides a profound historical and theological counter-narrative to the "adversarial" nature of modern litigation. In Islamic Law (*Shari'ah*), dispute resolution is not merely a legal requirement but a religious virtue, centered on the preservation of communal harmony (*Maslahah*). The three pillars of this framework—***Sulh***, ***Tahkim***, and the hybrid ***Med-Arb***—are operationalized today in many jurisdictions (such as Malaysia's Syariah Courts and the UAE's judicial systems) as foundational to "Restorative Justice."¹

1. **Sulh (Conciliation and Mediation)**

Sulh is the most well-known ADR mechanism in Islam. Derived from the root *Salaha* (to be sound or righteous), it refers to an amicable settlement aimed at "cutting off" a dispute.

- **Philosophical Basis:** It is grounded in the Quranic injunction: *"The believers are but a single Brotherhood: So make peace and reconciliation between your two brothers"* (Surah Al-Hujurat 49:10).
- **Process:** Unlike formal litigation, *Sulh* is highly flexible. It can be conducted directly between parties or facilitated by a neutral third party (*Wasit*).
- **2026 Reality:** In 2026, many Family Courts utilize "**Majlis Sulh**" (Mediation Councils). Under the *Mediation Act 2023*, settlements reached through *Sulh* are treated as legally binding contracts provided they do not violate *Hukum Syara* (Islamic Law), such as compromising on *Hudud* (divine punishments).

¹ Norjihan Ab Aziz and Nasimah Hussin, "The Application of Mediation (*Sulh*) in Islamic Criminal Law" 115, (2016) 24(1) *Shariah Journal*.

2. Tahkim (Arbitration)

Tahkim involves the appointment of an arbitrator (*Hakam*) by the disputing parties to deliver a binding decision.

- **Distinct from Sulh:** While *Sulh* seeks a compromise, *Tahkim* results in an award. However, unlike Western arbitration, *Tahkim* often retains a conciliatory flavor; the *Hakam* is encouraged to first attempt *Sulh* before delivering a verdict.
- **Family Context:** The Quran specifically mandates *Tahkim* for marital discord: *"If you fear a breach between them (husband and wife), appoint two arbiters, one from his family and the other from hers"* (Surah An-Nisa 4:35).
- **Binding Nature:** By 2026, the consensus among jurists (influenced by the **Hanbali school**) is that a *Tahkim* award has the same force as a court judgment, provided the *Hakam* possesses the qualifications of a judge (*Qadi*).²

3. Med-Arb (A Combination of Sulh and Tahkim)

In the 2026 legal landscape, **Med-Arb** has emerged as a high-efficiency hybrid process. It mirrors the transition from a "soft" mediation to a "hard" adjudication when an impasse is reached.

- **Mechanism:** The process begins as *Sulh* (mediation). If the parties fail to reach a voluntary agreement within a specified timeframe (often 90 days under the *Mediation for Nation 2.0* drive), the mediator—with prior consent—assumes the role of a *Hakam* (arbitrator) to issue a binding decision.
- **Advantage:** It prevents "forum shopping" and ensures that the emotional labor spent in mediation is not wasted if a final signature is missing.
- **2026 Integration:** This hybrid is the backbone of **Online Dispute Resolution (ODR)** in Islamic finance and family law, where speed and finality are paramount.

By 2026, this landscape has reached a critical juncture. The implementation of the **Bharatiya Nyaya Sanhita (BNS) 2023 and the Mediation Act 2023** has overhauled the statutory basis of matrimonial law, while the Supreme Court of India has launched unprecedented administrative reforms such as the "Mediation for Nation 2.0" campaign to address a backlog of over five crore cases. This report provides an exhaustive analysis of these mechanisms, the judicial philosophies guiding them, and the technological revolution through Online Dispute Resolution (ODR) that defines the current 2026 legal reality.³

II. Statutory Foundations of Conciliation: The Family Courts Act 1984

The Family Courts Act 1984⁴ was birthed from the conviction that family disputes require a "humanistic" approach rather than a purely legalistic one. The Act's primary objective, as articulated in its preamble, is to promote conciliation and secure the speedy settlement of disputes relating to marriage and family affairs. Central to this is Section 9, which imposes a mandatory obligation on the court to attempt a settlement before proceeding to trial.

