



INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

IJLAR

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www.ijlar.com

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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

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MINORITY EDUCATIONAL RIGHTS AND STATE REGULATION: A CONSTITUTIONAL STUDY OF THE UTTAR PRADESH MADARSA ACT

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Abstract

The paper critically examines the constitutional validity of the Uttar Pradesh Madarsa Act, 2004 in the light of legal challenges and questions its consonance with the secular principles and legislative competence. It takes a look at the landmark judgement in Anjum Kadari and Another v. Union of India and Others. Madarsas in the subcontinent have historically evolved to incorporate both religious and secular subjects. The Act was to regulate and regulate Madarsa education, with control over the curriculum and accreditation of institutions. However, it came under legal scrutiny for allegedly violating Articles 14 and 21A of the Constitution and the principle of secularism. The Allahabad High Court struck down the whole Act and the matter went in appeal and stay was granted by the Supreme Court. The Supreme Court stated a statute can be struck down only if it violates the provisions of the Constitution itself and not if it contravenes abstract principles like the basic structure of the Constitution. While upholding the basic validity of the Act under Entry 25 of List III, it struck down the provisions which were inconsistent with the University Grants Commission (UGC) Act under Entry 66 of List I. The judgment re-established the balance between rights of minorities under Article 30 and the state's regulatory role in education. This paper places the judgment in the context of wider debates on religious freedom, minority rights, federalism and the constitutional vision of secularism in India.

Keywords- Madarsa, UGC, Right to Education, Secularism, Minority Rights, Article 30, Legislative Competence, Federalism

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Introduction

The issue of the constitutionality of religious educational institutions has been a subject of controversy for years in the Indian Constitution. The issue of regulation of Madarasas of course, is one of the most complicated and contentious that is dealt with in the modern Indian jurisprudence today, and is a conundrum regarding secularism, minority rights, federalism, and the fundamental right to education. The UP Madarsa Act (Uttar Pradesh Madarsa Education Board Act, 2004) was a landmark legislation aimed at formalizing Madarsa education, setting out curriculum requirements, creating the examination system and establishing a state supervised Board for supervision. The issue raised by the constitution challenge against the Act and the Supreme Court's landmark judgment in Anjum Kadari case (Anjum Kadari and Another v. Union of India and Others, 2024) is not just about the Act in question, but about the fundamental issues that go beyond it. It discusses the nature and scope of legislative competence under a federal system, permissible scope of state regulation of minority educational institutions, interconnection between religious education and the constitutional protection of right to quality education under Article 21A of Indian Constitution and the limits of the doctrine of basic structure as a method of judicial review (Tripathi, 1972).

The Allahabad High Court's sweeping strike of the entire Madarsa Act in March 2024, on the basis of its failure to abide by the constitutional principle of secularism, sparked alarm amongst the Muslim minority communities as well as civil society organisations and constitutional experts. A High Court directive mandating that the government integrate more than 1.2 million Madarasas students into the regular education system seemed excessive and could lead to the deprivation of the right of minorities to education as enshrined in Article 30 of the Constitution. The High Court was subsequently stayed by the Supreme Court, and the Supreme Court eventually upheld the essential parts of the Act while severing the unconstitutional sections, reestablishing a certain balance of the constitution (Zaman, 2002).

The Historical Development of Madarsa Education and 2004 Act

The term 'madarsa' comes from the Arabic root for 'a place of learning' and is a general term for any educational institution. The story of Madarsa education in the Indian subcontinent dates back

to the era of Tughlaq dynasty when Madarasas started emerging in tandem with the mosques and the royal courts. Madarasas were from the elementary maktabas, associated with mosques to teach Quranic recitation and basic education, to higher Islamic institutions that taught theology, jurisprudence, philosophy and mathematics (Zaman, 2002). The syllabus of advanced Madarasat education which became standard in the subcontinent, developed at Firangi Mahal, Lucknow in the eighteenth century, is known as famous Dars-e-Nizami. The encounter with the colonies was a major change in this education system. The transition from Urdu to English medium instruction and phase-out of state patronage for traditional Islamic institutions resulted into fewer resources and prestige for Madarasas. Madarsa education was important socially in Muslim communities and in 1908 the British government issued the Education Code that allowed Madarasas in modern-day Uttar Pradesh to receive recognition for some public exams. It was the first time that Madarsa education is formally included in the architecture of the State's education. (Sikand, 2005)

