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INTEGRATING DARUL QAZA AS COMMUNITY-BASED PRIVATE MEDIATION CENTERS WITHIN INDIA'S ADR FRAMEWORK

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I. ABSTRACT

A renewed push for Alternative Dispute Resolution (ADR) in India has revived interest in traditional, indigenous and community-based mechanisms of dispute resolution. Darul Qaza represents a historically rooted institution within the Muslim community aimed at resolving matrimonial, family, community and civil disputes through principles grounded in Islamic jurisprudence. However, its legal status, constitutional legitimacy and intersection with the formal statutory framework remain subjects of complex debate. This paper investigates the operational framework of Darul Qaza through the lens of modern mediation principles, such as voluntariness, accessibility and party autonomy while evaluating its potential transformation into recognized private mediation centers within India's formal ADR ecosystem. It further identifies key challenges including enforceability, legal validity, gender justice concerns, secularism, debates around public perception and overlap with formal courts of law. This paper argues that instead of viewing Darul Qaza as parallel judicial systems, they may be restructured as voluntary community mediation centers functioning within the statutory safeguards. Such an integration can strengthen access to justice, reduce litigation burden, and preserve cultural autonomy while upholding constitutional values. The paper proposes evolving a reform-oriented model that harmonizes community-based dispute resolution with constitutional policies, reflecting the broader transformation of traditional justice systems within modern democracies. The paper explores avenues for future collaboration between the indigenous and cultural ADR practices of Darul Qaza and conventional modes of conflict resolution within the modern Indian ADR regimen. It further proposes mediation-friendly reforms that can leverage the widespread social acceptance of Darul Qaza, thereby offering a localized, cross-cultural model for efficient dispute resolution.

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II. KEYWORDS

Darul Qaza, Alternative Dispute Resolution, Mediation, Indigenous Dispute Resolution, Access to Justice.

III. INTRODUCTION

The legal landscape across the globe is currently undergoing a push for Alternative Dispute Resolution (ADR), and the same in turn has revitalized interest in traditional, indigenous, and community-based mechanisms of dispute resolution. As the formal judicial system grapples with ever-increasing pendency, high litigation costs, procedural complexity and delayed adjudication, the concerned stakeholders are increasingly exploring myriad non-litigious avenues in a bid to promote efficient and culturally sensitive access to justice.

Alternative Dispute Resolution refers to mechanisms that resolve disputes outside traditional court litigation. These mechanisms emphasize voluntariness, neutrality, flexibility, confidentiality, party autonomy and mutually acceptable settlements, aiming to provide accessible and culturally sensitive justice mechanisms. Being a forum of collaborative approach through which a neutral facilitator assists parties in reaching an agreeable settlement, it has gained great prominence in recent years.

India has historically relied upon many indigenous systems of dispute resolution, including panchayats, tribal councils and religious adjudicatory bodies. Within the context of the latter, Darul Qaza represents a historically rooted institution within the corpus of the Muslim community. This institution is traditionally aimed at resolving matrimonial, family, community, and civil conflicts through consensual settlement and principles cardinal to Islamic jurisprudence.²

However, despite its significant social acceptance within the Muslim community, its intersection with India's formal statutory framework remains at the juncture of complex political debates bringing together various contesting ideals of secularism, pluralism and

² Justin Jones, *Muslim Alternative Dispute Resolution: Tracing the Pathways of Islamic Legal Practice Between South Asia and Contemporary Britain*, 40 (1), JOURNAL OF MUSLIM MINORITY AFFAIRS, 48, 52 (2020).

legalism. The constitutional compatibility of Darul Qaza has in particular been specifically scrutinized, in the purview of secular governance and women's rights.³

This paper investigates the operational framework of Darul Qaza through the lens of modern mediation principles. Arguing that instead of viewing Darul Qaza as a parallel judicial system, it can in fact be restructured and integrated into the legal system as a voluntary community-based private mediation centers functioning within recognized statutory and constitutional safeguards as a viable solution to alleviate the burden on courts while ensuring timely access to justice. The paper addresses that by rechristening the Darul Qaza as not being a competing judicial forum, we can preserve such cultural dispute resolution practices while ensuring compliance with legal safeguards while upholding the modern mediation standards, and at the very same time put this traditional and culturally sensitive institution which is based in social and family welfare, towards amicable settlement of disputes, to use.

