

A PERSPECTIVE ON RELIGIOUS ARBITRATION

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This paper seeks to identify the significance as well as challenges of the doctrine of religious arbitration with special reference to Shariat Courts, thereby analysing its scope of application in the Indian legal framework. It explores the linkages between the Western experience and the Indian situation in this regard and strives to bring out the lessons that can be learned by India from the Western conditions in this regard. A lot has already been talked about the legitimacy and importance of religious arbitration in Western countries like Canada and the United States. In the Indian legal scenario, many informal systems have been operating due to the increasing demand for self-governance by certain communities. As we know India is a place of diverse communities and religions it is difficult to bring all under the umbrella of the same laws. Therefore, each religion or community has been given liberty to be governed by their personal laws in relation to matters like Intestate succession, special property of females, marriage, dissolution of marriage, maintenance, dower, guardianship, gifts, trust, and waqfs. Religious arbitration systems have existed for quite a long period in the West, and they have been prominent and successful in countries like the US since the Courts have been able to enforce their awards. The author is of the opinion that such endeavours would help in curing the insecurities of various religious communities by answering their concerns of self-governance on one hand, while balancing the concerns of public interest on the other.

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I. INTRODUCTION

“Discourage litigation; persuade your neighbours to compromise whatever you can. Point out to them how the normal winner is often a loser in fees, expenses, cost, and time”.

- Abraham Lincoln

Arbitration is a legal technique for extra-judicial resolution of a dispute.¹ It is one of the Alternate Dispute Resolution (‘ADR’) mechanisms, wherein the parties to the dispute refer it to one or more arbitrator(s), by whose decision(s) they agree to be bound.² Other mechanisms of ADR are conciliation, mediation, negotiation, lok adalats, etc. In short, arbitration is a form of dispute resolution equivalent to litigation in the courts and entirely distinct from the various forms of non-binding dispute resolution mechanisms, for example, negotiation, mediation, or non-binding determinations by experts.

After going through the meaning of arbitration it is pertinent to understand the relation between arbitration law and religion. Though the relationship between the two does not exist in a formal sense, however, the existence of the relation cannot be denied in a complete sense. The doctrine of religious arbitration is the perfect example of the same.

A lot has already been talked about the legitimacy and importance of religious arbitration in Western countries like Canada and the United States (‘US’).³ In the

¹ Stephen Louie, ‘Arbitration: An Analysis’
<<https://www.legalservicesindia.com/article/767/Arbitration-An-Analysis.html>> accessed 18 April 2021.

² *ibid.*

³ Aditi, ‘Challenges of Religious Arbitration in India’ (*Lawctopus*, 1 July 2023)
<<https://www.lawctopus.com/academike/religious-arbitration-india/>> last accessed 21 July 2014.

Indian legal scenario, many informal systems have been operating due to the increasing demand for self-governance by certain communities.⁴ As we know India is a place of diverse communities and religions, it is difficult to bring all under the umbrella of the same laws. Therefore, each religion or community has been given liberty to be governed by their personal laws in relation to matters like Intestate succession, special property of females, marriage, dissolution of marriage, maintenance, dower, guardianship, gifts, trust, waqfs. This paper talks about the significance and challenges of dealing with religious arbitration in India with reference to Shariat Courts.

Personal laws are often criticised for perpetuating gender bias, inequality, and discrimination. Muslim personal law based on Sharia has received the most flak and Muslim women have fought the fundamentalist interpretation of Sharia which has allowed men in India to divorce their wives for insignificant matters and also deny financial support to them.⁵ India's near about 65 million Muslim women often called a minority within a minority their double handicap of gender and faith is challenging medieval religious laws that have oppressed them for centuries.⁶ On the other side of the spectrum, Muslim scholars are of the view that Sharia Laws are a fair and upright set of laws. This brings us to an important question what Sharia laws are?