Post-Independence Regulatory Developments

Following independence, successive governments at the Federal level and the States level tried to put Madarsa education under a formal system of regulation, without infringing on the rights of minorities, particularly the Muslim communities. In 1969, the Uttar Pradesh government issued the Madrasa Education Rules, under which the education of Madarasas was transferred to the Education Department of the state. This was followed by the UP Non-Government Arabic and Persian Madrasa Recognition Rules of 1987 which laid down conditions for recognition and the standards for employing teachers. Administrative duties of Madaras supervision were handed over to Minority Welfare and Waqf Department in 1996.

The central government initiated a number of schemes at the national level to modernise Madarsa education such as Area Intensive Programme, Madrasa Modernization Programme (subsumed under Sarva Shiksha Abhiyan) and Scheme for Providing Quality Education in Madarasas. These programs aimed to strengthen the employability and social integration of Madarasas graduates through the integration of Science, Mathematics, English and social sciences programs. The eligibility for these schemes is that Madarasas must be of at least three years with proper registration from the concerned state authority.

In India, the highest density of Madarasas is in Uttar Pradesh where there are around 13000 Madarasas and the total number of students enrolled in these Madarasas is also more than 1.2 million. The state also invests a considerable amount of money in paying the salaries of its teachers and offers textbooks and lunch at state-run Madarsas. A number of Madarasas also operate Industrial Training Institutes (ITIs) that provides vocational training in addition to religious and secular education. There are four levels of the academic structure: Tathania (I-V), Fauquania (VI-VIII), Maulvi or Munshi (X) and Alim (XII). Select institutions offer higher level qualifications (Kamil, Fazil) but these are not historically recognised as comparable to undergraduate or post-graduate and therefore have not traditionally been accepted for admission to higher education or public employment, except of course through specific University Grants Commission (UGC) provisions for Urdu, Persian and Arabic studies from 2014 (Mahmood, 1977).

The Uttar Pradesh Madarsa Education Board Act, 2004 was enacted to create the Board of Madarsa Education as a statutory body to regulate and supervise Madarsa education in the State of Uttar Pradesh. The Act covered the definition of certain institutional terms, specified the composition of the Board which was mainly government related with expertise in Islamic education and gave the Board the authority to decide on curriculum, conduct examinations, issue certificates, and recognize Madarasas. The State Government had an over-riding supervisory role and any rules drawn up by the Board had to be approved by the State Government. Muslim community organisations greeted the Act broadly as an opportunity for Madarasa education to be formalised and better. The Act was welcomed by most of the Muslim community organisations as an opportunity for the formalisation and enhancement of Madarsa education in addition to the religious dimension, and by the state authorities as an instrument for providing the minimum standard of competencies in the secular discipline. At the same time, it drew condemnatory criticism from those who claimed that the state's recognition and funding of religious education was not in line with the constitutional principle of secularism, and from those who argued that the Act's higher education provisions, in particular the provisions giving the Board the power to award Kamil and Fazil degrees, went beyond the constitutional powers of the state legislature (Robinson, 1993).

Minority Rights and Education Under the Indian Constitution

The Indian Constitution gives special recognition to the right of any religious and linguistic minority to their own educational institutions, through Article 30. The Supreme Court has called the provision a 'cultural safeguard' meant to shield the special educational practices of minority groups from the laws of the 'majority'. In *St. Stephen's College case (St. Stephen's College v. University of Delhi, 1992)* the Supreme Court said that the autonomy in respect of admissions and administration which is vouchsafed to the minority institutions cannot be removed by general laws which the State has and does have a legitimate interest to provide the minimum standard for education. *TMA Pai Foundation case (TMA Pai Foundation v. State of Karnataka, 2002)* gave a detailed description of the constitutional position of minority educational institutions, distinguishing between 'unaided' minority educational institutions which have the highest level of autonomy and 'aided' minority educational institutions which receive financial support from the state and thus are subject to more regulatory supervision. The court decided that the state is entitled to enact reasonable restrictions on minority institutions for the purpose of securing education of the right standard, but not be in a position to abrogate the religious or linguistic minority character of the institutions. This separation is related to the Madarsa Act as state-funded Madarasas are not only being given financial support by the government but have also invoked protection under Article 30 of Indian Constitution. Secularism is defined as a principle that does not endorse any particular religion. Secularism is a conception of the Constitution that does not support any religion. The idea of secularism in India is different from that of the west (Noorani, 2003).