A. Research Objectives

The objectives of this research paper are as follows:

1. To examine the legal and institutional nature of Darul Qaza as a community-based dispute resolution mechanism in India.
2. To analyse the compatibility of Darul Qaza with the principles of mediation, particularly voluntariness, neutrality, confidentiality, party autonomy, and amicable settlement.
3. To evaluate the constitutional and legal standing of Darul Qaza in light of judicial precedents and India's existing Alternative Dispute Resolution framework.
4. To assess whether Darul Qaza can be integrated as a voluntary community-based private mediation centre without creating a parallel judicial system.

³ Noorjehan Safia Niaz & Zakia Soman, *Muslim Women's Views On Muslim Personal Law*, 50 (51), ECONOMIC AND POLITICAL WEEKLY, 83, 84 (2015).

5. To propose a regulatory and reform-oriented model for the lawful integration of Darul Qaza within India's ADR framework while ensuring gender justice, access to courts, and protection of fundamental rights.

B. Research Questions

The present study is guided by the following research questions:

1. Whether Darul Qaza, in its existing institutional form, satisfies the core principles of modern mediation, including voluntariness, neutrality, confidentiality, party autonomy, and non-coercive settlement?
2. What is the constitutional and legal status of Darul Qaza under Indian law, particularly in light of judicial pronouncements concerning its non-binding and non-adjudicatory character?
3. What legal and institutional safeguards would be necessary to recognise Darul Qaza as a community-based private mediation centre within India's ADR framework?
4. Whether comparative and community-based dispute resolution models can assist in developing a regulated framework for integrating Darul Qaza without creating a parallel judicial system?

C. Research Methodology

The present study adopts a doctrinal and black-letter legal research methodology. It relies primarily on statutory interpretation, judicial precedents, and scholarly literature to examine the legal status of Darul Qaza and its possible integration within India's Alternative Dispute Resolution framework. The paper analyses relevant statutory instruments, including the Code of Civil Procedure, 1908, the Arbitration and Conciliation Act, 1996, the Family Courts Act, 1984, and contemporary mediation-related legal developments. It also undertakes a case-law review of judicial decisions concerning Darul Qaza, non-State dispute resolution bodies, and the limits of community-based adjudicatory authority.

The study further draws upon comparative perspectives from selected foreign jurisdictions where faith-based or community-based dispute resolution mechanisms operate within broader legal frameworks. However, the research is limited to doctrinal and secondary-source analysis and does not include primary empirical data, field interviews, or direct observation of Darul Qaza proceedings.

IV. INDIGENOUS DISPUTE RESOLUTION SYSTEMS IN INDIA

India has long relied upon various indigenous dispute resolution systems rooted in community traditions and social norms, including but not limited to village panchayats, tribal councils, religious dispute resolution forums and community mediation bodies. Such conflict resolution models have historically served as informal justice systems before the establishment of formal legal court system in the country.

Some of the key features that have served as the cornerstones of such institutions have been, accessibility within the community itself, low cost and minimal procedural barriers, social legitimacy and emphasis on reconciliation rather than punishment.

The entrenched value of such indigenous mechanisms in promoting restorative justice and community harmony, while lending cultural sensitivity at the same instance has been the need of the modern Indian society plagued by an overburdened judicial backlog and a reeling under procedural complexities since long. The revitalization of the interest in such traditional ADR models has rekindled that aspiration that is currently unmet by the modern legal system.⁴

However, the legitimacy of such traditional dispute resolution models has long been contested in the perspective of their compliance with constitutional guarantees such as equality, dignity and fundamental rights. Darul Qaza institutions, in particular have been at the receiving end of many such political concerns.⁵

⁴ Irfan Engineer, *Fatwas and Muslim Women*, 49 (31), ECONOMIC AND POLITICAL WEEKLY, 15, 15 (2014).

⁵ P Ghosh, *Muttahidah qaumiyat in aqalliat Bihar: The Imarat i Shariah, 1921-1947*, 1 (34), INDIAN ECONOMIC AND SOCIAL HISTORY REVIEW (1997).

V. DARUL QAZA: HISTORICAL BACKGROUND AND INSTITUTIONAL STRUCTURE

Darul Qaza is a traditional Islamic dispute resolution institution where disputes are resolved by a Qazi, a scholar trained in Islamic jurisprudence and philosophy.⁶

Historically, the institution of Qazi has existed during the Mughal Empire's period and even earlier Islamic governance structures. After colonial rule and the introduction of British courts, the formal judicial role of Qazis diminished. Nevertheless, informal Darul Qaza institutions continued to operate at large within Muslim communities. In contemporary India, Darul Qaza institutions are often established by religious organizations and Islamic bodies, crucially today their decisions are advisory and consensual, relying on voluntary acceptance by the parties to the dispute themselves

as evidenced by the fact that Muslim women freely opt for different legal forums to resolve their personal and domestic issues.⁷

The Darul Qaza generally addresses marriage disputes, divorce matters, maintenance issues, Inheritance disputes, family reconciliation and community disputes, amongst other matters.

