The High Court Of Judicature At Allahabad
(Lucknow)

Neutral Citation No. - 2024:AHC-LKO:25324-DB
A.F.R.
Judgment Reserved on - 08.02.2024
Judgment delivered on - 22.03.2024

Court No. – 2

Case :- WRIT - C No. - 6049 of 2023
Petitioner :- Anshuman Singh Rathore
Respondent :- Union Of India Thru. Secy. Ministry Of Edu. New Delhi And 3 Others
Counsel for Petitioner :- In Person,Aditya Kumar Tiwari,Ghulam Mohammad Kamil
Counsel for Respondent :- A.S.G.I.,Afzal Ahmad Siddiqui,Amrendra Nath Tripathi,Anand Dwivedi,C.S.C.,Iqbal Ahmad,Mahendra Bahadur Singh,Mohd. Kumail Haider,Sanjeev Singh,Shailendra Singh Rajawat,Sudhanshu Chauhan,Syed Husain,Vikas Singh

ALONG WITH:

(1) **Case :-** WRIT - A No. - 29324 of 2019
Petitioner :- Mohammad Javed
Respondent :- State Of U.P. Thru Prin.Secy. Minority Lko. And Ors.
Counsel for Petitioner :- Pt. S. Chandra,.,Akber Ahmad (Amicus Curiae),Gaurav Mehrotra (Amicus Curiae),Madhukar Ojha (Amicus Curiae),Mohammad Imran
Counsel for Respondent :- C.S.C.,Afzal Siddiqui,Gauri Shankar Maurya;

(2) **Case :-** WRIT - A No. - 3735 of 2012
Petitioner :- Sirajul Haq
Respondent :- C/M Darul Uloom Warsia Vishal Khand-4 Thru Its Manager And Ors
Counsel for Petitioner :- R.N. Gupta,Anurag Tripathi
Counsel for Respondent :- C.S.C.,Afzal Siddiqi,Mahendra Bahadur Singh,Prem Shanker Trivedi;

(3) **Case :-** WRIT - A No. - 5548 of 2014
Petitioner :- Abdul Azeez
Respondent :- State Of U.P. Through Prin. Secy. Minorities Welfare Lko. And
Counsel for Petitioner :- Ashok K.Mishra,Aftab Ahmad
Counsel for Respondent :- C.S.C.,Afzal Siddiqui;

(4) **Case :-** WRIT - A No. - 3615 of 2020
Petitioner :- Razaul Mustafa And Others
Respondent :- Director Minority Welfare Deptt. Lko And Others
Counsel for Petitioner :- Nitin Kumar Mishra,Azhar Faiz

Khan
Counsel for Respondent :- C.S.C.,Afzal Siddiqui,Ghulam Mohammad Kamil; and

(5) **Case :-** WRIT - C No. - 481 of 2020
Petitioner :- C/M Madrsha Zamiatusslihat Educat.Society Thru Manager And Anr
Respondent :- State Of U.P. Thru Secy.Minority Welfare And Ors.
Counsel for Petitioner :- Vinod Kumar Pandey,Madan Mohan Srivastava
Counsel for Respondent :- C.S.C.,Afzal Siddiqui.

Hon'ble Vivek Chaudhary, J.
Hon'ble Subhash Vidyarthi, J.

(A) REFERENCE ORDER AND INTRODUCTORY FACTS

1. A Single Judge Bench hearing Writ A No. 29324 of 2019 (Mohammed Javed versus State of U.P. and others), passed the following order on 23.10.2019: -

> "*1. Heard learned counsel for petitioner.*
>
> *2. Sri Alok Sharma, learned Additional Chief Standing Counsel has accepted notices on behalf of opposite party no.1 and 3, Sri Afzal Siddiqui, learned counsel has accepted notices on behalf of opposite party no.2.*

3. Issue notice to opposite party no.4 returnable at an early date.

4. Petitioner has filed present writ petition claiming that he was appointed as part-time assistant teacher in the year 2011 for the primary Section of respondent no.4 Madrasa Nisarul Uloom Shahzadpur, Akbarpur Post Office, District Ambedkar Nagar on a fix salary of Rs.4,000/- per month, subject to 8% annual increment. He prays that no regular appointment should be made by respondent no.1 to 3 i.e. the State Government, the Madarsa Shiksha Parishad and District Minority Welfare Officer and his service should be regularized. Further prayer is that he should be paid salary as is being paid to the regular teachers.

5. Petitioner places reliance upon the provisions of U.P. Board of Madarsa Education Act, 2004 (Madarsa Act, 2004) and the regulations framed thereunder. At the time of hearing, perusal of the Madarsa Act, 2004, Section 2(h) defines:-

"Section 2(h):-Madarsa-Education" means education in Arbic Urdu, Parsian, Islamic-studies, Tibb Logic, Philosophy and includes such other branches of learning as may be specified by the Board from time to time."

6. For the purposes of Madarsa education, a Board is constituted under Section 3 of the Madarsa Act, 2004 which reads :-

"Section 3(3) The Board shall consist of the following members, namely:

(a) a renowned Muslim educationist in the field of traditional Madarsa-Education, nominated by the State Government who shall be the Chairperson of the Board;

(b) the Director, who shall be the Vice-Chairperson of the Board;

(c) the Principal, Government Oriental College, Rampur;

(d) one Sunni-Muslim Legislator to be elected by both houses of the State Legislature;

(e) one Shia-Muslim Legislator to be elected by both houses of the State Legislature;

(f) one representative of National Council for Educational Research and Training;

(g) two head of institution established and administered by Sunni-Muslim nominated by the State Government;

(h) one head of institution established and administered by Shia-Muslim nominated by the State Government;
(i) two teachers of institutions established and administered by Sunni-Muslim nominated by the State Government;

(j) one teacher of an institution established and administered by Shia-Muslim nominated by the State Government;

(k) one Science or Tibb teacher of an institution nominated by the State Government;

(l) the Account and Finance Officer in the Directorate of minority Welfare, Uttar Pradesh;

(m) the Inspector;

(n) an officer not below the rank of Deputy Director nominated by the State Government, who shall be the member Registrar;

7. From perusal of the same, following questions arise for consideration:-

(i) Since the Madarsa Board is constituted for education in 'Arbic, Urdu, Parsian, Islamic-studies, Tibb Logic, Philosophy and includes such other branches of learning as may be specified by the Board from time to time', how come persons of a particular religion are provided to be member of the same? It does not talks about exponence in the aforesaid fields, for the purposes of which the Board is constituted, but persons of specific religion. It was put to learned Additional Chief Standing Counsel as to whether the purpose of the Board is to impart religious education only, to which he submits that a perusal of the Madarsa Education Act, 2004 does not indicate so.

(ii) With a secular constitution in India can persons of a particular religion be appointed/nominated in a Board for education purposes or it should be persons belonging to any religion, who are exponent in the fields for the purposes of which the Board is constituted or such persons should be appointed, without any regard to religion, who are exponent

in the field for the purposes of which the Board is constituted?

(iii) The Act further provides the Board to function under the Minority Welfare Ministry of State of U.P., hence, a question arises as to whether it is arbitrary for providing the Madarsa education to be run under the Minority Welfare Department while all the other education institutions including those belonging to other minorities communities like Jains, Sikhs, Christians etc being run under the Education Ministry and whether it arbitrarily denies the benefit of experts of education and their policies to the children studying in Madarsa?

8. All these questions impacts the vires of the Madarsa Act, 2004 and are important questions to be decided before looking into the application of the Madarsa Act, 2004 and the regulations framed thereunder. Thus, I find it appropriate that the matter may be placed before the Larger Bench for decision on the aforesaid issue.

9. In view thereof, office is directed to place the matter before the Hon'ble the Chief Justice/Senior Judge for constitution of a Larger Bench."

2. Thereafter, on the basis of the aforesaid reference order, other writ petitions, namely, Writ A No. 3735 of 2012, 5548 of 2014, 3615 of 2020 and Writ (C) No. 481 of 2020, were also referred to the Larger Bench.

3. The matters referred were nominated to different Benches, but, could not be taken up. Finally, by order dated 18.05.2023 of the Chief Justice, the present Bench was nominated to hear the reference. Writ (C) No. 6049 of 2023 (Anshuman Singh Rathore versus Union of India and others) was filed meanwhile, challenging the *vires* of the U.P. Board of Madarsa Education Act, 2004 (for short 'the Madarsa Act') on the ground that the same violates the principle of Secularism, which forms a part of the basic structure of the Constitution of India as well Articles 14, 15 and 21-A of the same. He further challenges Section 1(5) of Right of Children to Free and Compulsory Education Act, 2009 (for short 'the R.T.E. Act') This Writ Petition was also nominated to this Bench by order dated 31.07.2023 of the Chief Justice. Hence, all these matters with regard to *vires* of the Madarsa Act are before us.

4. These petitions relate to the enforcement of Fundamental Rights of minor children of the marginalised and poor Sections of the largest minority community of the State. Looking into the vastness of the issues involved and depth of impact it would have upon them, this Court appointed Sri Gaurav Mehrotra, Sri Akber Ahmad and Sri Madhukar Ojha, Advocates, as *Amici Curiae* to assist the Court vide order dated 14.07.2023 passed in Writ A No.29324 of 2019.

5. During the course of hearing, the following parties filed applications seeking impleadment/intervention in Writ-C No.6049 of 2023: -

(1) Managers Association, Madaris Arabiya, U.P., through Sri G. M. Kamil, Advocate;

(2) All India Teachers Association, Madarsa Arabia, New Delhi, through Sri Syed Hussain, Advocate;

(3) Manager Association, Arbi Madarsa, Nai Bazar, Balrampur, through Sri Aditya Kumar Tiwari, Advocate;

(4) Adhyayan Foundation for Policy Research, through Sri Amrendra Nath Tripathi, Advocate;

(5) Shikshharettar Karamchari Association, Madaris E Arabia, Kanpur Nagar, through Sri Mohd. Kumail Haider and Sri Iqbal Ahmad, Advocates;

(6) Madarsa Jamia Baitul Uloom, Balrampur, through Sri Mohd. Kumail Haider and Sri Iqbal Ahmad, Advocates;

(7) Teachers Association, Madaris Aribiya, U.P. Kanpur, through Sri Prashant Chandra Senior Advocate assisted by Sri M. B. Singh, Advocate.

6. The learned Counsel for all the abovementioned applicants stated that as the issues involved are purely legal in nature, they would not file any counter affidavit and they advanced their submissions on the legal and Constitutional issues involved in the matter. The learned counsel for some of the parties have submitted some Government Orders and Notifications etc. through affidavits or otherwise and all of those have been taken on record.

7. We have heard at length the petitioner Sri Anshuman Singh Rathore, who himself is an Advocate, as well as Sri Sudeep Kumar, learned

counsel for the petitioner, *Amici Curiae* Sri Gaurav Mehrotra, Sri Akber Ahmad and Sri Madhukar Ojha Advocates, Sri Anil Pratap Singh, learned Additional Advocate General and Sri Sanjeev Singh, learned Standing Counsel for the State of U.P., Sri Sudhanshu Chauhan and Sri Anand Dwivedi, learned counsel appearing on behalf of Union of India, Sri Sandeep Dixit, Senior Advocate assisted by Sri Afzal Ahmad Siddiqui Advocate for the Madarsa Board, Sri Prashant Chandra Senior Advocate assisted by Sri M. B. Singh and Sri Vikas Singh Advocates for Teachers' Association Madarsa Aribiya, Sri G. M. Kamil Advocate for Managers Association Madaris Arabiya, Uttar Pradesh, Sri Syed Hussain Advocate for All India Teachers Association Madarsa Arabia, New Delhi, Sri Aditya Kumar Tiwari Advocate for Manager Association, Arbi Madarsa, Nai Bazar, Balrampur, Sri Amrendra Nath Tripathi Advocate for Adhyayan Foundation for Policy and Research, and Sri Mohd. Kumail Haider and Sri Iqbal Ahmad Advocates for Shikshharettar Karamchari Association, Madaris E Arabia, Kanpur Nagar and Madarsa Jamia Baitul Uloom, Balrampur.

8. The reference order doubts the validity of specific provisions of the Madarsa Act on the principles of secularism. The standing counsel before the single judge had stated that purpose of the Madarsa Board is not to impart religious education. However, both, the State of U.P. and the Madarsa Board before this Court fairly accepted that the Board imparts not only religious education, but, also religious instructions and teachings. Therefore the reference was reframed as follows: -

> *"Whether the provisions of the Madarsa Act stand the test of Secularism, which forms a part of the basic structure of the Constitution of India."*

9. This re-framing of the reference does not impact the scope of hearing, as the challenge raised in the writ petition of Anshuman Singh Rathore to the Madarsa Act is on the ground that the provisions, scheme and the environment created by the Madarsa Act with regard to education in Madarsas in the State violates Articles 14, 15 and 21-A of the Constitution of India. The Fundamental Rights under the aforesaid

Articles, more specifically under Article 14 and 21-A, includes right to universal quality education, which also includes secular education.

(B) SUBMISSIONS OF PARTIES

10. The Petitioner and his counsel submit that the Madarsa Act violates the principles of secularism, which forms a part of the basic structure of the Constitution of India; fails to provide quality compulsory education up to the age of 14 years/Class-VIII, as is mandatorily required to be provided under Article 21-A of the Constitution of India; and further fails to provide universal and quality school education to all the children studying in madarsas, as is mandatorily required to be provided under Article 21 of the Constitution of India. Thus it violates the Fundamental Rights of the students of the madarsas. The writ petition also challenges *vires* of Section 1(5) of the R.T.E. Act which excludes Madarsas, Vedic Pathshalas and educational institutions primarily imparting religious instructions.

11. Learned *Amici Curiae* also supported the submissions of the petitioner. They further submit that Article 25 provides the right to freedom of conscience and the right to freely profess, practice and propagate religion. This right does not affect the right of regulating any social activity which may be associated with religious practice and right of the State from making any law providing for social welfare and reform. Sri Mahrotra also submitted that while making laws which are saved by Article 25(2), the State should be progressive and reformative in its approach, and its approach cannot be regressive. The Madarsa Act denies the children studying in Madarsa, the right to receive quality education like other children studying in regular schools and, therefore, the Madarsa Act is a regressive enactment, which is unconstitutional.

12. The learned *Amici Curiae* also submitted that Part 4-A of the Constitution of India deals with Fundamental Duties and Article 51-A of the Constitution of India *inter alia* provides that it shall be the duty of every citizen to promote harmony and the spirit of common brotherhood amongst the people of India transcending religious, linguistic, regional or sectional diversities, to develop the scientific temper, humanism and the

spirit of inquiry and reform, to strive towards excellence in all the spheres of individual and collective activity so that the nation constantly rises to higher level of endeavor and achievement. Clause (K) of Article 51-A provides that it shall be the duty of every parent or guardian to provide opportunities for education to his child or, as the case maybe, ward between the age of 06 and 14 years. The learned *Amici Curiae* submit that although the fundamental duties are not enforceable and the State cannot be compelled to act in furtherance of Article 51-A, at the same time, the State cannot act in a manner which would be contrary to the provisions contained in Article 51A. The provisions of Madarsa Act making special provisions for education to the children of a single minority community, in a very limited sphere of knowledge and of level lower than the normal level of education imparted in regular educational institutions, is clearly violative of the fundamental duties and, therefore, the Madarsa Act is violative of the basic spirit of the Constitution of India.

13. The learned *Amici Curiae* further submit that Seventh Schedule appended to the Constitution of India contains three list – List I being the Union List, List II being the State List and List III being the Concurrent List. Entry 66 of List I is a "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Entry 25 in List III is- "Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List 1; vocational and technical training of labour." Section 9(a) and 9(j) of Madarsa Act contain provisions regarding determination of standards of higher education in Madarsa, power that vests in the Central Government, as per entry 66 of List I, and, therefore, the State does not have the legislative competence to legislate in this regard.

14. Section 3 of the Madarsa Act provides for constitution of Madarsa Board and no educational qualification is prescribed for any person to be a member of the Madarsa Board.

15. The learned *Amici Curiae* submitted that secularism is a part of the basic structure of Constitution of India and the Madarsa Act violates the

principle of secularism. In support of this submission, they have placed reliance on large number of judgments which are referred to in later part of the judgment.

16. The submission of the learned *Amici Curiae* is that the Madarsa Act violates Secularism and Article 14, 15, 16(5), 29(2), 30 and Article 51-A of the Constitution of India.

17. They further submitted that to the extent of higher education, the Madarsa Act is directly in conflict with and violates the U.G.C. Act and entrenches upon the field occupied by the central legislation and thus to the said extent is also *ultravires*.