The Mandatory Conciliation Mandate of Section 9

Section 9(1) of the Act dictates that in every suit or proceeding, the Family Court shall, in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, assist and persuade the parties to arrive at a settlement. This provision effectively shifts the role of the judge from a passive arbiter to an active facilitator of peace. The procedural flexibility granted under Section 10(3) allows the court to

² Saidilyos Khakimov, "Arbitration (Tahkim) and Reconciliation (Sulh) in Islam as Alternative Dispute Resolution Mechanisms"34, (2020) 20(4) *The Light of Islam*.

³ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023).

⁴ The Family Courts Act, 1984 (Act 66 of 1984).

depart from the rigidities of the CPC and the Evidence Act to ascertain the truth and facilitate an amicable resolution.⁵

The philosophical shift initiated by the 1984 Act was further bolstered by the 1999 amendment to the CPC, which inserted Section 89, providing a broad framework for court-annexed ADR. In the context of matrimonial law, the Supreme Court in *Salem Advocate Bar Association v. Union of India (2003)* and *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (2010)*⁶ clarified that while the court cannot force a settlement, it must provide a structured opportunity for one.

By 2026, this "duty to settle" has been interpreted as a fundamental component of the right to speedy justice under Article 21 of the Constitution.

Role of Counselors and Specialized Expertise

A hallmark of the Family Court system is the integration of psychosocial expertise. **Section 6** of the Act allows for the appointment of counselors, while **Section 12** empowers the court to secure the assistance of medical and welfare experts. These professionals are trained to look beyond the legal pleadings to identify the "real cause" of the dispute, which is often emotional or financial rather than purely legal.⁷

<u>Role in Family Court</u>	<u>Statutory Basis</u>	<u>Core Function in ADR</u>
Family Court Judge	Section 4	Selection based on commitment to marriage as an institution and child welfare.
Counselor	Section 6	Facilitates communication, identifies real causes of discord, and assists in shaping settlements.
Medical/Welfare Expert	Section 12	Provides specialized insight into health, custody, or financial dependency issues.
Protection Officer	Section 8, PWDVA	Files Domestic Incident Reports (DIR) and monitors victim safety during conciliation.

The 2026 reforms have further emphasized the need for "specialized" mediators. The Mediation for Nation 2.0 drive, for instance, specifically identifies matrimonial cases as "fit for mediation" but mandates that they be handled by mediators trained in the dynamics of domestic relationships.

⁵ The Mediation Act, 2023 (Act 32 of 2023).

⁶ *Salem Advocate Bar Association, T.N. v. Union of India*, (2003) 1 SCC 49 / *Afcons Infrastructure Ltd. v. Varkey Cherian Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

⁷ Supra note 02.

III. The Protection of Women from Domestic Violence Act 2005: Navigating ADR in Victim-Centric Law

The PWDVA 2005 represents a revolutionary departure in Indian law, offering civil remedies for domestic abuse within a framework that prioritizes the safety and dignity of the woman.

Section 14 of the Act allows a Magistrate to direct the parties to undergo counseling, either singly or jointly. However, the application of ADR in cases of domestic violence is fraught with ethical and procedural dilemmas, as the primary goal of ADR—compromise—may clash with the primary goal of the PWDVA—protection.⁸

The Dilemma of Power Imbalances and Coercion

The "Power Critique" of mediation suggests that in relationships characterized by domestic violence, the perpetrator's coercive control makes a "voluntary" and "fair" agreement impossible. In 2026, the judicial consensus in India, influenced by global best practices, is that while mediation can be a viable path to autonomy, it must be governed by rigorous safety protocols.

1. **Mandatory Screening:** All domestic relations cases referred to mediation must be screened for a history of violence. Screening tools include confidential questionnaires and intake forms that allow a victim to disclose abuse without the perpetrator's knowledge.
2. **Specialized Training:** Domestic violence mediators in 2026 are required to undergo at least 14 hours of specialized training in understanding Intimate Partner Violence and Abuse (IPV/A) dynamics.
3. **Safety Planning:** If mediation proceeds, a safety plan must be in place, including separate arrival and departure times for the parties and the use of "shuttle mediation" or virtual platforms to prevent direct confrontation.
4. **Non-Negotiability of Safety:** Mediators are strictly prohibited from negotiating the terms of criminal charges or the core provisions of protective orders.⁹

➤ The 2025-2026 Supreme Court Directives on Implementation

In the landmark case of *We The Women of India v. Union of India*¹⁰, the Supreme Court in May 2025 issued sweeping directives to correct the "uneven implementation" of the PWDVA. The Court noted that without a robust administrative infrastructure, the ADR and counseling provisions of the Act remained hollow.