A. "SHARIAT" – MEANING

The word Shariat literally means "*the road to the watering place or the path to be followed*".⁷ Quran, Hadis, Sunna, Ijma, and Qiyas form the body of Muslim common law known as Shariat. It is used to denote the whole of Muslim religious law. It embraces in its orbit all human acts. It is not a law in a modern sense but contains an infallible guide to ethics.⁸

B. HISTORY OF SHARIAT

⁴ *ibid.*

⁵ Sabiha Hussain, 'Shariat Courts and Women's Rights in India' (Centre for Women's Development Studies) <<https://www.cwds.ac.in/wp-content/uploads/2016/09/ShariatCourts.pdf>> last accessed 18 April 2021.

⁶ *ibid.*

⁷ Aqil Ahmad, *Mohammedan Law* (Central Law Agency 2016).

⁸ *ibid.*

A tribal social structure was prevalent in Arabia and thereafter Islam was introduced as a religion to them. This tribe determined what was law and the rules that they followed were unwritten. These laws were changing according to the changing needs of the society. The Muslim community was established in Medina by the seventh century and soon started spreading to the surrounding regions. With the establishment of Islam, the will of God, as transmitted in the Quran as the revelations of Muhammad, came to supersede every tribal custom.⁹ These writings in the Quran along with unwritten customs, also known as the Shariat are what govern Islamic society.¹⁰ Additionally, the Shariat is also based on the Hadith which means the actions and words of the Prophet as recorded by his companions. Originally, they were very broad and general solutions to practical problems in society. The narrations of ‘what the Prophet said, did, or tacitly allowed’ are called *Hadis* or Traditions. The Traditions, however, were not reduced in writing during the lifetime of Mohammad. They have been preserved as Traditions handed down from generation to generation by authorised persons. That is why a minute inquiry is necessary to accept a *Hadis*.¹¹

It would be a mistake to argue that the Shariat has remained static over centuries.¹² During the period when the Prophet was alive, the legislation mentioned in the Quran kept developing in response to practical problems faced by the Prophet and his community.¹³ Thus, Quran contains the very words of God as communicated to Prophet Mohammad through the angel Gabriel.¹⁴ After his death too, the presence of different schools of Sharia and Islamic countries have applied it to their legal domain, thus, proving the capacity in the Islamic law to be interpreted and developed in ways meeting the needs of society.

The four schools of Muslim Law i.e. Hanafi, Maliki, Shafi, and Hanabali developed in four different centuries.¹⁵ Each school of Islamic law interprets the writings in the Quran in different ways which consists of varying rules and regulations for the Islamic

⁹ Adrija Roychowdhury, ‘Shariat and Muslim Personal Law: All Your Questions Answered’ (Indian Express) <<https://indianexpress.com/article/research/Shariat-muslim-personal-law-Sharia-history-shayara-bano-shah-bano-triple-talaq-personal-laws-religious-laws-uniform-civil-code-2784081/>> last accessed 18 April 2021.

¹⁰ *ibid.*

¹¹ Adrija Roychowdhury (n 9).

¹² Aqil Ahmad (n 7).

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ *ibid.*

community world over. Muslim Countries have adopted their Islamic laws based upon one of these schools depending upon their specific situation.¹⁶

Accordingly, modern Islamic nation-states have responded to the needs of modernity by embracing the Shariat in ways suiting their social and political needs.¹⁷ For instance, Egypt responded to the calls of modernity in the late nineteenth century by extending secular laws based upon theories drawn from the West.¹⁸ The Islamic law, as interpreted by the Hanabali Shafiyya school of thought, is strictly followed in Saudi Arabia.¹⁹