18. Opposing the aforesaid submissions, the stand of State of U.P. through the learned additional Advocate General is that no doubt the Madarsa Board is providing religious education as well as religious instructions to the students, but the State has sufficient power to impart such education under the Constitution of India and is rightly permitting such education. He has also traced the history of Madarsa education in the State of U.P. Sri Sanjiv Singh learned standing counsel further submits that education provided by Madarsa Board is traditional education, relating to religion, culture and language which does not change with time. It is covered by entry 25 of List III of VII schedule to the Constitution of India. Providing religious education and instructions is not barred or illegal. For such religious education a separate Board is necessarily required, which needs to have members of such particular religion. He further states that these madarsas are providing cheap education to these children, who belong to poor and marginalised families. The U.G.C. Act does not relate to religious teachings, education and instructions or with traditional education and thus both occupy different fields.

19. Sri. Sandeep Dixit Senior Advocate for Madarsa Board raised a preliminary objection against the *locus standi* of the petitioner and also insufficiency of pleadings to challenge the maintainability of the writ petition. He also relies upon Article 25 to 30 of the Constitution of India to submit that State Government has power to provide religious education and instructions of a particular religion in schools. He strongly states that

nearly free education is being provided by these madarsas to minor children, with a monthly fee of hardly rupees 10/- or 20/- per month and in case the Madarsas are closed, these children would be left without even this education. These madarsas themselves are surviving on the aid received from the Government. Therefore the court, in the interest of these children from poor families, should dismiss the petition.

20. Sri. Prashant Chandra Senior Advocate appearing for Teachers' Association Madarsa Aribiya, Kanpur, opposing the petition, also supported the preliminary objections and further submitted that even if this Court finds some of the provisions of the Madarsa Act to be violating Chapter-III of the Constitution of India, still this Court should, as far as possible, only declare such provisions of the Madarsa Act to be *ultra vires* and save the remaining provisions of the Act, either by reading down the said provisions or by carving the same out of the Act.

21. Sri Amrendra Nath Tripathi Advocate on behalf of Adhyayan Foundation for Policy and Research submitted that it is the jurisdiction of NCTE to provide quality education up to Class-VIII and Madarsa Board violates the provisions of NCTE Act also. Counsel for respondents and intervenor broadly adopted leading arguments made by State of U.P., Madarsa Board and Teachers Association, Madarsa Arabiya, Kanpur.

22. All the learned Counsel opposing the petition and reference order have, while adopting arguments of aforesaid persons, also relied upon Articles 25 to 30 of the Constitution of India to submit that religious education and instructions of a religion can be provided in schools and thus State Government can frame such an Act.

23. Learned counsel for the respondents and interveners submit that the State Government is having sufficient power to legislate with regard to traditional education. They submit that the UGC Act does not cover the field of traditional education and there is also no other Central Act that occupies the said field of traditional education, therefore, the State has rightly exercised its legislative power in the said field. Learned counsel for the respondents and interveners, however, has not placed any case law or other material before us in support of their submission. They also, despite repeated queries, could not elaborate the difference between

traditional education and modern education, except for their submission that religious education is covered in the field of traditional education. They also could not specify the provisions that could be carved out of the Madarsa Act to save any part of the same.

24. Mr. Sudhanshu Chauhan for the Union of India states that the stand of the Union of India is that religious education and religious instructions of a single religion cannot be included in school education and State Government has no power to create statutory Education Boards permitting religious education. He further submits that the earlier policy of Union of India for providing grants/funds to Madarsas was effective till 31.03.2022 and there is no proposal of Government of India to extend the same. He strongly opposes challenge to vires of Section 1(5) of the R.T.E. Act.

25. In support of their respective submissions parties have placed reliance on large number of precedents, which are dealt with in the later part of this judgment.

(C) PRELIMINARY OBJECTIONS

26. Sri Sandeep Dixit, learned Senior Advocate, appearing for the Madarsa Board, and Sri Prashant Chandra, learned Senior Advocate, appearing for the Teachers' Association Madarsa Aribiya, Kanpur, have raised two preliminary objections with regard to maintainability of the writ petition filed by Sri Anshuman Singh Rathore. Their first objection is that the petitioner is an Advocate practicing in the High Court and he has no personal interest in the matter, hence, he could not have filed this writ petition. At best, he may have filed a Public Interest Litigation, but the present writ petition is not a Public Interest Litigation and, hence, he has no *locus standi* to file the present writ petition.

27. Sri. Sandeep Dixit has further submitted that the Writ Petition No.6049 of 2023 filed by Sri. Anshuman Singh Rathore Advocate appears to have been filed for the benefit of Madarsas, as in case the Madarsa Act is held to be unconstitutional or *ultra vires*, the State will lose control over the Madarsas and the Madarsas will become absolutely free, which will not be in the interests of the students of the Madarsas.

28. In support of their preliminary objection regarding lack of *locus standi*, they have placed reliance upon the judgments in the cases of ***Jasbhai Motibhai Desai versus Roshan Kumar, Haji Bashir Ahmed and others*** *(1976) 1 SCC 671* and **Vinoy Kumar versus State of U.P. and others** (2001) 4 SCC 734.

29. Replying to the preliminary objection regarding *locus standi*, Sri Sudeep Kumar, learned counsel for petitioner, and learned *Amici Curiae* submitted that this is a matter relating to Fundamental Right to life and education of minor children of financially weak families of a minority community of this country, therefore, this Court cannot refuse to entertain the writ petition involving questions of Fundamental Rights of such minor children belonging to a marginal section of the society on technicalities. As has been submitted by the State and Madarsa Board, the children studying in Madarsas belong to poor families, which are unable to bear the cost of education of regular schools and it is duty of this Court to come forward and protect their Fundamental Rights, rather to refuse to interfere on mere technicalities. They further submit that all the aforesaid judgments, relied upon by the respondents, arose from disputes which are regarding personal rights of individuals and the same cannot be applied to a matter relating to Fundamental Rights of minor children of poor and marginal families. Reliance is placed by Sri Sudeep Kumar upon a judgment of Supreme Court in the case of **S. P. Gupta versus Union of India and another**, 1981 (Supp) SCC 87.

30. In ***Jasbhai Motibhai Desai versus Roshan Kumar, Haji Bashir Ahmed and others*** *(1976) 1 SCC 671*, it was held that: -

> *"13. This takes us to the further question: Who is an "aggrieved person" and what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on*

the expression "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or "standing" to invoke certiorari jurisdiction.

* * *

37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) "person aggrieved"; (ii) "stranger"; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

38. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of "persons aggrieved". In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be "persons aggrieved".

39. To distinguish such applicants from "strangers", among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person"against whom a decision has been pronounced which has wrongfully deprived him of something or

wrongfully refused him something, or wrongfully affected his title to something?"

Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?"

31. In ***Vinoy Kumar versus State of U.P. and others*** *(2001) 4 SCC 734*, it was held that: -

"2. Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus or quo warranto or filed in public interest. It is a matter of prudence, that the Court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries are caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organisation which can take care of such cases. Even in cases filed in public interest, the Court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief."

32. However, in ***S. P. Gupta versus Union of India and another***, *1981 (Supp) SCC 87*, a larger bench consisting of seven Judges of the Supreme Court held that: -

"...But it must now be regarded as well settled law ***where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the Court on account of some disability or it is not practicable for him to move the Court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke assistance of the Court for the purpose of providing judicial redress to the person wronged or injured, so that the legal wrong or injury caused to such person does not go unredressed and justice is done to him****. ...*

* * *

***It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. Where the weaker Sections of the community are concerned, such as under trial prisoners languishing in jails without a trial, inmates of the Protective Home in Agra, or Harijan workers engaged in road construction in the district of Ajmer, who are living in poverty and destitution, who are barely eking out a miserable existence with their sweat and toil, who are helpless victims of an exploitative society and who do not have easy access to justice, this Court will not insist on a regular writ petition to be filed by the public-spirited individual espousing their cause and seeking relief for them. This Court will readily respond even to a letter addressed by such individual acting pro bono publico. It is true that there are rules made by this Court prescribing the procedure for moving this Court for relief under Article 32 and they require various formalities to be gone through by a person seeking to approach this Court. But it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without the slightest*

qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of the public-minded individual as a writ petition and act upon it. Today a vast revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letters from public-spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal right has been violated but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief. It is in this spirit that the Court has been entertaining letters for judicial redress and treating them as writ petitions and we hope and trust that the High Courts of the country will also adopt this pro-active, goal-oriented approach. *But we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activised at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in court.* ***We may also point out that as a matter of prudence and not as a rule of law, the Court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal-aid organisation which can take care of such cases.***

The types of cases which we have dealt with so far for the purpose of considering the question of locus standi are those where there is a specific legal injury either to the applicant or to some other person or persons for whose benefit the action is brought, arising from violation of some constitutional or legal right or legally protected interest. What is complained of in these cases is a specific legal injury suffered by a person or a determinate class or group of persons. But ***there may be cases where the State or a public authority may act in violation of a constitutional or statutory obligation or fail to carry out such***

obligation, resulting in injury to public interest or what may conveniently be termed as public injury as distinguished from private injury. Who would have standing to complain against such act or omission of the State or public authority? Can any member of the public sue for judicial redress? Or is the standing limited only to a certain class of persons? Or is there no one who can complain and the public injury must go unredressed? To answer these questions it is first of all necessary to understand what is the true purpose of the judicial function. This is what Prof. Thio states in his book on Locus Standi and Judicial Review:

"Is the judicial function primarily aimed at preserving legal order by confining the legislative and executive organs of Government within their powers in the interest of the public (jurisdiction de droit objectif) or is it mainly directed towards the protection of private individuals by preventing illegal encroachments on their individual rights (jurisdiction de droit subjectif)? The first contention rests on the theory that Courts are the final arbiters of what is legal and illegal…. Requirements of locus standi are therefore unnecessary in this case since they merely impede the purpose of the function as conceived here. On the other hand, where the prime aim of the judicial process is to protect individual rights, its concern with the regularity of law and administration is limited to the extent that individual rights are infringed."

We would regard the first proposition as correctly setting out the nature and purpose of the judicial function, as it is essential to the maintenance of the rule of law that every organ of the State must act within the limits of its power and carry out the duty imposed upon it by the Constitution or the law. If the State or any public authority acts beyond the scope of its power and thereby causes a specific legal injury to a person or to a determinate class or group of persons, it would be a case of private injury actionable in the manner discussed in the preceding paragraphs. So also if the duty is owed by the State or any public authority to a person or to a determinate class or group of persons, it would give rise to a corresponding right in such person or determinate class or group of persons and they would be entitled to maintain an action for judicial redress. But if no specific legal injury is caused to a person or to a determinate class or group of persons by the act or omission of the State or any public authority and the injury is caused only to public interest, the question arises as to who can maintain an action for vindicating the rule of law and setting aside the unlawful action or enforcing the performance of the public duty. If no one can maintain an action for redress of such public wrong or public injury, it would be disastrous for the

rule of law, for it would be open to the State or a public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it. The Courts cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. The view has therefore been taken by the Courts in many decisions that whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busy body or a meddlesome interloper but who has sufficient interest in the proceeding. There can be no doubt that the risk of legal action against the State or a public authority by any citizen will induce the State or such public authority to act with greater responsibility and care thereby improving the administration of justice. *Lord Diplock rightly said in Rex v. Inland Revenue Commissioners [(1981) 2 WLR 722, 740] :*

"It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public-spirited taxpayer, were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the Court to vindicate the rule of law and get the unlawful conduct stopped.... It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of Central Government is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; they are responsible to a Court of justice for the lawfulness of what they do, and of that the Court is the only judge."

This broadening of the Rule of locus standi has been largely responsible for the development of public law, because it is only the availability of judicial remedy for enforcement which invests law with meaning and purpose or else the law would remain merely a paper parchment, a teasing illusion and a promise of unreality. It is only by liberalising the Rule of locus standi that it is possible to effectively police the corridors of power and prevent violations of law. It was pointed out by Schwartz and H.W.R. Wade in their book on Legal Control of Government at p. 354:

"Restrictive rules about standing are in general inimical to a healthy system of administrative law. If a plaintiff with a good case is turned away, merely because he is not sufficiently affected personally, that means that some Government agency is left free to violate the law, and that is contrary to the public interest. Litigants are unlikely to expend their time and money unless they have some real interest at stake. In the rare cases where they wish to sue merely out of public spirit, why should they be discouraged?"

It is also necessary to point out that if no one can have standing to maintain an action for judicial redress in respect of a public wrong or public injury, not only will the cause of legality suffer but the people not having any judicial remedy to redress such public wrong or public injury may turn to the street and in that process, the rule of law will be seriously impaired. It is absolutely essential that the rule of law must wean the people away from the lawless street and win them for the Court of law.

There is also another reason why the Rule of locus standi needs to be liberalised. Today we find that law is being increasingly used as a device of organised social action for the purpose of bringing about socio-economic change. The task of national reconstruction upon which we are engaged has brought about enormous increase in developmental activities and law is being utilised for the purpose of development, social and economic. It is creating more and more a new category of rights in favour of large Sections of people and imposing a new category of duties on the State and the public officials with a view to reaching social justice to the common man. Individual rights and duties are giving place to meta-individual, collective, social rights and duties of classes or groups of persons. This is not to say that individual rights have ceased to have a vital place in our society but it is recognised that these rights are practicably meaningless in today's setting unless accompanied by the social rights necessary to make them effective and really accessible to all. The new social and economic rights which are sought to be created in pursuance of the Directive Principles of State Policy essentially require active intervention of the State and other public authorities. Amongst these social and economic rights are freedom from indigency, ignorance and discrimination as well as the right to a healthy environment, to social security and to protection from financial, commercial, corporate or even Governmental oppression. More and more frequently the conferment of these socio-economic rights and imposition of public duties on the State and other authorities for taking positive action generates situations in which a single human action can be beneficial or prejudicial to a large

number of people, thus making entirely inadequate the traditional scheme of litigation as merely a two-party affair. For example, the discharge of effluent in a lake or river may harm all who want to enjoy its clean water; emission of noxious gas may cause injury to large numbers of people who inhale it along with the air; defective or unhealthy packaging may cause damage to all consumers of goods and so also illegal raising of railway or bus fares may affect the entire public which wants to use the railway or bus as a means of transport. In cases of this kind it would not be possible to say that any specific legal injury is caused to an individual or to a determinate class or group of individuals. What results in such cases is public injury and it is one of the characteristics of public injury that the act or acts complained of cannot necessarily be shown to affect the rights of determinate or identifiable class or group of persons : public injury is an injury to an indeterminate class of persons. In these cases the duty which is breached giving rise to the injury is owed by the State or a public authority not to any specific or determinate class or group of persons, but to the general public. In other words, the duty is one which is not correlative to any individual rights. Now if breach of such public duty were allowed to go unredressed because there is no one who has received a specific legal injury or who was entitled to participate in the proceedings pertaining to the decision relating to such public duty, the failure to perform such public duty would go unchecked and it would promote disrespect for the rule of law. It would also open the door for corruption and inefficiency because there would be no check on exercise of public power except what may be provided by the political machinery, which at best would be able to exercise only a limited control and at worst, might become a participant in misuse or abuse of power. It would also make the new social collective rights and interests created for the benefit of the deprived Sections of the community meaningless and ineffectual.

Now, as pointed out by Cappelletti in Vol. III of his classic work on Access to Justice at p. 520, "The traditional doctrine of standing (legitimatio ad causam) attributes the right to sue either to the private individual who 'holds' the right which is in need of judicial protection or in case of public rights, to the State itself, which sues in Courts through its organs." The principle underlying the traditional rule of standing is that only the holder of the right can sue and it is therefore, held in many jurisdictions that since the State representing the public is the holder of the public rights, it alone can sue for redress of public injury or vindication of public interest. It is on this principle that in the United Kingdom, the Attorney-General is entrusted with the

function of enforcing due observance of the law. The Attorney-General represents the public interest in its entirety and as pointed out by S.A. de Smith in Judicial Review of Administrative Action (3rd Edn.) at p. 403, "the general public has an interest in seeing that the law is obeyed and for this purpose, the Attorney-General represents the public". There is, therefore, a machinery in the United Kingdom for judicial redress for public injury and protection of social, collective, what Cappelletti calls "diffuse" rights and interests. We have no such machinery here. We have undoubtedly an Attorney-General as also Advocates General in the States, but they do not represent the public interest generally. They do so in a very limited field; see Sections 91 and 92 of the Civil Procedure Code. But, even if we had a provision empowering the Attorney-General or the Advocate-General to take action for vindicating public interest, I doubt very much whether it would be effective. The Attorney-General or the Advocate-General would be too dependent upon the political branches of Government to act as an Advocate against abuses which are frequently generated or at least tolerated by political and administrative bodies. ***Be that as it may, the fact remains that we have no such institution in our country and we have therefore to liberalise the Rule of standing in order to provide judicial redress for public injury arising from breach of public duty or from other violation of the Constitution or the law. If public duties are to be enforced and social collective "diffused" rights and interests are to be protected, we have to utilise the initiative and zeal of public-minded persons and organisations by allowing them to move the Court and act for a general or group interest, even though, they may not be directly injured in their own rights. It is for this reason that in public interest litigation — litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, "diffused" rights and interests or vindicating public interest, any citizen who is acting bona fide and who has sufficient interest has to be accorded standing. What is sufficient interest to give standing to a member of the public would have to be determined by the Court in each individual case. It is not possible for the Court to lay down any hard and fast rule or any straitjacket formula for the purpose of defining or delimiting "sufficient interest". It has necessarily to be left to the discretion of the court. The reason is that in a modern complex society which is seeking to bring about transformation of its social and economic structure and trying to reach social justice to the vulnerable Sections of the people by creating new social, collective "diffuse" rights and interests and imposing new public duties on the State and other public authorities, infinite number of situations are bound to arise which cannot be imprisoned in a rigid mould or a procrustean formula. The***

Judge who has the correct social perspective and who is on the same wavelength as the Constitution will be able to decide, without any difficulty and in consonance with the constitutional objectives, whether a member of the public moving the Court in a particular case has sufficient interest to initiate the action.