Though the scope of Darul Qaza has historically and traditionally been much larger, in the present day and age, it confines itself to a limited operation.⁸

The process governing Darul Qaza commences with the filing of a complaint before the Qazi, whereupon a hearing opportunity is granted to both the parties, the neutral mediator attempts reconciliation and amicable settlement that is mutually agreeable to both sides, in the aftermath of which a settlement recommendation is issued between both the parties.⁹

⁶ Iqbal Ali Khan & Nooreen Zaidi, *Relevance and Importance of Darul Qaza in Contemporary India - A Critique*, 20, ALJ, 72, 75 (2012).

⁷ Anindita Chakrabarti & Suchandra Ghosh, *Judicial Reform vs Adjudication of Personal Law View from a Muslim Ghetto in Kanpur*, 52 (49), ECONOMIC AND POLITICAL WEEKLY, 12, 12 (2017).

⁸ SRIMATI BASU, *FILING RELIGION: STATE, HINDUISM, AND COURTS OF LAW* 318 (Daniela Berti et al eds., Oxford University Press 2016).

⁹ Jeffrey A. Redding, *The Case of Ayesha, Muslim 'Courts', and the Rule of Law: Some ethnographic lessons for legal theory*, 48 (4), MODERN ASIAN STUDIES, 940, 943 (2014).

VI. LEGAL STATUS OF DARUL QAZA IN INDIA

The constitutional and legal status of Darul Qaza has been subject to significant judicial scrutiny. In *Vishwa Lochan Madan v. Union of India*, the Supreme Court clarified that Darul Qaza and fatwas do not constitute a parallel judicial system and do not possess binding legal force. This position has now been reaffirmed and updated by the Supreme Court in *Shahjahan v. State of Uttar Pradesh*, Criminal Appeal No. 2112 of 2025, decided on 4 February 2025 and reported as 2025 INSC 528. The Court held that bodies styled as ‘Court of Kazi,’ ‘Court of (Darul Kaja) Kajiyat,’ or ‘Sharia Court,’ by whatever name called, have no recognition in law. Any declaration or decision issued by such bodies is not binding and cannot be enforced through coercive means. At most, such a declaration may operate inter se the parties who voluntarily accept and act upon it, provided that it does not conflict with any existing law or prejudice third-party rights.

This position has been recently reaffirmed in *Shahjahan v. State of Uttar Pradesh*, where the Supreme Court held that bodies such as the “Court of Kazi,” “Court of (Darul Kaja) Kajiyat,” and “Sharia Court” have no recognition in law, and that their decisions are unenforceable unless voluntarily accepted by the affected parties and otherwise consistent with law. Therefore, Darul Qaza may be understood only as an informal and voluntary conciliatory mechanism, and not as an adjudicatory forum capable of issuing legally binding determinations.¹⁰ The Government of India through an affidavit also supported that any decisions arrived at by Darul Qaza are simply opinions and cannot be imposed or enforced on anyone. It further argued that the operation of Darul Qaza is a protected fundamental right of the Muslim community as has been embedded in the Articles 25 and 26(b) of the Constitution of India. Positioning that such a freedom of choosing the fora is guaranteed by Article 26 to every religious denomination or every section thereof to establish and maintain institutions for religious purposes and to manage its own affairs, and the same would

¹⁰ *Vishwa Lochan Madan v. Union of India*, (2014) 7 SCC 707.

consequently empower the Muslims to establish Darul Qaza in a bid to settle disputes between two persons professing Islam.¹¹

The Hon'ble Supreme Court held that such cultural ADR forums are not in fact parallel judicial system and did not prevent the Muslim community from setting up their case under the law of land at any point of time whatsoever.¹²

The Hon'ble Madhya Pradesh High Court, Indore Bench, in *Aadil v. Union of India*, held that a Kazi may entertain a dispute and act as a mediator to settle disputes between members of the community, but cannot adjudicate the dispute like a court or pass an order in the nature of a decree.¹³