C. SHARIAT COURTS & INDIAN MUSLIMS

Shariat court or Darul Qaza is an Arabic term. In Arabic term *dar* means ‘a house’ and *qaza* means ‘final decision or binding decree’.²⁰ Thus, Darul Qaza means the house of Qazi or an Islamic scholar i.e. Muslim arbitrator who is authorised to give his views which, however, are not binding on the person going to this house. The binding power is the same as in the case of arbitration. The decision of the arbitrator is not binding on the parties to the dispute. It is wrong to describe a *Darul Qaza* or Shariat court as an Islamic court. In fact, they are arbitration councils or arbitration institutions which have no real or claimed judicial powers or authority whatsoever. Hence, these councils cannot be termed as a ‘parallel system’ by any stretch of the imagination, unlike what is (mis)understood by many within and outside the community.²¹ Their verdicts are recommendations and advice. It is entirely up to the two parties to accept the verdict or reject it. If the parties reject it, the so-called ‘Shariat Courts’ are powerless, and the Muslim community at large enjoys no authority to coerce the rejecting party or enforce the verdict.

It is pertinent to note that the Muslim Personal Law (Shariat) Application Act of 1937 (‘Act’) regulates the lives of millions of Muslims in India.²² This Act applies to

¹⁶ *ibid.*

¹⁷ Adrija Roychowdhury (n 9).

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ Sabiha Hussain (n 5).

²² Bittoo Rani, *Sharia Courts as Informal Justice Institution in India* (2014) 1 Intl J of Humanities, Social Science & Education 129, 139.

Muslim Personal Law in a number of important matters, in those cases, where parties are Muslims. Section 2 of the Act provides that:

*“Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agriculture land) regarding intestate succession, special property of females including personal property inherited or obtained under contract or gift or any other provision of personal law marriage, dissolution of marriage, maintenance, dower, guardianship, gifts, trust and trust properties and Waqfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)”.*²³

In *Mohamed Islam Khan v. Khalilul Rahman*,²⁴ it was held that the scope and purpose of Section 2 of the Act is to abrogate custom and usage in so far as these displaced the rules of Muslim Law. Thus, the following are the subjects expressly declared in which Muslim Personal Law (Shariat) shall be applied:²⁵

1. Intestate succession,
2. Special property of females,
3. Marriage,
4. Dissolution of Marriage,
5. Maintenance,
6. Dower,
7. Guardianship,
8. Gifts,
9. Trust and Trust properties, and
10. Waqfs

Section 3 of the Act provides that any person who satisfies the prescribed authority:²⁶

- that he is a Muslim,
- that he is competent to contract within the meaning of Section 11 of the Indian Contract Act, 1872, and

²³ Aqil Ahmad (n 7).

²⁴ *Mohamed Islam Khan v Khalilul Rahman* [1947] 51 C.W.N. 832.

²⁵ Aqil Ahmad (n 7).

²⁶ Aqil Ahmad (n 7).

- that he is a resident of India

may, by a declaration in the prescribed form and filed before the prescribed authority, declare that he desires to obtain the benefit of the Act, and thereafter the provisions of Section 2 shall apply to the declarant and all his minor children and their dependants as if in addition to the matters enumerated '*adoptions*', '*will*' and '*legacies*' were also specified.²⁷

II. LEGITIMACY OF ARBITRATION IN SHARIAH

Generally, in Islam, there are no arguments regarding the legitimacy of arbitration in Shariah. All Muslim Schools and Muslim thinkers have agreed that Shariah Courts or Darul Qaza can be used as arbitration councils for deciding disputes between the parties. The proof of the legitimacy of arbitration can also be found in the Holy Quran. The Islamic legal tradition or Quran however, has never questioned the propriety of settling conflict through ADR mechanisms. In fact, Islamic jurisprudence insists upon the settlement of family disputes through Sharia principles. Throughout its history, the Islamic legal system has emphasised the importance of '*sulh*' or reconciliation. Focused on ascertaining the truth and dispensing justice with minimal procedural distractions, the Islamic tradition has always favoured '*sulh*' over formal litigation.²⁸

III. CONSTITUTIONAL VALIDITY OF THE SHARIAT COURTS

Examining the existence of Sharia Courts *vis-à-vis* Art. 15(1) and Art. 29 (1):

According to Art. 29 clause 1 any sections of the citizens residing in the territory of India or any part thereof having a distinct language, script, or culture of its own shall have the right to conserve the same.²⁹ Thus, Sharia courts can be deemed as a considerable way to '*conserve*' the interest of the Muslim minority in India. According to Art. 15 Clause 1, State shall not discriminate against any citizens on grounds of religion, race, caste, sex, or place of birth.³⁰ Thus, banning them could be violative of Art. 29(1) read with Art. 15(1).