.....

We would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objectives. *"Law", as pointed out by Justice Krishna Iyer in Fertilizer Corporation Kamgar Union (Regd.) v. Union of India [(1981) 1 SCC 568 : AIR 1981 SC 344 : (1981) 1 LLJ 193] "is a social auditor and this audit function can be put into action only when someone with real public interest ignites the jurisdiction" (SCC p. 585)...."*

(Emphasis added)

33. In view of the law laid down in ***S. P. Gupta*** (supra), there remains no dispute that this Court has sufficient power to initiate proceedings even on a letter written by a person, who has no concern with the case, but, only brings the same in the knowledge of the Court and this Court can even exercise its jurisdiction *suo moto* where it finds that the Fundamental Rights of children belonging to financially deprived Section of the largest minority community are being violated by any action/inaction of the State.

34. No material is placed before us to show that the petitioner, an Advocate who is a regular practitioner in this court, does not have *bona fide* intentions in filing the present writ petition. There is no reason to disbelieve his intentions. Further, the cause raised by him is a genuine cause, which impacts not only these children and their families, but also each and every citizen of this country. If a substantial number of children of the State are denied universal quality education it would in future result in social and economic

disparity in the society. Those denied the benefits of modern quality education would find themselves stuck with limited options of growth and livelihood. Such situations cause social disparity resulting in tensions in society. It is the duty of the State to ensure that universal quality education is provided by it to one and all so that each individual gets equal opportunity to grow and create a bright future. A peaceful society is a right vested in every citizen of this country, both individually and collectively. To work in the said direction is a constitutional obligation of the State. Policies of the State have to be in furtherance of such constitutional obligations. Any person with bona fide apprehensions that the State is failing in its constitutional obligations can approach the High Court under Article 226 or, where the same are impacting Fundamental Rights, also to the Supreme Court under Article 32 of the Constitution of India. It is the duty of the Constitutional Courts to ensure that the Rule of Law prevails. Performance of this constitutional duty cannot be refused merely on technicalities of locus or pleadings. Courts have been accepting mere letters as sufficient to initiate proceedings in appropriate cases. Even newspaper reports are found sufficient to initiate suo moto action by courts, where cause is alarming enough. Constitutional Courts have understood and stood for the necessity of quality education to children. It is the Courts that read the right to receive universal quality education as a part of the Fundamental Right to Life guaranteed under Article 21 of the Constitution of India. In the present case, it is not only the petitioner who has raised the cause of these children studying in madarsas, but, this Court itself found a need to look into the issue.

35. In view of the foregoing discussion, we find no force in the preliminary objection regarding *Locus Standi* of the petitioner.

36. The second preliminary objection raised by Sri. Sandeep Dixit Senior Advocate is that there are no proper pleadings in the writ petition filed by Sri Anshuman Singh Rathore and in absence of proper pleadings, the writ petition cannot stand. He has submitted

that the earlier writ petition, in which the reference order was passed, also does not challenge the vires of the Madarsa Act, but it is for issuance of a Writ of Mandamus commanding the respondents to pay salary to the petitioner regularly in the prescribed pay scale of the State Government for the post of Assistant Teacher of Primary Section of Madarsa, with a further prayer to absorb and regularize the services of petitioner on the post of Assistant Teacher and no regular appointment should be made by the respondents, and thus in the same also, in absence of any pleadings, *vires* cannot be looked into.

37. In support of the preliminary objection regarding lack of adequate pleadings, the learned Counsel for the respondents have relied upon the judgments in the cases of **Union of India and others versus Manjurani Routray and others** (2023) 9 SCC 144; **Haji Abdul Gani Khan and another versus Union of India and others**, (2023) SCC OnLine SC 138; **State of Kerala and others versus Shibu Kumar P.K. and another**,(2019) 13 SCC 577; **Kerala State Toddy Shop Contractors Association versus T.N. Prathapan, MLA and others** (2014) 15 SCC 466; **Ashutosh Gupta versus State of Rajasthan and others** (2002) 4 SCC 34; and **S.S. Sharma and others versus Union of India and others** (1981) 1 SCC 397.

38. In the case of ***Union of India and others versus Manjurani Routray and others*** *(2023) 9 SCC 144*, it is held that: -

> *"11. While hearing the learned counsel appearing for the parties, we asked Shri B.H. Marlapalle, learned Senior Counsel along with Shri Shibashish Mishra appearing on behalf of the respondents and intervenors, as to how, in absence of any pleading setting out grounds challenging the vires of Rule 4(b) and in the absence of seeking any relief to that effect, the High Court was justified in exercising jurisdiction to declare Rule 4(b) as ultra vires? In response, the learned Senior Counsel has fairly stated that it is a defect in the pleadings as well as in the relief sought before CAT and in the writ petition. But still, they made an unsuccessful attempt to satisfy this Court that the said rule appears to be discriminatory and therefore the High Court has rightly exercised the jurisdiction while passing the impugned order. It is a trite law that for striking down the provisions of law*

or for declaring any rules as ultra vires, specific pleading to challenge the rules and asking of such relief ought to be made, that is conspicuously missing in the present case. In the absence of such a pleading, the Union of India did not have an opportunity to rebut the same. The other side had no opportunity to bring on record the object, if any, behind the Rules that were brought into force. We are also of the considered view that, in the writ petition seeking a writ of certiorari challenging the order of CAT, the High Court ought not to have declared Rule 4(b) as ultra vires in the above fact situation. Therefore, the High Court was not justified to declare Rule 4(b) as ultra vires."

39. In ***Haji Abdul Gani Khan and another versus Union of India and others****, (2023) SCC OnLine SC 138*, it is held that: -

"20. There cannot be any doubt that when a party wants to challenge the constitutional validity of a statute, he must plead in detail the grounds on which the validity of the statute is sought to be challenged. In absence of the specific pleadings to that effect, Court cannot go into the issue of the validity of statutory provisions. The Constitutional Courts cannot interfere with the law made by the Legislature unless it is specifically challenged by incorporating specific grounds of challenge in the pleadings. The reason is that there is always a presumption of the constitutionality of laws. The burden is always on the person alleging unconstitutionality to prove it. For that purpose, the challenge has to be specifically pleaded by setting out the specific grounds on which the challenge is made. A Constitutional Court cannot casually interfere with legislation made by a competent Legislature only by drawing an inference from the pleadings that the challenge to the validity is implicit. The State gets a proper opportunity to defend the legislation only if the State is made aware of the grounds on which the legislation is sought to be challenged."

40. In ***State of Kerala and others versus Shibu Kumar P.K. and another****,(2019) 13 SCC 577*, the Supreme Court held that: -

"4. In these matters, none of the parties to the proceedings had laid the required pleaded foundation for questioning the vires of Rules 4 and 5 of the Rules as imperative in law. What was really questioned by the respondent(s)/defaulter(s) was/were only the show-cause notice(s) issued for the recovery of the amounts due from him/them, either to the financial institution(s) or to the bank(s). Ignoring this aspect of the matter, the Division Bench of

the High Court has proceeded to consider the vires of Item (viii) under Rules 4 and 5(1) of the Rules.

5. In our opinion, the first and foremost, in the absence of adequate pleadings and grounds of challenge to the vires of the Rules in the writ petition, the Division Bench ought not to have considered that issue, and given its verdict or opinion. Even otherwise, in our opinion, the High Court has not convincingly substantiated its conclusion that the aforesaid Rules are unreasonable and arbitrary and, therefore, require to be struck down on the touchstone of Article 14 of the Constitution of India."

41. In ***Kerala State Toddy Shop Contractors Association versus T.N. Prathapan, MLA and others*** *(2014) 15 SCC 466*, it is held that: -

"9. In State of A.P. v. K. Jayaraman [State of A.P. v. K. Jayaraman, (1974) 2 SCC 738 : 1974 SCC (L&S) 547] , it has been observed that when an averment is made that a particular rule is invalid for violating Articles 14 and 16 of the Constitution, relevant facts showing how it is discriminatory ought to have been set out.

10. In Union of India v. E.I.D. Parry (India) Ltd. [Union of India v. E.I.D. Parry (India) Ltd., (2000) 2 SCC 223] , a two-Judge Bench has observed thus: (SCC p. 225, para 4)

"4. ... There was no pleading that the rule upon which the reliance was placed by the respondent was ultra vires the Railways Act, 1890. In the absence of the pleading to that effect, the trial Court did not frame any issue on that question. The High Court of its own proceeded to consider the validity of the rule and ultimately held that it was not in consonance with the relevant provisions of the Railways Act, 1890 and consequently held that it was ultra vires. This view is contrary to the settled law...."

11. In State of Haryana v. State of Punjab [State of Haryana v. State of Punjab, (2004) 12 SCC 673] , reiterating the principle, this Court has held that: (SCC p. 706, para 82)

"82. ... merely saying that a particular provision is legislatively incompetent [ground (ii)] or discriminatory [ground (iii)] will not do. At least prima facie acceptable grounds in support have to be pleaded to sustain the challenge. In the absence of any such pleading the challenge to the constitutional validity of a statute or statutory provision is liable to be rejected in limine."

From the aforesaid authorities, it is clear as day that in the absence of any assertion how a particular provision offends any of the Articles of the Constitution, the same cannot be adverted to. It is a settled principle of law that a person who assails a provision to be ultra vires must plead the same in proper perspective.

As we find in the case at hand, the High Court was required to interpret Rule 28-A of the Rules. Under such circumstances, the High Court has fallen into grave error by declaring another Rule as discriminatory and unreasonable. Suo motu assumption of jurisdiction in this regard is totally uncalled for and, therefore, that makes the judgment and order declaring the 2003 Rules as discriminatory sensitively susceptible."

42. In **Ashutosh Gupta versus State of Rajasthan and others** (2002) 4 SCC 34, the Supreme Court held that: -

"5. ..... Apart from making such submission on a hypothetical basis, no material has been produced to indicate if any one of the persons recruited under the Emergency Recruitment Rules has reaped any undue advantage in respect of his past experience by adoption of the formula in the Emergency Recruitment Rules for the purpose of allotting the year of allotment as 1976-N-1 + half of N-2. In the absence of an iota of material on this aspect, we are not required to examine the correctness of the said submission of Mr Jain, on an assumption that the provisions of the Recruitment Rules might have enabled the professionals on being recruited to count their past experience for reckoning their seniority in the cadre of administrative service even though the said experience might not have any correlation with the administrative service. Even otherwise, the entire experience of such recruits could not have been totally wiped off and therefore the rule-making authority while making the rules for recruitment on emergency basis did make the provisions contained in Rule 25 which is also in pari materia with similar provisions available elsewhere including the one which was meant for emergency recruitment to the Indian Administrative Service. Where the challenge is made to a statutory provision being discriminatory, allegations in writ petition must be specific, clear and unambiguous. There must be proper pleadings and averments in the substantive petition before the question of denial of equal protection of infringement of fundamental right can be decided. There is always a presumption in favour of the constitutionality of enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. The presumption of constitutionality stems from the wide power of classification which the legislature must, of

necessity possess in making laws operating differently as regards different groups of persons in order to give effect to policies. It must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience. The claim of equal protection under Article 14, therefore, is examined with the aforesaid presumption that the State Acts are reasonable and justified. If we examine the challenge to the impugned provision from the aforesaid standpoint, we have no hesitation to hold that the appellants have utterly failed to establish any material from which grievances about the discrimination alleged can be said to have been made."

43. In ***S.S. Sharma and others versus Union of India and others*** *(1981) 1 SCC 397*, it was held that: -

"6. ...We are of opinion that the Courts should ordinarily insist on the parties being confined to their specific written pleadings and should not be permitted to deviate from them by way of modification or supplementation except through the well known process of formally applying for amendment. We do not mean that justice should be available to only those who approach the Court confined in a strait-jacket. But there is a procedure known to the law, and long established by codified practice and good reason, for seeking amendment of the pleadings. If undue laxity and a too easy informality is permitted to enter the proceedings of a Court it will not be long before a contemptuous familiarity assails its institutional dignity and ushers in chaos and confusion undermining its effectiveness. Like every public institution, the Courts function in the security of public confidence, and public confidence resides most where institutional discipline prevails. Besides this, oral submissions raising new points for the first time tend to do grave injury to a contesting party by depriving it of the opportunity, to which the principles of natural justice hold it entitled, of adequately preparing its response."

44. In response to the objection regarding lack of proper pleadings, Mr. Sudeep Kumar learned Counsel for the petitioner has drawn attention of the Court to the pleadings made in paras 6, 7, 8, 13, 14 and 18 of the Writ Petition, which are being reproduced below: -

"6. That it is submitted that enactment of this law i.e. the Madarsa Act, 2004 is not only beyond the jurisdiction of the State legislation but also, from gainful reading of the provisions of the said enactment, the same is found to be arbitrary, discriminatory and unconstitutional in as much as by operation and implementation of the Madarsa Act, 2004 the benefit of quality education through common curriculum and common

syllabus formulated by experts is denied to the children studying at Madarsa on basis of religious discrimination.

7. That the children studying at Madarsa are not only deprived of the common quality syllabus as formulated under the National Education Policy, 2020 (NEP) but are also denied the right to free and compulsory education as enshrined under Article 21A of the Constitution of India solely on the grounds of religious discrimination.

8. That by virtue of the enactment of the Madarsa Act, 2004, the legislature has arbitrarily and in a discriminatory manner included the Madars sought to be run under the minority welfare Department while the other religious education institutions particularly those belonging to communities like Jan, Sikhs, Christians etc. are being run under the Education Ministry and deriving the benefit of the Right to Education Act, 2009 as well as the National Education Policy 2020.

13. That it is submitted that the prevailing system introduced by virtue of the Amendment act, 2012 does not provide equal opportunity to all children in terms of syllabus and curriculum in as much as children enrolled in Madarsas have been discriminated upon and not only been removed from the ambit of the Act of 2009 providing not only free and compulsory education but also quality and uniform education as envisaged under the National Education Policy, 2020.

14, that it is submitted that Right to Education is a fundamental right under Article 21A inserted by 86th Amendment of the Constitution. Even before the said amendment, the law of land has treated right to education as a fundamental right. Further, it is the settled law that Right to education and Article 21A of the Constitution has to be read in conformity with Article 14 and 15 of the Constitution and there must be no discrimination in quality of education. Thus, a syllabus and common curriculum is required. The right of education, the right of a child should not be restricted only to Free and compulsory education, but should be extended to have quality education without any discrimination on the ground of its economic, social and cultural backgrounds.

18. That it is apposite to submit here that in the Madarsas neither the regulation of the education department nor the syllabus prescribed therein is adopted whereas in every NEP there is a specific obligation upon all institutions to undertake study in a common syllabus and common programme of examination and thus, for a holistic development of a child is studying at Madarsa education, incorporation of the NEP, 2020 is imperative and in consonance with the fundamental rights guaranteed under the Constitution of India.

45. Ground A taken in Writ C No. 6049 of 2023 is as follows: -

"A. Because the U. P Board of Madarsas Education Act, 2004 is arbitrary, unconstitutional and is in violation of Articles 14, 15 and 21A of the Constitution of India."

46. The aforesaid pleadings made and the ground taken in Writ C No. 6049 of 2023 are sufficient to make all the other parties understand the case set up by the petitioner and required to be defended by the opposite parties. As all the aforesaid connected Writ Petitions involve the question of entitlement of payment of salary to teachers of Madarsas from State Exchequer, they were connected and were heard together. All the learned Counsel have advanced their submissions on various points, including vires of the Madarsas Act. Therefore, it is not a case which lacks proper pleadings or where the parties have been taken by surprise for lack of proper pleadings. Accordingly, we turn down the second preliminary objection raised by the counsel for the opposite parties.

(D) HISTORY OF MADARSAS IN STATE OF U.P. AND RELEVANT PROVISIONS OF MADARSA ACT AND REGULATIONS

47. It appears that after independence, private Madarsas continued in the State of U.P. The said Madarsas were not recognized by the State Government. However, the same continued to provide education at local levels. For the first time in the year 1969, the State Government came out with the 'Rules of Recognition of Arabic and Persian Madarsas, U.P.' by Government Order No.Ga-2/1390/15-40(41)-65, dated 18.06.1969. The said Rules provided that Arabic and Persian institutions desiring recognition should apply to the Registrar, Arabic and Persian Examinations, U.P., Allahabad, specifying clearly the examination or examinations for which recognition is sought for. The same broadly provided for the building, library, financial position and teachers for such Madarsas.