The Hon'ble Delhi High Court in *Mohd. Ashraf & Ors. v. Abdul Wahid Siddique* clarified that a fatwa or similar declaration cannot, by itself, create legally enforceable rights, particularly in respect of immovable property, nor can it bind third parties. However, the Court recognised that such a declaration may form the basis of an amicable settlement between parties who voluntarily submit to such a settlement process, provided the settlement is not contrary to law.¹⁴

The Hon'ble Madras High Court accepted Darul Qaza as an ADR forum in reference to Part III of Arbitration & Conciliation Act, 1996, observing the institution to have adopted mediation and conciliation especially for counselling and voluntarily settling matrimonial disputes within the community. The Hon'ble High Court went on to recognize the role of Darul Qaza in facilitating voluntary settlement by providing solutions and in case if no mutual settlement is possible, parties were advised to approach the court of law for grievance

¹¹ Jeff A. Redding, *Institutional v. Liberal Contexts for Contemporary Non-State, Muslim Civil Dispute Resolution Systems*, 6, SAINT LOUIS UNIVERSITY SCHOOL OF LAW LEGAL STUDIES RESEARCH PAPER SERIES, 1, 4 (2010).

¹² Iqbal Ali Khan & Nooreen Zaidi, *Relevance and Importance of Darul Qaza in Contemporary India - A Critique*, 20, ALJ, 72, 77 (2012).

¹³ *Aadil v. Union of India*, W.P. No. 24741 of 2018, Madhya Pradesh High Court, Indore Bench, decided on 12 January 2022; reported as 2022 LiveLaw (MP) 13.

¹⁴ *Mohd. Ashraf & Ors. v. Abdul Wahid Siddique*, C.R.P. 89/2016, Delhi High Court, decided on 14 December 2020; reported as AIRONLINE 2020 DEL 1766

redressal. The Hon'ble High Court went on to acknowledge that the social object of this historically rooted institution is to endeavour and resolve family disputes amicably.¹⁵

In the 16th Lok Sabha, on 31st July, 2018 a question regarding setting up sharia court by all India Muslim personal law board (AIMPLB) was asked, it was answered that the institution is based on a righteous motive to lessen the burden of litigation in Courts. Standing etymologically for 'House of Consultations', the Darul Qaza seeks only to advise people who submit their personal disputes for arbitration, as suggested under the Arbitration & Conciliation Act, 1996 itself, thus it is a completely Constitutional exercise.

Thus, from the perusal of the afore captioned judicial pronouncements, particularly Vishwa Lochan Madan and the later decision in Shahjahan v. State of Uttar Pradesh, it is clear that Darul Qaza institutions do not possess judicial authority and their decisions are not legally binding by themselves. Parties remain free to accept or reject such opinions. Even where a party voluntarily accepts a Darul Qaza declaration, its legal relevance remains limited to the consenting parties and cannot override statutory law, constitutional protections, or the rights of third parties.¹⁶

The Hon'ble Courts have made it amply evident that Darul Qaza may function as informal mediation, counselling and advisory forums, provided they do not claim judicial power or violate legal rights. Thus, Darul Qaza can indeed exist as voluntary dispute resolution forums, while aligning closely with modern mediation principles, it can indeed try to resolve disputes amicably, as counselling and mediation by Darul Qaza within reasonable limits are permissible according to the catena of judicial precedents discussed above. Such cultural institutions have historically given options to Muslim women, granting them the agency of choice for redressal of their family troubles.¹⁷

¹⁵ Abdur Rahman v. The Secretary to Government (W.P. No. 33059 of 2016 at Madras HC) (India).

¹⁶ Kalindi Kokal, *To Lead or To Follow? Supreme Court and Community 'Justice'*, 49 (50), ECONOMIC AND POLITICAL WEEKLY, 19, 19 (2014).

¹⁷ Anindita Chakrabarti & Suchandra Ghosh, *Judicial Reform vs Adjudication of Personal Law View from a Muslim Ghetto in Kanpur*, 52 (49), ECONOMIC AND POLITICAL WEEKLY, 12, 13 (2017).

D. Recent Supreme Court Clarification in *Shahjahan v. State of Uttar Pradesh*

The legal position concerning Darul Qaza has been further clarified by the Supreme Court in *Shahjahan v. State of Uttar Pradesh*, Criminal Appeal No. 2112 of 2025, decided on 4 February 2025 and reported as 2025 INSC 528. The Court, speaking through Justice Ahsanuddin Amanullah for a Bench comprising Justice Sudhanshu Dhulia and Justice Ahsanuddin Amanullah, reaffirmed the principle laid down in *Vishwa Lochan Madan v. Union of India*. The Court held that bodies described as “Court of Kazi,” “Court of (Darul Kaja) Kajiyat,” or “Sharia Court,” by whatever name styled, have no recognition in law. Any declaration or decision issued by such bodies is not binding on any person and cannot be enforced by coercive process.