²⁷ *ibid.*

²⁸ Bittoo Rani (n 22).

²⁹ Constitution of India 1950, art 29(1).

³⁰ Constitution of India 1950, art 15(1).

Examining the existence of Sharia Courts *vis-a-vis* Art. 25(1): According to Art. 25(1), all persons are equally entitled to freedom of conscience and the right freely to profess, practice, and propagate religion subject to public order, morality, and health and to the other provisions of the Part.³¹ Thus, the existence of the Shariat Court symbolises propagating one's religion.

Examining the existence of Sharia Courts *vis-a-vis* Art. 14: According to Art. 14 of the Constitution, State shall not deny to any person equality before law or equal protection of the laws within the territory of India. Thus, disallowing Shariat Courts would be violative of the principle of “*equality before the law*” as envisaged under Art. 14.³²

Examining the existence of Sharia Courts *vis-a-vis* Art. 26: According to Art. 26 of the Constitution, Every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes and to manage its own affairs in matters of religion.³³ Thus, Shariat Courts are not essentially ‘*courts*’ as held by the Supreme Court (‘SC’) in *Vishwa Lochan Madan v. Union Of India*³⁴ but they can fall under the definition of religious institutions established for managing its affairs and are thus, protected under Art. 26 of the Constitution.

Examining the existence of Sharia Courts *vis a-vis* Art. 21: Not allowing Shariat Courts to function would be violative of Art. 21 of the Constitution. This is because if Shariat Courts are functioning due to the desire of the Muslim Community approaching them is entirely optional. Thus, disallowing them would be violative of ‘*personal liberty*’ as enshrined under Art. 21.³⁵

IV. HOW ARE INDIAN SHARIAT COURTS DIFFERENT FROM OTHER COUNTRIES?

In countries like Saudi Arabia, Sharia courts are enforceable and are backed by the state. Whereas, the All-India Muslim Personal Law Board (‘AIMPLB’) has already

³¹ Constitution of India 1950, art 25(1).

³² Constitution of India 1950, art 14.

³³ Constitution of India 1950, art 26.

³⁴ *Vishwa Lochan Madan v Union of India* AIR (2014) SC 2957.

³⁵ Constitution of India 1950, art 21.

made it clear that it accepts the Indian Penal Code as far as criminal cases are concerned.³⁶

So, unlike some Islamic states, there can be no place for punishments like whipping a guilty or stoning him/her. The Taliban-like verdicts by Sharia Courts in India are a mere exaggeration and a figment of the imagination.³⁷ Some of the differences are enumerated below:

- **Unlike Western countries the Shariat Courts do not have state backing:** The SC's July 2014 verdict in the *Vishwa Lochan Madan v. Union Of India*³⁸ case did not delegitimise Darul Qazas, it made it clear that as Darul Qazas were not part of the corpus juris of the state, fatwas issued by them – or for that matter any person or religious body – do not amount to an adjudication of dispute by an authority under a judicial system sanctioned by law.
- **The courts cannot be approached for enforcement of such orders pronounced by such institutions:** As already pointed out by the Supreme Court of India there cannot exist a parallel judicial system hence the judgments pronounced by religious institutions cannot be enforced by the courts. It is pertinent to note that courts will not enforce the orders of such institutions, but it has the power to set aside the orders of the above-mentioned institutions. The said power has been given under Section 34 of the Arbitration & Conciliation Act, 1996 ('A&C Act').
- **The enforcement of awards is done through social pressure:** The court, however, refused to declare *Dar-ul-Qazas* (Islamic courts) or the practice of issuing fatwas as illegal, saying it was an informal justice delivery system for bringing amicable settlement and it was for the persons concerned to accept, ignore or reject it, but the enforcement of the same takes place through social pressures of the society and most people do not speak about the injustice done to them.
- The private nature of institutions keeps adding to the already existing complex nature of religious arbitration.