48. 'U.P. Ashaskiya Arbi Tatha Farsi Madarson Ki Manyata Niyamavali' was propounded by Government Order No. 3367/15-17-87-53(5)-86, dated 22.08.1987, which was non-statutory.

49. The State Government created a new department called 'Minority Welfare Department' vide Government Order No.1856/45Sa-E-1-95-639(2)/95 dated 12.08.1995. The same was followed by another Government Order No.272/15-6-96-28[4]/96 dated 31.1.1996, whereby all the matters with regard to declaring minority institution in basic and secondary education institutions, all work of Arbi and Farsi Madarsas, the enforcement of the schemes made by the Central Government for modernization of Arbi and Farsi Madarsas and forming of Committee for modernization of syllabus of these Madarsas and educational development schemes run by the Union of India with regard to minorities for construction of their hostels in the field of secondary education, were handed over to the Minority Welfare Department.

50. The aforesaid Government orders were followed by the U. P. Board of Madarsa Education Act, 2004, the validity whereof is being scrutinized in this case. The objects and reasons and the relevant provisions of the Madarsa Act reads as follows:

> "**Statement of Objects and Reasons of U.P. Board of Madarsa Education Act, 2004**
>
> *In para 55 of the Education Code the Registrar, Arabi-Pharasi Examinations, Uttar Pradesh Allahabad had been authorised to recognise the Arabi-Pharasi Madarsas in the State and for conducting the examinations of such Madarsas. These Madarsas were managed by the Education Department. But with the creation of the Minority Welfare and Wakfs Department in 1995 all the works relating to such Madarsa were transferred from Education Department to the Minority Welfare Departments by virtue of which all the works relating to Madarsas are being performed under the control of the Director, Minority Welfare Uttar Pradesh and the Registrar/Inspector Arabi-Pharasi Madarsas, Uttar Pradesh. The Arabi-Pharasi Madarsas were being administered under the Arabi-Pharasi Madarsas Rules, 1987 but since the said rules have not been made under an Act, many complication arose in running the Madarsas under the said rules. Therefore with a view to removing the difficulties arisen in running the Madarsas, improving the merit therein and making available the best facility of study to the students studying in Madarsas it was decided to make a law to provide for the establishment of a Board of*

Madarsa Education in the State and for the matters connected therewith or incidental thereto.
Since the State Legislature was not in session and immediate legislative action was necessary to implements the aforesaid decision the Uttar Pradesh Board of Madarsa Education Ordinance 2004 (U.P. Ordinance No.12 of 2004) was promulgated by the Governor on September 3, 2004.
This Bill is introduced to replace the aforesaid Ordinance."

51. The relevant provisions of the Madarsa Act read as under: -

"2. In this Act unless the context otherwise requires:-

(a) "Board" means the Uttar Pradesh Board of Madarsa Education established under Section 3;

(f) ***"institution" means the Government Oriental College, Rampur and includes a Madarsa or an Oriental College established and administered by Muslim-Minorities and recognised by the Board for imparting Madarsa-Education****;*

(h) "Madarsa-Education" means education in Arbic, Urdu, Parsian, Islamic-studies, Tibb Logic, Philosophy and includes such other branches of learning as may be specified by the Board from time to time;

* * *

3. Constitution of the Board*.—*

(1) With effect from such date as the State Government may, by notification, appoint, there shall be established at Lucknow a Board to be known as the Uttar Pradesh Board of Madarsa-Education.

(2) The Board shall be a body corporate.

(3) The Board shall consist of the following members, namely:-

(a) ***a renowned Muslim educationist in the field of traditional Madarsa-Education, nominated by the State Government who shall be the Chairperson of the Board****;*

(b) the Director, who shall be the Vice-Chairperson of the Board;

(c) the Principal, Government Oriental College, Rampur;

(d) ***one Sunni-Muslim Legislator*** *to be elected by both houses of the State Legislature;*

(e) ***one Shia-Muslim Legislator*** *to be elected by both houses of the State Legislature;*

(f) one representative of National Council for Educational Research and Training;

(g) ***two head of institution established and administered by Sunni-Muslim*** *nominated by the State Government;*

(h) ***one head of institution established and administered by Shia-Muslim nominated*** *by the State Government;*

(i) ***two teachers of institutions established and administered by Sunni-Muslim*** *nominated by the State Government;*

(j) ***one teacher of an institution established and administered by Shia-Muslim*** *nominated by the State Government;*

(k) one Science or Tibb teacher of an institution nominated by the State Government;

(l) the Account and Finance Officer in the Directorate of minority Welfere, Uttar Pradesh;

(m) the Inspector,

(n) an officer not below the rank of Deputy Director nominated by the State Government, who shall be the member Registrar.

(4) As soon as may be after the election and nomination of the members of the Board are completed, the State Government shall notify that the Board has been duty constituted:

Provided that a notification under this sub-section may be issued even before the election of the member specified in clause (d) or clause (e) of sub-section (3) has been completed.

(5) (a) Where mere is only one Shia member or only one Sunni member in the State Legislators then each will be nominated by the State Government.

(b) If no Shia member in the State Legislature is available then two Sunni-Muslim Legislators shall be elected as member of the Board and in the nomination paper of one of such Legislator it shall be mentioned before election that he shall cease to hold the office of the member of the Board on the date a Shia-Muslim Legislators takes oath as the member of the Board. Similarly in the case of non availability of Sunni-Muslim Legislator two Shia-Muslim Legislators shall be elected as the member of the Board and in the nomination paper of one of such Shia Legislators it shall be mentioned before election that he shall cease to hold office of the member of the Board on the date of taking oath of the office of the member of the Board by a Sunni-Muslim Legislator.

(6) On and from the date on the establishment of the Board under sub-section (1), the Arbi and Farsi Education Board functioning immediately before such establishment, hereinafter referred to as the earstwhile Board, shall stand dissolved and upon such dissolution,-

(a) all the properties and assets of the earstwhile Board shall stand transferred to, and vest in the Board;

(b) all debts, liabilities and obligations of the existing Board, whether contractual or otherwise, shall stand transferred to the Board;

(c) all the officer and employees of the earstwhile Board shall become the officers and employees of the Board on the same forms and conditions and with the same rights and privileges as to retirement benefits and other matters as would have been applicable to them immediately before such dissolution till their employment under the Board is duly terminated or until their remuneration and other conditions of service are duly altered not to their disadvantage:

Provided that an officer or employee of the earstwhile Board may by notice addressed to the Board served within a period of thirty days from such dissolution, intimate his option not to become an officer or employee of the Board

and upon receipt of such notice, the post held until then by him shall stand abolished and his services shall stand terminated and he shall be paid an amount equivalent to his three months salary as compensation.

* * *

Section 9 - Functions of the Board

Subject to the other provisions of this Act the Board shall have the following functions, namely:-

(a) ***to prescribe course of instructions, text-books, other books and instructional meterial, if any, for Tahtania, Fauquania, munshi, Maulavi, Alim, Kamil, Fazil and other courses****;*

(b) ***prescribe the course books, other books and instruction material of courses of Arbi, Urdu and Pharsi for classes upto High School and Intermediate standard in accordance with the course determined there for by the Board of High School and Intermediate Education****;*

(c) ***to prepare manuscript of the course books, other books and instruction material referred to in clause (b) by excluding the matters therein wholly or partially or otherwise and to publish them****;*

(d) ***prescribe standard for the appointment of Urdu translators in the various offices of the State and ensure through the appointing authority necessary action with respect to filling up of the vacant posts****;*

(e) ***to grant Degrees, Diplomas, Certificates or other academic distinctions to persons, who-***

(i) ***have pursued a course of study in an institution admitted to the privileges or recognition by the Board****;*

(ii) ***have studied privately under conditions laid down in the regulations and have passed an examination of the Board under like conditions****;*

(f) ***to conduct examinations of the Munshi, Maulavi, Alim and of Kamil and Fazil courses****;*

(g) to recognise institutions for the purposes of its examination;

(h) to admit candidates to its examination;

(i) to demand and receive such fee as may be prescribed in the regulations;

(j) to publish or withhold publication of the result of its examinations wholly or in part;

(k) to co-operate with other authorities in such manner and for such purposes as the Board may determine;

(l) to call for reports from the Director on the condition of recognised institutions or of institutions applying for recognition;

(m) ***to submit to the State Government its views on any matter with which it is concerned****;*

(n) to see the schedules of new demands proposed to be included in the budget relating to institutions recognised by it and to submit if it thinks fit, its views thereon for the consideration of the State Government;

(o) to do all such other acts and things as may be requisite in order to further the objects of the Board as a body constituted for regulating and supervising Madarsa-Education up to Fazil;

(p) ***to provide for research or training in any branch of Madarsa-Education viz. Darul Uloom Nav Uloom, Lucknow, Madarsa Babul Ilm, Mubarakpur, Azamgarh, Darul Uloom Devband, Saharanpur, Oriental College Rampur and any other institution which the State Government may notify time to time****.*

(q) to constitute a committee at district level consisting of not less than three members for education up to Tahtania or Faukania standard, to delegate such committee the power of giving recognition to the educational institutions under its control.

(r) to take all such steps as may be necessary or convenient for or as may be incidental to the exercise of any power, or the performance or discharge of any function or duty, conferred or imposed on it by this Act.

*** * ***

Section 10 - Powers of the Board

(1) The Board shall subject to the provisions of this Act and the rules made thereunder, shall have all such powers

as may be necessary for the performance of its fuctions and the discharge of its duties under this Act, or the rules or regulations made thereunder.

(2) In particular and without prejudice to the generality of the foregoing powers, the Board shall have the powers,-

(i) to cancel an examination or withhold the result of an examination of a candidate, or to disallow him from appearing at any future examination who is found by it to be guilty of,-

(a) using unfair means in the examination; or

(b) making any incorrect statement or suppressing material information or fact in the application form for admission to the examination; or

(c) fraud or impersonation at the examination; or

(d) securing admission to the examination in contravention of the rules governing admission to such examination; or

(e) any act of gross indiscipline in the course of the examination;

(ii) to cancel the result of an examination of any candidate for all or any of the acts mentioned in sub-clauses (a) to (d) of clause (i) or for any bona fide error of the Board in the declaration of the result:

(iii) to prescribe fees for the examinations conducted by it and provide for the mode of its realisation;

(iv) to refuse recognition of an institution,-

(a) which does not fulfill, or is not in a position to fulfill, or does not come up to, the standards for staff, instructions, equipment or buildings laid down by the Board in this behalf; or

(b) which does not, or is not, willing to abide by the conditions of recognition laid down by the Board in this behalf;

(v) to withdraw recognition of an institution not able to adhere to, or make provisions for, standards of staff, instructions, equipment or buildings laid down by the Board or on its failure to observe the conditions of recognition to the satisfaction of the Board;

(vi) to call for reports from the head of institution in respect of any act of contravention of the rules or regulations of decisions, instructions or directions of the Board and take suitable actions for the enforcement of the rules or regulations decisions, instructions or directions of the Board, in such manner as may be prescribed by regulations;

(vii) to inspect an institution for the purpose of ensuring due observance of the prescribed courses of study and that the facilities for instructions are duly provided and availed of; and

(viii) to fix the maximum number of students that may be admitted to a course of study in an institution.

(3) The decision of the Board in all matters mentioned in sub-sections (1) and (2) shall be final.

*** * ***

Section 17 – Appointment and constitution of committee and sub-committees

(1) The Board shall appoint the following committees, namely:-

(a) ***Curriculum Committee****;*

(b) Examination Committee;

© Result Committees;

(d) Recognition Committee; and

© Finance Committee.

(2) ***Such a committee shall consist of the members of the Board only*** *and shall be constituted in such a way that as for as possible atleast one member from each of the following classes are represented in each of the committees:-*

(a) head of institutions;

(b) teachers of institutions;

© Academicians:

Provided that no member of the Board shall serve on more than one of such committees, and the term of members of the committee shall cease with the cessation of the membership of the Board.

(3) In addition to the committees mentioned in sub-section (1) the Board may appoint such other committees or sub-committees as may be prescribed by regulations.

(4) The committees and sub-committees appointed under sub-section (3) shall be constituted in such manner and on such terms and conditions as may be prescribed by regulations.

* * *

Section 18 - Power to delegate

The Board may, by general or special order, direct that any power exercisable by it under this Act except the power to make regulations may also be exercised by its Chairperson or Vice-Chairpersons or by such Committee or officer in such cases and subject to conditions, as may be specified therein.

* * *

Section 20 - Power of the Board to make regulations

(1) The Board may make regulations for carrying out the purposes of this Act

(2) In particular and without prejudice to the generality of the foregoing powers, the Board may make regulations providing for all or any of the following matters, namely:-

(a) constitution, power and duties of committees and sub-committees;

(b) ***the conferment of Degrees, Diplomas and Certificates****;*

(c) the conditions of recognition of institutions;

(d) ***the courses of study to be laid down for all Degrees, Diplomas and Certificates****;*

(e) the conditions under which candidates shall be admitted to the examinations and research programme of the Board and shall be eligible for Degrees, Diplomas and Certificates;

(f) the fees for admission to the examination of the Board;

(g) the conduct of examination;

(h) the appointment of examiners, moderators, collators, scrutinisers, tabulators, Centre inspectors, Superintendents

of Centres and invigilators and their duties and powers in relation to the Board's examinations and the rates of their remuneration;

(i) the admission of institutions to the privilege of recognition and the withdrawal of recognition;

(ii) all matters which are to be, or may, provided for by regulations."

52. The Board of Madarsa in exercise of its powers under Section 20 of the Madarsa Act framed "U.P. Non-Governmental Arabic and Persian Madarsa Recognition, Administration and Service Regulations, 2016" (for short 'the Regulations of 2016') and the relevant regulations, *viz.* Regulation 2 in Part I and Regulations 3(1) and 3(2) of Part-III read as under:-

*"**Part-I***
**** * ****
2. Definitions. - (1) In these regulations unless there is anything repugnant in the subject or context:-
(a) "Act" means the Uttar Pradesh Board of Madarsa Education Act, 2004.
(b) "Department" means the Minority Welfare Department, Government of Uttar Pradesh.
(c) "District Madarsa Education Officer" means the District Minority Welfare Officer.
(d) ***"Oriental or Traditional" subject mean Arabic, Persian, Urdu, Hadees, Tafseer, Theology, Maqoolat, Maths, History, Geography and Tibb.***
(e) "State Government" means the Government of Uttar Pradesh.
(f) ***"Ductoora" means a degree for senior and complete research program.***
(g) ***"Alama" means a degree for junior research program.***
(h) ***"Fazil" means post-graduate degree of the Board.***
(i) ***"Kamil" means under graduate degree of the Board.***
(j) "Alim" means a certificate of senior secondary level examination of the Board.
(k) "Maulvi/Munshi" means a certificate of 10th level examination of the Board.
(l) "Hafiz" means the certificate of Hafiz-e-Quran.
(m) "Quari" means the diploma in Tajveed-e-Quran.
(n) "Fauquania" means upper elementary classes (VI to VIII).

(o) "Tahtania" means elementary classes (I to V).

(p) "Head" means the head of the institution (i.e. Headmaster or Principal as the case may be).

(q) "Lecturer" (Mudarris) means a teacher appointed and or recognized for teaching in Alim or higher classes.

(2) Words and expression not defined in these regulations but defined in the Act shall have the meaning respectively assigned to them in the Act.