The Supreme Court, in *S.R. Bommai case (S.R. Bommai vs Union of India, 1994)*, has clarified that Indian secularism is not a doctrine of separation of the state and religion, but rather a doctrine of 'principled distance' or 'equal treatment of all religions'. The state cannot be neutral to religion, but must show respect to all religious communities and not be favouring any religion (Galanter, 1998).

This positive interpretation of secularism is in line with the state's support for the educational institutions of all religious groups, including Madarasas with the same non-discriminatory approach. Others like Rajeev Bhargava, who gave birth to the phrase of 'principled distance' (Bhargava, 2010), have claimed that the Indian state's involvement with religious institutions –

such as aiding their educational programs – does not amount to secularism, but is a manifestation of it. Bhargava makes a clear distinction between the state being involved in religion (which secularism forbids) and the state helping the autonomous functioning of religious communities in the education and cultural work of the communities (which secularism allows and may even require in a religiously pluralist country like India). The concept of this is directly reflected in the reasoning of the Supreme Court in *Anjum Kadari (Anjum Kadari and Another v. Union of India and Others, 2024)*.

As per the 'Concurrent List' (Entry 25), Parliament and State Legislation have powers to legislate on education including universities and technical and medical education both subject to the overriding power of Parliament under Entry 63-66 of List I. The conflict between Entry 25 of List III and Entry 66 of List I forms the crux of the constitutional battle against the Madarsa Act. Thus, the UGC Act (University Grants Commission Act, 1956) was enacted by Parliament under Entry 66 of List I of the Schedule to the Constitution of India which vests the power to recognise universities and to authorise degree conferring powers with the UGC for coordinating and maintaining standards of higher education. According to Section 22 of the UGC Act only UGC recognised institutions are authorized to confer degree. One of the major issues before the Supreme Court was whether the provisions of the Madarsa Act that allowed the Board to confer degrees (higher education level certificates) upon Kamil and Fazil were in conflict with Section 22 of the UGC Act.

Critical Analysis

The petitioner, who was employed as a part-time teacher in a Madarsa, had filed a writ petition in the Allahabad High Court in 2019 under the Madarsa Act, seeking regularisation of the teaching job and pay equal to the regular teachers of the government. The same petitions were then sent to a larger bench. Meanwhile a petition challenging the constitutional validity of the entire Madarsa Act was filed. The petition stated that the Act was unconstitutional because it violated the constitutional principle of secularism, and articles 14, 15, and 21-A of the Constitution. The petition also challenged the constitutionality of Section 1(5) of the RTE Act (Right to Education Act, 2009) which clearly does not cover Madarasas. On March 22, 2024, the Allahabad High Court

gave a sweeping order that the entire Madarsa Act is unconstitutional (Anjum Kadari and Another v. Union of India and Others, 2024).

The court has ruled that the Act is ultra vires Section 22 of the UGC Act, and also fails to uphold the principles of secularism and Article 14, 21 and 21-A. Most importantly, the High Court also said it could not sever the remaining provisions of the Act, and that it was necessary to increase the capacity of schools for Madarasas if they were needed, and the State government had to place all Madarasas school children in regular government recognised schools.

The Uttar Pradesh government immediately reacted to the order of the High Court and issued orders to implement the judgment. But the High Court's order was later put on hold by the Supreme Court in the wake of filing of several Special Leave Petitions. This was critical in ensuring that more than 1.2 million Madarasas learners were not immediately affected in their education.