Such a declaration may have limited relevance only where the affected parties voluntarily accept and act upon it, provided that such acceptance does not conflict with any existing law. Even then, its effect remains confined inter se the consenting parties and cannot prejudice the rights of third parties. This decision is directly relevant to the proposed integration of Darul Qaza within India’s ADR framework because it confirms that Darul Qaza cannot function as a parallel court or adjudicatory body, but may operate, if at all, only as a voluntary and non-coercive forum for amicable settlement.

VII. DARUL QAZA AND PRINCIPLES OF MEDIATION

Several features of Darul Qaza correspond with internationally recognized mediation principles. Participation in Darul Qaza proceedings is voluntary, as parties approach the institution willingly on their own accord and may withdraw if dissatisfied with the services rendered, disputes in Darul Qaza are resolved through mutual agreement rather than imposed decisions, proceedings occur within a private setting, ensuring confidentiality of both the parties concerned, institution of Darul Qaza are accessible, inexpensive and

culturally familiar for community members. These characteristics demonstrate that Darul Qaza functions very similarly to modern mediation systems.¹⁸

A. Intersection with the Formal Statutory Framework: Key Challenges

The question of enforceability must be analysed under the Mediation Act, 2023¹⁹ Under Section 27, a mediated settlement agreement resulting from mediation, signed by the parties and authenticated by the mediator, is final and binding upon the parties and persons claiming under them, and is enforceable in accordance with the Act. Section 20 also permits registration of mediated settlement agreements, at the option of the parties, with the authority constituted under the Legal Services Authorities Act, 1987 or another notified body. These provisions are important because any Darul Qaza-assisted settlement should derive legal effect only from the parties' voluntary mediated settlement agreement, and not from any fatwa, religious declaration or decree-like order.

A second challenge concerns gender justice. Any community-based mediation process must ensure that women and vulnerable parties are not pressured into settlements that compromise statutory rights relating to maintenance, custody, divorce, inheritance, domestic violence or property. A third concern relates to constitutional secularism.²⁰ Recognition of Darul Qaza as a mediation-support forum must not be understood as State endorsement of religious adjudication, but only as regulation of a voluntary, non-coercive community mediation mechanism. A fourth challenge concerns public perception. Media narratives sometimes portray Darul Qaza as a parallel judicial system, which creates mistrust and controversy.

Clear statutory limits, written consent, trained mediators and access to courts are therefore necessary to prevent misunderstanding. Finally, regulatory oversight remains essential. In the absence of a uniform framework, Darul Qaza institutions may vary in procedure,

¹⁸ Jeff A. Redding, *Institutional v. Liberal Contexts for Contemporary Non-State, Muslim Civil Dispute Resolution Systems*, 6, SAINT LOUIS UNIVERSITY SCHOOL OF LAW LEGAL STUDIES RESEARCH PAPER SERIES, 1, 4 (2010).

¹⁹ *ibid*

²⁰ Anindita Chakrabarti, K. C. Mujeebu Rahman & Suchandra Ghosh, *Of Marriage, Divorce and Criminalisation Reflections on the Triple Talaq Judgement in India*, 6 (I), JOURNAL OF LEGAL ANTHROPOLOGY, 24, 33 (2022).

safeguards and accountability. Any integration within India's ADR framework must therefore be conditioned upon mediator training, neutrality, confidentiality, voluntariness, gender-sensitive procedures and compliance with constitutional rights.²¹

VIII. INTEGRATING DARUL QAZA INTO THE ADR FRAMEWORK

A constructive approach would involve integrating Darul Qaza institutions into India's formal mediation ecosystem not as religious courts or adjudicatory bodies, but as voluntary community-based mediation forums. The most appropriate statutory foundation for such integration is the Mediation Act, 2023, which is India's comprehensive legislation for promoting institutional mediation, enforcing mediated settlement agreements, registering mediators, encouraging community mediation and recognising online mediation. The long title of the Act itself reflects these objectives and therefore provides a direct statutory foundation for the reform model proposed in this paper.