* * *

Part-III

Services of Teaching and Non Teaching employees

3.The minimum qualification for appointment of the amployees in a Madarsa shall be as follows: -

Sl. No.	*Designation*	*Age*	*Qualifications*
1	*Principal (Alim or higher level Madarsa)*	*Minimum age 30 years*	*Degree of Fazil and Kamil (Persian) with minimum 5 years teaching experience in Munshi/Maulvi or higher classes* *Or* *M.A. in Diniyat/Arabic/Persian with 50% marks and 5 years teaching experience as above* *Or* *Fazil/M.A. with Dukturah in Diniyat/Arabic/Persian/ Traditional Ancient subjects with 3 years experience as above.*
2	*Head (up to munshi and maulvi level recognized madarsa)*	*Minimum age 30 years*	*Fazil or Master degree in Arabic/ Persian/Theology with at least 50% marks and minimum 3 years teaching experience in Munshi/ Maulvi classes.*
3	*Mudarris (teacher of alim or higher classes)*	*Minimum age 22 years*	*Fazil or Master degree in Arabic/ Persian/Theology/Traditional Ancient subjects with at least 50% marks and minimum 2 years teaching experience in Munshi/ Maulvi classes.* *But the teaching experience is not mandatory for the person who has the decree of Dukturah/Allama in*

			Arabic/Persian/Diniyat.
4	*(a) Assistant teacher (munshi/maulvi)* *(b) Teacher for optional subject*	*Minimum age 21 years*	*Fazil or Master degree in Arabic/ Persian/Theology/Traditional Ancient subjects with at least 50% marks and minimum 3 years teaching experience in* *Fazil or Master degree in related or trained kamil or trained graduate with at least 50% marks alongwith that a certificate of Alim or inter with Urdu is mandatory.*
5	*(a) Assistant teacher (fauquania)* *(b) Teacher for optional subject*	*Minimum age 20 years*	*Kamil or graduate with at least 50% marks alongwith that a certificate of Alim or inter with Urdu is mandatory.* *Kamil or graduate in relevant subject with at least 50% marks and a certificate of not below Munshi/Maulvi level examination with Urdu/Arabic/Persian.* *Or* *Quari of a recognized Madarsa with a certificate not below the Alim level examination with Urdu/ Arabic/Persian.*
6	*Assistant teacher (tahtania)*	*Minimum age 18 years*	*Alim or inter with Urdu* *Or Hafiz*
7	*Junior Assistant*	*Minimum age 18 years*	*(a) Alim or Inter or Equivalent certificate* *(b) Maulvi level certificate in Arabic/Persian.* *(c) CCC (Course on Computer Concept) Certificate granted by NEILET) National Institute of Electronics and Information Technology) for computer operation and speed of 25/30 words per minute in Hindi/English is mandatory.*
8	*Group-D employees*	*Minimum age 18 years*	*1. Fauquania level certificate with Urdu/Arabic/Persian* *2. Driving of cycle or bike shall be necessary.*

***Note:** (1) **Degree and diploma in the concerned subject of this Board or any University established or regulated by or under any Central or Provincial Act or State Act which is considered to be a University under Section 3 of University Grants Commission Act, 1956 or of any such institution especially empowered by any Act of Parliament shall be recognized for the purpose of minimum qualification prescribed under it**.*

*(2) **The Alimeeyat or Fazeelat granted by Darul Uloom Nadwatul Ulma Lucknow/Darul Uloom Devband/Mazahirul Uloom Saharanpur/Madarsa Alia (Oriental College), Rampur/ Jamiatul Salfia Varanasi/Madrastu Isiah Azamgarh/Jamea Asharafia Mubarakpur, Azamgarh, Jamiatul Falah Bilariyaganj, Azamgarh; Sultanul Madaris, Lucknow shall be considered equivalent to Alim/Fazil of Madarsa Education Board Uttar Pradesh**.*

*(3) Under it in reference to prescribed qualification with word **"trained" means port-graduation such as, Kamil-e-Tadrees or Fazil-e-Tadrees recognized by the Board of Madarsa Education and Bechelor of Education or Master of Education of any University or institution as prescribed in earlier para or any equivalent Degree or Diploma**.*

(4) For the recruitment of Junior Assistant and Group-D employees, the maximum age shall be 40 years."

(emphasis added)

(E) GROUNDS OF CHALLENGE:

(I) VIOLATIVE OF SCULARISM

53. The term secularism itself is left undefined in our constitution but the Supreme Court has defined and explained the same in a number of judgments. Reliance is place by the petitioner and *Amici Curiae* on the following cases: -

i)***S.R. Bommai and others versus Union of India and others** (1994) 3 SCC 1;*

ii)***Bal Patil and another versus Union of India and others** (2005) 6 SCC 690;*

iii) ***Subramanian Swamy versus Director, Central Bureau of Investigation and another*** *(2014)8 SCC 682;*

iv)***Ziyauddin Burhanuddin Bukhari versus Brijmohan Ramdass Mehra and others*** *(1976) 2 SCC 17;*

v)***T.M.A. Pai Foundation and others versus State of Karnataka and others*** *(2002) 8 SCC 481;*

vi)***Aruna Roy and others versus Union of India and others*** *(2002) 7 SCC 368.*

54. ***S.R. Bommai***(Supra) was decided by a Bench consisting of 9 Judges of the Supreme Court. Justice S. Ratnavel Pandian, and Justice A. M. Ahmadi authored their separate judgments, Justice J. S. Verma authored a judgment for himself and Justice Yogeshwar Dayal, Justice P. B. Sawant wrote a judgment for himself and Justice Kuldeep Singh, Justice Ramaswamy wrote a separate judgment and Justice B. P. Jeewan Reddy wrote a judgment for himself and Justice S. C. Agarwal.

55. Justice P. B. Sawant, while expressing the opinion for himself and Justice Kuldeep Singh, held that: -

> ***"148.*** *One thing which prominently emerges from the above discussion on secularism under our Constitution is that whatever the attitude of the State towards the religions, religious sects and denominations, religion cannot be mixed with any secular activity of the State. In fact, the encroachment of religion into secular activities is strictly prohibited. This is evident from the provisions of the Constitution to which we have made reference above.* ***The State's tolerance of religion or religions does not make it either a religious or a theocratic State. When the State allows citizens to practise and profess their religions, it does not either explicitly or implicitly allow them to introduce religion into non-religious and secular activities of the State. The freedom and tolerance of religion is only to the extent of permitting pursuit of spiritual life which is different from the secular life. The latter falls in the exclusive domain of the affairs of the State****. This is also clear from sub-section (3) of Section 123 of the Representation of the People Act, 1951 which prohibits an appeal by a candidate or his agent or by any other person with the consent of the candidate or his election agent to*

vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of or appeal to religious symbols. Sub-section (3-A) of the same Section prohibits the promotion or attempt to promote feelings of enmity and hatred between different classes of the citizens of India on the grounds of religion, race, caste, community or language by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate. A breach of the provisions of the said sub-sections (3) and (3-A) are deemed to be corrupt practices within the meaning of the said section."

(emphasis added)

While summarizing his conclusions, Justice P. B. Sawant held that: -

153. Our conclusions, therefore, may be summarised as under:

* * *

VIII. Secularism is a part of the basic structure of the Constitution. The acts of a State Government which are calculated to subvert or sabotage secularism as enshrined in our Constitution, can lawfully be deemed to give rise to a situation in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution."

56. Justice Ramaswamy explained the concept of Secularism as follows:

***"178.** Freedom of faith and religion is an integral part of social structure. Such freedom is not a bounty of the State but constitutes the very foundation on which the State is erected. Human liberty sometimes means to satisfy the human needs in one's own way. Freedom of religion is imparted in every free society because it is a part of the general structure of the liberty in such a society and secondly because restrictions imposed by one religion would be an obstacle for others. In the past religious beliefs have become battlegrounds for power and root cause for suppression of liberty. Religion has often provided a pretext to have control over vast majority of the members of the society. Democratic society realises folly of the vigour of religious practices in society. Strong religious*

consciousness not only narrows the vision but hampers rule of law. The Founding Fathers of the Constitution, therefore, gave unto themselves "we people of India", the Fundamental Rights and Directive Principles of State Policy to establish an egalitarian social order for all Sections of the society in the supreme law of the land itself. Though the concept of "secularism" was not expressly engrafted while making the Constitution, its sweep, operation and visibility are apparent from fundamental rights and directive principles and their related provisions. It was made explicit by amending the preamble of the Constitution 42nd Amendment Act. The concept of secularism of which religious freedom is the foremost appears to visualise not only of the subject of God but also an understanding between man and man. ***Secularism in the Constitution is not anti-God and it is sometimes believed to be a stay in a free society. Matters which are purely religious are left personal to the individual and the secular part is taken charge by the State on grounds of public interest, order and general welfare. The State guarantee individual and corporate religious freedom and dealt with an individual as citizen irrespective of his faith and religious belief and does not promote any particular religion nor prefers one against another****. The concept of the secular State is, therefore, essential for successful working of the democratic form of Government. There can be no democracy if anti-secular forces are allowed to work dividing followers of different religious faith flying at each other's throats. The secular Government should negate the attempt and bring order in the society. Religion in the positive sense, is an active instrument to allow the citizen full development of his person, not merely in the physical and material but in the non-material and non-secular life.*

* * *

180. *... In Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra [(1976) 2 SCC 17] this Court held that :*

*"****The Secular State rising above all differences of religion, attempts to secure the good of all its citizens irrespective of their religious beliefs and practices. It is neutral or impartial in extending its benefits to citizens of all castes***

and creeds. *Maitland had pointed out that such a State has to ensure, through its laws, that the existence or exercise of a political or civil right or the right or capacity to occupy any office or position under it or to perform any public duty connected with it does not depend upon the profession or practice of any particular religion."...*

* * *

183. *The preamble of the Constitution inter alia assures to every citizen liberty of thought, expression, belief, faith and worship. Article 5 guarantees by birth citizenship to every Indian. No one bargained to be born in a particular religion, caste or region. Birth is a biological act of parents. Article 14 guarantees equality before the law or equal protection of laws. Discrimination on grounds of religion was prohibited by Article 15. Article 16 mandates equal opportunity to all citizens in matters relating to employment or appointment to any office or post under the State and prohibits discrimination on grounds only of inter alia religion. Article 25 while reassuring to all persons freedom of conscience and the right to freely profess, practice and propagate his religion, it does not affect the operation of any existing law or preventing the State from making any law regulating or restricting any social, financial, political or other secular activity which may be associated with the religious practice. It is subject to providing a social welfare and reform or throwing open all Hindu religious institutions of public character to all classes of citizens and Sections of Hindus. Article 26 equally guarantees freedom to manage religious affairs, equally subject to public order, morality and health. Article 27 reinforces the secular character of Indian democracy enjoining the State from compelling any person or making him liable to pay any tax, the proceeds of which are specifically prohibited to be appropriated from the consolidated fund for the promotion or maintaining of any particular religion or religious denomination. Taxes going into consolidated funds should be used generally for the purpose of ensuring the secular purposes of which only some are mentioned in Articles 25 and 26 like regulating social welfare, etc. Article 28(1) maintains that no religious instruction shall be imparted in any educational institutions wholly maintained out of the State funds or receiving aid from the State. Equally no person attending any educational*

institution recognised by the State or receiving aid from the State funds should be compelled to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or in the case of a minor person his guardian has given his consent thereto. By Article 30(2) the State is enjoined not to discriminate, in giving aid to an educational institution, on the ground that it is a minority institution whether based on religion or language. It would thus be clear that ***Constitution made demarcation between religious part personal to the individual and secular part thereof. The State does not extend patronage to any particular religion, State is neither pro particular religion nor anti particular religion. It stands aloof, in other words maintains neutrality in matters of religion and provides equal protection to all religions subject to regulation and actively acts on secular part****.*

184. *In Ratilal Panachand Gandhi v. State of Bombay [1954 SCR 1055 : AIR 1954 SC 388] this Court defined religion that it is not necessarily atheistic and, in fact, there are well-known religions in India like Buddhism and Jainism which do not believe in the existence of God or caste. A religion undoubtedly has different connotations which are regarded by those who profess that religion to be conducive to their spiritual well-being but it would not be correct to say or seems to have been suggested by the one of the learned Brothers therein that matters of religion are nothing but matters of religious faith and religious belief. The religion is not merely only a doctrine or belief as it finds expression in acts as well. In Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar [1954 SCR 1005 : AIR 1954 SC 282] , known as Shirur Mutt case this Court interpreted religion in a restricted sense confining to personal beliefs and attended ceremonies or rituals.* ***The restrictions contemplated in Part III of the Constitution are not the control of personal religious practices as such by the State but to regulate their activities which are secular in character though associated with religions, like management of property attached to religious institutions or endowments on secular activity which are amenable to such regulation. Matters such as offering food to the diety, etc. are essentially***

religious and the State does not regulate the same, leaving them to the individuals for their regulation. The caste system though formed the kernel of Hinduism, and as a matter of practice, for millenniums 1/4th of the Indian population — Scheduled Castes and Scheduled Tribes — were prohibited entry into religious institutions like temples, maths, etc. on grounds of untouchability; Article 17 outlawed it and declared such practice an offence. Articles 25 and 26 have thrown open all public places and all places of public worship to Hindu religious denominations or sects for worship, offering prayers or performing any religious service in the places of public worship and no discrimination should be meted out on grounds of caste or sect or religious denomination*. *In Kesavananda Bharati case [Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225] and Indira Nehru Gandhi v. Raj Narain [1975 Supp SCC 1] this Court held that secularism is a basic feature of the Constitution. It is true that Schedule III of the Constitution provided the form of oath being taken in the name of God. This is not in recognition that he has his religion or religious belief in God of a particular religion but he should be bound by the oath to administer and to abide by the Constitution and laws as a moral being, in accordance with their mandate and the individual will ensure that he will not transgress the oath taken by him. It is significant to note that the Oaths Act, 1873 was repealed by Oaths Act, 1966 and was made consistent with the constitutional scheme of secularism in particular, Sections 7 to 11.*

185. Equally admission into an educational institution has been made a fundamental right to every person and he shall not be discriminated on grounds only of religion or caste. The education also should be imparted in the institutions maintained out of the State fund or receiving aid only on secular lines*. The State, therefore, has a missionary role to reform the Hindu society, Hindu social order and dilute the beliefs of caste hierarchy. Even in matters of entry into religious institutions or places of public resort prohibition of entry only on grounds of caste or religion is outlawed.*

186. *Dr S. Radhakrishnan, stated that: "Religion can be identified with emotion, sentiments, intensity, cultural, profession, conscious belief of faith." According to Gandhiji*

: "By religion I do not mean formal religion or customary religion but that religion which underlies all religions." Religion to him was spiritual commitment just total but intentionally personal. In other words, it is for only development of the man for the absolution of his consciousness (sic conscience) in certain direction which he considered to be good. Therefore, religion is one of belief personal to the individual which binds him to his conscience and the moral and basic principles regulating the life of a man had constituted the religion, as understood in our Constitution. Freedom of conscience allows a person to believe in particular religious tenets of his choice. It is quite distinct from the freedom to perform external acts in pursuance of faith. Freedom of conscience means that a person cannot be made answerable for rights of religion. Undoubtedly, it means that no man possesses a right to dictate to another what religion he believes in; what philosophy he holds, what shall be his politics or what views he shall accept, etc. Article 25(1) protects freedom of conscience and religion of members of only of an organised system of belief and faith irrespective of particular affiliations and does not march out of concern itself as a part of the right to freedom of conscience and dignity of person and such beliefs and practices which are reasonable. The Constitution, therefore, protects only the essential and integral practices of the religion. The religious practice is subject to the control of public order, morality and health which includes economic, financial or other secular activities. Could the religious practice exercise control over members to vote or not to vote, to ignore the National Flag, National Anthem, national institutions? Freedom of conscience under Article 25 whether guarantees people of different religious faiths the right to religious procession to antagonise the people of different religious faiths or right to public worship? It is a fact of social and religious history in India that religious processions are known to ignite serious communal riots, disturb peace, tranquillity and public order. The right to free profession of religion and exercising right to organise religious congregations does not carry with it the right to make inflammatory speeches, nor be a licence to spread violence, nor speak religious intolerance as an aspect of religious faiths. They are subject to the State control. In order to secure constitutional protection, the religious practices should not only be an essential part but

should also be an integral part of proponent's religion but subject to State's control. Otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be quoted as religious forms and make a claim for being treated as religious practices. Law as a social engineer provides the means as well as lays down the rules for social control and resolution of conflicts of all kinds in a human society. But the motive force for social, economic and cultural transformation comes from individuals who comprise the society. They are the movers in the mould of the law as the principal instrument of an orderly transient to a new socio-economic order or social integration and fraternity among the people. ***The Constitution has chosen secularism as its vehicle to establish an egalitarian social order. I am respectfully in agreement with our Brethren Sawant and Jeevan Reddy, JJ. in this respect. Secularism, therefore, is part of the fundamental law and basic structure of the Indian political system to secure to all its people socio-economic needs essential for man's excellence and of (sic his) moral well-being, fulfilment of material and prosperity and political justice****. (emphasis added)*

57. Justice A. M. Ahmadi expressed concurrence with the aforesaid view by adding that: -

"29. Notwithstanding the fact that the words 'Socialist' and 'Secular' were added in the Preamble of the Constitution in 1976 by the 42nd Amendment, the concept of Secularism was very much embedded in our constitutional philosophy. The term 'Secular' has advisedly not been defined presumably because it is a very elastic term not capable of a precise definition and perhaps best left undefined. By this amendment what was implicit was made explicit. The Preamble itself spoke of liberty of thought, expression, belief, faith and worship. While granting this liberty the Preamble promised equality of status and opportunity. It also spoke of promoting fraternity, thereby assuring the dignity of the individual and the unity and integrity of the nation. While granting to its citizens liberty of belief, faith and worship, the Constitution abhorred discrimination on grounds of religion, etc., but permitted special treatment for Scheduled Castes and Tribes, vide Articles 15 and 16. Article 25 next provided, subject to public order, morality and health, that all persons shall be entitled to freedom of

conscience and the right to profess, practice and propagate religion. Article 26 grants to every religious denomination or any Section thereof, the right to establish and maintain institutions for religious purposes and to manage its own affairs in matters of religion. These two Articles clearly confer a right to freedom of religion. Article 27 provides that no person shall be compelled to pay any taxes, the proceeds whereof are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. This is an important Article which prohibits the exercise of State's taxation power if the proceeds thereof are intended to be appropriated in payment of expenses for the promotion and maintenance of any particular religion or religious denomination. ***That means that State's revenue cannot be utilised for the promotion and maintenance of any religion or religious group.*** *Article 28 relates to attendance at religious instructions or religious worship in certain educational institutions. Then come Articles 29 and 30 which refer to the cultural and educational rights. Article* ***29 inter alia provides that no citizen will be denied admission to an educational institution maintained wholly or partly from State funds on grounds only of religion, etc. Article 30 permits all minorities, whether based on religion or language, to establish and administer educational institutions of their choice and further prohibits the State from discriminating against such institutions in the matter of granting aid.*** *These fundamental rights enshrined in Articles 15, 16, and 25 to 30 leave no manner of doubt that they form part of the basic structure of the Constitution. Besides, by the 42nd Amendment, Part IV-A entitled 'Fundamental Duties' was introduced which inter alia casts a duty on every citizen to cherish and follow the noble ideals which inspired our national struggle for freedom, to uphold and protect the sovereignty, unity and integrity of India, to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, and to value and preserve the rich heritage of our composite culture. These provisions which I have recalled briefly clearly bring out the dual concept of secularism and democracy, the principles of accommodation and tolerance as Advocated by Gandhiji and other national leaders.* ***I am, therefore, in agreement with the views expressed by my learned***

colleagues Sawant, Ramaswamy and Reddy, JJ., that secularism is a basic feature of our Constitution. They have elaborately dealt with this aspect of the matter and I can do no better than express my concurrence but I have said these few words merely to complement their views by pointing out how this concept was understood immediately before the Constitution and till the 42nd Amendment. By the 42nd Amendment what was implicit was made explicit."