The Supreme Court was asked to answer four main questions. The first question that arose in the minds of the court was whether the Madarsa Act was an act within the competence of the Uttar Pradesh state legislature under Entry 25 of List III in the Seventh Schedule. The other was that some of the provisions of the Act were at odds with the UGC Act, a Parliamentary Act under Entry 66 of List I, and thus rendered unconstitutional, especially those dealing with Higher Education degrees (Fazil and Kamil). The third question asked was whether the unconstitutional provisions could be severed, so that the remaining provisions of the Act would remain valid. The fourth was whether the Act infringed upon the constitutional core principle of secularism or the basic structure doctrine.

The petitioners who supported the Act made various submissions. Citing the precedent set by S.R. Bommai (S.R. Bommai v. Union of India, 1994), they contended that the rule of secularism in India is not to be achieved by suppression of educational rights of religious minorities, it should be achieved by positive action. They submitted that the Madarsa Act which dealt with the subjects of secular education like Mathematics, Science and Social Studies along with religious education, was an example to the effect that the state has a positive obligation towards the education of the minority community.

They argued that the prohibition in Article 28 of religious instruction being provided in institutions wholly funded by state monies presupposed and permitted state funding of institutions where religious education is taught along with secular subjects, as the proviso would not apply to such institutions. The petitioners also argued that if the Act is eliminated, there will be a vacuum in the enactment of any legislation governing Madarasas and students will get no formal recognition or quality assurance for their education. They contended that the High Court has instructed the students of Madarsa to be shifted to regular schools will effectively close all Madarasas in the State of Uttar Pradesh and the same is in violation of the minorities' right as guaranteed under Article 30.

The opponents of the Act said that the Concurrent List, Entry 25, must be interpreted as giving legislatures the power to regulate only 'secular education' and cannot be interpreted as giving the legislatures the power to recognise and regulate religious education itself. They argued that the state could not legislate on higher education degrees (Fazil and Kamil) as they were going beyond state legislative jurisdiction because Entry 66 of List I grants Parliament exclusive competence in regard to higher education degrees. They also claimed that the Act was unconstitutional as it established a two-pronged system of education, with Madarsa students receiving mainly religious education whereas other students were denied access to quality secular education for a meaningful life in professional and civic arena.

They argued that the structure of the Board with a large majority of those with experience in Islamic education would inevitably lead to a curriculum that would be more inclined to emphasize religious studies rather than secular studies. The Supreme Court's Reasoning and Holding. The Supreme Court's decision contains a number of constitutional principles. The court first reiterated the scope of the basic structure doctrine as the basis for striking down normal laws.

The court, however, while recognising that secularism has been a part of the basic structure of the Constitution (as laid down in *Kesavananda Bharati v State of Kerala* (1973 4 SCC 225)), observed that a law cannot be struck down on the basis of its being incompatible with the abstract principle of secularism. The statute must be invalidated by showing that it is unconstitutional in accordance with a set of explicit constitutional restrictions. Beyond mere invocation of the abstract concept of

"secularism" there was nothing in the High Court's decision to indicate any specific constitutional provisions that were infringed by the Act. On the competence of the legislature, the court ruled that the Madarsa Act is clearly within the ambit of Entry 25 of List III, which is related to education in the wide sense of the term. Some religious instruction on the curriculum doesn't exclude the legislation from this entry. The court cited the historical interpretation of Entry 25 to mean that all schools are subject to regulation under it, even those of a religious or denominational character. There is no repugnancy or conflict between the Entry and the central legislation in so far as Madarasas are concerned because the central legislation – the Right to Education Act, explicitly excludes Madarasas.

However, the court agreed with the respondents that the provisions of the Madarsa Act which enabled the Board to confer degrees on Fazil and Kamil were inconsistent with Section 22 of the UGC Act which provided that degrees are to be conferred only by those University or University Grants Commission recognised universities or institutions. The state legislature, however, had no power to pass laws about granting degrees in higher education because that was an area already covered by the Parliamentary legislation provided by Entry 66, and by Entry 25, where it is specifically subjected to the laws passed under Entry 63-66. As to severability the court concluded that the unconstitutional provisions concerning Fazil and Kamil degrees are clearly severable from the remainder of the Act.