The long title of the Act itself reflects these objectives and therefore provides a more direct statutory foundation for the reform model proposed in this paper. Although the Family Courts Act, 1984 remains relevant in matrimonial and family disputes, the Mediation Act, 2023 provides the more contemporary and specialised framework for examining the possible role of Darul Qaza. Under the Act, mediation includes pre-litigation mediation, online mediation, community mediation, conciliation and similar processes in which parties attempt to reach an amicable settlement with the assistance of a mediator who has no authority to impose a settlement. This definition is crucial because it aligns with the constitutional position that Darul Qaza may assist parties in reaching a voluntary settlement, but cannot adjudicate disputes or issue binding decrees.²²

In particular, Section 43 of the Mediation Act expressly recognises "community mediation" for disputes likely to affect peace, harmony, and tranquillity among residents or families of an area or locality. The provision contemplates that, upon receipt of an application, the concerned authority under the Legal Services Authorities Act, 1987, or the District Magistrate

²¹ *ibid*

²² The Family Court Act, 1984, § 5 & 12, No. 66, Acts of Parliament, 1984 (India).

or Sub-Divisional Magistrate, as the case may be, may constitute a panel of three community mediators to facilitate settlement. This model is directly relevant because Darul Qaza institutions already function within community settings and are often approached in family and interpersonal disputes. However, their integration must occur only through the statutory language of mediation, and not through any claim of religious adjudication.²³

In the state of Uttar Pradesh, the provisions find resonance with provincial rules governing family courts, framed by the state government²⁴ as well as the Hon'ble Allahabad High Court in promotion of amicable settlement.²⁵

Qazis and other Darul Qaza functionaries should be permitted to participate in a reformed mediation framework only if they are trained, accredited, and regulated as mediators in accordance with the statutory scheme of the Mediation Act, 2023. The Act provides for a Mediation Council of India and a broader framework for registration and regulation of mediators, thereby offering a mechanism through which community-based mediators may be brought within legal and professional standards. Accordingly, Darul Qaza institutions should not be recognised merely because of their religious or community authority; rather, their personnel must satisfy secular requirements of mediator competence, neutrality, confidentiality, voluntariness, gender sensitivity, and respect for constitutional rights.²⁶ Further a legal oversight can also be provided whereby, settlements reached through Darul Qaza mutually successful mediation could be submitted to courts for legal validation, there is a need to ensure clear safeguards for Fundamental Rights, so that settlements do not violate constitutional rights or statutory protections, there is a great scope of collaboration with legal aid institutions, Darul Qaza centers could collaborate with Legal Services Authorities to expand access to justice, the importance of ADR within legal aid was also touched upon by the Hon'ble Supreme Court.²⁷

²³ Radhey Shyam Soni v. State of Rajasthan, 1991 SCC OnLine Raj 112.

²⁴ The Uttar Pradesh Family Courts Rules, 1995, Rule 29 (India).

²⁵ The Uttar Pradesh Family Courts (Court) Rules, 2006, Rule 34 (India).

²⁶ Anindita Chakrabarti & Suchandra Ghosh, *Judicial Reform vs Adjudication of Personal Law View from a Muslim Ghetto in Kanpur*, 52 (49), ECONOMIC AND POLITICAL WEEKLY, 12, 14 (2017).

²⁷ Vishwa Lochan Madan v. Union of India, (2014) 7 SCC 707.

Integrating Darul Qaza within the ADR framework could reduce court backlog by resolving family disputes before reaching courts of law, it can also enhance access to justice, such localized institutions provide accessible disputes resolution for marginalized communities, community-based forums like Darul Qaza understand social norms and cultural contexts of the operations.

A mediation-based settlement emphasize reconciliation rather than adversarial conflict lessening the scope of social disharmony, it also helps in strengthening ADR ecosystem by integrating such indigenous systems ably, we can diversify and strengthen India's ADR infrastructure.

A. Darul Qaza and the Mediation Act, 2023

The Mediation Act, 2023 should form the principal statutory basis for any contemporary discussion on integrating Darul Qaza into India's ADR framework. The Act marks a legislative shift from scattered references to mediation in procedural statutes towards a consolidated framework governing institutional mediation, mediated settlement agreements, registration of mediators, community mediation, and online mediation. For the present study, its significance lies in the fact that it permits mediation as a facilitative process while denying the mediator any adjudicatory power to impose a decision. This distinction corresponds with the constitutional position on Darul Qaza: it may assist parties in arriving at a voluntary settlement, but it cannot decide disputes as a court.