(emphasis added)

58. In ***Bal Patil and another versus Union of India and others*** *(2005) 6 SCC 690*, the Supreme Court held that: -

> ***"37….****Differential treatments to linguistic minorities based on language within the State is understandable but if the same concept for minorities on the basis of religion is encouraged, the whole country, which is already under class and social conflicts due to various divisive forces, will further face division on the basis of religious diversities. Such claims to minority status based on religion would increase in the fond hope of various Sections of people getting special protections, privileges and treatment as part of the constitutional guarantee.Encouragement to such fissiparous tendencies would be a serious jolt to the secular structure of constitutional democracy. We should guard against making our country akin to a theocratic State based on multinationalism. Our concept of secularism, to put it in a nutshell, is that the "State" will have no religion. The States will treat all religions and religious groups equally and with equal respect without in any manner interfering with their individual rights of religion, faith and worship****."***

59. In ***Ziyauddin Burhanuddin Bukhari****(supra)*, the Supreme Court held: -

> ***"44.*** *The Secular State, rising above all differences of religion, attempts to secure the good of all its citizens irrespective of their religious beliefs and practices. It is neutral or impartial in extending its benefits to citizens of all castes and creeds. Maitland had pointed out that such a State has to ensure, through its laws, that the existence or exercise of a political or civil right or the right or capacity to occupy any office or position under it or to perform any*

public duty connected with it does not depend upon the profession or practise of any particular religion. ....”

60. In ***T.M.A. Pai Foundation****(supra),*the Supreme Court held that: -

“332. *Although the idea of secularism may have been borrowed in the Indian Constitution from the West, it has adopted its own unique brand of secularism based on its particular history and exigencies which are far removed in many ways from secularism as it is defined and followed in European countries, the United States of America and Australia.*

*** * ***

344. *In the ultimate analysis the Indian Constitution does not unlike the United States, subscribe to the principle of non-interference of the State in religious organisations but it remains secular in that it strives to respect all religions equally, the equality being understood in its substantive sense as is discussed in the subsequent paragraphs.”*

61. In ***Aruna Roy*** *(supra)* the Supreme Court held that: -

M.B. Shah, J.

31. Further, for controlling the wild animal instinct in human beings and for having a civilized cultured society, it appears that religions have come into existence. Religion is the foundation for value-based survival of human beings in a civilized society. The force and sanction behind civilized society depends upon moral values. The philosophy of coexistence and how to coexist is thought over by the saints all over the world which is revealed by various philosophers. How to coexist, not only with human beings but all living beings on the earth, maybe animals, vegetation and the environment including air and water, is thought over and discussed by saints and leaders all over the world which is reflected in religions. If that is taught, it cannot be objected as it is neither violative of constitutional or legal rights nor it offends moral values. This has been dealt with elaborately by the S.B. Chavan Committee. The Committee as stated above had invited suggestions from noted educationists on various aspects of value-based education. As stated by the Committee it had benefited by the views of eminent experts/NGOs doing pioneering work in this area. Further, no one can dispute that truth (satya), righteous conduct (dharma), peace (shanti), love (prem) and non-violence (ahimsa) are the core universal values accepted by all religions. The Committee has also pointed out that religion is the most misused and misunderstood concept. However, the

process of making the students acquainted with the basics of all religions, the values inherited therein and also a comparative study of the philosophy of all religions should begin; students have to be made aware that the basic concept behind every religion is common, only the practices differ. If these recommendations made by the Parliamentary Committee are accepted by NCERT and are sought to be implemented, it cannot be stated that its action is arbitrary or unjustified.

32. Further, it appears to be a totally wrong presumption and contention that knowledge of different religions would bring disharmony in the society. On the contrary, knowledge of various religious philosophies is material for bringing communal harmony as ignorance breeds hatred because of wrong notions, assumptions, preaching and propaganda by misguided interested persons.

.....

37. Therefore, in our view, the word "religion" should not be misunderstood nor contention could be raised that as it is used in the National Policy of Education, secularism would be at peril. On the contrary, let us have a secularistic democracy where even a very weak man hopes to prevail over a very strong man (having post, power or property) on the strength of rule of law by proper understanding of duties towards the society. Value-based education is likely to help the nation to fight against all kinds of prevailing fanaticism, ill will, violence, dishonesty, corruption, exploitation and drug abuse. As stated above, NCF, 1988 was designed to enable the learner to acquire knowledge and was aimed at self-discipline, courage, love for social justice etc., truth, righteous conduct, peace, non-violence which are core universal values that can become the foundation for building a value-based education. These high values cannot be achieved without knowledge of moral sanction behind it. For this purpose, knowledge of what is thought over by the leaders in the past is required to be understood in its true spirit. Let knowledge, like the sun, shine for all and that there should not be any room for narrow-mindedness, blind faith and dogma. For this purpose also, ***if the basic tenets of all religions over the world are learnt, it cannot be said that secularism would not survive.***

38. Learned counsel for the petitioners heavily relied upon Article 28 of the Constitution for contending that the National Curriculum is against the mandate of the said article. For appreciating the said contention, we would first refer to Article 28:

> *"28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.— (1) No religious instruction shall be provided in any*

educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto."

(emphasis supplied)

39. In substance, the aforesaid article prohibits imparting of religious instruction in any educational institution wholly maintained out of State funds. At the same time, there is no such prohibition where such an educational institution is established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

40. Further, no person attending any educational institution recognised by the State or receiving aid out of State funds could be compelled to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution. So the entire emphasis of the article is against imparting religious instruction or of performing religious worship. There is no prohibition for having study of religious philosophy and culture, particularly for having value-based social life in a society which is degenerating for power, post or property. In D.A.V. College v. State of Punjab [(1971) 2 SCC 269] the constitutional validity of certain provisions of the Guru Nanak University, Amritsar, Act 21 of 1969 was challenged by the DAV (Dayanand Anglo-Vedic) College Trust. The Trust was formed to perpetuate the memory of Swami Dayanand Saraswati who was the founder of an organisation known as Arya Samaj. It was claimed that it was having a fixed religious programme and its constitution is designed to perpetuate the religious teaching and philosophy of its founder. It was inter alia contended that as Guru Nanak University was wholly maintained out of the State funds and the provision under Section 4(2) offends Article 28(1) which is not saved by clause (2) thereof and in that context the Court observed (in para 24) thus : (SCC pp. 278-79)

"24. ... If the university makes provision for an academic study and research of the life and teachings of any saint it cannot on any reasonable view be considered to require colleges affiliated to the university to compulsorily study his life and teachings or to do research in them. The impugned provision would merely indicate that the university can institute courses of study or provide research facilities for any student of the university whether he belongs to the majority or the minority community to engage himself in such study or research but be it remembered that this study and research on the life and teachings of the Guru Nanak must be a study in relation to their culture and religious impact in the context of Indian and world civilizations which is mostly an academic and philosophical study."

"26. Even so the petitioners have still to make out that Section 4(2) implies that religious instruction will be given. We think that such a contention is too remote and divorced from the object of the provision. ***Religious instruction is that which is imparted for inculcating the tenets, the rituals, the observances, ceremonies and modes of worship of a particular sect or denomination.*** *To provide for academic study of life and teaching or the philosophy and culture of any great saint of India in relation to or the impact on the Indian and world civilizations cannot be considered as making provision for religious instructions."*

(emphasis supplied)

D.M. Dharmadhikari, J.

65. ***In a pluralistic society like India which accepts secularism as the basic ideology to govern its secular activities, education can include study based on "religious pluralism". "Religious pluralism" is opposed to exclusivism and encourages inclusivism***.

66. ***Exclusivism in religion has been explained to mean — the view that one particular tradition alone teaches the truth and constitutes the way to salvation or liberation.*** *The Christians believe in the words attributed to Jesus in the "Gospel of St. John":"No one can come to the Father, but by me." They also believe as early as the third century the dogma of extra ecclesiam nulla salus ("outside the church, no salvation").*

67. Muslims similarly believe that there is only one God and His one messenger "the Prophet". Jews cherish their ethnically exclusive identity as God's chosen people.

68. Hindus revere the Vedas as eternal and absolute and Buddhists have often seen Gautama's teachings as the dharma that alone can liberate human beings from illusion and misery.

69. The above kind of perception has led to inclusivist theologies and religious philosophies that their own tradition

presents the final truth and other traditions are seen as approaches to that final truth.

70. The comprehensive approach to religion which should be inculcated in a society comprising people of different religions and faiths is described as inclusivism. In explicit pluralism, the view accepted is that the great world faiths embodied different perceptions and conceptions of and correspondingly different responses to, the Real or Ultimate and that within each of them independently the transformation of human existence from self-centredness to reality-centredness is taking place.

71. ***Education in India which is to be governed by the secular ethos contained in its Constitution and where "religious instruction" in institutions of the State are forbidden by Article 28(1), the "religious education" which can be permitted, would be education based on "religious pluralism".*** *The experiment is delicate and difficult but if undertaken sincerely and in good faith for creating peace and harmony in the society is not to be thwarted on the ground that it is against the concept of "secularism" as narrowly understood to mean neutrality of the State towards all religions and bereft of positive approach towards all religions.*

....

77. ***The study of religious pluralism can be articulated in a generally acceptable way and such attempt has to be made particularly in India which time and again has suffered due to religious conflicts and communal disharmony. What is needed in the education is that the children of this country should acknowledge the vast range and complexity of differences apparent in the phenomenology of religion while at the same time they should understand the major streams of religious experience and thought as embodying different awarenesses of the one ultimate reality. A wider acceptance of a pluralist view of the religious life of humanity must involve developments in the self-understanding of each tradition, a modification of their claims to unique superiority in the interests of a more universal conception of the presence of the Real to the human spirit.*** *(See Comparative Study of Religion contained in the Encyclopedia of Religion under the heading "Religious Pluralism", pp. 331-33.)*

78. The purpose of making a survey of various thoughts and philosophies of different religions and the views of different philosophers, educationists and thinkers is only to show that the majority of them do not advocate a ban on religious education to children from the school to the college stage. ***What has been emphasised is that the religious education imparted to children should be one to make them aware of various thoughts and philosophies in religions without indoctrinating them and without curbing their free thinking, right to make choices for conducting their own life and deciding upon their course of action according to their***

individual inclinations. *For an all-round development of a child, all educationists feel that mere imparting of information to students to sharpen their intellect is not enough. Inner qualities of head and heart as also capacity to regulate their own life and their relation with society should also be imparted to them for their own and general good of the society as also for achieving the highest goal of life. The attainment of constitutional ideals is possible only if side by side with sharpening the intellect, the moral character of children, is also developed to make them good citizens.*

79. How best this religious pluralism to accord with "secular thought" of the country can be achieved by properly selecting the material for inclusion in the textbooks for children of different ages and different stages in the education, is a matter which has to be left to the academicians and educationists. Their involvement with all dignitaries and with other experts in related fields is necessary. This exercise has to be undertaken by the Government for which any direction from the court is neither required and nor can the court assume such power to encroach on the field of preparation of an educational policy by the State.

80. The scrutiny of the textbooks to find out whether they conform to the secular thought of the country is also to be undertaken by the experts, academicians and educationists. The members of NCERT should be open to any such dialogue with the academicians and educationists. On the basis of general consensus, suitable curriculum, which accords with secularism as understood in a wide and benevolent sense, has to be evolved.

81. The expression "religious instruction" used in Article 28(1) has a restricted meaning. It conveys that teaching of customs, ways of worship, practices or rituals cannot be allowed in educational institutions wholly maintained out of State funds. But Article 28(1) cannot be read as prohibiting study of different religions existing in India and outside India. If that prohibition is read with the words "religious instruction", study of philosophy which is necessarily based on study of religions would be impermissible. That would amount to denying children a right to understand their own religion and religions of others, with whom they are living in India and with whom they may like to live and interact. Study of religions, therefore, is not prohibited by the Constitution and the constitutional provisions should not be read so, otherwise the chances of spiritual growth of the human being, which is considered to be the highest goal of human existence, would be totally frustrated. ***Any interpretation of Article 28(1), which negates the fundamental right of a child or a person to get education of different religions of the country and outside the country and of his own religion would be destructive of his fundamental right of receiving information, deriving***

knowledge and conducting his life on the basis of a philosophy of his liking.

...

86. The word "secularism" used in the preamble of the Constitution is reflected in provisions contained in Articles 25 to 30 and Part IVA added to the Constitution containing Article 51-A prescribing fundamental duties of the citizens. It has to be understood on the basis of more than 50 years experience of the working of the Constitution. The complete neutrality towards religion and apathy for all kinds of religious teachings in institutions of the State have not helped in removing mutual misunderstanding and intolerance inter se between Sections of people of different religions, faiths and beliefs. ***'Secularism', therefore, is susceptible to a positive meaning that is developing understanding and respect towards different religions. The essence of secularism is non-discrimination of people by the State on the basis of religious differences. 'Secularism' can be practised by adopting a complete neutral approach towards religions or by a positive approach by making one Section of religious people to understand and respect religion and faith of another Section of people. Based on such mutual understanding and respect for each other's religious faith, mutual distrust and intolerance can gradually be eliminated.***

87. Study of religions, therefore, in school education cannot be held to be an attempt against the secular philosophy of the Constitution.

...

90. Democracy cannot survive and the Constitution cannot work unless Indian citizens are not only learned and intelligent, but they are also of moral character and imbibe the inherent virtues of the human being such as truth, love and compassion. Thinkers and philosophers strongly recommend introduction of teaching of religions in education. There may be some difference of opinion between them as to at what stage of education it should be introduced. Whether it should be introduced right from the primary stage, may be a subject of debate and it is not for the courts but for the educationists and academicians, to assist the Government in formulating a sound educational policy for primary education. India is mostly composed of people who are followers of one or the other religions or faiths. A very small section comprises those who are non-believers. They may be described as purely humanists and rationalists. Bertrand Russell in The School Curriculum Before Fourteen, speaking on teaching history to the school children, advocates imparting knowledge of the impact of thinkers and philosophers. He said:

"I should not keep silence, but I should not hold up military conquerors to admiration. The true conquerors, in my teaching of history, should be those who did something to dispel the darkness within and without — Buddha and Socrates,

Archimedes, Galileo and Newton, and all the men who have helped to give us mastery over ourselves or over nature. And so I should build up the conception of lordly splendid destiny for the human race, to which we are false when we revert to wars and other atavistic follies, and true only when we put into the world something that adds to our human dominion." (See Bertrand Russell on Education, at p. 172.)