³⁶ Anand Patel, 'Sharia Courts Decoded' (India Today) <<https://www.indiatoday.in/fact-check/story/fact-file-sharia-courts-decoded-1285236-2018-07-13>> last accessed 13 July 2018.

³⁷ Anand Patel (n 36).

³⁸ *Vishwa Lochan Madan v Union of India* AIR (n 34).

- Considering the social framework of Indian society where religion is deeply rooted, people under social pressure submit to these religious arbitration forums that are established.
- **Problems in interpreting the Shariah law:** By announcing its decision to open Sharia courts, the AIMPLB stirred a controversy that would give a fillip to the politics of polarisation. The ostensible aim is to educate “*the lawyers, judges and the common man about Sharia law*” through the so-called *Tafheem-e-Shariat* (understanding the Sharia) committees.³⁹ In *Aga Mohammed Jaffer Khan v. Koolsum Beebee*,⁴⁰ Their Lordships of the Privy Council held that where a passage of the Quran has been interpreted in a particular manner both in the Hedaya (a work on the Sunni Law) and in the Imamia (a work on the Shia Law), it is not open to a court to construe the same in a different manner. In *Aziz Bano v. Mahmud*,⁴¹ it was held that where there is a conflict of opinion and no specific rule to guide the Court, the Court ought to follow that opinion which is most in accordance with justice, equity, and good conscience.
- Sanctions are inappropriate and against the State Laws.
- **No provision of judicial review unless a separate lawsuit is filed:** There is no provision for judicial review, however, the person who is not satisfied can approach the court and the court has the power to set aside the orders of Shariat courts if any of the conditions under Section 34 of the A&C Act are fulfilled.

V. RELIGIOUS ARBITRATION & INDIAN ARBITRATION LAW

There has been a rising demand by parent institutions like the AIMPLB to grant state backing to the judgments given by such Shariat Courts and grant them a final and binding status. The SC’s July 2014 verdict in the *Vishwa Lochan Madan v. Union Of India* case did not delegitimise *Darul Qazas*, it made it clear that as *Darul Qazas* were not part of the *corpus juris* of the state, *fatwas* issued by them – or for that matter any person or religious body – do not amount to an adjudication of dispute by an authority

³⁹ A. Faizur Rehman, Muslim Law Board Must Stop Calling Arbitration Centres Sharia Courts (*The Wire*) < <https://thewire.in/law/muslim-personal-law-board-must-stop-calling-arbitration-centres-as-sharia-courts> > last accessed 16 July 2018.

⁴⁰ *Aga Mohammed Jaffer Khan v Koolsum Beebee* (1897) 25 Cal. 24.

⁴¹ *Aziz Bano v Mahmud* (1920) 47 All. 823.

under a judicial system sanctioned by law.⁴² Therefore, a *qazi* or *mufti* has no power to impose his fatwa on anyone and any attempt to do so would be illegal and actionable.

The court's decision not to outlaw *Darul Qazas* was based on its acceptance in good faith of the pleadings of the AIMPLB and Darul Uloom Deoband that *Darul Qazas* were akin to arbitration centres and not part of a parallel judicial system.⁴³ Thus, an umbrella provision granting finality and enforceability to all the judgments of such institutions would intensify the problems under such a private regime, the idea of formalising these institutions by bringing them under the ambit of state arbitration laws may deserve consideration.