Section 43 is particularly relevant because it recognises community mediation for disputes affecting peace and harmony within a local community. Darul Qaza institutions may be brought within, or at least modelled upon, this provision only if they are transformed into secularly regulated mediation forums. Their role should be limited to facilitating settlement where parties voluntarily submit to the process. The panel-based structure contemplated under Section 43 also suggests that community mediation should not depend upon a single religious authority. A legally compliant Darul Qaza model should therefore include trained mediators, preferably including women mediators and legally qualified members, to reduce risks of coercion, unequal bargaining power, and gender-biased outcomes.

Further, the enforceability of any settlement should flow only from the Mediation Act, 2023. A Darul Qaza opinion, fatwa, or declaration cannot by itself bind the parties or affect their civil status, property rights, maintenance claims, custody rights, or statutory remedies. Where parties reach a settlement through mediation, it should be reduced to writing, signed by the parties, authenticated by the mediator, and, wherever appropriate, registered or placed before a competent court or authority. This would ensure that the settlement is treated as a mediated settlement agreement rather than as a religious adjudication. Such a framework would preserve the accessibility and cultural familiarity of Darul Qaza while subjecting it to the requirements of voluntariness, legality, equality, and constitutional morality.

B. Relevance of the Mediation Act, 2023

The Mediation Act, 2023 is central to any contemporary proposal for integrating Darul Qaza within India's ADR framework. The Act defines mediation broadly to include pre-litigation mediation, online mediation, community mediation, conciliation, and other similar processes in which parties attempt to reach an amicable settlement with the assistance of a mediator. Importantly, the mediator does not possess authority to impose a settlement upon the parties. This statutory definition directly supports the argument that Darul Qaza cannot be treated as an adjudicatory body, but may potentially be restructured as a voluntary facilitative forum if it conforms to statutory mediation principles.

Section 43 of the Mediation Act, 2023 expressly recognises community mediation for disputes that may affect peace, harmony, and tranquillity among residents or families of a particular area or locality. The provision contemplates the constitution of a panel of community mediators by the concerned authority under the Legal Services Authorities Act, 1987, or by the District Magistrate or Sub-Divisional Magistrate, as the case may be. This statutory framework is especially relevant to the present paper because Darul Qaza institutions are already embedded within community structures and are commonly approached in family and personal disputes. However, any such integration must be conditional upon prior consent, trained mediators, neutrality, non-coercion, and conformity with statutory rights.

Accordingly, the legal question is not whether Darul Qaza can exercise adjudicatory power, since Indian law does not recognise such power. The more appropriate question is whether Darul Qaza can be transformed into a rights-compliant, voluntary community mediation centre under the broader statutory philosophy of the Mediation Act, 2023. Such a model would require institutional safeguards, including mediator training, written consent of parties, confidentiality, prohibition of coercive fatwas or binding religious decrees, gender-sensitive procedures, and a clear option for parties to approach formal courts at any stage.

C. Comparative Perspective

Comparative experience from other jurisdictions indicates that faith-based and community-based dispute resolution mechanisms may coexist with formal legal systems only when their authority is clearly limited. In jurisdictions such as the United Kingdom, religious or community mediation bodies may assist parties in resolving private disputes, but their outcomes cannot override statutory protections, public policy, equality norms, or the jurisdiction of civil courts. Similarly, community mediation models in plural societies are generally accepted when they operate as voluntary conciliatory spaces rather than substitute courts.

This comparative position offers an important lesson for India. Darul Qaza may be socially useful where it facilitates reconciliation, reduces hostility, and assists parties in reaching mutually acceptable settlements. However, it becomes legally problematic if it assumes the role of a court, issues binding declarations, pressures women or vulnerable parties into settlements, or discourages access to statutory remedies. Therefore, comparative practice supports a cautious regulatory model rather than blanket recognition. The appropriate framework is one in which Darul Qaza functions as a community mediation support institution, subject to constitutional morality, statutory supervision, gender justice norms, and judicial review wherever legal rights are affected.

IX. SUGGESTIONS AND RECOMMENDATIONS-

This paper proposes a reform-oriented model that harmonises community-based dispute resolution with constitutional governance. The proposed model should not recognise Darul

Qaza as a religious court or adjudicatory authority. Instead, it should permit Darul Qaza institutions to function only as voluntary community mediation-support centres, subject to statutory safeguards under the Mediation Act, 2023. The core features of such a model should include free and informed consent of parties, mediator training and accreditation, gender-sensitive procedures, confidentiality, written settlements, legal oversight, transparency, accountability and continuing access to courts. These safeguards would allow the cultural accessibility of Darul Qaza to be preserved while ensuring that its functioning remains consistent with equality, dignity, secularism and the rule of law.²⁸

Comparative experience also supports a cautious and regulated model. In Malaysia, *sulh* operates as a mediation mechanism within the Syariah Court framework, particularly in family-law disputes, and is supported by procedural rules, trained officers and court-linked oversight. This demonstrates that faith-sensitive mediation may operate within a formal legal structure where its process and outcomes remain subject to legal control. Indonesia similarly reflects the relevance of local and community-based mediation in family and neighbourhood disputes, but such mechanisms remain acceptable only where they facilitate settlement and do not displace formal legal remedies.