(emphasis added)

62. By the aforesaid judgments the Supreme Court has defined the term "secularism", in Indian context, to mean equal treatment to all religions and religious sects and denominations by the State, without either identifying itself with or favoring any particular religion, religious sect or determination. One thing which prominently emerges from the judgments is that whatever be the attitude of State towards the religions, religious sects and denominations, religion cannot be mixed with any secular activity of the state. In fact, the encroachment of religion into secular activities is strictly prohibited. The Courts have gone to the extent of saying that secularism is a part of the basic structure of the Constitution and acts of the State Government which are calculated to subvert or sabotage secularism as enshrined in the Constitution, can lawfully be deemed to give rise to a situation in which the Government of State cannot be carried on in accordance with the provisions of the Constitution. Constitution makes clear demarcation and matters which are purely religious are left personal to the individuals and secular part is taken care of by the State. The State does not extend patronage to any particular religion and cannot be either pro-particular religion or anti-particular religion. It stands aloof. In other words, it maintains neutrality in matters of religion and provides equal protection to all religions and actively acts on secular part. State will treat all religions and religious groups equally and with equal respect without in any manner interfering with their individual rights of religion, faith and worship. The concept of secular State is essential for successful working of the democratic form of Government.

63. It is in the aforesaid concept of secularism that this Court is to judge upon the constitutional validity of the Madarsa Act. The history and statement of objects and reasons of Madarsa Act shows that initially private Arbi Farsi Madarsas were established by some persons, which were unregulated. Executive directions for their registration were issued for the first time in the year 1969. Later in the year 1987 non-statutory rules were framed for their regulation. A separate Minority Department in the State Government was created on 12.08.1995 and on 31.01.1996 the work of Madarsas was transferred from Education Department to this new Minority Department. The earlier non-statutory regulations of 1987 were replaced by the impugned Madarsa Act of 2004 with a view to '*remove the difficulties arisen in running and improving the merit in the Madarsas and to make available the best facility of study to its students*'. The aims and objects of the Act is silent as to how and why requirement arose to have a separate education Board for a particular religion while there are secular Primary Education Board and Board for High School and Intermediate Education in State of U.P. providing education to one and all without making any differential between children of different religions.

64. The definition of 'institution' under Section 2(f) of Madarsa Act includes a Madarsa or Oriental College established and administered by Muslim-Minorities and recognized by the Board for imparting Madarsa-Education. The definition of 'Madarsa-Education' under Section 2 (h) includes 'Islamic-studies'. Under Section 3 Constitution of the board under sub-section (3) clause (a) requires a muslim educationist in the field of Traditional Madarsa-Education to be its chairman. Under clause (c) Principal, Government Oriental College, Rampur (a unique college run by State Government having power to give its own certificates of education, having at present only around 35 students and a Principal and no teachers), under clause (d) and (e) a Sunni-Muslim and a Shia-Muslim legislator, under clause (g) one head of institution established and administered by Sunni-Muslim and under clause (h) one head of institution established and administered

by Shia-Muslim, amongst others, as members of the Board. Section 9 (a) includes, amongst the other functions of the Board, to prescribe course of instructions, textbooks, other books and instructional material. Section 9 (b) provides one of the function of the board is to prescribe the course books, other books and instruction material of courses of Arbi, Urdu and Pharsi for classes up to high School and intermediate in accordance with the course determined there for by the Board of High School and Intermediate Education. Section 9(c) however empowers the Board to prepare manuscript of the course books, other books and instruction material referred to in clause (b) by excluding the matter therein wholly or partially or otherwise and to publish them. Thus the board is not bound to adopt the books of Board of High School and Intermediate education as they are but modify the same as it so desires. Clause (e) and (f) empowers the Board to grant degrees, diplomas, certificates or other academic distinctions and to conduct examinations for the same. Clause (g) empowers it to recognise institutions for the purposes of its examination. For the purpose of performing its functions the board is required to constitute committees and sub-committees under Section 17. These committees are to be constituted from amongst the members of the Board only. Under the Regulations of 2016 as per definitions provided in regulation 2 of part-I, containing definitions 'Tahtania' means elementary classes (1 to 5) ; 'Fauquania' means upper elementary classes (6 to 8); 'Quari' means diploma in Tajweed-e-Quran; 'Hafiz' means the certificate of Hafiz-e-Quran. Regulation 3 provides for qualification of teachers of Madarsas. Surprisingly, without first recognizing institutions, it recognises certain degrees granted by those private religious institutions, as named in regulation 3(2), as equivalent to senior secondary and undergraduate (Alim/Fazil) of Madarsa Board.

65. A perusal of the syllabus of primary classes (class 1 to 8) shows that Quran and Islam, amongst other subjects, are taught in every class. Similarly in class 10th (Maulvi/Munshi) theology Sunni and Shia are compulsory subjects while only one optional subject is required to

be taken from amongst Math, Home Science (only for girls), Logic and Philosophy, Social Science, Science and Tib (medical science). Similarly in class 12th (Alim) Theology - both Sunni and Shia, are compulsory subjects while one of the optional subject is to be opted from amongst Home Science (for girls only), General Hindi, Logic and Philosophy, Tib (Medical Science), Social Science, Science and Typing. The Certificate of 'Hafiz' and 'Quari' means Certificate of 'Hafiz-e-Quran' and 'Tajveed-e-Quran' [Part-I Regulation 2 (l)(m)], which are certificates of having knowledge of Quran - the religious book of Islam, including its religious instructions, making these certificates only with regard to study of a particular religion and its instructions. More particularly Sections 2(a), (f), (h), Section 3, Sections 9(a), (f) and Part-I Regulation 2(d), (l) and (m) prescribe for teaching of a particular religion, its prescriptions and philosophy. It is admitted to both the State and the Board for Madarsa that Islam as a religion, with all its prescriptions, instructions, philosophies and deliberations is taught in its recognized institutions as per its course material.

66. From the aforesaid it is clear that under the provisions of the Madarsa Act for being recognized by the Madarsa Board it is compulsory for an institution to be setup as a muslim minority institution and it is also compulsory for a student of Madarsa to study in every class, Islam as a religion, including all its prescriptions, instructions and philosophies, to get promoted to next class. The modern subjects are either absent or are optional and a student can opt to study only one of the optional subjects. Thus, the scheme and purpose of the Madarsa Act is only for promoting and providing education of Islam, its prescriptions, instructions and philosophy and to spread the same. This fact is admitted to the State and the Board and is also not disputed by any of the respondents/interveners.

67. To provide education, more particularly for minors, that is children upto the age of 18 years, is a constitutional duty of the State. Under Article 21-A State is bound to provide compulsory and free education to children between the age of 6 and 14 years, that is from

class I to class VI. Further it is the duty of the State to provide education which is secular in nature. It cannot discriminate and provide different type of education to children belonging to different religions. Any such action on part of State would be violative of secularism, which is part of the basic structure of the Constitution of India. Such an action on the part of the State is not only unconstitutional but also highly divisive of the society on religious lines. To maintain unity in the society is a primary duty of the State and all its authorities. Any policy of the State which is divisive of society on religious lines is violative of the constitutional principles. Where any legislative Act of the State is violative of the basic structure of the Constitution, one of the core principles of which is secularism; it is bound to be struck down.

68. The defense taken by the respondents, including the State Government and the Madarsa Board, is that State has sufficient power to frame laws with regard to education to be provided at school level, including traditional education. It is argued that in exercise of its powers under entry 25 of list III of schedule VII of the Constitution of India State has enacted the Madarsa Act. It is claimed that while having power to legislate for education it also has sufficient power to legislate on traditional education and since religion is part of traditional education, therefore, State Government can legislate on the same also. Further, in case this Court finds any provision of the Madarsa Act to be violative of the Constitution of India, it may only strike down such provisions and may save the remaining portions of the Act. The entire Act may not be struck down by this Court. Further, reliance is placed upon Article 25 to 30 of the Constitution of India. The Board and other respondents, while adopting arguments of the State, have further submitted that Article 25 to 29 provide rights to propagate religion and under Article 30 the rights of minority to establish and administer their educational institutions is specifically protected. They submit that State Government has sufficient power to establish a Board for religious education of a minority religion.

69. No doubt State has sufficient power to frame laws with regard to education to be provided at school level, both primary and thereafter up to intermediate; however, such education has to be secular in nature. The State has no power to create a Board for religious education or to establish Board for school education only for a particular religion and philosophy associated with it. Any such action on part of State violates the principles of secularism, which is in the letter and spirit of the Constitution of India. The same also violates Article 14 of the Constitution of India, which provides for equal treatment to every person by the State.

70. So far as Articles 25 to 29 of the Constitution of India are concerned, the same relate to the rights of the citizens and not those of the State. It is the citizens of this country who have right to profess and propagate their religion and its values. It is not mandatory for a citizen of this country to be secular by nature. He can have faith in his own religion or in some/every religion or may not have faith in any religion. But, the State cannot do so. The State has to remain secular. It must respect and treat all religions equally. The State cannot, in any manner whatsoever, discriminate between religions while performing its duties. Since providing education is one of the primary duties of the State, it is bound to remain secular while exercising its powers in the said field. It cannot provide for education of a particular religion, its instructions, prescriptions and philosophies or create separate education systems for separate religions. Any such action on the part of the State would be violative of the principles of secularism. Further, Article 30 only protects rights of minorities to establish and administer their educational institutions. The same, like Article 25 to 29, has no application on exercise of power by the State Government while establishing an Education Board. The protection of Article 30 is only to the minorities, both religious and linguistic, to establish and administer educational institutions of their choice. The Board is not an educational institution established and administered by any minority, but is an institution established by the State for providing an education system. It prescribes courses, recognises degrees and certificates,

conducts examinations and also recognizes schools and colleges for providing education. Therefore, Article 30 has no application to the facts and circumstances of the present case. We repetitively inquired from the respondents to point out the provisions which can be segregated to save the Madarsa Act but, over days of hearing this query was not replied to by any respondent. We also find that since the very purpose of the Madarsa Act is found to be violative of Secularism; it is not possible to segregate and save any portion of the Act which would be of any relevance.

71. Thus, on the basis of principles settled by the Supreme Court in the aforesaid judgments, we concluded that the very object and purpose of the Madarsa Act and the relevant provisions referred to above are violative of the principles of secularism and thus violate the Constitution of India and cannot stand.

(II) VIOLATION OF ARTICLE 21 AND 21-A

72. Sri. Sudeep Kumar, the learned Counsel for the petitioner submits that under Article 21A of the Constitution of India it is the duty of the State to provide free education to children between six and 14 years studying in Class 1 to 6. Under Article 21- right to life, the Supreme Court by repeated judgments has held that the life has to be purposeful and meaningful. In large fields covered by 'life', ‘education’ also finds prominent place. Such education has to be modern, of good quality and universal in nature. Whether the education provided is free or paid, the same has to be of good quality, universal and modern. It should necessarily include all modern subjects including science. Any education that is not universal and modern cannot be called quality education. He submits that in the name of education the State cannot prescribe and dispense with education which is neither of quality nor universal in nature and also lacks modern outlook. A perusal of syllabus of the Madarsa Board shows that the education provided therein is only of languages and Islam as a religion with a little touch of maths etc. The

modern subjects including science are only optional and entire school education can be completed without studying modern subjects.

73. Learned *Amici Curiae* further enhanced the said argument and submitted that the State cannot teach a particular religion in the name of traditional education. While fulfilling its duties of Free and Compulsory Education from classes 1 to 6 State Government is bound to provide education which is universal in nature that is education that is equally applied to all. Education to children of any minority community has to be of same quality as is being provided to other children of the state. By providing limited traditional and that too religious education the State cannot wash-off its hands and claim that it is fulfilling its duty under Article 21-A. The same principles also apply to education after Class 6. Education - whether free or paid, has to be of the same standard and of the same nature. The State cannot differentiate in the quality of education being provided to the children of largest minority of the State from that being provided to the children of other majority or minority communities.

74. Opposing these submissions, the learned Counsel for the respondents and interveners submitted that the State is free to prescribe the form of education it desires to provide. No interference can be made by the Courts in the said freedom of the State. The State has a right also to provide traditional education and in exercise of the said right it has established the Madarsa Board, which has prescribed the syllabus. Therefore the syllabus is valid and in accordance with law declared by the State. It is wrong to suggest that the syllabus does not prescribe to the education as provided under Article 21 or 21A.

75. The learned counsel for the petitioner and *Amici Curiae* have placed reliance on the judgment in the case of ***Bhartiya Seva Samaj Trust through President and another versus Yogeshbhai Ambalal Patel and another***: *(2012) 9 SCC 310*, wherein the Supreme Court held that: -

> *"20. In view to have greater emphasis, the Eighty-sixth Amendment in the Constitution of India was made in 2002 introducing the provision of Article 21-A, declaring the right to free and compulsory education of the children between the age of 6 to 14 years as a fundamental right.*

Correspondingly, the provisions of Article 45 have been amended making it an obligation on the part of the State to impart free education to the children. The amendment in Article 51-A of the Constitution inserting clause (k) has also been made making it obligatory on the part of the parents to provide opportunities for education to their children between the age of 6 to 14 years.

21. Thus, in view of the above, it is evident that ***imparting elementary and basic education is a constitutional obligation on the State as well as societies running educational institutions. When we talk of education, it means not only learning how to read and write alphabets or get mere information but it means to acquire knowledge and wisdom so that one may lead a better life and become a better citizen to serve the nation in a better way****.*

22. The policy framework behind education in India is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through the provision of inclusive elementary education to all. ***Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker Sections is, therefore, not merely the responsibility of the schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds****.*

23. Every generation looks up to the next generation with the hope that they shall build up a nation better than the present. Therefore, ***education which empowers the future generation should always be the main concern for any nation****.*

24. Right to education flows directly from Article 21 and is one of the most important fundamental rights. ***In Ashoka Kumar Thakur v. Union of India [(2008) 6 SCC 1], while deciding the issue of reservation, this Court made a reference to the provisions of Articles 15(3) and 21-A of the Constitution, observing that without Article 21-A the other fundamental rights are rendered meaningless. Therefore, there has to be a need to earnestly implement Article 21-A. Without education a citizen may never come to know of his other rights. Since there is no corresponding constitutional right to higher education-the fundamental stress has to be on primary and elementary***

education, so that a proper foundation for higher education can be effectively laid. Hence, we see that education is an issue, which has been treated at length in our Constitution. It is a well-accepted fact that democracy cannot be flawless; but, we can strive to minimise these flaws with proper education. Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs.

25. This Court in State of T.N. v. K. Shyam Sunder [(2011) 8 SCC 737] held as under :

> *18. In the post-constitutional era, attempts have been made to create an egalitarian society by removing disparity among individuals and in order to do so, education is the most important and effective means. There has been an earnest effort to bring education out of commercialism/mercantilism.*
>
> ***
>
> *21.* ***… The right of a child should not be restricted only to free and compulsory education but should be extended to have quality education without any discrimination on economic, social and cultural grounds***.

26. In view of the above, ***education and particularly that elementary/basic education has to be qualitative and for that the trained teachers are required. The legislature in its wisdom after consultation with the expert body fixes the eligibility for a particular discipline taught in a school. Thus, the eligibility so fixed requires very strict compliance and any appointment made in contravention thereof must be held to be void****."*

(emphasis added)

76. The aforesaid judgments repeatedly emphasis the need of quality education for the children which is universal in nature. Without quality, idea of education in itself is a failure. Teaching merely one religion and a few languages, without any study of modern subjects, cannot be called quality education.

77. Section 2 (h) of Madarsa Act defines 'Madarsa-Education' as education in Arbic, Urdu, Parsian, Islamic-studies, Tibb Logic, Philosophy and includes such other branches of learning as may be specified by the Board from time to time. The syllabus of class I to class VIII of Madarsas shows that study of Islam is necessary in every class along with study of languages. A student cannot get promoted to next class unless he would clear his exam in religion.

78. The syllabus of study for the Munshi/Maulvi Course (equivalent to Class X) under Madarsa Act is as follows: -

	Subject	Question papers
1	Theology (Sunni)	1. Tafseer
		2. Hadith
		3. Fiqah
	Theology (Shia)	1. Tafseer
		2. Hadith
		3. Fiqah
2	Arabic Literature (Only for Maulvi)	1. Prose, Poetry History of Arabic Literature
		2. Arabic Grammer
	Persian Literature (Only for Maulvi)	1. Prose & Grammer
		2. Poetry & Translation
3	Urdu Literature	1. Urdu Prose & Grammer
		2. Urdu Poetry & History of Urdu Literature
4	General English	Prose & Poetry
5	General Hindi	Prose & Poetry
6	Optional Subject (Select any one)	1. Math
		2. Home Science (Only for girl candidates)
		3. Logic & Pholosophy
		4. Social Science
		5. Science
		6. Tib (Medical Science)

79. The syllabus of study for the Arabic & Persian Alim (equivalent to Class XII) is as follows: -

	Subject	Question papers
1	Theology	1. Tafseer & Aqayad

	(Sunni)	2. Hadith & Seerat Khulfa-E-Rashdeen
		3. Fiqah
	Theology (Shia)	1. Tafseer & Aqayad
		2. Hadith & Seerat Khulfa-E-Rashdeen
		3. Fiqah
2	Arabic Literature (For Alim-Arabic)	1. Prose & Poetry & History of Arabic Literature
		2. Grammer Balaghat Insha
	Persian Literature (For Alim-Persian)	1. Prose, Grammer Balaghat
		2. Poetry, History of Persian Insha
3	Urdu Literature	1. Urdu Prose & Grammer
		2. Urdu Poetry & History of Urdu Literature
4	General English	General English
5	General Hindi	Prose & Poetry
6	Optional Subject (Select any one)	1. Home Science (Only for girl candidates)
		2. General Hindi
		3. Logic & Pholosophy
		4. Tib
		5. Social Science
		6. Science
		7. Typing

80. Thus it is apparent that the students of Class X have to study Theology (Sunni) and Theology (Shia), Arabic, Persian, Urdu, General English and General Hindi as compulsory subjects and they are to study only one of the subjects from amongst Maths, Logic & Philosophy, Social Science, Science and Tib (Medical Science). Home science is an optional subject for girls only. Students upto Class X do not have an option to study science, Maths and social science simultaneously.