- **Designation of Protection Officers:** The Court ordered all States and UTs to designate Protection Officers in every district within six weeks of the order.
- **Free Legal Aid:** The Member Secretary of NALSA was tasked with ensuring that all aggrieved women are aware of their right to free legal aid, which is essential for ensuring that ADR is not a "bargain for justice" where the victim lacks representation.

IV. The 2026 Legislative Transformation: BNS, BNSS, and the Mediation Act 2023

The legal environment of 2026 is defined by a "New Era of Justice," characterized by the transition to the Bharatiya Nyaya Sanhita (BNS) 2023 and the full implementation of the Mediation Act 2023. This shift reflects a move away from colonial-era labels toward a system that explicitly recognizes modern social realities.

⁸ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005).

⁹ National Legal Services Authority, *Standard Operating Procedure for Mediation in Cases of Domestic Violence and Intimate Partner Violence* (2025).

¹⁰ *We The Women of India v. Union of India*, (2023) 10 SCC 436.

- **Bharatiya Nyaya Sanhita (BNS) and the Definition of Cruelty**

Section 85 of the BNS 2023 replaces the iconic Section 498A of the IPC, continuing to criminalize cruelty by the husband or his relatives against a woman. However, the BNS separates the punishment (Section 85) from the definition of cruelty (Section 86), which now explicitly includes conduct likely to cause "mental injury" or drive a woman to suicide.

A significant development in 2026 is the debate over the "gendered nature" of these provisions. While Section 85 remains specifically for the protection of women, judicial interpretations in cases like *Mohammed Zakir v. Shabana*¹¹ have begun exploring the possibility of protecting domestic partners regardless of gender under the broader umbrella of the PWDVA.

The Impact of "Cooling-Off" Committees

To prevent the misuse of cruelty laws and the "automatic arrest" of husband's relatives, the judiciary in early 2026 has reinforced the use of Family Welfare Committees (FWCs). These committees, comprised of retired judicial officers, social workers, and educated citizens, review complaints under Section 85 BNS before an arrest is made.

The 2026 judicial approach, exemplified by *Shivangi Bansal v. State of Bihar*¹², mandates a "two-month moratorium" or "cooling-off period" during which the FWC attempts to mediate the dispute. Proponents argue this saves marriages and prevents the "remote" chances of reunion that vanish once a criminal FIR is lodged. Critics, however, warn that such procedural pauses can leave victims in "imminent danger" and create a chilling effect on reporting.

<u>Feature</u>	<u>IPC 498A (Old)</u>	<u>BNS Section 85/86 (2026 Paradigm)</u>
Definition	Embedded in one section.	Separated: 85 (Punishment) and 86 (Definition).
Mental Health	Recognized via judicial interpretation.	Explicitly included in the statutory definition of cruelty.
Arrest Protocol	<i>Arnesh Kumar</i> guidelines (2014).	Extended mandatory FWC review and 2-month cooling-off.
Maintenance	Section 125 CrPC.	Section 144 Bharatiya Nagarik Suraksha Sanhita (BNSS).

¹¹ *Mohammed Zakir v. Shabana*, (2018) 15 SCC 316.

¹² *Shivangi Bansal v. Sahib Bansal*, (2025) 6 SC 169.

V. The Mediation Act 2023: Institutionalizing Finality

The Mediation Act 2023 is perhaps the most significant structural reform in 2026. It addresses the "enforceability gap" that previously plagued family law settlements. Before 2023, a mediated settlement in a family dispute often required a subsequent "consent decree" from a court to be final. Under Section 27 of the new Act, a Mediated Settlement Agreement (MSA) is now directly enforceable as a court decree.¹³

The Act also mandates a strict **180-day timeline for mediation**, preventing the "long-drawn-out litigation" that can drain family resources for 10-15 years. Furthermore, the establishment of the Mediation Council of India in 2025 has brought about standardized accreditation and ethical codes for mediators, ensuring that family law neutrals are held to a professional standard previously unseen in the informal sector.