Here the complexities arising in the Western experience with respect to the religious arbitration doctrine may raise doubts about the validity of such an idea. However, an analysis of the provisions of Arbitration Law points out that the Indian setup is capable of filling the voids of the state-backed religious arbitration systems to a significant extent without drawing into the problems that seem inherent in the Western counterpart.⁴⁴ As such bringing such systems under the ambit of formal arbitration laws can help reconcile the community objectives as well as individual interests through a pre-existing bridge that has already gained legal and social acceptance.⁴⁵

If we go through the provisions of the A&C Act which is the governing law of arbitration in India, it is enough to diminish any doubts regarding the legitimacy of these institutions under Indian law. The aim of the new act, based on United Nations Commission on International Trade Law ('UNCITRAL') model law, is to ensure party autonomy and minimise judicial intervention to every extent possible.

Right from the appointment of the arbitrators to the procedure followed, the parties have full liberty to decide the conditions of arbitration. Section 11 of the Act provides that the parties can agree upon the procedure for the appointment of the arbitrator. In the case of failure of the parties to do so, the matter may be referred to the High Court ('HC') or the SC, or their respective designates. However, unlike the Western courts where the power of appointment by the courts may be curtailed owing to the religious

⁴² *Vishwa Lochan Madan v Union of India* (n 34).

⁴³ A. Faizur Rehman (n 39).

⁴⁴ Aditi (n 3).

⁴⁵ *ibid.*

question doctrine, the Indian scenario facilitates this to be done under Section 11(8) of the Act. Under this provision, the appointment of the arbitrator by the SC and the HC has to be done while having “*due regard to any qualifications required of the arbitrator by the agreement of the parties*”.⁴⁶ Therefore, in the case of religious arbitrations, any religious condition regarding the appointment of the arbitrator can be read as ‘qualifications’ under clause 8 of Section 11.

Also, courts have held the function of appointment of the arbitrators as a judicial one and hence the courts, while interpreting any such conditions can call for any kind of aid to help them interpret the doctrine according to the parties’ contemplations.

Following points as to the working of the Shariat courts:

- Parties do not require the presence of lawyers to argue or to put forward their cases before the judge, thus, the ambiance is more informal and user-friendly;
- There is no jury system; hence the case is presented before a single judge i.e. the Qazi who judges upon uncodified principles derived from Sharia rather than on legal standards;
- There is an absence of rigid court procedure i.e. absence of formalities. This makes proceedings streamlined and time-saving;
- Circumstantial and forensic evidence are not required and they do not follow standardised codes;
- The parties to the dispute are required to be Muslims and the principle of privity of contract is followed;
- The verdict of Sharia courts creates a non-binding effect.

Above discussed provisions are indicative of the fact that the freedom of religion which these religious tribunals seek to protect seems to be consistent with the provisions of the A&C Act given its approach upholding party autonomy.

VI. WESTERN EXPERIENCE

Although the challenges of the religious arbitration systems may be different under different legal setups, the remedies are largely the same, thereby placing a heavy

⁴⁶ Arbitration & Conciliation Act 1996, s 11(8).

burden on the grounds of public policy. However, their effects sure portray a distinction.⁴⁷ The application of public policy by the Indian courts in this regard can enhance the consistency between the functioning of the religious courts and the general community as well as individual interests.⁴⁸ In *Richardson v. Mellish*,⁴⁹ Justice Brough has described the term “*public policy*” as an unruly horse.⁵⁰ “*Public Policy*” is an inclusive term that may include within its ambit a wide range of activities that can be termed as public policy. It has been remarked that public policy in its nature is so uncertain and fluctuating; varying with the habits and fashions of the day, with the growth of commerce and the usages of trade, that it is difficult to determine its limits with any degree of exactness. In the case of *Murlidhar Agarwal & Anr. v. State of U.P. & Ors.*,⁵¹ the SC had remarked that public policy does not remain static in any given community. It may vary from generation to generation and even in the same generation. Public policy would be almost useless if it were to remain in fixed moulds for all time.