The provisions related to the award of degrees in higher education were completely separate from the higher purpose of the Act to set up a regulatory system for Madarsa education at both the primary and secondary levels, to draw up a curriculum, conduct examinations and award certificates of educational achievement. This leaves the rest of the provisions that could work without the unconstitutional ones. Accordingly, the court severed only those provisions relating to higher education degrees, and upheld the remainder of the Act.

The court also addressed the Article 30 dimension, and held that the right of religious minorities to establish and administer educational institutions of their own choice includes the freedom to establish institutions offering both secular and religious instruction, as well as a state's regulatory powers, including the Madarsa Board's curriculum and examination powers, do not diminish the

religious minority character of such institutions, provided the regulation is reasonable and non-discriminatory.

The judgment of the Supreme Court in the case of Anjum Kadari is a judicious constitutional intervention which neither has the breadth of a High Court invalidation nor a complete judicial acceptance of the Act as a whole. The court's action foregrounds the "principled distance" philosophy of state-religion relations as stated by the Indian secularist and scholar, Rajeev Bhargava (Bhargava, 1998), which involves "state engagement" with religious educational institutions without interfering in their autonomy and requiring them to meet a minimum standard of quality. The basic structure doctrine treatment by the judgment is particularly noteworthy.

The court restricts the ability of other courts to strike down ordinary legislation, without the specific mention of constitutional articles, on general principles of policy — as some scholars have pointed out, the 'judicialisation of the basic structure' - where general constitutional principles are used to invalidate legislation without proper reference to the Constitution. Meanwhile, there have been some criticism of the court's severability analysis as not being sufficiently rigorous. The inclusion of the Fazil and Kamil degrees was not simply an afterthought in the Act, they were a central desire of the Madarsa education system, that the graduates would be awarded a qualification recognised for higher education and public employment.

The implications of removing these provisions could be that Madarsa students are denied access to higher education, thus failing to fulfil the intent of the Act, while simultaneously failing to fully address the conflict between religious educational goals and constitutional requirements. The ruling also raises several relevant issues. It does not fully respond to the challenge posed by the respondents to the structure of education created by the Act which leads Muslim children into a structurally inferior track, where a significant amount of teaching time is spent on religious instruction instead of on secular subjects.

The Sachar Committee Report (2006) observed that Muslim communities in India suffer from grave educational disadvantages, such as lesser access to and completion of the schooling system, and recommended interventions for enhancing both access to and quality of education among

Muslims. The Supreme Court's decision upholding the Madarsa Act is an issue that requires further study and discussion, as it may be insufficient to address these challenges.

Conclusion

This paper discussed the constitutionality of the Uttar Pradesh Madarsa Act, 2004 in the context of the Supreme Court's decision in *Anjum Kadari & Others v. Union of India and Others* (2024). The analysis identifies five key findings. First, Indian secularism must not be indifferent, it must show equal respect to all religions, and regulation of minority educational institutions is constitutionally protected as long as it is non-discriminatory. Second, that the basic structure doctrine cannot be used to strike down any ordinary law without pointing to any specific violations of the constitution; the Allahabad High Court did not do so and used only a "secularism" concept. Third, the education list is also in the Concurrent List, but standards of higher education are in the exclusive jurisdiction of Parliament, which means that the provision for Fazil and Kamil degrees in the Act is unconstitutional. Fourth, the doctrine of severability allowed the Supreme Court to keep the Act in place, but to strike down only unconstitutional parts of it. Fifth, Article 30 guarantees minorities the right to set up and manage educational institutions, with reasonable restrictions. Finally, in the overall assessment, the Supreme Court has delivered a balanced Constitutional verdict, balancing the rights of minorities, secularism, federalism and the state intervention. The Court, in part, affirmed the Act and in so doing affirmed the pluralistic educational system of India and held that constitutional review was to be based on the constitutional issues and not on abstract principles which would ensure fair and equitable treatment to the minority educational institutions.

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