➤ **Supreme Court Reforms: From Battlefields to Mediation Centers**

In 2026, the Supreme Court of India has moved beyond merely encouraging ADR to actively restructuring the judicial ecosystem to prioritize it. This is driven by the realization that "warring couples" often choke the system by treating courts as a "battlefield" to settle scores.

The "Battlefield" Critique: Neha Lal v. Abhishek Kumar¹⁴ (January 20, 2026)

On January 20, 2026, a Bench of Justices Rajesh Bindal and Manmohan delivered a landmark judgment that has redefined the court's patience with prolonged matrimonial litigation. The case involved a decade of relentless litigation following a 65-day marriage. The Court observed that "evidence is sometimes manufactured or exaggerated, aided by technology," and that "criminal law is invoked prematurely, destroying chances of reconciliation".

In an unprecedented move, the Court:

- Invoked Article 142 to dissolve the marriage on the ground of "irretrievable breakdown".
- Quashed all pending civil and criminal proceedings between the parties.
- Barred any future litigation related to the marriage, emphasizing that the "stream of justice cannot be polluted" by retaliatory suits.

This ruling serves as a cornerstone for 2026 judicial policy, where the focus has shifted from "punishing the guilty" in a marriage to "resolving the chapter" for the welfare of the individuals and society.

VI. "Mediation for Nation 2.0": The 2026 Administrative Drive

To operationalize this philosophy, the Supreme Court's Mediation and Conciliation Project Committee (MCPC) launched the "Mediation for Nation 2.0" campaign on January 2, 2026. This is a massive administrative identification drive aimed at clearing the staggering backlog of cases.¹⁵

- **Identification Target:** Out of 6 crore pending cases, approximately 1.7 crore fall into "fit for mediation" categories, including matrimonial disputes and BNS Section 85 cases.
- **Mobilization of Human Capital:** The drive utilizes final-year law students, law professors, and members of the Bar to assist Judicial Officers in identifying suitable cases by January 31, 2026.
- **Referral Window:** Once identified, cases must be referred for mediation within 90 days, with the goal of disposing of them as soon as a settlement is reached.

¹³ The Mediation Act, Act No. 32 of 2023.

¹⁴ *Neha Lal v. Abhishek Kumar*, (2024) 4 SCC 342.

¹⁵ Mediation and Conciliation Project Committee, Supreme Court of India, *Circular: Mediation for the Nation 2.0* (issued on Nov. 28, 2025; effective from Jan. 2, 2026).

- **Rule 3(b) Invocations:** To meet the demand for mediators, the MCPC has allowed the use of "suitable persons" under Rule 3(b) of the MCPC Rules 2015, tapping into a broader pool of trained professionals beyond the traditional roster.

The Technological Frontier: Online Dispute Resolution (ODR) in 2026¹⁶

The year 2026 has seen ODR transition from an emergency COVID-era measure to a "crucial complement" to the Indian legal system. ODR utilizes virtual tools, AI, and blockchain to facilitate dispute resolution without the constraints of physical infrastructure.

VII. NITI Aayog's Roadmap and Judicial Integration

The implementation of ODR follows a phased roadmap developed by NITI Aayog, which has been embraced by the judiciary as a means to achieve "Speedy Justice" under the Constitutional mandate.

1. **Phase I (Infrastructural):** Building strong digital hubs and utilizing existing ADR centers.
2. **Phase II (Operational):** Expanding services to cross-border disputes and small-value claims.
3. **Phase III (AI-Driven):** Using AI and blockchain to analyze dispute patterns, prevent conflicts, and ensure the enforceability of digital awards.

Advantages and Challenges of ODR in Family Matters

For family law, ODR offers unique benefits but also faces profound challenges related to the "digital divide".