81. Similarly, the students of Class XII have to study Theology (Sunni) and Theology (Shia), Arabic, Persian, Urdu and General English, but the General English taught to the students of Class XII is of the level of NCERT books of Class X. They can study only one of the subjects from amongst General Hindi, Logic & Philosophy, Social Science, Science, Tib (Medical Science) or Typing. Home science is an optional subject for girls only. The students upto Class XII also do not have an option to

study Maths as a subject. The optional subject Science taught to Class XII students is of the level of Classes VIII, IX and X. Whereas in State Board, Physics, Chemistry and Biology are separate subjects.

82. In the same manner, subject Tib (Medical Science) is taught as an optional subject from Classes 9th to 12th. It is surprising to note that there is no regular Science subject from Classes 9th to 12th and Science is also an optional subject. Without giving basic education of Science particularly Biology, Medical Science education is being provided in the name of Tib to the students of Classes 9th to 12th.

83. From the above discussion it is clearly established that education under the Madarsa Act is certainly not equivalent to the education being imparted to the students of other regular educational institutions recognized by the State Primary and High School and Intermediate Boards and, therefore, the educations being imparted in Madarsas is neither 'quality' nor 'universal' in nature.

84. While the students of all other religions are getting educated in all modern subject denial of the same quality by the Madarsa Board amounts to violation of both Article 21-A as well as Article 21 of the Constitution of India. The State cannot hide behind the lame excuse that it is fulfilling its duty by providing traditional education on nominal fee. The Supreme Court has repeatedly emphasised on modern education with modern subjects, an education that is universal in nature that prepares a child to make his future bright and to take this country forward. It does not prescribe, by any stretch of imagination, limited education with emphasis only upon a particular religion, its instructions and philosophies. Education being provided by the Madarsa Board, therefore, is in violation of the standards prescribed by the Supreme Court while interpreting constitutional provisions. Therefore this Court has no hesitation in holding that the education being provided under the Madarsa Act is violative of Article 21 and 21A of the Constitution of India.

(III) CONFLICT OF MADARSA ACT AND UGC ACT

85. As is clear from the provisions of the Madarsa Act, the Board is empowered with regard to Madarsa education from primary level to post-graduation and research level. So far as the education being imparted in Madarsas to the students of Kamil or under-graduate degree, Fazil or post-graduate decree, Alama, which is a degree for junior research programme and Ductoora, which is a degree for senior and complete research programme, it is important to note that Section 22 of the University Grants Commission Act, 1956, provides: -

> *"**22. Right to confer degrees**.—(1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.*
>
> *(2) **Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree**.*
>
> *(3) For the purposes of this section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.*

86. As per the provision contained in Section 22 of the UGC Act, only Universities or institutions deemed to be Universities under Section 3 of the Act can confer degrees and no other person or authority, including any Madarsa or the Madarsa Board, can confer any degree.

87. The University Grants Commission has issued numerous Notifications in exercise of the power conferred by Section 22 of the UGC Act, which have specified numerous Bachelor's, Master's and Doctorate degrees that can be awarded by the Universities and no degree, which has not been notified by the UGC, can be awarded by any University. Kamil, Fazil, Alama and Ductoora degrees have not been notified by the UGC and these degrees, therefore, cannot be awarded by any body.

88. University Grants Commission (Minimum Standards and Procedure for Award of M.Phil./Ph.D. Degrees) Regulations, 2016 lays down minimum standards and procedure for award of M.Phil./Ph.D. Degrees

and these have necessarily to be followed for awarding these degrees. However, the Madarsa Board does not follow these minimum standards and procedures for award of M.Phil./Ph.D. Degrees.

89. Entry 66, List-I of Schedule 7 appended to the Constitution of India provides "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions", while Entry 25 of List-III-Concurrent List provides "Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List-I; vocational and technical training of labour."

90. The issue with regard to power of the Union of India vis-a-vis State Government with regard to higher education has been considered by the Supreme Court repeatedly. In ***Osmania University Teachers' Association versus State of Andhra Pradesh and another***: (1987) 4 SCC 671, the Supreme Court held that: -

> *"15. The Parliament has exclusive power to legislate with respect to matters included in List I. The State has no power at all in regard to such matters.* ***If the State legislates on the subject falling within List I that will be void, inoperative and unenforceable****.*
>
> * * *
>
> *30. The Constitution of India vests Parliament with exclusive authority in regard to coordination and determination of standards in institutions for higher education. The Parliament has enacted the UGC Act for that purpose. The University Grants Commission has, therefore, a greater role to play in shaping the academic life of the country. It shall not falter or fail in its duty to maintain a high standard in the Universities. Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs. It is hoped that University Grants Commission will duly discharge its responsibility to the Nation and play an increasing role to bring about the needed transformation in the academic life of the Universities."*
>
> *(emphasis added)*

91. In ***Dr. Preeti Srivastava and another versus State of M.P. and others*** *(1999) 7 SCC 120*, a Constitution Bench consisting of five Judges of the Supreme Court held: -

> *"35. The legislative competence of Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List II gave to the State an exclusive power to legislate on*
>
> *"education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III".*
>
> *Entry 11 of List II was deleted and Entry 25 of List III was amended with effect from 3-1-1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:*
>
> *"25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."*
>
> *Entry 25 is subject, inter alia, to Entry 66 of List I. Entry 66 of List I is as follows:*
>
> *"66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions."*
>
> *Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it*

is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

36. ***It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education****. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education.* ***Standards of education in an institution or college depend on various factors. Some of these are:***

(1) the calibre of the teaching staff;

(2) a proper syllabus designed to achieve a high level of education in the given span of time;

(3) the student-teacher ratio;

(4) the ratio between the students and the hospital beds available to each student;

(5) the calibre of the students admitted to the institution;

(6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;

(7) adequate accommodation for the college and the attached hospital; and

(8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged."

(emphasis added)

92. In ***Prof. Yashpal and another versus State of Chhattisgarh and others*** *(2005) 5 SCC 420*, the Supreme Court held that : -

> *"46.* ***Entry 66 which deals with coordination and determination of standard in institutions for higher education or research and scientific and technical institutions is in the Union List and Parliament alone has the legislative competence to legislate on the said topic****. The University Grants Commission Act has been made with reference to Entry 66 (see Prem Chand Jain v. R.K. Chhabra and Osmania University Teachers' Assn. v. State of A.P.). The Act has been enacted to ensure that there is coordination and determination of standards in universities, which are institutions of higher learning, by a body created by the Central Government.* ***It is the duty and responsibility of the University Grants Commission, which is established by Section 4 of the UGC Act, to determine and coordinate the standard of teaching curriculum and also level of examination in various universities in the country****. In order to achieve the aforesaid objectives, the role of UGC comes at the threshold. The course of study, its nature and volume, has to be ascertained and determined before the commencement of academic session. Proper standard of teaching cannot be achieved unless there are adequate infrastructural facilities in the campus like classrooms, libraries, laboratories, well-equipped teaching staff of requisite calibre and a proper student-teacher ratio. For this purpose, the Central Government has made a number of rules in exercise of powers conferred by Section 25 of the UGC Act and the Commission has also made regulations in exercise of power conferred by Section 26 of the UGC Act and to mention a few, the UGC Inspection of Universities Rules, 1960, the UGC Regulations, 1985 Regarding the Minimum Standards of Instructions for the Grant of the First Degree, UGC Regulations, 1991 Regarding Minimum Qualifications for Appointment of Teachers in Universities and Colleges, etc. UGC with the approval of the Central Government and exercising power under Section 22(3) of the UGC Act has issued a schedule of degrees which may be awarded by the universities. The impugned Act which enables a proposal on paper only to be notified as a university and thereby conferring the power upon such university under Section 22 of the UGC Act to confer degrees has the effect of completely stultifying the*

functioning of the University Grants Commission insofar as these universities are concerned. Such incorporation of a university makes it impossible for UGC to perform its duties and responsibilities of ensuring coordination and determination of standards. In the absence of any campus and other infrastructural facilities, UGC cannot take any measures whatsoever to ensure a proper syllabus, level of teaching, standard of examination and evaluation of academic achievement of the students or even to ensure that the students have undergone the course of study for the prescribed period before the degree is awarded to them.

48. ***Any State legislation which stultifies or sets at naught an enactment validly made by Parliament would be wholly ultra vires****. We are fortified in our view by a Constitution Bench decision in R. Chitralekha v. State of Mysore [(1964) 6 SCR 368] where power of the State under Entry 11 List II (as it then existed), and Entry 25 List III qua Entry 66 List I came up for consideration. Subba Rao, J. after quoting the following passage from Gujarat University v. Krishna Ranganath Mudholkar [1963 Supp (1) SCR 112 : AIR 1963 SC 703] (SCR p. 139): (R. Chitralekha case [(1964) 6 SCR 368 : AIR 1964 SC 1823] , at SCR p. 379)*

> *"The State has the power to prescribe the syllabi and courses of study in the institutions named in Entry 66 (but not falling within Entries 63 to 65) and as an incident thereof it has the power to indicate the medium in which instruction should be imparted. But the Union Parliament has an overriding legislative power to ensure that the syllabi and courses of study prescribed and the medium selected do not impair standards of education or render the coordination of such standards either on an all-India or other basis impossible or even difficult."*

enunciated the following principle defining the contours of the legislative powers of States vis-à-vis Union so as to steer clear of any overlap or collision: (SCR p. 379)

> *"This and similar other passages indicate that* ***if the law made by the State by virtue of Entry 11 of List II of the Seventh Schedule to the Constitution makes impossible or difficult the exercise of the legislative power of Parliament under the entry 'Coordination and determination of standards in institutions for higher education or research and scientific and technical***

institutions' reserved to the Union, the State law may be bad*. This cannot obviously be decided on speculative and hypothetical reasoning. If the impact of the State law providing for such standards on Entry 66 of List I is so heavy or devastating as to wipe out or appreciably abridge the Central field, it may be struck down. But that is a question of fact to be ascertained in each case."*

(emphasis added)

93. The Supreme Court in ***Annamalai University, Represented by Registrar versus Secretary to Government, Information and Tourism Department and others*** *(2009) 4 SCC 590,* held as under: -

"40. The UGC Act was enacted by Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the Statement of Objects and Reasons of the Open University Act shows that the formal system of education had not been able to provide an effective means to equalise educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

42. The provisions of the UGC Act are binding on all universities whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-section (1) of Section 26 are of wide amplitude. They apply equally to open universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and (c) of sub-section (2) thereof.

47. In University of Delhi v. Raj Singh [1994 Supp (3) SCC 516 : 1995 SCC (L&S) 118 : (1994) 28 ATC 541] this Court held: (SCC pp. 526-27, para 13)

> *"13. ... By reason of Entry 66, Parliament was invested with the power to legislate on 'coordination and determination of standards in institutions for higher education, or research and scientific and technical institutions'. Item 25 of List III conferred power upon Parliament and the State Legislatures to enact legislation with respect to 'vocational and technical training of labour'. A six-Judge Bench of this Court [Ed.: The reference is to Gujarat University v. Krishna Ranganath Mudholkar, AIR 1963 SC 703.] observed that the validity of the State legislation on the subjects of university education and education in technical and scientific institutions falling outside Entry 64 of List I as it then read (that is to say, institutions for scientific or technical education other than those financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance) had to be judged having regard to whether it impinged on the field reserved for the Union under Entry 66. In other words, the validity of the State legislation depended upon whether it prejudicially affected the coordination and determination of standards. It did not depend upon the actual existence of the Union legislation in respect of coordination and determination of standards which had, in any event, paramount importance by virtue of the first part of Article 254(1)."*

48. In State of T.N. v. Adhiyaman Educational and Research Institute [(1995) 4 SCC 104] this Court laid down the law in the following terms: (SCC pp. 134-35, para 41)

> *"41. What emerges from the above discussion is as follows:*
>
> *(i) The expression 'coordination' used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for*

preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to shortlist the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally."

94. In ***Kalyani Mathivanan versus K.V. Jeyaraj and others*** *(2015) 6 SCC 363*,the Supreme Court held: -

> *"48. Article 254 relates to repugnancy of law made by the State with the law made by Parliament. Article 254 reads as follows:*
>
> *"254.Inconsistency between laws made by Parliament and laws made by the legislatures of States.—(1) If any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the legislature of the State shall, to the extent of the repugnancy, be void.*
>
> *(2) Where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:*
>
> *Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the legislature of the State."*
>
> *49. The effect in case of inconsistency between the legislation made by Parliament and the State Legislature on the subject covered by List III has been decided by this Court in numerous cases.*
>
> * * *
>
> ***53.*** *The aforesaid judgment makes it clear that to the extent the State legislation is in conflict with the Central legislation including subordinate legislation made by the Central legislation under Entry 25 of the Concurrent List*

shall be repugnant to the Central legislation and would be inoperative."

95. In all the aforesaid judgments, the consistent law settled by the Supreme Court is that higher education is a field reserved for Union of India. Therefore, State Government has no power to legislate in the said field.

96. Section 9 (a) of the Madarsa Act confers power on the Board to prescribe course of instructions, text-books, other books and instructional material even for Alim, i.e. under-graduate course, Kamil i.e. post-graduate course, Fazil, i.e. Junior research Programme and other courses.

97. Section 9 (e) empowers the Madarsa Board to grant Degrees to persons, who have pursued a course of study in an institution admitted to the privileges or recognition by the Board or even who have studied privately and have passed an examination of the Board. Section 9(f) of the Madarsa Act empowers the Board to conduct examinations of the Alim (Graduate), Kamil (Post Graduate) and Fazil (Junior Research Programme) courses; Section 9 (g) empowers the Madarsa Board to recognise institutions for the purposes of its examination and Section 9 (h) empowers it to admit candidates to its examination. Section 9 (p) empowers the Madarsa Board to provide for research or training in any branch of Madarsa-Education.

98. All the aforesaid provisions confers powers on the Madarsa Board which are vested in the University Grants Commission by the UGC Act, falls within the purview of Entry 66 of List I of the Seventh Schedule to the Constitution of India and, therefore, the Madarsa Act is violative of the provision contained in Article 246 (1) of the Constitution of India and is unconstitutional to the said extent.

(F) CONCLUSION

99. In view of the foregoing discussion, we hold that the Madarsa Act, 2004, is violative of the principle of Secularism, which is a part of the basic structure of the Constitution of India, violative of Articles 14, 21 and 21-A of the Constitution of India and violative of Section 22 of the University Grants Commission Act, 1956. Accordingly, the Madarsa Act,

2004 is declared unconstitutional. Further, we are not deciding the validity of Section 1(5) of the R.T.E. Act as we have already held the Madarsa Act to be ultra vires and we are also informed by learned counsel for both the parties that in State of U.P. Vadik Pathshalas do not exist.

100. Since there are large number of Madarsas and Madarsa students in State of U.P., the State Government is directed to take steps forthwith for accommodating these Madarsa students in regular schools recognized under the Primary Education Board and schools recognized under the High School and Intermediate Education Board of State of U.P. The State Government for the said purpose shall ensure that as per requirement sufficient number of additional seats are created and further if required, sufficient number of new schools are established. The State Government shall also ensure that children between the ages of 6 to 14 years are not left without admission in duly recognized institutions.

101. The Writ-C No.6049 of 2023 stands ***allowed*** and Writ-A Nos.29324 of 2019, 3735 of 2012, 5548 of 2014, 3615 of 2020 and Writ-C No.481 of 2020, which are placed before this Court on reference, are returned to the appropriate Court.

102. We appreciate the assistance given to us in the hearing of this matter by all the learned counsel and Sri Anshuman Singh Rathore, the petitioner of Writ-C No.6049 of 2023, who also addressed the Court in person. We also appreciate the hard work and able assistance provided by Sri Gaurav Mehrotra, Advocate, Sri Madhukar Ojha, Advocate and Sri Akber Ahmad, Advocate, learned Amici Curiae. Sri Nandesh Verma, Sri Ankit Baranwal and Sri Adarsh Mohan Nigam, Research Associate/Law Intern have also contributed by their in depth research.

[Subhash Vidyarthi, J.] [Vivek Chaudhary, J]

Dated: March 22, 2024
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