South Africa provides another useful comparison: customary dispute-resolution institutions are recognised only within a framework that is expressly subject to constitutional values and statutory supervision. The South African Traditional Courts Act, 2022, for instance, frames traditional courts within constitutional imperatives and equality-based safeguards. These comparative models indicate that community-based dispute resolution is viable only when its authority is limited, its procedures are regulated and its outcomes remain subordinate to statutory rights and judicial review.” The Malaysian *sulh* model is discussed as a mediation mechanism within Syariah Courts, while South Africa’s Traditional Courts Act, 2022 expressly places customary dispute resolution within constitutional limits.

²⁸ Jeff A. Redding, *Institutional v. Liberal Contexts for Contemporary Non-State, Muslim Civil Dispute Resolution Systems*, 6, SAINT LOUIS UNIVERSITY SCHOOL OF LAW LEGAL STUDIES RESEARCH PAPER SERIES, 1, 18 (2010).

It has also been suggested that members of the Muslim community may not always be sufficiently sensitised about the precise legal status and limited role of Darul Qaza. Any reform model should therefore include public legal awareness, written disclosure of rights and clear explanation that participation is voluntary. Parties should be informed at the outset that Darul Qaza cannot adjudicate disputes, cannot restrict access to courts and cannot issue binding directions affecting statutory rights. This would reduce the risk of coercion or misunderstanding and would help reposition Darul Qaza as a legally compliant community mediation mechanism rather than as a parallel forum.²⁹

Accordingly, the recommended model should be implemented through the existing statutory structure of the Mediation Act, 2023 rather than through an informal or purely community-driven arrangement. The Mediation Council of India's regulatory framework may be used to prescribe mediator training, ethical standards and accreditation requirements for Qazis or other Darul Qaza functionaries who wish to act as mediators. Section 43 may be used as the statutory basis for community mediation in disputes affecting peace and harmony within families or localities. A panel-based model, preferably including women mediators and legally trained members, should be adopted to minimise the risk of unilateral religious authority, unequal bargaining power and gender-biased outcomes. Any settlement should be reduced into writing, signed by the parties and authenticated in the manner contemplated by mediation law. Where the dispute concerns matrimonial status, maintenance, custody, inheritance, property or domestic violence, the settlement should remain subject to scrutiny by a competent court or statutory authority. This would create a balanced model that preserves the social accessibility of Darul Qaza while ensuring legality, enforceability, gender justice and constitutional compliance.

X. CONCLUSION

Integrating Darul Qaza into India's formal ADR framework is not about endorsing a parallel legal system, but rather about harnessing the efficacy of indigenous dispute resolution. Such

²⁹ Iqbal Ali Khan & Nooreen Zaidi, *Relevance and Importance of Darul Qaza in Contemporary India- Iqbal Ali Khan & Nooreen Zaidi, Relevance and Importance of Darul Qaza in Contemporary India - A Critique*, 20, ALJ, 72, 78 (2012).

an integration can strengthen access to justice, significantly reduce the litigation burden on traditional courts, and preserve cultural autonomy. By restructuring these cultural institutions into private mediation centers bound by modern mediation principles and constitutional values, India can create a truly transformative and inclusive justice system.

India's justice system stands at a crucial juncture where innovative approaches are necessary to address judicial delays and enhance access to justice. Indigenous dispute resolution institutions such as Darul Qaza represent socially embedded mechanisms that continue to command legitimacy within certain communities.

Rather than perceiving them as parallel judicial structures, policymakers should recognize their potential as community-based mediation platforms. By integrating Darul Qaza within the formal ADR framework under appropriate legal safeguards, India can develop a hybrid dispute resolution model that respects cultural diversity while upholding constitutional values.

Such an approach would strengthen access to justice, reduce litigation burdens and promote inclusive legal pluralism within the Indian legal system. With proper regulatory oversight, mediator training and gender-sensitive safeguards, Darul Qaza institutions can evolve into valuable components of India's modern mediation landscape.

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