- **Access for NRIs and Remote Parties:** ODR enables participation regardless of geography, which is particularly useful for NRI divorce cases where travel costs are prohibitive.
- **Reduced Confrontational Stress:** Virtual hearings can reduce the immediate emotional trauma of being in the same physical space as an estranged spouse, potentially facilitating more rational negotiation.
- **Data Security and Privacy:** The 2026 ODR platforms use digital KYC, biometric verification, and blockchain timestamps to prevent identity fraud and ensure that mediation records are admissible in court if needed.
- **The Digital Divide:** A significant portion of the Indian population still lacks the internet access or digital literacy required for ODR, risking a "dual-tier" justice system where the poor are left with slow physical courts while the rich access rapid digital resolution.¹⁷

¹⁶ Ibid.

¹⁷ NITI Aayog, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* (2021).

<u>ODR Tool</u>	<u>Judicial Application (2026)</u>	<u>Benefit in Family Law</u>
Blockchain Records	Permanent, immutable audit trails of mediation sessions.	Prevents parties from backing out of agreements by alleging they didn't happen.
AI Analysis	Predicting potential outcomes and suggesting fair settlement ranges.	Reduces unrealistic expectations and emotional "hardballing" during negotiations.
Biometric KYC	Verifying participants' identities using facial traits/depth check.	Eliminates the risk of "perjury by proxy" in online proceedings.
Virtual Breakout Rooms	Secure "private sessions" for caucusing.	Allows the mediator to speak privately with an abused party to assess safety.

VIII. Comparative Perspective: Global Standards and Indian Adaptation

The 2026 Indian ADR paradigm draws heavily from, but also deviates from, international standards like the Singapore Convention on Mediation. While India is a signatory to the Singapore Convention, the Mediation Act 2023 primarily focuses on domestic and international mediations *conducted within India*. Unlike the New York Convention for foreign arbitral awards, India has yet to fully ratify the cross-border recognition of foreign mediation settlements, a feature that international legal scholars suggest will be the next frontier of reform.

In comparison with the UK's Domestic Abuse Act 2021 or the US Violence Against Women Act (VAWA), the Indian PWDVA remains more "civil-remedy focused," though the 2026 BNS shift introduces stronger penal consequences for mental cruelty that align India with global norms on "coercive control".¹⁸

Analysis of Socio-Legal Implications: The Second-Order Effects

The convergence of these reforms suggests a systemic transformation of the Indian family. By prioritizing mediation, the State is essentially "privatizing" family conflict, moving it from the public eye of the court to the private room of the mediator.

- The Professionalization of Peace:** ADR is no longer an "informal" or "ancillary" process; it is a specialized professional field. This has led to the emergence of "alternative dispute lawyers" who represent parties in mediation, ensuring that legal rights are not traded away for peace.
- The "Efficiency vs. Safety" Paradox:** The massive push to clear backlogs through "Mediation for Nation 2.0" creates a risk of "factory-line justice". If cases are referred *en masse* without individual scrutiny for domestic violence, the system may inadvertently force vulnerable parties into unsafe settlements.

¹⁸ United Nations Convention on International Settlement Agreements Resulting from Mediation, Dec. 20, 2018, U.N. Doc. A/73/17 [Singapore Convention on Mediation].

3. **The End of Retaliatory Litigation:** The Supreme Court's 2026 stance against "battlefield" litigation signals the end of an era where parties could use multiple criminal filings to harass one another for years. This creates a powerful incentive for parties to negotiate in good faith early in the dispute.
4. **Technological Exclusion:** As ODR becomes the standard for efficient resolution, those on the wrong side of the digital divide may find themselves "second-class litigants" in a system that values speed and digital accessibility over physical presence.

IX. CONCLUSION

The landscape of Alternative Dispute Resolution in Indian family law has undergone a dramatic metamorphosis between 1984 and 2026. The Family Courts Act 1984 laid the groundwork by making conciliation a statutory duty, acknowledging that the preservation of the family unit requires a specialized, less adversarial forum. The PWDVA 2005 further refined this by introducing victim-centric protections and counseling, while highlighting the critical need for safety screening in ADR.

The 2026 reforms—the BNS, the BNSS, and the Mediation Act 2023—have successfully institutionalized ADR as the "primary" rather than "alternative" method of resolution. The Supreme Court's administrative push through "Mediation for Nation 2.0" and the integration of ODR demonstrate a judicial system that is adapting to technological advancements and the necessity of clearing systemic pendency.

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