



ANALYSIS OF THE CASE ANJUM KADARI AND ANR. VS. UNION OF INDIA AND ORS

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FACTS OF THE CASE

The phrase "Madrasa" refers educational institution, or college. There are two categories of Pre-colonial Madrasas: Maktabas and Madrasas. Maktabas were associated with mosques, and their pivotal purpose was to provide primary education. Madrasas were the centre for higher education and learning, which contributed to the religious-cultural and administrative aspects. The respective importance of Madrasas lessened with the introduction of the English language during colonial rule. Post independence, the Department of Education, Government of Uttar Pradesh, came up with the Madrasa Education Rules, 1969, for the purpose of presenting Madrasa under the supervision of the education department. The Central Government formulated schemes to improve the quality of education delivered in Madrasas with a pervasive vision to modernise such education. During 1993-1994, the Central Government introduced a program to modernise the education imparted in Madrasa. The proposal was to teach advanced subjects like Science, English, Mathematics, Hindi and Social studies along with the traditional curriculum of religious education. The madrasa modernisation program became a part of the Sarva Sikha Abhiyaan subsequently. This scheme was implemented in order to promote quality education in Madrasas for the purpose of encouraging Madrasas and Maktabas to deliver education in modern subjects. According to the data, the number of Madrasas funded by the state is around 560. The number of Madrasas which is non funded by the state and are permanently recognised is 3,834. The number of madrasas, which are non-state funded and are temporarily recognised, is 8,970. The total number of Madrasas is 13,364. The state had an annual budget of rupees one thousand and ninety-six crore for the teaching and non-teaching staff. The academic curriculum in Madrasas is mainly divided into four categories —

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- Tathania (elementary classes from I -V);
- Fauquania (upper elementary classes from VI-VIII);
- Maulvi or Munshi (secondary classes from IX-X);
- Alim (senior secondary classes from XI-XII).

The (undergraduate degree) Kamil and (postgraduate) Fazil were also awarded by the Madrasas. The state of UP, in its affidavit, mentioned that Kamil and Fazil's degrees were not recognised as undergraduate and postgraduate degrees. The government laid down that Kamil and Fazil's degrees were neither recognised nor given uniformity by the Government of India or the State of U.P. The Madrasas Act came into force on 3 September 2004. The act stated that *“an act to provide for the establishment of a board of madrasa education in the state and the matter connected therewith and incidental thereto”*. The provisions given in the Madrasa Act gave the Board of Madrasa and the State government extensive powers for the regulation of education in the Madrasas. The state government was given wide powers to regulate and frame regulations. The state government adopted the established curriculum (NCERT curriculum). The board formulated under the act was responsible for prescribing the textbooks, materials, courses, etc., for various classes. From class I to X, subjects like elementary math and science, and civics were compulsory subjects. In 2019, a Writ Petition was filed in the High Court of Judicature at Allahabad on the ground that the Madrasa Act violated the principles of secularism and articles 14, 15 and 21 of the Indian Constitution. The court held that the Madrasas Act was wholly unconstitutional. The court reasoned that the act violated secularism, which is an integral part of the basic structure of the Constitution of India. It was held that the act infringed upon fundamental rights under Article 14 and Article 21 of the Indian Constitution, which marks the act to be constitutionally invalid.

ISSUES OF THE CASE

The following issues were involved in the case—

1. Whether the Madras Act violated the basic fundamental principle of secularism in the Indian Constitution.
2. Whether the provision violated Article 14, Article 21-A of the Indian Constitution.

3. Can a statute be held unconstitutional on the basis that it violated the basic structure doctrine of the Constitution?

ANALYSIS OF THE CASE

On 5th November 2024, the Supreme Court overturned the decision of the Allahabad High Court's judgment and verified the constitutional validity of the Uttar Pradesh Board of Madrasa Education Act, 2004. The Supreme Court shed light on the fact that the statute can only be nullified if it directly violates the fundamental rights under Part III of the Indian Constitution. The court highlighted the idea that the concept of secularism is not clearly defined and is abstract. Hence, permitting the violation of secularism to be the sole ground for nullifying a legislation would fabricate uncertainty in constitutional adjudication. Thus, by declaring the Madrasa Act to be invalid, a legislative blackhole would be created, due to which the future of the students studying in Madrasas would be hampered. The students will be shifted to the regular school. Due to this, the Madrasas will constructively be shut down, which violates Article 30 of the Indian Constitution. Secularism is the principle where the state acts neutrally in matters of religion.