As far as the conflicting interests inherent in the religious arbitration doctrine are concerned, the act also provides appropriate remedies in this respect. These largely include the provisions of equal treatment of parties and challenging an arbitral award. The court cannot set aside it on its own accord. This can be done only in case a party applies to the court under clause 2 of Section 34 of the Act. Interference of court is justified only if any of the following is proved:⁵²

- The party making the application furnishes proof that the party was under some incapacity;
- The arbitration agreement is not valid under the law to which the parties are subject;
- The party making the application was not given proper notice for the appointment of the arbitrator;
- The arbitral award deals with the dispute not contemplated in the arbitration agreement;

⁴⁷ Aditi (n 3).

⁴⁸ *ibid.*

⁴⁹ *Richardson v Mellish* (1824) 2 Bing. 229.

⁵⁰ *ibid.*

⁵¹ *Murlidhar Agarwal v State of U.P.* (1974) SCC 472.

⁵² Arbitration & Conciliation Act 1996, s 34(2).

- The composition of the tribunal was not in accordance with the agreement of the parties;
- If against public policy or the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force.

However, this does not jeopardise the party's autonomy by unduly interfering with the arbitration proceedings and awards thereof. The Act makes a provision for the supervisory role of courts for the review of arbitral awards only to ensure fairness. The intervention of the courts is envisaged in a few circumstances only. The courts cannot go into the merits of the case and are generally hesitant to interfere where it involves the application of mind on the part of the arbitrator and any injustice or inconsistency is not *prima facie* apparent. Courts also cannot interpret the Arbitration Agreement nor can doubt Arbitrator's Interpretation unless inherently illegal or in case of an application under Section 33 of the Act by a party to interpret a part of the agreement. Courts also lack any *suo moto* powers of interference under the Act. As such, the mechanism can be held as appropriate to uphold party autonomy while facilitating the balancing of interests thereby meeting the ends of justice.

VII. CONCLUSION

The Western experience with the concept of religious arbitration, notwithstanding its significance, has not been a pleasant one, thereby leading to a ban in regions like Ontario. In the Indian scenario, however, the Western experience can be used to strengthen the already enhancing socio-legal legitimacy of religious tribunals, while ensuring the general prevalence of basic principles of natural justice in the process.

Some challenges may still remain unanswered, for instance, meeting the formal requirements of written agreements and so on in initially informal setups of religious tribunals, revising the scope of judicial review under the general public policy clause so as to balance the concerns raised by religious arbitrations as against other arbitral matters and so on. Discussion of these challenges is beyond the scope of this paper. However, further evolution and modification of law in this regard can be undertaken keeping in mind the special nature of this kind of arbitration in the future to further mould this concept in order to tap the potential of these institutions while at the same time mitigating the damage caused by it. Appropriate editions can be made to the

Arbitration Laws in India for this purpose with special reference to religious arbitration.

If structured carefully, the framework provided by religious arbitrations can provide the much-needed gateway to the religious tribunals, thereby bringing them under the ambit of judicial scrutiny. Such endeavours would help in curing the insecurities of various religious communities by answering their concerns of self-governance on one hand while balancing the concerns of public interest on the other.

Thus, to conclude, we can infer that Sharia courts today are an important ADR mechanism, its role is complementary to the formal judiciary. Under the present dispensation, Sharia courts or Darul-qaza is an integral dispute redressal forum for Indian Muslims as they are able to resolve disputes expeditiously and amicably. By settling private disputes of such a big community as that of the Muslims, the *Darul-qaza* is complementing the formal Indian judiciary. Apart from its complementary role, the system is inspired by the ideal of service to mankind. In a developing country such as India, the Darul-qaza through its informal approach creates a more flexible and precise instrument for dispute adjudication and reduces the uncertainty and insecurity that emerge from the rigidity of the formal legal system. The institution is fully adapted to the profile and requirements of its community members.