The state does not hold as religion as a state religion. The 42nd Amendment of the Indian Constitution declared India a secular state. Secularism includes a positive side where all the religions are equally treated by the state and protected equally by laws. The court pointed towards articles 28 and 30 of the constitution, which address religious freedom and the rights of minorities. The reasoning given was that secularism allows the state to balance secular projects associated with religious practices while protecting genuine religious practices. They found that the madrasa act was designed to improve educational standards rather than promote religious instruction, making it consistent with constitutional secularism. The education imparted by Madrasas is based on a modern curriculum. The subjects involved are mathematics, science, and social science. Madrasas provide religious education and not religious instruction. Therefore, the State cannot abstain from funding the schools allocating religious education under Article 28 of the Constitution of India. Furthermore, it also stated that without the consent of the person, they cannot be forced to participate in any part of religious instruction. The article does not prevent educational institutions from giving lessons about the teaching of the philosophers and the culture of a specific religion. Education should be imparted as secular education, and it cannot include religious instruction. The Madrasa Board delivered religious education, not religious instruction. It does not violate the

mentioned provision by the petitioner, i.e. articles 14,15,16. The University Grants Commission (UGC) Act has been enacted by the parliament keeping this view in mind. By section 22 of the UGC Act, no degree can be delivered by an institution other than the institution defined under the aforementioned act. Articles 25 to 30 of the Indian Constitution enunciate other aspects of secularism. Article 25 states that all persons are equal as far as the authorisation to perform freedom of conscience is concerned. Every person has the right to proclaim, practice and promote any religion. The court was of the view that secularism, as envisaged in the context of the Indian constitution, did not mean total separation of state and religion. Secularism, as interpreted by the Court, allows the state to regulate the standards of even religious schools without denaturing their religious character, as long as such regulation is aimed at maintaining standards in education. The regulation, aimed at improving the quality of education, is, therefore, in line with secularism as envisaged in the constitution. The Madrasah Act aims to support the standard and the quality of education in Madrasas. The court underlined the concept of “positive secularism”. The Indian constitution offers positive secularism, which means it recognises that all religions are true. The state recognised and promoted religious education. A law can only be struck down if it goes against Part III of the Constitution, or if it steps out of what the lawmakers are allowed to do. One can’t challenge the validity of a law simply because it goes against the basic structure of the Constitution. As the concepts of secularism, fraternity, federalism, etc. are undefined concepts. If the court struck down the legislation due to a violation of the concept, it would allow and initiate a component of unreliability in the constitutional adjudication.

A statute can be removed if it violates any provision in Part III of the Indian Constitution. The constitution's validity cannot be challenged on the ground that certain elements of the basic structure of the constitution, like separation of powers, secularism, federalism, etc., have been violated because of the enactment of another statute. The court examined Article 14, which guarantees everyone equality before the law and equal protection of the law. This Article has a broad scope and applicability for safeguarding the rights available to the people in general, both citizens and non-citizens of India. Broadly deriving the ideas of equality from A. V. Dicey, the article can be divided into two parts—

Equality before Law: Equality before the law relates to the idea that all persons shall be provided with equal treatment by the law. Also, all persons shall be seen equally in the eyes

of the law. The concept laid down herein is a negative concept as it implies the absence of any privilege in favour of any person.

Equal protection of the Laws: Equal protection of the Laws means that the same law shall apply to every person, irrespective of the criteria laid down under Article 15(1). It means that equality should be maintained throughout society in every aspect. This is a positive concept as it imposes a positive action on the part of the state. Article 15 elaborates on the idea laid down in Article 14. This article is a safeguard against forms of discrimination based on certain factors like Religion, Race, Caste, Sex, etc. The Constitution of India assures its citizens of various rights to its citizens. Article 15 reassures the principle of Article 14 and restricts discrimination on the grounds of—

Religion: No person should be discriminated against on the grounds of religion from accessing any public property or policy by the state or any community.

Race: Race should not be a basis of discrimination.

Caste: Discrimination based on caste is also prohibited to prevent atrocities on the lower castes by the upper caste.

Sex: Gender of an individual shall not be a ground of discrimination in any manner.

Place of Birth: The place where an individual is born should not be a reason for discrimination.

Moreover, the Supreme Court of India upheld the constitutionality of the Uttar Pradesh Madrasa Act, 2004, setting aside the Allahabad High Court's Ruling. This judgement undermined the delicate balance between Religious Education, Secularism, Minority Rights and the State's Regulatory Authority over such matters, which establishes the case as a seminal precedent as far as minority educational institutions like Madrasas are concerned¹.

¹ Anjum kadari & Anr v. Union of India & Ors, 2024 INSC 831